

Tanzania

## Income Tax Act, 2004

### Chapter 332

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# Tanzania

## Income Tax Act, 2004

### Chapter 332

Assented to on 4 June 2004

Commenced on 1 July 2004

*[This is the version of this document at 30 November 2019.]*

*[Note: This legislation has been thoroughly revised and consolidated under the supervision of the Attorney General's Office, in compliance with the Laws Revision Act No. 7 of 1994, the Revised Laws and Annual Revision Act (Chapter 356 (R.L.)), and the Interpretation of Laws and General Clauses Act No. 30 of 1972. This version is up-to-date as at 31st July 2002.]*

*[Amended by [Finance Act, 2006 \(Act 6 of 2006\)](#) on 1 July 2006]*

*[Amended by [Finance Act, 2007 \(Act 16 of 2007\)](#) on 1 July 2007]*

*[Amended by [National Prosecutions Service Act, 2008 \(Chapter 430\)](#) on 9 June 2008]*

*[Amended by [Finance Act, 2008 \(Act 13 of 2008\)](#) on 1 July 2008]*

*[Amended by [Finance Act, 2009 \(Act 14 of 2009\)](#) on 1 July 2009]*

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*[Amended by [Finance Act, 2011 \(Act 5 of 2011\)](#) on 1 July 2011]*

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*[Amended by [Finance Act, 2013 \(Act 4 of 2013\)](#) on 1 July 2013]*

*[Amended by [Finance Act, 2014 \(Act 2 of 2014\)](#) on 1 July 2014]*

*[Amended by [Finance Act, 2015 \(Act 15 of 2015\)](#) on 1 July 2015]*

*[Amended by [Tax Administration Act \(Chapter 438\)](#) on 1 August 2015]*

*[Amended by [Tanzania Extractive Industries \(Transparency and Accountability\) Act, 2015 \(Act 23 of 2015\)](#) on 25 September 2015]*

*[Amended by [Finance Act, 2016 \(Act 2 of 2016\)](#) on 1 July 2016]*

*[Amended by [Written Laws \(Miscellaneous Amendments\) Act, 2017 \(Act 2 of 2017\)](#) on 3 March 2017]*

*[Amended by [Finance Act, 2017 \(Act 4 of 2017\)](#) on 1 July 2017]*

*[Amended by [Written Laws \(Miscellaneous Amendments\) Act, 2017 \(Act 7 of 2017\)](#) on 7 July 2017]*

*[Amended by [Finance Act, 2018 \(Act 4 of 2018\)](#) on 1 July 2018]*

*[Amended by [Written Laws \(Miscellaneous Amendments\) \(No. 2\) Act, 2019 \(Act 6 of 2019\)](#) on 22 February 2019]*

*[Amended by [Finance Act, 2019 \(Act 8 of 2019\)](#) on 1 July 2019]*

*[Acts Nos. 11 of 2004; 15 of 2004; 13 of 2005; 6 of 2006; 16 of 2007; 1 of 2008; 13 of 2008; 14 of 2009; 15 of 2010; 5 of 2011; 6 of 2012; 8 of 2012; 4 of 2013; 2 of 2014; 10 of 2015; 15 of 2015; 23 of 2015; 2 of 2016; 2 of 2017; 4 of 2017; 7 of 2017; 4 of 2018; 6 of 2019; 8 of 2019]*

**An Act to make provisions for the charge, assessment and collection of Income Tax, for the ascertainment of the income to be charged and for matters incidental thereto.**

### Part I – Preliminary provisions

#### 1. Short title

This Act may be cited as the Income Tax Act.

#### 2. Application

This Act shall apply to Tanzania Mainland as well as Tanzania Zanzibar.

### 3. Interpretation

In this Act, unless the context requires otherwise—

**"adjusted assessment"** means an assessment adjusted in accordance with section 48 of the Tax Administration Act;

**"amount derived"** means a payment received by a person or that the person is entitled to receive;

**"an entity of a public character"** means an entity established and functions solely for a public purpose and which operates in such a way that:

- (a) its membership is open to the general public or an identifiable group of a community with common interests;
- (b) it operates for purposes other than deriving profit or gain;
- (c) it does not allow any distribution or deemed distribution of profit generated out of its charitable business; and
- (d) its profit is ploughed back and used solely for improving or expansion of the original charitable purpose or function;

**"approved retirement fund"** means a resident retirement fund having a ruling under section 11 of the Tax administration Act;

**"arrangement"** includes an action, agreement, course of conduct, dealing, promise, transaction, understanding or undertaking, whether express or implied, whether or not enforceable by legal proceedings and whether unilateral or involving more than one person;

**"assessment"** means an assessment made in terms of sections 94 of this Act or sections 46, 47, 48 or 81 of the Tax Administration Act;

[Cap. 438]

**"asset"** means a tangible or intangible asset and includes currency, goodwill, know-how, property, a right to income or future income and a part of an asset;

**"associate"** in relation to a person, means another person where the relationship between the two is—

- (a) that of an individual and a relative of the individual, unless the Commissioner is satisfied that it is not reasonable to expect that either individual will act in accordance with the intentions of the other;
- (b) that of partners in the same partnership, unless the Commissioner is satisfied that it is not reasonable to expect that either person will act in accordance with the intentions of the other;
- (c) that of an entity and—
  - (i) a person who—
    - (aa) either alone or together with an associate or associates under another application of this definition; and
    - (bb) whether directly or through one or more interposed entities, controls or may benefit from fifty percent or more of the rights to income or capital or voting power of the entity; or
  - (ii) under another application of this definition, is an associate of a person to whom subparagraph (i) applies; or
- (d) in any case not covered by paragraphs (a) to (c), such that one may reasonably be expected to act, other than as employee, in accordance with the intentions of the other;

**"banking business"** means business of a financial institution approved under the Banking and Financial Institutions Act;

[Cap. 342]

**"business"** includes—

- (a) a trade, concern in the nature of trade, manufacture, profession, vocation or isolated arrangement with a business character; and
- (b) a past, present or prospective business, but excludes employment;

**"business asset"** means an asset to the extent to which it is employed in a business and includes a membership interest of a partner in a partnership but excludes—

- (a) trading stock or a depreciable asset;
- (b) an interest in land held by an individual that has a market value of less than ten million shillings at the time it is realised and that has been used for agricultural purposes for at least two of the three years prior to realisation;
- (c) the beneficial interest of a beneficiary in a resident trust;
- (d) shares in a corporation where receipt of a dividend in respect of the shares is exempt in the hands of the shareholder under [section 54\(2\)](#); and
- (e) shares and securities listed on the Dar es Salaam Stock Exchange that are owned by a resident person or by a non-resident person who either alone or with other associates controls less than twenty five percent of the controlling shares of the issuer company;

**"capitalisation of profits"** by an entity, includes a capitalisation by way of issuing bonus, membership interests or increasing the amount paid upon membership interests in the entity or otherwise crediting profits to a capital or premium account of the entity;

**"certified public accountant in public practice"** has the meaning ascribed to it by the Accountants and Auditors (Registration) Act;

[Cap. 286]

**"chargeable income"** has the meaning ascribed to it by [section 6](#);

**"charitable organisation"** has the meaning ascribed to it by [section 64](#);

**"Class of depreciable assets"** means a class determined in accordance with the provisions of paragraph 1 of the Third Schedule;

**"Commission"** means the Commission of Minerals established under section the Mining Act;

[Cap. 123]

**"Commissioner"** means the Commissioner General appointed under the Tanzania Revenue Authority Act;

[Cap. 399]

**"commuted pension"** means a payment received by an individual on retirement of the individual for the surrender of at least half of the individual's pension rights in respect of a retirement fund;

**"corporation"** means any company or body corporate established, incorporated or registered under any law in force in the United Republic or elsewhere, an unincorporated association or other body of persons, a Government, a political subdivision of a Government, a public authority, public institution international organisation and a unit trust but does not include partnership;

**"consumption expenditure"** has the meaning ascribed to it by [section 11](#);

**"controlled foreign trust"** and "controlled foreign corporation" means a non-resident trust or corporation in which a resident person owns a membership interest, whether directly or indirectly through one or more interposed non-resident entities, and where—

- (a) the person is associated with the trust or corporation; or
- (b) there exist between one and four other resident persons which, if associated with the person, would cause the person to be associated with the trust or corporation;

**"cost of an asset"** has the meaning ascribed to it by [section 37](#);

**"debt claim"** means an asset representing a right of one person to receive a payment from another person and includes a deposit with a financial institution, account receivable, note, bill of exchange or bond;

**"decommissioning fund"** with respect to petroleum operations means a fund established under the Petroleum Act;

[Cap. 392]

**"debt obligation"** means the obligation corresponding to a debt claim;

**"dependent of an individual"** with respect to a year of income, means a relative of the individual who has total income that does not exceed two hundred fifty thousand shillings and receives substantial support from the individual during the whole year of income for the necessities of life;

**"depreciable asset"** means an asset employed wholly and exclusively in the production of income from a business, and which is likely to lose value because of wear and tear, obsolescence or the passage of time but excludes goodwill, mineral or petroleum rights and other interest in land, a membership interest in an entity and trading stock;

**"depreciation basis"** at the end of a year of income with respect to a pool of depreciable assets, has the meaning ascribed to it by paragraph 3 of the Third Schedule;

**"development area"** has the meaning ascribed to it under the Petroleum Act;

[Cap. 392]

**"development licence"** has the meaning ascribed to it under the Petroleum Act;

**"development operations"** has the meaning ascribed to it under the Petroleum Act;

[Cap. 392]

**"distribution"** by an entity:

- (a) means—
  - (i) a payment made by the entity to any of its members, in any capacity to the extent that the amount of the payment exceeds the amount of any payment made by the member to the entity in return for the entity's payment; or
  - (ii) any re-investment of dividends which enhances the value of shares;
  - (iii) any capitalisation of profits;
- (b) includes a payment made by the entity to one of its members on cancellation, redemption or surrender of a membership interest in the entity, including as a result of liquidation of the entity or as a result of the entity purchasing a membership interest in itself;
- (c) excludes a payment of the type referred to in paragraph (a)(i) or (b)—
  - (i) to the extent to which the payment is directly included in calculating the member's income or in calculating a final withholding payment, other than by reason of being a distribution; and

- (ii) without limiting any amount treated as a distribution by paragraph (a)(ii), that consists of the issue of further membership interests in the entity to the entity's members in approximate proportion to the members' existing rights to share in dividends of the entity; and

(d) in the case of a controlled foreign trust or corporation, is interpreted in accordance with [section 75](#);

**"dividend of an entity"** means a distribution by the entity to the extent that it is not a repayment of capital;

**"domestic asset"** means—

- (a) an asset owned by a resident person (other than foreign land or buildings or an asset held by a foreign permanent establishment of the person) or held by a domestic permanent establishment;
- (b) an interest in land or a building situated in the United Republic; and
- (c) shares in a resident corporation whether the owner of the shares together with associates controls or within the previous five years controlled, either directly or indirectly, twenty five percent or more of the voting power in the corporation;

**"domestic liability"** means a liability owed by a resident person (other than a liability attributable to a foreign permanent establishment of the person) or attributable to a domestic permanent establishment;

**"domestic permanent establishment"** means all permanent establishments of a non-resident individual, partnership, trust or corporation situated in the United Republic;

**"downstream activities"** has the meaning ascribed to it under the Petroleum Act;

[Cap. 392]

**"employee"** means an individual who is the subject of an employment conducted by an employer;

**"employer"** means a person who conducts, has conducted or has the prospect of conducting the employment of an individual;

**"employment"** means—

- (a) a position of an individual in the employment of another person;
- (b) a position of an individual as manager of an entity other than as partner of a partnership;
- (c) a position of an individual entitling the individual to a periodic remuneration in respect of services performed; or
- (d) a public office held by an individual, and includes a past, present and prospective employment;

**"entity"** means a partnership, trust or corporation;

**"entity of a public character"** means an entity established and functions solely for a public purpose and which operates in such a way that:

- (a) its membership is open to the general public or an identifiable group of a community with common interests;
- (b) it operates for purposes other than deriving profit or gain;
- (c) it does not allow any distribution or deemed distribution of profit generated out of its charitable business; and
- (d) its profit is ploughed back and used solely for improving or expansion of the original charitable purposes or function;

**"excluded expenditure"** has the meaning ascribed to it by [section 11](#);

**"exempt amount"** means an amount exempt from income tax by reason of [section 10](#), [52](#), [60](#) or [63](#);

**"exploration area"** has the meaning ascribed to it under the Petroleum Act;

[Cap. 392]

**"exploration licence"** has the meaning ascribed to it under the Petroleum Act;

**"exploration operations"** has the meaning ascribed to it under the Petroleum Act;

**"farm-out arrangement"** with respect to a mineral right or a petroleum right includes an arrangement for the transfer of part of the right in return for consideration that includes in whole or in part an obligation on the part of the transferee to meet a disproportionate amount of future expenditure with respect to mineral operations or petroleum operations conducted with respect to the right, as the case requires;

**"financial cost"** means any amount payable under a financial instrument or a loss from the realisation of a financial instrument, includes the payment of interest but excludes a distribution by an entity;

**"final withholding payment"** has the meaning ascribed to it by [section 86](#);

**"financial institution"** means a bank or financial institution approved under the Bank of Tanzania Act or the Banking and Financial Institutions Act;

[Caps. 197 and 342]

**"foreign currency debt claim"** means a debt claim that is denominated in a currency other than Tanzanian shillings;

**"foreign income tax"** means income tax imposed by a foreign country and includes a final withholding tax or branch profits tax imposed by a foreign country;

**"foreign permanent establishment"** means all permanent establishments of an individual, partnership, trust or corporation that are situated in any one country that is not the country in which the individual, partnership, trust or corporation is resident but excludes a domestic permanent establishment;

**"foreign source"** means an amount that is not treated as having a source in the United Republic by [section 67](#), [68](#) or [69](#), as the case requires;

**"full time service director"** means a person at a managerial position and is in full time service in a corporation;

**"gain"** from the realisation of an asset or liability has the meaning ascribed to it by [section 36](#);

**"general insurance business"** means any insurance that is not life insurance;

**"gift"** means a payment without consideration or a payment with consideration to the extent that the market value of the payment exceeds the market value of the consideration;

**"incapacitated individual"** means a minor or any individual who is substantially blind or physically crippled or substantially mentally retarded or who is adjudged under any law, whether of the United Republic or of any other country, to be of unsound mind;

**"income"**—

- (a) from an employment, business or investment has the meaning ascribed in [sections 7, 8 or 9](#), as the case requires;
- (b) when used without a reference to employment, business or investment, means a person's income from any employment, business or investment and an aggregation of such income as calculated in accordance with this Act, as the case requires; and
- (c) in the case of corporation with unrelieved losses referred to under [section 4\(1\)\(a\)](#), the turnover of that corporation for the year of income;

**"income tax"** has the meaning ascribed to it by [section 4](#);

**"incomings for an asset"** has the meaning ascribed to it by [section 38](#);

**"individual"** means a natural person;

**"insurance business"** means the business of an insurer in effecting, issuing and carrying out insurance;

**"interest"** means a payment for the use of money and includes a payment made or accrued under a debt obligation that is not a repayment of capital, any gain realised by way of a discount, premium, swap payment or similar payment, amounts treated as interest under [section 32](#), amounts recognised as interest under [section 71\(6\) \(b\)\(ii\)](#) and interest imposed under Part X of the Tax Administration Act;

*[Cap. 438]*

**"investment"** means the owning of one or more assets of a similar nature or that are used in an integrated fashion, on similar terms and subject to similar conditions, including as to location and includes a past, present and prospective investment, but does not include a business, employment and the owning of assets, other than investment assets, for personal use by the owner;

**"investment asset"** means shares and securities in a corporation, a beneficial interest in a non-resident trust and an interest in land and buildings but does not include—

- (a) business assets, depreciable assets and trading stock;
- (b) a private residence of an individual that has been owned continuously for three years or more and lived in by the individual continuously or intermittently for a total of three years or more, other than a private residence that is realised for a gain in excess of fifteen million shillings;
- (c) an interest in land held by an individual that has a market value of less than ten million shillings at the time it is realised and that has been used for agricultural purposes for at least two of the three years prior to realisation; and
- (d) shares or securities listed on the Dar es Salaam Stock Exchange that are owned by a resident person or a non-resident person who either alone or with other associate controls less than twenty five percent of the controlling shares of the issuer company;

**"lease"** means an arrangement providing a person with a temporary right in respect of an asset of another person, other than money, and includes a licence, profit-a-prendre, option, rental agreement, royalty agreement and tenancy;

**"licence area"**—

- (a) with respect to mining operations, means the area covered by the mineral right in question; and
- (b) with respect to petroleum operations, means the exploration or development area with respect to which the operations are conducted;

**"licenced dealer"** has a meaning ascribed to it in the Mining Act;

*[Cap. 123]*

**"life insurance"** means insurance of any of the following classes:

- (a) insurance where the specified event is the death of an individual who is the insured or an associate of the insured;
- (b) insurance where—
  - (i) the specified event is an individual who is the insured or an associate of the insured sustaining personal injury or becoming incapacitated; and
  - (ii) the insurance agreement is expressed to be in effect for at least five years or without limit of time and is not terminable by the insurer before the expiry of five years except in circumstances prescribed by the regulations;
- (c) insurance under which an amount or series of amounts is to become payable to the insured in the future; and

(d) re-insurance of insurance referred to under paragraphs (a) to (c);

**"life insurance business"** means the business of an insurer in effecting, issuing and carrying out life insurance;

**"loss from any business or investment"** has the meaning ascribed to it by [section 19](#) and from the realisation of an asset or liability, has the meaning ascribed to it by [section 36](#);

**"manager"** in relation to an entity—

- (a) means any councillor, director, manager, member, officer or other person who participates or may participate, whether alone or jointly with other persons, in making senior management decisions on behalf of the entity; and
- (b) includes a partner of a partnership, a trustee of a trust and a person in accordance with whose directions and instructions the entity or a person described in paragraph (a) is required or accustomed to act;

**"market value"** means a market value determined under [section 27](#);

**"member"** in relation to an entity, means any person who owns a membership interest in the entity;

**"membership interest"** in an entity means a right, including a contingent right and whether of a legal or equitable nature, to participate in any income or capital of the entity and includes the interest of a partner in a partnership, the interest of a beneficiary in a trust and shares in a corporation;

**"midstream activities"** has the meaning ascribed to it under the Petroleum Act;

[Cap. 392]

**"mineral"** has the meaning ascribed to it under the Mining Act;

[Cap. 123]

**"mineral rights"** has the meaning ascribed to it under the Mining Act;

**"mining"** means intentionally winning minerals and every method or process by which mineral is won;

**"mining licence"** means special mining licence, mining licence or primary mining licence defined as such under the Mining Act;

[Cap. 123]

**"mining operations"** means prospecting, mining or operations connected with prospecting or mining carried out pursuant to mineral rights granted under the Mining Act;

[Cap. 123]

**"minor"** with respect to a year of income means an individual under the age of eighteen years at the end of the year of income;

**"money transfer agent"** means any person rendering money transfer service on behalf of the money transfer service provider;

**"money transfer commission"** means a payment in respect of money transfer service paid or payable to a money transfer agent;

**"National Oil Company"** has the meaning ascribed to it under the Petroleum Act;

[Cap. 392]

**"natural resource"** means minerals, petroleum, water or any other non-living or living resource that may be taken from land or the sea;

**"natural resource payment"** means any payment, including a premium or like amount, for the right to take natural resources from land or the sea or calculated in whole or part by reference to the quantity or value of natural resources taken from land or the sea;

**"net cost"** for an asset or liability to a particular time means—

- (a) in the case of a depreciable asset, its share of the written down value of the pool to which it belongs at that time apportioned according to the market value of all the assets in the pool; and
- (b) in the case of any other asset or a liability, the amount by which cumulative costs for the asset or liability exceed cumulative incomings for the asset or liability to the time;

**"net gains"** from the realisation of investment assets of an investment of a person for a year of income has the meaning ascribed to it by [section 36](#);

**"parastatal organisation"** means—

- (a) a local authority of the United Republic;
- (b) a body corporate established by or under any Act or Ordinance of the United Republic other than the Companies Act,

*[Cap. 212]*

and any company registered under the Companies Act where—

- (i) in the case of a company limited by shares, not less than fifty percent of the issued share capital of the company is owned by the Government or an organisation which is a parastatal organisation under this definition; or
- (ii) in the case of a company limited by guarantee—
  - (aa) the members of the company include the Government or an organisation which is a parastatal organisation under this definition; and
  - (bb) such members have undertaken to contribute not less than fifty percent of the amount to be contributed by members in the event of the company being wound up;

**"partnership"** means any association of individuals or bodies corporate carrying on business jointly, irrespective of whether the association is recorded in writing;

**"payment"** includes the transfer of assets or money, the transfer or decrease of a liability, the provision of services, the use or availability for use of money or an asset and the creation of an asset in another person;

**"permanent establishment"** means a place where a person carries on business and includes—

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

**"perpetual loss corporation rules"** means those rules set up by the definition of "income" in [section 3](#) and [sections 4\(1\)\(a\)](#) and [6\(1\)\(c\)](#) and paragraph 3(3) of the First Schedule;

**"person"** means an individual or an entity;

**"petroleum"** has the meaning ascribed to it under Petroleum Act;

*[Cap. 392]*

**"petroleum operations"** has the meaning ascribed to it under the Petroleum Act;

**"petroleum right"** means an exploration licence or a development licence granted under the Petroleum Act and includes—

- (a) separately, the interest of a contractor under a Production Sharing Agreement with respect to each exploration licence granted with respect to the contract area;
- (b) separately, the interest of a contractor under a Production Sharing Agreement with respect to each development licence granted with respect to the contract area; and
- (c) data or information pertaining to petroleum operations;

**"production operations"** has the meaning ascribed to it under the Petroleum Act;

[Cap. 392]

**"Production Sharing Agreement"** means—

- (a) an agreement concluded under section 47 of the Petroleum Act between the Government of the United Republic, the National Oil Company and another person "the contractor"; and

[Cap. 392]

- (b) a tripartite agreement between the Government of the United Republic, the National Oil Company and a contractor under which the National Oil Company engages the contractor to carry out on its behalf petroleum operations in an exploration or development area with respect to an exploration or development licence held by the National Oil Company;

**"prospecting"** with respect to mineral right means prospecting operations as provided for under section 4 of the Mining Act and includes retention under retention licence;

**"pool of depreciable assets of a person for a year of income"** has the meaning ascribed to it by paragraph 1 of the Third Schedule;

**"realisation"** of an asset has the meaning ascribed to it by [section 39](#), and of liability has the meaning ascribed to it under [section 40](#);

**"rehabilitation"** with respect to a mineral operations or with respect to processing, smelting or refining minerals means abandonment activities and includes reclamation, rehabilitation, restoration and closure of the operation as required by law or under the terms of the relevant mineral right or development agreement;

**"rehabilitation fund"** with respect to mining operations or with respect to processing, smelting or refining minerals means a fund—

- (a) required by law, a mineral right or under a development agreement and approved for that purpose by the Minister responsible for mining;
- (b) which is established to meet expenses to be incurred in the course of rehabilitation of the operations including expenses under an approved mine closure plan; and
- (c) where contributions to the fund are placed beyond the control of the person conducting the operations;

**"rehabilitation bond"** with respect of mining operation has the meaning ascribed to it by the Mining Act;

[Cap. 123]

**"relative"** means the individual's child, spouse, parent, grandparent, grandchild, sibling, aunt, uncle, nephew, niece or first cousin, including by way of marriage or adoption;

**"religious organisation"** means a resident entity of a public character established for the advancement religion that has been issued with ruling by the Commissioner under section 131 currently in force stating that, it is a religious organisation;

**"rent"** means any payment made by the lessee under a lease of a tangible asset including any premium and any other payment for the granting of the lease but excludes a natural resource payment and a royalty;

**"repatriated income"** has the meaning ascribed to it under [section 72](#);

**"residence"** or **"resident"** with respect to a person has the meaning ascribed to it under [section 66](#);

**"retention licence"** has the meaning ascribed to it under the Mining Act;

[Cap. 123]

