

**LAWS OF DOMINICA**

**INCOME TAX ACT**

**CHAPTER 67:01**

**Act**

**37 of 1982**

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on  
Omission**

The Double Taxation and Prevention of Fiscal Evasion Order 1973 (S.R.O. 48/1973) (deemed to be made under this Act) has been omitted.

**Note  
on  
Repeal**

For repeals effected by this Act, see section 131 and in particular subsection (3) of that section.

**Note  
on  
Revision Date**

THE REVISION DATE FOR THIS CHAPTER IS 1ST JANUARY, 1974.

## CHAPTER 67:01

## INCOME TAX ACT

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## CHAPTER 67:01

## INCOME TAX ACT

37 of 1982. **AN ACT to amend and consolidate the law relating to income tax.**

Commencement. [1st January 1983]

## PART I

## PRELIMINARY

Short title and application.

**1. (1) This Act may be cited as the –  
INCOME TAX ACT.**

**(2) This Act applies to –**

- (a)* the assessment of income for the year of assessment 1984 and subsequent years of assessment; and
- (b)* the deduction of withholding tax from payments made on or after 1st January 1983.

Interpretation.

**2. (1) In this Act –**

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

“Appeal Commissioners” means the Appeal Commissioners appointed under section 89;

“approved pension fund” means a pension fund approved for the purposes of this Act under section 55;

“assessable income” means assessable income as defined in section 8 and as ascertained in accordance with Part V;

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

- (a)* of the amount of chargeable income and the tax chargeable thereon;

- (b)* of the amount of any loss allowable as a deduction; or

- (c)* that no tax is chargeable,

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

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

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

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

“chargeable income” means chargeable income as ascertained in accordance with Part VI;

“child”, in relation to an individual, includes a step-child, an illegitimate child or a legally adopted child of that person;

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

“Comptroller” means the Comptroller of Inland Revenue appointed under section 3;

“controlled company” has the meaning given to it in section 41(3);

“dividend” means a dividend as defined in section 36;

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

- (a) a transfer of assets by will or other testamentary disposition, except to the extent provided by section 15; or
- (b) the assignment of any income by a deed of assignment, however described;

“earned income”, for the purpose of the allowances provided under section 17, means income deriving wholly, from the carrying on of a business or accruing as employment income within the meaning of section 35;

“employment” means any employment in which the relationship of master and servant subsists or an appointment or office whether public or not and whether or not that relationship subsists, and

the terms "employee" and "employer" shall be construed accordingly;

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

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

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

"Minister" means the Minister responsible for Finance;

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

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

"person" includes an individual, a trust, the estate of a deceased person, a company, a partnership and every other juridical person;

28 of 1966.

"previous Ordinance" means the Income Tax Ordinance 1966 (repealed by this Act);

"Regulations" means Regulations made under this Act;

"representative taxpayer" means, in relation to –

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

(b) a non-resident, any person appointed under section 22 to act as agent on his behalf; or

(c) tax due and payable –

(i) by a deceased person at the date of his death, the executor of the estate of that deceased person; or

(ii) at the commencement of liquidation by a company which is being wound up, the liquidator of that company;

"resident in Dominica", in relation to a year of assessment means –

(a) in the case of an individual, that –

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

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

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

- (a) for the use of, or the right to use –
  - (i) copyrights, artistic or scientific works, patents, trade marks, designs, plans, secret processes or formulae, motion picture films, tape or films for radio or television broadcasting, or

(11) information concerning industrial, commercial or scientific knowledge; or

(b) in respect of the operation of a mine, quarry or other place of extraction of natural resources;

“separated”, in relation to the marital status of an individual, means a person who is living apart from his or her spouse under –

(a) an order of a court of competent jurisdiction;

(b) a written agreement of separation; or

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

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

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

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

“withholding tax” means any tax deducted or deductible pursuant to sections 53, 55(13), 56(1)(b) or 57;

“year of assessment” means the period of twelve months commencing

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

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

## PART II ADMINISTRATION

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

Comptroller of  
Inland Revenue.

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

Delegation by  
Comptroller.

- (a) the power of delegation conferred by this section; and
- (b) the power to sanction prosecutions conferred by section 117.

(2) Any delegation made under this section shall be revocable at any time by the Comptroller and no delegation shall prevent the exercise of such powers, duties or functions by the Comptroller himself.

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

Indemnity against  
liability for acts  
done.

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

Secrecy.

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

- (a) to any person authorised by the Cabinet, or by any other

(b) to any other person to whom such disclosure is necessary for the purposes of this Act; or

(c) to any authorised officer of the Government of a country with which an international agreement for the avoidance of double taxation exists, for the purposes of that agreement.

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

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

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

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

(7) No person referred to in subsection (1) shall be required to produce in any court any return of income, assessment or notice of assessment or to divulge or communicate any information which comes to his knowledge in the performance of his office, duties or employment under this Act except to the extent to which it is necessary for the purposes of this Act.

### PART III

## IMPOSITION OF INCOME TAX

### DIVISION I – CHARGE TO TAX

Charge to tax:  
general.

7. (1) Subject to subsections (5) and (6), tax shall be charged for each year of assessment on the chargeable income of every person for that year.

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

(3) Subject to Part VII, the chargeable income of any person shall be ascertained by deducting from the assessable income of such person any amounts which may be allowable under Part VI.

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

(5) Where income ascertained in accordance with Part V, accrues directly or indirectly to a non-resident person from any source other than from the carrying on of business or the exercise of employment, the income shall not form part of the assessable income of that person and the gross amount of the income shall be liable to withholding tax in accordance with sections 53, 57 and 61.

(6) Where income accrues to any person by way of a cash benefit payable from an approved pension fund or on the surrender of a life assurance policy in circumstances where a separate charge to tax is created, the income shall not form part of the assessable income of that person and the gross amount thereof shall be liable to withholding tax in accordance with section 53 (13) or 54 (i)(b).

8. (1) The assessable income of a taxpayer shall be –

Scope of charge  
to tax.

- (a) where the taxpayer is a resident, subject to subsection (2), all amounts ascertained in accordance with Part V, accrued directly or indirectly from all sources whether in or out of Dominica; and
- (b) where the taxpayer is a non-resident, subject to section 7 (5), all amounts ascertained in accordance with Part V, accrued directly or indirectly from all sources in Dominica,

which is not exempt from tax under Part IV.

(2) Where an individual is a resident but is not ordinarily resident, his assessable income shall include income accrued from sources out of Dominica but only to the extent that such income is received in Dominica.

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

Income accrued:  
meaning of.

- (a) in the case of income from employment, when it is earned;

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

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

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

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

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

Income deemed  
to have accrued  
from sources in

**10. (1) Any income accrued to any person shall be deemed to have accrued from a source situated in Dominica where it has accrued to that**

- (a) any employment exercised in Dominica irrespective of where payment is made or the contract of employment is entered into;

(b) any employment exercised out of Dominica

- (i) in the performance of duties on behalf of the Government, or
- (ii) as an officer or member of the crew of a ship or aircraft engaged in international traffic,  
by such person being an individual who is ordinarily resident in Dominica;
- (c) any business carried on by a company resident in Dominica as owner or charterer of any ship or aircraft engaged in international traffic;
- (d) interest from any person being –
  - (i) an individual who is ordinarily resident in Dominica, where the indebtedness –
    - (A) was incurred in connection with the acquisition of; or
    - (B) was charged against,  
any property situated in or to be brought into Dominica; or
  - (ii) any other person, whether resident or non-resident, who has a permanent establishment in Dominica in connection with which the indebtedness on which the interest accrued was incurred, where the interest is borne by the permanent establishment;
- (e) a dividend from a company which is resident in Dominica;
- (f) any property physically situated in Dominica;
- (g) the provision of management services including personal services and technical and managerial skills in Dominica where the services are provided for the purposes of a business carried on in Dominica and the cost of the services is borne by that business, irrespective of where the contract for the services was entered into;
- (h) a source of income which under any international agreement made under section 50, is deemed to be situated in Dominica.

(2) Where, under this Act, or under any international agreement made under section 50, income is deemed to have accrued –

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

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

(3) In subsection (1)(d) –  
“permanent establishment” includes –

- (a) a place of management;
- (b) a branch or office;
- (c) a factory or workshop;
- (d) premises used as a sales outlet;
- (e) a building site or construction or assembly project;
- (f) the maintenance of plant and machinery for rental.

Basis period for a  
year of assess-  
ment.

**11.** (1) Subject to this section, the assessable income of any person for a year of assessment shall be the whole of the income, ascertained in accordance with Part V, which accrues to such person during the calendar year immediately preceding that year (in this Act referred to as “the basis period for a year of assessment”).

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

(3) Where, during the course of business, a person wishes to vary the basis period previously adopted by him (under subsection (1) or (2)) he may, with the approval of the Comptroller, and subject to subsection (4), do so and his chargeable income in respect of succeeding years of assessment shall be ascertained by reference to such varied basis period which for the purposes of this Act shall be taken to be the basis period of that person for a year of assessment.

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

(a) two basis periods terminate within the same calendar year, his chargeable income of the relevant year of assessment shall be ascertained by reference to the assessable income of both such basis periods;

(b) the Comptroller is of the opinion that substantially less tax would be payable than would have been payable if the basis period of that person had not been varied, the Comptroller may require the payment of such additional amount as an advance payment of tax as he deems reasonable.

(5) For the purposes of this section –

(a) in the year of commencement, a basis period of less than twelve months may be adopted;

(b) in the year of cessation of a business, the basis period shall be the period from the end of the basis period ending in the previous calendar year to the date of cessation, irrespective of whether the period is greater or less than twelve months.

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

## DIVISION II – PERSONS CHARGEABLE TO TAX

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

Persons  
chargeable:  
general.

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

13. Any income accrued to a married woman in the basis period for any year of assessment to which this Act applies shall be charged to tax in her own name.

14. (1) Where, by reason of any disposition made by any disponent for the benefit of a minor, whether or not such child is related to the

Minor children:  
dispositions to

~~disponer, any income has accrued to that child, the income shall, during his minority or until the prior death of the disponer, be deemed to have accrued to the disponer and shall be included in his assessable income.~~

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

Settlements and  
wills.

**15.** (1) Subject to subsection (3), any income accruing to a trust, where there is no beneficiary entitled to the immediate benefit thereof, shall be included in the assessable income of the trust and the chargeable income ascertained therefrom shall be charged to tax in the name of the trustee.

(2) Subject to section 14, any income accruing to a trust, where there is a beneficiary entitled to the immediate benefit thereof, shall be deemed to have accrued to the beneficiary and shall be included in his assessable income.

(3) Where, under a trust, a beneficiary may be entitled to the benefit of the income thereof at the discretion of the trustee, any income so applied for his benefit shall be deemed to have accrued to the beneficiary and shall be included in his assessable income.

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

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

(6) In subsections (1), (2) and (3), "trust" means a trust created –

- (a) by will or other testamentary disposition; or
- (b) by a deed or donation, settlement or other disposition *inter vivos*.

16. (1) Where income accrues to any person under a revocable disposition the income shall be deemed to have accrued to the disponent and shall be charged to tax in his name. Revocable dispositions.

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

- (a) has a right to reassume control, directly or indirectly, over or have access to the property or income of the disposition; or
- (b) has power to revoke or otherwise determine the disposition, whether immediately or in the future and whether with or without the consent of any other person, but only where, in the event of the exercise of such power the disponent will or may become beneficially entitled to the whole or any part of the property or income of the disposition.

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

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

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

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

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

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

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

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

(4) For the purposes of this section –

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

Legally disabled persons.

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

Insolvent persons.

**20.** Where a person becomes bankrupt –

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

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

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

- (a) include an amount equal to that proportion of the partnership assessable income for that year of assessment which the amount of the net partnership profit or income to which he is entitled under the partnership agreement, ascertained under that agreement, bears to the net partnership profit or income; or
- (b) be calculated after deducting an amount equal to that proportion of the partnership assessed loss for that year of assessment which the amount of the net partnership loss for which he is responsible under the partnership agreement, ascertained under that agreement, bears to the net partnership loss.

(3) In this section –

“partnership assessable income” means the assessable income of the partnership calculated as if the partnership were a person chargeable to tax;

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

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

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

(a) ~~has the management and control of property in~~  
of the non-resident;

(b) is appointed by the non-resident to act on his behalf; or

(c) ~~carries on business with a non-resident in circumstances in which section 22(1)(a) applies~~

Transactions  
designed to avoid  
liability to tax.

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

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

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

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

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

(3) Where a loan, including a commercial loan, is made by a resident person to a non-resident person, either free of interest or at a rate of interest other than the commercial rate generally prevailing at the time the loan was made, and the Comptroller is of the opinion that the loan is not one between independent persons dealing at arm's length, the Comptroller shall be deemed to have accrued to the resident person the amount of the interest which would have accrued to the resident person if the loan had been made at the commercial rate generally prevailing at the time the loan was made.

person for each year of assessment after the loan is made at such commercial rate as the Comptroller deems reasonable in the circumstances.

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

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

Responsibility of  
representative  
taxpayers.

(2) Where any person is liable to furnish a return of income under section 66, whether or not chargeable to tax, the obligation imposed by subsection (1) shall apply to any representative taxpayer acting on behalf of that person.

#### PART IV EXEMPT INCOME

25. (1) There shall be exempt from the tax –

Exemption of  
income: general.

(a) the official emoluments of the President, and of any Acting President, any gratuity or pension payable to a former Governor or President upon his retirement, any gratuity payable to his legal personal representative upon the death of a Governor or President and any pension payable to the widow of a Governor or President upon his death;

[32/1987  
57/1987  
56/1988  
22/1989  
50/1989  
9/1992  
43/1993].

(b) the official emoluments payable in respect of their offices to –

(i) ~~members of diplomatic missions and consulates~~ credited to Dominica;

(ii) members of the staff of such missions and consulates, except such persons who are citizens of or ordinarily resident in Dominica;

- (c) the official emoluments payable by –
  - (i) any international organisation of which Dominica and one or more other countries are members; or
  - (ii) any other Government,
    - in connection with the provision of any technical co-operation services, to the extent and subject to such conditions as may be prescribed by any enactment or in any agreement or memorandum of understanding entered into by the Government;
- (d) any war pension (including any disability pension) or gratuity in respect of service during war;
- (e) any amount accruing under a scholarship or similar educational grant to a person receiving full-time education at a school, college, university or other educational establishment;
- (f) any interest accrued on any loan charged on the public revenue, which is declared by the Minister to be exempt;
- (g) any benefits payable under section 27 of the Social Security Act to any person by way of –
  - (i) sickness benefit;
  - (ii) maternity benefit;
  - (iii) funeral grant;
  - (iv) invalidity benefit; or
  - (v) any child allowance payable as a survivors' benefit or death benefit;
- (h) any income accrued from a source outside Dominica to any retired person who, prior to his retirement, was not resident in Dominica;
- (i) any income accrued to –
  - (i) an individual, from his office; or
  - (ii) such an individual or his dependents by way of pension in respect of his past services,
    - as a minister of religion or other person in holy orders in the service of any religious body approved for this purpose by the Minister;

- (j) the income of any approved pension fund;
- (k) the income of any local or statutory authority;
- (l) the income of any trade union;
- (m) the income of any registered building society, friendly society or co-operative society;
- (n) the income of any religious, charitable, or educational institution of a public character in so far as the income is not derived from business carried on by it for profit, other than a business carried on for the primary purpose of assisting disabled persons to learn or exercise a trade or skill;
- (o) any income accruing from agriculture, including horticulture and the use of land for the purposes of husbandry including the keeping or breeding of livestock and poultry or the growing of crops of fruit, vegetables, flowers or plants;
- (p) the income of the Government Savings Bank;
- (q) the income of the Social Security Fund established under the Social Security Act; Ch. 31:01.
- (r) the income of the Dominica Association of Industry and Commerce;
- (s) the income of the Caribbean Investment Corporation, the Caribbean Development Bank and the Regional Development Agency; Ch. 84:05.  
Ch. 74:05.  
18 of 1968.
- (t) the income of the Windward Islands Banana Growers Association and the Dominica Banana Growers Association;
- (u) the income of the Dominica Agricultural Industrial and Development Bank; Ch. 74:03.
- (v) any travel, subsistence or transport allowance paid to any member of Parliament or any public officer in office;
- (w) any amount accrued by way of gratuity on the termination of a contract of employment; but this exemption shall not apply if the contract is renewed or replaced by

a new contract with the same employer on substantially similar terms;

- (x) the official emoluments and allowances payable in respect of their offices to Judges of the Eastern Caribbean Supreme Court;
- (y) the income accrued to the Prime Minister, or any High Commissioner or Ambassador, from the occupation of any official residence;
- (z) the income of Dominica Electricity Services Limited accruing in respect of the supply of electricity until 30th June, 1991, and any interest on indebtedness paid by the company during the continuance of its licence as provided by section 32 of the Electricity Supply Act;
- (aa) the income of any school carried on for the primary purpose of providing training in musical skills;
- (bb) any interest accruing from deposits in banks in Dominica to a resident or a non-resident individual;
- (cc) the income earned from loans made by commercial banks in long term housing mortgage schemes approved by Cabinet;
- \**(dd)* the first twelve thousand dollars of any income by way of pension for past services accrued in Dominica by any non-resident individual;
- (ee) any distributions of profits of a company by way of bonus shares issued to existing shareholders.

