

THE REPUBLIC OF KIRIBATI**INCOME TAX**

ARRANGEMENT OF SECTIONS

Section

**PART I
PRELIMINARY**

1. Short title
2. Commencement
3. Interpretation

**PART II
RATES OF TAX**

4. Income tax imposed
5. Calculation of tax payable
6. Individuals
7. Companies
8. Trustees
9. Standard rate of tax

**PART III
TAX BASE**

10. Chargeable income
11. Valuation and currency conversion
12. Indirect payments and benefits
13. Accounting period for tax purposes
14. Cash and accrual accounting
15. Residence and source

**PART IV
INCOME**

16. Gross income
17. Business income
18. Employment and services income
19. Property income
20. Compensation receipts
21. Periodical payments
22. Exchange gains
23. Exclusion of doctrine of mutuality
24. Cessation of source of income

**PART V
DEDUCTIONS**

- 25. Expenses of deriving income
- 26. Personal expenses
- 27. Capital expenses
- 28. Apportionment of expenses
- 29. Exchange losses
- 30. Interest
- 31. Bad debts
- 32. Provisions
- 33. Repairs
- 34. Depreciation
- 35. Mining
- 36. Industrial and intellectual property and restrictive covenants
- 37. Losses
- 38. Income tax not deductible

**PART VI
TIMING RULES**

- 39. Cash basis taxpayer
- 40. Accrual basis taxpayer
- 41. Claim of right
- 42. Prepayments
- 43. Profit and loss calculations
- 44. Long-term contracts
- 45. Inventory

**PART VII
TAX UNIT AND PERSONAL DEDUCTIONS**

- 46. Individual as tax unit
- 47. Deduction in respect of individuals
- 48. Deduction in respect of a spouse
- 49. Child deduction
- 50. Education deduction
- 51. Passages deduction
- 52. Interest deduction
- 53. Deduction in respect of investment in shares
- 54. Deduction in respect of alimony
- 55. Income splitting within families
- 56. Assignment of income

**PART VIII
PARTNERSHIPS AND TRUSTS**

- 57. Calculation of partnership income
- 58. Taxation of partners
- 59. Effect of changes in partnerships
- 60. Calculation of trust income
- 61. Taxation of beneficiaries
- 62. Taxation of trustees
- 63. Termination of trusts
- 63A. Partial termination of trusts
- 64. Taxation of incapacitated persons and estates of deceased persons
- 65. Income splitting through partnerships and trusts

**PART IX
COMPANIES**

- 66. Separate system of company taxation
- 67. Change in control of companies
- 68. Inter-company dividends
- 69. Asset and profit stripping
- 70. Liquidations
- 71. Incorporation roll-over
- 72. Reconstruction roll-over
- 73. Closely held companies
- 74. Chargeable income of co-operatives

**PART X
EXEMPTIONS AND CONCESSIONS**

- 75. Exemptions to public officials and private employees
- 76. Income of overseas technical personnel
- 77. International organisations and their employees
- 78. Diplomatic and similar privileges
- 79. Scholarships
- 80. Income of Government exempt
- 81. Religious, charitable, benevolent and educational institutions
- 82. Pioneer industries

**PART XI
LONG TERM SAVINGS**

- 83. Contributions to the Provident Fund and life insurance
- 84. Tax treatment of the Provident Fund and the Kiribati Insurance Corporation
- 85. Tax treatment of payments on life insurance policies or from the Provident Fund

**PART XII
INTERNATIONAL TAXATION**

- 86. Source of income
- 87. Foreign employment income of residents
- 88. Foreign tax credit and the treatment of losses
- 89. Tax havens
- 90. Withholding tax on international transactions
- 91. Re-insurance payments
- 92. Tax on repatriated branch profits
- 93. Agents for non-residents
- 94. Double taxation agreements

**PART XIII
ANTI-AVOIDANCE**

- 95. Transfer pricing
- 96. Recharacterisation of income and deductions and reimbursement agreements
- 97. Schemes to avoid tax

**PART XIV
RETURNS AND ASSESSMENTS**

- 98. Returns
- 99. Records
- 100. Assessments

**PART XV
APPEALS**

- 101. Notice of appeal
- 102. Onus of proof
- 103. The Tax Tribunal
- 104. Proceedings before the Tax Tribunal
- 105. Appeals to the High Court from the Tax Tribunal
- 106. Powers of the Board after appeal

**PART XVI
COLLECTION AND REFUND OF TAX**

- 107. Due date for payment of tax
- 108. Income tax as a debt due to the Republic
- 109. Interest on overdue payments of income tax
- 110. Refund or repayment of overpaid tax
- 111. Interest payable on overpaid tax
- 112. Remission of tax
- 113. Provisional tax payable on income not subject to withholding of tax at source
- 114. Duties of agents, trustees, liquidators, etc.

**PART XVII
WITHHOLDING OF TAX AT SOURCE**

- 115. Payments to employees
- 116. Payments to contractors
- 117. International payments
- 118. Domestic payments
- 119. Priority of tax withheld
- 120. Adjustment on assessment
- 121. Payment of tax withheld

**PART XVIII
OFFENCES AND PENALTIES**

- 122. Offences
- 123. Offences by corporate bodies
- 124. Tax payable despite prosecutions
- 125. Penalties where anti-avoidance provisions are applied
- 126. Collection and remission of penalties

**PART XIX
ADMINISTRATION**

- 127. Functions of Internal Revenue Board and delegation
- 128. Forms
- 129. Tax file number
- 130. Power to declare a person to be the agent of another person
- 131. Access to books and records
- 132. Notice to obtain information or evidence
- 133. Secrecy

PART XX
MISCELLANEOUS PROVISIONS

- 134.** Regulations and amendment of schedules
- 135.** Repeals
- 136.** Effect of this Act on Repealed Legislation
- 137.** Transitional arrangement not covered under this Part
- 138.** Assessments under Repealed Legislation

SCHEDULES

- 1.** Resident individual tax rate scale (section 6)
- 2.** Resident company tax rate scale (section 7)
- 3.** Trustees' tax rate scale (section 8)
- 4.** Provisions allowable as deductions (section 32)
- 5.** Rates of depreciation (section 34)
- 6.** Property income tax rate scale of minors (section 6(3))
- 7.** Exempt income (section 75(b))
- 8.** Pioneer industries (section 82)
- 9.** Personal deductions (sections 47, 48)

THE REPUBLIC OF KIRIBATI

(No.9 of 1989)

I assent,

Beretitenti,

19

AN ACT RELATING TO INCOME TAX; AND FOR CONNECTED PURPOSES

Commencement:

1990

9 of 1989
3 of 1993
4 of 1994
20 of 1996
18 of 1997
19 of 1997

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti.

**PART I
PRELIMINARY**

Short Title

1. This Act may be cited as the Income Tax Act 1990.

Commencement

2. This Act shall come into operation on 1 January 1990.

Interpretation

3. (1) In this Act unless the context otherwise requires -

"associate", in relation to any person, means any other person who acts or is likely to act in accordance with the directions, requests, suggestions or wishes of such person whether or not the directions, requests, suggestions or wishes are communicated to such other person;

"Board" means the Internal Revenue Board established by the Internal Revenue Board Act 1990;

"branch" means any place where a person carries on business, and includes -

- (a) a place where a person is carrying on business through an agent;
- (b) a place where a person has, is using, or is installing substantial equipment or substantial machinery; or
- (c) a place where a person is engaged in a construction project;

but excludes a place where a person is carrying on business through a general agent of independent status acting in the ordinary course of business as such;

"business" includes any trade, profession or vocation and any isolated transaction with a business character;

"chargeable income" means the amount calculated under section 10;

"child", in relation to an individual, includes an illegitimate, legitimated or step-child of the individual or a child adopted by the individual, or by the spouse of the individual, under the written or customary law of Kiribati or elsewhere;

"company" means any body corporate or unincorporated, whether created or recognised under the law in force in Kiribati or elsewhere, but does not include a partnership or trust;

"dividend" means, subject to section 70, any distribution by a company to a member of such company in the capacity of a member (including any issues of bonus shares, reduction of capital, payment out of share premium account, redemption of any share and cancellation of any share in liquidation);

"incapacitated person" means any individual who is a minor, a person of unsound mind or a bankrupt person;

"industrial and intellectual property" includes any interest in a copyright, patent or design;

"interest", in relation to a financial transaction, includes any discount, premium, foreign exchange hedging payment, swap payment and any profit on the disposal or surrender of any financial instrument;

"Kiribati" means the Republic of Kiribati as defined in the Constitution, and also includes the archipelagic waters, territorial sea and the exclusive economic zone;

"management charge" means any payment or remuneration however described for any management or administrative service;

"member", in relation to a company, includes a shareholder;

"membership interest", in relation to a company, includes a share;

"minor" means an individual who is under 18 years of age;

"natural resource payment" means any payment for minerals or any living or non-living resource of the land, seabed or seas where the payment is calculated in whole or in part by reference to the quantity or value of minerals or living or non-living resource taken from the land, seabed or seas of Kiribati;

"non-resident", in relation to a particular time, means a person who is not a resident of Kiribati at that time;

"partnership" means an association of not more than 20 persons carrying on business as partners;

"payment" includes any amount payable, the transfer of property and any other means of conferring value or benefit on a person;

"person" includes a company;

"personal deduction" means a deduction provided under Part VII or section 83(3);

"relative", in relation to an individual, means -

- (a) mother or father of the individual or of the spouse of the individual;
- (b) brother or sister of the individual or of the spouse of the individual;
- (c) uncle or aunt of the individual or of the spouse of the individual;
- (d) nephew, niece or cousin of the individual or of the spouse of the individual;
- (e) spouse of a person mentioned in paragraphs (b) to (d) or of a child of the individual;
- (f) child of a person mentioned in paragraphs (b) to (e); or

- (g) lineal ascendant or descendant of the individual or of the spouse of the individual, not mentioned in the foregoing paragraphs;

"religious and charitable organisations" means those organisations not involved with the activities having business character.

(Definition of "religious charitable organisation" inserted by No. 20 of 1996, S.2)

"resident" or "resident in Kiribati" for all or part of any tax year includes in relation to an individual -

- (a) a person with a normal place of abode in Kiribati who was present in Kiribati for part of the tax year;
- (b) a person present in Kiribati for a period in aggregate exceeding 183 days in the tax year;
- (c) a person who is a citizen and consular, diplomatic or similar official of the Republic posted overseas,

and means in relation to a company -

- (d) a company incorporated, formed or registered under the laws of the Republic;
- (e) a company with its management and control in Kiribati; or
- (f) a company that undertakes its major operations in Kiribati;

"royalty" means a payment for -

- (a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark, or other like property or right;
- (b) the use of, or the right to use, any industrial, commercial or scientific equipment;
- (c) the supply of know-how;
- (d) the use of, or right to use, any cinematographic film, video tape, gramophone record, audio tape, compact disc, and any other like medium;
- (e) the supply of any assistance ancillary to the matters referred to in paragraphs (a) to (d); or
- (f) any total or partial forbearance with respect to any matter referred to in paragraphs (a) to (e); or

"spouses" includes a man and a woman living together in a genuine domestic relationship even if they are not legally married, and "married" has a corresponding meaning;

"taxpayer" means a person liable to income tax under this Act;

"tax year" means the calendar year;

"Tribunal" means the Tax Tribunal established by section 103;

"trust" includes the estate of a deceased person;

"trustee" includes the executor or administrator of the estate of a deceased person; and

"underlying ownership or control", in relation to a company, means ownership interests held, or control exercised, directly or indirectly through interposed companies, partnerships or trusts by individuals or by entities which are not ultimately owned by individuals.

(2) As used in this Act, the following terms shall have the meanings accorded them under generally accepted accounting principles: "finance lease" (section 19(2)), "percentage-of-completion method" (section 44(1)), "completed-contract method" (section 44(2)), "prime-cost method" (section 45(2)), "absorption-cost method" (section 45(2)), "net realisable value" (section 45(3)), "first-in-first-out method" (section 45(5)) and "average-cost method" (section 45(5)).

(3) This Act binds the Republic and for the purposes of this Act, unless the context otherwise requires, "person" includes the Republic.
(S.3(3) substituted by No. 3 of 1993, S.3)

PART II RATES OF TAX

Income tax imposed

4. Subject to this Act, income tax shall be charged for each year on the chargeable income of every person for the tax year.

Calculation of tax payable

5. Subject to this Act, the tax payable by any taxpayer on his chargeable income for a tax year shall be determined by applying the tax rates specified under sections 6, 7, 8 and 9 and the applicable Schedules.

Individuals

6. (1) The chargeable income of a resident individual shall be subject to tax at the rates specified in Schedule 1.

(2) The chargeable income of a non-resident individual shall be subject to tax at the standard rate of tax.

(3) The chargeable property income of a resident minor shall be subject to tax at the rate specified in Schedule 6.

(4) Subsection (3) shall not apply to a minor who is not maintained by either parent of the minor, or in such other circumstances as the Board considers reasonable.

Companies

7. (1) The chargeable income of a resident company shall be subject to tax at the rates specified in Schedule 2.

(2) The chargeable income of a non-resident company shall be subject to tax at the standard rate of tax.

(3) The chargeable income of a non-resident company that has a branch in Kiribati shall be subject to tax on repatriated branch profits at the standard rate of tax to the extent set out in section 92.

Trustees

8. (1) Subject to subsections (2) and (3), the chargeable trust income of a trustee shall be subject to tax at the rates specified in Schedule 3.

(2) The chargeable trust income of a trustee of a resident incapacitated person shall be subject to tax at the rates specified in Schedule 1.

(3) The chargeable trust income of a trustee of a deceased taxpayer who, at the date of his death, was resident in Kiribati, shall, in respect of -

(a) the tax year in which death occurred; and

(b) the 3 following tax years;

be subject to tax at the rates specified in Schedule 1.

Standard rate of tax

9. The standard rate of tax shall be 30%.

PART III TAX BASE

Chargeable income

10. (1) The chargeable income of a resident taxpayer, other than a trustee, shall be determined by subtracting from his income, other than exempt income, any deduction (including any personal deduction) provided for under this Act.

(2) The chargeable income of a non-resident taxpayer, other than a trustee, shall be determined by subtracting from his income, other than exempt income, any deduction provided for under this Act; but no deduction shall be allowed in determining the amount of any income subject to withholding tax under section 90.

(3) The chargeable trust income of any trustee shall be determined in accordance with the provisions of sections 62 and 64.

(4) Where the income of a taxpayer is calculated as a net profit figure, any amount subtracted in the calculation of the income shall be in accordance with the principles for allowing deductions provided for under this Act; and the same principles shall be applied in calculating any net loss that is allowed as a deduction under this Act.

(5) Where income is derived jointly it shall be apportioned equally amongst the joint owners of the income.

(6) Where a deduction is allowed under more than one provision of this Act for the same matter, the Board shall allow such deduction to the taxpayer as it considers reasonable.

(7) Where a deduction is allowed under this Act, the amount concerned shall not be taken into account in calculating any net profit that is income or net loss that is taken into account for tax purposes unless the Board considers it reasonable for the amount to be treated otherwise.

Valuation and currency conversion

11. (1) Chargeable income under this Act shall be calculated in Australian dollars.

(2) Where the calculation of any chargeable income involves a receipt or an outgoing or any other amount in the form of property or services, or any other form, the open market value of the receipt, outgoing or amount at the date that it is taken into account for tax purposes shall be used in determining the chargeable income.

(3) In determining the open market value referred to in subsection (2) and generally under this Act, any restriction on transfer shall be disregarded.

(4) Subject to subsection (5), where the calculation of any chargeable income involves an amount in a currency other than the Australian dollar, the amount shall be converted at the exchange rate applying between the currency and the Australian dollar on the date that the amount is taken into account for tax purposes.

(5) With the prior permission in writing of the Board, any taxpayer may use a different conversion rate for a currency from that specified in subsection (4).

(6) Where a taxpayer changes the method of accounting for foreign currency under subsection (5) the taxpayer shall make such adjustments to income and deductions of the current and past tax years as the Board considers reasonable.

(S.11(6) inserted by No. 3 of 1993, S.4)

Indirect payments and benefits

12. The income of a taxpayer shall include -

(a) any payment that directly or indirectly benefits the taxpayer or is received or receivable by an associate of such taxpayer; and

(b) any payment dealt with on the taxpayer's behalf or as the taxpayer directs,

which would have been income of the taxpayer if the payment had been made directly to the taxpayer.

Accounting period for tax purposes

13. (1) The accounting period for tax purposes of every individual taxpayer and every trustee shall be the calendar year.

(2) Subject to subsection (3), the accounting period for tax purposes of every company shall be the 12 month period that the company uses for financial accounting purposes.

(3) The Board may, at the request of a company, grant permission to the company to substitute an accounting period which is different from that referred to in subsection (2) where a substantially good ground for such substitution is demonstrated by the company.

(4) The Board may impose such conditions as it thinks fit in granting a substituted accounting period under subsection (3) to ensure that the company concerned does not gain any advantage by delaying the payment of any tax or otherwise.

(5) Where the accounting period for tax purposes of a company ends on a day other than 31 December, then it shall use that other day -

(a) for determining its chargeable income; and

(b) for the purpose of ascertaining the tax payable by the company;

and the income for the accounting period ending on that other day shall -

(i) where the accounting period ends after 30 June, be taken to be income of the calendar year in which the accounting period ends; or

(ii) where the accounting period ends before 1 July, be taken to be income of the calendar year preceding that in which the accounting period ends.

(6) Where any person draws up financial accounts for tax purposes for a period greater or less than one year, the chargeable income for the tax year involved shall be computed on a pro rata basis or on such other basis as the Board considers reasonable.