**"retirement contribution"** means a payment made to a retirement fund for the provision or future provision of retirement payments;

**"retirement fund"** means any entity established and maintained solely for the purposes of accepting and investing retirement contributions in order to provide retirement payments to individuals who are beneficiaries of the entity;

**"retirement payment"** means a payment, by way of a lump sum, pension or commuted pension, made by a person to—

- (a) an individual in the event of the individual's retirement; or
- (b) a relative of an individual in the event of the individual's death;

**"return of income"** has the meaning ascribed to it by [section 91](#);

**"royalty"** means any payment made by the lessee under a lease of an intangible asset and includes payments for—

- (a) the use of, or the right to use, a copyright, patent, design, model, plan, secret formula or process or trademark;
- (b) the supply of know-how including information concerning industrial, commercial or scientific equipment or experience;
- (c) the use of, or right to use, a cinematography film, videotape, sound recording or any other like medium;
- (d) the use of, or right to use, industrial, commercial or scientific equipment;
- (e) the supply of assistance ancillary to a matter referred to in paragraphs (a) to (d); or
- (f) a total or partial forbearance with respect to a matter referred to in paragraphs (a) to (e),

but excludes a natural resource payment;

**"separate mining operation"** has the meaning ascribed to it under [section 65C](#);

**"separate petroleum operation"** has the meaning ascribed to it under [section 65L](#);

**"service"** has the meaning ascribed to it under sections 32 and 33 of the Tax Administration Act;

[Cap. 438]

**"service fee"** means a payment to the extent to which, based on market values, it is reasonably attributable to services rendered by a person through a business of that person or a business of any other person and includes a payment for any theatrical or musical performance, sports or acrobatic exhibition or any other entertainment performed, conducted, held or given;

**"service rendered"** means transmitting or delivering of service in the United Republic of Tanzania irrespective of the place of performance of service;

**"special mining licence"** has the meaning ascribed to it under the Mining Act;

[Cap. 123]

**"shareholder"** means a person who is a member of a corporation;

**"source"** has the meaning ascribed to it under sections [67](#), [68](#) or [69](#), as the case requires;

**"statutory rate"** in relation to calendar year means the prevailing discount rate determined by the Bank of Tanzania;

**"strategic investor"** means an investor who has been determined as such under the Tanzania Investment Act;

*[Cap. 38]*

**"tax"** has the meaning ascribed to it under [section 78](#);

**"technical service"** in respect of mining or petroleum operations, means services in respect of earthmoving, engineering and construction and includes geological, geotechnical and metallurgical services, seismic survey, data interpretation, drilling or any such services;

**"total income"** has the meaning ascribed to it under [section 5](#);

**"trading stock"** means assets owned by a person that are sold or intended to be sold in the ordinary course of a business of the person, work in progress on such assets and inventories of materials to be incorporated into such assets and includes, in the case of a person carrying on a banking business, loans made in the ordinary course of that business;

**"trust"** means an arrangement under which a trustee holds assets but excludes a partnership and a corporation;

**"trustee"—**

- (a) means an individual or body corporate holding assets in a fiduciary capacity for the benefit of identifiable persons or for some object permitted by law and whether or not the assets are held alone or jointly with other persons or the individual or body corporate is appointed or constituted trustee by personal acts, by will, by order or declaration of a court or by other operation of the law; and
- (b) includes—
  - (i) any executor, administrator, tutor or curator;
  - (ii) any liquidator, receiver, trustee in bankruptcy or judicial manager;
  - (iii) any person having the administration or control of assets subject to a usufruct, fideicommissum or other limited interest;
  - (iv) any person who manages the assets of an incapacitated individual; and
  - (v) any person who manages assets under a private foundation or other similar arrangements;

**"turnover"** in relation to a business by a resident person for the year of income, means an amount to be included in calculating the person's income under [section 8](#) without deducting any amount under Subdivision D of Division I of Part III;

**"unapproved retirement fund"** means a retirement fund that is not an approved retirement fund;

**"underlying ownership"—**

- (a) in relation to an entity, means membership interests owned in the entity, directly or indirectly through one or more interposed entities, by individuals or by entities in which no person has a membership interest; or
- (b) in relation to an asset owned by an entity, means the asset owned by the persons having underlying ownership of the entity in proportion to that ownership of the entity;

**"unit trust"** means—

- (a) an arrangement under which a trustee holds assets for the benefit of at least twenty persons; and
- (b) where the entitlements of the persons to participate in the income or capital of the arrangement are divided into units such that the entitlements are determined by the number of units owned;

**"upstream activities"** has the meaning ascribed to it under the Petroleum Act;

[Cap. 392]

**"withholdee"** means a person receiving or entitled to receive a payment from which income tax is required to be withheld under Subdivision A of Division II of Part VII;

**"withholding agent"** means a person required to withhold income tax from a payment under Subdivision A of Division II of Part VII;

**"written down value"** of a pool of depreciable assets—

- (a) at the end of a year of income has the meaning ascribed to it under paragraph 3(4) of the Third Schedule; and
- (b) at a particular time ("the time") during a year of income means—
  - (i) the written down value of the pool at the end of the previous year of income; plus
  - (ii) expenditure incurred prior to the time, which is added to the depreciation basis of the pool during the year of income or to be added during the following year of income under paragraph 3(5) of the Third Schedule; less
  - (iii) incomings derived during the year of income or to be derived with respect to a realisation occurring prior to the time in respect of assets that are or have been in the pool; and

**"year of income"** has the meaning ascribed to it under [section 20](#).

[Acts Nos. 13 of 2008 s. 13; 8 of 2012 s. 19; 4 of 2013 s. 18; 2 of 2014 s. 32; 10 of 2015 s. 113; 2 of 2016 s. 17; 4 of 2017 s. 17; 7 of 2017 s. 32A; 4 of 2018 s. 23; Cap. 438; Cap. 4 s. 8]

## Part II – Imposition of income tax

### 4. Charge of tax

- (1) Income tax shall be charged and is payable for each year of income in accordance with the procedure in Part VII by every person—
  - (a) who has total income for the year of income or is a corporation which has a perpetual unrelieved loss determined under [section 19](#) for the year of income and the previous two consecutive years of income;
  - (b) who has a domestic permanent establishment that has repatriated income for the year of income; or
  - (c) who receives a final withholding payment during the year of income.
- (2) The amount of income tax payable by a person for a year of income shall be equal to the sum of the income tax payable with respect to subsection (1).
- (3) Subject to the provisions of subsections (4) and (5), the income tax payable by a person with respect to subsection (1)(a) is calculated by—
  - (a) applying the relevant rates of income tax determined under paragraph 1, 3(1) or 3(3) of the First Schedule, as the case may be, to the person's total income or turnover for the year of income; and

- (b) subtracting from the resulting amount any tax credit that the person may claim for the year of income under [section 77](#).
- (4) The income tax payable with respect to subsection (1)(a) by a resident individual who is not required to file a return of income under [section 92\(a\)\(ii\)](#) (and who does not elect to file a return) shall be equal to the sum of the amounts to be withheld under section 81 by the individual's employer or employers from payments made to the individual during the year of income and the sum of instalments paid by the person under [section 90\(1\)](#) with respect to gains realised during the year of income.
- (5) Where a resident individual meets the requirements of paragraph 2(1) of the First Schedule with respect to a year of income, the income tax payable by the individual with respect to subsection (1)(a) for the year of income shall be equal to the amount of presumptive income tax provided in paragraph 2(3) of the First Schedule.
- (6) The income tax payable by a person with respect to subsection (1)(b) shall be calculated by applying the rate of income tax mentioned in paragraph 3(4) of the First Schedule to the permanent establishment's repatriated income for the year of income.
- (7) Subject to the provisions of [section 86\(4\)](#), the income tax payable by a person with respect to subsection (1) (c) shall be the sum of the amounts calculated by applying the relevant rates of income tax determined under paragraph 4 of the First Schedule to the amount of each final withholding payment received by the person during the year of income.
- (8) The income tax payable by a corporation with perpetual unrelieved loss for three consecutive years of income under paragraph (a) of subsection (1) shall not apply to a corporation conducting agricultural business or engaged in the provision of health or education.

[Act Nos. 13 of 2008 s. 14; 8 of 2012 s. 20; Cap. 4 s. 8]

### **Part III – Income tax base**

#### **Division I: Calculating the income tax base**

##### ***Subdivision A: Total income***

##### **5. Total income**

- (1) The total income of a person shall be the sum of the person's chargeable income for the year of income from each employment, business and investment less any reduction allowed for the year of income under [section 61](#) relating to retirement contributions to approved retirement funds.
- (2) The total income of each person shall be determined separately.

##### ***Subdivision B: Chargeable income***

##### **6. Chargeable income**

- (1) Subject to the provisions of subsection (2), the chargeable income of a person for a year of income from any employment, business or investment shall be—
  - (a) in the case of a resident person, the person's income from employment, business or investment for the year of income irrespective of the source of the income;
  - (b) in the case of a non-resident person, the person's income from employment, business or investment for the year of income, but only to the extent that the income has a source in the United Republic; and

- (c) in the case of a resident corporation which has perpetual unrelieved losses referred to in subsection (1)(a) of [section 4](#), the turnover of such corporation for a year of income.
- (2) The chargeable income of a resident individual who at the end of a year of income has been resident in the United Republic for two years or less in total during the whole of the individual's life shall be determined under subsection (1)(b).

*[Act No. 8 of 2012 s. 21; Cap. 4 s. 8]*

## 7. Income from employment

- (1) An individual's income from an employment for a year of income shall be the individual's gains or profits from the employment of the individual for the year of income.
- (2) Subject to the provisions of subsections (3), (4) and (5) in calculating an individual's gains or profits from an employment for a year of income the following payments made to or on behalf of the individual by the employer or an associate of the employer during that year of income shall be included:
  - (a) payments of wages, salary, payment in lieu of leave, fees, commissions, bonuses, gratuity or any subsistence travelling entertainment or other allowance received in respect of employment or service rendered;
  - (b) payments providing any discharge or reimbursement of expenditure incurred by the individual or an associate of the individual;
  - (c) payments for the individual's agreement to any conditions of the employment;
  - (d) retirement contributions and retirement payments;
  - (e) payment for redundancy or loss or termination of employment;
  - (f) other payment made in respect of employment including benefits in kind quantified in accordance with [section 27](#);
  - (g) other amounts as may be required to be included under Division II of this Part; and
  - (h) annual director's fees payable to a director other than a full time service director.
- (3) In calculating an individual's gains or profits from an employment, the following shall be excluded —
  - (a) exempt amounts and final withholding payments;
  - (b) on premises cafeteria services that are available on a non-discriminatory basis;
  - (c) medical services, payment for medical services, and payments for insurance for medical services to the extent that the services or payments are—
    - (i) available with respect to medical treatment of the individual, spouse of the individual and up to four of their children; and
    - (ii) made available by the employer and any associate of the employer conducting a similar or related business on a non-discriminatory basis;
  - (d) any subsistence, travelling, entertainment or other allowance that represents solely the reimbursement to the recipient of any amount expended by him wholly and exclusively in the production of his income from his employment or services rendered;
  - (e) benefits derived from the use of motor vehicle where the employer does not claim any deduction or relief in relation to the ownership, maintenance or operation of the vehicle;
  - (f) benefit derived from the use of residential premises by an employee of the Government or any institution whose budget is fully or substantially out of Government budget subvention;

- (g) payment providing passage of the individual, spouse of the individual and up to four of their children to or from a place of employment which correspond to the actual travelling cost where the individual is domiciled more than twenty miles from the place of employment and is recruited or engaged for employment solely in the service of the employer at the place of employment;
  - (h) retirement contributions and retirement payments exempted under the Public Service Social Security Fund Act;  
*[Cap. 371]*
  - (i) payment that it is unreasonable or administratively impracticable for the employer to account for or to allocate to their recipients;
  - (j) allowance payable to an employee who offers intramural private services to patients in a public hospital; and
  - (k) housing allowance, transport allowance, responsibility allowance, extra duty allowance, overtime allowance, hardship allowance and honoraria payable to an employee of the Government or its institution whose budget is fully or substantially paid out of Government budget subvention.
- (4) In calculating an individual's gains or profit from payment for redundancy or loss or termination of employment, any payment received in respect of a year of income which expired earlier than five years prior to the year of income in which it was received, or which the employment or services ceased, if earlier such payment shall, for the purposes of calculation of the tax payable thereon, be allocated equally between the years of income in which it is received or, if the employment or services ceased in an earlier year between such earlier year of income and the five years immediately preceding such year of income in which such payment is so received or as the case may be, such earlier year of income in which the employment or services ceased, and each such portion, allocated to any such year of income shall be deemed to be income of that year of income in addition to any other income in that year of income.
- (5) Where amount received as compensation for the termination of any contract of employment or services, whether or not provision is made in such contract for the payment of such compensation—
- (a) if the contract is for a specified term, the amount included in gains or profits shall not exceed the amount which would have been received in respect of the unexpired period of such contract and shall be deemed to have accrued evenly in such unexpired period;
  - (b) if the contract is for an unspecified term and provides for compensation on the termination thereof, such compensation shall be deemed to have accrued in the period immediately following such termination at a rate equal to the rate per annum of the gains or profits from such contract received immediately prior to such termination; and
  - (c) if the contract is for an unspecified term and does not provide for compensation on the termination thereof, any compensation paid on the termination thereof shall be deemed to have accrued in the period immediately following such termination at a rate equal to the rate per annum of the gains or profits from such contract received immediately prior to such termination, but the amount so included in gains or profits shall not exceed the amount of three years' remuneration at such rates.

*[Acts Nos. 6 of 2006 s. 13; 5 of 2011 s. 14; 2 of 2014 s. 33; Cap. 4 s. 8]*

## 8. Income from business

- (1) A person's income from a business for a year of income is the person's gains or profits from conducting the business for the year of income.

- (2) Subject to the provisions of subsection (3), there shall be included in calculating a person's gains or profits from conducting a business for a year of income the following amounts derived by the person from conducting the business during the year of income—
- (a) service fees;
  - (b) incomings for trading stock;
  - (c) gains from the realisation of business assets or liabilities of the business as calculated under Division III of this Part;
  - (d) amounts required to be included under paragraph 4 of the Third Schedule on the realisation of the person's depreciable assets of the business;
  - (e) amounts derived as consideration for accepting a restriction on the capacity to conduct the business;
  - (f) gifts and other *ex gratia* payments received by the person in respect of the business;
  - (g) amounts derived that are effectively connected with the business and that would otherwise be included in calculating the person's income from an investment; and
  - (h) the amount of tax benefit or advantage quantified under [section 27](#) or other amounts required to be included under Division II of this Part, Parts IV, V or VI.
- (3) The following are excluded in calculating a person's gains or profits from conducting a business—
- (a) exempt amounts and final withholding payments; and
  - (b) amounts that are included in calculating the person's income from any employment.

[Act No. 7 of 2017 s. 33]

## 9. Income from investment

- (1) A person's income from an investment for a year of income is the person's gains or profits from conducting the investment for the year of income.
- (2) Subject to the provisions of subsection (3), in calculating a person's gains or profits from conducting an investment for a year of income the following amounts derived by the person from conducting the investment during that year of income shall be included, namely—
- (a) any dividend, distribution of a trust, gains of an insured from life insurance, gains from an interest in an unapproved retirement fund, interest, natural resource payment, rent or royalty;
  - (b) net gains from the realisation of investment assets of the investment as calculated under Division III of this Part;
  - (c) amounts derived as consideration for accepting a restriction on the capacity to conduct the investment; and
  - (d) the amount of tax benefit or advantage quantified under section 27 of the Act or other amounts required to be included under Division II of this Part, Parts IV, V or VI.
- (3) In calculating a person's gains and profits from conducting an investment, the amounts shall be excluded, namely—
- (a) exempt amounts and final withholding payments; and
  - (b) amounts that are included in calculating the person's income from any employment or business.

[Act No. 15 of 2004 s. 27]

***Subdivision C: Exemption from tax*****10. Minister may exempt income from tax**

- (1) The Minister may, by order published in the *Gazette*, provide—
  - (a) that any income or class of incomes accrued in or derived from the United Republic shall be exempt from tax to the extent specified in such order; or
  - (b) that any exemption under the Second Schedule shall cease to have effect either generally or to such extent as may be specified in such order.
- (2) The Minister may, by order published in the *Gazette*, amend, vary or replace the Second Schedule.
- (3) Notwithstanding any law to the contrary, no exemption shall be provided from tax imposed by this Act and no agreement shall be concluded that affects or purports to affect the application of this Act, except as provided for—
  - (a) by the provisions of this Act;
  - (b) by an agreement:
    - (i) on a strategic project; and
    - (ii) on public interest,as may be approved by the Cabinet.

[Act No. 2 of 2017 s. 26]

***Subdivision D: Deductions*****11. General principles of deductions**

- (1) For purposes of calculating a person's income deduction shall not be allowed—
  - (a) for consumption expenditure incurred by the person or excluded expenditure incurred by the person; or
  - (b) otherwise, except as provided for by this Act.
- (2) Subject to this Act, for purposes of calculating a person's income for a year of income from any business or investment, there shall be deducted all expenditure incurred during the year of income, by the person wholly and exclusively in the production of income from the business or investment.
- (3) Deduction is not allowed under subsection (2) for expenditure of a capital nature.
- (4) For purposes of this section—

"consumption expenditure" means any expenditure incurred by any person in the maintenance of himself, his family or establishment, or for any other personal or domestic purpose;

"excluded expenditure" means—

  - (a) tax payable under this Act;
  - (b) bribes and expenditure incurred in corrupt practice;
  - (c) fines and similar penalties payable to a Government or a political subdivision of a Government of any country for breach of any law or subsidiary legislation;
  - (d) expenditure to the extent to which incurred by a person in deriving exempt amounts or final withholding payments;

- (e) distributions by an entity; or
- (f) withholding tax paid by a withholder; and

"expenditure of a capital nature" means expenditure that secures a benefit lasting longer than twelve months.

*[Acts Nos. 15 of 2010 s. 13; 4 of 2013 s. 19; 2 of 2016 s. 18; 4 of 2017 s. 18; Cap. 4 s. 8]*

## 12. Interest

- (1) For the purposes of [section 11\(2\)](#), interest incurred by a person during a year of income under a debt obligation shall be incurred wholly and exclusively in the production of income from a business or investment if—
  - (a) where the debt obligation was incurred in borrowing money, the money is employed during the year of income or was used to acquire an asset that is employed during the year of income wholly and exclusively in the production of income from the business or investment; or
  - (b) in any other case, the debt obligation was incurred wholly and exclusively in the production of income from the business or investment.
- (2) The total amount of interest that an exempt-controlled resident entity may deduct in accordance with [section 11\(2\)](#) for a year of income shall not exceed the sum of interest equivalent to debt-to-equity ratio of 7 to 3.
- (3) In this section, an entity is an exempt-controlled resident entity for a year of income if it is resident and at any time during the year of income twenty five percent or more of the underlying ownership of the entity is held by entities exempt under the Second Schedule, approved retirement funds, charitable organisations, non-resident persons or associates of such entities or persons.
- (4) Where there is a change of the amount of debt or equity, the amount of equity or debt shall be the average of balances of amount of debt or equity at the end of each period.
- (5) For purposes of this section—

"debt" means any debt obligation excluding:

- (i) a non-interest bearing debt obligation;
- (ii) a debt obligation owed to a resident financial institution; and
- (iii) a debt obligation owed to a non-resident bank or financial institution on whose interest tax is withheld in the United Republic;

"equity" means:

- (i) paid up share capital;
- (ii) paid up share premium; and
- (iii) retained earnings on an unconsolidated basis determined in accordance with generally accepted accounting principles; and

"period" means a month or part of a month.

*[Acts Nos. 15 of 2010 s. 14; 8 of 2012 s. 22]*

## 13. Trading stock

- (1) For purposes of calculating a person's income for a year of income from any business, there shall be deducted in respect of the trading stock of the business the allowance determined under subsection (2).

- (2) The allowance shall be calculated as—
- (a) the opening value of trading stock of the business for the year of income; plus
  - (b) expenditure incurred by the person during the year of income that is included in the cost of trading stock of the business; less
  - (c) the closing value of trading stock of the business for the year of income.
- (3) The opening value of trading stock of a business for a year of income shall be the closing value of trading stock of the business at the end of the previous year of income.
- (4) The closing value of trading stock of a business for a year of income shall be the lower of—
- (a) the cost of the trading stock of the business at the end of the year of income; or
  - (b) the market value of the trading stock of the business at the end of the year of income.
- (5) Where the closing value of trading stock is determined in accordance with subsection (4)(b), the cost of the trading stock shall be reset to that value.

*[Cap. 4 s. 8]*

#### **14. Repair and maintenance expenditure**

- (1) For purposes of calculating a person's income for a year of income from any business, there shall be deducted all expenditure to the extent incurred during the year of income, by the person and in respect of the repair or maintenance of depreciable assets owned and employed by the person wholly and exclusively in the production of income from the business.
- (2) Deductions shall not be allowed under subsection (1) for expenditure in improving an asset, but that expenditure may be included in the cost of the asset if the requirements of [section 37](#) are met.

*[Act No. 4. of 2017 s. 19; Cap. 4 s. 8]*

#### **15. Agriculture improvement, research development and environmental expenditure**

- (1) For the purposes of calculating a person's income for a year of income from any business, there shall be deducted agricultural improvement, research and development and environmental expenditure to the extent incurred by the person during the year of income in conducting the business.
- (2) For the purposes of this section—

"agricultural improvement expenditure" means expenditure incurred by the owner or occupier of farm land in conducting an agriculture, livestock farming or fish farming business where the expenditure is incurred in—

- (a) clearing the land and excavating irrigation channels; or
- (b) planting perennial crops or trees bearing crops;

"environmental expenditure" means expenditure incurred by the owner or occupier of farmland for prevention of soil erosion; and

"research and development expenditure" means expenditure incurred by a person in the process of developing the person's business and improving business products or process and includes expenditure incurred by a company for the purposes of an initial public offer and first listing on the Dar es Salaam Stock Exchange but excludes any expenditure incurred that is otherwise included in the cost of any asset used in the use in any such process, including an asset referred to in paragraph 1(3) of the Third Schedule.

*[Acts Nos. 10 of 2015 s. 114; 2 of 2016 s. 19]*

## 16. Gifts to public, charitable and religious institutions

- (1) For purposes of calculating a person's income for a year of income from any business, there shall be deducted—
  - (a) amounts contributed during the year of income to a charitable institution referred to in subsection (8) of [section 64](#) or social development project;
  - (b) any donation made under section 12 of the Education Fund Act; and
  - (c) amount paid to local government authority, which are statutory obligations to support community development projects.
- (2) The deduction available under subsection (1)(a) for a year of income shall not exceed two percent of the person's income from the business calculated without a deduction under that subsection.
- (3) For purposes of calculating a person's income for a year of income from any employment, there shall be deducted any donation made under section 12 of the Education Fund Act.

*[Cap. 412]*

- (4) Subject to subsection (3), an employee who makes a donation to the Fund may apply to the Commissioner for deduction.

*[Acts Nos. 13 of 2005 s. 9; 6 of 2006 s. 14; Cap. 412; Cap. 4. s. 8]*

## 17. Depreciation allowances for depreciable assets

For the purposes of calculating a person's income for a year of income from any business, there shall be deducted in respect of depreciation of depreciable assets owned and employed by the person during the year of income wholly and exclusively in the production of the person's income from the business the allowances granted under the Third Schedule.

## 18. Losses on realisation of business assets and liabilities

For purposes of calculating a person's income for a year of income from any business, there shall be deducted any loss of the person, as calculated under Division III of this Part, from the realisation during the year of income of—

- (a) a business asset of the business that is or was employed wholly and exclusively in the production of income from the business;
- (b) a debt obligation incurred in borrowing money, where the money is or was employed or an asset purchased with the money is or was employed wholly and exclusively in the production of income from the business; or
- (c) a liability of the business other than a debt obligation incurred in borrowing money, where the liability was incurred wholly and exclusively in the production of income from the business.