(2) The exemptions specified in subsection (1) may by Order made by Cabinet be added to, deleted or otherwise varied from time to time.

Exemption:

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[2 of 1993  
7 of 1993].

**26.** (1) Subject to this section, the income accruing from an hotel shall be exempt where the construction of the hotel or of any extensions to the residential accommodation therein commenced after the commencement of this Act.

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\*This provision applies to the assessment of income for the year of assessment 1994 and subsequent years of assessment

(2) No exemption under subsection (1) shall apply unless approval of the exemption is given by Cabinet following application in writing made to the Minister.

(3) Where approval has been given in respect of the construction of an hotel there shall be exempt from tax for such period of time as may be determined by Cabinet, but not exceeding a maximum of ten years (hereinafter referred to as “the tax holiday period”) all income accruing to the owner or to the lessee from the carrying on of the business of the hotel.

(4) Where any hotel ceases to be used as a hotel by the owner or lessee thereof during the tax holiday period the exemption provided by this section shall cease to apply from the date of cessation of such use.

(5) Where approval has been given in respect of any extension to an existing hotel there shall be exempt from tax for such period of time as may be determined by Cabinet, but not exceeding a maximum of ten years (hereinafter referred to as “the tax holiday period”) all income, attributable to the extension, accruing to the owner or to the lessee from the carrying on of the business of the hotel.

(6) The income exempted under subsection (3) or (5) shall be ascertained after taking into account any allowances for capital expenditure to which the owner or the lessee would have been entitled under the Second Schedule if such income had not been exempt from tax.

(7) For the purposes of subsection (5) income attributable to the extension to an existing hotel shall be taken to be such proportion of the total income accruing from the hotel as the number of additional bedrooms in the extension bears to the total number of bedrooms in the hotel.

(8) In this section “hotel” means a hotel or guest house containing not less than five bedrooms for the accommodation of guests for reward.

**27.** (1) Subject to this section, the rental accruing to any person from the lease of an industrial building shall be exempt from tax for a period of ten years after completion of its construction.

Exemption:  
rental income  
from lease of  
industrial  
buildings.  
[32 of 1995].

(2) No exemption under subsection (1) shall apply unless construction of the building has been completed after the commencement of this Act.

Second  
Schedule.  
Part III.

(3) In ascertaining the income which is exempt under this section, any capital allowances to which the owner would have been entitled under Part III of the Second Schedule including any balancing allowance or charge shall be taken into account in the same manner as if the income were chargeable to tax.

(4) Where any person who was entitled to exemption under this section disposes of the property prior to the expiry of the full period of exemption he shall cease to be entitled to any further exemption and exemption from tax shall apply to the person who has acquired the property for the remainder of the period.

(5) In this section an “industrial building” means an industrial building or factory shell of not less than five thousand square feet of surface area, which is used for industrial purposes.

(6) For the purposes of this section the period of exemption shall commence on the date of effective occupation by a tenant for the first time irrespective of whether the occupation occurs prior to final completion of the building or subsequent thereto.

Exemption:  
income from  
certain residen-  
tial accommoda-  
tion.  
[32 of 1995].

**28.** (1) Subject to this section, the income accruing to any person from the construction by him, or on his behalf, of residential accommodation in Dominica where the construction commences after the commencement of this Act shall be exempt from tax.

(2) No exemption under subsection (1) shall apply unless the construction of residential accommodation has been undertaken in pursuance of an agreement with the Government.

(3) The income which shall be exempt under this section shall be –

(a) any gains or profits accruing from the sale by that person of the residential accommodation within a period of ten years after completion of construction and irrespective of whether or not the property has been leased to a tenant during that period; and

(b) any rental income accruing to that person from the leasing of the residential accommodation during a period of ten years after completion of construction.

(4) In ascertaining the income which is exempt under this section, any capital allowances to which the owner would have been

entitled under the Second Schedule shall be taken into account in the same manner as if the income were chargeable to tax. Second Schedule

29. (1) Subject to this section, where any person, whether or not resident in Dominica, lends money to any other person by way of mortgage in connection with the purchase, construction or reconstruction of residential accommodation in Dominica, either for owner occupancy or for rental purposes, there shall be exempt from tax any income accruing to the mortgagee by way of interest on the loan secured by and any service charge payable under the mortgage. Exemption:  
interest from  
housing  
mortgages.

(2) The mortgage referred to in subsection (1) shall be a mortgage in respect of which the rate of interest and service charge do not exceed ten per cent and the exemption shall only apply where the mortgage does not exceed one hundred and fifty thousand dollars:

Provided that where the rate of interest and service charge, or the amount of a mortgage, exceed the limits specified in this section the income which is exempt from tax shall be such proportion of the total income accruing as –

- (a) the rate of ten per cent bears to the total interest and service charge payable; or
- (b) the sum of one hundred and fifty thousand dollars bears to the total amount of the mortgage,

in the basis period.

(3) Where income accrues to a resident company by way of interest or service charge which is exempt from tax under this section, the exempt income may be distributed by way of dividend to the shareholders and any distribution so made, whether during the period of exemption or at any subsequent time, shall, subject to section 32, be exempt from tax in the hands of the shareholders.

(4) The rate of interest and service charge and the mortgage limit specified in subsection (2) may by Order made by the Minister be varied from time to time.

(5) In this section –

“residential accommodation” means any place of accommodation used solely for residential purposes, and includes a shop with residential accommodation attached to it.

Exemption:  
interest paid on  
approved  
borrowings by  
mortgage  
companies or  
building  
societies.

**30. (1)** Where a company or a building society carries on a business which consists of the lending of moneys in relation to mortgages, the interest from which is exempt under section 29, the Minister may, by Order, exempt in the hands of the debenture holder the amount of any interest payable by that company or society in respect of debenture borrowing by it for the purpose of financing the purchase, construction or reconstruction of houses where he is satisfied as to the reasonableness of –

- (a) the period during which the debenture issue is to be repaid; and
- (b) the rate of interest payable thereon by the company or society.

(2) Where an Order is made under this section in respect of debenture borrowing, the company or society shall maintain such special account as the Comptroller may require showing –

- (a) the total borrowings; and
- (b) the amount loaned by the company or society under mortgage the interest from which is exempt under section 29.

(3) Any Order made under this section may be revoked by a further Order by the Minister from such date as he may specify therein, if he is of the opinion that the borrowings are being or have been applied other than under mortgages the interest from which is exempt under section 29; but nothing in this subsection shall be so construed as to prohibit the placing of the borrowings on short-term Treasury bills investment or short-term deposit with a recognised financial institution prior to the lending out under a programme of mortgage loans.

Exemption:  
approved  
enterprise for  
fiscal incentive  
relief.  
Ch. 84:51.

**31.** Where a company has been approved as an approved enterprise for the manufacture of an approved product under the Fiscal Incentives Act, it shall be exempt from tax under this Act during the currency of its tax holiday period provided under that Act.

Distribution:  
company income

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

- (a) the amount of exempt or partially exempt income accrued; and
- (b) the amount of any dividends declared and paid therefrom, and any dividends so declared shall be exempt or partially exempt in the hands of the shareholders.

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

- (a) the amount of exempt income accrued; and
- (b) the amount of any dividends declared and paid therefrom, and any dividends so declared shall be exempt or partially exempt in the hands of its shareholders.

(3) In the case of income which is only partially exempt, subsections (1) and (2) shall apply so as to exempt in the hand of the shareholder only such portion of the dividends as the exempt income bears to the total income of the company unless the company otherwise indicates and in such case the exempt income account referred to in subsection (1) shall be adjusted accordingly.

## PART V

### ASCERTAINMENT OF ASSESSABLE INCOME

#### DIVISION I – GAINS OR PROFITS FORMING ASSESSABLE INCOME

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

Assessable  
income: general.

- (a) any business;
- (b) any employment;
- (c) rentals and royalties;
- (d) interest or discounts;
- (e) premiums, commissions, fees and licence charges;

- ~~(f) annuities and other periodic receipts including receipts~~  
by way of alimony or maintenance;
- (g) dividends from companies; and
- (h) any other gains or profits accrued to that person which are not included under any other paragraph of this section.

(2) Nothing in subsection (1) shall be construed so as to bring within the meaning of assessable income liable to assessment under Part X, any amounts accrued to a non-resident (other than from the carrying on of a business or the exercise of employment) which are liable to withholding tax under section 57.

Business income.

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

First Schedule.

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

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

- (a) any amount accrued under any contract of insurance against loss of profits or by way of compensation or damage for loss of profits;
- (b) any amount accrued by way of recovery of any bad or doubtful debt which has been allowed as a deduction for any previous year of assessment;
- (c) any amount accrued by way of recovery or reimbursement of any expenditure or loss by way of remission or other cessation of indebtedness by a creditor, whether in a bankruptcy or insolvency or otherwise where the amount has been allowed as a deduction for a previous year of assessment;
- (d) any amount accrued by way of subsidy for, or in relation to, the carrying on of a business;
- ~~(e) the market value of any benefit accruing in the course of business, whether or not convertible into money;~~

- (f) the amount of any balancing charge ascertained under the Second Schedule.

Second Schedule.

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

- (a) the nature of the operation carried on in and out of Dominica;
- (b) the turnover of the business in and out of Dominica;
- (c) the situation and value of the assets employed in the business;
- (d) the market value of any trading stock imported into or exported from Dominica; and
- (e) any other matters which appear to the Comptroller to be relevant.

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

Employment  
income.

- (a) any amount accrued by way of wages, salary, leave pay, fee (including a director's fee), commission, bonus or gratuity;
- (b) any travelling, entertainment or other allowance to the extent to which it does not represent a repayment to the employee of moneys wholly and exclusively expended by him in the performance of the duties of the employment;
- (c) any benefit to an employee by way of the rental value of any quarters or residence provided by the employer;
- (d) the value of any other benefit or advantage received or enjoyed by the employee in respect of his employment; or
- (e) any pension payable to a former employee, or the dependent of a former employee either directly by the employer or indirectly by the trustees of a pension fund in respect of the employment. to the extent to which such pension is not exempt under section 25.

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

(a) any public officer;

(b) any other person, at intervals of not less than four years, where the leave passage is in fact used; but nothing in this subsection shall be so construed as to exclude from assessable income –

(i) any money or other consideration received in lieu of the entitlement to a leave passage; or

(ii) the value of any passage granted to any person at the termination of a contract or service, except at intervals of not less than four years, where the person returns to Dominica after leave to undertake employment under another contract of service with the same employer on substantially similar terms.

(3) Where an employment is exercised in Dominica on a visit or visits to Dominica by a non-resident in the performance of duties for a non-resident employer, and the Comptroller is satisfied that –

(a) the visit or visits do not exceed thirty days in any basis period; and

(b) the expenses associated with the visit are not allowable as a deduction against the profits of a business carried on in Dominica,

the income shall not be charged to tax as employment income under this Act:

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

(i) public entertainers including theatre, motion picture, radio or television artistes and musicians; or

(ii) athletes or sportsmen.

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

(a) where the property is not owned by the employer, the annual rental paid therefor; or

(b) where the property is owned by the employer, six per cent of what in the opinion of the Comptroller, is the estimated market value of the building.

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

36. (1) Subject to this section and section 63, the assessable income of every resident person shall include the actual amount of any dividend accrued to that person. Dividends.

(2) Any dividend accrued to a non-resident person shall not form part of the chargeable income of that person but shall be separately charged to withholding tax in accordance with section 57.

(3) For the purposes of this Act “dividend” means any distribution of the assets of a company whether in cash or otherwise, by the company to its shareholders in respect of shares of the company and includes –

- (a) any profit distributed by the company, not being –
  - (i) a distribution of exempt income to which section 32 applies;
  - (ii) a distribution, in cash or by way of bonus shares, of a capital profit arising from the sale or revaluation of fixed assets of the company;
- (b) in the event of the partial reduction of the capital of a company, any money or the value of any property which is distributed to the shareholders in excess of the amount by which the paid up value of the shares is reduced;
- (c) in the event of the reconstruction of a company, any money or the value of any property which is distributed to the shareholders in excess of the paid up value of the shares held by them before the reconstruction; and
- (d) in the event of the winding up of a company, any money or the value of any property which is distributed to the shareholders in excess of the paid up capital of the company including any amount held in a share premium reserve

(4) For the purposes of subsection (1) where a dividend consists of property other than money, it shall be deemed to be of an amount equal to the market value of the property at the time of the distribution of the dividend.

(5) In this section, “share premium reserve” means such amount as represents any premium which has arisen from an issue of shares where such amount has been capitalised.

Loans or advances by a controlled company to a shareholder.

37. (1) Where a controlled company makes a loan or advances any money to a shareholder therein, or to an associate of a shareholder (within the meaning of section 41(3)), the amount of the loan or advance shall, subject to this section, be deemed to be a dividend accrued to the shareholder in the basis period in which the loan or advance was made, unless the shareholder satisfies the Comptroller that –

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

(2) Subsection (1) shall not apply to any loan or advance made by a company –

- (a) in the ordinary course of its business where the business includes the lending of money;
- (b) where at the end of the basis period prior to the loan or advance being made, the company did not have any accumulated profits from which a dividend could be declared; or
- (c) where by reason of the operation of section 63, no additional tax would be payable by the shareholder.

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

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

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

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

**38.** The following amounts shall be charged to tax as rental income: Rental income.

- (a) the gross rental payable by the lessee, tenant or occupier of any property;
- (b) any premium or other consideration, however described, payable for the right of use or occupancy of any property;
- (c) the value of any improvements which pursuant to a lease agreement, the lessee has effected to property for the benefit of the lessor during the basis period for any year of assessment.

#### DIVISION II – DEDUCTIONS ALLOWABLE IN ASCERTAINING ASSESSABLE INCOME

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

(2) Subject to subsection (3), in ascertaining the assessable income of any person for any year of assessment from any source specified in section 33 there shall, subject to such evidence as the Comptroller may require, be allowed as a deduction, all expenditure wholly and exclusively and, in the case of employment income, necessarily incurred by that person during the basis period for that year of assessment for the purpose of producing his assessable income from that source.

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

(4) Where expenditure is incurred partly for the purpose of producing assessable income and partly for purposes for which no

deduction is allowable, nothing in subsection (7) shall be construed to prevent the apportionment of the expenditure in such manner as appears to the Comptroller to be reasonable.

Deductions  
allowable:  
specific.

40. (1) Subject to this Division and without prejudice to section 39(2), save to the extent that any provision of this section imposes a restriction on a deduction otherwise allowable, the deductions allowable in ascertaining the assessable income of any person for any year of assessment shall include –

Second  
Schedule.

