

SEAL no. 548/70



GUYANA.

ACT NO. 31 OF 1970.

INCOME TAX (AMENDMENT NO. 2) ACT 1970

I assent.

A. Burnham
President.

Arrangement of Sections. *12th December, 1970.*

Section

1. Short title and commencement.
2. Amendment of section 2 of Chapter 299.
3. Amendment of section 5 of Chapter 299.
4. Amendment of section 14 of Chapter 299.

5. Repeal and re-enactment of section 16 of Chapter 299.
6. Amendment of section 17 of Chapter 299.
7. Amendment of section 20 of Chapter 299.
8. Amendment of section 22 of Chapter 299.
9. Repeal of sections 27 and 28 of Chapter 299 and replacement.
10. Insertion of sections 27A to 27G in Chapter 299.
11. Amendment of section 29 of Chapter 299.
12. Repeal and re-enactment of section 30 of Chapter 299.
13. Insertion of sections 38A and 38B in Chapter 299.
14. Repeal and re-enactment of section 39 of Chapter 299.
15. Insertion of section 41A in Chapter 299.
16. Insertion of section 47A in Chapter 299.
17. Amendment of section 50 of Chapter 299.
18. Amendment of section 56D of Chapter 299.
19. Amendment of section 57 of Chapter 299.
20. Repeal of sections 60 to 65 and replacement.
21. Repeal and re-enactment of section 68 of Chapter 299.
22. Amendment of section 73 of Chapter 299.
23. Amendment of section 83 of Chapter 299.
24. Addition of the Third and Fourth Schedules to Chapter 299.

SCHEDULE

A.D. 1970. AN ACT to amend the Income Tax Ordinance.

Enacted by the Parliament of Guyana:—

Short title
and com-
mencement.
Cap. 299.

1. (1) This Act may be cited as the Income Tax (Amendment No. 2) Act, 1970, and amends the Income Tax Ordinance, hereinafter referred to as the Principal Ordinance.

(2) Save as otherwise provided by subsections (3) and (4), this Act shall be deemed to have come into operation with respect to and from the year of assessment commencing 1st January, 1970.

(3) Sections 5, 6, 15 and 16 shall come into operation with respect to and from the year of assessment commencing 1st January, 1971.

(4) Sections 18, 19 and 21 shall come into operation at the time of the enactment of this Act.

2. Section 2 of the Principal Ordinance is hereby amended in the following respects—

(a) by the insertion of the following definitions in their correct alphabetical order—

“close company” has the same meaning as in the Corporation Tax Act, 1970;

Amendment
of section 2
of Chapter
299.

“commercial company” means a company at least seventy-five per cent of the gross income of which is derived from trading in goods not manufactured by it and includes any commission agency, any body corporate licensed or otherwise authorised by law to carry on banking business in Guyana, and any company carrying on in Guyana insurance business, other than long-term insurance business, as defined in section 2 of the Insurance Act, 1970.

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of 1970

“distribution” has the meaning assigned to it in section 27A.

“head office expenses” means any expenses arising from a charge by a non-resident parent company or a non-resident associate company of a company resident in Guyana, or the head office of a non-resident company in respect of a branch or agency in Guyana, for any administrative, technical, professional or other like service of an essentially managerial nature, performed by such a non-resident parent or non-resident associate company or head office of a non-resident company;

“investment company” has the same meaning as in the Corporation Tax Act, 1970;

“participator” has the same meaning as in the Corporation Tax Act, 1970;”;

(b) by the substitution of the following definition for the definition of the word “company”—

“company” means a body corporate or unincorporate but does not include a partnership;”;

(c) by renumbering the section as section 2(1) and by inserting the following subsection as subsection (2) thereof—

“(2) For the purposes of this Ordinance, a person

shall be deemed to be resident in Guyana who is employed in the service of the Government of Guyana in an office the duties of which require that he shall reside outside Guyana.”.

Amendment
of Section
5 of Chapter
299.

3. Section 5 of the Principal Ordinance is hereby amended by the addition of the following proviso after the second proviso to paragraph (b) —

“And provided further that where any allowance to any such person as is mentioned in section 2(2) is certified by the Minister to represent compensation—

- (a) for the extra cost of having to live outside Guyana in order to perform his duties;
- (b) for the actual expenses incurred by such person in performing his duties as a representative of Guyana outside Guyana,

that allowance shall not be deemed to be income for the purposes of this Ordinance.”

Amendment
of Section
14 of Chap-
ter 299.

4. Section 14 of the Principal Ordinance is hereby amended by the addition thereto of the following paragraph—

“(i) head office expenses in excess of one-half of one per cent of sales or gross income (including premium income in the case of a company carrying on in Guyana insurance business other than long-term insurance business, as defined in section 2 of the Insurance Act, 1970) where the company is a commercial company and one per cent in the case of a company other than a commercial company;”.

Repeal and
re-enactment
of Section
16 of Chap-
ter 299.

5. Section 16 of the Principal Ordinance is hereby repealed and the following section substituted therefor—

“Deductions
in case of
residents in
Guyana.

16. Subject to this Ordinance, in ascertaining the chargeable income of an individual who is resident in Guyana in the year preceding the year of assessment, there shall be deducted —

- (a) a deduction of eight hundred dollars; and
- (b) a deduction of five per cent of the income of the individual earned from employment, before making the deductions allowed by this section and sections 17, 18, 19, 19B and 20, so however that the maximum amount of income in respect of which a deduction shall be allowed under this paragraph shall be ten thousand dollars.”.

6. Section 17 of the Principal Ordinance is hereby amended by the substitution of a semicolon for the colon at the end of paragraph (c) thereof, and by the addition thereto of the following paragraph as paragraph (d) immediately before the proviso —

Amendment
of Section
17 of Chapter
299.

