



**INCOME TAX ACT 2000
AS AMENDED**

**Updated to reflect all tax legislation through
to and including the Finance Act, 2015**

Foreword

Income taxation in Sierra Leone has come a long way since the enactment of the first Income Tax Act in 1943. The legislation has undergone several reviews and amendments as the economy evolved, given the dynamics of the global economy and as the needs and priorities of the government changed.

The civil conflict (1991 - 2002) provided, among others, an opportunity for a critical examination of the fiscal incentives contained in our various legislations. Given the need to encourage investment, mobilise additional revenue to address Sierra Leone's huge development challenges, including poverty reduction, income tax rates for both businesses and individuals were rationalised and progressively reduced. Administrative processes and procedures as well as the penal system of taxation were streamlined to encourage, promote and sustain voluntary tax compliance.

To reflect the new realities at the turn of the millennium, both within and outside Sierra Leone, the Income Tax Act 2000 was promulgated. In the ensuing years, a number of amendments were made to the Act as contained, for example, in various Finance Acts as well as other legislation. As an Authority with a responsibility to provide quality services to our diverse, but valued stakeholders, we have consolidated the various amendments into this volume. This piece of work will minimise the costs of obtaining information from the various and often scattered Acts. In addition, we have also provided footnotes to the various amended sections and clauses, to provide readers with some historical perspective on the evolution of the amendments.

In the production of this version, meticulous care was taken to ensure the identical reproduction of the Income Tax Act, 2000 with amendments. However, some changes in printing style were adopted both for convenience and to improve readability. Thus, for example, marginal notes appearing in the official Acts have been reproduced in bold face type in the first line of the section or subsection to which they apply. Nothing in this publication alters or affects the substance or wording of the law. The laws as contained in the Sierra Leone Gazettes remain the official versions of the law.

We do sincerely hope readers find this version useful and we would welcome comments and suggestions as to how we could improve the quality of future editions.

We look forward, with much pleasure, to your support to nation building efforts through revenue mobilisation.

Haja Isatu KALLAH-KAMARA
Commissioner-General
National Revenue Authority

THE INCOME TAX ACT, 2000
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THE INCOME TAX ACT, 2000

PART I – PRELIMINARY

Commencement.

1. This Act shall be deemed to have come into operation on the 1st April, 2000.

Interpretation.

2. In this Act, unless the context otherwise requires—

“adjusted cost base” means the cost base of an asset increased by—

- (a) indirect expenses, including commissions and legal fees incurred in respect of the acquisition, production or construction of an asset;
- (b) interest and taxes incurred during the acquisition, production and construction period of an asset;
- (c) customs duties incurred in respect of the importation of an asset; or
- (d) the cost of improvements and other costs properly added to capital accounts in respect of the asset (other than an amount allowed as a deduction);

“assessment” includes an amended assessment, a deemed assessment, a provisional assessment and a special assessment;

“associate” in relation to a person means any other person who is not at arms-length with the person or who acts or is likely to act in accordance with the directions, requests, suggestions or wishes of the person whether or not the directions, requests, suggestions or wishes are communicated to that other person;

“bad debt” means a debt in respect of which the taxpayer has taken all reasonable steps to the satisfaction of the Commissioner to pursue payment and which the taxpayer reasonably believes will not be satisfied;

“branch” (*repealed*)¹

¹ Definition of “branch” repealed by s. 2(a) of the Finance Act 2013 and all references to “branch” to be treated as references to “permanent establishment of a non-resident person in Sierra Leone”. Previously defined as –
“branch” means a place where a person carries on business and includes—

- (a) a place where a person is carrying on business through an agent, other than a general agent of independent status acting in the ordinary course of business as such;
- (b) a place where a person has, is using or is installing substantial equipment or substantial machinery; or
- (c) a place where a person is engaged in a construction, assembly or installation project for a period of more than six months;

“business” includes a trade, profession, vocation and an isolated transaction with a business character, but does not include employment;

“business asset” means an asset held for the production of assessable income and which is used in a business or is held for sale in a business;

“chargeable business income” in respect of a taxpayer means the taxpayer’s assessable business income less any allowable deductions for expenses incurred to derive that income;

“Commissioner”² means the Commissioner-General and, except for the purpose of Section 153, includes a Deputy Commissioner or an Assistant Commissioner.

“company” means a body corporate or unincorporate, whether created or recognised by or under any law in force in Sierra Leone or otherwise, and includes a superannuation fund, a friendly society and a provident fund but does not include a partnership or trust;

“complying retirement fund” means a retirement fund that has received notification from the Commissioner that it complies with the requirements of the Third Schedule;

“debt claim” means a right to receive payment or repayment of money or property from another person and includes deposits in banks and other financial institutions, accounts receivable, notes, bills of exchange and bonds;

“debt obligation” means the obligation to make payment or repayment of money or property to another person and includes the things falling under a debt claim;

“depreciable asset” means tangible or intangible property which is wholly or partly used in the production of assessable income and which is likely to lose value because of wear and tear, obsolescence or the passage of time;

“disposal” in relation to an asset, means—

- (a) the sale, exchange, redemption or distribution of the asset;
- (b) the transfer of the asset as a gift or at death; or
- (c) the destruction, loss or extinction of the asset,

and includes the disposal of a part of the asset;

“dividend” means a distribution by a company to a shareholder in the company as shareholder and includes any distribution upon redemption or cancellation of a share

² Definition of “Commissioner” was amended in 2002 by s. 36(a) of the National Revenue Authority Act 2002. Section 36(a) provides that reference to the Comptroller of Customs and Excise or the Commissioner of Income Tax in any law specified in the Schedule or in any other law is to be construed as a reference to the Commissioner-General

or in the course of liquidation, other than a distribution described in subsection (2) of section 86;

"employee" means an individual who receives employment income and includes any individual engaged for short-term or part-time work other than an individual acting as an agent;

"employer" means a person who employs or remunerates an employee;

"employment" means—

- (a) the position of an individual in the employ of another person;
- (b) a directorship of a company;
- (c) a position entitling the holder to a fixed or ascertainable remuneration and includes a public office;

"interest" includes—

- (a) an amount paid or accrued under a debt obligation which is not a return of principal; and
- (b) any gain realised by way of a discount, premium, swap payment or similar payment on a loan;

"investment asset" means an asset other than—

- (a) a business asset, or
- (b) an asset that does not produce assessable income and that is held primarily for personal use by the taxpayer;

"lottery"³ includes any scheme, system or device for the sale, gift, distribution or disposal of any property or right in any manner, depending on, or to be determined by, chance, whether by the throwing or casting of dice, or by the drawing of tickets, cards, lots, numbers or figures, or by means of a wheel or trained animal or by football pool or otherwise;

"market value" means the price which an asset or service might reasonably be expected to command on the open market;

"minor" means an individual who is under eighteen years of age at the end of the year of assessment;

"natural resource payment"⁴ means—

³ Definition of "lottery" inserted by s. 8(f) of the Finance Act 2008.

⁴ Definition of "natural resource payment" repealed and replaced by s. 2(b) of the Finance Act 2013. Previously read:

(a) a rent, toll, royalty or other like payment payable under a lease or agreement which relates wholly or in part to the mining and working of minerals or a living or non-living resource of the land or sea; or

(b) a payment calculated in whole or in part by reference to the quantity or value of minerals or living or non-living resource taken from the land or sea;

"paid" includes credited;

"payment" includes an amount payable, the transfer of property and any other means of conferring value or benefit on a person;

"permanent establishment"⁵ includes the following:-

(a) a branch office of a non-resident legal person;

(b) construction sites, assembly of batching facilities and the exercise of supervisory activities connected with such facilities;

(c) sites, drilling equipment or ships used for prospecting for natural resources as well as the exercise of supervisory activities connected with such facilities;

(d) a place used by a non-resident individual for business activity;

"permanent establishment of a non-resident person in Sierra Leone"⁶ means a place in Sierra Leone where the person carries on a business or that is at the disposal of the person for that purpose and includes –

(a) a place in Sierra Leone where –

(i) a person has, is using or is installing substantial equipment or machinery;

(ii) a person is engaged in a construction, assembly or installation project for 90 days or more, including a place where the person is conducting supervisory activities in relation to such a project;

(iii) an agent performs any function on behalf of a business of the person including, in the case of an insurance business, the collection of premiums or the insurance of risks situated in Sierra Leone, but

"natural resource payment" means-

(a) a rent, toll, royalty or other like payment payable under a lease or agreement which relates wholly or in part to the mining and working of minerals or a living or non-living resource of the land; or

(b) a payment calculated in whole or in part by reference to the quantity or value of minerals or living or non-living resource taken from the land"

⁵ Definition of "permanent establishment" inserted by s. 3(b) of the Finance Act 2009

⁶ Definition of "permanent establishment of a non-resident person in Sierra Leone" inserted by s. 2(a) of the Finance Act 2013 as a replacement for definition of "branch"

excluding a case involving a general agent of independent status acting in the ordinary course of business as such;

- (b) the provision of services in Sierra Leone but only if activities of that nature continue (for the same or a connected project) for a period of 183 days or more in any 12 months period;

"person" includes a partnership, a company, a government, a political subdivision of a government and a public international organisation;

"rent" includes—

- (a) any premium paid in connection with a lease or rental agreement; and
- (b) any payment made in connection with or for the use of or the right to use industrial, commercial or scientific equipment;

"retirement fund" means a pension, provident or superannuation fund or society;

"royalty" means a payment for—

- (a) the use of or the right to use a copyright, patent, design, model, plan, secret formula or process, trademark or other intangible property or right;
- (b) the supply of know-how;
- (c) the use of or the right to use a cinematographic film, video tape, sound recording or any like medium;
- (d) the supply of assistance ancillary to a matter referred to in paragraphs (a) to (c); or
- (e) a total or partial forbearance with respect to a matter referred to in paragraphs (a) to (d);

"shareholder" in relation to a company, includes a holder of an equity interest in the company.

"substituted year of assessment" means the year of assessment used by a taxpayer pursuant to subsection (2) of section 46;

"tax-free threshold" means the amount of income to which a nil rate of tax is applied in Parts I, II and III of the First Schedule;

"taxpayer" means a person who is subject to tax imposed by this Act or who derives income assessable under this Act;

"trading stock" includes goods sold or intended to be sold by a taxpayer in the ordinary course of business, work in progress on such goods and inventories of materials to be incorporated into such goods;

"trust" includes the estate of a deceased person but does not include a grantor trust or qualified beneficiary trust referred to in section 78;

"trustee" includes—

- (a) an executor, administrator, tutor or curator;
- (b) a liquidator or judicial manager;
- (c) a person having or taking on the administration or control of property subject to a trust;
- (d) a person acting in a fiduciary capacity; and
- (e) a person having the possession, control or management of the property of a person under a legal disability;

"turnover" in respect of a year of assessment means the value of the total gross receipts or amounts receivable in money or money's worth which give rise to business income for the year of assessment—

- (a) reduced by that part of the gross receipts for the year of assessment or a previous year of assessment that are bad debt claims; and
- (b) increased by any amounts recovered in respect of bad debt claims that arose in previous years of assessment;

"underlying ownership or control" in relation to a company means ownership interests held or control exercised directly or indirectly through interposed entities;

"whole-time service director" means a director of a company who is required to devote substantially the whole of his or her time to the service of the company in a managerial or technical capacity;

"withholding agent" means a person required to withhold tax under sections 116 to 123.

PART II – IMPOSITION OF INCOME TAX

IMPOSITION OF INCOME TAX

Income tax imposed.

3. (1) Income tax is hereby imposed on every person who has chargeable income for the year of assessment.

(2) Subject to section 21, the income tax payable shall be calculated by applying the relevant rates of tax determined by reference to the First and Second Schedules to the chargeable income for the year of assessment and subtracting any allowable tax credits.

(3) Subject to sections 124 and 125, a taxpayer's income from all sources shall be aggregated for the purpose of applying the relevant rates of tax in Parts I, II, III and IV of the First Schedule and the tax that will be imposed on the aggregated income without regard to any withholding tax imposed on the income or part thereof shall be reduced by the amount of withholding tax imposed on that income.

Rate of income tax for resident individuals.

4. (1) Subject to subsection (2), the chargeable income of a resident individual shall be taxed at the rate or rates prescribed in Part I of the First Schedule.

(2)⁷ Where the turnover of not being a company specified under Part III of the First Schedule excluding income from property is less than Le 350,000,000 but not less than Le10,000,000 the income tax payable shall at the option of such a business, be a percentage of the turnover as specified in part V of the First Schedule and –

- (a) no deduction shall be allowed under this Act for expenses incurred to derive business income;
- (b) no claims for withholding tax shall be allowed;
- (c) the tax shall be a final tax on the business of the taxpayer but if a business does not opt to pay taxes under this subsection it shall be subject to a tax under section 69.

(3)⁸ Subject to section 150, a taxpayer under Small Medium Enterprise (SME) regime who fails to file an income tax return on the due date commits an offence and shall be liable upon conviction to a fine the greater of Le 1,000,000.00 or 10% of the Tax due for the period to which the tax returns relate or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

(4) The chargeable property income of a resident minor shall be taxed at the rate or rates prescribed in Part II of the First Schedule.

(5) In the case of a resident minor whose chargeable property income is taxed at the rates prescribed in Part II of the First Schedule, such income shall be subtracted from chargeable income for the purposes of applying subsection (1).

⁷ Subsection (2) repealed and replaced by s. 3 of the Finance Act 2013. Previously read:

“(2) Subject to subsection (3), the business or property income of a person described in Part V of the First Schedule shall be subject to the minimum tax prescribed in that Part”

⁸ Subsection (3) repealed and replaced by s.3 of the Finance Act. Previously read:

“(3) Where a person described in Part V of the First Schedule derives—

(a) business or property income that would, apart from the application of subsection (2), be subject to tax greater than that provided in Part V of the First Schedule; or

(b) additional income from any source,

the Commissioner may assess tax payable by the person without regard to subsection (2)”

Rate of income tax for resident companies.

5. (1) Subject to section 21, the chargeable income of a resident company shall be taxed at the rate or rates prescribed in Part III of the First Schedule.

(2) Resident companies incorporated before 1st April, 1997 shall continue to receive those reliefs under section 29 of the Income Tax Act to which they had entitlement prior to the repeal of that Act.

Rate of income tax for trustees.

6. (1) Subject to subsections (2) and (3), the chargeable trust income of a trustee shall be taxed at the rate or rates prescribed in Part III of the First Schedule.

(2) The chargeable trust income of a trustee of the estate of a deceased taxpayer who at the date of death was a resident individual shall be subject to tax at the rates specified in Part I of the First Schedule for—

(a) the year of assessment in which death occurred; and

(b) the following year of assessment,

on the basis of the table that would have applied to the taxpayer had the taxpayer been alive for the entire year of assessment.

(3) The chargeable trust income of a trustee of an incapacitated person's trust shall be taxed at the rates prescribed in Part I of the First Schedule as if it were the income of the incapacitated person.

Rate of income tax for non-residents.

7. The chargeable income of a non-resident taxpayer shall be subject to tax at the rate prescribed in the Second Schedule.

PERSONS AND ORGANISATIONS EXEMPT FROM TAXATION

Exempt public international organisations.

8. A public international organisation shall be exempt from tax if it satisfies the Commissioner that it is exempt under international law or agreement with the Government of Sierra Leone.

Other exempt persons and organisations.

9. The following persons and organisations, hereinafter referred to as “exempt organisations”; are exempt from income tax—

- (a) (i) the City Council of Freetown and any other local authority;
- (ii) any department or ministry of Government;
- (iii) the Bank of Sierra Leone and
- (iv) any person or organisation exempted by order in a statutory instrument made by the President; and
- (b) any organisation being—
 - (i) a religious organisation;
 - (ii) a charitable organisation;
 - (iii) an amateur sporting association formed for the purpose of promoting social or sporting amenities not involving the acquisition of gain by the body of persons or by its individual members;
 - (iv) a trade union;
 - (v) an educational institution that offers equal access to all applicants; and
 - (vi) a co-operative society registered under the Co-operative Societies Act 1977 (***Act. No. 6 of 1977***);

none of whose income or assets confers or may confer a private benefit on any person and which has obtained a written ruling from the Commissioner that it is an exempt organisation.

PART III - RESIDENTS AND NON-RESIDENTS

Resident individual.

10. (1) Subject to subsections (2) and (3) and to Section 11, an individual shall be treated as resident in Sierra Leone for the entire year of assessment if that individual—

- (a) has a normal place of abode in Sierra Leone and is present in Sierra Leone at any time during the year of assessment;

(b) is present in Sierra Leone on more than one hundred and eighty two days in a twelve month period that commences or ends during the year of assessment; or

(c) is an official of the Government of Sierra Leone posted overseas during the year of assessment.

(2) An individual who was not a resident in the preceding year of assessment shall not be treated as a resident for the period preceding the day the individual was first present in Sierra Leone during the year of assessment.

(3) An individual who is not a resident in the following year of assessment shall not be treated as a resident for the period following the last day on which the individual was present in Sierra Leone during the year of assessment if during that period the individual had a closer connection to a foreign country than to Sierra Leone.

(4) For the purposes of this section an individual shall not be treated as present in Sierra Leone on any day when—

(a) the individual crosses the border to Sierra Leone to perform services as an employee in Sierra Leone;

(b) the individual is in transit between two points outside Sierra Leone;

(c) the individual is present in Sierra Leone for the purpose of medical treatment or full-time study; or

(d) the individual is present in Sierra Leone by reason of diplomatic status or being dependant of a person with diplomatic status.

Temporarily resident individual.

11. An individual treated as resident under section 10 shall be treated as temporarily resident in Sierra Leone for the entire year of assessment if that individual –

(a) is not a citizen of or domiciled in Sierra Leone;

(b) does not intend, during the year of assessment, to reside in Sierra Leone for a total period of more than four years; and

(c) as of the end of the year, has not been resident in Sierra Leone for more than four years.

Resident company.

12. (1) A company is a resident company if it—

(a) is incorporated or formed under the laws of Sierra Leone;

(b) has its effective management and control in Sierra Leone; or

(c) undertakes the majority of its operations in Sierra Leone.

(2)⁹ For the purposes of this Act, a permanent establishment of a non-resident person in Sierra Leone shall be treated as a resident person separate from but associated with its non-resident owner.

Non-resident person.

13. (1) A non-resident person is a person who is not resident during the year of assessment or, where subsection (2) or (3) of section 10 applies, during part of the year of assessment.

(2) *(repealed)*¹⁰

(3) *(repealed)*¹¹

PART IV - INCOME TAX BASE

CHARGEABLE INCOME

Chargeable income of resident taxpayers.

14. The chargeable income of a taxpayer resident in Sierra Leone shall be the taxpayer's assessable income from all sources less any deduction allowed under this Act.

Chargeable income of temporarily resident taxpayers.

15. The chargeable income of a taxpayer temporarily resident in Sierra Leone shall be the taxpayer's assessable income from all sources outside Sierra Leone which is remitted to Sierra Leone and the taxpayer's assessable income from any source in Sierra Leone less any deduction allowed under this Act.

⁹ Subsection (2) repealed and replaced by s. 4 of the Finance Act 2013. Previously read:

"(2) A branch in Sierra Leone of a non-resident company is deemed to be a separate person which is a resident company"

¹⁰ Subsection (2) repealed by s. 5 of the Finance Act 2013. That subsection had previously been inserted by s. 3(a) of the Finance Act 2009. Previously read:

"(2) A permanent establishment of a non-resident person in Sierra Leone shall be treated as a resident legal person with respect to the business carried out by that permanent establishment in Sierra Leone"

¹¹ Subsection (3) repealed by s. 5 of the Finance Act 2013. That subsection had previously been inserted by s. 3(a) of the Finance Act 2009. Previously read:

"(3) For the purpose of subsection (2), the permanent establishment of a non-resident person in Sierra Leone is, unless otherwise stated, the establishment through which it carries out business activities in full or in part, including activities carried out through an agent, for a period of no less than 182 days during the tax year"

Chargeable income of non-resident taxpayers.

16. The chargeable income of a non-resident taxpayer shall be—

- (a) all payments from which tax is required to be withheld under sections 116 to 123; and
- (b) ¹²all other assessable income from any source in Sierra Leone, whether or not the income is received in Sierra Leone,

less any deduction allowed under this Act.

Chargeable property income of minors.

17. The chargeable property income of a resident minor shall be the property income included in assessable income reduced by the allowable deductions which relate to the production of that income.

Chargeable income of a trust.

18. The chargeable income of a trust shall be determined in accordance with sections 78 to 83.

Chargeable income of an insurance company.

19. (1) For the purposes of this section, an insurance company is a company that carries on an insurance business in Sierra Leone.

(2) The chargeable income of an insurance company, other than a life insurance company, shall be determined in accordance with paragraph 1 of the Fourth Schedule.

(3) A taxpayer that is a life insurance company may calculate its chargeable income on the basis of paragraph 2 or 3 of the Fourth Schedule.

Chargeable income from international shipping, transport or communications.

20. The chargeable income from a source in Sierra Leone of a non-resident person carrying on the business of—

¹² Paragraph (b) repealed and replaced by s. 6 of the Finance Act 2013. Previously read:
“(b) all other assessable income from any source in Sierra Leone”

- (a) shipowner or charterer;
- (b) air transport; or
- (c) broadcasting or transmitting messages by cable, telegraph, wireless or other similar means,

shall be determined in accordance with the Fifth Schedule.

Mining sector.

21. *(Repealed)*¹³

ASSESSABLE INCOME

Assessable income.

22. (1) The assessable income of a taxpayer for a year of assessment is the sum of —

- (a) employment income;
- (b) business income;
- (c) property income; and
- (d) any other income or gain,

but does not include amounts exempt from income tax.

(2) For the purposes of subsection (1), "employment income", "business income" and "property income" each has the meaning respectively assigned thereto by sections 23, 24 and 25.

Employment income.

23. (1) "Employment income" means a payment or benefit arising from past, present or prospective employment, including but not restricted to the following payments or benefits—

¹³ Section 21 repealed by s.7 of the Finance Act 2013. Previously read:

"21. The chargeable income of a person derived from the exploitation of mineral rights, prospecting and exploration licenses, mining licenses or mining leases granted under the Mines and Minerals Act, 2009 (Act No. 12 of 2009) shall be determined in accordance with and taxed at the rate prescribed in the Sixth Schedule" That section had previously been amended by s. 6(a) of the Finance Act 2010 by substituting reference to the Mines and Minerals Act 2009 for the former 1994 Act

- (a) any salary, wages or other remuneration provided to the employee, including leave pay, overtime payments, commissions and bonuses;
- (b) gifts received by an employee in the course of or by virtue of a past, present or future employment;
- (c) unless another value is specified in subsection (2), the higher of the cost to the employer or the market value to the employee of any benefit provided by an employer to an employee by way of the transfer or use of property or the provision of services, whether or not the benefit may be converted to money's worth by the employee;
- (d) any allowance provided by the employer for the benefit of an employee or in respect of any member of the employee's family, including any cost of living, subsistence, rent, medical, entertainment or travel allowance;
- (e) any consideration provided by the employer in respect of the employees' agreement to any conditions of employment or to any changes in the conditions of employment;
- (f) any payment provided by the employer in respect of redundancy, any payment for loss of office or termination of the holding of an office or employment and any similar payment;
- (g) any pension payments (other than pension payments described in paragraph (d) of section 31);
- (h) any payments (other than payments described in paragraph (e) of section 31) provided as a supplement to a pension payment;
- (i) the provision by the employer to an employee of the use, or the availability for use, of a motor vehicle wholly or partly for the private purposes of the employee;
- (j) the provision by the employer of accommodation or housing;
- (k) the reimbursement or discharge by an employer of the employee's utilities expenditure;
- (l) the provision by an employer to an employee of a housekeeper, chauffeur, gardener or other domestic assistant;
- (m) the provision by an employer to an employee of any meal, refreshment or entertainment;
- (n) the waiver by an employer of an obligation of the employee to pay or repay an amount owing to the employer or to any other person;

(o) an amount which is credited to an employee in the books or in the name of the employer in circumstances in which the employee may draw sums on account of such amount or otherwise utilise such credit in any way;

(p) any money or asset withdrawn by a director not previously voted and taxed as employment income or a distribution and not otherwise standing to his credit in the books of the company;

(q) an amount contributed by the employer to a pension, superannuation, provident or similar fund for the benefit of the employee; and

(r) any other payment by the employer in discharge of the employee's pecuniary liabilities.

(2) For the purpose of determining the amount included in employment income under subsection (1), the taxable value of the benefit, described in—

(a) paragraph (i), is the amount calculated in accordance with paragraph 1 of the Ninth Schedule;

(b) paragraph (j), is the market rent of the accommodation or housing reduced by any payment made by the employee for the benefit;

(c) paragraph (k), is the amount of the reimbursement or discharge;

(d) paragraph (1), is the total employment income paid to the domestic assistant in respect of services rendered to the employee reduced by any payment made by the employee for the benefit;

(e) paragraph (m), is the cost to the employer of providing the meal, refreshment or entertainment reduced by any consideration paid by the employee for it; and

(f) paragraph (n), is the amount of the payment or repayment waived.

(3) Notwithstanding subsection (1), the following income is excluded from an employee's assessable income—

(a) the actual amount of an employee's medical expenses discharged or reimbursed by the employer;

(b) where—

(i) it is a condition of an employee's employment that the employee serve the employer at locations specified by the employer; and

(ii) an employee maintains a household in his previous place of abode after moving at the employer's request,

the value of accommodation provided to the employee;

(c) in the case of an employee not described in paragraph (b) who is required to change his place of abode at the request of his employer. the difference between the rental value of the employee's previous accommodation and the rental value of accommodation provided by the employer reduced by any contributions made by the employee towards the cost of accommodation;

(d) the reimbursement of expenditures incurred by an employee on behalf of the employer for which the employer would be entitled to a deduction under this Act if incurred directly;

(e) that portion of an allowance for which the employee has provided receipts or other proof of payment of expenses that, had they been incurred directly by the employer, would have been deductible by the employer under this Act;

(f) the cost incurred by the employer of any passage to or from Sierra Leone in respect of non-resident or temporarily resident employee's first appointment or termination of such appointment, and in respect of a period of vacation leave after each complete year of service;

(g) any amount paid by the employer as a contribution to a complying retirement fund not exceeding the amount specified in subsection (1) of section 38;

(h) the lesser of –

(i) any redundancy pay or a payment for termination or loss of office or employment or similar type of payment; and

(ii) the amount specified in paragraph 2 of the Ninth Schedule; and

(i) a fringe benefit the value of which (after taking into account the frequency with which similar benefits are provided by the employer) is so small as to make accounting for it unreasonable or administratively impracticable.

(j)¹⁴ an amount not exceeding Le 2,640,000 being a consolidation of all allowances paid to an employee.

(k)¹⁵ the actual amount of leave pay or allowance paid by the employer.

(4) For the purposes of this section, payments made or benefits provided by an employer include any made or provided by an associate of the employer or to an associate of the employee.

¹⁴ Paragraph (j) was added by s. 2 of the Income Tax (Amendment) Act 2005

¹⁵ Paragraph (k) was added by s. 2 of the Income Tax (Amendment) (No. 2) Act 2006

Business income.

24. “Business income” means the profits or gains arising from a business and includes—

- (a) gains on the disposal of business assets (other than depreciable assets) or on the satisfaction of business debts, whether or not the asset or debt was on capital or revenue account;
- (b) amounts included in assessable income under subsection (8) of section 39;
- (c) gifts received by a person in the context of a business relationship;
- (d) a payment received as consideration for accepting a restriction on the capacity to carry on business;
- (e) interest derived in respect of trade receivables or interest accruing to a person engaged in the business of banking or money lending;
- (f) rent derived by a person whose business is wholly or mainly the holding or letting of property; and
- (g) amounts received in respect of trading stock under a policy of insurance or contract for indemnity.

Property income.

