

INCOME TAX BILL 2004

Arrangement of Sections

PART 1 – PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Fair market value
4. Residents and non-residents

PART II – IMPOSITION OF INCOME TAX

5. Tax on chargeable income
6. Tax on certain payments to non-residents
7. Tax on shipping and air transport income of a non-resident person
8. Presumptive income tax
9. General provisions relating to income taxes imposed under sections 6, 7, and 8

PART III – COMPUTATION OF CHARGEABLE INCOME

- 37. Carry forward of business losses

Division V – Income Tax Accounting

- 38. Method of accounting for income tax
- 39. Cash-basis accounting
- 40. Accrual-basis accounting
- 41. Trading stock
- 42. Long-term contracts
- 43. Financial leases

Division VI –Assets

- 44. Disposal and acquisition of assets
- 45. Cost
- 46. Determination of cost in special cases
- 47. Consideration received
- 48. Non-arm's length transaction
- 49. Gain or loss not recognised

Division VII – Miscellaneous Provisions Relating to Income and Deductions

- 50. Income of joint owners
- 51. Apportionment of deductions
- 52. Recovered expenditure
- 53. Cessation of source of income
- 54. Currency translation

PART IV – APPLICATION OF INCOME TAX TO PERSONS

Division I – Individuals

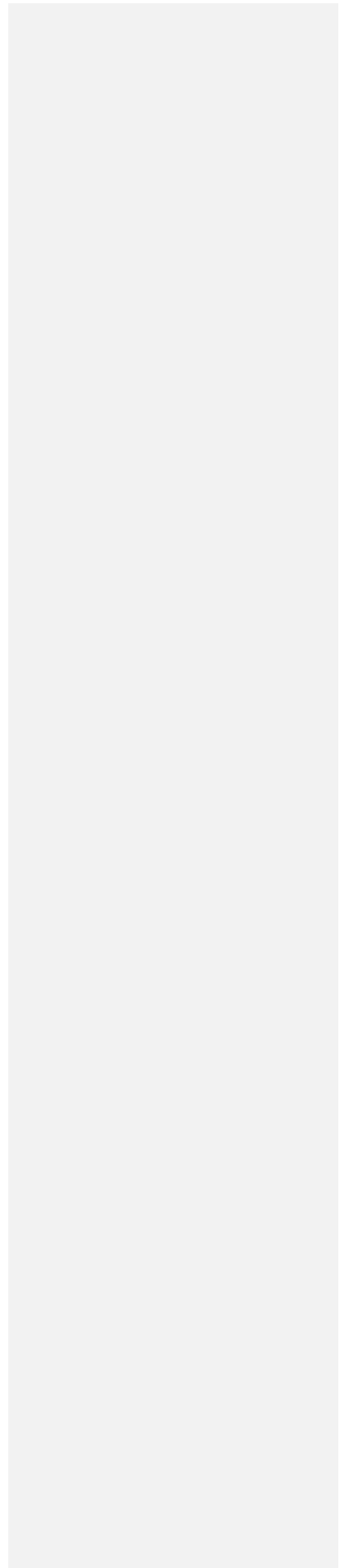
- 55. Taxation of individuals

Division II – Entities

- 56. Taxation of trusts
- 57. Taxation of companies
- 58. Change in control of entity

PART VII – ANTI-AVOIDANCE

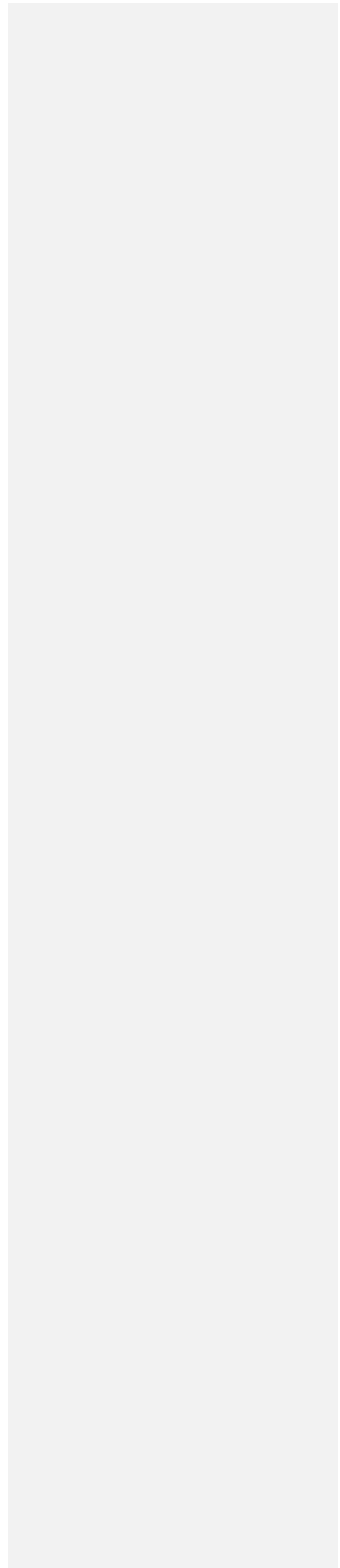
- 66. Transactions between associates
- 67. Tax avoidance schemes



PART XII – MISCELLANEOUS

- 97. Regulations
- 98. Transitional

First Schedule
Second Schedule
Third Schedule



A BILL

for

AN ACT TO CONSOLIDATE AND MAKE PROVISION FOR INCOME TAX

BE IT ENACTED by the King and the Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

**PART I
PRELIMINARY**

Short Title and commencement

1. (1) This Act may be cited as the Income Tax Act 2004.
- (2) This Act shall come into force on a day to be proclaimed by His Majesty –in Council and shall apply to fiscal years as set out in the proclamation.