“(d) he had a wife living with him who at any time during the year preceding the year of assessment earned income from employment, there shall be allowed a deduction of the amount of income so earned but not exceeding in any case four hundred dollars.”.

7. Subsection (3) of section 20 of the Principal Ordinance is hereby repealed and the following subsection substituted therefor—

Amendment
of section 20
of Chapter
299.

“(3) For the purposes of this section, “approved company” means —

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1970.

(a) a company which was an approved company within the meaning of section 20 before the enactment of the Income Tax (Amendment No. 2) Act, 1970;

(b) a company carrying on life insurance business in Guyana pursuant to registration under the Insurance Act, 1970”.

8. Subsection (3) of section 22 of the Principal Ordinance is hereby repealed and the following subsections substituted therefor—

Amendment
of Section
22 of Chapter
299.

“(3) In the case of a company carrying on long-term insurance business as defined in section 2 of the Insurance Act, 1970, the gains or profits on which tax is chargeable shall be the income accruing from the investment of its statutory fund as mentioned in section 23(1) of that Act where the company is registered under that Act, or its life assurance fund where the company is not so registered, less the amount allowed as agency expenses or head office expenses in earning that income as provided in subsection (4):

Provided that where such a company received premiums outside Guyana, the gains or profits shall be the same proportion of the total income of the company accruing from investment as aforementioned as the premiums received in Guyana bore to the total premiums received.

(4) The amount allowed for expenses incurred in respect of income from investment aforesaid shall be —

(a) twenty per cent of the said income of the company for the year of assessment commencing 1st January, 1970;

- (b) sixteen per cent of the said income of the company for the year of assessment commencing 1st January, 1971;
- (c) twelve per cent for every year of assessment thereafter.

9. Sections 27 and 28 of the Principal Ordinance are hereby repealed and the following section substituted for section 27—

Repeal of sections 27 and 28 of Chapter 299 and Replacement.

"Rate of tax on companies.

27. The tax upon the chargeable income of —

- (a) a company carrying on long-term insurance business as defined in section 2 of the Insurance Act, 1970, shall be charged at the rate of forty-five per cent of the amount of chargeable income;
- (b) any other company (other than an investment company) shall be charged at the rate of twenty per cent of the amount of the chargeable income."

10. The following sections are hereby inserted in the Principal Ordinance immediately after section 27 as sections 27A to 27G thereof —

Insertion of Section 27A to 27G in Chapter 299.

"Meaning of distribution.

27A. (1) In relation to any company "distribution" means —

- (a) any dividend paid by the company including a capital dividend;
- (b) any other distribution of the assets of the company (whether in cash or otherwise) in respect of shares of the company, except so much as represents the repayment of share capital, or is equal in amount or value to any new consideration given on the distribution;
- (c) any redeemable share capital or security issued by the company in respect of shares in the company, to the extent that such share capital or security is not issued for a new consideration;
- (d) any interest or other distributions out of assets of the company in respect of securities of the company (except so

much if any, of any such distribution as represents the principal thereby secured), where the securities are either—

- (i) securities issued as mentioned in paragraph (c);
 - (ii) securities convertible directly or indirectly into shares of the company;
 - (iii) securities under which a consideration given by the company for the use of the principal secured is to any extent dependent on the result of the company's business or any part of it, under which the consideration so given represents more than a reasonable commercial return on the use of that principal; or
 - (iv) securities issued by the company to a non-resident company, where the former is a subsidiary of the latter or both are subsidiaries of a third company.
- (c) any such amount as is required to be treated as a distribution by subsection (2) or (3).

(2) Where on a transfer of assets or liabilities by a company to its members or to a company by its members the amount or value of the benefit received by a member (taken according to its market value) exceeds the amount of value (so taken) of any new consideration given by him, the company shall be treated as making a distribution to him of an amount equal to the difference.

(3) Where, after the first day of January, 1969 a company —

- (a) repays any share capital, or has done so at any time after the commencement of the accounting period for the year of assessment 1970, and
- (b) at or after the time of that repayment (but not before the commencement of the accounting period for the year of assessment 1970) issues as paid up, otherwise than by the receipt of a new consideration any share capital, not being redeemable share capital,

the amount so paid up shall be treated as a distribution made in respect of the shares on which it is paid up, except in so far as that amount exceeds the amount or aggregate amount of share capital so repaid less any amounts previously so paid up and treated by virtue of this subsection as a distribution.

(4) Where —

(a) a company issues any share capital as paid up otherwise than by the receipt of new consideration, or has done so after the commencement of the accounting period for the year of income 1970; and

(b) any amount so paid up does not fall to be treated as a distribution,

then for the purposes of subsections (1) to (3), distributions afterwards made by the company in respect of shares representing that share capital shall not be treated as repayments of share capital, except to the extent to which those distributions, together with any relevant distributions previously so made, exceed the amounts so paid up (then or previously) on such shares after that date and not falling to be treated as distributions.

(5) In subsection (4) "relevant distributions" means so much of any distribution made in respect of shares representing the relevant share capital as apart from that subsection would be treated as a repayment of share capital, but by virtue of that subsection cannot be so treated.

(6) For the purposes of subsections (4) and (5) all shares of the same class shall be treated as representing the same share capital, and where shares are issued in respect of other shares, or are directly or indirectly converted into or exchanged for other shares, all such shares shall be treated as representing the same share capital.

(7) In this section, "new consideration" means consideration not provided directly or indirectly out of assets of the company, and in particular does not include amounts retained by the company by way of capitalising a distribution, so, however, that where share capital has been issued at a premium repre-

senting new consideration, any part of that premium afterwards applied in paying up the share capital shall be treated as new consideration also for that share capital.

