

Bill No. 28 of 1962

PUBLISHED 8TH DECEMBER, 1962

No. 547

LEGISLATURE,
Public Buildings,
Georgetown,
7th December, 1962.

The following Bill which will be introduced in the Legislative Assembly is published for general information.

I. CRUM EWING,
Clerk of the Legislature.

Bill No. 28 of 1962.

INCOME TAX (AMENDMENT NO. 2) BILL, 1962.
ARRANGEMENT OF SECTIONS

Section

1. Short title and commencement.
2. Amendment of section 2 of Cap. 299.
3. Amendment of section 5 of Cap. 299.
4. Insertion of section 5A in Cap. 299.
5. Amendment of section 14A of Cap. 299.
6. Insertion of section 66C in Cap. 299.
7. Repeal and re-enactment of section 69A of Cap. 299.
8. Amendment of section 74 of Cap. 299.
9. Amendment of section 76 of Cap. 299.
10. Amendment of section 77 of Cap. 299.
11. Amendment of section 83 of Cap. 299.

A BILL

Intituled

AN ORDINANCE TO AMEND THE INCOME TAX ORDINANCE

Enacted by the Legislature of British Guiana:—

A.D. 1962.

1.(1) This Ordinance may be cited as the Income Tax (Amendment No. 2) Ordinance, 1962, and shall be construed and read with the Income Tax Ordinance, hereinafter referred to as the Principal Ordinance, and any Ordinance amending the same.

Short title
and com-
mencement.
Cap. 299.

(2) Save as provided for in subsection (4) of section 5A of the Principal Ordinance as enacted by section 4 of this Ordinance, sections 3, 4, and 6 of this Ordinance shall come into operation with respect to and from the year of assessment commencing on the 1st January, 1963.

(3) Save as otherwise provided in subsection (2) of this section, the provisions of this Ordinance shall be deemed to have come into operation with respect to and from the year of assessment commencing on the 1st January, 1962.

2. Section 2 of the Principal Ordinance is hereby amended by the insertion immediately after the definition of "local authority" of the following definition of "Minister":—

Amendment
of section 2
of Cap. 299.

' "Minister" means the Minister for the time being charged with the responsibility for Finance; '

3. Section 5 of the Principal Ordinance is hereby amended by —

Amendment
of section 5
of Cap. 299.

- (a) renumbering that section as subsection (1);
- (b) substituting for the words "has not been expended for purposes in respect of which no deduction is allowed under section 14 of this Ordinance" in the second proviso to paragraph (b) thereof of the following words "has been expended for the purposes in respect of which the allowance has been given";
- (c) the deletion of the colon at the end of paragraph (e) and the substitution therefor of a semi-colon;
- (d) adding thereto, immediately after the aforesaid paragraph (e) and before the proviso, the following paragraph as paragraph (f) —
 - “(f) subject to the provisions of subsection (3) of this section, net capital gains arising from —
 - (i) subject to the provisions of paragraph (c) of subsection (2) of this section, the change of ownership of any property occurring by sale, disposal, transfer, realisation, or exchange, or in any other manner whatsoever,
 - (ii) the surrender or relinquishment of any right in any property other than the surrender of a life insurance policy,
 - (iii) the transfer of some of the rights in any property other than the transfer of the rights of a trustee in any property subject to a trust,
 - (iv) the redemption of any shares, debentures, or other obligations,
 - (v) the formation of a company,
 - (vi) the dissolution of a business, or the liquidation of a company,
 - (vii) the amalgamation or merger of two or more businesses or companies, or
 - (viii) any transaction in connection with which a person who promotes that transaction without being a party to it receives any commission or reward,

on or after 1st January, 1962, other than any such gains which are treated as profits or income under any other provisions of this section:”;

- (e) adding thereto the following subsections as subsection (2) and subsection (3) —
 - “(2) Subject to the provisions of subsection (3) of this section, for the purposes of this section:—
 - (a) “capital gains” —
 - (i) with reference to capital gain of any person arising from any change of ownership of property, means, subject to the provisions of subsection (3) of section 5A of this Ordinance, the amount by which the value of that property at the time when such change of ownership occurs exceeds its value at the time when it was acquired by that person by purchase, gift, inheritance, or exchange or in any other manner whatsoever;
 - (ii) with reference to capital gain of any person arising from the surrender or relinquishment of any right or the transfer of some of the rights in any property, means, subject to the provisions of subsection (3) of section 5A of this Ordinance, the value of the consideration for such surrender, relinquishment or transfer;
 - (iii) with reference to capital gain of any person arising from the redemption of any shares, debentures, or other obligations, means,

subject to the provisions of subsection (3) of section 5A of this Ordinance, the value of all property received by him in consequence of such redemption less —