- (a) any allowance to which that person is entitled under the Second Schedule in respect of capital expenditure;
- (b) any expenditure incurred by that person during the basis period for such year of assessment on the repair of premises, plant and machinery used by him in his business, or the replacement of any implement, utensil or similar article for which no allowance is given under the Second Schedule;
- (c) any legal expenses incurred by that person during the basis period for the year of assessment in respect of any claim, dispute or action at law arising in the course, or by reason of, the ordinary operations undertaken by him in the carrying on of business;
- (d) any annually assessed rates or taxes imposed on any immovable property used by him for the purpose of producing assessable income;
- (e) any premiums incurred under a policy of insurance against damage to or loss of property –
  - (i) where the property insured is used for the purpose of producing assessable income; and
  - (ii) the policy is entered into with an insurance company which carries on business in Dominica and is liable to include such premiums in its assessable income;
- (f) any premiums incurred under a policy of insurance against loss of profits;

Provided that –

- (i) no such deduction shall be allowed unless the policy is entered into with an insurance company which

carries on business in Dominica and is liable to include such premiums in its assessable income; and

- (ii) where any policy against loss or profits arises under a policy of insurance on the life of an employee, including a director, a deduction shall only be allowable where the Comptroller is satisfied that –
  - (A) any sum recoverable will constitute assessable income under section 34;
  - (B) the insurance is intended to meet a loss of profits arising from the loss of the employee's services;
  - (C) if the policy of insurance is against the death or permanent disablement of the employee, it is a policy providing only for a sum to be paid in the event of the death or permanent disablement of the employee within a specified number of years and while in the employment of the employer;
- (g) the amount of any debts due to that person to the extent to which they are bad and provided they have been brought to account in the ascertainment of his assessable income for any year of assessment;
- (h) such amount as the Comptroller thinks reasonable in respect of any debts due to that person which he considers to be doubtful of recovery and provided they have been brought to account in the ascertainment of his assessable income for any year of assessment;
- (i) any expenditure incurred during the basis period for the year of assessment by way of interest on any loan made to that person, including interest payable on debentures, to the extent to which the Comptroller is satisfied that the amount of the loan was used by that person for the purpose of producing assessable income;
- (j) any amount contributed under the Social Security Act Ch. 31:01. by him in respect of persons employed in his business;
- (k) any amount contributed by him in respect of his employees by way of current annual contributions to an approved pension fund;

- (1) such amount as is specified in subsection (2) in respect of any contribution made by way of special payment to an approved pension fund where the payment is made –
- (i) in relation to a period of service by any employee prior to the setting up of the approved pension fund; or
  - (ii) to meet any actuarially ascertained insufficiency in the resources of the approved pension fund to meet its obligations to his employees;
- (m) any expenditure incurred by that person during the basis period for a year of assessment by way of audit fees, accountancy fees or in respect of the preparation of a return of income for the purposes of this Act or the previous Ordinance;
- (n) any expenditure incurred by that person during the basis period for a year of assessment by way of subscription or donation to a business or professional organisation approved by the Comptroller where he is satisfied that the organisation is a non-profit body established with the object of maintaining and advancing the standards of the business or profession.

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

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

41. (1) Notwithstanding section 39 where a person carrying on business in Dominica incurs expenditure by way of management charges, being expenditure payable –

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

- (a) to a non-resident (the non-resident not being engaged in a business in Dominica giving rise to the management charges); or
- (b) by a branch of a non-resident company to its head office or to some other branch outside Dominica of the company,

a deduction shall be allowed of the lesser of –

- (i) the amount of the management charges; or
- (ii) five percent of the deductions (exclusive of management charges) allowable under section 39 and the provisions of section 40(1) other than paragraph (a) thereof, or such higher amount as in the opinion of the Comptroller is reasonable,

and any amount of management charge not allowed as a deduction by reason of this subsection shall be deemed not to be a management charge for the purposes of section 57 and the Third Schedule.

Third Schedule.

(2) Notwithstanding section 39, in ascertaining the assessable income of a controlled company for any year of assessment, the Comptroller may disallow any amount, otherwise deductible, which is paid or payable to a shareholder or any associate or a shareholder by way of –

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

and which in the opinion of the Comptroller is excessive in amount, having regard to the duties performed or the rate of interest payable on the loan, and any amount which is not allowed as a deduction by reason of this subsection shall be deemed not to be employment income or interest, as the case may be, of the person to whom it is paid or payable.

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

- (a) “a controlled company” means a resident company which is owned and controlled by not more than five shareholders excluding the Government and any company which is not itself a controlled company;

(h) "an associate of a shareholder" means, in relation to a shareholder, an individual who is –

- (i) the spouse of the shareholder; or
  - (ii) a lineal ancestor, child or other lineal descendant, brother, sister, uncle, aunt, nephew or niece of the shareholder or of his spouse;
- (c) a company shall be deemed to be owned and controlled by not more than five shareholders where five or less individual persons and any associates of such persons (within the meaning of paragraph (b)) beneficially own shares carrying between them, directly or indirectly –
- (i) the right to exercise more than one half of the voting power in that company;
  - (ii) the right to receive more than one half of any dividends that might be paid by that company; and
  - (iii) the right to receive more than one half of any capital distribution in the event of the winding up or of a reduction in the share capital of the company.

(4) Notwithstanding section 39, a deduction shall be allowed in respect of expenditure incurred by a married person by way of employment income within the meaning of section 35 to his or her spouse as an employee or former employee, only to the extent to which the Comptroller is satisfied that the expenditure is reasonable in amount, and any amount which is not allowed as a deduction by reason of this subsection shall be deemed not to be employment income of the spouse to whom it was paid.

(5) Subsection (4) shall apply to a partnership in respect of employment income paid or payable to the spouse of one of the partners and, notwithstanding section 21, any amount which is not allowed as a deduction shall be deemed to be chargeable income of the partner.

Capital  
allowances.

Schedule.

**42.** For the purpose of ascertaining the assessable income of any person for any year of assessment there shall be allowed as a deduction any amount to which that person is entitled under the Second Schedule in respect of capital expenditure incurred by him.

Deduction for  
losses.  
[13 of 1989].

**43.** (1) Subject to subsection (4), where the deductions allowable to any person for any year of assessment under the provisions of this Division other than this section, exceed the income from the source to

which those deductions relate, the amount of the excess shall be allowed as a deduction against income accruing from other sources of income for that year of assessment.

(2) Subject to subsection (4), where, after the allowance of any deduction to which the person may be entitled under subsection (1), an excess still remains, the amount of the excess (herein referred to as “the assessed loss”) shall be allowed as a deduction in ascertaining the assessable income of subsequent years of assessment to the extent provided in subsection (3).

(3) The deduction provided in subsection (2) shall be the full amount of the assessable income of the next subsequent year of assessment ascertained in accordance with this Part, but before the operation of subsection (2) (in this section referred to as “the relevant assessable income”) and where the assessed loss exceeds the relevant assessable income, or there is no relevant assessable income of such subsequent year of assessment, the excess of the amount of the assessed loss, as the case may be, shall be carried forward and deducted in like manner in ascertaining the assessable income of the next following two years of assessment or until the assessed loss has been fully allowed, whichever is the earlier.

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

(a) an hotel; or

(b) an enterprise approved under the Fiscal Incentives Act, Ch. 84:51.

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

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

Deductions not allowable under more than one provision.

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

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

Expenditure for which no deduction allowable.

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

- (a) any expenditure to the extent to which it is not incurred for the purpose of producing assessable income;
- (b) any expenditure incurred for domestic or private purposes;
- (c) any expenditure incurred for the purpose of producing exempt income;
- (d) any capital withdrawn or any expenditure or loss of a capital nature;
- (e) any tax imposed under this Act or any previous enactment relating to tax imposed on income;
- (f) any income tax or tax of a similar nature charged in a country outside Dominica; or
- (g) any contribution made to a pension fund which has not been approved under this Act.

(2) Notwithstanding sections 39 and 40, in ascertaining the chargeable income of any person for any year of assessment, no deduction shall be allowed in respect of any amount paid or payable to a non-resident to which section 57 applies unless the Comptroller is satisfied that the withholding tax chargeable thereon has been paid.

## PART VI

ASCERTAINMENT OF CHARGEABLE  
INCOME DEDUCTIONS ALLOWABLE

46. (1) In ascertaining the chargeable income for any year of assessment of any person who is a resident individual, there shall, upon due claim and subject to such evidence as the Comptroller may require, be allowed as a deduction from his assessable income any amount to which he is entitled under this Part.

Concessional  
deductions:  
general.

(2) Where a person is not entitled to any deductions under this Part, his assessable income shall constitute his chargeable income.

(3) The deductions allowable under this Part shall be allowed after any deductions to which he is entitled under Division II of Part V and in the event of there being an insufficiency of assessable income to permit the allowance in full of any deductions under this Part, then the concessional deductions shall be limited to the amount of the assessable income, if any, which remains.

47. A resident individual shall be entitled to an allowance of twelve thousand dollars irrespective of the nature of his income.

Personal  
allowance to  
individuals.  
[20 of 1985  
21 of 1987  
13 of 1989].

48. (1) In ascertaining the chargeable income for any year of assessment of any individual who purchases shares in a public company approved by Government at a cost of not more than five thousand dollars there shall upon due claim, and subject to such evidence as the Comptroller may require, be allowed a deduction from his assessable income of an amount equal to the cost of the shares.

Purchase of  
shares.  
[13 of 1989].

(2) For the purposes of subsection (1) the shares must –

- (a) be allotted and issued for the first time by the company out of capital;
- (b) have been issued for the purposes of providing new capital to finance expansion of a business or the acquisition of a new business and in either case as promoted in a public prospectus advertised by the company to which the shares relate.

Deduction for mortgage interest on owner occupied property.

**48A.** A resident individual shall be entitled to a deduction in respect of any amount paid during the basis period for a year of assessment by way of interest on a mortgage or loan in respect of the acquisition of or improvements to an owner occupied residential property but the deduction allowable for any year of assessment in respect of the expenditure shall not exceed fifteen thousand dollars.

Deduction for gifts for certain approved purposes. [3 of 1988 15 of 1988 13 of 1989 2 of 1990 2 of 1992]. Ch. 28:02.

**49.** (1) In ascertaining the chargeable income of any person for any year of assessment, where in the basis period for that year of assessment that person –

- (a) has made a contribution or donation to the Education Trust Fund established by the Education Trust Fund Act;
- (b) has made a contribution or donation to the National Development Foundation of Dominica;
- (c) has made a contribution to the Council of Legal Education;
- (d) has granted a scholarship through the Ministry of Education for secondary or college education within Dominica or the University of the West Indies;
- (e) has made a contribution or donation to the Princess Margaret Hospital Trust Fund;
- (f) has made a contribution or donation to any charitable institution designated by Order of Cabinet an approved charity;
- (g) has made a contribution or donation to the Community Hostels Incorporated of Dominica;
- (h) has made a contribution of not less than one thousand dollars but not more than twenty thousand dollars to a special fund operated by a Carnival Organising Committee, designated by Notice of the Minister published in the *Gazette*, for the purpose of this provision;
- <sup>\*</sup>(i) has made a contribution to the National Services Development Council,

there shall be allowed a deduction of the contribution or donation made or the value of the scholarship granted by that person.

<sup>\*</sup>This provision shall have effect in relation to the assessment of income for the year of assessment 1993 and for each subsequent year of income.

(2) Notwithstanding section 46(1), the deduction allowable under this section shall be allowable to any resident person, whether or not an individual or any non-resident company carrying on business in Dominica.

## PART VII

### SPECIAL PROVISIONS RELATING TO CERTAIN TAXPAYERS

#### DIVISION I – VARIATION OF NORMAL BASIS OF TAXATION

**50.** (1) Notwithstanding any other provisions of this Act, the Minister may enter into an agreement with the Government or Governments of any other country or group of countries with a view to –

International agreements for the avoidance of double taxation.

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

agreement entered into under subsection (1).

(3) Any agreement entered into under subsection (1) or amendment or cancellation under subsection (2) shall come into force by Order and be published in the *Gazette*

General insurance  
companies.  
[20 of 1991  
2 of 1993  
32 of 1995].

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

(2) To the balance so ascertained there shall be added a reserve for unexpired risks outstanding at the beginning of the basis period; and from the balance so ascertained there shall be deducted –

- (a) a reserve for unexpired risks outstanding at the end of the basis period; and
- (b) where the company is a non-resident, but subject to section 41(1), such proportion of the expenses of the head office as, in the opinion of the Comptroller, is reasonably attributable to the general insurance business carried on in Dominica.

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

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

(5) For the purposes of subsection (4) “gross premium” means the aggregate of all premiums collected by or on behalf of an association of underwriters from insured persons and includes premiums paid by an insurer to a reinsurer or premiums received by an association of underwriters for reinsurance business.

(6) For the purpose of the charge to tax an association shall be deemed to be an individual.

Life insurance  
companies.

**52.** (1) The chargeable income for any year of assessment of any company carrying on a business of life assurance whether mutual or proprietary shall be deemed to be an amount equal to twenty per cent of the gross investment income accruing in Dominica to that company during the basis period for that year of assessment.

(2) For the purposes of subsection (1) –

- (a) "the gross investment income accruing in Dominica" shall be deemed to be an amount equal to such part of the total investment income of the company as the premiums attributable to Dominica bear to the total premiums received;
- (b) "the total investment income" means the aggregate of the investment income accruing in Dominica and elsewhere including income which would in the hands of any other person be exempt;
- (c) no deduction or tax credit shall be given against the gross investment income accruing in Dominica (ascertained under paragraph (a)) in respect of any investment income accruing in Dominica which would in the hands of any other person be exempt under section 25.

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

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

Non-resident  
airline compa-  
nies.

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

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

Third Schedule.

**54.** (1) Where any controlled company fails to make a sufficient distribution in relation to any year of assessment (hereinafter referred to as "a sufficient distribution") it is liable to pay tax on the undistributed

Undistributed  
profits of  
controlled  
company.

profits of that year of assessment at the rate of fifteen per cent in respect of every dollar thereof.

(2) A controlled company shall have made a sufficient distribution for the purposes of this section if, by 31st December in the year of assessment, it has paid by way of dividend the whole or such proportion of its chargeable income remaining after deduction of the income tax payable thereon as the Comptroller considers reasonable.

(3) In determining the amount of a sufficient distribution in relation to a company the Comptroller shall have regard to the nature of the sources of its income and the financial resources available to it and may, where he is satisfied that it would be detrimental to the business of the company to regard the whole of its chargeable income after deduction of the tax payable thereon as a sufficient distribution, direct that such proportion thereof as he may specify (hereinafter referred to as "a retention allowance") may be retained for the purposes of the business without liability to tax thereon under subsection (1).

(4) Where any retention allowance is approved by the Comptroller under subsection (3), he may require that such reserves be created in the accounts of the company as are necessary to ensure that the retention allowance is being applied for the purpose or purposes for which it was approved.

(5) The undistributed profits of a year of assessment shall be the amount specified as a sufficient distribution for that year less the amount of the dividends, if any, made in relation to that year within the time allowed under subsection (2).

(6) Where, during the time allowed under subsection (2), a controlled company has made a distribution in excess of the distributable profits of that year of assessment the amount of the excess shall be deemed to be a distribution made by the company within the time allowed for making a sufficient distribution in relation to the next succeeding year of assessment.

(7) Where any liability to tax arises under subsection (1) in relation to a year of assessment, any subsequent distribution of profits does not qualify the company for any relief therefrom, and the distribution shall be dealt with in accordance with section 50.

(8) Where liability to tax arises under this section, the Comptroller shall issue a separate notice of assessment in respect of the liability stating the amount of undistributed profits and the tax payable in respect thereof, but save as provided, the provisions of this Act

relating to the making of assessments, objections and appeals shall apply in respect of the liability.

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

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

(a) to its members upon retirement;

(b) to the spouse or child of a member upon death,

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

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

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

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

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

(a) for a pension to be payable –

(i) on retirement of the member at his retirement date, which shall not be prior to his attaining fifty years of age;

(ii) on retirement of the member prior to his retirement date where he retires prematurely as a result of mental or physical infirmity; or

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

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

(i) the member for his life,

- (ii) the spouse of a deceased member during her ~~widowhood~~ or for a guaranteed term of years;
  - (iii) any child of the member until such child attains an age of not less than eighteen years;
- (c) that the maximum pension payable to a member shall not exceed seventy per cent of the maximum salary earned by him during any twelve month period of membership;
- (d) that the maximum pension payable to the spouse and children of a deceased member shall not exceed fifty per cent of the pension payable to the member at his death, or where death occurred prior to his retirement would have been payable to him had he retired on the date of his death;
- (e) that contributions by a member shall cease upon his retirement, death or withdrawal from the fund;
- (f) that the annual contribution by the employer in relation to every calendar year shall not be less than the total contribution paid by all the members in relation to that year, except where the Comptroller is satisfied upon certification by an actuary that a lesser contribution is necessary to maintain solvency of the fund;
- (g) that no pension payable thereunder shall be capable of being surrendered, commuted or assigned either wholly or in part except to the extent permitted by subsection (8);
- (h) that no benefit shall be payable to or in respect of a member prior to his retirement or death, except to the extent permitted by subsection (11) or (12);
- (i) for the constitution of the fund by a trust under which the property of the fund is irrevocably vested in –
  - (i) ~~not less than three persons, where the trustees are individuals; or~~
  - (ii) a trust corporation.

(5) A pension fund may provide that, in lieu of a widow's pension being payable in the event of the death of a member prior to retirement, a death benefit shall be payable equal to the aggregate of the

joint contributions of the member and the employer together with compound interest thereon up to the date of his death.