(8) A distribution shall be treated under this section as made, or consideration as provided, out of assets of a company if the cost falls on the company.

(9) The following kinds of expenditure when paid by a close company to a participator shall be treated as distributions —

- (a) interest, or other consideration paid or given by the company to a participator who is also a director (other than a whole-time service director) or an associate of such participator for the use of money advanced by any person, or to a person who is an associate of such director for the use of money so advanced;
- (b) any annuity or other annual payment other than interest;
- (c) any rent, royalty or other consideration paid for the use of property other than money.

(10) For the purposes of paragraph (c) of subsection (9) in the case of tangible property or copyrights, the excess only over what the Commissioner may consider to be reasonable consideration therefor, shall be treated as a distribution.

27B. (1) There shall be levied and paid income tax (in this Ordinance referred to as withholding tax,) at the rate set out in Part I of the Third Schedule —

Rates of
withholding
tax.

- (a) on any gross distribution made to any person not resident in Guyana and to any company resident in Guyana;
- (b) on any gross payment made to any person not resident in Guyana or to any person on behalf of such non-resident person, where such person is not engaged in trade or business in Guyana, so however that in the case of payment of income arising outside Guyana to such a person withholding tax shall not be payable.

(2) Where, after the first day of January, 1970, a person makes any payment or distribution to any such person as is mentioned in subsection (1), the person shall under this subsection, within thirty days, account for and pay over withholding tax in respect of the payment or distribution aforesaid at the rate referred to in subsection (1).

(3) Where the payment or distribution is made to a person who is not resident in Guyana and such person is resident in a country with which there is a double taxation agreement or Order under section 62, the person making the payment shall, nevertheless, deduct tax at the rate specified in Part I of the Third Schedule unless the person making the payments satisfies the Commissioner that a reduced rate of withholding tax applies under or by virtue of the double taxation agreement, or Order under section 62.

(4) Where the distribution is a dividend in respect of which tax has already been paid by the company pursuant to section 27, such distribution shall be deemed to be an amount calculated in accordance with Part II of the Third Schedule and the amount of tax to be withheld from such distribution shall take into account income tax already paid by the company on the income out of which such dividend has been distributed.

(5) A person liable under subsection (2) to account for and pay over withholding tax to the Commissioner who fails so to do shall be guilty of an offence, and the provisions of subsection (4) of section 66A shall apply accordingly.

(6) Notwithstanding the provisions of section 5, where a payment or distribution that is subject to withholding tax is made to any person not resident in Guyana income tax under section 5 or corporation tax shall not be payable in respect of such payment or distribution.

(7) Where an office or a branch or agency of any non-resident company engaged in trade or business in Guyana, remits or is deemed to remit any part of the profits of such non-resident company accruing in or derived from Guyana, such office or branch or agency of the non-resident company shall be liable to account for and pay

over withholding tax in respect of such profits in accordance with the provisions of this section as if the remitting of such profits was a distribution.

(8) For the purpose of subsection (7) an office or a branch or agency of a non-resident company shall be deemed to have remitted all the profits thereof, except to the extent that the office or the branch or agency has reinvested to the satisfaction of the Commissioner such profits or any part thereof in Guyana, other than in the replacement of fixed assets.

(9) In subsections (7) and (8) "profits" means profits after the payment of any income tax or corporation tax.

(10) The Minister may by directions in writing reduce the rate of withholding tax on any distribution or payment for the purpose of giving effect to any agreement relating to tax between the Government and any person not resident in Guyana and the Commissioner may by notice in writing to that person by whom those payments are to be made sanction his complying with such reduction in the rate of withholding tax to such extent as the Minister shall decide and any deductions made in pursuance of this subsection shall be deemed for the purposes of the foregoing provisions of this section to be in accordance with the requirement thereof in question.

(11) Where prior to 1st January, 1970, income tax was paid on any income accumulated prior to that date and a distribution of such income is made after that date, withholding tax shall be applied thereon so, however, that the effective rate of tax shall not exceed 61 per cent in the case of a commercial company, and 51.25 per cent in the case of any other company.

Meaning of
"payment".

27C. In sections 27A to 27G —

"payment" means a payment without any deductions whatsoever, other than a distribution, not being a payment to which section 66A applies, with respect to —

(a) interest on any debt, mortgage or other security;

(b) rentals;

(c) royalties;

(d) management charges or charges for the provision of personal services and technical and managerial skills;

(e) premiums (other than premiums paid to insurance companies and contributions to pension funds and schemes) commissions, fees and licences;

(f) discounts, annuities or other annual or periodic payments;

(g) such other payment as may, from time to time be prescribed,

but does not include —

(i) interest paid by any person on a temporary bank loan or in respect of any trade account;

(ii) any payment made after 1st January, 1969, in respect of a loan made to a company prior to 1st January, 1969, and which prior to that date was treated in its accounts by the company or according to the conditions subject to which the loan was made, as a loan free of interest.

27D. (1) Subject to subsection (2), where after the 1st January, 1969, a close company, otherwise than in the ordinary course of its business carried on by it which includes the lending of money, makes any loan or advances any money to an individual who is a participator in the company or an associate of a participator, the amount of such loan or advance shall be deemed to be a distribution made in the year of income in which the loan was made, unless the loan is repaid within one year after the end of such year of income and it is established that the repayment was not made as part of a series of loans and repayments.

Loans to directors of close companies.

(2) Where in any subsequent year of income a participator or associate repays any part of a loan deemed to be a distribution made under subsection (1), relief shall be given to such participator or associate by setting off against the tax payable on his chargeable income for the year the tax attributable to the proportionate part of the loan which was included in his chargeable income for the year in which the loan was deemed to be a distribution.