- (A) where the shares, debentures or other obligations were acquired by that person before 1st January, 1956, the value to him of that which is redeemed as at 1st January, 1956, or,
- (B) where the shares, debentures or other obligations were acquired by that person on or after 1st January, 1956, the cost to him of that which is redeemed:

Provided that, where that which is redeemed is any property referred to in sub-paragraph (viii) or sub-paragraph (ix) of paragraph (d) of this subsection the capital gain shall mean, subject to the provisions of subsection (3) of section 5A of this Ordinance, the amount by which the value of all property received by him in consequence of such redemption less the value of that property as is specified in that sub-paragraph;

- (iv) with reference to capital gain of any person arising from the formation of a company, means subject to the provisions of subsection (3) of section 5A of this Ordinance, the value of the consideration received by him for any transaction in connection with the formation of such company;
- (v) with reference to capital gain of any person arising from the dissolution of a business or the liquidation of a company, means, subject to the provisions of subsection (3) of section 5A of this Ordinance, the amount by which the value of all property received by him in consequence of such dissolution or liquidation exceeds —
 - (A) where he had acquired his share of the capital of such business or company before 1st January, 1956, the value of his share of such capital as at 1st January, 1956, or,
 - (B) where he had acquired his share of the capital of such business or company on or after 1st January, 1956, the cost to him of his share of such capital;
- (vi) with reference to capital gain arising from the amalgamation or merger of two or more companies, means, in the case of a shareholder of any of those companies, any money received by such shareholder in consequence of such amalgamation or merger, and, in the case of any other person, the value of the consideration received by such other person for any transaction in connection with such amalgamation or merger; and
- (vii) with reference to capital gain of any person arising from a transaction promoted by him without being a party to it, the sum received by him as a commission or reward;

(b) "capital loss" —

- (i) with reference to capital loss of any person arising from a change of ownership of any property, means, subject to the provisions of subsection (3) of section 5A of this Ordinance, the amount by which the value of that property at the time when such change of ownership occurs is less than its value at the time when it was acquired by that person by purchase, gift, inheritance, or exchange, or in any other manner whatsoever;
- (ii) with reference to capital loss of any person arising from the redemption of any shares, debentures or other obligations, means subject to the provisions of subsection (3) of section 5A of this Ordinance, the amount by which the value of all property received by him in consequence of such redemption is less than —
 - (A) where the shares, debentures or other obligations were acquired by that person before 1st January, 1956, the value to him of that which is redeemed as at 1st January, 1956, or,
 - (B) where the shares, debentures or other obligations were acquired by that person on or after 1st January, 1956, the cost to him of that which is redeemed:

Provided that, where that which is redeemed is any property referred to in subparagraph (viii) or subparagraph (ix) of paragraph (d) of this subsection, the capital loss shall mean, subject to the provisions of subsection (3) of section 5A of this Ordinance, the amount by which the value of all property received by him in consequence of such redemption is less than the value of that property as is specified in that subparagraph;

- (iii) with reference to capital loss of any person arising from the dissolution of a business or the liquidation of a company, means, the amount by which the value of all property received by him in consequence of such dissolution or liquidation is less than —
 - (A) where he had acquired his share of the capital of such business or company before 1st January, 1956, the value of his share of such capital as at 1st January, 1956, or,
 - (B) where he had acquired his share of the capital of such business or company on or after 1st January, 1956, the cost to him of his share of such capital; and
- (iv) includes the amount of any irrecoverable debt which is secured by a mortgage or a promissory note which is not treated as an allowable deduction under any other provisions of this Ordinance;
- (c) "change of ownership", in the context of the definition of "capital gain" or "capital loss", does not include —
 - (i) the sale to a customer of any property held by the vendor primarily for sale to customers in the ordinary course of his trade or business;