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

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

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

(a) where the annual amount payable does not exceed one thousand two hundred dollars the full amount of the pension may be commuted;

(b) in any other case, the greater of one thousand two hundred dollars or twenty-five per cent of the pension may be commuted.

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

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

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

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

(b) where membership of the employee exceeds five years a paid up deferred pension determined by reference to the aggregate of the joint contributions of the member and the employer together with compound interest thereon up to the date of withdrawal.

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

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

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

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

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

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

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

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

(17) Notwithstanding subsection (1), where a fund or scheme has been approved for the purposes of section 22 of the previous Ordinance prior to the commencement of this Act, the fund or scheme shall be deemed to have been approved under this section.

(18) In this section –

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

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

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

“trust corporation” means a company, a substantial activity of which consists of the administration or management of property held in trust for the beneficiaries of such trusts.

56. (1) Where, under the provisions of the previous section 54 of this Act in force before its repeal by the Income Tax (Amendment) Act or the corresponding provisions of the previous Ordinance, a resident individual has been allowed a deduction in respect of premiums for insurance on his life or the life of his wife and cash benefits are payable in respect of the surrender of the policy prior to maturity, the following provisions shall apply:

Surrender of life assurance policy prior to maturity. [21 of 1987 28 of 1966].

- (a) where deductions have been allowed or are allowable in the year of assessment in the basis period for which the policy was surrendered and in any of the four preceding years of assessment (whether under this Act or the previous Ordinance) the amount of the benefits, apportioned in such manner as appears to the Comptroller to be reasonable and whether payable to him or his wife, shall be added to his chargeable income for each of those years and taxed accordingly:

Provided that nothing in this paragraph shall be construed to bring to charge any amount greater than the deduction which had been allowed or is allowable in respect of each of those years of assessment;

- (b) where deductions have been allowed in respect of more than four but less than ten preceding years of assessment the amount of the benefit shall not form charge.

able income, but shall be separately charged to tax in the hands of the insurer, who shall deduct as tax ten per cent of the moneys prior to payment of the balance to the insuree;

(c) where premiums have been paid for a period of more than ten years prior to surrender of a policy this section shall have no application.

(2) The tax deducted by the insurer under subsection (1)(b) shall be paid to the Comptroller within fifteen days after the end of the month in which it was deducted, and shall be accompanied by a statement setting out the names of all policy-holders to whom payments have been made, the amounts of the payments and the tax deducted therefrom.

DIVISION II – WITHHOLDING TAX ON  
PAYMENTS TO NON-RESIDENTS AND  
DEDUCTION OF TAX BY EMPLOYERS

Deduction of tax  
from payments  
made to non-  
residents.  
Third Schedule.

57. (1) Every person who makes any payments to a non-resident, shall deduct tax from the payments in accordance with and in the manner specified in the Third Schedule and shall carry out such other obligations as are imposed by that Schedule.

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

Third Schedule.

(3) Nothing in this section shall prevent the Comptroller from directing the deduction of a lesser amount than that provided in the Third Schedule where he is satisfied that the person to whom the payment is made is a resident of a country with which an international agreement made under section 50 exists which provides for a lower rate of withholding tax than that provided in the Third Schedule.

Profits of non-  
resident company  
liable to  
withholding tax  
when remitted.  
[22 of 1988].

58. (1) Every non-resident company carrying on business in Dominica is liable to withholding tax under section 57 on such part of the profits of the business for any year of assessment as is remitted out of the State.

(2) For the purposes of subsection (1), the profits of a non-resident company means the whole of the chargeable income that accrued from carrying on of business in Dominica remaining after the

deduction of any income tax payable in respect of such chargeable income.

**59.** (1) Every employer who pays remuneration to his employees, shall deduct tax therefrom in accordance with and in the manner specified in the Fourth Schedule and shall carry out such other obligations as are imposed by that Schedule.

Deduction of tax  
by employers.  
Fourth Schedule.

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

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

Indemnification  
for tax paid to  
Comptroller.

## PART VIII

### ASCERTAINMENT OF TAX PAYABLE

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

Rates of tax.  
Fifth Schedule.

(2) Withholding tax shall be charged –

- (a) in respect of the income of non-resident airline companies at the rate specified in section 53;
- (b) in respect of cash benefits payable to member on withdrawal from an approved pension fund at the rate specified in section 55(13), or on the surrender value of a life insurance policy at the rate specified in section 56(1)(b);
- (c) in respect of any other payments to non-residents at the rates specified in the Third Schedule.

Third Schedule.

**62.** Where any tax has been

Credit for tax  
deducted or paid.

- (a) deducted under section 59 from employment income accrued to any person; or
- (b) paid in advance of a notice of assessment pursuant to section 94 or otherwise.

the tax so deducted shall be set off against the tax charged under section 61(1) for the year of assessment in relation to which the income accrued.

Credit in relation  
to dividends.  
[13 of 1989].

**63.** (1) Where a dividend accrues to a resident company from another resident company, there shall be allowed to the first mentioned company a tax credit equal to the amount by which the tax payable by that company has been increased by the inclusion of the dividend in its assessable income:

Provided that where, by reason of any loss allowable under section 43(1), the chargeable income of the year of assessment is less than the net dividend then credit shall continue to be given in succeeding years of assessment until credit has been given in respect of the full amount of the tax attributable to such dividend.

(2) Where a dividend accrues to a resident person, other than a company, from a resident company, there shall be allowed –

- (a) where the tax payable by reason of the inclusion of dividend in the assessable income of that person is payable at a rate of not more than thirty per cent, a tax credit equal to the whole amount of the tax;
- (b) where the tax payable by reason of the inclusion of the dividend in the assessable income of that person is payable at a rate greater than thirty per cent, a tax credit equal to thirty-five per cent of the net dividend.

(3) In this section “net dividend” means the actual dividend included under section 36(1) reduced by the amount of any deductions allowed under Division II of Part V other than section 43.

Credit for tax  
paid outside  
Dominica.

**64.** (1) Where an agreement which has effect under section 50 provides that tax payable under the laws of the country with which the agreement has been made shall be allowed as a credit against tax charged in Dominica, credit for the tax shall be given in the manner provided in the agreement and shall be set off against the tax charged under this Act.

(2) Where income has accrued to a resident and has been charged to tax under the laws of a country outside Dominica –

(a) where the country is a country with which there is an agreement under section 50; or

(b) with which country there is an agreement under section 50 but is income to which the agreement does not relate, and the income is charged to tax under this Act.

credit for any tax payable under the laws of the other country in which the income was charged to tax shall be calculated in the manner provided in section 65, and shall be set off against the tax charged under this Act.

(3) Where any assessment is made to give effect to the provisions of this section, it shall be subject to the limits as to time provided by section 83.

**65.** (1) The credit to be set off in respect of tax payable in another country on the income referred to in section 64(2) shall be the lesser of –

Calculation of tax credit for foreign tax.

(a) the tax payable in the other country; or

(b) the tax charged under this Act on the amount.

(2) Where liability to tax in Dominica arises in respect of income which is received in this country, for the purpose of calculating the tax charged under this Act, the amount of the assessable income charged to tax in the other country shall be taken to be the aggregate of the amount remitted to this country and the amount of tax payable thereon in the other country.

(3) In this section –

“the tax payable in the other country” means the amount payable, either directly or by deduction, for which the resident person was personally liable and actually paid in that other country;

“the tax charged under this Act” in relation to any year of assessment means that proportion of the tax which the assessable income charged to tax in the other country bears to the total assessable income for that year of assessment, but where the proportion is greater than the tax actually paid the tax charged shall be limited to the amount actually paid.

## **PART IX**

### **RETURNS AND INFORMATION**

**66.** (1) Subject to section 78, every person liable to furnish a return of income in respect of any year of assessment, either personally or in a representative capacity, shall furnish a return in such form as may be approved by the Comptroller on or before 31st March following the end

Returns of income: general.  
[27 of 1986  
2 of 1992].

of the income year or the last day of the third month following the end of a fiscal year and the return shall –

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

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

- (a) every person liable to pay tax under this Act;
- (b) every partnership;
- (c) every person who for that year or any previous year of assessment has made a loss in respect of which he may be entitled to claim a deduction for the year of assessment or any subsequent year of assessment;
- (d) subject to subsection (5), every person who derives any income from any source specified in section 33 irrespective of the amount of the income; and
- (e) every person who derives any income which would be charged to tax under this Act save for the provisions of sections 26 to 31 or any other enactment which has exempted such income from the charge to tax for a limited period of time.

(3) The Comptroller shall give general notice in such manner as he thinks fit of the obligations imposed by this section and shall in any such notice specify the place at which return forms may be obtained.

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

(5) ~~Notwithstanding subsection (3),~~

- <sup>\*</sup>(a) a resident individual whose income accrues entirely from employment and does not exceed twelve thousand

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<sup>\*</sup>This provision shall have effect in relation to the assessment of income for the year of assessment 1991 and for each subsequent year of income

dollars during the basis period for a year of assessment;  
and

- (b) a non-resident person, whose income accrued from sources situated in Dominica consists only of income to which the provisions of section 57 apply,

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

**67.** Where it appears to the Comptroller that –

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

Returns of income: cessation of income during the basis period for any year of assessment.

the Comptroller may, subject to section 101, at any time serve upon that person a notice in writing requiring him to furnish within such time as may be specified in the notice a return of income for any year of assessment.

**68.** (1) Where it appears to the Comptroller that any person is or may be liable to furnish a return of income for any year of assessment and has not done so, the Comptroller may, subject to section 101, by notice in writing, require that person to furnish a return of income within such time as may be specified in the notice, not being less than seven days from the date of service of the notice.

Returns of income: where no return furnished.

(2) Nothing in this section shall be construed as extending time limits provided by section 66 for the furnishing of any return of income.

**69.** (1) For the purposes of the administration or the enforcement of this Act, including the obtaining of full information in respect of the income of any person who is or may be liable to tax, the Comptroller

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

- (a) to furnish to the Comptroller at such time as may be specified in the notice such further return of income, statement of assets and liabilities or other information as may be required by him;

(b) to produce, at such time and place as may be specified in the notice, for examination by the Comptroller or for retention by him for such period as may be reasonable for their examination, any accounts, books of account, statement of assets and liabilities or other documents which the Comptroller may consider necessary for such purpose and, if any such information is not available in the English language, to produce at the expense of the person who is or may be liable to tax a translation in English prepared and certified by an approved translator;

(c) to attend, at such time and place as may be specified in the notice, for the purpose of being examined by the Comptroller in respect of the assessable or chargeable income of himself or any other person or any transaction or matters appearing to the Comptroller to be relevant thereto.

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

(a) to furnish to him details of any banking account or other assets which may be held on behalf of any person, or to furnish a copy of bank statements of any such banking account;

(b) to permit the Comptroller or any officer authorised by him to inspect the records of the bank with respect to the banking account of any person,

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

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

(a) the payment of income by any person to a non-resident,

(b) the payment of remuneration by an employer to his employees, to which the Fourth Schedule applies,

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

Third Schedule.

Fourth Schedule.

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

**70.** (1) Whether or not any person has been assessed to tax, the Comptroller may carry out an examination of the income tax affairs of that person, but subject to the limit as to time specified in section 83.

Examination of  
business records.

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

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

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

**71.** (1) Where he is of the opinion that fraud or wilful intent to evade liability to tax exists, the Comptroller or any officer authorised by him may, for the purpose of obtaining information which he considers necessary in relation to the liability of any person to tax, enter any premises at any time during the day, with or without previous notice, and search for any moneys or documents; and in carrying out any such search he may –

Powers of entry,  
inspection and  
removal of  
documents.

- (a) open, or cause to be opened, any article in which he considers any moneys or documents may be contained;
- (b) seize any documents which he considers may afford material evidence of the liability of any person to tax;
- (c) retain any such documents for such period as may be reasonable for their examination or for the purposes of a prosecution or the defence of any assessment;
- (d) make copies of any such documents; and
- (e) require the owner of the business, or any employee to give him such reasonable assistance in connection with the search as may be necessary and to answer orally or in writing any questions relating to assets found on the premises and as to the location of any books of account, documents, information or assets which should be on the premises.

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

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

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

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

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

(2) Where the Comptroller is of the opinion that records or books of account are not being kept in accordance with subsection (1), or where no records or books of account are being kept by any person carrying on business, then in addition to any proceedings which may be taken under section 119, the Comptroller may direct that person to keep such records or books of account as he may specify.

Maintenance of proper record of transactions, methods of accounting and preservation of books of account and records.

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

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

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

(6) Where –

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

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

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

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

Third Schedule.  
Fourth Schedule.

**73.** (1) Where any person carries on business in the basis period for any year of assessment his return of income for the year shall be accompanied by a copy of the final accounts of the business together with a reconciliation of the income shown in the accounts with the

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

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

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

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

Principal officer  
of company.

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

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

- (a) if it is carrying on business at the commencement of this Act, within two months after the commencement; or
- (b) in the case of a company which begins to carry on business in Dominica after the commencement of this Act, within one month after the commencement of business,

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

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

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

(5) Everything done by the principal officer, which he is required to do in his representative capacity, shall be deemed to have been

done by the company and any notice given to the principal officer shall be deemed to be given to the company.

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

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

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

**75.** (1) Every partnership carrying on business in Dominica shall at all times be represented by a resident individual who shall be – Precedent partner  
of partnership.

(a) the precedent partner; or

(b) if no acting partner is resident in Dominica, the agent of the partnership in Dominica.

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

(a) is first named in the partnership agreement;

(b) if there is no partnership agreement in Dominica, the name or initial singly or with precedence to the other partners in the usual name of the partnership,

or, in any case where neither paragraph (a) nor (b) is applicable, such other partner as is specified by the partnership.

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

- (a) if it is carrying on business at the commencement of this Act, within two months after the commencement; or
- (b) if it begins to carry on business after the commencement of this Act, within one month after the commencement of business.

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

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

(6) The precedent partner or agent, as the case may be, shall be answerable for the doing of all such things as are required under this Act to be done by the partnership of which he is the representative and in case of default he shall be liable to the same penalties.

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

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

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

Returns: method of furnishing.

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

Returns: extension of time for furnishing.

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

**PART X****ASSESSMENT OF TAX**

**79.** (1) Subject to section 83, the Comptroller –

Assessments.

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

(2) Where a person has furnished a return of income the Comptroller may accept the return and make an assessment in accordance therewith.

(3) Where –

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

he may make an assessment to the best of his judgment.

**80.** (1) Subject to section 83, where in relation to an assessment made on any person for any year of assessment, the Comptroller is of the opinion that –

Additional assessments.

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

he shall make an additional assessment accordingly.

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

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

Reduced assessments.

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

the Comptroller shall make a reduced assessment accordingly.

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

(3) Where, for any year of assessment a person who has furnished a return of income for that year and has been assessed under section 79 or 80, notifies the Comptroller in writing within six years after the end of the basis period for that year of assessment that by reason of some error or mistake in the return the assessment was excessive, the Comptroller after taking into account all relevant circumstances and subject to subsection (4), shall reduce the assessment to provide such relief as appears to him to be fair and reasonable.

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

Determination of  
assessed loss.

**82.** (1) Where, in relation to any year of assessment the amount, as determined by the Comptroller, by which the deductions allowable to any person under Division II of Part V exceed the assessable income against which the deductions may be allowed the Comptroller shall make a determination of the excess (referred to in this Act as “the assessed loss”).

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

Time limits for  
assessments.

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

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

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

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

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

**84.** (1) Subject to subsection (2), a notice of assessment in respect of every person chargeable with tax shall be made and issued to that person in such forms as may be approved by the Comptroller. Notice of assessment.

(2) The Comptroller shall not be required to issue a notice of assessment to any person where –

- (a) no liability to tax arises and no tax has to be repaid;
- (b) liability to tax arises but the tax payable does not exceed five dollars, unless the person makes a request for the issue of a notice of assessment.

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

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

**86.** (1) Subject to section 81, where, in relation to an assessment – Finality of assessment.

- (a) no valid notice of objection has been given under section 87;
- (b) subsequent to the determination of an objection, no appeal has been determined, or
- (c) an appeal has been determined and there is no right of further appeal,

the assessment shall be final and conclusive

(2) Nothing in subsection (1) shall prevent the Comptroller from making an additional assessment within such time limits as are permitted by section 83 for any year of assessment which does not involve re-opening any matter which has been determined on objection or appeal for such year.

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

## PART XI

### OBJECTIONS AND APPEALS

Objection to  
assessment.

