



## **CHAPTER 15.02**

# **INCOME TAX ACT**

### **Revised Edition**

Showing the law as at 31 December 2008

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

### **INCOME TAX ACT**

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remainder: 1 January 1988

Amended by Act 18 of 1990 in force 26 January 1991

Amended by Act 7 of 1994 in force 25 September 1994

Amended by Act 8 of 1996 in force 25 September 1994

Amended by Act 24 of 1996 in force 9 May 1990

Amended by Act 11 of 1998 in force 2 May 1998

Amended by Act 12 of 1999 in force 27 March 1999

Amended by Act 9 of 2001 in force 23 June 2001

Amended by Act 14 of 2003 in force 22 April 2003<sup>1</sup>

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<sup>1</sup> Act 14 of 2003 applies in respect of income year 2002. See section 2 and 3 of Act 14 of 2003.

Amended by Act 15 of 2003 in force 22 April 2003<sup>2</sup>  
Amended by Act 7 of 2006 in force 6 February 2006  
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Amended by S.I. 60/2004 in force 9 August 2004  
Amended by S.I. 75/2004 in force 1 November 2004  
Amended by S.I. 82/2004 in force 29 November 2004  
Amended by S.I. 4/2007 in force 12 February 2007  
Amended by S.I. 40/2007 in force 8 June 2007  
Amended by S.I. 172/2007 in force 29 October 2007  
Amended by S.I. 100/2008 in force 3 November 2008

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Amended by S.I. 32/1998 in force 1 May 1998

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<sup>2</sup> Amendments to Schedule 2 by Act 15 of 2003 takes effect in respect of income year 2002. See section 5(2) of Act 15 of 2003.

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Paragraph 6(3) of Schedule: 7 September 1968

Paragraphs 13(1) and 13(2) of Schedule: 1 January 1968

Remainder: 28 May 1949

Amended by S.I. 33/1951

Amended by S.I. 25/1968 in force 7 September 1968

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**INCOME TAX (DOUBLE TAXATION RELIEF) (NORWAY) ORDER – Section 60**

Statutory Instrument appearing in volume 7, page 1119 of the 1957 Revision of the Laws of Saint Lucia

**INCOME TAX (DOUBLE TAXATION RELIEF) (U.S.A.) ORDER – Section 60**

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**INCOME TAX FORMS RULES – Section 151**

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**INCOME TAX APPEALS AGAINST ASSESSMENTS RULES– Section 151**

Statutory Instrument 14/1924



## CHAPTER 15.02

### INCOME TAX ACT

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## CHAPTER 15.02

### INCOME TAX ACT

(Acts 1 of 1989, 18 of 1990, 7 of 1994, 8 of 1996, 24 of 1996, 11 of 1998, 12 of 1999, 9 of 2001, 14 of 2003, 15 of 2003, 7 of 2006, 11 of 2007 and S.I. 86/1985, 78/1990, 56/1996, 26/1997, 38/1997, 102/1997, 34/1999, 69/2000, 141/2000, 232/2000, 84/2001, 98/2001, 136/2001, 12/2003, 19/2003, 59/2003, 64/2003, 4/2004, 4/2007, 40 of 2007, 172/ 2007 and 100/2008)

AN ACT to revise and consolidate the law relating to income tax.

Commencement [Section 25(1)(j)(i):1 June 1987]

[Remainder:1 January 1988]

### PART 1 PRELIMINARY

#### 1. SHORT TITLE AND APPLICATION

- (1) This Act may be cited as the Income Tax Act.
- (2) Subject to subsection (3), this Act applies to—
  - (a) the income year 1988 and subsequent years of income; and
  - (b) the deduction of withholding tax from payments made on or after 1 January 1988.
- (3) Sections 58 and 65 to 74 inclusive apply to tax on income derived in the year 1998 and each subsequent income year.

*(Amended by Act 12 of 1999)*

#### 2. INTERPRETATION

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

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

“**appeal commissioners**” means the Appeal commissioners appointed under section 108;

“**approved pension fund**” means a pension fund approved for the purposes of this Act under section 63;

“**assessable income**” means assessable income as defined in section 8 and as ascertained in accordance with Part 5;

“**assessment**” in relation to any person—

- (a) means a determination by the Comptroller—
  - (i) of the amount of chargeable income and the tax chargeable thereon,
  - (ii) of the amount of any loss allowable as a deduction, or
  - (iii) that no tax is chargeable; and
- (b) includes, where the context so requires, an additional assessment or a reduced assessment;

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

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

“**chargeable income**” means chargeable income as ascertained in accordance with Part 6;

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

“**commercial building**” means a building that is used or is purchased, constructed, reconstructed, altered or adapted to be used for commercial purposes including use as offices or a warehouse or for any trade other than—

- (a) a building let out as a dwelling house;
- (b) a building used for the purposes of carrying on any other qualifying business;
- (c) a hotel as defined in section 26;

*(Inserted by Act 15 of 2003)*

“**Comptroller**” means the Comptroller of Inland Revenue;

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

“**controlled company**” has the meaning given to it in section 39(3);

“**disposition**”—

- (a) means any settlement, trust, agreement, arrangement or gift whereby assets, including a right to income, are transferred from one person to another, whether beneficially or as a trustee;
- (b) does not include—
  - (i) a transfer of assets by will or other testamentary disposition, except to the extent provided by section 15, or
  - (ii) the assignment of any income by a deed or assignment, howsoever described;

“**earned income**” means income accruing directly from the carrying on of a business or accruing as employment income within the meaning of section 34;

“**employment**” means any employment in which the relationship of employer and employee subsists or an appointment in an office whether public or not and whether or not that relationship subsists;

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

“**graduate**” means a person who has successfully completed education at a community college, a university or at any institution providing technical, vocational or professional education of a standard equivalent to university education.

“**incapacitated person**” means a minor, a person of unsound mind, or a mental patient;

“**management charges**” means charges made for the provision of—

- (a) management services;
- (b) personal services;

(c) technical services;

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

“**minor**” means an individual who has not attained the age of 18 years;

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

“**permanent establishment**”—

- (a) means a fixed place or premises through which the business of a person is wholly or partly carried on; and
- (b) includes—
  - (i) a place of management,
  - (ii) a branch or an office,
  - (iii) a factory or workshop,
  - (iv) premises used as a sales outlet,
  - (v) a building site or construction, assembly or installation project, only if such site or project continues for a period of more than 6 months,
  - (vi) the maintenance of plant and machinery for rental, and
  - (vii) a mine, quarry or any other place of extraction or exploration of natural resources;

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

“**previous Act**” means the Income Tax Act, 1965 as amended;

“**regulations**” means regulations made under this Act;

“**representative taxpayer**” means, in relation to—

- (a) the estate of a deceased person, an incapacitated person, a trust or a settlement, the trustee of that person;
- (b) a non-resident, any person appointed under section 22 to act as agent on his or her behalf; or

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

“**resident in Saint Lucia**”, in relation to a year of income means—

- (a) in the case of an individual, that—
  - (i) his or her permanent place of abode is in Saint Lucia and that he or she is physically present therein for some period of time in the income year, unless the Comptroller is satisfied that his or her absence throughout the whole of the income year was for the purpose of education, medical treatment, the performance of duties on behalf of the Government or for any other purposes which, in the opinion of the Comptroller, is reasonable,

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- (ii) he or she is physically present in Saint Lucia for not less than 183 days in the year of income, or
- (iii) he or she is physically present in Saint Lucia for some period of time in that year of income and such period is continuous with a period of physical presence in the year of income for the immediately preceding or succeeding year of income of such duration as to qualify him or her for the status of a resident for such preceding or succeeding year under subparagraph (ii);
- (b) in the case of an estate of a deceased person, that immediately prior to his or her death the deceased person qualified for the status of a resident under paragraph (a);
- (c) in the case of a trust or a body of persons, that such trust or body of persons was established in Saint Lucia; and
- (d) in the case of a company, that such company was—
  - (i) incorporated in Saint Lucia, or
  - (ii) if incorporated outside Saint Lucia, was managed and controlled in Saint Lucia,

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

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

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

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

- (a) an order of a court of competent jurisdiction; or
- (b) any other circumstances where there is sufficient evidence for the Comptroller to conclude that the separation is permanent;

“**small scale business enterprise**” means an enterprise incorporated during the year of income and—

- (a) is wholly owned by citizens of Saint Lucia who have not been owners of previously incorporated businesses in Saint Lucia;
- (b) employs not more than 50 persons;
- (c) has a gross income which does not exceed \$1,000,000;
- (d) engages in an activity on the listing of preferred business activity as approved by the Minister of Commerce in accordance with the provisions of any law in respect of micro or small scale business;
- (e) satisfies the provisions of any law in force in respect of micro or small scale business;

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

“**trade**” means any trade, manufacture, business and any adventure or concern in the nature of trade and includes farming, fishing, market gardening, husbandry and the occupation of land for any commercial purpose;

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

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

“**withholding tax**” means any tax deducted or deductible under sections 53(5), 63(13) or 76;

“**year of income**” and “**income year**” mean—

- (a) the period of 12 months commencing on 1 January in each year; or
  - (b) in the case of a company or any unincorporated business or partnership whose financial year does not begin in January, its financial year is its year of income.
- (2) Any reference in this Act to “any person employed in carrying out the provisions of this Act” includes a person whose services under agreement with the Government are provided by any other Government or international agency to assist with the administration of this Act.
- (3) Where gains or profits are ascertainable only by reference to the year of income and for the purpose of the charge to or exemption from tax, apportionment of such gains or profits to different periods of time is necessary, then such apportionment may be made on a time basis according to the respective lengths of those periods of time.
- (4) The term “permanent establishment” does not include—
- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the person;
  - (b) the maintenance of a stock of goods or merchandise belonging to the person solely for the purpose of storage, display or delivery;
  - (c) the maintenance of a stock of goods or merchandise belonging to the person solely for the purpose of processing by another person;
  - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information for the person;

- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the person, any other activity of a preparatory or auxiliary character.

*(Amended by Acts 18 of 1990, 11 of 1998, 9 of 2001 and 7 of 2006)*

## **PART 2 ADMINISTRATION**

### **3. COMPTROLLER OF INLAND REVENUE**

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

### **4. DELEGATION BY COMPTROLLER**

- (1) The Comptroller may, in relation to any matter or class of matter, delegate to any other person employed in carrying out the provisions of this Act, any powers, functions or duties conferred or imposed on the Comptroller by this Act other than—
  - (a) the power of delegation conferred by this section; and
  - (b) the power to sanction prosecutions under section 138.
- (2) Any delegation made under this section is revocable at any time by the Comptroller and no delegation prevents the exercise of such powers, duties or functions by the Comptroller.

### **5. INDEMNITY AGAINST LIABILITY FOR ACTS DONE**

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

### **6. SECRECY**

- (1) Subject to this section, the Comptroller and every person employed in carrying out the provisions of or having any official duty under this Act shall regard and deal with all documents and information relating to any person, and all

confidential instructions in respect of the administration of this Act which may come into his or her possession or to his or her knowledge in the course of his or her duties, as secret.

- (2) This section does not apply to the disclosure of any confidential information—
  - (a) to any person authorized by –
    - (i) Cabinet,
    - (ii) the Comptroller, or
    - (iii) any other enactment,to receive such information;  
*(Substituted by Act 7 of 2006)*
  - (b) to any other person to whom such disclosure is necessary for the purposes of this Act; or
  - (c) to any authorised officer of the Government of a country with which an international agreement for the avoidance of double taxation or exchange of information exists, for the purposes of that agreement.
- (3) This section does not prevent the disclosure of information of a statistical nature, but any such information shall be supplied in a manner that does not disclose the identity of any person in relation to his or her income.
- (4) A person appointed under or employed in carrying out the provision of this Act and a person to whom confidential information is disclosed under subsection (2)(a) or (2)(b) shall make an oath or affirmation of secrecy in the manner and form approved by the Comptroller.
- (5) Any oath or affirmation under subsection (4) may be taken before the Comptroller (who is hereby authorised to administer such oath or affirmation) or before a magistrate, and no fee is payable.
- (6) The obligation as to secrecy imposed by this section continues to apply in respect of any person although he or she ceases to have any official duty under or be employed in carrying out the provisions of this Act.
- (7) A person referred to in subsection (1) is not required to produce in any court, any return of income, assessment or notice of assessment or to divulge or communicate any information

which comes to his or her knowledge in the performance of his or her duties under this Act except to the extent to which it is necessary for the purposes of this Act.

### **PART 3**

## **IMPOSITION OF INCOME TAX**

### *Division 1 — Charge to Tax*

#### **7. CHARGE TO TAX: GENERAL**

- (1) Subject to subsections (5) and (6), tax shall be charged for each year of income on the chargeable income for that year of every person.
- (2) The persons chargeable to tax shall be those persons specified in Division 2 of this Part.
- (3) Subject to Part 7, the chargeable income of a person is ascertained by deducting from the person's assessable income any amounts which is allowable under Part 6.
- (4) The tax payable by a person is calculated in accordance with Part 8.
- (5) Where income ascertained in accordance with Part 5, accrues directly or indirectly to a non-resident person, from any source, other than from the exercise of employment or the carrying on of business through a permanent establishment, such income shall not form part of the assessable income of such person and the gross amount of such income is liable to withholding tax in accordance with sections 76 and 80.
- (6) Where income accrues to any person by way of a cash benefit payable from an approved pension fund or on the surrender of a life assurance policy, in circumstances where a separate charge to tax is created, such income shall not form part of the assessable income of such person and the gross amount thereof is liable to withholding tax in accordance with sections 53(5) or 61(13) as the case may be.

*(Amended by Act 18 of 1990)*

**8. SCOPE OF CHARGE TO TAX**

- (1) The assessable income of a taxpayer is—
  - (a) where the taxpayer is a resident, subject to subsection (2), all amounts ascertained in accordance with Part 5, accrued directly or indirectly from all sources whether in or out of Saint Lucia; and
  - (b) where the taxpayer is a non-resident, subject to section 7(5) all amounts ascertained in accordance with Part 5, accrued directly or indirectly from all sources in Saint Lucia,which are not exempt from tax under Part 4.
- (2) Where an individual is a resident but is not ordinarily resident, his or her assessable income shall include income accrued from sources out of Saint Lucia but only to the extent that such income is received in Saint Lucia.

**9. INCOME ACCRUED: MEANING OF**

- (1) Subject to this section, income shall accrue to a person for the purposes of this Act—
  - (a) in the case of income from employment, when it is earned;
  - (b) in the case of a business, in relation to which the Comptroller is satisfied that a commercially recognised system of accounting other than a cash received basis is regularly followed, when it is credited in the books of account of such person;
  - (c) in the case of a business, where, under subsection (2), the Comptroller has accepted the preparation by that person of his or her accounts on a cash received basis, when it is received by him or her; or
  - (d) in any other case, when it becomes due and payable to him or her.
- (2) Where any person regularly prepares the accounts of his or her business on a cash received basis the Comptroller may, on application and in his or her discretion, accept such method of accounting or may direct that accounts be prepared on an

accrual basis and the income accrued to such person shall be ascertained accordingly.

- (3) Subsection (2) shall not be construed to prevent the Comptroller from directing the adoption of an accrual basis in respect of a particular person or class of persons for any year of income by reason only that a cash received basis had been accepted in respect of previous years.
- (4) Where an amount that would otherwise have accrued to a person when it was received by him or her is not paid to him or her but is reinvested, accumulated, carried to any reserve or otherwise dealt with on his or her behalf or as he or she directs, it shall be deemed to have accrued to him or her on the date it is so dealt with.
- (5) Income shall not cease to have accrued to any person within the meaning of this section by reason only of the cessation of a source of income prior to the receipt of any amount from such source.

## **10. INCOME DEEMED TO HAVE ACCRUED FROM SOURCES IN SAINT LUCIA**

- (1) Income accrued to a person accrues from a source situated in Saint Lucia where it accrues to that person in respect of—
  - (a) any employment exercised in Saint Lucia irrespective of where payment is made or the contract of employment is entered into;
  - (b) any employment exercised out of Saint Lucia—
    - (i) in the performance of duties on behalf of the Government, or
    - (ii) as an officer or member of the crew of a ship or aircraft engaged in international traffic, by such person being an individual who is ordinarily resident in Saint Lucia;
  - (c) interest from any person being—
    - (i) an individual who is ordinarily resident in Saint Lucia, where the indebtedness—
      - (A) was incurred in connection with the acquisition of, or

- (B) was charged against, any property situated in or to be brought into Saint Lucia, or
  - (ii) any other person, whether resident or non-resident, who has a permanent establishment in Saint Lucia in connection with which the indebtedness on which the interest accrued was incurred, where such interest is borne by such permanent establishment;
  - (d) any property physically situate in Saint Lucia;
  - (e) the provision of management services, including personal services and technical and managerial skills, in Saint Lucia where such services are provided for the purposes of a business carried on in Saint Lucia and the cost of such services is borne by that business, irrespective of where the contract for such services was entered into;
  - (f) a source of income which under any international agreement made under section 60, is considered to be situated in Saint Lucia.
- (2) Where, under this Act, or under any international agreement made under section 60, income is considered to accrue—
- (a) to a person;
  - (b) from a source; or
  - (c) in a year of income,
- a reference to income accrued shall be construed as including income considered to accrue.

## 11. BASIS OF ASSESSMENT

- (1) Subject to this section, the assessable income of a person for a year of income is the whole of income, ascertained in accordance with Part 5, which accrues to such person during that year.
- (2) Tax is charged for each year of income upon the chargeable income of any person for that year.
- (3) The gains or profits of a person for a year of income so far as such gains or profits arise from the carrying on of a trade, business, profession or vocation is—
  - (a) where there is an established accounting terminal date, the gains or profits of the 12 months from the established

- accounting terminal date occurring in the year immediately preceding the year of income;
- (b) in the case of the commencement by any person of any trade, business, profession or vocation, the gains or profits from the date of commencement of such trade, business, profession or vocation occurring in the year immediately preceding the year of income or occurring in the year of income to such date in the year of income as may be agreed by the Comptroller which agreed date will become the established accounting terminal date;
  - (c) in the event of a departure from the established accounting terminal date, the gains or profits for such 12 month period as the Comptroller in his or her discretion may determine in respect of the year of income in which the departure from the established accounting terminal date occurs and in respect of the next succeeding year of income; the accounting terminal date resulting from the change becomes the established accounting terminal date.
- (4) Where any person ceases to carry on his or her trade, business, profession or vocation, the gains or profits of such person arising from his or her trade, business, profession or vocation for the year of income in which he or she ceased to carry on his or her trade, business, profession or vocation is the gains or profits from the established accounting terminal date in the year immediately preceding the year of income to the date upon which he or she ceased his or her trade, business, profession or vocation.
- (5) Although the income of a business charged to tax under this section may be for a period greater or less than 12 months, any annual allowances shall be deductible for a year of income only by reference to a 12 month period.
- (6) In this section “established accounting terminal date” means the accounting date to which the accounts of any trade, business, profession or vocation of any person are ordinarily made up and accepted for the purposes of assessment under this Act or in the case of any new trade, business, profession or vocation, such date as may be agreed by the Comptroller.

**12. PERSONS CHARGEABLE: GENERAL**

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

**13. MARRIED WOMEN**

Any income accrued to a married woman in the year of income to which this Act applies shall be charged to tax in her own name.

**14. MINOR CHILDREN: DISPOSITIONS TO**

- (1) Where, by reason of any disposition made by any disponent for the benefit of a minor whether or not the child is related to the disponent, any income has accrued to that child, such income shall, during his or her minority or until the prior death of the disponent, be deemed to have accrued to the disponent and shall be included in his or her assessable income.
- (2) Where, during a year of income, an individual ceases to be a minor, subsection (1) shall apply only in respect of income accrued prior to the date upon which he or she ceased to be a minor.

**15. SETTLEMENTS AND WILLS**

- (1) Subject to subsection (3), any income accruing to a trust, where there is no beneficiary entitled to the immediate benefit thereof, shall be included in the assessable income of the trust and the chargeable income ascertained therefrom shall be charged to tax in the name of the trustee.
- (2) Subject to section 14, any income accruing to a trust, where there is a beneficiary entitled to the immediate benefit thereof, accrues to the beneficiary and is to be included in his or her assessable income.

- (3) Where, under a trust, a beneficiary may be entitled to the benefit of the income thereof at the discretion of the trustee, any income so applied for his or her benefit accrues to the beneficiary and is to be included in his or her assessable income.
- (4) Where, in any will or other testamentary disposition, a stipulation is made to the effect that the beneficiaries therein, or one or more of them, shall not receive any income accrued under such will or disposition until the happening of an event, whether fixed or contingent, any such income as would, but for the stipulation, have accrued to the beneficiaries shall, until the happening of that event accrues to the trust and shall be included in the assessable income of the trust and the chargeable income ascertained therefrom is to be charged to tax in the name of the trustee.
- (5) Where any deed of donation, settlement or other disposition *inter vivos* (in this subsection referred to as “the disposition”) made by any person (in this subsection referred to as “the disponent”) contains a stipulation to the effect that the beneficiaries therein, or one or more of them, shall not receive any income accrued under the disposition until the happening of an event, whether fixed or contingent, any such income as would, but for the stipulation, have accrued to the beneficiaries, until the happening of that event or the prior death of the disponent, accrues to the disponent and is to be included in his or her assessable income.
- (6) In subsections (1), (2) and (3) “trust” means a trust created—
  - (a) by will or other testamentary disposition; or
  - (b) by a deed or donation, settlement or other disposition *inter vivos*.

## 16. REVOCABLE DISPOSITIONS

- (1) Where income accrues to a person under a revocable disposition the income accrues to the disponent and is to be charged to tax in his or her name.
- (2) For the purposes of this section, a disposition revocable where the disponent—

- (a) has a right to reassume control, directly or indirectly, over or has access to the property or income of the disposition; or
  - (b) has power to revoke or otherwise determine the disposition, whether immediately or in the future and whether with or without the consent of any other person, but only where, in the event of the exercise of such power the disponent will or may become beneficially entitled to the whole or any part of the property or income of the disposition.
- (3) Where part only of a disposition is capable of revocation, subsection (1) applies only to such part of the disposition.
- (4) Subsection (2) does not deem a disposition to be revocable by reason only of a power of revocation in such disposition in relation to the interest of any beneficiary therein where such power of revocation is limited to arise only in the event that such beneficiary should pre-decease the disponent.

## **17. DECEASED PERSONS**

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

## **18. ESTATES OF DECEASED PERSONS**

- (1) Any income accruing to the estate of a deceased person before there is a beneficiary entitled to the immediate benefit thereof is to be included in the assessable income of the estate and the chargeable income ascertained therefrom is to be charged to tax in the name of the executor.
- (2) Any income accruing to the estate of a deceased person on or after the date on which there is a beneficiary entitled to the immediate benefit thereof other than as a legatee, accrues to the beneficiary and is to be included in his or her assessable income.

- (3) Where a beneficiary of the estate of a deceased person is a legatee any income accruing in respect of the property of which he or she is the legatee, on or after the earlier of—
- (a) the date of the handing over of the property; or
  - (b) the date of the completion of the administration of the estate,
- accrues such legatee and is to be included in his or her assessable income.
- (4) For the purposes of this section—
- (a) a beneficiary is entitled to the immediate benefit of any income accrued to the estate of a deceased person on or after the date of completion of the administration of the estate; and
  - (b) the date of completion of the administration of the estate means the date upon which the whole of the debts relating to the estate of the deceased person have been ascertained and paid or provided for.

## 19. INCAPACITATED PERSONS

Subject to this Part, any income accrued to an incapacitated person is included in his or her assessable income and the chargeable income ascertained is charged to tax in the name of the trustee in the same amount as would be charged if that person was incapacitated.

## 20. INSOLVENT PERSONS

Where a person becomes bankrupt—

- (a) any income accrued to that person in his or her own right after the period of insolvency and prior to the date his or her insolvency ceases is included in the assessable income of that person; and
- (b) any income accrued in respect of the estate of that person held by his or her trustee during the period of insolvency is included in the assessable income of the estate and the chargeable income ascertained is charged to tax in the name of the trustee.

## 21. PARTNERSHIPS

- (1) A partnership shall not be charged to tax in its own name but all income accrued to it in a year of income is to be charged on the partners for the year of income in accordance with this section.
- (2) The chargeable income of a partner for a year of income—
  - (a) includes an amount equal to that proportion of the partnership assessable income for that year of income which the amount of the net partnership profit or income to which he or she is entitled under the partnership agreement, ascertained under that agreement, bears to the net partnership profit or income; or
  - (b) is calculated after deducting an amount equal to that proportion of the partnership assessed loss for that year of income which the amount of the net partnership loss for which he or she is responsible under the partnership agreement, ascertained under that agreement, bears to the net partnership loss.
- (3) In this section—

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

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

## 22. NON-RESIDENT PERSONS

- (1) The chargeable income of a non-resident, where it is not charged to tax directly on him or her, is charged to tax on his or her agent in the same amount as would have been charged on the non-resident.
- (2) For the purposes of this section “agent”, in relation to a non-resident, means a person who—
  - (a) has the management or control of property in Saint Lucia of such non-resident;
  - (b) is appointed by the non-resident to act on his or her behalf; or
  - (c) carries on business with a non-resident in circumstances to which section 23(2)(b) applies.

**23. TRANSACTIONS INVOLVING LIABILITY TO TAX**

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

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

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

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

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

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

of the opinion that the loan is not one between independent persons dealing at arm's length with each other, interest is considered to accrue to the resident person for each year of income after the loan is made at such commercial rate as the Comptroller considers reasonable in the circumstances.

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

#### **24. RESPONSIBILITY OF REPRESENTATIVE TAXPAYERS**

- (1) A person in whose name the chargeable income of a deceased person, the estate of a deceased person, an incapacitated person, a non-resident or any other person is chargeable, is responsible for doing all such things as are under this Act required to be done by a person chargeable to tax.
- (2) Where a person is liable to furnish a return of income under section 84, whether or not chargeable to tax, the obligation imposed by subsection (1) applies to any representative taxpayer acting on behalf of such person.

### **PART 4 EXEMPT INCOME**

#### **25. EXEMPTIONS**

- (1) There is exempt from the tax—
  - (a) the official emoluments of the Governor General, Deputy Governor General and of any Acting Governor General, any gratuity or pension payable to a former Governor or Governor General upon his or her retirement, any gratuity payable to his or her legal personal representative upon the death of a former Governor or Governor General and any pension payable to the widow of a former Governor or Governor General upon his or her death;

- (b) the official emoluments payable in respect of their offices to—
  - (i) heads of diplomatic missions and consulates accredited to Saint Lucia,
  - (ii) members of the staff of such missions and consulates, except such persons who are citizens of or ordinarily resident in Saint Lucia;
- (c) the official emoluments payable by—
  - (i) any international organisation of which Saint Lucia and one or more other countries are members, or
  - (ii) any other Government, in connection with the provision of any technical co-operation services, to the extent and subject to such conditions as may be prescribed by any enactment or in any agreement or memorandum of understanding entered into by the Government;
- (d) any war pension (including any disability pension) or gratuity in respect of service during war;
- (e) any amount accruing under a scholarship or similar education grant to a person receiving full time education at a school, college, university or other educational establishment;
- (f) any interest accrued on any loan charged on the public revenue, which is declared by the Minister to be exempt;
- (g) any income accrued to any individual by way of—
  - (i) interest on a deposit in any bank in Saint Lucia, or
  - (ii) discounts arising on Treasury Bills;
- (h) any income accrued to a company on Treasury bills, bonds and debentures;
- (i) any amount accrued by way of gratuity on the termination of a contract of employment, however, this exemption does not apply—
  - (i) if the contract is renewed, extended or replaced by a new contract with the same employer or associate of that employer, or
  - (ii) to any part of the gratuity in excess of 25% of the gross income of the employee for the period,

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- (j) any income accrued to—
  - (i) an individual for his or her office, or
  - (ii) such an individual or his or her dependents by way of pension in respect of his or her past services;  
as a minister of religion or other person in Holy Orders in the service of any religious body approved for this purpose by the Minister;
- (k)
  - (i) the first \$6,850, or
  - (ii) the first \$6,000,  
of any income accruing from a source in Saint Lucia by way of pension for past services, being payable—
    - (A) by the Government or an approved pension fund;
    - (B) by a pension fund which is not an approved fund or directly by an employer where, and to the extent to which, the Comptroller is satisfied that such pension is reasonable in amount having regard to the length of service to the employer, the age or state of health of the employee and the remuneration payable to him or her prior to his or her retirement; or
    - (C) earned income other than a pension, in the case of a resident individual, who is a citizen of Saint Lucia and has reached the age of 60 years;
- (l) any pension accruing from a source outside Saint Lucia to any retired person, who, prior to his or her retirement, was not resident in Saint Lucia;
- (m) any benefits payable under the National Insurance Corporation Act to any person by way of—
  - (i) sickness benefit,
  - (ii) invalidity benefit,
  - (iii) maternity benefit,
  - (iv) funeral grant, or
  - (v) any child allowance payable as a survivor's benefit or death benefit;

- (n) the income of any approved pension fund;
- (o) the income of any local authority as defined in the Local Authorities Act, 1916;
- (p) the income of any trade union in so far as such income is not derived from a business carried on by it;
- (q) the income of any registered building society or co-operative society;
- (r) the income of any religious, charitable, or educational institution of a public character in so far as such income is not derived from a business carried on by it for profit, other than a business carried on for the primary purpose of assisting disabled persons to learn or exercise a trade or skill;<sup>3</sup>
- (s) the income of the National Insurance Fund established under the National Insurance Corporation Act;
- (t) the income of the Saint Lucia Banana Growers Association; the Windward Islands Banana Growers Association; and the Saint Lucia Agriculturists Association Limited;
- (u) the income of the Caribbean Development Bank, and the Council of Legal Education;
- (v) any travel, subsistence, entertainment, telephone, housing or transport allowance paid to any member of Parliament or any public officer in connection with the carrying out of the duties of his or her office;
- (w) the official emoluments, allowances and pensions payable in respect of their offices to the Chief Justice and other judges of the Eastern Caribbean Supreme Court;
- (x) distributions from companies;
- (y) any income accruing to any individual from fishing or agriculture, including horticulture and the use of land for husbandry including the keeping or breeding of livestock or poultry or the growing of crops of fruit or vegetables. However, this paragraph shall not be construed to set off the losses incurred from the activities specified in this

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<sup>3</sup> **Editor's note:** Incorporated Trustees of the Presentation Brothers is declared to be an Educational institution of a public character by Gazette Notice 267/1958

paragraph against income from any other source or activity;

- (z) any income earned on securities issued by member governments of the Eastern Caribbean Central Bank;
- (za) interest earned on loan to the Government of Saint Lucia in accordance with statutory instruments 15/1997 and 25/1997 until the payment of the loan authorised under these 2 statutory instruments;
- (zb) interest earned on loan to the Saint Lucia Development Bank and National Commercial Holding Ltd by the Barbados Mutual Life Assurance Society and Life of Barbados Ltd. until the payment of the loan authorised under statutory instrument 15/1997 and 25/1997;
- (zc) the income earned by way of tips by artistic, entertainment and sports personnel, office clerks, customer service clerks, housekeeping and restaurant service workers and other employees in similar categories working in restaurants and hotels but excluding managers and heads of department. In this paragraph—
  - “**hotel**” includes guesthouse, inn or any commercially run establishment which engages in the business of providing accommodation for guests;
  - “**tips**” includes any amount paid by a guest as a gratuity for services rendered by an employee of an hotel or restaurant, and includes service charge.
- (zd) the income earned by public officers as a result of the retroactive salary increase payable for the period 1 April 1995 to 31 March 1999 until the payment of that retroactive salary increase;
- (ze) income earned by way of bonus approved to be paid to certain categories of civil servants in the 1998/1999 Budget presentation until the payment of the sum of \$2 million approved to be paid to certain categories of civil servants in the 1998/1999 Budget;
- (zf) bonds in the amount of EC\$20 million issued for the funding of the low income housing initiative of the National Commercial Bank Mortgage Financial Company of Saint Lucia Limited;

- (zg) profits earned by the National Insurance Property Development & Management Company Ltd. on development fees and project management fees gained under the refurbishment of police stations project;
- (zh) any income accruing from trading in securities under the Securities Act to any citizen or resident of any member State of the Organisation of Eastern Caribbean States or to any company incorporated in and registered in any member State of the Organisation of Eastern Caribbean States;
- (zi) income earned on the emolument paid to professional staff of the Financial Centre Corporation and the International Financial and World Investment Corporation;
- (zj) income tax chargeable on returns from investments in the Production Section Equity Fund;
- (zk) the income of consultants and staff of the Project Coordination Unit, OECS Emergency Recovery and Disaster Management Project;
- (zl) the income of the Project Coordinator and individual Consultants of the World Bank Technical Assistance Water Sector Reform Project;
- (zm) lump sum payment of \$850 in *lieu* of retroactive pay for the year April 2001 to March 2002 made in December 2003 to all public servants inclusive of those employed after March 2002 and still employed in the Public Service as at December of 2003;
- (zn) the income earned by public officers as a result of the retroactive salary increase payable for the periods April 2002 to March 2003 and April 2003 to December 2003;
- (zo) the income arising from CWC 2007 and earned by —
  - (i) CWC 2007 Inc., ICC and its members, IDI, GCC and WICB and its members and their respective advisers not ordinarily resident in Saint Lucia;
  - (ii) a member of a squad;
  - (iii) a CWC 2007 Inc. official; or
  - (iv) staff of ICC, IDI or GCC.

In this paragraph —

"CWC 2007 Inc." means ICC Cricket World Cup West Indies 2007 Inc., a company incorporated in the British Virgin Islands;

"CWC 2007 Inc. official" means the Chairman, Vice Chairman, members of the Board, Chief Executive Officer, Financial Controller, Secretary or Manager of CWC 2007 Inc.;

"GCC" means Global Cricket Corporation Pte Limited, a company incorporated in Singapore as Company No. CRN200008431R and its successors or assigns;

"ICC" means the International Cricket Council, a company limited by guarantee and incorporated in the British Virgin Islands as Company No. 9112;

"IDI" means ICC Development (International) Limited, a company incorporated in the British Virgin Islands as Company No. 90940;

"income" includes basic salary, appearance fees, endorsement fees, prize money, and man-of-the match and man-of-the-series awards;

"WICB" means the West Indies Cricket Board Inc., a company incorporated in the British Virgin Islands as Company No. 302180;

(zp) the income of expatriate Commissioners appointed to review the terms and conditions of employment of medical practitioners and nurses;

(zq) the income earned by way of back pay to non-established and fortnightly paid workers who are affiliated with the National Workers Union;

(zr) the income earned by way of back pay to non-established and fortnightly paid workers who are affiliated with the National Workers Union for the triennium April 2001 to March 2004;

(zs) income arising from trading in securities other than by way of a business on an exchange licensed by the Eastern Caribbean Securities Regulatory Commission pursuant to the Securities Act, Cap. 12.18;

(zt) contributions to the captive insurance fund established by the Saint Lucia Electricity Services Company Limited;

zu the income earned by public officers as a result of the retroactive salary increase payable for the period 1 April 2007 to 30 September 2008 until the payment of that retroactive salary.

*(Amended by Acts 18 of 1990, 24 of 1996, 11 of 1998 and 9 of 2001 and S.I. 78/1990, 56/1996, 26/1997, 38/1997, 102/1997, 102/1997, 34/1999, 69/2000, 141/2000, 232/2000, 98/2001, 136/2001, 12/2003, 19/2003, 59/2003, 4/2004, 60/2004, 75/2004, 82/2004, 4 of 2007, 40 of 2007, 172/2007 and 100 of 2008)*

- (2) The exemptions specified in subsection (1) may be added to, deleted or otherwise varied by order made by statutory instrument by the Minister with the approval of Cabinet.

## **26. EXEMPTION: HOTELS**

- (1) Subject to this section the income accruing from an hotel shall be exempt where the construction of such hotel or of any extensions to the residential accommodation therein commenced after the commencement of this Act.
- (2) An exemption under subsection (1) shall not apply unless approval of such exemption is given by Cabinet following application in writing made to the Minister.
- (3) Where approval has been given in respect of the construction of an hotel there is exempt from tax for such period of time as may be determined by Cabinet, but not exceeding a maximum of 15 years all income accruing to the owner or to the lessee from the carrying on of the business of the hotel.
- (4) Where any hotel ceases to be used as a hotel by the owner or lessee thereof during the tax holiday period the exemption provided by this section shall cease to apply from the date of cessation of such use.
- (5) Where any hotel is sold during the tax holiday period but continues to be used as a hotel, the exemption provided by this section continues to apply to the new owner or the lessee, as the case may be, for the remainder of the period.
- (6) Where approval has been given in respect of any extensions to an existing hotel there is exempt from tax for such period of time as may be determined by Cabinet, but not exceeding a

maximum of 10 years all income attributable to such extensions, accruing to the owner or to the lessee from the carrying on of the business of the hotel.

- (7) The income exempted under subsection (3) or (6) are ascertained after taking into account any allowances for capital expenditure to which the owner or the lessee would have been entitled under Schedule 2 if such income had not been exempt from tax.
- (8) For the purpose of subsection (6) income attributable to the extensions to an existing hotel shall be taken to be such proportion of the total income accruing from the hotel as the number of additional bedrooms in the extensions bears to the total number of bedrooms in the hotel.
- (9) In this section—

“**hotel**” means a building or group of buildings used to provide services and accommodation to guests for reward, containing—

- (a) not less than 6 bedrooms;
- (b) one or more kitchens in which meals may be prepared by employees of the hotel owner or hotel operator for the guests; and
- (c) one or more dining rooms shared in common by all the guests in which meals may be served by employees of the hotel owner or hotel operator to such guests.

*(Amended by Act 15 of 2003)*

“**tax holiday period**” means any period of exemption from tax granted by Cabinet under this section.

## **27. EXEMPTION: INCOME FROM RESIDENTIAL ACCOMMODATION**

- (1) Subject to this section, the income accruing to any person from the construction and sale by him or her, or on his or her behalf, of residential accommodation in Saint Lucia shall be exempt from tax.
- (2) Exemptions under subsection (1) shall not apply unless—

- (a) the construction is in an approved sub-division as certified by the Minister of Finance and Planning;
  - (b) the cost of construction of such residential accommodation does not exceed \$200,000 per unit of housing or such other sum as may be prescribed;
  - (c) the number of houses constructed and sold in any income year is not less than 5;
  - (d) the houses are sold within a period of 10 years after completion of construction.
- (3) Any rental income accruing to the person referred to under subsection (1) from the leasing of such residential accommodation during a period of 10 years after completion of construction shall be exempt from tax provided the amount of rental does not exceed \$500 per month or if higher, the proportion that \$500 bears to the total monthly rental.
- (4) In ascertaining the income which is exempt under this section, any capital allowances to which the owner would have been entitled under Part 2 of Schedule 2 shall be taken into account in the same manner as if the income were chargeable to tax.
- (5) In ascertaining the income which is exempt under this section, sections 37 and 38 shall apply.

*(Substituted by Act 11 of 1998)*

## **28. EXEMPTION: INTEREST FROM HOUSING MORTGAGES**

- (1) Subject to this section, where any person whether resident in Saint Lucia or not, lends money to any other person by way of mortgage in connection with the purchase, construction or reconstruction of residential accommodation in Saint Lucia, either for owner occupancy or for rental purposes, there is exempt from tax any income accruing to the mortgagee by way of interest on the loan secured by, and any service charge payable under such mortgage.
- (2) The mortgage referred to in subsection (1) is a mortgage in respect of which the rate of interest and service charge do not exceed 11% and the exemption only applies where the mortgage does not exceed \$150,000.

- (3) Where the rate of interest and service charge or the amount of the mortgage exceed the limits specified in subsection (2), the income which is exempt from tax is such proportion of the total income accruing as—

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- (a) the rate of 11% bears to the total interest and service charge payable; or
  - (b) the sum of \$150,000 bears to the total amount of the mortgage, in the income year or where both limits are exceeded, the lesser thereof.
- (4) Where interest accrues to a resident company by way of interest or service charge which is exempt from tax under this section, such exempt income may be distributed by way of dividend to the shareholders and any distribution so made, whether during the period of exemption or at any subsequent time, subject to section 31 is exempt from tax in the hands of the shareholders.
- (5) The rate of interest and service charge and the mortgage limit specified in subsection (2) may be varied by order made by statutory instrument by the Minister.

**29. EXEMPTION: INTEREST PAID ON APPROVED BORROWINGS BY MORTGAGE COMPANIES**

Where a company carries on a business which consists of lending of moneys in relation to mortgages, the interest from which is exempt under section 28, the Minister may, by order published in the Gazette exempt, in the hands of the debenture holders, the amount of any interest payable by that company in respect of debenture borrowing by it for the purpose of financing the purchase, construction or reconstruction of houses where he or she is satisfied as to the reasonableness of—

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

**30. COMPTROLLER MAY REQUIRE COMPANY TO KEEP SPECIAL ACCOUNT**

Where an order is made under the preceding section in respect of debenture borrowing, the company shall maintain such special account as the Comptroller may require showing—

- (a) the total borrowings; and
- (b) the amount loaned by the company under mortgage the interest from which is exempt under section 28.

### **31. EXEMPTION: APPROVED ENTERPRISES FOR FISCAL INCENTIVE RELIEF**

Where a company is approved as an approved enterprise for the manufacture of an approved product under the Fiscal Incentives Act it is exempt from tax under this Act during the currency of its tax holiday period provided under that Act.

## **PART 5 ASCERTAINMENT OF ASSESSABLE INCOME**

### *Division 1 — Gains or Profits forming Assessable Income*

### **32. ASSESSABLE INCOME: GENERAL**

- (1) Subject to this Part, the assessable income of any person includes the gains or profits from or by way of—
- (a) any business;
  - (b) any employment;
  - (c) rentals and royalties;
  - (d) interest or discounts;
  - (e) premiums, commissions, fees and licence charges;
  - (f) annuities and other periodic receipts, including receipts by way of alimony or maintenance; and
  - (g) any other gains or profits of an income nature which accrued to that person which are not included under any other paragraph of this subsection.

*(Amended by Act 18 of 1990)*

- (2) Subsection (1) shall not be construed so as to bring within the meaning of assessable income, liable to assessment under Part 10, any income which is exempt under Part 4 or any amounts accrued to a non-resident (other than from the carrying on of a business or the exercise of employment) which are liable to withholding tax under section 76.

**33. BUSINESS INCOME**

- (1) Subject to this Act, the assessable income of any person for any year of income, insofar as it is derived from a business, is the gains or profits accrued from the business during that year of income.
- (2) In ascertaining the assessable income from a business the value of any trading stock held at the beginning and end of the income year shall be taken into account in accordance with Schedule 1.
- (3) The assessable income referred to in subsection (1) shall include—
  - (a) any amount accrued under any contract of insurance against loss of profits or loss of stock or by way of compensation or damage for loss of profits or loss of stock;
  - (b) any amount accrued by way of recovery of any bad or doubtful debt which has been allowed as a deduction for any previous year of income;
  - (c) any amount accrued by way of recovery or reimbursement of any expenditure or loss or by way of remission or other cessation of indebtedness by a creditor, whether in a bankruptcy or insolvency or otherwise where such amount has been allowed as a deduction for a previous year of income;
  - (d) any amount accrued by way of subsidy for, or in relation to, the carrying on of a business;
  - (e) the amount of any balancing charge, ascertained under Schedule 2.
- (4) Where a person carries on a business in and out of Saint Lucia the amount which considered to accrue to him or her from a source situate in Saint Lucia in respect of that business is such sum as appears to the Comptroller to be reasonable having regard to—
  - (a) the nature of the operations carried on in and out of Saint Lucia;
  - (b) the turnover of the business in and out of Saint Lucia;
  - (c) the situation and value of the assets employed in the business;

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

### 34. EMPLOYMENT INCOME

- (1) Subject to this Act, the employment income of any person for any year of income includes—
  - (a) any amount accrued by way of wages, salary, leave pay, fee (including a director's fee), commission, bonus or gratuity;
  - (b) any travelling, entertainment or other allowance to the extent to which it does not represent a repayment to the employee of moneys wholly and exclusively expended by him or her in the performance of the duties of the employment;
  - (c) the rental value of any quarters or residence provided by the employer, but not including the official residence of the Prime Minister or any High Commissioner or Ambassador of Saint Lucia;
  - (d) the value of any other benefit or advantage received or enjoyed by the employee in respect of his or her employment; or
  - (e) any pension payable to a former employee, or the dependent of a former employee either directly by the employer or indirectly by the trustees of a pension fund in respect of the employment, to the extent to which such pension is not exempt under section 25.
- (2) The employment income of any person does not include the value of any leave passage to or from Saint Lucia granted to any person, at intervals of not less than 2 years, where such leave passage is in fact used but this subsection does not exclude from assessable income—
  - (i) any money or other consideration received *in lieu* of the entitlement to a leave passage, or
  - (ii) the value of any passage granted to any person at the termination of a contract of service, except at intervals of not less than 2 years where such person returns to Saint

Lucia after leave to undertake employment under another contract of service with the same employer on substantially similar terms.

- (3) Where an employment is exercised in Saint Lucia on a visit or visits to Saint Lucia by a non-resident in the performance of duties for a non-resident employer, and the Comptroller is satisfied that—
- (a) the visit or visits do not exceed 30 days in any income year; and
  - (b) the salary of the employee is not allowable as a deduction against the profits of a business carried on in Saint Lucia;
- such income shall not be charged to tax under this Act.
- (4) Subsection (3) does not exclude from assessable income, any employment income accruing to—
- (i) public entertainers, including theatre, motion picture, radio or television artistes and musicians, or
  - (ii) athletes or sportspersons.
- (5) For the purposes of subsection (1)(c) the rental value of any quarters or residence provided is considered to be—
- (a) where the property is not owned by the employer, the annual rental paid therefor; or
  - (b) where the property is owned by the employer, such annual value as is assessed thereon under the Land and House Tax Act,

together with any other expenditure of a recurrent nature including electricity, water and telephone charges and other outgoings of a domestic nature borne by the employer, less any amount paid as rent by the employee.

### **35. LOANS OR ADVANCES BY A CONTROLLED COMPANY TO A SHAREHOLDER, DIRECTOR OR HIGHER PAID EMPLOYEE**

- (1) Where a controlled company makes a loan or advances any money to a shareholder therein, an associate of a shareholder (within the meaning of section 39(3), a director or a higher paid employee thereof, the amount of such loan or advance shall, subject to this section, be deemed to be income accrued to the shareholder, director or employee in the income year in which

the loan or advance was made, unless he or she satisfies the Comptroller that—

- (a) the loan or advance is repaid within one year after the end of the income year in which it is made; and
  - (b) that the repayment was not made as part of a series of loans or advances and repayments.
- (2) Subsection (1) shall not apply to any loan or advance made by a company in the ordinary course of its business where such business includes the lending of money.
- (3) Where a loan or advance is made to which subsection (1) applies and the shareholder, associate, director or employee in a subsequent income year repays the loan or advance either wholly or in part, the shareholder, director or employee is entitled to relief, in the year of income for which the repayment is made, by way of a tax credit of so much of the tax payable for the year of income for which the amount was considered to have been income as is attributable to the amount repaid.
- (4) In this section a loan or advance to a shareholder, director or employee is considered to include—
- (a) the amount of any payment made by the company to a third person on his or her behalf; or
  - (b) the sale price of any trading stock or other property sold by the company to him or her,
- in respect of which debt the shareholder, director or employee is debited in the books of account of the company.
- (5) For the purpose of this section, an employee whose remuneration from a company exceeds \$24,000 per annum is considered to be a higher paid employee.