## 19. Losses from business or investment

- (1) For purposes of calculating the income of a person, other than a partnership or a foreign permanent establishment, for a year of income from a business or investment, there shall be deducted—
  - (a) any unrelieved loss of the year of income of the person from any other business or investment; and
  - (b) any unrelieved loss of a previous year of income of the person from any business or investment;

- (2) For purposes of subsection (1), a person may deduct an unrelieved loss—
- (a) in the case of a foreign source loss from an investment, only in calculating the person's foreign source income from an investment;
  - (b) in the case of other losses from an investment, only in calculating the person's income from an investment;
  - (c) in the case of other foreign source losses, only in calculating the person's foreign source income;
  - (d) in the case of loss incurred on agricultural business, only in calculating the person's income derived from agricultural business; and
  - (e) in the case of loss incurred in dealing with a speculative transaction, only in calculating the person's income derived from a speculative transaction.
- (3) Where a person calculates income for a year of income from more than one business or investment of the person, and deducts an unrelieved loss in more than one such calculation, the person may choose the calculation or calculations in which the loss or part of the loss is deducted.
- (4) For the purposes of this section—

"agricultural business" means the practice of rearing of crops or animals including forestry, beekeeping, aquaculture and farming with a view to deriving a profit but excludes processing of agricultural produce other than preparing such produce for the purpose of sale in its original form;

"loss" of a year of income of a person from any business or investment shall be calculated as the excess of amounts deducted in calculating the person's income from the business or investment over amounts included in calculating such income;

"speculative transaction" means—

- (a) a transaction which is a contract for sale or purchase of a commodity including stocks and shares settled otherwise than actual delivery or transfer of the commodity; or
- (b) any agreement for repurchase or resale, forward sale or purchase, futures contract, option or swap contract; and

"unrelieved loss" means the amount of a loss that has not been deducted in calculating a person's income under subsection (1) or [section 26\(3\)](#).

[Acts Nos. 15 of 2004 s. 28; 4 of 2013 s. 20; 2 of 2016 s. 20; 4 of 2017 s. 20]

## **Division II: Rules governing amounts used in calculating the income tax base**

### ***Subdivision A: Tax accounting and timing***

#### **20. Year of income**

- (1) Subject to the provisions of this section, the year of income for every person shall be the calendar year.
- (2) Subject to the provisions of subsections (6), (7) and (8), an entity may apply, in writing, to the Commissioner for approval to change the entity's year of income from—
  - (a) the calendar year; or
  - (b) a twelve-month period previously approved by the Commissioner under subsection (3), to another twelve-month period.

- (3) Where, in an application under subsection (2), the entity shows a compelling need to change the entity's year of income, the Commissioner may, by notice in writing, approve the application subject to any conditions as the Commissioner prescribes.
- (4) The Commissioner may, by notice in writing, revoke an approval granted to an entity under subsection (3).
- (5) Where an entity's year of income changes, the period between the end of its previous year of income and the beginning of its new year of income shall be another year of income of length of up to twelve months, or to eighteen months subject to the approval of the Commissioner.
- (6) The year of income for every person's foreign permanent establishment shall be the same as the year of income of its owner.
- (7) The year of income for every non-resident partnership, trust or corporation shall be the period, not exceeding twelve months, for which the entity makes up its accounts or, if it has no such period, the calendar year.
- (8) The initial year of income of a person shall be the period of twelve months or less or subject to the approval of Commissioner eighteen months or less from the time the person starts to exist until the end of the person's year of income as calculated according to the foregoing subsections.

## 21. Basis of accounting for income tax purposes

- (1) Subject to this Act, a person shall account for his income according to generally accepted accounting principles.
- (2) Notwithstanding the provisions of subsection (1), an individual shall account for income tax purposes on a cash basis in calculating the individual's income from an employment or investment.
- (3) A corporation shall account for income tax purposes on an accrual basis.
- (4) Unless the Commissioner prescribes otherwise by notice in writing, individuals in calculating income from a business, partnerships and trusts shall account for income tax purposes on either a cash or accrual basis according to the method that most clearly reflects the person's gains or profits.
- (5) Subject to the provisions of subsections (2) and (3), a person may apply in writing for a change in the person's basis of accounting for income tax purposes and the Commissioner may by notice in writing approve the application but only if satisfied that the change is necessary to clearly reflect the person's gains and profits.
- (6) Where any aspect of a person's basis of accounting for income tax purposes is changed, adjustments shall be made in the year of income of the change so that no item is omitted or taken into account more than once.
- (7) In this section "generally accepted accounting principles" means the principles adopted by the National Board of Accountants and Auditors.

*[Act No. 10 of 2015 s. 115]*

## 22. Cash basis accounting

Subject to this Act, a person who accounts for income tax purposes on a cash basis—

- (a) derives an amount and, therefore, shall include the amount in calculating the person's income or otherwise account for the amount as required by this Act when payment is received or made available to the person; and
- (b) incurs expenditure and, therefore, may deduct the expenditure in calculating the person's income or otherwise account for the expenditure as required by this Act when payment is made.

## 23. Accrual basis accounting

- (1) Subject to this Act, a person who accounts for income tax purposes on an accrual basis—
  - (a) derives an amount when it is receivable by the person; and
  - (b) incurs expenditure when it is payable by the person.
- (2) Subject to this Act, an amount is receivable by a person when the person becomes entitled to receive it, even if the time for discharge of the entitlement is postponed or the entitlement is payable by instalments.
- (3) Subject to this Act, an amount shall be treated as payable by a person when all the events that determine liability have occurred and the amount of the liability can be determined with reasonable accuracy, but not before economic performance with respect to the amount occurs.
- (4) For purposes of subsection (3), economic performance occurs—
  - (a) with respect to the acquisition of services or property, at the time the services or property are provided;
  - (b) with respect to the use of an asset, at the time the asset is used; or
  - (c) in any other case, at the time the person makes payment in full satisfaction of the liability.
- (5) Where in calculating income on an accrual basis—
  - (a) a person includes a payment of a particular quantity to which the person is entitled or deducts a payment of a particular quantity that the person is obliged to make; and
  - (b) subsequently that entitlement or obligation is satisfied by a payment received or made by the person, as the case requires, of a different quantity, including by reason of a change in currency valuations,

then appropriate adjustments shall be made at the time the payment is received or made so as to remedy the inaccuracy.

## 24. Claim of right

For purposes of sections [22](#) and [23](#), an amount shall be treated as derived or expenditure incurred by a person notwithstanding that the person is not legally entitled to receive the amount or liable to make the payment, if the person claims to be legally entitled to receive, or legally obliged to pay the amount.

## 25. Reverse of amounts including bad debts

- (1) Where a person has deducted expenditure in calculating the person's income and the person later recovers the expenditure, the person shall, at the time of recovery, include the amount recovered in calculating the person's income.
- (2) Where a person has included an amount in calculating the person's income and, because of a legal obligation to do so, the person later refunds the amount, the person may, at the time of refund, deduct the amount refunded in calculating the person's income.
- (3) Where in calculating income on an accrual basis a person deducts expenditure that the person shall be obliged to make and the person later disclaims an obligation to incur the expenditure, the person shall, at the time of disclaimer, include the amount disclaimed in calculating the person's income.
- (4) Subject to the provisions of subsection (5), where in calculating income on an accrual basis a person includes an amount to which the person is entitled and the person later—
  - (a) disclaims an entitlement to receive the amount; or

- (b) in the case where the amount constitutes a debt claim of the person, the person writes off the debt as bad,
- the person may, at the time of disclaimer or writing off, deduct the amount disclaimed or written off in calculating the person's income.
- (5) A person may disclaim the entitlement to receive an amount or write off as a bad debt claim of the person—
  - (a) in the case of a debt claim of a financial institution, after the debt claim has become a bad debt as determined in accordance with the relevant standards established by the Bank of Tanzania and that such institution has taken all reasonable steps in pursuing payment and the institution reasonably believes that debt claim will not be satisfied; and
  - (b) in any other case, only after the person has taken all reasonable steps in pursuing payment and the person reasonably believes that the entitlement or debt claim will not be satisfied.

*[Act No. 2 of 2014 s. 34]*

## **26. Long-term contracts**

- (1) In the case of a person accounting for income tax purposes on an accrual basis, amounts to be included or deducted in calculating income that relate to a long-term contract shall be taken into account on the basis of the percentage of the contract completed during each year of income.
- (2) The percentage of completion shall be determined by comparing the total expenditure allocated to the contract and incurred before the end of the year of income with the estimated total contract expenditure as determined at the time of commencement of the contract.
- (3) Where for the year of income in which a long-term contract is completed, the person has an unrelieved loss determined under [section 19](#) for the year of income or a previous year of income that is attributable to the long-term contract, the Commissioner may allow the loss to be—
  - (a) carried back to a previous year of income; and
  - (b) treated as an unrelieved loss for that year.
- (4) The amount treated as an unrelieved loss for a year of income under subsection (3)(b) shall not exceed the amount by which amounts included in calculating income for that year of income under the contract exceed deductions under the contract for the year.
- (5) An unrelieved loss for a year of income shall be attributable to a long-term contract to the extent that deductions in calculating the income from the business that relate to the contract exceed inclusions in that calculation that relate to the contract.
- (6) For purposes of this section, "long-term contract"—
  - (a) means a contract for manufacture, installation, or construction, or, in relation to each, the performance of related services, which is not completed within the year of income in which work under the contract commences; but
  - (b) excludes a contract estimated to be completed within six months of the date on which work under the contract commenced.
- (7) The regulations may apply the percentage of completion method to other types of contracts that span more than one year of income where the contract may accelerate expenditure in early years or delay income until later years of the contract.

### ***Subdivision B: Quantification, allocation and characterisation of amounts***

## 27. Quantification according to market value

- (1) A payment or amount to be included or deducted in calculating income shall be quantified as follows—
- (a) for payments consisting of the availability for use or use of a motor vehicle during a year of income provided in return for services whether by way of employment or otherwise or provided by an entity to a member or manager of the entity, the amount of the payment shall be as prescribed in the Fifth Schedule;
  - (b) for payments consisting of a loan provided in return for services whether by way of employment or otherwise or by an entity to a member or manager of the entity—
    - (i) where the loan is made by an employer to an employee, the term of the loan is less than twelve months and the aggregate amount of the loan and any similar loans outstanding at any time during the previous twelve months does not exceed three months basic salary, the quantity of the payment is nil; and
    - (ii) in any other case, the amount by which—
      - (aa) the interest that would have been paid by the payee during the year of income of the payee in which the payment is made if interest were payable under the loan at the statutory rate for the year of income, exceeds;
      - (bb) the interest paid by the payee during the year of income under the loan, if any;
  - (c) for payments consisting of the provision of premises including any furniture or other contents by an employer for residential occupation by an employee during a year of income, (i) or (ii), whichever is less, reduced by any rent paid for the occupation by the employee, where—
    - (i) is the market value rental of the part of the premises occupied by the employee for the period occupied during the year of income; and
    - (ii) is the greater of—
      - (aa) fifteen percent of the employee's total income for the year of income, calculated without accounting for the provision of the premises and, where the premises are occupied for only part of the year of income, apportioned as appropriate; and
      - (bb) expenditure claimed as a deduction by the employer in respect of the premises for the period of occupation by the employee during the year of income;
  - (d) for purposes of tax benefit or advantage, the amount of tax benefit or advantage shall be three hundred thirty percent of the actual tax benefit or advantage:

Provided that, for the purpose of this paragraph, tax benefits or advantage means benefit or advantage obtained by a person by shifting an obligation to pay income tax to another person; and
  - (e) in any other case, the amount prescribed by the regulations or, in the absence of regulations, the market value.
- (2) The amount of a payment is quantified without reduction for any income tax withheld from the payment under Subdivision A of Division II of Part VII.
- (3) The market value of an asset shall be determined without regard to any restriction on transfer of the asset or the fact that the asset is not otherwise convertible into a payment of money or money's worth.

*[Act No. 7 of 2017 s. 32(c)]*

## 28. Quantification in shillings

- (1) Subject to the provisions of subsection (4), for purposes of this Act, a person's tax payable, income and amounts to be included and deducted in calculating income shall be quantified in Tanzania shillings.
- (2) Subject to subsection (3), where an amount to be included or deducted in calculating income is quantified in a currency other than Tanzania shillings, the amount shall be converted at the exchange rate quoted by the Bank of Tanzania and applying between the currency and the shilling at the time the amount is taken into account for income tax purposes.
- (3) For purposes of subsection (2) and where the Commissioner permits, by notice in writing, a person may use the average exchange rate applying during the year of income as determined by the Commissioner.
- (4) The Commissioner may, by notice in writing, for a specified period of time and on such terms and conditions as he thinks fit, permit an entity to quantify amounts to be included and deducted in calculating income in any foreign currency that is convertible into Tanzania shillings.

## 29. Indirect payments

- (1) Subsection (2) shall apply where a person indirectly benefits from a payment or directs who is to be the payee of the payment and the payer, an associate of the payer or a third person under an arrangement with the payer or with an associate of the payer intends the payment to benefit the person.
- (2) Where this subsection applies, the Commissioner may, by practice note generally or by notice in writing served on the person—
  - (a) treat the person as the payee of the payment;
  - (b) treat the person as the payer of the payment; or
  - (c) treat the person as the payee of the payment and as making an equal payment to the person who would be considered the payee of the payment if this subsection were ignored.

## 30. Jointly owned investment

- (1) For purposes of calculating a person's income from an investment that is jointly owned with another person, amounts to be included and deducted in that calculation shall be apportioned among the joint owners in proportion to their respective interests in the investment.
- (2) Where the interests of joint owners cannot be ascertained they shall be treated as equal.

## 31. Compensation and recovery payments

Subject to the provisions of [section 25](#), where a person or an associate of the person derives an amount "the compensation amount" which compensates for or represents recovery of—

- (a) income or an amount to be included in calculating income, which the person expects or expected to derive; or
- (b) a loss or an amount to be deducted in calculating income, which the person has incurred or which the person expects or expected to incur,

the compensation amount shall be included in calculating income of the person and takes its character from the amount compensated for.

### 32. Annuities, instalment sales and finance leases

- (1) Payments made by a person under a finance lease or in acquiring an asset under an instalment sale, other than an instalment sale that provides for commercial periodic interest payable on balance outstanding, shall be treated as interest and a repayment of capital under a loan made by the lessor or seller to the lessee or buyer, as the case requires.
- (2) Payments made to a person under an annuity shall be treated as interest and a repayment of capital under a loan made by the person to the payer of the annuity.
- (3) The interest and repayment of capital under subsections (1) and (2) shall be calculated as if the loan were a blended loan with interest compounded six-monthly.
- (4) Where an asset is leased under a finance lease, the lessor shall be treated as transferring ownership of the asset to the lessee.
- (5) Subject to [section 44](#), where a person transfers an asset under an instalment sale or, by reason of subsection (4), under a finance lease—
  - (a) the person shall be treated as deriving an amount in respect of the transfer equal to the market value of the asset immediately before the transfer; and
  - (b) the person who acquires the asset shall be treated as incurring expenditure of an equal amount in acquiring the asset.
- (6) Where the lessee under a finance lease returns the asset to the lessor before ownership passes to the lessee, other than by reason of subsection (4), the lessee shall be treated as transferring ownership of the asset back to the lessor.
- (7) For purposes of this section—

"blended loan" means a loan under which payments by the borrower represent in part a payment of interest and in part a repayment of capital where the interest part is calculated on capital outstanding at the time of each payment and the rate of interest is uniform over the term of the loan;

"finance lease" means a lease where—

- (a) the lease agreement provides for transfer of ownership following the end of the lease term or the lessee has an option to acquire the asset after expiry of the lease term for a fixed or presupposed price;
- (b) the lease term exceeds seventy five percent of the useful life of the asset;
- (c) the estimated market value of the asset after expiry of the lease term is less than twenty percent of its market value at the start of the lease;
- (d) in the case of a lease that commences before the last twenty five percent of the useful life of the asset, the present value of the minimum lease payments equals or exceeds ninety percent of the market value of the asset at the start of the lease term; or
- (e) the asset is custom-made for the lessee and after expiry of the lease term the asset will not be of practical use to any person other than the lessee; and

"lease term" includes an additional period for which the lessee has an option to renew a lease.

### 33. Transfer pricing and other arrangements between associates

- (1) In any arrangement between persons who are associates, the persons shall quantify, apportion and allocate amounts to be included or deducted in calculating income between the persons as is necessary to reflect the total income or tax payable that would have arisen for them if the arrangement had been conducted at arm's length.

- (2) Where, in the opinion of the Commissioner, a person has failed to comply with the provisions of subsection (1), the Commissioner may make adjustments consistent with subsection (1) and in doing so the Commissioner may—
- (a) re-characterise the source and type of any income, loss, amount or payment; or
  - (b) apportion and allocate expenditure, including that referred to in [section 71\(2\)](#) incurred by one person in conducting a business that benefits an associate in conducting a business to the person and the associate based on the comparability analysis of the businesses.

*[Act No. 2 of 2016 s. 21]*

### 34. Income splitting

- (1) Where a person attempts to split income with another person, the Commissioner may, by notice in writing,
- (a) adjust amounts to be included or deducted in calculating the income of each person; or
  - (b) re-characterise the source and type of any income, loss, amount or payment,
- to prevent any reduction in tax payable as a result of the splitting of income.
- (2) Subject to the provisions of subsection (3), a reference in subsection (1) to a person attempting to split income includes a reference to a transfer, either directly or indirectly, between the person and an associate of the person of—
- (a) amounts to be derived or expenditure to be incurred; or
  - (b) an asset with the result that the transferee receives or enjoys amounts derived from owning the asset.
- (3) Subsection (2) applies only where the reason or one of the reasons for the transfer is to lower the tax payable by the person or the associate.
- (4) In determining under subsection (2) whether a person is seeking to split income, the Commissioner shall consider the market value of any payment made for the transfer.

### 35. \*\*\*

*[Repealed by Act [No. 10 of 2015](#) s. 116]*

## Division III: Assets and liabilities

### *Subdivision A: Central concepts*

### 36. Calculation of gains and losses

- (1) A person's gain from the realisation of an asset or liability is the amount by which the sum of the incomings for the asset or liability exceeds the cost of the asset or liability at the time of realisation.
- (2) The loss of a person from the realisation of an asset or liability is the amount by which the cost of the asset or liability exceeds the sum of the incomings for the asset or liability at the time of realisation.
- (3) Subject to the provisions of subsection (4), net gains from the realisation of investment assets of an investment of a person for a year of income are calculated as the sum of all gains from the realisation of investment assets of the investment during the year reduced by—
- (a) the total of all losses from the realisation of investment assets of the investment during the year;

- (b) any unrelieved net loss of any other investment of the person for the year; and
  - (c) any unrelieved net loss for a previous year of income of the investment or any other investment of the person.
- (4) A person may claim a reduction under subsection (3) with respect to a foreign source loss on the realisation of an asset or liability only to the extent that the amount, which the loss is to reduce, includes gains on the realisation of an asset or liability with a foreign source.
- (5) Where a person may use an unrelieved net loss of an investment in more than one calculation under subsection (3), the person may choose the calculation or calculations in which the loss or part of the loss is used, and is limited to one such use.
- (6) For purposes of this section, "unrelieved net loss" of an investment for a year of income means the excess of losses over gains from the realisation of investment assets of the investment during the year of income reduced by any amount of the excess that has previously been taken into account under subsection (3)(b) or (c).

*[Cap. 4 s. 8]*

### 37. Cost of asset

- (1) Subject to this Act, the cost of an asset of a person is the sum of—
- (a) expenditure incurred by the person in acquiring the asset including, where relevant, expenditure of construction, manufacture or production of the asset;
  - (b) expenditure incurred by the person in altering, improving, maintaining and repairing the asset;
  - (c) expenditure incurred by the person in realising the asset;
  - (d) incidental expenditure incurred by the person in acquiring and realising the asset; and
  - (e) any amount required—
    - (i) by Subdivision B of Division I of this Part to be directly included in calculating the person's income; or
    - (ii) that is an exempt amount or final withholding payment of the person;

but excludes consumption expenditure, excluded expenditure and expenditure to the extent to which it is directly deducted in calculating the person's income or included in the cost of another asset.

- (2) For purposes of determining the cost of trading stock of a business of a person—
- (a) no amount shall be included in respect of the repair, improvement or depreciation of depreciable assets; and
  - (b) subject to paragraph (a) but without otherwise limiting amounts to be included under subsection (1), the person shall use the absorption-cost method.
- (3) Where assets owned by a person, being—
- (a) trading stock; or
  - (b) any other type of asset prescribed by the regulations,

are fungible and not readily identifiable, the person may elect for the cost of the assets to be determined according to the first-in-first-out method or the average-cost method but, once chosen, the method may only be changed with the written permission of the Commissioner.

- (4) Where a person inherits an asset from a deceased, that person shall be treated as having incurred expenditure equal to the market value of that asset at the time of such acquisition.
- (5) Subject to the provisions of subsection (6), where a person becomes a resident of the United Republic for the first time, the net cost of an asset held by the person immediately before becoming resident is equal to the market value of the asset at that time.
- (6) Subsection (5) does not apply to an asset that was a domestic asset of the person immediately before becoming resident.
- (7) For purposes of this section—

"absorption-cost method" means the generally accepted accounting principle under which the cost of trading stock is the sum of direct asset costs, direct labour costs and factory overhead costs;

"average-cost method" means the generally accepted accounting principle under which costs are allocated to fungible assets of a particular type owned by a person based on a weighted average cost of all assets of that type owned by the person;

"direct labour costs" means expenditure incurred by a person on labour that directly relates to the production of trading stock;

"direct asset costs" means expenditure incurred by a person in acquiring any asset or assets, as described in subsection (1)(a), that constitutes trading stock or becomes an integral part of trading stock produced;

"factory overhead costs" means all expenditure incurred by a person in producing trading stock except direct labour and direct asset costs;

"first-in-first-out method" means the generally accepted accounting principle under which costs are allocated to a fungible asset of a particular type owned by a person based on the assumption that assets of that type owned by the person are realised in the order of their acquisition; and

"incidental expenditure" incurred by a person in acquiring or realising an asset includes—

- (a) advertising expenditure, taxes, duties and other expenditure of transfer; and
- (b) expenditure of establishing, preserving or defending ownership of the asset,

and the expenditure referred to in paragraphs (a) and (b) includes any related remuneration for the services of an accountant, agent, auctioneer, broker, consultant, legal advisor, surveyor or valuer.

*[Act No. 2 of 2016 s. 22]*

### 38. Incomings for asset

Subject to this Act, incomings for an asset of a person means—

- (a) amounts derived by the person in respect of owning the asset including—
  - (i) amounts derived from altering or decreasing the value of the asset; and
  - (ii) amounts derived under the asset including by way of covenant to repair or otherwise; and
- (b) amounts derived or to be derived by the person in respect of realising the asset,

but excludes any amount to the extent that it is an exempt amount, a final withholding payment or, other than in the case of trading stock, an amount to be directly included in calculating the person's income under Subdivision B of Division I of this Part.

### 39. Realisation

A person who owns an asset shall be treated as realising the asset—

- (a) subject to paragraph (b), when the person parts with ownership of the asset including when the asset is sold, exchanged, transferred, distributed, cancelled, redeemed, destroyed, lost, expired or surrendered;
- (b) in the case of an asset of a person who ceases to exist, excluding a deceased individual, immediately before the person ceases to exist;
- (c) in the case of an asset other than a Class 1, 2, 3, 5, 6 or 8 depreciable asset or trading stock, where the sum of the incomings for the asset exceeds the cost of the asset;
- (d) in the case of an asset that is a debt claim owned by a financial institution, when the debt claim becomes a bad debt as determined in accordance with the relevant standards established by the Bank of Tanzania and the institution writes the debt off as bad after such institution had taken all reasonable steps in pursuing payment and the institution reasonably believes that the debt claim will not be satisfied;
- (e) in the case of an asset that is a debt claim owned by a person other than a financial institution, the person reasonably believes the debt claim shall not be satisfied, the person has taken all reasonable steps in pursuing the debt claim and the person writes the debt off as bad;
- (f) in the case of an asset that is a business asset, depreciable asset, investment asset or trading;
- (g) in the case of a foreign currency debt claim when such debt is actually paid; or
- (h) in the case of an asset owned by an entity, in the circumstances referred to in [section 56\(1\)](#).