Interpretation

2. In this Act, unless the context requires otherwise –
“amount” includes an amount-in-kind;
“approved retirement fund” means a retirement fund approved by the Chief Commissioner in accordance with the regulations;
“associate”, in relation to a person, means any other person who acts or may

6

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

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

“depreciable asset” has the meaning in section 27;

“dividend” means –

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

“employee” means an individual engaged in employment;

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

“employment” includes –

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

“employment income” has the meaning in section 13;

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

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

“fiscal year” means –

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

“intangible” means –

- (a) any patent, invention, design or model, secret formula or process, trademark, copyright, or other like property or right;
- (b) contractual rights with a benefit for a period of more than one year; or
- (c) any expenditure that provides an advantage or benefit for a period of more than one year, other than expenditure incurred to acquire any tangible movable or immovable property;

“interest” means –

- (a) an amount, described as interest, discount, premium, or otherwise, whether periodical or a lump sum, as

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

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

“presumptive income taxpayer” means a person liable for income tax under section 8;

“property income” has the meaning in section 14;

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

“received”, in relation to a person, includes –

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

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

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

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

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

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

11

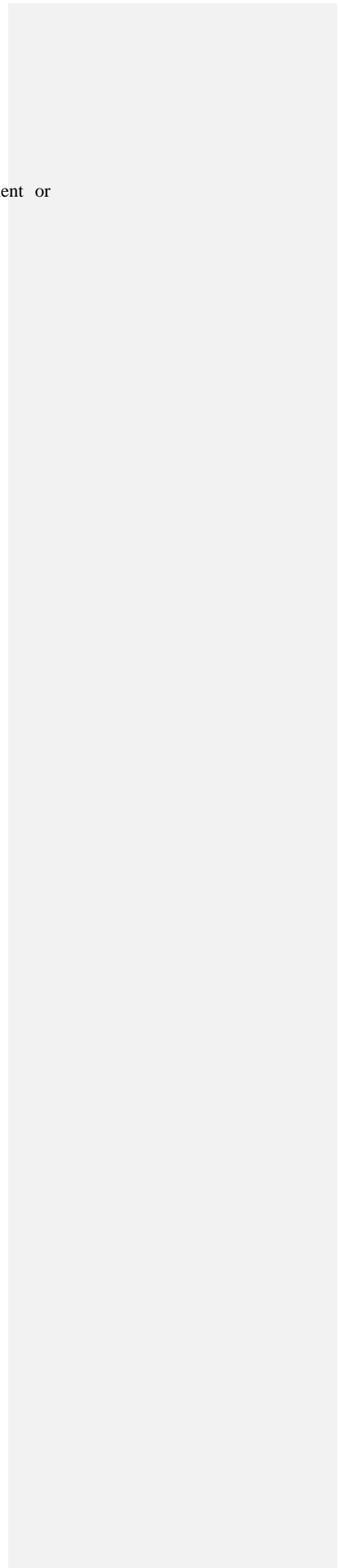
- (c) is a partnership with a partner who is a resident person at any time during the year.
- (7) A trust shall be a resident trust for a fiscal year if –
- (a) the trust was settled or established in Tonga; or
 - (b) a trustee of the trust is a resident person at any time during the year.

PART II
IMPOSITION OF INCOME TAX

- (3) This section does not apply to –
 - (a) any interest if the debt claim or other instrument or
agt instrument or

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

**Presumptive
income tax**



writing to the applicant.

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

9. Subject to this Act, the tax imposed under sections 6, 7, and 8 on a person shall be a final tax on the income in respect of which it is imposed and -
- (a) the income shall not be included in -
 - (i) gross income in computing the chargeable income of the person for any fiscal year; or
 - (ii) turnover in computing the minimum income tax liability of the person for any fiscal year;
 - (b) no deduction shall be allowable under this Act for any expenditure incurred in deriving the income;
 - (c) the amount on which tax is imposed under section 6(2), 7(2), or 8(2) shall not be reduced by any loss; and
 - (d) the tax payable by the person under section 6, 7, or 8 shall not be reduced by any tax credits allowed under this Act.

PART III – COMPUTATION OF CHARGEABLE INCOME

Division I – Chargeable Income

- Chargeable income** 10. The chargeable income of a person for a fiscal year shall be the gross income of the person for the year reduced by the total amount of deductions allowed to the person for the year.

Division II – Gross Income

- Gross income** 11. (1) Subject to this Act, the gross income of a person for a fiscal year shall be the total amount of -
- (a) business income;
 - (b) employment income;
 - (c) property income; and
 - (d) any other income,
- derived by the person during the year, other than exempt income.
- (2) For the purposes of subsection (1) -
- (a) the gross income of a resident person includes income derived from all sources within and outside Tonga; and
 - (b) the gross income of a non-resident person includes only Tongan-source income.
- (3) Unless the Act provides otherwise, the rules in Division V of this Part apply in determining when an amount is derived for the purposes of this Act.
12. Business income means -

Business income

- (a) the gross receipts, whether of a revenue or capital nature, arising from the conduct of business, including the gross proceeds from the disposal of trading stock and any consideration for accepting a restriction on the capacity to carry on business, but not including any amount taken into account in the computation of business income under paragraph (b) or (c);
- (b) any balancing charge under section 32; and
- (c) any gain arising on the disposal of a business asset, other than an asset dealt with under paragraph (a) or (b), computed as the consideration received on disposal less the cost of the asset at the time of disposal.