27E. Any income, which, by virtue of any settlement made directly or indirectly by a close company may accrue to or may be received by a participator of the company or an associate of a participator, shall be deemed to be a distribution by the company to such participator or associate, as the case may be.

Settlements in favour of participators of close companies.

27F. Where a person is liable under section 27B to account for withholding tax deducted or withheld in respect of any payment or distribution made by that person, the person shall as against any person entitled to the

Discharge of liability for withholding tax.

payment or distribution, be acquitted and discharged of so much money as is represented by the withholding tax as if that sum had actually been paid.

Certificate
for deduct-
ion of tax.

27G (1) Where, after 1st January, 1970, a person makes any payments or distribution which is subject to withholding tax, the payer shall furnish to the recipient of the payment or distribution a statement in writing showing the gross amount of the payment, the amount of the withholding tax and the actual amount paid.

(2) The duty imposed by subsection (1) shall be enforceable at the suit or instance of the person entitled to the statement.

Amendment
of Section
29 of Chap-
ter 299.

11. Section 29 of the Principal Ordinance is hereby amended in the following respects —

(a) by the repeal of subsection (1) and the substitution therefor of the following subsection —

“(1) Every company registered in Guyana which pays tax at the rate provided in section 27(a) shall be entitled to deduct from the amount of any dividend paid to a share holder tax at the rate paid or payable by the company (double taxation relief left out of account) on the income out of which the dividend is paid; and in the case of a company which pays tax at the rate provided in section 27(b) on the income out of which the dividend is paid, the rate of deduction in respect of income tax shall be in accordance with the provisions contained in Part II of the Third Schedule :

Provided that where tax is not paid or payable by the company on the whole income out of which the dividend is paid the deduction shall be restricted to that portion of the dividend which is paid out of income on which tax is paid or payable by the company.”; and

(b) by the substitution of "Sections 60 to 62" for "section 63" in subsection (3).

Repeal and re-enactment of Section 30 of Chapter 299.

12. Section 30 of the Principal Ordinance is hereby repealed and the following section substituted therefor —

"Tax deducted from dividend to be set off against tax or income of share holder

30. Any tax which a company to which section 27(a) applies has deducted or is entitled to deduct under section 29 from a dividend paid to a share holder, and any tax applicable to the share to which anyone is entitled in the income of a body of persons assessed under this Ordinance, shall, when that dividend or share is included in the chargeable income of the shareholder or person, be set off for the purposes of collection against the tax charged on that chargeable income; and in the case of a company which pays tax at the rate provided in section 27(b) on the income out of which the dividend is paid, the amount of set off and the amount of the dividend for inclusion in the chargeable income of the shareholder or person in respect of income tax shall be in accordance with the provisions contained in Part II of the Third Schedule."

Insertion of Sections 38 A and 38 B in Chapter 299.

13. The following sections are hereby inserted in the Principal Ordinance immediately after section 38 as sections 38A and 38B thereof —

"Deduction of tax on surrender of life insurance policy.

38A. (1) Where a life insurance policy is surrendered before the policy holder attains the age of sixty years, there shall be deducted or withheld in the manner hereinafter provided tax equal to fifteen per cent of the amount representing the surrender value of the policy.

(2) The tax shall be deducted or withheld by the company responsible for paying the amount due on the surrender of the policy and where the tax has been so deducted or withheld the policyholder shall be deemed to have paid the same and shall thereupon cease to be liable for the tax to the extent of the amount so deducted or withheld.

(3) The company shall forthwith pay the amount deducted or withheld to the Commissioner who shall furnish the company with a receipt which shall be a good and sufficient discharge of the liability of the company and the policy holder for the amount deducted or withheld as required by this section.

(4) For the purposes of this section, a policy shall be regarded as having been surrendered if the policy ceases to be active in the books of the company otherwise than by way of maturity or death, and in determining whether or not a policy has ceased to be an active policy in the books of the company, account shall be taken of —

- (a) the amount of the tax chargeable;
 - (b) the debts owing to the company under or secured by, the policy;
 - (c) any overdue premiums, and
- as soon as the aforesaid amounts together are equal to the surrender value of the policy, the policy shall, for the purposes of this section, be regarded as having ceased to be an active policy in the books of the company.

(5) If pursuant to subsection (4), a policy has ceased to be an active policy on the books of the company, the company may, in its discretion, re-instate the policy and the tax paid to the Commissioner under this section shall be refunded to the company.

(6) In this section —

“life insurance policy” means a policy issued in the course of the Ordinary Life Insurance Business of a company registered under the Insurance Act, 1970, or a company carrying on that type of business though not so registered;

“surrender value” means the total cash surrender value of a life insurance policy determined before making allowance for any debts owing to the company under, or secured by, the policy, and the amount of any overdue premium, so approved by the actuary of the company.

Deduction
of tax from
premiums
paid in
respect of
insurance
other than
long-term
insurance.

38B. (1) Where any person pays any premium (other than a premium to which section 39 applies) to or on behalf of a foreign company in respect of insurance (including

re-insurance) other than long-term insurance, then whether or not such premium is remitted outside Guyana, the person making the payment shall deduct therefrom tax at the rate of —

- (a) ten per cent of the premium where payment is made to or on behalf of a foreign company which has not established a place of business in Guyana;
- (b) six per cent of the premium where payment is made to or on behalf of a foreign company which has established a place of business in Guyana,

and shall forthwith render an account to the Commissioner of the amount so deducted and every such amount shall be a debt due from that person to the Government.