25. “Property Income” includes—

- (a) dividends, interest, discounts, natural resource payments, rent, royalties and annuity payments; and
- (c) gifts received in connection with the provision, use or exploitation of property,

but does not include income which is business or employment income.

EXEMPT INCOME

Diplomatic and similar income.

26. The following amounts are exempt from income tax—

- (a) the official employment income of an individual who is not a citizen of Sierra Leone, not engaged in Sierra Leone or who is a diplomatic or consular employee;

(b) the official employment income of an individual who is not a citizen of Sierra Leone and who is in the public service of the government of a foreign country where the income is subject to income tax in that country;

(c) the official employment income of an individual who is not a citizen of Sierra Leone and who is an employee of a public international organisation the income of which is exempt from taxation under section 8; and

(d) foreign-source income derived by a person whose official employment income is exempt under paragraph (a), (b) or (c) or by a member of the immediate family of such a person.

Income of exempt organisations.

27. (1) The income of an exempt organisation is exempt from income tax other than —

(a) subject to subsection (2), property income, or

(b) business income, including the business of acquiring and letting properties, that is not related to the function constituting the basis for the organisation's exemption.

(2) Rental income derived by an exempt organisation referred to in subparagraphs (i), (ii) or (v) of paragraph (b) of section 9 is exempt from income tax where the property in respect of which rental income is paid is used exclusively for the activities which further the purposes of the organisation.

(3) Where an organisation or institution to which subsection (2) applies derives rental income from which tax has been withheld under section 120, the organisation may apply to the Commissioner for a refund of tax withheld on the income that is exempt from taxation.

Scholarships.

28. A scholarship payable to a full-time student undergoing instruction at an educational institution is exempt from income tax.

Maintenance and child support.

29. Maintenance or child support payments received are exempt from income tax.

Proceeds of life insurance policy.

30. (1) The proceeds of a life insurance policy paid by a life insurance company to the insured or his beneficiaries by reason either, of the death of the insured or,

subject to subsection (2), the surrender or maturity of the policy, are exempt from income tax except to the extent attributable to premiums for which a deduction was allowed.

(2) Exemption from income tax for surrendered or matured policies shall be given—

(a) for policies on which annual premiums were fully paid for at least eleven years, in full; or

(b) for other policies, at the rate of ten percent per annum for each year after the first in which annual premiums were paid.

Commissioner-General may reassess tax withheld

30A. *(Repealed)*¹⁶

Other exempt income.

31. (1)¹⁷ The following amounts are exempt from income tax—

(a) the official income of the person holding the office of President of Sierra Leone;

(b) the overseas allowance payable to officers of the Sierra Leone diplomatic, consular, overseas or foreign service while these officers are serving in posts outside Sierra Leone;

(c) ex-gratia capital sums received by way of compensation for death or injury;

(d) wound and disability pensions granted to members of the Sierra Leone Armed Forces;

¹⁶ Section 30A inserted by s. 6(f) of the Finance Act 2010 (and was probably meant to have been section 130A) and repealed by s. 8 of the Finance Act 2013. Previously read:

“30A (1) Where a withholding agent –

a) fails to file the statement required by section 128;

b) fails to withhold tax as required by this Act;

c) fails to pay to the Commissioner-General any tax that has been withheld; or

d) has filed the statement required by section 128 and the Commissioner-General is of the opinion that the information provided in the statement does not correctly disclose the amount of the tax that should have been withheld,

the Commissioner-General may according to his best judgment, determine the amount of the tax payable and may make an assessment accordingly.

(2) A withholding agent may file with the Commissioner-General an objection to any assessment made by the Commissioner-General under subsection (1) and the provisions of Part XVII relating to objections and appeals shall, with the necessary modifications, apply to the determination of the objection filed”

¹⁷ Section 31 was amended by s. 6(b)(ii) of the Finance Act 2010 by renumbering the section as subsection (1), and adding a subsection (2)

(e) pensions granted to any person under the provisions of the Widows and Orphans (African Officers) Pensions Act; and the Widows and Orphans (European Officers) Pensions Act;

(f) the income of an individual derived from any agricultural activity involving rice farming¹⁸ and tree crop farming such as cocoa, coffee, oil-palm, poultry, livestock and ruminants,¹⁹ cashew, ginger, chilli, vegetable and tubers²⁰ for a period of ten years from the commencement of the agricultural activity;

(g) the income of a company incorporated in Sierra Leone derived from any agricultural activity involving rice farming²¹ and tree crop farming such as cocoa, coffee, oil-palm, poultry, livestock and ruminants²², cashew, ginger, chilli, vegetable and tubers²³ for a period of ten years from the commencement of that activity and fifty percent of any dividend paid in that period provided the company maintains full records of all transaction relevant to the agricultural activity.²⁴

(h) five percent of business income derived from export sales calculated as necessary in the proportion that export sales bear to total sales;

(i) the investment income of a complying retirement fund;

(j) half the official employment income of a person holding the office of Vice-President;

(k) winnings below Le 500,000 from any lottery;²⁵

(l) subject to sections 23, 24 and 25, the value of property acquired by gift, bequest, devise or inheritance; and

(m) *(repealed)*²⁶

(2)²⁷ The exemption in paragraphs (f) and (g) of subsection (1) shall apply-

(a) in the case of a foreign investor –

¹⁸ “rice farming” added by s. 2(a) of the Income Tax (Amendment) Act 2004

¹⁹ “poultry, livestock and ruminants” added by s. 6(b)(i) of the Finance Act 2010

²⁰ “cashew, ginger, chilli, vegetable and tubers” added by s. 28(a)(i) of the Finance Act 2011

²¹ “rice farming” added by s. 2(a) of the Income Tax (Amendment) Act 2004

²² “poultry, livestock and ruminants” added by s. 6(b)(i) of the Finance Act 2010

²³ “cashew, ginger, chilli, vegetable and tubers” added by s. 28(a)(i) of the Finance Act 2011

²⁴ The words “and fifty percent of any dividend paid in that period, provided the company maintains full records of all transactions relevant to the agricultural activity” were deleted from the end of paragraph (g) by the Income Tax (Amendment) Act 2004

²⁵ Paragraph (k) was repealed and replaced by s. 8(a) of the Finance Act 2008. Previously read: “(k) *winnings from a lottery*”

²⁶ Paragraph (m) repealed by s. 9 of the Finance Act 2013. Previously read:

“(m) *gains on the disposal of property other than business assets or investment assets*”

²⁷ Subsection (2) was added by s. 6(b)(ii) of the Finance Act 2010

- (i) if he intends to irrigate, at least, 500 hectares of agricultural land or to cultivate, at least 2,500 hectares of such land not irrigated; or
- (ii) if he intends to invest at least US\$ 1 million in livestock production or processing; and

(b) in the case of a domestic investor²⁸ -

- (i) if he intends to irrigate, at least, 100 hectares of agricultural land or to cultivate, at least, 500 hectares of such land irrigated or
- (ii) if he intends to invest, at least US\$500,000 in livestock production or processing;
- (iii) ²⁹for the purposes of subparagraphs (i) and (ii), forested land does not qualify.

(3)³⁰ For the purposes of subsection (2)(b), “domestic investor” means –

- (a) a natural person of Sierra Leonean citizenship who is resident in Sierra Leone; or
- (b) a company registered in Sierra Leone with, at least, 51% of the shares being held by residents of Sierra Leone, whose office is in Sierra Leone or a co-operative registered in Sierra Leone.

DEDUCTIONS

Expenses of deriving income.

32. (1) In this section, “allowable loss” means the amount by which a taxpayer's allowable deductions exceed the taxpayer's assessable income for the year of assessment.

(2) For the purpose of ascertaining the chargeable income derived by a taxpayer during a year of assessment, there shall be deducted—

- (a) all outgoings and expenses incurred by the taxpayer during the year of assessment to the extent that expenses or outgoings were incurred in the production of assessable income;
- (aa) ³¹cash and capital items, at their fair market values as determined by the Commissioner-General, given or donated by the taxpayer in the course of generating chargeable income or in deriving sales or promoting the activities

²⁸ The words “domestic investor” were substituted for “national” by s. 28(a)(ii) of the Finance Act 2011

²⁹ Subparagraph (iii) added by s. 28(a)(iv) of the Finance Act 2011

³⁰ Subsection (3) added by s. 28(a)(iii) of the Finance Act 2011

³¹ Paragraph (aa) added by s. 6(c)(i) of the Finance Act 2010

of the business to the extent of 50% of the market value or values so determined;

(b) *(repealed)*³²

(c) losses suffered on the disposal of business assets other than trading stock as determined in accordance with sections 57 and 61;

(d)³³ at the rate of one hundred and twenty five percent-

- (i) any expenses on training of staff in an approved training programme;
- (ii) any expenses on social services such as building of schools and hospitals and any investments outside the scope of the original investment that would also be available to the general public for use free of charge;
- (iii) expenses which are aimed at promoting exports and the supply of goods overseas;
- (iv) freight charges from the quay to a factory or processing site not locked within Freetown;
- (v) expenditure incurred promoting an export quality standard Sierra Leonean owned product".

(3) No deduction is allowed under subsection (2) for—

- (a) any outgoing or expense to the extent that it is personal to the taxpayer;
- (b) an amount that is included in the adjusted cost base of an asset;
- (c) income tax paid or incurred to Sierra Leone or to a foreign country;
- (d) any contribution to a non-complying pension, superannuation, provident or similar fund or to a complying fund in excess of the limit prescribed in section 38;
- (e) any sums paid in respect of redundancy, loss of office, termination of the holding of an office or retirement and any like sum in excess of the limit prescribed in paragraph 2 of the Ninth Schedule, except to the extent that it has been taxed as employment income;
- (f) any gratuity paid to an employee past, present or future or to a dependant of an employee except to the extent that it has been taxed as employment

³² Paragraph (b) repealed by s. 6(c)(ii) of the Finance Act 2010. Previously read: "*(b) any allowable loss suffered by the taxpayer to the extent that the loss has not been deducted in previous year of assessment in-so-far as the tax payable each year will be less than 50% of the tax due if such loss is not carried forward*"

³³ Paragraph (d) added by s. 6(c)(iii) of the Finance Act 2010

income;

(g) expenses, except cost of travel to attend board meetings incurred by a company in respect of transport to or from any place outside or inside Sierra Leone of a director of the company or his dependants, other than those of a whole-time service director;

(h) subject to sections 33 and 41, expenses incurred to repair, renew, alter or improve property;

(i) subject to section 34, expenses incurred to provide meals, refreshment or entertainment;

(j) subject to section 35, interest expenses incurred by a taxpayer that is not a bank;

(k) subject to section 36, losses in respect of bad debt claims;

(l) subject to section 37, research and development costs;

(m) subject to section 38, any part of the cost of acquiring a right to receive pension or annuity payments;

(n) subject to section 42, expenses incurred to acquire mineral and petroleum exploration and production rights and expenses incurred in respect of mineral and petroleum development;

(o) subject to section 43, expenses incurred in starting up a business to produce assessable income;

(p) subject to section 44, expenses incurred in acquiring an interest in a business;

(q) subject to section 54, expenses incurred to acquire trading stock or raw materials to be incorporated into trading stock;

(r) the cost of a gift made directly or indirectly to an individual if the gift is excludable from the individual's assessable income; or

(s) a fine or similar penalty paid to a government for breach of any law;

(t)³⁴ donations towards good causes.

(4) In this section an outgoing or expense treated as personal to the taxpayer includes—

(a) the cost of commuting between a taxpayer's residence and work;

³⁴ Paragraph (t) added by s. 3(c) of the Finance Act 2009

- (b) the cost of clothing that is suitable for wearing outside work;
- (c) the cost of caring for dependants; and
- (d) the cost of education in such areas of study as the Minister may, after consultation with the Minister for the time being responsible for Education by statutory instrument determine.

(5)³⁵ In paragraph (t) of subsection (3), the expression “donations towards good causes” refers to donations made in respect of community development programmes, charitable giving and sponsorship of sports, educational and health programmes.

Expenses incurred to derive rental income from real property.

33. (1) Subject to Part V of the First Schedule, and notwithstanding any other provision of this Act, no deduction is allowed in respect of the cost of deriving rental income from real property except as allowed under subsection (2) of this section and subsection (1) of section 39.

(2) A deduction is allowed for expenditure on insuring and managing the property during the period the property income is being derived and on expenditure incurred to repair, renew, alter or improve a property to the extent that it is—

- (a) attributable to a period of occupation by a tenant; and
- (b) allowed by subsection (2) of section 41.

Meal, refreshment and entertainment expenses.

34. A deduction is allowed for expenses of meals, refreshments or entertainment where—

- (a) the value of the meals, refreshment or entertainment is included in the assessable income of an employee under subsection (1) (m) of section 23; or
- (b) the taxpayer’s business includes the provision of meals, refreshments or entertainment and the persons to whom the benefits are provided have paid consideration for the benefits at arm’s length.
- (c) the expense is in respect of hospitality to export customers.

³⁵ Subsection (5) added by s. 3(c) of the Finance Act 2009

Financial cost.

35. ³⁶(1) In ascertaining a person's chargeable income for a year of assessment, the amount of financial cost deducted shall not exceed the amount referred to in subsection (3).

(2) The amount of financial cost referred to in subsection (1) is the sum of –

- (a) financial gains derived by the person, that are to be included in ascertaining the person's chargeable income for the year of assessment plus;
- (b) fifty percent of the person's chargeable income calculated without including financial gains derived or deducting financial costs incurred by the person.

(3) Financial cost for which a deduction is denied as a result of subsection (1) may be carried forward and treated as incurred during the next year of assessment except where there is a change in control as specified in section 88.

(4) The Commissioner-General may by Statutory Instrument prescribe the circumstances under which financial costs may be set against financial gain.

(5) For the purpose of this section–

- (a) “financial cost” means standard interest and any other amount payable under a financial instrument;
- (b) “financial gain” means standard interest and any other amount receivable under a financial instrument;
- (c) “financial instrument” has the same meaning prescribed by Statutory Instruments made under the Act and in the absence of such Statutory Instrument, takes its meaning from generally accepted accounting principles and includes foreign currency positions.

³⁶ Section 35 was repealed and replaced by s. 10 of the Finance Act 2013. Previously read:

“35. (1) Subject to subsection (3), a taxpayer that is not a bank is entitled to a deduction for a proportion of the interest expenses paid in respect of a debt obligation incurred by the taxpayer to produce assessable income.

(2) The proportion of interest expenses that are deductible under subsection (1) is as stated in paragraph 3 of the Ninth Schedule.

(3) Subsection (1) does not apply to interest expenses that are—

(a) included in the adjusted cost base of an asset; or

(b) borne on a loan from a shareholder or his associate to the extent of interest of one half the excess of that loan over the shareholder's paid-up shares”

Bad and doubtful claims.

36. A deduction is allowed for a bad debt when the debt is written off in the taxpayer's accounts and for a doubtful debt to the extent it is specifically estimated to be bad.

Research and development costs.

37. (1) Subject to subsection (2), a deduction of 125% ³⁷ is allowed for expenditure on research and development incurred in or incidental to the production of assessable income.

(2) Subsection (1) not apply to any expense incurred in ascertaining the existence, location, extent or quality of a natural deposit or for the acquisition of depreciable assets or land.

(3) Expenditure in this section not relieved due to there being no business in the year of expenditure shall be treated as start-up costs under Section 43.

Expenses in respect of pension and annuity payments.

38. (1) An employer's contributions to a complying retirement fund in respect of each employee shall be allowable up to a limit of thirty percent of the employee's employment income in the year.

(2) An individual's contributions to a complying retirement fund shall be allowable to the extent of thirty percent of his employment income in the year less any contributions for his benefit by an employer.

(3) Where an employer or individual has incurred an expense, including any contribution to a fund other than a complying retirement fund to acquire a right to receive a pension or annuity, the expense or contribution shall be deductible from the pension or annuity receipts as prescribed in paragraph 4 of the Ninth Schedule.

Capital allowance deduction for depreciable assets.

39. (1) A capital allowance deduction is allowed for depreciation of a taxpayer's depreciable assets.

(2) Depreciable assets are classified into groups as set out in the Seventh Schedule.

(3) The assets in the groups set out in the Seventh Schedule are placed into separate pools for each group and the capital allowance deduction for each pool is determined in accordance with subsections (4) to (12).

³⁷ The words "of 125%" inserted by s. 6(d) of the Finance Act 2010

(4) The capital allowance deduction for each pool is calculated by applying the rate of capital allowance prescribed in the Seventh Schedule against the balance of the pool at the end of the year of assessment.

(5) The balance of the pool at the end of the year of assessment is the total of –

(a) the balance of the pool at the end of the preceding year of assessment after allowing for the deductions under this section for the preceding year of assessment; and

(b) the adjusted cost base of assets added to the pool in the current year of assessment,

reduced, but not below zero, by the consideration received from the disposal of assets in the pool during the year of assessment.

(6) Where an asset owned by a taxpayer ceases to be a depreciable asset the taxpayer is deemed to have disposed of the asset for its market value.

(7) The adjusted cost base of an asset is added to the pool in the year in which the asset is placed in service.

(8) Where the consideration received from the disposal of assets in a pool exceeds the balance of the pool at the end of the year of assessment of the disposal, disregarding the amount of such consideration, the balance of the pool is reduced to zero and the excess is included in the taxpayer's assessable income.

(9) If the balance of the pool at the end of the year of assessment, after allowing for the deduction under subsection (4), is less than the amount prescribed in paragraph 5 of the Ninth Schedule a deduction is allowed for the amount of the balance.

(10) Where all the assets in a pool are disposed of, a deduction is allowed for the balance of the pool at the end of the year of assessment.

(11) Where a building is bought or sold together with land, the Commissioner will apportion the total consideration reasonably to arrive at a separate value of the building.

(12) Where assets are used only in part for the production of income, the capital allowance deduction is allowed in respect of a proportion of the adjusted cost base equal to the proportion of use allocatable to the production of income.

(13) Capital allowances on depreciable assets for businesses within section 21 shall be given in accordance with the Sixth Schedule.

Investment allowance.

40. A deduction known as investment allowance is allowed at the rate specified in paragraph 6 of the Ninth Schedule on expenditure to purchase assets within Group 1

of the Seventh Schedule and in the case of businesses in the tourist industry, the investment shall be allowed at the rate specified in paragraph 6 of the Ninth Schedule on expenditure incurred in acquiring new assets within Groups 1 and 4 of the Seventh Schedule.

Repairs and improvements.

41. (1) A deduction is allowed in respect of—

(a) expenses incurred to repair, renew, alter or improve depreciable assets; and

(b) expenses incurred to repair non-depreciable assets used in the production of assessable income.

(2) The deduction under paragraph (a) of subsection (1) for each year of assessment is limited to five percent of the balance of the pool, as determined under section 39, at the end of the preceding year of assessment.

(3) The excess, if any, of the amount described in paragraph (a) of subsection (1) over the limit in subsection (2) is treated as the cost of an asset added to the pool during the year of assessment.

Mineral and petroleum extraction.

42. Expenses incurred to acquire mineral and petroleum exploration and production rights and in respect of mineral and petroleum development are treated as if they were incurred for a depreciable asset in accordance with the Sixth Schedule.

Start-up costs.

43. An amortisation deduction is allowed for expenditure incurred in starting up a business to produce assessable income as if it were incurred for a depreciable asset in group 2 of the Seventh Schedule on the day the business commences.

Business investment relief.

44. (1) A deduction known as business investment relief shall be allowed to a resident individual if—

(a) he subscribes on his own behalf for qualifying shares in an eligible company either directly or through a business investment relief fund approved by the Commissioner,

(b) neither he nor an associate of his is a landlord, employee, partner or loan creditor of the company or any associate of the company; and

(c) he together with his associates has less than thirty percent of the voting shares in or rights in a distribution of the assets of the company.

(2) The relief shall be—

(a) given by deduction of the relevant amount from the individual's chargeable income;

(b) given in the year the qualifying shares are issued or, to the extent claimed in writing to the Commissioner at the time of the claim, in the following year; and

(c) limited in each year to the relevant amount specified in paragraph 7 of the Ninth Schedule.

(3) In this section, “qualifying shares” means shares certified by the company to be newly issued ordinary shares which for a period of five years, beginning with the date of issue, carry no present or future preferential rights to dividends, redemption or assets in a liquidation.

(4) In this section an “eligible company” means a company which—

(a) is resident and not exempt from income taxation in Sierra Leone;

(b) intends to receive and receives most of its income as business income wholly or mainly within Sierra Leone;

(c) is in receipt of business income on the date the qualifying shares are issued or begins to receive business income within two years of that date;

(d) continues to receive business income during the period (known in this section as the “qualifying period”) of five years from the later of the date of issue of the qualifying shares or the first receipt of business income;

(e) raises less than fifty percent of its share capital from the issue of shares to potential claimants of business investment relief; and

(f) within three years after the commencement of the qualifying period does not take over a business, part of a business or the greater part of the assets of a business.

(5) Relief given shall be withdrawn by assessment in the year in which—

(a) the individual ceases to qualify for relief;

(b) the shares cease to be qualifying shares;

(c) the company to be an eligible company, or

(d) the shares cease to belong beneficially to the claimant due to his death or to the winding up of the company for bona fide commercial reasons, at the rate of twenty percent for each year or part year remaining of the relevant period.

(6) Where the claimant otherwise than under paragraph (d) of subsection (5) disposes of the qualifying shares or an interest in the shares within the relevant period—

(a) at arm's length, the relief given shall be reduced by the amount of consideration received; or

(b) at other than arm's length, the relief given shall be withdrawn,

by assessment for the year or years in which relief was given as if relief had been claimed incorrectly.

TAX ACCOUNTING PRINCIPLES

Year of assessment.

45. In this Act, a reference to a particular year of assessment applies equally to a substituted year of assessment or transitional year of assessment commencing during the year of assessment.

Ordinary and substituted year of assessment.

46. (1) Subject to subsection (2), the year of assessment is the period of twelve months ending on 31st December³⁸ and shall be referred to as the "ordinary year of assessment".

(2) The Commissioner may, on written application, grant permission to use a different twelve month period as the year of assessment (referred to as a substituted year of assessment), subject to any conditions prescribed by him.

(3) Permission granted to use a substituted year of assessment can be withdrawn by written notice issued by the Commissioner.

(4) A notice issued by the Commissioner under subsection (3) shall take effect at the end of the taxpayer's substituted year of assessment.

(5) References to a year of assessment shall be read, in the case of a taxpayer authorised to use a substituted year of assessment, as a reference to the taxpayer's substituted year of assessment.

³⁸ The words "31st December" were substituted for the words "31st March" by s. 1(a) of the Finance Act 2007

Transitional year of assessment.

47. (1) Where the year of assessment for a taxpayer changes from an ordinary year of assessment to a substituted year of assessment to an ordinary year of assessment or from one substituted year of assessment to another, the period between the last full year of assessment prior to the change and the date on which the changed year of assessment commences shall be treated as a separate year of assessment, to be known as a "transitional year of assessment".

(2) Reference to a year of assessment shall be read, in the case of a taxpayer to which or to whom subsection (1) applies, as a reference to the taxpayer's transitional year of assessment.

Method of accounting.

48. (1) A taxpayer's method of accounting shall clearly reflect the taxpayer's income.

(2) Subject to subsections (3) and (4), a taxpayer may account for tax purposes on a cash or accrual basis.

(3) In the case of an individual or trustee, where either the taxpayer's chargeable business income or his turnover for a year of assessment exceeds the amounts specified in paragraph 8 of the Ninth Schedule, the taxpayer shall account for business income on an accrual basis in all succeeding years of assessment.

(4) A company shall account for income on an accrual basis.

(5) Except for a change from the cash basis to the accrual basis required under subsection (3) or (4), a taxpayer may change his method of accounting only with the prior written permission of the Commissioner.

(6) If the taxpayer's method of accounting is changed, adjustments to items of income, deduction, credit or other items shall be made in the year of assessment following the change, so that no item is omitted and no item is included more than once.

Cash-basis accounting.

49. A cash-basis taxpayer shall take income into account when received or made available and shall take deductions into account when paid or discharged.

Accrual-basis accounting.

50. (1) An accrual-basis taxpayer shall take income and deductions into account when payable.

(2) Subject to this Act, an amount is payable to the taxpayer when the taxpayer becomes entitled to receive it, even if the time for discharge of the entitlement is postponed or the entitlement is payable by instalments.

(3) Subject to this Act, an amount is treated as payable by the taxpayer when all the events that determine liability have occurred and the amount of the liability can be determined with reasonable accuracy, but not before economic performance with respect to the amount occurs.

(4) For the purposes of subsection (3), economic performance occurs—

(a) with respect to the acquisitions of services or property, at the time the service or property is provided;

(b) with respect to the use of property, at the time the property is used; or

(c) in any other case, at the time the taxpayer makes payment in satisfaction of the liability.

Claim of right.

51. (1) Where a cash-basis taxpayer includes in assessable income an amount which the taxpayer is not entitled to receive or claims a deduction for an amount which the taxpayer is not obliged to pay, the calculation of chargeable income shall be adjusted for the year of assessment in which the taxpayer refunds the amount received or receives back the amount paid.

(2) An accrual-basis taxpayer shall include an amount in assessable income or claim a deduction even if not legally entitled to receive the amount or liable to pay the expense if the taxpayer claims to be legally entitled to receive the amount or to be legally obliged to pay the expense.

(3) Where an accrual-basis taxpayer includes an amount in income or claims a deduction under subsection (2), the calculation of chargeable income shall be adjusted for the year of assessment in which the taxpayer ceases to claim the right to receive the amount or ceases to claim an obligation to pay the amount.

Prepayments.

52. An otherwise allowable deduction for an expense which is not of a capital nature and which relates to a service or other benefit that extends after the end of the year of assessment is allowed proportionately over the years of assessment to which the service or other benefit relates.

Long-term contracts.

53. (1) Income and deductions relating to a long-term contract shall be taken into account on the basis of the percentage of the contract completed during the year of assessment.

(2) The percentage of completion is determined by comparing costs allocated to the contract and incurred before the end of the year of assessment with the estimated total contract costs.

(3) In this section, "long-term contract means a contract for manufacture, installation or construction or the performance of related services which is not completed within the year of assessment in which work under the contract commenced, other than a contract estimated to be completed within six months of the date on which work under the contract commenced.

Trading stock.

54. (1) A taxpayer who maintains trading stock shall establish and maintain inventories of such stock.

(2) A deduction shall be allowed for the cost of trading stock sold during the year of assessment.

(3) The cost of trading stock sold in a year of assessment shall be determined by adding to the value of opening trading stock the cost of goods acquired during the year and subtracting the value of closing trading stock.

(4) A cash-basis taxpayer may calculate the cost of trading stock on the prime-cost or absorption-cost method and an accrual-basis taxpayer shall calculate the cost of trading stock on the absorption-cost method.

(5) The value of trading stock on hand at the end of the year of assessment shall be the lower of its cost or market value at that date.

(6) Where particular items of trading stock are not readily identifiable, a taxpayer may account for the trading stock on the first-in-first-out method or the average-cost method, but once chosen, a stock valuation method may only be changed with the written permission of the Commissioner, and a taxpayer using the last-in-first-out method shall change to the first-in-first-out or the average stock method within five years from the date of commencement of this Act.

Debt obligations with discount or premium.

55. A discount or premium on a debt claim or obligation shall be taken into account on a straight line basis over the life of the claim or obligation.

Foreign currency debt gains and losses.

56. (1) Foreign currency debt gains are assessable and foreign currency debt losses are deductible only under this section.

(2) For the purpose of this section, a taxpayer realises a foreign currency debt gain in the year of assessment in which the taxpayer satisfies a foreign currency debt where, because of a change in the value of the leone as against a foreign currency, the amount in leones of—

- (a) any loan principal received by the taxpayer;
- (b) any expense that is deductible by the taxpayer under this Act; or
- (c) any amount included in the adjusted cost base of a depreciable asset,

is more than the amount required to settle the foreign currency debt.