### **36. RENTAL INCOME**

The following amounts are to be charged to tax as rental income—

- (a) the gross rental payable by the lessee, tenant or occupier of any property;
- (b) any premium or other consideration, however described, payable for the right of use or occupancy of any property;
- (c) the value of any improvements which under a lease agreement, the lessee has effected to property for the

benefit of the lessor over a period not exceeding 5 years as the Comptroller may determine.

*Division 2—Deductions allowable in ascertaining assessable income*

**37. DEDUCTIONS ALLOWABLE : GENERAL**

- (1) The assessable income of every person for each year of income shall be ascertained after taking into account the deductions allowable under this Division.
- (2) Subject to subsection (3), in ascertaining the assessable income of any person for any year of income from any source specified in section 32 there shall, upon due claims and subject to such evidence as the Comptroller may require, be allowed as a deduction, all expenditure wholly and exclusively incurred by that person during that year of income for the purpose of producing his or her assessable income from that source.
- (3) For the purposes of this Division where income which has accrued to a person is considered to have accrued to, and is included in the assessable income of, some other person, any expenditure incurred by either person in relation to such income is considered to have been incurred by the person to whom such income is deemed to have accrued.
- (4) Where expenditure is incurred partly for the purpose of producing assessable income and partly for purposes for which no deduction is allowable, subsection (2) shall not be construed to prevent the apportionment of such expenditure in such manner as appears to the Comptroller to be reasonable.

**38. DEDUCTIONS ALLOWABLE : SPECIFIC**

- (1) Subject to this Division and without prejudice to section 37(2), save to the extent that any provision of this section imposes a restriction on a deduction otherwise allowable, the deductions allowable in ascertaining the assessable income of any person for any year of income shall include—
  - (a) any allowances to which that person is entitled under section 40 and Schedule 2 in respect of capital expenditure;

- (b) any expenditure incurred by that person during the income year on the repair of premises, plant and machinery used by him or her in his or her business, or the replacement of any implement, utensil or similar article for which no allowance is given under Schedule 2;
- (c) any legal expenses incurred by that person for the income year in respect of any claim, dispute or action at law arising in the course, or by reason of, the ordinary operations undertaken by him or her in the carrying on of business;
- (d) any annually assessed rate or taxes imposed on any immovable property used by him or her for the purpose of producing assessable income;
- (e) any premiums incurred under a policy of insurance against damage to or loss of property—
  - (i) where the property insured is used for the purpose of producing assessable income, and
  - (ii) the policy is entered into with an insurance company which carries on business in Saint Lucia and is liable to include such premiums in its assessable income;
- (f) any premiums incurred under a policy of insurance against loss of profits, however—
  - (i) such deduction shall not be allowed unless the policy is entered into with an insurance company which carries on business in Saint Lucia and is liable to include such premiums in its assessable income, and
  - (ii) where any policy against loss of profits arises under a policy of insurance on the life of an employee, including a director, a deduction shall only be allowable where the Comptroller is satisfied that—
    - (A) any sum recoverable will constitute assessable income under section 33;
    - (B) the insurance is intended to meet a loss of profits arising from the loss of the employee's services;
    - (C) if the policy of insurance is against the death or permanent disablement of the employee, it

is a policy providing only for a sum to be paid in the event of the death or permanent disablement of the employee within a specified number of years and while in the employment of the employer;

- (g) the amount of any debts due to that person to the extent to which they are bad and provided they have been brought to account in the ascertainment of his or her assessable income for any year of income;
- (h) such amount as the Comptroller considers reasonable in respect of any debts due to that person which he or she considers to be doubtful of recovery and provided they have been brought to account in the ascertainment of his or her assessable income for any year of income;
- (i) any expenditure incurred during the year of income by way of interest on any loan made to that person, including interest payable on debentures, to the extent to which the Comptroller is satisfied that the amount of such loan was used by that person for the purpose of producing assessable income;
- (j) any amount contributed under the National Insurance Corporation Act by that person in respect of persons employed in his or her business;
- (k) any amount contributed by him or her in respect of his or her employees by way of current annual contributions to an approved pension fund;
- (l) such amount as is specified in subsection (2) in respect of any contribution made by way of special payment to an approved pension fund where such payment is made—
  - (i) in relation to a period of service by an employee prior to the setting up of the approved pension fund, or
  - (ii) to meet any actuarially ascertained insufficiency in the resources of the approved pension fund to meet its obligations to his or her employees;
- (m) any expenditure incurred by that person during the income year by way of audit fees, accountancy fees or in respect of the preparation of a return of income for the purposes of this Act or the previous Act;

- (n) any expenditure incurred by that person during the income year by way of subscription or donation to a professional association approved by the Comptroller where he or she is satisfied that such body of persons is a non-profit body established with the object of maintaining and advancing the standards of such profession;
  - (o) an additional amount of 25% of the total salary paid during the income year to each graduate employed, for a maximum period of 3 years;
  - (p) all expenditure incurred as a result of incorporation costs for the establishment of a new small scale business enterprise;
  - (q) from income year 2001 up to and including income year 2003, expenses reasonably incurred by that person during the income year in the purchasing and installation of a new solar water heating system up to a limit of \$6,500;
  - (r) from income year 2004, an allowance equal to 150% of the actual expenditure incurred by a company which –
    - (i) promotes or sponsors a local or regional sporting activity or event, sportsperson or team in respect of such promotion or sponsorship up to a maximum of \$75,000; or
    - (ii) build, construct rehabilitate, or repair a sporting facility up to a maximum of \$250,000;
  - (s) from income year 2005, an additional amount of 25% of the total salary paid during the income year to each graduate of the National Skills Development Centre employed with an employer who is certified by the National Skills Development Centre, for a maximum period of 3 years;
  - (t) from income year 2005, up to and including income year 2007, expenses incurred by that person during the income year in the purchasing and installation of a new solar water heating system up to a limit of \$6,500.
- (2) For the purpose of subsection (1)(p), the expenditure allowed shall be fixed by the Minister in a notice to be published in the Gazette.

- (3) Where a special payment is made to an approved pension fund to which subsection (1) applies such amount shall be allowed as follows—
- (a) where the special payment does not exceed the current annual contribution it is to be wholly allowed for the year of income for which payment is made;
  - (b) where the special payment exceeds the current annual contribution, it is to be allowed in such years of income, not exceeding 5 in number, as in the opinion of the Comptroller is reasonable in the circumstances;
  - (c) where under paragraph (b) annual deductions are allowable over a number of years of income the first such deduction is allowable for the year of income for which the special payment is made.
- (4) For the purposes of –
- (a) subsection (1)(r) the deduction shall—
    - (i) apply to a sportsperson who belongs to a club recognized by the Minister responsible for sports,
    - (ii) apply to a local team which is affiliated to a national association or belongs to a club recognized by the Minister responsible for sports, and
    - (iii) not be granted for the sponsorship of clubs established by corporate bodies;
  - (b) paragraph (a) and subsection (1)(r)—

“**club**” means a formal structure—

    - (i) with a document which clearly sets out the rules, regulations, accepted patterns of behaviour of its members and the role of each member,
    - (ii) which follows a program over a sustained period of time,
    - (iii) which exists not only for the fulfilment of programmed activities but also for the social development of its membership,
    - (iv) which shares similar social objectives with other clubs on a regional level, and
    - (v) which demonstrates both formal and informal relationships;

“**national association**” means a nationally, regionally or internationally recognized grouping of clubs or organizations with similar interests;

“**sponsor**” means one who provides funds or equipment for a broadcast, sporting activity or event;

“**sporting activities or events**” means athletics, basketball, bridge, amateur boxing, martial arts, cricket, squash, woule-la-ba, hockey, cycling, darts, dominoes, football, rugby, golf, netball, swimming, tennis, body building, yachting and such other activities or events as determined by the Minister responsible for sports, after consultations with the Minister by order published in the Gazette;

“**sporting facility**” means playing field, playing court, pavilion and any other amenity to serve such facility;

“**sportsperson**” means an individual engaged in sporting activities or events;

“**team**” means an informal unit, with a captain, vice captain and coach, to manage its activities, which comes together usually on a seasonal basis, for the purpose of fulfilling a particular objective or a set of objectives.

*(Amended by Act 11 of 1998, 9 of 2001 and 7 of 2006)*

### **39. RESTRICTIONS ON DEDUCTIONS: MANAGEMENT CHARGES AND CERTAIN PAYMENTS BY CONTROLLED COMPANIES TO SHAREHOLDER**

- (1) Despite section 37, where a person carrying on business in Saint Lucia incurs expenditure by way of paragraph 1(1)(a) and 1(1)(b) of Schedule 3, or by way of head office expenses being expenditure payable—
- (a) to a non-resident (such non-resident not being engaged in a business in Saint Lucia giving rise to such management charges); or

*[The next page is page 50A]*

- (b) by a branch of a non-resident company to its head office or to some other branch outside Saint Lucia of such company, a deduction shall be allowed of the lesser of—
  - (i) the aggregate of such charges, or
  - (ii) 10% of the deductions (exclusive of such charges) allowable under section 37 (excluding cost of sales) and the provisions of section 38(1) other than section 39(1)(a), or such higher amount as in the opinion of the Comptroller is reasonable.

*(Amended by Act 7 of 2006)*

- (2) Despite section 37, in ascertaining the chargeable income of a controlled company for any year of income, the Comptroller may disallow any amount, otherwise deductible, which is paid or payable to a shareholder or any associate of a shareholder by way of—
  - (a) employment income; or
  - (b) interest on a loan by such person to the company,and which in the opinion of the Comptroller is excessive in amount, having regard to the duties performed or the rate of interest payable on such loan.
- (3) For the purposes of subsection (2)—
  - (a) **“a controlled company”** means a resident company which is owned and controlled by not more than 5 shareholders excluding the Government and any company which is not itself a controlled company;
  - (b) **“an associate of a shareholder”** means, in relation to a shareholder, an individual who is—
    - (i) the spouse or the shareholder, or
    - (ii) a lineal ancestor, child or other lineal descendant, brother, sister, uncle, aunt, nephew or niece of the shareholder or of his or her spouse;
  - (c) a company shall be deemed to be owned and controlled by not more than 5 shareholders where 5 or less individual persons and any associates of such persons (within the meaning of paragraph (b)) beneficially own shares carrying between them, directly or indirectly—

*[The next page is page 50B]*

- (i) the right to exercise more than  $\frac{1}{2}$  of the voting power in that company,
  - (ii) the right to receive more than  $\frac{1}{2}$  of any dividends that might be paid by that company, and
  - (iii) the right to receive more than  $\frac{1}{2}$  of any capital distribution in the event of the winding up or of a reduction in the share capital of that company.
- (4) Despite section 37, a deduction shall be allowed in respect of expenditure incurred by a married person by way of employment income within the meaning of section 34 to his or her spouse as an employee or former employee, only to the extent to which the Comptroller is satisfied that such expenditure is reasonable in amount, and any amount which is not allowed as a deduction by reason of this subsection shall be deemed not to be employment income of the spouse to whom it was paid.
- (5) Subsection (4) applies to a partnership in respect of employment income paid or payable to the spouse of one of the partners and, despite section 21, any amount which is not allowed as a deduction is chargeable income of such partner.

#### **40. CAPITAL ALLOWANCE**

- (1) For the purpose of ascertaining the assessable income of any person for any year of income there is allowed as a deduction an initial allowance of  $\frac{1}{5}$  as well as any amount to which that person is entitled under Schedule 2 in respect of capital expenditure incurred by him or her.
- (2) For the purposes of ascertaining the assessable income of any person who is carrying on a small scale business enterprise, there is granted, in the initial year of income, an investment

*[The next page is page 51]*

allowance of 10% on the capital expenditure incurred on the provision of plant and machinery acquired and brought into use by that person for the purpose of producing assessable income.

- (3) For the purpose of this section capital expenditure relates to plant and machinery imported into Saint Lucia for the first time and is funded from non-local sources.

*(Substituted by Act 11 of 1998)*

#### **41. DEDUCTION FOR LOSSES**

- (1) Subject to subsection (4), where deductions allowable to any person for any year of income under the provisions of this Division other than this section, exceed the assessable income from the source to which these deductions relate, the amount of such excess is allowed as a deduction against income accruing from other sources of income for that year of income except exempt income.
- (2) Subject to subsection (4), where, after the allowance of any deduction to which the person may be entitled under subsection (1), an excess still remains, the amount of such excess (herein referred to as “the assessed loss”) is allowed as a deduction in ascertaining the assessable income of subsequent years of income to the extent provided in subsection (3).
- (3) The deduction provided in subsection (2) shall not exceed  $\frac{1}{2}$  of the assessable income of the next subsequent year of income ascertained in accordance with this Part but before the operation of subsection (2) (in this section referred to as “the relevant assessable income”) and where the assessed loss exceeds  $\frac{1}{2}$  of the relevant assessable income or there is no such income of such year of income, the excess or the amount of the assessed loss, as the case may be, is to be carried forward and deducted in like manner in ascertaining the assessable income of the next following 5 years of income or until the assessed loss has been fully allowed, whichever is the earlier.
- (4) Where, for any year of income during the tax holiday period of any person whose exemption relates to income accruing in respect of—
  - (a) an hotel; or
  - (b) an enterprise approved under the Fiscal Incentives Act,

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

- (5) Despite the provisions of this section, no deduction shall be allowed in respect of any loss arising from the carrying on of any business where, in the opinion of the Comptroller, such business was not carried on on a commercial basis and with a view to the realisation of gains or profits.
- (6) For the purposes of subsections (2) and (3) an assessed loss is considered to include a loss incurred under the corresponding provision of the previous Act, and any losses brought forward in respect of years of income prior to 1988 shall be treated in like manner as if they were an assessed loss for the year of income 1988.

#### **41A. INTERPRETATION IN RESPECT OF SECTIONS 41B TO 41J**

- (1) For the purposes of sections 41B to 41J—
  - “**capital allowances**” means the allowances specified in section 40;
  - “**claimant company**” means a company which utilises the trading loss of a surrendering company;
  - “**current loss**” means a trading loss incurred for the current income year;
  - “**51% subsidiary**” means a body corporate of which—
    - (a) 51% or more of the ordinary share capital of that body corporate is beneficially owned, whether directly or indirectly by another body corporate; and
    - (b) 51% or more of the voting rights are attached to its share capital;

“**surrendering company**” means a company which suffers a trading loss and surrenders this loss to another company for the purposes of group relief;

“**trading loss**” means the assessed loss referred to in section 41 but does not include capital allowances and expenses payable to a group member and claimed as a deduction if corresponding amounts have not been included in the income of the group member for the income year.

- (2) Group relief is relief that allows the trading loss, excluding the current loss, of a surrendering company to be set off, by way of relief from tax, against the profits of a claimant company where both companies satisfy the provisions of the group test set out in subsections (3) and (4).
- (3) Group relief is available where a surrendering company and a claimant company are members of the same group.
- (4) For the purposes of subsection (3) 2 companies are regarded as being members of the same group where—
  - (a) one company is a 51% subsidiary of the other company; or
  - (b) both companies are 51% subsidiaries of a third company.
- (5) Every company engaged in group relief must be resident in Saint Lucia.

*(Inserted by Act 15 of 2003)*

#### **41B. DETERMINATION OF SUBSIDIARY COMPANY**

- (1) In determining, for the purposes of group relief, whether a company is a 51% subsidiary of another, the other company shall be treated as not being the owner—
  - (a) of any share capital which it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade;
  - (b) of any share capital which it owns indirectly and which is owned by a body corporate for which a profit on the sale of the shares would be a trading receipt; or
  - (c) of any share capital which it owns directly or indirectly in a body corporate not resident in Saint Lucia.

- (2) Despite that any time a company is a 51% subsidiary of another company the former company shall not be treated at that time as such a subsidiary with respect to group relief unless, additionally at that time—
- (a) the parent company is beneficially entitled to not less than 51% of any profits available for distribution to equity holders of the subsidiary company; and
  - (b) the parent company would be beneficially entitled to not less than 51% of any assets of the subsidiary company available for distribution to its equity holders on a winding-up.

*(Inserted by Act 15 of 2003)*

#### **41C. CLAIM FOR GROUP RELIEF**

- (1) A claim for group relief shall specify the following—
- (a) the name of the claimant company;
  - (b) a schedule of any available trading losses claimed by the claimant company;
  - (c) the name of the surrendering company;
  - (d) a schedule of any available trading losses relinquished by the surrendering company; and
  - (e) the amount claimed in respect of the surrendering company.
- (2) A claim for group relief—
- (a) shall not be allowed unless the profits of the claimant company are first applied against any previous years' assessed losses of that company;
  - (b) shall not exceed  $\frac{1}{2}$  of the assessable income of the claimant company and where the trading loss exceeds  $\frac{1}{2}$  of the assessable income or where there is no such income of such year of income, the excess or the amount of the trading loss, as the case may be, shall be carried forward and deducted in like manner in ascertaining the assessable income of the next following 5 years of income or until the trading loss has been fully allowed, whichever is the earlier;

- (c) shall require the consent of the surrendering company which shall be submitted to the Comptroller in the form prescribed by the Comptroller;
  - (d) must be made within 2 years of the date of the end of the surrendering company's income year to which the claim relates; and
  - (e) shall only be allowed by the Comptroller after all taxes due and payable under any other Act under the administration or management of the Inland Revenue Department, have been satisfied by both the claimant company and the surrendering company.
- (3) Group relief claim shall apply only in the case of a company that is part of a group restructuring or reorganization approved by the Comptroller.
- (4) Subject to this section, the assessed losses carried forward by the companies taking part in the group restructuring or reorganization shall be available for utilization for purposes of a claim for group relief except that the assessed losses carried forward shall expire in accordance with the provisions of section 41(3).

*(Inserted by Act 15 of 2003)*

#### **41D. COMPANIES JOINING GROUP**

- (1) Despite the provisions of section 41C, the assessed losses carried forward by a company joining a group after restructuring or reorganization shall not be available for utilization by the companies in the existing group for purposes of claiming group relief.
- (2) Despite the provisions of section 41C, the trading losses carried forward by the group, shall not be available for utilization by a company joining the group after restructuring or reorganization for a period of 2 years after joining.

*(Inserted by Act 15 of 2003)*

#### **41E. RELIEF OBTAINABLE ONCE FOR THE SAME AMOUNT**

Relief shall not be given more than once in respect of the same amount, whether by giving group relief or by giving some other

relief, in any income year, to the surrendering company, or by giving group relief more than once. *(Inserted by Act 15 of 2003)*

#### **41F. AGGREGATE OF CLAIM**

- (1) Subject to subsection (2), 2 or more claimant companies may make claims relating to the same surrendering company.
- (2) Despite subsection (1) where the claimant companies referred to in subsection (1) make claims, the aggregate of the claims shall not exceed the amount of the loss surrendered by the surrendering company.

*(Inserted by Act 15 of 2003)*

#### **41G. CAPITAL ALLOWANCES**

A claimant company shall only be eligible to claim group relief where that company, has first claimed all its capital allowances in accordance with the provisions of section 40. *(Inserted by Act 15 of 2003)*

#### **41H. TAX RECOVERY**

Subject to section 90, where the Comptroller discovers that any group relief which has been given is or has become excessive, he or she may make an assessment to tax in the amount which ought in his or her opinion to be charged.

*(Inserted by Act 15 of 2003)*

#### **41I. EXEMPT COMPANIES**

Group relief is not available to—

- (a) any company established under the International Business Companies Act or any enactment replacing it;
- (b) any other company which has been granted tax concessions under any other enactment with the exception of companies operating under the Tourism Incentive Act.

*(Inserted by Act 15 of 2003)*

*[The next page is 54(C)]*

**41J. PROFITS AND LOSSES AND DISTRIBUTION OR CHARGE ON INCOME VIS-A-VIS GROUP RELIEF**

- (1) A payment for group relief—
  - (a) shall not be taken into account in computing profits or losses of either company for tax purposes; and
  - (b) shall not for the purposes of the Income Tax Act be regarded as a distribution or charge on income.
- (2) In subsection (1) a “**payment for group relief**” means a payment made by the claimant company to the surrendering company under an agreement between them as respects an account surrendered by way of group relief, being payment not exceeding that amount.

*(Inserted by Act 15 of 2003)*

**41K. EXEMPTION FROM STAMP DUTY**

Despite anything to the contrary in the Stamp Duty Act, any instrument relating in any way to the assets or activities of a company taking part in a group restructuring or reorganization approved by the Comptroller, is exempt from the payment of stamp duty.

*(Inserted by Act 15 of 2003)*

**42. DEDUCTIONS NOT ALLOWABLE UNDER MORE THAN ONE PROVISION**

- (1) No amount shall be deducted under any provision of this Act in respect of expenditure, or claim for an allowance, which has been or will be taken into account as a deduction or in calculating a deduction under any other provision of this Act or the previous Act.
- (2) Where an amount qualifies for deduction under 2 or more provisions of this Act, subsection (1) does not prevent the person concerned claiming such of those deductions as is most advantageous to him or her.

**43. EXPENDITURE FOR WHICH NO DEDUCTION ALLOWABLE**

- (1) Subject to any express provision in this Act authorising a specified deduction, in ascertaining the assessable income of any person for any year of income no deduction is allowed in respect of—
- (a) any expenditure to the extent to which it is not incurred for the purpose of producing assessable income;
  - (b) any expenditure incurred for domestic or private purposes including *inter alia*—
    - (i) the cost of travelling between residence and place of business,
    - (ii) the rent of any dwelling house or domestic offices or any part thereof as is not used in connection with the carrying on by him or her of his or her trade, business, profession or vocation,
    - (iii) any remuneration, or interest on capital, paid or credited to himself or herself,
    - (iv) the cost price of any goods taken out of the business for the use of the proprietor or any partner or their families;
  - (c) any expenditure incurred for the purpose of producing exempt income;
  - (d) any capital withdrawn or any expenditure or loss of a capital nature;
  - (e) any tax imposed under this Act or any previous enactment relating to tax imposed on income;
  - (f) any income tax or tax of a similar nature charged in a country outside Saint Lucia; or
  - (g) any contribution made to a pension fund which has not been approved under this Act.
- (2) Notwithstanding sections 37 and 38, in ascertaining the chargeable income of any person for any year of income, no deduction shall be allowed in respect of any amount paid or payable to a—

[The next page is 54E]

- (a) person to whom sections 77 and 78 applies; or
  - (b) non-resident to which section 76 applies,
- unless the Comptroller is satisfied that the tax chargeable thereon has been paid.

*[Amended by Act 7 of 2006]*

## **PART 6**

### **ASCERTAINMENT OF CHARGEABLE INCOME : DEDUCTIONS AND ALLOWANCES**

#### **44. CONCESSIONAL DEDUCTIONS: GENERAL**

- (1) In ascertaining the chargeable income for any year of income of any person there is allowed as a deduction from his or her assessable income, upon due claim and subject to such evidence as the Comptroller may require, any amount to which he or she is entitled under this Part.
- (2) Where a person is not entitled to any deductions under this Part, his or her assessable income constitutes his or her chargeable income.
- (3) The deductions allowable under this Part is allowed after any deductions to which he or she is entitled under Division 2 of Part 5 and in the event of there being an insufficiency of assessable income to permit the allowance in full of any deductions under this Part then such concessional deductions shall be limited to the amount of the assessable income, if any, which remains.

#### **45. PERSONAL ALLOWANCE TO INDIVIDUALS**

A resident individual shall be entitled irrespective of the nature of his or her income, to the allowance specified in Schedule 6 for an income year.

#### **46. ALLOWANCE FOR SPOUSE**

- (1) Subject to section 13 a resident individual is entitled to an allowance of \$1,500 in respect of his or her spouse if, at any

time during the year of income the spouse is living with him or her or is maintained by and not separated from him or her in circumstances in which he or she is entitled to a deduction under section 47.

- (2) The deduction allowable under this section is reduced where the spouse has assessable income in excess of \$1,500 by \$1 for each dollar of the excess.

*[The next page is 55]*

**47. DEDUCTION FOR MAINTENANCE OR ALIMONY**

- (1) Subject to subsection (2), a resident individual who, in the year of income has paid—
  - (a) a maintenance or separation allowance (under a deed of separation or an order of court) to his or her spouse from whom he or she is separated; or
  - (b) alimony, to a former spouse from whom he or she is divorced,is entitled to a deduction equal to the amount of such allowance or alimony.
- (2) The deduction allowable under subsection (1) shall not apply unless the person receiving such allowance or alimony is chargeable to tax thereon under this Act.

**48. DEDUCTION FOR MAINTENANCE OF CHILDREN**

- (1) Subject to this section in ascertaining the chargeable income of an individual who is resident in Saint Lucia and who proves to the satisfaction of the Comptroller that he or she maintained a child who—
  - (a) was born during the income year; or
  - (b) at the commencement of the income year has not attained the age of 16 years or, irrespective of age, was a student child or an invalid child,is entitled to a deduction of \$1,000.
- (2) The deduction allowable under this section does not apply in relation to any child whose income from any source during the income year exceeds \$1,000.
- (3) Where 2 or more individuals contribute towards the maintenance of a child to whom this section applies the deduction allowable may be apportioned between the individuals in the manner that appears to the Comptroller to be reasonable.
- (4) In this section—

“**invalid child**” means a child of the individual claiming the deduction provided by this section who is by reason of

permanent disability dependent upon his or her parent for his or her maintenance.

“**student child**” means a child who, at any time during the income year, was—

- (a) receiving full time education at a school, college or other educational institution but not including a university or other institution providing technical or professional education or a standard equivalent to a university; or
- (b) serving full time as an apprentice or under articles or with a view to qualifying in a trade or profession;

#### **49. DEDUCTION FOR EDUCATION OF CERTAIN CHILDREN**

- (1) Subject to this section, in ascertaining the chargeable income of an individual who is resident in Saint Lucia and who, during the income year, maintained a child who, during the income year—
  - (a) had attained the age of 10 years; and
  - (b) was a student child within the meaning of section 48(4), whether in Saint Lucia or elsewhere,is entitled to a deduction in respect of the education or training of that child.
- (2) The deduction allowable under this section is \$2,000 in respect of any one child.
- (3) Where 2 or more individuals contribute towards the maintenance of a child to whom this section applies the deduction allowable may be apportioned between the individuals in such manner as appears to the Comptroller to be reasonable.
- (4) Where a deduction is allowable under this section no deduction shall be allowed in respect of the same child under section 48.

*(Amended by Act 18 of 1990)*

#### **50. DEDUCTION FOR HIGHER EDUCATION**

- (1) Subject to this section, in ascertaining the chargeable income of an individual who is resident in Saint Lucia and who, is a relative of a person whom he or she maintained during the

income year shall, if that person irrespective of age, was a university student, whether in Saint Lucia or elsewhere, during that income year, be entitled to a deduction in respect of education of such university student.

- (2) The deduction allowable under this section is \$5,000 in respect of any one person.
- (3) Where a deduction is allowable under this section no deduction is allowed in respect of the same person under section 48.
- (4) Where 2 or more individuals contribute towards the maintenance of a person to whom this section applies the deduction allowable may be apportioned between the individuals in such manner as appears to the Comptroller to be reasonable.
- (5) In this section—

“**relative**” means a parent, grandparent, brother, sister, uncle or aunt and includes a person *in loco parentis*;

“**university student**” means a person receiving full time education at a university or at any other institution providing technical or professional education of a standard equivalent to university education.

*(Amended by Act 18 of 1990)*

## 51. ALLOWANCE FOR HOUSEKEEPER

- (1) Subject to this section, where a resident individual being a widower or widow or unmarried, divorced or separated maintains a relative who, during the year of income, resided with him or her—
  - (a) for the purpose of having the charge and care of any child of his or hers within the meaning of section 48; or
  - (b) in the capacity of housekeeper,that individual is entitled to an allowance of \$200.
- (2) The deduction allowable under subsection (1) is granted only—
  - (a) in respect of one person for any year of income, and
  - (b) where no deduction is allowed to any other person in respect of the maintenance of such person.

- (3) Where a deduction is allowable under subsection (1) no deduction is allowed in respect of the same person under section 52.

## 52. ALLOWANCE FOR DEPENDENT RELATIVE

- (1) Subject to this section, where a resident individual during the year of income maintains a dependent relative he or she is entitled to an allowance of \$350, in respect of each such relative.
- (2) The deduction allowable under this section—
  - (a) does not apply in relation to any child in respect of whom a deduction is allowed under sections 48, 49, or 50; and
  - (b) shall be reduced, where such dependent relative has assessable income in excess of \$350, by \$1 for each dollar of the excess.
- (3) Where 2 or more individuals are entitled to relief under subsection (1) the deduction allowable may be apportioned between such individuals in such manner as appears to the Comptroller to be reasonable.
- (4) In this section—

“**dependent relative**” means, in relation to an individual, a person who—

  - (a) whether incapacitated or not is the parent or other lineal ancestor or aunt or uncle of that individual or of his or her spouse and is unmarried, divorced, widowed or separated; or
  - (b) is incapacitated by old age or infirmity or is unemployable by reason of old age and is the child, brother or sister of that individual or of his or her spouse.

## 53. DEDUCTION FOR CONTRIBUTIONS TO LIFE ASSURANCE, OR OTHER RETIREMENT BENEFITS

- (1) Subject to this section, where in any year of income a resident individual makes payments for the future benefit of himself or herself, his or her spouse, children or other dependents—

- (a) as premiums for insurance on his or her life or the life of his or her spouse or child, or contracts for a deferred annuity on his or her life or the life of his or her spouse or child with an insurance company registered under the Insurance Act; or
- (b) as contributions under the National Insurance Corporation Act,

he or she is entitled to a deduction in respect of the amount of such expenditure subject to the limits imposed by subsection (2).

- (2) The deduction allowable under this section shall not exceed the lower of—
  - (a)  $\frac{1}{10}$  of his or her assessable income; or
  - (b) \$8,000.
- (3) A deduction is not allowable under subsection (1)(a) in respect of any premium paid under a policy of insurance effected after 1 January 1972, unless—
  - (a) the policy is entered into with a company registered and carrying on business in Saint Lucia; or
  - (b) the policy is effected at a time when the person is not resident in Saint Lucia.
- (4) Where the deduction claimed under subsection 1(a) is in respect of premium paid under a policy of an insurance effected after January 1972 with a company not doing business in Saint Lucia, the amount allowable as a deduction is 50% of the premium paid to the company. However, the deduction is limited to the higher of—
  - (a)  $\frac{1}{20}$  of the assessable income of the individual; or
  - (b) \$3,000.
- (5) Where a policy of insurance to which this section applies is surrendered within 10 years from the date on which it was effected the amount of the benefits paid is not from chargeable income but is to be separately charged to tax in the hands of the insurer who shall—
  - (a) deduct as tax, 10% of such monies prior to payment of the balance to the insuree;

- (b) pay such tax to the Comptroller, within 15 days after the end of the month in which it was deducted; and
- (c) furnish to the Comptroller, at the time such payment of tax is made, a statement setting out—
  - (i) the names of all policy holders to whom payments were made,
  - (ii) the amounts of such payments, and
  - (iii) the tax deducted.
- (6) For the purposes of this section, a policy of insurance includes—
  - (a) a policy providing lump sum benefits; and
  - (b) a policy providing for periodical benefits, upon maturity, but in either case, a deduction under this section is only allowable where the policy is expressed to mature not earlier than 10 years from the date it was effected or on death prior to maturity.

*(Amended by Act 18 of 1990)*

#### **54. DEDUCTION FOR MORTGAGE INTEREST, RATES AND INSURANCE ON OWNER OCCUPIED PROPERTY**

- (1) A resident individual is entitled to a deduction in respect of any amount paid during the year of income by way of—
  - (a) interest upon money borrowed by him or her and applied for the acquisition or construction of or improvements to an owner occupied dwelling house; however, the deduction allowable for any year of income in respect of such expenditure shall not exceed \$15,000;
  - (b) taxes incurred in respect of an owner occupied dwelling house;
  - (c) insurance premiums on an owner occupied dwelling house; or
  - (d) expenses reasonably incurred in the upkeep and maintenance of an owner occupied dwelling house.
- (2) Despite subsection (1), a resident individual who—
  - (a) subject to paragraph (b), satisfies the Comptroller that he or she has paid any sum to which subsection (1) applies,

during the year of income, is entitled to the deduction under subsection (1);

- (b) has failed to pay any amount payable to which subsection (1)(b) relates, is not entitled to the deduction to which subsection (1)(a) relates.
- (3) Where 2 or more persons are entitled to relief under this section the deduction allowable may be apportioned between them in the manner that appears to the Comptroller to be reasonable.
- (4) In this section “**an owner occupied**” dwelling house means a dwelling house occupied by the owner either alone or together with his or her family, or occupied rent-free by members of his or her family.

*(Amended by Act 9 of 2001)*

## **55. DEDUCTION FOR GIFTS FOR CERTAIN APPROVED PURPOSES**

In ascertaining the chargeable income of any person for any year of income, where, in that year of income, such person makes a contribution—

- (a) under a deed of covenant for a period of not less than 3 years, to any religious, charitable, medical, or educational institution or sporting body or fund of a public character, approved by Cabinet;
- (b) to the Saint Lucia National Trust,

there is allowed a deduction of the amount of such contribution. However, the deduction in respect of such contributions shall not exceed 25% of the assessable income of the person for that year of income.

## **56. DEDUCTION FOR MEDICAL EXPENSES**

- (1) In ascertaining the chargeable income of an individual who is resident in Saint Lucia there is allowed a deduction in respect of medical expenses of the individual during the income year on behalf of himself or herself or on behalf of a dependent in respect of whom he or she is entitled to a deduction under sections 45, 46, 48, 49, 50 or 51.

Except that no deduction is allowed under this subsection in excess of \$400 unless the individual produces documentary

evidence to the satisfaction of the Comptroller in support of a claim for a deduction in excess of \$400.

(2) In ascertaining the medical expenses for which a deduction is allowable under this section there is to be deducted any amount which he or she or his or her dependent is reimbursed or is entitled to be reimbursed whether under an insurance contract or otherwise.

(3) For the purposes of this section—

“**medical expenses**” means amounts paid—

- (a) to a registered medical practitioner, a qualified nurse or a midwife, a chemist or to a hospital or other similar institution for services rendered, facilities provided or medicines prescribed by a registered medical practitioner for the treatment of any illness or in connection with the birth of a child;
- (b) to a qualified dentist for dental services rendered or services rendered in the supply or repair of artificial teeth or to a dental technician for such of those services as he or she is qualified to perform;
- (c) for therapeutic treatment administered on the advice of a registered medical practitioner;
- (d) in respect of an artificial limb or part thereof, an artificial eye or a hearing aid;
- (e) in respect of a medical or a surgical appliance prescribed by a registered medical practitioner;
- (f) for the testing of eyes or the prescribing of spectacles or contact lenses by a person qualified to perform those services and for spectacles or contact lenses purchased as a result of such prescription;
- (g) to a person for services rendered by him or her as an attendant of a person who is blind or permanently incapacitated by infirmity; or
- (h) as premiums on an insurance contract under which amounts are payable by the insurer in respect of medical expenses within the meaning of paragraphs (a) to (g) of this definition;

“**insurance contract**” means a contract between—

- (a) an insurer and an individual; or

- (b) an insurer and an employer in respect of his or her employees,

which provides for the payment of amounts in respect of medical expenses or benefits.

#### **57. DEDUCTIONS FOR PAYMENTS TO CO-OPERATIVE OR BUILDING SOCIETY**

- (1) Subject to this section, where in any year of income a resident individual makes payments by way of subscription for shares in any society registered under the Co-operative Societies Act or incorporated under the Building Societies Act there is allowed a deduction for such payments up to a limit of \$5,000.

*(Amended by Act 14 of 2003<sup>4</sup>)*

- (2) Where a deduction has been allowed under this section and the shares to which such deduction relates are disposed of within 5 years from the date of subscription therefor, the person shall cease to be entitled to the deductions previously granted and the Comptroller shall amend the assessment of the relevant year accordingly.
- (3) For the purposes of this section where shares are disposed of within 5 years of the date of subscription—
  - (a) every individual to whom a deduction has been granted shall inform the Comptroller of such disposal within one month of the date of disposal; and
  - (b) every co-operative society and building society shall furnish to the Comptroller at the end of each quarter a list of such disposals showing—
    - (i) the name and address of the former owner,
    - (ii) the number of shares disposed of,
    - (iii) the dates of acquisition and disposal.

#### **58. DEDUCTION FOR INTEREST ON STUDENT LOAN**

Subject to this Act, a resident individual is entitled to a deduction of a maximum of \$3,000 in respect of any amount paid during the year of

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<sup>4</sup> Act 14 of 2003 applies in respect of income year 2002. See section 2 of Act 14 of 2003.

income by way of interest on money borrowed by him or her to finance his or her tertiary education.

*(Inserted by Act 12 of 1999)*

#### **59. DEDUCTIONS FOR PURCHASE OF NEW SHARES IN A RESIDENT PUBLIC COMPANY**

- (1) Subject to this section, where in any year of income, a resident individual purchases new shares issued by a resident public company there shall be allowed a deduction for such purchase up to a limit of \$5,000.
- (2) Where a deduction has been allowed under this section, the provisions of section 57(2) and (3) shall apply with the necessary modifications.

*(Inserted by Act 9 of 2001)*

### **PART 7 SPECIAL PROVISIONS RELATING TO CERTAIN TAXPAYERS**

#### *Division 1 – Variation of Normal Bases of Taxation*

#### **60. INTERNATIONAL AGREEMENT FOR THE AVOIDANCE OF DOUBLE TAXATION**

- (1) Despite any other provisions of this Act the Minister may enter into an agreement with the Government of any other country with a view to—
  - (a) the provision of relief by way of the prevention, mitigation or discontinuance of the levying of tax under this Act or the income tax laws of that other country, or otherwise for the avoidance of double taxation;
  - (b) determining the assessable income to be attributed to any agency, branch or other permanent establishment in Saint Lucia, of a resident of that other country or to any agency, branch or other permanent establishment in that country, of a resident of Saint Lucia;
  - (c) determining the assessable income to be attributed to a resident who enters into trading arrangements with a

resident of that other country with whom he or she is not dealing at arm's length;

- (d) determining the situation of the source of any assessable income derived by a resident of Saint Lucia or that other country; or

*[The next page is 65]*



- (e) the rendering of reciprocal assistance to facilitate the administration of this Act and the income tax laws of that other country and any agreement for the avoidance of double taxation or the exchange of information.
- (2) The Minister may, at any time, amend or cancel any agreement entered into under subsection (1).
- (3) Any agreement entered into under subsection (1) or amendment or cancellation under subsection (2) shall be published by order in the Gazette.

**61. GENERAL INSURANCE COMPANIES AND ASSOCIATIONS OF UNDERWRITERS**

- (1) Subject to subsection (2), the chargeable income for any year of income of any company carrying on a business of insurance other than life assurance (hereinafter referred to as “general insurance”) is to be ascertained in accordance with Parts 5 and 6.
- (2) To the balance so ascertained there is to be added a reserve for unexpired risks outstanding at the beginning of the income year and from the balance so ascertained there is to be deducted—
  - (a) a reserve for unexpired risks outstanding at the end of the income year; and
  - (b) where the company is a non-resident, but subject to section 39(1), such proportion of the expenses of the head office as is attributable to the general insurance business carried on in Saint Lucia.
- (3) The reserve for unexpired risks at the beginning and end of the income year, referred to in subsection (2) shall be such percentage as is adopted by the company in relation to its operations as a whole for such risks at such times.
- (4) The chargeable income for any year of income of an association of underwriters, within the meaning of that term as defined in section 2 of the Insurance Act is considered to be an amount equal to 10% of the gross premium arising in Saint Lucia during that year of income.
- (5) For the purposes of subsection (4)—

“**gross premium**” means the aggregate of all premiums collected by or behalf of an association of underwriters from insured persons and includes premiums paid by an insurer to a reinsurer or premium received by an association of underwriters for reinsurance business.

- (6) For the purpose of the charge to tax an association of underwriters is considered to be an individual.

## 62. LIFE ASSURANCE COMPANIES

- (1) The chargeable income for any year of income of any company carrying on a business of life assurance is considered to be an amount equal to 10% of the gross investment income accruing in Saint Lucia to that company during that year of income.
- (2) For the purposes of subsection (1)—
- (a) “**the gross investment income accruing in Saint Lucia**” is considered to be an amount equal to such part of the total investment income of the company as the premiums paid in Saint Lucia bear to the total premiums paid;
  - (b) “**the total investment income**” means the aggregate of the investment income accruing in Saint Lucia and elsewhere including income which would in the hands of any other person be exempt;
  - (c) a deduction or tax credit shall not be given against the gross investment income accruing in Saint Lucia (ascertained under paragraph (a)) in respect of any investment income accruing in Saint Lucia which would in the hands of any other person be exempt under section 25;
  - (d) a deduction or tax credit shall not be given against the gross investment income accruing in Saint Lucia (ascertained under paragraph (a)) in respect of tax on premium tax levied in Saint Lucia which would in the hands of any other person be exempt under section 25.
- (3) In this section “**investment income**” means the income accruing to a company from the investment of premium moneys paid to the company in respect of ordinary life assurance (including non-cancellable group life assurance), industrial life assurance and general annuity life insurance.

**63. APPROVED PENSION FUNDS**

- (1) For the purposes of this Act, the Comptroller may approve a fund established for the provision of retirement benefits for employees and their dependents as an approved pension fund in accordance with this section.
- (2) The primary object of an approved pension fund is the provision of benefits by way of a pension—
  - (a) to its members upon retirement;
  - (b) to the spouse or child of a member upon his or her death, but any such fund may also make provision for other benefits not inconsistent with this object.
- (3) The Comptroller shall not approve a pension fund where—
  - (a) subject to subsections (5) and (8), the benefit provided on retirement or death is a lump sum;
  - (b) where eligibility for membership in respect of members in permanent employment is not available to employees generally or to a class of employees generally; or
  - (c) the fund is not established or constituted in Saint Lucia, except as provided in section 64.
- (4) The Comptroller shall not approve a pension fund unless satisfied that it provides—
  - (a) for a pension to be payable—
    - (i) on retirement of the member at his or her retirement date, which shall not be prior to his or her attaining 50 years of age,
    - (ii) on retirement of the member prior to his or her retirement date where he or she retires prematurely as a result of mental or physical infirmity, or
    - (iii) on death of the member while still in employment, except where alternative provision is made for a death benefit to be payable in accordance with subsection (5);
  - (b) that any pension provided is payable in equal amounts (whether annually or at lesser periodic intervals) to—
    - (i) the member for his or her life,

- (ii) the spouse of a deceased member, until his or her death or remarriage or for a guaranteed term of years,
    - (iii) any child of the member until the child attains an age of not less than 16 years;
  - (c) that the maximum pension payable to a member does not exceed 70% of the maximum salary earned by him or her during any 12 month period of membership;
  - (d) that the maximum pension payable to the spouse and children of a deceased member does not exceed 75% of the pension payable to the member at his or her death, or where death occurred prior to his or her retirement would have been payable to him or her had he or she retired on the date of his or her death;
  - (e) that contributions by a member cease upon his or her retirement, death or withdrawal from the fund;
  - (f) that the annual contribution by the employer in relation to every calendar year is not less than the total contribution paid by all the members in relation to that year, except where the Comptroller is satisfied upon certification by an actuary that a lesser contribution is necessary to maintain the solvency of the fund;
  - (g) that no pension payable thereunder is capable of being surrendered, commuted or assigned either wholly or in part, except to the extent permitted by subsection (8);
  - (h) that no benefit is payable to or in respect of a member prior to his or her retirement or death, except to the extent permitted by subsections (11) or (12);
  - (i) for the constitution of the fund by a trust under which the property of the fund is irrevocably vested in—
    - (i) not less than 3 persons, where the trustees are individuals, or
    - (ii) a trust corporation.
- (5) A pension fund may provide that, *in lieu* of widow's pension being payable in the event of the death of a member prior to retirement, a death benefit be payable equal to the aggregate of the joint contributions of the member and the employer together with compound interest thereon up to the date of his or her death.

- (6) Where under subsection (5) death benefits are payable in the event of the death of a member prior to his or her retirement, he or she may elect that such benefits be payable to his or her estate or any nominated beneficiary.
- (7) A pension fund may provide for contributions to be made only by the employer, but no such fund shall be approved which provides for contributions to be made only by the members.
- (8) A pension fund may provide for the commutation of pension benefits to the following extent—
  - (a) where the annual amount payable does not exceed \$1,200, the full amount of the pension may be commuted;
  - (b) in any other case, the greater of \$1,200 or 25% of the pension may be commuted.
- (9) Where any pension benefits are commuted, the trustees of an approved pension fund shall notify the comptroller of any commutation.
- (10) The trustees of an approved pension fund shall not invest, lend or use the assets of the fund in any investment which is not authorised by law or by the instrument creating the fund.
- (11) Despite subsection (4)(c) and (4)(d) (which provide maximum limits in relation to pension entitlements) a pension fund may provide for increases in pensions to be payable to existing pensioners by reason of increased cost of living.
- (12) A pension fund may provide for withdrawal from membership prior to resignation or death, but in any such case the rules of the fund shall provide that the maximum benefits to be paid to the member shall not exceed—
  - (a) where membership of the employee does not exceed 5 years, a cash payment equal to, or a paid up deferred pension determined by reference to, the employee's own contributions together with compound interest thereon up to date of withdrawal;
  - (b) where membership of the employee exceeds 5 years a paid up deferred pension determined by reference to the aggregate of the joint contributions of the member and the employer together with compound interest thereon up to the date of withdrawal,

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

- (13) Despite subsection (12)(b) the rules of a pension fund may provide for the payment of a cash sum *in lieu* of a paid up deferred pension in the following circumstances—
- (a) where the member is a married woman or an unmarried woman who is about to marry;
  - (b) where the member intends, upon withdrawal, to leave Saint Lucia permanently; or
  - (c) where, in the opinion of the Comptroller, other special circumstances exist.
- (14) Where cash benefits are payable to a member under subsection (12) or (13) upon withdrawal from a pension fund such moneys shall not form part of the chargeable income of the member but shall be separately charged to tax in the hands of the trustees who shall deduct, as tax, 10% of the moneys prior to payment of the balance to the member.
- (15) The tax deducted by the trustees under subsection (14) shall be paid to the Comptroller within 15 days after the end of the month in which it was deducted and shall be accompanied by a statement setting out the names of all members to whom payments have been made, the amounts of such payments and the tax deducted therefrom.
- (16) Where an approved pension fund is vested in—
- (a) individuals, at least one trustee is to be a representative of the employees, selected by them;
  - (b) a trust corporation, a management committee is to be established comprising not less than 3 individuals, at least one of whom shall be a representative of the employees, selected by them.
- (17) An employer shall not be a trustee of any pension fund established under this section, but nothing herein is to be constructed as preventing an employer from appointing a representative either as a trustee or a member of the management committee as the case may be.
- (18) Despite subsection (1), where a fund or scheme has been approved for the purposes of section 14 of the previous Act

prior to the commencement of this Act, such fund or scheme is considered to have been approved under this section.

#### **64. DEDUCTIONS DEPENDENT ON PLACE WHERE FUND ESTABLISHED**

- (1) Where any pension fund has been approved by the Comptroller under the provisions of the preceding section, or deemed to be approved for purposes of section 14 of the previous Act as provided by subsection (18) of the preceding section the deduction allowable is as follows—
  - (a) where the pension fund is constituted or established in Saint Lucia, the whole of the contribution in respect of year of income 1988 and thereafter;
  - (b) where the pension fund is not constituted or established in Saint Lucia and participation in such fund commenced before year 1988, 50% of the contribution in respect of year of income 1988 and thereafter;
  - (c) where the fund is not established or constituted in Saint Lucia and participation commences in the year of income 1988 or after, no deduction is allowed.
- (2) In this section and the preceding section—

“**contribution**” means the payment made to the pension fund by either the member or the employer;

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

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

“**retirement date**” means the date upon which an employee reaches an age at which in accordance with the customary practice of his or her employer, he or she may optionally, or must compulsorily, retire but not being an age less than 50 years.