Cash and accrual accounting

14. (1) Except as provided in subsection (2), every individual taxpayer and every trustee shall account for tax purposes on a cash basis.

(2) Where an individual or a trustee has chargeable income in excess of \$10,000, business income may be accounted for on a cash or accrual basis at the option of the taxpayer, unless the Board requires that business income be accounted for on an accrual basis.

(3) Except as provided in subsection (4), a company may account for tax purposes on a cash or accrual basis.

(4) Where the chargeable income of a company is in excess of \$10,000, the Board may require that the chargeable income of the company shall be accounted for on an accrual basis.

(5) A taxpayer accounting for business income on an accrual basis may change to accounting on a cash basis only with the permission of the Board.

(6) Where a taxpayer changes his mode of accounting from a cash to an accrual basis of accounting or from an accrual to a cash basis of accounting, the Board may make such adjustment as is necessary to ensure that all amounts of income and deductions are taken into account for tax purposes.

Residence and source

15. (1) In the case of a resident taxpayer other than a trustee, the income of the taxpayer shall, subject to this Act, include income from all geographic sources.

(2) In the case of a non-resident taxpayer other than a trustee, the income of the taxpayer shall, subject to this Act, only include income from a source in Kiribati.

(3) The taxation of a trustee is subject to the provisions of sections 62 and 64.

PART IV INCOME

Gross income

16. (1) The income of a taxpayer shall include receipts, gains or profits from -

- (a) any business, for whatever period of time carried on;
- (b) any employment exercised or services rendered;
- (c) any dividend, interest or right granted to any other person for the use or possession of any property;

(d) any charge, annuity or alimony; and
(S.16(1)(d) amended by No. 4 of 1994, S.2)

(e) any amount deemed to be income under this Act.

(2) For the purposes of subsection (1)(c), a gain or profit includes any premium or like consideration paid for the use or possession of property or money.

Business income

17. (1) In addition to any income that may arise under sections 20, 22 or 24, or any other section, the income of a business shall include -

- (a) any profit made on the disposal of any asset used in the business; or
- (b) any profit made on any liability of the business,

after reduction by any loss pursuant to section 37, whether or not the asset or liability is on capital or revenue account.

(2) Where any asset of a business is disposed of or any liability of a business is discharged by a taxpayer outside the ordinary course of business or in a situation where the parties are not at arm's length, the transaction shall be treated as if the asset were disposed of or the liability discharged for its open market value in the ordinary course of business whether the disposal or the discharge will give rise to income or a loss.

(3) For the purpose of subsection (2), a disposal or a discharge includes a change of use of an asset or a change in the nature of a liability whereby its character for tax purposes is changed.

(4) Income from a business includes any payment for a restrictive covenant given by a taxpayer in relation to the business, or for releasing another person from a restrictive covenant that relates to such business.

(5) In the case of a company, every transaction of the company shall be treated as a business transaction.

(6) Where income that would otherwise be property or services income, is derived as part of a business, it shall be treated as business income.

Employment and services income

18. (1) The income from any employment exercised or services rendered shall be deemed to include any wages, salary, leave pay, sick pay, payment in lieu of leave, fee, commission, bonus or gratuity.

(2) Subject to this Act, income from any employment exercised or services rendered shall be deemed to include any amount paid as compensation for, or as a consequence of, the termination or cessation of any contract of service, whether or not -

- (a) provision is made in the contract for a payment;
- (b) the amount is paid by way of, or in lieu of, any damages, as a recognition of services or for any other reason; or
- (c) the payment is received from the employer or person to whom such services are rendered, or from any other person.

(3) The income from employment exercised or services rendered shall be deemed to include any benefit, advantage or facility in kind.

(4) Where a benefit in kind involves the use of a motor vehicle wholly or partly for private purposes of the taxpayer -

- (a) the income shall be deemed to be 15% per tax year of the open market value of the motor vehicle at the time when it was first provided for private use; and
- (b) where the motor vehicle is not available for private use throughout the tax year, the amount of income shall be calculated pro rata for the period during which it is so available.

(5) Where a benefit in kind consists of accommodation or housing, the income shall be deemed to be -

- (a) the open market rent of such accommodation or housing; or
- (b) the subsidised rent of such accommodation or housing in the case of a citizen of Kiribati who is employed in the public service or by a company wholly or partly owned by the Government,

as the case may be.

(6) The income brought to account under subsections (3), (4) or (5) shall be reduced by any payment made by the taxpayer for the benefit in kind.

(7) Where a benefit in kind consists of a loan, at a rate of interest below the average rate charged by any commercial bank in Kiribati in the tax year on unsecured loans, from or arranged by -

- (a) the employer; or
- (b) a person to whom services are rendered,

the income shall be deemed to be the difference between the interest paid, if any, on the loan and the interest that would be payable on the loan if the interest rate were the average rate charged on an unsecured loan by such commercial bank in the tax year.

(8) Income from any employment exercised or services rendered shall include any payment for any restrictive covenant given by the taxpayer in relation to such employment or services including where a taxpayer does not render any services because of the restrictive covenant.

Property income

19. (1) A transaction giving rise to interest in the form of any discount, premium or profit on any -

- (a) bill of exchange;

- (b) zero coupon security or like instrument,

(whether or not periodic interest is payable in addition to any discount, premium or profit) shall be treated as giving rise to interest income in relation to the discount or premium to the holder of the instrument at the maturity or earlier disposal of such instrument.

- (2) Where any taxpayer leases any property to any other person under a finance lease -

- (a) the transaction shall be treated for tax purposes in relation to all parties to it as a purchase of the property by, and a loan to, the lessee;
- (b) income of the lessor shall include the effective interest component in any rental payment; and
- (c) the lessee shall be entitled to interest and depreciation deductions if the conditions for the deductions are otherwise fulfilled.

Compensation receipts

- 20.** (1) Any payment to a taxpayer -

- (a) under any insurance policy against any loss of profit; or
- (b) by way of any damages or compensation for any loss of profit,

shall be treated as income.

- (2) Where in calculating the chargeable income for any tax year -

- (a) any expenditure, loss or bad debt has been deducted or a deduction in respect of any reserve or provision to meet any liability has been made; and
- (b) in a later tax year -
 - (i) the whole or part of such expenditure or loss or bad debt is recovered;
 - (ii) the whole or part of the liability is released; or
 - (iii) the retention in whole or in part of the reserve or provision has become unnecessary,

then any sum so recovered or released or no longer required as a reserve or a provision shall be deemed to be income of the tax year in which it is recovered or released or is no longer required.

(3) The Board may apportion any compensation receipt where it is of the opinion that the receipt is partly of an income nature and partly of a capital nature, and may tax the income portion accordingly.

Periodical payments

21. (1) Where any individual taxpayer has purchased an annuity or similar periodical payment that, apart from this subsection, would be treated as income, the income of the taxpayer arising from the annuity or similar payment shall be reduced -

- (a) by an amount of the purchase price apportioned equally over the period of the annuity; or
- (b) on any other basis that the Board considers reasonable.

(2) Where property has been disposed of for payment in instalments and the sale does not otherwise give rise to income (apart from interest on the outstanding sale price) -

- (a) the Board may apportion the instalments into principal and interest components; and
- (b) the interest component shall be treated as income of the seller of the property,

unless the sale includes interest at an open market rate, at the time of sale, in which case no apportionment of the instalments shall be possible.

Exchange gains

22. Any exchange gain made as part of a business shall be treated as income, whether the gain relates to any asset or liability on revenue or capital account.

Exclusion of doctrine of mutuality

23. (1) The doctrine of mutuality (whereby any payment made as a contribution to a club, a mutual insurance company, or other similar body is not treated as income) shall not be applicable in Kiribati.

(2) Without prejudice to subsection (1), any distributions of such club, mutual insurance company, or other similar body that would otherwise be treated as dividend shall not be denied an income character for the purposes of this Act on the basis of the doctrine of mutuality.

(S.23(2) inserted by No.3 of 1993, S.5)

Cessation of source of income

24. Where any payment is received by any person after the cessation of a source of income of that person, which, if it had been received prior to the cessation would have been included in the income from that source, then, to the extent to which that sum has not already been included in income, that sum shall be deemed to be income of the person for the tax year in which the sum is received.

PART V DEDUCTIONS

Expenses of deriving income

25. (1) For the purpose of ascertaining the chargeable income of any taxpayer for any tax year, there shall be deducted any outgoing, expense or loss, the deduction of which is not denied under this Act, to the extent to which the outgoing, expense or loss is incurred by the taxpayer during that tax year in the production of income subject to tax under this Act except for exempt income under section 90(2).

(2) Where any outgoing, expense or loss is incurred by any taxpayer before the commencement or after the cessation of a source of income of that person which, if it had been incurred during the existence of the source of income, would have been allowed as a deduction then, that outgoing, expense or loss shall be a deduction in calculating chargeable income.

(3) In determining whether any outgoing, expense or loss is incurred in the production of income, regard shall be had to the substance of the transaction in question and not to its form and in making such a determination the purposes of the parties to the transaction, so far as relevant, shall be objectively determined.

Personal expenses

26. Except as expressly provided in this Act, a taxpayer shall not be allowed a deduction for any outgoing, expense or loss to the extent to which it is of a personal nature.

Capital expenses

27. (1) Except as expressly provided in this Act, no taxpayer shall be allowed a deduction for any outgoing, expense or loss to the extent to which it is of a capital nature.

(2) A taxpayer shall be allowed such deduction for expenditure of a capital nature incurred upon scientific or other research for the purposes of a business (which would not otherwise give rise to a deduction under this Act) as the Board considers reasonable.

Apportionment of expenses

28. Where any outgoing, expense or loss relates -

- (a) partly to the production of income of a taxpayer which is subject to tax under this Act, apart from income exempt under section 90(2); and

- (b) partly to other matters, such as the production of exempt income, personal expenses, capital expenses, or foreign income, as are not subject to tax under this Act,

the taxpayer shall be entitled to deduct so much of the outgoing, expense or loss as the Board considers reasonable.

Exchange losses

29. (1) Subject to this section, any exchange loss made or hedging cost incurred, as part of a business giving rise to income which is subject to tax under this Act shall be deductible whether such loss or cost relates to any asset or liability on revenue or capital account.

(2) A taxpayer shall not be entitled to any deduction in respect of an exchange loss or hedging cost on a borrowing unless the taxpayer notifies the Board in the return of income for the tax year in which the borrowing is made that the taxpayer had made a borrowing in foreign currency, or within such further time as the Board may allow.

(3) A taxpayer shall not be entitled to any deduction in respect of an exchange loss or hedging cost where in a related transaction the taxpayer or any associate of the taxpayer has made or may make a gain of a similar amount.

Interest

30. (1) Every taxpayer shall be entitled to a deduction in respect of interest incurred on a borrowing relating to the production of income which is subject to tax under this Act.

(2) In determining whether a borrowing relates to the production of income, the Board may take into account -

- (a) the use to which the borrowing is put; and
- (b) the extent of the assets and liabilities of the taxpayer.

(3) Where a company or trustee, which is not engaged in a money-lending business, has a debt-to-equity ratio in excess of 3 to 1 in relation to any income-earning activity, the Board may disallow so much of the interest as a deduction as is necessary to produce a debt-to-equity ratio of 3 to 1, not counting the portion of the debt in respect of which the interest deduction is disallowed.

(4) In the case of a bill of exchange, zero coupon security or like instrument, a taxpayer shall only be entitled to a deduction when interest in the form of any discount, premium, deferred interest or profit is paid.

Bad debts

31. (1) Every taxpayer shall be entitled to a deduction for any bad debt on revenue account incurred in any business giving rise to income which is subject to tax under this Act, where the debt is proved, to the satisfaction of the Board, to have become a bad debt during the tax year concerned.

(2) A taxpayer who is accounting for tax purposes on an accrual basis may claim a deduction for a reasonable provision for bad debts on revenue account; but in that case there shall be no deduction under subsection (1) for the debt when it becomes bad to the extent of the existing provision.

(3) Where the Board considers that any provision for any bad debt allowed as a deduction to a taxpayer in a previous tax year was excessive, the Board may make such adjustment to the provision as is appropriate.

Provisions

32. (1) Any taxpayer who is accounting for tax purposes on an accrual basis may claim a deduction for a reasonable provision in respect of the matters specified in Schedule 4 where the matters relate to income subject to tax under this Act; but in such a case there shall be no deduction under this Act for any outgoing, expense or loss to the extent to which a provision for tax purposes has so been made for it.

(2) Where the Board considers that any provision allowed as a deduction to a taxpayer in a previous tax year was excessive, the Board may make such adjustment to the provision as is appropriate.

(3) Where any taxpayer changes from a cash to an accrual, or an accrual to a cash basis of accounting for tax purposes, the Board may make such an adjustment as is necessary in relation to any provision under this section and section 31 (including a phased introduction or withdrawal of any provision) to prevent any distortion to the taxpayer's chargeable income.

Repairs

33. A taxpayer shall be entitled to a deduction for any sum expended upon the repair of any premises, plant, machinery, equipment, implement or utensil used for the production of income which is subject to tax under this Act, but not where the expense results in an improvement, or the expense is otherwise of a capital nature.

Depreciation

34. (1) In this section, unless the context otherwise requires -

"depreciation deduction" means a deduction authorised under this section;

"cost", in relation to expenditure on a tangible capital asset, means -

- (a) the amount of a capital nature spent upon the purchase of that asset by the taxpayer claiming the depreciation deduction; or
- (b) the amount of a capital nature spent by the taxpayer upon the improvement of that asset,

reduced by the amount of any grant, subsidy or contribution towards that cost made by any other person, but where the taxpayer is not at arm's length with the party to whom the amount is paid, the cost shall be determined as the open market value of the asset or improvement;

"industrial building" means a building used during any tax year for the purpose of carrying on any business but excludes a building used for residential purposes;

"written-down value", in relation to a capital asset, means the cost of that asset less -

- (a) the sum of any depreciation deductions made in respect of that asset; and
- (b) any similar deductions authorised by the repealed Income Tax Ordinance (Cap. 44),

but where depreciation deductions are reduced pursuant to subsection (10), the written down value shall be calculated disregarding such reduction.

(2) The capital assets in respect of which a depreciation deduction may be claimed under this section are -

- (a) an industrial building (excluding land);
- (b) a motor vehicle;
- (c) furniture and fittings;
- (d) a ship;
- (e) tanks, other than mobile tanks, of not less than 1000 litres capacity for storage of petroleum products; and
- (f) any other article, machinery or plant.

(3) Where the cost of any capital asset under subsection (2) is incurred by a taxpayer in a tax year for which the relevant depreciation deduction is being claimed or in an earlier tax year, the

amount of the depreciation deduction shall, subject to the following subsections, be as specified in Schedule 5.

(4) Where the written-down value of any asset in respect of which the taxpayer is entitled to any depreciation deduction is, at the beginning of the tax year, less than 10% of the cost of the asset, the taxpayer shall, subject to the following subsections, be entitled to a depreciation deduction in that tax year of the written-down value of the asset.

(5) The total depreciation deductions available to a taxpayer in respect of a capital asset shall not exceed the cost of the asset to the taxpayer.

(6) Where any asset is used -

- (a) partly for the production of income subject to tax under this Act; and
- (b) partly for other purposes,

any depreciation deduction available in respect of the asset shall be reduced by such amount in such tax years as the Board considers appropriate.

(7) Where in any tax year -

- (a) a capital asset, in respect of which any depreciation deduction is allowable or has been allowed to a taxpayer, is sold, lost, scrapped or destroyed; and
- (b) the amount of any sale proceeds or insurance recoveries is less than the written-down value at the time of sale, loss, scrapping or destruction,

there shall be allowed for that tax year a deduction equal to the amount of the deficiency.

(8) Where in any tax year -

- (a) any capital asset, in respect of which any depreciation deduction is allowable or has been allowed, is sold, lost, scrapped or destroyed; and
- (b) the amount of the sale proceeds or insurance recoveries is more than the written-down value at the time of sale, loss, scrapping or destruction,

the amount of the excess shall be additional income chargeable to tax for that tax year.

(9) Where any building is bought or sold together with land, the Board shall make such apportionment of the total sum as is reasonable for the purpose of arriving at a separate value of the building.

(S.34 amended by No. 3 of 1993, S.6)

Mining

35. (1) Where -

- (a) any taxpayer incurs any outgoing, expenditure or loss of a capital nature with respect to mining exploration, a mining right or any activity associated with mining (excluding any industrial and intellectual property or restrictive covenant covered by section 36); and
- (b) no deduction is available under section 34 in respect of the expenditure,

such taxpayer shall be entitled to a deduction of part of the outgoing, expenditure or loss as if -

- (i) it were incurred in the acquisition and use for income-producing purposes of a capital asset subject to a depreciation deduction under section 34; and
- (ii) the deduction specified in Schedule 5 were 10% of cost in the first year and 10% of cost in any subsequent year.

(2) Where -

- (a) any outgoing, expenditure or loss relates to a specific mine; and
- (b) the life of the mine at the time of incurring the outgoing, expenditure or loss is in the opinion of the Board less than 10 years.

the percentages in subsection (1) shall be calculated by dividing the life of the mine, as determined by the Board, into 100.

Industrial and intellectual property and restrictive covenants

36. (1) Where any taxpayer incurs any outgoing, expenditure or loss of a capital nature with respect to industrial and intellectual property or a restrictive covenant, the taxpayer shall be entitled to a deduction of part of the outgoing, expenditure or loss as if -

- (a) it were incurred in the acquisition and use for income-producing purposes of a capital asset subject to a depreciation deduction under section 34; and
- (b) the deductions specified in Schedule 5 were 10% of cost in the first year and 10% of cost in any subsequent year.