[Acts Nos. 15 of 2004 s. 29; 8 of 2012 s. 23; 2 of 2014 s. 35; 2 of 2016 s. 23]

### 40. Application of this Division to liabilities

- (1) The costs and incomings of a liability of a person shall be determined consistently with sections [37](#) and [38](#) as though a reference to an asset were a reference to a liability and the following shall be included:
  - (a) in the costs, expenditure incurred in realising the liability; and
  - (b) in the incomings, amounts derived in respect of incurring the liability.
- (2) A person who owes a liability shall be treated as realising the liability—
  - (a) subject to paragraph (b), when the person ceases to owe the liability including when the liability is transferred, satisfied, cancelled, released or expired;
  - (b) in the case of a liability of a person who ceases to exist, excluding a deceased individual, immediately before the person ceases to exist;
  - (c) in the case of a foreign currency debt obligation, when such debt is actually paid;
  - (d) in the case of a liability of an entity, in the circumstances referred to in [section 56 \(1\)](#); and
  - (e) subject to the provisions of subsection (3), in the case of a liability owed by a resident person, immediately before the person becomes a nonresident person, other than liabilities owed by the person through a permanent establishment situated in the United Republic immediately after becoming non-resident.
- (3) Subject to the provisions of any regulations, the provisions of Subdivision B shall apply, with any necessary adaptations, to liabilities in a manner similar to that in which they apply to assets.

[Act No. 8 of 2012 s. 24]

#### 41. Reverse, quantification and compensation for costs and incomings

- (1) Subject to the provisions of [section 25](#), where a person has included expenditure in the cost of an asset or liability and later recovers the expenditure, the person shall include the amount recovered in the incomings for the asset or liability, as the case requires.
- (2) Subject to the provisions of [section 25](#), where a person has included an amount derived in the incomings for an asset or liability and, because of a legal obligation to do so, later refunds the amount, the person may include the amount refunded in the cost of the asset.
- (3) [Section 28](#) applies to the cost of and incomings for an asset or liability in the same manner as it applies to amounts to be included and deducted in calculating income.
- (4) Subject to any or other adjustment under this Act, where a person or an associate of a person derives an amount "the compensation amount" which compensates for or represents recovery of actual or expected costs or incomings for an asset or liability or a loss in value of an asset or increase in a liability, the compensation amount shall be included in the incomings for the asset or liability, as the case requires.

#### *Subdivision B: Special rules*

#### 42. Realisation with retention of asset

Where a person realises an asset in any of the manners described in [section 39\(d\)](#) to (h)—

- (a) the person shall be treated as having parted with ownership of the asset and deriving an amount in respect of the realisation equal to the market value of the asset at the time of the realisation; and
- (b) the person shall be treated as reacquiring the asset and incurring expenditure of the amount referred to in paragraph (a) in the acquisition.

[Cap. 4 s. 8]

#### 43. Transfer of asset to spouse or former spouse

Where on divorce settlement or *bona fide* separation agreement an individual transfers an asset to a spouse or former spouse and an election for this subsection to apply is made by the spouse or former spouse in writing—

- (a) the individual is treated as deriving an amount in respect of the realisation equal to the net cost of the asset immediately before the realisation; and
- (b) the spouse or former spouse is treated as incurring expenditure of the amount referred to in paragraph (a) in acquiring the asset.

#### 44. Transfer of asset to associate or for no consideration

- (1) Subject to the provisions of this section and [section 43](#), where a person realises an asset by way of transfer of ownership of the asset to an associate of the person or by way of transfer to any other person by way of gift—
  - (a) the person shall be treated as deriving an amount in respect of the realisation equal to the greater of the market value of the asset or the net cost of the asset immediately before the realisation; and
  - (c) the person who acquires ownership of the asset shall be treated as incurring expenditure of the amount referred to in paragraph (a) in the acquisition.

[Please note: numbering as in original.]

- (2) Where a person realises an asset, being a business asset, depreciable asset or trading stock, by way of transfer of ownership of the asset to an associate of the person and the requirements of subsection (4) are met—
  - (a) the person shall be treated as deriving an amount in respect of the realisation equal to the net cost of the asset immediately before the realisation; and
  - (b) the associate shall be treated as incurring expenditure of the amount referred to in paragraph (a) in acquiring the asset.
- (3) For purposes of subsection (2), the net cost of a depreciable asset at the time of its realisation is equal to its share of the written down value of the pool to which it belongs at that time apportioned according to the market value of all the assets in the pool.
- (4) The requirements specified in subsection (2) shall be—
  - (a) either the person or the associate is an entity;
  - (b) the asset or assets are business assets, depreciable assets or trading stock of the associate immediately after transfer by the person;
  - (c) at the time of the transfer—
    - (i) the person and the associate are residents; and
    - (ii) the associate or, in the case of an associate partnership, none of its partners is exempt from income tax;
  - (d) there is continuity of underlying ownership in the asset of at least fifty percent; and
  - (e) an election for subsection (2) to apply is made by both the person and the associate in writing.

#### 45. Involuntary realisation of asset with replacement

- (1) This section shall apply where a person involuntarily realises an asset in any of the manners described in [section 39\(a\)](#), acquires a replacement asset of the same type within one year of the realisation and elects in writing for this subsection to apply.
- (2) Where this section applies, the person shall be treated as—
  - (a) deriving an amount in respect of the realisation equal to—
    - (i) the net cost of the asset immediately before the realisation; plus
    - (ii) the amount, if any, by which amounts derived in respect of the realisation exceed expenditure incurred in acquiring the replacement asset, calculated ignoring this section; and
  - (b) incurring expenditure in acquiring the replacement asset equal to—
    - (i) the amount referred to in paragraph (a)(i); plus
    - (ii) the amount, if any, by which expenditure incurred in acquiring the replacement asset exceed amounts derived in respect of the realisation calculated ignoring this section.
- (3) For purposes of this section, the net cost of a depreciable asset at the time of its realisation is equal to its share of the written down value of the pool to which it belongs at that time apportioned according to the market value of all the assets in the pool.

- (4) The regulations may prescribe the circumstances in which the replacement of one security in a corporation with another security in a corporation, including as a result of reconstruction, constitutes an involuntary realisation.

*[Cap. 4 s. 8]*

#### **46. Realisation by separation**

Subject to the provisions of [section 32](#), where rights or obligations with respect to an asset owned by one person are created in another person, including by way of lease of an asset or part thereof, then—

- (a) where the rights or obligations are permanent, the person shall be treated as realising part of the asset but is not treated as acquiring any new asset or liability; and
- (c) where the rights or obligations are temporary or contingent, the person is not treated as realising part of the asset or liability but as acquiring a new asset.

*[Please note: numbering as in original.]*

#### **47. Apportionment of costs and incomings**

- (1) Where a person acquires one or more assets by way of transfer at the same time or as part of the same arrangement, the expenditure incurred in acquiring each asset shall be apportioned between the assets according to their market values at the time of acquisition.
- (2) Where a person realises one or more assets by way of transfer at the same time or as part of the same arrangement, the amounts derived in realising each asset shall be apportioned between the assets according to their market values at the time of realisation.
- (3) Where a person who owns an asset realises part of it, the net cost of the asset immediately before the realisation shall be apportioned between the part of the asset realised and the part retained according to their market values immediately after the realisation.

### **Part IV – Rules applicable to particular types of persons**

#### **Division I: In general**

##### ***Subdivision A: Partnerships***

#### **48. Principles of taxation**

- (1) Notwithstanding [section 4](#) but subject to the rest of this Act, a partnership shall not be liable to pay income tax with respect to its total income and shall not be entitled to any tax credit with respect to that income.
- (2) Partnership income or a partnership loss of a partnership shall be allocated to the partners in accordance with this Subdivision.
- (3) Amounts derived and expenditure incurred by partners in common shall be treated as derived or incurred by partnership and not the partners.
- (4) Assets owned and liabilities owed by partners in common shall be treated as owned or owed by the partnership and not the partners and shall be treated as—
- (a) in the case of assets, acquired when they begin to be so owned;
- (b) in the case of liabilities, incurred when they begin to be so owed; and
- (c) realised when they cease to be so owned or owed.

- (5) All activities of a partnership shall be treated as conducted in the course of the partnership business.
- (6) Subject to this Part and Division II of Part III, arrangements between a partnership and its partners shall be recognised other than the following, which are taken into account in determining a partner's share under [section 50\(4\)](#)—
  - (a) loans made by a partner to a partnership and any interest paid with respect thereto; and
  - (c) services provided by a partner to a partnership, including by way of employment, and any service fee or income from employment payable with respect thereto.

*[Please note: numbering as in original.]*
- (7) Subject to any consequences under [section 56](#), if on the change of partners in a partnership at least two existing partners continue, the partnership shall be treated as the same entity both before and after the change.

#### 49. Partnership income or loss

- (1) Partnership income from a business of a resident or non-resident partnership for a year of income shall be the chargeable income of the partnership for the year of income from the business calculated as if the partnership were a resident partnership.
- (2) A partnership loss from a business of a resident or non-resident partnership for a year of income shall be the loss of the partnership for the year of income from the business calculated under [section 19\(4\)](#).

#### 50. Taxation of partners

- (1) For purposes of calculating a partner's income from a partnership for a year of income of the partner there shall be—
  - (a) included the partner's share of any partnership income under [section 49\(1\)](#); and
  - (b) deducted the partner's share of any partnership loss under [section 49\(2\)](#),for a year of income of the partnership ending on the last day of or during the year of income of the partner.
- (2) Partnership income or a partnership loss allocated to partners under subsection (1)—
  - (a) shall retain its character as to type and source;
  - (b) shall be treated as an amount derived or expenditure incurred, respectively, by a partner at the end of the partnership's year of income; and
  - (c) shall be allocated to the partners proportionately to each partner's share, unless the Commissioner, by notice in writing, permits otherwise.
- (3) At the time partnership income is treated as derived by partners under subsection (2)(b), any income tax under this Act or foreign income tax paid or treated as paid by the partnership with respect to the partnership income shall be allocated to the partners, proportionately to each partner's share, and treated as having been paid by them.
- (4) For purposes of this section and subject to [section 48\(6\)](#), a "partner's share" is equal to the partner's percentage interest in any income of the partnership as set out in the partnership arrangement.

**51. Cost and incomings of partner's membership interest in partnership**

- (1) The following costs and incomings shall be included in the cost of a partner's membership interest in a partnership, namely—
  - (a) amounts included in calculating the partner's income under [section 50](#) (1)(a), at the time of that inclusion; and
  - (b) the partner's share determined under section 50(4) of exempt amounts and final withholding payments derived by the partnership at the time the amount or payment is derived.
- (2) The following shall be included in the incomings for a partner's membership interest in a partnership—
  - (a) amounts deducted in calculating the partner's income under [section 50](#)(1)(b), at the time of deduction;
  - (b) distributions made by the partnership to the partner, at the time of distribution; and
  - (c) the partner's share determined under section 50(4) of consumption or excluded expenditure incurred by the partnership, at the time the expenditure is incurred.

***Subdivision B: Trusts*****52. Taxation of trusts**

- (1) A trust or unit trust shall be liable to tax separately from its beneficiaries and separate calculations of total income shall be made for separate trusts regardless of whether they have the same trustees.
- (2) Distributions—
  - (a) of a resident trust or unit trust shall be exempt in the hands of the trust's beneficiaries; and
  - (b) of a non-resident trust or unit trust shall be included in calculating the income of the trust's beneficiaries.
- (3) Amounts derived and expenditure incurred by a trust or a trustee in the capacity of trustee other than as a bare agent, whether or not derived or incurred on behalf of another person and whether or not any other person is entitled to such an amount or income constituted by such an amount, shall be treated as derived or incurred by the trust and not any other person.
- (4) Assets owned and liabilities owed by a trust or a trustee in the capacity of trustee other than as a bare agent shall be treated as owned or owed by the trust and not any other person.
- (5) Where a receiver referred to in section 66(5) of the Tax Administration Act is a trustee—
  - (a) the trust shall be treated as conducting or continuing the activities of the person whose assets come into the possession of the receiver; and
  - (b) amounts derived and expenditure incurred by the trust shall be included in calculating the income of the trust in the same manner as they would have been included in calculating the income of the person if they were derived or incurred by the person prior to the event resulting in the appointment of the receiver.

*[Cap. 438]*

- (6) Subject to this Part and Division II of Part III, arrangements between a trust and its trustees or beneficiaries shall be recognised.

*[Act No. 10. of 2015 s. 117]*

***Subdivision C: Corporations***

**53. Taxation of corporations**

- (1) A corporation shall be liable to tax separately from its shareholders.
- (2) Amounts derived and expenditure incurred jointly or in common by the managers or shareholders for the purposes of a corporation that lacks legal capacity, shall be treated as derived or incurred by the corporation and not any other person.
- (3) Assets owned and liabilities owed jointly or in common by the managers or shareholders for the purposes of a corporation that lacks legal capacity shall be treated as owned or owed by the corporation and not any other person.
- (4) Subject to this Part and Division II of Part III, arrangements between a corporation and its managers or shareholders shall be recognised.

**54. Taxation of shareholders**

- (1) Dividends—
  - (a) distributed by a resident corporation shall be taxed in the hands of the corporation's shareholders in the form of a final withholding tax; and
  - (b) distributed by a non-resident corporation shall be included in calculating the income of the shareholders.
- (2) A dividend distributed by a resident corporation to another resident corporation shall be taxed at the rate provided for in the First Schedule where the corporation receiving the dividend holds twenty five percent or more of the shares in the corporation distributing the dividend and controls, either directly or indirectly, twenty five percent or more of the voting power in the corporation.

*[Acts Nos. 8 of 2012 s. 25; 2 of 2014 s. 36; 2 of 2016 s. 24]*

**Division II: General provisions applicable to entities****55. Asset dealings between entities and members**

Subject to the provisions of [section 44\(2\)](#), where an asset is realised by way of transfer of ownership of the asset by an entity to one of its members or vice versa—

- (a) the transferor shall be treated as deriving an amount in respect of the realisation equal to the market value of the asset immediately before the realisation; and
- (b) the transferee shall be treated as incurring expenditure of the amount referred to in paragraph (a) in the acquisition.

**56. Change in control**

- (1) Where the underlying ownership of an entity changes by more than fifty percent as compared with that ownership at any time during the previous three years, the entity shall be treated as realising any assets owned and any liabilities owed by it immediately before the change.
- (2) Subject to the provisions of subsection (4), where there is a change in ownership of the type referred to in subsection (1), after the change the entity shall not be permitted to—
  - (a) deduct a loss under [section 19\(1\)](#) that was incurred by the entity prior to the change;
  - (b) in a case where the entity has, prior to the change, included an amount in calculating income in terms of [section 25\(2\)](#) or (4), claim a deduction under those provisions after the change;

- (c) carry back a loss under [section 26\(3\)](#) that was incurred after the change to a year of income occurring before the change;
  - (d) reduce under [section 36\(3\)](#) gains from the realisation of investment assets after the change by losses on the realisation of investment assets before the change; or
  - (e) carry forward foreign income tax under [section 77\(3\)](#) that was originally paid with respect to foreign source income derived by the entity prior to the change.
- (3) Where there is a change in ownership of the type referred to in subsection (1) during a year of income of the entity, the parts of the year of income before and after the change shall be treated as separate years of income.
- (4) The provisions of subsection (2) shall not apply where for a period of two years after a change of the type mentioned in subsection (1), the entity—
- (a) conducts the business or, where more than one business was conducted, all of the businesses that it conducted at any time during the twelve month period before the change and conducts them in the same manner as during the twelve month period; and
  - (b) conducts no business or investment other than those conducted at any time during the twelve month period before the change.
- (5) The entity shall have the duty to report to the Commissioner immediately before and after the changes referred to under subsection (1) have occurred.

*[Acts Nos. 8 of 2012 s. 26; 2 of 2014 s. 37; 15 of 2015 s. 17; 2 of 2016 s. 25; Cap. 4 s. 8]*

## **57. Income or dividend stripping**

- (1) Where a distribution is made by an entity to an acquirer in the course of an income or dividend stripping arrangement, the arrangement shall be treated as though—
- (a) the payment referred to in subsection (2) is a distribution made by the entity to the original member of the entity; and
  - (b) the distribution made by the entity to the acquirer is in an amount equal to the distribution less the amount of the payment.
- (2) For the purpose of subsection (1) "income or dividend stripping arrangement" means an arrangement under which—
- (a) an entity has accumulated, current or expected income "the "income";
  - (b) a person "the acquirer" acquires a membership interest in the entity and the acquirer or an associate of the acquirer makes a payment "the payment", whether or not in respect of the acquisition and whether or not the payment is at the time of acquisition, to another person who is or was a member in the entity "the original member" or an associate of such another person;
  - (c) the payment reflects, in whole or in part, the income of the entity; and
  - (d) after the acquirer acquires the interest in the entity, the entity makes a distribution to the acquirer that represents, in whole or in part, the income.

## Part V – Special industries

### Division I: Insurance business

#### 58. General insurance business

- (1) For purposes of this Act, a person's activities in conducting a general insurance business shall be treated as a business separate from any other activity of the person and the person's income or loss from the business for any year of income shall be calculated separately.
- (2) For purposes of calculating the income of a person for a year of income from a general insurance business—
  - (a) there shall be included, together with any other amounts to be included under other provisions of this Act—
    - (i) premiums derived during the year of income by the person as insurer, including as re-insurer, in conducting the business; and
    - (ii) proceeds derived during the year of income by the person under any contract of re-insurance in respect of proceeds referred to in paragraph (b)(i); and
  - (b) there shall be deducted, together with any other amounts deductible under other provisions of this Act—
    - (i) proceeds incurred during the year of income by the person as insurer, including as re-insurer, in conducting the business; and
    - (ii) premiums incurred during the year of income by the person under any contract of re-insurance in respect of proceeds referred to in subparagraph (i).

[Cap. 4 s. 8]

#### 59. Life insurance business

- (1) For purposes of this Act, a person's activities in conducting a life insurance business shall be treated as a business separate from any other activity of the person and the person's income or loss from the business for any year of income shall be calculated separately.
- (2) For purposes of calculating the income of a person for a year of income from a life insurance business—
  - (a) there shall be included any amounts to be included under other provisions of this Act but the following amounts shall not be included and not be an income of the person—
    - (i) premium derived during the year of income by the person as insurer, including as re-insurer, in conducting the business; and
    - (ii) proceeds derived during the year of income by the person under any contract of re-insurance in respect of proceeds referred to in paragraph (b)(i); and
  - (b) there shall be deducted only the expenses of managing the business's investments including commission that are deductible under other provisions of this Act but the following amounts shall not be deductible and not be included in the cost of any asset or liability of the person—
    - (i) proceeds incurred during the year of income by the person as insurer, including as re-insurer, in conducting the business; and
    - (ii) premiums incurred during the year of income by the person under any contract of re-insurance in respect of proceeds referred to in subparagraph (i).

**60. Proceeds from insurance**

- (1) Subject to subsection (2) and sections [58](#) and [59](#), for purposes of calculating the income of a person, the treatment of proceeds derived by the person from insurance shall be determined in accordance with [section 31](#).
- (2) Subject to the provisions of sections [58](#) and [59](#), gains of an insured from life insurance shall be—
  - (a) in the case where the proceeds are paid by a resident insurer, exempt in the hands of the insured; and
  - (b) in the case where the proceeds are paid by a non-resident insurer, included in calculating the income of the insured.
- (3) For purposes of this section, "gains of an insured from life insurance" means the extent to which proceeds from life insurance paid by an insurer exceed premiums paid to the insurer with respect to the insurance.

*[Cap. 4 s. 8]*

**Division II: Retirement savings****61. Retirement contributions to approved retirement fund**

- (1) Subject to the provisions of subsection (2), an individual may claim a reduction in calculating total income for a year of income equal to retirement contributions made during the year of income by—
  - (a) the individual; or
  - (b) an employer of the individual where the contribution is included in calculating the individual's income from the employment,to an approved retirement fund in respect of an interest of the individual or a spouse of the individual in the fund.
- (2) The reduction claimed by an individual under subsection (1) for any year of income shall be the actual contribution or the statutory amount required whichever is lesser.

**62. Taxation of retirement funds**

- (1) Subject to the provisions of this section, the provisions of Parts III and IV shall apply to a retirement fund and the calculation of income of a retirement fund.
- (2) For purposes of calculating the income of a retirement fund—
  - (a) retirement contributions received by the fund shall not be included in the calculation and shall not be an incoming of the fund; and
  - (b) retirement payments shall not be deductible and are not included in the cost of any asset or liability of the fund.
- (3) Where an approved retirement fund ceases to be an approved retirement fund during a year of income, its income tax payable under [section 4\(1\)\(a\)](#) for the year of income shall be increased by an amount equal to the income tax rate applicable to corporations applied to—
  - (a) all retirement contributions received by the fund from or on behalf of resident individuals and total income of the fund during the period from its most recent approval as an approved retirement fund to when it ceased to be so approved, less;

- (b) all retirement payments made by the fund from its most recent approval as an approved retirement fund to when it ceased to be so approved in respect of individuals who were resident during that period.

*[Act No. 15 of 2004 s. 30]*

### **63. Retirement payments**

- (1) Gains from an interest in an unapproved retirement fund shall be—
  - (a) in the case where the retirement payments are paid by a resident fund, exempt in the hands of the payee; and
  - (b) in the case where the retirement payments are paid by a non-resident fund, included in calculating the income of the payee.
- (2) For purposes of this section, "gain from an interest in an unapproved retirement fund" means the extent to which retirement payments made by an unapproved retirement fund in respect of an interest in the fund exceed retirement contributions paid to the fund in respect of the interest.

*[Act No. 15 of 2004 s. 31]*

## **Division III: Charitable organisations, clubs and trade associations**

### **64. Charitable organisations**

- (1) A charitable organisation or religious organisation shall be treated as conducting a business with respect to its functions referred to in subsection (8) as the "charitable business".
- (2) For purposes of calculating the income of a charitable organisation or religious organisation for any year of income from its charitable business—
  - (a) there shall be included, together with any other amounts required to be included under other provisions of this Act, all gifts and donations received by the organisation; and
  - (b) there shall be deducted, together with any other amounts deductible under other provisions of this Act—
    - (i) amounts applied in pursuit of the organisation or religious organisation's functions referred to in subsection (8) by providing reasonable benefits to resident persons or, where the expenditure on the benefits has a source in the United Republic, persons resident anywhere; and
    - (ii) twenty five percent of the organisation or religious organisation's income from its charitable business calculated without any deduction under subparagraph (i) and any investments.
- (3) This subsection shall apply to any amount applied by a charitable organisation or religious organisation during a year of income other than in the manner referred to in subsection (2)(b)(i) or as a reasonable payment to a person for assets or services rendered to the organisation by the person.
- (4) Where subsection (3) applies—
  - (a) the organisation or religious organisation shall be treated as conducting a business other than its charitable business; and
  - (b) the sum of amounts to which that subsection applies for the year of income less any income of the organisation or religious organisation from a business other than its charitable business or business referred to in paragraph (a) shall be treated as income of

the organisation or religious organisation that has a source in the United Republic derived during the year of income from the business referred to in paragraph (a).