*(Amended by Act 9 of 2001)*

## 65. INTERPRETATION OF THIS PART

In this Part, the expression—

- (a) “**annuitant**” means an individual to whom, under an annuity contract, any annuity for life is agreed to be paid or provided;
- (b) “**annuity contract**” means a contract between an individual and a person authorised to carry on in Saint Lucia the business of granting annuities on human life under the terms of which an annuity for life is agreed to be paid or provided;
- (c) “**individual**” means an employee or person who is in receipt of income derived from a business carried on by him or her as an individual, or in the case of a partnership, as a partner personally acting therein;
- (d) “**maturity**” means the date fixed under an annuity contract for the commencement of any annuity, the payment of which is provided for by the contract;
- (e) “**premium**” means any periodic amount paid or payable as consideration under an annuity contract; and
- (f) “**retirement age**” has the same meaning as given in section 63(4)(a)(i) of the principal Act.

*(Inserted by Act 12 of 1999)*

## 66. APPLICATIONS FOR REGISTRATION

Application for the registration of an annuity contract as a registered retirement plan shall be made to the Comptroller in writing by one of the parties to the contract and shall be accompanied by a copy of the contract and such other information as the Comptroller may require.

*(Inserted by Act 12 of 1999)*

## 67. CONDITIONS SUBJECT TO WHICH REGISTRATION MAY BE GRANTED

Registration of an annuity contract as a registered retirement plan shall not be granted unless it is shown to the satisfaction of the Comptroller that—

- (a) the premiums under the annuity contract are to be paid by the annuitant; and

- (b) subject to section 69, the annuity contract does not—
  - (i) provide for the payment during the life of the annuitant of any sum, other than a premium, except sums payable by way of annuity to the annuitant or to a widow or widower of the annuitant,
  - (ii) provide for the annuity payable to the annuitant to commence before retirement or maturity,
  - (iii) provide for the payment by the persons carrying on the business of granting annuities of any other sums except sums payable by way of annuity to the annuitant's widow or widower and any sums which, in the event of no annuity becoming payable either to the annuitants or to the annuitant's legal representatives by way of return of premiums or of reasonable interest on such premiums or of bonuses out of profits,
  - (iv) provide for the annuity, if any, payable to the widow or widower of the annuitant to be of a greater annual amount than that paid or payable to the annuitant, or
  - (v) provide for the payment of an annuity otherwise than for the life of the annuitant or of the widow or widower of the annuitant; and
- (c) the annuitant contract includes a provision stipulating that no annuity payable under it shall be capable, either in whole or in part, of surrender, commutation or assignment.

*(Inserted by Act 12 of 1999)*

## **68. PERMITTED PROVISIONS IN ANNUITY CONTRACTS**

The Comptroller may register an annuity contract as a registered retirement plan, which otherwise satisfies the conditions of section 68, although the annuity contract—

- (a) provides for the payment, after the annuitant's death, of an annuity to a dependant who is not the widow or widower of the annuitant;
- (b) provides for the payment to the annuitant of an annuity commencing before retirement or maturity if the annuity is payable on his or her becoming incapable, through

infirmity of mind or body, of carrying on his or her own profession, vocation, trade or business of a similar nature for which he or she is trained or fitted;

- (c) provides for the continuation of the payment of the annuity to any person for a term certain, not exceeding 10 years, despite his or her death within that term, or for the termination or suspension on marriage or remarriage or in other circumstances, of the payment to any person of the annuity; or
- (d) in the case of an annuity which is to continue for a term certain, provides for the annuity to be assignable by will, or in the event of the death of any person to whom such annuity is payable, to be assignable by the legal representatives of such person in the distribution of his or her estate so as to give effect to a testamentary disposition, or to the rights of any person entitled on intestacy, or to its appropriation to a legacy or to a share or interest in the estate.

*(Inserted by Act 12 of 1999)*

## **69. REGISTRATION**

- (1) The Comptroller may register as a registered retirement plan any annuity contract that complies with the conditions of this Part.
- (2) The Comptroller shall, as soon as practicable, give to the applicant notice of his or her registration of the annuity contract or his or her refusal to register the annuity contract and where he or she registers the annuity contract the notice shall specify the date from which it is registered.

*(Inserted by Act 12 of 1999)*

## **70. CHANGE IN ANNUITY CONTRACTS**

If an alteration is made to an annuity contract after the date of application for registration of the contract, the annuitant shall in writing notify the Comptroller of the alteration, and in default of such notification any registration granted, unless the Comptroller otherwise orders, is considered to have been withdrawn as from the date from which the alteration had effect. *(Inserted by Act 12 of 1999)*

**71. WITHDRAWAL OF REGISTRATION**

- (1) The Comptroller may, at any time, withdraw his or her registration of an annuity contract which, in his or her opinion, no longer complies with the conditions set out in this Part.
- (2) The Comptroller shall, as soon as practicable, give to the parties to the annuity contract, notice of such withdrawal and the date from which it is to take effect.

*(Inserted by Act 12 of 1999)*

**72. COMPTROLLER TO BE NOTIFIED OF PAYMENTS UNDER ANNUITY CONTRACT AND TO BE PROVIDED WITH RETURNS**

- (1) A person who grants an annuity under an annuity contract shall notify the Comptroller of all payments made under the contract.
- (2) A person who grants an annuity under an annuity contract, shall render the returns required to be rendered by employers under Schedule 2 and deduct income tax in accordance with Schedule 2 as if the person was an employer of the person to whom the annuity payment is made.

*(Inserted by Act 12 of 1999)*

**73. ALLOWABLE DEDUCTIONS**

Where the annuity contract has been registered by the Comptroller as a registered plan under section 70, the deduction allowed shall be an amount of the premium up to a maximum amount of \$8,000.

*(Inserted by Act 12 of 1999, amended by Act 9 of 2001 and substituted by Act 14 of 2003<sup>5</sup>)*

**74. DEDUCTIONS FOR PAYMENTS TO A RHOS PLAN**

- (1) In this section—  
**“Registered Home Ownership Savings Plan”** or **“RHOS Plan”** means a savings plan over a period of at least 5 years to be used wholly for the acquisition or construction of an owner occupied dwelling house;

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<sup>5</sup> Act 14 of 2003 applies in respect of income year 2002. See section 3 of Act 14 of 2003.

“**owner occupied dwelling house**” has the same meaning as in section 54.

- (2) Subject to this section, where, in any year of income a resident individual, by way of savings, makes payments under a Registered Home Ownership Plan in any financial institution, any society registered under the Cooperative Societies Act or in any institution incorporated under the Building Societies Act there is allowed a deduction for such payments up to a maximum of \$6,000.
- (3) Where a deduction is allowed under this section and any amounts to which such deduction relates are withdrawn within the minimum period of 5 years, these amounts are to be included as income in the year of withdrawal.
- (4) To qualify for the deduction under subsection (2), the resident individual must not have previously owned a home in Saint Lucia.

*(Inserted by Act 12 of 1999)*

## **75. TAX CREDIT IN RESPECT OF FOREIGN CURRENCY FROM INCOME YEAR 2001 ONWARDS**

- (1) Where from income year 2001 and subsequent income years a person carrying on business in Saint Lucia derives assessable income from qualifying professional services and the Comptroller is satisfied that an amount of foreign currency earnings has been transferred to the credit of that person within the income year or within such later time as the Comptroller in his or her discretion may allow—
  - (a) by the transfer of foreign currency to Saint Lucia through the Saint Lucia banking system;
  - (b) by payment outside Saint Lucia in foreign currency in an account held in a bank outside Saint Lucia;

*[The next page is page 77]*

- (c) by payment in Saint Lucia in E.C. Currency from funds held in Saint Lucia which would be legally remittable from Saint Lucia,

in computing the tax payable for that income year, there shall be set off against the tax payable, a foreign currency tax credit, calculated in the manner specified in Schedule 8.

- (2) For the purposes of this section—

(a) “**foreign currency earnings**” means the gross amount of foreign currency earnings received from fees, premiums, rewards or payments from work performed in respect of qualifying professional service;

(b) “**qualifying professional services**” are as specified in paragraphs 3 and 4 of Schedule 8.

- (2) The Minister may by order amend, vary or revoke the Schedule.

*(Inserted by Act 9 of 2001)*

*Division 2 — Withholding Tax on Payments to Non-Residents and Deduction of Tax by Employers, by Companies and from Payments to Contractors*

**76. DEDUCTION OF TAX FROM PAYMENTS MADE TO NON-RESIDENT**

- (1) Where a—

(a) person makes payment to a non-resident; or

(b) branch of a non-resident company makes payments to its head office or to some other branch or associate outside Saint Lucia,

tax shall be deducted from such payments in accordance with and in the manner specified in Schedule 3 and the person or branch shall carry out such other obligations as are imposed by that Schedule. *(Amended by Act 7 of 2006)*

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

- (3) This section does not prevent the Comptroller from directing the deduction of a lesser amount than that provided in Schedule 3 where he or she is satisfied that the person to whom the payment is made is a resident of a country with which an international agreement made under section 60 exists which provides for a lower rate of withholding tax than that provided in Schedule 3.
- (4) This section and paragraph 1 of Schedule 3 shall not be construed so as to bring within the charge to withholding tax, any payments of income which is exempt from tax under Part 4.

#### **77. DEDUCTION OF TAX BY EMPLOYERS**

- (1) Every employer who pays remuneration to his or her employees, shall deduct tax from it in accordance with and in the manner specified in Schedule 4 and shall carry out such other obligations as are imposed by that Schedule.
- (2) In this section “employer” and “remuneration” shall have the meaning given to them in Schedule 4.

#### **78. DEDUCTION OF TAX FROM PAYMENTS TO CONTRACTORS**

- (1) Where any person makes any payment, either directly or indirectly through a financial institution, to a contractor, for the supply of labour or for the hiring of equipment, that person or that financial institution shall, subject to subsection (3), deduct tax from the gross amount of such payment at the rate of 10%.
- (2) Any contractor may apply to the Comptroller for an exemption from compliance with this section, which may be granted where the Comptroller is satisfied that receipts of such form of income have been regularly disclosed in the returns of income of such person and any tax thereon has been paid or secured to the satisfaction of the Comptroller.
- (3) Production of such evidence of exemption by the contractor to a person, or financial institution, making any such payment shall be sufficient authority for the payer to make payment of the gross amount without deductions of tax under subsection (1).
- (4) In the case of contractors in operation for less than one year, the Comptroller may request a deposit representing an advance payment of the tax payable under subsection (1) and calculated

in accordance with information made available to him or her by the contractor.

(5) In this section—

“**contractor**” means any person who is a resident and who is providing or supplying independent personal services for reward, other than as an employee, but does not include any person providing services as or by way of—

- (a) accountant, auditor or tax consultant;
- (b) business or management consultant;
- (c) lawyer;
- (d) doctor, dentist, pharmacist or nurse;
- (e) civil or mechanical engineer;
- (f) funeral undertaking services.

*(Amended by Acts 18 of 1990, 11 of 1998 and 9 of 2001)*

## **79. INDEMNIFICATION FOR TAX PAID TO COMPTROLLER**

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

## **PART 8 ASCERTAINMENT OF TAX PAYABLE**

### **80. RATES OF TAX**

- (1) Tax shall be charged for each year of income on the chargeable income for every person at the rates specified in Schedule 5.
- (2) Withholding tax shall be charged—
  - (a) in respect of cash benefits payable to a member on withdrawal from an approved pension fund at the rate specified in section 63(15); or on the surrender of a life insurance policy at the rate specified in section 53(5); and
  - (b) in respect of any other payments to non-residents at the rates specified in Schedule 3.

**81. CREDIT FOR TAX DEDUCTED OR PAID**

Where any tax is—

- (a) deducted under section 77 from employment income accrued to any person;
- (b) deducted under section 78 from a payment to any contractor; or
- (c) paid in advance of a notice of assessment under section 113 or otherwise,

the tax so deducted shall be set off against the tax charged under section 80(1) for the year of income in relation to which such income accrued.

**82. CREDIT FOR TAX PAID OUTSIDE SAINT LUCIA**

- (1) Where an agreement which has effect under section 60 provides that tax payable under the laws of the country with which such agreement has been made is allowed as a credit against tax charged in Saint Lucia, credit for such tax is given in the manner provided in such agreement and is to be set off against the tax charged under this Act.
- (2) Where income accrues to a resident and is charged to tax under the laws of a country outside Saint Lucia—
  - (a) with which country there is no agreement under section 60; or
  - (b) with which country there is an agreement under section 60 but is income to which such agreement does not relate,and such income is charged to tax under this Act, credit for any tax payable under the laws of the other country in which such income was charged to tax is calculated in the manner provided in section 83, and is set off against the tax charged under this Act.
- (3) Where any assessment is made to give effect to the provisions of this section, it is subject to the limits as to time provided by section 102.

**83. CALCULATION OF TAX CREDIT FOR FOREIGN TAX**

- (1) The credit to be set off in respect of tax payable in another country on the income referred to in section 82(2) is the lesser of—
  - (a) the tax payable in the other country on the amount; or
  - (b) the tax charged under this Act, on the amount.
- (2) Where liability to tax in Saint Lucia arises in respect of income which is received in this country, for the purpose of calculating the tax charged under this Act, the amount of the assessable income charged to tax in the other country shall be taken to be the aggregate of the amount remitted to this country and the amount of tax payable thereon in the other country.
- (3) In this section—

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

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

**PART 9  
RETURNS AND NOTICES****84. RETURNS OF INCOME: GENERAL**

- (1) Subject to section 96, every person liable to furnish a return of income in respect of any year of either personally or in a representative capacity shall furnish a return in such form as may be approved by the Comptroller within 3 months after the year of income and such return shall—
  - (a) be signed by him or her or by an agent authorised to sign on his or her behalf;

- (b) contain a calculation of the chargeable income, if any, disclosed therein and of the tax payable thereon; and
  - (c) contain an address for service of notices.
- (2) For the purposes of this section “every person liable to furnish a return of income” includes—
- (a) every person liable to pay tax under this Act;
  - (b) every partnership;
  - (c) every person who for that year or any previous year of income has made a loss in respect of which he or she may be entitled to claim a deduction for the year of income or any subsequent year of income;
  - (d) subject to subsection (5), every person who derives any income from any source specified in section 32 irrespective of the amount of that income; and
  - (e) every person who derives any income which would be charged to tax under this Act save for the provisions of sections 26 to 30 or any other enactment which has exempted that income from the charge to tax for a limited period of time.
- (3) The Comptroller shall give general notice in such manner as he or she considers fit of the obligations imposed by this section and shall in any such notice specify the place at which return forms may be obtained.
- (4) Despite subsection (3) the Comptroller may cause forms to be delivered by hand or by post to any person, but failure to do so, or the non-receipt by any person of a return form does not relieve any person liable to furnish a return of income from his or her obligation to comply with subsection (1).
- (5) Despite subsection (2)—
- (a) a resident individual whose income accrues from sources other than a business and whose income from which does not exceed the sums specified as allowances in Schedule 6 during a year of income; and
  - (b) a non-resident person, whose income accrued from sources situated in Saint Lucia consists only of income to which the provisions of section 76 apply,

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

**85. RETURNS OF INCOME: CESSATION OF INCOME DURING ANY YEAR OF INCOME**

Where it appears to the Comptroller that—

- (a) a person may leave Saint Lucia during any year of income or shortly after its expiry and that the absence from Saint Lucia of such person is unlikely to be temporary only;
  - (b) a person has ceased to carry on business during any year of income; or
  - (c) in the case of any other person, it is expedient to do so,
- the Comptroller may, subject to section 121, at any time serve upon such person a notice in writing requiring him or her to furnish within such time as may be specified in the notice, not being less than 7 days from the date of service of such notice, a return of income for any year of income.

**86. RETURNS OF INCOME: WHERE NO RETURN FURNISHED**

- (1) Where it appears to the Comptroller that any person is or may be liable to furnish a return of income for any year of income and has not done so, the Comptroller may, subject to section 121, by notice in writing, require such person to furnish a return of income within such time as may be specified in the notice, not being less than 7 days from the date of service of such notice.
- (2) This section shall not be construed as extending the time limits provided by section 84 for the furnishing of any return of income.

**87. FURTHER RETURN OR INFORMATION, PRODUCTION OF BOOKS AND GIVING OF EVIDENCE TO COMPTROLLER**

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

any other person whom the Comptroller reasonably believes is capable of so doing—

- (a) to furnish to the Comptroller at such time as may be specified in such notice such further return of income, statement of assets and liabilities or other information as may be required by him or her;
  - (b) to produce, at such time and place as may be specified in such notice, for examination by the Comptroller or for retention by him or her for such period as may be reasonable for their examination, any accounts, books of account, statement of assets and liabilities or other documents which the Comptroller may consider necessary for such purpose and, if any such information is not available in the English Language, to produce at the expense of the person who is or may be liable to tax a translation in English prepared and certified by an approved translator;
  - (c) to attend, at such time and place as may be specified in such notice, for the purpose of being examined by the Comptroller in respect of assessable or chargeable income of himself or herself or any other person or any transaction or matters appearing to the Comptroller to be relevant thereto.
- (2) Without prejudice to the generality of subsection (1), the Comptroller may require any bank—
- (a) to furnish to him or her details of any banking account or other assets which may be held on behalf of any person, or to furnish a copy of bank statements of any such banking account;
  - (b) to permit the Comptroller or any officer not being below the rank of a senior tax inspector authorised by him or her to inspect the records of the bank with respect to the banking account of any person,
- or may require the attendance of any officer of a bank before him or her to give evidence respecting any bank account or other assets which may be held by the bank on behalf of any person.
- (3) Subject to such modifications and adaptations as may be necessary the provisions of subsection (1) shall extend to the

supply of information, the production of documents and the giving of evidence to the Comptroller in relation to—

- (a) the payment of income by any person to a non-resident, to which Schedule 3 applies;
- (b) the payment of remuneration by an employer to his or her employees, to which Schedule 4 applies,

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

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

## **88. EXAMINATION OF BUSINESS RECORDS**

- (1) The Comptroller may carry out an examination of the income affairs of the business of any person liable to pay tax but subject to the limit as to time specified in section 102.
- (2) For the purposes of subsection (1), the Comptroller or any officer not being below the rank of a Senior Officer authorised by him or her may at all reasonable times, and subject to prior notice, enter into any premises where any business is carried on or the records or books of account of such business are kept, and—
  - (a) examine such records or books of account and examine any documents which relate to income accruing from such business;
  - (b) inspect any trading stock of the business and any assets of the business in respect of which allowances or deductions have been or may be claimed under this Act;
  - (c) require the owner of the business, or any employee or agent to give him or her such reasonable assistance in connection with the examination and inspection as may be necessary and to answer orally or in writing any questions relating thereto;
  - (d) open or cause to be opened any article in which he or she considers any money or documents may be contained.

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

*(Amended by Act 7 of 2006)*

## **89. POWERS OF ENTRY**

- (1) Admission to any premises shall not be demanded unless 24 hours' notice of the intended entry has been given to the owner or occupier.
- (2) If it is shown to the satisfaction of a magistrate on sworn information in writing—
  - (a) that admission to any premises was refused, or that refusal is apprehended, or that the giving of notice would defeat the object of the entry; and
  - (b) that there is reasonable ground for entry into the premises for the purposes of this Act,

the magistrate may by warrant under his or her hand authorise the Comptroller or any authorised officer in writing by him or her to enter the premises, if need be by force. Where it is shown to the satisfaction of the magistrate that the giving of notice would defeat the object of the entry, the provisions of this section shall apply despite anything to the contrary in the preceding subsection.

- (3) An authorised officer entering any premises by virtue of this section, or of a warrant issued thereunder, may take with him or her such other persons as may be necessary.

*[The next page is 86A]*

- (4) Every warrant granted under this section shall continue in force until the purpose for which the entry is necessary has been satisfied.
- (5) Every person who hinders or molests or interferes with any person doing anything that he or she is authorised to do or prevents or attempts to prevent any person from doing any such thing and any person who unless he or she is unable to do so fails or refuses to do anything he or she is required by or under this or the preceding section to do commits an offence and is liable on summary conviction to a fine not exceeding \$1,500 or to imprisonment for 2 years or to both such fine and imprisonment.



**90. MAINTENANCE OF PROPER RECORDS OF TRANSACTIONS, METHODS OF ACCOUNTING AND PRESERVATION OF BOOKS OF ACCOUNT AND RECORDS**

- (1) Every person carrying on any business shall keep, in the English language, such records or books of accounts as are necessary to reflect the true and full nature of the transactions of the business regard being had to the nature of the activities concerned and the scale on which they are carried on.
- (2) Where the Comptroller is of the opinion that records or books of account are not being kept in accordance with subsection (1), or where no records or books of account are being kept, by any person carrying on business then in addition to any proceedings which may be taken under section 140, the Comptroller may direct such person to keep such records or books of account as he or she may specify.
- (3) The records or books of account required by this section shall be kept at the place of business of the person carrying on business unless the Comptroller approves of them being kept at some other place.
- (4) Subject to subsections (5) and (6), every person to whom this section applies shall preserve all books of account and other records which are essential to the explanation of any entry in such books of account of that business for a period of 6 years after the end of the income year to which such books of account or records relate.
- (5) The Comptroller may, by notice in writing, require any person to retain such records as are referred to in subsection (4) for such further period of time as he or she deems necessary for their proper examination.
- (6) Where—
  - (a) a person dies;
  - (b) a company has gone into liquidation;
  - (c) a trust or body of persons has been terminated; or
  - (d) in any other case where he or she is satisfied that it is reasonable to do so,

the Comptroller may, on application, approve of the disposal of any books of account or other records within such lesser period than 6 years as he or she thinks fit.

- (7) The Comptroller may, subject to such conditions and in respect of such books of account or other records as he or she may specify, authorise the retention of a micro film copy of any books of accounts or other records in lieu of the original books or records.
- (8) For the purposes of this section the books of account and other records required to be preserved shall be deemed to include the record required to be kept under Schedule 3 or 4.

#### **91. SUBMISSION OF ACCOUNTS WITH RETURN OF INCOME AND CERTIFICATE RELATING TO PREPARATION OF ACCOUNTS**

- (1) Where any person carries on business in any year of income his or her return of income for such year shall be accompanied by a copy of the final accounts of the business together with a reconciliation of the income shown in the accounts with the chargeable income disclosed in the return in relation to the business.
- (2) Where the accounts referred to in subsection (1) are audited by a professionally qualified auditor, he or she shall provide on the face of the accounts a certificate giving his or her name, address and occupation and stating—
  - (a) the extent of the examination made of the books of account and of the documents from which such books of account were prepared; and
  - (b) whether or not, as far as he or she was able to ascertain from such examination, the entries in those books of account disclosed the true nature of every transaction, receipt, accrual, payment and debit.
- (3) Where the accounts referred to in subsection (1) have been prepared by a person other than the person carrying on the business and have not been audited by a professionally qualified auditor, that other person shall provide on the face of the accounts a certificate giving his or her name, address and occupation and stating whether he or she has made any examination, and if so, the extent of the examination made, of

the books of account and of documents from which such books of account were prepared.

## **92. PRINCIPAL OFFICER OF COMPANY**

- (1) Every company carrying on business in Saint Lucia shall at all times be represented for the purposes of this Act by a principal officer residing in Saint Lucia and duly appointed by the company or its authorised agent or attorney.
- (2) Every company shall appoint a principal officer and an address for service of notices—
  - (a) if it is carrying on business at the commencement of this Act, within 2 months after such commencement; or
  - (b) in the case of a company which begins to carry on business in Saint Lucia after the commencement of this Act, within one month after the commencement of business,

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

- (3) Every change of principal officer or of the address for service of notices on the company shall be notified to the Comptroller by the company within 15 days of such change occurring.
- (4) The principal officer shall be answerable for the doing of all such things as are required under this Act to be done by the company of which he or she is the representative and in case of default he or she is liable to the same penalties.
- (5) Everything done by the principal officer, which he or she is required to do in his or her representative capacity, is considered to have been done by the company and any notice given to the principal officer is considered to be given to the company.
- (6) The absence of or failure to appoint a principal officer does not excuse a company from the necessity of complying with any of the provisions of this Act and the company shall be subject to and liable to comply with its provisions as if there were no requirement to appoint a principal officer.
- (7) Every notice, process or proceeding which under this Act may be given to, served on or taken against any company may be

given to, served on or taken against the principal officer, and if at any time there is no principal officer, then any such notice, process or proceeding may be given to, served on or taken against any officer or person acting in the management of the business of the company or as agent for the company and such person has the same liability in respect of that notice, process or proceeding as the company or principal officer would have had if it had been given to, served on or taken against the company or principal officer.

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

### **93. PRECEDENT PARTNER OF PARTNERSHIP**

- (1) Every partnership carrying on business in Saint Lucia shall at all times be represented by a resident individual who shall be—
  - (a) the precedent partner; or
  - (b) if no acting partner is resident in Saint Lucia, the agent of the partnership in Saint Lucia.
- (2) The precedent partner shall be the person who, being an acting partner resident in Saint Lucia—
  - (a) is first named in the partnership agreement;
  - (b) if there is no partnership agreement, is specified by name or initial singly or with precedence to the other partners in the usual name of the partnership,or, in any case where neither paragraph (a) or (b) is applicable, such other partner as is specified by the partnership.
- (3) Every partnership shall notify the Comptroller of the name of the precedent partner, or, if there is no acting partner resident in Saint Lucia shall appoint and notify the Comptroller of the name of its agent in Saint Lucia—
  - (a) if it is carrying on business at the commencement of this Act, within 2 months after such commencement; or

- (b) if it begins to carry on business after the commencement of this Act, within one month after the commencement of business.
- (4) Every partnership shall within the period specified in subsection (3) appoint an address for service of notice.
- (5) Every change of precedent partner or agent of the partnership or of address for service of notices shall be notified to the Comptroller within 15 days of such change.
- (6) The precedent partner or agent, as the case may be, shall be answerable for the doing of all such things as are required under this Act to be done by the partnership of which he or she is the representative and in case of default he or she is liable to the same penalties.
- (7) Everything done by the precedent partner or the agent, as the case may be, which he or she is required to do in his or her representative capacity is considered to have been done by the partnership, and any notice given to or request made upon the precedent partner or the agent is considered to have been given to or made upon the partnership.

**94. RETURNS DEEMED TO BE FURNISHED BY DUE AUTHORITY AND IN FULL KNOWLEDGE OF CONTENTS**

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

**95. RETURNS: METHOD OF FURNISHING**

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

**96. RETURNS: EXTENSIONS OF TIME FOR FURNISHING**

- (1) Where, under this Act, any return is required to be furnished by any person within a specified period the Comptroller may, on application by such person in writing, by notice in writing

served on such person, extend the period within which such return is to be furnished.

- (2) The granting of the extension of time under subsection (1) does not affect the due date for payment of tax under section 114.

*(Inserted by Act 9 of 2001)*

## **PART 10 ASSESSMENT OF TAX**

### **97. ASSESSMENTS**

- (1) Subject to section 102, the Comptroller—
- (a) shall make an assessment of the chargeable income of and the tax payable by every person chargeable with tax; and
  - (b) may make an assessment of any person where there is no chargeable income but there is an entitlement to a refund of tax.
- (2) Where a person furnishes a return of income, the Comptroller may accept such return and make an assessment in accordance with it.
- (3) Where—
- (a) a person fails to furnish a return of income; or
  - (b) the Comptroller is not satisfied that the return furnished by any person is true and correct,
- he or she may make an assessment to the best of his or her judgement.

### **98. ADDITIONAL ASSESSMENT**

- (1) Subject to section 102, where in relation to an assessment made on any person for any year of income, the Comptroller is of the opinion that—
- (a) the tax charged is less than the amount which should have been charged;
  - (b) any assessed loss is greater than the amount at which it should have been assessed; or

- (c) a refund was made in excess of the amount which should be refunded,  
he or she shall make an additional assessment accordingly.
- (2) Where, on the determination of an appeal made under Part 11, the appeal commissioners or any subsequent appellate tribunal increase an assessment, the Comptroller shall increase the assessment accordingly, without limit as to time.

#### **99. TRANSACTIONS DESIGNED TO AVOID LIABILITY TO TAX**

- (1) Where the Comptroller has reasonable grounds to believe that the main purpose or one of the main purposes for which any transaction was or transactions were effected (whether before or after the commencement of this Act) was the avoidance or reduction of liability to tax for any year, he or she may, if he or she determines it to be just and reasonable, direct that such adjustments shall be made as respects liability to tax as he or she may deem appropriate so as to counteract the avoidance or reduction of liability to tax which would otherwise be effected by the transaction or transactions.

However, this subsection does not apply to any transaction the main purpose or one of the main purposes for which was to effect the succession by a resident company, incorporated for that purpose, to any business carried on by an individual or partnership.

- (2) Without prejudice to the generality of the powers conferred by subsection (1) the powers conferred thereby extend—
  - (a) to the charging with tax of persons who, but for the adjustments, would not be chargeable with any tax, or would not be chargeable to the same extent;
  - (b) to the charging of a greater amount of tax than would be chargeable but for the adjustments; and
  - (c) payment of dividends at such intervals as would appear to be payment of a salary.

#### **100. REDUCED ASSESSMENTS**

- (1) Subject to this section, in relation to an assessment made on any person for any year of income the Comptroller is satisfied upon

a claim made within 6 years after the end of that year of income that there is a mistake in the assessment apparent from the face of the return, the assessment or other records, as a result of which—

- (a) the tax charged is greater than the amount which should be charged;
  - (b) any assessed loss is less than the amount at which it should be assessed; or
  - (c) a refund is made which is less than the amount which should have been refunded, the Comptroller shall make a reduced assessment accordingly.
- (2) Where, on the determination of an appeal made under Part 11, the appeal commissioners or any subsequent appellate tribunal order the reduction of an assessment, the Comptroller shall reduce the assessment accordingly, without limit as to time.
- (3) Where, for any year of income a person who has furnished a return of income for that year and has been assessed under sections 97 or 98 notifies the Comptroller in writing within 6 years after the end of that year of income that by reason of some error or mistake of fact in such return the assessment was excessive, the Comptroller after taking into account all relevant circumstances and subject to subsection (4), may reduce the assessment to provide such relief as appears to him or her to be fair and reasonable.
- (4) No relief shall be given under subsection (3) if the assessment was properly made in accordance with the practice generally prevailing at the time the return of income was made.

## **101. DETERMINATION OF ASSESSED LOSS**

- (1) Where, in relation to any year of income, the amount, as determined by the Comptroller by which the deductions allowable to any person under Division 2 of Part 5 exceed the assessable income against which such deductions may be allowed the Comptroller shall make a determination of such excess (referred to in this Act as “the assessed loss”).
- (2) The determination of the assessed loss of any person under subsection (1) shall constitute the making of an assessment by the Comptroller and shall be notified in writing to the person

assessed and the provisions of this Act other than sections 103 and 104 shall apply as if such determination were the determination of the amount of the assessable income of such person for such year of income.

## **102. TIME LIMITS FOR ASSESSMENTS**

- (1) Subject to this section, an assessment may be made in relation to any person at any time prior to the expiry of 6 years after the end of the year of income to which it relates.
  - (2) Where a return of income is furnished after the end of the year of income, an assessment may be made at any time prior to the expiry of 6 years after the end of the year during which it is furnished.
  - (3) Subject to subsection (4), where no return of income is furnished in relation to a year of income, an assessment may be made at any time before the expiration of 6 years after the year of income to which it relates.
  - (4) Where, due to any fraud or wilful default—
    - (a) no return of income is furnished in relation to a year of income; or
    - (b) an incorrect return of income has been furnished in relation to a year of income,an assessment in relation to such year may be made at any time.
  - (5) Where a person is deceased, despite the provisions of subsections (1), (2), (3) and (4), no assessment shall be made at any time after the expiry of 4 years from the end of the year in which such person died.
- (3) The provisions of subsection (4) are without prejudice to the right of appeal of a tax payer under this Act.

*(Amended by Act 9 of 2001)*

## **103. NOTICE OF ASSESSMENT**

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

- (2) The Comptroller shall not be required to issue a notice of assessment to any person where—
- (a) no liability to tax arises and no tax has to be repaid;
  - (b) liability to tax arises but the tax payable does not exceed \$5,
- unless the person makes a request for the issue of a notice of assessment.
- (3) In this section, “**notice of assessment**” includes a notice in respect of an additional assessment and a reduced assessment.

#### 104. RECORD OF ASSESSMENT

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

#### 105. FINALITY OF ASSESSMENT

- (1) Subject to section 100, where, in relation to an assessment—
- (a) no valid notice of objection is given under section 106;
  - (b) subsequent to the determination of an objection, no valid notice of appeal is given under section 109; or
  - (c) an appeal is determined and there is no right of further appeal,
- such assessment is final and conclusive.
- (2) Subsection (1) does not prevent the Comptroller from making an additional assessment within such time limits as are permitted by section 102 for any year of income which does not involve re-opening any matter which has been determined on appeal for such year.
- (3) Despite subsections (1) and (2) where any fraud or wilful default has been committed by or on behalf of any person in relation to his or her liability to tax for any year of income, the Comptroller may make an additional assessment for such year even though it may involve re-opening a matter which has been determined on appeal, but only in respect of a matter upon which no finding of fact was in dispute.

## PART 11 OBJECTIONS AND APPEALS

### 106. OBJECTION TO ASSESSMENT

- (1) Any person who is aggrieved by an assessment or a determination by the Comptroller made on him or her may, by notice in writing to the Comptroller within 30 days after the date of service of the notice of assessment or determination, or within such further time as the Comptroller may for good cause allow, object to the assessment or determination.
- (2) Where the assessment is—
  - (a) an additional assessment; or
  - (b) a reduced assessment which in part imposes a fresh liability,

the person assessed shall have no further right of objection than he or she would have had if that assessment had not been made except to the extent to which that assessment has imposed a fresh liability on him or her.
- (3) An objection shall specify particulars of the grounds on which it is made.
- (4) In this section “aggrieved by an assessment or a determination” means aggrieved by—
  - (a) the inclusion in an assessment of an amount as part of the assessable income;
  - (b) the disallowance in an assessment of an amount claimed as a deduction in ascertaining the chargeable income;
  - (c) the determination by the Comptroller of the amount of an assessed loss;
  - (d) the amount of tax set off under sections 81, 82 or 113; or
  - (e) the determination by the Comptroller of any matter affecting a person’s liability to tax in circumstances where such determination has not involved the making of an assessment.

**107. DECISION BY COMPTROLLER ON OBJECTION**

- (1) The Comptroller shall consider any valid objection made under section 106 and may either disallow it or allow it either wholly or in part and shall, by notice in writing, inform the objector of his or her decision.
- (2) If a decision of the Comptroller in determining an objection requires the reduction of or an increase in, an assessment, the Comptroller shall issue a notice of the reduction or increase in the assessment to the person assessed, together with the notice of his or her decision or as soon as is practicable.

**108. APPEAL COMMISSIONERS**

- (1) For the purposes of this Part, there is hereby established a tribunal of appeal commissioners constituted and regulated in accordance with this section.
- (2) The appeal commissioners shall comprise such persons as may be appointed by the Cabinet.
- (3) Cabinet shall appoint one of the Commissioners to be Chairperson and another to be Deputy Chairperson and any meeting of the appeal commissioners shall comprise the Chairperson and 2 other members.

However, in the absence of or inability of the Chairperson to act a meeting of the appeal commissioners shall comprise the Deputy Chairperson and 2 other members.

- (4) Every decision of the appeal commissioners shall be given under the signature of the Chairperson presiding at the meeting.
- (5) The Cabinet shall appoint a Secretary to the appeal commissioners and any notice or correspondence, other than decisions of the commissioners, may be issued and signed by the Secretary.
- (6) At any hearing by the appeal commissioners, in the event of a division of opinion, the decision of the majority shall prevail.
- (7) The appeal commissioners have—
  - (a) the power to summon to attend at the hearing of an appeal any person who in its opinion is or might be able to give evidence respecting the appeal;

- (b) power, where any person is so summoned, to examine him or her on oath or otherwise;
- (c) power to require any person to produce any books or documents which are in his or her custody or under his or her control and which the appeal commissioners may consider necessary for the purpose of the appeal;
- (d) all the powers of a court with regard to the enforcement of attendance of witnesses, hearing evidence on oath and punishment for contempt;
- (e) power to postpone or adjourn the hearing of an appeal where the appeal commissioners are satisfied that, for any reasonable cause, either party to the appeal is prevented from attending on the date fixed for such hearing; and
- (f) power to determine the procedure to be followed in an appeal.

#### **109. APPEAL FROM DECISION BY COMPTROLLER**

- (1) Any person (hereinafter referred to as “the appellant”) who is aggrieved by a decision of the Comptroller may, by notice of appeal, appeal to the appeal commissioners.
- (2) A notice of appeal, a copy of which shall be lodged with the Comptroller, shall be made in writing and shall be lodged with the Secretary to the appeal commissioners within 30 days of the date of service of—
  - (a) the Comptroller’s decision on the objection; or
  - (b) the Comptroller’s determination in relation to any other matter from which an appeal may be made,or within such further time as the appeal commissioners may for good cause allow.
- (3) In this section “aggrieved by a decision of the Comptroller” means aggrieved by a decision of the Comptroller upon an objection against—
  - (a) the inclusion in an assessment of an amount as part of the assessable income;
  - (b) the disallowance in an assessment of an amount claimed as a deduction in ascertaining the chargeable income;

- (c) the determination by the Comptroller of the amount of an assessed loss;
- (d) the amount of tax set off under sections 81, 82 or 113;
- (e) the disallowance by the Comptroller of a claim for relief under section 100; or
- (f) any determination by the Comptroller of any matter affecting a person's liability to tax in circumstances not involving the making of an assessment.

#### **110. HEARING BY APPEAL COMMISSIONER**

- (1) Upon every hearing of an appeal, the appeal commissioners may confirm, increase or order the reduction of any assessment or make such other order as they deem fit.
- (2) On any appeal to which this section relates both the appellant and the Comptroller shall bear their own costs except where the appeal commissioners otherwise direct.
- (3) On any appeal the burden of proof shall lie upon the appellant.
- (4) At least 30 days before the date fixed for the hearing of an appeal, the Secretary to the appeal commissioners shall, by notice in writing, advise the appellant and the Comptroller of the date on, and the place at which the appeal has been set down for hearing.
- (5) At every hearing by the appeal commissioners the appellant and the Comptroller is entitled to appear in person or by a representative.
- (6) The hearing of an appeal by the appeal commissioners shall not be public unless the Chairperson of the appeal commissioners so directs on application by the appellant and in any case where such a direction is made the obligation as to secrecy imposed by section 6 ceases to apply.
- (7) The Chairperson of the appeal commissioners may authorise the publication of the decision on any appeal but the publication shall be in such manner as not to disclose the identity of the appellant.

**111. RIGHT OF FURTHER APPEAL**

- (1) The Comptroller or the appellant may within 30 days appeal to the High Court from any decision of the appeal commissioners which involves a question of law, including a question of mixed fact and law.
- (2) The Comptroller or the appellant may within 30 days appeal to the Court of Appeal from any decision of the High Court (being a decision of the High Court on an appeal from the appeal commissioners) which involves a question of law, including a question of mixed fact and law.
- (3) On any further appeal to which this section relates the High Court or the Court of Appeal, as the case may be—
  - (a) may confirm, increase or order the reduction of any assessment;
  - (b) may make such other order as it deems fit; and
  - (c) may make such order as to costs as it deems fit.

**112. PAYMENT OF TAX SUSPENDED BY OBJECTION OR APPEAL**

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

shall be suspended by reason of any notice of objection or appeal having been given against an assessment, pending determination of the objection or appeal.

- (2) The Comptroller may enforce payment of that portion of the tax which is not in dispute.
- (3) Despite the provisions of subsection (1), the Comptroller may, in his or her discretion, require the taxpayer to pay an amount not exceeding 50% of the tax in dispute pending the determination of the appeal.
- (4) If the taxpayer's appeal is allowed by the Commissioners, the amount paid under subsection (3) shall be refunded by the Comptroller to the taxpayer.

*(Amended by Act 18 of 1990)*

## **PART 12**

### **PAYMENT, RECOVERY AND REFUND OF TAX**

#### **113. ADVANCE PAYMENT OF TAX**

- (1) This section shall apply to—
  - (a) every resident company;
  - (b) every other resident person, except an individual whose only source of income is from employment or by way of dividends or both such sources;
  - (c) every non-resident person carrying on business in Saint Lucia, except a non-resident person providing independent personal services in respect of which there is a liability to withholding tax.
- (2) Subject to this section, every person to whom this section applies shall in respect of his or her liability to tax for any year of income make payment towards such tax in the manner provided by this section.
- (3) Subject to this section, every person shall pay to the Comptroller on or before 25 March, 25 June and 25 September respectively, in each year of income, an amount equal to  $\frac{1}{3}$  of the tax estimated by him or her at the rates set out in Schedule 5 on his or her estimated chargeable income for the year and, on or before 31 March in the following year, or where, in the case of a company, its financial year does not commence in the month of January, within 3 months after the end of its financial year, the remainder of the tax as estimated by him or her.
- (4) For the purposes of subsection (3) the estimated chargeable income of any person for a year of income is taken to be the chargeable income as disclosed in his or her return, if any, of total income for the preceding year of income.
- (5) Where the estimated chargeable income of any person for the year of income as provided for by subsection (4) is, in the opinion of such person, likely to be less than the chargeable income of the preceding year, on an application by such person for the purpose, the Comptroller may revise the estimated

chargeable income of that person and the amount of tax chargeable thereon, and the provisions of subsection (1) shall apply accordingly.

- (6) In the case of a person other than a company, who is in receipt of income from—
- (a) employment or dividends or both; and
  - (b) another source or sources,
- the instalments payable shall take into account any deductions of tax which have been made under Schedule 4 in relation to employment income.
- (7) Any instalments of tax paid under this section in respect of a year of income shall be set off against the tax charged under section 80(1) for such year.
- (8) Despite section 129(3), the Comptroller may apply any overpayment of tax, against instalments which are due to be paid in accordance with this section.

*(Amended by Acts 18 of 1990, 7 of 1994, 8 of 1996 and 11 of 1998)*

#### **114. WHEN TAX IS DUE AND PAYABLE**

- (1) Subject to this Part, and particularly to section 113, any tax charged by a notice of assessment is due and payable—
- (a) by 30 September in the year of income, or
  - (b) within 30 days of the date of service of the notice of assessment, whichever is the later.
- (2) In the case of emolument income any additional tax due and payable as calculated under the provisions of section 84 is to be paid at time of filing the return provided for in that section.
- Except that where any further tax is charged by way of any notice of assessment the provisions of subsection (1) above apply.
- (3) On application in writing by the person chargeable, the Comptroller may in any case grant in writing such extension of time for payment or permit payments to be made by such instalments and within such time as he or she considers the circumstances warrant, and in such case the tax is due and payable accordingly, but nothing in this subsection is to be

construed to extend the due date specified in subsection (1) in respect of any interest payable under section 115.

- (3) Where, under subsections (1) and (2), any tax is permitted to be paid by instalments and there is default in payment of any instalment, the whole of the balance of tax outstanding shall become due and payable.

*(Amended by Act 9 of 2001)*

### **115. INTEREST ON UNPAID TAX**

- (1) Any tax, being the whole or part of an instalment of tax due and payable by any person under section 113, not paid by the date upon which such instalment or part thereof becomes due and payable shall bear interest at the rate of 11/4% per year above the prevailing prime rate of interest or such other rate as may be prescribed by the Minister by Order made by statutory instrument for the period during which it remains unpaid.
- (2) Any tax, being the remainder of any tax charged on any person under section 114 not paid by the due date shall bear interest at the rate of 1% per year above the prevailing prime rate of interest or such other rate as may be prescribed by the Minister by Order made by statutory instrument for the period during which it remains unpaid.

*(Substituted by Act 11 of 2007)*

### **116. WHEN TAX DEDUCTED FROM REMUNERATION, PAYMENTS TO CONTRACTORS OR PAYMENTS TO NON-RESIDENTS IS DUE AND PAYABLE**

Any tax deducted or deductible—

- (a) from the remuneration paid to an employee under section 77;
- (b) from payments to contractors under section 78; or
- (c) from the payment of any income to a non-resident to which section 76 applies,

is due and payable within 15 days after the end of the month during which that tax was deducted or deductible.

**117. INTEREST ON UNPAID TAX DEDUCTIONS**

- (1) Any tax or part thereof deducted or deductible under sections 53, 63, 76, 77, or 78 and not paid by the time specified in those sections or in section 116 bear interest at the rate of 1% per year above the prevailing prime rate of interest or such other rate as may be prescribed by the Minister by Order made by statutory instrument for the period during which it remains unpaid.
- (2) Any interest imposed on any person under subsection (1) shall be a debt by that person and shall not be recoverable by him or her from the person in respect of whom the tax was deducted or should have been deducted.

*(Amended by Act 18 of 1990 and 11 of 2007)*

**118. RECOVERY OF TAX BY COURT ACTION**

- (1) Tax shall, when it becomes due and payable, be a debt due to the Government and payable to the Comptroller.
- (2) Any tax unpaid may be sued for and recovered by the Comptroller in any court of competent jurisdiction.
- (3) In any proceedings for the recovery of tax it shall not be competent for the defendant to enter a defence that the tax charged is excessive.
- (4) In this section, tax includes—
  - (a) tax payable under sections 113 and 114; and
  - (b) tax deducted or deductible under sections 53(5), 63(14), 76, 77, or 78.

**119. RECOVERY OF TAX BY DISTRAINT**

- (1) If upon demand made by the Comptroller a person neglects or refuses to pay any tax or any portion of it that is payable, the Comptroller by warrant under his or her hand, in the form given in Schedule 7, may authorise an officer of the rank of senior executive officer or above hereinafter referred to as an “authorised person” to distrain upon the goods and chattels of that person.
- (2) For the purpose of levying any such distress, the “authorised person” may break open, in the day-time, any house or

premises, calling to his or her assistance any constable. Every such constable shall, when so required, aid and assist the “authorised person” in the execution of the warrant and in levying the distress in the house or premises.

- (3) A distress levied by the authorised person shall be kept for any period not exceeding 30 days, at the costs and charges of the person neglecting or refusing to pay.
- (4) If the person from whom such tax is recoverable does not pay the sum due, together with the costs and charges, within the said 30 days, the goods and chattels distrained upon shall be sold by public auction by the authorised person or any person deputed by him or her for payment of the sum due and all costs and charges. The costs and charges of taking, keeping and selling the distress shall be retained by the authorised person or any person deputed by him or her, and any surplus arising from the distress, after the deduction of the costs and charges and of the sum due, shall be restored to the owner of the goods and chattels distrained.
- (5) Every sale under subsection (4) shall be held at such time and place as the Comptroller shall direct and notice of such sale shall be published in the Gazette.
- (6) In this section “**constable**” includes any member of the police service and any member of the special reserve, a special constable or a rural constable appointed under the Police Act.

## 120. OBSTRUCTION OF OFFICERS

A person commits an offence who, by himself or herself or by any person in his or her employ obstructs, molests or hinders—

- (a) an authorised person or any person employed in relation to any duty of tax in the execution of his or her duty, or of any of the powers or authorities by law given to the authorised person or any other person; or
- (b) any person acting in the aid of an authorised person or any person so employed.