- (ii) the sale of household furniture, jewellery and works of art of the vendor where the value of such property is less than five thousand dollars;
 - (iii) the sale of any property which was held and occupied by the vendor as his principal place of residence, if not less than seventy-five per cent of the proceeds of such sale are reinvested by him within twelve months after the sale of the aforementioned property in another property held and occupied by him as his principal place of residence;
 - (iv) the passing of any property subject to a trust from the trustee to any beneficiary under the trust; and
 - (v) the passing of any property belonging to the estate of a deceased person from the executor or administrator of the estate, as the case may be, to any beneficiary of the deceased;
- (d) "value" with reference to any property or consideration in the context of the definition of "capital gain" or "capital loss" shall be as follows:—

- (i) where the property is movable property acquired by purchase, gift, inheritance, or exchange, or in any other manner whatsoever before 1st January, 1956, by the person who is the owner of the property immediately before the occurrence of the change of ownership, then, subject to the provisions of sub-paragraph (vi), sub-paragraph (vii), sub-paragraph (viii), sub-paragraph (ix) and sub-paragraph (x) of this paragraph, the value of the property at the time of the change of ownership shall, if such change occurs by a sale of the property, be an amount equal to the sale price, and if such change occurs in any other manner, be an amount equal to the market value of the property at that time, and the value of the property at the time when it was acquired as aforesaid by such person shall be an amount equal to the market value of the property on 1st January, 1956;
- (ii) where the property is movable property acquired as aforesaid by such person on or after 1st January, 1956, then, subject to the provisions of sub-paragraph (vi), sub-paragraph (vii), sub-paragraph (viii), sub-paragraph (ix) and sub-paragraph (x) of this paragraph, the value of the property at the time of the change of ownership shall, if such change occurs by a sale of the property, be an amount equal to the sale price, and if such change occurs in any other manner, be an amount equal to the market value of the property at that time, and the value of the property at the time when it was acquired as aforesaid by such person shall, if such acquisition was by purchase, be an amount equal to the cost of such purchase, and if such acquisition was otherwise than by purchase, be an amount equal to the market value of the property at the time of such acquisition;

- (iii) where the property is immovable property acquired as aforesaid by such person before 1st January, 1956, then, subject to the provisions of sub-paragraph (vi), sub-paragraph (vii) and sub-paragraph (x) of this paragraph, the value of the property at the time of change of ownership shall, if such change occurs by a sale of the property, be an amount equal to the sale price, and if such change occurs in any other manner, be an amount equal to the market value of the property at that time, and the value of the property at the time when it was acquired as aforesaid by such person shall be an amount equal to the market value of the property on 1st January, 1956;
- (iv) where the property is immovable property acquired as aforesaid by such person on or after 1st January, 1956, then, subject to the provisions of sub-paragraph (vi), sub-paragraph (vii) and sub-paragraph (x) of this paragraph, the value of the property at the time of the change of ownership shall, if such change occurs by a sale of the property, be an amount equal to the sale price, and if such change occurs in any other manner, be an amount equal to the market value of the property at that time, and the value of the property at the time when it was acquired as aforesaid by such person shall, if such acquisition was by purchase, be an amount equal to the cost of such purchase, and if such acquisition was otherwise than by purchase, be an amount equal to the market value of the property at the time of such acquisition;
- (v) the value of any consideration received by any person shall, where the consideration is partly cash and partly property other than cash, be an amount equal to the aggregate of such cash and the market value of such property on the date on which the consideration was received, and where the consideration is wholly property other than cash, be an amount equal to the market value of such property on the date on which the consideration was received;
- (vi) where the acquisition as aforesaid of the property by such person is by the transfer of the property by a trustee of the property under a trust to such person in his capacity as a beneficiary under the trust or is by the transfer of the property by an executor or administrator, as the case may be, to such person in his capacity as a beneficiary of the deceased whose estate is administered by such executor or administrator, as the case may be, the value of the property at the time of such acquisition shall, if the date of such acquisition is before 1st January, 1956, be an amount equal to the market value of the property on 1st January, 1956, and if the date of such acquisition is on or after 1st January, 1956, be —
 - (A) where such trustee, executor or administrator came into possession of the property before 1st January, 1956,