- (5) Notwithstanding the provision of [section 19](#), a charitable organisation or religious organisation—
- (a) may not set any loss from its charitable business against its income from any other business; and
  - (b) may only set losses from any other business against income from any such other business.
- (6) Where a charitable organisation or religious organisation ceases to be a charitable organisation or religious organisation during a year of income—
- (a) the organisation or religious organisation shall be treated as conducting a business other than its previous charitable business; and
  - (b) there shall be included in calculating the organisation or religious organisation's income for the year of income from the business referred to in paragraph (a) any amounts claimed as a deduction under subsection (2)(b)(ii) during that year of income or any prior year of income during which the organisation was a charitable organisation or religious organisation.
- (7) Where a charitable organisation or religious organisation wishes to save funds for a project that is detailed in material particulars and which the organisation is committed to, the organisation or religious organisation may apply to the Commissioner and the Commissioner may approve the saving as meeting the requirements of subsection (2)(b)(i).
- (8) For purposes of this section, "charitable organisation" means a resident entity of a public character that satisfies the following conditions:
- (a) the entity was established and functions solely as an organisation for:
    - (i) the relief of poverty or distress of the public;
    - (ii) the advancement of education; or
    - (iii) the provision of general public health, education, water or road construction or maintenance; and
  - (b) the entity has been issued with a ruling by the Commissioner under section 11 of the Tax Administration Act currently in force stating that it is a charitable organisation or religious organisation.

*[Cap. 438]*

*[Act No. 10 of 2015 s. 118; Cap. 4 s. 8]*

## 65. Clubs and trade associations

- (1) Subject to subsection (2), the activities of a club, trade association or similar institution shall be treated as a business and for the purposes of calculating the club, association or institution's income for a year of income from that business there shall be included, together with any other amounts to be included under other provisions of this Act, entrance fees, subscriptions and other amounts derived from members during the year of income.
- (2) Where three-quarters or more of the amounts to be included in calculating the income of a members club or trade association for a year of income from the business referred to in subsection (1) are derived from members of the club or association, the income from that business shall be exempt and shall not constitute chargeable income of the club or association.

(3) For purposes of this section—

"members club" means a club or similar institution all the assets of which are owned in common by, tested ignoring [section 53\(3\)](#), or held in trust for the members thereof;

"member" means—

- (a) in the case of a club or similar institution, a person who, while a member, is entitled to an interest in all the assets of the club or institution in the event of its liquidation or who is entitled to vote at a general meeting of the club or institution; and
- (b) in the case of a trade association, a person who is entitled to vote at a general meeting of the association; and

"trade association" means any association of persons—

- (a) that are all separately engaged in a particular type of business; and
- (b) formed with the main object of safeguarding or promoting the business interests of such persons.

[Cap. 4 s. 8]

## Division IV: Minerals

### *Subdivision A: Prospecting and mining*

#### **65A. Application of subdivision**

This subdivision applies where a person is conducting mining operations without a separate license solely for processing, smelting or refining of minerals.

[Act No. 2 of 2016 s. 26]

#### **65B. Principles of taxation**

- (1) A person conducting mining operations shall be subject to income tax with respect to those operations as provided by this Act, and as modified by this subdivision.
- (2) The income tax payable in respect of mining operations for a year of income shall be calculated by applying the rate set out in paragraph 1(5) of the First Schedule to a person's total income from mining operations for the year of the income.
- (3) Subject to subsection (2), where a person has other total income, that income shall be charged at the appropriate rate under the First Schedule.
- (4) For purposes of calculating a person's total income from mining operations
  - (a) all mining operations conducted by a person shall be treated as business activities save as arrangement referred to under [section 65H](#) of this Act;
  - (b) each separate mining operation shall be treated as an independent business and the person must prepare accounts for that business separate from any other activity of the person; and
  - (c) the person shall calculate chargeable income and income tax liability for the business independently for each year of income.
- (5) The provisions of [section 33](#) shall apply—
  - (a) to arrangements between a separate mining operation and other activities of the person conducting the mining operation including mining operations under a different mineral rights or processing, smelting or refining operations of the person;

- (b) as though the arrangements were conducted between associated persons; and
  - (c) so as to treat the transfer of an asset to or from a separate mining operation as an acquisition and disposal of the asset.
- (6) Where subsection (5) applies, [section 33](#) shall apply to arrangements between the persons with respect to the mining operations as though they were associated persons.

*[Acts Nos. 2 of 2016 s. 26; 4 of 2018 s. 25]*

#### **65C. Separate mining operations**

- (1) Subject to this section, each mineral right shall constitute a separate mining operation.
- (2) Where a person holding a prospecting licence is granted a mining licence and the mining licence area falls wholly within the prospecting licence area, the following conditions shall apply—
- (a) mining operations conducted by the person with respect to the prospecting licence to the date of grant of the mining licence shall be treated as conducted with respect to the separate mining operation; and
  - (b) from the date of grant of the mining licence, mining operations conducted with respect to the new prospecting licence outside the mining licence area shall be treated as a new separate mining operation.
- (3) Where a person holds a mining licence in relation to mining area and such mining area is extended mining operations conducted by the person with respect to the mining licence in both the original area and the extended area shall be treated as conducted with respect to the same mining operation.
- (4) For purposes of clarity, the prospecting and mining ring fencing set up by this section and [section 65B](#)—
- (a) starts with the grant of a prospecting licence and prospecting operations conducted with respect to that licence;
  - (b) may, subject to the limitations in this section, continue into a mining licence granted with respect to the prospecting licence and mining operations conducted with respect to that licence; and
  - (c) ends at the point minerals from the mining operations are sufficiently processed to produce a first saleable product.
- (5) The Minister may, after consultation with the Minister responsible for mining, make regulations as may be necessary for the better carrying out the provisions of this section.

*[Act No. 2 of 2016 s. 26]*

#### **65D. Income from mining operations**

In calculating a person's income from a separate mining operations for a year of income, there shall be included, together with any other amounts required to be included under other provisions of this Act, the following—

- (a) incomings derived from the disposal of minerals produced from the licence area;
- (b) amounts received in respect of the sale of data or information pertaining to the operations or mineral reserves;
- (c) amounts required to be included under paragraph 5 of the Third Schedule including from the assignment or other disposal of an interest in the mineral right with respect to which the operation is conducted after commencement of production; and

- (d) amounts required to be included under [section 65I](#) in respect of a surplus in a rehabilitation fund.

[Act No. 2 of 2016 s. 26]

#### 65E. Deduction for mining operations

- (1) In calculating a person's income from a separate mining operation for a year of income, there shall be deducted, together with any other amounts deductible under other provisions of this Act, the following—

- (a) annual charges incurred by the person under the Mining Act or Mining Development Agreements with respect to the mineral rights;
- (b) depreciation allowances granted with respect to the mining operation and calculated in accordance with paragraph 5 of the Third Schedule;

Provided that, depreciation basis for purposes of depreciation allowance shall not exceed the cost of investment as determined by the Commission under section 22 of the Mining Act;

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- (c) contributions to and other expenses incurred in respect of a rehabilitation fund for the operation as required by the law or approved under Mining Development Agreements by the Minister responsible for mining; and
  - (d) expenses incurred in respect of acquisition of rehabilitation bond.
- (2) Deduction shall not be allowed in calculating income from a separate mining operations—
- (a) under sections [15](#), [16](#), [17](#) or [26](#);
  - (b) for an unrelieved loss under [section 19](#), except as permitted by [section 65F](#);
  - (c) for a bonus payment referred to in [section 65G](#); or
  - (d) for expenses incurred by the person implementing an approved mine closure fund in excess of the amount contributed to the approved rehabilitation fund.

[Acts Nos. 2 of 2016 s. 26; 7 of 2017 s. 34; [Cap. 123](#); Cap. 4 s. 8]

#### 65F. Losses from mining operations

- (1) The provisions of [section 19](#) shall apply to unrelieved losses of a person from a separate mining operation with the following conditions—
- (a) losses from the separate mining operations may be deducted only in calculating future income from that operation and not income from any other activity whether a mining operation under a different mineral right, processing, smelting, refining or a non-mining activity;
  - (b) income from the separate mining operations may not be reduced by a loss from any other activity whether a mining operation under a different mineral rights, processing, smelting, refining or a non-mining activity; and
  - (c) income from the separate mining operation for any year of income may be reduced by reason of the use of unrelieved losses from that operation subject to other limitations imposed by [section 19](#) but not below thirty percent of that income before any reduction for losses.
- (2) The perpetual loss making corporation rules shall not apply in conducting mining operations under a prospecting licence.

[Act No. 2 of 2016 s. 26]

**65G. Bonus payments**

- (1) Bonus payments for the grant, transfer or assignment of a mineral rights, whether in form of a lump sum or dependent on or calculated by reference to specific production targets, are not deductible in calculating income from a separate mining operation.
- (2) In this section, "bonus payment" shall not include annual charges and royalties paid under the Mining Act or Mining Development Agreements.

*[Cap. 123]*

*[Act No. 2 of 2016 s. 26]*

**65H. Realisation of mineral rights**

- (1) Mineral rights shall be an asset which is separate from any other interest in the land that constitutes the license area and separate from any other asset employed in mining operations.
- (2) For purposes of farm-out, arrangement mineral rights shall be deemed as investment asset when realised before commencement of production.
- (3) Where mineral right is realised in terms of subsection (2), relevant provisions under this Act in respect of realisation of investment or business asset shall apply.
- (4) Where mineral right is realised together with other assets used in mining operations or where a mineral right is realised in part, the provisions of [section 47](#) shall apply for purposes of apportionment of expenditure, costs and amounts derived from the realisation.
- (5) Incomings from the realisation of mineral rights include amounts derived by the holder of the right from the realisation and also include amounts to be derived in the future from the realisation in accordance with [section 38\(b\)](#).
- (6) For purposes of [section 38\(b\)](#), an amount including any form of payment or benefit to be derived in the future from the realisation of an asset shall be taken into account as an incoming at its market value at the time of the realisation or in any other case, in accordance with [section 27\(1\)\(d\)](#).
- (7) In calculating the market value of an obligation to pay a future amount, there shall apply present value of a reasonable estimate of the amount of the future payment.
- (8) An amount taken into consideration under subsections (6) and (7) as incoming from the realisation of mineral rights shall be included in the cost of the asset for the acquirer.
- (9) The right to receive a future amount shall be realised in a different amount to the extent that the provisions of [sections 25 and 41](#) shall apply to make adjustments.
- (10) The provisions of this section shall apply to the realisation of mineral rights where the incomings from the realisation include an overriding royalty.

*[Act No. 2 of 2016 s. 26]*

**65I. Rehabilitation fund**

- (1) Rehabilitation fund shall be exempt from tax.
- (2) Amounts paid from a rehabilitation fund to meet expenses of activities authorised by an approved mine closure plan for which the fund was established are not income of the mineral right holder which is otherwise required to meet those expenses.

- (3) Any amounts in a rehabilitation fund which are paid to or come under the control of a mineral right holder and which are not referred to in subsection (2) are included in calculating income of the mineral rights holder from the associated mineral operations.

[Act No. 2 of 2016 s. 26]

### ***Subdivision B: Processing, smelting and refining***

#### **65J. Licensee conducting processing, smelting or refining**

- (1) A licensee conducting processing, smelting or refining with respect to minerals shall be subject to income tax with respect to the activities as provided by this Act, and as modified by this subdivision to the extent that there is no modification, the standard rules in this Act shall apply.
- (2) In calculating a licensee's income from a business which includes processing, smelting or refining of minerals, there shall be deducted amounts deposited in respect of a rehabilitation fund established for the licence.
- (3) There shall be no deduction allowed in calculating income from a separate mining operation—
- (a) under section 15, 16, 17 or 26;
  - (b) for an unrelieved loss under [section 19](#), except as permitted by [section 65E](#);
  - (c) expenses incurred by the person in implementing the rehabilitation plan for the operation in excess of deposits in the rehabilitation fund.
- (4) Unrelieved losses of a licensee arising from conducting a business that includes processing, smelting or refining may be deducted under [section 19](#) so as to reduce total income of the licensee but not below thirty percent of total income before any deduction for such an unrelieved loss.
- (5) The provisions of [section 65I](#) shall apply to a rehabilitation fund established for a processing, smelting or refining licence as though a reference to "mineral rights holder" were a reference to the "holder of that licence."
- (6) For purposes of this section, "licence" means a licence granted in respect to processing, smelting or refining under respective Mining Act.

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[Act No. 2 of 2016 s. 26]

## **Division V: Petroleum**

### ***Subdivision A: Petroleum operations***

#### **65K. Principles of taxation**

- (1) A person conducting petroleum operations pursuant to licence granted under the Petroleum Act shall be subject to income tax with respect to those operations as prescribed by this Act and as modified by this division.
- (2) Income tax payable in respect to petroleum right for a year of income shall be calculated by applying the rate set out in paragraph 1(6) of the First Schedule to a person's total income from petroleum right for the year of income.
- (3) Subject to subsection (2), where a person has other total income, that income shall be charged at the appropriate rate under the First Schedule.

- (4) For purposes of calculating a person's total income from petroleum right—
- (a) all petroleum right conducted by a person shall be treated as business activities save as arrangement referred to under [section 65Q](#) of this Act;
  - (b) each separate petroleum right shall be treated as an independent business and the person shall prepare accounts for that business separate from any other activity of the person; and
  - (c) a person shall calculate chargeable income and income tax liability for the business independently for each year of income.
- (5) The provisions of [section 33](#) shall apply—
- (a) to arrangements between a separate petroleum right and other activities of the person conducting the petroleum right including other petroleum right or midstream or downstream activities of the person;
  - (b) as though the arrangements were conducted between associated persons; and
  - (c) so as to treat the transfer of an asset especially petroleum to or from a separate petroleum right as an acquisition and disposal of the asset.
- (6) Where subsection (5) applies, [section 33](#) shall apply to arrangements between the persons with respect to the petroleum right as though they were associated persons.
- (7) The Minister may, after consultation with the Minister responsible for mining, make regulations as may be necessary for the better carrying out the provisions of this section.

*[Acts Nos. 2 of 2016 s. 26; 4 of 2018 s. 26]*

#### **65L. Separate petroleum rights**

- (1) Subject to this section, petroleum operations pertaining to each petroleum right shall constitute a separate petroleum operation.
- (2) Where a person holding an exploration petroleum right which is partly converted into a development petroleum right, the following conditions shall apply—
- (a) petroleum operations conducted by the person in respect of the exploration licence to the date of grant of development licence are treated as conducted with respect to the development licence, and so are treated as conducted with respect to the same petroleum right; and
  - (b) from the date of grant of the development licence referred to in paragraph (a), exploration operations conducted with respect to the area outside the development area but within the exploration right shall be treated as separate petroleum operation.
- (3) For purposes of subsection (2), a person holds an exploration petroleum right that is partly converted into a development petroleum right, where—
- (a) the person holds a petroleum right which is or dependent on an exploration licence including by reason of a Production Sharing Agreement;
  - (b) a development licence is subsequently granted and the development area falls wholly within the exploration area; and
  - (c) as a consequence, the person holds a different petroleum right with respect to the development area.
- (4) For purposes of this section and [section 65K](#) the upstream ring fencing set up—
- (a) all petroleum rights held by a person who conducts petroleum operations shall be treated as business activities save as arrangement referred to under [section 65Q](#) of this Act;

- (b) subject to the limitations in this section, may continue into a development licence granted with respect to the exploration licence and development and production rights conducted with respect to that licence; and
- (c) ends at the delivery point identified in the Production Sharing Agreement.

*[Act No. 2 of 2016 s. 26; Cap. 4 s. 8]*

#### **65M. Income from petroleum rights**

- (1) Subject to this section, in calculating a person's income from a separate petroleum rights for a year of income, there shall be included, together with any other amounts required to be included under other provisions of this Act, the following—
  - (a) incomings derived from the disposal of petroleum obtained from the licence area valued at the delivery point identified in the Production Sharing Agreement;
  - (b) amounts received in respect of the sale of data or information pertaining to the operations or petroleum reserves; and
  - (c) amounts required to be included under paragraph 5 of the Third Schedule including from the assignment or other disposal of an interest in the petroleum right with respect to which the operation is conducted after commencement of production.
- (2) In the case of a contractor under a Production Sharing Agreement, in calculating inclusions under subsection (1)(a), include the contractor's full share of petroleum from profit oil or profit gas.

*[Acts Nos. 2 of 2016 s. 26; 7 of 2017 s. 35]*

#### **65N. Deductions for petroleum rights**

- (1) In calculating a person's income from a separate petroleum right for a year of income, there shall be deducted, together with any other amounts deductible under other provisions of this Act, the following—
  - (a) annual fees incurred by the person with respect to the petroleum right under section 114 of the Petroleum Act;
  - (b) depreciation allowances in respect of depreciable assets other than the assets whose costs are recouped from the cost oil or cost gas under a production sharing agreement granted with respect to the operations and calculated in accordance with paragraph 6 of the Third Schedule; and
  - (c) amounts deposited in respect of the decommissioning fund for the petroleum operation.
- (2) There shall be no deduction allowed in calculating income from a separate petroleum right—
  - (a) under section [15](#), [16](#), or [26](#);
  - (b) any expenditure and depreciation allowance in respect of assets covered by cost petroleum under a production sharing agreement;
  - (c) for unrelieved loss under [section 19](#), except as permitted by [section 65O](#);
  - (d) any bonus payment; and
  - (e) expenses incurred by the person in implementing the decommissioning plan for the operation in excess of deposits in the decommissioning fund.

*[Acts Nos. 2 of 2016 s. 26; 7 of 2017 s. 36; Cap. 392]*

**65O. Losses from petroleum rights**

- (1) The provision of [section 19](#) shall apply to unrelieved losses of a person from a separate petroleum right with the following modifications—
  - (a) losses from the separate petroleum right may be deducted only in calculating future income from that operation and not income from any other activity, whether an upstream, midstream or downstream petroleum activity or a nonpetroleum activity;
  - (b) income from the separate petroleum right may not be reduced by a loss from any other activity whether an upstream, midstream or downstream petroleum activity or a non-petroleum activity; and
  - (c) income from the separate petroleum right for any year of income may be reduced by reason of the use of unrelieved losses from that operation, subject to other limitations imposed by [section 19](#) but not below thirty percent of that income before any reduction for losses.
- (2) The perpetual loss corporation rules shall not apply to a person conducting exploration operations.

*[Act No. 2 of 2016 s. 26]*

**65P. Bonus payments**

Bonus payments made with respect to a petroleum right, whether in form of a lump sum or otherwise, shall not be deductible in calculating income from a separate petroleum right:

Provided that, bonus payments shall neither be included in the cost of the petroleum right nor depreciated over the term of the right.

*[Act No. 2 of 2016 s. 26; Cap. 4 s. 8]*

**65Q. Realisation of petroleum rights**

- (1) A petroleum right shall be an asset separate from any other interest in the land that constitutes the license area and separate from any other asset employed in petroleum operations.
- (2) For purposes of farm-out arrangement, petroleum rights shall be deemed as investment asset when realised before commencement of production.
- (3) Where petroleum rights is realised in terms of subsection (2), relevant provisions under this Act in respect of realisation of investment or business asset shall apply.
- (4) Where a petroleum right is realised together with other assets used in petroleum operations or where a petroleum right is realised in part, the rules in [section 47](#) shall apply for purposes of apportionment expenditure, costs and amounts derived from the realisation.
- (5) The incomings from the realisation of a petroleum right which include amounts derived by the holder of the right from the realisation, shall include amounts to be derived in the future from the realisation.
- (6) For purposes of [section 38\(b\)](#), an amount including any form of payment or benefit to be derived in the future from the realisation of an asset, shall be taken into account as an incoming at its market value at the time of the realisation or in any other case, in accordance with [section 27\(1\)\(d\)](#).
- (7) In calculating the market value of an obligation to pay a future amount, there shall apply present value of a reasonable estimate of the amount of the future payment.
- (8) An amount taken into consideration under subsections (6) and (7) as incomings from the realisation of a petroleum right shall be included in the cost of the asset for the acquirer.
- (9) The right to receive a future amount shall be realised in a different amount to the extent that the provisions of [sections 25 and 41](#) shall apply to make adjustments.

- (10) The provisions of this section shall apply to the realisation of a petroleum right where the incomings from the realisation include an overriding royalty.

*[Act No. 2 of 2016 s. 26]*

## **65R. Decommissioning funds**

- (1) A decommissioning fund shall be exempt from tax.
- (2) Amounts paid from a decommissioning fund to meet expenses of activities authorised by the decommissioning plan for which the fund was established shall not be an income of the petroleum right holder which otherwise required to meet those expenses.
- (3) Any amounts in a decommissioning fund which are paid to or come under the control of a petroleum right holder and which are not referred to in subsection (2) shall be included in calculating income of the petroleum rights holder from the associated petroleum rights.

*[Act No. 2 of 2016 s. 26]*

### ***Subdivision B: Midstream and downstream activities***

## **65S. Midstream and downstream activities**

- (1) A licensee conducting midstream or downstream activities with respect to petroleum shall be subject to income tax with respect to the activities as prescribed by this Act, and as modified by this Subdivision.
- (2) In calculating a licensee's income from a business which includes conducting midstream or downstream activities with respect to petroleum, there shall be deducted amounts deposited in and other expenses incurred in respect of the decommissioning fund established for the licence.
- (3) There shall be no deduction allowed in calculating income from a separate petroleum right—
- (a) under section [15](#), [16](#), [17](#) or [26](#);
  - (b) for unrelieved losses under [section 19](#), except as permitted by [section 65O](#); or
  - (c) expenses incurred by the person in implementing the decommissioning plan for the operation in excess of the amount contributed in the decommissioning fund.
- (4) Unrelieved losses of a licensee arising from conducting a business that includes midstream or downstream activities may be deducted under [section 19](#) so as to reduce total income of the licensee but not below thirty percent of total income before any deduction for such an unrelieved loss.
- (5) The provisions of [section 65R](#) applies to a decommissioning fund established under section 197 of the Petroleum Act as though a reference to "petroleum right holder" were a reference to the "holder of a midstream or downstream licence."

*[Cap. 392]*

- (6) In this section, "licence" means a licence granted in respect to midstream and downstream activities under the Petroleum Act.

*[Cap. 392]*

*[Act No. 2 of 2016 s. 26]*

## Part VI – International

### Division I: Residence and source

#### 66. Resident persons

- (1) An individual is resident in the United Republic for a year of income if the individual—
  - (a) has a permanent home in the United Republic and is present in the United Republic during any part of the year of income;
  - (b) is present in the United Republic during the year of income for a period or periods amounting in aggregate to one hundred eighty three days or more;
  - (c) is present in the United Republic during the year of income and in each of the two preceding years of income for periods averaging more than one hundred twenty two days in each such year of income; or
  - (d) is an employee or an official of the Government of the United Republic posted abroad during the year of income.
- (2) A partnership is a resident partnership for a year of income if at any time during the year of income a partner is a resident of the United Republic.
- (3) A trust is a resident trust for a year of income if—
  - (a) it was established in the United Republic;
  - (b) at any time during the year of income, a trustee of the trust is a resident person; or
  - (c) at any time during the year of income a resident person directs or may direct senior managerial decisions of the trust, whether the direction is or may be made alone or jointly with other persons or directly or through one or more interposed entities.
- (4) A corporation is a resident corporation for a year of income if—
  - (a) it is incorporated or formed under the laws of the United Republic; or
  - (b) at any time during the year of income the management and control of the affairs of the corporation are exercised in the United Republic.

*[Cap. 4 s. 8]*

#### 67. Source of income and loss

- (1) A person shall calculate his income or loss from any employment, business or investment that has a source in the United Republic separately from any income or loss from that employment, business or investment that has a foreign source.
- (2) A person's income from any employment, business or investment has a source in the United Republic to the extent to which—
  - (a) the amounts directly included in calculating that income that have a source in the United Republic, exceed the amount stipulated in paragraph (b);
  - (b) the amounts directly deducted in calculating that income that have a source in the United Republic.
- (3) A person's loss from any business or investment has a source in the United Republic to the extent to which the amounts referred to in subsection (2)(b) exceed those referred to in subsection (2)(a).

- (4) A person's foreign source of income or loss from an employment, business or investment shall be calculated as—
- (a) the person's worldwide income or loss from that employment, business or investment calculated notwithstanding subsection (1); less
  - (b) any income with a source in the United Republic from that employment, business or investment; or plus
  - (c) any loss with a source in the United Republic from that employment, business or investment.