Employment income

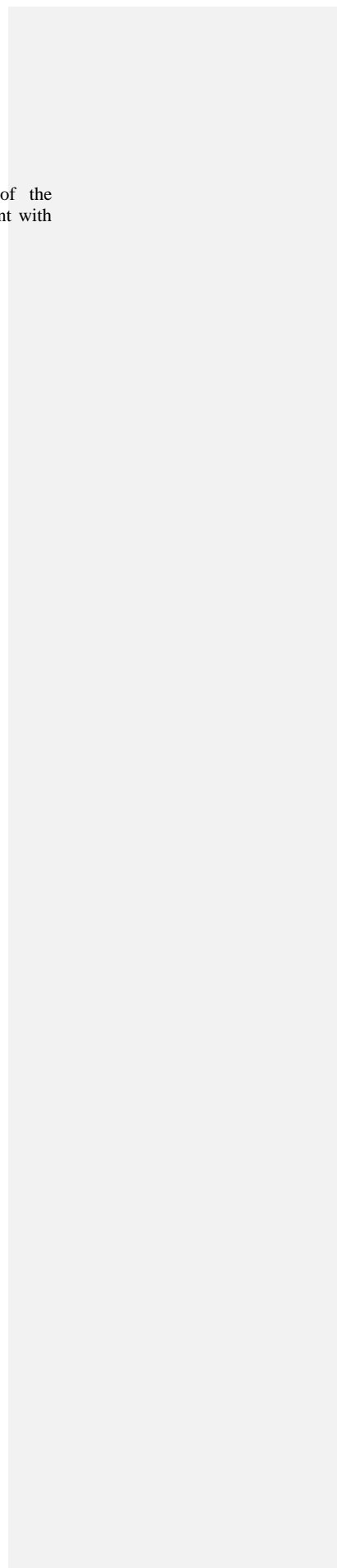
13. (1) Employment income means any amount, whether of a revenue or c

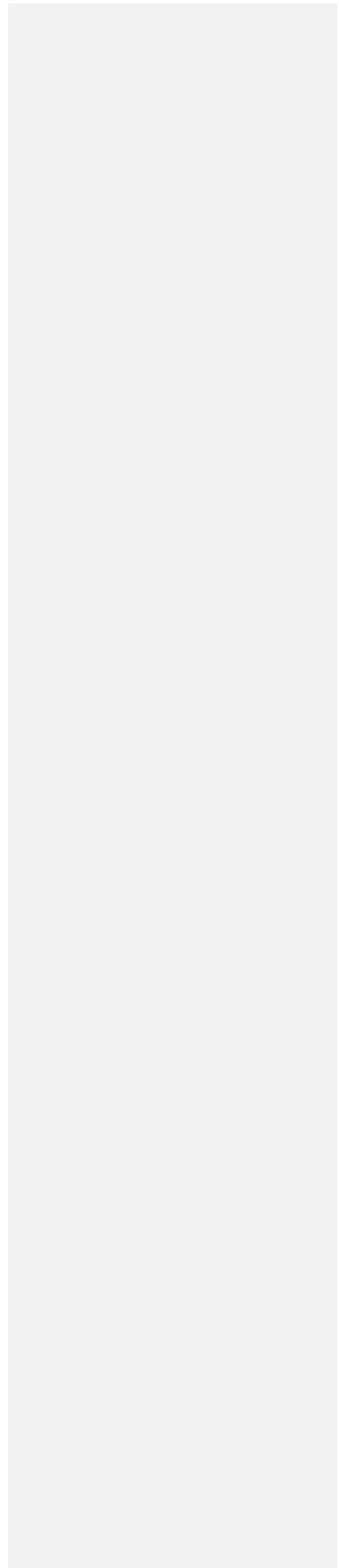
15

paid or provided by –

- (a) the employer of the employee, an associate of the employer, or by a third party under an arrangement with

Property income





tunnel, airport runway, canal, dock, wharf, retaining wall, fence, power lines, water or sewerage pipes, drainage, landscaping, or dam.

- (2) A person shall be allowed a deduction (referred to as a “depreciation

**Straight-line
depreciation**

Diminishing value

depreciation

depreciable asset under the diminishing value method shall be computed by applying the rate specified in the Third Schedule against the written down value of the asset at the beginning of the year.

Amortisation of intangibles

30. (1) In this section, “cost” means –
- (a) in relation to an intangible referred to in paragraph (a) or (b) of the definition of “intangible” in section 2, the total expenditure incurred in acquiring, creating, improving, or renewing the intangible; or
 - (b) in relation to an intangible referred to in paragraph (c) of the definition of “intangible” in section 2, the amount of the expenditure.
- (2) A person shall be allowed a deduction (referred to as an “amortisation deduction”) computed in accordance with this section for the cost of an intangible wholly or partly used by the person in a fiscal year in deriving taxable business income.
- (3) Subject to this section, the amortisation deduction of a person for a fiscal year shall be computed according to the following formula –
- $$\frac{A}{B}$$
- where –
- A** is the cost of the intangible; and
- B** is the useful life of the intangible in whole years.
- (4) An intangible –
- (a) with a useful life of more than ten years; or
 - (b) that does not have an ascertainable useful life,
- shall be treated as having a useful life of ten years.
- (5) If an intangible is used in a fiscal year partly in deriving taxable business income and partly for another use, the amortisation deduction for that year shall be the fair proportional part of the amount that would be allowed if the intangible were wholly used to

- C** is the number of days in the fiscal year.
- (7) The total amortisation deductions allowed, or that would be allowed but for subsection (5), to a person under this section in the current fiscal year and all previous fiscal years in respect of an intangible shall not exceed the cost of the intangible.
- Written down value of depreciable assets and intangibles**
31. (1) Subject to subsection (2), the written down value of a depreciable asset or intangible of a person at the beginning of a fiscal year shall be –
- (a) if the asset or intangible was acquired during the year, the cost of the asset; or
- (b) in any other case, the cost of the asset or intangible as reduced by the total depreciation or amortisation deductions allowed to the person in respect of the asset or intangible in previous fiscal years.
- (2) If section 27(7) applies to a depreciable asset or section 30(5) applies to an intangible for a fiscal year, the written down value of the asset or intangible shall be computed on the basis that the asset has been used solely to derive taxable business income.
- Disposal of a depreciable asset or intangible**
32. If a person disposes of a depreciable asset or an intangible in a fiscal year, there shall be no depreciation or amortisation deduction for that year and –
- (a) if the consideration received exceeds the written down value of the asset or intangible at the beginning of the year, the excess (referred to as a “balancing charge”) shall be business income included in the gross income of the person for that year; or
- (b) if the consideration received is less than the written down value of the asset or intangible at the beginning of the year, the difference (referred to as a “balancing allowance”) shall be allowed as a deduction in computing the chargeable income of the person for that year.
- Amortisation of preliminary expenditure**
33. (1) In this section, “preliminary expenditure” means any expenditure

Interest

according to the following formula –

$$A + (50\% \times (B - C))$$

where –

A is the interest income derived by the person during the year;

B is the gross income of the person for the year, other than interest income; and

C is the total amount of deductions allowed to the person for the year, other than for interest incurred.