**121. RECOVERY OF TAX AS PRIVILEGED DEBT BY REGISTRATION AS JUDGEMENT DEBT**

- (1) Where any tax having become due and payable by any person under section 113 or 114 remains unpaid after the day on or before or by which it should have been paid such tax constitutes a privileged debt due to the Government carrying a privilege over all property whether movable or immovable, ranking immediately after law costs and in priority to all other privileged claims, charges or debts against such person.
- (2) Such tax and any amount of penalty due under section 134 is considered to be a judgement debt due by that person and payable to the Comptroller and execution for the recovery thereof together with interest at the rate of 1% per month or part thereof and costs may be issued by the Comptroller under a certificate prepared by him or her containing particulars of—
  - (a) the date upon which the tax become due and payable;
  - (b) the amount of tax, penalty and interest.
- (3) The Comptroller may register the certificate referred to in subsection (2) in the Land Registry or the Registry of Deeds and Mortgages as if it were a judgement; and upon satisfaction thereof he or she shall issue a further certificate certifying payment which upon registration by him or her shall have the effect of discharging the registered judgement.
- (4) A fee shall not be charged for the registration of a certificate of debt or certificate of payment to which this section applies.

**122. RECOVERY OF MONEYS FROM PERSONS LEAVING SAINT LUCIA**

- (1) Where the Comptroller has reason to believe that any person may leave Saint Lucia owing moneys under this Act, the Comptroller may, by notice in writing served on that person, require that he or she pay the amount owing or give security to the satisfaction of the Comptroller for the payment of the amount, within the time specified in the notice.
- (2) If any person fails to pay any money owing or give satisfactory security as required under subsection (1), an exit certificate shall not be issued to such person under the subsidiary legislation in force in relation to income tax exit certificates.

### **123. RECOVERY OF TAX FROM ASSETS OF CERTAIN DISPOSITIONS**

- (1) So much of any tax due and payable by a disponent as is attributable to income accrued under a disposition, but charged to tax in the name of the disponent under sections 14, 15(5) or 16, may be recovered from the assets of the disposition.
- (2) For the purposes of subsection (1), the tax attributable to income considered to have accrued to a disponent under sections 14, 15(5) or 16, means the amount by which the tax charged under section 80 has been increased by the inclusion of such income in the assessable income of the disponent.
- (3) Where income is considered to have accrued to the disponent under 2 or more dispositions the amount ascertained under subsection (2) is to be apportioned between those dispositions in such proportions as the chargeable income of each such disposition bears to the total chargeable income of all such dispositions.

### **124. RECOVERY OF TAX FROM REPRESENTATIVE TAXPAYER**

- (1) Where any individual dies, then in respect of any tax payable under an assessment—
  - (a) made upon him or her prior to and remaining unpaid at his or her death;
  - (b) made upon his or her executor under section 17 in respect of income accrued to his or her death; or
  - (c) made upon his or her executor under section 18 in respect of income accrued after death to the estate of the deceased person,the amount of tax unpaid by that person in his or her lifetime or payable under an assessment made on his or her executor is a debt due and payable out of the estate of the deceased person.
- (2) Where a company is being wound up, then in respect of any tax payable under an assessment—
  - (a) made upon the company, prior to and remaining unpaid at the commencement of the liquidation;
  - (b) made upon the liquidator in respect of income accrued prior to commencement of the liquidation; or

- (c) made upon the liquidator in respect of income accrued during the winding up of the company, the amount of tax unpaid by the company or payable by the liquidator is a debt due and payable out of the assets of the company.
- (3) Where any person is chargeable to tax under section 15(1) as trustee of a trust to the income of which there is no beneficiary immediately entitled, then any tax payable by the trustee is due and payable out of the assets of the trust.
- (4) Where any person is chargeable to tax under sections 19 or 20 as trustee for an incapacitated or an insolvent person, any tax payable by the trustee is due and payable out of the assets of that person.
- (5) Where any person is chargeable to tax under section 22 as agent for a non-resident, any tax payable is due and payable out of the assets in Saint Lucia of the non-resident.

#### **125. RIGHT OF REPRESENTATIVE TAX PAYER TO INDEMNITY**

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

#### **126. PERSONAL LIABILITY OF REPRESENTATIVE TAXPAYERS**

- (1) Every representative taxpayer is personally liable for any tax payable by him or her in his or her representative capacity if, while it remains unpaid—
  - (a) he or she alienates, charges or disposes of any income in respect of which the tax is charged; or
  - (b) he or she disposes of or parts with any assets or money which is in his or her possession or comes to him or her after the date on which the tax is due and payable,if the tax could legally have been paid out of such income, assets or money.
- (2) Every trustee, curator, liquidator, tutor or executor, is personally liable for the payment of any tax if, before distributing any assets under his or her control to the persons

entitled thereto, he or she fails to obtain from the Comptroller a certificate showing that all tax which may be recovered from such assets has been paid.

## **127. RECOVERY OF TAX FROM PERSONS HOLDING MONEY FOR ANOTHER PERSON**

- (1) For the purposes of recovery of any tax due and payable by any person, the Comptroller may, by notice in writing, declare any other person—
  - (a) from whom any money is due or may become due to the first mentioned person;
  - (b) who holds or may subsequently hold money for or on account of the first mentioned person;
  - (c) who holds money on account of some other person for payment to the first mentioned person; or
  - (d) who has authority from some other person to pay money to the first mentioned person,

to be the agent of that person and to pay to the Comptroller within 15 days of the date of service of the notice, or if on such date no money is due or held to which this subsection applies, within 15 days of the date on which money becomes due or is held in any of the circumstances referred to in this subsection, the amount specified in the notice or, if the money due or held is less than the amount specified, the whole amount of the money due or held.

- (2) The payment of any money to the Comptroller by any person under subsection (1) shall to the extent of such payment constitute the discharge of the original liability of that person to the person from whom tax was due and payable to the Comptroller.
- (3) Where any person, declared to be an agent under subsection (1), fails to make any payment within the time specified in a notice under that subsection, the provisions of this Act shall apply as if each amount were tax due and payable by the person declared to be an agent on the date by which he or she was required to make such payment to the Comptroller.

**128. PRIORITY OF TAX DEBT UPON BANKRUPTCY OR LIQUIDATION**

Despite anything contained in any other enactment—

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

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

**129. REFUND OF TAX OVERPAID**

- (1) Where the Comptroller is satisfied that any person has paid tax for any year of income, by deduction or otherwise in excess of the amount finally determined to be payable under this Act for such year of income, that person shall subject to section 100, be entitled to have the amount of the excess refunded.
  - (2) Despite subsection (1), where any tax is due and payable and unpaid in respect of any other year of income or any tax, interest or penalty is due and payable and unpaid under any other Act under the administration or management of the Inland Revenue Department the Comptroller, instead of refunding the amount of the excess, may apply such excess towards such other unpaid tax and shall notify the person accordingly.
  - (3) Subject to section 113(8) any refund of tax due and payable under subsection (1) which is not paid 6 months after the date of assessment shall bear interest at the rate of 4% per year for the additional period during which it remains unpaid.
- (2) Subsection (3) shall apply to income tax returns filed with the Comptroller of Inland Revenue for the income year 1998 and succeeding income years.

*(Acts 11 of 1998 and 9 of 2001)*

**130. REMISSION OF TAX**

- (1) The Cabinet may exempt or remit wholly or in part any tax payable by any person where it is satisfied that it is just and necessary to do so.
- (2) Any decision made under subsection (1) is final and not subject to appeal.
- (3) The Comptroller may remit any amount of tax unpaid by any person in respect of any year of income, whether before or after the commencement of this Act, where he or she is satisfied—
  - (a) that such tax is irrecoverable by operation of law;
  - (b) that the cost of collection of such tax would exceed the amount outstanding; or
  - (c) the amount of such tax does not exceed \$500, or such higher amount as may be specified in Regulations made by the Minister.
- (4) In this section “**tax**” includes amounts of interest or penalty.
- (5) In exercising his or her powers under subsection (3)(a), the Comptroller shall consult with the Minister.

*(Amended by Act 9 of 2001)*

**PART 13  
OFFENCES***Division 1 – Civil Penalties***131. PENALTIES: GENERAL**

- (1) The penalties imposed by this Division of this Part shall be in addition to any right to institute criminal proceedings against any person for an offence under this Act, and any fine payable on conviction for an offence is in addition to the penalties provided herein.
- (2) The penalties imposed by this Division of this Part are in addition to any interest payable under section 115 or 117 of this Act. *(Inserted by Act 9 of 2001)*

- (3) For the purposes of this Division, where under this Act, tax is expressed to be due and payable on or before, or by, a specified date the due date is considered to be such specified date.

### **132. PENALTIES: FAILURE TO FURNISH RETURN OF INCOME**

Where any person, who is liable to furnish a return of income for any year of income, fails to do so within the prescribed time or any extended time allowed under section 96, he or she is liable to a penalty not exceeding 5% of the amount of tax charged for that year of income.

### **133. PENALTIES: FAILURE TO FURNISH CORRECT RETURN OF INCOME**

- (1) Where any person fails to furnish a correct return of income for any year of income by reason of—
  - (a) his or her failure to disclose any assessable income accrued to him or her from any source;
  - (b) the deduction or set off by him or her of any amount which is not allowable as a deduction or set off;
  - (c) the claim by him or her of an expenditure or loss of an amount which was not expended or lost; or
  - (d) his or her failure to disclose any fact, the disclosure of which would result in an increase in his or her liability to tax,he or she is liable to a penalty in accordance with subsections (2) or (3).
- (2) Where the incorrectness of the return of income or the information was attributable to—
  - (a) neglect or carelessness, he or she is liable to a penalty not exceeding the amount of tax which would have been lost if he or she had been assessed on the basis of the incorrect return or information furnished by him or her; or
  - (b) fraud or wilful default, he or she is liable to a penalty not exceeding twice the amount of tax which would have been lost if he or she had been assessed on the basis of the incorrect return or information furnished by him or her.

- (3) If, for any year of income, determination of the chargeable income of any person results in an assessed loss, and the amount of such loss is less than it would have been if it had been calculated on the basis of the return of income or information furnished by him or her by reason of any of the circumstances specified in subsection (1) and such incorrectness of the return or information was due to neglect, carelessness, fraud or wilful default, he or she is liable to a penalty not exceeding 10% of the difference between those amounts.

#### **134. PENALTIES: FAILURE TO PAY TAX BY DUE DATE**

- (1) Where any person fails to pay tax, being the whole or part of—
  - (a) an instalment of tax due and payable under section 113; or
  - (b) the remainder of any tax charged under section 114,by the due date he or she is liable to a penalty of 10% of the amount of such tax.
- (2) The penalty imposed by this section is in addition to any interest payable under section 115.

#### **135. PENALTIES: FAILURE TO DEDUCT TAX OR ACCOUNT FOR TAX DEDUCTED**

- (1) Where any person who is required by this Act to deduct tax from the income of, or payments to some other person under sections 53(5), 63(14), 76, 77, or 78, fails to deduct such tax or to account to the Comptroller for any tax so deducted, he or she is liable to a penalty of 10% of the tax which should have been deducted or for which he or she has failed to account.
- (2) The penalty imposed by this section is in addition to any interest payable under section 117 and any personal liability which might exist in relation to such tax.

#### **136. PENALTIES: FAILURE TO COMPLY WITH NOTICE TO GIVE INFORMATION, PRODUCE DOCUMENTS OR GIVE EVIDENCE TO COMPTROLLER**

Where any person fails within the specified time to comply with a notice issued under section 87(1) requiring him or her to—

- (a) furnish returns or information under paragraph (a);

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

of that section, whether in relation to himself or herself or any other person he or she is liable to a penalty not exceeding \$500.

### **137. NOTICE OF INTENTION TO IMPOSE PENALTY TO BE GIVEN**

Where any penalty is contemplated under section 136, prior to its imposition, the Comptroller shall notify the person concerned—

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

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

### *Division 2 – Criminal Proceedings*

### **138. SANCTION FOR PROSECUTION**

- (1) Subject to the powers of the Director of Public Prosecutions under section 85 of the Constitution criminal proceedings in respect of any offence under this Act shall not be commenced except with the sanction of the Comptroller.
- (2) Criminal proceedings under this Act shall be commenced in the name of the Comptroller.

### **139. OFFENCES: BREACH OF SECRECY**

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

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

(b) permits any unauthorised person to have access to any records in the possession or custody of the Comptroller, commits an offence and is liable summarily to a fine of \$1,000 or to imprisonment for one year.

#### **140. OFFENCES: FAILURE TO COMPLY WITH REQUIREMENTS OF THE ACT**

- (1) Any person who—
- (a) fails or neglects to furnish to the Comptroller any return or document as and when required under this Act;
  - (b) fails to comply with the requirements of any notice in writing served on him or her under this Act;
  - (c) refuses or neglects to answer truly and fully any questions put to him or her or to supply any information required from him or her in relation to his or her assessable income or the assessable income of any other person;
  - (d) fails to keep a proper record of his or her transactions or to preserve any books of account or documents as required under section 90;
  - (e) fails to disclose in any return of income made by him or her any assessable income accrued to him or her or any material facts which should have been disclosed;
  - (f) signs any return or document rendered to the Comptroller without reasonable grounds for believing that return or document or any part thereof to be correct; or
  - (g) obstructs or hinders any person appointed or employed under this Act in the discharge of his or her duties,
- commits an offence and is liable summarily to a fine of \$1,000 or to imprisonment for one year.
- (2) Every person who, having been convicted under subsection (1) of failing to do anything required to be done by him or her under this Act, fails within any further period specified by the Comptroller in a notice served on him or her, to comply with the requirements of that notice, commits a further offence and is liable summarily for each day during which the offence continues to a fine of \$50 or to imprisonment for one month.

**141. OFFENCES: INTENT TO EVADE LIABILITY TO TAX**

- (1) Any person who, wilfully and with intent to evade assessment or liability to tax—
  - (a) makes, causes or allows to be made any incorrect statement in any return lodged under this Act;
  - (b) signs any document or any return lodged under this Act having reason to believe the contents of such document or return or any part thereof to be incorrect;
  - (c) gives any incorrect answer, verbally or in writing, to any request for information made by the Comptroller;
  - (d) prepares or maintains any incorrect books of account or other records or falsifies any books of account or other records;
  - (e) authorises the preparation or maintenance of any incorrect books of account or other records; or
  - (f) makes use of or authorises the use of any fraud whatever, commits an offence and is liable summarily to a fine of \$2,000 or to imprisonment for 2 years.
- (2) In any proceedings under this section, if it is proved that any incorrect statement or entry is wilfully made in any return, document, answer, books of account or other records by any person, he or she shall be presumed, until the contrary is proved, to have made, caused or allowed to be made that incorrect statement or entry with intent to evade assessment or liability to tax.

**142. OFFENCES: DEDUCTION OF WITHHOLDING TAX AND TAX FROM PAYMENTS TO CONTRACTORS**

Any person who—

- (a) fails to deduct withholding tax from a payment—
  - (i) to a non-resident, to which section 76 and Schedule 3 apply,
  - (ii) to any person, to which sections 53(5) or 63(14) apply;
- (b) fails to deduct tax from a payment to a contractor, to which section 78 applies; or

- (c) within the prescribed time, fails to pay to the Comptroller any amount deducted in accordance with the provisions referred to in paragraphs (a) and (b),

commits an offence and is liable on summary conviction to a fine of \$1,000 or to imprisonment for one year.

#### **143. OFFENCES: BY EMPLOYERS OR EMPLOYEES**

(1) Any person who—

(a) being an employer—

- (i) within the prescribed time, fails to register as an employer, or to notify any change of address or to notify that he or she has ceased to be an employer,
- (ii) within the prescribed time, fails to deduct any amount of tax from remuneration paid to an employee,
- (iii) within the prescribed time, fails to pay to the Comptroller any amount of tax deducted from remuneration paid to an employee,
- (iv) fails to comply with any direction issued by the Comptroller under Schedule 4,
- (v) fails to maintain a record of remuneration paid to his or her employees and tax deducted therefrom,
- (vi) within the prescribed time, fails to deliver to any employee a certificate of tax deducted from remuneration,
- (vii) within the prescribed time, fails to furnish to the Comptroller an annual return of tax deductions and remittances; or

(b) being an employee, within the prescribed time, fails to lodge the further declaration required by paragraph 3(5)(b) of Schedule 4 upon ceasing to be entitled to any of the deductions or allowances claimed by him or her in a declaration previously furnished by him or her in respect of that year of income,

commits an offence and is liable on summary conviction to a fine of \$1,000 or to imprisonment for one year.

**144. OFFENCES: EVASION OF TAX IN RELATION TO DEDUCTION OF TAX BY EMPLOYER**

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

commits an offence and is liable on summary conviction to a fine of \$2,000 or to imprisonment for 2 years.

- (2) In any proceedings under this section, if it is proved that any incorrect statement or entry is wilfully made in any return, document, answer, books of account or other records by any person, he or she shall be presumed, until the contrary is proved, to have made, caused or allowed to be made that incorrect statement or entry with intent to evade assessment or liability to tax.
- (3) In this section the words “**employer**”, “**remuneration**” and “**employee**” shall have the meaning given to them in Schedule 4.

**145. AIDING OR ABETTING AN OFFENCE**

- (1) Where any person—
  - (a) wilfully makes or furnishes on behalf of another person;  
or

- (b) aids or abets another person to make or deliver, an incorrect return, document, statement or any incorrect information relating to any matter affecting the tax liability of that other person, the first mentioned person commits an offence and is liable to a fine of \$1,000 or to imprisonment for one year.
- (2) Where any person wilfully and with intent to assist any other person to evade assessment or liability to tax does any of the matters referred to in section 141 or 144, he or she commits an offence and is liable on summary conviction to a fine of \$2,000 or to imprisonment for 2 years.
- (3) In any proceedings under subsection (2), if it is proved that any incorrect statement or entry is wilfully made in any return, document, answer, books of account or other records by such person, he or she is presumed, until the contrary is proved, to have made such incorrect statement or entry with intent to assist such other person to evade assessment or liability to tax.

#### **146. MITIGATION OF PENALTIES AND COMPOUNDING OF OFFENCES**

- (1) Where any person commits a breach of the provisions of this Act for which a penalty is provided under Division 1 of this Part, then in relation to such breach, the Comptroller may mitigate any penalty either wholly or in part.
- (2) Subject to the powers of the Director of Public Prosecutions under section 85 of the Constitution, where any person commits an offence against this Act for which criminal proceedings may be taken under Division 2 of this Part, then in relation to such offence, the Comptroller may, at any time prior to the commencement of the hearing by any court of such proceedings, compound the offence and order the person to pay such sum of money as the Comptroller may think fit but not exceeding the maximum amount specified in Division 2 for such offence.
- (3) The Comptroller shall not exercise his or her power to compound under subsection (2) unless the person who has committed the offence requests the Comptroller in writing to so deal with the offence.

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

#### **147. TIME LIMITS FOR PROCEEDINGS TO BE TAKEN**

- (1) Where the offence alleged involved the doing of any act, proceedings under this Division may be commenced within 3 years after the discovery of the act.
- (2) Where the offence alleged involved the failure to do any act, proceedings under this Division may be commenced within 3 years after the date of such failure.
- (3) Where the offence alleged involved the non-disclosure or incorrect disclosure by any person of any income or information relating to that person's liability to tax, Proceedings under this Division may be commenced within 3 years after his or her correct liability to tax has become final in respect of the year of income to which the offence relates.

### **PART 14 MISCELLANEOUS**

#### **148. FORMS OF NOTICES AND RETURNS**

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

- (2) Any notice given by the Comptroller under this Act may be signed by the Comptroller or any officer not being below the rank of a senior tax inspector authorised by him or her in that behalf and any notice purporting to be signed on behalf of the Comptroller shall, unless the contrary is proved, be presumed to have been signed by an officer so authorised.
- (3) Every form, notice or other document issued, served or given by the Comptroller under this Act is sufficiently authenticated if the name or title of the Comptroller or the name or title of the officer authorised in that behalf, is printed, stamped or written thereon.

#### **149. SERVICE OF NOTICES OR DOCUMENTS**

- (1) Where, under this Act, any notice or other document is required or authorised to be served on or given to any person by the Comptroller, such notice or other document is sufficiently served—
  - (a) in the case of a person other than a company, a body of persons or a partnership if—
    - (i) personally served on him or her,
    - (ii) left at his or her address for service of notices, or
    - (iii) sent by post to such address for service of notices;
  - (b) in the case of a company if—
    - (i) personally served on the principal officer of the company,
    - (ii) left at or sent by post to the company's address appointed under section 92 for service of notices under this Act, or
    - (iii) where no address for service of notices has been appointed, left at or sent by post to any office or place of business of the company;
  - (c) in the case of a partnership if—
    - (i) personally served on the precedent partner or agent of the partnership,
    - (ii) left at or sent by post to the partnership's address appointed under section 93 for service of notices under this Act, or

- (iii) where no address for service of notices has been appointed, left at or sent by post to any office or place of business of the partnership;
  - (d) in the case of a body of persons if left at or sent by post to the address for service of notices of that body.
- (2) Where any notice is served on any person—
  - (a) requiring the personal attendance of that person before the Comptroller, under section 87; or
  - (b) appointing that person the agent of some other person for the payment of tax, under section 127,the provisions of subsection (1) relating to service by post shall be construed as service by registered post.
- (3) Any notice served by post in accordance with this section is considered to be served, in the case of—
  - (a) a person resident in Saint Lucia, 7 days; and
  - (b) a non-resident, 30 days,after the date upon which such notice was posted.

#### **150. CHANGE OF ADDRESS FOR SERVICE OF NOTICE**

- (1) Every person who has given an address for service of notices, whether in a return of income or otherwise and who subsequently changes such address shall, within one month after such change, notify the Comptroller in writing of his or her new address for service of notices.
- (2) The address for service of notice last given to the Comptroller by any person shall, for all purposes of the Act, be his or her address for service of notices.
- (3) Where no address for service of notices has been given, or where the Comptroller's records disclose that any person has changed his or her address and has failed to notify the Comptroller of such change, then the address of such person as described in any record in the Comptroller's possession is a sufficient address for service of notices.
- (4) In any criminal proceedings which may be taken for failure to furnish a return of income against any person liable to furnish

such a return it shall be no defence by such person that he or she has not received from the Comptroller—

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

## 151. REGULATIONS

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

- (a) the collection of tax by instalments or by means of deductions made from emoluments or other income;
- (b) the conditions under which persons chargeable to tax may leave or may be prevented from leaving Saint Lucia and for the issue of exit certificates showing that tax has been paid or that satisfactory arrangements have been made;
- (c) the payment of tax by companies by such instalments and at such times as may be prescribed;
- (d) the periods during which companies are required to submit returns;
- (e) matters which are required or permitted to be prescribed;
- (f) the imposition by a court of summary jurisdiction of—
  - (i) a fine not exceeding \$500, or
  - (ii) a term of imprisonment not exceeding 3 months, for any breach of the regulations;
- (g) appeals to the appeal commissioners against decisions of the Comptroller made under the regulations; and
- (h) any other matters or things whether similar or not to those above mentioned in respect of which it may be expedient to make regulations for the purposes of this Act.

**152. AMENDMENT OF SCHEDULES AND RATES SPECIFIED IN THE ACT**

- (1) Subject to subsection (2) the Minister may by order made by statutory instrument published in the Gazette—
  - (a) amend the Schedules;
  - (b) increase, delete, reduce, vary or make changes to the rates of tax specified in Schedule 5 and Schedule 6 or in any other provision of the Act; or
  - (c) vary any sum or figure in any provision of the Act.
- (2) An order made under subsection (1) is subject to negative resolution of Parliament.

**153. SAVING**

- (1) The regulations made under the previous Act, remain in force until revoked by regulations made under this Act.
- (2) The repeal of the previous Act does not affect any liability to tax or any obligation arising in respect of any year of income or assessment prior to the commencement of this Act for which purpose the previous Act and subsidiary legislation, subject to subsections (3) and (4) continue in force.
- (3) Where any objection or appeal is made or is still undetermined in relation to any matter arising under the previous Act, the provisions of Part 11 apply.
- (4) In relation to the recovery of any tax, penalty or interest becoming due and payable under the previous Act the provisions of sections 121 to 130 apply.

## SCHEDULE 1

(Section 33)

### VALUE OF TRADING STOCK

#### 1. VALUE OF TRADING STOCK TO BE INCLUDED IN RETURN OF INCOME

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

#### 2. VALUE OF TRADING STOCK AT BEGINNING OF INCOME YEAR

The value of trading stock held by any person at the beginning of any income year is considered to be—

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

#### 3. VALUE OF TRADING STOCK AT END OF INCOME YEAR

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

#### 4. VALUE OF TRADING STOCK ON CESSATION OF BUSINESS

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

**5. COST PRICE OF TRADING STOCK**

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

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

**6. DEEMED VALUE OF CERTAIN TRADING STOCK**

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

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

such trading stock is considered to be acquired or disposed of at an amount equal to the price which, in the opinion of the Comptroller, was the current market price of such stock on the date of such acquisition or disposal.

**7. ADJUSTMENTS TO BE MADE WHERE TRADING STOCK INCORRECTLY VALUED**

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

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

**SCHEDULE 2<sup>6</sup>**

(Sections 26, 27, 33, 38 and 40)

**CAPITAL ALLOWANCES****PART 1  
BUILDINGS****1. ANNUAL ALLOWANCES**

- (1) In ascertaining the assessable income of any person for any year of income from the carrying on by that person or by a lessee from that person of any qualifying business (within the meaning of paragraph 3), there shall be deducted in respect of any building used for the purposes of such qualifying business carried on by that person or lessee an annual allowance of—
  - (a) an amount equal to 5% of the written down value of the building, not being a commercial building, at the end of the immediately preceding income year;
  - (b) in case of a commercial building, an amount equal to 2.5% of the written down value of the building at the end of the immediately preceding income year.

*(Substituted by Act 15 of 2003)*
- (2) For the purposes of this paragraph the written down value of a building at the end of a year of income means—
  - (a) in the case of the first year of income in which the building is used, the cost of such building less the annual allowance allowed in respect of such building for that year of income; and
  - (b) in the case of subsequent years in which the building is used, the written down value at the end of the income year for the immediately preceding year of income less the amount of the annual allowance on such building for the year of income.
- (3) Where a building commences to be used for the first time in a year of income the written down value for that year of income for the purposes of this paragraph shall be—

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<sup>6</sup> Amendments to Schedule 2 by Act 15 of 2003 takes effect in respect of income year 2002. See section 5(2) of Act 15 of 2003.

- (a) where the building is a newly erected or purchased building, the cost of erection or purchase thereof;
  - (b) where the building is an existing building which has been used for purposes other than the carrying on of a qualifying business, the cost thereof less notional allowances calculated in accordance with subparagraph (1) in respect of each year during which the building has been owned.
- (4) Where a building was in use for the purposes of a qualifying business on the last day of the year of income 1988, the written down value ascertained in accordance with the provisions of the previous Act apply.
- (5) Where a building in respect of which deductions have been allowed under this paragraph ceases to be used for the purposes of a qualifying business for one or more years of income but subsequently commences to be used for such purposes or is disposed of, notional annual allowances calculated in accordance with subparagraph (1) shall be calculated for each year during which the building was not used for business purposes in order to ascertain—
- (a) the written down value of the building in relation to subsequent years of income; or
  - (b) the adjusted cost of the building for the purposes of paragraph 2.

## **2. DISPOSAL OF BUILDING**

- (1) Where allowances have been granted to any person for previous years of income, whether before or after the coming into operation of this Act, in respect of a building and that building is disposed of in any year of income, a balancing allowance or a balancing charge shall be made as provided in this paragraph.
- (2) Where the cost, or the adjusted cost of a building exceeds the aggregate of—
- (a) the allowances granted for previous years of income; and
  - (b) the disposal value;
- the amount of such excess (referred to in this Act as “a balancing allowance”) shall be allowed as a deduction for the year of income in which the building is disposed.

- (3) Where the disposal value of a building exceeds the difference between—
  - (a) the cost, or the adjusted cost, of such building; and
  - (b) the allowances granted for previous years of income,the amount of such excess (referred to in this Act as “a balancing charge”) shall be included in the assessable income of the person disposing of the building for the year of income in which the building is disposed.
- (4) For the purposes of this Part, the adjusted cost of a building means the cost of erection or purchase thereof less the amount of any notional allowances under paragraph 1(3) or 1(5), in respect of any year of income during which the building was used other than for qualifying business purposes.
- (5) Where a person has been granted allowances in respect of a building, and such person ceases to carry on business prior to the disposal of such building, for the purposes of this paragraph he or she shall be subject to the provisions of this paragraph in the event of the subsequent disposal of the building.

### 3. MEANING OF BUILDING

- (1) For the purposes of this Part, a building means a building used for the purposes of carrying on any qualifying business, and includes a building provided by way of welfare facilities for employees but does not include a building used for residential purposes. (*Substituted by Act 15 of 2003*)
- (2) Where part only of a building is used for the purposes of a qualifying business, and the capital expenditure on that part of the building which is not so used—
  - (a) does not exceed 11% of the total capital expenditure the whole of the building is considered to be used for the purposes of a qualifying business;
  - (b) exceeds 11% but does not exceed 75% of the total capital expenditure, then the portion of such expenditure qualifying for deduction under this Part is such proportion of such expenditure as the part of the building so used for the purposes of a qualifying business bears to the entire building;

- (c) exceeds 75%, then the entire building is considered not to be used for the purposes of a qualifying business.
- (3) For the purposes of this Part a “qualifying business” means—
- (a) a business carried on in a commercial building, mill, factory or similar premises for the manufacture of goods or materials or their subjection to any industrial process;*(Substituted by Act 15 of 2003)*
  - (b) the operation of a dock or a water or electricity undertaking;
  - (c) the extraction of natural resources by mining or drilling;
  - (d) the catching or taking of fish including shell fish; or
  - (e) a business of agriculture, including horticulture and the use of land for the purposes of husbandry including the keeping or breeding of livestock and poultry or the growing of crops of fruits or vegetables.
  - (f) a commercial undertaking or trade, except an undertaking or trade determined to be an approved Tourism project as defined by the Tourism Incentive Act, or any enactment replacing it. *(Inserted by Act 15 of 2003)*

## **PART 2**

### **PLANT AND MACHINERY**

#### **1. ANNUAL ALLOWANCES**

- (1) In ascertaining the chargeable income of any person for any year of income there shall be deducted an annual allowance in respect of expenditure incurred, whether before or after the commencement of this Act, on the provision of plant and machinery acquired and brought into use by that person for the purpose of producing assessable income.
- (2) The deduction allowable shall, subject to subparagraph (3), be an amount equal to the following percentages of—
  - (a) the cost of the plant and machinery, in the case of the year of income in which the plant and machinery was first brought into use; and
  - (b) the written down value of the plant and machinery at the end of the income year for the immediately preceding

year of income in the case of subsequent years of income—	
(i) Agricultural plant and machinery—	
(A) electrical, including meters	15%
(B) spraying equipment	15%
(C) other	10%
(ii) Aerated beverage plant—	
(A) Electrical	15%
(B) Steam	10%
(iii) Aircraft, parts and equipment	33 1/3%
(iv) Bakery plant and machinery	15%
(v) Bicycles	25%
(vi) Block and brick manufacturing plant and machinery	15%
(vii) Cigarette manufacturing machinery	15%
(viii) Cinematograph—	
(A) Machinery (projectors)	20%
(B) Electrical appliances including fans and public address systems	15%
(C) Seating	15%
(ix) Clothing Trade—	
(A) Steam boilers, engines and similar plant and machinery	10%
(B) General Machinery including sewing machines	15%
(C) Electrical plant and machinery	15%
(x) Copra crushing and refining plant	15%
(xi) Cranes and hoists	15%
(xii) Diesel engines and motors	15%
(xiii) Electricity undertakings—	
(A) Generating plant	15%
(B) Mains	10%
(C) Other equipment water turbines and transformers	10%
(xiv) Electrical lifts	15%
(xv) Engineering workshops—	
(A) Electrical equipment	15%
(B) Heavy plant	10%

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	(C) Lathes and milling machines	15%
	(D) Welding plant, tools and instruments	15%
(xvi)	Furniture Workshops—	
	(A) Electrical equipment	15%
	(B) Other	15%
(xvii)	Furniture	15%
(xviii)	Garages—	
	Gasoline and Kerosene tanks and pumps	10%
(xix)	Gas—	
	(A) Gas holders or containers	10%
	(B) Other plant	10%
(xx)	Ice manufacture and Cold stores—	
	(A) Electrical plant and insulation	15%
	(B) Refrigeration machinery, compressors, condensers, tanks, etc.	15%
	(C) Steam and gas engines	10%
(xxi)	Laundry and dry cleaning—	
	(A) Steam boilers, engines and similar plant and machinery	10%
	(B) General machinery	15%
	(C) Electrical plant and machinery	15%
(xxii)	Motor cars, lorries, omnibuses, vans, jeeps, tractors, trucks, land rovers	25%
(xxiii)	Motor cycles	25%
(xxiv)	Neon signs	15%
(xxv)	Office appliances: Accounting, adding, calculating, cash registers and duplicating and copying machines, typewriters	15%
(xxvi)	Oil tanks and pumps	10%
(xxvii)	Photographic equipment	15%
(xxviii)	Printing—	
	(A) Plant and machinery	10%
	(B) Type	15%
	(C) Computer hardware	25%

	(D) Computer software	33 1/3%
(xxix)	Pumps—	
	(A) Electric	15%
	(B) Other	10%
(xxx)	Radio equipment—	
	(A) Amplifiers and receivers	15%
	(B) Lines and speakers	10%
(xxxix)	Refrigeration, deep freeze and refrigeration cabinets	15%
(xxxvii)	Rum plant and breweries: Boilers, pumps, stills and vats	10%
(xxxviii)	Stoves	15%
(xxxix)	Scales	10%
(xxxv)	Shipping: Launches, lighters, canoes and sail boats	15%
(xxxvi)	Traction and hauling equipment	25%
(xxxvii)	Trailers	15%
(xxxviii)	Timber merchants—	
	(A) Saw milling machinery and electrical motors	15%
	(B) Steam engines and boilers	10%
(xxxix)	Waterworks: Appliances and apparatus used for storage, purification, conveyance, measurement or regulation of water	10%
(xl)	Plant and machinery not elsewhere specified	15%

- (3) Where the Comptroller is satisfied that by reason of the use of plant and machinery on multiple shift work or in other circumstances of abnormal wear and tear, he or she may authorise the deduction of such higher rate of allowance than is provided by subparagraph (2) as appears to him or her to be reasonable in the circumstances.
- (4) For the purposes of this paragraph the written down value of any plant and machinery at the end of the year of income means—

- (a) in the case of the first year of income in which the plant and machinery is acquired, the cost of such assets less the annual allowance, allowed in respect of such assets for that year of income;
  - (b) in the case of subsequent years the written down value at the end of the income year for the immediately preceding year of income less the annual allowance allowed in respect of such assets for that year of income.
- (5) Where expenditure had been incurred prior to the commencement of this Act, the written down value at the end of year of income 1987 ascertained in accordance with the previous Act shall apply for the purposes of subparagraph (4)(b).

## 2. DISPOSAL OF PLANT AND MACHINERY

- (1) Where allowances have been granted to any person for previous years of income, whether before or after the coming into operation of this Act, in respect of plant and machinery and any such asset is disposed of in any year of income, a balancing allowance or a balancing charge shall be made as provided in this paragraph.
- (2) Where the cost of the asset exceeds the aggregate of—
- (a) the allowances granted for previous years of income; and
  - (b) the disposal value,
- the amount of such excess (referred to in this Act as “a balancing allowance”) shall be allowed as a deduction for the year of income in which the asset is disposed of.
- (3) Where the disposal value of the asset exceeds the difference between—
- (a) the cost of the asset; and
  - (b) the allowances granted for previous years of income,
- the amount of such excess (referred to in this Act as “a balancing charge”) is to be taken into account in ascertaining the assessable income of the person disposing of the asset for the year of income in which the asset is disposed of.
- (4) Where a person has been granted allowances in respect of any plant and machinery and such person ceases to carry on

business prior to the disposal of such asset, for the purposes of this paragraph he or she shall be subject to the provisions of this paragraph in the event of the subsequent disposal of such plant and machinery.

### 3. REPLACEMENT PROPERTY

- (1) Where but for this paragraph the amount of any balancing charge would be taken into account in ascertaining the assessable income of any person for a year of income, that person may elect, by notice in writing given to the Comptroller when furnishing his or her return of income for that year and that *in lieu* of the balancing charge being so taken into account it may be deducted, subject to subparagraphs (2) and (3), from expenditure incurred on any plant and machinery (hereinafter referred to as “the replacement property”) acquired by him or her during the year of income to replace the plant and machinery disposed of.
- (2) Where an election is made under this paragraph the expenditure incurred on the replacement property is to be reduced by the amount of the balancing charge referred to in subparagraph (1) for the purpose of determining the written down value of the replacement property and the annual allowances applicable, but nothing herein affects the calculation of any balancing allowance or balancing charge by reference to the full amount of the expenditure incurred and the reduction of balancing charge made by subparagraph (1) in the event of the subsequent disposal of the replacement property.
- (3) Where an election is made under this paragraph in relation to the disposal of an asset giving rise to a balancing charge which exceeds the cost of the replacement property—
  - (a) no annual allowance shall be granted in respect of the replacement property; and
  - (b) the amount of the excess shall be included in the assessable income of the person disposing of the asset for the year of income in which the asset is disposed.

## **PART 3**

### **AGRICULTURAL EXPENDITURE**

#### **1. DEDUCTION ALLOWED**

Subject to this Part, where any person who is not exempt from tax under section 25 in respect of income from agriculture incurs capital expenditure on any agricultural works there is to be allowed as a deduction for the year of income for which the expenditure was incurred and in the next succeeding 4 years of income an amount equal to  $\frac{1}{5}$  of such expenditure.

#### **2. CERTIFICATE TO BE FURNISHED**

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

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

#### **3. DEDUCTION ALLOWABLE ON DISPOSAL**

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

#### **4. APPORTIONMENT OF DEDUCTION**

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

## 5. MEANING OF CAPITAL EXPENDITURE ON AGRICULTURAL WORKS

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

## PART 4 INTERPRETATION

### 1. DEFINITIONS

In Parts 1 and 2 of this Schedule—

“**allowances granted**” in relation to previous years of income means the sum of the annual allowances granted under this Schedule or the corresponding provision of the previous Act and any initial allowances granted under the previous Act;

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

“**disposal value**” means, in relation to—

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

but in any case where the amount accrued or the market value exceeds the cost, the disposal value is limited to the cost price, or in the case of a building the adjusted cost price, if applicable;

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

## **2. APPLICATION OF SCHEDULE TO HIRE PURCHASE TRANSACTIONS**

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

- (a) acquired the asset at the time the agreement or transaction was entered into; and
- (b) incurred expenditure thereon of an amount equal to the total amounts, excluding interest, payable under the agreement or transaction at the time referred to in subparagraph (a).

## **3. APPORTIONMENT OF CONSIDERATION WHERE ASSETS SOLD FOR CONSOLIDATED AMOUNT**

Where any property, in respect of which allowances are granted under this Schedule or the previous Act is disposed of together with other assets for a total consideration—

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

he or she may apportion the total consideration among the several assets in such manner as to arrive at a true market value of those assets in respect of which allowances have been granted and such

value shall be taken to be the disposal value of such assets for the purposes of this Schedule.

#### **4. DISPOSAL OF ASSETS IN CERTAIN TRANSACTIONS: VALUE TO BE ADOPTED**

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

(2) Where—

(a) under the amalgamation, reconstruction or merger of a company with another company and the transfer of assets to that other company; or

(b) the transfer of assets from an individual to a company or to a relative,

there is a substantial identity between the former owner and the new owner, the assets in relation to both, are considered to have been disposed of at their written down value.

(3) For the purposes of subparagraph (2) there is a substantial identity between the former owner and the new owner—

(a) in the case to which subparagraph (2)(a) applies, where at the end of the year of income in which the assets were transferred, shares in the company acquiring the assets, carrying—

(i) the right to exercise not less than 51% of the voting power in the company,

(ii) the right to receive not less than 51% of any dividends that might be paid by the company, or

(iii) the right to receive not less than 51% of any capital distribution in the event of a winding up or of a reduction in the share capital of the company, were beneficially held by persons or relatives of such persons who at the time the assets were transferred beneficially held in the disposing company shares carrying rights of those kinds;

*(Amended by Act 15 of 2003)*

- (b) in a case to which subparagraph (2)(b) applies, where at the end of the year of income in which the assets were transferred, in the case of a transfer to a company, shares carrying rights of the kind specified in subparagraph (a) were beneficially held by the vendor or relatives of the vendor.
- (4) In subparagraphs (2) and (3) “**a relative**” in relation to any person means—
  - (a) the spouse of that person; or
  - (b) a lineal ancestor, child or other lineal descendant, brother, sister, uncle, aunt, nephew or niece of that person or of his or her spouse.

*[The next page is page 143]*



## SCHEDULE 3

(Sections 76, 80, 87, 90 and 142)

### DEDUCTION OF TAX FROM PAYMENT TO NON-RESIDENTS

#### 1. APPLICATION

- (1) This Schedule applies to every person who makes any payment by way of—
  - (a) royalty;
  - (b) management charges;
  - (c) commission or fee, not being in respect of an employment to which section 77 applies;
  - (d) the distribution of income of a trust being income of the kind specified in subparagraphs (a) to (c);
  - (e) premiums including insurance premiums but excluding re-insurance;
  - (f) any other payments of an income nature and excludes the following payments:
    - (i) dividends,
    - (ii) interest or discounts,
    - (iii) lease, premium or licence,
    - (iv) annuities or other periodic payments such as payments by way of alimony or maintenance,to a non-resident, and subject to subparagraph (2) does not apply to any other payments to a non-resident carrying on business or exercising employment in Saint Lucia.
- (2) This Schedule also applies to any payment to a non-resident person in respect of the independent personal services performed in Saint Lucia other than by way of carrying on a business in Saint Lucia through a permanent establishment in Saint Lucia.
- (3) Where the accounts of a business are maintained on an accrual basis, and during a year of income any amount of the kind specified in subparagraph (1) is charged as an expense but payment is not made, tax shall be deducted and accounted for to

the Comptroller as if payment had been made on the last day of such income year.

- (4) For the purposes of proviso (a) to paragraph 2, where the income accruing to a trust is of different kinds, it shall be treated as retaining such character for determining the rate of tax to be deducted therefrom by the trustee.

## **2. DEDUCTION TO BE MADE BY PERSON MAKING PAYMENT**

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

- (a) where income accrues to a trust, and a non-resident beneficiary is entitled to the immediate benefit of the whole or part thereof, the trustee shall deduct and account for the tax required to be deducted under this Schedule;
- (b) where income which accrues to a non-resident is payable to a bank or other agent on his or her behalf, then for the purposes of collection, such bank or agent shall deduct and account for the tax required to be deducted under this Schedule;
- (c) where income which accrues to a non-resident is payable by another non-resident then, for the purpose of collection of the tax imposed by this section, the Comptroller may issue an assessment directly on the non-resident to whom the income accrues and the general provisions of Part 12 relating to the recovery of tax shall apply;
- (d) where income accrues to a non-resident in respect of rental of residential accommodation provided in Saint Lucia the provisions of Parts 5 and 6 apply and in that case the tax payable shall be at the rate provided in Schedule 5.

## **3. RATE OF TAX TO BE DEDUCTED**

Subject to section 60, and paragraph 2 the rate of tax to be deducted on any payment of the kind specified in paragraph 1, is 25% of every

dollar of such payment and is the final liability in respect of such income.

#### **4. CERTIFICATE AND RECORD OF PAYMENTS MADE AND TAX DEDUCTED**

- (1) Every person who has deducted any tax under this Schedule shall furnish to the person to whom payment is made a certificate showing the gross amount of the payment made and the tax deducted therefrom.
- (2) Every person making any payment to which this Schedule applies shall maintain a record showing in relation to each calendar year—
  - (a) the nature of the payment;
  - (b) the gross payment made to each non-resident; and
  - (c) the tax deducted therefrom,

and such record shall be kept available for examination by the Comptroller as and when required for any period not exceeding 6 years.

#### **5. RETURNS OF DEDUCTION AND REMITTANCES OF TAX**

- (1) Every person shall, when making any payment under section 116, furnish a return in such form as the Comptroller may approve showing the amount of tax deducted and remitted, together with a copy of all certificates issued under paragraph 4 in respect of such deductions of tax.
- (2) Every person to whom this Schedule applies, shall in respect of each calendar year, within 2 months after the end of such year or within such further time as the Comptroller may allow, furnish to the Comptroller a return in such form as he or she may approve showing the total of tax deducted by that person during such year and the total payments of such tax which have been made to the Comptroller.
- (3) In the event of there being any deficiency between the total amount of tax deducted in any year and the total payments of such tax made to the Comptroller, that person shall be required to account to the Comptroller for such deficiency.

**6. PERSONAL LIABILITY WHERE FAILURE TO DEDUCT TAX**

- (1) Where any person fails to deduct any tax under this Schedule he or she shall, in addition to any penalty for which he or she may be liable, be personally liable to pay to the Comptroller within the time specified in section 116 the amount which he or she has failed to deduct.
- (2) Where any person pays to the Comptroller the amount of tax which he or she failed to deduct, such amount shall be deemed to have been deducted under this Schedule.
- (3) The person making any payment to the Comptroller under this paragraph is entitled to recover such amount from the person to whom payment was made.
- (4) Where any person has failed to deduct tax as required under this Schedule but the Comptroller is satisfied that tax deducted from earlier or later payments is sufficient to meet the amount of tax which he or she has failed to deduct, the Comptroller may absolve such person from his or her liability under subparagraph (1).

## **SCHEDULE 4**

(Sections 77, 86, 90, 113, 143 and 144)

### **DEDUCTION OF TAX BY EMPLOYERS**

#### **1. REGISTRATION OF EMPLOYERS**

- (1) Every person who pays or becomes liable to pay remuneration to any employee shall register as an employer with the Comptroller.
- (2) Every person who was an employer at the commencement of this Act, but was not registered as an employer under the Income Tax (Employment) Rules, 1965 shall register with the Comptroller in the prescribed form within 30 days after the commencement of this Act and every person who becomes an employer after the commencement of this Act shall so register within 30 days after the end of the month in which he or she becomes an employer.
- (3) Every employer who changes his or her business address or ceases to be an employer shall notify the Comptroller accordingly within 30 days of such change of address or of his or her ceasing to be an employer, as the case may be.

#### **2. DEDUCTION OF TAX**

- (1) Every employer shall, unless the Comptroller otherwise directs, deduct tax in accordance with this Schedule.
- (2) Subject to this paragraph and paragraph 5 the amount of tax to be deducted is determined in accordance with tax deduction tables prescribed by the Comptroller under paragraph 4(2) and taking into account the concessional deductions claimed by the employee in the declaration lodged by him or her under paragraph 3.
- (3) Where, during any calendar year an employee receives income from more than one source of employment at the same time, the amount of tax to be deducted is such amount as is directed by the Comptroller.
- (4) Where, during any calendar year, an employee—

- (a) is a non-resident individual; or
- (b) being a resident individual, fails to lodge a declaration as required by paragraph 3,

the amount of tax to be deducted is determined in accordance with tax deduction tables prescribed by the Comptroller under paragraph 4.

### 3. DECLARATION BY EMPLOYEES

- (1) Subject to this paragraph, every employee chargeable to tax, to whom any remuneration accrues from employment after the commencement of this Act, shall furnish a declaration in the prescribed form to the person specified in subparagraphs (2) or (3).
- (2) Where such remuneration is received from one employer only, such declaration shall be furnished to the employer, who shall take the particulars shown on such declaration into account in deducting tax under paragraph 2.
- (3) Where such remuneration is received by that employee from more than one employer such declaration shall be furnished to the Comptroller who shall direct the respective employers as to the amount of tax to be deducted by them.
- (4) A declaration under this paragraph shall not be furnished by any employee who is a non-resident.
- (5) A declaration under this paragraph shall be furnished—
  - (a) where an employment commences, within 14 days of such commencement; and
  - (b) where the employee ceased to be entitled to the personal allowances or other deductions or allowances claimed in a declaration already furnished by him or her in respect of that year, within 7 days of such change of circumstance.
- (6) A declaration under this paragraph may be furnished at any time during the year where there is any change of circumstances whereby an employee becomes entitled to an increase in the concessional deductions or other deductions or allowances claimed in a declaration already furnished by him or her.