(3) For the purposes of this section, a taxpayer realises a foreign currency debt loss in the year of assessment in which the taxpayer satisfies a foreign currency debt where, because of a change in the value of the leone as against a foreign currency, the amount in leones of—

- (a) any loan principal received by the taxpayer;
- (b) any expense deductible by the taxpayer under this Act; or
- (c) any amount included in the adjusted cost base of a depreciable asset,

is less than the amount required to settle the foreign currency debt.

(4) A foreign currency debt reserve may be allowed in a year where leones sufficient to meet the debt have been lodged with a bank but through insufficiency of foreign currency the debt has not been paid, to the extent it is shown that a loss may thereby have been incurred.

(5) Foreign currency debt gains shall be included in a taxpayer's assessable income in the year of assessment in which they are realised.

(6) A deduction is allowed for foreign currency debt losses incurred by a taxpayer in the year of assessment in which they are incurred.

Installment sales and finance lease.

56A. ³⁹(1) Payments made by a person under a finance lease or in acquiring an asset under an installment sale shall be treated as

³⁹ Section 56A inserted by s. 11 of the Finance Act 2013

interest and a repayment of capital under a loan made by the lessor or seller to the lessee or buyer, as the case may be.

(2) The interest and repayment of capital under subsection (1) shall be calculated as if the loan were a blended loan with interest compounded six monthly.

(3) Where an asset is leased under a finance lease, the lessor shall be treated as transferring ownership of the assets to the lessee.

(4) Where the lessee under a finance lease returns the assets to the lessor before ownership passes to the lessee other than by reason of this subsection, the lessee shall be treated as transferring ownership of the asset back to the lessor.

(5) Where a person transfers an asset under an installment sale or under a finance lease under subsection (3) or (4)–

(a) the person shall be treated as receiving an amount in respect of the transfer equal to the market value of the asset immediately before the transfer; and

(b) the person who acquires the asset shall be treated as paying an equal amount in acquiring the asset.

(6) The Commissioner-General may by Statutory Instrument prescribe that other forms of financing that involve interest substitutes shall be treated in a manner consistent with this section.

(7) For the purpose of this section–

(a) “blended loan” means a loan–

(i) under which payments by the borrower represent in part a payment of interest and in part a repayment of capital;

(ii) where the interest part is calculated on capital outstanding at the time of each payment; and

(iii) where the rate of interest is uniform over the term of the loan;

(b) “finance lease” means a lease where–

(i) the lease agreement provides for the transfer of ownership following the end of the lease term or the lessee has an option to acquire the asset after expiry of the lease term for a fixed or presupposed price;

(ii) the lease term exceeds 75% of the useful life of the asset;

(iii) the estimated market value of the asset after expiry of the lease term is less than 20% of its market value at the start of the lease;

(iv) in the case of a lease that commences before the last 25% of the useful life of the asset, the present value of the minimum lease payment equals or exceeds 90% of the market value of the asset at the start of the lease term; or

(v) the asset is custom-made for the lessee and after expiry of the lease term the asset will not be of practical use to any person other than the lessee;

(c) “installment sale” excludes a sale that provides for commercial periodic interest payable on sales proceeds outstanding; and

(d) “lease term” includes an additional period for which the lessee has an option to renew a lease.

CAPITAL GAINS TAX REGIME ⁴⁰

Imposition of capital gains tax.

57. ⁴¹(1) Capital gains tax shall be payable by a chargeable person at the rate of 30% of the capital gain accruing to or derived by that chargeable person from the disposal of a chargeable asset owned

⁴⁰ The Capital Gains Tax Regime contained in sections 57 to 61 was inserted by s. 12 of the Finance Act 2013 and repealed and replaced the former sections 57 to 61 relating to “Gains and Losses on Disposal of Assets”

⁴¹ Section 57 repealed and replaced by s. 12 of the Finance Act 2013. Previously read:

“57. (1) Subject to this Act, the gain realised or the loss incurred on the disposal of a business or investment asset is taken into account in determining chargeable income.

(2) The gain from the disposal of an asset is the excess of the consideration received over the adjusted cost base of the asset.

(3) The loss from the disposal of an asset is the excess of the adjusted cost base over the consideration received.

(4) No gain or loss on disposal of a depreciable asset is taken into account otherwise than under section 39.

(5) The gain or loss on disposal of an asset which is not a business or investment asset is not taken into account in determining chargeable income.

(6) Where a taxpayer—

(a) converts a business asset or investment asset to personal use;

(b) converts an asset primarily used for personal purposes to a business or investment asset;

(c) converts a business asset to an investment asset; or

(d) converts an investment asset to a business asset,

the taxpayer is deemed to have disposed of the asset for its market value at the time of the conversion and reacquired it for a cost equal to its market value.

(7) A non-resident person who becomes resident is deemed to have acquired all assets owned by the person at the time of becoming a resident for their market value at that.

(8) A resident person who becomes a non-resident is deemed to have disposed of all assets owned by the person at the time of becoming a non-resident for their market value at that time.

(9) Where a person to whom subsection (8) would otherwise apply—

(a) intends to reacquire status as a resident of Sierra Leone; and

(b) provides the Commissioner with sufficient security to satisfy any tax liability that would otherwise arise under subsection (8)

by a chargeable person.

(2) For the purpose of sections 57 to 61–

- (i) “capital gain” means the excess of the consideration received or receivable by a chargeable person (whether in cash, kind or by any other means) from the realization or disposal of a chargeable asset over the cost base at the time of the realization or disposal;
- (ii) “capital gains tax” means the tax arising from a capital gain;
- (iii) “chargeable asset” includes land and sea, property attached and integrated equipment, fixtures, improvements including leases, anything growing on the land and all interest in the property including sea which may be right to future ownership, right to occupy as tenant, life estate, the right to explore, develop, extract or produce oil, and other minerals, the right to shares, stocks and other investment opportunities in an entity, business or company, intellectual property rights, reversion of property, if it is not used for its current purpose, an easement across another person’s property and any other privileges relating to the property, business and business asset including goodwill wherever situated;
- (iv) “chargeable disposal” means the sale, realization or change of hands of a chargeable asset other than those specifically exempt from capital gain; and
- (v) “chargeable person” means a person, individual, corporation and related organizations including permanent establishment, associates, affiliates and joint ventures which have made chargeable disposal of a chargeable asset during a year of assessment.

Disposal or realization of chargeable asset.

58. ⁴²(1) Subject to subsection (2), a person who owns a chargeable asset shall be treated as realizing or disposing of the asset where–

the Commissioner may exempt the person from the application of subsections (7) and (8)”

⁴² Section 58 repealed and replaced by s. 12 of the Finance Act 2013. Previously read:

“58. (1) Subject to subsection (6) and section 61, the cost base of an asset purchased, produced or constructed by the taxpayer is the amount paid or incurred by the taxpayer in respect of the acquisition of the asset and includes the market value of any consideration in kind given for the asset.

(2) Subject to subsection (3), the cost base of an asset acquired in a non-arm’s length transaction is the market value of the asset at the date of acquisition.

- (a) the person parts with ownership of the asset including when the asset is—
 - (i) sold, exchanged, surrendered, or distributed by the owner of the asset, or
 - (ii) redeemed, destroyed or lost;
- (b) the person begins to use the asset in such a way that it ceases to be a chargeable asset; or
- (c) the person is a resident who becomes non-resident but only with respect to chargeable asset.

(2) Where an asset is disposed of by way of gift, the disposer shall be treated as having received consideration equal to the market value of the asset at the time of the disposal.

Cost base of a chargeable asset.

59. ⁴³(1) The cost base of a chargeable asset owned by a chargeable person at a particular time shall be the sum of the cost—

-
- (3) *The cost base of an asset acquired from an associate or in a non-arm's length transaction described in section 59 is the amount of the consideration deemed by section 59 to be received by the person disposing of the asset.*
 - (4) *Where a part of an asset is disposed of, the adjusted cost base of the asset is apportioned between the part of the asset retained and the part disposed of in accordance with their market values at the time of disposal.*
 - (5) *Expenses incurred to alter or improve a non-depreciable asset are added to the cost base of the asset.*
 - (6) *Where a taxpayer has an asset at the date this Act comes into operation, its adjusted cost base at that date shall be—*
 - (a) *its cost base indexed in accordance with Tables to be published by the Commissioner under paragraph 9 of the Ninth Schedule; or*
 - (b) *if the asset has been held for more than ten years, or if the taxpayer so elects by notice in writing to the Commissioner within one year of the Act coming into operation, its market value.*
 - (7) *Where a taxpayer holds an asset for more than twelve months commencing on or after the date this Act comes into operation, its adjusted cost base shall be its cost base indexed in accordance with Tables to be published by the Commissioner under paragraph 9 of the Ninth Schedule, but not so as to convert a gain into a loss or to increase a loss.*
 - (8) *The cost base of a share received by the taxpayer as a dividend is the market value of the share at the time it is received"*

⁴³ Section 59 repealed and replaced by s. 12 of the Finance Act 2013. Previously read:

- "59. (1) *The consideration received on disposal of an asset includes the market value of consideration in kind.*
- (2) *Where an asset is disposed of by way of testamentary gift or by reason of intestacy, the disposer is treated as having received consideration equal to the adjusted cost base of the asset computed in accordance with subsection (7) of section 58.*
- (3) *Where an asset is disposed of to an associate or in a non-arm's length transaction other than by way of testamentary gift or by reason of intestacy, the disposer is treated as having received consideration equal to the greater of—*
 - (a) *the adjusted cost base of the disposer; and*
 - (b) *the market value of the asset at the date of disposal.*
- (4) *Where two or more assets are disposed of in a single transaction and the consideration paid for each asset is not specified, the total consideration received is apportioned among the assets disposed of in proportion to their respective market values at the time of the transaction"*

- (a) including incidental costs and the cost of construction or production incurred by the person in acquiring ownership of the asset;
- (b) incurred by that person on alteration and improvement of the asset between the date of its acquisition and the date of its realization, and
- (c) incurred by that person in realizing the asset.

(2) For the purposes of subsection (1), where, as a result of a person acquiring ownership of a chargeable asset, that person is treated under the rules of chargeable income as deriving an amount of income as contained in this Act, that person shall be treated as having incurred in acquiring ownership of the asset an additional cost equal to the amount of the income.

(3) A person who acquires ownership of a chargeable asset in a non-arm's length transaction shall be treated as having incurred in acquiring that ownership, a cost equal to the market value of the asset at the date of acquisition approved by the Commissioner-General.

(4) Where a person who owns an asset, which is not a chargeable asset, begins to use the asset in such a way that it becomes a chargeable asset, that person shall be treated as having incurred in acquiring ownership of the asset a cost equal to the market value of the asset at the date that person begins to so use the asset.

(5) Where a non resident person who owns one or more assets, which are not chargeable assets, becomes a resident and, as a result the asset becomes chargeable assets, that person shall be treated as having incurred in acquiring ownership of each asset, a cost equal to the market value of the asset at the time of becoming resident.

(6) Where a capital gain is exempt as a result of paragraph (b), (c), or (d) of subsection (1) of section 61, the person acquiring ownership of the asset shall be treated as having incurred in acquiring that ownership, a cost equal to the cost base of the asset of the former owner at the time of realization.

(7) Where a capital gain, or part thereof, is exempt as a result of paragraph (e) or (f) of subsection (1) of section 61, the person acquiring ownership of the replacement asset shall be treated as having incurred in acquiring that ownership a cost equal to the cost base of the asset realized at the time of the realization.

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

Consideration received in respect of chargeable disposal

60. ⁴⁴(1) The consideration received or receivable by a person from the realization of a chargeable asset owned by that chargeable person shall be equal to the sum of all amounts and consideration in kind received or receivable by that person or an associate or a permanent establishment in respect of the realization.

(2) Where a person who owns a chargeable asset realizes it by way of transfer to an associate or permanent establishment in a non-arm's length transaction, that person shall be treated as having received consideration of an amount equal to the market value of the asset at the time of the realization.

(3) Where a resident person became a non-resident and as a result, is treated as realizing a chargeable asset in accordance with paragraph (c) of subsection (1) of section 58, that person shall be treated as receiving as consideration from the realization the market value of the asset at that time.

(4) Where a chargeable asset and one or more other assets are realized in a single transaction and the consideration received for each asset is not specified, the total consideration received from the realization shall be apportioned among the assets in proportion to their market values at the time of the transaction.

Exemption for capital gain.

61. ⁴⁵(1) The following capital gain shall be exempt from the

⁴⁴ Section 60 repealed and replaced by s. 12 of the Finance Act 2013. Previously read:

"60. (1) A deduction for a loss on the disposal of investment assets is allowed only to the extent that the taxpayer has realised gains on the disposal of investment assets in the year of assessment.

(2) A loss that is not deductible in whole or in part in a year of assessment because of subsection (1) is treated as incurred in the following year of assessment"

⁴⁵ Section 61 repealed and replaced by s. 12 of the Finance Act 2013. Previously read:

"61. (1) No gain or loss is taken into account in determining chargeable income on—

(a) a transfer of an asset between spouses;

(b) a transfer of an asset between former spouses as part of a divorce settlement or bona fide separation agreement; or

(c) a disposal of a business asset where and to the extent that consideration in excess of the adjusted cost base of the asset is invested in an asset of a like kind within one year of the disposal.

(2) Where no gain or loss is taken into account pursuant to paragraph (a) or (b) of subsection (1), the transferee is deemed to have acquired the transferred asset for consideration equal to the adjusted cost base of the transferor.

(3) Where an asset is reacquired within twelve months of its disposal—

(a) any gain assessed shall be reduced by the extent to which the cost of reacquisition exceeds the adjusted cost base of the asset, but not so as to create a loss;

(b) any loss relief given shall be withdrawn;

(c) any net loss on the sale and repurchase of the asset shall be added to its adjusted cost base; and

realization of a chargeable asset–

- (a) capital gain of a person that is up to and under the minimum chargeable income of Le1,800,000 per annum or per transaction;
- (b) capital gain accruing to or derived by a company out of a merger, amalgamation or re-organization of the company where there is continuity of underlying ownership in the asset of at least one quarter.
- (c) capital gain resulting from a transfer of ownership of the asset by a person to that person's spouse, children, parent, brother or sister;
- (d) capital gain resulting from a transfer of ownership of the asset between former spouses as part of a divorce settlement or a genuine separation agreement;
- (e) capital gain where the amount received on realization is, within one year of realization, used to acquire a chargeable asset of the same nature (referred to as "replacement asset"); and
- (f) where part only of the amount received or realized is used in the manner referred to in paragraph (e), any part of the capital gain represented by the amount used to acquire the replacement asset is less than the cost base of the asset realized at the time of realization.

Filing of returns and payment of capital gains tax.

61A. ⁴⁶(1) Subject to subsection (3), a person who accrues or derives a capital gain from the realisation of a chargeable asset, shall within thirty days after the realization, submit to the Commissioner-General a return in writing together with payment of the capital gains tax containing the following information–

- (a) ⁴⁷a statement of the capital gain of a person that is within the minimum chargeable income of Le 3,600,000.00 per annum or per transaction.
- (b) the cost base of the asset immediately prior to the realization and how that cost base is calculated with supporting evidence approved by the Commissioner-General;
- (c) the consideration received by that person from the realization with supporting documentation approved by the Commissioner-General;

(d) any net gain on the sale and repurchase of the asset exceeding the gain to be assessed before repurchase shall be deducted from its adjusted cost base.

(4) In the case of a business asset in which proceeds of disposal of another asset have been reinvested, the cost base of the replacement asset is the cost of that asset less the excess referred to in paragraph (c) of subsection (1)''

⁴⁶ Section 61A inserted by s. 13 of the Finance Act 2013

⁴⁷ Paragraph (a) repealed and replaced by s. 3(a) of the Finance Act 2015. Previously read: "*(a) the description and location of the chargeable asset*"

- (d) the amount of any capital gain and tax payable with respect to that capital gain and the related tax;
- (e) the full name and address of the new owner of the asset; and
- (f) any other information as required by the Commissioner-General in order to ascertain the accuracy and completeness of the transaction.
- (g) ⁴⁸capital gains resulting from a transfer of ownership of the asset by a person to a religious, charitable, educational organization which uses the asset for the benefit of the public or a section of the public and does not confer any personal or commercial benefit.

(2) A person who brings into or received in Sierra Leone a capital gain shall within thirty days, submit to the Commissioner-General a return in writing containing the following information–

- (a) the amount of the capital gain brought into or received in Sierra Leone and tax payable with respect to that amount; and
- (b) any other information as required by the Commissioner-General.

(3) Where a person is required to file a capital gains tax return under whatever circumstances, that person shall remit to the Commissioner- General the amount of tax calculated as payable and the payment of tax shall be due at the time of disposal.

Assessment collection and application of income tax procedure.

61B. ⁴⁹(1) Subject to subsection (3), the Commissioner-General shall, based on a person's return filed under section 61A and on any other information available, make an assessment of the amount of any capital gain of that person and the tax payable on that amount within thirty days from the date the return is filed.

(2) The Commissioner-General shall apply sections 95 and 96 in order to ascertain the actual base cost or consideration received in arriving at the chargeable gain of the person.

(3) Where section 104 applies to a person and that person files a return under section 61A, the Commissioner-General shall be deemed to have made an assessment of any capital gain of that person and the tax payable on that assessment, being those respective amounts shown in the return.

(4) The procedures for objection, enforcement and recovery of a capital gain tax including interest and penalty shall apply in accordance with this Act.

⁴⁸ Paragraph (g) inserted by s. 3(b) of the Finance Act 2015

⁴⁹ Section 61B inserted by s. 14 of the Finance Act 2013

MISCELLANEOUS PRINCIPLES FOR DETERMINING CHARGEABLE INCOME

Income of joint owners.

62. Income or deductions relating to jointly owned property are apportioned among the joint owners in proportion to their respective interests in the property.

Valuation.

63. (1) Where the calculation of chargeable income involves a receipt, an outgoing or any other amount in the form of property, services or other benefit, its market value on the date taken into account for tax purposes is used in determining the chargeable income.

(2) The market value of property transferred to an employee or other provider of services is determined without regard to any restriction on transfer.

CURRENCY CONVERSION

Currency conversion.

64. (1) Chargeable income under this Act is calculated in leones, subject to any other law relating to the conversion of other currency into leones.

(2) Where the calculation of chargeable income involves an amount in a currency other than leones, the amount is converted at the exchange rate applying between the currency and leones on the date that the amount is paid, accrued or otherwise taken into account for tax purposes.

(3) With the prior written permission of the Commissioner, a taxpayer may use the average rate of exchange during the year of assessment or may keep books of account in a currency other than leones.

Indirect payments and benefits.

65. (1) The income of a taxpayer includes—

(a) a payment that directly or indirectly benefits the taxpayer; and

(b) a payment dealt with as the taxpayer permits,

which would have been income of the taxpayer if the payment had been made directly to the taxpayer.

(2) The deductions of a taxpayer include a payment made on behalf of the taxpayer or as the taxpayer permits which would have been a deduction of the taxpayer if the payment had been made directly by the taxpayer.

Compensation receipts.

66. Compensation payments received take the character of the thing that is compensated.

Recouped deductions.

67. (1) Where a previously deducted expenditure, loss or bad debt claim is recovered, the amount recovered is income of the year of assessment in which it is recovered and takes the character of the income to which the deduction is related.

(2) For the purposes of subsection (1), a deduction is considered recovered on the occurrence of an event inconsistent with the basis for the deduction.

PART V – ALTERNATIVE CHARGEABLE BUSINESS INCOME AND DESIGNATED CHARGEABLE INCOME

Ordinary chargeable business income.

68. A taxpayer's chargeable income for the year of assessment as calculated without reference to sections 69 and 70 is known as the taxpayer's ordinary chargeable business income.

Alternative chargeable business income.

69. (1) Subject to (2) and (3) and notwithstanding any other provisions in this Act, a taxpayer's chargeable business income for the year of assessment is the higher of—

(a) the taxpayer's ordinary chargeable business income for the year of assessment; and

(b) twenty percent⁵⁰ of the turnover during the year of assessment.

(2) Where subsection (3) does not apply and where a taxpayer maintains in respect of a business proper books of accounts of all receipts obtained, expenses incurred, the matter to which such receipts and expenditures relate and all sales and purchases of goods and services made in respect of that business, notwithstanding any other provisions in this Act, the taxpayer's chargeable income for the year of assessment derived from the business for which the taxpayer has maintained proper books of accounts is the higher of—

⁵⁰ The words "twenty percent" were substituted for the words "fifteen percent" in paragraph (b) by s. 1(b)(i) of the Finance Act 2007

(a) the taxpayer's ordinary chargeable business income attributable to such business for the year of assessment; and

(b) fifteen percent⁵¹ of the turnover of the business during the year of assessment.

(3) Where –

(a) a taxpayer maintains proper books of accounts of—

(i) all receipts obtained and expenses incurred by a business and the matter to which such receipts such receipts and expenditures relate; and

(ii) all sales and purchases of goods and services made by that business;

(b) those books of accounts have been audited by a recognised firm of accountants; and

(c) the Commissioner is satisfied, that complete and proper records have been kept and that there have been no false, artificial or fictitious transactions aimed at reducing the chargeable income of such business,

the taxpayers' chargeable business income attributable to such business for the year of assessment is the taxpayer's ordinary chargeable business income attributable to such business:

Provided that the Commissioner may conduct an audit of the books and accounts of the business within four years from the end of the year of assessment.

(4) For the purposes of subsection (3), where the Commissioner has not completed an audit within two years of the end of any year of assessment, any excess tax paid by the taxpayer under this section shall be repayable unless the delay in completion of the audit is caused by a failure of the taxpayer to provide information requested by the Commissioner.

(5)⁵² This section shall not apply to a taxpayer whose turnover is less than three hundred and fifty million Leones and has elected to be assessed under the turnover method specified in subsection

(2) of section 4.

Designated chargeable income.

70. Where-

⁵¹ The words “fifteen percent” were substituted for the words “ten percent” in paragraph (b) by s. 1(b)(ii) of the Finance Act 2007

⁵² Subsection (5) inserted by s. 15 of the Finance Act 2013

(a) a person has not filed a return of income and the Commissioner is of the opinion that the taxpayer has derived chargeable income in the year of assessment; or

(b) the taxpayer has filed a return of income and the Commissioner is of the opinion that the information provided on the return of income does not correctly disclose the taxpayer's chargeable income for the year of assessment;

the Commissioner may, according to the best of his judgement, determine the amount of the chargeable income of the person.

PART VI - SPECIAL PRINCIPLES FOR INDIVIDUALS

Individual as tax unit.

71. The chargeable income of each individual is determined separately.

Income splitting.

72. (1) Where an individual taxpayer attempts to split income with another person, the Commissioner may adjust the chargeable income of the taxpayer and the other person to prevent any reduction in tax payable as a result of the income splitting.

(2) In determining whether the taxpayer is seeking to split income through a partnership or trust, the Commissioner shall consider the value given by the other party to the partnership or trust.

(3) In this section, "income splitting" means the transfer of income from one person to an associate or the diversion of income from one person to an associate where the reason or one of the reasons for the transfer or diversion is to lower the total tax payable upon the income of the transferor and the transferee.

PART VII - SPECIAL PRINCIPLES FOR PARTNERSHIPS

Principles of taxation of partnerships.

73. (1) The presence or absence of a written partnership agreement shall not determine if a partnership exists between persons.

(2) The partners rather than the partnership are taxed, but the partnership shall file a partnership return of income.

(3) An election, notice or statement required to be filed in relation to a partnership's activities shall be filed by the partnership.

Calculation of partnership income or loss.

74. Partnership income or loss is calculated as if the partnership were a resident individual taxpayer but without reference to paragraph (b) of subsection (2) of section 32.

Taxation of partners.

75. (1) The assessable income of a resident partner includes the partner's share of partnership income for the year of assessment.

(2) The assessable income of a non-resident partner includes the partner's share of Sierra Leone – source partnership income for the year of assessment.

(3) A resident partner is allowed a deduction for the partner's share of partnership loss for the year of assessment.

(4) A non-resident partner is allowed a deduction for the partner's share of a partnership loss, but only to the extent that the activity giving rise to the loss would have given rise to income from a source in Sierra Leone if a loss had not been incurred.

(5) Income, expenses or losses derived or incurred by a partnership retain their character as to geographic source and type of income, expense or loss in the hands of the partners.

Disposals of property to and by a partnership.

76. (1) A contribution to a partnership by a partner of an asset owned by the partner is treated as a disposal of the asset to the partnership.

(2) A partner's interest to a partnership is treated as a business asset of the partner for income tax purposes.

Cost base of partner's interest.

77. The cost base of a partner's interest in a partnership includes any share of partnership income which has been included in the partner's assessable income in a previous year and any share of exempt income derived by the partnership which have not been distributed from the partnership.

PART VIII – SPECIAL PRINCIPLES FOR TRUSTS

Definition of terms.

78. For the purposes of sections 79 to 83—

“grantor” means a person who transfers property to or confers a benefit on a trust for no consideration or for a consideration less than its market value;

“grantor trust” means a trust in relation to a whole or part of which—

(a) the grantor has—

(i) the power to revoke or alter the trust so as to acquire a beneficial interest in the corpus or income; or

(ii) a reversionary interest in either the corpus or income; or

(b) the property or benefit conferred by the grantor benefits a minor;

“incapacitated person’s trust” means a trust for the benefit of a person under a legal disability; and

“qualified beneficiary trust” means—

(a) a trust in relation to which a person has a power solely exercisable by that person to vest the corpus or income in that person; or

(b) a trust whose sole beneficiary is an individual or an individual’s estate or appointees, but does not include an incapacitated person’s trust.

Principles of taxation for trusts.

79. (1) The chargeable income of a trust shall be taxed either on the trustee or on the beneficiaries of the trust in accordance with this Act.

(2) A grantor trust or a qualified beneficiary trust shall not be treated as an entity separate from the grantor or beneficiary respectively; and the chargeable income of a grantor trust or qualified beneficiary trust shall be taxed on the grantor or beneficiary and property owned by the trust shall be deemed to be owned by the grantor or beneficiary as the case may be.

(3) The chargeable income or allowable loss of a trust shall be calculated as if the trust were a resident individual taxpayer.

(4) Separate calculations of the chargeable income or allowable loss shall be made for separate trusts regardless of whether they have the same trustee.

(5) Income, expenses or losses derived or incurred by a trustee retain their character as to geographic source and type of income, expense or loss in the hands of the beneficiary.

(6) A trust shall file a return of income.

Taxation of beneficiaries.

80. (1) Subject to subsection (4) of section 83, the assessable income of a resident beneficiary under a trust includes the share of the chargeable income of the trust to which the beneficiary is absolutely entitled.

(2) Subject to subsection (4) of section 83, the assessable income of a non-resident beneficiary under a trust includes the Sierra Leone-source chargeable income of the trust to which the beneficiary is entitled.

(3) No beneficiary shall be allowed a deduction for a trust loss.

(4) Chargeable income that is subject to taxation under section 81, shall not be included in the assessable income of a beneficiary to whom it is subsequently distributed.

(5) For the purposes of this section and section 81, a beneficiary is deemed to be entitled to a share of the chargeable income of a trust in a year of assessment where the beneficiary becomes absolutely entitled to the income within thirty days of the end of the year of assessment.

Taxation of trustees.

81. (1) Subject to subsection (2), a trustee is liable for income tax on the chargeable income of the trust.

(2) For the purposes of subsection (1), the chargeable income of a trust for a year of assessment shall be calculated by subtracting from the chargeable income of the trust calculated without reference to this subsection, the amount included in the assessable income of any beneficiary under section 80.

(3) Trustees shall be jointly and severally liable for a tax liability arising from trust income that is not satisfied from trust assets, but any trustee required to meet such liability shall be entitled to a contribution from each of the other trustees.

Taxation of settlors.