(3) If an amount of interest is not deducted in a fiscal year as a result of subsection (2), the interest shall be carried forward and treated as interest incurred in the next following fiscal year and deducted in accordance with this section in that year, and so on until the interest is fully deducted.

(4) Subsection (2) does not apply to a financial institution.

Contribution to approved retirement fund

35. (1) Subject to subsection (2), an employer shall be allowed a deduction for a contribution made in a fiscal year to a retirement fund only if –
- (a) the fund is an approved retirement fund; and
 - (b) the contribution is made in respect of an employee who is a resident individual.

(2) The amount of the deduction allowed under subsection (1) shall not exceed 20% of the employment income paid by the employer to the employee for the year.

Bad debts

36. (1) A person shall be allowed a deduction for a bad debt written off in a fiscal year if the following conditions are satisfied –
- (a) the amount of the debt –
 - (i) was previously included in the gross income of the person; or
 - (ii) is money lent by the person in the normal course of business for the purposes of deriving taxable business income;
 - (b) the debt or part of the debt is written off in the accounts of the person in the fiscal year; and
 - (c) there are reasonable grounds for believing that the debt is irrecoverable.

(2) The amount of the deduction allowed under this section for a fiscal year shall not exceed the amount of the debt written off in the accounts of the person for that year.

Carry forward of business losses

37. (1) If a person has a business loss for a fiscal year, the amount of the loss shall be carried forward to the following fiscal year and allowed as a deduction in computing the chargeable income of the person for that following year.

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

Division V – Income Tax Accounting

Method of accounting for income tax

- 38. (1) Subject to subsection (2), a person shall -
 - (a) account for business income and expenditures –
 - (i) in the case of a company, on an accrual basis; or
 - (ii) in any other case, on a cash or accrual basis, provided the same basis is used for both business income and expenditures; and
 - (b) account for any other income and expenditures on a cash basis.
- (2) The Chief Commissioner may specify that any class of persons shall account for income tax purposes on a cash or accrual basis.
- (3) Subject to this Act, a person shall use generally accepted accounting principles in accounting for income tax.
- (4) A person may apply, in writing, for a change in the person's method of accounting and the Chief Commissioner may, by notice in writing, approve the application but only if satisfied that the change is necessary to properly compute the chargeable income of the person.
- (5) Subject to subsection (6), if a person's method of accounting changes, the person shall make adjustments in the fiscal year of change to items of income, deduction, or credit, or to any other items affected by the change so that no item is omitted and no item is taken into account more than once.
- (6) If an amount is added to the chargeable income of a person solely by reason of the adjustments required under subsection (5), one-third of the amount shall be included in the fiscal year in which the change occurs and the balance shall be included equally in the following two fiscal years.

Cash-basis accounting

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

Accrual-basis accounting

- 40. (1) A person accounting for income tax purposes on an accrual basis shall derive an amount when it is due to the person and shall incur an expenditure when it is payable by the person.
- (2) Subject to this Act, an amount is due to a person at the time the person becomes entitled to receive it even if the time for discharge of the entitlement is postponed or the amount is payable by instalments.
- (3) Subject to this Act, an amount is payable by a person when all the events

that determine liability have occurred and the amount of the liability can be determined with reasonable accuracy, but not before economic performance occurs.

- (4) For the purposes of subsection (3), economic performance shall occur -
 - (a) in the case of the acquisition of services or assets, at the time the services are provided or assets delivered;
 - (b)

Trading stock

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

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

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

$$(A + B) - C$$

where –

- A** is the opening value of the trading stock of the person for the year;
- B** is the cost of trading stock acquired by the person in the year; and
- C** is the closing value of trading stock for the year.

contracts

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

Financial leases

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

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

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

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

- (2) This section applies to an asset that is leased or hired under a financial lease.
- (3) If this section applies, this Act shall apply on the basis that –
 - (a) the lessee is the owner of the asset;
 - (b) the lessee acquired the asset at the commencement of the lease, except in cases where the lessee already was the owner of the asset; and
 - (c) the lessor has made a blended loan to the lessee at the commencement of the lease and each lease payment is in part repayment of principal and in part payment of interest under that loan.
- (4) The cost of the asset treated as owned by the lessee under subsection

- (8) If a person disposes of a part of an asset, the cost of the asset shall be apportioned between the part of the asset retained and the part disposed of in accordance with their respective fair market values determined at the time the person acquired the asset.

**Determination of
cost in special cases**

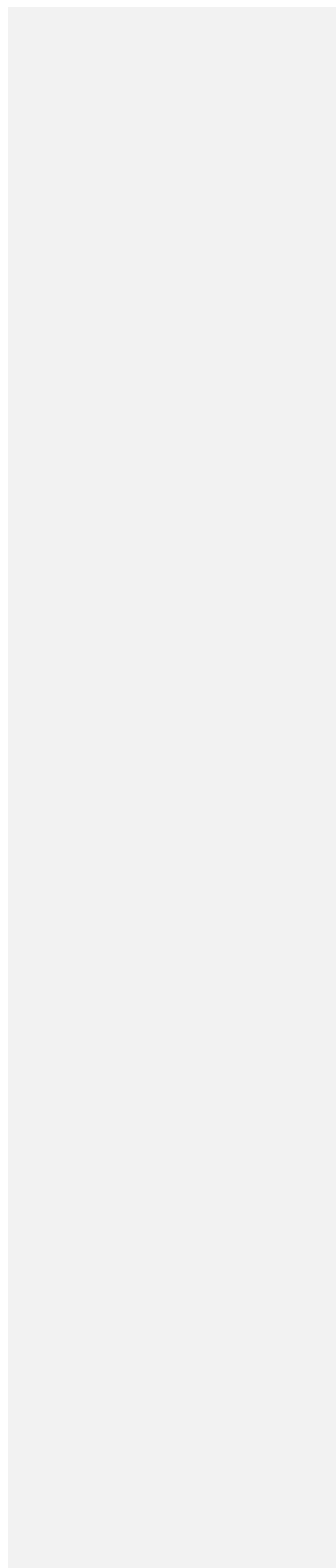
**Consideration
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**Non-arm's length
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**Apportionment of
deductions**