(2) Where -

- (a) the outgoing, expenditure or loss relates to any industrial and intellectual property or restrictive covenant; and
- (b) the life of the property at the time of incurring the outgoing, expenditure or loss is in the opinion of the Board less than 10 years,

the percentages in subsection (1) shall be calculated by dividing the life of the property, as determined by the Board, into 100.

Losses

37. (1) Where the income from any business carried on by any taxpayer is exceeded in any tax year by deductions relating to that income, the loss (being the amount of the excess) -

- (a) may not be deducted against any other income of the taxpayer but shall be carried forward; and
- (b) may be deducted in determining the chargeable income from any business in any of the next 3 tax years, where in those tax years the income from any business of the taxpayer exceeds deductions, apart from the loss in the earlier tax year, relating to that income.

(2) Where the taxpayer disposes of any capital asset of any business or satisfies any liability on capital account of any business at a loss, the loss -

- (a) shall not be available as a deduction (except a deduction pursuant to section 29), notwithstanding that any profit on disposal of any capital asset of any business or satisfaction of any liability on capital account of any business is income under section 17; but
- (b) may be used to reduce any capital profit that is income under section 17, for a period of 3 tax years after the tax year in which the loss is incurred.

(3) Where any taxpayer's income from any property is exceeded in any tax year by any deduction relating to the income, the loss (being the amount of the excess) -

- (a) may not be deducted against any other income of the taxpayer but shall be carried forward; and
- (b) may be deducted in determining chargeable income from any property in any of the next 3 tax years, when in those tax years the taxpayer's income from any property exceeds such deduction, apart from the loss in the earlier tax year, relating to that income.

(4) In calculating any deduction that relates to any business or property income of any taxpayer, the deduction shall be allocated between business, property and other income in such manner as the Board considers reasonable.

(5) For the purposes of this section 'property income' shall not include interest income.
(S.37(5) inserted by No. 3 of 1993, S.7)

Income tax not deductible

38. No taxpayer shall be entitled to any deduction for any income tax imposed under this Act or the law of any country other than Kiribati.

PART VI TIMING RULES

Cash basis taxpayer

39. (1) A taxpayer who is accounting for tax purposes on a cash basis shall include any payment in income when received and shall claim any deduction in relation to the incurring of any outgoing or expense when it is paid.

(2) When a payment is income of a taxpayer who accounts for tax purposes on a cash basis, then, even though the income has not been received by the taxpayer, it shall be taxable at the time when it is paid to a third party.

Accrual basis taxpayer

40. (1) A taxpayer who is accounting for tax purposes on an accrual basis -

- (a) shall include any amount in income when it becomes payable to the taxpayer; and
- (b) may claim any deduction in relation to the incurring of any outgoing or expense when it becomes payable by the taxpayer.

(2) When an amount payable is income of a taxpayer who is accounting for tax purposes on an accrual basis, then even though such income is not receivable by the taxpayer, it shall be taxable at the time when it is payable to a third party.

(3) Except where otherwise expressly provided in this Act, an amount shall be treated as payable under subsection (1) or (2) when the taxpayer becomes entitled to receive, or obliged to pay, the amount, even if the time for discharge of the entitlement or obligation is postponed or if the entitlement or obligation is payable by instalments.

Claim of right

41. (1) A taxpayer who -

- (a) is accounting for tax purposes on a cash basis; and
- (b) has included an amount in income or claimed a deduction for an amount which the taxpayer was not legally entitled to receive or legally obliged to pay,

shall have the calculation of chargeable income adjusted when the taxpayer refunds the amount received or receives back the amount paid.

(2) A taxpayer who is accounting for tax purposes on an accrual basis shall include any amount in income or claim any deduction even if the taxpayer is not legally entitled to receive the amount or liable to pay the deduction in any case where the taxpayer claims to be legally entitled to receive the amount or to be legally obliged to pay the deduction.

(3) A taxpayer who -

- (a) is accounting for tax purposes on an accrual basis; and

- (b) has included any amount in income or claimed any deduction under subsection (2), shall have the calculation of chargeable income adjusted when the taxpayer ceases to claim the right to receive the amount or the obligation to pay the amount.

Prepayments

42. (1) Where a taxpayer claims any deduction for an outgoing or expense which is not of a capital nature and which is incurred in a tax year that relates to any service or other benefit that extends beyond 13 months from the date when the outgoing or expense would otherwise be deductible under sections 39, 40 or 41 the deduction -

- (a) shall be determined pro rata over the tax years to which the service or other benefit relates; and
- (b) shall be available to the taxpayer as a deduction proportionately in those tax years.

(2) Where a taxpayer is paid or is entitled to be paid any amount in a tax year that relates to any services or other benefit provided by the taxpayer that extends beyond 13 months from the date when the payment or entitlement would otherwise be income under section 39, 40 or 41 the income -

- (a) shall be determined pro rata over the tax years to which the services or other benefit relates; and
- (b) shall be income of the taxpayer proportionately in those tax years.

(3) A company which is accounting for tax purposes on an accrual basis may, at the option of the company, account for any prepayment for tax purposes in accordance with generally accepted accounting principles, rather than in accordance with subsection (1) or (2).

Profit and loss calculations

43. (1) Where the disposal or realisation of any non-wasting asset gives rise to tax consequences for a taxpayer, any income or deduction arising from the disposal or realisation shall be calculated on a net profit or loss basis.

(2) Any net profit or loss of the kind referred to in subsection (1) shall be included in income or claimed as a deduction when the asset concerned is disposed of or realised.

(3) This section shall not apply to any inventory or contract subject to section 44.

(4) For the purposes of this section, "non-wasting asset" includes -

- (a) any land and building not subject to any deduction under section 34 or 35; and
- (b) intangible choses in action not subject to any deduction under section 35 or 36, such as any debt or share.

Long-term contracts

44. (1) Where any taxpayer has entered into a contract that extends over more than 2 tax years for any construction, building, land or foreshore development the taxpayer shall -

- (a) include any profit arising from the contract as income; or
- (b) claim the loss arising from the contract as a deduction,

based on the percentage-of-completion method.

(2) A company which is accounting for tax purposes on an accrual basis may account for any long-term contract for tax purposes in accordance with generally accepted accounting principles, rather than in accordance with subsection (1), but shall not use the completed-contract method.

Inventory

45. (1) Subject to this section a taxpayer shall account for any profit or loss on inventory for tax purposes at the time of disposal or realisation of the inventory.

(2) The cost of inventory may be calculated on the prime-cost or absorption-cost method unless the Board requires the taxpayer to use the absorption-cost method.

(3) A taxpayer may claim a deduction for the difference between the net realisable value and the cost of inventory where the cost exceeds the net realisable value at the end of a tax year; but in such a case, the net realisable value shall thereafter be treated as the cost of the inventory for tax purposes.

(4) Section 17, as it applies to business assets generally, shall apply to inventory.

(5) Where particular items of inventory are not readily identifiable, a taxpayer may account for the disposal of such inventory on the first-in-first-out or average-cost method.

PART VII TAX UNIT AND PERSONAL DEDUCTIONS

Individual as tax unit

46. (1) Subject to the provisions of this Part, the chargeable income of spouses shall be determined as if the spouses were unmarried persons.

(2) Any individual who for any tax year in the calculation of any chargeable income -

(a) makes a claim for any personal deduction pursuant to this Part or section 83(3) on the prescribed form containing such particulars and supported by such proof as the Board may require; and

(b) furnishes a return of income in respect of the tax year,

shall, in respect of that tax year, be entitled to such personal deduction as is specified in this Part or section 83(3).

(3) Where an individual is entitled to any personal deduction in respect of a period of assessment which is less than 12 months, the maximum permitted amount of the deduction shall be in the proportion which the period of assessment bears to 12 months.

(4) Personal deductions under this Part and section 83(3) shall only be available to resident individuals.

(5) Where a taxpayer's principal source of income is from employment, the deductions under sections 47, 48 and 49 shall be reduced in accordance with subsection (3) on the basis that the period of assessment is that part of the year during which the taxpayer is employed.

(S.46(5) inserted by No. 3 of 1993, S.8)

Deduction in respect of individuals

47. (1) Subject to subsection (2) and without prejudice to section 83(3), every individual shall be entitled to an individual deduction of the amount specified in paragraph 1 of Schedule 9.

(2) An unmarried minor shall be entitled to an individual deduction of \$100.

(3) A widower or widow who has not remarried and who is entitled to a child deduction under section 49, shall be entitled to an individual deduction of the amount specified in paragraph 2 of Schedule 9.

(S.47 amended by No.3 of 1993, S.9)

Deduction in respect of a spouse

48. (1) Where -

(a) an individual taxpayer is married;

(b) the spouse of the taxpayer is living with or is wholly maintained by the taxpayer; and

- (c) the income of the spouse (after any deduction other than the individual deduction) is less than the amount specified in paragraph 3 of Schedule 9,

the taxpayer shall be entitled to a spouse deduction of that amount; but the chargeable income of the taxpayer shall be increased by the income of the spouse (after any deduction other than the individual deduction).

(2) Where -

- (a) an individual taxpayer is married;
- (b) the spouse of the taxpayer is living with or is wholly maintained by the taxpayer; and
- (c) the income of the spouse (after any deduction other than the individual deduction) is the amount specified in paragraph 3 of Schedule 9 or more,

the taxpayer shall not be entitled to a spouse deduction.
(S.48 amended by No. 3 of 1993, S.10)

Child deduction

49. (1) An individual who in any tax year maintains a child shall, in respect of each such child, not exceeding 2 in number, be entitled to a child deduction of \$100.

(2) Subject to subsection (3), where spouses would both be entitled to a child deduction under this section in respect of the same child, the deduction shall be claimed by the spouse with the higher chargeable income apart from the personal deductions.

(3) If spouses in the case in subsection (2) elect in writing prior to the tax year to share the deduction in the proportions specified in the notice, the deductions shall be allocated between the spouses in accordance with the election.

(4) In this section, "child" means any child of the individual claiming the child deduction -

- (a) where the chargeable income of the child for the year for which the claim is made does not exceed \$100; and
- (b) where the child -
 - (i) has not attained the age of 18 years before the end of the tax year concerned;
 - (ii) has attained the age of 18 years, but has not attained the age of 26 years before the end of the tax year concerned and is receiving full-time instruction at a university, college, school or other place of instruction; or
 - (iii) has attained the age of 18 years before the end of the tax year concerned and is dependent upon the individual by reason of mental or physical incapacity.

(5) Spouses shall not be entitled between them to child deductions for more than 2 children under this Part.

Education deduction

50. (1) Any individual who -

- (a) is entitled for any tax year to a child deduction under section 49 in respect of a child who -
 - (i) has not attained the age of 26 years before the end of the tax year; and
 - (ii) is receiving full-time instruction at the expense of that individual at any university, college, school or other place of instruction; or

- (b) in any tax year incurs such expense in respect of a relative who has not attained the age of 26 years before the end of the tax year,

shall be entitled, in respect of each such child or relative to an education deduction of -

- (aa) \$100 where the instruction is received within Kiribati;
 (bb) \$300 where the instruction is received elsewhere; or
 (cc) the amount actually expended by the taxpayer on the education of the child,

whichever is the less.

(2) The number of relatives in respect of whom an individual may claim a deduction under this section, shall not exceed 2 and the total number of education deductions claimed by a taxpayer or by taxpayers who are spouses for a tax year shall not in any event exceed 4.

(3) The amount of the education deduction in respect of any child or relative for any tax year shall be reduced by any payment made in respect of that child for that tax year which is exempt from tax by virtue of section 75(b).

(4) Subject to subsection (5) where -

- (a) spouses would both be entitled to an education deduction under this section in respect of the same child; or
 (b) more than one individual would be entitled to an education deduction in respect of the same relative,

the deduction shall be claimed by the spouse or relative with the higher chargeable income apart from the personal deductions.

(5) If spouses or relatives in the case in subsection (4) elect in writing prior to the tax year to share the deduction in the proportions specified in the notice, the deduction shall be allocated between the spouses or relatives in accordance with the election.

(6) In this section "relative", in relation to an individual, means -

- (a) a brother, sister, uncle or aunt of the individual; or
 (b) a child of such brother, sister, uncle or aunt.

(7) For the purposes of subsection (3), the education deduction shall also be reduced where pursuant to an agreement within section 78(1)(d) an education allowance is paid to a taxpayer which is exempt from tax pursuant to such agreement.

(S.50(7) inserted by No. 3 of 1993, S.11)

Passages deduction

51. An individual who is entitled to an education deduction for a tax year under section 50 in respect of a child who is receiving full-time instruction at a place outside Kiribati shall be entitled to a passages deduction in such tax year for the amount expended by such individual upon 1 return journey by the child between Kiribati and the place where the instruction is being received, but the amount of the deduction shall not exceed the economy airfare applicable to the child for such journey.

Interest deduction

52. (1) An individual (other than an unmarried minor) shall be entitled to an interest deduction of an amount not exceeding \$250, to the extent the individual derives income consisting of interest on savings in a bank in Kiribati.

(S.52(1) amended by No.3 of 1993, S.12)

(2) Where an individual is unable to take full advantage of the interest deduction under subsection (1) because the interest income of the individual is less than \$250, the interest deduction of the spouse of the individual available under subsection (1) shall be increased to a corresponding extent.

(S.52(2) amended by No.3 of 1993, S.12)

Deduction in respect of investment in shares

53. (1) Subject to subsection (4) an individual (other than an unmarried minor) shall be entitled to a share investment deduction of an amount not exceeding \$200 in respect of the amount the individual subscribes for shares of an eligible company.

(2) For the purposes of this section, "eligible company" means a company -

- (a) incorporated under the Companies Ordinance; (Cap. 10A)
- (b) declared to be an eligible company by the Beretitenti, acting in accordance with the advice of the Cabinet, by order; and
- (c) which satisfies such conditions as may be prescribed.

(3) In formulating its advice pursuant to subsection (2)(b) the Cabinet shall have regard to the economic and other benefits likely to accrue to Kiribati from making the declaration and may only advise that a declaration should be made if it is of the opinion that it would be in the public interest to make the declaration.

(4) The deduction available to a taxpayer under subsection (1) shall be disallowed if the taxpayer sells the shares within 2 years after the tax year in which the shares were purchased.

Deduction in respect of alimony

54. (1) An individual who is a resident taxpayer shall be allowed an alimony deduction not exceeding \$900 for any amount paid by way of alimony or allowance under -

- (a) a decree of divorce;
- (b) a judicial order of separation or maintenance; or
- (c) a deed or other instrument evidencing separation or maintenance.

(2) Where the person claiming a deduction under subsection (1) is entitled to any income which is not charged to tax under this Act, the amount of the deduction shall not exceed that proportion of the alimony or allowance which the taxpayer's chargeable income, ascertained before any deduction is made under that subsection, bears to the taxpayer's total income (including income not charged to tax under this Act).

Income splitting within families

55. Where an individual taxpayer attempts to split income with a spouse, child, relative or associate, whether -

- (a) by a loan at an interest rate below the open market value or at zero interest;
- (b) by payment of any amount in respect of employment exercised or services rendered either in excess of the open market rate or where there is no economic need for the employment exercised or services rendered;
- (c) by assignment of property subject to a condition; or
- (d) by any other means,

the Board may adjust the chargeable income of the taxpayer and the other party in order to prevent the income splitting.

Assignment of income

56. An assignment of the right to income by a taxpayer to an associate shall not be valid for tax purposes and the income shall be taxed to the assignor accordingly.

**PART VIII
PARTNERSHIPS AND TRUSTS**

Calculation of partnership income

57. (1) Every partnership which carries on business or has income derived from a source in Kiribati (apart from income subject to a withholding tax and exempt under section 90) shall be required to have a Nominated Partner for tax purposes.

(2) The following provisions apply with respect to the Nominated Partner, namely-

- (a) the Nominated Partner shall be a resident of Kiribati unless none of the partners is so resident;
- (b) the Nominated Partner's name shall be notified to the Board in the first tax year in which the partnership is required to have a Nominated Partner;
- (c) in default of nomination by the partners, the Nominated Partner shall be the person specified by the Board; and
- (d) the partners may by notice to the Board change the Nominated Partner.

(3) A partnership -

- (a) shall not be subject to tax apart from the partners; but
- (b) shall be required to submit a partnership return of income where its income exceeds the amount specified by the Board; and
- (c) may be required by the Board to submit a partnership return of income where the income of the partnership is less than the specified amount.

(4) The Nominated Partner shall be responsible for the submission of the partnership return of income and shall notify the Board of the identity of any non-resident partner of the partnership.

(5) Partnership income or partnership loss shall be calculated in the manner of chargeable income as if the partnership were a resident individual taxpayer but disregarding -

- (a) any personal deduction as specified in this Act; and
- (b) any loss carried forward pursuant to section 37.

(6) A partnership shall be allowed to have both partnership income and partnership loss in a tax year in respect of different types of income.

(7) Any income or loss derived or incurred by a partnership shall retain its character as to source and as to type of income or loss in the hands of the partners.

Taxation of partners

58. (1) A resident partner shall include in such partner's income the partner's share of the partnership income.

(2) A resident partner shall be entitled to utilise a partnership loss, or part of a partnership loss, in the tax year of the partnership loss, or a subsequent tax year, in the same manner as for any loss specified in section 37, depending on the type of the partnership loss.

(3) A non-resident partner shall include in such partner's income the partner's share of the partnership income derived from a source in Kiribati.

(4) A non-resident partner may utilise a partnership loss, or part of a partnership loss, in the tax year of the partnership loss, or a subsequent tax year -

- (a) in the same manner as for any loss specified in section 37, depending on the type of the partnership loss, but
- (b) only so far as the activity giving rise to the partnership loss would have given rise to partnership income derived from a source in Kiribati if the loss had not occurred.