an amount equal to the market value of the property on 1st January, 1956, or,

- (B) where such trustee, executor or administrator came into possession of the property on or after 1st January, 1956, an amount equal to the market value of the property at the time when such trustee, executor or administrator came into possession of the property;
- (vii) where the person who is the owner of the property immediately before the occurrence of the change of ownership had come into possession of the property immediately after the cessation of a life interest of any other person in the property, the value of the property at the time when the first mentioned person acquired title to the property shall, if the date of acquisition of such title is before 1st January, 1956, be an amount equal to the market value of the property on 1st January, 1956, and if the date of acquisition of such title is on or after 1st January, 1956, be an amount equal to the market value of the property on the date of acquisition of such title;
- (viii) where the property consists of any shares forming part of a holding of such person which includes bonus shares issued on or after 1st January, 1956, or shares issued on or after 1st January, 1956, at a price less than their market value, the value of the property at the time when it was acquired as aforesaid by such person shall be an amount which bears to the cost of acquisition by him of such holding the same proportion as the property bears to such holding;
- (ix) where the property consists of any shares received by a person in place of any shares of his in any of two or more companies which have amalgamated or merged on or after 1st January, 1956, the value of the property, i.e. the first mentioned shares, at the time when it was so received shall be an amount equal to —
- (A) the value of the last mentioned shares as at 1st January, 1956, if they were acquired by him before 1st January, 1956, or
- (B) the cost to him of the last mentioned shares, if they were acquired by him on or after 1st January, 1956;
- (x) where the property is property which was acquired by purchase, gift, inheritance, or exchange, or in any other manner whatsoever by the person who is the owner of the property immediately before the occurrence of the change of ownership, and which was used by him in producing income from any trade (other than a trade to which the provisions of Parts II and III of the Income Tax (In Aid of Industry) Ordinance apply), business, profession, vacation or employment carried on or exercised by him, and in respect of which a deduction for wear and tear has been allowed under the provisions of section 13 of this Ordinance, the value of the property at the time of such acquisition shall —

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- (A) if the property was acquired as aforesaid before 1st January, 1956, be an amount equal to the difference between the value as at 1st January, 1956, and the amount deducted for wear and tear after 1st January, 1956, and
- (B) if the property was acquired as aforesaid on or after 1st January, 1956, be an amount equal to the difference between the cost of the acquisition and the amount deducted for wear and tear during the period in which the property was used as aforesaid;
- (xi) where, in the case of a change of ownership of the property of any person occurring by sale, the Commissioner is of the opinion that the sale price is less than the market value of that property at the time of the sale, then, unless that person satisfies the Commissioner that there was reasonable cause for the difference between the sale price and such market value, the value of such property at the time of the sale shall be an amount equal to the market value of that property at that time;
- (e) "market value", in the context of the definition of "value of any property", means —
 - (i) in respect of any property acquired before 1st January, 1956, with reference to the value of such property on 1st January, 1956, the aggregate of its estimated price in open market, on that date, which price shall be estimated by the owner:

Provided that the Commissioner may in any case estimate the price of such property as at 1st January, 1956, if he is dissatisfied with the price estimated by the owner:

Provided further that any such estimated price, whether by the owner or the Commissioner, shall, where applicable, be the same value as used for the computation of the Property Tax under the provisions of section 12 of the Property and the Gift Tax Ordinance, 1962; and

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- (ii) in respect of any property and any date other than as provided for in sub-paragraph (i) of this paragraph, the price which, in the opinion of the Commissioner, that property would have fetched on that date in an open market;
- (f) "net capital gains" in respect of any year of assessment, means the excess of the capital gains in the basis period of that year over the capital losses in the basis period of that year.

- (3) For the purposes of paragraph (f) of subsection (1) and of subsection (2) of this section, property includes immovable and movable property, rights of any kind, whether absolute, conditional, or contingent, and effects of any kind, situate or having their seat in British Guiana, and the proceeds of sale thereof, and any money or investment for the time being representing them, and also includes movable property and effects wherever situate”.

4. The Principal Ordinance is hereby amended by the insertion immediately after section 5 of the following section —

Insertion of section 5A in Cap. 299.

5A. (1) Where a capital gain or a capital loss arises from the change of ownership of any property occurring on a donation of that property by its owner to any other person, such capital gain or such capital loss shall be deemed to be a capital gain or a capital loss, as the case may be, of the donor.

“Special provisions regarding capital gains and capital losses.

(2) Where a capital gain or a capital loss arises from the change of ownership of any property occurring on the death of the owner of that property, such capital gain or such capital loss shall be deemed to be his capital gain or capital loss, as the case may be, arising immediately before his death.

(3) The amount of a capital gain or a capital loss arising from the change of ownership of any property shall be computed after making the following deductions —

- (a) the expenditure (other than the purchase price, if any) incurred solely in connection with the acquisition of that property by the person who is the owner of that property immediately before the occurrence of such change of ownership.
- (b) the expenditure incurred by the aforesaid owner in making any improvements, additions, or alterations to that property on or after 1st January, 1956; and
- (c) the expenditure incurred by the aforesaid owner solely in connection with the transaction which results in such change of ownership.