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

(2) Where the assessment is –

(a) an additional assessment; or

(b) a reduced assessment which in part imposes a fresh liability,

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

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

(4) In this section “aggrieved by an assessment or a determination” means aggrieved by –

(a) the inclusion in an assessment of an amount as part of the assessable income;

(b) the disallowance in an assessment of an amount claimed as a deduction in ascertaining the assessable or chargeable income;

- (c) the determination by the Comptroller of the amount of an assessed loss;
- (d) the amount of tax set off under sections 62, 63, 64 or 94; or
- (e) the determination by the Comptroller of any matter affecting a person's liability to tax in circumstances where the determination has not involved the making of an assessment.

88. (1) The Comptroller shall consider any valid objection made under section 87 and may either disallow it or allow it either wholly or in part and shall, by notice in writing, inform the objector of his decision. Decision by Comptroller on objection.

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

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

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

(3) Cabinet shall appoint one of the Commissioners to be Chairman and another to be Deputy Chairman and any meeting of the Appeal Commissioners shall comprise the Chairman and two other members:

Provided that, in the absence of the Chairman or where for any reason he is unable to act, a meeting of the Appeal Commissioners shall comprise the Deputy Chairman and two other members.

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

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

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

(7) The Appeal Commissioners shall have -

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

Appeal from  
decision by  
Comptroller.

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

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

(a) the Comptroller's decision on the objection; or

(b) the Comptroller's determination in relation to any other matter from which an appeal may be made,

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

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

- (a) the inclusion in an assessment of an amount as part of the assessable income;
- (b) the disallowance in an assessment of an amount claimed as a deduction in ascertaining the assessable or chargeable income;
- (c) the determination by the Comptroller of the amount of an assessed loss;
- (d) the amount of tax set off under section 62, 63, 64 or 94;
- (e) the disallowance by the Comptroller of a claim for relief under section 81; or
- (f) any determination by the Comptroller of any matter affecting a person's liability to tax in circumstances not involving the making of an assessment.

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

Hearing by  
Appeal Commis-  
sioners.

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

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

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

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

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

(7) The Chairman of the Appeal Commissioners may authorise the publication of the decision on any appeal, but the publication shall be in such manner as not to disclose the identity of the appellant except with the written consent of the latter.

Right of further appeal.

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

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

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

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

Payment of tax not suspended by objection or appeal.

93. The obligation to pay –

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

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

## PART XII

### PAYMENT, RECOVERY AND REFUND OF TAX

Advance payment of tax.  
[6 of 1986  
27 of 1986].

94. (1) This section shall apply to –

- (a) every resident company;

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

(2) Every person to whom this section applies shall in respect of his liability to tax for any income year make payment towards such tax in the manner provided by this section.

(3) Subject to subsection (4), every person to whom this section applies shall pay on or before March 31st, June 30th and September 30th in each income year an instalment towards the total tax due in respect of that income year; and such person shall pay the final instalment of any balance upon filing his annual tax return on or before March 31st of the subsequent year.

(4) (a) Taxpayers with fiscal period shall pay instalments at the end of the third, sixth and ninth month following the beginning of their fiscal period and shall pay any balance of tax due in respect of that fiscal period upon filing their tax returns for the fiscal period.

(b) The provisions of subsection (5) shall apply *mutatis mutandis* to the instalments payable by fiscal period taxpayers under paragraph (a).

(5) Subject to subsections (6) to (13), every person to whom this section applies shall pay –

(a) in respect of the income year 1986 –

- (i) on or before March 31st 1986, a sum equal to fifty percent of the total tax payable on his 1985 income;
- (ii) on or before June 30th 1986, a prepayment of tax for the 1986 income year, in the sum equivalent to either fifty percent of the total tax payable in respect of his 1985 income or an estimated amount equal to fifty percent of the total tax payable on the income he expects to earn in 1986;
- (iii) on or before September 30th 1986, the balance of tax due on his 1985 income;

(b) in respect of the income year 1987

- (i) on or before March 31st 1987, the balance of tax due and owing for the 1986 income year;
  - (ii) on or before June 30th 1987, a prepayment of tax for the 1987 income year in the sum equivalent to either fifty percent of the total tax payable in respect of his 1986 income or an estimated amount equal to fifty percent of the total tax payable on the income he expects to earn in 1987;
  - (iii) on or before September 30th 1987, a prepayment of the balance of tax due and owing in respect of the 1987 income year;
- (c) in respect of the income year 1988 –
- (i) on or before March 31st 1988, such balance as may be due in respect of the 1987 income year plus, as a prepayment of tax in respect of the 1988 income year, a sum equivalent to either twenty-five percent of the total tax payable on his 1987 income or an estimated amount equal to twenty-five percent of the total tax payable on the income he expects to earn in 1988;
  - (ii) on or before June 30th 1988, as a prepayment of tax in respect of the 1988 income year, a sum equivalent to either thirty-five percent of the total tax payable in respect of his 1987 income or an estimated amount equal to thirty-five percent of the total tax payable on the income he expects to earn in 1988;
  - (iii) on or before September 30 1988, as a prepayment of tax in respect of the 1988 income year a sum equivalent to either forty percent of the total tax payable in respect of his 1987 income or an estimated amount equal to forty percent of the total tax payable on the income he expects to earn in 1988;
- (d) in respect of every income year after 1988 –
- (i) on or before March 31st of the relevant income year, such balance as may be due in respect of the preceding income year plus, as a prepayment of tax in respect of the relevant income year, a sum equivalent to either twenty-five percent of the total tax

payable on the preceding income year or an estimated amount equal to twenty-five percent of the total tax payable on the income he expects to earn in that relevant income year;

- (ii) on or before June 30th of the relevant income year, as a prepayment of tax in respect of the relevant income year, a sum equivalent to either thirty-five percent of the total tax payable on the preceding income year or an estimated thirty-five percent of the total tax payable on the income he expects to earn in that relevant income year;
- (iii) on or before September 30th of the relevant income year, as a prepayment of tax in respect of the relevant income year, a sum equivalent to either forty percent of the total tax payable in respect of the preceding income year or an estimated amount equal to forty percent of the total tax payable on the income he expects to earn in that relevant income year.

(6) Where in any income year a person, to whom this section applies, begins to carry on business or to receive rents for his own account, that person shall, not later than thirty days before the date on which prepayment of the first instalment of tax payable in respect of that income year is due, apply in writing to the Comptroller for a determination of the amount of the instalment payable under subsections (4) and (5).

(7) The Comptroller may estimate the amount of tax payable under this section by any person where that person fails to file a return as required by section 66 for the preceding income year, and upon making a demand in writing of that person for the prepayment of the amount so estimated, subsections (4) and (5) shall apply as if the amount so estimated was the estimate of that person.

(8) Where a person to whom this section applies –

(a) is of the opinion that the taxable income in respect of the current income year may be less than the taxable income for the preceding income year,

(b) is of the opinion that the taxable income in respect of the current income year may be less than the taxable income for the preceding income year.

that person shall not later than thirty days before the date on which prepayment of the first instalment of tax is due under this section, apply in writing to the Comptroller for a determination or reduction, as the case may be, of the amount of the instalments payable under subsections (4) and (5).

(9) On an application under subsection (6) or (8), the Comptroller may –

- (a) in the case of an application under subsection (6) or under subsection (8)(a), determine; or
- (b) in the case of an application under subsection (8)(b), if he is satisfied that the taxable income in respect of the current income year is likely to be less than that of the preceding income year, reduce,

the amount of the instalments payable under subsections (4) and (5).

(10) In the case of an individual who is in receipt of income from employment and from another source or sources, the final instalment payable under this section shall take into account any deductions which have been made under the Fourth Schedule from his employment income.

Fourth Schedule.

(11) Any tax instalments paid pursuant to this section in respect of an income year shall be set off against the tax charged under section 61(1) for such year.

(12) Where any person to whom this section applies makes an overpayment of prepayments of tax for an income year he may either claim the overpayment on his annual returns as a refund or apply the overpayment against the subsequent income year's prepayments of income tax.

(13) For the purposes of this section –

- (a) “income year” means –
  - (i) in the case of a resident company or other person carrying on a business, a fiscal period; and
  - (ii) in the case of an individual, a calendar year, and  
a calendar year the reference is to the income year coinciding with or ending in that calendar year;
- (b) “fiscal period” in relation to a resident company or other person carrying on a business means the period for

which the accounts of the business have been ordinarily made up and accepted for the purposes of income tax and, in the absence of an established practice, the fiscal period is that adopted by the person with the approval of the Comptroller; but no fiscal period may exceed fifty-three weeks and no change in a usual and accepted fiscal period may be made for the purposes of this section without the concurrence of the Comptroller.

**95.** (1) Subject to this Part and particularly to section 94(3) and (4): When tax is due and payable. [27 of 1986].

- (a) where the Comptroller makes an assessment in pursuance of section 79(3) the amount of tax payable under the assessment shall be due and payable thirty days after service of the notice of assessment;
- (b) any unpaid balance of tax shown on an income tax return shall be due and payable on or before March 31st in the year following the income year in respect of which the tax is payable or three months after the end of a taxpayer's fiscal year in respect of which the tax is payable;
- (c) any additional tax due as a result of an additional assessment made by the Comptroller under section 80, shall be due and payable thirty days after service of the notice of assessment.

(2) On application by the person chargeable, the Comptroller may in any case grant such extension of time for payment or permit payments to be made by the instalments and within such time as he considers the circumstances warrant, and in such case the tax shall be due and payable accordingly, but nothing in this subsection shall be construed to extend the due date specified in subsection (1) in respect of any interest payable under section 96.

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

**96.** (1) Any tax, being the whole or part of an instalment of tax due and payable by any person under section 94, not paid by the date upon which the instalment becomes due and payable shall bear interest at the Interest on unpaid tax.

rate of one percent per month or part thereof for the period during which it remains unpaid.

(2) Any tax, being the remainder of any tax charged on any person under section 95, not paid by the due date shall bear interest at the rate of one percent per month or part thereof for the period during which it remains unpaid.

(3) The interest chargeable under this section shall be in addition to any penalty to which the person may be liable under section 113.

(4) Any penalty imposed under section 113 and any interest charged under this section shall be collected and recovered in the same manner as the tax and as part thereof.

When tax deducted from remuneration or other payments to non-residents is due and payable.

**97.** Any tax deducted or deductible –

- (a) from the remuneration paid to an employee pursuant to section 59; or
- (b) from the payment of any income to which section 57 applies to a non-resident,

shall be due and payable by the person responsible for making the deduction, within fifteen days after the end of the month during which that tax was deducted or deductible.

Interest on unpaid tax deduction.

**98.** (1) Any tax deducted or deductible under sections 53, 55, 56, 57 or 59 and not paid within the time specified in those sections or in section 97 shall bear interest at the rate of one percent per month or part thereof for the period during which it remains unpaid, and the interest shall be in addition to any penalty to which that person may be liable under section 114.

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

Recovery of tax

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

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

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

- (a) the chargeable income is incorrect;
  - (b) the tax charged is excessive;
  - (c) the assessment is the subject of objection or appeal.
- (4) In this section, tax includes –
- (a) tax payable under sections 94 and 95; and
  - (b) tax deducted or deductible under sections 53, 55, 56, 57 or 59.

**100.** (1) Where any person fails to pay any tax when it becomes due and payable, whether –

Recovery of tax  
by distraint.

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

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

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

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

Recovery of  
moneys from  
persons leaving  
Dominica.

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

Recovery of tax  
from assets of  
certain disposi-  
tions.

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

(2) For the purpose of subsection (1), the tax attributable to income deemed to have accrued to a disposer under section 14, 15(5) or 16 means the amount by which the tax charged under section 61 has been increased by the inclusion of such income in the assessable income of the disposer.

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

Recovery of tax  
from representa-  
tive taxpayer.

**103.** (1) Where any individual dies, then in respect of any tax payable under an assessment –

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

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

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

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

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

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

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

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

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

Right of representative taxpayer to indemnity.

**105.** (1) Every representative taxpayer shall be personally liable for any tax payable by him in his representative capacity if, while it remains unpaid –

Personal liability of representative taxpayers.

(a) he alienates, charges or disposes of any income in respect of which the tax is charged; or

(b) he disposes of or parts with any assets or money which is in his possession or comes to him after the date on which the tax is due and payable, if this tax could legally have been paid out of such income, assets or money.

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

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

Recovery of tax from person holding money for another person.

(a) from whom any money is due or may become due to the first mentioned person;

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

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

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

(3) Where any person, declared to be an agent under subsection (1), fails to make any payment within the time specified in a notice under that subsection, the provisions of this Act shall apply as if the amount were tax due and payable by the person declared to be an agent on the date by which he was required to make the payment to the Comptroller.

(4) No action, suit or other proceedings shall be brought or instituted against any person declared an agent under this section or against any representative taxpayer in respect of any act done *bona fide* in pursuance of his functions as an agent or as a representative taxpayer under this Act.

Priority of tax  
debt upon  
insolvency or  
liquidation.

**107.** Notwithstanding anything contained in any other enactment –

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

in any case may be, in payment of tax due under this Act or under the previous Ordinance (whether assessed before or after the date of sequestration or commencement of winding up) in priority over other secured or unsecured debts of that individual or company to the extent provided by section 22 of the Collection of Taxes Act.

28 of 1966.

17. 25.01

~~108.~~ (1) Where the Comptroller is satisfied that any person has paid tax for any year of assessment by deduction or otherwise in excess of the amount finally determined to be payable under this Act for such year of assessment, that person shall, subject to section 81, be entitled to have the amount of the excess refunded. Refund of tax overpaid.

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

109. (1) Cabinet may remit wholly or in part any tax payable by any person where it is satisfied that it is just and equitable to do so. Remission of tax.

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

(3) The Comptroller may remit any amount of tax not exceeding ten dollars unpaid by any person in respect of any year of assessment, whether before or after the commencement of this Act, where he is satisfied that the cost of collection of the tax would exceed the amount outstanding.

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

## PART XIII

## OFFENCES

### DIVISION I – CIVIL PENALTIES

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

111. Where any person, who is required to furnish a return of income for any year of assessment, fails to do so within the prescribed time or any extended time allowed under section 78, he is liable to a penalty not exceeding ten percent of the amount of tax chargeable for that year of assessment. Penalties: failure to furnish return of income.

Penalties: failure  
to furnish correct  
return of income.

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

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

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

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

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

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

Penalties: failure  
to pay tax by due  
date or to give

**113. (1)** Any person who fails to pay tax, being the whole or part of –

- (a) an installment of tax due and payable under section 77,  
OR

- (b) the remainder of any tax charged under section 95,

by the due date is liable to a penalty equal to ten percent of the amount of tax due.

estimate.  
[6 of 1986].

(2) Any person to whom section 94 applies who makes prepayments of tax for an income year based on a substantial underestimation that is less than seventy-five percent correct, is liable to a penalty equal to ten percent of the amount of underpayment; and the amount of the underpayment due and payable shall bear interest at the rate of one percent per month or part thereof for the period during which it remains unpaid.

**114.** (1) Any person who is required by this Act to deduct tax from the income of or payments to some other person under section 53, 55, 56, 57 or 59 and who, fails to deduct or to account to the Comptroller for any tax so deducted, is liable to a penalty of ten percent of the tax which should have been deducted or for which he has failed to account.

Penalties: failure to deduct tax or to account for tax deducted.

(2) The penalty imposed by this section is in addition to any interest payable under section 98 and any personal liability which might exist in relation to the tax.

**115.** Any person who fails within the specified time to comply with a notice issued under section 69(1) requiring him to –

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

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

of that subsection, whether in relation to himself or any other person, is liable to a fine of five hundred dollars.

**116.** Where any penalty is contemplated under section 115, prior to the imposition thereof, the Comptroller shall notify the person concerned –

Notice of intention to impose penalty to be given.

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

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

## DIVISION II – CRIMINAL PROCEEDINGS

Sanction for  
prosecution.

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

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

Offences: breach  
of secrecy.

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

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

is guilty of an offence and liable to a fine of one thousand dollars or to imprisonment for one year.

Offences: failure  
to comply with  
requirements of  
the Act.

**119.** (1) Any person who –

- (a) fails or neglects to furnish to the Comptroller any return or document as and when required under this Act;
- (b) fails to comply with the requirements of any notice in writing served on him under this Act;
- (c) refuses or neglects to answer truly and fully any questions put to him or to supply any information required from him in relation to his assessable income or the assessable income of any other person;
- (d) fails to keep a proper record of his transactions or to preserve any books of account or documents as required under section 72;
- (e) fails to disclose in any return of income made by him any assessable income accrued to him or any material facts which should have been disclosed;

- (f) signs any return or document rendered to the comptroller without reasonable grounds for believing that return or document or any part thereof to be correct; or
- (g) obstructs or hinders any person appointed or employed under this Act in the discharge of his duties,

is guilty of an offence and liable to a fine of one thousand dollars or to imprisonment for one year.