#### **4. TAX DEDUCTION TABLES**

- (1) The Comptroller shall prescribe tax deduction tables (hereinafter in this Schedule referred to as “the tables”) which come into force on the date of commencement of this Act.
- (2) The tax to be deducted in accordance with the tables prescribed under this paragraph shall take into account—
  - (a) the rates of tax payable under section 80;
  - (b) the concessional deductions allowable under sections 45, 46, 48, 49, 50, 51, 52 and 53; and
  - (c) such other deductions or allowances as the Comptroller may deem appropriate.
- (3) The tables shall include a table prescribing the tax to be deducted in the case of a non-resident employee and an employee who has failed to furnish a declaration under paragraph 3.
- (4) The tables shall specify the manner of calculation of the tax to be deducted from any payments of remuneration by way of—
  - (a) annual or other bonuses;
  - (b) overtime; and
  - (c) other payments of an abnormal nature.
- (5) In the event of any variation of the rates of tax payable or the concessional deductions allowable in relation to any year of income to which this Act applies, the Comptroller shall prescribe new tables to take into account such variation and shall, by notice published in the Gazette, specify the date upon which such tables come into force.

#### **5. VARIATIONS FROM TAX DEDUCTION TABLES**

- (1) Every employer shall, at the written request of any employee, deduct from his or her remuneration an amount of tax greater than that required to be deducted under the tables.
- (2) Where, in relation to any year of income any employee is of the opinion that the amount of tax required to be deducted by his or her employer under the tables will be substantially greater than the amount of tax which is likely to be charged for that year of income, he or she may apply in the prescribed form to the Comptroller for the issue of a direction and, if the Comptroller

is satisfied that it would be reasonable to do so, he or she may direct the employer by notice in writing to deduct either no tax or such amount as appears to the Comptroller to be appropriate to the circumstances of that employee, and the employer shall comply with that direction.

- (3) A request by an employee under subparagraph (1) or a direction by the Comptroller under subparagraph (2) may be withdrawn at any time by notice in writing given to the employer and upon receipt of any such notice the employer shall deduct tax in accordance with the tables.
- (4) Any request under subparagraph (1), direction under subparagraph (2) or notice of withdrawal under subparagraph (3) shall be complied with by the employer on and after the pay day next succeeding a period of 7 days following the receipt by him or her of such request, direction or notice.

## **6. PAYMENT TO OR RECOVERY BY COMPTROLLER**

Any tax deducted under this Schedule—

- (a) is due and payable within the time specified in section 116; and
- (b) when it becomes due and payable, is a debt due to Government and, if unpaid, is liable to the penalty specified in section 135 and to interest at the rate specified in section 117 and may be recovered in the manner provided in sections 118, 119, or 121.

## **7. PAYMENT OR REMUNERATION FREE OF TAX**

- (1) Any agreement between an employer and an employee whereby the employer agrees to pay, as remuneration to the employee, an amount expressed to be free of tax, is considered an agreement providing for payment to the employee of such an amount of remuneration as, after deduction of tax would leave an amount equal to the remuneration paid.
- (2) In any case to which subparagraph (1) applies—
  - (a) the employer is liable to pay to the Comptroller an amount equal to the difference between the remuneration considered to be paid and the amount of remuneration paid;

- (b) the amount is considered to be tax to be deducted under this Schedule; and
- (c) the employee is considered to have received as income from employment the amount considered to have been paid by the employer.

## **8. CERTIFICATE OF REMUNERATION AND TAX DEDUCTED**

- (1) Every employer who deducts any tax under this Schedule in any calendar year shall within the time and in relation to the period specified in subparagraph (2), furnish to every employee to whom remuneration has been paid, a certificate in the prescribed form the contents of which shall include—
  - (a) the total remuneration accrued to that employee; and
  - (b) the total of the amounts of tax deducted from such remuneration.
- (2) The certificate referred to in subparagraph (1) shall specify the period of employment to which it relates and shall be furnished to the employee or former employee—
  - (a) where the employer has not ceased to be an employer in relation to that employee at the end of the calendar year, within one month after the end of that calendar year;
  - (b) where the employer has ceased to be an employer in relation to that employee but has continued to be an employer in relation to other employees, on the date of cessation of the employment of that person; or
  - (c) where the employer has ceased to be an employer in relation to all employees, within one month after the date on which he or she ceased to be an employer.
- (3) Any employee who has not received a certificate within the time specified in subparagraph (2) shall apply to the employer for such certificate to be furnished and in the event of such certificate not being furnished within a further period of 15 days he or she shall notify the Comptroller of such failure by the employer to furnish the certificate.
- (4) Every employee, when furnishing his or her return of income for any year of income, shall attach to such return the certificate furnished to him or her under this paragraph.

- (5) The certificate to be furnished under this paragraph by an employer to an employee may be delivered—
- (a) by hand to such employee or his or her authorised agent;
  - (b) by registered letter addressed to that employee at his or her usual or last known postal address; or
  - (c) where the chargeable income of that employee is not chargeable to tax in his or her name, by hand or registered letter addressed to the person chargeable.

However, in the event of inability to deliver a certificate in the manner provided by this subparagraph the employer shall retain such certificate and forward it to the Comptroller with the return required under paragraph 12.

- (6) In addition to the annual certificate referred to in subparagraph (1), on every occasion during the calendar year upon which a payment of remuneration is made to an employee from which tax is deducted under this Schedule the employer shall furnish to him or her particulars of the total remuneration payable for the pay period and of the amount of tax deducted therefrom.

## **9. PERSONAL LIABILITY OF EMPLOYER AND EMPLOYEE**

- (1) Where, in any calendar year, an employer fails to deduct any tax under paragraph 2, he or she, in addition to any penalty for which he or she may be liable, is personally liable to pay to the Comptroller within the time specified in section 116 the amount which he or she has failed to deduct.
- (2) Where an employer pays to the Comptroller the amount of tax which he or she failed to deduct, such amount is considered to have been deducted under this Schedule.
- (3) The employer shall be entitled to recover from the employee any amount paid to the Comptroller under subparagraph (2).
- (4) Where, in relation to any payment of remuneration an employer has failed to deduct tax under paragraph 2, but the Comptroller is satisfied that tax deducted under this Schedule from earlier or later payments of remuneration is sufficient to meet the amount of tax which he or she has failed to deduct, the Comptroller may absolve the employer from his or her liability under subparagraph (1).

- (5) Where the Comptroller is of the opinion that any amount of tax which has been set off under section 81 under a certificate under paragraph 8 has not been deducted by the employer, the employer and the employee is jointly and severally liable to pay to the Comptroller the amount which has been so set off and such amount is recoverable under this Act.

However, where the Comptroller is satisfied that the employee alone was responsible for the incorrect amount being shown on his or her certificate under paragraph 8, the employer is absolved from liability under this subparagraph.

- (6) Where it is proved to the satisfaction of the Comptroller that any amount of tax is deducted from the remuneration of any employee, although the employer has failed to pay such amount to the Comptroller, no action shall be taken by the Comptroller for the recovery thereof from that employee.

#### **10. EMPLOYER TO KEEP RECORDS**

Every employer shall, in respect of each of his or her employees, maintain a record showing in relation to each calendar year, the amounts of—

- (a) remuneration accrued to that employee; and
- (b) tax deducted from such remuneration,

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

#### **11. EMPLOYER'S MONTHLY RETURN OF TAX DEDUCTIONS AND REMITTANCES**

Every employer shall, when making any payment under section 116 furnish a return showing the amount of tax deducted and remitted.

#### **12. EMPLOYER'S MONTHLY RETURN OF TAX DEDUCTIONS AND REMITTANCES**

- (1) Every employer shall, in respect of each calendar year—
- (a) within one month after the end of that year; or
  - (b) where he or she ceases to be an employer during that year, within 15 days after such cessation,

or within such further time as the Comptroller may allow, furnish to the Comptroller a return showing the total amount of tax deducted by him or her in respect of all of his or her employees during that year and the total payments of such tax made to the Comptroller.

- (2) In the event of there being any deficiency between the total amount of tax deducted and the total payments of such tax made to the Comptroller, the employer shall be required to account to the Comptroller for such deficiency.
- (3) The return referred to in subparagraph (1) shall be accompanied by a copy of all certificates issued under paragraph 8.

### **13. DUTIES AND LIABILITIES OF REPRESENTATIVE EMPLOYERS**

- (1) Every representative employer, in relation to any remuneration paid by him or her in his or her representative capacity to any employee shall be subject to the same duties and liabilities under this Schedule as if such remuneration had been paid by him or her in his or her personal capacity.
- (2) Any tax which should be deducted by a representative employer under this Schedule, any penalty due by him or her under section 135, any interest due by him or her under section 117 or fine imposed under section 143 or 144 on him or her shall be recoverable from him or her but to the extent only of any assets of the person whom he or she represents which may be in his or her possession or may come to him or her while acting in his or her representative capacity.
- (3) The executor of the estate of any deceased employer or the trustee of the estate of any bankrupt employer shall fulfil such obligations of that employer under this Schedule as were not fulfilled at the time of his or her death or bankruptcy.

### **14. LIABILITY TO DEDUCT TAX NOT ABATED BY OTHER RIGHTS OR OBLIGATIONS**

The liability of an employer to deduct tax under this Schedule shall not be abated or extinguished by reason of—

- (a) the fact that the employer has a right or is, otherwise than in terms of any law, under an obligation to deduct any other amount from the employee's remuneration and such

right or obligation, despite anything to the contrary contained in any other law, is considered to refer only to the balance of remuneration remaining after tax has been deducted; and

- (b) the provisions of any law which may provide that the amount of remuneration shall not be reduced or be subjected to attachment.

## 15. DEFINITIONS

In this Schedule—

“**employee**” means any person who, in respect of an employment, as defined in section 2, receives remuneration from an employer, and includes any person to whom remuneration accrues—

- (a) as a director of a company;
- (b) from a former employer or the trustee of a pension fund, as a consequence of a former employment; or
- (c) as a dependent of a deceased person where such remuneration accrued to that dependent as a consequence of the former employment of that deceased person;

“**employer**” means any person who pays remuneration to an employee, and includes—

- (a) the Government of Saint Lucia;
- (b) a representative employer; and
- (c) the trustee of any pension fund;

“**remuneration**” means any amount accrued to an employee by way of employment income within the meaning of section 34, and includes any advance payments of remuneration;

“**representative employer**” means—

- (a) in the case of a company, the principal officer or, where such company is in liquidation, the liquidator;
- (b) in the case of a partnership, the precedent partner;
- (c) where the employer is the Government, a local authority, a corporation or other authority

established by statute or a body corporate or unincorporate (not being a company or partnership), the person responsible for paying remuneration on behalf of such employer;

- (d) in the case of an employer in respect of whose chargeable income a representative taxpayer is chargeable to tax, the representative taxpayer; or
- (e) in the case of a non-resident employer, the agent having responsibility to pay remuneration on behalf of such employer,

but this definition shall not be construed as relieving any employer from any duty or liability imposed upon him or her by this Schedule.

**SCHEDULE 5****RATE OF TAX**

(Section 80)

1. On the chargeable income of every individual, unincorporated body of persons or trustee—

<i>Income Year</i>	<i>Rate of Tax</i>	
1988	On the first \$6,000 and under.....	10%
	On the next \$6,000 viz. 6,001–12,000 .....	20%
	On the next \$5,000 viz. 12,001–17,000 .....	30%
	On the remainder.....	40%
1989	On the first \$8,000 and under.....	10%
	On the next \$7,000 viz. 8,001–15,000 .....	15%
	On the next \$5,000 viz. 15,001–20,000 .....	25%
	On the remainder. ....	30%
1990	On the first \$10,000 and under. ....	10%
	On the next \$10,000 viz. 10,001–20,000 .....	15%
	On the next \$10,000 viz. 20,001–30,000 .....	20%
	On the remainder.....	30%

2. On the chargeable income, on every dollar thereof, of—

- (a) companies existing before the commencement of this Act—
- (i) for the income year 1988—40%
  - (ii) for the income year 1989—35%
  - (iii) for the income year 1990—33%
  - (iv) for income year 2003—33%
  - (v) for income year 2004—32%
  - (vi) for income year 2005 and subsequent income years—30%
- (aa) The rates specified in items (iv), (v) and (vi) are applicable to companies who prior to income year 2003—
- (i) have no arrears of income or any other tax administered by the Inland Revenue Department; and
  - (ii) have complied with the requirements of any enactment administered by the Inland Revenue Department.

- (ab) Despite subparagraph (aa), a company which complies with the provisions of subparagraph (aa) subsequent to income year 2003, shall only be entitled to the prevailing reduced rates for the income year in which the company complies and for subsequent income years.
- (b) 10% with effect from income year 2001 and for subsequent income years up to income year 2005.

*(Amended by Act 9 of 2001 and S.I.64/2003)*

3. On the chargeable income of every individual, unincorporated body of persons or trustee until the payment of the retroactive salary increase for people in the public service for the period April, 1994 to December, 1995–

GRADE	ANNUAL INCOME	TAX RATE
1–2	\$11,580 and below	0%
3–9	\$11,581 – \$28,380	5%
10–18	\$28,381 and above	10%

*(Inserted by S.I. 86/1995)*

## SCHEDULE 6

(Section 45)

### PERSONAL ALLOWANCE TO INDIVIDUALS

*Income Year*

1988	\$ 6,000
1989	8,000
1990	10,000
2001	12,000 effective 1 June 2001
2002	14,000
2003	16,000

*(Amended by Act 9 of 2001)*

**SCHEDULE 7**

**DISTRESS WARRANT**

(Section 119)

SAINT LUCIA

IN THE MATTER OF THE INCOME TAX ACT

IN THE MATTER OF ARREARS OF INCOME TAX

**WARRANT TO EXECUTE DISTRESS FOR ARREARS OF TAX**

To.....

WHEREAS it has been made to appear to me .....

Comptroller of Inland Revenue that.....

is (are) in arrears of income tax in the sum

of.....

AND WHEREAS that sum has been duly demanded from.....

.....

AND WHEREAS such tax has not been paid and remains unpaid as at the day of

NOW THEREFORE by virtue of the power vested in me as Comptroller by section 107 of the Income Tax Act I do hereby authorise you to collect and recover the several amounts—

.....

.....  
respectively due for tax, and for the recovery thereof I further authorise you, with the assistance of any Constable which assistance the Constable is hereby authorised to give, to distrain upon the goods and chattels of.....

.....  
and to keep such goods and chattels for a period not exceeding 30 days at the premises where execution was levied or such other place as you may consider appropriate and if within the said 30 days after the making of the distress the said sums and also the costs and charges of and incidental to the taking and keeping of such distress, on the goods and chattels and other distrainable things of.....

or of any part thereof charged with such tax are not paid, to sell such goods and chattels by public auction for payment of the above-mentioned tax



## SCHEDULE 8

(Section 75)

1. Foreign currency tax credit would be allowed against profits for agents registered under the Registered Agent and Trustee Licensing Act as follows—

100% for the first 4 years  
75% for the next 3 years  
50% for the next 3 years

2. Where a person derives income from the provision of professional services to the International Financial Services sector as listed in paragraph 4, and also derives income from other services, the person is entitled to a foreign tax credit only in respect of income earned in the provision of professional services to the International Financial Services sector. The foreign tax credit is calculated as follows—

Profits from Foreign currency	Tax Relief
Up to 30% .....	35%
31% but under 50% .....	55%
51% but under 70% .....	75%
71% but under 100% .....	95%

for a period of 10 years.

For the purposes of calculation, profits from foreign currency earnings declared by the domestic organizations, shall be deemed to be profits arrived at by the formula—

$$\frac{\text{FCE} \times \text{P}}{\text{TE}} \quad \text{where}$$

- (a) “FCE” represents the foreign currency earnings transferred to the credit of that person within the relevant income year;
- (b) “P” represents the net profits from all sources;
- (c) “TE” represents the total gross earnings from all sources.

The profits would be taxed by using the normal tax rates specified in Schedule 5.

3. The qualifying professional services provided by companies licensed under the Registered Agent and Trustee Licensing Act are the following—
- (a) Application Preparation

- (b) Incorporation
  - (c) Provision of Office facilities
  - (d) Directorships
  - (e) Company Secretaries
  - (f) Actuarial Services
4. The qualifying professional services provided by persons to whom paragraph 2 relates are the following—
- (a) Administrative\Management Services
  - (b) Insurance Management
  - (c) Mutual Fund Services
  - (d) Audit\Accounting Services.

*(Inserted by Act 9 of 2001)*

Revision Date: 31 Dec 2008

## **INCOME TAX (EVASION OF TAX PAYMENT) (PREVENTION) RULES – SECTION 151**

(Statutory Instruments 18/1971, 19/1977, 38/1993 and 32/1998)

Commencement [26 June 1971]

### **1. SHORT TITLE**

These Rules may be cited as the Income Tax (Evasion of Tax Payment) (Prevention) Rules.<sup>7</sup>

### **2. EXIT CERTIFICATES**

- (1) Subject to the provisions of rule 3 a person shall not leave or attempt to leave the State unless the person so leaving or attempting to leave has in his or her possession an exit certificate in the Form A contained in the Schedule duly signed by or on behalf of the Comptroller certifying that he or she—
  - (a) does not owe any income tax; or
  - (b) has made satisfactory arrangements for the payment of any income tax payable by him or her.
- (2) Subject to the provisions of rule 3 a person shall not issue or cause to be issued to any other person any ticket entitling such other person to leave the State unless such other person has in his or her possession an exit certificate as in the last preceding subrule mentioned.
- (3) A person shall not—
  - (a) accept or cause to be accepted as a passenger or otherwise any other person to whom this rule applies; or
  - (b) arrange or cause to be arranged any transportation for any person to whom this rule applies to leave the State,

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<sup>7</sup> *Editor's note:* These rules are made under the Income Tax Act, 1965. This Act was repealed and replaced by the Income Tax Act. However, these rules continue in force under section 153.

unless such other person produces or causes to be produced to the first-named person a valid certificate issued to such other person by or on behalf of the Comptroller.

- (4) Every person to whom this rule applies when about to leave the State, shall, if required so to do by any immigration officer, surrender to such immigration officer a valid exit certificate issued to him or her by or on behalf of the Comptroller.
- (5) An exit certificate shall be valid for such period as might be stated therein and not thereafter.
- (6) The following fees shall be payable in respect of every certificate issued under this rule.

A	Single Exit Certificate	\$
(i)	individual with no tax liability	5
(ii)	pensioners with no other source of income	5
(iii)	all other individuals	10
B	For each Exit Certificate valid for 3 months	40
C	For each Exit Certificate valid for 6 months	60
D	For each Exit Certificate valid for 12 months	120

*(Substituted by S.I. 38/1993)*

### **3. PERSONS EXEMPTED FROM OPERATION OF RULE 2**

- (1) Rule 2 shall not apply to—
  - (a) any person of the age of 16 years or under;
  - (b) any person of the age of 25 years or under, who is a whole time student at a secondary school, college or university;
  - (c) any married woman living with her husband, the latter being resident in the State;
  - (d) the Governor General, his or her spouse and children under 21 years of age;
  - (e)

Revision Date: 31 Dec 2008

- (i) members of the House of Assembly,
  - (ii) public officers of the State when travelling on Government business;
  - (f) any member of the military, naval or air forces of Her Majesty or of any foreign State;
  - (g) any person in the diplomatic or consular service of Her Majesty or foreign state unless any such person is also engaged in any business or other employment in the State;
  - (h) any high official, his or her spouse and children under 21 years of age and any other official of any organisation in respect of which a declaration has been made by order of the Minister under and for the purpose of the International Organisations and Overseas Countries (Immunities and Privileges) Act and any representative of any other Government as defined in any such order;
  - (i) any person temporarily resident in the State; for the purposes of this paragraph a person is temporarily resident in the State whose total period of residence in any one year does not exceed 6 months;
  - (j) any trafficker or other person who by reason of the nature of his or her occupation or employment the Comptroller deems it expedient to exempt, and who holds a certificate of exemption issued by the Comptroller; and
  - (k) ministers of religion, their spouses and children under 16 years of age;
  - (l) any citizen or permanent resident of Saint Lucia.
- (Amended by S.I. 32/1998)*
- (2) The certificate of exemption under this rule shall be in the Form B in the Schedule.

#### **4. IMMIGRATION OFFICER TO GRANT PERMISSION TO LEAVE**

- (1) Despite anything to the contrary in these Rules if an immigration officer is satisfied, on application made to

him or her by any person, that circumstances have arisen in which it is impracticable for such person before leaving the State to apply to the Comptroller for an exit certificate or a certificate of exemption then—

- (a) if such person satisfies the immigration officer that he or she has paid all income tax then due and owing by him or her on his or her own behalf or on behalf of some other person or has made satisfactory arrangements for the payment thereof; or
- (b) if such person or any other person on his or her behalf enters into a bond in the Form D of the Schedule, with such surety or sureties, if any, as an immigration officer shall require in the sum of \$1,000 for the payment by such person of any income, tax due and owing by him or her; or
- (c) if such person satisfies the immigration officer that he or she is exempted from complying with the provisions of rule 2,

such immigration officer shall issue to such person a certificate in the Form C in the Schedule (in these rules referred to as a “special certificate of exemption”); and every person holding a valid special certificate of exemption is exempt from complying with the provisions of rule 2.

- (2) An immigration officer who issues a special certificate of exemption shall, without delay, forward a copy of such certificate together with the relevant bond, if any, to the Comptroller.
- (3) A special certificate of exemption shall be valid for such period from the date of its issue as may be stated therein and not thereafter.
- (4) Any person who has obtained from an immigration officer a special certificate of exemption under subrule (1) shall, when about to leave the State, if required so to do by any immigration officer, surrender such certificate to such immigration officer.
- (5) If an individual, upon his or her arrival in the State, satisfies an immigration officer that he or she is visiting the

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State for a temporary purpose (not with a view to deriving or earning income in the State) for a period not exceeding 30 days, the immigration officer shall mark the passport or other travel document issued in the name of that individual with an official stamp mark bearing the date of such arrival and the letters “E.W.T.C.” (denoting Exit Without Tax Certificate) and during the period of 30 days commencing on that date, whenever necessary for the purpose of these Rules *in lieu* of producing a tax certificate, that individual may produce his or her passport or other travel document so marked.

#### **5. POWER OF COMPTROLLER TO FORBID SALE OF TICKET**

Despite anything to the contrary a person shall not issue or cause to be issued to any other person any ticket entitling such other person to leave the State and shall not arrange for any transportation for such other person to leave the State if a written request is issued by or on behalf of the Comptroller to such first named person prohibiting the issue of a ticket to such other person.

However, the provisions of this rule cease to have effect on the receipt by such first named person of a subsequent written request issued by or on behalf of the said Comptroller withdrawing such prohibition.

#### **6. RIGHT OF APPEAL**

Any person aggrieved by—

- (a) the refusal of the Comptroller to grant to such person an exit certificate or a certificate of exemption under these rules; or
- (b) the request of the Comptroller prohibiting the issue of a ticket to such person, or the refusal of the Comptroller to issue a request withdrawing any such prohibition,

may appeal to the Minister whose decision thereon is final.



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\* Delete what is not applicable.

FORM B (Rule 3)

**Income Tax Act**

**CERTIFICATE OF EXEMPTION**

*(to be presented to shipping or air transport lines and to be surrendered on demand to an immigration officer at the place of departure).*

..... 20 .....

Applicant .....

Address .....

Occupation .....

\*This is to certify that the above person is exempt from producing an exit certificate on the grounds that such person is ..... and that the Comptroller has no objection to a ticket being issued to the above person to leave the State.

.....  
Comptroller.

\*Insert what is applicable.

FORM C (Rule 4)

**Income Tax Act**

**SPECIAL CERTIFICATE OF EXEMPTION**

*(to be presented to shipping or air transport lines and to be surrendered on demand to an immigration officer at the place of departure).*

This certificate is issued to .....  
(Full name and occupation)

of .....

being holder of ..... Passport No .....  
(Nationality and No. of Passport)



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follows—

- (a) if the said ..... returns to the State within 6 months of the date of this Bond; or
- (b) pays or makes arrangements for the payment of the income tax due and owing by him or her on the day of his or her departure from the State, then the above-written bond is void, but otherwise the same remains in full force and virtue.

Signed .....

of .....

Signed .....

(Surety)

of .....

Signed .....

(Surety)

of .....

Before me

.....

Immigration Officer.



## **INCOME TAX (EXEMPTIONS) PROCLAMATIONS- SECTION 25<sup>8</sup>**

**(Statutory Instruments 5/1924 and 93/1941)**

It is hereby declared that the interest payable on all loans charged on the Public Revenue of Saint Lucia or on the revenue of any local authority to persons not resident in Saint Lucia is exempted from income tax as from 1 January 1924.

It is hereby declared that the interest payable on any Saint Lucia Savings Certificates issued by the Government of Saint Lucia is exempted from income tax.

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<sup>8</sup> **Editor's note:** *This Proclamation was continued under the Income Tax Act, 1965. That Act was repealed and replaced by the Income Tax Act. However, the Proclamation continues in force under section 153.*



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## **INCOME TAX (DOUBLE TAXATION RELIEF) (UNITED KINGDOM) ORDER – SECTION 60<sup>9</sup>**

(Statutory Instruments 33/1949, 33/1951 and 25/1968)

### Commencement

[Paragraph 6(3) of Schedule: 7 September 1968]

[Paragraphs 13(1) and 13(2) of Schedule: 1 January 1968 Remainder:  
28 May 1949]

### **1. SHORT TITLE**

This Order may be cited as the Income Tax (Double Taxation Relief) (United Kingdom) Order.

### **2. DECLARATION**

It is hereby declared—

- (a) that the arrangements specified in the Arrangement set out in the Schedule to this Order were made with the Government of the United Kingdom with a view to affording relief from double taxation in relation to income tax or profits tax and taxes of a similar character imposed by the laws of the United Kingdom; and
- (b) that it is expedient that those arrangements have effect.

## **SCHEDULE**

ARRANGEMENT BETWEEN HIS MAJESTY'S GOVERNMENT AND THE GOVERNMENT OF SAINT LUCIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

### 1.

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<sup>9</sup> *Editor's note:* This Order was continued under the Income Tax Act, 1965. That Act was repealed and replaced by the Income Tax Act. However, the Order continues in force under section 153.

- (1) The taxes which are the subject of this Arrangement are—
  - (a) In the United Kingdom:  
The Income tax (including surtax) and the profits tax (hereinafter referred to as “United Kingdom tax”).
  - (b) In Saint Lucia:  
The Income tax (hereinafter referred to as “Saint Lucia tax”).
- (2) This Arrangement shall also apply to any other taxes of a substantially similar character imposed in the United Kingdom or Saint Lucia after this Arrangement has come into force.

## 2.

- (1) In this Arrangement, unless the context otherwise requires—
  - (a) The term “United Kingdom” means Great Britain and Northern Ireland, excluding the Channel Islands and the Isle of Man.
  - (b) (*Repealed by S.I. 25/1968*)
  - (c) The terms “one of the territories” and “the other territory” mean the United Kingdom or Saint Lucia, as the context requires.
  - (d) The term “tax” means United Kingdom tax or Saint Lucia tax, as the context requires.
  - (e) The term “person” includes any body of persons, corporate or not corporate.
  - (f) The term “company” includes any body corporate.
  - (g) The terms “resident of the United Kingdom” and “resident of Saint Lucia” mean respectively any person who is resident in the United Kingdom for the purposes of United Kingdom tax and not resident in Saint Lucia for the purposes of Saint Lucia tax and any person who is resident in Saint Lucia for the purposes of Saint Lucia tax and not resident in the United Kingdom for the purposes of United Kingdom tax; and a company shall be regarded as resident in the United Kingdom if its

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business is managed and controlled in the United Kingdom and as resident in Saint Lucia if its business is managed and controlled in Saint Lucia.

- (h) The terms “resident of one of the territories” and “resident of the other territory” mean a person who is a resident of the United Kingdom or a person who is a resident of Saint Lucia, as the context requires.
- (i) The terms “United Kingdom enterprise” and “Saint Lucia enterprise” mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of the United Kingdom and an industrial or commercial enterprise or undertaking carried on by a resident of Saint Lucia; and the terms “enterprise of one of the territories” and “enterprise of the other territory” mean a United Kingdom enterprise or a Saint Lucia enterprise, as the context requires.
- (j) The term “industrial or commercial profits” includes rentals in respect of cinematograph films.
- (k) The term “permanent establishment”, when used with respect to an enterprise of one of the territories means a branch, management or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has a stock of merchandise from which he regularly fills orders on its behalf.

An enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business dealings in that other territory through a *bona fide* broker or general commission agent acting in the ordinary course of his business as such.

The fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed

place of business a permanent establishment of the enterprise.

The fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which is engaged in trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.

- (2) Where under this Arrangement any income is exempt from tax in one of the territories if (with or without other conditions) it is subject to tax in the other territory, and that income is subject to tax in that other territory by reference to the amount thereof which is remitted to or received in that other territory, the exemption to be allowed under this Arrangement in the first-mentioned territory shall apply only to the amount so remitted or received.
- (3) In the application of the provisions of this Arrangement by the United Kingdom or Saint Lucia, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of the United Kingdom, or, as the case may be, Saint Lucia, relating to the taxes which are the subject of this Arrangement.

3.

- (1) The industrial or commercial profits of a United Kingdom enterprise shall not be subject to Saint Lucia tax unless the enterprise is engaged in trade or business in Saint Lucia through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by Saint Lucia but only on so much of them as is attributable to that permanent establishment.
- (2) The industrial or commercial profits of a Saint Lucia enterprise shall not be subject to the United Kingdom tax unless the enterprise is engaged in trade or business in the United Kingdom through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by the United Kingdom, but only on so

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much of them as is attributable to that permanent establishment.

- (3) Where an enterprise of one of the territories is engaged in trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive from its activities in that other territory if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment
- (4) No portion of any profits arising from the sale of goods or merchandise by an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of the goods or merchandise within that other territory.

4. Where—

- (a) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory, and
- (c) in either case conditions are made or imposed between the 2 enterprises, in their commercial or financial relations, which differ from those which would be made between independent enterprises,

then any profits which would but for those conditions have accrued to one of the enterprises but by reason of those conditions have not so accrued may be included in the profits of that enterprise and taxed accordingly.

5. Notwithstanding the provisions of paragraphs 3 and 4, profits which a resident of one of the territories derives from operating ships or aircraft shall be exempt from tax in the other territory.

6.

- (1) Dividends paid by a company resident in one of the territories to a resident of the other territory who is subject

to tax in that other territory in respect thereof and not engaged in trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from any tax in that first mentioned territory which is chargeable on dividends in addition to the tax chargeable in respect of the profits or income of the company.

- (2) Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, the Government of that other territory shall not impose any form of taxation on dividends paid by the company to persons not resident in that other territory or any tax in the nature of an undistributed profits tax on undistributed profits of the company, by reason of the fact that those dividends or undistributed profits represent, in whole or in part, profits or income so derived.
- (3) If the recipient of a dividend is a company which owns 10% or more of the class of shares in respect of which the dividend is paid then subparagraph (1) shall not apply to the dividend to the extent that it can have been paid only out of profits which the company paying the dividend earned or other income which it received in a period ending 12 months or more before the relevant date. For the purposes of this subparagraph the term “relevant date” means the date on which the beneficial owner of the dividend became the owner of 10% or more of the class of shares in question. Provided that this subparagraph shall not apply if the beneficial owner of the dividend shows that the shares were acquired for *bona fide* commercial reasons and not primarily for the purpose of securing the benefit of this paragraph.

(Amended by S.I.25/1968)

7.

- (1) Any royalty derived from sources within one of the territories by a resident of the other territory who is subject to tax in that other territory in respect thereof and is not engaged in trade or business in the first-mentioned territory through a permanent establishment situated

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therein, shall be exempt from tax in that first mentioned territory; but no exemption shall be allowed under this paragraph in respect of so much of any royalty as exceeds an amount which represents a fair and reasonable consideration for the rights for which the royalty is paid.

- (2) In this paragraph the term “royalty” means any royalty or other amount paid as consideration for the use of, or for the privilege of using any copyright, patent, design, secret process or formula, trade-mark, or other like property, but does not include a royalty or other amount paid in respect of the operation of a mine or quarry or of other extraction of natural resources.

8.

- (1) Remuneration, including pensions, paid by the Government of one of the territories to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from tax in the other territory if the individual is not ordinarily resident in that other territory or (where the remuneration is not a pension) is ordinarily resident in that other territory solely for the purpose of rendering those services.
- (2) The provisions of this paragraph shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Governments for purposes of profit.

9.

- (1) An individual who is a resident of the United Kingdom shall be exempt from Saint Lucia tax on profits or remuneration in respect of personal (including professional) services performed within Saint Lucia in any year of assessment if—
  - (a) he is present within Saint Lucia for a period or periods not exceeding in the aggregate 183 days during that year, and
  - (b) the services are performed for or on behalf of a person resident in the United Kingdom, and
  - (c) the profits or remuneration are subject to United Kingdom tax.

- (2) An individual who is a resident of Saint Lucia shall be exempt from United Kingdom tax on profits or remuneration in respect of personal (including professional) services performed within the United Kingdom in any year of assessment if—
  - (a) he is present within the United Kingdom for a period or periods not exceeding in the aggregate 183 days during that year, and
  - (b) the services are performed for or on behalf of a person resident in Saint Lucia, and
  - (c) the profits or remuneration are subject to Saint Lucia tax.
- (3) The provisions of this paragraph shall not apply to the profits or remuneration of public entertainers such as stage, motion picture or radio artists, musicians and athletes.

10.

- (1) Any pension (other than a pension paid by the Government of Saint Lucia for services rendered to it in the discharge of governmental functions) and any annuity, derived from sources within Saint Lucia by an individual who is a resident of the United Kingdom and subject to United Kingdom tax in respect thereof, shall be exempt from Saint Lucia tax.
- (2) Any pension (other than a pension paid by the Government of the United Kingdom for services rendered to it in the discharge of governmental functions) and any annuity, derived from sources within the United Kingdom by an individual who is a resident of Saint Lucia and subject to Saint Lucia tax in respect thereof, shall be exempt from United Kingdom tax.
- (3) The term “annuity” means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in consideration of money paid.

11. The remuneration derived by a professor or teacher who is ordinarily resident in one of the territories, for teaching, during

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a period of temporary residence not exceeding 2 years, at a university, college, school or other educational institution in the other territory, shall be exempt from tax in that other territory.

12. A student or business apprentice from one of the territories who is receiving full-time education or training in the other territory shall be exempt from tax in that other territory on payments made to him by persons in the first-mentioned territory for the purposes of his maintenance, education or training.
13.
  - (1) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax or tax payable in a territory outside the United Kingdom (which shall not effect the general principle hereof)—
    - (a) Saint Lucia tax payable under the laws of Saint Lucia and in accordance with this Arrangement, whether directly or by deduction, on profits or income from sources within Saint Lucia shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits or income by reference to which Saint Lucia tax is computed. Provided that in the case of a dividend the credit shall only take into account such tax in respect thereof as is additional to any tax payable by the company on the profits out of which the dividend is paid and is ultimately borne by the recipient without reference to any tax so payable.
    - (b) Where a company which is a resident of Saint Lucia pays a dividend to a company resident in the United Kingdom which controls directly or indirectly at least 10% of the voting power in the first-mentioned company, the credit shall take into account (in addition to any Saint Lucia tax for which credit may be allowed under (a) of this subparagraph) the Saint Lucia tax payable by that first-mentioned company in respect of the profits out of which such dividend is paid.
  - (2) Subject to the provisions of the law of Saint Lucia regarding the allowance as a credit against Saint Lucia tax

of tax payable in a territory outside Saint Lucia (which shall not affect the general principle hereof)—

- (a) United Kingdom tax payable under the laws of the United Kingdom and in accordance with this Arrangement, whether directly or by deduction, on profits or income from sources within the United Kingdom shall be allowed as a credit against any Saint Lucia tax computed by reference to which the profits or income by reference to which the United Kingdom tax is computed. Provided that in the case of a dividend the credit shall only take into account such tax in respect thereof as is additional to any tax payable by the company on the profits out of which the dividend is paid and is ultimately borne by the recipient without reference to any tax so payable.
  - (b) Where a company which is a resident of the United Kingdom pays a dividend to a company resident in Saint Lucia which controls directly or indirectly at least 10% of the voting power in the first-mentioned company, the credit shall take into account (in addition to any United Kingdom tax for which credit may be allowed under (a) of this subparagraph) the United Kingdom tax payable by that first-mentioned company in respect of the profits out of which such dividend is paid.
- (3) For the purposes of this paragraph profits or remuneration for personal (including professional) services performed in one of the territories shall be deemed to be income from sources within that territory, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory.
  - (4) Where Colonial income tax is payable for a year for which this arrangement has effect in respect of any income in respect of which United Kingdom income tax is payable for a year prior to the year beginning on the 6th April, 1949, then—
    - (a) in the case of a person resident in Saint Lucia, the Colonial income tax shall, for the purposes of

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subparagraph (2) of this paragraph, be deemed to be reduced by the amount of any relief allowable in respect thereof under the provisions of section 27 of the United Kingdom Finance Act, 1920; and

- (b) in the case of a person resident in the United Kingdom, the provisions of section 50 of the Saint Lucia Income Tax Act, 1948, shall apply for the purposes of the allowance of relief from the Saint Lucia tax.

*(Amended by S.I. 25/1968)*

14.

- (1) The taxation authorities of the United Kingdom and Saint Lucia shall exchange such information (being information available under their respective taxation laws) as is necessary for carrying out the provisions of this Arrangement or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Arrangement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of this Arrangement. No information shall be exchanged which would disclose any trade secret or trade process.
- (2) As used in this paragraph, the term “taxation authorities” means the Commissioners of Inland Revenue or their authorised representative in the case of the United Kingdom and the Commissioners of Income Tax or their authorised representative in the case of Saint Lucia.

15. This Arrangement shall come into force on the date on which the last of all such things shall have been done in the United Kingdom and Saint Lucia as are necessary to give the Arrangement the force of law in the United Kingdom and Saint Lucia respectively, and shall thereupon have effect—

- (a) In the United Kingdom:  
as respects income tax, for any year of assessment beginning on or after 6 April 1949; as respects surtax, for any year of assessment beginning on or after 6 April

1948; and as respects profits tax, in respect of the following profits—

- (i) profits arising in any chargeable accounting period beginning on or after the 1 April 1949;
  - (ii) profits attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;
  - (iii) profits not so arising or attributable by reference to which income tax is, or but for the present Arrangement would be, chargeable for any year of assessment beginning on or after 6 April 1949;
- (b) In Saint Lucia:  
as respects income tax for the year of assessment beginning on 1 January 1949, and subsequent years.

16. This Arrangement shall continue in effect indefinitely but either of the Governments may, on or before 30 June in any calendar year after the year 1950, give notice of termination to the other Government and in such event, this Arrangement shall cease to be effective—

- (a) In the United Kingdom:  
as respects income tax, for any year of assessment beginning on or after the 6th April in the calendar year next following that in which the notice is given; and as respects surtax, for any year of assessment beginning on or after the 6th April in the calendar year in which the notice is given; and as respects profits tax, in respect of the following profits—
- (i) profits arising in any chargeable accounting period beginning on or after 1 April in the calendar year next following that in which the notice is given;
  - (ii) profits attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date.
  - (iii) profits not so arising or attributable by reference to which income tax is chargeable for any year of assessment beginning on or after 6 April in that next following calendar year;

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- (b) In Saint Lucia:  
as respects income tax for any year of assessment  
beginning on or after 1 January in the calendar year next  
following that in which such notice is given.



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## **INCOME TAX (DOUBLE TAXATION RELIEF) (SWEDEN) ORDER – SECTION 60**

(Statutory Instrument 50/1954)

Commencement [31 December 1954]

WHEREAS it is provided by section 52(1) of the Income Tax Act 1947<sup>10</sup>, that if the Governor General by order declares that arrangements specified in the order were made with the Government of any territory outside Saint Lucia with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory and that it is expedient that those arrangements have effect, the arrangements have effect in relation to income tax despite anything in any enactment;

AND WHEREAS by a Convention dated 30 March 1949 between His Majesty in respect of the United Kingdom and His Majesty the King of Sweden, arrangements were made among other things for the avoidance of double taxation;

AND WHEREAS provision is made in the said Convention for the extension by means of an exchange of notes between the High Contracting Parties of the said Convention, subject to such modifications and conditions (including conditions as to termination) as may be specified in the exchange of notes, to any territory, for whose foreign relations the United Kingdom is responsible, which imposes taxes substantially similar in character to those which are the subject of the said Convention;

AND WHEREAS by a notification dated 18 December 1953 the said Convention with certain modifications was applied to Saint Lucia.

### **1. SHORT TITLE**

This Order may be cited as the Income Tax (Double Taxation Relief) (Sweden) Order.

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<sup>10</sup> *Editor's note:* This Act was repealed by the Income Tax Act, 1965 which itself was repealed and replaced by the Income Tax Act. This Order was continued in force by the 1965 Act and section 153 of the Income Tax Act.

## 2. DECLARATION

It is hereby declared—

- (a) that the arrangements specified in Schedule 1 to this Order, as modified by the provisions of Schedule 2 to this Order have been made with the Government of Sweden;
- (b) that it is expedient that those arrangements have effect.

## SCHEDULE 1

(Section 2)

CONVENTION BETWEEN HIS MAJESTY IN RESPECT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND HIS MAJESTY THE KING OF SWEDEN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME.

*London, 30th March, 1949*

His Majesty The King of Great Britain, Ireland and the British Dominions beyond the Seas and His Majesty the King of Sweden,

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have appointed for that purpose as their Plenipotentiaries:

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas:

For the United Kingdom of Great Britain and Northern Ireland:

Sir William Strang, K.C.B., K.C.M.G., M.B.E., Permanent Under-Secretary of State for Foreign Affairs:

His Majesty the King of Sweden:

His Excellency Monsieur Bo Gunnar Richardson, Hagglof, His Majesty's Ambassador Extraordinary and Plenipotentiary in London:

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Who, having exhibited their respective full powers, found in good and due form, have agreed as follows:—

#### ARTICLE I

1. The taxes which are the subject of the present Convention are—
  - (a) In Sweden:

The State income tax (including coupon tax) and the tax on the undistributed profits of companies (Ersattningsskatt), and, for the purposes of Articles XXII, paragraph (3), and XXIII to XXV inclusive, the State capital tax (hereinafter referred to as “Swedish tax”).
  - (b) In the United Kingdom of Great Britain and Northern Ireland:

The income tax (including surtax) and the profits tax (hereinafter referred to as “United Kingdom tax”).
2. The present Convention shall also apply to any other taxes of a substantially similar character imposed in the United Kingdom or Sweden subsequently to the date of signature of the present Convention.

#### ARTICLE II

1. In the present Convention, unless the context otherwise requires—
  - (a) the term “United Kingdom” means Great Britain and Northern Ireland, excluding the Channel Islands and the Isle of Man;
  - (b) the terms “one of the territories” and “the other territory” mean the United Kingdom or Sweden, as the context requires;
  - (c) the term “tax” means United Kingdom tax or Swedish tax, as the context requires;
  - (d) the term “person” includes any body of persons, corporate or not corporate;
  - (e) the term “company” means any body corporate;
  - (f) the terms “resident of the United Kingdom” and “resident of Sweden” mean respectively any person who is resident

in the United Kingdom for the purposes of United Kingdom tax and not resident in Sweden for the purposes of Swedish tax and any person who is resident in Sweden for the purposes of Swedish tax and not resident in the United Kingdom for the purposes of United Kingdom tax; a company shall be regarded as resident in the United Kingdom if its business is managed and controlled in the United Kingdom and as resident in Sweden if it is incorporated under the laws of Sweden and its business is not managed and controlled in the United Kingdom, or if it is not so incorporated but its business is managed and controlled in Sweden;

- (g) the terms “resident of one of the territories” and “resident of the other territory” mean a person who is a resident of the United Kingdom or a person who is a resident of Sweden, as the context requires;
- (h) the terms “United Kingdom enterprise” and “Swedish enterprise” mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of the United Kingdom and an industrial or commercial enterprise or undertaking carried on by a resident of Sweden, and the terms “enterprise of one of the territories” and “enterprise of the other territory” mean a United Kingdom enterprise or a Swedish enterprise, as the context requires;
- (i) the term “industrial or commercial profits” includes rents or royalties in respect of cinematograph films;
- (j) the term “permanent establishment,” when used with respect to an enterprise of one of the territories, means a branch, management, factory, or other fixed place of business, a mine, quarry or any other place of natural resources subject to exploitation. It also includes a place where building construction is carried on by contract for a period of at least one year, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of the enterprise or has a stock of merchandise from which he regularly fills orders on its behalf. In this connection
  - (i) an enterprise of one of the territories shall not be deemed to have a permanent establishment in the

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other territory merely because it carries on business dealings in that other territory through a *bona fide* broker or general commission agent acting in the ordinary course of his business as such,

- (ii) the fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise,
  - (iii) the fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which carries on a trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.
2. Where under this Convention any income is exempt from tax in one of the territories if (with or without other conditions) it is subject to tax in the other territory, and that income is subject to tax in that other territory by reference to the amount thereof which is remitted to or received in that other territory, the exemption to be allowed under this Convention in the first-mentioned territory shall apply only to the amount so remitted or received.
  3. In the application of the provisions of the present Convention of the High Contracting Parties any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws in force in the territory of that Party relating to the taxes which are the subject of the present Convention.

### ARTICLE III

1. The industrial or commercial profits of a United Kingdom enterprise shall not be subject to Swedish tax unless the enterprise carries on a trade or business in Sweden through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits by

Sweden, but only on so much of them as is attributable to that permanent establishment.

2. The industrial or commercial profits of a Swedish enterprise shall not be subject to United Kingdom tax unless the enterprise carries on a trade or business in the United Kingdom through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits by the United Kingdom, but only on so much of them as is attributable to that permanent establishment.
3. Where an enterprise of one of the territories carries on a trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive in that other territory if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.
4. Where an enterprise of one of the territories derives profits, under contracts concluded in that territory, from sales of goods or merchandise stocked in a warehouse in the other territory for convenience of delivery and not for purposes of display, those profits shall not be attributed to a permanent establishment of the enterprise in that other territory.
5. No portion of any profits arising to an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of goods or merchandise within that other territory by the enterprise.

#### ARTICLE IV

Where—

- (a) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory; or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory;

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and in either case, conditions are made or imposed between the 2 enterprises, in their commercial or financial relations, which differ from those which would be made between independent enterprises, then any profits which would but for those conditions have accrued to one of the enterprises but by reason of those conditions have not so accrued may be included in the profits of that enterprise and taxed accordingly.

#### ARTICLE V

1. The industrial and commercial profits of a Swedish enterprise shall, so long as undistributed profits of United Kingdom enterprises are effectively charged to United Kingdom profits tax at a lower rate than distributed profits of such enterprises, be charged to United Kingdom profits tax only at that lower rate.
2. Where a company which is a resident of Sweden controls, directly or indirectly, not less than 50%. of the entire voting power of a company which is a resident of the United Kingdom, distributions by the latter company to the former company shall be left out of account in computing United Kingdom profits tax effectively chargeable on the latter company at the rate appropriate to distributed profits.