(2) In the case of a company making the payment of the premium, the aforesaid account shall be rendered by the manager or other principal officer of the company.

(3) Any person who fails or neglects to comply with the requirements of this section shall be guilty of an offence.

(4) For the purposes of this section, the amount of the premium on which tax is payable shall be the amount remaining after deducting from the premium in the case of insurance any commission paid to an agent resident in Guyana, and in the case of re-insurance the amount received for placing the re-insurance :

Provided that the maximum amount of commission or other sum which shall be allowed as a deduction under this subsection shall be ten per cent of the premium.

(5) In this section, 'foreign company,' means a company the control of and management of whose business are exercised outside Guyana."

14. Section 39 of the Principal Ordinance is hereby repealed and the following section substituted therefor —

Repeal and re-enactment of Section 39 of Chapter 299.

"Agents of non-residents to be assessed for tax.

39. Where any person pays or transmits any dividend, interest, rent, royalty, premium, annuity or other annual payment derived from any source within Guyana to a person not resident in Guyana, the first named person shall be deemed to be the agent of the person not resident in Guyana and shall, subject to section 27B, be assessed and pay tax accordingly."

Insertion of Section 41 A in Chapter 299.

15. The following section is hereby inserted in the Principal Ordinance immediately after section 41 as section 41A thereof —

"Persons to estimate tax.

41A. Every person required by section 40 to deliver or submit a return of income shall in the return estimate the amount of tax payable."

Insertion of Section 47 A in Chapter 299.

16. The following section is hereby inserted in the Principal Ordinance immediately after section 47 as section 47A thereof —

"Payment of tax by instalments.

47A (1) Notwithstanding the provisions of section 67, but subject to this section, every person shall pay to the Commissioner on or before 1st April, 1st July, 1st October and 31st December, respectively, in each year of income, an amount equal to one-quarter of the tax as estimated by him at the rates specified in section 26 on his estimated chargeable income for the year, and, on or before 30th April in the next ensuing year, the remainder of the tax, as estimated by him under section 41A.

(2) For the purposes of subsection (1), the estimated chargeable income of any person for a year of income shall be taken to be the chargeable income as disclosed in his return, if any, of total income for the preceding year of income.

(3) Where the estimated chargeable income of any person for the year of income as provided for by subsection (2) is, in the opinion of such person, likely to be less than the chargeable income of the preceding year, on an application by such person for the purpose, the Commissioner may revise the estimated chargeable income of that person and the amount of tax chargeable thereon, and the provisions of subsection (1) shall apply accordingly.

(4) The Commissioner may estimate the amount of tax payable by any person where —

(a) that person fails to make a return required by section 40(1);

(b) no tax was payable in the year immediately preceding the year of income, and upon making a demand therefor in writing of such person, subsection (1) shall apply accordingly, as if the estimate of the Commissioner was the estimate of such person.

(5) Where an individual is in receipt of emoluments, to which section 66A applies in the year of income, the provisions of subsection (1) shall not apply to that individual in respect of that part of his income arising or accruing to him from emoluments received by him in the year of income, but the instalment of tax payable under subsection (1) shall be at the highest rates, as if that part of his income arising or accruing to him from emoluments as aforesaid was included in his estimated chargeable income for the year.

(6) Where amounts have been deducted or withheld under subsection (1) of section 66A from the emoluments received by an individual in a year of income, if the emoluments from which such amounts have been deducted or withheld and which he had received in the year, are equal to or greater than three-quarters of his total income for the year, he shall, on or before the 30th April in the next year, pay to the Commissioner the remainder of his tax for the year as estimated under section 41A.

(7) Where the income of an individual for a year of income consists solely of income from emoluments to which section 66A applies, that individual shall, on or before the 30th April in the next year, pay to the Commissioner the remainder of his tax, if any, as estimated by him under section 41A.

17. Section 50 of the Principal Ordinance is hereby amended by the substitution of the word "seven" for the word "five".

Amendment
of Section
56D of
Chapter 299.

18. Section 56D of the Principal Ordinance is hereby amended in the following respects —

- (a) by the repeal of subsections (5) and (6) and the substitution therefor of the following subsections, respectively —

“(5) No appeal shall lie to the Board unless the person agrieved by an assessment made upon him by the Commissioner has paid to the Commissioner tax equal to two-thirds of the tax which is in dispute.

(6) Upon the receipt of any notice of appeal, and on being satisfied that the appellant has paid the amount of tax as required by subsection (5), the Secretary shall fix a time and place for the hearing of the appeal, and shall give not less than fourteen day's notice in writing of such fixture to the appellant and the Commissioner.”;

- (b) by the insertion of the words “the balance of” immediately before the word “tax” where it first appears in subsection (14); and

- (c) by the insertion of the words “the balance of” immediately after the words “payment of” in subsection (14).

Amendment
of Section 57
of Chapter
299.

19. Section 57 of the Principal Ordinance is hereby amended in the following respects —

- (a) by the substitution of the words “Subject to section 68, any” for the word “Any” at the commencement of subsection (1) (a);

- (b) by the substitution of a semicolon for the full stop at the end of subsection (6) and the addition immediately thereafter of the following words —

“ ; and where a judge has reduced the amount of the assessment the Commissioner shall forthwith refund the amount of the overcharge to the appellant together with interest calculated at the rate of twelve per cent of the amount of the overcharge.”

Repeal of
Sections 60
to 65 and
replacement.

20. (1) Sections 60 to 65 of the Principal Ordinance (both sections inclusive) are hereby repealed and the following sections substituted therefor —

“Relief from
double
taxation.