(4) Notwithstanding anything to the contrary contained in this Ordinance, where a capital gain arises in respect of any property which was owned and possessed by the owner thereof, before the change of ownership which gave rise to the capital gain, for a period exceeding three years, the person liable to be charged in respect of such capital gain may request the Commissioner in writing at any time before the Commissioner makes an assessment upon such person in respect of such capital gain to deem such gain as gain or profit which had arisen equally over the period of ownership of such property and to charge him to tax in respect of such gain as if such gain had arisen proportionately in each calendar year during which he owned and possessed such property, and thereupon the Commissioner shall assess him accordingly:

Provided that where upon the exercise of such option such gain would fall to be considered as having arisen over a period of more than five years, it shall be deemed to have arisen over a period not exceeding the five most recent years and shall be charged and assessed accordingly.

(5) Where the chargeable income of an individual includes any net capital gain, and the rate of the tax payable on a part of such chargeable income (hereafter in this subsection referred to as the “relevant part of the chargeable income”) exceeds forty cents in every dollar, then, in regard to the relevant part of the chargeable income, the tax shall be computed as follows:—

- (a) if the relevant part of the chargeable income exceeds the amount of the net capital gain —
- (i) the tax payable on such portion of the relevant part of the chargeable income as is equal to the amount of the net capital gain shall be at the rate of forty-five cents in every dollar, and
 - (ii) the tax payable on the balance of the relevant part of the chargeable income shall be computed according to such of the rates of the tax above forty cents in every dollar as are applicable thereto under this Ordinance; and
- (b) if the relevant part of the chargeable income is less than the amount of the net capital gain, the tax payable on the entirety of the relevant part of the chargeable income shall be forty-five cents in every dollar notwithstanding anything to the contrary in this Ordinance.

(6) The amount of the net capital loss of any person for any year of assessment shall not be set off against income from other sources for that year of assessment but shall be carried forward as a capital loss of that person for the next succeeding year of assessment, and so on from year to year.

(7) Where a person dies and he has any net capital loss for the last year of assessment for which he was liable to be assessed for the tax, the amount of such net capital loss shall, notwithstanding anything to the contrary in this Ordinance and as far as is practicable, be deducted from his income from all sources for such last year of assessment, and, if it cannot be so deducted from his income, from capital gains for any (in order of recession) of the five years of assessment (but not earlier than the Year of Assessment 1963) preceding such last year of assessment; and, if it cannot be so deducted, then from his income from all other sources for any of the aforementioned five years of assessment in the aforementioned order, and where such deduction is made from his income for any such preceding year of assessment, the tax for that year of assessment, in respect of him, shall be revised taking into consideration such deduction, and the amount of the difference in the tax originally assessed on him in respect of that year of assessment shall be refunded to the legal personal representative of the deceased.

(8) In this section —

- (a) the expressions “capital gain”, “capital loss” and “net capital gain” shall have the same meanings as are assigned to them in subsection (2) of section 5 of this Ordinance;
- (b) the expression “property” shall have the same meaning as is assigned to it in subsection (3) of section 5 of this Ordinance; and
- (c) “net capital loss”, in respect of any year of assessment, means the excess of the capital loss for that year over the capital gain for that year.”

Amendment
of Section
14A of
Cap 299.

5. Section 14A of the Principal Ordinance is hereby amended —

- (a) by the deletion of the colon at the end of the sixth line;
- (b) by the insertion after the word “assessment” at the end of the aforesaid line of the following words “less any deductions to which he is entitled under the provisions of section 16, section 17, section 18, section 19 and section 20 of this Ordinance”;
- (c) by the deletion of paragraph (b) of the proviso and the substitution therefor of the following paragraph —

- “(b) where such person actually incurs a loss in the year preceding the year of assessment, the loss to be carried forward in accordance with the provisions of section 15 of this Ordinance shall, where he actually pays tax, equal the sum of the aforesaid minimum chargeable income on which tax is actually paid and the loss, and where no tax is paid, equal the loss incurred”; and
- (d) by the deletion of paragraph (c) of the proviso and the substitution therefor of the following paragraph —

“(c) where the actual chargeable income of such person in the year preceding the year of assessment is less than the aforesaid minimum chargeable income and he actually pays tax, then the difference between the actual chargeable income and the aforesaid minimum chargeable income on which tax is actually paid may be carried forward in the same manner as if it were a loss”.