#### ARTICLE VI

Notwithstanding the provisions of Articles III, IV, and V, profits which a resident of one of the territories derives from operating ships or aircraft shall be exempt from tax in the other territory.

#### ARTICLE VII

1.
  - (a) Dividends paid by a company which is a resident of the United Kingdom to a resident of Sweden, who is subject to tax in Sweden in respect thereof and does not carry on a trade or business in the United Kingdom through a permanent establishment situated therein, shall be exempt from United Kingdom surtax.

- (b) The Swedish coupon tax on dividends paid by a company which is a resident of Sweden to a resident of the United Kingdom, who is subject to tax in the United Kingdom in respect thereof and does not carry on a trade or business in Sweden through a permanent establishment situated therein, shall not exceed 5%.

Provided that where the resident of the United Kingdom is a company which controls, directly or indirectly, not less than 50% of the entire voting power of the company paying the dividends, the dividends shall be exempt from coupon tax.

2. Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, there shall not be imposed in that other territory any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of undistributed profits tax on undistributed profits of the company, whether or not those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

#### ARTICLE VIII

1. Any interest derived from sources within one of the territories by a resident of the other territory who is subject to tax in that other territory in respect thereof and does not carry on a trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory.
2. In this Article, the term “interest” includes interest on bonds, securities, notes, debentures or any other form of indebtedness.
3. Where any interest exceeds a fair and reasonable consideration in respect of the indebtedness for which it is paid, the exemption provided by the present Article shall apply only to so much of the interest as represents such fair and reasonable consideration.

#### ARTICLE IX

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1. Any royalty derived from sources within one of the territories by a resident of the other territory, who is subject to tax in that other territory in respect thereof and does not carry on a trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory.
2. In this Article, the term “royalty” means any royalty or other amount paid as consideration for the use of, or for the privilege of using, any copyright, patent, design, secret process or formula, trade-mark, or other like property, but does not include any royalty or other amount paid in respect of the operation of a mine or quarry or of any other extraction of natural resources.
3. Where any royalty exceeds a fair and reasonable consideration in respect of the rights for which it is paid, the exemption provided by the present Article shall apply only to so much of the royalty as represents such fair and reasonable consideration.
4. Any capital sum derived from sources within one of the territories from the sale of patent rights by a resident of the other territory who does not carry on a trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory.

#### ARTICLE X

1. Income of whatever nature derived from real property within the territory of the United Kingdom (other than income from mortgages or bonds secured by real property) by a resident of Sweden who is subject to tax in the United Kingdom in respect thereof shall be exempt from tax in Sweden.
2. Any royalty or other amount paid in respect of the operation of a mine or quarry or of any other extraction of natural resources within the territory of the United Kingdom to a resident of Sweden who is subject to tax in the United Kingdom in respect thereof, shall be exempt from tax in Sweden.
3. Swedish tax payable in respect of income of the kind referred to in the preceding paragraphs, derived from sources within Sweden by a resident of the United Kingdom who is liable to tax in the United Kingdom in respect thereof, shall in

accordance with Article XIX be allowed as a credit against the United Kingdom tax payable in respect of that income.

#### ARTICLE XI

1. Where under the provisions of this Convention a resident of the United Kingdom is exempt or entitled to relief from Swedish tax, similar exemption or relief shall be applied to the undivided estates of deceased persons in so far as one or more of the beneficiaries is a resident of the United Kingdom.
2. Swedish tax on the undivided estate of a deceased person shall, in so far as the income accrues to a beneficiary who is resident in the United Kingdom, be allowed as a credit under Article XIX.

#### ARTICLE XII

A resident of one of the territories who does not carry on a trade or business in the other territory through a permanent establishment situated therein shall be exempt in that other territory from any tax on gains from the sale, transfer, or exchange of capital assets.

#### ARTICLE XIII

1. Remuneration or pensions paid by, or out of funds created by, one of the High Contracting Parties to any individual in respect of services rendered to that Party in the discharge of governmental functions shall be exempt from tax in the territory of the other High Contracting Party, unless the individual is a national of that other Party without being also a national of the first-mentioned Party.
2. The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the High Contracting Parties for purposes of profit.

#### ARTICLE XIV

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1. An individual who is a resident of the United Kingdom shall be exempt from Swedish tax on profits or remuneration in respect of personal (including professional) services performed within Sweden in any year of assessment if—
  - (a) he is present within Sweden for a period or periods not exceeding in the aggregate 183 days during that year; and
  - (b) the services are performed for or on behalf of a resident of the United Kingdom, and
  - (c) the profits of remuneration are subject to United Kingdom tax.
2. An individual who is a resident of Sweden shall be exempt from United Kingdom tax on profits or remuneration in respect of personal (including professional) services performed within the United Kingdom in any year of assessment, if—
  - (a) he is present within the United Kingdom for a period or periods not exceeding in the aggregate 183 days during that year, and
  - (b) the services are performed for or on behalf of a resident of Sweden, and
  - (c) the profits or remuneration are subject to Swedish tax.
3. The provisions of this Article shall not apply to the profits or remuneration of public entertainers such as theatre, motion picture or radio artists, musicians and athletes.

#### ARTICLE XV

1. Any pension (other than a pension of the kind referred to in paragraph 1 of Article XIII) and any annuity, derived from sources within Sweden by an individual who is a resident of the United Kingdom and subject to United Kingdom tax in respect thereof, shall be exempt from Swedish tax.
2. Any pension (other than a pension of the kind referred to in paragraph 1 of Article XIII) and any annuity, derived from sources within the United Kingdom by an individual who is a resident of Sweden and subject to Swedish tax in respect thereof, shall be exempt from the United Kingdom tax.
3. The term “annuity” means a stated sum payable periodically at stated times, during life or during a specified or ascertainable

period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

#### ARTICLE XVI

A professor or teacher from one of the territories, who receives remuneration for teaching, during a period of temporary residence not exceeding 2 years, at a university, college or other establishment for further education in the other territory, shall be exempt from tax in that other territory in respect of that remuneration.

#### ARTICLE XVII

A student or business apprentice from one of the territories who is receiving full-time education or training in the other territory, shall be exempt from tax in that other territory on payments made to him by persons in the first-mentioned territory for the purposes of his maintenance, education or training.

#### ARTICLE XVIII

1. Individuals who are residents of Sweden shall be entitled to the same personal allowances, reliefs and reductions for the purposes of United Kingdom tax as British subjects not resident in the United Kingdom.

Individuals who are residents of the United Kingdom shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Swedish tax as those to which Swedish nationals not resident in Sweden may be entitled.

#### ARTICLE XIX

1. Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom, Swedish tax payable under the laws of Sweden and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within Sweden shall be allowed as a credit against any United Kingdom tax

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payable in respect of that income. Where such income is an ordinary dividend paid by a company which is a resident of Sweden the credit shall take into account (in addition to any Swedish tax appropriate to the dividend) the Swedish tax payable by the company in respect of its profits; and, where it is a dividend paid on participating preference shares and representing both a dividend at the fixed rate to which the shares are entitled and an additional participation in profits, the Swedish tax so payable by the Company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

2. Income from sources within the United Kingdom which under the laws of the United Kingdom and in accordance with this Convention is subject to tax in the United Kingdom either directly or by deduction shall be exempt from Swedish tax:

Provided that where such income is a dividend paid by a company being a resident of the United Kingdom to a person resident in Sweden, not being a company, whether or not he is also resident in the United Kingdom, Swedish tax may be charged on the amount of the dividend after deduction of United Kingdom income tax, but the amount of Swedish tax chargeable shall be reduced by a sum equal to 20% of the amount of the dividend so charged.

3. Where income is derived from sources outside both the United Kingdom and Sweden by a person who is resident in the United Kingdom for the purposes of United Kingdom tax and also resident in Sweden for the purposes of Swedish tax, the income may be taxed in both countries (subject to any Convention which may exist between either of the High Contracting Parties and the territory or territories from which the income is derived), but the Swedish tax on that income shall be limited to tax on the proportion of such income represented by the proportion which such person's income from sources in Sweden bears to the sum of his income from sources in Sweden and of his income from sources in the United Kingdom, and the United Kingdom tax on that income shall be reduced by a credit, in accordance with paragraph 1 of this Article, for the Swedish tax on the proportion of that income so computed.
4. The special tax payable in Sweden by public entertainers such as theatre and radio artists, musicians and athletes

(bevillningsavgift för vissa offentliga föreställningar) shall be regarded, for the purposes of this Article, as Swedish tax.

5. For the purposes of this Article, profits or remuneration for personal (including professional) services performed in one of the territories shall be deemed to be income from sources within that territory, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory.
6. That graduated rate of Swedish tax to be imposed on residents of Sweden may be calculated as though income exempted under this Convention were included in the amount of the total income.

#### ARTICLE XX

1. The taxation authorities of the High Contracting Parties shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any person other than those concerned with the assessment and collection of the taxes which are the subject of the present Convention. No information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.
2. As used in these Articles, the term "taxation authorities" means, in the case of the United Kingdom, the Commissioners of Inland Revenue; in the case of Sweden, the Finance Ministry; and, in the case of any territory to which the present Convention is extended under Article XXIII, the competent authority for the administration in such territory of the taxes to which the present Convention applies.

#### ARTICLE XXI

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The following agreements between the United Kingdom and Sweden shall not have effect for any period for which the present Convention has effect, that is to say—

- (a) the agreement dated 19th December, 1924 (1) for the reciprocal exemption from income tax in certain cases of profits accruing from the business of shipping;
- (b) the agreement dated 6th July, 1931, (2) for the reciprocal exemption from taxes in certain cases of profits arising through agencies.

#### ARTICLE XXII

1. The nationals of one of the High Contracting Parties shall not be subjected in the territory of the other High Contracting Party to any taxation or any requirements connected therewith which is other, higher, or more burdensome than the taxation and connected requirements for which the nationals of the latter Party are or may be subjected.
2. The enterprises of one of the territories shall not be subject in the other territory, in respect of profits attributable to their permanent establishments in that other territory, to any taxation which is other, higher or more burdensome than the taxation to which the enterprises of that other territory are or may be subjected in respect of the like profits.
3. An individual or company being a resident of one of the territories shall not be subject to any tax on capital in the other territory which is other, higher or more burdensome than the tax on capital to which an individual or, as the case may be, a company, being a resident of that other territory is or may be subjected.
4. Nothing in paragraph 1 or paragraph 2 of this Article shall be construed as obliging one of the High Contracting Parties to grant to nationals of the other High Contracting Party who are not resident in the territory of the former Party the same personal allowances, reliefs and reductions for tax purposes as are granted to his own nationals.
5. In this Article the term “**nationals**” means—

- (a) in relation to Sweden, all Swedish subjects and all legal persons, partnerships and associations deriving their status as such from the law in force in Sweden;
  - (b) in relation to the United Kingdom, all British subjects and British-protected persons residing in the United Kingdom or any British territory to which the present Convention applies by reason of extension made under Article XXIII and all legal persons, partnerships and associations deriving their status as such from the law in force in any British territory to which the present Convention applies.
6. In this Article the term “taxation” means taxes of every kind and description levied on behalf of any authority whatsoever.

#### ARTICLE XXIII

1. The present Convention may be extended, either in its entirety or with modifications, to any territory for whose foreign relations the United Kingdom is responsible and which imposes taxes substantially similar in character to those which are the subject of the present Convention, and any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be specified and agreed between the High Contracting Parties in notes to be exchanged for this purpose.
2. The termination in respect of Sweden or the United Kingdom of the present Convention under Article XXV shall, unless otherwise expressly agreed by both High Contracting Parties, terminate the application of the present Convention to any territory to which the Convention has been extended under this Article.

#### ARTICLE XXIV

1. The present Convention shall be ratified by the High Contracting Parties. Ratification by His Majesty the King of Sweden shall be subject to the consent of the Riksdag.
2. The instruments of ratification shall be exchanged at Stockholm as soon as possible.

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3. Upon exchange of ratifications the present Convention shall have effect—
- (a) In Sweden:
- as respects tax on income which is assessed in or after the calendar year beginning on 1st January, 1950, being income for which preliminary tax is payable during the period 1st March, 1949, to 28th February, 1950; or any succeeding period;
- as respects coupon tax payable on or after 1st January 1949;
- as respects capital tax which is assessed in or after the calendar year beginning on 1st January, 1950.
- (b) In the United Kingdom:
- as respects income tax for any year of assessment beginning on or after 6th April, 1949;
- as respects surtax for any year of assessment beginning on or after 6th April, 1948; and
- as respects profits tax in respect of the following profits:—
- (i) profits arising in any chargeable accounting period beginning on or after 1st April, 1949;
- (ii) profits attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;
- (iii) profits not so arising or attributable by reference to which income tax is, or but for the present Convention would be chargeable for any year of assessment beginning on or after 6th April, 1949.

#### ARTICLE XXV

The present Convention shall continue in effect indefinitely but either of the High Contracting Parties may, on or before 30th June in any calendar year not earlier than the year 1953, give to the other High Contracting Party, through diplomatic channels, written notice of termination and, in such event, the present Convention shall cease to be effective—

- (a) In Sweden:

as respects tax on income for which preliminary tax is payable after the last day of February in the calendar year next following that in which the notice is given;

as respects coupon tax payable on or after 1st January in the calendar year next following that in which the notice is given.

as respects capital tax assessed in or after the second calendar year following that in which the notice is given.

(b) In the United Kingdom:

as respects income tax for any year of assessment beginning on or after 6th April in the calendar year next following that in which the notice is given;

as respects surtax for any year of assessment beginning on or after 6th April in the calendar year in which the notice is given; and

as respects profits tax in respect of the following profits:—

- (i) profits arising in any chargeable accounting period beginning on or after 1st April in the calendar year next following that in which the notice is given;
- (ii) profits attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;
- (iii) profits not so arising or attributable by reference to which income tax is chargeable for any year of assessment beginning on or after 6th April in the next following calendar year.

In witness whereof the above-mentioned plenipotentiaries have signed the present Convention and have affixed thereto their seals.

Done at London, in duplicate, in the English and Swedish languages, both texts being equally authentic, on the thirtieth day of March, one thousand nine hundred and forty-nine.

(L.S.) WILLIAM STRANG

(L.S.) GUNNAR HAGGLOF.

## SCHEDULE 2

(Section 2)

### 1. APPLICATION

- (1) The provisions of the Convention incorporated in Schedule 1 to this Order shall apply as modified below—
  - (a) as if the contracting parties were Saint Lucia and the Government of Sweden; and as if the tax concerned in the case of Saint Lucia were income tax;
  - (b) as if references to the date of signature were references to 18 December 1953.
- (2) The extension
  - (a) has effect in Saint Lucia as respects tax for the year of assessment beginning in the calendar year next following the date of this Order and for subsequent years of assessment; and
  - (b) has effect in Sweden—

as respects Swedish tax on income for which preliminary tax is payable after the last day of February in the calendar year next following the date of this Order;

as respects Swedish coupon tax payable on or after 1 January in the calendar year next following the date of this Order;

as respects Swedish capital tax assessed in or after the second calendar year next following that date.
- (3) The extension continues in effect indefinitely but may be terminated as respects Saint Lucia by written notice of termination given on or before 30 June in any calendar year by either of the High Contracting Parties to the Convention to the other High Contracting Party through the diplomatic channel and in such event the extension—
  - (a) ceases to have effect in Saint Lucia as respects tax for the year of assessment beginning in the calendar year next following the date of such notice and for subsequent years of assessment; and

- (b) ceases to have effect in Sweden as respects Swedish tax on income for which preliminary tax is payable after the last day of February in the calendar year next following that in which the notice is given, as respects Swedish coupon tax payable on or after 1 January in the calendar year next following that in which the notice is given, and as respects Swedish capital tax assessed in or after the second calendar year next following that in which the notice is given.

## **2. MODIFICATIONS**

- (1) In article VII(1) of the Convention the words “exempt from United Kingdom Surtax” shall be understood for the purposes of this extension as though they read “is not liable to tax in the territory at a rate in excess of the rate applicable to a company”.
- (2) Article VIII is considered to be deleted.

## **INCOME TAX (DOUBLE TAXATION RELIEF) (CANADA) ORDER – SECTION 60**

(Statutory Instrument 19/1953)

Commencement [4 April 1953]

WHEREAS it is provided by section 52(1) of the Income Tax Act, 1947<sup>11</sup> that if the Governor General by order declares that arrangements specified in the order have been made with the Government of any territory outside Saint Lucia with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory and that it is expedient that those arrangements have effect, the arrangements have effect in relation to income tax despite anything in any enactment;

AND WHEREAS by an Agreement dated 5 June 1946, between the Government of the United Kingdom and the Government of Canada, arrangements were made, among other things, for the avoidance of double taxation;

AND WHEREAS provision is made in the said Agreement for the application by means of a notification of extension given to the other Government by either of the said Governments of the said Agreement to all or any of its colonies, overseas territories, protectorates or territories in respect of which it exercises a mandate or trusteeship, that impose taxes substantially similar in character to those that are the subject of the said Agreement:

AND WHEREAS by a notification dated 9 May 1952, the said Agreement was applied to Saint Lucia.

### **1. SHORT TITLE**

This Order may be cited as the Income Tax (Double Taxation Relief) (Canada) Order.

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<sup>11</sup> *Editor's note:* This Act was repealed by the Income Tax Act, 1965 which itself was repealed and replaced by the Income Tax Act. This Order was continued in force by the 1965 Act and section 153 of the Income Tax Act.

## 2. DECLARATION

It is hereby declared—

- (a) that the arrangements specified in the Schedule to this Order subsist between the Government of Saint Lucia and the Government of Canada in manner provided by Article XV of the Schedule to this Order;
- (b) that it is expedient that those arrangements have effect subject to modification of Article VI(3) of the Agreement contained in the Schedule to this Order substituting for the words “shall be exempt from United Kingdom surtax” of the words “is not liable to tax in Saint Lucia at a rate in excess of the rate applicable to a company”.

## SCHEDULE

(Section 2)

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM AND THE GOVERNMENT OF CANADA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Canada, desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows—

### ARTICLE I

- (1) The taxes which are the subject of the present Agreement are—
  - (a) In Canada:

The income taxes, including surtaxes and excess profits tax imposed by Canada (hereinafter referred to as “Canadian tax”).
  - (b) In the United Kingdom:

The income tax (including surtax), the excess profits tax and the national defence contribution (hereinafter referred to as “United Kingdom tax”).

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- (2) The present Agreement shall also apply to any other taxes of a substantially similar character imposed by either Contracting Government subsequently to the date of signature of the present Agreement or by the Government of any territory to which the present Agreement is extended under Article XV.

## ARTICLE II

- (1) In the present Agreement, unless the context otherwise requires—
- (a) The term “United Kingdom” means Great Britain and Northern Ireland, excluding the Channel Islands and the Isle of Man.
  - (b) The terms “one of the territories” and “the other territory” mean the United Kingdom or Canada, as the context requires.
  - (c) The term “tax” means United Kingdom tax or Canadian tax, as the context requires.
  - (d) The term “person” includes any body of persons, corporate or not corporate.
  - (e) The term “company” includes any body corporate.
  - (f) The terms “resident of the United Kingdom” and “resident of Canada” mean respectively any person who is resident in the United Kingdom for the purposes of United Kingdom tax and not resident in Canada for the purposes of Canadian tax and any person who is resident in Canada for the purposes of Canadian tax and not resident in the United Kingdom for the purposes of United Kingdom tax; and a company shall be regarded as resident in the United Kingdom if its business is managed and controlled in the United Kingdom and as resident in Canada if its business is managed and controlled in Canada.
  - (g) The terms “resident of one of the territories” and “resident of the other territory” mean a person who is a resident of the United Kingdom or a person who is a resident of Canada, as the context requires.
  - (h) The terms “United Kingdom enterprise” and “Canadian enterprise” mean respectively an industrial or commercial

enterprise or undertaking carried on by a resident of the United Kingdom and an industrial or commercial enterprise or undertaking carried on by a resident of Canada; and the terms “enterprise of one of the territories” and “enterprise of the other territory” mean a United Kingdom enterprise or a Canadian enterprise, as the context requires.

- (i) The term “permanent establishment” when used with respect to an enterprise of one of the territories, means a branch or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has a stock of merchandise from which he regularly fills orders on its behalf.

An enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business dealings in that other territory through a *bona fide* broker or general commission agent acting in the ordinary course of his business as such.

The fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise.

The fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which is engaged in trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.

- (2) The term “industrial or commercial profits”, as used in the present Agreement, does not include income in the form of dividends, interest, rents or royalties, management charges, or remuneration for labour or personal services.
- (3) In the application of the provisions of the present Agreement by one of the Contracting Governments any term not otherwise

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defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting Government relating to the taxes which are the subject of the present Agreement.

### ARTICLE III

- (1) The industrial or commercial profits of a United Kingdom enterprise shall not be subject to a Canadian tax unless the enterprise is engaged in trade or business in Canada through a permanent establishment situated therein. If it so engaged, tax may be imposed on those profits by Canada, but only on so much of them as is attributable to that permanent establishment.
- (2) The industrial or commercial profits of a Canadian enterprise shall not be subject to United Kingdom tax unless the enterprise is engaged in trade or business in the United Kingdom through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by the United Kingdom, but only on so much of them as is attributable to that permanent establishment; Provided that nothing in this paragraph shall affect any provisions of the law of the United Kingdom regarding the imposition of excess profits tax and national defence contribution in the case of inter-connected companies.
- (3) Where an enterprise of one of the territories is engaged in trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to such permanent establishment the industrial or commercial profits which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.
- (4) No portion of any profits arising from the sale of goods or merchandise by an enterprise of one of the territories shall be deemed to arise in the other territory by reason of the mere purchase of the goods or merchandise within that other territory.
- (5) Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, the Government of that other territory shall not impose

any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of an undistributed profits tax on undistributed profits of the company, by reason of the fact that those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

#### ARTICLE IV

Where—

- (a) an enterprise of one of the territories directly or indirectly in the management, control or capital of an enterprise of the other territory, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory, and
- (c) in either case conditions are made or imposed between the 2 enterprises, in their commercial or financial relations, which differ from those which would be made between independent enterprises,

then any profits which would but for those conditions have accrued to one of the enterprises but by reason of those conditions have not so accrued may be included in the profits of that enterprise and taxed accordingly.

#### ARTICLE V

Notwithstanding the provisions of Articles III and IV, profits which a resident of one of the territories derives from operating ships or aircraft shall be exempt from tax in the other territory.

#### ARTICLE VI

- (1) The rate of Canadian tax on income (other than earned income) derived from sources within Canada by a resident of the United Kingdom who is subject to United Kingdom tax in respect thereof and not engaged in trade or business in Canada through a permanent establishment situated therein, shall not exceed 15%.

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- (2) Notwithstanding the provisions of the foregoing paragraph, dividends paid to a company which is a resident of the United Kingdom by a Canadian company, all of whose shares (less directors' qualifying shares) which have under all circumstances full voting rights are beneficially owned by the former company, shall be exempt from Canadian Tax.

Provided that exemption shall not be allowed if ordinarily more than one-quarter of the gross income of the Canadian company is derived from interest and dividends other than interest and dividends from any wholly-owned subsidiary company.

- (3) Income (other than earned income) derived from sources within the United Kingdom by an individual who is a resident of Canada, subject to Canadian tax in respect of the income, and not engaged in trade or business in the United Kingdom through a permanent establishment situated therein, shall be exempt from United Kingdom surtax.

#### ARTICLE VII

Copyright royalties and other like payments made in respect of the production or reproduction of any literary, dramatic, musical or artistic work (but not including rents or royalties in respect of motion picture films) and derived from sources within one of the territories by a resident of the other territory who is liable to tax in that other territory in respect thereof and not engaged in trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory.

#### ARTICLE VIII

- (1) Remuneration (other than pensions) paid by one of the Contracting Governments to any individual for services rendered to that Contracting Government in the discharge of governmental functions shall be exempt from tax in the territory of the other Contracting Government if the individual is not ordinarily resident in that territory or is ordinarily resident in that territory solely for the purpose of rendering those services.
- (2) Any pension paid by one of the Contracting Governments to any individual for services rendered to that Contracting

Government in the discharge of governmental functions shall be exempt from tax in the territory of the Contracting Government, if immediately prior to the cessation of those services the remuneration therefor was exempt from tax in that territory, whether under paragraph (1) of this Article or otherwise, or would have been exempt under that paragraph if the present Agreement had been in force at the time when the remuneration was paid.

- (3) The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Contracting Governments for purposes of profit.

#### ARTICLE IX

- (1) An individual who is a resident of the United Kingdom shall be exempt from Canadian tax on profits or remuneration in respect of personal (including professional) services performed within Canada in any taxation year if—
- (a) he is present within Canada for a period or periods not exceeding in the aggregate 183 days during that year, and
  - (b) the services are performed for or on behalf of a person resident in the United Kingdom, and
  - (c) the profits or remuneration are subject to United Kingdom tax.
- (2) An individual who is a resident of Canada shall be exempt from United Kingdom tax on profits or remuneration in respect of personal (including professional) services performed within the United Kingdom in any year of assessment if—
- (a) he is present within the United Kingdom for a period or periods not exceeding in the aggregate 183 days during that year, and
  - (b) the services are performed for or on behalf of a person resident in Canada, and
  - (c) the profits or remuneration are subject to Canadian tax.
- (3) The provisions of this Article shall not apply to the profits or remuneration of public entertainers such as stage, motion picture or radio artists, musicians and athletes.

#### ARTICLE X

- (1) Any pension (other than a pension paid by the Government of Canada for services rendered to it in the discharge of governmental functions) and any annuity, derived from sources within Canada by an individual who is a resident of the United Kingdom and subject to United Kingdom tax in respect thereof, shall be exempt from Canadian tax.
- (2) Any pension (other than a pension paid by the Government of the United Kingdom for services rendered to it in the discharge of governmental functions) and any annuity, derived from sources within the United Kingdom by an individual who is a resident of Canada and subject to Canadian tax in respect thereof, shall be exempt from United Kingdom tax.
- (3) The term “annuity” means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in consideration of money paid.

#### ARTICLE XI.

A professor or teacher from one of the territories who receives remuneration for teaching, during a period of temporary residence not exceeding 2 years, at a university, college, school or other educational institution in the other territory, shall be exempt from tax in that other territory in respect of that remuneration.

#### ARTICLE XII

A student or business apprentice from one of the territories who is receiving full-time education or training in the other territory shall be exempt from tax in that other territory on payments made to him by persons in the first-mentioned territory for the purposes of his maintenance, education or training.

#### ARTICLE XIII

- (1) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom, Canadian tax payable in respect of income from sources within Canada shall be allowed as a credit against any United Kingdom tax payable in respect of that income. Where such income is an ordinary dividend paid by a Canadian debtor, the credit shall take into account (in addition to any Canadian income tax chargeable directly or by deduction in respect of the dividend) the Canadian income tax payable in respect of its profits by the company paying the dividend, and where it is a dividend paid on participating preference shares and representing both a dividend at a fixed rate to which the shares are entitled and an additional participation in profits, the Canadian income tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.
- (2) For the purposes of the foregoing paragraph and of the aforesaid provisions of the law of the United Kingdom, so much of the tax chargeable under the law of Canada relating to excess profits tax as is chargeable otherwise than by reference to excess profits shall be treated as income tax and not as excess profits tax.
- (3) Subject to the provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada, United Kingdom tax payable in respect of income from sources within the United Kingdom shall be deducted from any Canadian tax payable in respect of that income. Where such income is an ordinary dividend paid by a company resident in the United Kingdom, the deduction shall take into account (in addition to any United Kingdom income tax appropriate to the dividend) the United Kingdom national defence contribution payable by the company in respect of its profits, and where it is a dividend paid on participating preference shares and representing both a dividend at the fixed rate to which the shares are entitled and an additional participation in profits, the national defence contributions so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

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- (4) For the purposes of this Article, profits or remuneration for personal (including professional) services performed in one of the territories shall be deemed to be income from sources within that territory, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory.

#### ARTICLE XIV

- (1) The taxation authorities of the Contracting Governments shall exchange such information (being information available under the respective taxation laws of the Contracting Governments) as is necessary for carrying out the provisions of the present Agreement or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of the present Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of the present Agreement. No information shall be exchanged which would disclose any trade secret or trade process.
- (2) The taxation authorities of the Contracting Governments may consult together as may be necessary for the purpose of carrying out the provisions of the present Agreement and, in particular, the provisions of Articles III and IV.
- (3) As used in this Article, the term “taxation authorities” means, in the case of Canada, the Minister of National Revenue or his authorised representative; in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative; and, in the case of any territory to which the present Agreement is extended under Article XV, the competent authority for the administration in such territory of the taxes to which the present Agreement applies.

#### ARTICLE XV

- (1) Either of the Contracting Governments may, on the coming into force of the present Agreement or at any time thereafter while it continues in force, by a written notification of extension given

to the other Contracting Government, declare its desire that the operation of the present Agreement shall extend, subject to such modification as may be necessary, to all or any of its colonies, overseas territories, protectorates, or territories in respect of which it exercises a mandate or trusteeship, which impose taxes substantially similar in character to those which are the subject of the present Agreement. The present Agreement shall, subject to such modifications (if any) as may be specified in the notification, apply to the territory or territories named in such notification on the date or dates specified in the notification (not being less than 60 days from the date of the notification) or, if no date is specified in respect of any such territory, on the sixtieth day after the date of the notification, unless prior to the date on which the Agreement would otherwise become applicable to a particular territory, the Contracting Government to whom notification is given shall have informed the other Contracting Government in writing that it does not accept the notification as to that territory. In the absence of such extension, the present Agreement shall not apply to any such territory.

- (2) At any time after the expiration of one year from the entry into force of an extension under paragraph (1) of this Article, either of the Contracting Governments may, by written notice of termination given to the other Contracting Government, terminate the application of the present Agreement to any territory to which it has been extended under paragraph (1), and in that event the present Agreement shall cease to apply, 6 months after the date of the notice, to the territory or territories named therein, but without affecting its continued application to Canada, the United Kingdom or to any other territory to which it has been extended under paragraph (1) hereof.
- (3) In the application of the present Agreement in relation to any territory to which it is extended by notification by the United Kingdom or Canada, references to the "United Kingdom" or, as the case may be, "Canada" shall be construed as references to that territory.
- (4) The termination in respect of Canada or the United Kingdom of the present Agreement under Article XVIII shall, unless otherwise expressly agreed by both Contracting Governments, terminate the application of the present Agreement to any

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territory to which the Agreement has been extended by Canada or the United Kingdom.

- (5) The provisions of the preceding paragraphs of this Article shall apply to the Channel Islands and the Isle of Man as if they were colonies of the United Kingdom.

#### ARTICLE XVI

The present Agreement shall come into force on the date on which the last of all such things shall have been done in the United Kingdom and Canada as are necessary to give the Agreement the force of law in the United Kingdom and Canada respectively, and shall thereupon have effect—

- (a) in Canada as respects income taxes, including surtaxes, for the taxation year 1946 and subsequent years, and as respects excess profits tax for any fiscal period beginning on or after the first day of January, 1946, and for the unexpired portion of any fiscal period current at that date;
- (b) in the United Kingdom, as respects income tax for the year of assessment beginning on the 6th day of April, 1946, and subsequent years; as respects surtax for the year of assessment beginning on the 6th day of April, 1945, and subsequent years; and as respects excess profits tax and national defence contribution for any chargeable accounting period beginning on or after the first day of January, 1946, and for unexpired portion of any chargeable accounting period current at that date.

#### ARTICLE XVII

The present Agreement shall be deemed to have superseded the Agreements made on the 8th day of May, 1930, and the 3rd day of October, 1935, between the Government of the United Kingdom and the Government of Canada for reciprocal exemption from income tax in certain cases of profits accruing from the business of shipping and profits or gains accruing through an agency respectively, and those Agreements shall cease to have effect—

- (a) in Canada, for the taxation year 1946 and subsequent years;

- (b) in the United Kingdom, as respects income tax for the year of assessment beginning on the 6th day of April, 1946, and subsequent years, and as respects surtax for the year of assessment beginning on the 6th day of April, 1945, and subsequent years.

#### ARTICLE XVIII

- (1) The present Agreement shall continue in effect indefinitely but either of the Contracting Governments may, on or before the 30th day of June in any calendar year after the year 1947, give notice of termination to the other Contracting Government and, in such event, the present Agreement shall cease to be effective—
  - (a) in Canada, as respects income taxes, including surtaxes, for any taxation year ending in or after the calendar year next following that in which such notice is given, and as respects excess profits tax for any fiscal period beginning on or after the first day of January in the calendar year next following that in which such notice is given and for the unexpired portion of any fiscal period current at that date;
  - (b) in the United Kingdom, as respects income tax for any year of assessment beginning on or after the 6th day of April in the calendar year next following that in which such notice is given; as respects surtax for any year of assessment beginning on or after the 6th day of April in the calendar year in which such notice is given, and as respects excess profits tax or national defence contribution for any chargeable accounting period beginning on or after the first day of January in the calendar year next following that in which such notice is given and for the unexpired portion of any chargeable accounting period current at that date.
- (2) The termination of the present Agreement shall not have the effect of reviving any agreement or arrangement abrogated by the present Agreement or by agreements previously concluded between the Contracting Governments.

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IN WITNESS thereof the undersigned, duly authorised thereto, have signed the present Agreement and have affixed thereto their seals.

Done at London, in duplicate, on the fifth day of June, one thousand nine hundred and forty-six.

For the Government of the United Kingdom:

[L.S.]

Hugh Dalton.

For the Government of Canada:

[L.S.]

W. L. Mackenzie King.

## **INCOME TAX (DOUBLE TAXATION RELIEF) (DENMARK) ORDER – SECTION 60**

**(Statutory Instrument appearing in volume 7, page 1106 of the 1957 Revision of the  
Laws of Saint Lucia)**

WHEREAS it is provided by section 52(1) of the Income Tax Act, 1947<sup>12</sup> that if the Governor General by order declares that arrangements specified in the order were made with the Government of any territory outside Saint Lucia with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory and that it is expedient that those arrangements have effect, the arrangements have effect in relation to income tax despite anything in any enactment;

AND WHEREAS by a Convention dated 27 March 1950, between the Government of the United Kingdom and the Government of Denmark arrangements were made among other things for the avoidance of double taxation;

AND WHEREAS provision is made in the said Convention for the extension by means of an exchange of notes between the High Contracting Parties of the said Convention, subject to such modifications and conditions (including conditions as to termination) as may be specified in the exchange of notes, to any territory, for whose international relations the United Kingdom is responsible, which imposes taxes substantially similar in character to those which are the subject of the said Convention;

AND WHEREAS by an Exchange of Notes dated respectively 18 November and 22 December 1954 the said Convention with certain modifications was applied to Saint Lucia.

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<sup>12</sup> *Editor's note:* This Act was repealed by the Income Tax Act, 1965 which itself was repealed and replaced by the Income Tax Act. This Order was continued in force by the 1965 Act and section 153 of the Income Tax Act.

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**1. SHORT TITLE**

This Order may be cited as the Income Tax (Double Taxation Relief) (Denmark) Order.

**2. DECLARATION**

It is hereby declared—

- (a) that the arrangements specified in Schedule 1 to this Order, as modified by the provisions of Schedule 2 to this Order, have been made with the Government of Denmark;
- (b) that it is expedient that those arrangements have effect.

**SCHEDULE 1**

(Section 2)

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE KINGDOM OF DENMARK FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME.

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Denmark,

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have appointed for that purpose as their Plenipotentiaries:

The Government of the United Kingdom of Great Britain and Northern Ireland:

The Right Honourable Ernest Bevin, M.P., Principal Secretary of State for Foreign Affairs;

The Government of the Kingdom of Denmark:

His Excellency Count Eduard Reventlow; Ambassador Extraordinary and Plenipotentiary of Denmark in London;

Who, having exhibited their respective full powers, found in good and due form, have agreed as follows—

#### ARTICLE I

1. The taxes which are the subject of the present Convention are:
  - (a) In Denmark: The national income tax (including the extraordinary company tax) (hereinafter referred to as “Danish tax”).
  - (b) In the United Kingdom of Great Britain and Northern Ireland: The income tax (including surtax) and the profits tax (hereinafter referred to as “United Kingdom tax”).
2. The present Convention shall also apply to any other taxes of a substantially similar character imposed in Denmark or the United Kingdom subsequently to the date of signature of the present Convention.

#### ARTICLE II

1. In the present Convention, unless ‘the context otherwise requires:
  - (a) The term “United Kingdom” means Great Britain and Northern Ireland, excluding the Channel Islands and the Isle of Man;
  - (b) The term “Denmark” means the Kingdom of Denmark, excluding the Faroe Islands and Greenland;
  - (c) The terms “one of the territories” and “the other territory” mean the United Kingdom of Denmark, as the context requires;
  - (d) The term “tax” means United Kingdom tax or Danish tax, as the context requires;
  - (e) The term “person” includes any body of persons, corporate or not corporate;
  - (f) The term “company” means any body corporate;
  - (g) The terms “resident of the United Kingdom” and “resident of Denmark” mean respectively any person who is resident in the United Kingdom for the purposes of United Kingdom tax and not resident in Denmark for the

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purposes of Danish tax, and any person who is resident in Denmark for the purposes of Danish tax and not resident in the United Kingdom for the purpose of United Kingdom tax; a company shall be regarded as resident in the United Kingdom if its business is managed and controlled in the United Kingdom and as resident in Denmark if its business is managed and controlled in Denmark;

- (h) The terms “resident of one of the territories” and “resident of the other territory” mean a person who is a resident of the United Kingdom or a person who is a resident of Denmark, as the context requires;
- (i) The terms “United Kingdom enterprise” and “Danish enterprise” mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of the United Kingdom and an industrial or commercial enterprise or undertaking carried on by a resident of Denmark, and the terms “enterprise of one of the territories” and “enterprise of the other territory” mean a United Kingdom enterprise or a Danish enterprise, as the context requires;
- (j) The term “industrial or commercial profits” includes rents or royalties in respect of cinematograph films;
- (k) The term “permanent establishment,” when used with respect to an enterprise of one of the territories, means a branch, management, factory, or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has a stock of merchandise from which he regularly fills orders on its behalf. In this connection—
  - (i) An enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business dealings in that other territory through a bono fide broker or general commission agent acting in the ordinary course of his business as such;
  - (ii) The fact that an enterprise of one of the territories maintains in the other territory a fixed place of

business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise;

- (iii) The fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which carries on a trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.
2. Where under this Convention any income is exempt from tax in one of the territories if (with or without other conditions) it is subject to tax in the other territory, and that income is subject to tax in that other territory by reference only to the amount thereof which is remitted to or received in that other territory, the exemption to be allowed under this Convention in the first-mentioned territory shall apply only to the amount so remitted or received.
3. In the application of the provisions of the present Convention by one of the High Contracting Parties any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws in force in the territory of that Party relating to the taxes which are the subject of the present Convention.

### ARTICLE III

1. The industrial or commercial profits of a United Kingdom enterprise shall not be subject to Danish tax unless the enterprise carries on a trade or business in Denmark through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits by Denmark, but only on so much of them as is attributable to that permanent establishment.
2. The industrial or commercial profits of a Danish enterprise shall not be subject to United Kingdom tax unless the enterprise carries on a trade or business in the United Kingdom through a permanent establishment situated therein. If it carries on a trade

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or business as aforesaid, tax may be imposed on those profits by the United Kingdom, but only on so much of them as is attributable to that permanent establishment.

3. Where an enterprise of one of the territories carries on a trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive in that other territory if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.
4. Where an enterprise of one of the territories derives profits, under contracts concluded in that territory, from sales of goods or merchandise stocked in a warehouse in the other territory for convenience of delivery and not for purposes of display, those profits shall not be attributed to a permanent establishment of the enterprise in that other territory, notwithstanding that the offers of purchase have been obtained by an agent in that other territory and transmitted by him to the enterprise for acceptance.
5. No portion of any profits arising to an enterprise of one of the territories shall be attributable to a permanent establishment situated in the other territory by reason of the mere purchase of goods or merchandise within that other territory by the enterprise.

#### ARTICLE IV

Where—

- (a) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory,

and in either case, conditions are made or imposed between the 2 enterprises, in their commercial or financial relations, which differ from those which would be made between independent

enterprises, then any profits which would but for those conditions have accrued to one of the enterprises but by reason of those conditions have not so accrued may be included in the profits of that enterprise and taxed accordingly.

#### ARTICLE V

1. The industrial and commercial profits of a company which is a resident of Denmark shall, so long as undistributed profits of United Kingdom enterprises are effectively charged to United Kingdom Profits Tax at a lower rate than distributed profits of such enterprises, be charged to United Kingdom Profits Tax only at that lower rate.
2. Where a company which is a resident of Denmark controls, directly or indirectly, not less than 50%, of the entire voting power of a company which is a resident of the United Kingdom, distributions by the latter company to the former company shall be left out of account in computing United Kingdom Profits Tax effectively chargeable on the latter company at the rate appropriate to distributed profits.
3. If the industrial and commercial profits of a company which is a resident of the United Kingdom become chargeable to a form of Danish tax under which, in the case of companies which are residents of Denmark, the undistributed or undistributable income is charged to tax at a lower rate than the distributed or distributable income of such companies, these industrial and commercial profits shall be charged to Danish tax only at the lower rate.
4. Where a company which is a resident of the United Kingdom beneficially owns not less than 50%, of the entire ordinary share capital of a company which is a resident of Denmark, distributed or distributable income payable by the latter company to the former company shall be left out of account in computing the liability of the latter company to Danish tax at any higher rate appropriate to distributed or distributable income, and this shall apply, in particular, in computing the liability of the latter company to that part of the Danish extraordinary tax on companies known as Udbytterate.

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#### ARTICLE VI

1. Notwithstanding the provisions of Articles III, IV and V, profits which a resident of one of the territories derives from operating ships or aircraft shall be exempt from tax in the other territory.
2. The Agreement dated 18th December, 1924, between the United Kingdom and Denmark for the reciprocal exemption from Income Tax in certain cases of profits accruing from the business of shipping shall not have effect for any year or period for which the present Convention has effect.

#### ARTICLE VII

1.
  - (a) Dividends paid by a company which is a resident of the United Kingdom to a resident of Denmark, who is subject to tax in Denmark in respect thereof and does not carry on a trade or business in the United Kingdom through a permanent establishment situated therein, shall be exempt from United Kingdom surtax.
  - (b) Dividends paid by a company which is a resident of Denmark to a resident of the United Kingdom, who is subject to tax in the United Kingdom in respect thereof and does not carry on a trade or business in Denmark through a permanent establishment situated therein, shall not be chargeable to tax in addition to the tax on the profits out of which the dividends are paid at a rate exceeding 5%.: Provided that where the resident of the United Kingdom is a company which beneficially owns not less than 50%, of the entire ordinary share capital of the company paying the dividends, the dividends shall be exempt from any such tax on dividends.
2. Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, there shall not be imposed in that other territory any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of undistributed profits tax on undistributed profits of the company, whether or not those dividends or undistributed

profits represent, in whole or in part, profits or income so derived.

#### ARTICLE VIII

1. Any interest or royalty derived from sources within one of the territories by a resident of the other territory, who is subject to tax in that other territory in respect thereof and does not carry on a trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory; but no exemption shall be allowed in respect of interest paid by a company which is a resident of one of the territories to a company which is a resident of the other territory where the latter company controls, either directly or indirectly, more than 50%, of the entire voting power of the former company.
2. In this Article—
  - (a) The term “interest” includes interest on bonds, securities, notes, debentures or on any other form of indebtedness;
  - (b) The term “royalty” means any royalty or other amount paid as consideration for the use of, or for the privilege of using, any copyright, patent, design, secret process or formula, trade mark or other like property, but does not include any royalty or other amount paid in respect of the operation of a mine or quarry or of any other extraction of natural resources.
3. Where any interest or royalty exceeds a fair and reasonable consideration in respect of the indebtedness or rights for which it is paid, the exemption provided by the present Article shall apply only to so much of the interest or royalty as represents such fair and reasonable consideration.
4. Any capital sum derived from one of the territories from the sale of patent rights by a resident of the other territory who does not carry on a trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory.

#### ARTICLE IX

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Income of whatever nature derived from real property within one of the territories (except interest on mortgages secured on real property) shall be chargeable to tax in accordance with the laws of that territory. Where the said income is also chargeable to tax in the other territory, credit for the tax payable in the first-mentioned territory shall be given against the tax payable on that income in the other territory in accordance with Article XVII.

#### ARTICLE X

A resident of one of the territories who does not carry on a trade or business in the other territory through a permanent establishment situated therein shall be exempt in that other territory from any tax on gains from the sale, transfer, or exchange of capital assets.

#### ARTICLE XI

1. Remuneration, including pensions, paid by, or out of funds created by, one of the High Contracting Parties to any individual in respect of services rendered to that Party in discharge of governmental functions shall be exempt from tax in the territory of the other High Contracting Party, unless the individual is a national of that other Party without being also a national of the first-mentioned Party.
2. The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the High Contracting Parties for purposes of profit.

#### ARTICLE XII

1. An individual who is a resident of the United Kingdom shall be exempt from Danish tax on profits or remuneration in respect of personal (including professional) services performed within Denmark in any year of assessment if—
  - (a) he is present within Denmark for a period or periods not exceeding in the aggregate 183 days during that year, and

- (b) the services are performed for or on behalf of a resident of the United Kingdom, and
  - (c) the profits or remuneration are subject to United Kingdom tax.
2. An individual who is a resident of Denmark shall be exempt from United Kingdom tax on profits or remuneration in respect of personal (including professional) services performed within the United Kingdom in any year of assessment, if—
  - (a) he is present within the United Kingdom for a period or periods not exceeding in the aggregate 183 days during that year, and
  - (b) the services are performed for or on behalf of a resident of Denmark, and
  - (c) the profits or remuneration are subject to Danish tax.
3. The provisions of this Article shall not apply to the profits or remuneration of public entertainers such as theatre, motion picture or radio artists, musicians and athletes.

### ARTICLE XIII

1. Any pension (other than a pension of the kind referred to in paragraph 1 of Article XI) and any annuity, derived from sources within Denmark by an individual who is a resident of the United Kingdom and subject to United Kingdom tax in respect thereof, shall be exempt from Danish tax.
2. Any pension (other than a pension of the kind referred to in paragraph 1 of Article XI) and any annuity, derived from sources within the United Kingdom by an individual who is a resident of Denmark and subject to Danish tax in respect thereof, shall be exempt from United Kingdom tax.
3. The term “annuity” means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money’s worth.

### ARTICLE XIV

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A professor or teacher from one of the territories, who receives remuneration for teaching, during a period of temporary residence not exceeding 2 years, at a university, college, school or other educational institution in the other territory, shall be exempt from tax in that other territory in respect of that remuneration.

#### ARTICLE XV

A student or business apprentice from one of the territories, who is receiving full-time education or training in the other territory, shall be exempt from tax in that other territory on payments made to him by persons in the first-mentioned territory for the purposes of his maintenance, education or training.

#### ARTICLE XVI

1. Individuals who are residents of Denmark shall be entitled to the same personal allowances, reliefs and reductions for the purposes of United Kingdom income tax as British subjects not resident in the United Kingdom.
2. Individuals who are residents of the United Kingdom shall be entitled to the same personal allowances and reliefs for the purposes of Danish tax as Danish nationals not resident in Denmark.