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

**120.** (1) Any person who, wilfully and with intent to evade assessment or liability to tax –

Offences: intent to evade liability to tax.

- (a) makes, causes or allows to be made any incorrect statement in any return lodged under this Act;
- (b) signs any document or any return lodged under this Act having reason to believe the contents of the document or return or any part thereof to be incorrect;
- (c) gives any incorrect answer, verbally or in writing, to any request for information made by the Comptroller;
- (d) prepares or maintains any incorrect books of account or other records or falsifies any books of account or other records;
- (e) authorises the preparation or maintenance of any incorrect books of account or other records; or
- (f) makes use of or authorises the use of any fraud whatever,

is guilty of an offence and liable to a fine of two thousand dollars or to imprisonment for two years.

(2) Every person who, after the expiration of the period during which an appeal may be made, if any, in respect of any incorrect statement or entry is wilfully made in any return, document, answer, books of account or other records by any person, he shall be presumed, until the contrary is proved, to have made, caused or allowed to be made that incorrect statement or entry with intent to evade assessment or liability to tax.

Offences:  
deduction of  
withholding tax.

Third Schedule.

# **121. Any person who –**

- (a) fails to deduct any withholding tax from a payment –
  - (i) to a non-resident to which sections 53, 57 and the Third Schedule apply;
  - (ii) to any person to which section 55(13) or 56(1)(b) applies; or
- (b) within the prescribed time fails to pay to the Comptroller any amount deducted in accordance with those provisions,

is guilty of an offence and liable to a fine of one thousand dollars or to imprisonment for one year.

Offences: by  
employers or  
employees.

# **122. Any person who –**

- (a) being an employer –
  - (i) within the prescribed time, fails to register as an employer, or to notify any change of address or to notify that he has ceased to be an employer;
  - (ii) within the prescribed time, fails to deduct any amount of tax from remuneration paid to an employee;
  - (iii) within the prescribed time, fails to pay to the Comptroller any amount of tax deducted from remuneration paid to an employee;
  - (iv) fails to comply with any direction issued by the Comptroller under the Fourth Schedule;
  - (v) fails to maintain a record of remuneration paid to his employees and tax deducted therefrom;
  - (vi) within the prescribed time, fails to deliver to any employee a certificate of tax deducted from remuneration;
  - (vii) within the prescribed time, fails to furnish to the Comptroller an annual return of tax deductions and remittances; or

Fourth Schedule.

- (b) being an employer, within the prescribed time, fails to file the further declaration required by paragraph 3(5)(b) of the Fourth Schedule upon ceasing to be entitled to any of the deductions or allowances claimed by him in a declaration previously furnished by him in respect of that year of assessment.

is guilty of an offence and liable to a fine of one thousand dollars or to imprisonment for one year.

**123. (1)** Any person who wilfully with intent to evade assessment or liability to tax –

Offences:  
evasion of tax in  
relation to  
deduction of tax  
by employer.

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

is guilty of an offence and liable to a fine of two thousand dollars or to imprisonment for two years.

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

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

**124. (1)** Any person who –

Aiding or  
abetting an  
offence.

- (a) wilfully makes or furnishes on behalf of another person;
- or

(b) aids or abets another person who has or believes

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

(2) Any person who wilfully and with intent to assist any other person to evade assessment of liability to tax does any of the matters referred to in section 120 or 123 is guilty of an offence and liable to a fine of two thousand dollars or to imprisonment for two years.

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

Mitigation of penalties and compounding of offences.

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

(2) Subject to the powers of the Director of Public Prosecutions under the Constitution, where any person has committed an offence against this Act for which criminal proceedings may be taken under Division II of this Part, then in relation to such offence, the Comptroller may, at any time prior to the commencement of the hearing by any court of the proceedings, after advising the Director of Public Prosecutions that he intends to do so, compound the offence and order the person to pay such sum of money as the Comptroller may think fit but not exceeding the maximum specified in Division II for such offence.

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

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

- (a) the order shall be made in writing and there shall be attached to it the request made under subsection (3);
- (b) the order shall specify the offence committed, the amount ordered to be paid and the date on which payment is to

- (c) a copy of the order shall be given to the Director of Public Prosecutions and also to the person who committed the offence, and the latter shall not be liable to any criminal proceedings in respect of the offence;
- (d) the order shall be final and not subject to any appeal;
- (e) the amount ordered to be paid shall be recoverable as if it were tax due and payable.

**126. Proceedings under this Division may be commenced –**

Time limits for proceedings to be taken.

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

## PART XIV

### MISCELLANEOUS

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

Forms of notice and returns.

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

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

Service of  
notices or  
documents.

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

(a) in the case of a person other than a company or a partnership, if –

- (i) personally served on him;
- (ii) left at his address for service of notices; or
- (iii) sent by post to such address for service of notices;

(b) In the case of a company, if –

- (i) personally served on the principal officer of the company;
- (ii) left at or sent by post to the company's address appointed under section 74 for service of notices under this Act; or
- (iii) where no address for service of notices has been appointed, left at or sent by post to any office or place of business of the company;

(c) in the case of a partnership, if –

- (i) personally served on the precedent partner or agent of the partnership;
- (ii) left at or sent by post to the partnership's address appointed under section 75 for service of notices under this Act; or
- (iii) where no address for service of notices has been appointed, left at or sent by post to any office or place of business of the partnership;

(d) in the case of a body of persons, if left at or sent by post to the address for service of notices of that body.

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

(a) requiring the personal attendance of that person before the Comptroller, pursuant to section 69; or

(b) appointing that person the agent of some other person for the payment of tax, pursuant to section 100,

the provisions of this section relating to service by post shall be construed as service by registered post.

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

(a) a person resident in Dominica, seven days; and

(b) a non-resident, thirty days,

after the date upon which the notice was posted.

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

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

(3) Where no address for service of notices has been given, or where the Comptroller's records disclose that any person has changed his address and has failed to notify the Comptroller of the change, then the address of that person as described in any record in the Comptroller's possession shall be a sufficient address for service of notices.

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

(a) a form for the return of income; or

(b) any notice calling upon him to furnish such return.

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

**130.** Cabinet may make Regulations for the better carrying out of the purposes of this Act and without prejudice to the generality of the Regulations.

- (a) may prescribe all matters which are required or permitted to be prescribed;
- (b) may provide for the imposition by a court of –
  - (i) a fine not exceeding five hundred dollars; or
  - (ii) a term of imprisonment not exceeding three months, for any breach of the Regulations; and
- (c) may provide for appeals to the Appeal Commissioners against decisions of the Comptroller made under the Regulations.

Repeal and  
Saving.  
28/1966.

**131.** (1) The Income Tax Ordinance, 1966 as amended, is repealed.

(2) The following subsidiary legislation is repealed –

3/1926.

(a) The Income Tax Rules;

13/1965.

(b) The Income Tax (Annual Allowance) Rules, 1965;

50/1966.

(c) The Income Tax (Employment) Rules, 1966;

5/1971.

(d) The Income Tax (Deduction) Rules, 1971.

(3) Nothing in the repeal effected by this section shall affect any liability to tax or any obligation arising in respect of any year of assessment prior to the commencement of this Act for which purposes the previous Ordinance and subsidiary legislation shall, subject to subsections (4) and (5), continue in force.

(4) Where any objection or appeal is made in relation to any matter arising under the previous Ordinance, the provisions of Part XI shall apply.

(5) In relation to the recovery, repayment or remission of any tax, penalty or interest becoming due and payable under the previous Ordinance the provisions of sections 99 to 109 shall apply.

Ch. 85:04.

(6) Section 14 of the Hotels Aid Act is repealed.

Transitional.  
22 of 1966.

**132.** (1) The person appointed as Comptroller under the previous Ordinance, and serving on the date of the repeal thereof, shall be deemed to have been appointed under and for the purposes of this Act on such

(2) Any declaration of secrecy taken under the previous Ordinance by any person appointed in relation to or employed in carrying out the provisions of that Ordinance shall be deemed to have been taken under this Act.

(3) Any reference in this Act to a previous year of assessment shall, if the context so requires, include a reference to a year of assessment under the previous Ordinance.

(4) Every international agreement for the avoidance of double taxation entered into under the previous Ordinance and in force at the commencement of this Act, shall be deemed to have been made under this Act for the purposes of any liability to or relief from tax in respect of the year of assessment 1984 and subsequent years of assessment and shall be read with such modifications and adaptations as may be necessary to bring it into conformity with this Act.

(5) Where, at the commencement of this Act, the tax holiday period of any hotel, pioneer enterprise, development project or fiscal incentive enterprise had not expired, exemption from tax shall continue under this Act for the remainder of the tax holiday period.

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Section 24.

FIRST SCHEDULE

VALUE OF TRADING STOCK

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

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

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

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

Value of trading stock at beginning of basis period.

2. The value of trading stock held by any person at the beginning of any basis period shall be deemed to be –  
(a) where he carried on the business on the last day of the previous basis period, the value of trading stock held on that date; or  
(b) where he commenced business during the basis period for a year of assessment, the cost price to him of any trading stock acquired prior to the commencement of the business.

Value of trading stock at the end of basis period.

3. The value of trading stock held by any person at the end of any basis period shall be deemed to be the cost price to him unless the cost price to that person is less than cost.

Value of trading stock on cessation of business.

4. Where any person ceases to carry on business but does not dispose of his trading stock at the time of cessation, the trading stock shall be deemed to be disposed of at its commercial value at the time of cessation.

5. For the purposes of this Schedule but subject to paragraph 6, the cost price of any trading stock shall be – Cost price of trading stock.

- (a) the cost incurred in acquiring the trading stock; and
- (b) any further costs incurred in getting the trading stock into its then existing condition or location.

6. Where any trading stock has been acquired or disposed of by any person – Deemed value of certain trading stock.

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

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

7. Where, for any year of assessment, the Comptroller is of the opinion that the value of trading stock held does not comply with the basis of valuation specified in this section, the value of trading stock held – Adjustments to be made where trading stock incorrectly valued.

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

(Sections 26, 27,  
28, 34, 40 and  
42).  
[5 of 1992].

## \* SECOND SCHEDULE

### CAPITAL ALLOWANCES

#### ARRANGEMENT OF PARAGRAPHS

- PART I - INTERPRETATION
- PART II - CLASSIFICATION OF ASSETS
- PART III - USEFUL LIVES AND DEPRECIABLE ASSETS
- PART IV - RESIDENTIAL BUILDING EXPENDITURE
- PART V - DISPOSAL OF DEPRECIABLE ASSETS

#### PART I INTERPRETATION

##### 1. In this Schedule –

“allowances granted” means in relation to previous years of assessment, the sum of the annual allowances granted under this Schedule or under the corresponding provision of the previous Ordinance or both;

“disposal” means scrapping, loss, destruction, sale, exchange, compulsory acquisition or alienation by gift of an asset;

“disposal value” means in relation to –

- (a) the scrapping of an asset, the scrap value thereof;
- (b) the loss or destruction of an asset, any amount received for the remains thereof together with any amount accrued as compensation or indemnity for loss or destruction;
- (c) the sale of an asset, the net proceeds of sale;
- (d) the exchange of an asset, the market value of any asset acquired through the exchange adjusted to take account of any monetary exchange made;

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\* The provisions of this Schedule shall apply to the assessment of income for the year of assessment 1994 and subsequent years.

(e) the compulsory acquisition of an asset, the amount for which it was acquired; and

(f) the gift of an asset, the market value thereof,

but in any case where the amount or net proceeds or the market value exceeds the cost, the disposal value shall be limited to the cost price;

“expenditure incurred” by any person does not include –

(a) part of any expenditure incurred by a person that is reimbursed to that person by way of subsidy or grant by the Government or some other person unless the subsidy or grant has formed part of his assessable income;

(b) notwithstanding paragraph (a) the expenditure incurred by a person shall not be reduced on account of the expenditure qualifying for the investment tax credit under the First Schedule of the Fiscal Incentives Act.

Ch. 84:51.

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

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

(b) incurred expenditure thereon of an amount equal to the total amounts, excluding interest payable under the agreement or transaction at the time the asset was acquired.

3. Where any property, in respect of which allowances have been granted under this Schedule or the previous Ordinance is disposed of together with other assets for a total consideration – 28 of 1966.

(a) which does not allocate separate prices for separate items; or

(b) which allocates a combined consideration to some assets, or a consideration which in the opinion of the Comptroller does not represent the true market value of the assets, he may apportion the total consideration among the several assets in a manner in order to arrive at a true market value of the assets in respect of which allowances were

granted and that value shall be the disposal value of the assets for the purpose of this Schedule.

28 of 1966.

4. (1) Where any asset in respect of which allowances were granted under this Schedule or the previous Ordinance or both, is disposed of by the owner to a purchaser other than by way of a transaction at arm's length the asset shall be deemed to have been disposed of at market value and that value shall apply to both the vendor and purchaser.

(2) Notwithstanding subsection (1), where pursuant to –

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

there is a substantial identity between the former owner and the new owner, the assets shall in relation to both be deemed to have been disposed of at their costs minus the sum of the annual allowances granted with respect to those assets under this Schedule or under the corresponding provision of the previous Ordinance or both.

28 of 1966.

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

- (a) under subparagraph (2)(a) where at the end of the basis period for the year of assessment in which the assets were transferred, shares in the company acquiring the assets, carrying –
  - (i) the right to exercise not less than eighty per cent of the voting power in the company;
  - (ii) the right to receive not less than eighty per cent of any dividends that might be paid by the company; or
  - (iii) the right to receive not less than eighty per cent of any capital distribution in the event of a winding up or of a reduction in the share capital of the company,
 were beneficially held by persons or relatives of those persons who at the time the assets were transferred beneficially held in the disposing company shares carrying rights of those kinds

(b) under subparagraph (2)(b) where at the end of the year of assessment in the basis period for which the assets were transferred –

- (i) in the case of a transfer to a company, shares carrying rights of the kind specified in subparagraph (3)(a) were beneficially held by the vendor or relatives of the vendor; or
- (ii) in the case of a transfer to a relative, the assets were leased by the new owner to the former owner or to a company in which shares carrying rights of the kind specified in subparagraph (3)(a) were beneficially held by the vendor or relatives of the vendor.

5. In subparagraphs (2) and (3), “relative” means –

- (a) the spouse of a person; or
- (b) a lineal ancestor, child or other lineal descendent, brother, sister, uncle, aunt, nephew or niece of a person or his spouse.

## PART II

### CLASSIFICATION OF ASSETS

1. (1) For the purpose of determining the allowances deductible under Part III of this Schedule with respect to real property used by a person in his business the real property shall be classified in accordance with subparagraph (2).

(2) Real property is classified as follows:

- (a) commercial real property means hotels, guest houses and restaurants; and
- (b) industrial real property includes –
  - (i) buildings in which goods are manufactured or processing;
  - (ii) buildings used for the purpose of trade which consists in the storage of goods or materials which are to be used in the manufacture of other goods or materials;

- (iii) buildings used for the purpose of trade which consists in the storage of goods or materials which will be subjected in the course of trade to any process; and
- (iv) buildings used for the purpose of trade which consists in the storage of goods or materials which have been manufactured, produced or subjected in the course of trade to any process but have not been delivered to any purchaser.

(3) Real property utilised for more than one purpose in a business shall be classified as commercial or industrial depending on the dominant purpose for which the property is used.

(4) For the purpose of determining the allowances deductible under this Schedule with respect to real property the cost or value of land shall not be taken into account.

2. (1) For the purpose of determining the allowances deductible under Part III of this Schedule with respect to plant and machinery used in a business, the plant and machinery shall be classified in accordance with subparagraphs (2), (3) and (4).

(2) Five year plant and machinery includes the following:

- (i) aircraft and aircraft accessory equipment;
- (ii) bicycles;
- (iii) motor cars, lorries, omnibuses, vans, jeeps, tractors, land rovers, traction and hauling equipment;
- (iv) motor cycles;
- (v) office appliances - accounting, adding and calculating machines, cash registers, duplicating and copying machines, typewriters, computers and computer accessories; and
- (vi) trailers.