60. (1) If the Minister by Order declares that arrangements specified in the Order have been made with the Government of any country with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that country, and that it is

expedient that those arrangements should have effect, then subject to the provisions of the next succeeding section the arrangements shall, notwithstanding anything in any enactment, have effect in relation to income tax in so far as —

- (a) they provide for relief from tax;
or
- (b) they provide for —
 - (i) charging the income arising from sources in Guyana to persons not resident in Guyana; or
 - (ii) determining the income to be attributed to such persons and their agencies, branches or establishments in Guyana; or
 - (iii) determining the income to be attributed to persons resident in Guyana who have special relationships with persons not so resident.

(2) The provisions of Part I of the Fourth Schedule shall have effect where arrangements which have effect by virtue of this section provide that tax payable under the laws of the country concerned shall be allowed as a credit against tax payable in Guyana.

(3) The Minister may by regulations, which shall be subject to negative resolution, add to, vary or amend the provisions of the Fourth Schedule or substitute a new schedule therefor.

(4) Where, under any arrangements which have effect by virtue of this section, relief may be given either in Guyana or in the country with the Government of which the arrangements are made, in respect of any income, and it appears that the assessment to income tax made in respect of the income is not made in respect of the full amount thereof or is incorrect having regard to the credit, if any, which falls to be given under the arrangements, any such assessment may be made as is necessary to ensure that the total amount

of the income assessed and the proper credit, if any, is given in respect thereof, and where the income is entrusted to any person in Guyana for payment, any such assessment may be made on the recipient of the income under the provisions of this Ordinance.

(5) Any arrangements to which effect is given under this section may include provision for relief from tax for periods before the commencement of this section or before the making of the arrangements and provisions as to income which is not itself subject to double taxation, and the preceding provisions of this section shall have effect accordingly.

(6) Any order made under this section may be revoked by a subsequent Order and such revoking Order may contain such transitional provisions as appear necessary and expedient.

Unilateral relief.

61. (1) To the extent appearing from the following provisions of this section and Parts II and III of the Fourth Schedule, relief from income tax shall be given in respect of income tax payable under the law of any country outside Guyana by allowing the last mentioned tax as a credit against income tax payable in Guyana notwithstanding that there are not for the time being in force any arrangements under section 60 providing for such relief.

(2) The said relief (hereinafter referred to in this section and in Parts II and III of the Fourth Schedule as "Unilateral relief") shall be such relief as would fall to be given under Part I of the Fourth Schedule if arrangements with the Government of the foreign country containing such provision as appears in so much of Part II of the Fourth Schedule as applies to that country were in force by virtue of section 60, and any reference occurring in the said Part I which imports a reference to relief under arrangements for the time being in force by virtue of section 60 shall be deemed to import also a reference to unilateral relief:

Provided that —

- (a) the total credit to be allowed by way of unilateral relief in the

case of any income shall not, if the country is within prescribed commonwealth countries, exceed one-half and in any other case one quarter of the sum of the limits specified in regulations 4 and 5 of Part I of the Fourth Schedule; and

- (b) the provisions of Part I of the Fourth Schedule shall, as respects unilateral relief, have effect subject to the provisions set out in Part III of the said Fourth Schedule.

(3) Where unilateral relief may be given in respect of any income and it appears that the assessment to income tax made in respect of the income is not made in respect of the full amount thereof or is incorrect having regard to the credit, if any, which falls to be given by way of unilateral relief, any such assessment may be made as is necessary to ensure that the total amount of income is assessed and the proper credit, if any, is given in respect thereof, and where the income is entrusted to any person in Guyana for payment, any such assessment may be made on the recipient of the income under the provisions of this Ordinance.

(4) References in this section and in Parts II and III of the Fourth Schedule to tax payable or tax paid under the law of a country outside Guyana include only references to taxes which are charged on income or profits and correspond to income tax in Guyana, and, without prejudice to the generality of the foregoing, a tax which is payable under the law of a province, state or other part of a country, or which is levied by or on behalf of a municipality or other local body, shall not be deemed for the purposes of this subsection to correspond to income tax.

Power to vary withholding Tax.

62. If the Minister, by Order, so provides, the rate of withholding tax shall be reduced to the extent so provided as respects any person, notwithstanding that there are not for the time being in force any arrangements under section 60 providing for such relief."

(2) Notwithstanding the repeal of sections 60, 61 and 62 of the Income Tax Ordinance, until arrangements are made with those of the Commonwealth countries prescribed in the first Schedule to which the said sections 60, 61 and 62 apply under the provisions of the Income Tax Ordinance, as repealed and replaced by this section, the provisions of the said sections 60, 61 and 62 shall continue to have effect for the purpose of double taxation relief with respect to those Commonwealth countries, so however that this section shall have effect for purposes of withholding tax.

Repeal and re-enactment of section 68 of Chapter 299.

21. Section 68 of the Principal Ordinance is hereby repealed and the following section substituted therefor —

"Appellant to pay tax.

68. No appeal shall lie under section 57(1) (a) to a judge by a person aggrieved by a assessment made upon him by the Commissioner or by a decision of the Board, unless that person has paid to the Commissioner the whole amount of tax which is in dispute under the assessment made upon him."

Amendment of section 73 of Chapter 299.

22. Subsection (2) of section 73 of the Principal Ordinance is hereby amended by the substitution of the word "seven" for the word "five".

Amendment of section 83 of Chapter 299.

23. Section 83 of the Principal Ordinance is hereby amended by the addition of the following paragraph as paragraph (k) of subsection (1) —

"(k) the amendment, variation or alteration of the Third Schedule or the substitution of a new schedule therefor, but any regulation for the amendment, variation or alteration of Part I of the said Schedule shall be subject to affirmative resolution:

Provided that this paragraph shall be without prejudice to any other provision in this Ordinance authorising a reduction in the rate of withholding tax in any particular case or for any particular purpose;"

Addition of the third and fourth schedules to the Principal Ordinance.