**Recovered
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**Cessation of source
of income**



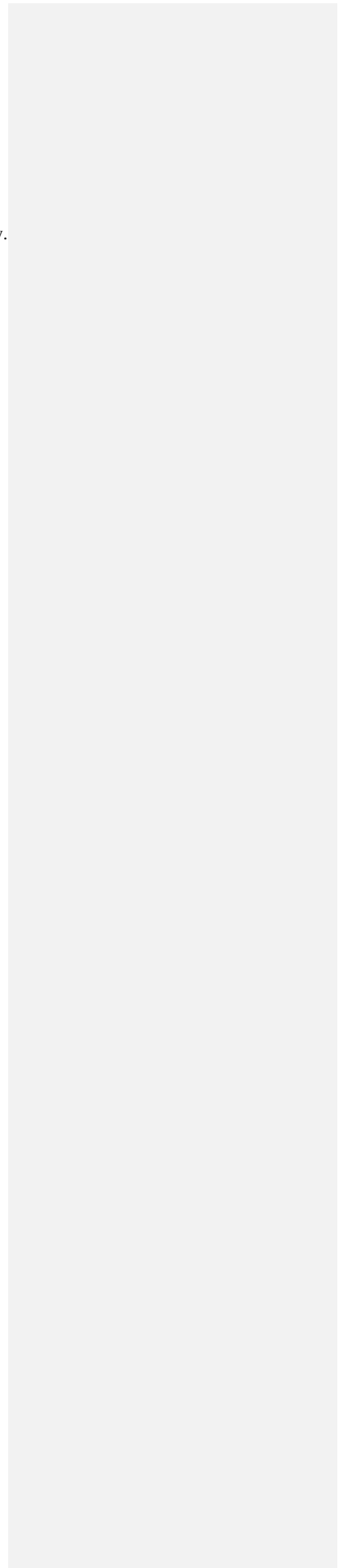
PART IV – APPLICATION OF INCOME TAX TO PERSONS

Division I – Individuals

**Taxation of
individuals**

55. The chargeable income of each individual shall be computed separately.

Division II – Entities



received by the beneficiary to the extent to which the distribution is foreign-source income not dealt with under subsection (3).

Taxation of companies

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

Change in control of entity

58. (1) In this section, –
- “carry forward loss” means an interest deduction carried forward under

PART VI – APPLICATION OF INCOME TAX TO INTERNATIONAL TRANSACTIONS

Division I – Geographic Source of Income

- | | | |
|------------------------------------|-----|---|
| Geographic source of income | 60. | <ul style="list-style-type: none"> (1) Employment income shall be Tongan-source income to the extent to which the income – <ul style="list-style-type: none"> (a) is received from employment exercised in Tonga, wherever paid; or (b) is paid by, or on behalf of, the Government, wherever the employment is exercised. (2) Business income derived by a resident person shall be Tongan-source income to the extent to which the income is derived from any business carried on in Tonga. (3) Business income derived by a non-resident person shall be Tongan-source income to the extent to which it is directly or indirectly attributable to – <ul style="list-style-type: none"> (a) a permanent establishment of the non-resident person in Tonga; (b) sales in Tonga of goods or merchandise of the same or similar kind as those sold by the person through a permanent establishment in Tonga; or (c) any other business activity carried on in Tonga of the same or similar kind as that carried on by the person through a permanent establishment in Tonga. (4) If the business of a non-resident person comprises the rendering of independent services, the Tongan-source business income of the person shall include, in addition to any amounts treated as Tongan-source income under subsection (3), any remuneration – <ul style="list-style-type: none"> (a) paid by a resident person, except remuneration for services utilised in a business carried on by the resident person outside Tonga through a permanent establishment; or (b) that is deductible expenditure of a permanent establishment in Tonga of a non-resident person. (5) Any gain from the disposal of an asset shall be Tongan-source income to the extent that the asset has been used in deriving business income that is treated as Tongan-source income under this section. (6) A dividend shall be Tongan-source income if it is paid by a resident company. (7) Interest shall be Tongan-source income if it is – <ul style="list-style-type: none"> (a) paid by a resident person, except when the debt or other instrument or agreement giving rise to the interest is utilised in a business carried on by the person outside Tonga through a permanent establishment; or (b) deductible expenditure of a permanent establishment in Tonga of a non-resident person. |
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“foreign income tax” includes a foreign withholding tax, but does not include any penalty, additional tax, or interest payable in respect of any foreign income tax;