## 68. Source of directly included and deducted amounts

- (1) Amounts directly included in calculating income have a source in the United Republic where they consist of—
- (a) incomings, gains and amounts referred to in [section 8\(2\)\(b\)](#), (c) or (d) or [section 9\(2\)\(b\)](#), to the extent to which a domestic asset or domestic liability is involved; and
  - (b) subject to paragraph (a), payments that have a source in the United Republic.
- (2) Amounts directly deducted in calculating income have a source in the United Republic where they consist of—
- (a) allowances referred to in [sections 13\(1\) or 17](#) and expenditure referred to in [section 14\(1\)](#) to the extent to which—
    - (i) subject to subparagraph (ii), they relate to domestic assets; or
    - (ii) where the expenditure or allowances relate to moveable tangible assets used by a person who conducts a business of land, sea or air transport operator or charterer to carry passengers, cargo, mail or other moveable tangible assets, the assets are used to carry passengers who embark or cargo, mail or other moveable tangible assets that are embarked in the United Republic, other than as a result of transshipment;
  - (b) losses from the realisation of business assets, investment assets and liabilities of a business where the asset or liability involved is a domestic asset or domestic liability; and
  - (c) subject to paragraphs (a) and (b), payments that have a source in the United Republic.

## 69. Source of payments

The following payments have a source in the United Republic—

- (a) dividends paid by a resident corporation;
- (b) interest paid by a resident person or domestic permanent establishment;
- (c) natural resource payments made in respect of or calculated by reference to natural resources taken from land or the sea situated within the United Republic or its territorial waters;
- (d) rent paid for the use of, right to use or forbearance from using an asset situated in the United Republic;
- (e) royalties paid for the use of, right to use or forbearance from using an asset in the United Republic;
- (f) premiums for general insurance or re-insurance paid to, and proceeds from general insurance or re-insurance paid by a resident person in respect of the insurance or re-insurance of any risk in or outside the United Republic;

- (g) payments received by a person who conducts a business of land, sea or air transport operator or charterer in respect of—
  - (i) the carriage of passengers who embark or cargo, mail or other moveable tangible assets that are embarked in the United Republic, other than as a result of transshipment; or
  - (ii) rental of containers and related equipment which are supplementary or incidental to carriage referred to in subparagraph (i);
- (h) payments received by a person who conducts a business of transmitting messages by cable, radio, optical fibre or satellite or electronic communication in respect of the transmission of messages by apparatus established in or outside the United Republic, whether or not such messages originate in or outside the United Republic;
- (i) payments, including service fees, of a type not mentioned in paragraphs (g) or (h) or attributable to employment exercised, service rendered or a forbearance from exercising employment or rendering service—
  - (i) in the United Republic, regardless of the place of payment; or
  - (ii) where the payer is the Government of the United Republic, irrespective of the place of exercise, rendering or forbearance;
- (j) proceeds of life insurance and retirement payments not falling within paragraph (i) the "return" paid by a resident person or a domestic permanent establishment and any premium or retirement contribution paid to a resident person or domestic permanent establishment to secure such a return;
- (k) gifts and other *ex gratia* payments to the extent received in respect of business or investment conducted with domestic assets; and
- (l) payments not mentioned in the above paragraphs made in respect of—
  - (i) the acquisition of a domestic asset, incurring of a domestic liability or realisation of such an asset or liability; or
  - (ii) activity conducted or a forbearance from conducting activity in the United Republic.

[Acts Nos. 5 of 2011 s. 15; 4 of 2017 s. 21]

## Division II: Permanent establishments

### 70. Principles of taxation

- (1) The income tax liability under [section 4\(1\)\(a\)](#) of a person with a domestic or foreign permanent establishment shall be calculated as if the person and the permanent establishment were independent but associated persons and the permanent establishment were resident in the country in which it is situated.
- (2) In addition to taxation in accordance with subsection (1), a person with a domestic permanent establishment shall be taxed with respect to the repatriated income of the permanent establishment in accordance with [sections 4\(1\)\(b\) and 74](#).
- (3) Part VII of this Act shall apply as though a reference to a "resident person" includes a reference to a domestic permanent establishment of a non-resident person as though the permanent establishment were a person separate from the non-resident person.

### 71. Calculating income of permanent establishment

- (1) Subsections (2) to (6) apply for the purposes of calculating the income of a domestic or foreign permanent establishment separately from that of its owner.

- (2) Subject to Division II of Part III, the following amounts derived and expenditure incurred shall be attributed to the permanent establishment, namely—
- (a) amounts derived and payments received in respect of assets held by, liabilities owed by or the business of the permanent establishment; and
  - (b) expenditure incurred and payments made for the purposes of assets held by, liabilities owed by or the business of the permanent establishment, but only to the extent the expenditure is recorded in the accounts of the permanent establishment.
- (3) The following assets and liabilities shall be treated as assets or liabilities of the permanent establishment—
- (a) tangible assets situated in the country of the permanent establishment;
  - (b) intangible assets created by or through the permanent establishment;
  - (c) intangible assets, to the extent that they may be exploited in the market of the country of the permanent establishment;
  - (d) subject to subsection (6)(b), debt obligations incurred in borrowing money, to the extent that the money is employed in or used to acquire an asset that is employed in the business of the permanent establishment; and
  - (e) other liabilities arising directly out of the business of the permanent establishment.
- (4) In addition to the circumstances specified in sections 39 and 40 the permanent establishment shall be treated as realising an asset held by it or liability owed by it—
- (a) in the case of a tangible asset, when the asset is no longer situated in the country of the permanent establishment;
  - (b) in the case of an intangible asset, to the extent the asset is available for exploitation in the country in which the owner is resident or a country in which the owner has another permanent establishment; or
  - (c) in the case of a liability referred to in subsection (3) (d), the money or asset is no longer employed in the business of the permanent establishment.
- (5) The following activities shall be treated as conducted by the permanent establishment—
- (a) employment by the owner of any individual who is resident in the country of the permanent establishment;
  - (b) sales of trading stock by the owner of the same or a similar kind as those sold through the permanent establishment; and
  - (c) other business activities of the owner conducted with residents of the country of the permanent establishment of the same or a similar kind as those effected through the permanent establishment.
- (6) Subject to Division II of Part III, the only arrangements between a permanent establishment and the owner that are recognised are the following—
- (a) the transfer of an asset or liability between the permanent establishment and the owner or vice versa, in accordance with subsections (3) and (4); and
  - (b) where the owner carries on a banking business through the permanent establishment, has received written approval under this subsection from the Commissioner and subject to such conditions as the Commissioner thinks fit, entries shown in the same manner in the accounts of the owner and the permanent establishment as—
    - (i) a debt obligation between the owner and the permanent establishment or vice versa; and

- (ii) interest derived or incurred with respect to a debt obligation referred to in subparagraph (i),

but where this paragraph applies no debt obligation incurred by the owner shall be attributed to the permanent establishment under subsection (3)(d).

- (7) In this section, "the owner" means the owner of the permanent establishment.

## 72. Repatriated income of domestic permanent establishment

- (1) Subject to the provisions of subsection (2), the repatriated income of a domestic permanent establishment of a non-resident person for a year of income shall be calculated according to the following formula—

$$A + B - C$$

Where—

- (A) is the net cost of assets of the permanent establishment at the start of the year of income plus the market value of capital contributed to the permanent establishment by the owner during the year.
  - (B) is net total income of the permanent establishment for the year of income; and
  - (C) is the net cost of assets of the permanent establishment at the end of the year of income plus, where the establishment has no total income for the year of income, any unrelieved loss for the year of income referred to in [section 19\(4\)](#).
- (2) The repatriated income shall not exceed—
- (a) the net total income of the permanent establishment for the year of income plus the balance of the permanent establishment's accumulated profits account referred to in subsection (3) at the end of the previous year of income after the adjustments referred to in that subsection, less
  - (b) where the permanent establishment has no total income for the year of income, any unrelieved loss for the year of income referred to in [section 19\(4\)](#) for the year of income.
- (3) For purposes of calculating repatriated income, a domestic permanent establishment shall maintain an accumulated profits account which, at the end of each year of income, shall be—
- (a) credited with the net total income of the permanent establishment for the year of income; and
  - (b) debited with the repatriated income and, where the permanent establishment has no total income, any unrelieved loss referred to in [section 19\(4\)](#) for the year of income.
- (4) For purposes of this section—
- "net cost of assets" of a domestic permanent establishment—
- (a) at the start of a year of income equals the net cost of assets at the end of the previous year of income, if any; and
  - (b) at the end of a year of income is calculated as—
    - (i) the written down value of the permanent establishment's pools of depreciable assets at the end of the year of income plus the net cost of other assets of the permanent establishment at the end of the year of income; less

- (ii) the net incomings for liabilities of the permanent establishment at the end of the year of income;

"net incomings for a liability to a particular period" means the amount by which cumulative incomings for the liability exceed cumulative costs for the liability to the time; and

"net total income" of a domestic permanent establishment for a year of income is its total income for the year of income calculated without any deduction under [section 19\(1\)\(b\)](#) less income tax payable under [section 4\(1\)\(a\)](#) with respect to that income.

### **Division III: Controlled foreign trusts and corporations**

#### **73. Principles of taxation**

- (1) Controlled foreign trusts and corporations and their members shall be taxed in accordance with Subdivisions B and C of Part IV as modified by this Division.
- (2) A controlled foreign trust or corporation shall be treated as distributing its unallocated income to its members at the end of each year of income in accordance with [section 75](#).

#### **74. Unallocated income of controlled foreign trust and corporation**

- (1) The unallocated income of a controlled foreign trust or corporation for a year of income shall be—
  - (a) the attributable income of the trust or corporation for the year of income; less
  - (b) any distributions made by the trust or corporation during the year of income determined otherwise than in [section 75\(1\)](#) that are included in calculating the income of a member under [section 52\(2\)\(b\)](#) or [54\(1\)\(b\)](#), respectively.
- (2) The "attributable income" of a controlled foreign trust or corporation for a year of income shall be its total income for the year of income calculated as if the trust or corporation were resident.

#### **75. Taxation of members of controlled foreign trusts or corporations**

- (1) Where at the end of a year of income a trust or corporation is a controlled foreign trust or corporation, the trust or corporation shall be treated as distributing to its members at that time its unallocated income for the year of income referred to in [section 74\(1\)](#) according to each member's share.
- (2) A member who is treated as receiving a distribution under subsection (1) may deduct the amount treated as distributed in calculating the member's income of a future year of income to the extent to which—
  - (a) the amount has not previously been deducted under this subsection; and
  - (b) distributions of the type referred to in [section 74\(1\)\(b\)](#) received by the member during the year of income exceed the member's share of the trust or corporation's attributable income for the year of income referred to in [section 74\(2\)](#).
- (3) To the extent that all dividends distributed by a controlled foreign corporation during a year of income, including as a result of subsection (1), do not exceed the corporation's attributable income for the year of income referred to in [section 74\(2\)](#), then dividends distributed to shareholders who are corporations and associated with the corporation at the time of distribution are treated as—
  - (a) having the same character as to type and source as the corporation's attributable income; and
  - (b) made proportionately out of each type and source of the corporation's attributable income.

- (4) At the time an amount is treated as distributed by a controlled foreign corporation to an associated shareholder under subsection (3), the shareholder shall be allocated any income tax under this Act or foreign income tax paid or treated as paid by the corporation with respect to the amount.
- (5) A shareholder is treated as having paid the tax allocated to the shareholder by subsection (4) at the time of allocation and foreign tax relief may be available to the shareholder under [section 77](#) but no other tax credit shall be available to the shareholder.
- (6) Subsections (3), (4) and (5) shall apply to distributions by a resident corporation made during any year of income to a non-resident associate of the corporation as though the corporation were a controlled foreign corporation and the attributable income of the corporation were its total income for the year of income.
- (7) For purposes of this section, a "member's share" with respect to income of trust or corporation shall be—
  - (a) equal to the member's percentage right to share in the income on distribution; or
  - (b) where that right is not reasonably certain, such percentage as the Commissioner thinks appropriate in the circumstances.

#### **76. Cost and incomings of member's interest in controlled foreign trust or corporation**

- (1) Any amount treated as distributed to a member under [section 75\(1\)](#) shall be included in the cost of the member's membership interest in the non-resident trust or corporation at the time of distribution.
- (2) Any amount deducted by a member under [section 75\(2\)](#) shall be included in the incomings for the member's membership interest in the non-resident trust or corporation at the time of deduction.

### **Division IV: Foreign tax relief**

#### **77. Foreign tax relief**

- (1) Subject to subsection (4), a resident person other than a partnership may claim a foreign tax credit for a year of income for any foreign income tax paid by the person to the extent to which it is paid with respect to the person's taxable foreign income for the year of income.
- (2) Foreign tax credits claimed under subsection (1) are calculated separately for each year of income and shall not exceed the average rate of Tanzania income tax of the person for the year of income applied to the person's taxable foreign income.
- (3) For purposes of subsections (1) and (2), there shall be treated as foreign income tax paid by a resident person with respect to the person's taxable foreign income for a year of income any unrelieved foreign income tax of a previous year of income paid by the person.
- (4) A person may elect to relinquish a foreign tax credit available for a year of income and claim a deduction for the amount of the foreign income tax but otherwise no deduction is available for foreign income tax.
- (5) For purposes of this section—

"average rate of Tanzania income tax" of a resident person for a year of income means the percentage that income tax payable by the person under [section 5\(1\)\(a\)](#) calculated under [section](#)

4(3) without a reduction for any foreign tax relief) shall be of the total income of the person for the year of income;

"taxable foreign income" of a resident person for a year of income means foreign source income that shall be included in the person's chargeable income from any employment, business or investment for the year of income; and

"unrelieved foreign income tax" of a resident person means foreign income tax paid by the person with respect to the person's taxable foreign income—

- (a) for which a foreign tax credit has not been granted under subsection (1) as a result of the limitation in subsection (2); and
- (b) that has not been relinquished under subsection (4).

## Part VII – Tax payment procedure

### Division I: General obligations

#### 78. Types of tax and methods of payment

- (1) Tax payable under this Act means—
  - (a) income tax imposed under section 4(1), including amounts payable by a withholding agent or withholder under Division II, by an instalment payer under Division III and on assessment under Division IV of this Part;
  - (b) interest and penalties imposed by assessment Division I of Part VIII;
  - (c) an amount required to be paid to the Commissioner in collection from a tax debtor under section 112(9) or 128(3); and
  - (d) an amount required to be paid to the Commissioner in respect of a tax liability of a third party under section 115(2), 116(3) or (4), 117(2) or 118(1) or (3).
- (2) Tax shall be paid to the Commissioner in the form and at the place is may be prescribed.

#### 79. Time for payment of tax

Subject to section 55 of the Tax Administration Act, tax shall be payable—

- (a) in the case of income tax payable by withholding, at the time provided for in section 84;
- (b) in the case of income tax payable by instalment, on the date by which the instalment is to be paid under section 88 or 90;
- (c) in the case of income tax payable on an assessment under section 94, on the date by which the return of income must be filed.

*[Act No. 10 of 2015 s. 119; Cap. 4 s. 8]*

#### 80. \*\*\*

*[Repealed by Act No. 10 of 2015 s. 120]*

#### 80A. \*\*\*

*[Repealed by Act No. 10 of 2015 s. 120]*

## **Division II: Income tax payable by withholding**

### ***Subdivision A: Withholding obligations***

#### **81. Withholding by employers**

- (1) A resident employer who makes a payment that is to be included in calculating the chargeable income of an employee from the employment shall withhold income tax from the payment at the rate provided for in paragraphs 1 and 4(a) of the First Schedule.
- (2) The obligation of an employer to withhold income tax under subsection (1) shall not be reduced or extinguished because the employer has a right or is under an obligation to deduct and withhold any other amount from the payment or because of any other law that provides that an employee's income from employment shall not be reduced or subject to attachment.

*[Act No. 2 of 2014 s. 38]*

#### **82. Withholding from investment returns**

- (1) Where a resident person—
  - (a) pays a dividend, interest, natural resource payment, rent or royalty; and
  - (b) the payment has a source in the United Republic and is not subject to withholding under section 81,the person shall withhold income tax from the payment at the rate provided for in paragraph 4(b) of the First Schedule.
- (2) This section shall not apply to—
  - (a) payments made by individuals unless made in conducting a business;
  - (b) interest paid to a resident financial institution;
  - (c) payments that are exempt amounts;
  - (d) rent paid to a resident person for the use of an asset other than aircraft, land or buildings; or
  - (e) interest payable to a non-resident bank by a strategic investor except for interest payable on any loan taken by a strategic investor from an associated or related company.

*[Acts Nos. 15 of 2004 s. 32; 8 of 2012 s. 28; 2 of 2016 s. 27; Cap. 4 s. 8]*

#### **83. Withholding from service fees and contract payments**

- (1) Subject to subsection (2), a resident person who—
  - (a) is conducting business of extractive industry in mining, oil or gas pays a service fee to another resident person in respect of management or technical services provided wholly and exclusively for the business;
  - (b) pays to a non-resident an insurance premium with a source in the United Republic;
  - (c) pays to—
    - (i) a non-resident a service fee with a source in United Republic; or
    - (ii) a resident person a service fee for provision of professional services.

- (d) pays money transfer commission to a money transfer agent,

shall withhold income tax from the payment at the rate provided for in paragraph 4(c) of the First Schedule.

- (2) This section shall not apply to—

- (a) payments made by individuals unless made in conducting a business; or
- (b) payments that are exempt amounts.

- (3) For purposes of subsection (1)(c)(ii), "professional service" means services rendered by a person licensed as a practitioner by any recognised professional body and shall include other services or activities of an independent business character including consultancy, legal, architectural, engineering, supervisory, accounting, auditing, medical, artistic, survey, theatrical performance, sports, exhibition, private security services, private investigation and consultancies in various disciplines or any entertainment held or given other than those for remuneration under contract of employment:

Provided that, where the service referred in subsection (1)(c)(ii) involves construction works, the payment which is subject to withholding shall be based on the ratio of 3:2 for materials and services respectively.

*[Acts Nos. 4 of 2013 s. 23; 2 of 2014 s. 39; 2 of 2016 s. 28; Cap. 4 s. 8]*

#### **83A. Withholding of income tax for goods**

- (1) Subject to subsection (2), any resident corporation which makes a payment in respect of goods supplied by a resident person in the course of conducting business shall withhold income tax at the rate provided for under paragraph 4(c) of the First Schedule.
- (2) This section shall apply to a resident corporation whose budget is wholly or substantially financed by the Government budget subvention.

*[Acts Nos. 13 of 2008 s. 15; 15 of 2010 s. 16; 4 of 2013 s. 24]*

#### **83B. \*\*\***

- (1) *[Repealed by Act [No. 6 of 2019](#) s. 6]*

#### ***Subdivision B: Procedure applicable to withholding***

#### **84. Statements and payments of tax withheld or treated as withheld**

- (1) Every withholding agent shall pay to the Commissioner within seven days after the end of each calendar month any income tax that has been withheld in accordance with Subdivision A during the month.
- (2) Every withholding agent shall file with the Commissioner within thirty days after the end of each six-month calendar period a statement in the manner and form prescribed specifying—
  - (a) payments made by the agent during the period that are subject to withholding under Subdivision A;
  - (b) the name and address of the withholder;
  - (c) income tax withheld from each payment; and
  - (d) any other information that the Commissioner may prescribe.

- (3) A withholding agent who fails to withhold income tax in accordance with Subdivision A must nevertheless pay the tax that should have been withheld in the same manner and at the same time as tax that is withheld.
- (4) Where a withholding agent fails to withhold income tax from a payment as required by Subdivision A—
  - (a) the withholder shall jointly and severally, be liable with the withholding agent for the payment of the tax to the Commissioner; and
  - (b) the tax shall be payable by the withholder within seven days after the end of the calendar month in which the payment is received.
- (5) A withholding agent who withholds income tax under Subdivision A and pays the tax to the Commissioner shall be treated as having paid the amount withheld to the withholder for the purposes of any claim by the withholder for payment of the amount withheld.
- (6) A withholding agent who fails to withhold income tax under Subdivision A but pays the tax that should have been withheld to the Commissioner in accordance with subsection (3) shall be entitled to recover an equal amount from the withholder.

## 85. Withholding certificates

- (1) A withholding agent shall prepare and serve on a withholder—
  - (a) separately for each period referred to in subsections (2) and (3);
  - (b) at the time referred to in those subsections; and
  - (c) in the form prescribed,a withholding certificate setting out the amount of payments made to the withholder and income tax withheld from those payments under Subdivision A by the agent during the period.
- (2) Subject to subsection (3), a withholding certificate shall cover a calendar month and shall be served within thirty days after the end of the month.
- (3) In the case of income tax withheld under section 81, a withholding certificate—
  - (a) shall cover the part of the calendar year during which the employee shall be employed; and
  - (b) shall be served by 30th January after the end of the year or, where the employee has ceased employment with the withholding agent during the year, no more than thirty days from the date on which the employment ceased.

## 86. Final withholding payments

- (1) For purposes of this Act, the following are final withholding payments—
  - (a) dividends paid by—
    - (i) a resident corporation;
    - (ii) non-resident corporation to a resident individual, other than a dividend received by—
      - (aa) an individual in conducting a business; or
      - (bb) an individual referred to in [section 6\(2\)](#);
  - (b) interest paid by financial institution to a resident individual where the interest is paid with respect to a deposit held with the institution, other than—
    - (i) interest received by the individual in conducting a business; or

- (ii) foreign source interest paid to an individual referred to in [section 6\(2\)](#);
  - (c) rent paid to a resident individual under a lease of land or a building and associated fittings and fixtures, other than—
    - (i) rent received by an individual in conducting a business; or
    - (ii) foreign source rent paid to an individual referred to in [section 6\(2\)](#);
  - (d) service fees paid to a resident person that are subject to withholding under [section 83\(1\)\(a\)](#) and (d);
  - (e) payments made to non-resident persons other than through a domestic permanent establishment of the person that are subject to withholding under Subdivision A or would be so subject if [section 83\(1\)\(a\)](#) is not applied;
  - (f) interest paid to a unit trust; and
  - (g) payment made to a resident person as specified under [section 83B\(1\)](#).
- (2) Income tax—
- (a) withheld from a final withholding payment under Subdivision A of Division II of this Part; or
  - (b) paid with respect to a final withholding payment in accordance with [section 84\(3\)](#) or (4), satisfies the withholder's income tax liability under [section 4\(1\)\(c\)](#) with respect to the payment.
- (3) Subject to the provisions of subsection (4), where a final withholding payment is not subject to withholding tax whether by reason of [section 83\(2\)\(a\)](#) or that the payer is non-resident—
- (a) the recipients income tax liability under [section 4\(1\)\(c\)](#) with respect to the payment shall be payable by way of assessment under Division IV of this Part as though that liability were a liability under [section 4\(1\)\(a\)](#); and
  - (b) where the payment is a foreign source payment, a foreign tax credit shall be available under [section 77](#) for any foreign income tax imposed on the payment and the credit shall be calculated as though the payment were taxable foreign income.
- (4) Where—
- (a) a resident individual the "landlord" receives rent during a year of income in respect of residential premises situated in the United Republic that are leased by another individual as the residence of that other individual;
  - (b) the rent is not received by the landlord in conducting a business; and
  - (c) the total of the rent received by the landlord under the lease and any other lease meeting the requirements of paragraphs (a) and (b) during the year of income does not exceed five hundred thousand shillings,

then the landlord shall not have tax liability under [section 4\(1\)\(c\)](#) with respect to receipt of the rent.

[Acts Nos. 6 of 2006 s. 15; 4 of 2013 s. 25; 4 of 2017 s. 23]

## 87. Credit for non-final withholding tax

The withholder of a payment that is not a final withholding payment shall be treated as having paid any income tax—

- (a) withheld from the payment under Subdivision A of Division II of this Part; or

- (b) paid with respect to the payment in accordance with [section 84\(3\)](#) or (4);

and the withholder is entitled to a tax credit in an amount equal to the tax treated as paid for the year of income in which the payment is derived.