82. (1) The chargeable income as determined under section 81 of a non-resident trust other than a qualified beneficiary trust shall be included in the chargeable income of a resident person who has contributed value to the trust.

(2) If a person to whom subsection (1) applies is not able to ascertain the chargeable income of the non-resident trust, the person shall be deemed to have derived chargeable income equal to the amount of chargeable income that the person would have derived for the year of assessment with respect to the value contributed by the person to the trust, assuming a half yearly compounded net rate of return equal to six percent higher than the specified rate referred to in section 146.

(3) Where more than one person has contributed value to a trust to which subsection (1) applies, the chargeable income of the trust shall be attributed proportionally to each person who has contributed value with regard to the proportion of value contributed by the person.

(4) For the purposes of this section, a person contributes value to a non-resident trust where the person provides property or services to the trust for less than the market value.

Taxation of estates of deceased persons.

83. (1) Where the provisions of this section are inconsistent with those of section 81, the provisions of this section prevail.

(2) Income accruing or received—

(a) in the year of assessment in which a taxpayer dies, and

(b) prior to the date of death,

which would but for the death of the taxpayer have been assessable to tax on the taxpayer for any year of assessment, shall be assessable on the executor or administrator of the deceased taxpayer for that year of assessment.

(3) Income—

(a) accruing or received after the date of death of a deceased taxpayer; and

(b) arising from an income-producing activity of the taxpayer before the taxpayer's death,

which would but for the death of the taxpayer have been assessable on the taxpayer for any year of assessment, shall be assessable on the executor or administrator of the deceased taxpayer for that year of assessment.

(4) For the years of assessment referred to in subsection (2) of section 6, the executor or administrator of a deceased taxpayer shall be taxed on income subject to subsections (2) and (3) for the year of assessment on the basis that no beneficiary is entitled to the income, and no beneficiary is taxed on that trust income.

(5) An executor or administrator of a deceased taxpayer shall be responsible for the tax liability of the taxpayer arising from any year of assessment prior to the year of assessment in which the taxpayer died.

PART IX - SPECIAL PRINCIPLES FOR COMPANIES

Principles of taxation for companies.

84. (1) A company is liable to tax separately from its shareholders.

(2) Subject to subsection (3), a dividend received by a resident company from another resident company is exempt from taxation.

(3) Subsection (2) does not apply to a dividend received by a financial institution by virtue of its ownership of shares in the company paying the dividend.

Deemed dividends.

85. For the purpose of this Act, the following shall be treated as dividends paid by a company to a shareholder—

(a) the use or transfer of company property which confers a direct or indirect benefit on him or his associate; and

(b) interest expenses disallowed under subsection (3) of section 35.

Share cancellations, redemptions and acquisitions.

86. (1) Where—

(a) a company cancels or redeems a share or acquires a share from a shareholder other than in the course of a complete liquidation by the company; and

(b) the shareholder retains other shares in the company following the redemption, cancellation or acquisition,

the shareholder shall be treated as not having disposed of the share that was redeemed, cancelled or acquired by the company and the shareholder's adjusted cost base in the share shall be added to the adjusted cost base of shares in the company retained by the shareholder on a pro rate basis; and the shareholder shall be treated as having received a dividend in the amount transferred in redemption, cancellation or acquisition of the share.

(2) Where—

(a) a company cancels or redeems a share or acquires a share from a shareholder including in the course of a complete liquidation by the company; and

(b) the shareholder retains no other shares in the company following the redemption or cancellation,

the proceeds derived by the shareholder shall be deemed not to be dividends.

(3) If a company in the course of a complete liquidation distributes assets in specie to a shareholder that is a resident company—

(a) no gain or loss shall, for the purposes of this Act be recognised by the distributing company as a result of the disposal, and

(b) the shareholder's cost base in the distributed property shall be the shareholder's cost base in the cancelled shares.

(4) Where a shareholder to which subsection (3) applies receives more than one asset in the course of a liquidation of a company in which it has shares, the proportion of the adjusted cost base of its shares that is attributed to an asset shall be the proportion of the market value of all assets received in respect of the liquidation that is attributable to the market value of the asset.

Incorporation roll-over.

87. (1) Where—

(a) a person transfers an asset (with or without any liability not in excess of the adjusted cost base of the asset) to a company in exchange for a shareholder interest in the company; and

(b) the person has a fifty percent or greater shareholder interest in the company immediately after the exchange,

the transfer shall not be treated as a disposal of the asset by the transferor but shall be treated as an acquisition by the transferee.

(2) The transferee's cost base of an asset to which subsection (1) applies shall be the same as the transferor's adjusted cost base at the time of transfer.

(3) The cost base of a share received in an exchange described in subsection (1) shall be equal to the adjusted cost base of the asset transferred less any liability transferred.

Change in control of companies.

88. Where there has been a change of fifty percent or more in the underlying ownership or control of a company, no deduction shall be allowed under paragraph (b) of subsection (2) of section 32 in year's of assessment following the change for losses suffered before the change unless the company—

- (a) continues to conduct the same business; and
- (b) does not engage in a new business or investment except with the approval of the Commissioner,

for a period of three years after the change.

PART X - INTERNATIONAL TAXATION

Source of income.

89. (1) Income is from a source in Sierra Leone if it is—

- (a) derived from an activity which occurs in Sierra Leone;
- (b)⁵³ derived in respect of employment exercised or services rendered in Sierra Leone whether or not the income is received in Sierra Leone;
- (c) derived from real property located in Sierra Leone, including gains from the disposal of interest in such real property and from the disposal of shares in a company the property of which consists directly or indirectly principally of interests in such real property;
- (d) derived from the disposal of a shareholder interest in a company resident in Sierra Leone;
- (e) derived from the rental of personal property used in Sierra Leone;
- (f) derived from the sale or license of industrial or intellectual property used in Sierra Leone;
- (g) interest where—
 - (i) the debt is secured by real or personal property located in Sierra Leone;
 - (ii) the borrower is resident in Sierra Leone (other than a temporarily resident individual); or
 - (iii) the borrowing relates to a business carried on in Sierra Leone;
- (h) a dividend, management fee or director's fee paid by a company resident in Sierra Leone;

⁵³ Paragraph (b) repealed and replaced by s. 16(a) of the Finance Act 2013. Previously read:
“(b) derived in respect of any employment exercised in Sierra Leone whether or not the gains or profits from such employment are received in Sierra Leone”

(i) a pension or annuity where the pension or annuity is paid by the Sierra Leone Government or a resident of Sierra Leone;

(j) a natural resource payment for a natural resources taken from Sierra Leone.

(k)⁵⁴ a premium for a general insurance paid in respect of the insurance of any risk in Sierra Leone.

(2) Any income which is not from a source in Sierra Leone is foreign-source income.

Allowable foreign tax credit.

90. (1) A resident taxpayer is entitled to an allowable tax credit in respect of foreign income tax borne by the taxpayer on assessable income derived from a foreign source.

(2) The allowable tax credit in respect of any foreign-source income may not exceed the Sierra Leone income tax on that foreign-source income, calculated by applying the average rate of Sierra Leone income tax to the foreign-source income reduced by any deduction properly allocated to that income.

(3) For the purposes of subsection (2), the allowable tax credit in respect of foreign-source income and the Sierra Leone income tax imposed on that income are calculated separately for each amount of foreign-source income derived by a taxpayer.

(4) For the purposes of subsection (2), foreign-source income derived by a foreign branch of a resident company is aggregated and considered a single receipt of income.

(5) Foreign income tax borne by—

(a) a partnership shall be treated as borne by the partners;

(b) a trustee shall be treated as borne by the beneficiary where the income on which the trustee was assessed in the foreign country is included in the assessable income of a beneficiary under this Act; and

(c) a beneficiary shall be treated as borne by the trustee where the income on which the beneficiary was assessed in the foreign country is included in the income of a trustee under this Act.

(6) For the purposes of this section—

(a) “average rate of Sierra Leone income tax” is the percentage that the taxpayer’s Sierra Leone income tax calculated without reference to this

⁵⁴ Paragraph (k) added by s. 16(b) of the Finance Act 2013

section bears to the taxpayer's chargeable income for the year of assessment;

(b) "income" includes gains included in the chargeable income under this Act; and

(c) "income tax" includes tax on such gains.

(d)⁵⁵ Foreign permanent establishment " means a fixed place of business of a resident person situated in a foreign country where the business is conducted continuously for at least 183 days, but excludes any place at which only activities of a preparatory or auxiliary nature are conducted

Foreign employment income of residents.

91. Foreign-source employment income derived by a resident individual during a year of assessment from employment in a foreign country shall be exempt from income tax if the income is chargeable to tax in the foreign country.

Agents for non-residents.

92. (1) Where—

(a) a non-resident person has failed to pay to the Commissioner tax which has been assessed; or

(b) the Commissioner believes a non-resident person may not pay tax that is expected to be assessed on income to be paid to the non-resident,

the Commissioner may require any person liable to make a payment to the non-resident to withhold an amount from the payment and remit the amount to the Commissioner.

(2) A person who has withheld tax under subsection (1) and remitted the withheld amount to the Commissioner shall be treated as having paid the withheld amount to the non-resident person for the purposes of any claim by that person for payment of the withheld amount.

Taxation of branch profits.⁵⁶

93. (1) A branch in Sierra Leone of a non-resident company shall be subject to tax on repatriated income at the rate prescribed in Part II of the Second Schedule as though such income were a dividend taxable under section 118, this tax being in addition to income tax on the chargeable income of the branch.

⁵⁵ Paragraph (d) added by s. 17 of the Finance Act 2013

⁵⁶ Note the definition of "branch" in section 2 was repealed by s. 2(a) of the Finance Act 2013 and all references to "branch" to be treated as references to "permanent establishment of a non-resident person in Sierra Leone"

(2) Repatriated income is the higher of—

(a) funds repatriated in the year out of accumulated profits; and

(b) the chargeable income of the branch less—

(i) Sierra Leone income tax paid on that chargeable income; and

(ii) any profit reinvested or retained in the branch.

International agreements.

94. (1) To the extent that the terms of an international agreement to which Sierra Leone is a party are inconsistent with the provisions of this Act other than sections 95 and 96, the terms of the international agreement prevail over the provisions of this Act.

(2) In this section "international agreement" means an agreement between Sierra Leone and a foreign government.

PART XI - ANTI-AVOIDANCE

Transfer pricing.

95. ⁵⁷(1) Where an arrangement exists between associated persons, the persons shall calculate their income and tax payable according to the arms length standard.

(2) The arms length standard requires associated persons to qualify, characterize, apportion and allocate amounts to be included or deducted in calculating income to reflect arrangements that would have been made between independent persons.

(3) The Commissioner-General may by Statutory Instrument prescribe conditions on the application of and exceptions to this section and international guidelines that must be followed in applying the arm's length standard.

⁵⁷ Section 95 was repealed and replaced by s. 18 of the Finance Act 2013. Previously read:

"95. (1) In any transaction between persons who are associates, the Commissioner may distribute, apportion or allocate assessable income, deductions or credits between the persons as is necessary to reflect the chargeable income the persons would have realised in an arm's length transaction.

(2) The Commissioner may adjust the income arising in respect of any transfer or licence of intangible property between associates so that it is commensurate with the income attributable to the intangible property.

(3) In making any adjustment under subsections (1) and (2), the Commissioner may recharacterise the source of income and the nature of any payment or loss as revenue, capital or otherwise"

Section 6(e) of the Finance Act 2010 previously amended subsection (1) by substituting the word "persons" for "taxpayers" wherever it occurred

(4) Where, in the opinion of the Commissioner-General, a person has failed to comply with subsection (1), the Commissioner-General may make adjustments consistent with subsection (1) and in doing so the Commissioner-General may—

(a) re-characterise an arrangement made between associated persons, including re-characterising debt financing as equity financing;

(b) re-characterise the source and type of any income, loss, amount or payment; and

(c) apportion and allocate expenditure based on turnover.

(5) This section shall apply to an arrangement between a permanent establishment in Sierra Leone and its non-resident owner.

(6) For the purpose of this section, “arrangement” means a transaction including a course of conduct, dealing or understanding, whether expressed or implied, whether or not enforceable by legal proceedings and whether unilateral or involving more than one person.

Recharacterisation of income and deductions.

96. (1) For the purposes of determining liability to tax under this Act, the Commissioner may—

(a) recharacterise a transaction or an element of a transaction that was entered into as part of a tax avoidance scheme or which would result or has resulted in less income tax being paid;

(b) disregard a transaction that does not have substantial economic effect, or

(c) recharacterise a transaction the form of which does not reflect the substance.

(2) A “tax avoidance scheme” in subsection (1) includes any transaction one of the main purposes of which is the avoidance or reduction of liability to tax.

PART XII – RETURNS

Filing of return of income.

97. ⁵⁸(1) Subject to section 98, a taxpayer or nominated officer of a partnership or trust shall file a return of income for each year of assessment and make arrangements to pay any balance of tax thereon not later than one hundred and twenty days after the end of the year.

(2) The return of income shall-

- (a) be in the form;
- (b) state the information; and
- (c) be filed,

as prescribed by Commissioner-General.

(3) ⁵⁹The return of income tax shall be accompanied by-

- (a) in the case of a person carrying on business in Sierra Leone with annual turnover of not less than three hundred and fifty million Leones, a set of accounts certified by a firm of chartered accountants recognized by the Institute of Chartered Accountants of Sierra Leone and accepted by the Commissioner-General;

⁵⁸ Subsection (1) repealed and replaced by s. 19(a) of the Finance Act 2013. Previously read:

“(1) Subject to section 98, a taxpayer or nominated officer of a partnership or trust, shall file a return of income for each year of assessment and make arrangements to pay any balance of tax thereon not later than ninety days after the end of that year”

Section 97 was previously repealed and replaced by s. 3(d) of the Finance Act 2009. Previously read:

“97. (1) Subject to section 98, a taxpayer or nominated officer of a partnership or trust shall file a return of income for each year of assessment not later than ninety days after the end of that year.

(2) The return of income shall state—

- (a) the total amount of chargeable income for the year of assessment; and*
- (b) the amount of any tax paid or withheld in respect of that year.*

(3) The return of income shall—

- (a) be in the form,*
- (b) state the information; and*
- (c) be filed,*

as prescribed by the Commissioner”.

⁵⁹ Subsection (3) repealed and replaced by s. 19(b) of the Finance Act 2013. Previously read:

“(3) The return of income shall be accompanied by-

- (a) in the case of a person carrying on business in Sierra Leone with annual turnover of not less than three hundred million leones, a set of accounts certified by a firm of chartered accountants recognized by the Institute of Chartered Accountants of Sierra Leone and accepted by the Commissioner-General;*

- (b) in the case of a non-governmental organization (NGO) or an exempt organization under section 9, annual accounts and withholding tax compliance returns;*

- (c) in the case of a person carrying on business in Sierra Leone with annual turnover of less than three hundred million leones but not less than two hundred million leones, copies of the annual accounts”*

(b) in the case of a non-governmental organization (NGO) or an exempt organization under section 9, annual accounts and withholding tax compliance returns;

(c) in the case of a person carrying on business in Sierra Leone with annual turnover of less than three hundred and fifty million Leones but not less than two hundred million Leones, copies of the annual accounts;

(d)⁶⁰ in the case of a person who has opted to be taxed under the Small and Medium Taxpayer Regime, a simple return completed by an agent approved under a domestic preparer scheme for SMEs specified by the Commissioner-General; and

(e) in every other case the annual accounts and supporting documents as may be prescribed by the Commissioner-General.

(4) Where the taxpayer is about to cease activity in Sierra Leone or where the Commissioner otherwise considers it appropriate, the Commissioner may require a taxpayer to file a return of income covering a period of less than twelve months by service of a notice in writing which specifies the due date for the return of income.

(5) A return of income shall be signed by the taxpayer or, if the taxpayer is legally incapacitated, by the taxpayer's legal representative and shall contain a representation that the return is complete and accurate.

(6) A person who completes or contributes to the completion of a return for compensation shall also sign the return unless the person is an employee of the taxpayer.

(7)⁶¹ A taxpayer may file his income tax and other returns under this Act and make payment through an automated system administered by the National Revenue Authority.

Failure to file a return of income

97A. ⁶²Any person who fails to file a return of income without reasonable excuse, as determined by the Commissioner-General, shall be liable on conviction to a fine not exceeding Le 5,000,000 or to imprisonment for a term not exceeding 2 years or to both.

⁶⁰ Paragraph (d) inserted by s. 4(a) of the Finance Act 2015.

⁶¹ Subsection (7) added by s. 4(b) of the Finance Act 2015

⁶² Section 97A inserted by s. 2(a) of the Finance Act 2011

Cases where return is not required.

98. Unless expressly requested in writing by the Commissioner, no return of income is required under this Act from a resident individual—

- (a) whose chargeable income for the year of assessment is less than the amount specified to be taxed at nil percent in Part I of the First Schedule; or
- (b) whose chargeable income for the year of assessment (other than income subject to final withholding tax under this Act) consists only of—
 - (i) employment income derived from a single employer upon which tax has been fully withheld; or
 - (ii) a pension from which tax has been fully withheld.

Information returns.

99. (1) Every person who makes payments of Sierra Leone-source interest, dividends, royalties, management fees, rent or other income as specified by the Commissioner shall make a return of such payments to the Commissioner within twenty eight days of the end of the year of assessment in which the payments were made, setting out—

- (a) the name, address and, where appropriate, the taxpayer file number of each person to whom such payments were made;
- (b) the amount paid; and
- (c) such additional information as the Commissioner may require.

(2) Every employer shall make a return within twenty eight days of the end of the year of assessment setting out—

- (a) the names and places of residence of all employees;
- (b) the full mount of all employment income, in cash or otherwise, paid to such employees; and
- (c) such additional information as the Commissioner may require.

(3) A person or organisation having responsibility to register the disposal by a third party of a business or investment asset shall, within fifteen days of the registration and at the latest within twenty eight days of the end of the year of assessment in which the disposal occurred, make a return to the Commissioner specifying—

- (a) the assets sold;

- (b) the date of sale;
- (c) the gross consideration for the sale;
- (d) the costs of sale;
- (e) details of any set-offs or part-exchange; and
- (f) the name, address and taxpayer file number of both the vendor and purchaser.

(4) A person or organisation referred to in subsection (3) includes a solicitor conveying land, the nominated officer of a company required to register changes in its membership and organisations exempt from income tax.

(5) The Commissioner may require additional information as part of the returns required by this section.

“Extension of time to file returns.

100. ⁶³(1) Upon application in writing by the taxpayer filed by the due date for a return, the Commissioner may extend the period in which a return of income is to be made by a maximum period of sixty days upon payment of a fee of Le 5,000,000 required under section 97 or an information return required under section 99 is to be made.

(2) A taxpayer who fails to file a return within the maximum period of sixty days prescribed in subsection (1), shall be liable to a surcharge consisting of the average treasury bill rate plus 3% both of the fee for every day that the failure continues.

(3) The granting of an extension of time under subsection (1) does not affect the due date for payment of income tax under section 105”.

PART XIII – ASSESSMENTS

Ordinary, deemed and special assessments.

101. ⁶⁴(1) Subject to subsection (2) and section 104A, where a taxpayer has filed a return of income and the Commissioner-General has decided not to determine the

⁶³ Section 100 repealed and replaced by s. 2(b) of the Finance Act 2011. Previously read:

“100. (1) Upon application in writing by the taxpayer filed by the due date for a return, the Commissioner may extend the period in which a return of income required under section 97 or an information return required under section 99 is to be made.

(2) The granting of an extension of time under subsection (1) does not affect the due date for payment of income tax under section 105”

⁶⁴ Subsection (1) repealed and replaced by s. 3(f) of the Finance Act 2009. Previously read:

amount of income in accordance with section 70, the Commissioner-General shall make an ordinary assessment of the tax payable and notify the taxpayer of any amount owed or overpaid.

(2) Where the Commissioner has determined the amount of a taxpayer's chargeable income in accordance with section 70, he is deemed to have made an assessment of the tax payable as the amount of any tax that has been paid or withheld during the year of assessment and may make a special assessment based on the chargeable income determined.

Jeopardy assessments.

102. Where the Commissioner finds that the assessment or collection of tax is in jeopardy because the taxpayer is about to depart from Sierra Leone, to cease business or to transfer property, or is in jeopardy for any other reason, the Commissioner may at any time issue a notice of assessment for the current year of assessment, for a portion of the current year or for the preceding year of assessment.

Amended assessments.

103. (1) Subject to subsection (2), the Commissioner may within six years after the date described in subsection (1) of subsection 97 (or if later, the date the return of income was filed) amend an assessment previously made or deemed to have been made.

(2) Where—

(a) a taxpayer with the intent of evading tax has failed to file a return; or

(b) fraud has been or may have been committed by or on behalf of the taxpayer in relation to income tax for a year of assessment,

the Commissioner may make or amend an assessment for that year at any time.

Provisional assessments.

104. (1) Where he is dissatisfied with a taxpayer's estimate of chargeable business income or the taxpayer fails to make an estimate under subsection (1) of section 113, the Commissioner may make a provisional assessment of the taxpayer's chargeable business income, which will serve as such estimates under subsection (1) of section 113 as the Commissioner decides.

“(1) Where a taxpayer has filed a return of income and the Commissioner has decided not to determine the amount of his income in accordance with section 70, the Commissioner shall make an ordinary assessment of the tax payable and notify the taxpayer of any amount owed or overpaid”

(2) The taxpayer may appeal against a provisional assessment, where the Commissioner has disregarded an estimate made by him, and his appeal shall be treated as an appeal against an objection decision under section 137.

Self-assessment.

104A.⁶⁵ (1) A taxpayer has filed a self-assessment return of income for year of assessment, the Commissioner-General decided to use the return of income filed by him as notice of his tax liability for that year of assessment.

(2) Where a taxpayer has filed a self-assessment return of income for year of assessment, the Commissioner-General shall, by that return, be deemed to have made an assessment of the chargeable income of the taxpayer and the tax payable on that chargeable income for that year shall be the amounts shown respectively in the return.

(3) Where subsection (2) applies, the taxpayer's return of income is treated as a notice of an assessment served on the taxpayer by the Commissioner-General on the due date for filing the return or on the actual date the return was filed, whichever is the later.

(4) Notwithstanding subsection (2), the Commissioner-General may make an assessment under section 101 on a taxpayer in any case in which the Commissioner-General considers necessary.

(5) Where the Commissioner-General makes an assessment in accordance with subsection (4), the Commissioner-General shall include with the assessment a statement of reason as to why the Commissioner-General considers it necessary to make such an assessment.

PART XIV - COLLECTION AND REFUND OF TAX

DUE DATE FOR PAYMENT

Due date for payment of income tax.

105. (1) Subject to section 113 and subsections (2), (3) and (4), income tax assessed shall be due and payable twenty one days after service of the notice of assessment.

(2) The Commissioner shall specify the time at which income tax assessed pursuant to section 102 shall be due and payable.

⁶⁵ Section 104A inserted by s. 3(g) of the Finance Act 2009

(3) Where an objection to, notice of appeal against, or an application for amendment to, an assessment has been filed, and except as otherwise proved by an order of the Board or Court—

(a) the undisputed tax liability remains due and payable and may be recovered, notwithstanding the objection, appeal or application; and

(b) the due date for collection of any balance of tax assessed shall be deferred to the earlier of six months from the date of filing or the date the assessment became final;

(c) ⁶⁶a tax payer who files an objection to, notice of appeal against, or an application for an amendment to, an assessment which is not determined in his favour, shall pay as penalty 25% interest on the difference between that assessment and the undisputed tax liability.

(4) Upon written application by the taxpayer, the Commissioner may, where good cause is shown, extend the time for payment of income tax beyond the date on which it is required to be paid under subsection (1), (2) or (3) or make appropriate arrangements to ensure the payment of the income tax liability.

(5) If the Commissioner informs the Director of Immigration by letter that a person liable for assessed income tax has failed to pay the tax by the due date, and that he has reasonable grounds to believe that the person concerned is seeking to evade the payment of the assessed tax, the Director of Immigration shall prevent the person from leaving Sierra Leone for a period of five days⁶⁷ from issuance of the letter, unless the person—

(a) makes payment in full; or

(b) makes an arrangement for the payment of the tax which is satisfactory to the Commissioner.

(6) Upon application by the Commissioner, the High Court may extend the period of five days⁶⁸ referred to in subsection (5).

(7) For the purposes of section 147—

(a) where the period of time in which a return of income is required under section 97 has been extended under subsection (1) of section 100, the due date for the payment of tax referred to in subsection (1) is one hundred and forty days after the year of assessment; or

(b) where a taxpayer has failed to file a return, the due date for the payment of tax is one hundred and forty days after the year of assessment.

⁶⁶ Paragraph (c) inserted by s. 8(b)(i) of the Finance Act 2008

⁶⁷ The words “five days” were substituted for the words “seventy-two hours” by s. 8(b)(ii) of the Finance Act 2008

⁶⁸ The words “five days” were substituted for the words “seventy-two hours” by s. 8(b)(ii) of the Finance Act 2008

RECOVERY OF TAX

Income tax as a debt due to Sierra Leone.

106. (1) Income tax that is due and payable is a debt owed to Sierra Leone and is payable to the Commissioner.

(2) For the purpose of enforcing payment of any liability under this Act, the Commissioner may publish in the Gazette or otherwise details of each defaulter and his debt.

(3) Tax that has not been paid when it is due and payable may be sued for and recovered in a court of competent jurisdiction by the Commissioner.

(4) In any suit under this section, production of a certificate signed by the Commissioner giving the name and address of the defendant and the amount of tax, interest and penalty due, shall be sufficient evidence of the amount of tax, interest and penalty owed by the defendant.

Tax lien.

107. (1) If a taxpayer fails to pay tax by the due date, the amount owing and interest (together with any costs of collection that may accrue) creates a lien in favour of the Commissioner on all property belonging to the taxpayer, and has priority as against all other rights except as otherwise provided in this section.

(2) The lien created by subsection (1), arises at 5 p.m. on the due date and continues until the liability is satisfied or becomes unenforceable by lapse of time.

(3) The lien created by subsection (1) is not valid against the interest of a person who is a purchaser from the taxpayer, the holder of a security interest granted by the taxpayer or other lien holder prescribed by the Commissioner where the interest—

(a) arose in a bona fide arm's length transaction between the taxpayer and the other person referred to in this subsection;

(b) arose before such other person had actual knowledge of the lien; and

(c) arose before notice of the lien has been registered with the Registrar-General.

(4) The Commissioner may prescribe circumstances in which the lien created by this section is not valid against certain persons even though notice of the lien has been filed.

(5) The Commissioner may file a civil action in the High Court to enforce the lien created by this section.

Recovery from agent of non-resident.

108. (1) The Commissioner may by notice in writing require any person who is in possession of assets belonging to a non-resident taxpayer to pay tax on behalf of the non-resident up to the amount of tax due.

(2) The master of any ship or the captain of any aircraft owned or chartered by a non-resident person shall be deemed to be in possession of the ship or aircraft respectively for the purposes of this section.

(3) The income from a partnership of any non-resident partner shall be assessable in the name of the partnership or of any partner resident in Sierra Leone and the tax may be recovered out of the assets of the partnership or from any such partner.

(4) A person making a payment of tax under this section shall be deemed to have been acting with the authority of the taxpayer and is hereby indemnified in respect of the payment.

Distress proceedings.

109. (1) The Commissioner may recover unpaid income tax by distress proceedings against the property of the taxpayer by issuing to the Sheriff or Under-sheriff, Warrant in the form prescribed in the Tenth Schedule specifying the taxpayer against whose property the proceedings are authorised, the location of the property and the assessment to which the proceedings relate and may require a police officer to be present while the distress is being levied.

(2) A warrant under subsection (1) may only be issued after thirty days from the date the Commissioner notifies the taxpayer in writing of the Commissioner's intention to proceed with the distress.