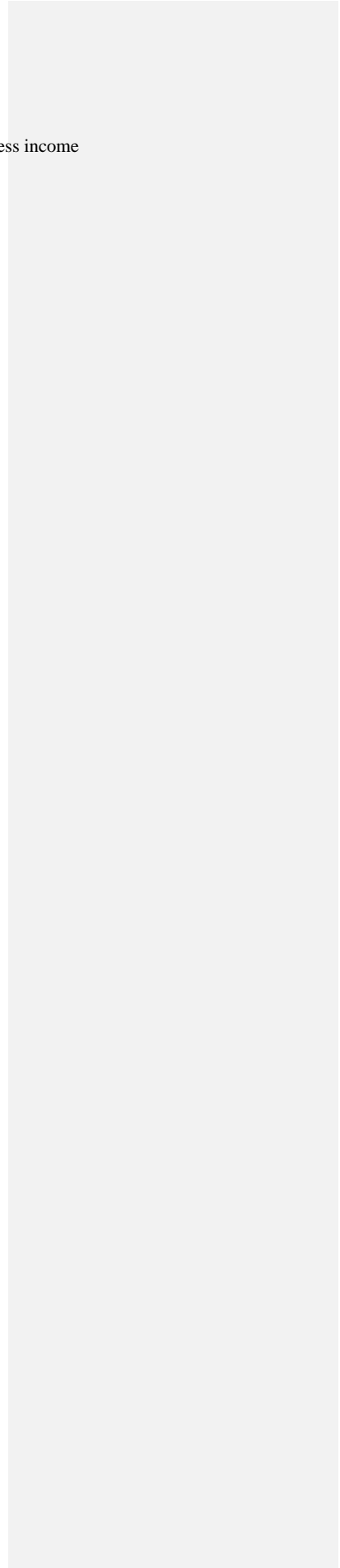
“net foreign-source income” in relation to a resident person for a fiscal year, means the total taxable foreign-source income of the person for the year, as reduced by any deductions allowed to the person under this Act for the year that –

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

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

- (2) If a resident person derives taxable foreign-source income in respect of which the person has paid foreign income tax, the person shall be allowed a tax credit (referred to as a “foreign tax credit”) of an amount equal to the lesser of –
 - (a) the foreign income tax paid; or
 - (b) the Tongan income tax payable in respect of the income.

allowed to the person in deriving taxable foreign-source business income



payable by a permanent establishment as a reimbursement of actual expenditures incurred by the non-resident person to third parties if the reimbursement is otherwise deductible under this Act.

- Foreign-source income of non-resident persons** 65. The foreign-source income of a non-resident person shall be exempt income.

PART VII – ANTI-AVOIDANCE

- Transactions between associates** 66. (1) The Chief Commissioner may, in respect of any transaction between persons who are associates, distribute, apportion, or allocate income, deductions, or tax credits between the persons as is necessary to reflect the income that the persons would have realised in an arm's length transaction.

- (2) In making any adjustment under subsection (1), the Chief Commissioner may determine the geographic source of income and the nature of any income, payment, or loss as revenue, capital, or otherwise.

- Tax avoidance schemes** 67. (1) In this section, "tax avoidance scheme" means any transaction if one of the main purposes of a person in entering into the transaction is the avoidance or reduction of any person's liability to tax under this Act.

- (2) For the purposes of determining the liability to tax under this Act of any person, the Chief Commissioner may –

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

PART VIII – MINIMUM INCOME TAX

- Minimum income tax** 68. (1) In addition to the income tax imposed under section 5 (referred to as the "normal income tax"), a person (other than a presumptive income taxpayer) carrying on business shall be liable for minimum income tax for each fiscal year.
- (2) The minimum income tax imposed under subsection (1) on a person for a fiscal year shall be 1% of the turnover of the person for the year.
- (3) The normal income tax payable by a person for a fiscal year, determined without taking into account any tax credits allowed under section 62, 90, or 92, shall be credited against the minimum income tax payable by the person for that year.
- (4) If the normal income tax paid by a person for a fiscal year is equal to or exceeds the minimum income tax payable for that year, no minimum income tax shall be payable for that year.
- (5) Minimum income tax payable under this section shall be treated as income tax for all purposes of this Act and the Revenue Services Administration Act 2002, other than this section and section 92(6).