(5) Partners shall be jointly and severally liable for any tax liability of the partners arising from partnership income; but any partner who is required to meet the tax liability of another partner shall be entitled to be indemnified against that liability by that other partner.

Effect of changes in partnerships

59. (1) Where -

- (a) there is a change in the constitution of a partnership; or
- (b) a partnership is dissolved,

the partnership income or partnership loss for the year in which such event occurs shall be calculated on the basis that the assets of the partnership held at the time of the change or dissolution were -

- (i) disposed of by the partnership and acquired by the reconstituted partnership in the case of a change in constitution; or
- (ii) acquired by the partners in the case of dissolution.

(2) Every such calculation under subsection (1) shall be made on the basis that section 17(1) applies in relation to any asset subject to this section.

(3) Where there is a change in the constitution of the partnership and partners having 50% or more of the interest in the former partnership continue as partners in a reconstituted partnership, all the partners of such reconstituted partnership may elect that subsection (1) shall not apply.

(4) The Board may refuse to give effect to such an election where -

- (a) more than one election is made within a 12-month period; and
- (b) there is not such a 50% or more continuity of interest of partners as is referred to in subsection (3) from before the first election and after the second or subsequent election.

(5) Where a partnership is formed, any asset of the partners which becomes partnership property shall be treated for tax purposes as if it had been disposed of by one or more of the partners, as appropriate, to the partnership and in such a case, thereafter the assets shall be subject to section 17(1).

(6) In a case where subsection (5) applies, if the partner or partners whose assets become partnership property retain a 50% or more interest in the partnership, all the partners may elect that no income shall arise when the assets become partnership property.

(7) Where any election is made under subsection (3) or (6), the cost of the assets for tax purposes shall be the same as the cost that applied immediately prior to the event that gives rise to the right to make an election.

Calculation of trust income

60. (1) Every trust which carries on business or has any income derived from a source in Kiribati (apart from income subject to a withholding tax and exempt under section 90) shall be required to have a Nominated Trustee for tax purposes.

(2) The following provisions apply with respect to the Nominated Trustee, namely-

- (a) where there is only one trustee, that trustee shall be the Nominated Trustee;

- (b) where there is more than one trustee, the Nominated Trustee shall be a resident of Kiribati unless none of the trustees is so resident;
- (c) the name of the Nominated Trustee shall be notified to the Board in the first tax year in which the trust is required to have a Nominated Trustee;
- (d) in default of nomination by the trustees, the Nominated Trustee shall be the person specified by the Board; and
- (e) the trustees may by notice to the Board change the Nominated Trustee.

(3) Trustees -

- (a) shall not be subject to tax in respect of any trust income except as provided for in this Act; but
- (b) may be required by the Board to submit a return of income.

(4) The Nominated Trustee shall be responsible for the submission of the return of income and shall notify the Board of the identity of any non-resident beneficiaries subject to tax under section 61(3).

(5) Subject to subsection (6), trust income or trust loss shall be calculated in the manner of chargeable income as if the trust were a resident individual taxpayer (including the treatment of any loss under section 37).

(6) Any personal deduction shall be disregarded, except in the case of a trust subject to section 64, in which case the relevant personal deduction shall be -

- (a) for the tax year in which death occurred and the 3 following tax years, that to which the deceased taxpayer would be entitled if still alive; or
- (b) any personal deduction of the incapacitated person,

as the case may be.

(7) A trust shall be allowed to have both trust income and trust loss in a tax year in respect of different types of income.

(8) The same person may be a trustee of more than one trust for tax purposes, and to the extent that a person is trustee of different trusts, separate calculations of trust income and trust loss shall be made in respect of each trust.

(9) Any income or loss derived or incurred by a trust shall retain its character as to source and as to type of income or loss.

Taxation of beneficiaries

61. (1) Every resident beneficiary under a trust shall include in such beneficiary's income the share of the trust income to which the beneficiary is presently entitled.

(2) Such a beneficiary as is referred to in subsection (1) shall not be entitled to utilise a trust loss, or part of a trust loss.

(3) Every non-resident beneficiary under a trust shall include in such beneficiary's income the share of the trust income, to which the beneficiary is presently entitled and which is derived from a source in Kiribati.

(4) Such a beneficiary as is referred to in subsection (3) shall not be entitled to utilise a trust loss, or part of a trust loss.

(5) Where in the case of a discretionary trust, income is applied for the benefit of a beneficiary under the trust, the beneficiary shall -

- (a) be deemed to be presently entitled to that income; and
- (b) include it in such beneficiary's income accordingly.

(6) For the purposes of subsection (5) income shall not be treated as applied for the benefit of a beneficiary unless the income is paid to the beneficiary or to a third party for the maintenance, support or benefit of the beneficiary.

(7) Where a beneficiary under a trust sells an interest which the Board considers to be a majority beneficial interest in the trust, the income of the beneficiary shall include any amount which the Board considers represents a profit from the effective disposal of any asset of a business conducted by the trust.

(8) This section shall not apply to an incapacitated individual person subject to section 64.

Taxation of trustees

62. (1) To the extent that any chargeable trust income is derived from a source in Kiribati, the trustee shall be liable to tax on such chargeable trust income at the rates specified in section 8 and Schedule 3.

(2) To the extent that any chargeable trust income is derived from a source outside Kiribati, the trustee shall be liable to tax on such chargeable trust income at the rates specified in section 8 and Schedule 3 if either of the relevant conditions set out in subsection (3) is satisfied.

(3) For the purposes of subsection (2), the relevant conditions are -

- (a) that the settlor or any person transferring property to or conferring any benefit on the trust for less than its open market value was a resident at the time of the transfer of property or conferring of the benefit or is a resident in the tax year in question; or
- (b) the Board considers that it is reasonably likely that a beneficiary resident in Kiribati in the tax year in question will ultimately benefit directly or indirectly from the income.

(4) Where in the circumstances the Board considers it reasonable that the tax rates in Schedule 1 rather than the tax rates in Schedule 3 should be applied to the whole or part of the chargeable trust income, the Board may apply Schedule 1 accordingly.

(5) Chargeable trust income shall be calculated by subtracting from trust income-

- (a) trust income included in the income of any beneficiary; and
- (b) in the case of a non-resident beneficiary, trust income that would be included in such beneficiary's income if the beneficiary were a resident.

(6) For the purpose of subsection (5), the Board may -

- (a) treat part of trust income which has a source outside Kiribati as chargeable trust income subject to that subsection; and
- (b) exclude the rest of the trust income which has a source outside Kiribati from that subsection.

(7) Trustees of a trust shall be jointly and severally liable for any tax liability arising from trust income; but any trustee required to meet such tax liability shall be entitled to a contribution to that liability by each of the other trustees of the trust.

(8) This section is subject to section 64.

Termination of trusts

63. (1) Where a trust is terminated, section 17(2) shall not apply if the property subject to the trust continues to be held by a beneficiary of the trust, but the cost of the asset for tax purposes shall be the same that applied before the trust was terminated.

(2) When a trust is terminated, any distribution made to a beneficiary of the trust, to the extent that -

- (a) it represents trust income; and

(b) it has not already been taxed in the hands of the trustee,
shall be income of the beneficiary -

- (i) in full, if the beneficiary is a resident; or
- (ii) to the extent that the Board considers the distribution to be attributable to trust income derived from a source in Kiribati, if the beneficiary is a non-resident.

Partial termination of trusts

63A. (1) Section 63 shall apply to the partial termination of a trust.

(2) For the purposes of section 63, a trust shall be treated as partially terminated where there is a payment to beneficiaries of the corpus of the trust or where there is a payment to beneficiaries which is unusual in amount.

(S.63A inserted by No.3 of 1993, S. 13)

Taxation of incapacitated persons and estates of deceased persons

64. (1) A receiver appointed by a court, or a trustee, guardian, curator or committee having the control of the property of an incapacitated resident individual person shall be chargeable to tax on the chargeable trust income of the incapacitated person in accordance with section 8(2) on the basis that the incapacitated person is not presently entitled to the trust income; and the incapacitated person shall not include that trust income in chargeable income.

(2) Income accruing or received -

- (a) in the tax year of death of a deceased taxpayer; and
- (b) prior to the date of death,

which would, but for the taxpayer's death, have been chargeable to tax on the taxpayer shall be charged to tax as chargeable trust income upon any executor or administrator of the deceased taxpayer for the tax year.

(3) Income -

- (a) accruing or received after the date of death of a deceased taxpayer; and
- (b) arising from any income-producing activity of the taxpayer before the taxpayer's death,

which would, but for the taxpayer's death, have been chargeable to tax on the taxpayer for any tax year shall be charged to tax as chargeable income trust upon any executor or administrator of the deceased taxpayer for that tax year.

(4) Every executor or administrator of a deceased taxpayer shall be taxed on income subject to subsections (2) and (3) (together with any other chargeable trust income to which no beneficiary is presently entitled) for the tax year on the basis that no beneficiary is presently entitled to the income; and no beneficiary shall be taxed on that trust income.

(5) Every executor or administrator of a deceased taxpayer shall be responsible for any tax liability of the taxpayer arising from any tax year prior to the tax year in which the taxpayer died.

Income splitting through partnerships and trusts

65. (1) Where an individual taxpayer attempts to split income with a spouse, child, relative or associate through the medium of a partnership or trust, the Board may adjust the chargeable income of the taxpayer and the other party in order to prevent the income splitting.

(2) In judging whether the taxpayer is seeking to split income through a partnership or trust, the Board shall have regard to the value given by any such other party as is referred to in subsection (1), whether in the form of money, property, services or otherwise to the partnership or trust.

PART IX

COMPANIES

Separate system of company taxation

66. (1) Every -

- (a) company shall be subject to tax on its chargeable income pursuant to section 7; and
- (b) member of the company shall separately include under section 169(1)(c) in such member's income any dividend received from such company without any credit or regard for tax paid by such company.

(2) Every company which carries on business or derives income from a source in Kiribati (apart from income subject to a withholding tax and exempt under section 90) shall be required to have a Nominated Company Officer for tax purposes.

(3) The following provisions apply with respect to a Nominated Company Officer, namely -

- (a) he shall be a resident individual unless none of the company's officers is so resident;
- (b) his name shall be notified to the Board in the first tax year in which the company is required to have a Nominated Company Officer;
- (c) in default of nomination by the company he shall be the person specified by the Board; and
- (d) the company may by notice to the Board change the Nominated Company Officer.

(4) Where -

- (a) any obligation is imposed on any company under this Act; and
- (b) the company has a Nominated Company Officer,

that officer shall be responsible for performing that obligation; but if a company has no Nominated Company Officer, the general manager or other principal officer of the company shall be responsible for performing that obligation.

Change in control of companies

67. (1) Where the Board considers that there has been a change of 50% or more in the underlying ownership or control of any company, any loss available which may be offset against any income or as a deduction under section 37 shall cease to be available, unless the company -

- (a) continues to conduct the same business; and
- (b) does not engage in any new business, the assets of which constitute more than 10% of its total assets.

(2) Where the Board considers that there has been a change of 50% or more in the underlying ownership or control of any company, a separate calculation shall be made of -

- (a) chargeable income; or
- (b) a loss on any business activity,

of the company, for the period in the tax year before the change occurs, and for the period after the change occurs, as if each period were a separate tax year.

(3) Where such a separate calculation for the period before the change gives rise to a loss of the kind referred to in section 37, the loss shall not be available as a deduction in relation to the calculation for the period after the change unless the company after the change -

- (a) continues to conduct the same business; and

- (b) does not engage in any new business, the assets of which constitute more than 10% of its total assets.

(4) Where -

- (a) the Board considers that there has been a change of 50% or more in the underlying ownership or control of any company; and
- (b) the taxpayer has not maintained a provision for bad debts for tax purposes,

any debt available for deduction as a bad debt shall cease to be available for deduction in the current or future tax years unless the company -

- (i) continues to conduct the same business; and
- (ii) does not engage in any new business, the assets of which constitute more than 10% of its total assets.

(5) Where a company has maintained a provision for bad debts for tax purposes, the provision shall be unaffected by a change of 50% or more in the underlying ownership or control of the company unless the Board considers that the provision is unreasonable in the light of the information available to the company at the time of the change, in which event the Board may make -

- (a) such adjustment to the provision as it considers appropriate; and
- (b) any consequential adjustment to any income or deduction.

(6) Where a member of a company in a transaction, or in related transactions, sells -

- (a) a membership interest; or
- (b) any other indirect interest in such membership interest,

amounting to a change of 50% or more in the underlying ownership or control of the company, the income of the member shall include an amount which, in the opinion of the Board, represents a gain from the effective disposal of the assets of any business conducted by the company.

Inter-company dividends

68. (1) Subject to this section and section 69, any company resident in Kiribati in receipt of a dividend from any other company resident in Kiribati shall be entitled to a deduction equal to 90% of the net dividend received.

(2) The deduction under subsection (1) shall not be available where the dividend is paid as part of a transaction -

- (a) which the Board considers is substantially equivalent to a loan; or
- (b) which the Board considers is substantially equivalent to a sale of a membership interest in the company at a profit, in circumstances where the profit would be income.

(3) For the purposes of this section -

- (a) any net dividend received shall be the amount of the dividend reduced (not below zero) by any deduction available to the company;
- (b) where the dividend is received through a partnership or trust the amount of the dividend shall be the amount of partnership or trust income included in the income of the company attributable to the dividend; and
- (c) any deduction available in the calculation of partnership or trust income shall be regarded as being offset first against dividend income of the partnership or trust; but if such deduction is greater than that dividend income, there shall be no partnership or trust income attributable to the dividend.

Asset and profit stripping

69. (1) Where a company -

- (a) takes part in a transaction in the nature of dividend stripping; and
- (b) receives a dividend from a resident company in the transaction,

such company receiving the dividend shall be denied any dividend deduction under section 68 to the extent that the Board considers necessary to offset any decrease in the value of the shares in respect of which the dividend is paid, or of other property the value of which is affected by payment of such dividend.

(2) Where any company -

- (a) disposes of an asset to a member, or an associate of a member, for less than its open market value; or
- (b) releases a liability of a member, or an associate of a member, for an amount less than the liability,

the transaction shall be treated as giving rise to a dividend paid to the member in an amount equal to the difference between the open market value of the asset, or the amount of the liability, and the consideration received by the company.

Liquidations

70. (1) Where -

- (a) any company is liquidated by winding up under the Companies Ordinance (Cap. 10A) or by any other means, and
- (b) a member is -
 - (i) an individual; or
 - (ii) a trustee, in the case where -
 - (aa) no beneficiary is presently entitled to the distribution received in the liquidation; or
 - (bb) the beneficiary presently entitled to the distribution received in the liquidation is an individual,

the distribution received by the member, or an associate of such a member, shall be treated as a dividend to the member except to the extent of the cost of the membership interest of the member.

(2) Where any company is liquidated by winding up under the Companies Ordinance (Cap. 10A) or by any other means, and

- (a) a member is a company; or
- (b) a company is a beneficiary of a trust presently entitled to the distribution received in the liquidation,

the liquidation shall be treated as a disposal of the membership interest by the company, to which section 17 shall apply.

Incorporation roll-over

71. (1) Where -

- (a) any individual, partnership or trust, or a combination thereof, disposes of any asset (with or without any liability) to a company in exchange for a membership interest in the company; and

- (b) that membership interest -
 - (i) is equal or similar in value to the net value of the asset transferred; or
 - (ii) in the case of a transfer by more than one person, is equal or similar in value to the net value of the asset, or of the interest in the asset, transferred by each person,

the transaction shall not be regarded as a disposal of the asset, or a realisation of the liability transferred, unless the company and the transferors in total elect to treat the transaction as a disposal or realisation.

(2) Where no election is made under subsection (1), the value, cost or other relevant amount in relation to any asset or liability transferred shall be the same for the company as for the transferors in total.

(3) Where no election is made under subsection (1), a membership interest received in the exchange by a person shall be treated as having a cost for tax purposes equal to the cost of any asset, or of any interest in any asset, less any liability transferred by the person.

(4) Where, in the case in subsection (3), any asset or liability transferred relates, in whole or in part, to a business carried on by the transferor, the membership interest received in the exchange shall be treated as a business asset of the transferor, in whole or in part accordingly.

(5) Where -

- (a) a company is liquidated under the Companies Ordinance (Cap. 10A) or by any other means;
- (b) any asset, apart from money, is transferred to a member or to members jointly or in common;
- (c) the member, or members, held a 50% or more interest in the company, immediately prior to the liquidation; and
- (d) the member, or members, elect that this subsection applies,

then -

- (i) the transfer shall not be treated as a disposal of the asset by the company;
- (ii) the cost to the member or members of the asset transferred shall be the same as the cost of such asset to the company prior to the transfer;
- (iii) the asset shall continue to be subject to section 17; and
- (iv) the distribution of the asset shall be disregarded for the purposes of the definition of dividend in section 3 and section 70.

Reconstruction roll-over

72. Where a company or group of companies is reconstructed without any significant change in the underlying ownership or control of the company or group of companies, the Board may -

- (a) permit any taxpayer involved in the transaction to treat it as not giving rise to the disposal of any asset or the realisation of any liability, as the case may be; and
- (b) determine the cost of any asset held or liability undertaken by the taxpayer after the transaction in order to reflect the fact that no disposal or realisation is regarded as having occurred.

Closely held companies

73. (1) Any loan by a closely held company to a member, officer or associate of such member or officer shall be treated as a dividend paid by the company to the borrower in the capacity of a member (whether the recipient is a member or not), unless the Board is satisfied that the loan -

- (a) is on normal commercial terms; and
- (b) is not a disguised distribution by the company.