(3) Seven year plant and machinery includes the following:

- (i) aerated beverage plant (electrical);
- (ii) bakery machinery and plant;
- (iii) block and brick manufacturing machinery and plant;

- (iv) cigarette manufacturing machinery;
- (v) cinematography equipment - projectors, fans, public address systems and other electrical appliances and furniture used for seating;
- (vi) clothing trade - general machinery used in the clothing trade including sewing machines;
- (vii) copra crushing and refining plant;
- (viii) cranes;
- (ix) diesel engines and motors;
- (x) electrical lifts;
- (xi) electrical undertakings including generating plants;
- (xii) engineering workshops - electrical equipment, lathes and milling machines, welding plant, tools and instruments;
- (xiii) furniture workshops - electrical and other equipment;
- (xiv) furniture;
- (xv) ice manufacture and cold storage - electrical plant and insulation, refrigeration machinery, compressors, condensers, tanks, etc.;
- (xvi) neon signs;
- (xvii) photographic equipment;
- (xviii) plant and machinery not specified as either five or nine year machinery or equipment;
- (xix) printing type;
- (xx) pumps - electric pumps;
- (xxi) radio equipment - amplifiers and receivers;
- (xxii) refrigeration and deep freeze cabinets;
- (xxiii) shipping - canoes, launches, lighters and sail boats;
- (xxiv) stores; and
- (xxv) timber merchants - saw milling machinery and electrical motors

(4) Nine year plant and machinery includes the following:

- (i) aerated beverage plant (steam);
- (ii) clothing trade - steam boilers, engines and similar machinery and plant;
- (iii) electrical undertakings - mains and other equipment, water turbines and transformers;
- (iv) engineering workshops - heavy plant;
- (v) garages - gasoline and kerosene tanks and pumps;
- (vi) gas - gas holders and containers and other plant;
- (vii) ice manufacture and cold storage - steam and gas engines;
- (viii) oil tanks and pumps;
- (ix) printing - plant and machinery;
- (x) pumps - other than electric pumps;
- (xi) radio equipment - lines and speakers;
- (xii) scales;
- (xiii) timber merchants - steam engines and boilers; and
- (xiv) waterworks - appliances and apparatus used for storage, purification, conveyance, measurement or regulation of water.

### PART III

#### AMOUNT OF THE CAPITAL ALLOWANCES

1. In ascertaining the assessable income of any person for any year of assessment from the carrying on of any business by that person or by a lessee from that person there shall be deducted an annual allowance in respect of expenditure incurred for the construction, acquisition or improvement of assets listed in Part II of this Schedule.

2. The deduction allowable under paragraph 1 with respect to the construction, acquisition or improvement of any asset listed in Part II of this Schedule shall begin in the year of assessment in the basis period for which the asset was first brought into use or, if later, the year of assessment in the basis period for which the expense is incurred.

3. (1) The deduction allowable under paragraph 1 shall be an amount equal to the percentage of the cost of the assets as specified in subparagraph (2), (3), (4) or (5).

(2) The deduction allowable for commercial real property shall be determined in accordance with the following table:

#### COMMERCIAL REAL PROPERTY

<u>Assessment Year</u>	<u>Percentage of Cost</u>
1	4
2-33	3

(3) The deduction allowable for industrial real property shall be four per cent for the year of assessment in the basis period for which the expenditure was incurred and in the next twenty-four succeeding years of assessment.

(4) The deduction allowable for five year plant and machinery shall be twenty per cent for the year of assessment in the basis period for which expenditure was incurred and in the next four succeeding years of assessment.

(5) The deduction allowable for seven year plant and machinery shall be determined in accordance with the following table:

#### SEVEN YEAR PLANT AND MACHINERY

<u>Assessment Year</u>	<u>Percentage of Cost</u>
1	15
2	15
3	14
4	14
5	14
6	14
7	14

(6) The deduction allowable for nine year plant and machinery shall be determined in accordance with the following table:

NINE YEAR PLANT AND MACHINERYAssessment Year      Percentage of Cost

1	12
2	11
3	11
4	11
5	11
6	11
7	11
8	11
9	11

4. (1) For assessment years 1993 and thereafter, the allowance allowable under paragraph 1 with respect to the construction, acquisition or improvement of any asset listed in Part II of this Schedule and which was put into use by the person claiming the allowance before January 1, 1992 shall be determined in accordance with subparagraph (2), (3) or (4).

(2) In the case of any asset with respect to which an annual allowance was allowable under the Second Schedule in the assessment year 1992, the written down value of that asset at the end of assessment year 1992 shall be deemed to be the cost of the asset. The asset shall be deemed to be put into use in the basis period for the assessment year 1993, and the annual allowances for that asset in assessment years 1993 and thereafter shall be determined under paragraph 3.

(3) In the case of any asset with respect to which an annual allowance was not allowable under the Second Schedule in the assessment year 1992, no annual allowance shall be allowable in assessment years 1993 and thereafter.

(4) In this paragraph, the written down value of an asset at the end of the assessment year 1992 means –

(a) where 1992 is the first year of assessment in the basis period for which the asset is acquired, the cost of the asset less the annual allowance allowed in respect of that asset for the assessment year 1992; or

(b) where 1992 is an assessment year subsequent to the first year of assessment in the basis period for which the asset is acquired, the written down value at the end of

the basis period for the assessment year 1991 less the annual allowance allowed in respect of that asset for the assessment year 1992.

5. For assessment years 1993 and thereafter, the annual allowance under paragraph 1 with respect to the acquisition of any asset which is listed in Part II of this Schedule, which was put into business use by a person before January 1, 1992 and for which an annual allowance was not allowable under the Second Schedule in the assessment year 1992 shall be allowed only if the asset acquired from a person who is not –

- (a) a family member; or
- (b) a related company.

6. Where an asset is an existing asset which has been used for purposes other than the carrying on of a business, the allowance under paragraph 1 for the first and subsequent years of assessment in the basis period for which the asset is used in business shall be computed as if allowances had been allowed with respect to that asset from the first year of assessment in the basis period for which the asset was acquired.

7. Where an asset in respect of which deductions have been allowed ceases to be used for business purposes for one or more years of assessment but subsequently commences to be so used or is disposed of, notional annual allowances calculated in accordance with paragraph 4(2) shall be calculated for each year during which the building was not used for business purposes in order to ascertain the written down value of the asset in relation to subsequent years of assessment.

8. Where the Comptroller is satisfied that by reason of the use of business assets on multiple shift work or in circumstances of abnormal wear and tear, he may authorise the deduction of a higher rate of allowance than is provided for under paragraph 3 as appears to him to be reasonable in the circumstances.

9. Where only part of an asset is to be used for business purposes ~~and the capital expenditure incurred on that part of the asset~~ is not to be so used –

- (a) does not exceed ten per cent of the total capital expenditure on the asset that asset shall be deemed to be used for business purposes;

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

#### PART IV

#### RESIDENTIAL BUILDING EXPENDITURE

1. (1) When a person incurs capital expenditure on residential buildings either by –

- (a) the construction of a new dwelling house; or
- (b) the substantial reconstruction of an existing dwelling house,

for the purpose of letting and the expenditure is incurred in the basis period of the assessment years 1993 or thereafter, there shall be allowed as a deduction for the year of assessment, in the basis period for which the expenditure was incurred, and in the next succeeding nine years of assessment an amount equal to the lesser of five per cent of that expenditure or five thousand dollars.

(2) When a person incurs capital expenditure on residential buildings either by –

- (a) the construction of a new dwelling house; or
- (b) the substantial reconstruction of an existing dwelling house,

for the purpose of letting and the expenditure is incurred in the basis period of the assessment year 1993 or before, there shall be allowed as a deduction for the year of assessment, in the basis period for which the expenditure was incurred, and in the next succeeding nine years of assessment an amount equal to the lesser of five per cent of that expenditure or two thousand five hundred dollars.

(3) Notwithstanding subparagraph (2) a person shall not be allowed a deduction in the assessment years 1993 and thereafter with respect to an expenditure incurred in the basis period for the assessment

year 1992 or before if that person was not entitled to a deduction for the assessment year 1992.

2. (1) Where a person who has incurred capital expenditure to which this Part relates, disposes of the property prior to the grant of the full amount of the allowance to which he would have been entitled had the disposal not taken place, he shall cease to be entitled to any further deduction and the balance thereof shall, subject to paragraph 3, be allowable to the person who has acquired the property.

(2) Notwithstanding paragraph 2(1) where a property is disposed of on a date other than the end of a basis period the Comptroller may apportion the deduction allowable as between the parties in such manner as appears to him to be reasonable.

3. The deduction provided by paragraph 2 to a purchaser of property shall only apply where the purchaser acquired the property for the purpose of letting and not for the purpose of occupation by the owner.

4. In this Part –

“residential buildings” include dwelling houses and flats or apartments which are units of larger buildings;

“substantial reconstruction of an existing dwelling house” means any extension, renovation or repair of an existing dwelling house which in the opinion of the Comptroller is reasonable to render it fit –

(a) for human habitation; or

(b) to provide additional accommodation for human habitation.

## PART V

### DISPOSAL OF DEPRECIABLE ASSETS

1. (1) Where capital allowances have been granted to a person for previous years of assessment, whether before or after the coming into operation of this Act, in respect of industrial or commercial real property or plant and machinery and any of those assets is disposed of in the basis period for any year of assessment, a balancing allowance or a balancing charge shall be made in accordance with this Part.

(2) Where the cost of the asset exceeds the aggregate of –

(a) the allowances granted for previous years of assessment; and

(b) the disposal value;

the balancing allowance shall be allowed as a deduction for the year of assessment in the basis period for which the asset is disposed of.

(3) Where the disposal value of the asset exceeds the difference between –

(a) the cost of the asset; and

(b) the allowance granted for previous years of assessment,

the balancing charge shall be included in the assessable income of the person disposing of the asset for the year of the assessment in the basis period for which the asset is disposed of.

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

2. (1) Where but for this paragraph the amount of any balancing charge would be taken into account in ascertaining the chargeable income of any person for a year of assessment, that person may elect by notice in writing to the Comptroller when furnishing his return of income for that year that in lieu of the balancing charge being taken into account it may be deducted from expenditure incurred on any replacement property acquired by him during the basis period for the year of assessment to replace the asset disposed of.

(2) Where an election is made under this paragraph the expenditure incurred on the replacement property shall be reduced by the amount of the balancing charge referred to in subparagraph (1) for the purpose of determining the written down value of replacement property and the annual allowance applicable thereto.

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

(a) no annual allowance shall be granted in respect of the replacement property; and

(b) the amount of the excess shall be included in the assessable income of the person disposing of the asset for the year of assessment in the basis period for which the asset is disposed of.

THIRD SCHEDULESections 53, 57,  
61, 69, 72, 121.DEDUCTION OF TAX FROM PAYMENTS  
TO NON-RESIDENTS

## PARAGRAPH

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

1. (1) This Schedule applies to every person who makes any Application.  
payment by way of –

- (a) a dividend;
- (b) interest or discounts;
- (c) rental, lease premium or licence in relation to immovable property;
- (d) rental of plant, machinery, equipment or other movable property;
- (e) royalty;
- (f) management charge;
- (g) commission or fee, not being in respect of an employment to which section 57 applies;
- (h) annuities or other periodic payments including payments by way of alimony or maintenance;
- (i) the distribution of income of a trust, being income of the kind specified in clauses (a) to (h);
- (j) any other payment of an income nature,

to a non-resident, and subject to subparagraph (2) does not apply to any other payments to a non-resident, carrying on business or exercising employment in Dominica.

(2) This Schedule also applies to any payment to a non-resident person in respect of independent personal services performed in Dominica other than by way of carrying on a business in Dominica through a permanent establishment in Dominica.

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

(4) For the purposes of proviso (a) to paragraph 2, where the income accruing to a trust is of different kinds, it shall be treated as retaining such character for determining the rate of tax to be deducted therefrom by the trustee.

Deduction to be made by person making payment.

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

Provided that –

- (a) where income accrues to a trust, and a non-resident beneficiary is entitled to the immediate benefit of the whole or part thereof, the trustee shall deduct the tax;
- (b) where income which accrues to a non-resident is payable by another non-resident then, for the purposes of collection of the tax imposed by this section the Comptroller may, without relieving the payer of his obligations under this Schedule, impose the charge directly on the non-resident to whom the income accrues and the general provisions of Part XII relating to the recovery of tax shall apply;
- (c) where income which accrues to a non-resident is payable to a bank or other agent on behalf of the non-resident, then, for the purposes of collection of the withholding tax the bank or agent shall deduct and account for the tax required to be deducted under this Schedule.

Rate of tax to be deducted.

3. Subject to section 50, tax shall be deducted from the actual amount paid by way of –

- (a) dividends, at the rate of fifteen percent;
- (b) rental payments in respect of immovable property, at the rate of ten percent;
- (c) rental payments in respect of movable property, at the rate of twenty percent;

~~(d) fees payable to public entertainers, at the rate of thirty percent; and~~

(e) any other payments of the kind specified in paragraph 1, at the rate of twenty-five percent,

of every dollar of such payment and shall be the final liability in respect of such income.

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

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

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

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

5. Every person shall, when making any payment under section 97, furnish a return in such form as the Comptroller may approve showing the amount of tax deducted and remitted, together with a copy of all certificates issued under paragraph 4 in respect of the deductions of tax. Returns of deduction and remittances of tax.

6. (1) Where any person fails to deduct any tax under this Schedule he shall, in addition to any penalty for which he may be liable, be personally liable to pay to the Comptroller within the time specified in section 97 the amount which he has failed to deduct. Personal liability where failure to deduct tax.

(2) Where any person pays to the Comptroller the amount of tax which he failed to deduct the amount shall be deemed to have been

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

~~(4) Where any person has failed to deduct tax as required under~~

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

## FOURTH SCHEDULE

### DEDUCTION OF TAX BY EMPLOYERS

#### ARRANGEMENT OF PARAGRAPHS

##### PARAGRAPH

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

Registration of  
employers.

1. (1) Every person who pays or becomes liable to pay remuneration to any employee shall register as an employer with the Comptroller.

50/1966.

(2) Every person who was an employer at the commencement of this Act but was not registered as an employer under the Income Tax Employment Rules (repealed by this Act) shall register with the Comptroller in the prescribed form within thirty days after the commencement of this Act and every person who becomes an employer after the commencement of this Act shall so register within thirty days after the end of the month in which he becomes an employer.

(3) Every employer who changes his business address or ceases to be an employer shall notify the Comptroller accordingly within thirty days of the change of address or of his ceasing to be an employer, as the case may be.

~~2. (1) Every employer shall, unless the Comptroller otherwise directs,~~ Deduction of tax  
directs, deduct tax in accordance with this Schedule.

(2) Subject to this paragraph and paragraph 5, the amount of tax to be deducted shall be determined in accordance with tax deduction tables prescribed by the Comptroller under paragraph 4(2) and taking into account the concessional deductions claimed by the employee in the declaration lodged by him under paragraph 3.

(3) Where, during any calendar year an employee receives income from more than one source of employment at the same time, the amount of tax to be deducted shall be such amount as is directed by the Comptroller.

(4) Where, during any calendar year, an employee –

(a) is a non-resident individual; or

(b) being a resident individual, fails to lodge a declaration as required by paragraph 3,

the amount of tax to be deducted shall be determined in accordance with tax deduction tables prescribed by the Comptroller under paragraph 4.

3. (1) Subject to this paragraph, every employee chargeable to tax, to whom any remuneration accrues from employment after the commencement of this Act, shall furnish a declaration in the prescribed form to the person specified in subparagraph (2) or (3). Declaration by employees.

(2) Where the remuneration is received from one employer only, the declaration shall be furnished to the employer, who shall take the particulars shown on the declaration into account in deducting tax under paragraph 2.

(3) Where the remuneration is received by that employee from more than one employer the declaration shall be furnished to the Comptroller who shall direct the respective employers as to the amount of tax to be deducted by them.

~~(4) A declaration under this paragraph shall be furnished by any employee who is a non-resident.~~

(5) A declaration under this paragraph shall be furnished –

(a) where an employment commences, within seven days of the commencement; and

~~(5) where the employee ceases to be entitled to the personal~~  
**allowances or other deductions or allowances claimed**  
**in a declaration already furnished by him in respect of**  
**that year, within seven days of the change of circum-**  
**stance.**

(6) A declaration under this paragraph may be furnished at any time during the year where there is any change of circumstances whereby an employee becomes entitled to an increase in the concessional deductions or other deductions or allowances claimed in a declaration already furnished by him.

Tax deduction  
 tables.