(3) Subsection (2) does not apply if the Commissioner has reasonable grounds to believe that the collection of tax is in jeopardy.

(4) For the purpose of executing distress under subsection (1), the Commissioner or any public officer authorised by him may at any reasonable time enter any premises described in the warrant authorising the distress proceedings:

Provided that the Commissioner or any person authorised by him shall not enter any dwelling house except with the consent of the owner or occupier or on the authority of an order of a court.

(5) Property upon which a distress is levied under this section shall be kept for ten days either at the premises where the distress was levied or at such other place as the Commissioner may consider appropriate at the cost of the taxpayer whose tax liability is involved.

(6) If the taxpayer does not pay the tax due together with the costs of the distress within ten days of the distress being levied, the property distrained upon may be sold by public auction or in such manner as the Commissioner may direct, the proceeds of sale being applied first towards the cost of taking, keeping and selling the property distrained upon and then towards the income tax due and payable, any remaining proceeds being restored to the owner of the property.

(7) Nothing in this section precludes the Commissioner from proceeding under section 107 for any balance owed if the proceeds of the distress are not sufficient to meet the costs thereof and the income tax due, but at any time before execution of the warrant or judgement of the Court the Commissioner may stay or compound proceedings thereunder.

(8) The period of ten days in subsections (5) and (6) does not apply to delay the sale of property which is subject to spoilage.

(9) In addition to any other powers of collection and recovery, where tax charged on the proprietor or his agent of a business of ship or aircraft owner or charterer is in default for more than three months, the Commissioner may, by notice in writing, require the Comptroller of Customs to refuse clearance from any port in Sierra Leone of any craft owned or chartered wholly or in part by the defaulter until the debt has been satisfied; and

(a) the Comptroller of Customs is hereby indemnified against any proceedings in respect of a refusal of clearance under this section; and

(b) the owner, charterer or agent of the craft detained under this section shall remain liable to all dues and charges imposed by the port authority during the period of detention.

Recovery of tax from person owing money to the taxpayer.

110. (1) The Commissioner may by notice in writing require any person—

(a) owing or who may owe money to the taxpayer;

(b) holding or who may subsequently hold money for or on account of the taxpayer; or

(c) having authority from some other person to pay money to the taxpayer;

to pay the money to the Commissioner on the date set out in the notice, up to the amount of tax due.

(2) The date specified in the notice under subsection (1) shall not be a date before the money becomes due to the taxpayer or is held on behalf of the taxpayer.

(3) A copy of a notice issued under subsection (1) shall be forwarded to the taxpayer.

(4) A person making a payment pursuant to a notice under subsection (1) is deemed to have been acting under the authority of the taxpayer and of all other persons concerned and is hereby indemnified in respect of the payment.

(5) Where the Commissioner is satisfied that the beneficial owner of an account held by any bank or other financial intermediary has failed to pay tax without lawful reason, he may apply for an order from a court of competent jurisdiction to suspend the operation of the account until the tax is paid.

Duties of receivers.

111. (1) A receiver shall notify the Commissioner within fourteen days of his appointment to the position or of taking possession of an asset in Sierra Leone, whichever first occurs.

(2) The Commissioner may notify a receiver of the amount which appears to the Commissioner to be sufficient to provide for any income tax including withholding tax which is or will become payable by the person whose assets are in the possession of the Commissioner.

(3) A receiver shall not dispose of any asset in Sierra Leone held in that capacity without the prior written permission of the Commissioner.

(4) A receiver—

(a) shall set aside out of the proceeds of sale of an asset the amount notified by the Commissioner under subsection (2) or such lesser amount as is agreed by the Commissioner;

(b) shall be liable to the extent of the amount set aside for the income tax of the person who owned the asset; and

(c) may pay any debt that has priority over the income tax referred to in this section notwithstanding any provision of this section.

(5) A receiver shall be personally liable to the extent of any amount required to be set aside under subsection (4) for the income tax referred to in subsection (2), if and to the extent that the receiver fails to comply with the requirements of this section.

(6) In this section, "receiver" means a person who with respect to an asset in Sierra Leone is—

(a) a liquidator of a company;

(b) a receiver appointed out of court or by a court;

(c) a trustee for a bankrupt; or

(d) a mortgagee in possession.

Remission of irrecoverable tax.

112. (1) The Commissioner may by order in a statutory instrument, remit any liability under this Act up to the limit specified in paragraph 10 of the Ninth Schedule, on the ground of Poverty or other ground of inability to pay.

(2) Upon the recommendation of the Commissioner, the President with the approval of Cabinet, may by order in a statutory instrument, remit wholly or in part any liability under this Act where—

(a) the amount to be remitted is greater than the amount specified in paragraph 10 of the Ninth Schedule; and

(b) the Commissioner certifies in writing to the Minister responsible for finance that he is satisfied that the tax cannot effectively be collected.

INSTALMENTS OF INCOME TAX

Instalments of income tax.

113. (1) A taxpayer who derives or expects to derive business income in a year of assessment shall make an estimate of chargeable business income and turnover—

(a) for the year of assessment on or before 31st January⁶⁹, of the year of assessment or, for a taxpayer using a substituted year of assessment, on or before the end of the first month of the substituted year of assessment;

(b) for the year of assessment on or before 31st July⁷⁰ or, for a taxpayer using a substituted year of assessment, on or before the end of the seventh month of the substituted year of assessment; and

(c) for the following year of assessment on or before 15th September⁷¹ of the year of assessment.

(2) A taxpayer who derives business income in a year of assessment may review his estimates of chargeable business income and turnover for the year of assessment—

(a) on or before 30th April⁷² of the year of assessment or, for a taxpayer using a substituted year of assessment, on or before the end of the fourth month of the substituted year of assessment; and

⁶⁹ The words “31st January” were substituted for the words “30th April” by s. 1(c) of the Finance Act 2007

⁷⁰ The words “31st July” were substituted for the words “31st October” by s. 1(c) of the Finance Act 2007

⁷¹ The words “15th September” were substituted for the words “15th December” by s. 1(c) of the Finance Act 2007

⁷² The words “30th April” were substituted for the words “31st July” by s. 1(c) of the Finance Act 2007

(b) on or before 30th October⁷³ of the year of assessment, or for a taxpayer using a substituted year of assessment, on or before the tenth month of the substituted year of assessment.

(3) A taxpayer required to make an estimate of chargeable business income under subsection (1) is liable to pay instalments of tax on account—

(a) for a taxpayer not using a substituted year of assessment, on 15th March, 15th June, 15th September and 15th December, and ⁷⁴

(b) for a taxpayer using a substituted year of assessment on the 15th day of the third, sixth, ninth and twelfth months of the substituted year of assessment.

(4) A copy of the estimates of chargeable business income and turnover made under subsections (1) and (2) shall be included with each instalment of tax paid.

(5) Subject to any provisional assessment under section 104—

(a) the amount of the first instalment due is twenty five percent of the tax payable on estimated chargeable business income;

(b) the amount of the second instalment due is fifty percent of the tax payable on estimated chargeable business income, less the amount of the first instalment due;

(c) the amount of the third instalment due is seventy five percent of the tax payable on estimated chargeable business income less the amount of the first and second instalments due; and

(d) the amount of the fourth instalment due is one hundred percent of the tax payable on estimated chargeable business income, less the amount of the first, second and third instalments due,

where chargeable business income is estimated in accordance with subsection (1) or, where the Commissioner agrees, under subsection (2).

(6) The amount of the final instalment due is the difference between the tax payable on the taxpayer's chargeable business income for the year of assessment and the total tax due under subsection (5), and is payable on the day the taxpayer is required to file a return of income for the year of assessment.

(7) A taxpayer may, with the approval of the Commissioner, reduce an instalment of tax due under this section by any tax withheld by a withholding agent from a payment made to the taxpayer during the year of assessment which is to be included in his business income.

⁷³ The words “30th October” were substituted for the words “31st January” by s. 1(c) of the Finance Act 2007

⁷⁴ Paragraph (a) amended by s. 1(c) of the Finance Act 2007. Previously read: “(a) for a taxpayer not using a substituted year of assessment, on 15th June, 15th September, 15th December and 15th March, and”

(8) No tax paid by instalment shall be repayable until the final liability of the year has been agreed.

(9) For the purposes of subsection (5), the tax payable on estimated chargeable business income is the amount of tax payable if that income equals the taxpayer's chargeable income.

(10) The provisions of this Act relating to the collection and recovery of income tax apply to the collection and recovery of any instalment of tax.

PREPAYMENT OF INCOME TAX BASED ON CIF PRICE OF IMPORTS

Prepayment of income tax.

114. (1) Subject to subsection (2), every taxpayer who imports goods into Sierra Leone for resale shall pay to the Commissioner an amount equal to the higher of—

(a) three percent of the CIF value of the goods imported; or

(b) three percent of the value of the goods imported as

assessed for the purpose of customs duty.

(2) Subsection (1) does not apply to a company taxpayer where—

(a) the taxpayer maintains proper books of accounts of—

(i) all receipts obtained and expenses incurred by a business and the matters to which such receipts and expenditures relate; and

(ii) all sales and purchases of goods and services made by that business;

(b) the books of accounts of the taxpayer have been audited in each of the preceding three years by a recognised firm of accountants; and

(c) the taxpayer is not in arrears with respect to the payment of tax for a previous year of assessment.

(3) Upon payment of the amount required under subsection (1) or satisfaction of the requirements of subsection (2), the Commissioner shall provide the taxpayer with a certificate to be called a customs income tax clearance certificate certifying that the tax has been paid.

(4) ⁷⁵The Commissioner-General shall not release any consignment of goods unless the consignee produces to the Commissioner-General,

(a) a customs income tax clearance certificate; and

(b) evidence that the consignee is not in arrears of any other tax collected by the National Revenue Authority which is applicable to the consignee.

(5) Any amount paid under this section shall be regarded as a payment of income tax in respect of the taxpayer's tax liability for the year of assessment in which the payment is made and any instalments of tax otherwise due for that year shall be reduced by the amount paid pursuant to this provision.

(6) ⁷⁶Notwithstanding the payment of the amount specified in subsection (1), the Commissioner-General may prevent the release of goods to the importer, where the importer is in arrears of other taxes collected by the National Revenue Authority which are applicable to him.

REFUNDS OF TAX

Repayment of overpaid tax.

115. (1) Where a taxpayer has for any year of assessment paid income tax by withholding instalments or otherwise in excess of the income tax liability assessed to the taxpayer in respect of that year, the excess may be applied—

(a) to pay the taxpayer's liability for other taxes collected by the Income Tax Department, if any; and

(b) if the taxpayer agrees, to pay the taxpayer's liability to make instalment payments during the year of assessment in which the notice of assessment is issued.

(2) Any excess tax not applied in the manner described in subsection (1) shall be refunded to the taxpayer.

(3) A claim for credit or refund under this section shall be made within the later of three years after—

(a) the date on which the Commissioner has served notice of the assessment;
or

(b) the date on which the tax was paid.

⁷⁵ Subsection (4) was repealed and replaced by s. 8(c)(i) of the Finance Act 2008. Previously read:
“(4) *The Comptroller of Customs shall not release any consignment of goods unless the consignee produces to the Comptroller a customs income tax clearance certificate*”

⁷⁶ Subsection (6) was added by s. 8(c)(ii) of the Finance Act 2008

PART XV - WITHHOLDING OF TAX AT SOURCE

WITHHOLDING OBLIGATIONS

Withholding of tax by employers.

116. (1) An employer shall withhold tax from employment income as instructed by the Commissioner—

(a) in the case of an employee who is resident or temporarily resident in Sierra Leone, at the rates prescribed in Part I of the First Schedule; or

(b) in the case of an employee who is not resident in Sierra Leone at the rate prescribed in Part II of the Second Schedule.

(2) The liability of an employer to withhold tax under subsection (1) is not abated or extinguished—

(a) because the employer has a right or is under an obligation to deduct and withhold any other amount from such payments; or

(b) because of any law providing that the amount of any such payment shall not be reduced or be subject to attachment.

Payments to contractors.

117. ⁷⁷(1) Where a person makes a payment referred to in

⁷⁷ Section 117 was repealed and replaced by s. 20 of the Finance Act 2013. Previously read:

“117. (1) In this section, “contractor” means a person engaged—

(a) in the business of providing construction, transportation, management or any other service under a contract where the primary purpose of the contract is the performance of services whether or not goods are also provided under the contract; or

(b) in the business of providing goods under a contract.

(2) For the purposes of this section, any commission paid to a person in respect of services performed by that person is deemed to be a payment to a contractor by a person who has contracted with the contractor.

(3) For the purposes of this section, payment to a contractor includes any charge or fee paid for the provision of management services, other than under an employment contract, and any payment for goods.

(4) Subject to subsection (5), a person who contracts with a contractor for the provision of services to a business shall withhold tax on the gross amount of any payment to the contractor—

(a) in the case of a payment made to a contractor resident in Sierra Leone, at the rate prescribed in Part IV of the First Schedule; and

(b) in the case of a payment made to a non-resident contractor, at the rate prescribed in Part II of the Second Schedule.

(5) Subsection (4) does not apply to payments made by a person to a contractor during a month in which the person pays a total of Le 500,000 or less to the contractor.

(6) The tax otherwise payable by a contractor on income from which tax has been withheld under this section shall be reduced by the tax withheld under this section.

(7) Non-governmental organizations shall file annual withholding tax returns showing their full compliance with this section.

Subsection (5) previously amended by substituting the amount “Le 500,000” for the amount “Le 50,000” by s. 2(b) of the Income Tax (Amendment) Act 2004.

subsection (2), the person shall withhold tax–

- (a) in the case of a payment to a resident of Sierra Leone, at the rate prescribed in Part IV of the First Schedule;
- (b) in the case of a payment to a nonresident, at the rate prescribed in Part II of the Second Schedule.
- (c) ⁷⁸Notwithstanding any law to the contrary, the obligation to withhold tax from payment to a contractor shall not be absolved or extinguished, because the service was rendered or other taxable event occurred outside Sierra Leone.

(2) The payments referred to in subsection (1) are –

- (a) service fees with a source in Sierra Leone irrespective of whether the recipients are resident or non-resident;
- (b) insurance premium with a source in Sierra Leone paid to a non-resident person;
- (c) other payments made under a contract including management fees and other remittances.

(3) The tax otherwise payable by a contractor on income from which tax has been withheld under this section shall be reduced by the tax withheld under this section.

(4) For the purpose of this section “service fee” means a payment to the extent to which, based on market values, it is reasonably attributable to services rendered by a business.

(5) Subsection (4) shall not apply to payments made by a person to a contractor during a month in which the person pays a total of Le 500,000 or less to the contractor.

(6) Subject to subsection (1) of section 130, all withholding agents shall submit monthly withholding tax returns including Pay As You Earn (PAYE) returns in the prescribed form showing details of the gross amount of payments and the related withholding taxes.

(7) A person who fails to file a Pay As You Earn (PAYE) and other withholding tax returns on the due date without the written approval of the Commissioner-General or an authorized official commits an offence and shall be liable to a fine not exceeding Le 1,000,000.00 or ten percent of the tax payable or whichever is the higher or upon conviction to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

Subsection (7) previously added by s. 3(e) of the Finance Act 2009

⁷⁸ Paragraph (c) added by s. 5 of the Finance Act 2015

Payments of dividends.

118. (1) Subject to subsection (2) and the Sixth Schedule, a resident company that pays a dividend shall withhold tax on the gross amount of the payment—

(a) in the case of a payment made to a person resident in Sierra Leone, at the rate prescribed in part IV of the First Schedule, and

(b) in the case of a payment made to a non-resident person at the rate prescribed in Part II of the Second Schedule.

(2) Subsection (1) shall not apply to dividends paid—

(a) to a resident company; or

(b) to a complying retirement fund resident in Sierra Leone.

Payments of interest.

119. (1) Subject to subsection (2) and the Sixth Schedule, a person resident in Sierra Leone who pays interest shall withhold tax on the gross amount of the payment—

(a) in the case of a payment made to a person resident in Sierra Leone, at the rate prescribed in Part IV of the First Schedule;

(b) in the case of a payment made to a non-resident person, at the rate prescribed in Part II of the Second Schedule; and

(c) in the case of a discount or premium referred to in section 55, at the time it is given or paid.

(2) This section shall not apply to—

(a) interest under paragraph (e) of section 24 if paid to a bank resident in Sierra Leone;

(b) interest paid on Government Development Stocks; and

(c) interest the payment of which the Commissioner certifies to be exempt from the requirements of this section.

Payments of royalties.⁷⁹

120 (1) Subject to subsection (2), (3)⁸⁰, a person resident in Sierra Leone who pays royalty shall withhold tax on the gross amount of the payment—

(a) in the case of a payment made to a person resident in Sierra Leone, at the rate prescribed in Part IV of the First Schedule⁸¹; and

(b) in the case of a payment made to a non-resident person, at the rate prescribed in Part II of the Second Schedule.

(c) ⁸²in the case of a body corporate, a trust or an individual whose source of income is the holding and letting of properties, the amount withheld shall not be a final tax.

(2) ⁸³Subsection (1) shall not apply to royalties –

(a) in respect of a property owned by a person or organisation referred to in section 8 or 9;

(b) the payment of which the Commissioner-General certifies to be exempt from the requirements of this section.

(3) ⁸⁴This section shall apply to rental income as follows:-

(a) the rate of tax on taxable rental income shall be 10% with the taxable rental income being arrived at by granting to the landlord-

(i) ⁸⁵non-taxable threshold of Le 3,600,000 in the aggregate; and

(ii) a tax deductible allowance of 20% of the gross rental income that is in excess of the non-taxable threshold.

(b) individual tenants shall withhold tax on rents payable to non-resident landlords but not on rents payable to resident landlords;

⁷⁹ The sub-title words “Payment of royalties” were substituted for the words “Payment of rents and royalties” by s. 2(a) of the Finance Act 2006

⁸⁰ The words “and the Sixth Schedule” were deleted by s. 21(a) of the Finance Act 2013

⁸¹ The words “the tax withheld on the rent payment shall be a final tax” (which had previously been added by s. 2(c) of the Income Tax (Amendment) Act 2004) were deleted from paragraph (a) by s. 2(a) of the Finance Act 2006. Previously read:

“(a) in the case of a payment made to a person resident in Sierra Leone, at the rate prescribed in Part IV of the First Schedule, and the tax withheld on the rent payment shall be a final tax;”

⁸² Paragraph (c) added by section 2(c) of the Income Tax (Amendment) Act 2004

⁸³ Subsection (2) repealed and replaced by s. 2(a) of the Finance Act 2006. Previously read:

“(2) Subsection (1) shall not apply to rents or royalties—

(a) in respect of property owned by a person or organisation referred to in section 8 or 9;

(b) where the monthly rental or its equivalent does not exceed Le 30,000; or

(c) the payment of which the Commissioner certifies to be exempt from the requirements of this section”

⁸⁴ Subsection (3) was added by s. 2(a) of the Finance Act 2006

⁸⁵ Sub-paragraph (i) was repealed and replaced by s. 6(a) of the Finance Act 2015. Previously read:

“(i) non-taxable threshold of Le 1,500,000 in the aggregate;”

(c) institutional tenants paying rent to either resident or non-resident landlords shall withhold tax on the rent payable;

(d) ⁸⁶a landlord receiving rent above the non-taxable threshold shall submit a copy of the tenancy agreement to the National Revenue Authority not later than 90 days after concluding such agreement;

(e) ⁸⁷where rent is paid directly to an agent of the landlord, the tenant shall withhold the tax regardless of the residence status of the landlord.

(f) the due date for the payment of tax on rental income and the filing of the relevant returns shall be-

(i) the first day of each lease year (that is to say, the calendar day and month on which the lease or tenancy agreement came into force) with a grace period of 90 days;

(ii) in the case of a tenancy in respect of which there is no written agreement, the first day of January of each calendar year with a grace period of 90 days;

(g) any amount in respect of tax on rental income remaining unpaid beyond the grace period of 90 days shall attract interest at the rate of 35% per annum for as long as it remains unpaid;

(h) any profit accruing from a sub-lease or other sub-letting arrangement shall be taxed as if it were rental income.

(i) ⁸⁸The Commissioner-General may take or authorise an officer to take other enforcement measures, including sealing off the premises for which rental income tax remains unpaid beyond the grace period of 90 days.

Payments of pensions and annuities.

121. (1) Subject to Subsection (2), a person resident in Sierra Leone who makes any payment by way of a pension or annuity, whether in a lump sum or by periodical payment, shall withhold tax on the gross amount of the payment—

⁸⁶ Paragraph (d) was repealed and replaced by s. 6(b) of the Finance Act 2015. Previously read:

“(d) a landlord receiving rent above the non-taxable threshold shall provide details of the tenancy agreement to the National Revenue Authority not later than 90 days after the conclusion of the agreement, failing which he shall be liable to the prescribed penalty;”

⁸⁷ Paragraph (e) was added by s. 21(b) of the Finance Act 2013. The previous paragraphs (e) to (h) have been renamed as paragraphs (f) to (i)

⁸⁸ Paragraph (i) added as paragraph (h) but renamed as per previous footnote by s. 6(c) of the Finance Act 2015

(a) in the case of a payment to a person resident in Sierra Leone, at the rate prescribed in Part I of the First Schedule; or

(b) in the case of a payment to a non-resident person at the rate prescribed in Part II of the Second Schedule.

(2) Payments arising from contributions to which subsection (3) of section 38 applies shall be subject to withholding tax on the taxable element determined in accordance with paragraph 4 of the Ninth Schedule—

(a) in the case of a payment to a person resident in Sierra Leone at the rate prescribed in Part IV of the First Schedule; or

(b) in the case of a payment to a non-resident person at the rate prescribed in Part II of the Second Schedule for interest payments within section 119.

Natural resource payments.

122. ⁸⁹(1) A person who makes any Sierra Leone source natural resource payment to a person not resident in Sierra Leone shall withhold tax at the rate specified in Part IV of the First Schedule and Part II of the Second Schedule.

(2) Where the payment is made to a person resident in Sierra Leone, tax shall be withheld at the rate specified in Part IV of the First Schedule.

Payments to non-resident beneficiaries of trusts.

123. *(Repealed)*⁹⁰

Purchase of real property.

123A. *(Repealed)*⁹¹

⁸⁹ Section 122 was repealed and replaced by s. 22 of the Finance Act 2013. Previously read:

“122. (1) Subject to the Sixth Schedule, a person who makes any Sierra Leone-source natural resource payment to a person not resident in Sierra Leone shall withhold tax at the rate specified in Part II of the Second Schedule.

(2) Where the payment is made to a person resident in Sierra Leone, tax shall be withheld at the rate specified in Part IV of the First Schedule”

⁹⁰ Section 123 repealed by s. 23 of the Finance Act 2013. Previously read:

“123. A person resident in Sierra Leone who distributes income of a trust to a non-resident beneficiary or applies income of a trust for the benefit of a non-resident beneficiary shall withhold tax at the rate prescribed in Part II of the Second Schedule”

⁹¹ Section 123A (as inserted by s. 3(d) of the Finance Act 2007) repealed by s.24 of the Finance Act 2013.

Previously read:

“123A. The purchaser of real property shall withhold tax at the rate specified in Part IV of the First Schedule which is hereby amended by the insertion of the following at the end thereof:-

(i) under “Type of payment” insert “real property” and

(ii) under “Rate” insert 10%”

Final withholding tax on dividend and interest payments to residents

124. Where a resident taxpayer receives a dividend payment from which tax has been withheld under sections 118 and 119 the tax withheld is a final tax and—

- (a) no further tax liability shall be imposed upon the taxpayer in respect of it;
- (b) that income shall not be aggregated with other income of the taxpayer for the purpose of ascertaining chargeable income; and
- (c) no refund of tax shall be made in respect of it.

Final withholding tax on payments to non-residents.

125. Where a payment is made to a non-resident taxpayer and tax is withheld under section 116, 118, 119, 120, 121, 122 or 123, that tax is a final tax and—

- (a) no further tax liability shall be imposed upon the taxpayer, in respect of the income to which the tax relates;
- (b) that income shall not be aggregated with other income of the taxpayer for the purpose of ascertaining chargeable income; and
- (c) no refund of tax shall be made in respect of it.

GENERAL PROVISIONS RELATING TO WITHHOLDING OF TAX AT SOURCE

Definition of term.

126. For the purposes of sections 127 to 132, “payee” means a person receiving or entitled to payments from which tax is required to be withheld by a withholding agent.

Tax withholding certificates.

127. (1) A withholding agent shall deliver to the payee a tax withholding certificate setting out the amount of payments made, the address of the taxpayer and any tax withheld during the year of assessment.

(2) A tax withholding certificate shall be delivered—

- (a) in the case of an employee, within twenty eight days of the end of the year of assessment, or where an employee has ceased employment during the year of assessment, within seven days of the date on which employment ceased;

(b) in the case of rent or interest payments, within twenty eight days of—

(i) the end of the year of assessment; or

(ii) where a debt obligation has been redeemed or lease terminated, the date on which the obligation was redeemed or lease terminated.

(3) A payee who is required to file a return of income shall attach to the return the tax withholding certificates which relate to the year of assessment for which the return is filed.

Record of payments and tax withheld.

128. (1) A withholding agent shall maintain and keep available for inspection by the Commissioner records showing in relation to each year of assessment—

(a) payments made to each payee; and

(b) tax withheld from those payments.

(2) A withholding agent shall, within twenty eight days after the end of the year of assessment or such further time as the Commissioner may allow, file with the Commissioner a statement in the prescribed form specifying—

(a) the name and address of each payee;

(b) the amounts paid or payable to each payee;

(c) the amounts of any tax withheld; and

(d) any other information that the Commissioner may require.

(3) The statement shall be signed by the withholding agent or, if he is legally incapacitated, by his legal representative and shall contain a representation that the statement is true and correct.

(4) ⁹²Without prejudice to section 129, where a withholding agent –

(a) fails to withhold tax under subsection (1) of that section; or

(b) fails to pay to the Commissioner-General any tax that has been withheld;
or

(c) fails to file to the Commissioner-General the statement required by subsection (2); and

(d) has filed the statement required by subsection (2) but the Commissioner-

⁹² Subsection (4) added by s. 3(e) of the Finance Act 2007

General is of the opinion that the information provided in that statement does not correctly disclose the amount of tax that should have been withheld, the Commissioner-General may, according to the best of his judgment, determine the amount of tax payable and may then make an assessment accordingly.

(5) ⁹³The provisions of Part XVII relating to objections and appeals shall apply to any determination or assessment made under subsection (4).

Failure to withhold tax.

129. (1) Subject to subsection (2), a withholding agent who fails to withhold tax as required by this Act shall be personally liable to pay to the Commissioner the amount of tax which has not been so withheld, but the withholding agent shall be entitled to recover that amount from the payee.

(2) The provisions of this Act relating to the collection and recovery of tax apply to the liability imposed by subsection (1).

(3) An employer shall not be entitled to recover from the employee tax which he should have withheld, but the Commissioner may proceed against the employee for the amount of the tax and any penalty which remain due from the employer by virtue of the liability imposed by subsection (1).

(4) ⁹⁴Without prejudice to any action available to the National Revenue Authority to recover the tax due from the payer or payee, where a person has failed to deduct withholding tax from any payment from which tax should have been withheld, such payment shall not be allowed as an expense for the purpose of ascertaining the income of that person.

Payment of tax withheld.

130. (1) Any tax that has been withheld or should have been withheld by a withholding agent shall be paid by such agent to the Commissioner within fifteen days of the end of the month in which it was or should have been withheld.

(2) The provisions of this Act relating to the collection and recovery of tax apply to any amount required to be paid under subsection (1).