#### ARTICLE XVII

1. The laws of the High Contracting Parties shall continue to govern the taxation of income arising in either of the territories except where express provision to the contrary is made in this Convention. Where income is subject to tax in both territories, relief from double taxation shall be given in accordance with the following paragraphs.
2. Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom, Danish tax, payable whether directly or by deduction, in respect of income from sources within Denmark shall be allowed as a

credit against the United Kingdom tax payable in respect of that income. Where such income is an ordinary dividend paid by a company resident in Denmark, the credit shall take into account (in addition to any Danish tax appropriate to the dividend) the Danish tax payable by the company in respect of its profits; and, where it is a dividend paid on participating preference shares and representing both a dividend at the fixed rate to which the shares are entitled and an additional participation in profits, the Danish tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

3. United Kingdom tax payable, whether directly or by deduction, in respect of income from sources within the United Kingdom shall be allowed as a deduction from Danish tax payable in respect of that income. Provided that the amount of deduction shall not exceed the proportion of the Danish tax which such income chargeable to Danish tax bears to the total income chargeable to Danish tax. For the purposes of this paragraph only, the expression "Danish tax" shall include the Danish inter-municipal income tax.
4. In the case of a person who is resident in the United Kingdom for the purposes of United Kingdom tax and is also resident in Denmark for the purposes of Danish tax, the provisions of paragraph 2 of this Article shall apply in relation to income which that person derives from sources within Denmark, and the provisions of paragraph 3 of this Article shall apply in relating to income which he derives from sources within the United Kingdom. If such person derives income from sources outside both the United Kingdom and Denmark, tax may be imposed on that income in both the territories (subject to the laws in force in the territories and to any Convention which may exist between either of the High Contracting Parties and the territory from which the Income is derived). A credit shall be allowed in accordance with paragraph 2 of this Article against any United Kingdom tax payable in respect of that income, equal to that proportion of the United Kingdom tax or the Danish tax on that income, whichever is the less, which such person's income from sources within the United Kingdom bears to the sum of his income from sources within the United Kingdom and his income from sources within Denmark; and a

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deduction shall be allowed in accordance with paragraph 3 of this Article against any Danish tax payable in respect of that income equal to that proportion of the United Kingdom tax or the Danish tax on that income, whichever is the less, which such person's income from sources within Denmark bears to the sum of his income from sources within the United Kingdom and his income from sources within Denmark.

5. For the purposes of this Article, profits or remuneration for personal (including professional) services performed in one of the territories shall be deemed to be income from sources within that territory, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory.

#### ARTICLE XVIII

1. The taxation authorities of the High Contracting Parties shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of taxes which are the subject of the present Convention. No information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.
2. As used in this Article, the term "taxation authorities" means, in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representatives; in the case of Denmark, the Director General of Taxation or his authorised representative; and, in the case of any territory to which the present Convention is extended under Article XX, the competent authority for the administration in such territory of the taxes to which the present Convention applies.

## ARTICLE XIX

1. The nationals of one of the High Contracting Parties shall not be subjected in the territory of the other High Contracting Party to any taxation or any requirement connected therewith which is other, higher, or more burdensome than the taxation and connected requirements to which the nationals of the latter Party are or may be subjected.
2. The enterprises of one of the territories, whether carried on by a company, a body of persons or by individuals alone or in partnership, shall not be subjected in the other territory, in respect of profits or capital attributable to their permanent establishments in that other territory, to any taxation which is other, higher or more burdensome than the taxation to which the enterprises of that other territory similarly carried on are or may be subjected in respect of the like profits or capital.
3. The income, profits and capital of an enterprise of one of the territories, the capital of which is wholly or partly owned or controlled, directly or indirectly, by a resident or residents of the other territory shall not be subjected in the first-mentioned territory to any taxation which is other, higher or more burdensome than the taxation to which other enterprises of that first-mentioned territory are or may be subjected in respect of the like income, profits and capital.
4. Nothing in paragraph 1 or paragraph 2 of this Article shall be construed as obliging one of the High Contracting Parties to grant to nationals of the other High Contracting Party who are not resident in the territory of the former Party the same personal allowances, reliefs and reductions for tax purposes as are granted to his own nationals.
5. In this Article the term “nationals” means—
  - (a) in relation to Denmark, all Danish citizens and all legal persons, partnerships, associations and other entities deriving their status as such from the law in force in Denmark or in any Danish territory to which the present Convention applies by reason of extension made under Article XX;
  - (b) in relation to the United Kingdom, all British subjects and British-protected persons residing in the United Kingdom

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or any British territory to which the present Convention applies by reason of extension made under Article XX, and all legal persons, partnerships, associations and other entities deriving their status as such from the law in force in any British territory to which the present Convention applies.

6. In this Article the term “taxation” means taxes of every kind and description levied on behalf of any authority whatsoever.

#### ARTICLE XX

1. The present Convention may be extended, either in its entirety or with modifications, to any territory of one of the High Contracting Parties to which this Article applies and which imposes taxes substantially similar in character to those which are the subject of the present Convention, and any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be specified and agreed between the High Contracting Parties in notes to be exchanged for this purpose.
2. The termination in respect of Denmark or the United Kingdom of the present Convention under Article XXII shall, unless otherwise expressly agreed by both High Contracting Parties, terminate the application of the present Convention to any territory to which the Convention has been extended under this Article.
3. The territories to which this Article applies are—
  - (a) in relation to the United Kingdom: any territory other, than the United Kingdom for whose international relations the United Kingdom is responsible;
  - (b) in relation to Denmark: any territory other than Denmark for whose international relations Denmark is responsible.

#### ARTICLE XXI

1. The present Convention shall be ratified and the instruments of ratification shall be exchanged at London as soon as possible.
2. Upon exchange of ratifications the present Convention shall have effect—

- (a) In the United Kingdom:
- as respects income tax for any year of assessment beginning on or after the 6th April, 1949;
  - as respects surtax for any year of assessment beginning on or after the 6th April, 1948; and
  - as respects profits tax in respect of the following profits—
    - (i) profits arising in any chargeable accounting period beginning on or after the 1st April, 1949;
    - (ii) profits attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;
    - (iii) profits not so arising or attributable by reference to which income tax is, or but for the present Convention would be, chargeable for any year of assessment beginning on or after the 6th April, 1949.
- (b) In Denmark:
- as respects Danish tax for any taxation year beginning on or after the 1st April, 1949.

## ARTICLE XXII

The present Convention shall continue in effect indefinitely but either of the High Contracting Parties may, on or before the 30th June in any calendar year not earlier than the year 1953, give to the other High Contracting Party, through diplomatic channels, written notice of termination and, in such event the present Convention shall cease to be effective—

- (a) In the United Kingdom:
- as respects income tax for any year of assessment beginning on or after the 6th April in the calendar year next following that in which the notice is given; and
  - as respects surtax for any year of assessment beginning on or after the 6th April in the calendar year in which the notice is given; and
  - as respects profits tax in respect of the following profits:—

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- (i) profits arising in any chargeable accounting period beginning on or after the 1st April in the calendar year next following that in which the notice is given;
  - (ii) profits attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;
  - (iii) profits not so arising or attributable by reference to which income tax is chargeable for any year of assessment beginning on or after the 6th April in the next following calendar year.
- (b) In Denmark:  
as respects Danish tax for any taxation year beginning on or after the 1st April in the calendar year next following that in which the notice is given.

In witness whereof the above-mentioned Plenipotentiaries have signed the present Convention and have affixed thereto their seals.

Done at London in duplicate, in the English and Danish languages, both texts being equally authentic, on the twenty-seventh day of March, one thousand nine hundred and fifty.

(L.S.) ERNEST BEVIN.

(L.S.) E. REVENTLOW.

## SCHEDULE 2

(Section 2)

### 1. APPLICATION

- (1) The provisions of the Convention incorporated in Schedule 1 to this Order apply as modified below—
  - (a) as if the contracting parties were Saint Lucia and the Government of Denmark;
  - (b) as if the tax concerned in the case of Saint Lucia were income tax;

- (c) as if the taxes concerned in the case of Denmark included the Defence tax;
  - (d) as if references to the date of signature were references to 22 December 1954;
  - (e) as if references to the 6th day of April were references to 1 January 1954.
- (2) The extension shall have effect in Saint Lucia as respect tax for the year of assessment 1954 (or 1954/55) and for subsequent years of assessment, (and will have effect in Denmark as respects Danish tax for any taxation year beginning on or after 1 April 1954).
- (3) The extension shall continue in effect indefinitely but may be terminated as respects Saint Lucia by written notice of termination given on or before 30 June in any calendar year not earlier than the year 1957 by either of the High Contracting Parties to the Convention to the other High Contracting Party through the diplomatic channel and in such event the extension shall cease to have effect in Saint Lucia as respects tax for the year of assessment beginning in the calendar year next following the date of such notice and for subsequent years of assessment and will cease to have effect in Denmark as respects Danish tax for any taxation year beginning on or after 1 April in the calendar year next following that in which the notice is given.

## 2. MODIFICATIONS

- (1) In Article VII(1) of the Convention the words “exempt from United Kingdom surtax” shall be understood for the purposes of this extension as though they read “is not liable to tax in the territory at a rate in excess of the rate applicable to a company”.
- (2) In Articles VIII and IX all references to interest shall be deemed to be deleted.

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## **INCOME TAX (DOUBLE TAXATION RELIEF) (NORWAY) ORDER – SECTION 60**

**(Statutory Instrument appearing in volume 7, page 1119 of the 1957 Revision of the  
Laws of Saint Lucia)**

WHEREAS it is provided by section 52 of the Income Tax Act, 1947<sup>13</sup> that if the Governor General by order declares that arrangements specified in the Order were made with the Government of any territory outside Saint Lucia with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory and that it is expedient that those arrangements have effect, the arrangements have effect in relation to Income Tax despite anything in any enactment;

AND WHEREAS by a Convention dated the 2nd day of May, 1951 between the Government of the United Kingdom and the Government of Norway, arrangements were made among other things for the avoidance of Double Taxation;

AND WHEREAS provision is made in the said Convention for the extension by means of an exchange of notes between the Contracting Parties of the said Convention, subject to such modifications and conditions (including conditions as to termination) as may be specified in the exchange of notes, to any territory, for whose international relations the United Kingdom is responsible, which imposes taxes substantially similar in character to those which are the subject of the said Convention;

AND WHEREAS by an Exchange of Notes dated 18 May 1955, the said Convention with certain modifications was applied to Saint Lucia.

NOW, THEREFORE, it is hereby ordered and declared by His Excellency the Governor General as follows—

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<sup>13</sup> *Editor's note:* This Act was repealed by the Income Tax Act, 1965 which itself was repealed and replaced by the Income Tax Act. This Order was continued in force by the 1965 Act and section 153 of the Income Tax Act.

**1. SHORT TITLE**

This Order may be cited as the Income Tax (Double Taxation Relief) (Norway) Order.

**2. DECLARATION**

It is hereby declared—

- (a) That the arrangements specified in Schedule 1 to this Order, as modified by the provisions of Schedule 2 to this Order, have been made with the Government of Norway.
- (b) That it is expedient that those arrangements should have effect.

**SCHEDULE 1**

(Section 2)

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM AND THE NORWEGIAN GOVERNMENT FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME.

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Norway,

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

Have agreed as follows—

**ARTICLE I**

- (1) The taxes which are the subject of the present Convention are—
  - (a) In Norway:

The national income tax, including the national defence tax on income, the communal income tax, the old age pension tax, the war pension tax, and the seamen's tax, and, for the purposes of Article XIX, the national property

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tax, including the national defence tax on property (hereinafter referred to as “Norwegian tax”);

- (b) In the United Kingdom of Great Britain and Northern Ireland:

The income tax (including surtax) and the profits tax (hereinafter referred to as “United Kingdom tax”).

- (2) The present Convention shall also apply to any other taxes of a substantially similar character imposed in Norway or the United Kingdom subsequently to the date of signature of the present Convention.

## ARTICLE II

- (1) In the present Convention, unless the context otherwise requires—

- (a) The term “United Kingdom” means Great Britain and Northern Ireland, excluding the Channel Islands and the Isle of Man;
- (b) The term “Norway” means the Kingdom of Norway, excluding Spitsbergen and Bear Island and Jan Mayen and the Norwegian dependencies outside Europe;
- (c) The terms “one of the territories” and “the other territory” mean the United Kingdom or Norway, as the context requires;
- (d) The term “tax” means United Kingdom tax or Norwegian tax, as the context requires;
- (e) The term “person” includes any body of persons, corporate or not corporate;
- (f) The term “company” means any body corporate;
- (g) The terms “resident of the United Kingdom” and “resident of Norway” mean respectively any person who is resident in the United Kingdom for the purposes of United Kingdom tax and not resident in Norway for the purposes of Norwegian tax, and any person who is resident in Norway for the purposes of Norwegian tax and not resident in the United Kingdom for the purposes of United Kingdom tax; a company shall be regarded as resident in the United Kingdom if its business is managed

and controlled in the United Kingdom and as resident in Norway, if its business is managed and controlled in Norway;

- (h) The terms “resident of one of the territories” and “resident of the other territory” mean a person who is a resident of the United Kingdom or a person who is a resident of Norway, as the context requires;
- (i) The terms “United Kingdom enterprise” and “Norwegian enterprise” mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of the United Kingdom and an industrial or commercial enterprise or undertaking carried on by a resident of Norway, and the terms “enterprise of one of the territories” and “enterprise of the other territory” mean a United Kingdom enterprise or a Norwegian enterprise, as the context requires;
- (j) The term “industrial or commercial profits” includes rents or royalties in respect of cinematograph films;
- (k) The term “permanent establishment,” when used with respect to an enterprise of one of the territories, means a branch, management, factory, or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has a stock of merchandise from which he regularly fills orders on its behalf. In this connection—
  - (i) An enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business dealings in that other territory through a *bona fide* broker or general commission agent acting in the ordinary course of his business as such.
  - (ii) The fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise.

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- (iii) The fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which carries on a trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.
- (2) Where under the present Convention any income is exempt from tax in one of the territories if (with or without other conditions) it is subject to tax in the other territory, and that income is subject to tax in that other territory, by reference to the amount thereof which is remitted to or received in that other territory, the exemption to be allowed under this Convention in the first-mentioned territory shall apply only to the amount so remitted or received.
- (3) In the application of the provisions of the present Convention by one of the Contracting Parties any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws in force in the territory of that Party relating to the taxes which are the subject of the present Convention.

### ARTICLE III

- (1) The industrial or commercial profits of a United Kingdom enterprise shall not be subject to Norwegian tax unless the enterprise carries on a trade or business in Norway through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits by Norway, but only on so much of them as is attributable to that permanent establishment.
- (2) The industrial or commercial profits of a Norwegian enterprise shall not be subject to United Kingdom tax unless the enterprise carries on a trade or business in the United Kingdom through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits by the United Kingdom, but only on so much of them as is attributable to that permanent establishment.

- (3) Where an enterprise of one of the territories carries on a trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive in that other territory if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.
- (4) Where an enterprise of one of the territories derives profits, under contracts concluded in that territory, from sales of goods or merchandise stocked in a warehouse in the other territory for convenience of delivery and not for purposes of display, those profits shall not be attributed to a permanent establishment of the enterprise in that other territory, notwithstanding that the offers of purchase have been obtained by an agent in that other territory and transmitted by him to the enterprise for acceptance.
- (5) No portion of any profits arising to an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of goods or merchandise within that other territory by the enterprise.

#### ARTICLE IV

Where—

- (a) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory,

and, in either case, conditions are made or imposed between the 2 enterprises, in their commercial or financial relations, which differ from those which would be made between independent enterprises, then any profits which would but for those conditions have accrued to one of the enterprises but by reason

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of those conditions have not so accrued may be included in the profits of that enterprise and taxed accordingly.

#### ARTICLE V

Notwithstanding the provisions of Articles III and IV, profits which a resident of one of the territories derives from operating ships or aircraft shall be exempt from tax in the other territory.

#### ARTICLE VI

(1)

- (a) Dividends paid by a company which is a resident of the United Kingdom to a resident of Norway, who is subject to tax in Norway in respect thereof and does not carry on a trade or business in the United Kingdom through a permanent establishment situated therein, shall be exempt from United Kingdom surtax.
- (b) Norwegian tax on dividends paid by a company which is a resident of Norway to a resident of the United Kingdom, who is subject to tax in the United Kingdom in respect thereof and does not carry on trade or business in Norway through a permanent establishment situated therein, shall not exceed 5%.

Provided that, where the resident of the United Kingdom is a company which controls, directly or indirectly, not less than 50% of the entire voting power of the company paying the dividends, the dividends shall be exempt from Norwegian tax.

- (2) Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, there shall not be imposed in that other territory any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of an undistributed profits tax on undistributed profits of the company, whether or not those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

## ARTICLE VII

- (1) Any interest or royalty derived from sources within one of the territories by a resident of the other territory, who is subject to tax in that other territory in respect thereof and does not carry on a trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory.
- (2) In this Article—
  - (a) The term “interest” includes interest on bonds, securities, notes, debentures or on any other form of indebtedness;
  - (b) The term “royalty” means any royalty or other amount paid as consideration for the use of, or for the privilege of using, any copyright, patent, design, secret process or formula, trade mark or other like property, but does not include any royalty or other amount paid in respect of the operation of a mine or quarry or of any other extraction of natural resources.
- (3) Where any interest or royalty exceeds a fair and reasonable consideration in respect of the indebtedness or rights for which it is paid, the exemption provided by the present Article shall apply only to so much of the interest or royalty as represents such fair and reasonable consideration.
- (4) Any capital sum derived from sources within one of the territories from the sale of patent rights by a resident of the other territory, who does not carry on a trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory.

## ARTICLE VIII

- (1) Where under the provisions of the present Convention a resident of the United Kingdom is exempt or entitled to relief from Norwegian tax, similar exemption or relief shall be applied to the undivided estates of deceased persons in so far as one or more of the beneficiaries is a resident of the United Kingdom.

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- (2) Norwegian tax on the undivided estate of a deceased person shall, in so far as the income accrues to a beneficiary who is resident in the United Kingdom, be allowed as a credit under Article XVI.

#### ARTICLE IX

- (1) Remuneration, including pensions, paid by, or out of funds created by, one of the Contracting Parties to any individual in respect of services rendered to that Party in the discharge of governmental functions shall be exempt from tax in the territory of the other Contracting Party, unless the individual is a national of that other Party without being also a national of the first-mentioned Party.
- (2) The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Contracting Parties for purposes of profit.

#### ARTICLE X

- (1) An individual who is a resident of the United Kingdom shall be exempt from Norwegian tax on profits or remuneration in respect of personal (including professional) services performed within Norway in any year of assessment if—
  - (a) he is present within Norway for a period or periods not exceeding in the aggregate 183 days during that year, and
  - (b) the services are performed for or on behalf of a resident of the United Kingdom, and
  - (c) the profits or remuneration are subject to United Kingdom tax.
- (2) An individual who is a resident of Norway shall be exempt from United Kingdom tax on profits or remuneration in respect of personal (including professional) services performed within the United Kingdom in any year of assessment, if—
  - (a) he is present within the United Kingdom for a period or periods not exceeding in the aggregate 183 days during that year, and

- (b) the services are performed for or on behalf of a resident of Norway, and
  - (c) the profits or remuneration are subject to Norwegian tax.
- (3) The provisions of this Article shall not apply to the profits or remuneration of public entertainers such, as theatre, motion picture or radio artistes, musicians and athletes.

#### ARTICLE XI

A resident of one of the territories shall be exempt from tax in the other territory in respect of remuneration for services performed on ships or aircraft operating outside the other territory.

#### ARTICLE XII

- (1) Any pension (other than a pension of the kind referred to in paragraph (1) of Article IX) and any annuity, derived from sources within Norway by an individual who is a resident of the United Kingdom and subject to United Kingdom tax in respect thereof, shall be exempt from Norwegian tax.
- (2) Any pension (other than a pension of the kind referred to in paragraph (1) of Article IX) and any annuity, derived from sources within the United Kingdom by an individual who is a resident of Norway and subject to Norwegian tax in respect thereof, shall be exempt from United Kingdom tax.
- (3) The term “annuity” means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money’s worth.

#### ARTICLE XIII

A professor or teacher from one of the territories, who receives remuneration for teaching, during a period of temporary residence not exceeding 2 years, at a university, college, school, or other educational institution in the other territory, shall be

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exempt from tax in that other territory in respect of that remuneration.

#### ARTICLE XIV

A student or apprentice from one of the territories, who is receiving full-time education or training in the other territory, shall be exempt from tax in that other territory on payments made to him from abroad for the purposes of his maintenance, education or training.

#### ARTICLE XV

- (1) Individuals who are residents of Norway shall be entitled to the same personal allowances, reliefs and reductions for the purposes of United Kingdom tax as British subjects not resident in the United Kingdom.
- (2) Individuals who are residents of the United Kingdom shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Norwegian tax as Norwegian nationals not resident in Norway.

#### ARTICLE XVI

- (1) Subject to the provisions of the laws of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom, Norwegian tax payable, whether directly or by deduction, in respect of income from sources within Norway shall be allowed as a credit against any United Kingdom tax payable in respect of that income.

Where such income is an ordinary dividend paid by a company resident in Norway the credit shall take into account (in addition to any Norwegian tax appropriate to the dividend) the Norwegian tax payable by the company in respect of its profits; and, where it is a dividend paid on participating preference shares and representing both a dividend at the fixed rate to which the shares are entitled and an additional participation in profits, the Norwegian tax so payable by the company shall

likewise be taken into account in so far as the dividend exceeds that fixed rate.

Provided that for the purposes of this paragraph of this Article, the credit to be allowed for Norwegian communal income tax shall not exceed one-half of the said communal income tax.

- (2) Where United Kingdom tax is payable, whether directly or by deduction, in respect of income from sources within the United Kingdom, and that income is chargeable also to Norwegian tax, the Norwegian tax payable by the person entitled to such income on his total income chargeable to Norwegian tax shall be reduced by an amount which bears the same proportion to that Norwegian tax as the income from sources within the United Kingdom bears to the said total income. Provided that the Norwegian Ministry of Finance and Customs may decide that the deduction shall not exceed the amount of the United Kingdom tax.

Where such income is an ordinary dividend paid by a company resident in the United Kingdom, the deduction, in the event that it is restricted to the amount of the United Kingdom tax, shall take into account (in addition to the United Kingdom tax appropriate to the dividend) the United Kingdom profits tax payable by the company in respect of its profits; and, where it is a dividend paid on participating preference shares and representing both a dividend at a fixed rate to which the shares are entitled and an additional participation in profits, the profits tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

- (3) Where income is derived from sources outside both the United Kingdom and Norway by a person who is resident in the United Kingdom for the purposes of United Kingdom tax and also resident in Norway for the purposes of Norwegian tax the income may be taxed in both countries (subject to any Convention which may exist between either of the Contracting Parties and the territory or territories from which the income is derived). A credit shall be allowed in accordance with paragraph (1) of this Article against any United Kingdom tax payable in respect of that income, equal to that proportion of the United Kingdom tax or the Norwegian tax, which ever is the less, which such person's income from sources within the

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United Kingdom bears to the sum of his income from sources within the United Kingdom and his income from sources within Norway; and a deduction shall be allowed in accordance with paragraph (2) of this Article against any Norwegian tax payable in respect of that income equal to that proportion of the United Kingdom tax or the Norwegian tax, whichever is the less, which such person's income from sources within Norway bears to the sum of his income from sources within the United Kingdom and his income from sources within Norway.

- (4) For the purposes of this Article, profits or remuneration for personal (including professional) services performed in one of the territories shall be deemed to be income from sources within that territory, except that the remuneration of a director of a company shall be deemed to be income from sources within the territory in which the company is resident, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory.

#### ARTICLE XVII

- (1) The taxation authorities of the Contracting Parties shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than persons (including a Court) concerned with the assessment, determination and collection of the taxes which are the subject of the present Convention. No information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

As used in this Article, the term "taxation authorities" means, in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative; in the case of Norway, the Ministry of Finance and Customs: and, in the case of any territory to which the present Convention is extended

under Article XX, the competent authority for the administration in such territory of the taxes to which the present Convention applies.

#### ARTICLE XVIII

The Agreement of 18th December, 1924, between Great Britain and Norway for the reciprocal exemption from income tax in certain cases of profits accruing from the business of shipping, and the Agreement of 21st December, 1938 between the United Kingdom and Norway for the reciprocal exemption from taxes in certain cases of profits arising through agencies, shall not have effect—

- (a) in Norway, for any period for which the present Convention has effect in that country;
- (b) in the United Kingdom, in relation to any tax for any period for which the present Convention has effect as respects that tax.

#### ARTICLE XIX

- (1) The nationals of one of the Contracting Parties shall not be subjected in the territory of the other Contracting Party to any taxation or any requirement connected therewith which is other, higher or more burdensome than the taxation and connected requirements to which the nationals of the latter Party are or may be subjected.
- (2) The enterprises of one of the territories shall not be subjected in the other territory, in respect of profits or capital attributable to their permanent establishments in that other territory, to any taxation which is other, higher or more burdensome than the taxation to which the enterprises of that other territory are or may be subjected in respect of the like profits or capital.
- (3) The income, profits and capital of an enterprise of one of the territories, the capital of which is wholly or partly owned or controlled, directly or indirectly by a resident or residents of the other territory shall not be subjected in the first-mentioned territory to any taxation which is other, higher or more burdensome than the taxation to which other enterprises of that

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first-mentioned territory are or may be subjected in respect of the like income, profits and capital.

- (4) Nothing in paragraph (1) or paragraph (2) of this Article shall be construed as obliging one of the Contracting Parties to grant to nationals of the other Contracting Party who are not resident in the territory of the former Party the same personal allowances, reliefs and reductions for tax purposes as are granted to its own nationals.
- (5) In this Article the term “nationals” means—
  - (a) in relation to Norway, all Norwegian citizens and all juridical persons domiciled in Norway;
  - (b) in relation to the United Kingdom all British subjects and British protected persons residing in the United Kingdom or any British territory to which the present Convention applies by reason of extension made under Article XX, and all legal persons, partnerships and associations deriving their status as such from the law in force in any British territory to which the present Convention applies.
- (6) In this Article the term “taxation” means taxes of every kind and description levied on behalf of any authority whatsoever.

#### ARTICLE XX

- (1) The present Convention may be extended, either in its entirety or with modifications, to any territory for whose international relations the United Kingdom is responsible and which imposes taxes substantially similar in character to those which are the subject of the present Convention, and any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be specified and agreed between the Contracting Parties in notes to be exchanged for this purpose.
- (2) The termination in respect of Norway or the United Kingdom of the present Convention under Article XXII shall, unless otherwise expressly agreed by both Contracting Parties, terminate the application of the present Convention to any territory to which the Convention has been extended under this Article.

- (3) The territories to which this Article applies are:
- (a) in relation to the United Kingdom: any territory other than the United Kingdom for whose international relations the United Kingdom is responsible;
  - (b) in relation to Denmark: any territory other than Denmark for whose international relations Denmark is responsible.

#### ARTICLE XXI

- (1) The present Convention shall be ratified and the instruments of ratification shall be exchanged at Oslo as soon as possible.
- (2) The present Convention shall enter into force upon the exchange of ratifications and the foregoing provisions thereof shall have effect—
  - (a) In the United Kingdom:
    - as respects income tax for any year of assessment beginning on or after 6th April, 1950;
    - as respects surtax for any year of assessment beginning on or after 6th April, 1949; and
    - as respects profits tax in respect of the following profits:—
      - (i) profits arising in any chargeable accounting period beginning on or after 1st April, 1950;
      - (ii) profits attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;
      - (iii) profits not so arising or attributable by reference to which income tax is, or but for the present convention would be, chargeable for any year of assessment beginning on or after 6th April, 1950;
  - (b) In Norway:
    - for the taxable years beginning on or after 1st January, 1950.

#### ARTICLE XXII

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The present Convention shall continue in force indefinitely but either of the Contracting Parties may, on or before 30th June in any calendar year not earlier than the year 1954, give to the other Contracting Party, through diplomatic channels, written notice of termination, provided that such notice of termination may be given in any year before 1954 if there should be any important change in the laws of the other Contracting Party affecting the application of Article XVI. In such event, the present Convention shall cease to be effective—

(a) In the United Kingdom:

as respects income tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which the notice is given:

as respects surtax, for any year of assessment beginning on or after 6th April in the calendar year in which the notice is given; and as respects profits tax, in respect of the following profits—

- (i) profits arising in any chargeable accounting period beginning on or after 1st April in the calendar year next following that in which the notice is given;
- (ii) profits attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;
- (iii) profits not so arising or attributable by reference to which income tax is chargeable for any year of assessment beginning on or after 6th April in the next following calendar year;

(b) In Norway:

for the taxable years beginning on or after 1st January in the calendar year next following that in which the notice is given.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed the present Convention and have affixed thereto their seals.

Done at London, in duplicate, in the English and Norwegian languages, both texts being equally authoritative, on the 2nd day of May, 1951.

(L.S.)

HERBERT MORRISON,

(L.S.)

P. PREBENSEN.

## SCHEDULE 2

(Section 2)

### 1. APPLICATION

- (a) The provisions of the Convention incorporated in Schedule 1 to this Order shall apply as modified below—
- (i) as if the Contracting Parties were Saint Lucia and the Government of Norway; and as if the tax concerned in the case of Saint Lucia were Income Tax;
  - (ii) as if references to the date of signature were references to the 18th day of May, 1955.
- (b) The extension shall have effect in Saint Lucia as respects tax for the year of assessment 1955 and for subsequent years of assessment, and will have effect in Norway – as respects Norwegian tax for taxable years beginning on or after 1st January, 1954.
- (c) The extension shall continue in effect indefinitely but may be terminated as respects Saint Lucia by written notice of termination given on or before the 30th June in any calendar year not earlier than the year 1957 by either of the Contracting Parties to the Convention to the other Contracting Party through the diplomatic channel and in such event the extension shall cease to have effect in Saint Lucia as respects tax for the year of assessment beginning in the calendar year next following the date of such notice and for subsequent years of assessment, and will cease to have effect in Norway as respects Norwegian tax for the taxable years beginning on or after 1st January in the calendar year in which the notice is given.

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## **2. MODIFICATIONS**

- (a) In article VI(1) of the Convention the words “shall be exempt from United Kingdom surtax” shall be understood for the purposes of this extension as though they read “is not liable to tax in the territory at a rate in excess of the rate applicable to a company”.
- (b)
  - (i) In Article VII all references to interest is considered to be deleted; and
  - (i) in paragraph 2 of Article XVI references to income (except in the phrase “total income”) is considered not to include interest.



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## **INCOME TAX (DOUBLE TAXATION RELIEF) (U.S.A.) ORDER – SECTION 60**

(Statutory Instrument 42/1958)

Commencement [27 December 1958]

WHEREAS it is provided by section 52(1) of the Income Tax Act, 1947<sup>14</sup> that if the Governor General by Order declares that arrangements specified in the Order were made with the Government of any territory outside Saint Lucia with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the Laws of that territory and that it is expedient that those arrangements have effect, the arrangements have effect in relation to income tax despite anything in any enactment;

AND WHEREAS by a Convention dated 16 April 1945 and a protocol thereto dated 6 June 1946 and a further protocol thereto dated 25 May 1954 and a further protocol thereto dated 19 August 1957 between the Government of the United Kingdom and the Government of the United States, arrangements were made among other things for the avoidance of double taxation;

AND WHEREAS provision is made in the said Convention as amended by the said protocols for the application by means of a notification of extension given by either of the said Governments to the other Government and acceptance thereof by the other Government of the said Convention as amended, subject to such modifications, if any, as may be specified in the notification, to all or any of its Colonies, overseas territories, protectorates or territories in respect of which it exercise a mandate or trusteeship, which impose taxes substantially similar in character to those which are the subject of the said Convention.

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<sup>14</sup> *Editor's note:* This Act was repealed by the Income Tax Act, 1965 which itself was repealed and replaced by the Income Tax Act. This Order was continued in force by the 1965 Act and section 153 of the Income Tax Act.

AND WHEREAS by acceptance of a notification dated 3 December 1958 the said Convention as amended, with certain modifications, was applied to Saint Lucia;

**1. SHORT TITLE**

This Order may be cited as the Income Tax (Double Taxation Relief) (U.S.A.) Order.

**2. DECLARATION**

It is hereby declared—

- (a) that the arrangements specified in Schedule 1 to this Order, as modified by the provisions of Schedule 2 to this Order, have been made with the Government of the United States of America;
- (b) that it is expedient that those arrangements should have effect.

**SCHEDULE 1**

(Section 2)

**PART 1**

**CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America,

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have appointed for that purpose as their Plenipotentiaries:

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The Government of the United Kingdom of Great Britain and Northern Ireland:

The Right Honourable the Earl of Halifax, K.G., Ambassador Extraordinary in Washington; and

The Government of the United States of America:

Mr. Edward R. Stettinius, Jr., Secretary of State;

Who, having exhibited their respective full powers, found in good and due form, have agreed as follows—

#### ARTICLE 1

- (1) The taxes which are the subject of the present Convention are—
  - (a) In the United States of America:

The Federal income taxes, including surtaxes and excess profits taxes (hereinafter referred to as United States tax).
  - (b) In the United Kingdom of Great Britain and Northern Ireland:

The income tax (including surtax), the excess profits tax and the national defence contribution (hereinafter referred to as United Kingdom tax).
- (2) The present Convention shall also apply to any other taxes of a substantially similar character imposed by either Contracting Party subsequently to the date of signature of the present Convention or by the Government of any territory to which the present Convention is extended under Article XXII.

#### ARTICLE II

- (1) In the present Convention, unless the context otherwise requires—
  - (a) The term “United States” means the United States of America, and when used in a geographical sense means the States, the Territories of Alaska and of Hawaii, and the District of Columbia.
  - (b) The term “United Kingdom” means Great Britain and Northern Ireland, excluding the Channel Islands and the Isle of Man.

- (c) The terms “territory of one of the Contracting Parties” and “territory of the other Contracting Party” mean the United States or the United Kingdom as the context requires.
- (d) The term “United States corporation” means a corporation, association or other like entity created or organised in or under the laws of the United States.
- (e) The term “United Kingdom corporation” means any kind of juridical person created under the laws of the United Kingdom.
- (f) The terms “corporation of one Contracting Party” and “corporation of the other Contracting Party” mean a United States corporation, or a United Kingdom corporation as the context requires.
- (g) The term “resident of the United Kingdom” means any person (other than a citizen of the United States or a United States corporation) who is resident in the United Kingdom for the purposes of United Kingdom tax and not resident in the United States for the purposes of United States tax. A corporation is to be regarded as resident in the United Kingdom if its business is managed and controlled in the United Kingdom.
- (h) The term “resident of the United States” means any individual who is resident in the United States for the purposes of United States tax and not resident in the United Kingdom for the purposes of United Kingdom tax, and any United States corporation and any partnership created or organised in or under the laws of the United States, being a corporation or partnership which is not resident in the United Kingdom for the purposes of United Kingdom tax.
- (i) The term “United Kingdom enterprise” means an industrial or commercial enterprise or undertaking carried on by a resident of the United Kingdom.
- (j) The term “United States enterprise” means an industrial or commercial enterprise or undertaking carried on by a resident of the United States.
- (k) The terms “enterprise of one of the Contracting Parties” and “enterprise of the other Contracting Party” mean a

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United States enterprise or a United Kingdom enterprise, as the context requires.

- (1) The term “permanent establishment” when used with respect to an enterprise of one of the Contracting Parties means a branch, management, factory or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has a stock of merchandise from which he regularly fills orders on its behalf. An enterprise of one of the Contracting Parties shall not be deemed to have a permanent establishment in the territory of the other Contracting Party merely because it carries on business dealings in the territory of such other Contracting Party through a *bona fide* commission agent, broker or custodian acting in the ordinary course of his business as such. The fact that an enterprise of one of the Contracting Parties maintains in the territory of the other Contracting Party a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute such fixed place of business a permanent establishment of such enterprise. The fact that a corporation of one Contracting Party has a subsidiary corporation which is a corporation of the other Contracting Party or which is engaged in trade or business in the territory of such other Contracting Party (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary corporation a permanent establishment of its parent corporation.
- (2) For the purposes of Articles VI, VII, VIII, IX and XIV a resident of the United Kingdom shall not be deemed to be engaged in trade or business in the United States in any taxable year unless such resident has a permanent establishment situated therein in such taxable year. The same principle shall be applied, *mutatis mutandis*, by the United Kingdom in the case of a resident of the United States.
- (3) In the application of the provisions of the present Convention by one of the Contracting Parties any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting Party

relating to the taxes which are the subject of the present Convention.

### ARTICLE III

- (1) A United Kingdom enterprise shall not be subject to United States tax in respect of its industrial or commercial profits unless it is engaged in trade or business in the United States through a permanent establishment situated therein. If it is so engaged, United States tax may be imposed upon the entire income of such enterprise from sources within the United States.
- (2) A United States enterprise shall not be subject to United Kingdom tax in respect of its industrial or commercial profits unless it is engaged in trade or business in the United Kingdom through a permanent establishment situated therein. If it is so engaged, United Kingdom tax may be imposed upon the entire income of such enterprise from sources within the United Kingdom : Provided that nothing in this paragraph shall affect any provisions of the law of the United Kingdom regarding the imposition of United Kingdom excess profits tax and national defence contribution in the case of inter-connected companies.
- (3) Where an enterprise of one of the Contracting Parties is engaged in trade or business in the territory of the other Contracting Party through a permanent establishment situated therein, there shall be attributed to such permanent establishment the industrial or commercial profits which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment, and the profits so attributed shall, subject to the law of such other Contracting Party, be deemed to be income from sources within the territory of such other Contracting Party.
- (4) In determining the industrial or commercial profits from sources within the territory of one of the Contracting Parties of an enterprise of the other Contracting Party, no profits shall be deemed to arise from the mere purchase of goods or merchandise within the territory of the former Contracting Party by such enterprise.

#### ARTICLE IV

Where an enterprise of one of the Contracting Parties, by reason of its participation in the management, control or capital of an enterprise of the other Contracting Party, makes with or imposes on the latter, in their commercial or financial relations, conditions different from those which would be made with an independent enterprise, any profits which would but for those conditions have accrued to one of the enterprises but by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

#### ARTICLE V

- (1) Notwithstanding the provisions of Articles III and IV of the present Convention, profits which an individual (other than a citizen of the United States) resident in the United Kingdom or a United Kingdom corporation derives from operating ships documented or aircraft registered under the laws of the United Kingdom, shall be exempt from United States tax.
- (2) Notwithstanding the provisions of Articles III and IV of the present Convention, profits which a citizen of the United States not resident in the United Kingdom or a United States corporation derives from operating ships documented or aircraft registered under the laws of the United States, shall be exempt from United Kingdom tax.
- (3) This Article shall be deemed to have superseded, on and after the first day of January, 1945, as to United States tax, and on and after the 6th day of April, 1945, as to United Kingdom tax, the arrangements relating to reciprocal exemption of shipping profits from income tax effected between the Government of the United States and the Government of the United Kingdom by exchange of Notes dated August 11, 1924, November 18, 1924, November 26, 1924, January 15, 1925, February 13, 1925, and March 16, 1925, which shall accordingly cease to have effect.

#### ARTICLE VI

- (1) The rate of United States tax on dividends derived from a United States corporation by a resident of the United Kingdom who is subject to United Kingdom tax on such dividends and not engaged in trade or business in the United States shall not exceed 15%.: Provided that such rate of tax shall not exceed 5%, if such resident is a corporation controlling, directly or indirectly, at least 95%, of the entire voting power in the corporation paying the dividend, and not more than 25%, of the gross income of such paying corporation is derived from interest and dividends, other than interest and dividends received from its own subsidiary corporations. Such reduction of the rate to 5%, shall not apply if the relationship of the 2 corporations has been arranged or is maintained primarily with the intention of securing such reduced rate.
- (2) Dividends derived from sources within the United Kingdom by an individual who is (a) a resident of the United States, (b) subject to United States tax with respect to such dividends and (c) not engaged in trade or business in the United Kingdom, shall be exempt from United Kingdom surtax.
- (3) Either of the contracting Parties may terminate this Article by giving written notice of termination to the other Contracting Party, through diplomatic channels, on or before the thirtieth day of June in any year after the year 1945, and in such event paragraph (1) hereof shall cease to be effective as to United States tax on and after the first day of January, and paragraph (2) hereof shall cease to be effective as to United Kingdom tax on and after the 6th day of April, in the year next following that in which such notice was given.

## ARTICLE VII

- (1) Interest (on bonds, securities, notes, debentures, or on any other form of indebtedness) derived from sources within the United States by a resident of the United Kingdom who is subject to United Kingdom tax on such interest and not engaged in trade or business in the United States, shall be exempt from United States tax ; but such exemption shall not apply to such interest paid by a United States corporation to a corporation resident in the United Kingdom controlling, directly or indirectly, more than 50%, of the entire voting power in the paying corporation.

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- (2) Interest (on bonds, securities, notes, debentures, or on any other form of indebtedness) derived from sources within the United Kingdom by a resident of the United States who is subject to United States tax on such interest and not engaged in trade or business in the United Kingdom, shall be exempt from United Kingdom tax ; but such exemption shall not apply to such interest paid by a corporation resident in the United Kingdom to a United States corporation controlling, directly or indirectly, more than 50%, of the entire voting power in the paying corporation.

#### ARTICLE VIII

- (1) Royalties and other amounts paid as consideration for the use of, or for the privilege of using, copyrights, patents, designs, secret processes and formulae, trade marks, and other like property, and derived from sources within the United States by a resident of the United Kingdom who is subject to United Kingdom tax on such royalties or other amounts and not engaged in trade or business in the United States, shall be exempt from United States tax.
- (2) Royalties and other amounts paid as consideration for the use of, or for the privilege of using, copyrights, patents, designs, secret processes and formulae, trade-marks and other like property, and derived from sources within the United Kingdom by a resident of the United States who is subject to United States tax on such royalties or other amounts and not engaged in trade or business in the United Kingdom, shall be exempted from United Kingdom tax.
- (3) For the purposes of this Article the term “royalties” shall be deemed to include rentals in respect of motion picture films.

#### ARTICLE IX

- (1) The rate of United States tax on royalties in respect of the operation of mines or quarries or of other extraction of natural resources, and on rentals from real property or from an interest in such property, derived from sources within the United States by a resident of the United Kingdom who is subject to United Kingdom tax with respect to such royalties or rentals and not

engaged in trade or business in the United States, shall not exceed 15%. : Provided that any such resident may elect for any taxable year to be subject to United States tax as if such resident were engaged in trade or business in the United States.

- (2) Royalties in respect of the operation of mines or quarries of other extraction of natural resources, and rentals from real property or from an interest in such property, derived from sources within the United Kingdom by an individual who is (a) a resident of the United States, (b) subject to United States tax with respect to such royalties and rentals, and (c) not engaged in trade or business in the United Kingdom, shall be exempt from United Kingdom surtax.

#### ARTICLE X

- (1) Any salary, wage, similar remuneration, or pension, paid by the Government of the United States to an individual (other than a British subject who is not also a citizen of the United States) in respect of services rendered to the United States in the discharge of governmental functions, shall be exempt from United Kingdom tax.
- (2) Any salary, wage, similar remuneration, or pension, paid by the Government of the United Kingdom to an individual (other than a citizen of the United States who is not also a British subject) in respect of services rendered to the United Kingdom in the discharge of governmental functions, shall be exempt from United States tax.
- (3) The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Contracting Parties for purposes of profit.

#### ARTICLE XI

- (1) An individual who is a resident of the United Kingdom shall be exempt from United States tax upon compensation for personal (including professional) services performed during the taxable year within the United States if (a) he is present within the United States for a period or periods not exceeding in the aggregate 183 days during such taxable year, and (b) such

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services are performed for or on behalf of a person resident in the United Kingdom.

- (2) An individual who is a resident of the United States shall be exempt from United Kingdom tax upon profits, emoluments or other remuneration in respect of personal (including professional) services performed within the United Kingdom in any year of assessment if (a) he is present within the United Kingdom for a period or periods not, exceeding in the aggregate 183 days during that year, and (b) such services are performed for or on behalf of a person resident in the United States.
- (3) The provisions of this Article shall not apply to the compensation, profits, emoluments or other remuneration of public entertainers such as stage, motion picture or radio artists, musicians and athletes.

#### ARTICLE XII

- (1) Any pension (other than a pension to which Article X applies), and any life annuity, derived from sources within the United States by an individual who is a resident of the United Kingdom shall be exempt from United States tax.
- (2) Any pension (other than a pension to which Article X applies), and any life annuity, derived from sources within the United Kingdom by an individual who is a resident of the United States shall be exempt from United Kingdom tax.
- (3) The term “life annuity” means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in consideration of money paid.

#### ARTICLE XIII

- (1) Subject to section 131 of the United States Internal Revenue Code as in effect on the first day of January, 1945, United Kingdom tax shall be allowed as a credit against United States tax. For this purpose, the recipient of a dividend paid by a corporation which is a resident of the United Kingdom shall be deemed to have paid the United Kingdom income tax appropriate to such dividend if such recipient elects to include

in his gross income for the purposes of United States tax the amount of such United Kingdom income tax.

- (2) Subject to such provisions (which shall not affect the general principle hereof) as may be enacted in the United Kingdom, United States tax payable in respect of income from sources within the United States shall be allowed as a credit against any United Kingdom tax payable in respect of that income. Where such income is an ordinary dividend paid by a United States corporation, such credit shall take into account (in addition to any United States income tax deducted from or imposed on such dividend) the United States income tax imposed on such corporation in respect of its profits, and where it is a dividend paid on participating preference shares and representing both a dividend at the fixed rate to which the shares are entitled and an additional participation in profits, such tax on profits shall likewise be taken into account in so far as the dividend exceeds such fixed rate.
- (3) For the purposes of this Article, compensation, profits, emoluments and other remuneration for personal (including professional) services shall be deemed to be income from sources within the territory of the Contracting Party where such services are performed.

#### ARTICLE XIV

A resident of the United Kingdom not engaged in trade or business in the United States shall be exempt from United States tax on gains from the sale or exchange of capital assets.

#### ARTICLE XV

Dividends and interest paid on or after the first day of January, 1945, by a United Kingdom corporation shall be exempt from United States tax except where the recipient is a citizen of or a resident of the United States or a United States corporation.

#### ARTICLE XVI

A United Kingdom corporation shall be exempt from United States tax on its accumulated or undistributed earnings, profits,

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income or surplus, if individuals who are residents of the United Kingdom control, directly or indirectly, throughout the last half of the taxable year, more than 50%, of the entire voting power in such corporation.

## ARTICLE XVII

- (1) The United States income tax liability for any taxable year beginning prior to the 1st January, 1936, of any individual (other than a citizen of the United States) resident in the United Kingdom, or of any United Kingdom corporation, remaining unpaid on the date of signature of the present Convention, may be adjusted on a basis satisfactory to the United States Commissioner of Internal Revenue: Provided that the amount to be paid in settlement of such liability shall not exceed the amount of the liability which would have been determined if—
  - (a) the United States Revenue Act of 1936 (except in the case of a United Kingdom corporation in which more than 50%, of the entire voting power was controlled, directly or indirectly, throughout the latter half of the taxable year, by citizens or residents of the United States), and
  - (b) Articles XV and XVI of the present Convention,had been in effect for such year. If the taxpayer was not, within the meaning of such Revenue Act, engaged in trade or business in the United States and had no office or place of business therein during the taxable year, the amount of interest and penalties shall not exceed 50%, of the amount of the tax with respect to which such interest and penalties have been computed.
- (2) The United States income tax unpaid on the date of signature of the present Convention for any taxable year beginning after the 31 December 1935, and prior to 1 January 1945, in the case of an individual (other than a citizen of the United States) resident of the United Kingdom, or in the case of any United Kingdom corporation shall be determined as if the provisions of Articles XV and XVI of the present Convention had been in effect for such taxable year.
- (3) The provisions of paragraph (1) of this Article shall not apply—

- (a) unless the taxpayer files with the Commissioner of Internal Revenue on or before 31 December 1947, a request that such tax liability be so adjusted and furnishes such information as the Commissioner may require; or
- (b) in any case in which the Commissioner is satisfied that any deficiency in tax is due to fraud with intent to evade the tax.

