

THE OFFICIAL GAZETTE — 5TH DECEMBER, 1970
LEGAL SUPPLEMENT — C

PARLIAMENT OFFICE,
Public Buildings,
Georgetown.
4th December, 1970.

The following Bills which will be introduced in the National Assembly are published for general information.

F. A. NARAIN,
Clerk of the National Assembly.



GUYANA

BILL NO. 29 OF 1970.
CORPORATION TAX BILL, 1970.

Arrangement of Sections.

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| | SCHEDULE |

SCHEDULE

A BILL

Intituled

AN ACT to impose a tax on the profits of companies and for purposes connected therewith.

A.D. 1970.

Enacted by the Parliament of Guyana :—

Short title
and
commence-
ment.

1. This Act may be cited as the Corporation Tax Act, 1970, and shall be deemed to have come into operation with respect to and from the year of assessment commencing 1st January, 1970.

Interpret-
ation

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

“chargeable profits” means the aggregate amount of the profits of any company from the sources specified in section 4 remaining after allowing the appropriate deductions and exemptions under this Act;

“commercial company” and “company” have the meanings assigned to them in section 2 of the Income Tax Ordinance;

“corporation tax” means the tax imposed by this Act;
“investment company” means a resident company that in respect of a year of assessment satisfies the following conditions —

- (a) 100 per cent of the assets thereof are situate in Guyana;
- (b) at least 80 per cent of its property owned throughout the year was shares, bonds, marketable or securities;
- (c) not less than 90 per cent of its profits was derived from shares, bonds, or marketable securities;
- (d) not more than 50 per cent of its gross revenue for the year was from interest;
- (e) at no time in the year of income did more than 10 per cent of its property consist of shares, bonds, marketable securities of any one company or debtor, other than those of the Government;
- (f) at no time in the year of income was the number of share-holders of the company less than 50, none of whom at any time in the year held more than 25 per cent of the shares or the capital stock of the company;

- (g) 90 per cent or more of its profits (other than dividends or interest received in the form of shares, bonds, or other securities that had not been sold before the end of the year of income) was distributed to its shareholders within six months following the end of the accounting period for that year of assessment.

“non-resident company” means a company the control and management of whose business are exercised outside Guyana;

“preference dividend” means a dividend payable on a preferred share or preferred stock at a fixed gross rate per cent issued by a resident company before 31st January, 1969, or, where a dividend is payable on such a preferred share or preferred stock partly at a fixed gross rate per cent and partly at a variable rate, such part of that dividend as is payable at a fixed gross rate per cent;

“profits” means income and includes net chargeable gains accruing on a disposal of property within twelve months of its acquisition and deemed to be chargeable income for the purposes of the Income Tax Ordinance by section 8 of the Capital Gains Tax Ordinance, 1966;

“resident company” means a company the control and management of whose business are exercised in Guyana.

(2) Without prejudice to any other case in which a company is engaged in or carrying on trade or business in Guyana, a company shall be deemed to be engaged in or carrying on trade or business in Guyana if it has an office or place of business in Guyana or has a branch or agency therein.

(3) For the purpose of this Act, dividends, including preference dividends, shall be treated as paid on the date when they become due and payable.

(4) For the purposes of the definition of “resident company” and “non-resident company”, the place where such a company is to be regarded as controlled is the place where the mind or management of the company is ordinarily situated.

3. The corporation tax imposed by this Act shall be under the care and management of the Commissioner of Inland Revenue. Administration of the Act.

4. Subject to this Act, corporation tax shall be payable for each year of assessment at the rate specified in section 10, upon the profits of any company accruing in or derived from Guyana or elsewhere, and whether received in Guyana or not in respect of — Imposition of corporation tax.