6. The Principal Ordinance is hereby amended by the insertion immediately after section 66B of the following section —

Insertion of
section 66C
in Cap. 299.

“Transitional
Provisions.

66C. (1) Notwithstanding anything contained in this Ordinance, but subject to the provisions of this section, income tax on all emoluments arising or accruing in or derived from or received in British Guiana during the year 1962 is hereby discharged.

(2) Income tax shall not be discharged as aforesaid unless the person entitled to any emoluments arising or accruing in or derived from or received in British Guiana during the year 1962 is at some time during the year 1963 in receipt of emoluments arising or accruing in or derived from or received in British Guiana during the year 1963 from which deductions are made in accordance with the provisions of section 66A of this Ordinance:

Provided that where the emoluments arising or accruing in or derived from or received in British Guiana during the year 1962 exceed or are at a rate in excess of the emoluments arising or accruing in or derived from or received in British Guiana in the year 1963, the income tax on the emoluments for the year 1962 assessable under the provisions of this Ordinance in the Year of Assessment 1963 which shall be discharged shall be computed as if the emoluments for the year 1962 were the same as or were at the same rate as the emoluments for 1963:

Provided further that where a person is —

- (a) resident in British Guiana during part of the year 1963 and during some other part of that year is not resident in British Guiana, or
- (b) employed in British Guiana during part of the year 1963 and during some other part of that year is not so employed,

so that emoluments received in the year 1963 from which deductions are made in accordance with the provisions of section 66A of this Ordinance do not represent emoluments of a full year, the income tax on the emoluments for the year 1962 assessable under the provisions of this Ordinance in the Year of Assessment 1963 which shall be discharged shall be an amount which bears to the full amount of the income tax assessable on such emoluments the same proportion as the period of residence or the period of employment in 1963, as the case may be, whichever is the lesser bears to a full year.

(3) For the purpose of determining the amount of income tax on any emoluments which form a part only of the total income assessed to income tax pursuant to

the provisions of this Ordinance, the amount of income tax on such emoluments shall be an amount that bears to the full amount of income tax so assessed the same proportion that the emoluments bear to the total income.

Repeal and reenactment of section 69A of Cap. 299.

7. Section 69A of the Principal Ordinance is hereby repealed and the following section substituted therefor —

“Tax leaving certificates

69A (1) Except as otherwise provided in this section, no person shall leave or attempt to leave British Guiana unless he has paid or made arrangements to the satisfaction of the Commissioner for the payment of all income tax that is or may become payable by that person under this Ordinance on his income accruing in or derived from British Guiana or elsewhere up to and including the year in which he proposes to leave British Guiana.

(2) Subject to the provisions of subsection (8) of this section, every person about to leave British Guiana shall notify the Commissioner of his intention to leave the country and shall apply to the Commissioner to certify that, for the purposes of this Ordinance, there is no objection to the departure of such person from British Guiana.

(3) Except as otherwise provided in this section, every person shall before embarkation upon any boat, ship, or aircraft for the purpose of leaving British Guiana submit to the immigration officer or any person for the time being exercising the duties of an immigration officer, a certificate signed by or on behalf of the Commissioner that for the purposes of this Ordinance there is **no objection to the departure of that person from British Guiana.**

(4) Upon the application of any person about to leave British Guiana the Commissioner shall, as soon as is practicable thereafter, if he is satisfied —

- (a) that the person is not liable to pay income tax;
- (b) that arrangements have been made to the satisfaction of the Commissioner for the payment of all income tax that is or may become payable by that person;
- (c) that the income tax payable by that person is irrecoverable;
- (d) that the person will be leaving British Guiana for a temporary or urgent purpose; or
- (e) that the person is a person to whom the provisions of this section do not apply;

issue a certificate that, for the purposes of this Ordinance, there is no objection to the departure of that person from British Guiana.

(5) For the purposes of this section the Commissioner may from time to time issue certificates of exemption subject to such conditions as may appear to him to be necessary and he may from time to time, suspend, alter, annul or cancel such certificates as appear to him to be necessary.