(2) Any payment by a closely held company to a member, officer or associate of such member or officer in relation to any services rendered or property transferred to the company shall be treated as a dividend paid by the company to the recipient in the capacity of a member (whether the recipient is a member or not) to the extent that the payment is excessive having regard to the open market value of such services or property.

(3) Subject to subsection (4), where a closely held company receives any chargeable income that would be property income if received by an individual, that income shall constitute distributable income and the company shall pay -

- (a) by way of dividend to its individual members; and
- (b) in the tax year following the tax year of receipt of that income,

an amount equal to that income, less tax at the highest rate of tax paid by the company.

(4) If a closely held company has no individual members, it shall, in the case in subsection (3) -

- (a) pay a dividend of the same amount to its members; and
- (b) notify the members that the dividend represents distributable income.

(5) A company which receives a dividend pursuant to subsection (4) shall, within 30 days, pay a dividend of an equal amount to its individual members; but if such company has no individual members -

- (a) it is not required to pay a dividend by this subsection;
- (b) it shall not be entitled to a deduction under section 68 in respect of the dividend received pursuant to subsection (4); and
- (c) the dividend received shall not be treated for the purposes of this section as distributable income of that company.

(6) If a company is unable, by reason of the provisions of the Companies Ordinance (Cap. 10A) or any other Act, to pay in whole or in part a dividend as required by this section, the company shall be liable to pay tax at the maximum tax rate applied to the chargeable income of resident individuals under Schedule 1 on the amount of income or dividend received that is subject to this section, reduced by the amount of any dividend paid.

(S.73(6) amended by No. 3 of 1993, S.14(a))

(7) For the purposes of this section, a "closely held company" means a company that is, directly or indirectly, through interposed companies, partnerships or trusts, under the control of 10 or fewer individuals; and for that purpose "control" refers to any direct or indirect interest in the company amounting to 50% or more of all membership interests in the company and individuals who are relatives or associates are to be counted as one person.

(S.73(7) amended by No. 3 of 1993, S.14(b))

(8) Subsections (3), (4), (5) and (6) shall not apply to any tax year where the tax rates for companies under Schedule 2 are no less than the tax rates for resident individuals under Schedule 1 (disregarding any personal deductions, individual tax rebates, chargeable income taxed at a nil rate and chargeable income of less than \$50,000 taxed at a rate exceeding the company rate on such income by 5% or less)

(S.73(8) amended by No.3 of 1993, S.14(c))

Chargeable income of co-operatives

74. (1) The chargeable income of the Kiribati Cooperative Copra Society Ltd., is exempt from income tax.

(2) Subject to subsection (1), the chargeable income of a Cooperative Society registered under the Cooperative Societies Ordinance (Cap. 14) shall be subject to tax, except income earned from the sale of copra.

(3) Any bonus paid out to members of a Cooperative Society shall be allowed as a deduction.
(S.74 substituted by No.18 of 1997, S.2)

PART X EXEMPTIONS AND CONCESSIONS

Exemptions to public officials and private employees

- 75.** The following amounts shall be exempt from income tax -
- (a) any -
 - (i) travelling, subsistence or entertainment allowance or non-accountable leave grant paid to any officer in the public service; and
 - (ii) similar allowance (other than an entertainment allowance) paid to any other person, so long as the Board is satisfied that it is reasonable in amount; and
 - (b) the income referred to in Schedule 7.

Income of overseas technical personnel

- 76.** (1) The following amounts shall be exempt from income tax -
- (a) property income (other than interest income), derived from a foreign source, of overseas technical personnel resident in Kiribati for -
 - (i) the period of the first 5 years of residence; or
 - (ii) more than one period of residence but not exceeding 5 years in total.

(S.76(1) amended by No.3 of 1993, S.15)

(2) In determining the level of exemption (if any) under subsection (1)(a), the Board and the Cabinet shall have regard to -

- (a) any exemption of income from tax generally available to overseas technical personnel who are public officers; and
- (b) any other exemptions available to taxpayers under this Act.

International organisations and their employees

- 77.** The following amounts shall be exempt from income tax -
- (a) the income of any international organisation declared by the Minister by order under any law in force in Kiribati to be an organisation exempt from income tax; and
 - (b) the official emoluments of any officer or employee of such organisation declared by the Minister to be exempt from income tax.

Diplomatic and similar privileges

- 78.** (1) The following amounts shall be exempt from income tax -
- (a) the official emoluments of, and income derived from a foreign source by, any representative in Kiribati of a foreign government;
 - (b) income derived from a foreign source of members of the family and household of any such representative, to the extent required by the Diplomatic Privileges and Immunities Act 1983 and the Consular Privileges and Immunities Act 1983;
 - (c) the official emoluments of any person in the public service of the government of a foreign country where -
 - (i) the person is resident in Kiribati solely for the purposes of performing the duties of his office;

- (ii) the emoluments are payable from the public funds of that country; and
- (iii) the emoluments are subject to income tax in that country; and
- (d) the emoluments payable, by a non-resident person in respect of duties performed in Kiribati in connection with any technical assistance agreement to which the Government is a party, to -
 - (i) any non-resident person; or
 - (ii) any person who is resident solely for the purpose of performing the duties;

in any case where the agreement provides for the total or partial exemption of those emoluments; but where the agreement provides for partial exemption of those emoluments from income tax in Kiribati, the exemption under this paragraph shall only apply to the extent referred to in the agreement.

(2) The Board shall be given notice of any agreement such as is referred to in subsection (1)(d) as soon as it is entered into.

Scholarships

79. Income of an amount that the Board considers reasonable arising from a scholarship payable to a person for the purpose of full-time instruction at such university, college, school or other place of instruction as may be approved by the Board shall be exempt from income tax.

Income of Government exempt

80. Income of the Republic of Kiribati and any local government council shall be exempt from income tax.
(S.80 substituted by No.3 of 1993, S.16)

Religious, charitable, benevolent and educational institutions

81. Income of any religious, charitable, benevolent or educational institution approved as such by the Board shall be exempt from income tax.

Pioneer industries

82. Schedule 8 shall apply with respect to the declaration of pioneer industries and otherwise as provided in the Schedule.

PART XI LONG TERM SAVINGS

Contributions to the Provident Fund and life insurance

- 83.** (1) Subject to subsection (2), a taxpayer shall be entitled to a deduction for any payment as an employer in respect of an employee who is resident in Kiribati in the following circumstances -
- (a) any contribution made under the Provident Fund Ordinance (Cap. 78A) in respect of such employee;
 - (b) any premium paid in respect of any life insurance policy to the Kiribati Insurance Corporation, or any other insurer in Kiribati, on the life of such employee for the benefit of the employee or the spouse or child of the employee; and
 - (c) any premium under an annuity contract paid to the Kiribati Insurance Corporation, or any insurer in Kiribati, for the benefit of the employee or the spouse or child of the employee.

(2) Where the total amount paid in a year in respect of a particular employee under subsection (1)(b) and (c) exceeds 5% of the employee's income from employment with the taxpayer for that year, the excess shall not be deductible to the taxpayer.
(S.83(2) amended by No.19 of 1997, S.4)

(3) A resident individual taxpayer shall be entitled to a personal deduction of \$800 or the aggregate of the following payments, whichever is the less -

- (a) any contribution made under the Provident Fund Ordinance (Cap. 78A);
- (b) any premium in respect of a life insurance policy paid to the Kiribati Insurance Corporation or any insurer in Kiribati by the taxpayer on the life of the taxpayer for the benefit of the taxpayer, or the taxpayer's spouse or child;
- (c) any premium in respect of a life insurance policy paid by a citizen of Kiribati where the policy was effected with any insurer other than, and prior to the establishment of, the Kiribati Insurance Corporation on the life of the taxpayer, for the benefit of the taxpayer or the taxpayer's spouse or child;
- (d) any premium under an annuity contract paid to the Kiribati Insurance Corporation, or any insurer in Kiribati, for the benefit of the employee or the spouse or child of the employee.

(4) In this section and sections 84, 85 and 91 "insurer" has the meaning assigned to it under section 2 of the Insurance Act (Cap. 45A).

(5) A life insurance policy shall not be prevented from falling within subsection (1) or (3) by the fact that -

- (a) it covers the life of the spouse of the employee or taxpayer and not the employee or taxpayer;
- (b) it covers other lives in addition to those permitted under subsections (1) and (3) and paragraph (a); or
- (c) it is for the benefit of other people in the event that the employee or taxpayer, and any spouse and child of the employee or taxpayer are deceased.

(S.83.5 inserted by No.3 of 1993, S.17)

Tax treatment of the Provident Fund and the Kiribati Insurance Corporation

84. (1) Income of the Provident Fund established under the Provident Fund Ordinance (Cap. 78A) shall be exempt from income tax.

(2) Income of the Kiribati Insurance Corporation shall be exempt from income tax.

Tax treatment of payments on life insurance policies or from the Provident Fund

85. (1) Any proceeds of a life insurance policy -

- (a) issued by the Kiribati Insurance Corporation or any other insurer in Kiribati; or
- (b) referred to in section 83(3)(c),

shall be treated as income of the recipient of those proceeds, except in any of the following cases where the proceeds shall be exempt -

- (i) where the payment made by the Kiribati Insurance Corporation or an insurer in Kiribati results from death and the estate of the deceased or the surviving spouse or child of the deceased is entitled to the proceeds of the policy; or
- (ii) where the payment made by the Kiribati Insurance Corporation or an insurer in Kiribati arises from the maturity of a policy which matures only after the expiration of 10 years or more from the date of issue of the policy.

(2) In determining the amount of the proceeds of the policy which is income, the proceeds shall be reduced by the amount of premiums for which deductions were not obtained under section 83.

(3) Any payment from the Provident Fund established under the Provident Fund Ordinance (Cap. 78A) to a member of the Fund or any person nominated by the member in the event of death of the member shall be exempt from income tax.

PART XII INTERNATIONAL TAXATION

Source of income

86. (1) The source of any income -

- (a) derived from services or employment shall be deemed to be where the services are rendered or the employment is exercised;
- (b) derived from land (whether from any rent, premium, sale or otherwise) shall be deemed to be where the land is situated;
- (c) derived from the sale of any tangible property, other than land and property used in any business, shall be deemed to be where the taxpayer is resident;
- (d) derived from the rental of any tangible property shall be deemed to be where the property is used;
- (e) derived from the sale or licence of any industrial and intellectual property shall be deemed to be where the property is used or is to be used;
- (f) derived from the sale of any intangible property, other than property used in a business or property referred to in paragraphs (e) and (g), shall be deemed to be where the taxpayer is resident;
- (g) in the form of interest shall be deemed to be where the borrowing in respect of which the income arises is used;
- (h) in the form of a dividend shall be deemed to be where the company paying the dividend is resident;
- (i) derived from transportation shall be deemed to be where the transportation begins and ends; but if the beginning and end of the transportation is in more than one country, the income shall be treated as having been derived in equal proportions from the countries where transportation began and ended;
- (j) in the form of a natural resource payment shall be deemed to be the place from which the natural resource is taken;
- (k) in the form of a management charge shall be deemed to be where the business of the payer of the charge is carried on; or
- (l) derived from a business, other than income referred to in any of the preceding paragraphs, shall be deemed to be where the activity giving rise to the income occurs; but if the activity occurs in more than one country the income shall be treated as having been derived, in such proportions as the Board determines, from each of the countries.

(2) Any other income whose source is not covered under this section shall be deemed to be derived where the Board determines.

(3) Any deduction shall be allocated among different types of income and income with different sources in such proportions as the Board determines.

Foreign employment income of residents

87. Income from any employment exercised in any country other than Kiribati by a resident shall be exempt from income tax except to the extent prescribed by regulations.

Foreign tax credit and the treatment of losses

88. (1) A resident taxpayer shall be entitled to a foreign tax credit against liability to Kiribati income tax in respect of any foreign income tax borne directly or indirectly by the resident on foreign income (other than income referred to in section 87).

(2) The foreign tax credit shall not exceed the Kiribati income tax on the foreign income.

(3) In the case of a taxpayer other than a company, the calculation of a foreign tax credit shall be made separately for business income and for other income.

(4) For the purposes of this section -

- (a) the Kiribati income tax on any foreign income shall be calculated by applying the average rate of Kiribati income tax to any income derived from a foreign source, reduced by any deduction allocated to that income;
- (b) the average rate of Kiribati income tax shall be the percentage that the Kiribati income tax, before the foreign tax credit, is of chargeable income;
- (c) in the case of any taxpayer with both business and non-business income, the average rate of tax shall be calculated separately for both categories of income;
- (d) any foreign income tax on a company shall not be treated as indirectly borne by the members of the company, but any foreign income tax borne by any partnership shall be treated as borne by the partners;
- (e) any foreign income tax borne by any trustee (where the income on which such trustee was assessed is included in the income of a beneficiary under this Act) shall be treated as borne by the beneficiary, and vice versa; and
- (f) any foreign income tax includes any foreign withholding tax but does not include any foreign tax designed to raise the foreign tax level on the income so that the taxation of the country of residence of the taxpayer is reduced.

(5) Where the Board is of the opinion that any taxpayer has organised a transaction that has the effect of -

- (a) minimising Kiribati income tax by maximising the foreign tax credit; or
- (b) avoiding wastage of any excess foreign tax credit by deriving low taxed income from a source outside Kiribati,

the Board may reduce the amount of the foreign tax credit of the taxpayer to reverse the tax effect of the transaction.

(6) The provisions of section 37 relating to the treatment of losses shall be applied to income derived from a source outside Kiribati separately from income derived from a source in Kiribati; and where any loss is incurred in relation to business or property income, the loss (and the income and any deduction giving rise to the loss) shall be disregarded in calculating the foreign tax credit on any other income.

Tax havens

89. (1) Where a resident of Kiribati has entered into any transaction that directly or indirectly has the effect that income is derived from a source outside Kiribati through a non-resident company which is connected to a tax haven, the Board may make any adjustment to the income and foreign tax credit position of the resident to reverse the tax effect of the transaction.

(2) The Board may treat any foreign country as a tax haven where that country has -

- (a) effective tax rates significantly lower than those of Kiribati; and
- (b) laws providing for the secrecy of financial and corporate information which facilitate the concealment of the identity of the real owner of any asset.

(3) The Board shall not treat a foreign country as a tax haven under this section if the Government has entered into an agreement with that country under section 94.

Withholding tax on international transactions

90. (1) A withholding tax at the standard rate of tax shall be charged and payable in respect of any dividend, interest, royalty, natural resource payment and management charge on the full amount of the payment, in the following cases -

- (a) where a resident makes a payment to a non-resident of income derived from a source in Kiribati;
- (b) where a non-resident carrying on business through a branch in Kiribati makes a payment to a non-resident of income derived from a source in Kiribati;
- (c) where a resident makes a payment to a resident carrying on business through a branch outside Kiribati of income derived from a source in Kiribati by the branch outside Kiribati; or
- (d) where a non-resident carrying on business through a branch in Kiribati makes a payment to a resident carrying on business through a branch outside Kiribati of income derived from a source in Kiribati by the branch outside Kiribati.

(2) In the case of subsection (1) -

- (a) where subsection (1)(a) or (b) is applicable, the income shall be treated as exempt income and the withholding tax shall be a final tax for the purposes of this Act, unless the taxpayer makes a return of income in which the taxpayer elects to be taxed by an assessment in respect of the income; and
- (b) where subsection (1)(c) or (d) is applicable, the withholding tax shall be in addition to, and shall not be taken into account in arriving at the amount of any other tax payable in respect of that income.

(3) This section does not apply to any case where the payment of a dividend, interest, royalty, natural resource payment or a management charge is made to a trustee taxed under section 62 or 64.

(4) In the case of any payment under subsection (1)(a) or (b), the Beretitenti, acting in accordance with the advice of the Cabinet, may, by order, declare any taxpayer -

- (a) to be exempt from any withholding tax or income tax in respect of a particular payment or particular transaction, or a series of transactions; or
- (b) to be subject to a lower rate of tax than the standard rate of tax.

(5) In formulating its advice under subsection (4), the Cabinet -

- (a) shall have regard to the economic and other benefits likely to accrue to Kiribati from the making of an order; and
- (b) may only advise that an order should be made if it is of the opinion that it would be in the public interest to make such an order.

Re-insurance payments

91. (1) Any payment under a re-insurance contract to a non-resident by the Kiribati Insurance Corporation or any insurer in Kiribati shall be subject to a withholding tax of 5%, which shall be a final tax and the income of the non-resident constituted by the re-insurance payment shall be exempt income.

(2) The provisions of section 117 relating to collection of any withholding tax levied under section 90 shall apply to any re-insurance payment under subsection (1).

Tax on repatriated branch profits

92. (1) Any branch in Kiribati of a non-resident taxpayer shall be subject to tax at the standard rate of tax on repatriated income in addition to income tax on branch profits.

(2) Repatriated income is chargeable income, less -

- (a) Kiribati income tax paid by the non-resident on any activity of the branch; and
- (b) any profit reinvested in the branch,

and every repatriation of moneys by the branch shall be treated for tax purposes as having been made first out of branch income, notwithstanding that it may be treated otherwise in the records of the branch.

(3) A non-resident with a branch in Kiribati shall be required to have a Nominated Agent for tax purposes.

(4) The following provisions apply with respect to the Nominated Agent, namely -

- (a) he shall be a resident individual;
- (b) his name shall be notified to the Board within 30 days of the branch being established in Kiribati;
- (c) in default of nomination by the non-resident, he shall be the person specified by the Board; and
- (d) the non-resident may, by notice to the Board, change the Nominated Agent.