### Division III: Income tax payable by instalment

#### 88. Payment of income tax by quarterly instalment

- (1) A person an "instalment payer" who derives or expects to derive any chargeable income during a year of income—

- (a) from a business or investment, or
- (b) from an employment where the employer is not required to withhold tax under [section 81](#) from payments received by the person that are included in calculating the person's income from the employment,

shall pay income tax for the year of income by quarterly instalments as provided for by this section.

- (2) An instalment payer shall pay instalments of income tax—

- (a) in the case of a person whose year of income is a twelve month period beginning at the start of a calendar month, on or before the last day of the third, sixth, ninth and twelfth months of the year of income; or
- (b) in any other case, at the end of each three-month period commencing at the beginning of the year of income and a final instalment on the last day of the year of income unless it coincides with the end of one of the three-month periods.

- (3) Subject to subsection (4), the amount of each instalment of income tax payable by an instalment payer for a year of income is calculated according to the following formula—

$$\frac{[A - C]}{B}$$

Where—

- (A) is the estimated tax payable by the instalment payer for the year of income at the time of the instalment under [section 89](#);
- (B) is the number of instalments remaining for the year of income including the current instalment; and
- (C) is the sum of any—
  - (a) income tax paid during the year of income, but prior to the due date for payment of the instalment, by the person by previous instalment under this section; or [section 90](#);
  - (b) income tax withheld under Subdivision A of Division II during the year of income, but prior to the due date for payment of the instalment, from payments received by the person that are included in calculating the person's income for the year of income; and
  - (c) income tax paid in accordance with [section 83\(3\)](#) or (4) with respect to a payment of the kind referred to in paragraph (b) that shall be paid to the Commissioner by the withholding agent or the withholder during the year of income but prior to the due date for payment of the instalment.

- (4) Where an instalment shall be payable at a time when an instalment payer's estimated tax payable for a year of income is fifty thousand shillings or less or the amount of an instalment calculated under subsection (3) is twelve thousand five hundred shillings or less, the amount of the instalment shall be nil.
- (5) Where an instalment payer is a resident person who conducts agricultural business involving seasonal crops in the United Republic during a year of income and conducts no other business instalments for the year of income shall be nil.
- (6) An instalment payer shall be entitled to a tax credit for a year of income in an amount equal to the income tax paid by way of instalment for the year of income under this section.

*[Act No. 4 of 2017 s. 24]*

## **89. Statement of estimated tax payable**

- (1) Subject to the provisions of subsection (7) and section 39 of the Tax Administration Act, every person who is an instalment payer for a year of income under [section 88](#) shall file with the Commissioner—
  - (a) in the case of a resident person to whom [section 88\(5\)](#) applies, by the end of September, of the year of income; and
  - (b) in any other case, by the date for payment of the first tax instalment an estimate of tax payable for the year of income.
- (2) An estimate of tax payable of a person for a year of income shall, subject to any instructions by the Commissioner to the contrary—
  - (a) be in the manner and form prescribed estimating—
    - (i) the person's chargeable income for the year of income from each employment, business and investment and the source of that income;
    - (ii) the person's total income for the year of income and the income tax to become payable with respect to that income under [section 4\(1\)\(a\)](#);
    - (iii) in the case of a domestic permanent establishment of a non-resident person, the permanent establishment's repatriated income for the year of income and the income tax to become payable with respect to that income under [section 4\(1\)\(b\)](#); and
    - (iv) any other information that the Commissioner may prescribe.
  - (b) be signed by the person and includes a declaration that, to the best of that person's knowledge and belief, the estimate is full and true; and
  - (c) have attached to it any other information that the Commissioner may prescribe.
- (3) Subject to the provisions of subsections (6) and (9), the sum of the income tax referred to in subsection (2)(a)(ii) and (iii) shall be the person's estimated tax payable for the year of income.
- (4) In estimating income tax payable for a year of income under subsection (2)(a)(ii) and, in particular, calculating any foreign tax relief to be claimed under [section 77](#), a person may take account of foreign income tax only if the person has paid such tax or the person reasonably estimates that such tax shall be paid during the year of income.
- (5) An instalment payer's estimate under subsections (1) and (2) shall remain in force for the whole of the year of income unless the person files with the Commissioner a revised estimate, in the form and specifying the information referred to in subsection (2), together with a statement of reasons for the revision.
- (6) Subject to subsection (8), a revised estimate filed by a person under subsection (5) is the person's estimated tax payable for the year of income, but only for the purposes of calculating instalments

payable under [section 88](#) for the year of income after the date the revised estimate is filed with the Commissioner.

(7) The Commissioner may—

- (a) specify by notice in writing that an instalment payer or class of instalment payers are not required to submit an estimate under subsection (1); or
- (b) extend the time for filing such an estimate in accordance with section 39 of the Tax Administration Act.

*[Cap. 438]*

(8) Where an instalment payer fails to file an estimate for a year of income as required by subsection (1), or an instalment payer shall not be required to submit an estimate by reason of subsection (7), the Commissioner shall—

- (a) make an estimate of the person's estimated tax payable for the year of income, which may take into account the income tax payable under [section 4\(1\)\(a\)](#) and (b) for the previous year of income; and
- (b) serve on the instalment payer a written notice stating the Commissioner's estimate, and the manner in which it is calculated.

(9) Where the Commissioner serves an instalment payer with a notice under subsection (8), then for the purposes of [section 88](#) the estimated tax payable by the person for the year of income shall be the amount estimated by the Commissioner.

*[Act No. 10 of 2015 s. 121; [Cap. 438](#)]*

## 90. Single instalment at time of realisation or receipt

(1) Where a person an "instalment payer" derives a gain in conducting an investment from the realisation of an interest in land, petroleum or mineral rights or buildings situated in the United Republic shares or securities held in resident entity that the person shall pay income tax by way of single instalment equal to—

- (a) in the case of a resident person, ten percent of the gain;
- (b) in the case of realisation of mineral rights under [section 65H](#), thirty percent and petroleum right under [section 65Q](#), thirty percent; or
- (c) in the case of a non-resident person, twenty percent of the gain.

(2) The instalment referred to in subsection (1) shall be paid before the title to an investment asset is transferred, and the appropriate authorities for registration, transfer or approval shall not register such transfer or change of name without the production of a certificate of the Commissioner certifying that the instalment has been paid or that no instalment is payable.

(3) This subsection applies where—

- (a) a non-resident person, an "instalment payer", receives a payment in conducting a business of land, sea or air transport operator or charterer;
- (b) no part of that business is conducted through a permanent establishment of the person situated in the United Republic; and
- (c) the payment is received in respect of—
  - (i) the carriage of passengers who embark or cargo, mail or other moveable tangible assets that are embarked in the United Republic, other than as a result of transshipment; or

- (ii) rental of containers and related equipment which are supplementary or incidental to carriage referred to in paragraph (a).
- (4) Subsection (3) shall not apply to payment received in respect of carriage of fish or horticulture products by a foreign aircraft.
- (5) Where subsection (3) applies the person shall pay income tax by way of single instalment equal to five percent of the gross payment.
- (6) A tax certificate issued by the Commissioner showing that the instalment referred to in subsection (4) has been paid is necessary before the vehicle, ship or aircraft in respect of which the payment shall be received shall be permitted to clear customs and leave the United Republic and the proper officer of Customs by whom customs clearance may be granted shall refuse clearance until such a certificate is produced.
- (7) Civil or criminal proceedings shall not be instituted or maintained against the proper officer of Customs or any other authority in respect of a refusal of clearance under this section, nor shall the fact that a vehicle, ship or aircraft is detained under this section affect the liability of the owner, charterer or agent to pay border, harbour or airport dues and charges for the period of detention.
- (8) An instalment payer shall be entitled to a tax credit for a year of income in an amount equal to the income tax paid by way of single instalment for the year of income under this section.

*[Acts Nos. 5 of 2011 s. 16; 8 of 2012 s. 29; 2 of 2016 s. 29; 4 of 2017 s. 25; Cap. 4 s. 8]*

## **Division IV: Income tax payable on assessment**

### ***Subdivision A: Returns***

#### **91. Returns of income**

- (1) Subject to sections [92](#) and [94](#) of this Act and 39 and 48 of the Tax Administration Act, every person shall file with the Commissioner not later than six months after the end of each year of income a return of income for the year of income.
- (2) A return of income of a person for a year of income shall, subject to any instructions by the Commissioner to the contrary—
  - (a) be in the manner and form prescribed specifying—
    - (i) the person's chargeable income for the year of income from each employment, business and investment and the source of that income;
    - (ii) the person's total income for the year of income and the income tax payable with respect to that income under [section 4\(1\)\(a\)](#);
    - (iii) in the case of a domestic permanent establishment of a non-resident person, the permanent establishment's repatriated income for the year of income and the income tax payable with respect to that income under [section 4\(1\)\(b\)](#);
    - (iv) any income tax paid by the person for the year of income by withholding, instalment or assessment for which a tax credit is available under sections [67](#), [88](#), [90](#) of this Act or 47 of the Tax Administration Act;
  - [Cap. 438]*
  - (v) the amount of income tax still to be paid for the year of income calculated as the sum of the tax referred to in subparagraphs (ii) and (iii) less the tax already paid referred to in subparagraph (iv); and
  - (vi) any other information that the Commissioner may prescribe;

- (b) in the case of a corporation, be prepared or certified by a certified public accountant in public practice;
- (c) include a declaration that the return is complete and accurate;
- (d) be signed by—
  - (i) the person; and
  - (ii) a person specified in section 37(2)(a) of the Tax Administration Act;  
[Cap. 438]
- (e) have attached to it—
  - (i) any withholding certificates supplied to the person under [section 85](#) with respect to payments derived by the person during the year of income;
  - (ii) any statement provided to the person under section 38(3) of the Tax Administration Act;  
[Cap. 438]
  - (iii) certified financial statements; and
  - (iv) any other information that the Commissioner may prescribe.

[Acts Nos. 10 of 2015 s. 122; 2 of 2016 s. 30; 4 of 2017 s. 26; [Cap. 438](#); Cap. 4 s. 8]

## 92. Return of income not required

Unless requested by the Commissioner by notice in writing served on the person and subject to a right of the person to elect to file a return, no return of income for a year of income shall be required under [section 91](#) from—

- (a) a resident individual—
  - (i) who has no income tax payable for the year of income under [section 4\(1\)\(a\)](#); or
  - (ii) whose income for the year of income consists exclusively of either or both of the following:
    - (aa) income from any employment where the employer is required to withhold tax under section 81 from payments made to the individual that are included in calculating the individual's income from the employment; or
    - (bb) gains of the type referred to in [section 90\(1\)](#); or
- (b) a non-resident person other than one with a domestic permanent establishment who has no income tax payable for the year of income under [section 4\(1\)\(a\)](#) or whose income tax payable for the year of income under [section 4\(1\)\(a\)](#) consists exclusively of gains of the type referred to in [section 90\(1\)](#).

## 93. \*\*\*

[Repealed by Act [No. 10 of 2015](#) s. 124]

## Subdivision B: Assessments

**94. Self-assessment**

- (1) Where an entity files a return of income for a year of income, an assessment shall be treated as made on the due date for filing the return of—
  - (a) the income tax payable by the person for the year of income under [section 4\(1\)\(a\)](#) and (b) in the amount shown in the return; and
  - (b) the amount of that tax still to be paid for the year of income in the amount shown in the return the "tax payable on the assessment".
- (2) Where an entity fails or is not required to file a return of income for a year of income then, until such time as a return shall be filed, an assessment shall be treated as made on the due date for filing the return that—
  - (a) the income tax payable by the person for the year of income shall be equal to the sum of any income tax withheld from payments derived by the person during the year of income under Division II and any income tax paid by the person by instalment for the year of income under Division III of this Part; and
  - (b) there is no tax payable on the assessment.
- (3) Where an individual files a return of income, the Commissioner shall assess the tax as expeditiously as possible after the expiry of the time allowed for the filing of a return of income.
- (4) Where an individual has filed a return of income, the Commissioner may—
  - (a) accept such return and make assessment on the basis of the return; or
  - (b) if the Commissioner has reasonable cause to believe that such return is not true and correct, determine, according to the best of his judgement, the amount of the income of that individual and assess the tax accordingly.
- (5) Where an individual has not filed a return for any year of income, whether or not he has been required by the Commissioner so to do, and the Commissioner considers that, that individual has income chargeable tax for such year, the Commissioner may determine, according to the best of his judgement, the amount of the income of that individual and assess the tax accordingly.
- (6) Subject to the provisions of subsections (1) and (2), the Commissioner may make an assessment under subsections (3), (4) or (5), at any time prior to the expiry of three years following the year of income to which the assessment relates:

Provided that—

- (a) where any fraud or wilful neglect has been committed by or on behalf of any person in connection with or in relation to any tax for any year of income, an assessment in relation to such year of income may be made at any time; and
  - (b) in the case of payment referred to in subsections (4) and (5) of [section 7](#) an assessment in relation thereto may be made at any time prior to the expiry of three years following the year of income in which the payment is received.
- (7) Subsection (5) shall not affect any liability otherwise incurred by that individual under this Act in consequence of the failure to file a return.

*[Acts Nos. 6 of 2006 s. 16; 10 of 2015 s. 123]*

**95. \*\*\***

*[Repealed by Act [No. 10 of 2015](#) s. 124]*

96. \*\*\*

*[Repealed by Act [No. 10 of 2015](#) s. 124]*

97. \*\*\*

*[Repealed by Act [No. 10 of 2015](#) s. 124]*

98. \*\*\*

*[Repealed by Act [No. 10 of 2015](#) s. 124]*

99. \*\*\*

*[Repealed by Act [No. 10 of 2015](#) s. 124]*

100. \*\*\*

*[Repealed by Act [No. 10 of 2015](#) s. 124]*

101. \*\*\*

*[Repealed by Act [No. 10 of 2015](#) s. 124]*

102. \*\*\*

*[Repealed by Act [No. 10 of 2015](#) s. 124]*

103. \*\*\*

*[Repealed by Act [No. 10 of 2015](#) s. 124]*

104. \*\*\*

*[Repealed by Act [No. 10 of 2015](#) s. 124]*

105. \*\*\*

*[Repealed by Act [No. 10 of 2015](#) s. 124]*

106. \*\*\*

*[Repealed by Act [No. 10 of 2015](#) s. 124]*

107. \*\*\*

*[Repealed by Act [No. 10 of 2015](#) s. 124]*

108. \*\*\*

*[Repealed by Act [No. 10 of 2015](#) s. 124]*

109. \*\*\*

*[Repealed by Act [No. 10 of 2015](#) s. 124]*

110. \*\*\*  
*[Repealed by Act [No. 10 of 2015](#) s. 124]*
111. \*\*\*  
*[Repealed by Act [No. 10 of 2015](#) s. 124]*
112. \*\*\*  
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114. \*\*\*  
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124. \*\*\*

*[Repealed by Act [No. 10 of 2015](#) s. 124]*

125. \*\*\*

*[Repealed by Act [No. 10 of 2015](#) s. 124]*

126. \*\*\*

*[Repealed by Act [No. 10 of 2015](#) s. 124]*

127. \*\*\*

*[Repealed by Act [No. 10 of 2015](#) s. 124]*

## Part X – Administration

### Division II: Official documentation and registration

#### 128. International agreements

- (1) To the extent that the terms of an international agreement to which the United Republic is a party are inconsistent with the provisions of this Act, apart from subsection (5) and Subdivision B of Division II of Part III, the terms of the agreement prevail over the provisions of this Act.
- (2) This subsection applies where the Commissioner receives a request pursuant to an international agreement from the competent authority of another country for the collection in the United Republic of an amount payable by a person otherwise referred to as the "tax debtor" under the tax laws of the other country.
- (3) Where subsection (2) applies, the Commissioner may, by service of a notice in writing, require the tax debtor to pay the amount to the Commissioner by the date specified in the notice and for transmission to the competent authority.
- (4) This subsection applies where an international agreement provides that the United Republic shall exempt income or a payment or subject income or a payment to reduced tax.
- (5) Where subsection (4) applies, the exemption or reduction shall not be available to any entity that meets the following conditions—
  - (a) the entity is, for the purposes of the agreement, a resident of the other contracting state; and
  - (b) fifty percent or more of the underlying ownership of the entity is held by persons, being individuals or entities in which no individual holds part of the underlying ownership, that are not, for the purposes of the agreement, residents of the other contracting state or the United Republic.
- (6) For purposes of this section, "international agreement" means a treaty or other agreement with a foreign government that has entered into force in the United Republic providing for—
  - (a) relief of international double taxation and the prevention of fiscal evasion; or
  - (b) reciprocal administrative assistance in the enforcement of tax liabilities.

**129. Regulations**

The Minister may make regulations for the better carrying into effect of the principles, purposes and provisions of this Act".

*[Act No. 4 of 2018 s. 27]*

**130. \*\*\***

*[Repealed by Act [No. 10 of 2019](#) s. 124]*

**131. \*\*\***

*[Repealed by Act [No. 10 of 2019](#) s. 124]*

**132. \*\*\***

*[Repealed by Act [No. 10 of 2019](#) s. 124]*

**133. \*\*\***

*[Repealed by Act [No. 10 of 2019](#) s. 124]*

**134. \*\*\***

*[Repealed by Act [No. 10 of 2019](#) s. 124]*

**135. \*\*\***

*[Repealed by Act [No. 10 of 2019](#) s. 124]*

**136. \*\*\***

*[Repealed by Act [No. 10 of 2019](#) s. 124]*

**137. \*\*\***

*[Repealed by Act [No. 10 of 2019](#) s. 124]*

**138. \*\*\***

*[Repealed by Act [No. 10 of 2019](#) s. 124]*

**139. \*\*\***

*[Repealed by Act [No. 10 of 2019](#) s. 124]*

**140. \*\*\***

*[Repealed by Act [No. 10 of 2019](#) s. 124]*

**Part XI – Transitional provisions****141. Repeal**

(1) Repeals the Income Tax Act [No. 33 of 1973](#).

- (2) The applicable regulations, rules, orders or notices made under the Repealed Income Tax Act, and in force shall continue to be in force, so far as may be, as if they have been made as regulations, rules, orders or notices under this Act until such time as they are amended or revoked by regulations, rules, orders or notices made under this Act.

## 142. Transition

- (1) Subject to subsections (6) and (8), the repealed legislation continues to apply for years of income commencing prior to the date on which this Act comes into effect.
- (2) All appointments made under the repealed legislation and subsisting at the date this Act comes into effect shall be deemed to be appointments made under this Act.
- (3) Any international agreement made by the Government of the United Republic that is effective at the time this Act comes into effect shall continue to have effect under this Act.
- (4) All blank forms and other documents used in relation to the repealed legislation may continue to be used under this Act and all references in those forms and documents to provisions of and expressions appropriate to the repealed legislation are taken to refer to the corresponding provisions and expressions of this Act.
- (5) A reference in this Act to—
  - (a) a previous year of income includes, where the context requires, a reference to a year of income under the repealed legislation; or
  - (b) this Act or to a provision of this Act includes, where the context requires, a reference to the repealed legislation or to a corresponding provision of the repealed legislation, respectively.
- (6) Subject to [sections 20\(4\), \(6\), \(7\) and \(8\)](#), a person whose year of income under the repealed legislation is, at the time the repealed legislation ceases to have effect, a period of twelve months other than the calendar year shall be treated as having been granted approval by the Commissioner under [section 20\(3\)](#) to use that year of income under this Act.
- (7) Interest derived by a person from long-term bonds of not less than three years maturity period issued and listed on the Dar es Salaam Stock Exchange in the fiscal year 2002/2003 shall be exempted under this Act.
- (8) The provisions of [sections 7\(2\), 9\(2\) and Division II of Part V](#) shall apply for the year of income commencing on or after 1 January, 2005.

*[Act No. 15 of 2004 s. 33]*

## 143. Agreements and certificates for fiscal stability

- (1) Subject to subsection (2), where the Government of the United Republic has concluded a binding agreement with a person whether before or after the commencement of this Act such that certain provisions of the repealed legislation or provisions of this Act that are later repealed will continue to apply or not be altered to the detriment of the person—
  - (a) the provisions of the repealed legislation shall continue to apply—
    - (i) to the extent provided for in the agreement, for the duration of the agreement; or
    - (ii) until such time as the person relinquishes the right to apply those provisions,
  - (b) in calculating the tax liability of the person during the application period referred to in paragraph (a), the Commissioner may, in the Commissioner's discretion—
    - (i) continue to apply other provisions of the repealed legislation that the Commissioner considers are associated with or that have an application that is consequential upon

the provisions mentioned in paragraph (a) instead of applying the corresponding provisions under this Act; and

- (ii) disapply any provisions in this Act that have no corresponding provision in the repealed legislation.
- (2) An agreement referred to in subsection (1) has no effect on the application of this Act until such time as it shall be incorporated in a register to be kept by the Minister and known as the Register of Tax Agreements.
- (3) A person seeking the benefit of an agreement referred to in subsection (1) shall apply to the Minister for inclusion of the agreement in the Register of Tax Agreements.
- (4) For purposes of this section, an agreement concluded by the Government of the United Republic includes a certificate issued by the Tanzanian Investment Centre under the Tanzania Investment Act.

[Cap. 38]

#### 144. Assets and liabilities

- (1) Subject to the provisions of subsection (2), the following provisions shall apply in calculating the cost of assets owned and net incomings of liabilities owed—
  - (a) the net cost of a depreciable asset or class of depreciable assets for which capital allowances were available under the repealed legislation is, at the commencement, the residue of expenditure or written down value for the asset or assets, as the case requires, under the repealed legislation at the time the repealed legislation ceased to have effect;
  - (b) the net cost of a depreciable asset for which capital allowances were not available under the repealed legislation is, at the commencement, the market value of the asset at that time;
  - (c) the net cost of a business asset or investment asset that is an interest in any premises or a financial asset within the meaning of section 13 of the Income Tax Act, 1973 is, at the commencement, the lower of the asset's cost determined under section 13 of the Income Tax Act, 1973 and adjusted for inflation and devaluation to the date of commencement of this Act only and the market value of the asset at that time of commencement;
  - (d) the net cost of a business asset or investment asset, other than an asset referred to in paragraph (c), is, at the commencement, the market value of the asset at that time of commencement; and
  - (e) the net incomings of a liability of a business is, at the commencement, the market value of the liability expressed in a positive amount at that time.
- (2) The net cost of an asset for which a deduction or immediate expensing was available under the repealed legislation is, at the commencement, nil.

[Cap. 4 s. 8]

#### 145. \*\*\*

[Repealed by Act [No. 2 of 2016](#) s. 31]

**First Schedule (Section 4(6))****Tax rates****1. Rates of income tax for individuals**

- (1) Subject to subparagraphs (2), (3) and (4) of this paragraph and paragraph 2, the total income of a resident individual for a year of income shall be taxed at the following rates—

Total income		Rate payable
1.	Where the total income does not exceed 2,040,000/=	NIL
2.	Where the total income exceeds 2,040,000/= but does not exceed Tshs. 4,320,000/=	9% of the amount in excess of Tshs. 2,040,000/=
3.	Where the total income exceeds 4,320,000/= but does not exceed 6,480,000/=	Tshs. 205,200/= plus 20% of the amount in excess of 4,320,000/=
4.	Where the total income exceeds 6,480,000/= but does not exceed 8,640,000/=	Tshs. 637,200/= plus 25% of the amount in excess of 6,480,000/=
5.	Where the total income exceeds 8,640,000/=	Tshs.1,177,200/= plus 30% of the amount in excess of 8,640,000/=

- (2) Subparagraph (3) shall apply where—

- (a) the total income of a resident individual for a year of income exceeds Tshs. 2,040,000/=; and  
 (b) any of the following (the "gains") are included in calculating the individual's income—

- (i) net gains from the realisation of investment assets but not exceeding the amount calculated as—

$$A - B$$

Where—

- (A) is any gain from the realisation of shares and securities in a resident corporation or an interest in land or buildings situated in the United Republic; and  
 (B) is losses on the realisation of assets referred to in A used in calculating the net gains; and

- (ii) a commuted pension from an approved retirement fund.