(6) Any person who being aggrieved by the refusal, failure or neglect of the Commissioner to issue a certificate to which this section refers, may appeal against the refusal, failure or neglect of the Commissioner to a judge in chambers upon giving notice in writing to the Commissioner. The decision of the judge shall only be binding in respect of the granting or refusal of a certificate and to this extent it shall be final and the Commissioner shall act in accordance with that decision and any direction given therewith for the purposes of this section.

(7) Except as otherwise provided in this section, no ticket entitling a person to travel from any port or any other place of embarkation in British Guiana to any port or any other place outside of British Guiana shall be issued in British Guiana by any owner or charterer or representative of or employee of such owner or charterer of any ocean-going ship or aircraft, or of any agent of such owner or charterer or by any person who customarily arranges transportation out of British Guiana, or the employee, representative of or agent of such person as aforesaid to any person, unless such person produces to the owner or

charterer, or representative or employee of such owner or charterer, or agent or person as aforesaid a certificate (as provided for by this section) duly signed by or on behalf of the Commissioner during the period of validity of such certificate.

- (8) The provisions of this section shall not apply to —
- (a) the Governor;
 - (b) the Premier;
 - (c) a member of the Council of Ministers or any other body exercising the functions of the Council of Ministers by whatever name described;
 - (d) any person who is an officer or member of the crew of the ship or aircraft;
 - (e) any member of the Military, Naval or Air Forces of Her Majesty or of any foreign state;
 - (f) any person in the diplomatic or consular service of a foreign state or in the service of the United Nations unless any such person has also been exercising any trade, business, profession or vocation or other employment in British Guiana rendering such person liable to income tax;
 - (g) any person employed by any Government other than the Government of British Guiana, whether employed directly by the said Government or under contract with any public or private organisation in British Guiana in connection with a technical co-operation or assistance programme or project where the agreement or conditions relating to such programme or project provide for the exemption of the emoluments of such person from income tax in British Guiana, unless such person has also been exercising any trade, business, profession or vocation or other employment in British Guiana rendering such person liable to income tax;
 - (h) any person temporarily resident in British Guiana who has not during such temporary residence engaged in any trade, business, profession, vocation or employment in British Guiana.

For the purposes of this paragraph a person shall be deemed to be temporarily resident in British Guiana who is in the country for some temporary purpose only and not with intent to establish his residence therein and who has not actually resided in British Guiana at one or more times for a period equal in the whole to six months in the year preceding the year of assessment;

- (i) any person being the wife or minor child of any person mentioned under paragraphs (a) to (g) inclusive of this subsection, and who has not exercised any trade, business, profession, vocation or employment in British Guiana rendering such person liable to income tax;
- (j) a married woman, having no income chargeable to tax whether in her name or in that of her husband under this Ordinance;
- (k) any child under the age of sixteen years having no income chargeable to tax under this Ordinance;
- (l) any child over the age of sixteen years and under the age of twenty-one years having no income chargeable to tax under this Ordinance, who is a whole-time student at any school, college, university or other educational establishment; and
- (m) any person or class of person as the Minister may from time to time specify in the Official Gazette:

Provided that any such person may be required to submit under the provisions of subsection (3) of this section a certificate of exemption in the prescribed form signed by or on behalf of the Commissioner.

(9) Where the Commissioner is of the opinion that any person is about to or is likely to leave British Guiana without compliance with the provisions of sub-section (1) of this section, he may issue a certificate containing particulars of the tax assessed upon such person, including all tax assessed upon him under section 49 of this Ordinance and a direction to the Commissioner of Police or the Chief Immigration Officer, or both, to prevent such person from leaving British Guiana without paying the tax or furnishing security to the satisfaction of the Commissioner for the payment thereof.

(10) The Commissioner of Police or the Chief Immigration Officer or both, or any member of the police force or any immigration officer, as the case may be, may, and any immigration officer responsible for checking the passport, certificate or identity or other travel document of any person before embarkation upon any boat, ship or aircraft shall take such measures as may be necessary to prevent any person from leaving British Guiana without compliance with the provisions of this section, including the use of such force as may be necessary and the seizure, removal and retention of any passport, certificate of identity or travel document relating to such person and of any exit permit or other document authorising such person to leave British Guiana:

Provided that the production of a certificate signed by the Commissioner, or some person or persons from time to time appointed by him for that purpose, stating that the tax has been paid or that security has been furnished therefor pursuant to the provisions of subsection (1) of this section, or payment of the tax to an immigration officer or to a police officer in charge of a police station shall be sufficient authority for the purposes of this section for allowing such person to leave British Guiana.