(3) ⁹⁵Where a withholding agent—

- (a) fails to file the statement required by section 128;
 - (b) fails to withhold tax as required by this Act;
 - (c) fails to pay to the Commissioner-General any tax that has been withheld;
- or

⁹³ Subsection (5) added by s. 3(e) of the Finance Act 2007

⁹⁴ Subsection (4) added by s. 2(b) of the Finance Act 2006

⁹⁵ Subsection (3) added by s. 25 of the Finance Act 2013

- (d) has filed the statement required by section 128 and the Commissioner-General is of the opinion that the information provided in the statement does not correctly disclose the amount of the tax that should have been withheld, the Commissioner-General may, according to his best judgment, determine the amount of the tax payable and may make an assessment accordingly.

(4) ⁹⁶A withholding agent may file with the Commissioner-General an objection to any assessment made by the Commissioner-General under subsection (3) and Part XVII relating to objections and appeals shall, with the necessary modifications, apply to the determination of the objection filed.

Commissioner-General may reassess tax withheld

130A. ⁹⁷

Priority of tax withheld.

131. (1) Tax withheld by a withholding agent—

(a) is held in trust for the Republic of Sierra Leone; and

(b) is not subject to attachment in respect of a debt or liability of the withholding agent,

and in the event of any liquidation, assignment or bankruptcy of the withholding agent, any amount withheld under this Act does not form part of the estate in liquidation, assignment or bankruptcy and shall be paid in full to the Commissioner before any distribution of property is made.

(2) Every sum which a withholding agent is required under this Part to withhold from a payment is—

(a) a first charge on that payment; and

(b) withheld prior to any other deduction which the withholding agent may be required to make by virtue of any other law or of an order of a court.

⁹⁶ Subsection (4) added by s. 25 of the Finance Act 2013

⁹⁷ Refer to Section 30A and its footnote

Adjustment on assessment and withholder's indemnity

132. (1) Tax withheld under this Act shall be treated as received by the payee at the time it was withheld and the income and liability of the payee shall be calculated accordingly.

(2) A person who has withheld tax under this Act and remitted the withheld amount to the Commissioner shall be treated as having paid the withheld amount to the person deriving income from which tax has been withheld, for the purposes of any claim by that person for payment of the withheld amount.

(3) Tax withheld from a payment as required by this Act shall be deemed to have been paid by the person to whom the payment is due.

(4) Except in the case of a tax that is a final tax by virtue of section 124 or section 125, where tax withheld under this Act exceeds the income tax liability assessed on the taxpayer to whom the payment is due, the excess may be applied in reduction of any other tax due from the taxpayer and any further excess shall be refunded to the taxpayer.

PART XVI - RECORDS AND INVESTIGATION POWERS⁹⁸

Accounts and records.

133. (1) Unless otherwise authorised by the Commissioner, a taxpayer shall maintain in the English language and in Sierra Leone such records as may be necessary for the accurate determination of the tax payable by the taxpayer.

(2) The Commissioner may disallow a claim for a deduction if the taxpayer is unable, without reasonable excuse, to produce a receipt or other record of the transaction or to produce evidence relating to the circumstances giving rise to the claim.

(3) The record or evidence referred to in subsection (1) or (2) shall be retained by the taxpayer for the greater of six years or as long as it remains material to an audit commenced within that period.

Access to books, records and computers.

134. (1) Subject to subsection (2), the Commissioner or any officer authorised by the Commissioner in writing for that purpose—

(a) shall have at all times and without any prior notice full and free access to any premises, other than a dwelling house, place, book, record or computer;

⁹⁸ The heading words "PART XVI" were substituted for "PART VI" by s. 1(f) of the Finance Act 2007.

(b) may make an extract or copy from any book, record or computer-stored information to which access is obtained under paragraph (a);

(c) may seize any book or record that, in the opinion of the Commissioner or an officer authorised by him, affords evidence which may be material in determining the liability of any person to tax or a penalty under this Act;

(d) may retain any book or record seized under paragraph (c) for as long as it may be required for determining a person's liability or for any proceeding under this Act; and

(e) may, where a hard copy or computer disk of information stored on a computer is not provided, seize and retain the computer for as long as is necessary to copy the information required.

(2) The powers authorised by subsection (1) may be exercised only during ordinary business hours unless the Commissioner determines that the collection of tax is in jeopardy and that their exercise outside ordinary business hours is necessary to protect the collection of the tax.

(3) An officer who attempts to exercise a power under subsection (1) on behalf of the Commissioner shall not be entitled to enter or remain on any premises or place if, upon being requested by the occupier of the premises or place, he does not produce an authorisation in writing from the Commissioner to the effect that he is authorised to exercise that power under this section.

(4) The owner, manager or any other person on the premises or place entered or proposed to be entered under this section shall provide all reasonable facilities and assistance for the effective exercise of power under this section.

(5) A person whose books, records or computer have been removed and retained under subsection (1) may examine them and make copies or extracts from them during regular office hours under such supervision as the Commissioner may determine.

(6) ⁹⁹The Commissioner-General or any person authorised by him may, in the performance of any duties require and receive from any person as he may think necessary, all information that is pertinent to the establishment of a tax liability and may conduct investigations for the purpose of gathering evidence of a possible criminal offence.

Notice to obtain information or evidence.

135. (1) In this section, "authorised purpose" means—

⁹⁹ Subsection (6) added by s. 26 of the Finance Act 2013

(a) the collection of information for the purpose of determining the liability of any specific person for a tax; or

(b) the collection of information required for the collection of tax from a specific person:

(c) ¹⁰⁰the collection of information for the purposes of criminal prosecution.

Provided that this section shall not apply to any person unless the Commissioner has reasonable grounds to believe that that person possesses the information required.

(2) ¹⁰¹In respect of an authorized purpose, the Commissioner-General may by notice in writing require a person, whether a taxpayer or not, to furnish information required by the notice within one month or such other extended time not exceeding three months as the Commissioner-General may determine.

(3) In respect of an authorised purpose, the Commissioner may, by notice in writing, require a person, whether a taxpayer or not, to attend at the time and place designated in the notice for the purpose of being examined on oath before the Commissioner or any officer authorised by the Commissioner for that purpose concerning the income tax liability of that person or any other person, and for that purpose require such person to produce any book, record or computer-stored information in the control of that person.

(4) Where the notice requires the production of documents or other records, it is sufficient if such documents or other records are described with reasonable certainty.

Books and records not in the English language.

136. Where any book or record referred to in section 133, 134 or 135 is not in the English language, the Commissioner may by notice in writing require the person keeping the book or record to provide, at the taxpayer's expense, a translation into the English language by a translator approved by the Commissioner for that purpose.

¹⁰⁰ Paragraph (c) inserted by s. 27(a) of the Finance Act 2013

¹⁰¹ Subsection (2) repealed and replaced by s. 27(b) of the Finance Act 2013. Previously read:

“(2) In respect of an authorised purpose, the Commissioner may, by notice in writing, require a person, whether a taxpayer or not, to furnish such information as may be required by the notice”

PART XVII - OBJECTIONS AND APPEALS

OBJECTIONS

Objection to assessment.

137. (1) A taxpayer who is dissatisfied with an assessment may file an objection to the assessment with the Commissioner within thirty days of service of the notice of assessment.

(2) The objection shall be in writing and shall specify the grounds upon which it is made, the facts, any point of law at issue and the amount which the taxpayer believes should be assessed on him.

(3) In considering the objection, the Commissioner may require to be produced any books and records and examine any person in accordance with sections 134 and 135.

(4) The Commissioner may allow the objection in whole or in part and amend the assessment accordingly or disallow the objection, and the Commissioner's decision shall hereinafter be referred to as an "objection decision".

(5) The Commissioner shall serve the taxpayer with a copy of the objection decision.

(6) ¹⁰²Where an objection decision has not been made by the Commissioner-General within ninety days after the taxpayer has filed the objection with the Commissioner-General, the taxpayer may, by notice in writing to the Commissioner-General, elect to treat the Commissioner-General as having made decision to allow the objection.

(6A) ¹⁰³Where a taxpayer has filed an objection and the Commissioner-General has made an objection decision to allow the objection, the Commissioner-General shall amend such assessment in accordance with the objection decision made.

(7) A taxpayer who fails to file an objection within the period specified in subsection (1) may—

(a) on payment of the fee specified in paragraph 11 of the Ninth Schedule;
and

(b) on production of an affidavit specifying the reasons for the delay,

file with the Commissioner a late objection to an assessment not later than one year after the end of the year of assessment or three months after the notice of assessment, if later.

¹⁰² Subsection (6) repealed and replaced by s. 3(h) of the Finance Act 2009. Previously read:

"(6) If the Commissioner has not made an objection decision within ninety days of the objection being filed, the taxpayer may give notice in writing to the Commissioner that from the date of the notice he will proceed under subsection (9) as if the Commissioner had disallowed the objection"

¹⁰³ Subsection (6A) added by s. 3(h) of the Finance Act 2009

(8) The Commissioner shall either treat a late objection for all purposes of this Act as if it were made within subsection (1) or issue to the taxpayer his refusal of the late objection.

(9) A taxpayer may, within thirty days of being served with a notice of refusal, file with the Board established under subsection (1) of section 138, a notice of appeal against the refusal and shall serve a copy of such notice on the Commissioner.

INCOME TAX BOARD OF APPELLATE COMMISSIONERS

Board of Appellate Commissioners.

138. (1) There is hereby established a body to be known as the Income Tax Board of Appellate Commissioners (hereinafter referred to as "the Board").

(2) The Board shall consist of not more than ten persons none of whom is a public officer, but at least one of whom shall be a legal practitioner.

(3) Members of the Board shall be appointed by the President and shall hold office for a term of three years and shall be eligible for re-appointment.

(4) Any appointment under subsection (3) shall be published by Government Notice.

(5) Members of the Board shall receive such remuneration as Parliament may determine.

(6) The Board shall appoint one of its members who is a legal practitioner to be its chairman.

(7) No action, suit, prosecution or any other proceeding may be brought or instituted personally against a person who is or was a member of the Board in respect of any act done or omitted to be done in good faith in the discharge of any function under this Act.

(8) A member of the Board who has a material, pecuniary or other interest which may be in conflict with the proper performance of the member's functions shall disclose that interest and shall not take part in any hearing of the Board which may be in conflict with such interest unless both parties to the proceeding agree on the member taking part in the hearing.

Secretary to Board.

139. (1) The Board shall have a secretary Appointed by the chairman from among the members of the Board.

(2) The secretary shall perform such functions as are provided in this Act or as the chairman of the Board may direct.

Board to hear appeals.

140. (1) The Board shall hear and determine appeals from taxpayers with respect to objection decisions.

(2) An appeal shall be heard by not less than three members of the Board, who shall be nominated by the chairman.

(3) The chairman of the Board shall preside or shall nominate a member of the Board to preside over any hearing.

(4) Subject to sections 141 and 142, the Minister responsible for finance may, by statutory instrument, make rules prescribing the procedure to be followed in an appeal to the Board.

Procedure of Board.

141. (1) The times and places of the hearings of the Board shall be specified by the chairman so as to secure a reasonable opportunity for taxpayers to appear before the Board with as little inconvenience and expense as is practicable.

(2) The proceedings of the Board shall be conducted in accordance with the Eighth Schedule and such further rules of practice and procedure as the chairman may specify.

(3) The Board in carrying out its functions under this Act, shall have the powers of the High Court in respect of summoning witnesses, compelling the production of documents, the examination of witnesses abroad and for contempt.

Hearings and decisions.

142. (1) Proceedings of the Board shall be in public unless the chairman directs otherwise.

(2) In all proceedings before the Board, the taxpayer and the Commissioner may be represented by a solicitor or an accountant.

(3) A decision on an appeal shall be made as quickly as practicable and notified to the parties in writing.

(4) A decision of the Board shall be by simple majority and in the event of equality of votes the chairman or other person presiding shall have a casting vote.

(5) The written decision of the Board, including its findings of fact, shall be signed by the chairman or other member of the Board who presided over the hearing.

(6) Subject to subsection (8), the decision of the Board and evidence received by it, including a transcript of the report of the hearings, shall be open to the inspection of the public.

(7) The Board shall provide for the publication of its decisions in such form and manner as may be adapted for public information and use and such authorised publication shall be evidence of the decisions of the Board in all courts of Sierra Leone without any further proof or authentication.

(8) A person who has appealed to the Board may request that documents released under subsection (6) be amended to conceal—

(a) the person's name; or

(b) aspects of the person's business or affairs that might reveal the person's identity.

APPEALS

Appeal to Board.

143. (1) A taxpayer dissatisfied with an objection decision may within thirty days of being served with notice of the objection decision file a notice of appeal with the Board and shall serve a copy of the notice of appeal on the Commissioner.

(2) The secretary shall give not less than fifteen days notice to the parties of the date fixed for hearing of the appeal.

(3) In an appeal to the Board against an objection decision, the taxpayer shall be limited to the grounds of objection set out in his notice of objection, unless the Board grants the taxpayer leave to add new grounds, in which case the Commissioner shall, if he so requests, be granted an adjournment of not less than fifteen days.

(4) In deciding an appeal, the Board may make an order—

(a) affirming, reducing, increasing or varying the assessment under appeal; or

(b) remitting the assessment for reconsideration by the Commissioner in accordance with the directions or recommendations of the Board.

(5) An order made under subsection (4) may be based on the Board's conclusions regarding a question of fact or a question of law relevant to the assessment and shall state what those conclusions are.

(6) Subject to the right of the Commissioner to issue an amended assessment under section 103, where no notice of appeal is served within the time permitted by subsection (1), the assessment shall be deemed to be final.

Appeal to High Court.

144. A party to a proceeding before the Board who is dissatisfied with decision of the Board may, within sixty days of the decision, appeal to the High Court.

Onus on taxpayer.

145. In any objection to an assessment or appeal from an objection decision, the onus shall be on the taxpayer to prove on the balance of probabilities the extent to which the assessment made by the Commissioner does not correctly reflect the taxpayer's chargeable income for the year of assessment.

PART XVIII - INTEREST AND PENALTIES

INTEREST

Specified rate of interest.

146. For the purposes of sections 147 and 148, "specified rate" means the rate of interest as published from time to time by the Commissioner based on the rate of interest paid on Treasury Bills.

Interest on tax not paid when due.

147. ¹⁰⁴(1) Subject to subsection (5), a person who fails to pay tax or a penalty after the first seven days on which such payment was due under this Act, shall be liable to pay interest at a rate equal to three percent higher than the specified rate on the amount due, calculated from the due date to the date the payment is actually made.

(2) Where the Commissioner has extended the time for payment of income tax under subsection (4) of section 105, interest shall be calculated upon the unpaid tax from the date payment should have been made had the extension not been granted.

(3) If interest is paid under subsection (1), to the extent that the tax to which it relates is found not to have been due and payable, it shall be refunded.

(4) Where tax that has not been paid as a result of an extension granted under subsection (4) of section 105 subsequently becomes due and payable, interest at a rate equal to three percent higher than the specified rate, shall be levied on that tax

¹⁰⁴ Subsection (1) repealed and replaced by s. 7(a) of the Finance Act 2015. Previously read:

"(1) Subject to subsection (5), a person who fails to pay tax or a penalty as required by this Act on or before the date on which such payment is due, shall be liable to pay interest at a rate equal to three percent higher than the specified rate on the deficiency calculated from the date on which the payment is made"

calculated from the date on which the payment would have been due but for subsection (4) of section 105 until the date on which payment is made.

(5) The Commissioner may waive a taxpayer's liability to pay interest under this section—

- (a) where the tax was not paid on the due date pursuant to subsection (4) of section 105, if the taxpayer's objection or appeal is withdrawn or settled prior to the making of an objection decision or an appeal on such decision, as the case may be; and
- (b) in any other case, if the tax is paid within sixty days of the due date.
- (c) ¹⁰⁵Where good cause is shown and accepted by the Commissioner-General;
- (d) ¹⁰⁶For the purposes of paragraph (c) of subsection (5) of section 147 and subsection (2) of section 152A “good cause” refers to circumstances beyond the control of the taxpayer, which includes but is not limited to, death in the family, illness, imprisonment, and an act of God.

(6) Interest charged in respect of failure to comply with subsection (1) of section 130 shall be borne personally by the withholding agent and no part thereof shall be recoverable from the person who received the payment from which tax was or should have been withheld.

(7) Interest charged under this section shall be compounded on a six-monthly basis.

Interest on overpayment of tax.

148. (1) Where in consequence of an objection, appeal or application a taxpayer is entitled to a refund of tax or a refund of a penalty, the taxpayer shall be entitled to interest at the specified rate on the amount of the refund.

(2) Subject to subsection (3), interest payable under subsection (1) shall be calculated from the date the refunded amount was originally paid to the Commissioner until the date it was refunded.

(3) Where a refund to which a taxpayer is entitled under subsection (2) of section 115 is not refunded at the time the notice of assessment is issued, the taxpayer shall be entitled to interest on the refunded amount calculated from—

(a) the later of –

(i) the date on which the taxpayer's return of income was filed with the Commissioner; and

¹⁰⁵ Paragraph (c) added by s. 7(b) of the Finance Act 2015

¹⁰⁶ Paragraph (d) added by s. 7(b) of the Finance Act 2015

(ii) the date of service of the notice of assessment, until

(b) the date the excess tax is refunded.

(4) Where a taxpayer has been assessed on alternative minimum chargeable business income under subsection (1) or (2) of section 69 and is subsequently entitled to a refund of tax paid as a result of the application of subsection (3) of section 69, the taxpayer shall be entitled to interest at the specified rate on the amount of the refund from the date on which tax was paid until the date on which a refund was made.

PENALTIES

Recovery of penalty.

149. (1) The provisions of this Act relating to the collection and recovery of income tax shall apply to any penalty imposed.

(2) The imposition of a penalty shall be in addition to any interest charged under section 147 and any penalty imposed as a result of a conviction for any offence under this Act.

(3) A penalty imposed under sections 150, 151 or 152 shall be calculated separately and compounded on a six-monthly basis.

Penalty for failure to file correct return.

150. ¹⁰⁷(1) A taxpayer who, without reasonable excuse fails to file a return of income within the time required shall be liable to a penalty of—

(a) Le 5,000,000;

(b) ten percent of the tax payable; and

(2) A taxpayer who, without reasonable excuse files a return, of income incorrectly stating his chargeable income, shall be liable to a penalty of twenty five percent of the difference between the amount of tax payable for the year of assessment and the

¹⁰⁷ Subsection (1) repealed and replaced by s. 28(a) of the Finance Act 2013. Previously read:

“(1) A taxpayer who, without reasonable excuse, fails to file a return of income within the time required, shall be liable to a penalty of—

(a) Le 2,000,000, plus

(b) ten percent of the tax payable”

Paragraph (a) previously repealed and replaced by s. 3(k) of the Finance Act 2009. Previously read:

“(a) the amount specified in paragraph 12 of the Ninth Schedule, plus”

amount that would have been payable if the tax payable had been calculated by reference to the incorrect return.

(3) ¹⁰⁸This section shall not apply to tax payers who have opted for the small and micro enterprises regime as stipulated under section 4.

Penalty for underestimation of tax payable.

151. (1) Where the amount of any instalment payment under section 113 is—

(a) for the first and second instalments less than sixty percent; or

(b) for the third and fourth instalments, less than ninety percent,

of the tax which would have been payable if the estimated chargeable business income had been equal to the actual chargeable business income, the taxpayer shall be liable to a penalty calculated at the rate of three percent above the specified rate of interest on the difference between the instalment payment and that tax.

(2) The penalty shall be calculated from the date the instalment should have been paid to the earlier of—

(a) the due date of the next instalment payable for the year of assessment, or

(b) the date on which the final instalment is due.

(3) The penalty imposed under this section shall be due on the day on which a taxpayer is required to file a return of income under section 97.

(4) For the purpose of calculating a taxpayer's liability to a penalty under this section, amounts of tax withheld taken into account for purposes of reducing an instalment under subsection (7) of section 113 are treated as having been paid by the taxpayer as part of such instalments.

Penalty in relation to tax withheld under Part XV.

152. (1) A withholding agent liable under section 129 for failing to withhold tax shall be liable to a penalty of ten percent of the amount of tax not withheld.

(2) A withholding agent who fails to comply with section 130 shall be liable to a penalty of—

(a) ten percent of the tax, if the tax which that person has failed to pay to the Commissioner is paid within less than thirty days from the date on which the tax should have been paid;

¹⁰⁸ Subsection (3) added by s. 28(b) of the Finance Act 2013

(b) fifteen percent of the tax, if the tax which that person has failed to pay to the Commissioner is paid thirty or more days after the due date on which the tax should have been paid but less than ninety days after the due date;

(c) twenty percent of the tax, if the tax which that person has failed to pay to the Commissioner is paid ninety or more days after the due date on which the tax should have been paid, but less than one hundred and eighty days after the due date; and

(d) twenty five percent of the tax, if the tax which that person has failed to pay to the Commissioner is paid one hundred and eighty or more days after the date on which the tax should have been paid.

(3) A penalty recoverable under subsection (1) or (2) shall be borne personally by the withholding agent, and no part thereof shall be recoverable from the person who received the payment from which tax should have been withheld.

Penalty for failure to pay after due date.

152A.¹⁰⁹(1) Subject to section 149, a person who fails to pay income tax seven days after payment is due under this Act is liable to a penalty-

(a) where the failure is for a period of not more than 30 days, to a sum equal to 10% of the tax payable in addition to the unpaid tax;

(b) where the failure is for a period of more than 30 days and up to 90 days, to a sum equal to 15% of the tax payable;

(c) where the failure is for a period of more than 90 days, to a sum equal to 25% of the tax payable.

(2) The Commissioner-General may waive the penalty due, where he has reasonable grounds to believe that a delay in the payment of income tax is due to circumstances beyond the taxpayer's control and good cause is shown by application in writing by the taxpayer to the satisfaction of the Commissioner-General.

OFFENCES

Transfer to Director of Public Prosecution.

153. The Commissioner may transfer information on a person to the Director of Public Prosecutions to enable the Director to bring charges against the person in respect of an offence provided for in this Act.

¹⁰⁹ Section 152A added by s. 8 of the Finance Act 2015

Tax evasion.

154. ¹¹⁰ A person who willfully evades or defeats or attempts to evade or defeat tax imposed by this Act either by, among other things, physically or otherwise preventing the tax officer from access to tax information or the business premises of the taxpayer during normal working hours or the payment and collection of such tax, commits an offence and, in addition to any penalty otherwise provided, shall be liable, on conviction, to a fine not exceeding the amount specified in paragraph 12 of the Ninth Schedule or to a term of imprisonment not exceeding five years, or both.

Impeding tax administration.

155. A person who in any manner impedes or attempts to impede the administration of this Act commits an offence and, in addition to any penalty otherwise provided, shall be liable on conviction to a fine not exceeding the amount specified in paragraph 12 of the Ninth Schedule or to a term of imprisonment not exceeding one year, or both.

Breaking sealed premises.

155A. ¹¹¹(1) Where a person liable to income tax fails to pay such tax within the time required, the Commissioner-General may, instead of issuing the warrant referred to in subsection (1) of section 109, seal the business premises of that person and, thereafter the goods or chattels in those premises shall be deemed to be attached and at the disposal of the Commissioner-General.

(2) The Commissioner-General or any person designated by him in that behalf, may make an inventory of all goods and other property in the premises attached under subsection (1).

(3) Any person who without the authority of the Commissioner-General breaks the seal on any premises sealed under this section or removes any goods or chattels therefrom, commits an offence and is liable on conviction to a fine of not less than Le 10,000,000.00 or to a term of imprisonment not exceeding one year or to both.

¹¹⁰ Section 154 repealed and replaced by s. 6(g)(i) of the Finance Act 2010. Previously read:

“154. A person who wilfully evades or defeats or attempts to evade or defeat tax imposed by this Act or the payment or collection of such tax commits an offence and, in addition to any penalty otherwise provided, shall be liable, on conviction, to a fine not exceeding the amount specified in paragraph 12 of the Ninth Schedule or to a term of imprisonment not exceeding five years, or both”.

¹¹¹ Section 155A added by s. 8(e) of the Finance Act 2008. Subsection (1) was amended and subsections (2) and (3) were added by s. 3(j) of the Finance Act 2009. Section 155A previously read:

“155A. Any person who breaks the seal on any sealed premises without the authority of the Commissioner-General commits an offence and is liable on conviction to a fine of not less than Le 5,000,000 or to a term of imprisonment not exceeding 6 months or to both”

Failure to preserve secrecy.

156. A person who contravenes subsection (1) of section 165 commits an offence and shall be liable on conviction to a fine not exceeding the amount specified in paragraph 12 of the Ninth Schedule or to a term of imprisonment not exceeding six months, or both.

Contempt of Board.

157. A person who contravenes subsection (3) of section 141 commits an offence and shall be liable on conviction to a fine not exceeding the amount specified in paragraph 12 of the Ninth Schedule or to a term of imprisonment not exceeding six months, or both.

Making false or misleading statements.

158. A person who knowingly or recklessly—

(a) makes a statement in a tax return or to a tax official that is false or misleading in a material particular; or

(b) omits from a statement in a tax return or made to a tax official any matter or thing without which the statement is misleading in a material particular,

commits an offence and, in addition to any penalty otherwise provided, shall be liable on conviction to a fine not exceeding the amount specified in paragraph 12 of the Ninth Schedule or to a term of imprisonment not exceeding six months, or both.

Failure to maintain proper records.

159. (1) A taxpayer which is—

(a) a company;

(b) a member of a partnership;

(c) an importer;

(d) an exporter; or

(e) an individual or trustee required under subsection (3) of section 48 to account for business income on an accrual basis,

and who fails to maintain proper records of income from any source in accordance with the requirements of this Act commits an offence and shall be liable, on conviction, to a fine not exceeding the higher of ten percent of the annual turnover

from that source and Le 50,000,000 or imprisonment for a term not exceeding one year or both¹¹².

(2) Where the taxpayer is a company, every director or officer of the company who fails to ensure that proper records are kept shall be deemed to have committed the offence.

(3) Where the taxpayer is a partnership, every partner shall be deemed to have committed the offence.

Failure to comply with notice.

160. Any person who, without reasonable excuse, fails to produce books or records or furnish information requested by the Commissioner under section 134 or 135, commits an offence and shall be liable, on conviction, to a fine not exceeding the amount specified in paragraph 12 of the Ninth Schedule.

Aiding or abetting.

161. Any person who aids or abets a person to commit an offence under this sub-part or counsels or induces another person to commit such an offence shall be liable on conviction to the same penalty as if he had committed the offence.

Offences by tax officials.

162. Any person who, being a person appointed for the due administration of this Act or any assistant employed in connection with the assessment and collection of income tax levied under this Act—

- (a) demands from any person an amount in excess of the authorised assessment of the tax;
- (b) withholds for his own use or otherwise any portion of the amount of tax collected;
- (c) renders a false return whether verbal or in writing of the amounts of tax collected or received by him;
- (d) defrauds any person, embezzles any money or otherwise uses his position so as to deal wrongfully either with the Commissioner or any other individual; or
- (e) not being authorised under this Act to do so, collects or attempts to collect tax under this Act,

¹¹² The words “the higher of ten percent of the annual turnover from that source and Le 50,000,000 or imprisonment for a term not exceeding one year or both” were substituted for the words “ten percent of the taxpayer’s chargeable income from that source” by s. 2(e) of the Finance Act 2011

commits an offence and shall be liable on conviction to a fine not exceeding the amount specified in paragraph 12 of the Ninth Schedule or to a term of imprisonment exceeding three years, or both.

PART XIX - ADMINISTRATION

OFFICE OF THE COMMISSIONER OF INCOME TAX

Appointment of Commissioner of Income Tax, Deputy Commissioners and other officers.

163. *(Repealed)*¹¹³

Delegation.

164. (1) The Commissioner may delegate to any officer of the Department of Income Tax or any person authorised in writing any power or duty conferred or imposed on the Commissioner by this Act, other than—

(a) this power of delegation; or

(b) the power authorised by section 153.

(2) Subject to such conditions as the Commissioner may specify, the Commissioner may direct that any information, return or document required to be supplied, forwarded or given to the Commissioner shall be supplied to such other person as the Commissioner may nominate.