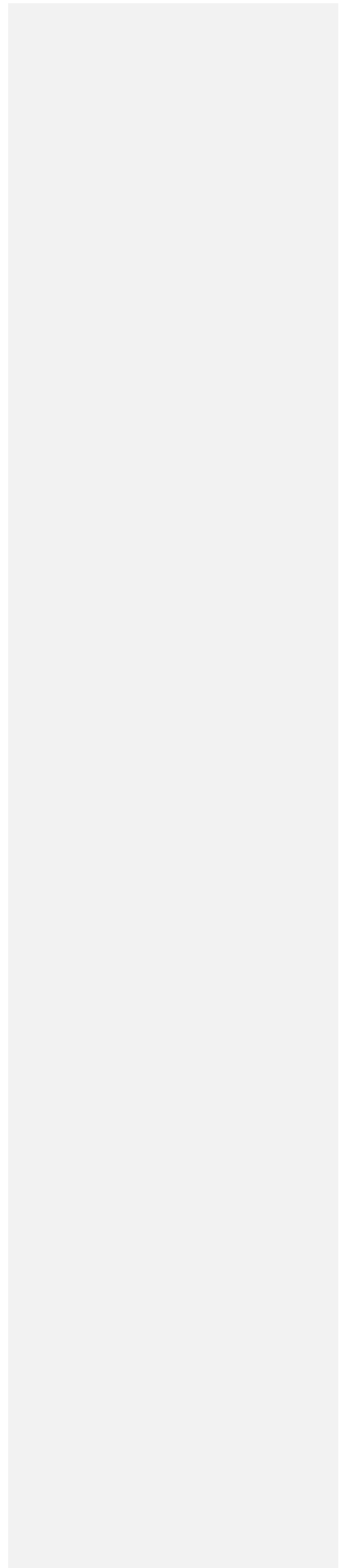
PART IX – INCOME TAX PROCEDURE

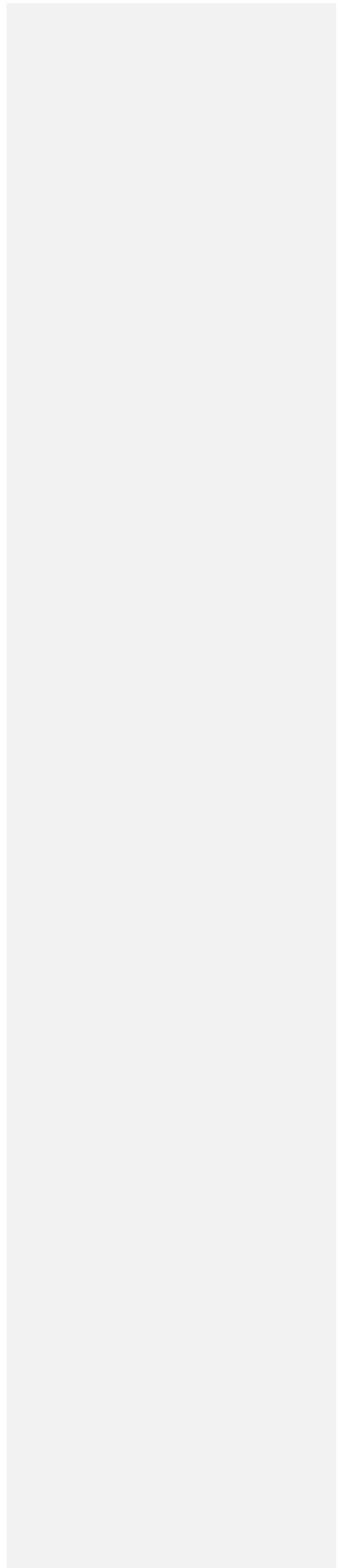
Division I – Income Tax Returns

**Furnishing of
income tax
returns**

69. (1) Subject to section 70, a taxpayer, other than a presumptive income taxpayer, shall lodge an income tax return for each fiscal year within two months after the end of the year.
- (2) An income tax return shall be lodged in the form and manner prescribed in the Regulations.

**Income tax return
not required**





as an income tax assessment for the purposes of this Act and the Revenue Services Administration Act 2002, other than subsection (1).

Division III – Payment of Income Tax

**Due date for
payment of
income tax**

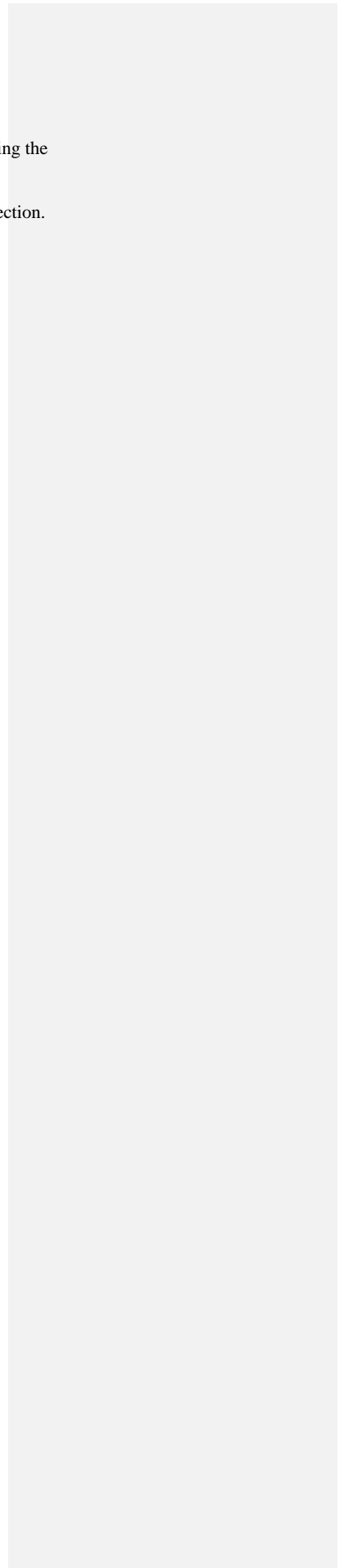
**Collection of tax
from non-resident
ship owners or
charterers**

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

collected monthly and shall be due on the due date for furnishing the return for each quarter.

- (5) Sections 71(3) and (4), and 72 apply for the purposes of this section.
- (6) If the tax referred to in subsection (4) is not paid within three

Security



No withholding from exempt income

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

Time of withholding

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

Payment of tax withheld

Failure to pay tax withheld

Recovery of withholding tax

Tax withholding certificate

Withholding tax statements

45

- (b) section 78 if the interest is paid by a financial institution and is derived by an individual; or
 - (c) section 79 if the amount is derived by a non-resident.
- (2) If this section applies, the tax withheld shall be a final tax on the income in respect of which the tax has been withheld and-
- (a) the income shall not be included in –
 - (i) gross income in computing the chargeable income of the person who derives it for any fiscal year; or

income tax returns

tax return for each quarter within 15 days after the end of the quarter.

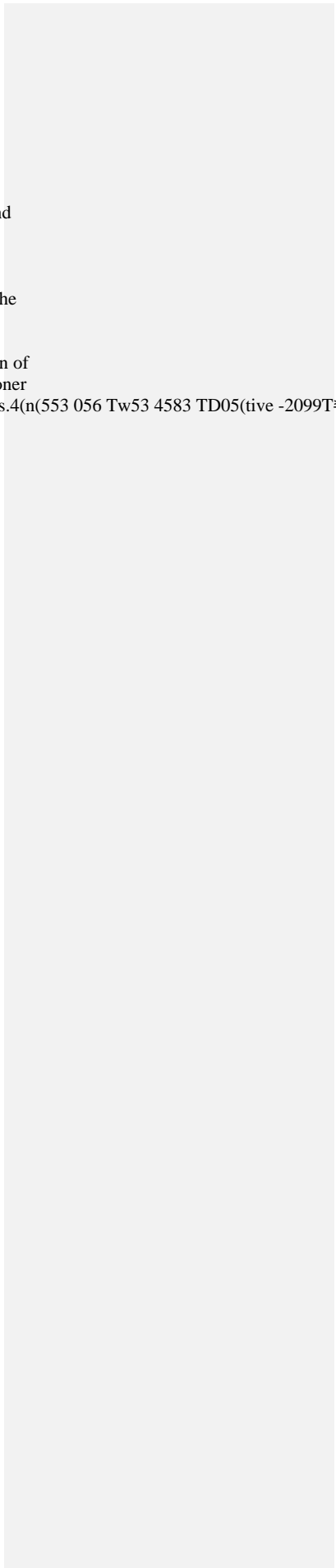
- (2) A presumptive income tax return shall be lodged in the form and manner prescribed in the Regulations.