24. The schedules contained in the schedule to this Act are hereby added to the Principal Ordinance as the third and fourth schedules, respectively.

S. 83

SCHEDULE

27B, 29 and 30 THIRD SCHEDULE

PART I

1. Withholding tax shall —

(a) in the case of a commercial company, be at the rate of

(i) forty per cent on a distribution made by the company to a resident or non-resident company;

(ii) thirty-one per cent on gross dividends not exceeding \$10,000 and forty per cent on gross dividends exceeding \$10,000, where the person to whom or on whose behalf the payment is made is an individual not resident in Guyana;

(b) except as provided in (c), in the case of a company which is not a commercial company, be at the rate of —

(i) thirty-five per cent on a distribution made by the company to a resident or non-resident company;

(ii) twenty-seven per cent on gross dividends not exceeding \$8,000, and thirty-five per cent on gross dividends exceeding \$8,000, where the person to whom or on whose behalf the payment is made is an individual not resident in Guyana.

(c) in the case of a company carrying on long-term insurance business as defined in section 2 of the Insurance Act, 1970 be at the rate of forty-five per cent on a distribution made to any resident or non-resident company or to an individual not resident in Guyana.

2. Withholding tax on payments shall be at the rate of twenty-five per cent.

PART II

1. Where a company (other than a commercial company) distributes any dividend which has been paid out of income other than a distribution received from a resident company to an individual resident in Guyana the following provisions shall apply:—

(a) there shall be deemed to have been deducted from the dividend by the company an amount equal to 36.4 per cent of the dividend actually distributed:

Provided that the actual amount deducted and retained by the company in respect of each distribution shall not exceed the amount of tax paid by the company in respect of such distribution.

(b) there shall be included in the income of the individual in respect of such dividend a distribution equal to 136.4 per cent of the dividend actually distributed;

- (c) there shall be a set off for the purposes of collection against tax payable by the individual an amount equal to 36.4 per cent of the dividend actually distributed.
- (d) where such a company makes a distribution out of income received as a distribution from a resident company the relevant percentages shall be 141.1% and 41.1% respectively.

2. Where a company (other than a commercial company) distributes any dividend to an individual not resident in Guyana who is in receipt of gross dividends whether or not exceeding \$8,000, or to a company whether resident or not in Guyana, the amount of dividend distributed shall be deemed to be a distribution equivalent to 136.4 per cent of the amount actually distributed when included in the income of the person.

3. Where a commercial company distributes any dividend to an individual resident in Guyana the following provisions shall apply:—

- (a) there shall be deemed to have been deducted from the dividend by the company an amount equal to 44.5 per cent of the dividend actually distributed:

Provided that the actual amount deducted and retained by the company in respect of each distribution shall not exceed the amount of tax paid by the company in respect of such distribution.

- (b) there shall be included in the income of the individual in respect of such dividend a distribution equal to 144.5 per cent of the dividend actually distributed.
- (c) there shall be a set off for the purposes of collection against tax payable by the individual an amount equal to 44.5 per cent of the dividend actually distributed.
- (d) where such a company makes a distribution out of income received as a distribution from a resident company the relevant percentages shall be 151.3% and 51.3% respectively.

4. Where a commercial company distributes any dividend to an individual not resident in Guyana who is in receipt of gross dividends whether or not exceeding \$10,000, or to a company whether resident or not in Guyana, the amount of dividend distributed shall be deemed to be a distribution equivalent to 144.5 per cent of the amount actually distributed when included in the income of any person.

5. Where a distribution is made by an investment company the relevant percentages shall be 141.1% and 41.1% respectively.

FOURTH SCHEDULE

(S. 60 and 61)

DOUBLE TAXATION REGULATIONS

Part I

PROVISIONS AS TO RELIEF FROM INCOME TAX
BY WAY OF CREDIT IN RESPECT OF FOREIGN TAX

Interpretation

1. (1) In this Part of these Regulations —

“Guyana tax” means income tax;

“foreign tax” means in relation to any country, arrangements with the Government of which have effect by virtue of section 60 of the Ordinance, any tax chargeable under the laws of that country for which credit may be allowed under the arrangements;

“foreign income tax” means any foreign tax which corresponds to income tax;

“total income” means the aggregate amount of the income of any person from the sources specified in section 5 of the Ordinance for a year of income.

(2) Where arrangements having effect by virtue of the said section 60 of the Ordinance provide for any tax chargeable under the laws of the country concerned being treated as income tax, that tax shall, notwithstanding anything contained in this regulation be treated as foreign income tax or foreign tax other than foreign income tax as the case may be.

(3) Any reference in these Regulations to foreign tax or foreign income tax shall be construed, in relation to credit to be allowed under any arrangements, as a reference only to tax chargeable under the laws of the country with the Government of which the arrangements were made.

General

2. (1) Subject to the provisions of these Regulations where, under the arrangements, credit is to be allowed against any Guyana tax chargeable in respect of any income, the amount of the Guyana taxes so chargeable shall be reduced by the amount of the credit.

(2) Nothing contained in this regulation authorises the allowance of credit against any Guyana tax against which credit is not allowable under the arrangements.

Requirement as to residence

3. Credit shall not be allowed against tax for any year of income unless the person in respect of whose income the tax is chargeable is resident in Guyana for that year.

Limit on total credit

4. The credit shall not exceed the amount which would be produced by computing the amount of the income of the person in question in accordance with the provisions of the Ordinance, and then charging it to income tax at a rate ascertained by dividing the income tax chargeable (before allowance of credit under any arrangements having effect under section 60 of the Ordinance) on the total income by the amount of the total income.