(5) Where any obligation is imposed under this Act on any non-resident person and the non-resident has a Nominated Agent, the agent shall be responsible for performing that obligation.

(6) The requirement under subsection (3) is in addition to those under sections 57(1), 60(1) and 66(2), but the same person may fulfil any such requirement.

Agents for non-residents

93. (1) Subsections (1), (2) and (3) of section 114 shall apply, in the case of any moneys held by a person for a non-resident person in any of the ways referred to in any of those subsections, to any existing or future tax liability of such non-resident; and a notice given by the Board may include an amount of an estimated future income tax or a withholding tax liability accordingly.

(2) Subsections (4) to (8) of section 114 shall apply to an agent of a non-resident who has been appointed -

- (a) to wind up the business; or
- (b) to realise any asset,

of the non-resident in Kiribati as if the agent were a liquidator referred to in those subsections.

(3) Subsection (9) of section 114 applies to this section and in its application shall extend to contesting the amount of income tax for which no assessment has been issued at the time of application of section 93(1) or (2).

(S.93(3) substituted by No. 3 of 1993, S.18)

Double taxation agreements

94. (1) The Beretitenti, acting in accordance with the advice of the Cabinet, may, by order, declare that an agreement for the relief of double taxation and the prevention of fiscal evasion which has been entered into between the Republic and the Government of any other country has effect for the purposes of this Act.

(2) Such an order shall set out the terms of the agreement and any understandings reached in relation to the operation or amendment of the agreement.

(3) Upon the making of such an order and subject to the terms of the order, the double taxation agreement shall have the same force of law as if its provisions were a part of this Act.

(4) To the extent that the terms of such an agreement as is referred to in subsection (1) are inconsistent with the provisions of this Act (apart from Part XIII), the terms of the agreement shall prevail over the provisions of this Act.

PART XIII ANTI-AVOIDANCE

Transfer pricing

95. (1) Where in any transaction between taxpayers who are associates, the Board is of the opinion that the consideration is higher or lower than the open market value, the Board may -

- (a) substitute the open market value as the consideration; and
- (b) calculate the taxpayers' chargeable income or income subject to a withholding tax under this Act accordingly.

(2) Where -

- (a) there are a number of transactions among persons; and
- (b) the Board is of the opinion that the consideration in respect of one or more of the transactions is higher or lower than the open market value (although the total consideration for all the transactions may be the open market value),

the Board may -

- (i) substitute the open market value as the consideration in all or any of the transactions; and
- (ii) calculate the chargeable income or income subject to a withholding tax under this Act accordingly.

(3) In making any adjustment under subsections (1) and (2), the Board may recharacterise the source of income and the nature of any payment or loss as revenue, capital or otherwise.

Recharacterisation of income and deductions and reimbursement agreements

96. (1) Where -

- (a) there are a number of transactions among persons; and
- (b) the Board is of the opinion that the consideration in respect of one or more of the transactions has a revenue or capital character as part of a tax avoidance scheme,

the Board may -

- (i) recharacterise the nature of the consideration as revenue, capital or otherwise; and
- (ii) calculate the chargeable income or income subject to a withholding tax under this Act accordingly.

(2) Where -

- (a) there are a number of transactions among persons; and
- (b) the Board is of the opinion that the economic position of any of the persons has not changed in substance as a result of the transaction,

the Board may -

- (i) disregard the transaction; and

- (ii) calculate the chargeable income or income subject to a withholding tax under this Act accordingly.

Schemes to avoid tax

97. (1) This section applies to every scheme by a person which purports to have the effect of, in any way, directly or indirectly, -

- (a) altering the incidence of any income tax;
- (b) relieving any person from liability to pay any income tax or make any return of income;
- (c) defeating, reducing, postponing or avoiding any duty or liability imposed on any person by this Act; or
- (d) preventing the operation of this Act in any respect.

(2) A scheme to which subsection (1) of this section applies shall, if the Board so determines, be disregarded, and the Act shall be treated as operating in relation to the person involved in the scheme in such manner as the Board determines.

PART XIV RETURNS AND ASSESSMENTS

Returns

98. (1) Every person with income chargeable to tax under this Act for any tax year shall make a return of income for that tax year, on the prescribed form, not later than 31 March following that year at any place specified on the form.

(2) Where, by virtue of section 13, any person chargeable to income tax under this Act has an accounting period for tax purposes that ends on a date other than 31 December, then the return of income required by subsection (1) shall be made not later than 3 months after that date.

(3) A partnership return of income required by section 57(4) shall be made, on the prescribed form, not later than 31 March following the tax year at any place specified on the form.

(4) A trust return of income required by section 60(3) shall be made, on the prescribed form, not later than 31 March following the tax year at any place specified on the form.

(5) The Board may, by notice in writing, require any person, within such time as may be specified in the notice, to make a return of income, on the prescribed form, for any tax year or part thereof, together with such other particulars as may be required for the purposes of this Act.

(6) The Board may give a notice under subsection (5) whether or not the person has made a return of income under subsection (1), (2), (3) or (4).

(7) The Board may, by notice in writing, require any person, within such time as may be specified in the notice, to provide any particulars, or to make further returns of income, in relation to -

- (a) any matter contained in any return of income made under this Act; or
- (b) any transaction or matter appearing to the Board to be relevant for the purpose of ascertaining the income of -
 - (i) the person;
 - (ii) a trust of which the person is a trustee; or
 - (iii) a partnership of which the person is a partner.

(8) The Board may, by notice in writing, require any employer as defined in section 115, any principal as defined in section 116, or any payer referred to in sections 117 and 118, within such time as may be specified in the notice, to make a return of income for any tax year containing -

- (a) the name and address of each person referred to in sections 115 to 118 to whom any payment of income has been made, together with the amount of the payment; and
- (b) in the case of an employer as defined in section 115, the name and address of each person to whom any payment of pension was made during that tax year in respect of that person's former employment together with the amount of the payment.

(9) The Board may, by notice in writing, require any person who, in the ordinary course of business, holds any deposit of money on which interest is paid or credited, to make, within such time as may be specified in the notice, a return of -

- (a) any interest paid or credited during the period specified in the notice; and
- (b) the name and address of each person to whom the interest was paid or credited and the amount thereof.

(10) A return under subsection (8) or (9) shall be made in the prescribed form.

(11) The Board may, at any time, extend the period in which any return required under this section is to be made.

Records

99. (1) Every person who carries on a business shall keep and maintain such records of every transaction of that business as may be necessary for -

- (a) the accurate determination of the chargeable income from that business; and
- (b) the making of any return of income required by section 98.

(2) The Board may disallow any claim for a deduction (including a personal deduction) by an individual taxpayer, if the taxpayer is unable without any reasonable cause to produce written evidence in the form of a receipt or other records of the transaction giving rise to the claim for the deduction.

(3) The records referred to in subsection (1) or (2) shall be retained by the taxpayer for a period of 7 years after the tax year to which they relate.

Assessments

100. (1) The Board shall assess every person chargeable to tax under this Act as soon as possible -

- (a) after the receipt of the return of income required by section 98; or
- (b) where there has been failure to make a return of income, after the expiry of the time allowed for the delivery of a return by that section.

(2) Where a person has made a return of income, the Board may -

- (a) accept the return and assess the person on the basis of the return; or
- (b) if the Board has reasonable cause to believe that the return is not true and correct, estimate the amount of the income of the person and assess that person accordingly.

(3) Where -

- (a) a person has not made a return of income; and
- (b) the Board considers that the person is liable to tax under this Act,

the Board may estimate the income of the person and assess the person accordingly.

(4) Where -

- (a) the Board has reasonable cause to believe that any person is about to leave, or has left, Kiribati permanently or without any intention to return; and
- (b) the person has not been assessed to tax on income chargeable to tax for any tax year or part thereof,

the Board may estimate the income of the person for that tax year or that part thereof and assess the person accordingly.

(5) Where the Board considers that any person has been assessed at a lesser or greater amount, either in relation to the income assessed or to the amount of tax payable than that at which the person ought to have been assessed, the Board may, by way of an amended assessment, assess the person to such additional or reduced amount of income or tax as the person ought, in the opinion of the Board, to have been assessed; and the amended assessment shall be treated as an assessment for the purposes of this Act.

(6) The Board shall cause a notice of assessment to be served on each person assessed which shall -

- (a) state the amount of income assessed and the amount of tax payable; and
- (b) inform the person assessed of the rights of appeal under section 101.

(S.100(6) amended by No.19 of 1997, S.5)

(7) The time limits for the making of an assessment (including an amended assessment) under this Act are as follows -

- (a) where any fraud or any gross or wilful neglect has been committed by or on behalf of any person in relation to tax for any tax year, an assessment for that tax year may be made at any time;
- (b) where paragraph (a) does not apply, in the case of an assessment made upon the executor or administrator of any deceased taxpayer in respect of the income of the deceased taxpayer, the assessment shall be made prior to the expiry of 3 years after the tax year in which the taxpayer dies; and
- (c) where neither paragraph (a) nor paragraph (b) applies, the assessment shall be made prior to the expiry of 6 years after the tax year to which the assessment relates.

(8) The Board shall, as soon as possible, prepare a list (referred to in this Act as "the assessment list") of all persons assessed to tax; and the assessment list shall contain -

- (a) the name and address of each person assessed; and
- (b) the amount of the income assessed on, and the tax payable by, each such person in respect of each tax year or part thereof.

(9) Where, for any tax year, complete copies of all notices of assessment and of notices amending assessments have been placed on file in the office of the Board, such notices shall be deemed to constitute the assessment list for the purposes of this Act; and a copy of any such notice shall be receivable in any proceeding as conclusive evidence -

- (a) of the due making of the assessment; and
- (b) except in any proceeding under Part XV relating to the assessment, that the amount and all the particulars of the assessment are correct.

(10) Except in any proceeding under Part XV, an assessment shall not be invalidated or called into question by reason of -

- (a) any variance between the assessment and the duly served notice of it; or
- (b) a mistake in the assessment as to -

- (i) the name of the person assessed;
- (ii) the description of any income; or
- (iii) the amount of tax charged.

(11) No assessment, warrant or other document purporting to be made, issued or executed under this Act shall be -

- (a) quashed or deemed to be void or voidable for want of form; or
 - (b) affected by reason of any mistake, defect or omission therein,
- if -

- (i) it is, in substance and effect, in conformity with or according to the intent and meaning of this Act; and
- (ii) the person assessed, or intended to be assessed, or affected by the document is designated in it according to common understanding.

PART XV APPEALS

Notice of appeal

101. (1) Any person who disputes an assessment made under Part XIV may, by notice in writing to the Board, appeal against the assessment.

(2) The notice shall -

- (a) state the grounds of the appeal; and
- (b) be lodged with the Board within 60 days of service of the notice of assessment.

(S.101(2)(b) amended by No. 20 of 1996, S.3)

(3) If the Board is satisfied that the person objecting to the assessment was prevented by any reasonable cause from giving notice of appeal within the period specified in subsection (2), the Board may accept the notice after the expiry of the period, and if it does so, the notice shall be deemed to be a valid notice of appeal.

(4) Where a person -

- (a) has given a valid notice of appeal to an assessment; and
- (b) subsequently agrees in writing with the Board on the manner in which and the extent to which that assessment shall be amended,

the Board shall -

- (i) amend the assessment accordingly; and
- (ii) send to the person a notice of the amended assessment and of the tax payable thereunder.

(5) No appeal shall lie from an amended assessment issued under subsection (4).

(6) Where a person -

- (a) has given a valid notice of appeal to an assessment; and
- (b) does not agree with the Board as to the amendment of the assessment within 30 days of the lodging of the notice of appeal,

(S.101(6)(b) amended by No.20 of 1997, S.4)

that person may lodge the notice of appeal with the Tribunal within 90 days of service of the notice of assessment to which the notice of appeal relates for determination of the appeal by the Tribunal.
(S.101(6) amended by No.20 of 1997, S.4)

(7) Where a taxpayer has given a notice of appeal which the Board does not accept as a valid notice of appeal, the taxpayer may lodge the notice of appeal with the Tribunal within 90 days of service of the notice of assessment to which the notice of appeal relates for determination of the appeal by the Tribunal.
(S.101(7) amended by No.18 of 1997, S.3)

(8) Where a taxpayer is appealing against an amended assessment, the notice of appeal may only relate to particulars in respect of which the original assessment was amended; and where the amended assessment has reduced the tax payable, particulars in respect of which the reduction has occurred shall not be subject to any right of appeal.

Onus of proof

102. (1) In an appeal against any assessment or any other action of the Board, the onus of proving that -

- (a) the assessment is excessive; or
- (b) the Board is otherwise in error,

shall be on the taxpayer.

(2) In an appeal against any assessment or any other action of the Board, the taxpayer shall be bound by the grounds of the notice of appeal, unless the Board, the Tribunal or the High Court grants the taxpayer leave to amend the notice when the matter is under consideration by the Board, the Tribunal or the Court, as the case may be.

The Tax Tribunal

103. (1) There shall be established by this section a Tax Tribunal.

(2) The Tribunal shall consist of such members as may be appointed annually by the Minister acting in accordance with the advice of the Cabinet.

(3) No member of the Tribunal shall be simultaneously a public officer engaged in the processing of income tax returns.

(4) On the hearing of any appeal, the Tribunal shall be constituted by three members.
(S.103(4) amended by No.20 of 1996, S.5)

(5) A member of the Tribunal shall cease to be a member on the happening of any of the following events -

- (a) if the member becomes bankrupt;
- (b) if the member becomes incapable of performing the duties of the Tribunal for a continuous period of 60 days;
- (c) if the member is removed by the Minister, acting in accordance with the advice of the Cabinet, by notice in writing, for any misconduct; or
- (d) if the member resigns by notice in writing to the Minister.

(6) Where a member of the Tribunal ceases to be a member under subsection (5), the Minister, acting in accordance with the advice of the Cabinet, may appoint a new member for the balance of that calendar year.

(7) A member of the Tribunal shall be entitled to such remuneration and allowances as may be determined by the Beretitenti, acting in accordance with the advice of the Cabinet; and any such remuneration or allowance to which a member is entitled shall not be decreased during his term of office.

(8) No action, suit, prosecution or any other proceeding shall be brought or instituted personally against any person who is or was a member of the Tribunal in respect of any act done or omitted to be done in good faith in the discharge of any function under this Act.

(9) Where a member appointed to the Tribunal has any material, pecuniary or other interest that could conflict with the proper performance of his functions, he -

- (a) shall disclose the interest; and
- (b) shall not preside at any hearing of the Tribunal that could conflict with such interest.

Proceedings before the Tax Tribunal

104. (1) The Tribunal may review any assessment that is the subject of an appeal, and for that purpose shall have all the powers of the Board with respect to the making and amending of any assessment.

(2) The Tribunal may make -

- (a) an order confirming, reducing, increasing or varying an assessment; or
- (b) any other order that it considers fit.

(3) The Board shall make any such adjustment as may be necessary to give effect to a decision of the Tribunal.

(4) Every decision of the Tribunal shall be notified to the Board and the taxpayer in writing.

(5) If the Board or the taxpayer so requests within 30 days of notification of any decision, the Tribunal shall give its reasons for such decision in writing.

(6) Any proceeding before the Tribunal shall be open to the public unless the taxpayer requests that such proceeding should be closed to the public.

(7) The Tribunal shall be bound by the rules of natural justice but shall not be bound by the rules of evidence.

Appeals to the High Court from the Tax Tribunal

105. (1) Any party to any proceeding before the Tribunal who is dissatisfied with any decision of the Tribunal may, within 60 days after the date of service upon him of notification of the decision, lodge a notice of appeal with the Chief Registrar of the High Court of an appeal to the High Court; and he shall serve a copy of the notice on the other party to the proceeding before the Tribunal.

(2) An appeal shall lie to the High Court on a question of law only; and the notice of appeal shall state the question of law that will be raised on the appeal.

(3) Every appeal shall be heard in chambers on such terms as to costs or otherwise as the High Court may direct.

(4) In deciding any appeal under this Act, the High Court may -

- (a) confirm, reduce, increase or vary any assessment; or
- (b) make such other order as it may think fit.

(5) The Board shall make any such adjustment to an assessment as may be necessary to give effect to a decision of the High Court.

(6) Notwithstanding any provision of this section, any taxpayer may appeal to the High Court where -

- (a) the Tribunal has not offered the taxpayer a hearing within 90 days of the lodging of the taxpayer's appeal with the Tribunal; or

- (b) the Tribunal has not given a decision within 60 days of the hearing of the appeal by the Tribunal.

Powers of the Board after appeal

106. (1) Subject to subsection (2), nothing in this Part shall prevent the Board from amending any assessment for any tax year if the amendment does not involve a re-opening of any matter which has been determined on appeal.

(2) Where any fraud or any gross or wilful neglect has been committed by or on behalf of any person in relation to tax for any tax year, the Board may make an amended assessment on that person for such tax year even if it involves a re-opening of any matter which has been determined on appeal, but only where the fraud or gross or wilful neglect came to the notice of the Board after the determination of the appeal.

PART XVI COLLECTION AND REFUND OF TAX

Due date for payment of tax

107. (1) Any income tax payable under an assessment shall become due and payable -

- (a) on the date specified in the notice of assessment being a date which is not less than 30 days after the date of service of the notice; or
- (b) if no date is so specified, on the date which is 30 days after the date of service of the notice.