(11) No civil or criminal proceedings shall be instituted or maintained against the Government, the Commissioner of Police, the Chief Immigration Officer, or any other member of the police force or any immigration officer in respect of anything lawfully done under the authority or in pursuant to the provisions of this section.

(12) Any person who —

- (a) leaves or attempts to leave British Guiana contrary to the provisions of this section; or
- (b) issues a ticket entitling a person to travel from any port or any other place of embarkation in British Guiana to any port or any other place outside of British Guiana contrary to the provisions of subsection (7) of this section; or
- (c) wilfully commits a breach of any other provision of this section; or
- (d) aids, abets, assists, induces, counsels or procures any person to commit a breach of any of the provisions of this section, shall be guilty of an offence against this Ordinance and shall be liable on summary conviction to a penalty not exceeding one thousand dollars, or to imprisonment not exceeding six months or to both such fine and imprisonment.

(13) For the purposes of this section —

“Immigration Officer” has the meaning assigned thereto by section 2 of the Immigration Ordinance;

“Passport” means any kind of document with respect to which, upon its production by an individual to an immigration officer, that individual is permitted to enter British Guiana.

Amendment
of section 74
of Cap. 299

8. Section 74 of the Principal Ordinance is hereby amended by the deletion of the words “under the provisions of subsection (4) of section 48” and by the substitution therefor of the following words “under the provisions of subsection (5) of section 48”.

Amendment
of section 76
of Cap. 299

9. Subsection (1) of section 76 of the Principal Ordinance is hereby amended by the deletion of the words “shall be liable on summary conviction” to the end of the subsection, and by the substitution therefor of the following words “shall be liable on summary conviction to a fine —

- (i) not exceeding one thousand dollars, and
- (ii) double the amount of the tax which has been undercharged in consequence of such incorrect return, statement, or information, or would have been so undercharged if the return, statement, or information had been accepted as correct.”

Amendment
of section 77
of Cap. 299

10. Subsection (1) of section 77 of the Principal Ordinance is hereby amended by the deletion of the words “shall be liable on summary conviction” to the end of the subsection, and by the substitution therefor of the following words “shall be liable on summary conviction to a fine—

- (i) not exceeding one thousand dollars, and
- (ii) treble the amount of the tax which has been undercharged in

consequence of such false account, particulars, return, statement, information or representation, or would have been so undercharged if the account, particulars, return, statement, information, or representation had been accepted as correct, or

to imprisonment for six months, or to both such fine and imprisonment.”

11. Subsection (1) of section 83 of the Principal Ordinance is hereby amended by the substitution for the word “Governor” of the word “Minister”. Amendment
of section 83
of Cap. 299

OBJECTS AND REASONS

This Bill seeks to amend the Income Tax Ordinance in order to provide for the levying of a tax on capital gains made in the year 1962 and onwards, and to make certain other necessary amendments to the income tax law.

2. Capital gain, for the purposes of taxation, is to be treated as part of a person's income which ordinarily attracts income tax.

3. The rates of taxation in respect of any capital gain are also to be the same as those applicable to a person's income and which are set out in the Income Tax Ordinance. There is, however, this qualification that in no case is a higher rate than 45 per cent to be charged in respect of any capital gain.

4. Clause 5 seeks to amend section 14A of the Income Tax Ordinance and to provide that the minimum chargeable income on which certain businesses are taxed shall equal two per cent of their turnover less certain deductions ordinarily allowable on a person's income before taxation.

5. Clause 6 seeks to provide for the discharge of tax on emoluments earned in 1962. This exemption, however, only applies to those who actually earn an emolument in 1963 and pay tax for some period in 1963 under the P.A.Y.E. system. Moreover, where the amount of the emoluments for 1963 is less than or is at a lower rate than for 1962, then the amount of tax to be discharged for 1962 will be based on the emoluments for 1963.

6. Clause 7 seeks to provide that every one desirous of leaving British Guiana must get a certificate from the Commissioner of Income Tax stating either that he owes no income tax or has made satisfactory arrangements for the payment of all income tax owed or likely to be owing by him up to the time of his departure before he would be permitted to leave this country. This clause will not apply to certain persons who are specified in sub-clause (8) and among whom are the Governor, the Premier, the members of the Council of Ministers and diplomats. Heavy penalties are imposed on any one committing or helping others to commit a breach of this clause.

CHARLES JACOB, JR.

Minister of Finance.