- (a) any trade or business for whatever period of time the trade or business may have been carried on;

- (b) any profession or vocation or management charges or charges for the provision of personal services and technical and managerial skills;
- (c) capital gains accruing on a disposal of property within twelve months of its acquisition and deemed to be chargeable income for the purposes of the Income Tax Ordinance by section 8 of the Capital Gains Tax Ordinance;
- (d) preference dividends;
- (e) interests, discounts, annuities or other accrued or periodic payments received for the use of capital;
- (f) premiums, commissions and fees;
- (g) rentals and royalties paid for the use or the right to use —
 - (i) Copyrights, artistic or scientific work, patents, designs, plans, secret processes or formulae, trade marks, motion picture films, films or tape for radio and television broadcasting, or other like properties or rights, or
 - (ii) information concerning industrial, commercial or scientific knowledge, experience or skill;
- (h) dividends and other income received from non-resident companies, out of profits not derived from or accruing in Guyana, and from persons (including a partnership) not being companies.
- (i) any annual profits not falling under any of the foregoing paragraphs.

General
Scheme of
corporation
tax.

5. (1) Subject to any exceptions provided for by this Act, a resident company shall be chargeable to corporation tax on all its profits wherever arising.

(2) Where a non-resident company is carrying on a trade or business in Guyana, the profits thereof that are chargeable to corporation tax shall be any income directly or indirectly accruing in or derived from Guyana.

(3) A company shall be chargeable to corporation tax on profits accruing for its benefit under any trust or arising under any partnership in any case in which it would be so chargeable if the profits accrue to it directly; and a company shall be chargeable to corporation tax on profits arising in the winding up of the company, but shall not otherwise be chargeable to corporation tax on profits accruing to it in a fiduciary or representative capacity except as respects its own beneficial interest (if any) in those profits.

6. (1) Corporation tax shall be charged for each year of assessment upon the chargeable profits of the company arising in respect of that year; so, however, that the provisions of this Act shall be read and construed as imposing the charge to corporation tax on the profits of the company for the year of assessment commencing 1st January, 1970, and subsequent years in respect of the profits of the accounting period relating to that year and so for subsequent years of assessment. Basis of assessment.

(2) Except as otherwise provided by this Act, corporation tax shall be assessed upon the full amount of the profits accruing or arising, whether or not received in Guyana, for the year of assessment without any other deduction than is authorised by this Act.

7. There shall be exempt from corporation tax — Exemptions

- (a) distributions, other than preference dividends, received by a company from a resident company;
- (b) the profits of an investment company;
- (c) the profits of any company to the extent that the income of that company is exempt from income tax by virtue of the Income Tax Ordinance or any other law;
- (d) the profits of any company which carries on in Guyana long-term insurance business as defined in the Insurance Act, 1970. No. 25 section 2 of 1970.

8. (1) Except as otherwise provided by this Act, the chargeable profits of a company shall be computed in accordance with income tax principles relating to the provisions of the Income Tax Ordinance applied by section 16. General rules for computation of profits.

(2) Subject to any enactment applied by this Act which expressly authorises such an allowance, no allowance shall, subject to subsections (4) and (5), be made in ascertaining the chargeable profits —

- (a) in respect of distributions; or
- (b) in respect of any annuity or other annual payment.

(3) Subsection (2) (a) shall not apply when the company makes a distribution that is a preference dividend, paid on or after 1st January, 1969, but so however that —

- (a) the deduction that is allowed in ascertaining the chargeable profits shall not exceed the amount of the preference dividend;
- (b) the deduction shall be allowed only in the year of income in which such preference dividend has actually been paid.

(4) Subsection (2) (b) shall not apply when the company makes a disposition to which section 53(3) of the Income Tax Ordinance applies.

(5) Without prejudice to the generality of subsection (1), any provision of the Income Tax Ordinance which confers an exemption from income tax, or which provides for a person to be charged to income tax on any amount (whether expressed to be income or not, and whether an actual amount or not), shall have the like effect for purposes of corporation tax so far as is consistent with this Act.

Deductions and additions in computation of profits for capital allowances and related changes

9. (1) In computing for purposes of corporation tax a company profits for any year of assessment there shall be made in accordance with this section all such deductions and additions as are required to give effect to the provisions of the Income Tax (In Aid of Industry) Ordinance which relate to deductions and allowances and charges in respect of capital expenditure, as those provisions are applied by this Act.