(2) Where a notice of appeal against an assessment has been lodged under section 101 or 105 or to the Court of Appeal -

- (a) the amount of tax payable under the assessment shall remain due and payable notwithstanding that appeal; and

(b) the tax due under the assessment may be recovered as if no appeal were pending.
(S.107(2) amended by No.3 of 1993, S.25)

(3) The Board may -

- (a) extend the period within which any income tax is payable; and
- (b) specify another date for payment;

and in particular, the Board may accept payment of tax by instalments with the addition of interest at such rate, as the Board may determine but not exceeding 15% per annum or such other rate as may be prescribed.

(4) Notwithstanding any other provision of this Act, the Board may, on the ground of a person's imminent departure from Kiribati, demand the immediate payment of any tax under an assessment and the tax shall be due and payable accordingly.
(S.107(4) substituted by No.3 of 1993, S.25)

(5) If any person to whom a demand is made under subsection (4) fails to pay the tax, the Principal Immigration Officer shall prevent the person from leaving Kiribati until the person -

- (a) makes payment in full; or
- (b) makes an arrangement satisfactory to the Board for the payment of the tax.
(S107(5) amended by No.3 of 1993, S.25)

(6) A letter from the Board to the Principal Immigration Officer that tax is due and payable by a person assessed to tax under subsection (4) shall be sufficient authority for the Principal Immigration Officer to act in pursuance of subsection (5).

Income tax as a debt due to the Republic

- 108.** (1) Any tax, interest or penalty assessed or imposed upon any person under this Act -
- (a) shall, when it becomes due and payable, be recoverable as a debt owing to the Republic; and
 - (b) may be sued for and recovered in a court of competent jurisdiction by the Republic with full costs of the suit from that person.
- (2) In any suit under subsection (1), the production of a certificate signed by the Board giving -
- (a) the name and address of the person who is the defendant in the suit, and
 - (b) the amount of tax, interest or penalty, as the case may be, due by the person,

shall be conclusive evidence that that amount is due from the person.

(S.108(2) amended by No.19 of 1997, S.6)

Interest on overdue payments of income tax

109. (1) Where any income tax payable under this Act is not paid on or before the due date, an additional sum by way of a penalty tax shall become payable, being the greater of \$10 or interest at the rate of 15% per annum or such other rate as may be prescribed on the unpaid income tax from the date by which it should have been paid until the date of payment.

(2) The provisions of this Act relating to the collection and recovery of income tax apply to the collection and recovery of any penalty imposed under this section as if it were an income tax.

(3) The Board may remit the whole or any part of any penalty imposed under this section if there is evidence which satisfies the Board that it will be harsh and unconscionable to impose such a penalty.

Refund or repayment of overpaid tax

110. (1) If it is proved to the satisfaction of the Board that any person has, for any tax year, paid tax by withholding or otherwise in excess of the amount which ought to have been paid for that year according to the assessment issued to the person, the person shall be entitled to a refund or a repayment of the amount so paid in excess.

(2) Every claim for a refund or a repayment under this section shall be made within 3 years of the end of the tax year to which it relates.

Interest payable on overpaid tax

111. (1) Where a taxpayer has appealed against an assessment but has paid the tax in dispute, the taxpayer shall be entitled to interest on any amount of tax paid which is found on appeal not to have been payable by the taxpayer.

(2) Interest under this section shall be paid at the rate payable by any commercial bank in Kiribati on any demand deposit, but not exceeding 10% per annum or such other rate as may be prescribed, calculated from the date of the taxpayer's notice of appeal.

Remission of tax

112. (1) The Minister, acting in accordance with the advice of the Cabinet, may remit in whole or in part the tax payable by any person -

- (a) on the ground of poverty; or
- (b) on the ground that the expense likely to be incurred in collecting or recovering such tax would be greater than the amount of tax payable or unpaid.

(2) The Minister, acting in accordance with the advice of the Cabinet, on being satisfied that it is just, equitable and in the public interest to do so -

- (a) may remit in whole or in part the tax payable by any person; or

- (b) may refund in whole or in part the tax already paid by any such person,

under this Act.

Provisional tax payable on income not subject to withholding of tax at source

113. (1) Where a taxpayer derives income in a tax year which is not subject to withholding of tax under Part XVII, the taxpayer shall be liable to pay a provisional tax on that income by 3 instalments due on 30 June, 30 September and 31 December of that tax year.
(S. 113(1) amended by No.3 of 1993, S.26(b))

(2) Where a taxpayer is a company with an accounting period for tax purposes ending on a date other than 31 December, the taxpayer shall be liable to pay a provisional tax by 3 instalments due 6, 9 and 12 months after the date on which such accounting period commences.
(S. 113(2) amended by No.3 of 1993, S.26(c))

(3) Each payment by instalment of tax referred to in subsections (1) and (2) shall represent 27.5% of the amount calculated by applying the average rate of tax of the taxpayer to the chargeable income in the most recent assessment received by the taxpayer which was not subject to withholding of tax under Part XVII; and for that purpose, the average rate of tax shall be the percentage that the income tax, after any foreign tax credit, bears to the chargeable income in the most recent assessment received by the taxpayer.
(S. 113(3) amended by No.3 of 1993, S.26(a))

(3A) Where rates of tax are changed, the average rate of tax referred to in subsection (3) shall be the percentage that the income tax, after any foreign tax credit, would bear to the chargeable income in the most recent assessment received by the taxpayer if the new rates of tax had applied for the tax year to which the assessment relates.
(S. 113(3A) inserted by No.3 of 1993, S.26(e))

(3B) Where a taxpayer has not received an assessment of tax, the Board may estimate the taxpayer's chargeable income for the tax year and any payment of the provisional tax payable under subsection (1) or (2) shall be one quarter of the amount of tax calculated by applying the appropriate tax rate scale for the taxpayer to that estimated chargeable income less the amount of tax estimated by the Board to be referable to income subject to withholding of tax under Part XVII.
(S. 113(3B) inserted by No.3 of 1993, S.26(e))

(4) In calculating the chargeable income that is not subject to withholding of tax under Part XVII, any deduction from income under this Act shall be allocated between that chargeable income and income subject to withholding of tax in the manner which the Board considers reasonable.

(5) The Board may reduce any payment of a provisional tax payable under this section where there has been a reduction in a tax year (compared to the most recent assessment received by the taxpayer) of a taxpayer's income which is not subject to withholding of tax under Part XVII.
(S. 113(5) amended by No.3 of 1993, S.26(f)(g))

(6) Any payment of tax under this section shall be a debt due to the Republic which may be sued for and recovered in a court of competent jurisdiction by the Republic with full costs of the suit.
(S. 113(6) amended by No.3 of 1993, S.26(h))

(7) When an assessment is issued for a tax year in respect of which any payment for the provisional tax is payable under this section -

- (a) the payment shall be credited against the tax liability of the taxpayer under the assessment; and

- (b) the tax payable under the assessment shall be reduced accordingly.

(S. 113(7) amended by No.3 of 1993, S.26(i)(j))

(8) Where any such payments for the provisional tax exceed the tax liability of the taxpayer under the assessment, the excess may be applied in reduction of -

- (a) any other tax due from the taxpayer; or

- (b) any payment for the provisional tax due for the tax year after that in respect of which the assessment was issued;

and any further excess shall be refunded to the taxpayer.

(S.113(8) amended by No.3 of 1993, S.26(k)(l))

Duties of agents, trustees, liquidators, etc.

114. (1) Any -

- (a) agent, trustee, attorney, factor, receiver, liquidator, partner or manager who has the receipt, control or disposal of any money belonging to a person deriving or having derived chargeable income; or
- (b) bank or any other financial institution, or any other person owing any money to a person deriving or having derived chargeable income,

on receipt of notice in writing from the Board, shall, to the extent specified in the notice, pay to the Board any money held on behalf of or owing to the person deriving or having derived chargeable income in respect of tax due and owing by that person.

(S.114(1) amended by No.3 of 1993, S.27)

(2) Any person making any payment under subsection (1) is discharged from any obligation to make any payment to the person deriving or having derived chargeable income to the extent of any payment made to the Board.

(3) Any person who receives any notice from the Board under subsection (1) shall be personally liable for tax due and owing from the person deriving or having derived chargeable income to the extent that the person fails to pay any money to the Board in accordance with the notice.

(4) Any person who, with respect to any asset in Kiribati, is -

- (a) a liquidator of a company;
- (b) a receiver appointed out of court or by a court;
- (c) a trustee for a bankrupt; or
- (d) a mortgagee in possession,

shall give notice to the Board of that fact within 14 days after being appointed to the position or of taking possession of any such asset, whichever first occurs.

(5) As soon as possible after receipt of a notice under subsection (4), the Board shall notify the liquidator, receiver, trustee or mortgagee, as the case may be, of any amount which appears to the Board to be sufficient to provide for any tax which is or will become payable by the person whose assets are in the possession of the liquidator, receiver, trustee or mortgagee.

(6) A liquidator, receiver, trustee or mortgagee shall not part with any asset in Kiribati of the person whose asset is in his possession without the prior written permission of the Board.

(7) A liquidator, receiver, trustee or mortgagee -

- (a) shall set aside out of any asset the amount notified by the Board under subsection (5), or such lesser amount as is subsequently agreed by the Board;
- (b) is liable to the extent of the asset set aside for the tax of the person whose asset is in his possession; and
- (c) may pay any debt that has priority over the tax referred to in this section notwithstanding any provision of this section.

(8) A liquidator, receiver, trustee or mortgagee shall be personally liable to the extent of the value of any asset required to be set aside under subsection (7) for the tax referred to in subsection (5) if, and to the extent that, he fails to comply with the requirements of this section.

(9) If any question arises as to whether any debt has priority under subsection (7), the question shall be determined by the Board, who shall notify the liquidator, receiver, trustee or mortgagee of the decision in writing; and the provisions of Part XV relating to appeals shall apply to any such determination of the Board as if it were an assessment.

PART XVII WITHHOLDING OF TAX AT SOURCE

Payments to employees

115. (1) For the purposes of this section -

"payment" means any payment of income referred to in section 18 in respect of employment;

"employee" means an individual exercising an employment;

"employer" means a person who employs any individual in an employment; and

"employment" includes -

- (a) the position of a person in the employ of some other person;
- (b) any directorship of a company;
- (c) any office or position entitling the holder to a fixed or ascertainable stipend or remuneration; and
- (d) any other office the holder of which is elected by popular vote or is elected or appointed in a representative capacity,

but excludes employment of an individual as a domestic servant where the remuneration is less than \$120 per month.

(S.115(1) amended by No.3 of 1993, S.28)

(2) Every employer shall withhold tax on any payment to an employee at such rate as is prescribed; and the tax shall be withheld -

- (a) whether or not, when the payment is made, an assessment has been issued in respect of the payment; or
- (b) whether or not the payment may be, in whole or in part, income of a tax year other than the tax year during which the payment is made.

(3) The Board may authorise lesser rates of withholding than those prescribed (including zero rates), where the employee has communicated to the employer in writing his tax file number issued pursuant to section 129(1).

(4) If any employer fails to withhold tax in accordance with subsection (2), the employer shall be personally liable to pay to the Board the amount of any tax which has not been so withheld; but the employer shall be entitled to recover any amount paid under this subsection from the employee in respect of whom the liability under this subsection arose.

(5) The Board may authorise an employer to vary the amount of any tax withheld under subsection (2) in respect of an employee if any of the following events occurs -

- (a) a change in the marital status of the employee;
- (b) the birth or adoption of a child to or by the employee; or
- (c) the ceasing of the employment of the spouse of the employee in respect of whom a spouse deduction under section 48 has been granted, if the Board is satisfied that the spouse is unlikely to resume employment in the tax year in respect of which any varied deduction is to be made.

(6) Every employer shall keep and maintain records in such form as the Board may approve showing -

- (a) any payment made to each employee of such employer; and
- (b) the amount of tax withheld in respect of each such employee pursuant to subsection (2).

(7) Every employer shall ensure that any records kept pursuant to subsection (6) are available for inspection at any reasonable time by the Board.

(8) Every employer shall, within 21 days after the end of each tax year, or within such further time as the Board may in any case allow, lodge with the Board -

- (a) a statement in the prescribed form specifying -
 - (i) the name and address of each employee of the employer;
 - (ii) the payments made to each employee during the tax year; and
 - (iii) the total amount of tax withheld from those payments during that year; and
- (b) details of any payment that is due but not defrayed to each employee during the tax year in question.

(9) Every employer shall -

- (a) complete a withholding tax certificate on a prescribed form in respect of each employee; and
- (b) dispose of such certificate in the manner specified in the form.

(10) One copy only of the withholding tax certificate maintained in respect of each employee shall be delivered to the employee by the employer -

- (a) on the date his employment terminates; or
- (b) within 21 days after the end of the tax year to which such certificate relates, whichever is the earlier.

(11) No employer shall, without the written consent of the Board, show or deliver to any employee any document stating or purporting to state the amount of tax withheld under subsection (2), other than a certificate delivered under subsection (10).

(12) Every employer to whom any withholding tax certificate is supplied shall account for its disposal to the Board within 21 days after the end of the tax year in respect of which the certificate was so supplied.

(13) Where any employee dies, his employer shall not make any payment due and payable to the estate or relative of the employee until the Board -

- (a) has been notified of the amount to be paid; and
- (b) has given a direction as to the amount of tax, if any, to be withheld from the payment.

(14) Where any employee has ceased to be employed by an employer and any amount withheld by that employer from any payment is less than required under subsection (2), the Board may -

- (a) notify any subsequent employer of that employee of the deficiency; and
- (b) require the subsequent employer to withhold tax up to the notified amount from any payment to the employee, in addition to any amount required to be withheld by that subsequent employer under subsection (2).

(15) Where any person first becomes an employer, that person shall register with the Board as an employer on the prescribed form within 30 days of the commencement of the employment.

(16) The Board may in writing require any employer, whether registered under subsection (15) or not, to provide such details as may be required -

- (a) to identify any person in that employer's employment; and
- (b) to ascertain any payment or anticipated payment to such person in respect of any tax year which the Board may specify.

(17) If any question arises in relation to an employer or an employee as to whether any amount is or is not a payment under this section, the question shall be determined by the Board, which shall notify the employer or employee of the Board's decision in writing; and the provisions of Part XV relating to appeals shall apply to any such determination of the Board as if it were an assessment.

Payments to contractors

116. (1) For the purposes of this section -

"contractor" means any person who enters into a contract for the provision of services;

"payment" means any payment in whole or in part in the nature of income by a principal to a contractor in respect of the provision of services, but excludes -

- (a) any payment by any individual for the provision of services by a domestic servant;
- (b) any payment by an individual for the provision of construction services in relation to the erection or improvement of the individual's home; and
- (c) any payment referred to in sections 115 and 117;

"principal" means any person who or which contracts with any contractor for the provision of services with an aggregate value of more than \$2,000 in any single month of the current or immediately preceding tax year;

(2) Every principal shall withhold tax on any payment of more than \$50 to any contractor at such rate as is prescribed; and the tax shall be withheld -

- (a) whether or not, when the payment is made, an assessment has been issued in respect of the payment; or
- (b) whether or not the payment may be, in whole or in part, income of a tax year other than the tax year during which the payment is made.

(3) The Board may authorise lesser rates of withholding than those prescribed (including zero rates), where the contractor has communicated to the principal in writing the contractor's tax file number issued pursuant to section 129(1).

(4) If any principal fails to withhold tax in accordance with subsection (2), the principal shall be personally liable to pay to the Board the amount of any tax which has not been so withheld; but the principal shall be entitled to recover any amount paid under this subsection from the contractor in respect of whom the liability under this subsection arose.

(5) The Board may in special circumstances authorise a principal to vary the amount of tax withheld under subsection (2).

(6) Every principal shall keep and maintain records in such form as the Board may approve showing -

- (a) any payment made to any contractor; and
- (b) the amount of tax withheld in respect of each such contractor pursuant to subsection (2).

(7) Every principal shall ensure that any records kept pursuant to subsection (6) are available for inspection at any reasonable time by the Board.

(8) Every principal shall, within 21 days after the end of each tax year, or within such further time as the Board may in any case allow, lodge with the Board -

- (a) a statement in the prescribed form specifying -
 - (i) the name and address of each contractor;
 - (ii) any payment made to the contractor during the tax year; and
 - (iii) the total amount of tax withheld from those payments during that year; and
- (b) details of any payment that is due but not defrayed to each contractor during the tax year in question.

(9) Every principal shall -

- (a) complete a tax withholding certificate on the prescribed form in respect of each payment of more than \$50 to each contractor; and
- (b) dispose of the certificate in the manner specified in the form.

(10) One copy only of the tax withholding certificate maintained in respect of any payment shall be delivered to the contractor by the principal on the date of the payment.

(11) No principal shall, without the written consent of the Board, show or deliver to any contractor any document stating or purporting to state the amount of any tax withheld under subsection (2), other than a certificate delivered under subsection (10).

(12) Every principal to whom any tax withholding certificate is supplied shall account for its disposal to the Board within 21 days after the end of the tax year in respect of which the certificate was so supplied.

(13) Where any contractor dies, no payment exceeding \$50 which is due and payable to the estate or any relative of the contractor shall be made by any principal until the Board -

- (a) has been notified of the amount to be paid; and
- (b) has given a direction as to the amount of tax, if any, to be withheld from the payment.

(14) Where any contractor has ceased for 6 months or more to receive any payment from a principal and any tax withheld by the principal from any payment is less than required under subsection (2), the Board may -

- (a) notify any subsequent principal of that contractor of the deficiency; and
- (b) require the subsequent principal to withhold tax up to the notified amount from any payment to the contractor in addition to any amount required to be withheld by that subsequent principal under subsection (2).

(15) Where any person first becomes a principal, that person shall register with the Board as a principal on the prescribed form within 30 days; that registration shall cease to be effective at the end of the tax year when the person ceases to be a principal, but if, thereafter, the person again becomes a principal, he shall so register under this section.