¹¹³ Section 163 was repealed by s. 23 of the National Revenue Authority Act 2002. Previously read:

“163. (1) For the administration of this Act, there shall be appointed,, subject to section 152 of the Constitution, a Commissioner of Income Tax and Deputy Commissioners of Income Tax.

(2) Any appointment made under subsection (1), shall be published by Government Notice.

(3) The Commissioner has the general administration of this Act.

(4) Deputy Commissioners shall, under the direction of the Commissioner, perform such general official duties as are required by this Act, and in the case of the illness, absence or temporary incapacity of the Commissioner, one of them shall be appointed by the Public Service Commission to act as Commissioner”

SECURITY

Secrecy.

165. (1) Subject to subsections (3), (4) and (5), a person appointed under this Act shall preserve secrecy with regard to all information or documents which may come to the person's knowledge in an official capacity and shall not communicate such information or the contents of such documents to any other person except in the performance of his duties under this Act or by order of a competent court for the purpose of carrying into effect the provisions of this Act, or in order to institute a prosecution or in the course of a prosecution for any offence committed in relation to income tax.

(2) A person appointed to audit the assessment and accounts of the Commissioner shall be deemed for the purposes of this section to be a person appointed under this Act

(3) Subsection (1) does not prohibit the disclosure of information or documents to—

- (a) the Minister responsible for finance or any other person where such disclosure is necessary for the purposes of this Act;
- (b) the Auditor-General or the Director of the Central Statistics Office or any officer duly authorised by either of them to have such access to any records or documents as may be necessary for the performance of their official duties;
- (c) the competent authority of the government of a country with which an agreement for the avoidance of double taxation exists, to the extent permitted under that agreement; or
- (d) the Comptroller of Customs.

(4) Information obtained by the Commissioner in the performance of his duties under this Act may be used by the Commissioner or by the Comptroller of Customs for purposes of any other legislation administered by the Commissioner or by the Comptroller of Customs.

(5) Information concerning a taxpayer may be disclosed to another person with the taxpayer's written consent.

(6) Persons receiving information under this section are deemed, for the purposes of this section, to be persons appointed under this Act.

(7) No officer or employee of the Department of Income Tax shall enter upon his or her duties unless he has first taken before the Commissioner and subscribed to the prescribed oath of secrecy.

(8) Proceedings for an offence against this section may only be taken with the consent of the Attorney-General and Minister of Justice.

REGULATIONS, PUBLIC GUIDELINES AND RULINGS

Regulations.

166. The Minister responsible for finance may, by statutory instrument, make—

- (a) an order to amend, repeal or replace any provision of the First and Second Schedules; and
- (b) such rules or regulations as may be necessary or expedient for carrying into effect the purposes of this Act.

Commissioner to issue public guidelines.

167. (1) The Commissioner may issue opinions to be known as Public Guidelines, setting out the Commissioner's interpretation of this Act for the purpose of achieving consistency in the administration of this Act and to provide guidance to taxpayers and officers of the Income Tax Department.

(2) A public guideline is binding on the Commissioner until revoked.

(3) A public guideline is not binding on a taxpayer.

Private rulings.

168. (1) The Commissioner may, under procedures prescribed in paragraph 13 of the Ninth Schedule, issue to a taxpayer a private ruling setting out the Commissioner's position regarding the application of this Act to a transaction proposed by the taxpayer.

(2) Where the taxpayer has made a full and true disclosure of the nature of all aspects of the transaction relevant to the ruling and the transaction proceeds in all material respects as described in the taxpayer's application for the ruling, the ruling shall be binding on the Commissioner and the taxpayer with respect to the law as it stood at the time of the ruling.

(3) ¹¹⁴A ruling issued under subsection (1) may—

- (a) in addition to income tax, deal with any other type of tax or revenue collectible by the National Revenue Authority.
- (b) apply to multiple transactions, whether concluded in the same year or proposed to be concluded over a number of years; and

¹¹⁴ Subsection (3) added by s. 29 of the Finance Act 2013

- (c) take the form of an agreement with the taxpayer as to the appropriate pricing of the arrangement according to the arm's length standard under section 95.

Non-binding statements.

169. With the exception of a notice of assessment issued under section 101, 102, 103 or 104 and a private ruling issued under section 168, no statement or agreement concerning a taxpayer's tax liability made or purported to be made by an officer of the Income Tax Department is binding on the Commissioner unless it is a written statement personally signed by the Commissioner or by a delegate of the Commissioner authorised to do so by a delegation order.

FORMS AND NOTICES

Forms and notices.

170. (1) Forms, notices, returns, statements, tables and other documents prescribed or published by the Commissioner shall be in such form as the Commissioner may determine.

(2) The Commissioner shall make such documents available to the public at the office of the Income Tax Department and at such other locations, or by mail, as the Commissioner may determine.

Service and sufficiency of notices and other documents.

171. (1) A notice or other document required or authorised by this Act to be served upon a person other than a company is considered sufficiently served if it is—

(a) personally served upon that person;

(b) delivered to the person's usual or last known place of abode, office or place of business; or

(c) sent by registered post to such place of abode, office or place of business or to the person's usual or last known address.

(2) A notice or other document to be served upon a company pursuant to this Act is considered sufficiently served if it is—

(a) personally served on the nominated officer of the company;

(b) delivered to the registered office of the company or the company's address for service of notices under this Act; or

(c) where there is no such office or address, delivered to or sent by registered post to any office or place of business of the company in Sierra Leone.

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

(4) No notice of assessment or other document issued under this Act shall be considered invalid or affected by reason of defects if—

(a) it is, in substance and effect, in conformity with this Act; and

(b) the person assessed or intended to be assessed or affected by the document is designated in it according to common understanding or accepts it.

NOMINATED OFFICERS

Notification of nominated officers.

172. (1) Every partnership, trust or company which carries on business in Sierra Leone or derives income from a source in Sierra Leone (other than income subject to a final tax under section 125) shall have a nominated officer for tax purposes.

(2) In the case of—

(a) a partnership with a resident partner, the nominated officer shall be a resident partner;

(b) a trust (other than a provident fund or superannuation fund) with a resident trustee, the nominated officer shall be a resident trustee;

(c) a provident fund or superannuation fund with a resident trustee or fund manager, the nominated officer shall be a resident trustee or, if there is no trustee, a resident person who manages the fund; or

(d) a company with a resident officer, the nominated officer shall be a company officer resident in Sierra Leone.

(3) The name of the nominated officer shall be notified to the Commissioner in the first year of assessment in which the partnership, trust, provident fund, superannuation fund or company satisfies subsection (1).

(4) Where a partnership, trust, superannuation fund or company fails to comply with subsection (3), the nominated officer shall be the person specified by the Commissioner.

(5) Subject to subsection (2), partnership, trust, provident fund, superannuation fund or company may, by notice in writing, change the nominated officer.

(6) The nominated officer shall be responsible for any obligation imposed on the partnership, trust, provident fund, superannuation fund or company under this Act and shall notify the Commissioner of the identity of any non-resident partners, beneficiaries or shareholders, as the may be.

TAXPAYER FILE NUMBER AND TAX CLEARANCE CERTIFICATE

Taxpayer file number.

173. (1) The Commissioner shall prepare or cause to be prepared a register (hereinafter referred to as the "taxpayer-file number register") of all persons assessable or liable to be assessed to tax and such register shall contain such particulars and information as the Commissioner may deem necessary.

(2) The Commissioner shall notify every person so registered in writing of the taxpayer-file number assigned to him.

(3) Every registered person shall give his taxpayer-file number to any person who requests it for the purpose of complying with this Act.

(4) The Commissioner may require a taxpayer to include the taxpayer-file number issued by the Commissioner to that taxpayer in any return, notice or other document used for the purposes of this Act.

(5) The Commissioner may release any taxpayer-file number to any person or organisation for official purposes.

Tax clearance certificate.

174. (1) Where under any enactment a person or authority is empowered to issue a licence, permit, registration certificate or other similar document, the document shall not be issued unless the person applying for the document produces a valid certificate of tax clearance issued by the Commissioner or by some other person authorised by the Commissioner on payment of the fee prescribed in paragraph 14 of the Ninth Schedule.

(2) ¹¹⁵The certificate of tax clearance referred to in subsection (1), shall not be issued unless the applicant therefore produces to the satisfaction of the Commissioner-General or such officer deputed in that behalf by the Commissioner-General, evidence that he has discharged such other tax and non-tax liability arising under any of the enactments specified in the First and Second Schedules to the National Revenue Authority Act, 2002, as applicable.

¹¹⁵ Subsection (2) was added by s. 2(c) of the Finance Act 2006

PART XX - REPEALS AND TRANSITIONAL PROVISIONS

Repeal.

175. (1) The following enactments (hereinafter referred to as the “repealed legislation”) are hereby repealed—

- (a) The Income Tax Act;
- (b) The Surtax (Temporary Imposition) Act;
- (c) The Income Tax (Clearance) Act.

(2) Notwithstanding the repeal effected by subsection (1), any Order, Rules, Notice or Regulations made under the repealed legislation and in force immediately before the commencement of this Act shall, unless revoked, continue in force.

Transitional provisions.

176. (1) All appointments made under the repealed legislation and subsisting at the date of commencement of this Act shall be deemed to be appointments made under this Act and an oath of secrecy taken under the repealed legislation shall be deemed to have been taken under this Act.

(2) A double taxation agreement made under the repealed legislation and in force at the commencement of this Act, shall continue to have effect under this Act.

(3) All forms and documents used in relation to the repealed legislation may be used under this Act and all references in those forms and documents to provisions of and expressions appropriate to the repealed legislation shall be deemed to refer to the corresponding provisions of and expressions used in this Act.

(4) A reference in this Act to a previous year of assessment includes, unless the context otherwise requires, a reference to a year of assessment under the repealed legislation and a reference in this Act to this Act or to a provision of this Act includes a reference to the repealed legislation or corresponding provision of the repealed legislation respectively.

(5) The book value for income tax purposes of all depreciable assets held by the taxpayer at the time this Act comes into operation shall be added to the appropriate pool and no further capital allowance shall be allowed in respect of those assets except as provided for under section 39.

(6) Subject to section 46, where a taxpayer has used an accounting period as a basis period for a year of assessment under the repealed Income Tax Act he may continue to use that period under this Act.

(7) For the purposes of section (4) of section 20 of the repealed Income Tax Act, unincorporated businesses continuing beyond 31st March, 1999 shall be deemed to have ceased trading on that date and to have immediately recommenced on the 1st

April, 1999; and profits to the 31st March shall be apportioned from accounts straddling that date as determined in accordance with this Act, but all other provisions of the repealed Income Tax Act shall apply as though accounts are drawn to 31st March, 1999.

(8) Businesses having an accounting date other than March under the repealed Income Tax Act shall have both a transitional and a substituted year of assessment for 1999/2000; and—

(a) in the case of unincorporated businesses, the rate of tax for the transitional year of assessment shall be the rate in force in 1999/2000; and

(b) in the case of incorporated businesses, the rate of tax for the transitional year of assessment shall be forty five percent and for the substituted year of assessment shall be forty percent.

(9) The taxable value of certain benefits in section 23 shall, for the year of assessment indicated, be the lower of the values described in paragraphs (a), (b), (c) and (d) of subsection (2) of section 23 and the values in the following Table—

Year	Housing Benefit Le	Vehicle Benefit Le	Utilities Benefit Le	Benefit Per Servant Le
2000/2001	2,000,000	1,000,000	500,000	250,000
2001/2002	4,000,000	2,000,000	1,000,000	350,000
2002/2003	6,000,000	3,000,000	1,500,000	450,000
2003/2004	8,000,000	4,000,000	2,000,000	600,000

FIRST SCHEDULE

PART I

(Section 4(1))

Rates of tax applicable to individuals resident in Sierra Leone for the year of assessment commencing 1st January, 2014 and each succeeding year of assessment.¹¹⁶

Chargeable income	Taxable rate
Below Le 3,600,001.00 per annum	Nil
Le 3,600,001.00 to Le 7,200,000 per annum	15%
Le 7,200,001.00 to Le 10,800,000 per annum	20%
Over 10,800,001.00	30%

¹¹⁷

¹¹⁶ Part I repealed and replaced by s. 9 of the Finance Act 2015 and provided rates that have applied from 1 January 2014.

¹¹⁷ Rates that applied for the year from 1 January 2013 were the same as those that applied for the 2011 and 2012 years (as below) except that the “25%” tax rate was reduced to “20%” as per s. 30 of the Finance Act 2013.

Rates that applied for the years from 1 January 2011 and from 1 January 2012 were established by s. 2(c) of the Finance Act 2011 as:

If chargeable income is:	The tax is:
Not over Le 1,800,000	Nil
Over Le 1,800,000 but not over 3,600,000	15%
Over Le 3,600,000 but not over 9,000,000	25%
Over Le 9,000,000	30%

From 1 January 2009 the “nil” tax rate threshold was raised from Le 1,500,000 to Le 1,800,000 by s. 3(i) of the Finance Act 2009. Previous rates were:

If chargeable income is:	The tax is:
Not over Le 1,500,000	Nil
Over Le 1,500,000 but not over 4,500,000	20%
Over Le 4,500,000 but not over 7,500,000	25%
Over Le 7,500,000	30%

Rates for prior years were provided by the Income Tax (Amendment of First Schedule) Orders of 2005 and 2003. Their details are not included in this publication.

PART II
(Section 4(4))

Rates of tax applicable to chargeable property income of minors resident in Sierra Leone for the year of assessment commencing 1st April, 2000 and each succeeding year of assessment.

<i>If chargeable income is:</i>	<i>The tax is:</i>
Not over Le360,000	Nil
Over Le360,000	40% of the excess over Le360,000

PART III
(Sections 5 and 6)

Rate of tax applicable to companies, other than companies under section 21, resident in Sierra Leone for a year of assessment commencing on or after 1st April, 1999 and to trust income of a trustee for the year of assessment commencing on or after 1st April, 2000 and each succeeding year of assessment.

Rates of Tax	30% ¹¹⁸
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PART IV
(Sections 117, 118, 119, 120 and 121)

Rates of tax to be withheld from payments made to residents

Type of payment Rate

Payments to contractors (section 117)	5%
Dividends (section 118)	10%
Interests (section 119)	15%
Rents	10%
Royalties (section 120)	25%
Pensions and annuities (section 121(2) (a))	15%
Natural resource payments (122)	25%
Real property(section 123)	10%
Winnings of Le 500,000 and above from any lottery	10%

¹¹⁹

¹¹⁸ The Income Tax (Amendment of First Schedule) Order 2003 changed the rate of tax to 30% with effect from 29 November 2002. Prior to the amendment, the rate was 35%.

¹¹⁹ Part IV repealed and replaced by s. 31 of the Finance Act 2013. Previously read: “*Rates of tax to be withhold from payments made to persons resident in Sierra Leone.*”

PART V
(Section 4(2))

Small and micro tax payer regime

Turnover	Income tax payable in Leones
1. under 10,000,000	Nil
2. 10,000,001-20,000,000	100,000 plus 2% of the amount above 10,000,000
3. 20,000,001-100,000,000	300,000 plus 4% of the amount above 20,000,000
4. 100,000,001-200,000,000	3,500,000 plus 5% of the amount above 100,000,000
5. 200,000,000-350,000,000 ¹²⁰	8,500,000 plus 6% of the amount above 200,000,000

<i>Type of payment</i>	<i>Rate</i>
<i>Payments to contractors (section 117)</i>	<i>5%</i>
<i>Dividends (section 118)</i>	<i>10%</i>
<i>Interest (section 119)</i>	<i>15%</i>
<i>Rents (section 120)</i>	<i>10%</i>
<i>Royalties (section 120)</i>	<i>25%</i>
<i>Pensions and annuities (section 121(2)(a))</i>	<i>15%</i>
<i>Natural resource payments (122)</i>	<i>25%</i>
<i>Real property (section 123A)</i>	<i>10%</i>
<i>Winnings of Le 500,000 and above from any lottery</i>	<i>10%”</i>

¹²⁰ Part V repealed and replaced by s. 32 of the Finance Act 2013. Previously read: "Standard Assessment for Certain Types of Business and Property Income

Every Individual belonging to a class or description of persons as specified in this Part shall be liable in respect of the person's business or property income to a standard assessment of a minimum tax applicable to the class or description of persons to which that person belongs.

Item	Class or description of persons	Minimum tax payable by standard assessment in the Western Area	Minimum tax payable by standard assessment in the Provinces
		Tax (Le)	Tax(Le)
1.	Goldsmiths other than those described in item 2	60,000	-
2.	Goldsmiths Makeni, Makali, Magburaka and Kono	—	48,000
3.	Blacksmiths, tinsmiths, persons in allied trades	60,000	48,000
4.	Money lenders	60,000	48,000
5.	Auctioneers	90,000	60,000

6.	<i>Wine and Beer Sellers</i>	60,000	48,000
7.	<i>Surveyors</i>	180,000	60,000
8.	<i>Druggist and Midwives</i>	96,000	60,000
9.	<i>Owners of Furniture and Upholstery Shops</i>	180,000	144,000
10.	<i>Motor Mechanics and fitters</i>	180,000	144,000
11.	<i>Tailors</i>	276,000	144,000
12.	<i>Seamstresses</i>	180,000	96,000
13.	<i>Hairdressers</i>	180,000	96,000
14.	<i>Barbers</i>	60,000	48,000
15.	<i>Cattle Dealers</i>	180,000	144,000
16.	<i>Butchers</i>	96,000	48,000
17.	<i>Electricians</i>	180,000	60,000
18.	<i>Refrigeration and Air Conditioning Engineers</i>	276,000	144,000
19.	<i>Radio and T.V. Mechanics</i>	180,000	60,000
20.	<i>Shoemakers and Repairs</i>	60,000	48,000
21.	<i>Book Sellers</i>	60,000	48,000
22.	<i>Hawkers in general</i>	60,000	48,000
23.	<i>Watch Repairs</i>	60,000	48,000
24.	<i>Second and clothes dealers</i>	144,000	72,000
25.	<i>Second hand vehicle part dealers</i>	180,000	96,000
26.	<i>Cafes and Cookery Shops</i>	60,000	48,000
27.	<i>Petrol Peddlers</i>	60,000	48,000
28.	<i>Mill Operators</i>	60,000	48,000
29.	<i>Tax Operators</i>	96,000	96,000
30.	<i>Lorry and Tipper Operators carrying passengers for hire or reward</i>	276,000	276,000
31.	<i>Omni buses and Mini buses carrying over 20 passengers</i>	360,000	360,000

32.	<i>Omni buses and Mini buses carrying up to 20 passengers</i>	276,000	276,000
33.	<i>Rice dealers</i>	180,000	180,000
34.	<i>Newspaper Vendors</i>	48,000	36,000
35.	<i>Photographers</i>	60,000	48,000
36.	<i>Bakers and Caterers</i>	120,000	96,000
37.	<i>Florists</i>	60,000	48,000
38.	<i>Local fishing without engine</i>	60,000	48,000
39.	<i>Local fisherman using draw chain</i>	108,000	60,000
40.	<i>Local fishing boats with engine</i>	180,000	96,000
41.	<i>Foreign trawlers</i>	2,400,000	2,400,000
42.	<i>Local Trawlers</i>	800,000	800,000
43.	<i>Petty traders with table or baffa</i>	60,000	48,000
44.	<i>Trailers (single or double)</i>	240,000	240,000
45.	<i>Diamond exporters (percentage of the export value)</i>	3%	3%
46.	<i>Exporter's agent</i>	1,200,000	1,200,000
47.	<i>Diamond dealers</i>	600,000	600,000
48.	<i>Alluvial diamond miners (per licence issued)</i>	96,000	96,000
49.	<i>Gold miners (per licence issued)</i>	60,000	60,000
50.	<i>Gold dealers</i>	360,000	360,000
51.	<i>Gold exporters</i>	600,000	600,000
52.	<i>Diamond dealer's agent</i>	180,000	180,000
53.	<i>Tele centre operators</i>	120,000	96,000
54.	<i>Video centre operators</i>	120,000	96,000
55.	<i>Motor bike operators</i>	Nil	48,000 ¹²⁰

Note: Company diamond exporters shall be liable to standard assessment of a minimum tax at rate of 2.0% of export value”

Details of earlier rates as provided by the Income Tax (Amendment of First Schedule) Orders of 2004 and 2003 are not contained in this publication

SECOND SCHEDULE

PART I (Section 7)

Rates of tax on chargeable income of non-resident other than income to which Part II applies: 25%

PART II (Sections 116, 117, 118, 119, 120, 121, 122 and 123)

Rates of tax to be withheld from payments made to non-residents:

Employment income (section 116)	25%
Payments to contractors (section 117)	10%
Dividends (section 118)	10%
Interest (section 119)	15%
Rents and royalties (section 120)	25%
Pensions and annuities (section 121)	25%
Natural resource payments (section 122)	25%
Payments to or applications for the benefit of non-resident beneficiaries (section 123)	25%

¹²¹

THIRD SCHEDULE

(Section 2)

COMPLYING RETIREMENT FUNDS

1. Rules for approval of retirement funds

(1) An application for approval of a fund shall be made in writing to the Commissioner by the trustees of the fund and shall be—

¹²¹ Part II repealed and replaced by s. 33 of the Finance Act 2013. Previously read:

<i>“Employment income (section 116)</i>	<i>25%</i>
<i>Payment to contractors (section 117)</i>	<i>10%</i>
<i>Dividends (section 118)</i>	<i>10%</i>
<i>Interest (section 119)</i>	<i>15%</i>
<i>Rents (section 120)</i>	<i>10%</i>
<i>Royalties (section 120)</i>	<i>25%</i>
<i>Pensions and annuities (section 121)</i>	<i>25%</i>
<i>Natural resource payments (section 122)</i>	<i>25%</i>
<i>Payments to or applications for the benefit of non-resident beneficiaries (section 123)</i>	<i>25%</i> ”

Prior rates such as those provided by the Income Tax (Amendment) Act 2004 are not included in this publication

(a) accompanied by a copy of the instrument by which the fund is established, two copies of the rules or regulations of the fund, and two copies of the accounts of the fund for its last financial year;

(b) supported by such further information as the Commissioner may require.

(2) An application for approval of a fund shall be made for any year of assessment before the end of that year of assessment.

(3) An application to alter the rules, regulations, constitution, objects or conditions of an approved fund shall be made in writing to the Commissioner by the trustees of the fund and shall be –

(a) accompanied by a copy of the proposed alteration and two copies of the accounts of the fund for its last financial year;

(b) supported by such further information as the Commissioner may require.

(4) The Commissioner may approve—

(a) as a complying retirement fund; or

(b) as an alteration to the rules, regulations, constitution, objects or conditions of an approved fund,

any fund or proposed alteration which complies with paragraph 2 of this Schedule and shall give to the applicant a notice either of his approval of the application, from a date specified in the notice, or of his refusal of it.

(5) The Commissioner may at any time withdraw his approval of a fund which, in his opinion no longer complies with paragraph 2 this Schedule, and shall give to the applicant a notice of withdrawal of his approval from the date specified in the notice.

(6) Where the Commissioner gives notice of withdrawal of his approval, or refuses an application for approval or for an alteration to the rules, regulations, constitution, objects or conditions of an approved fund, he shall advise the applicant of the reasons for his decision, and if within six months the applicant gives notice of an acceptable alteration of the rules, regulations, constitution, objects or conditions of a fund, the Commissioner may rescind his withdrawal or refusal.

(7) The trustees of any fund may request the Commissioner to withdraw his approval of the fund, but subject to the Commissioner giving notice of withdrawal, his approval shall stand for all succeeding Years of assessment.

(8) A fund approved under The Income Tax (Pension and Provident Fund) Rules shall be deemed to have been approved under this Schedule.

2. Conditions for a fund to be a complying retirement fund

(1) Assets of the fund shall be vested in three or more trustees under an irrevocable trust.

(2) The fund shall have as its sole purpose the accumulation of funds 'by provision of pensions, annuities or other sums—

(a) for the benefit of individuals by reason of retirement at age fifty five years or above as specified in the rules of the fund, or retirement by reason of ill health, of which not more than thirty percent may be commuted to a lump sum; or

(b) for the benefit of an individual's named dependants by reason of the death of the individual, of which up to one hundred percent may be commuted to a lump sum.

(3) The assets of the fund may comprise contributions from employers and individuals, any investment income and capital accretions arising from such contributions, and any donations received by the trustees.

(4) The assets and income of the fund shall be so invested that they are not available to a contributor or any associate of his, nor to a potential beneficiary or any associate of his, other than under subparagraph (2) or on termination of the fund.

(5) Assets of the fund representing at least fifty percent of the contributions and income derived therefrom shall be invested in Sierra Leone.

(6) No contributor to or potential beneficiary of the fund shall have a lien on or right of recourse to any assets of the fund nor be entitled to use the assets of the fund as security for any loan.

(7) Contributions by an employer to the fund in respect of an employee shall be directly proportional to the benefits the employee is entitled to draw in respect of those contributions, and that proportion shall apply to all beneficiaries of the fund in similar circumstances.

(8) The trustees shall account to the members of the fund each year for the contributions and other income received by the fund, its investments and its disbursements, and shall account to the Commissioner in such form and with such frequency as the Commissioner may prescribe to enable him to monitor the fund's compliance with this Schedule and the provisions of this Act.

(9) All disbursements from the fund shall be taxed as employment income under paragraph (f) of subsection (1) of section 23 except that—

(a) where a lump sum is paid under subparagraph (a) of paragraph (2), it shall be treated as a redundancy or termination payment under paragraph (h) of subsection (3) of section 23; and

(b) where a lump sum is paid under subparagraph (b) of subparagraph (2) it shall be treated as exempt from tax.

FOURTH SCHEDULE (Section 19)

CHARGEABLE INCOME OF COMPANY CARRYING ON INSURANCE BUSINESS IN SIERRA LEONE

1. Insurance companies (other than life insurance companies)

In the case of an insurance company, whether mutual or proprietary (other than a life insurance company), where the gains or profits accrue in part outside Sierra Leone, the gains or profits on which tax is payable shall be ascertained by taking the gross premiums and interest and other income received or receivable in Sierra Leone (less any premiums returned to the insured and premiums paid on re-insurances), and deducting from the balance so arrived at a reserve for unexpired risks at the percentage adopted by the company in relation to its operations as a whole for such risks at the end of the period for which the gains or profits are being ascertained (but not in excess of a reasonable reserve as determined by the Commissioner), and adding to it a reserve similarly calculated for unexpired risks outstanding at the commencement of such period, and from the net amount so arrived at, deducting the actual losses (less the amount recovered in respect thereof under re-insurance), the agency expenses in Sierra Leone and a fair proportion of the expenses of the head office of the company.

2. Life insurance companies

(1) Subject to subparagraphs (2) and (3), in the case of a life insurance company, whether mutual or proprietary, the gains or profits on which tax is payable shall be the investment income less the management expenses (including commission).

(2) Where a life insurance company received premiums outside Sierra Leone, the gains or profits shall be the same proportion of the total investment income of the company as the premiums received in Sierra Leone bore to the total premiums received in Leone bore to the total premiums received after deducting from the amount so arrived at the agency expenses in Sierra Leone and a fair proportion of the expenses of the head office of the Company.

(3) In the case of a life insurance company having its head office outside Sierra Leone, the Commissioner may substitute some basis other than that prescribed in subparagraph (1) or (2) for the purpose of ascertaining the portion of the income from investments to be so charged as being gains or profits on which tax is payable.

3. Life insurance companies (alternative)

(1) Subject to subparagraphs (3) and (6), the income and deductions relating to the life insurance business of a mutual or proprietary life insurance company shall not be taken into account in determining its assessable income; the company shall be assessed to tax at five percent of the insurance premiums received and tax

assessed under this paragraph shall be paid by the fifth day of the calendar month following the month in which the payment was received.