- (3) Where this subparagraph applies—

- (a) the greater of—

- (i) the individual's total income less the gains; or

- (ii) Tshs. 2,040,000/=,
- shall be taxed at the rates specified in subparagraph (1) as though it were the only total income of the individual; and
- (b) the balance of the total income shall be taxed at the rate of ten percent.
- (4) The total income of a non-resident individual for a year of income shall be taxed at the rate of thirty percent.
- (5) The total income of a person from conducting mining operations shall be taxed at the rate of thirty percent.
- (6) The total income of a person from conducting petroleum operations shall be taxed at the rate of thirty percent.
- (7) The Minister may, in consultation with the Minister responsible for finance of the Revolutionary Government of Zanzibar, determine the rate applicable in Tanzania Zanzibar.

*[Acts Nos. 15 of 2004 s. 34; 13 of 2005 s. 10; 6 of 2006 s. 19; 16 of 2007 s. 16; 13 of 2008 s. 18; 15 of 2010 s. 21; 8 of 2012 s. 31; 2 of 2016 s. 32; 4 of 2018 s. 28]*

## 2. Presumptive income tax for individuals

- (1) Where a resident individual meets the following requirements for a year of income the individual's income tax payable with respect to [section 4\(1\)\(a\)](#) for the year of income shall be equal to the amount of presumptive income tax provided in subparagraph (3)—
- (a) the individual's income for a year of income consists exclusively of income from a business having a source in the United Republic;
- (b) the turnover of the business does not exceed the threshold in subparagraph (2); and
- (c) the individual does not elect to disapply this provision for the year of income.
- (2) The threshold referred to in subparagraph (1)(b) is 100,000,000 shillings.
- (3) The amount of presumptive income tax referred to in subparagraph (1) is—

Turnover	Tax payable where section 35 of Tax Administration Act is not complied with	Tax payable where section 35 of Tax Administration Act is complied with
Where turnover does not exceed Tshs. 4,000,000/=	NIL	NIL
Where turnover exceeds Tshs. 4,000,000/= but does not exceed Tshs. 7,000,000/=	Tshs. 100,000/=	3% of turnover in excess of Tshs. 4,000,000/=

Turnover	Tax payable where section 35 of Tax Administration Act is not complied with	Tax payable where section 35 of Tax Administration Act is complied with
Where turnover exceeds Tshs. 7,000,000/= but does not exceed Tshs. 11,000,000/=	Tshs. 250,000/=	Tshs. 90,000/= plus 3% of turnover in excess of Tshs. 7,000,000/=
Where turnover exceeds Tshs. 11,000,000/= but does not exceed Tshs. 14,000,000/=	Tshs. 450,000/=	Tshs. 230,000/= plus 3% of turnover in excess of Tshs. 11,000,000/=
Where turnover exceeds Tshs. 14,000,000/= but does not exceed Tshs. 100,000,000/=	NOT APPLICABLE	Tshs. 450,000/= plus 3.5% of turnover in excess of Tshs. 14,000,000/=

[Acts Nos. 15 of 2004 s. 34; 8 of 2012 s. 31; 2 of 2014 s. 40; 15 of 2015 s. 15; 8 of 2019 s. 9]

### 3. Rates of income tax for entities

- (1) The total income of a corporation, trust, unapproved retirement fund or domestic permanent establishment of a non-resident person for a year of income shall be taxed at the rate of thirty percent.
- (2) Notwithstanding subparagraph (1)—
  - (a) a newly listed company with the Dar es Salaam Stock Exchange with at least thirty percent of its equity ownership issued to the public shall be taxed at a reduced corporate rate of twenty five percent for three consecutive years from the date of listing; and
  - (b) a corporation with a newly established plant for assembling motor vehicles, tractors, fishing boats or out boats engine and having a performance agreement with the Government shall be taxed at a reduced corporate rate of ten percent for five consecutive years from the year of commencement of production.
  - (c) a newly established entity dealing in manufacture of pharmaceuticals or leather products and having a performance agreement with the Government of the United Republic of Tanzania shall be taxed at a reduced corporate rate of twenty percent for five consecutive years from the year of commencement of production.
  - (d) an entity dealing in manufacture of sanitary pads and having a performance agreement with the Government of the United Republic shall be taxed at a reduced corporate rate of twenty five percent for two consecutive years from the 1<sup>st</sup> July 2019 to 30<sup>th</sup> June 2021.

- (3) Income of a corporation with perpetual unrelieved loss for three consecutive years shall be taxed at the rate of 0.5 percent of the turnover of the third year of perpetual unrelieved loss.
- (4) The repatriated income of a domestic permanent establishment of a non-resident person for a year of income shall be taxed at the rate of ten percent.

*[Acts Nos. 6 of 2006 s. 19; 13 of 2008 s. 18; 4 of 2009 s. 14; 8 of 2012 s. 31; 4 of 2013 s. 27; 4 of 2017 s. 27; 4 of 2018 s. 28; 8 of 2019 s. 9]*

#### 4. Rates of withholding tax

Income tax to be withheld from payments under Division II of Part VII shall be withheld at the following rates—

- (a) payments to which [section 81](#) applies—
  - (i) in the case of a resident withholder - at the rates prescribed in regulations;
  - (ii) in the case of a non-resident withholder - fifteen percent; or
  - (iii) in the case of director's fees referred to in [section 7\(2\)\(h\)](#) - fifteen percent;
- (b) payments to which [section 82](#) applies—
  - (i) in the case of dividends—
    - (aa) of a corporation listed on the Dar es Salaam Stock Exchange or to which subsection (2) of [section 54](#) applies - five percent; or
    - (bb) of any other corporation - ten percent;
  - (ii) in the case of interest, rent or a commuted pension paid to a resident withholder or interest or rent paid to a non-resident withholder - ten percent; or
  - (iii) in the case of other payments - fifteen percent; and
- (c) payments to which [section 83](#) applies—
  - (i) in the case of service fee referred to in [section 83\(1\)\(a\)](#), - five percent for a resident and fifteen percent for a nonresident;
  - (ii) in the case of insurance premium referred to in [section 83\(1\)\(b\)](#), - five percent;
  - (iii) in the case of service fee referred to in [section 83\(1\)\(c\)](#), - five percent for a resident and fifteen percent for a nonresident;
  - (iv) in the case of money transfer commission referred to in [section 83\(1\)\(d\)](#), - ten percent; and
  - (v) in the case of payment referred to under [section 83A](#), - two percent; and

*[Acts Nos. 8 of 2012 s. 31; 4 of 2013 s. 27; 2 of 2014 s. 40; 4 of 2017 s. 27]*

#### 5. Change of rate

- (1) Where an order relating to tax rates is in force under the Provisional Collection of Taxes and Duties Act, with respect to any year of income, the rates of tax referred to in this Schedule shall, so long as the order remains in force, be construed in accordance with the order.

- (2) Subject to subparagraph (1), where the rates of tax specified under paragraph 1, 2, 3 or 4 are changed for a year of income without specifying the precise date from which the change takes effect then—
- (a) in the case of tax rates under paragraphs 1, 2 and 3, the change shall be treated as having effect from the start of the calendar year specified or if no year is specified from the start of the calendar year after the Act changing the rate receives Presidential assent; and
  - (b) in the case of tax rates under paragraph 4, the change shall be treated as having effect from the start of the calendar year specified or if no year is specified from the date the Act changing the rate receives Presidential assent.
- (3) Where a tax rate specified under paragraphs 1, 2 or 3 changes and the change takes effect on a date other than the start of a person's year of income then for the year of income in which the change takes place—
- (a) the person's total income shall be apportioned between the part of the year of income occurring before the change and the remaining part according to the number of days in each part;
  - (b) the total income attributable to the part of the year of income occurring before the change shall be taxed at the rate applicable before the change and that attributable to the remaining part shall be taxed at the rate applicable after the change; and
  - (c) in the case of a resident individual, the thresholds referred to in paragraph 1(1), both before and after change, shall be reduced in proportion to the part of the year of income occurring before the change and the remaining part.

*[Cap. 153]*

## Second Schedule (Section 10)

### Exempt amounts

#### 1. Exempt amounts

- (1) The following amounts are exempt from income tax—
- (a) amounts derived by the President of the United Republic or the President of the Revolutionary Government of Zanzibar from salary, duty allowance and entertainment allowance paid or payable to the President from public funds in respect of or by virtue of the office as President;
  - (b) amounts derived by the Government including Executive Agency established under the Executive Agencies Act or any local authority of the United Republic or by the Revolutionary Government of Zanzibar or any local authority of Zanzibar except amounts derived from business activities that are unrelated to the functions of Government;
- [Cap. 245]*
- (c) amounts derived by any person entitled to privileges under the Diplomatic and Consular Immunities and Privileges Act to the extent provided in that Act or in regulations made under that Act;
- [Cap. 356]*
- (d) amounts derived by an individual from employment in the public service of the Government of a foreign country provided—
    - (i) the individual is a resident person solely by reason of performing the employment or is a non-resident person; and

- (ii) the amounts are payable from the public funds of the country;
- (e) foreign source amounts delivered by—
  - (i) an individual who is not a citizen of the United Republic and who is referred to in paragraph (d); or
  - (ii) a spouse or child of an individual referred to in subparagraph (i) where the spouse is resident in the United Republic solely by reason of accompanying the individual on the employment;
- (f) amounts derived by—
  - (i) the East African Development Bank;
  - (ii) the Price Stabilisation and Agricultural Inputs Trust;
  - (iii) the Investor Compensation Fund under the Capital Markets Regulatory Authority;
  - (iv) the Bank of Tanzania;
  - (v) Dar es Salaam Stock Exchange; and
  - (vi) African Development Bank from the sale of bonds and securities in the capital market;
- (g) amounts derived during a year of income by a primary cooperative society—
  - (i) registered under the Co-operative Societies Act;  
*[Cap. 211]*
  - (ii) solely engaged in activities as a primary co-operative in one of the following fields—
    - (aa) agricultural activities, including activities related to marketing and distribution;
    - (bb) construction of houses for members of the cooperative;
    - (cc) distribution trade for the benefit of the members of the cooperative; and
    - (dd) savings and credit society; and
  - (iii) whose turnover for the year of income does not exceed fifty million shillings;
- (h) pensions or gratuities granted in respect of wounds or disabilities caused in war and suffered by the recipients of such pensions or gratuities;
- (i) a scholarship or education grant payable in respect of tuition or fees for full-time instruction at an educational institution;
- (j) amounts derived by way of alimony, maintenance or child support under a judicial order or written agreement;
- (k) amounts derived by way of gift, bequest or inheritance, except as required to be included in calculating income under sections 7(2), 8(2) or 9(2);
- (l) *[deleted]*
- (m) amounts derived by way of foreign living allowance by any officer of the Government that are paid from public funds and in respect of performance of the office overseas;
- (n) income derived from gaming by a gaming licensee who has paid gaming tax under Gaming Act;

*[Cap. 41]*

- (o) income derived from investment or business conducted within the Export Processing Zone, and Special Economic Zone during initial period of ten years;
  - (p) income derived from investments exempted under any written laws for the time being in force in Tanzania Zanzibar;
  - (q) amounts derived by a crop fund established by farmers under a registered farmers cooperative society, union or association for financing crop procurement from its members;
  - (r) *[deleted]*
  - (s) the fidelity fund established under the Capital Markets and Securities Act;  
*[Cap. 79]*
  - (t) interest on bonds issued by the East African Development Bank which are listed in the Dar es Salaam Stock Exchange;
  - (u) amounts derived from gains on realisation of asset by a unit holder on redemption of a unit by a unit trust;
  - (v) interest, fees or other financing charges paid by the Government to a non--resident bank, financial institution, other government or representative of other government arising from a loan agreement that entitles such non-resident entity to a tax exemption for purposes of financing Government projects".
- (2) The provisions of item (v) of subparagraph (1) shall be deemed to have come into operation on the 1<sup>st</sup> June, 2017.
- [Acts Nos. 6 of 2006 s. 20; 13 of 2008 s. 19; 5 of 2011 s. 17; 8 of 2012 s. 32; 2 of 2014 s. 41; 16 of 2015 s. 16; 2 of 2016 s. 33; 4 of 2018 s. 29; 8 of 2019 s. 9]*

### Third Schedule (Section 17)

#### Depreciable assets, allowances and inclusions

##### 1. Classification and pooling of depreciable assets

- (1) Depreciable assets are classified as follows—

Class	Depreciable assets
1.	Computers and data handling equipment together with peripheral devices; automobiles, buses and minibuses with a seating capacity of less than thirty passengers, goods vehicles with a load capacity of less than seven tonnes; construction and earth-moving equipment.

Class	Depreciable assets
2.	Buses with a seating capacity of thirty or more passengers, heavy general purpose or specialised trucks, trailers and trailer-mounted containers; railroad cars, locomotives, and equipment; vessels, barges, tugs, and similar water transportation equipment; aircraft; other self-propelling vehicles; plant and machinery used in agriculture or manufacturing; specialised public utility plant, equipment, and machinery irrigation installations and equipment.
3.	Office furniture, fixtures and equipment; any asset not included in another Class.
4.	<i>[Deleted]</i>
5.	Buildings, structures and similar works of a permanent nature used in agriculture, livestock farming or fishing farming.
6.	Buildings, structures and similar works of permanent nature other than those mentioned in Class 5.
7.	Intangible assets other than those in Class 4.
8.	Plant and machinery including windmills, electric generators and distribution equipment used in agriculture and electronic fiscal device purchased by a non value added tax registered trader, equipment used for prospecting and exploration of minerals or petroleum.

- (2) Each depreciable asset owned and employed by a person during a year of income wholly and exclusively in the production of the person's income from a particular business shall be, at the time the asset is first owned and so employed, placed in a pool—
- in the case of a Class 1, 2, 3, 5 or 8 depreciable asset other than one referred to in paragraph (c), with all other assets of the same Class so owned and employed by the person in that business;
  - in the case of a Class 7 depreciable asset, of its own separately from other assets of that Class or any other Class; and
  - in the case of a moveable tangible asset used by a person who conducts a business of land, sea or air transport operator or charterer to carry passengers, mail, livestock or other

moveable tangible assets between different countries, of its own separately from other assets of any Class,

and those pools are referred to as the person's pools of depreciable assets for the year of income.

- (3) To the extent not otherwise provided, expenditure incurred by a person wholly and exclusively in the production of the person's income from a business in respect of natural resource prospecting, exploration and development shall be treated as if it were incurred in securing the acquisition of an asset that is used by the person in that production.

## 2. Initial allowance

- (1) Subject to this paragraph, an allowance is granted to a person for each item of plant or machinery—
- (a) that is—
    - (i) used in manufacturing processes and fixed in a factory;
    - (ii) used in fish farming; or
    - (iii) used for providing services to tourists and fixed in a hotel; and
  - (b) that is added to the person's Class 2 or 3 pools of depreciable assets for a business of the person in accordance with paragraph 1(2).
- (2) The amount of the allowance granted for each asset under subparagraph (1) is calculated as fifty percent of the net cost of the asset at the time it is added to the pool.
- (3) The allowance granted to a person under subparagraph (1) shall be available in two portions as follows—
- (a) the first portion shall be available in the year of income in which the asset is added to the person's pool of depreciable assets; and
  - (b) the remaining portion shall be available during the year of income following that in which the first portion is added, but not if the pool has been dissolved under paragraph 4 in the meantime.

## 3. Depreciation allowance

- (1) Subject to this paragraph, an allowance shall be granted to a person for a year of income for each of the person's pools of depreciable assets equal to the depreciation for the year of income of each pool calculated in accordance with subparagraphs (2), (7) or (8) of this paragraph.
- (2) Depreciation for a year of income for each of a person's pools of depreciable assets shall be calculated—
- (a) in the case of Class 1, 2 and 3 pools, according to the diminishing value method; and
  - (b) in the case of Class 5, 6 and 7 pools, according to the straight line method,

using the following formula:

$$A \times B \times C / 365$$

Where—

- (A) is the depreciation basis of the pool at the end of the year of income;
- (B) is the depreciation rate applicable to the pool; and
- (C) is the number of days in the person's year of income.

- (3) The depreciation basis of a Class 1, 2, 3 or 8 pool of depreciable assets of a person at the end of a year of income is the total of—
- (a) the depreciation basis of the pool at the end of the previous year of income, if any, after deducting depreciation for that pool calculated under subparagraphs (2), (7) or (8) for that year of income; and
  - (b) amounts added to the depreciation basis of the pool during the year of income under subparagraph (5) in respect of additions to the cost of assets in or added to the pool,
- reduced, but not below zero, by incomings for the assets in the pool or that have been in the pool derived during the year of income.
- (4) The depreciation basis of a Class 5, 6 or 7 pool of depreciable assets of a person at the end of a year of income shall be the total of—
- (a) the depreciation basis of the pool at the end of the previous year of income; and
  - (b) amounts added to the depreciation basis of the pool during the year of income under subparagraph (5) in respect of additions to the cost of assets in or added to the pool,
- reduced, but not below zero, by incomings for the assets in the pool derived during the year of income.
- (5) Additions to the cost of a depreciable asset included in a person's pools of depreciable assets are added to the depreciation basis of the person's relevant pool as follows—
- (a) subject to item (b) of this paragraph at the time the asset is added to the pool in accordance with subparagraph (2) of paragraph 1 or the expenditure is incurred, whichever is later; or
  - (b) in the case of an asset for which an initial allowance is granted under paragraph 2, twelve months after the time referred to in subparagraph (a).
- (6) The depreciation rates applicable to each pool referred to in subparagraph (2) are—

Class	Rate
1.	37.5%
2.	25%
3.	12.5%
4.	<i>[Deleted]</i>
5.	20%
6.	5%
7.	1 divided by the useful life of the asset in the pool and rounded down to the nearest half year

Class	Rate
8.	100%

- (7) Where the depreciation basis of a pool of depreciable assets at the end of a year of income reduced by depreciation calculated under subparagraph (2) produces an amount that is less than one million shillings, additional depreciation of the pool shall be calculated as equal to that amount.
- (8) The allowance granted to a person under subparagraph (1) for a year of income with respect to a Class 5, 6 or 7 pool of depreciable assets shall not exceed the depreciation basis of the pool at the end of the year of income reduced by all other such allowances granted to the person in any previous year of income in respect of the pool.
- (9) For the purposes of calculating the depreciation basis of a pool of depreciable assets—
- (a) amounts to be added under subparagraph (5) in respect of an asset when it is added to the pool shall be reduced by any initial allowance available under paragraph 2 in respect of the asset, irrespective of the year of income for which the initial allowance is available; and
  - (b) expenditure incurred in acquiring a road vehicle, other than a commercial vehicle, to the extent that the expenditure exceeds thirty million shillings the excess shall not be recognised.
- (10) For the purposes of this paragraph, "commercial vehicle" means—
- (a) a road vehicle designed to carry loads of more than half a tonne or more than thirteen passengers; or
  - (b) a vehicle used in a transportation or vehicle rental business.

#### 4. Realisation of depreciable assets

- (1) The excess of—
- (a) incomings derived by a person during a year of income for any assets that are or have been in a Class 1, 2, 3, 5, 6 or 8 pool of depreciable assets of the person during the year of income; over;
  - (b) (i) or (ii), as appropriate—
    - (i) in the case of a Class 1, 2, 3 or 8 pool, the depreciation basis of the pool at the end of the year of income calculated under paragraph 3(3) but disregarding those incomings; or
    - (ii) in the case of a Class 5 or 6 pool, the written down value of the pool at the end of the year of income calculated under subparagraph (4) but disregarding those incomings,
- shall be included in calculating the person's income for that year of income from the business in which the assets are or were employed.
- (2) Where the assets in a pool of depreciable assets of a person are all realised by the person before the end of a year of income, the pool shall be dissolved and—
- (a) an amount is included in calculating the person's income for the year of income calculated in accordance with the following formula:
- $$A - B$$
- or

- (b) an allowance shall be granted to the person for the year of income calculated in accordance with the following formula:

$B - A$

Where—

- (A) is the person's incomings derived during the year of income, or to be derived, for the assets; and
- (B) is the sum of—
- (i) the written down value of the pool at the end of the previous year of income;
  - (ii) any initial allowance otherwise available in respect of the pool for the following year of income under paragraph 2; and
  - (iii) expenditure added to the depreciation basis of the pool during the year of income or to be added during the following year of income under paragraph 3(5).

(3) *[Deleted]*

- (4) For the purposes of this section, "written down value" of a pool of depreciable assets at the end of a year of income means—

- (a) in the case of a Class 1, 2, 3 or 8 pool, the depreciation basis of the pool at the end of the year of income, if any, after deducting depreciation for that pool calculated under paragraph 3(2) and (7) for that year of income; or
- (b) in the case of a Class 5, 6 or 7 pool, the depreciation basis of the pool at the end of the year of income reduced by all allowances granted to the person under paragraph 3(1) for that year of income and any previous year of income in respect of the pool.

## 5. Depreciation allowances for mineral or petroleum operations

- (1) The whole of depreciation allowance expenditure incurred in respect of mineral or petroleum operations during a year of income shall be placed in a separate pool.
- (2) Subject to subparagraph (1), the depreciation allowances shall be granted with respect to each pool at the rates provided for in subparagraph (3).
- (3) Depreciation allowance shall be granted for expenditure pooled under subparagraph (1) for a year of income at the following rates—

Year of income	Depreciation allowance
First Year	20% of expenditure
Second Year	20% of expenditure
Third Year	20% of expenditure
Fourth Year	20% of expenditure

Year of income	Depreciation allowance
Fifth Year	20% of expenditure

- (4) The depreciation allowance granted with respect to a particular year of income shall be taken in that year and shall not be deferred to a later year(s) of income.
- (5) Where an asset for which depreciation allowance have been or may be granted under this paragraph realised during a year of income—
- if the incomings derived from the realisation of an asset(s), exceed the written down value of the pool of depreciable assets, the excess shall be included in calculating income from the mineral or petroleum operations for the year; and
  - if the written down value of the pool of depreciable assets exceed the incomings derived from realisation of all assets in the pool, the excess of written down value in the pool of assets may be granted for that year of income and the pool shall be dissolved.
- (6) Where incomings are derived by a person during a year of income with respect to a depreciable asset employed by the person in mineral or petroleum operations but the asset is not realised at that time in whole or in part, the incomings shall be included in calculating income from the mineral or petroleum operations for the year.
- (7) In this paragraph—
- "depreciation allowance expenditure" means—
- additions to the cost of depreciable assets owned and employed by a person wholly and exclusively in mineral or petroleum operations; and
  - expenditure other than financial costs incurred in respect of mineral operations wholly and exclusively on reconnaissance, appraisal and prospecting or exploration operations or in developing mineral or petroleum operations and infrastructure, including as may be prescribed by regulations, where—
    - the expenditure is not directly deductible in calculating income from the operations; and
    - does not otherwise fall to be included in the cost of an asset;

"written down value of a pool of depreciable assets at a particular time during a year of income" means—

- the written down value of the pool at the end of the previous year of income; plus
- expenditure incurred prior to the time, which is added to the depreciation basis of the pool during the year of income or to be added during the following year of income; less
- incomings derived during the year of income or to be derived with respect to a realisation occurring prior to the time in respect of assets that are or have been in the pool; and

"written down value of an asset" means the cost of the asset less all depreciation allowances granted with respect to expenditure included in that cost.

[Act No. 2 of 2016 s. 34]

[Acts Nos. 15 of 2004 s. 35; 8 of 2012 s. 33; 4 of 2013 s. 28; 2 of 2016 s. 34; 4 of 2017 s. 28; Cap. 4 s. 8]

**Fourth Schedule (Section 133(5))***[Revoked by Act [No. 10 of 2015](#) s. 125]***Fifth Schedule (Section 27(1)(a))****Quantification of motor vehicle benefits**

Engine size of vehicle	Quantity of payment	
	Vehicle less than 5 years old	Vehicle more than 5 years old
Not exceeding 1000cc	Tshs. 250,000	Tshs. 125,000
Above 1000cc but not exceeding 2000cc	Tshs. 500,000	Tshs. 250,000
Above 2000cc but not exceeding 3000cc	Tshs. 1,000,000	Tshs. 500,000
Above 3000cc	Tshs. 1,500,000	Tshs. 750,000