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(2) Allowances and charges which fail to be made for any year of assessment in computing the profits of a trade shall be given effect by treating the amount of any allowance as a trading expense of the trade in that year, and by treating the amount on which any such charge is to be made as a trading receipt of the trade in that year.

Rate of tax.

10. Subject to this Act, corporation tax shall be paid at the rate of thirty-five per cent of the chargeable profits of a commercial company, and at the rate of twenty-five per cent in the case of any other company.

Power to direct distribution of certain profits

11. (1) A close company shall distribute as dividend profits which can be distributed without detriment to the company's business.

(2) With a view to preventing the avoidance of the payment of tax through the withholding from distribution of the profits of a close company which could otherwise be distributed, it is hereby enacted that where it appears to the Commissioner that such a company has not distributed to its members as dividend, profits which could be distributed without detriment to the company's existing business, the Commissioner, by notice in writing to the company, may direct that such profits shall thereupon be distributed, so however, that in determining whether any company has or has not distributed profits that could be distributed as aforesaid, the Commissioner shall have regard to the current needs and future development requirements of the company's business.

(3) Where, during any year of assessment, a close company, on an application made in the prescribed manner and within the prescribed time, satisfies the Commissioner on the basis of concrete evidence that such distribution could be prejudicial to the current needs or to the future development requirements or both of the company,

the Commissioner may relieve such company from compliance with the directions under this section to such extent as it may consider appropriate, and the company shall thereupon be so relieved, so, however that if the Commissioner refuses so to relieve the company he may treat any such undistributed profits as distributed, and the persons concerned shall be assessable accordingly.

12. (1) In computing the profits of a close company for any year of assessment for the purpose of ascertaining the chargeable profits of such company, the deduction that may be made for the remuneration by way of fees of a director other than a whole-time service director shall not, subject to this section, exceed 10 per cent. of the chargeable profits, before making the deduction for that remuneration or for initial allowances, other than the allowance in respect of annual depreciation provided for by the Income Tax (In Aid of Industry) Ordinance, but so that the deduction does not exceed \$3,000 for each such director. Deductions
for dir-
ector's re-
muneration

(2) In computing the profits of a close company for any year of assessment there may be allowed a deduction for the remuneration by way of fees paid to any director, who is required to devote substantially the whole of his time to the service of the company in a managerial or technical capacity of an amount not exceeding —

- (a) \$12,000, in the case of the highest paid director;
- (b) \$9,600, in any other case,

so however, that where any such director receives remuneration by way of a salary as a full-time employee of the company, the company may not claim as a deductible expense an amount in excess of \$6,000 in respect of the fees so paid.

(3) Notwithstanding anything in this section to the contrary, where any sum paid to a director of a close company exceeds an amount which in the opinion of the Commissioner appears to be fair and reasonable in view of the time provided by the director to the affairs of the company, the Commissioner may deem the excess of the amount paid to such director over what is considered to be fair and reasonable, to be a distribution by the company to such a director.

13. The provisions of the schedule shall have effect for the interpretation and operation of the foregoing sections of this Act relating to close companies, and those sections shall have effect subject to and in accordance with the provisions of that Schedule. Supplementary
provisions
about close
companies
First
Schedule.

Application
and applica-
tion of
Ordinance as
to certain
allowances
and other
matters.

14. (1) Except in so far as this Act otherwise provides, the Income Tax (In Aid of Industry) Ordinance and any provisions of the Income Tax Ordinance relating to the making of allowances or charges under or in accordance with the said Income Tax (In Aid of Industry) Ordinance shall apply equally for purposes of corporation tax and for purposes of income tax.

(2) For the purposes of corporation tax the right to an allowance or liability to a charge for a year of assessment and the rate or amount of any such allowance, or charge, shall be determined under the provisions referred in subsection (1) by applying the law in force for the year of assessment.