(2) Where for any period a life insurance company which is a non-resident person, produces the certificate mentioned in subparagraph (3), the profits accruing in Sierra Leone from the life insurance business for such period, shall be a sum bearing the same ratio to the life insurance premiums receivable in Sierra Leone as the ratio for the said period shown by that certificate of the total profits to the total sum of life insurance premiums receivable.

(3) The certificate shall be one issued by or on behalf of any income tax authority with regard to which the Commissioner is satisfied that it computes and assesses the full profits of the non-resident person from his life insurance business, and shall certify for any accounting period, as regards such business, the ratio of the profits or, where there are no profits, of the loss, as computed for the purposes of income tax by that authority, to the total life insurance premiums receivable.

(4) Where any person has been assessed for any year of assessment by reference to subparagraph (1), he shall be entitled to claim at any time within six years after the end of such year of assessment, that his liability to tax for that year be recomputed on the basis provided by subparagraph (2).

(5) In the case of a non-resident taxpayer—

(a) The agent or other representative in Sierra Leone of the taxpayer, or any other person who makes, signs, issues, or sells the insurance policy, shall make a return of the amount of tax due under this Schedule.

(b) If the return under subparagraph (a) is not made, or if the Commissioner is not satisfied with the return—

(i) the Commissioner may determine the amount of tax payable; and

(ii) the agent or other person described in subparagraph (a) may be assessed upon the taxable income and shall be liable to pay the tax assessed.

(6) A resident taxpayer shall be entitled to be assessed under the principles of subparagraph (2) as if it were a non-resident taxpayer, if it furnishes to the Commissioner the information necessary for the calculation.

FIFTH SCHEDULE (Section 20)

INTERNATIONAL SHIPPING, TRANSPORT, AND COMMUNICATIONS

1. Where, for any period, a non-resident person who carries on the business of shipowner or charterer produces the certificate mentioned in paragraph 2, the profits accruing in Sierra Leone from the business for such period before deducting any allowance for wear and tear, shall be a sum bearing the same ratio to the sums receivable in respect of the carriage of passengers, mails, livestock, and goods shipped in Sierra Leone as the ratio for the said period shown by that certificate of the total profits to the total sum receivable by him in respect of the carriage of passengers, mails, livestock, and goods.
2. The certificate shall be one issued by or on behalf of any income tax authority with regard to which the Commissioner is satisfied that it computes and assesses the full profits of the non-resident person from his shipping business on a basis not materially different from that prescribed by this Act, and shall certify for any accounting period as regards such business—
 - (a) the ratio of the profits or, where there are no profits, of the loss, as computed for the purposes of income tax by that authority, without making any allowance for depreciation, to the total sums receivable in respect of carriage of passengers, mails, livestock or goods; and
 - (b) the ratio of the allowance for wear and tear as computed by that authority to the said total sums receivable in respect of the carriage of passengers, mails, livestock and goods.
3. Where at the time of assessment the provisions of paragraph 1 cannot be satisfactorily applied, the profits accruing in Sierra Leone shall be computed as five percent of the full sum receivable on account of the carriage of passengers, mails, livestock and goods shipped in Sierra Leone.
4. Where any person has been assessed for any year of assessment by reference to paragraph 3, he shall be entitled to claim at any time within six years after the end of such year of assessment that his liability to tax for that year be recomputed on the basis provided by paragraph 1.
5. Where the Commissioner decides that the call of a ship belonging to a particular non-resident shipowner or charterer at a port in Sierra Leone is casual and that further calls by that ship or others in the same ownership are improbable, the provisions of this Schedule shall not apply to the profits of such ship and no tax shall be chargeable thereon.
6. (a) The master of the ship, or the agent or other representative in Sierra Leone of the shipowner or charterer shall make a return of the amount of tax due under this Schedule.

(b) If such return is not made, or if the Commissioner is not satisfied with the return, he may determine the amount of tax payable.

(c) The master, agent, or representative, as agent for the owner or charterer, may be assessed upon the taxable income and shall be liable to pay the tax assessed.

(d) Where the assessment is made on the agent or representative, and the tax is not paid upon receipt of notice of the assessment, the master shall be liable to pay the tax.

(e) Subparagraph (d) shall not, so long as any tax for which the master becomes liable under this paragraph remains unpaid, relieve any other person to whom the notice of assessment has been given in respect of that tax, from liability to pay the tax remaining unpaid.

(f) A collector or officer of customs shall not grant a clearance to the ship until he is satisfied that any tax which has been or may be assessed under this Schedule has been paid, or that arrangements for its payment have been made to the satisfaction of the Commissioner.

7. Where a non-resident person carries on the business of air transport or the business of the transmission of messages by cable or by any form of wireless apparatus, he shall be assessable to tax as if he were a non-resident shipowner and the provisions of this Schedule shall apply *mutatis mutandis* to the computation of the gains or profits of such business.

SIXTH SCHEDULE (Section 21)

MINING SECTOR

(Repealed)¹²²

SEVENTH SCHEDULE (Section 39)

¹²² Sixth Schedule repealed by s. 34 of the Finance Act 2013. Previously read:

“1. The rate of tax applicable to companies under section 21 for the year of assessment commencing after 1st April, 1999 shall be thirty percent.

2. The rate of capital allowances—

(a) on expenditure under section 43 (start-up costs) on mineral and petroleum prospecting and exploration shall be one hundred percent; and

(b) on production rights and other expenditure incurred on mineral and petroleum development shall be—

(i) an initial allowance of forty percent of cost in the year of expenditure; and

(ii) an annual allowance of twenty percent of cost for each of the three years succeeding the year of expenditure.

3. The rate of withholding tax to be paid by taxpayers under section 21 shall be—

(a) on interest to affiliates 15 percent

(b) on interest to non-affiliates including recognized financial institutions 5 percent

(c) on dividends to residents 10 percent

(d) on dividends to non-residents 10 percent

(e) on rents 10 percent

(f) on royalties and natural resource payments 25 percent

(g) on payments to resident contractors 5 percent

(h) on payments to non-resident contractors who are not party to a double taxation avoidance agreement with the Government of Sierra Leone 5 percent

(i) on pensions and annuities under section 121(2) 15 percent

(j) on payments to non-resident contractors who are party to a double taxation avoidance agreement with the Government of Sierra Leone 10 percent

4. If the holder of a small-scale mining licence or a accounts pursuant to subsection (3) of section 69, then the licence holder shall pay a minimum income tax of three percent of turnover.

5. A loss in any year of assessment may be carried forward as a deduction against income of the subsequent year of assessment. Accumulated losses can be carried forward up to a maximum of ten years the date of commencement of commercial production.

6. Where a deduction for head office expenses exceeds one-half percent of sales, any excess of such expense shall be treated as a dividend under section 85.

7. Where a deduction for interest payable on loans is prohibited because the total debt of the paying company exceeds three times the total equity and where interest payments exceed fifty percent of income before capital allowances, any amount disallowed shall be treated as dividend under section 85.

8. Costs associated with reclamation, rehabilitation and mine closure or payments made towards providing financial surety for environmental liabilities will be fully deductible in the year in which they were incurred.

9. The minister responsible for mineral resources shall advise the Commissioner- General of-

(a) any “appropriate price” determined and the circumstance of that determination;

(b) when a holder of mineral rights is permitted to deduct expenditures incurred on an exploration licence from income attributed from a large-scale mining licence;

(c) the nature (but not the content) of any document or information obtained by order of the Minister and the reason for ordering its production.”

A range of previous amendments incorporated in the above were made by s. 6(h) of the Finance Act 2010 and by s. 28(b) of the Finance Act 2011

CAPITAL ALLOWANCE DEDUCTION

Depreciable assets are classified into groups with depreciation rates as follows—

Group	Assets Included	Rate of Capital Allowance
1.	Plant, machinery and equipment, including automobiles and trucks	40%
2.	All other tangible depreciable assets except buildings, and intangible depreciable assets	10%
3.	Buildings used to house industrial, manufacturing, or agricultural activities	15%
4.	Buildings used to house commercial activities other than those described in group 3	10%
5.	Buildings other than those described in groups 3 and 4	5%

EIGHTH SCHEDULE (Section 141 (2))

INCOME TAX BOARD OF APPELLATE COMMISSIONERS

1. Where the appellant is not represented by a legal practitioner or accountant, and the onus of proof is on him, the Chairman may ask the Commissioner to open proceedings with a concise summary of the points at issue.

2. Where the appellant is represented and the onus of proof is on him, the proceedings shall normally take the following order—

- (a) the appellant's representative opens the case for the appellant;
- (b) the appellant may be examined under oath by his representative;
- (c) the appellant may be cross-examined by the Commissioner;
- (d) the appellant may be re-examined by his representative;
- (e) the appellant's witnesses may in turn each be examined, cross-examined, and re-examined;
- (f) the appellant's representative summarises the appellant's case;
- (g) the Commissioner opens his case;
- (h) the Commissioner's witnesses may in turn each be examined, cross-examined, and re-examined;
- (i) the Commissioner summarises his case;
- (j) the appellant's representative replies.

3. This order of proceeding may be amended as the parties to the hearing agree or as the Chairman decides, and any variation in the order of proceeding will not of itself invalidate the decision of the Board.

4. If in considering an appeal under subsection (9) of section 137 the Board is satisfied that—

- (a) the taxpayer was not substantially negligent in contributing to the delay in filing the objection;
- (b) the taxpayer filed his late objection without unreasonable further delay;
and
- (c) the taxpayer would be materially injured by a refusal of his late objection,

the Board shall instruct the Commissioner to treat the late objection as if it were made under subsection (1) of section 137.

5. The Board may decide any appeal in the absence of the appellant and his representative, but where satisfied that an appellant's absence is due to sickness or other reasonable cause, the Board may permit the postponement of the hearing for a period not exceeding three months.

6. The Commissioner may be present at and throughout any appeal hearing if he so wishes.

NINTH SCHEDULE

MISCELLANEOUS PROVISIONS

1. Motor Vehicle Benefit

The amount to be included in employment income as a motor vehicle benefit under paragraph (a) of subsection (2) of section 23 shall be—

$$(C + R) \times P \text{ where}$$

C is twenty percent of the cost to the employer of purchasing the vehicle, or the full cost of leasing the vehicle;

R is the running costs of the vehicle in the year ultimately borne by the employer;

P is the proportion the employee's non-business use of the vehicle bears to its total use in the year.

2. ¹²³Maximum Redundancy or Termination Payment

The maximum redundancy or termination payment which is to be excluded from employment income under paragraph (h) of subsection (3) of section 23, shall be Le 50,000,000.00 and any excess above this amount shall be taxed at 5%.

3. Interest Proportion

¹²⁴The proportion of interest cost deductible in ascertaining chargeable income under subsection (2) of section 35 shall be eighty percent.

4. Pension and annuity deductions

In the absence of actuarial tables accepted by the Commissioner, the non-taxable element of each pension or annuity receipt under subsection (3) of section 38 shall be ninety-five percent in the first year of receipt, ninety percent in the second year of receipt, reducing by five percent in each successive year of receipt until a maximum of fifty percent of the receipt is taxed as income in each year.

¹²³ Paragraph 2 repealed and replaced by s. 10(a) of the Finance Act 2015. Previously read:

"The maximum redundancy or termination payment which is to be excluded from employment income under paragraph (h) of subsection (3) of section 23 shall be Le 20,000,000.00"

The maximum amount was previously increased from Le 10,000,000 to Le 20,000,000 by the Income Tax (Amendment) Act 2005 and from Le 4,000,000 to Le 10,000,000 by the Income Tax (Amendment) Act 2004

¹²⁴ Paragraph 3 inserted by s. 36(a) of the Finance Act 2013. That paragraph had been previously repealed by s. 6(h)(i) of the Finance Act 2010. Before that paragraph 3 read:

"The proportion of interest costs deductible in ascertaining chargeable income under subsection (2) of section 35 shall be eighty percent"

5. Capital allowance pool

The maximum balance of a capital allowance pool which may at the end of the year of assessment be deducted from chargeable income under subsection (9) of section 39 shall be Le 100,000.

6. Investment allowance

¹²⁵The amount of investment allowance to be deducted from business income under section 40 is 5% of the cost of the relevant asset.

7. Business investment relief

The maximum relevant amount of business investment relief available to an individual under section 44 is fifty percent of qualifying investments totalling not more than Le 3,000,000 in any year of assessment.

8. Requirement to account on accrual basis

The amount which under subsection (3) of section 48 is to trigger the requirement to account for business income on an accrual basis shall be either—

- (a) a turnover of or exceeding Le 10,000,000; or
- (b) chargeable business income of or exceeding Le 1,000,000.

9. Indexation of adjusted cost base

(a) The indexation of the adjusted cost base of an asset under subsections (6) and (7) of section 58 shall be computed from the first day of the month following the date of acquisition of the asset to the first day of the month following the date of disposal of the asset.

(b) A leone indexation table shall be published by the Commissioner based on a comparison of the value of the leone to the average value of the French franc, the German deutschemark, the Japanese yen, the United Kingdom pound sterling and the United States of America dollar, as supplied to the Commissioner by the Bank of Sierra Leone for the first day of each calendar month or first working day thereafter.

(c) Where each of the adjusted cost base, the disposal proceeds and any income arising from the asset during the period of ownership was in leones,

¹²⁵ Paragraph 6 repealed and replaced by s. 36(b) of the Finance Act 2013. Previously read:

“(a) The amount of new investment allowance to be deducted from business income under section 40 is twenty percent of the cost of the relevant asset.

(b) For the purposes of paragraph (a), “new investment” means injecting substantial new capital for the acquisition of any asset referred to in the Seventh Schedule”

Paragraph 6 had previously been renumbered as paragraph 6(a) and a new paragraph 6(b) inserted by s. 13(b) of the Finance Act 2011. Section 13(a) of the Finance Act 2011 had also added the word “new” in paragraph (a) and “twenty percent” had been substituted for “5 percent” by s. 6(h)(ii) of the Finance Act 2010

the indexation shall be in accordance with the leone indexation table.

(d) Where any of the adjusted cost base, the disposal proceeds and any income arising from the asset during the period of ownership was in a currency other than leones, the indexation shall be the lower of the leone indexation table and the index computed by comparing each such currency to the average values computed for the leone indexation table.

10. Remission of liability

The limit of remission referred to in section 112 is Le 1,000,000 for each year of assessment for each taxpayer.

11. Late Appeal

The fee payable on filing a late objection under paragraph (a) of subsection (7) of section 137 is Le 1,000,000¹²⁶.

12. Maximum fines for prosecuted offences

¹²⁷The maximum fines imposed under the following sections are—

section 154, tax evasion-	Le 50,000,000
section 155, impeding tax administration-	Le 50,000,000
section 156, failure to preserve secrecy-	Le 50,000,000
section 157, contempt of Board-	Le 40,000,000
section 158, making false statement-	Le 50,000,000
section 160, failure to comply with notice or information requested-	Le 40,000,000
section 161, aiding and abetting any offence mentioned herein-	Le 40,000,000
section 162, offence by tax official -	Le 50,000,000

¹²⁶ The amount “Le 1,000,000” was substituted for the amount “Le 10,000” by s. 3(l) of the Finance Act 2009

¹²⁷ The maximum penalties were substituted by s. 2(d)(i) of the Finance Act 2011 with s. 2(d)(ii) of that Act providing that each of the maximum fines prescribed is subject to the following qualification:- “rising by the average treasury bond rate compounded annually”. The maximum fine for section 154, tax evasion, had previously been increased to Le 10,000,000 from Le 1,000,000 by s. 6(g)(ii) of the Finance Act 2010. Previously read:

“The maximum fines imposed under the following sections are—

section 154 Le 1,000,000

section 155 Le 500,000

section 156 Le 100,000

section 157 Le 100,000

section 158 Le 1,000,000

section 160 Le 50,000

section 162 Le 1,000,000”

An earlier section on fine range between Le 150 and Le 50,000 was deleted by s. 3(l) of the Finance Act 2009

each maximum rising by the average treasury bond rate compounded annually

13. Private Ruling

(a) Where a taxpayer applies for a private ruling under section 168 his application shall—

- (i) be in writing;
- (ii) specify that a private ruling is requested;
- (iii) disclose completely and accurately all issues material to the ruling;
- (iv) state the precise question on which the ruling is sought; and
- (v) be accompanied by a fee of Le 200,000.

(b) The Commissioner may seek further information before issuing a ruling.

14. Tax Clearance Certificate Fee

¹²⁸The fee to be paid under section 174 shall be—

(a) for a tax clearance certificate—

- (i) in the case of a student Le 10,000.00;
- (ii) in the case of an unemployed person Le 10,000.00;
- (iii) in the case of an employed Le 20,000.00;
- (iv) in the case of an unincorporated business Le 30,000.00;
- (v) in the case of a company Le 40,000.00;
- (vi) in any other case Le 20,000.00.

¹²⁸ Paragraph 14 repealed and replaced by s. 10(b) of the Finance Act 2015. Previously read:

“The fee to be paid under section 174 shall be—

(a) for a tax clearance certificate—

(i) in the case of a student Le 200;

(ii) in the case of an unemployed person Le 300;

(iii) in the case of an employee Le 500;

(iv) in the case of an unincorporated business Le 1,500;

(v) in the case of a company Le 2,000; and

(vi) in any other case Le 1,000.

(b) for a written statement for the purposes of business registration—

(i) in the case of a company Le 4,000; and

(ii) in any other case Le 2,000”

(b) for a written statement for the purposes of business registration—

(i) in the case of a company Le 50,000.00;

(ii) in any other case Le 40,000.00.

TENTH SCHEDULE (Section 109(1))

**THE INCOME TAX ACT 2000
Section 109(1)**

EXECUTION WARRANT OF THE COMMISSIONER GENERAL

In the Office of the Commissioner-General, assessment of tax due from
.....
.....of.....
for the year(s) of assessment.....

To: The Sheriff or Under-Sheriff

We command you that out of the goods and chattels
of.....if they are sufficient and, if not, then out of
the lands, tenements, and other real estate of you cause to
be made the sum of Le.....
being the amount of the outstanding balance of the tax due from him for the year(s)
of
assessment.....together
with the sum of Le.....being the amount of any penalty, interest and
costs payable by him under the Income Tax Act and that you have the money before
the Magistrate's Court at.....
immediately after the execution of this warrant to be paid to the Commissioner-
General.

Dated this.....day of.....

Signed:

ADDITIONAL INCOME TAX EXEMPTION/CONCESSION PROVISIONS

In addition to the income tax exemption and concession provisions contained in the Income Tax Act 2000 (as amended), a number of additional income tax exemption and concession provisions are contained in other Acts and these are listed below.

Finance Act 2015:

s. 23 Promotion of youth employment and local content:

“Any small or medium size business employing any Sierra Leonean youth who is-

(a) between the age of 18 and 35 years, and

(b) previously unemployed or working part time,

between 1st December, 2014 and before 1st December, 2015 shall be eligible to a 6.5% tax credit on employee PAYE of that employee as an incentive.”

s. 24 Investment and employment incentive:

“Any business registered in Sierra Leone and having, at least, 20% Sierra Leonean ownership as of 1st January, 2015 and beyond shall be entitled to corporate tax exemption,

(a) for a period of five (5) years if its fulltime workforce is at least 100 employees and minimum investment is \$5,000,000.00;

(b) for a period of ten (10) years if its workforce is at least 150 employees and minimum investment is \$7,500,000.00.”

s. 25 Donation into Skills Development Fund:

“(1) For the purposes of income tax, any investor who makes a donation into the Skills Development Fund, shall be eligible for 100% deduction of the donation from profits for the same year that the donation is made, but any unclaimed amount shall not be available for future deductions.

(2) For the purposes of subsection (1), Skills Development Fund means the Skills Development Fund established by the Minister responsible for finance at the Bank of Sierra Leone for the purpose of supporting the critical needs of youth and women throughout Sierra Leone.”

s. 26 Fish farming development incentives:

“Fish farms comprising, at least ten fish ponds and measuring at least 200 square metres shall, of the 1st January, 2015, be exempted from income tax on-

- (a) income derived from any fish farming activity; and
- (b) 50% of any dividend paid as a result of these activities, for a period of five years.”

Finance Act 2013:

s. 47 Refinery

“A petroleum refinery investing a minimum of \$20,000,000 and employing at least fifty Sierra Leonean citizens shall be eligible for the following relief–

- (a) a corporate tax relief not exceeding five years; and

- (b) *(import duty exemption)*”

s. 48 Manufacturing

“A new business investing a minimum of US\$2,000,000 and employing at least twenty Sierra Leonean citizens shall be eligible for the following relief–

- (a) a corporate tax relief not exceeding five years; and

- (b) *(import duty exemption)*”

s. 50 Income from poultry business tax exempt

“(1) The income derived from investment in poultry business shall be exempt from income tax for a period of three (3) years–

- (a) in the case of a Sierra Leonean citizen if the investment is at least US\$50,000; and

- (b) in the case of a non-citizen, if the investment is at least US \$500,000

- (2) *(import duty exemption)*”

Finance Act 2011:

s. 14 Research and development expenses:

“For the purposes of income tax, any expenses incurred on research and development by an investor, shall be eligible for deduction from profits of 100% of

the cost incurred up to the extent of profits of the same year the expenditure is made but any unclaimed amount shall not be available for future deductions.”

s. 15 Training expenses:

“For the purposes of income tax, any expenses on training of local staff in an approved training programme, shall be eligible for deduction from profits of 100% of the cost incurred up to the extent of profits of the same year the expenditure is made, but any unclaimed amount shall not be available for future deductions.”

s. 16 Social development expenses

“Any expenses on social services, such as building of schools and hospitals and any investment that is outside the scope of the original investment and which would be also available to the general public for use free of charge, shall be eligible for deduction from profits of 100% of the cost incurred up to the extent of profits for the purposes of the Income Tax Act, 2000.”

s. 20 Promotion of exports

“(1) Subject to subsection (2), any expenses which are aimed at promoting exports and the supply of goods overseas shall, for the purposes of income tax, be eligible for deduction from profits of 100% of the cost incurred up to the extent of profits of the same year the expenditure is made.

(2) The expenses referred to in subsection (1) shall be those in relation to the following activities:–

- (a) overseas advertising, publicity and public relations work;
- (b) supplying samples abroad, including delivery costs;
- (c) undertaking export market research;
- (d) preparing tenders for supply of goods overseas;
- (e) supplying of technical information abroad; preparing exhibits and participation costs in trade or industrial exhibitions, virtual trade or shows and trade portals and fares for overseas travel by company employees for business;
- (f) maintaining sales offices and warehouses overseas to promote exports;
- (g) hiring professionals to design packaging for exports, subject to the company using local professional services;
- (h) undertaking feasibility studies for overseas projects identified for the purpose of tenders;

(i) preparing architectural and engineering models, perspective drawings and 3 – D animations for participating in competitions at international level;

(j) participating in trade or industrial exhibitions in the country or overseas.

(3) The deductions referred to in subsection (1) in respect of the promotion of exports and the supply of goods overseas shall, with the necessary modifications, apply to the tourist industry, in respect of the costs incurred in the overseas promotion of Sierra Leone as a tourist destination.”

s. 21 Disabled persons

“(1) For the purposes of income tax, there shall be deducted from the taxable profits of any business or establishment, 200% of the actual cost of the remuneration payable to any physically or mentally disabled employees, up to the extent of the profits of the year in which the expenditure is made, but any unclaimed amount shall not be available for future deductions.

(2) A claim for the deduction under subsection (1) shall be accompanied by a certificate of disability issued by the prescribed authority in the prescribed form in respect of the employee with disability.

(3) For the purposes of subsection (1), "disability" shall have the meaning assigned thereto in the Persons with Disability Act, 2010.”

s. 22 Brand promotion advertisement

“(1) Subject to subsection (2), any expenses incurred on promoting an export quality standard Sierra Leonean owned product shall be eligible for deduction from profits of 100% of the cost incurred up to the extent of profits of the same year the expenditure is made.

(2) The expenses referred to in subsection (1) shall be eligible only if made in promoting a brand name by making such a name internationally known, including expenditure on bill-board advertisements in international airports and highways.

s. 23 Infrastructure projects

“(1) Income derived from any undertaking under the Public-Private Partnership Infrastructure Projects in excess of twenty million dollars shall enjoy a corporate tax relief for fifteen years.

(2) *(Import duty exemption)*”

s. 25 Pharmaceuticals

“(1) Any new¹²⁹ business—

(a) manufacturing drugs, medical devices and other health-related items according to the guidelines of the World Health Organization; and

(b) investing a minimum of US\$500,000.00; and

(c) employing a minimum of fifty persons for that purpose;

shall be eligible for a corporate tax relief not exceeding ten years in addition to other incentives the business may be eligible for.

(2) (*Import duty exemption/concession*)”

Development of Tourism Act 1990 (as amended by the Finance Acts of 2010 and 2011) Part 5:

30. (1) Where for the purpose of an Approved Development by Income Tax way of constructing a new hotel, extending, restoring or renovating and other an existing hotel; or any tourist facility or amenity with a minimum number of rooms for hotels established in the Western Area of 50 ensuite bedrooms and 10 ensuite bedrooms for the rest of the country, eligible expenditure is incurred, such expenditure shall qualify for income Tax and other Tax Relief.

(a) relief by way of capital allowance under section 31 of this Act;

(b) (*repealed*);

(c) relief from income tax—

(i) for a period not exceeding five years; and

(ii) in value, not exceeding, during the tax holiday period, one hundred and fifty percent of the original capital invested.

(2) In paragraph (c) of subsection (1), the expression “original capital invested” means, for the purposes of taxation, both the equity and non-equity capital initially utilized in setting up the business.

(3) The incentives granted in subsection (1) shall not be available to a night club, casino or restaurant unless it is an integral part of an eligible hotel.

31. Capital allowances on any asset utilized in the development of tourism shall be deducted from the profits or other income before tax in accordance with the provisions of the Seventh Schedule to the Income Tax Act, 2000:

Provided that an investment allowance of sixteen percentum of the costs may be granted but such investment allowance shall not be deductible in ascertaining the residue of the expenditure for the purpose of a balancing allowance or balancing charge

¹²⁹ The word “new” was inserted by s. 39(c) of the Finance Act 2013

32. (1) Any net loss incurred by any person during the tax holiday period shall for the purpose of ascertaining the total income of that person as provided for under Part IV of the Income Tax Act, 2000 be carried forward and be available for set - off against the profits or income arising from any business in the basis period of the year of Assessment immediately following the expiration of the tax holiday period or against the profits or income arising from such business in any of the basis periods of the next following five years of Assessment immediately following the expiration of the tax holiday period.

(2) For the purposes of sub-section (1) the expression "net loss" shall be construed to mean the amount by which the total of any loss incurred during the tax holiday period exceeds the total of any gains or profits or income derived by any person from any business during the tax holiday period.

33. (*Exchange control rules*)

34. (*Import duty relief*)

35. Tax relief for the employment of expatriate staff for the purposes of tourism development may be obtained under the Pay-roll Tax Act, 1972.

36. (1) The reliefs, allowances and concessions granted under Limitations this Act as Development Aids and Incentives shall not apply to night clubs, restaurants or casinos except in so far as they are an integral part of a hotel.

(2) In the case of a hotel, these reliefs shall not apply except where the hotel has a minimum of ten letting bedrooms and where it is demonstrated that the hotel will be under the management of a person or persons who have the professional ability and experience in the management of hotels and in the tourist industry and where it is demonstrated that an appropriate plan has been prepared for the effective marketing of the hotel.

37. The Minister may, in consultation with the Minister responsible for Finance and with the subsequent approval of Cabinet grant further relief as the situation may demand.

38. Any person who fraudulently provides false information to enable him to benefit from the Development Aids and Incentives provided in this Act shall be guilty of an offence and shall, on summary conviction, be liable to a fine equivalent to thrice the tax or customs duty that person intended to evade or twelve months imprisonment or to both such fine and imprisonment.