5. Without prejudice to the provisions of the last preceding regulation, the total credit to be allowed to a person against income tax for any year of income for foreign tax under all arrangements having effect by virtue of section 60 of the Ordinance, shall not exceed the total tax payable by him for that year.

Effect on Computation of Income of Allowance of Credit

6. (1) In computing the amount of the income —

- (a) no deduction shall be allowed in respect of foreign tax (whether in respect of the same or any other income);
- (b) where the income tax chargeable depends on the amount received in Guyana, the said amount shall be increased by the appropriate amount of the foreign tax in respect of the income;
- (c) where the income includes a dividend and under the arrangements foreign tax not chargeable directly or by deduction in respect of the dividend is to be taken into account in considering whether any and if so what, credit is to be given against income tax in respect of the dividend the amount of the income shall be increased by the amount of the foreign tax not so chargeable which falls to be taken into account in computing the amount of the credit;

but notwithstanding anything in the preceding provisions of this paragraph a deduction shall be allowed of any amount by which the foreign tax in respect of the income exceeds the credit therefor.

(2) Subparagraphs (a) and (b) of the preceding paragraph (but not the remainder thereof) shall apply to the computation of total income for the purposes of determining the rate mentioned in regulation 4 and shall apply thereto in relation to all income in the case of which credit falls to be given for foreign tax under arrangements for the time being in force under section 60 of the Ordinance.

7. (1) Where, in the case of any dividend, foreign income tax not chargeable directly or by deduction in respect of the dividend is, under the arrangements, to be taken into account in considering whether any, if so what, credit is to be given against income tax in respect of the dividend, the foreign income tax not so chargeable which is to be taken into account shall be that borne by the body corporate paying the dividend upon the relevant profits in so far as it is properly attributable to the proportion of the relevant profits which is represented by the dividend.

(2) For the purposes of paragraph (1) the relevant profits are —

- (a) if the dividend is paid for a specified period, the profits of that period;
- (b) if the dividend is not paid for a specified period but is paid out of specified profits, those profits;
- (c) if the dividend is paid neither for a specified period nor out of specified profits, the profits of the last period for which accounts of the body corporate were made up which ended before the dividend became payable;

Provided that if, in a case falling under sub-paragraph (a) or sub-paragraph (c) of this paragraph, the total dividend exceeds the profits available for distribution of the period mentioned in the said subparagraph (a) or the said subparagraph (c), as the case may be, the relevant profits shall be the profits of that period plus so much of the profits available for distribution of preceding periods (other than profits previously distributed or previously treated as relevant for the purposes of this paragraph) as equal to the excess; and for the purposes of this proviso the profits of the most recent preceding period shall first be taken into account, then the profits of the next most recent preceding period, and so on.

8. Where —

- (a) the arrangements provide, in relation to dividends of some classes, but not in relation to dividends of other classes, that foreign tax not chargeable directly or by deduction in respect of dividends is to be taken into account in considering whether any, and if so what, credit is to be given against income tax in respect of the dividends; and
- (b) a dividend is paid which is not of a class in relation to which the arrangements so provide,

then, if the dividend is paid to a company which controls, directly or indirectly, not less than one-half of the voting power in the company paying the dividend, credit shall be allowed as if the dividend were a dividend of a class in relation to which the arrangements so provide.

Miscellaneous

9. Subject to the following provisions of this Schedule, the sums Guyana tax chargeable in respect of the income of any person if he elects that credit shall not be allowed in respect of that income.

10. Subject to provisions of regulation 11, any claim for an allowance by way of credit for foreign tax in respect of any income shall be made not later than six years from the year of income and in the event of any dispute as to the amount allowable the claim shall be subject to objection and appeal in like manner as an assessment.

11. Where the amount of any credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in Guyana or under the law of any other country, nothing in this Ordinance or in any other enactment limiting the time for making assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than six years from the time when all such assessments, adjustments and other determinations have been made, whether in Guyana or elsewhere, as are material in determining whether any and if so what credit falls to be given.

Part II

PROVISIONS FOR CREDIT BY WAY OF UNILATERAL RELIEF

1. Credit for tax paid under the law of the country outside Guyana in respect of income arising in that country shall be allowed against Guyana tax chargeable in respect of that income :

Provided that where arrangements with the Government of the country are for the time being in force by virtue of section 60 of this Ordinance, credit for tax paid under the law of the country shall not be allowed under this regulation in the case of any income if any credit for that tax is allowable under these arrangements in the case of that income.

2. Profits from or remuneration for personal or professional services performed in the country shall be deemed to be income arising in the country for the purpose of the preceding regulation.

3. Where a dividend paid by the company resident in the country is paid to a company resident in Guyana which owns not less than one-quarter of all classes of voting and non-voting stock in the company paying the dividend, tax paid under the law of the country by the first mentioned company in respect of its profits shall be taken into account in considering whether any, and if so what credit is to be allowed in respect of the dividend.

Part III

MODIFICATIONS OF PROVISIONS OF PART I APPLICABLE TO UNILATERAL RELIEF

Notwithstanding anything in regulation 3 of Part I of these Regulations (which provides that relief by way of credit shall be given only where the

person is resident in Guyana) credit by way of unilateral relief for tax paid under the law of any country in respect of income from an office or employment or profits the duties whereof are performed wholly or mainly in that country may be allowed against tax chargeable in respect of that income if the person is for the particular year of income, resident either in Guyana or that country.

Passed by the National Assembly on the 9th of December, 1970.

Harain
Clerk of the National Assembly.

(Bill No. 30/1970).