#### ARTICLE XVIII

A professor or teacher from the territory of one of the Contracting Parties who visits the territory of the other Contracting Party for the purpose of teaching, for a period not exceeding 2 years, at a university, college, school or other educational institution in the territory of such other Contracting Party shall be exempted by such other Contracting Party from tax on his remuneration for such teaching for such period.

#### ARTICLE XIX

A student or business apprentice from the territory of one of the Contracting Parties who is receiving full-time education or training in the territory of the other Contracting Party shall be exempted by such other Contracting Party from tax on payments made to him by persons within the territory of the former Contracting Party for the purposes of his maintenance, education or training.

#### ARTICLE XX

- (1) The taxation authorities of the Contracting Parties shall exchange such information (being information available under the respective taxation laws of the Contracting Parties) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any person other than those concerned with the assessment and collection of the taxes which are the subject of

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the present Convention. No information shall be exchanged which would disclose any trade secret or trade process.

- (2) As used in this Article, the term “taxation authorities” means, in the case of the United States, the Commissioner of Internal Revenue or his authorised representative; in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative ; and, in the case of any territory to which the present Convention is extended under Article XXII, the competent authority for the administration in such territory of the taxes to which the present Convention applies.

#### ARTICLE XXI

- (1) The nationals of one of the Contracting Parties shall not, while resident in the territory of the other Contracting Party, be subjected therein to other or more burdensome taxes than are the nationals of such other Contracting Party, resident in its territory.
- (2) The term “nationals” as used in this Article means—
  - (a) In relation to the United Kingdom, all British subjects and British protected persons, from the United Kingdom or any territory with respect to which the present Convention is applicable by reason of extension made by the United Kingdom under Article XXII; and
  - (b) In relation to the United States, United States citizens, and all persons under the protection of the United States, from the United States or any territory to which the present Convention is applicable by reason of extension made by the United States under Article XXII;

and includes all legal persons, partnerships and associations deriving their status as such from, or created or organised under, the laws in force in any territory of the Contracting Parties to which the present Convention applies.

- (3) In this Article the word “taxes” means taxes of every kind or description, whether national, federal, state, provincial or municipal.

#### ARTICLE XXII

- (1) Either of the Contracting Parties may, at the time of exchange of instruments of ratification or thereafter while the present Convention continues in force, by a written notification of extension given to the other Contracting Party through diplomatic channels, declare its desire that the operation of the present Convention shall extend to all or any of its Colonies, overseas territories, protectorates, or territories in respect of which it exercises a mandate, which impose taxes substantially similar in character to those which are the subject of the present Convention. The present Convention shall apply to the territory or territories named in such notification on the date or dates specified in the notification (not being less than 60 days from the date of the notification) or, if no date is specified in respect of any such territory, on the sixtieth day after the date of such notification, unless, prior to the date on which the Convention would otherwise become applicable to a particular territory, the Contracting Party to whom notification is given shall have informed the other Contracting Party in writing through diplomatic channels that it does not accept such notification as to that territory. In the absence of such extension, the present Convention shall not apply to any such territory.
- (2) At any time after the expiration of one year from the entry into force of an extension under paragraph (1) of this Article, either of the Contracting Parties may, by written notice of termination given to the other Contracting Party through diplomatic channels, terminate the application of the present Convention to any territory to which it has been extended under paragraph (1), and in such event the present Convention shall cease to apply, 6 months after the date of such notice, to the territory or territories named therein, but without affecting its continued application to the United States, the United Kingdom or to any other territory to which it has been extended under paragraph (1) hereof.
- (3) In the application of the present Convention in relation to any territory to which it is extended by notification by the United Kingdom or the United States references to the “United Kingdom” or, as the case may be, the “United States” shall be construed as references to that territory.
- (4) The termination in respect of the United States or the United Kingdom of the present Convention under Article XXIV or of

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Article VI shall, unless otherwise expressly agreed by both Contracting Parties, terminate the application of the present Convention or, as the case may be, that Article to any territory to which the Convention has been extended by the United States or the United Kingdom.

- (5) The provisions of the preceding paragraphs of this Article shall apply to the channel Islands and the Isle of Man as if they were colonies of the United Kingdom.

#### ARTICLE XXIII

- (1) The present Convention shall be ratified and the instruments of ratification shall be exchanged at Washington as soon as possible.
- (2) Upon exchange of ratifications, the present Convention shall have effect—
  - (a) as respects United States tax, for the taxable years beginning on or after the first day of January, 1945;
  - (b)
    - (i) as respects United Kingdom income tax, for the year of assessment beginning on the 6th day of April, 1945, and subsequent years;
    - (ii) as respects United Kingdom surtax, for the year of assessment beginning on the 6th day of April, 1944, and subsequent years; and
    - (iii) as respects United Kingdom excess profits tax and national defence contribution, for any chargeable accounting period beginning on or after the first day of April, 1945, and for the unexpired portion of any chargeable accounting period current at that date.

#### ARTICLE XXIV

- (1) The present Convention shall continue in effect indefinitely but either of the Contracting Parties may, on or before the 30th day of June in any year after the year 1946, give to the other Contracting Party, through diplomatic channels, notice of termination and, in such event, the present Convention shall cease to be effective—

- (a) as respects United States tax for the taxable years beginning on or after the first day of January in the year next following that in which such notice is given;
- (b)
  - (i) as respects United Kingdom income tax, for any year of assessment beginning on or after the 6th day of April in the year next following that in which such notice is given;
  - (ii) as respects United Kingdom surtax, for any year of assessment beginning on or after the 6th day of April in the year in which such notice is given; and
  - (iii) as respects United Kingdom excess profits tax and national defence contribution, for any chargeable accounting period beginning on or after the first day of April in the year next following that in which such notice is given and for the unexpired portion of any chargeable accounting period current at that date.
- (2) The termination of the present Convention or of any Article thereof shall not have the effect of reviving any treaty or arrangement abrogated by the present Convention or by treaties previously concluded between the Contracting Parties.

In witness whereof the above-mentioned Plenipotentiaries have signed the present Convention and have affixed thereto their seals.

Done at Washington, in duplicate, on the sixteenth day of April, one thousand nine hundred and forty-five.

For the Government of the United Kingdom of Great Britain and Northern Ireland :

(L.S.)

HALIFAX.

For the Government of the United States of America :

(L.S.)

E. R. STETTINIUS, Jr.

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## **PART 2**

### **PROTOCOL**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America,

Desiring to conclude a supplementary Protocol modifying in certain respects the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income which was signed at Washington on April 16th, 1945,

Have agreed as follows :

#### **ARTICLE 1**

Paragraph (3) of Article XI of the Convention of April 16th, 1945, for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income shall be deemed to be deleted and of no effect.

#### **ARTICLE II**

This Protocol, which shall be regarded as an integral part of the said Convention, shall be ratified and the instruments of ratification thereof shall be exchanged at Washington.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being authorized thereto by their respective Governments, have signed this Protocol and have affixed thereto their seals.

DONE at Washington, in duplicate, this sixth day of June, 1946.

FOR THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:

JOHN BALFOUR,  
His Majesty's  
Envoy Extraordinary and Minister Plenipotentiary  
in Washington.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

JAMES F. BYRNES,

Secretary of State of the United  
States of America,

SUPPLEMENTARY PROTOCOL AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, SIGNED AT WASHINGTON ON THE 16TH APRIL, 1945, AS MODIFIED BY THE SUPPLEMENTARY PROTOCOL, SIGNED AT WASHINGTON ON THE 6TH JUNE, 1946.

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America,

Desiring to conclude a further supplementary Protocol amending the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed at Washington on the 16th April, 1945, as modified by the Supplementary Protocol, signed at Washington on the 6th June, 1946,

Have agreed as follows :

#### ARTICLE 1

Paragraph (1) of Article XXII of the Convention of the 16th April, 1945, for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income is hereby amended to read as follows :

- “(1) Either of the Contracting Parties may, at any time while the present Convention continues in force, by a written notification given to the other Contracting Party through the diplomatic channel, declare its desire that the operation of the present Convention, either in whole or in part or with such modifications as may be found necessary for special application in a particular case, shall extend to all or any of its territories for whose international relations it is responsible, which impose taxes substantially similar in character to those which are the subject of the present Convention. When the other Contracting Party has, by a written communication through the diplomatic channel, signified to the first Contracting Party that such

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notification is accepted in respect of such territory or territories, the present Convention, in whole or in part or with such modifications as may be found necessary for special application in a particular case, as specified in the notification, shall apply to the territory or territories named in the notification on and after the date or dates specified therein. None of the provisions of the present Convention shall apply to any such territory in the absence of such acceptance in respect of that territory.”

## ARTICLE II

This supplementary Protocol, which shall be regarded as an integral part of the said Convention, shall be ratified and the instruments of ratification thereof shall be exchanged in London.

IN WITNESS WHEREOF the undersigned, being authorized thereto by their respective Governments, have signed this supplementary Protocol and have affixed thereto their seals.

DONE in duplicate at Washington this twenty-fifth day of May, 1954.

FOR THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND :

*Roger Makins,*

Her Majesty's

Ambassador Extraordinary and Plenipotentiary  
at Washington.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA :

*John Foster Dulles,*

Secretary of State of the  
United States of America.

SUPPLEMENTARY PROTOCOL BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE UNITED STATES OF AMERICA AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF

FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, SIGNED AT WASHINGTON ON THE 16TH APRIL 1945, AS MODIFIED BY THE SUPPLEMENTARY PROTOCOL SIGNED AT WASHINGTON ON THE 6TH JUNE 1946 AND BY THE SUPPLEMENTARY PROTOCOL SIGNED AT WASHINGTON ON THE 25TH MAY 1954.

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America,

Desiring to conclude a further supplementary Protocol amending the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed at Washington on the 16th April 1945, as modified by the supplementary Protocol signed at Washington on the 6th June 1946 and by the supplementary Protocol signed at Washington on the 25th May 1954,

Have agreed as follows :

#### ARTICLE 1

Paragraphs (1) and (2) of Article VIII of the Convention of the 16th April 1945 for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income are hereby amended to read as follows :

- “(1) Royalties and other amounts paid as consideration for the use of, or for the privilege of using, copyrights, patents, designs, secret processes and formulae, trade marks and other like property, and derived from sources within the United States by a resident of the United Kingdom who is subject to United Kingdom tax on such royalties or other amounts shall be exempt from United States tax (a) if such resident is not engaged in trade or business in the United States through a permanent establishment situated therein or (b) if such resident is so engaged, the royalties or other amounts are not directly associated with the business carried on through that permanent establishment.
- (2) Royalties and other amounts paid as consideration for the use of, or for the privilege of using, copyrights, patents, designs, secret processes and formulae, trade marks, and other like

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property, and derived from sources within the United Kingdom by a resident of the United States who is subject to United States tax on such royalties or other amounts shall be exempt from United Kingdom tax (a) if such resident is not engaged in trade or business in the United Kingdom through a permanent establishment situated therein or (b) if such resident is so engaged, the royalties or other amounts are not directly associated with the business carried on through that permanent establishment.”

## ARTICLE II

Paragraph (1) of Article XIII of the said Convention is hereby amended to read as follows :

- “(1) Subject to Sections 901 to 905 of the United States Internal Revenue Code as in effect on the 1st day of January 1956, United Kingdom tax shall be allowed as a credit against United States tax. For this purpose
- (a) the recipient of a dividend paid by a corporation which is a resident of the United Kingdom shall be deemed to have paid the United Kingdom tax appropriate to such dividend, and
  - (b) the recipient of any royalty or other amount coming within the scope of Article VIII of the present Convention shall be deemed to have paid any United Kingdom tax legally deducted from the royalty or other amount by the person by or through whom any payment thereof is made,
- if the recipient of the dividend or royalty or other amount, as the case may be, elects to include in his gross income for the purposes of United States tax the amount of such United Kingdom income tax.”

## ARTICLE III

- (1) This supplementary Protocol shall be ratified and the instruments of ratification shall be exchanged at London as soon as possible.

(2) This supplementary Protocol shall enter into force upon the exchange of instruments of ratification and shall thereupon have effect—

(a) In the United Kingdom:

- (1) as respects income tax and surtax for any year of assessment beginning on or after the 6th April 1956;
- (ii) as respects profits tax for any chargeable accounting period beginning on or after the 1st April 1956, and for the unexpired portion of any chargeable accounting period current at that date.

(b) In the United States:

As respects taxable years beginning on or after the 1st January 1956.

IN WITNESS WHEREOF the undersigned, being authorised thereto by their respective Governments, have signed this supplementary Protocol and have affixed thereto their seals.

DONE in duplicate at Washington this nineteenth day of August, 1957.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

(L.S.)

HAROLD CACCIA.

For the Government of the United States of America:

(L.S.)

JOHN FOSTER DULLES.

## SCHEDULE 2

(Section 2)

### 1. APPLICATION

(a) The provisions of the Convention and Protocols incorporated in Schedule 1 to this Order shall apply as modified below—

- (1) as if the contracting parties were Saint Lucia and the Government of the United States; and as if the tax concerned in the case of Saint Lucia were Income Tax;
- (ii) as if references to the date of signature were references to the 3rd day of December, 1958;

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- (iii) as if references to the 6th day of April were references to the 1st day of January.
- (b) The extension shall have effect in Saint Lucia as respects tax for the year of assessment next following that in which the last of those measures shall have been taken in the United States and Saint Lucia necessary to give the extension the force of law in the United States and Saint Lucia and for subsequent years of assessment and will have effect in the United States as respects United States tax for the taxable year beginning on or after the 1st day of January in that next following calendar year.

## **2. MODIFICATIONS**

- (a) In Article VI(2) the words “exempt from United Kingdom Surtax” shall be understood for the purposes of this extension as though they read “is not liable to any tax in the territory other than tax imposed with respect to the profits or earnings of the corporation out of which such dividends are paid”.
- (b) In Article IX(2) the words “shall be exempt from United Kingdom surtax” shall be understood for the purposes of this extension as though they read “is not liable to tax in the territory at a rate in excess of the rate applicable to a company”.
- (c) Articles VII, XIV and XVI shall be deemed to be deleted.



## **INCOME TAX (DOUBLE TAXATION RELIEF) (SWITZERLAND) ORDER – SECTION 60**

(Statutory Instrument 16/1965)

Commencement [28 August 1965]

WHEREAS it is provided by section 52(1) of the Income Tax Act, 1947<sup>15</sup> that if the Governor General by Order declares that arrangements specified in the Order have been made with the Government of any territory outside Saint Lucia with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory and that it is expedient that those arrangements have effect, the arrangements have effect in relation to income tax despite anything in any enactment;

AND WHEREAS by a Convention dated 30 September 1954 between the Government of the United Kingdom and Northern Ireland and the Swiss Federal Council, arrangements were made among other things for the avoidance of double taxation;

AND WHEREAS provision is made in the said Convention for the extension by means of an exchange of notes between the High Contracting Parties of the said Convention, subject to such modifications and conditions (including conditions as to termination) as may be specified in the exchange of notes, to any territory, for whose foreign relations the United Kingdom is responsible, which imposes taxes substantially similar in character to those which are the subject of the said Convention;

AND WHEREAS by a notification dated 1 January 1961 the said Convention with certain modifications was applied to Saint Lucia.

### **1. SHORT TITLE**

This Order may be cited as the Income Tax (Double Taxation Relief) (Switzerland) Order.

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<sup>15</sup> *Editor's note:* This Act was repealed by the Income Tax Act, 1965 which itself was repealed and replaced by the Income Tax Act. This Order was continued in force by the 1965 Act and section 153 of the Income Tax Act.

## 2. DECLARATION

It is hereby declared—

- (a) that the arrangements specified in Schedule 1 to this Order as modified by the provisions of Schedule 2 to this Order have been made with the Swiss Federal Council;
- (b) that it is expedient that those arrangements should have effect.

### SCHEDULE 1

(Section 2)

#### CONVENTION BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE SWISS CONFEDERATION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME.

The Government of the United Kingdom of Great Britain and Northern Ireland and the Swiss Federal Council.

Desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income.

Have appointed for that purpose as their respective Plenipotentiaries:

The Government of the United Kingdom of Great Britain and Northern Ireland:

Alfred Douglas Dodds-Parker, Esquire, Parliamentary Under-Secretary of State for Foreign Affairs;

The Swiss Federal Council;

Monsieur Erwin Bernath, Swiss Charge d'Affaires ad interim in London;

Who, having communicated to one another their full powers, found in good and due form, have agreed as follows:

#### ARTICLE 1

- (1) The taxes which are the subject of the present Convention are—
  - (a) In the United Kingdom:

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The income tax (including surtax), the profits tax and the excess profits levy (hereinafter referred to as “United Kingdom tax”);

(b) In Switzerland:

The federal, cantonal and communal taxes on income (total income, earned income, income from capital, industrial and commercial profits, &c.), but not including the Federal coupon tax except where expressly mentioned (hereinafter referred to as “Swiss tax”).

(2) The present Convention shall also apply to any other taxes of a substantially similar character imposed in the United Kingdom or Switzerland subsequently to the date of signature of the present Convention.

## ARTICLE II

(1) In the present Convention, unless the context otherwise requires—

(a) The term “United Kingdom” means Great Britain and Northern Ireland, excluding the Channel Islands and the Isle of Man;

(b) The term “Switzerland” means the Swiss Confederation.

(c) The terms “one of the territories” and “the other territory” mean the United Kingdom or Switzerland, as the context requires;

(d) The term “tax” means United Kingdom tax or Swiss tax, as the context requires;

(e) The term “person” includes any individual, company, unincorporated body of persons and any other entity with or without juridical personality;

(f) The term “company” means in relation to the United Kingdom any body corporate, and in relation to Switzerland any entity with juridical personality;

(g) The term “resident of the United Kingdom” means:

(i) any company or partnership whose business is managed and controlled in the United Kingdom;

- (ii) any other person who is resident in the United Kingdom for the purposes of United Kingdom tax and not resident (by reason of domicile or sojourn) in Switzerland for the purposes of Swiss tax;
- (h) The term “resident of Switzerland” means—
  - (i) any company or partnership (“société simple,” “société, en nom collectif” or “société, en commandite”) created or organised under Swiss law, if its business is not managed and controlled in the United Kingdom;
  - (ii) any other person who is resident (by reason of domicile or sojourn) in Switzerland for the purposes of Swiss tax and not resident in the United Kingdom for the purposes of United Kingdom tax;
- (i) The terms “resident of one of the territories” and “resident of the other territory” mean a resident of the United Kingdom or a resident of Switzerland, as the context requires;
- (j) the terms “United Kingdom enterprise” and “Swiss enterprise” mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of the United Kingdom and an industrial or commercial enterprise or undertaking carried on by a resident of Switzerland, and the terms “enterprise of one of the territories” and “enterprise of the other territory” mean a United Kingdom enterprise or a Swiss enterprise, as the context requires;
- (k) The term “permanent establishment” means a branch, management, office, factory, workshop or other fixed place of business, and a farm, mine, quarry or other place of natural resources subject to exploitation. It also includes a place where building construction is carried on by contract for a period of at least one year, but does not include an agency unless the agent has and habitually exercises a general authority to negotiate and conclude contracts on behalf of an enterprise of one of the territories. In this connexion—
  - (i) An enterprise of one of the territories shall not be deemed to have a permanent establishment in the

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- other territory merely because it carries on business dealings in that other territory through a *bona fide* broker, general commission agent or other independent agent acting in the ordinary course of his business as such;
- (ii) The fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise;
  - (iii) The fact that an enterprise of one of the territories has a subsidiary company which is a resident of the other territory or which is engaged in trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of the enterprise of the former territory;
- (l) The term “industrial or commercial profits” includes manufacturing, mercantile, mining, farming, financial and insurance profits, and rents and royalties in respect of cinematograph films, but does not include income in the form of dividends, interest or royalties (other than cinematograph royalties) except any such income which, under the laws of one of the territories and in accordance with Article III of the present Convention, is attributable to a permanent establishment situated therein;
- (m) The term “competent authority” means, in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative; in the case of Switzerland, the Director of the Federal Tax Administration or his authorised representative; and in the case of any territory to which the present Convention is extended under Article XXI, the competent authority for the administration in such territory of the taxes to which the Convention applies.
- (2) Where the present Convention provides that income from a source within Switzerland shall be exempt from, or entitled to a reduced rate of, tax in Switzerland if (with or without other

conditions) it is subject to tax in the United Kingdom, and under the law in force in the United Kingdom the said income is subject to tax by reference to the amount thereof which is remitted to or received in the United Kingdom and not by reference to the full amount thereof, then the exemption or reduction in rate to be allowed under the Convention in Switzerland shall apply only to so much of the income as is remitted to or received in the United Kingdom.

- (3) Where under any provision of the present Convention a partnership is entitled to exemption from United Kingdom tax as a resident of Switzerland on any income, such a provision shall not be construed as restricting the right of the United Kingdom to charge any member of the partnership, being a person who is resident in the United Kingdom for the purposes of United Kingdom tax (whether or not he is also resident in Switzerland for the purposes of Swiss tax), to tax on his share of the income of the partnership; but any such income shall be deemed for the purposes of Article XV to be income from sources within Switzerland.
- (4) Where under any provision of the present Convention an estate of a deceased person is entitled to exemption from United Kingdom tax as a resident of Switzerland on any income, such a provision shall not be construed as requiring the United Kingdom to grant exemption from United Kingdom tax in respect of such part of such income as goes to any heir of such estate who is not resident in Switzerland for the purposes of Swiss tax and whose share of such income is not subject to Swiss tax either in his hands or in the hands of the estate.
- (5) In the application of the provisions of the present Convention by either Contracting Party any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws in force in the territory of that Party relating to the taxes which are the subject of the Convention.

### ARTICLE III

- (1) The industrial or commercial profits of a United Kingdom enterprise shall not be subject to Swiss tax unless the enterprise is engaged in trade or business in Switzerland through a permanent establishment situated therein. If it is so engaged, tax

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- may be imposed on those profits by Switzerland, but only on so much of them as is attributable to that permanent establishment.
- (2) The industrial or commercial profits of a Swiss enterprise shall not be subject to United Kingdom tax unless the enterprise is engaged in trade or business in the United Kingdom through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by the United Kingdom, but only on so much of them as is attributable to that permanent establishment.
  - (3) Where an enterprise of one of the territories is engaged in trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.
  - (4) Where an enterprise of one of the territories derives profits, under contracts concluded in that territory, from sales of goods or merchandise stocked in a warehouse in the other territory, those profits shall not be attributed to a permanent establishment of the enterprise in that other territory, notwithstanding that the offers of purchase have been obtained by an agent in that other territory and transmitted by him to the enterprise for acceptance.
  - (5) No portion of any profits arising to an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of goods or merchandise within that other territory by the enterprise.
  - (6) In the determination of the industrial or commercial profits of a permanent establishment there shall be allowed as deductions all expenses which are reasonably applicable to the permanent establishment, including executive and general administrative expenses so applicable, whether incurred in the territory in which the permanent establishment is situated or elsewhere.

#### ARTICLE IV

Where—

- (a) an enterprise of one of the territories participates directly in the management, control or capital of an enterprise of the other territory, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory.

and, in either case, conditions are made or imposed between the 2 enterprises, in their commercial or financial relations, which differ from those which would be made between independent enterprises, then any profits which would but for those conditions have accrued to one of the enterprises but by reason of those conditions have not so accrued may be included in the profits of that enterprise and taxed accordingly.

#### ARTICLE V

Notwithstanding the provisions of Articles III and IV, profits which a resident of one of the territories derives from operating ships or aircraft, including profits of that resident from the sale of tickets for passages by such ships or aircraft, shall be exempt from tax in the other territory.

#### ARTICLE VI

- (1) Dividends (other than dividends which, under the laws of the United Kingdom and in accordance with Article III of this Convention, are attributable to a permanent establishment situated in the United Kingdom) paid by a company which is a resident of the United Kingdom to a resident of Switzerland who is subject to Swiss tax in respect thereof shall be exempt from United Kingdom surtax.
- (2) The industrial and commercial profits of a Swiss enterprise engaged in trade or business through a permanent establishment in the United Kingdom shall, so long as undistributed profits of United Kingdom enterprises are effectively charged to United Kingdom profits tax at a lower rate than distributed profits of such enterprises, be charged to United Kingdom profits tax only at that lower rate.

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- (3) Where not less than 50% of the entire voting power of a company which is a resident of the United Kingdom is controlled, directly or indirectly, by a company which is a resident of Switzerland, the distributions by the former company to the latter company, and to any other company which is a resident of Switzerland and which beneficially owns not less than 10% of the entire share capital of the company paying the dividends, shall be left out of account in computing United Kingdom profits tax effectively chargeable on that company at the rate appropriate to distributed profits.
- (4)
  - (a) The Swiss anticipatory tax may be charged in respect of dividends paid by any company created under Swiss law to a resident of the United Kingdom, but, in the case of any such resident who is subject to United Kingdom tax in respect thereof, the rate of anticipatory tax shall be reduced in accordance with the following provisions of this paragraph (unless the dividends are, under the laws of Switzerland and in accordance with Article III of this Convention, attributable to a permanent establishment situated in Switzerland).
  - (b) If that resident is an individual whose effective rate of United Kingdom tax does not exceed 5%, the anticipatory tax shall not be charged.
  - (c) If that resident is an individual whose effective rate of United Kingdom tax exceeds 5%, the anticipatory tax shall be charged only at the rate which, when added to the rate of Federal coupon tax, equals that effective rate.
  - (d) If that resident is a company which controls, directly or indirectly not less than 95% of the entire voting power of the company paying the dividends, the anticipatory tax shall be reduced by an amount equal to 20% of the dividend.
  - (e) If that resident is a company which controls, directly or indirectly less than 95% but not less than 50% of the entire voting power of the company paying the dividends, the anticipatory tax shall be reduced by an amount equal to 10% of the dividend.

- (f) If that resident is a company which beneficially owns not less than 10% of the entire share capital of the company paying the dividends, and that provisions of either subparagraph (d) or subparagraph (e) of this paragraph apply to some part of the dividends paid by the latter company, the anticipatory tax shall be reduced by an amount equal to 10% of the dividend.
- (5) If at any time distributed profits of companies become chargeable to United Kingdom profits tax at a rate other than 20% above the rate at which undistributed profits are effectively chargeable to that tax, the competent authorities of the 2 Contracting Parties may consult together in order to determine whether it is necessary for this reason to amend subparagraphs (d), (e) and (f) of the preceding paragraph. After such consultation has taken place either of the Contracting Parties may give to the other Contracting Party through the diplomatic channel written notice of termination of the provisions of paragraph (3) and of subparagraphs (d), (e) and (f) of paragraph (4) of this Article, and, in such event, those provisions shall cease to be effective from the date on which the relevant change in the rates of United Kingdom profits tax took effect.
- (6) Subject to the provisions of subparagraph (a) of paragraph (4) of this Article, where a company which is a resident of one of the territories derives profits or income from sources within the other territory, there shall not be imposed in that other territory any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of an undistributed profits tax on undistributed profits of the company, whether or not those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

#### ARTICLE VII

- (1) Any interest or royalty derived from sources within one of the territories by a resident of the other territory, who is subject to tax in that other territory in respect thereof, shall be exempt from tax in that first territory.
- (2) In this Article—

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- (a) The term “interest” means interest on bonds, securities, notes, debentures or on any other form of indebtedness (including mortgages or bonds secured on real property);
  - (b) The term “royalty” means any royalty or other amount paid as consideration for the right to use any copyright, artistic or scientific work, patent, model, design, secret process or formula, trademark, or other like property or right (including rentals and like payments for the use of industrial or commercial machinery or plant or scientific apparatus), but does not include any royalty or other amount paid in respect of the operation of mines, quarries or other natural resources.
- (3) Any capital sum derived from sources within one of the territories from the sale of property or rights mentioned in subparagraph (b) of paragraph (2) of this Article by a resident of the other territory shall be exempt from tax in the first territory.
  - (4) Where there is a special relationship between debtor and creditor or both debtor and creditor have a special relationship with a third person or persons, and in consequence the amount paid is greater than would have been agreed upon if debtor and creditor had been at arm’s length, the exemption provided by this Article shall not apply to the excess.
  - (5) Any interest or royalty exempted from United Kingdom tax by this Article shall be allowed as a deduction for profits tax and excess profits levy purposes from the profits or income of the person paying the interest or royalty, whatever the relationship between that person and the person receiving the interest or royalty may be.
  - (6) The exemptions from tax in one of the territories provided for in this Article shall not apply to interest, royalties or capital sums which, under the laws of that territory and in accordance with Article III of this Convention, are attributable to a permanent establishment situated therein.

#### ARTICLE VIII

- (1) A resident of one of the territories shall be exempt in the other territory from any tax on gains from the sale, transfer or

exchange of capital assets (other than gains which, under the laws of that other territory and in accordance with Article III of this Convention, are attributable to a permanent establishment situated therein).

- (2) In this Article the term “capital assets” means any movable property, whether corporeal or incorporeal.

#### ARTICLE IX

- (1) Income derived from real property situated in one of the territories by a resident of the other territory shall be subject to tax in accordance with the laws of the first-mentioned territory. Where the income is also subject to tax in the other territory, relief from double taxation shall be given in accordance with the provisions of Article XV.
- (2) In this Article, the term “income from real property” means income of whatever nature derived from real property, including gains derived from the sale or exchange of such property, and it also includes royalties in respect of the operation of mines, quarries or other natural resources. It does not however include interest from mortgages or bonds secured on such property.

#### ARTICLE X

- (1) Remuneration, including pensions, paid by, or out of funds created by, the Government of the United Kingdom to an individual in respect of services rendered to that Government in the discharge of governmental functions shall be exempt from Swiss tax: provided that the exemption shall not apply to remuneration, other than a pension, paid to a Swiss citizen who is not also a British subject.
- (2) Remuneration, including pensions, paid by, or out of funds created by, the Swiss Confederation or by any Swiss canton to an individual in respect of services rendered to Switzerland in the discharge of governmental functions shall be exempt from United Kingdom tax: provided that the exemption shall not apply to remuneration, other than a pension, paid to a British subject who is not also a Swiss citizen.

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- (3) The provisions of paragraphs (1) and (2) of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either Contracting Party or by any Swiss canton for purposes of profit.
- (4) The provisions of this Convention shall not be construed as denying or affecting in any manner the right of diplomatic and consular officers to other or additional exemptions now enjoyed or which may hereafter be granted to them.

#### ARTICLE XI

- (1) An individual who is a resident of the United Kingdom shall be exempt from Swiss tax on profits or remuneration in respect of personal (including professional) services performed within Switzerland in any year of assessment if—
  - (a) he is present within Switzerland for a period or periods not exceeding in the aggregate 183 days during that year, and
  - (b)
    - (i) in the case of a directorship or employment, the services are performed for or on behalf of a resident of the United Kingdom;
    - (ii) in other cases, he has no office or other fixed place of business in Switzerland, and
  - (c) the profits or remuneration are subject to United Kingdom tax.
- (2) An individual who is a resident of Switzerland shall be exempt from United Kingdom tax on profits or remuneration in respect of personal (including professional) services performed within the United Kingdom in any year of assessment if—
  - (a) he is present within the United Kingdom for a period or periods not exceeding in the aggregate 183 days during that year, and
  - (b)
    - (i) in the case of a directorship or employment, the services are performed for or on behalf of a resident of Switzerland;

- (ii) in other cases, he has no office or other fixed place of business in the United Kingdom; and
  - (c) the profits or remuneration are subject to Swiss tax.
- (3) The provisions of this Article shall not apply to the profits or remuneration of public entertainers such as stage, motion picture, radio or television artists, musicians and athletes.

#### ARTICLE XII

- (1) Any pension (other than a pension of the kind referred to in Article X) and any annuity, derived from sources within one of the territories by an individual who is a resident of the other territory and subject to tax in that other territory in respect thereof, shall be exempt from tax in the first territory.
- (2) In this Article—
  - (a) The term “pension” means periodic payments made in consideration of past services or by way of compensation for injuries received;
  - (b) The term “annuity” means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money’s worth.

#### ARTICLE XIII

- (1) A professor or teacher from one of the territories, who receives remuneration for teaching, during a period of temporary residence not exceeding 2 years, at a university, college, school or other educational institution in the other territory, shall be exempt from tax in that other territory in respect of that remuneration.
- (2) A student or business apprentice from one of the territories, who is receiving full-time education or training in the other territory, shall be exempt from tax in that other territory on payments made to him by persons outside that other territory for the purposes of his maintenance, education or training.

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#### ARTICLE XIV

- (1) Individuals who are residents of Switzerland shall be entitled to the same personal allowances, reliefs and reductions for the purposes of United Kingdom tax as British subjects not resident in the United Kingdom.
- (2) Individuals who are residents of the United Kingdom shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Swiss tax as Swiss nationals resident in the United Kingdom.

#### ARTICLE XV

- (1) The laws of the Contracting Parties shall continue to govern the taxation of income arising in either of the territories, except where express provision to the contrary is made in the present Convention. Where income is subject to tax in both territories, relief from double taxation shall be given in accordance with the following paragraphs of this Article.
- (2) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom, Swiss tax payable, whether directly or by deduction in respect of income from sources within Switzerland shall be allowed as a credit against the United Kingdom tax payable in respect of that income. Where such income is a dividend paid by a company which is a resident of Switzerland to a company which controls, directly or indirectly, not less than 50%, of the if entire voting power of the former company, the credit shall take into account (in addition to any Swiss tax appropriate to the dividend) the Swiss tax payable by the former company in respect of its profits. For the purpose of this paragraph, the term "Swiss tax" shall include the Federal coupon tax, but shall not include the communal taxes.
- (3) Income (other than dividends) from sources within the United Kingdom which under the laws of the United Kingdom and in accordance with this Convention is subject to tax in the United Kingdom either directly or by deduction shall be exempt from Swiss tax.

- (4) In the case of a person (other than a company or partnership) who is resident in the United Kingdom for the purposes of United Kingdom tax and also resident (by reason of domicile or sojourn) in Switzerland for the purposes of Swiss tax, the provisions of paragraph (2) of this Article shall apply in relation to income which that person derives from sources within Switzerland, and the provisions of paragraph (3) of this Article shall apply in relation to income which that person derives from sources within the United Kingdom. If such person derives income from sources outside both the United Kingdom and Switzerland, tax may be imposed on that income in both the territories (subject to the laws in force in the territories and to any Convention which may exist between either of the Contracting Parties and the territory from which the income is derived) but the Swiss tax on so much of that income as is subjected to tax in both the territories shall be limited to  $\frac{1}{2}$  of the tax on such income, and the United Kingdom tax on that income shall be reduced by a credit, in accordance with paragraph (2) of this Article, for the Swiss tax so computed.
- (5) For the purposes of this Article, profits or remuneration for personal (including professional) services performed in one of the territories shall be deemed to be income from sources within that territory, except that the remuneration of a director of a company shall be deemed to be income from sources within the territory in which the company is resident, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory.

#### ARTICLE XVI

- (1) Where it is provided in this Convention that relief from tax in respect of any kind of income shall be allowed in the territory from which such income is derived, that provision shall not be construed as requiring that income to be paid without deduction of tax at source at the full rate. Where tax has been deducted at source from such income the taxation authorities of the territory in which relief from tax is required to be given shall, when the taxpayer in receipt of the income shows to their satisfaction and within the time limits prescribed in that territory that he is

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entitled to the relief, arrange for the appropriate repayment of tax.

- (2) Where any income is exempted from tax by any provision of this Convention, it may nevertheless be taken into account in computing the tax on other income or in determining the rate of such tax.
- (3) For the purpose of calculating the reliefs due under Articles VI and XIV, the income of a partnership shall be regarded as that of its individual members.

#### ARTICLE XVII

- (1) The provisions of the present Convention shall not be construed as restricting in any manner any exemption, deduction, credit or other allowance now or hereafter accorded by the laws in force in the territory of one of the Contracting Parties in the determination of the tax imposed in such territory.
- (2) The provisions of the present Convention shall not be construed as derogating from any right or privilege conferred upon taxpayers by the Agreement of the 17th October, 1931, between the Government of the United Kingdom and the Swiss Federal Council for reciprocal exemption from taxation on profits or gains arising through an agency.

#### ARTICLE XVIII

- (1) The nationals of one Contracting Party shall not be subjected in the territory of the other Contracting Party to any taxation on any requirement connected therewith which is either, higher or more burdensome than the taxation and connected requirements to which the nationals of the latter Party are or may be subjected in similar circumstances.
- (2) The enterprises of one of the territories, whether carried on by a company, a body of persons or by individuals alone or in partnership, shall not be subjected in the other territory, in respect of income, profits or capital attributable to their permanent establishments in that other territory, to any taxation which is other, higher or more burdensome than the taxation to which the enterprises of that other territory similarly carried on

are or may be subjected in respect of the like income, profits or capital.

- (3) The income, profits, and capital of an enterprise of one of the territories, the capital of which is wholly or partly owned or controlled, directly or indirectly, by a resident or residents of the other territory, shall not be subjected in the first territory to any taxation which is other, higher or more burdensome than the taxation to which other like enterprises of that first territory are or may be subjected in similar circumstances in respect of the like income, profits and capital.
- (4) Nothing in paragraph (1) or paragraph (2) of this Article shall be construed as obliging one Contracting Party to grant nationals of the other Contracting Party who are not resident in the territory of the former Party the same personal allowance, reliefs and reductions for tax purposes as are granted to its own nationals.
- (5) In this Article the term “nationals” means—
  - (a) in relation to Switzerland, all Swiss citizens wherever residing and all entities with or without juridical personality created under Swiss laws;
  - (b) in relation to the United Kingdom, all British subjects and British protected persons—
    - (i) residing in the United Kingdom or any territory to which the present Convention is extended under Article XXI, or
    - (ii) deriving their status as such from connection with the United Kingdom or any territory to which the present Convention is extended under Article XXI, and all legal persons, partnerships, associations and other entities deriving their status as such from the law in force in the United Kingdom or any territory to which the Convention is extended under Article XXI.
- (6) In this Article the term “taxation” means taxes of every kind and description levied on behalf of any authority whatsoever.

## ARTICLE XIX

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- (1) Where a taxpayer shows to the satisfaction of the competent authority of the Contracting Party of which he is a national or in whose territory he a resident that he has not received the treatment in the other territory to which he is entitled under any provision of this Convention, that competent authority shall consult with the competent authority of the other Party with a view to the avoidance of the double taxation in question.
- (2) The competent authorities of the 2 Contracting Parties may communicate with each other directly for the purpose of giving effect to the provisions of this Convention (and in particular the provisions of Articles III and IV) and for resolving any difficulty or doubt as to the application or interpretation of the Convention.

#### ARTICLE XX

- (1) The competent authorities of the Contracting Parties shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present Convention in relation to the taxes which are the subject of the Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of the Convention. No information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.
- (2) In no case shall the provisions of this Article be construed as imposing upon either of the Contracting Parties the obligation to carry out administrative measures at variance with the regulations and practice of either Contracting Party or which would be contrary to its sovereignty, security or public policy or to supply particulars which are not procurable under its own legislation or that of the Party making application.

#### ARTICLE XXI

- (1) The present Convention may be extended, either in its entirety or with modifications, to any territory for whose international

relations the United Kingdom is responsible and which imposes taxes substantially similar in character to those which are the subject of the Convention, and any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be specified and agreed between the Contracting Parties in notes to be exchanged for this purpose.

- (2) The termination in respect of the United Kingdom or Switzerland of the present Convention under Article XXIV shall, unless otherwise expressly agreed by the Contracting Parties, terminate the application of the Convention to any territory to which it has been extended under this Article.

#### ARTICLE XXII

- (1) The present Convention shall be ratified and the instruments of ratification shall be exchanged at Berne as soon as possible.
- (2) The present Convention shall enter into force upon the exchange of ratifications.

#### ARTICLE XXIII

- (1) Upon the entry into force of the present Convention in accordance with Article XXII, the provisions of the Convention shall have effect—
  - (a) In the United Kingdom—

as respects income tax (including surtax) for any year of assessment beginning on or after the 6th April, 1953; as respects profits tax and excess profits levy in respect of the following profits—

    - (i) profits by reference to which income tax is, or but for the present Convention would be chargeable for any year of assessment beginning on or after the 6th April, 1953;
    - (ii) other profits being profits by reference to which income tax is not chargeable, but which arise in any chargeable accounting period beginning on or after the 1st April, 1953, or are attributable to so much of any chargeable accounting period falling partly

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before and partly after that date as falls after that date.

- (b) In Switzerland—for any taxable year beginning on or after the 1st January 1953.
- (2) The exemption from tax provided in Article V shall have effect for any year of assessment beginning on or after the 6th April, 1946.

#### ARTICLE XXIV

The present Convention shall continue in effect indefinitely but either Contracting Party may, on or before the 30th June in any calendar year not earlier than the year 1957, give to the other Contracting Party, through the diplomatic channel, written notice of termination and, in such event, the Convention shall cease to be effective—

- (a) In the United Kingdom—
  - as respects income tax (including surtax) for any year of assessment beginning on or after the 6th April in the calendar year next following that in which the notice is given; as respects profits tax in respect of the following profits—
    - (i) profits by reference to which income tax is chargeable for any year of assessment beginning on or after the 6th April in the calendar year next following that in which the notice is given;
    - (ii) other profits being profits by reference to which income tax is not chargeable, but which arise in any chargeable accounting period beginning on or after the 1st April in the calendar year next following that in which the notice is given or are attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;
- (b) In Switzerland—
  - for any taxable year beginning on or after 1 January of the calendar year next following that in which the notice is given.

IN WITNESS WHEREOF the above-mentioned Plenipotentiaries have signed the present Convention and have affixed thereto their seals.

Done in duplicate at London, the 30th day of September, one thousand nine hundred and fifty-four, in the English and French languages, both texts being equally authoritative.

(Sgd.) (L.S.) DOUGLAS DODDS-PARKER,

(Sgd.) (L.S.) E. BERNATH.

## SCHEDULE 2

(Section 2)

### APPLICATION

1. The said Convention as modified by the present Annex shall apply in the case of Saint Lucia—
  - (a) as if the Contracting Parties were the Swiss Federal Council and the Government of Saint Lucia ;
  - (b) as if the taxes concerned in the case of Saint Lucia were income tax;
  - (c) as if references to “the date of signature of the present Convention” were references to the date of the Exchange of Notes to which the present Annex is appended.
2. When the last of those measures shall have been taken in Switzerland and in Saint Lucia necessary to give the present extension the force of law in Switzerland and in Saint Lucia respectively, the present extension shall have effect—
  - (a) in Switzerland : for any taxable year beginning on or after the first day of January, 1961; and
  - (b) in Saint Lucia : as respects taxes charged for the year of assessment or year of income beginning on the 1st January 1961, and for subsequent years, years of assessment or years of income.
3. The Swiss Federal Council shall inform the Government of the United Kingdom in writing through the diplomatic channel

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when the last of the measures necessary, as indicated in paragraph (2) have been taken in Switzerland. The Government of the United Kingdom shall inform the Swiss Federal Council in writing through the diplomatic channel when the last of the measures necessary, as indicated in paragraph (2), have been taken in Saint Lucia.

- (4) The present extension shall continue in effect indefinitely but either the Government of the United Kingdom or the Swiss Federal Council may, on or before the 30th of June in any calendar year not earlier than the year 1966 give to the other through the diplomatic channel written notice of termination which may apply to Saint Lucia and in such event the present extension shall cease to have effect,
- (a) in Switzerland : for any taxable year beginning on or after the first day of January of the calendar year next following that in which the notice is given ; and
  - (b) in Saint Lucia : as respects taxes charged for any year, year of assessment or year of income beginning on or after 1st January, 1961 in the calendar year next following that in which the notice is given.

#### MODIFICATIONS

The said Convention shall, for the purposes of the extension to Saint Lucia, apply with the following modifications—

- (a) For the purposes of the extension of the Convention to Saint Lucia, Article VI shall be deleted ;
- (b) for the purposes of the extension of the Convention to Saint Lucia, references to interest in Article VII of the Convention shall be deemed to be deleted, and in Article XV (3) the words in brackets shall be deemed to be replaced by the words “other than dividends and interest”;



## INCOME TAX (FORMS) RULES – SECTION 151

(Statutory Instrument 42/1949)

Commencement [30 July 1949]

### 1. SHORT TITLE

These Rules may be cited as the Income Tax (Forms) Rules.

### 2. FORMS

The Income Tax forms appearing in the Schedule are the forms under the Income Tax Act, 1947.<sup>16</sup>

### 3. FORMS MAY BE OBTAINED AT TREASURY

The said forms with the exception of Forms 5 and 7 may be obtained at the Treasury in Castries or at any district revenue office in other parts of Saint Lucia.

## SCHEDULE

(Section 2)

<i>No. of Form.</i>	<i>Description.</i>
1.	Notice and return under section 37 of the Act (Return — General Form).
2.	Notice and return under section 38 of the Act (Employers).
3.	Notice and list to be delivered for the purposes of sections 30, 31, 32 of the Act (Agents, etc., of non-residents).
4.	Notice and list to be delivered for the purposes of sections 29, 31, 32 of the Act (Trustees, Executors, etc.).
5.	Notice of assessment, section 47 of the Act.

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<sup>16</sup> *Editor's note:* This Act was repealed by the Income Tax Act, 1965 which itself was repealed and replaced by the Income Tax Act. These Rules were continued in force by the 1965 Act and section 153 of the Income Tax Act.

6. Account to be rendered under section 36 of the Act by persons paying mortgage or debenture interest to persons not resident in Saint Lucia.
7. Declaration required by section 4 of the Act (Declaration of Official Secrecy).

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## INCOME TAX APPEALS AGAINST ASSESSMENTS, RULES – SECTION 151<sup>17</sup>

(Statutory Instrument 14/1924)

1. In the notice in writing to be given by the appellant to the Commissioner the grounds, reasons, or particulars of the appeal shall be clearly stated and the said notice shall be served on the Commissioner.

Such notice may be served through the Sheriff's Office and if so served, the return of service of the said notice on the Commissioner shall be made on a duplicate or copy of the notice to be delivered in the Sheriff's Office by the appellant at the time of delivering the notice in writing for service.

If the notice in writing is not served through the Sheriff's Office an affidavit by the person serving such notice shall be similarly made on the duplicate or copy of such notice.

2. The appellant shall before the expiration of the third day computing from the day of service of the notice referred to in rule 1 file in the Registry of the High Court (a) an application to the judge in chambers to fix a day for the hearing of the appeal and (b) the duplicate or copy of the notice with the return of service or affidavit required by rule 1.
3. A copy of the order fixing the day of the hearing of the appeal may be served on the Commissioner through the sheriff's office and if so served the return of service shall be filed by the appellant in the Registry before the day fixed for the hearing of the appeal.

If the copy of the order is not served through the sheriff's office an affidavit by the person serving such copy shall be similarly filed as required by the preceding paragraph.

4. The proceedings in the appeal shall be intituled.

“IN THE EASTERN CARIBBEAN SUPREME COURT (SAINT LUCIA).

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<sup>17</sup> **Editor's note:** These Rules were continued under the Income Tax Act, 1965. That Act was repealed and replaced by the Income Tax Act. However, the rules continue in force under section 153.

(In Chambers).”

In the matter of the Income Tax Act and of an appeal against assessment by (*state name of Appellant*),

Date of the Commissioner’s refusal to amend assessment.....”  
(*state day with month and year*).

(*A short heading or description of the proceeding should follow — e.g.*

“APPLICATION TO FIX DATE FOR HEARING OF APPEAL” *or as the case may be*).