(3) Where by virtue of this Act any provision of the Income Tax Ordinance applies both to income tax and to corporation tax, it shall not be affected in its operation by the fact that they are distinct taxes but, so far as consistent with this Act, shall apply in relation to income tax and corporation tax as if they were one tax, so that, in particular, a matter which in a case involving two individuals is relevant for both of them in relation to income tax shall in a like case involving an individual and a company be relevant for him in relation to that tax and for it in relation to corporation tax; and for that purpose in any such provision of the Income Tax Ordinance references to a deduction or allowance for the purpose of ascertaining chargeable income or to a specified provision of that Ordinance shall, in the absence of or subject to any express adaptation made by this Act, be construed as being or including a reference to any corresponding deduction or allowance for the purpose of ascertaining chargeable profits or to any corresponding provision of this Act.

15. (1) Sections 60 and 61 of the Income Tax Ordinance together with any other enactment relating or referring to double taxation relief shall have effect in relation to corporation tax and profits chargeable thereto as they are expressed to have effect in relation to income tax and income chargeable thereto.

(2) Where dividends are paid by a company resident in a country outside Guyana to a company resident in Guyana which controls, directly or indirectly not less than one-quarter of the voting power of the company paying the dividends, then for the purpose of allowing credit against corporation tax in respect of the dividends in accordance with the Fourth Schedule to the Income Tax Ordinance, any Guyana tax payable by the first-mentioned company in respect of its profits (whether income tax or corporation tax) and any tax so payable under the law of any country outside Guyana shall be taken into account as if it were tax payable under the law of the first-mentioned country.

(3) For the purposes of this section a company shall be deemed to control, directly or indirectly, not less than one-quarter of the voting power in another company if a third company having such control also controls directly or indirectly not less than one-half of the voting power in the first-mentioned company.

16. Subject to sections 8 and 9, the provisions of the Income Tax Ordinance shall, in so far as they are applicable with reference to a company, apply *mutatis mutandis* in relation to corporation tax as they apply in relation to income tax.

Application of the provisions of the Income Tax Ordinance for the purposes of Corporation Tax.

S. 13 SCHEDULE

SUPPLEMENTARY PROVISIONS RELATING TO CLOSE COMPANIES

1. (1) For the purposes of this Act a "close company" is one which is under the control of five or fewer participators or of participators who are directors, except that the expression does not apply:—

- (a) to a non-resident company; or
- (b) to a statutory or registered co-operative or friendly society; or
- (c) to a company controlled by or on behalf of the State; or
- (d) to a company falling within subparagraph (2).

(2) A company is not to be treated as a close company in any case where —

- (a) by reason of beneficial ownership of shares in the company the control of it is in the hands of a company which is not a close company or of two or more companies none of which is a close company; and
- (b) it could only be treated as a close company as being under the control of five or fewer participators, and it cannot be so treated except by taking as one of the participators a company which is not a close company;

but so that references in this subparagraph to a close company, shall be construed as applying to any company which, if a resident company, would be a close company.

2. For the purposes of this Act relating to close companies, a company is to be treated as another's "associated company" at a given time if at that time, or at any time within one year previously, one of the two has control of the other or both are under the control of the same person or persons.

3. (1) For the purposes of this Act a person shall be taken to have control of a company:—

- (a) if he exercises, or is able to exercise, or is entitled to acquire, control, whether direct or indirect, over the company's affairs, and in particular, but without prejudice to the generality of the preceding words,

- if he possesses or is entitled to acquire, the greater part of the share capital or voting power in the company; or
- (b) if he possesses or is entitled to acquire, either —
- (i) the greater part of the issued share capital of the company; or
 - (ii) such part of that capital as, would, if the whole of the profits of the company were in fact distributed to the members, entitle him to receive the greater part of the amount so distributed; or
 - (iii) such redeemable share capital as would entitle him to receive on its redemption the greater part of the assets which, in the event of a winding up, would be available for distribution among members; or
- (c) if in the event of a winding up he would be entitled to the greater part of the assets available for distribution among members.

Where two or more persons together satisfy any of the conditions in paragraphs (a) to (c), they shall be deemed to have control of the company.