**4. (1) The Comptroller shall prescribe tax deductions tables (hereinafter in this Schedule referred to as “the tables”) which shall come into force on the date of commencement of this Act.**

(2) The tax to be deducted in accordance with the tables prescribed under this paragraph shall take into account –

- (a) the rates of tax payable under section 61;
- (b) the concessional deductions allowable under section 47; and
- (c) such other deductions or allowances as the Comptroller may deem appropriate.

(3) The tables shall include a table prescribing the tax to be deducted in the case of a non-resident employee and an employee who has failed to furnish a declaration under paragraph 3.

(4) The tables shall specify the manner of calculation of the tax to be deducted from any payments of remuneration by way of –

- (a) annual or other bonuses;
- (b) overtime; and
- (c) other payments of an abnormal nature.

(5) In the event of any variation of the rates of tax payable or the concessional deductions allowable in relation to any year of assessment to which this Act applies, the Comptroller may prescribe new tables to ~~take into account such variation and shall, by notice published in the~~  
~~Gazette, specify the dates upon which the tables shall come into force.~~

5. (1) Every employer shall, at the written request of any employee, deduct from his remuneration an amount of tax greater than that required to be deducted under the tables.

Variations from  
tax deduction  
tables.

(2) Where, in relation to any year of assessment, any employee is of the opinion that the amount of tax required to be deducted by his employer under the tables will be substantially greater than the amount of tax which is likely to be charged for that year of assessment, he may apply to the Comptroller for the issue of a direction and, if the Comptroller is satisfied that it would be reasonable to do so, he may direct the employer by notice in writing to deduct either no tax or such amount as appears to the Comptroller to be appropriate to the circumstances of that employee, and the employer shall comply with that direction.

(3) A request by an employee under subparagraph (1) or a direction by the Comptroller under subparagraph (2) may be withdrawn at any time by notice in writing given to the employer and upon receipt of any such notice the employer shall deduct tax in accordance with the tables.

(4) Any request under subparagraph (1), direction under subparagraph (2) or notice of withdrawal under subparagraph (3) shall be complied with by the employer on and after the pay day next succeeding a period of seven days following the receipt by him of the request, direction or notice.

6. Any tax deducted under this Schedule shall –

- (a) be due and payable within the time specified in section 97; and
- (b) when it becomes due and payable, be a debt due to Government and, if unpaid, shall be liable to the penalty specified in section 114 and to interest at the rate specified in section 98 and may be recovered in the manner provided in section 99 or 100.

Payment to or  
recovery by  
Comptroller.

7. (1) Any agreement between an employer and an employee whereby the employer agrees to pay, as remuneration to the employee, an amount expressed to be free of tax, shall be deemed to be an agreement providing for payment to the employee of such an amount of remuneration as, after deduction of tax would leave an amount equal to the remuneration paid.

Amount of  
remuneration free  
of tax.

(2) In any case to which subparagraph (1) applies –

- (a) the employer shall be liable to pay to the Comptroller an amount equal to the difference between the remuneration deemed to be paid and the amount of remuneration paid;
- (b) the amount shall be deemed to be tax to be deducted under this Schedule; and
- (c) the employee shall be deemed to have received as income from employment the amount deemed to have been paid by the employer.

Certificate of remuneration and tax deducted.

8. (1) Every employer who has deducted any tax under this Schedule in any calendar year shall, within the time and in relation to the period specified in subparagraph (2), furnish to every employee to whom remuneration has been paid, a certificate in the prescribed form the contents of which shall include –

- (a) the total remuneration accrued to that employee; and
- (b) the total of the amounts of tax deducted from the remuneration.

(2) The certificate referred to in subparagraph (1) shall specify the period of employment to which it relates and shall be furnished to the employee or former employee –

- (a) where the employer has not ceased to be an employer in relation to that employee at the end of the calendar year, within one month after the end of that calendar year;
- (b) where the employer has ceased to be an employer in relation to that employee but has continued to be an employer in relation to other employees, on the date of cessation of the employment of that person; or
- (c) where the employer has ceased to be an employer in relation to all employees, within one month after the date on which he ceased to be an employer.

(3) Any employee who has not received a certificate within the time specified in subparagraph (2) shall apply to the employer forthwith for the certificate to be furnished and in the event of the certificate not being furnished within a further period of fifteen days he shall notify the Comptroller of the failure by the employer to furnish the certificate.

(4) Every employee, when furnishing his return of income for any year of assessment, shall attach to the return the certificate furnished to him under this paragraph.

(5) The certificate to be furnished under this paragraph by an employer to an employee may be delivered –

- (a) by hand to the employee or his authorised agent;
- (b) by registered letter addressed to that employee at his usual or last known postal address; or
- (c) where the chargeable income of that employee is not chargeable to tax in his name, by hand or registered letter addressed to the person chargeable:

Provided that in the event of inability to deliver a certificate in the manner provided by this subparagraph the employer shall retain the certificate and forward it to the Comptroller with the return required under paragraph 12.

(6) In addition to the annual certificate referred to in subparagraph (1), on every occasion during the calendar year upon which a payment of remuneration is made to an employee from which tax is deducted under this Schedule the employer shall furnish to him particulars of the total remuneration payable for the pay period and of the amount of tax deducted therefrom.

9. (1) Where, in any calendar year, an employer fails to deduct any tax under paragraph 2, he shall, in addition to any penalty for which he may be liable, be personally liable to pay to the Comptroller within the time specified in section 97 the amount which he has failed to deduct.

Personal liability  
of employer and  
employee.

(2) Where an employer pays to the Comptroller the amount of tax which he failed to deduct, the amount shall be deemed to have been deducted under this Schedule.

(3) The employer shall be entitled to recover from the employee any amount paid to the Comptroller under subparagraph (2).

(4) Where, in relation to any payment of remuneration an employer has failed to deduct tax under paragraph 2, but the Comptroller is satisfied that tax deducted under this Schedule from earlier or later payments of remuneration is sufficient to meet the amount of tax which he has failed to deduct, the Comptroller may absolve the employer from his liability under subparagraph (1).

(5) Where an employer pays an amount to the Comptroller under this paragraph, he shall not be required to include any such amount in a certificate under paragraph 8 unless and until he recovers the amount from the employee.

(6) Where the Comptroller is of the opinion that any amount of tax which has been set off under section 62 pursuant to a certificate under paragraph 8 has not been deducted by the employer, the employer and the employee shall be jointly and severally liable to pay to the Comptroller the amount which has been set off and such amount shall be recoverable under this Act:

Provided that where the Comptroller is satisfied that the employee alone was responsible for the incorrect amount being shown on his certificate under paragraph 8, the employer shall be absolved from liability under this paragraph.

(7) Where it is proved to the satisfaction of the Comptroller that an amount of tax has been deducted from the remuneration of any employee, notwithstanding that the employer has failed to pay the amount to the Comptroller, no action shall be taken by the Comptroller for the recovery thereof from that employee.

Employer to  
keep records.

**10.** Every employer shall, in respect of each of his employees, maintain a record showing in relation to each calendar year, the amounts of –

(a) remuneration accrued to that employee; and

(b) tax deducted from the remuneration,

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

Employer's  
monthly return of  
tax deductions  
and remittances.

**11.** Every employer shall, when making any payment under section 97, furnish a return showing the amount of tax deducted and remitted.

Employer's  
annual return of  
tax deductions  
and remittances.

**12. (1)** Every employer shall, in respect of each calendar year –

(a) within one month after the end of that year, or

(b) where he ceases to be an employer during that year within fifteen days after the cessation,

or within such further time as the Comptroller may allow, furnish to the Comptroller a return showing the total amount of tax deducted by him

in respect of all his employees during that year and the total payments of the tax made to the Comptroller.

(2) In the event of there being any deficiency between the total amount of tax deducted and the total payments of the tax made to the Comptroller, the employer shall be required to account to the Comptroller for the deficiency.

(3) The return referred to in subparagraph (1) shall be accompanied by a copy of all certificates issued under paragraph 8.

13. (1) Every representative employer, in relation to any remuneration paid by him in his representative capacity to any employee, shall be subject to the same duties and liabilities under this Schedule as if the remuneration had been paid by him in his personal capacity.

Duties and liabilities of representative employers.

(2) Any tax which should be deducted by a representative employer under this Schedule, any penalty due by him under section 114, any interest due by him under section 98, or fine imposed under section 122 or 123 on him shall be recoverable from him but to the extent only of any assets of the person whom he represents which may be in his possession or may come to him while acting in his representative capacity.

(3) The executor of the estate of any deceased employer or the trustee of the estate of any bankrupt employer shall fulfill the obligations of that employer under this Schedule as were not fulfilled at the time of his death or bankruptcy.

14. The liability of an employer to deduct tax under this Schedule shall not be abated or extinguished by reason of –

Liability to deduct tax not abated by other rights or obligations.

(a) the fact that the employer has a right or is, otherwise than in terms of any law, under an obligation to deduct any other amount from the employee's remuneration and the right or obligation shall, notwithstanding anything to the contrary contained in any other law, be deemed to refer only to the balance of remuneration remaining after tax has been deducted; and

(b) the provisions of any law which may provide that the amount of remuneration shall not be reduced or be subject to abatement.

Interpretation**15. In this Schedule –**

“employee” means any person who, in respect of an employment, as defined in section 2, receives remuneration from an employer, and includes any person to whom remuneration accrues –

- (a) as a director of a company;
- (b) from a former employer or the trustee of a pension fund, as a consequence of a former employment; or
- (c) as a dependant of a deceased person where the remuneration accrued to that dependant as a consequence of the former employment of that deceased person.

“employer” means any person who pays remuneration to an employee, and includes –

- (a) the Government of Dominica;
- (b) a representative employer; and
- (c) the trustee of any pension fund;

“remuneration” means any amount accrued to an employee by way of employment income within the meaning of section 35, and also includes any advance payments of remuneration;

“representative employer” means –

- (a) in the case of a company, the principal officer or, where the company is in liquidation, the liquidator;
- (b) in the case of a partnership, the precedent partner;
- (c) where the employer is the Government, a local authority, a corporation or other authority established by statute or a body corporate or unincorporate (not being a company or partnership), the person responsible for paying remuneration on behalf of such employer;
- (d) in the case of an employer in respect of whose chargeable income a representative taxpayer is chargeable to tax, the representative taxpayer; or

(e) in the case of a person who is not a company, partnership, corporation or other authority established by statute or a body corporate or unincorporate, the person having responsibility to pay remuneration on behalf of such employer,

but nothing in this definition shall be construed as relieving any employer from any duty or liability imposed upon him by this Schedule.

**FIFTH SCHEDULE**

Section 61.  
[20 of 1985  
27 of 1986  
21/1987  
13 of 1989].

**RATES OF TAX**

**1.** On the chargeable income of every individual, unincorporated body of persons or trustees –

- (a) for every dollar of the first 18,000 ..... 20%
- (b) for every dollar of the next 30,000 ..... 30%
- (c) for every dollar over 48,000 ..... 40%

**2.** On the chargeable income of a company on every dollar thereof 30%.

**SUBSIDIARY LEGISLATION**

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**INCOME TAX (EXIT CERTIFICATES) REGULATIONS****ARRANGEMENT OF REGULATIONS**

## REGULATION

1. Short title.
  2. Exit certificates.
  3. Duty of immigration officer.
  4. Exemptions.
  5. Appeal.
  6. Duration of certificate.
  7. Fee.
  8. Offences.
-

**SUBSIDIARY LEGISLATION**

**INCOME TAX (EXIT CERTIFICATES) REGULATIONS**

27/1984.

*made under section 130*

[9th August 1984]

Commencement.

1. These Regulations may be cited as the –

Short title.

INCOME TAX (EXIT CERTIFICATES) REGULATIONS.

2. Subject to regulation 5 –

Exit certificates.

(a) no person shall leave or attempt to leave Dominica without obtaining an exit certificate issued by the Comptroller certifying that he does not owe, or that satisfactory arrangements have been made for the payment of, any income tax or withholding tax;

(b) no person shall issue, or cause to be issued to any person a ticket entitling that other person to leave Dominica unless he is in possession of a valid exit certificate;

(c) every person when about to leave Dominica shall produce to an immigration officer an exit certificate and the immigration officer shall –

(i) keep the certificate if it expires on that day; or

(ii) return it to the holder if it expires on a later day.

3. Subject to regulation 5, it shall be the duty of an immigration officer to stop any person who has not produced to him a valid exit certificate from boarding as a passenger any ship or aircraft about to depart from Dominica or to order him to disembark if he has already boarded the ship or aircraft.

Duty of  
immigration  
officer.

4. (1) The following persons shall be exempt from the provisions of regulation 3:

Exemptions.

(a) the President and his or her spouse;

- (b) Ministers of Government, members of Parliament and Judges of the Eastern Caribbean Supreme Court, travelling on official business;
- (c) any person under sixteen years of age;
- (d) the head and members of staff of any diplomatic mission or consulate, the whole of whose income is exempt under section 25(1)(b) of the Act;
- (e) representatives of the United Nations Organisation, the Organisation of American States or any other international organisation accorded diplomatic privileges in Dominica, persons sent on missions on behalf of any such organisation, and the spouse or child of any such representative or person.

(2) Upon application to the Comptroller, the following persons shall be entitled without payment of any fee therefor to a certificate of exemption from regulation 3:

- (a) any person of or over sixteen but under twenty-six years of age who is a full time student at a school, college or university, where the Comptroller is satisfied that that person has no income liable to tax;
- (b) any married woman who is not separated from her husband where the Comptroller is satisfied that she has no income liable to tax;
- (c) public officers travelling on official business;
- (d) any person employed by an international organisation or the Government of another country, whose income is exempt under section 25(1)(c) of the Act;
- (e) any person who is temporarily resident in Dominica who has not carried on a business or exercised any employment in Dominica;
- (f) any other person in respect of whom the Comptroller is satisfied that no liability to tax exists.

(3) For the purpose of subregulation (2)(e), a person shall be deemed to be temporarily resident if his period of continuous residence in Dominica does not exceed six months.

(4) If an immigration officer is satisfied that a person on arrival in Dominica falls within and is entitled to be temporarily resident for the

purposes of subregulation (4)(c), he shall endorse that person's passport or other travel document "Exit without tax certificate" or the abbreviation EWIC and that person shall be exempt from regulation 3 and the endorsement shall be deemed to constitute a certificate of exemption from the Comptroller under regulation 5(2).

(5) Notwithstanding the endorsement of the passport or other travel document of any person under subregulation (4), where in any case, the Comptroller forms the opinion that that person is no longer entitled to a certificate of exemption the Comptroller may require that person to produce his passport or other travel document for cancellation of the endorsement and, in any such case, that person shall be liable to comply with the provisions of regulation 3.

5. Where any person is aggrieved by a decision of the Comptroller, Appeal.  
by way of –

- (a) a refusal to issue an exit certificate;
- (b) a refusal to issue a certificate of exemption;
- (c) the cancellation under regulation 5(5) of a certificate of exemption given under regulation 5(4);
- (d) the terms imposed by the Comptroller in respect of the payment of, or the giving of security for, any unpaid tax,

he may appeal from the decision to the Appeal Commissioners in the manner provided by section 90 of the Act and the appeal shall be set down for hearing by the Appeal Commissioners within seven days of the lodgement of the notice of appeal.

6. An exit certificate or an exemption certificate shall be issued for such period of time as the Comptroller thinks fit and shall be valid for the purposes of travel on more than one occasion, subject only to the date of expiry stated therein. Duration of certificate.

7. Any person who –

8. Any person who –

Offences.

- (a) issues or causes to be issued a travel ticket in contravention of regulation 3(4)(c)

(b) leaves or attempts to leave Dominica without being in possession of a valid exit certificate or in any case to which regulation 5(2) applies, a valid certificate of exemption;

(c) hinders or obstructs any immigration officer in the performance of his duties under these Regulations,

is liable on summary conviction to a fine of five hundred dollars.

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**SUBSIDIARY LEGISLATION**

**INCOME TAX (APPEALS COMMISSIONERS) ORDER**

2/1987.

*made under section 130*

[15th January 1987]

Commencement.

1. This Order may be cited as the –

Short title.

INCOME TAX (APPEALS COMMISSIONERS) ORDER.

2. For the purpose of section 97(3) of the Act any meeting of the Appeals Commissioners shall comprise the Chairman and two other members selected by the Chairman.

Meeting of  
Commissioners.

3. In the absence of the Chairman or where for any reason he is unable to act, a meeting of the Appeals Commissioners shall comprise the Deputy Chairman and two other members selected by the Chairman or the Deputy Chairman.

Composition of  
meeting.