Payment of presumptive income tax

- 94. (1) The presumptive income tax payable by a presumptive income taxpayer for a quarter shall be due by the due date for lodging the presumptive income tax return for the quarter.

- (2) The liability for presumptive income tax shall arise by operation of this section and shall not be dependent on the Chief Commissioner making an assessment of presumptive income tax

Presumptive income tax assessment



taxpayer, amend the assessment by making such alterations and additions as he considers necessary, and a notice of the amended assessment shall be served on the taxpayer.

- (6) Nothing in this section prevents penalty and interest in respect of presumptive income tax assessed under this section from being computed from the original due date for payment of the tax as determined under section 94.

PART XI – REFUNDS

Refunds

- 96. (1) Subject to this Act, a taxpayer who has paid tax in excess of the amount for which the taxpayer is properly chargeable under this Act may apply to the Chief Commissioner for a refund of the excess.
- (2) An application for a refund under subsection (1) shall be lodged in the form and manner prescribed in the Regulations within 5 years of the date on which the tax was paid.

commencement of the taxpayer's first fiscal year under this Act.

- (3) Subject to subsection (4), sections 27-29, 31 and 32 shall apply to a

shall apply to such taxpayer.

- (14) Where self-assessment does not apply to a taxpayer by virtue of subsection (13), the Chief Commissioner shall, based on the taxpayer's income tax return for a fiscal year and on any other information available, make an assessment of the chargeable income or the business loss of a taxpayer and any tax payable thereon for the year.

Passed in the Legislative Assembly this day of 2004.

SCHEDULES

FIRST SCHEDULE

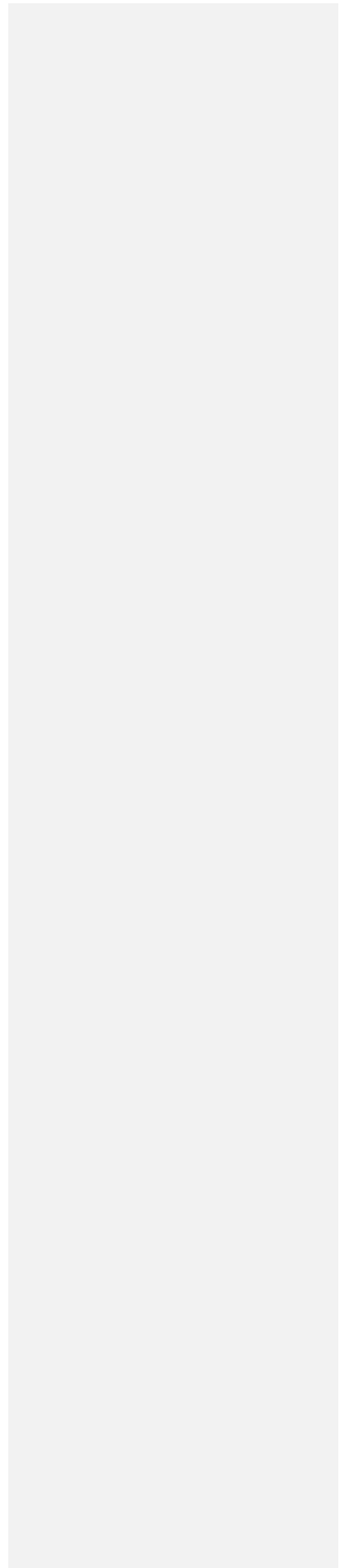
(Section 5)

RATES OF INCOME TAX

1. The rates of income tax imposed on the chargeable income of an individual shall be –

Chargeable Income

Income Tax Rate



SECOND SCHEDULE

(Section 13)

VALUATION OF EMPLOYMENT BENEFITS

1. In this Schedule -
“benchmark rate” means the National Reserve Bank of Tonga rediscount rate at the commencement of the fiscal year; and
“services” includes the making available of any facility.
2. The value of any benefit-in-kind included in the employment income of an employee under section 13(1)(b) shall be determined in accordance with this Schedule.
3. This Schedule shall not apply to any allowance or reimbursement referred to in section 13(1)(c) or (d).
4. If, in a fiscal year, a motor vehicle is provided by an employer to an employee wholly for the private use of the employee, the value of the benefit for the year shall be the amount computed in accordance with the following formula –
$$(20\% \text{ of } A) - B$$

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

gross income, the employee shall be treated as having paid an amount as interest equal to the benchmark rate on the loan or that part of the loan used to acquire the property.

10. If, in a fiscal year, an obligation of an employee to pay or repay an amount owing by the employee to the employer is waived by the employer, the value of the benefit shall be the amount so waived.
11. If, in a fiscal year, an obligation of an employee to repay an amount owed by the employee to another person is paid by the employer, the value of the benefit shall be the amount so paid.
12. If, in a fiscal year, property is transferred or services are provided by an employer to an employee, the value of the benefit shall be the fair market value of the property or services determined at the time the property is transferred or the services are provided, as reduced by any payment made by the employee for the property or services.
13. If, in a fiscal year, accommodation or housing is provided by an employer to an employee, the value of the benefit shall be –
 - (a) when the employer or an associate owns the accommodation or housing, the fair market rent of the accommodation or housing; or
 - (b) in any other case, the rent paid by the employer for the accommodation or housing,

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

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

Comment [LC34]: 13. the govt houses must be valued, normal admin practice, is that admin in consultation, would prepare what value of house in arrears. Reduced rent, so market rent less than what paid. Who will value? Only if sig diff.