(2) In subparagraph (1) "member" includes any person having a share or interest in the capital or profits of the company, and for purposes of that subparagraph a person shall be treated as entitled to acquire anything which he is entitled to acquire at a future date or will at a future date be entitled to acquire; but for the purposes of subparagraphs (1), (b) (iii) and (c) any such loan creditor as is mentioned in paragraph (4) (1) (b) may be treated as a member (and the references to share capital as including loan capital).

(3) For the purposes of subparagraph (1) there shall be attributed to any person any rights or powers of a nominee for him, that is to say, rights or powers which another person possesses on his behalf or may be required to exercise on his direction or behalf.

(4) For the purposes of subparagraph (1) there may also be attributed to any person all the rights and powers of any company of which he has, or he and associates of his have, control or any two or more such companies, or of any associate of his or of any two or more associates of his, including those attributed to a company or associate under subparagraph (3) but not those attributed to an associate under this subparagraph; and such attributions shall be made under this subparagraph as will result in the company being treated as under the control of five or fewer participators, if it can be so treated.

"Participator" and "Associate"

4. (1) For the purposes of this Act a “participator” is, in relation to any company, a person having a share or interest in the capital or profits of the company and, without prejudice to the generality of the preceding words, includes —

- (a) any person who possesses or is entitled to acquire share capital or voting rights in the company;
- (b) any person who is a loan creditor of the company otherwise than in respect of any loan capital or debt issued or incurred by the company for money lent by him to the company in the ordinary course of a business of banking carried on by him;
- (c) any person who possesses or is entitled to acquire a right to receive or to participate in the distributions of the company or any amounts payable by the company, (in cash or in kind) to loan creditors by way of premium on redemption;
- (d) any person who is entitled to secure that the profits or assets (whether present or future) of the company will be applied directly or indirectly for his benefit.

(2) In subparagraph (1) references to “being entitled to do anything” apply where a person is presently entitled to do it at a future date or will at a future date be entitled to do it; and “loan creditor” means a creditor in respect of any redeemable loan capital issued by the company or in respect of any debt incurred by the company or in respect of any debt incurred by the company, being a debt —

- (a) for money borrowed or capital assets acquired by the company; or
- (b) for any right to receive profits created in favour of the company; or
- (c) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium thereon).

5. / For the purposes of this Act relating to close companies, “associate” means, in relation to a participator —

- (a) a person in any of the following relationships to the participator, that is to say, husband or wife, parent or remoter forebear, child or remoter issue, brother or sister, and partner;
- (b) the trustee or trustees of any settlement in relation to which the participator is, or any such relative of his (living or dead) as is mentioned in subparagraph

(a) is or was a settlor.

(c) where the participator is interested in any shares or obligations of the company which are subject to any trust or are part of the estate of a deceased person, any other person interested therein,

and has a corresponding meaning in relation to a person other than a participator.

“Director” and “Whole-time Service Director”.

6. (1) For the purposes of this Act relating to close companies, “director” and “whole-time service director” have the meaning assigned to them by this paragraph.

(2) “Director” includes any person occupying the position of director by whatever name called, any person in accordance with whose directions or instructions the directors are accustomed to act and any person who —

- (a) is a manager of the company or otherwise concerned in the management of the company’s trade or business; and
- (b) is remunerated out of funds of that trade or business; and
- (c) is, either on his own or with one or more associates, the beneficial owner of, or able, directly or through the medium of other companies or by any other indirect means, to control 20 per cent, or over of the ordinary share capital of the company (“ordinary share capital” here meaning all the issued share capital, by whatever name called, other than capital the holders whereof have a right to a dividend at a fixed rate but have no other right to share in the profits of the company).

(3) “Whole-time Service Director” has the same meaning as in section 2 of the Income Tax Ordinance.

EXPLANATORY MEMORANDUM

This Bill seeks to make provision for the imposition of a corporation tax on the profits of companies, at the rate of 35 per cent of the chargeable profits of a commercial company and twenty-five per cent in the case of any other company. Clause 7 seeks to provide for the exemptions from corporation tax.

P. A. REID,

Minister of Finance.