(16) The Board may, in writing, require any principal, whether registered under subsection (15) or not, to provide such details as may be required -

- (a) to identify any contractor in receipt of any payment from that principal; and
- (b) to ascertain any payment or anticipated payment to the contractor from that principal in respect of any tax year the Board may specify.

(17) If any question arises in relation to any principal or contractor as to whether any amount is or is not a payment within the meaning of this section, the question shall be determined by the Board which shall notify the principal or contractor of the Board's decision in writing; and the provisions of Part XV relating to appeals shall apply to any such determination of the Board as if it were an assessment.

International payments

117. (1) Upon making any payment of the kind referred to in section 90(1), the payer shall withhold the tax levied under that subsection from the payment; and the tax shall be withheld -

- (a) whether or not when the payment is made no assessment has been or will be issued in respect of the payment; or
- (b) whether or not the payment may be, in whole or in part, income of a tax year other than the tax year during which the payment is made.

(S.117(1) amended by No.3 of 1993, S.30)

(2) Every payer who withholds tax under subsection (1) shall forthwith furnish the person to whom the payment is made with a tax withholding certificate in the prescribed form showing the gross amount payable to the person, the amount of tax withheld and the net amount paid.

(3) Where payment of any dividend, interest, royalty, natural resource payment or management charge is to be made to any partnership or trustee and the payer is uncertain of the application of section 90(1), the payer may -

- (a) withhold tax at the standard rate of tax;
- (b) pay that tax to the Board; and
- (c) give a notice to the recipient of such payment in accordance with subsection (2),

in which event the payer shall be relieved of liability to pay the amount of tax withheld to the person entitled to the payment.

(4) If a partner, trustee or beneficiary proves to the satisfaction of the Board that all or part of a payment is not liable to tax under section 90(1), the Board shall refund all or part of any tax withheld pursuant to subsection (3) to the person entitled to it.

(5) Where any order made under section 90(4) is produced to the payer in respect of any payment under section 90(1)(a) or (b) -

- (a) the payer shall be relieved of any obligation imposed by this section and section 90, where the payment is exempt from tax; and
- (b) where the payment is subject to a reduced rate of withholding tax, the payer may satisfy any obligation imposed by this section and section 90 by withholding tax at the rate specified in such order.

(6) If a payer fails to withhold tax in accordance with subsection (1), the payer shall be personally liable to pay to the Board the amount of any tax which has not been so withheld; but the payer shall be entitled to recover any amount paid under this subsection from the person in respect of whom the liability under this subsection arose.

(7) Every payer shall keep and maintain records in such form as the Board may approve showing -

- (a) any payment subject to section 90(1); and
- (b) the amount of tax withheld in respect of each payment pursuant to subsection (1).

(8) Every payer shall ensure that any records kept pursuant to subsection (7) are available for inspection at any reasonable time by the Board.

(9) Every payer who is required to withhold tax under subsection (1) shall, within 21 days after the end of each tax year, or within such further time as the Board may in any case allow, lodge with the Board -

- (a) a statement in the prescribed form specifying -
 - (i) the name and address of each person to whom any payment from which tax was withheld was made;
 - (ii) any payment made during that tax year; and
 - (iii) the total amount of tax withheld from those payments during that year; and
- (b) details of any payment under section 90(1) that is due but not defrayed during the tax year in question.

(10) If any question arises in relation to a payer or payee as to whether any amount is or is not a payment from which tax is to be withheld under this section, the question shall be determined by the Board which shall notify the payer or payee of the decision of the Board in writing; and the provisions of Part XV relating to appeals shall apply to any such determination of the Board as if it were an assessment.

(11) In this section, "payer" means a person making any payment of the kind referred to in section 90(1).

Domestic payments

118. (1) For the purposes of this section -

"payee" means any taxpayer to whom any payment is made;

"payment" means any payment in whole or in part in the nature of income by a payer to a payee, but excludes any payment under sections 115, 116 and 117;

"payer" means a person that by any regulation has been declared to be a payer for the purposes of this section in respect of any transaction referred to in the regulation.

(S.118(1) amended by No.3 of 1993, S.31)

(2) Every payer shall withhold tax on any payment to any payee at such rate as is prescribed; and the tax shall be withheld -

- (a) whether or not when the payment is made no assessment has been issued in respect of the payment; or
- (b) whether or not the payment may be, in whole or in part, income of a tax year other than the tax year during which the payment is made.

(3) Every payer who withholds tax under subsection (2) shall forthwith furnish the person to whom the payment is made with a tax withholding certificate in the prescribed form showing the gross amount payable to the person, the amount of tax withheld and the net amount paid.

(4) If any payer fails to withhold tax in accordance with subsection (2), the payer shall be personally liable to pay to the Board the amount of any tax which has not been so withheld; but the payer shall be entitled to recover any amount paid under this subsection from the payee in respect of whom the liability under this subsection arose.

(5) The Board may -

- (a) in special circumstances authorise any payer to vary the amount of any tax withheld under subsection (2); or
- (b) authorise lesser rates of withholding than those prescribed (including zero rates), where the payee has communicated to the payer in writing the payee's tax file number issued pursuant to section 129(1).

(6) Every payer shall keep and maintain records in such form as the Board may approve showing -

- (a) any payment made to each payee; and
- (b) the amount of tax withheld in respect of each payee pursuant to subsection (2).

(7) Every payer shall ensure that any records kept pursuant to subsection (6) are available for inspection at any reasonable time by the Board.

(8) Every payer shall, within 21 days after the end of each tax year, or within such further time as the Board may in any case allow, lodge with the Board a statement in the prescribed form specifying -

- (a) the name and address of each payee;
- (b) any payment made to the payee during that tax year; and
- (c) the total amount of tax withheld from those payments during that year.

(9) When a person first becomes a payer, that person shall register with the Board as a payer in the prescribed form within 30 days; that registration shall cease to be effective at the end of a tax year when the person ceases to be a payer, but if, thereafter, the person again becomes a payer, that person shall so register under this section.

(10) The Board may, in writing, require any payer, whether registered under subsection (9) or not, to provide such details as may be required to identify any payee in receipt of any payment from that payer and to ascertain any payment or anticipated payment to that payee in respect of any tax year the Board may specify.

(11) If any question arises in relation to a payer or payee as to whether any amount is or is not a payment under this section, the question shall be determined by the Board, which shall notify the payer or payee of the decision of the Board in writing; and the provisions of Part XV relating to appeals shall apply to any such determination of the Board as if it were an assessment.

Priority of tax withheld

119. (1) Any amount of tax withheld by any person under this Part -

- (a) shall be deemed to be held in trust by the person for the Republic; and
- (b) shall not be subject to attachment in respect of any debt or liability of such person;

and in the event of any liquidation, assignment or bankruptcy of any such person, an amount withheld under this Part -

- (i) shall not form part of the estate in liquidation, assignment or bankruptcy; and
- (ii) shall be paid in full to the Board before any distribution of property is made.

(2) Every sum which any person is required under this part to withhold from any payment shall be -

- (a) a first charge on that payment; and
- (b) withheld prior to any other deduction which the person may be required to make by virtue of an order of a court or any other law.

Adjustment on assessment

120. (1) Where any tax has been withheld under this Part, the amount of the tax shall, for the purposes of this Act, be deemed to have been received at the time it was withheld, by the employee, contractor or payee, as the case may be, to whom was made the payment from which the tax was withheld; and the income of such employee, contractor or payee, as the case may be, shall be calculated accordingly.

(2) Any tax which is withheld from any payment under this Part shall be -

- (a) deemed to have been paid by the person to whom the payment is made; and
- (b) set off, for the purpose of collection of tax by assessment, against the tax assessed on the person for the tax year in which the payment is made;

but in any case where the income of a person from which tax was withheld is exempt under section 90(2), the tax shall not be so set off.

(3) Where any tax withheld pursuant to this Part exceeds the tax liability pursuant to an assessment of the taxpayer to whom the payment is made, the excess may be applied in reduction of any other tax due from the taxpayer and any further excess shall be refunded to the taxpayer.

Payment of tax withheld

121. (1) Every employer, principal or payer, as the case may be, shall pay to the Board the amount of any tax withheld under this Part within 15 days after the end of the month in which the tax was so withheld.

(2) Any person who fails to comply with subsection (1) shall be liable to pay to the Board an additional sum of 15% of the amount of any tax which that person has failed to pay to the Board or at such other rate as may be prescribed.

(3) The Board may reduce or remit in whole the amount of any additional sum recoverable under subsection (2) if a satisfactory explanation for the delay is provided.

(4) Any additional sum recoverable under subsection (2) shall be borne personally by the person on whom it is levied, and no part thereof shall be recoverable from any employee, contractor or payee, as the case may be, or credited against any assessment to income tax.

(5) The provisions of this Act relating to the collection and recovery of tax shall apply -

- (a) to the collection and recovery of any amount withheld under this Part; and
- (b) to any liability on the employer, principal or payer, as the case may be, for failure to withhold tax in accordance with this Part,

as if the amount required to be withheld were tax which was due for payment within 30 days of the date of the payment from which tax was or should have been withheld under this Part.

PART XVIII OFFENCES AND PENALTIES

Offences

122. (1) Any person who, without reasonable excuse, -

- (a) fails to provide, within the required period, any return, statement or document or to take any action required under this Act; or
- (b) fails to keep and maintain records required to be kept pursuant to section 99,

commits an offence.

(2) Any person who in relation to the income tax affairs of that person or another person -

- (a) makes any false return of income by omitting or understating any income which should have been stated in the return;
- (b) makes any false return of income by overstating any deduction or claiming any deduction to which the person or such other person is not entitled;
- (c) makes any false statement in any return which such person is required under this Act to make;
- (d) gives any false information to any public officer in relation to any matter relating to income tax;

- (e) maintains or authorises the maintenance of any false book of account or other records or falsifies or authorises the falsification of such book of account or records;
- (f) makes use of any fraud or authorises the use of any fraud;
- (g) makes any fraudulent claim for the repayment or refund of any tax; or
- (h) obstructs, hinders or otherwise prevents the Board in, or from, the exercise of any power or the performance of any function conferred upon the Board by or under section 127, 131 or 132,

commits an offence.

(3) Where under sections 57(1) and (2), 60(1) and (2), 66(2) and (3) or 92(3), a partnership, trust, company or non-resident is required to have a Nominated Partner, Nominated Trustee, Nominated Company Officer or Nominated Agent, as the case may be, and the relevant person is not notified to the Board by the partners, trustees, company or non-resident, each partner, each trustee, the company or the non-resident, as the case may be, commits an offence.

(4) Any person convicted of any offence under this section shall be liable to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 24 months or to both such fine and imprisonment.

(5) Any proceeding for an offence under this section may be instituted at any time within 6 years after the end of the tax year in respect of which the offence was committed.

(6) Where any person admits in writing the commission by that person of any offence under this section, the Board may, instead of initiating any proceeding before a court and with the written consent of the Attorney-General, compound the offence and accept such sum of money not exceeding the amount of the fine to which such person would have been liable if convicted of such an offence.

(7) Where any person has been convicted of any offence under subsection (2), the court may, without prejudice to subsection (4), assess such person to a penalty tax of up to twice the amount of any tax for which such person is liable under this Act for the tax year in respect of which the offence was committed.

Offences by corporate bodies

123. (1) Where any offence under this Act has been committed by a company which is a corporate body, every person who at the time of the commission of the offence -

- (a) was a director, general manager, secretary or other similar officer of the company; or
- (b) was acting or purporting to act in any such capacity,

shall be deemed to have committed an offence.

(2) It shall be a defence to a prosecution under subsection (1) that -

- (a) the offence was committed without such person's consent or knowledge; and
- (b) the person exercised all such diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of such person's functions and all the circumstances.

(3) This section shall apply to any officer of any statutory corporation.

Tax payable despite prosecutions

124. The institution of a prosecution against any person for any offence under this Act, or the punishment of such person consequent upon any such prosecution, shall not relieve that person from liability for the payment of any tax including penalty tax, for which such person is or may be liable.

Penalties where anti-avoidance provisions are applied

125. (1) Where the Board -

- (a) has applied Part XIII in assessing a taxpayer to any tax or in the application of section 90; or
- (b) is of the opinion that there has been fraud or gross or wilful neglect in preparation of any return of income under this Act,

the Board may assess the taxpayer to a penalty tax of up to twice the amount of the tax that -

- (i) would have been avoided but for the application of Part XIII; or
- (ii) would have escaped assessment because of such fraud or gross or wilful neglect,

as the case may be.

(2) Where the Board has assessed any taxpayer to a penalty tax under subsection (1), the assessment shall state clearly that the penalty tax has been levied -

- (a) as a result of the application of the anti-avoidance provisions of Part XIII; or
- (b) for fraud or gross or wilful neglect in the preparation of a return of income,

as the case may be.

(3) Where the Board has assessed a person to a penalty tax under subsection (1), the person may challenge -

- (a) the assessment by notice of appeal under Part XV; and
- (b) in such an appeal both -
 - (i) the application of Part XIII or the existence of any fraud or gross or wilful neglect; or
 - (ii) the reasonableness of the penalty tax in the circumstances.

Collection and remission of penalties

126. (1) The provisions of Part XVI relating to the collection and recovery of tax shall apply to the collection and recovery of any penalty tax or fine imposed under this Part as if it were a tax.

(2) Where this Part provides for the levy of any penalty tax by assessment, the Board may issue such an assessment whether or not a return has been filed; and the power to issue any amended assessment and the time limits under section 100 shall apply to such an assessment.

(3) The Minister may remit the whole or any part of any penalty tax imposed under section 125 if there is evidence which satisfies the Minister that it will be harsh and unconscionable to impose such penalty.

PART XIX ADMINISTRATION

Functions of Internal Revenue Board and delegation

127. (1) The Board shall carry out any function assigned to it under this or any other Act.

(2) The delegation of any function under this Act shall be made in accordance with Part III of the Internal Revenue Board Act 1990.

Forms

128. The Minister may, after consultation with the Board, by order, prescribe the form of any return, notice or other document required or authorised to be prescribed for the purposes of this Act, and, where any form has been so prescribed, the return, notice or other document shall be in the form so prescribed.

Tax file number

129. (1) The Board -

- (a) shall keep and maintain in respect of each taxpayer a separate and distinct tax file;
- (b) shall assign a separate and distinct number to that file; and
- (c) shall issue that number to the taxpayer concerned.

(2) If requested to do so by any person, whether or not a taxpayer, the Board shall comply with subsection (1) in relation to that person.

(3) The Board may require that the tax file number referred to in subsections (1) and (2) shall be included in any return, notice or other document prescribed under section 128, or in any other document used for the purposes of this Act.

(4) No person shall be issued more than one tax file number at any one time.

(5) Notwithstanding the secrecy provisions of the Internal Revenue Board Act and section 133 of this Act, the Board may disclose the tax file number of a taxpayer to any person in the performance of its function under, or in connection with this Act or any other Act or as required by any other legal duty. *(S.129(5) substituted by No.3 of 1993, S.32)*

(6) The Board may at any time cancel the tax file number issued to any person and issue a new tax file number to the person.

Power to declare a person to be the agent of another person

130. The Board may, in any case where it considers it necessary to do so, by notice in writing to any person, declare such person to be the agent of another person, and the person so declared to be an agent shall be deemed to be the agent of such other person for all the purposes of this Act.

Access to books and records

131. (1) The Board may at any reasonable time and without any prior notice have such full and free access to any building, place, book, records or computer as is reasonable for any of the purposes of this Act.

(2) The Board may make an extract or copy from any book, records or computer-stored information to which access is obtained under subsection (1).

(3) Any person who exercises any power under subsections (1) and (2) on behalf of the Board is not entitled to enter or remain in any building or place if, upon being requested by the occupier of the building or place, he does not produce an authority in writing from the Board to the effect that he is authorised to exercise that power under this section.

(4) The occupier of any building or place entered or proposed to be entered under this section shall provide all reasonable facilities and assistance for the effective exercise of any power under this section.

Notice to obtain information or evidence

132. (1) The Board may, by notice in writing, require any person, whether a taxpayer or not, including any public officer or any employee of a public authority or statutory corporation, to furnish such information as may be required by the notice.

(2) The Board may -

- (a) by notice in writing, require any person, whether a taxpayer or not, including any public officer or any employee of any public authority or statutory corporation, to attend and give evidence before a public officer designated in the notice concerning that person's or any other person's income or assessment; and
- (b) for that purpose require such person to produce any book, records or computer-stored information or any other information in the control of that person.

Secrecy

133. (1) The provisions relating to secrecy in the Internal Revenue Board Act 1990 apply to this Act.

(2) Where an agreement for the avoidance of double taxation which has been made between the Republic and the Government of any other country has effect under section 94 and contains any provision for the mutual exchange of information, nothing in this section or the Internal Revenue Board Act 1990 or any other Act shall prevent the furnishing of that information to that other Government in accordance with that provision.

PART XX MISCELLANEOUS PROVISIONS

Regulations and amendment of schedules

134. The Beretitenti, acting in accordance with the advice of the Cabinet, may -

- (a) make regulations prescribing any matter that is necessary or convenient to be prescribed under this Act;
- (b) make regulations giving full effect to this Act and for its due administration; and
- (c) amend the Schedules to this Act.

Repeals

135. (1) Subject to subsection (2), the Income Tax Ordinance (Cap. 44) and any regulations made thereunder (in this Part referred to as the "Repealed Legislation") are hereby repealed.

(2) Subject to section 138 the Repealed Legislation shall continue to apply to income of any tax year prior to 1990 in the manner it would have applied if it had not been repealed.
(S.135(2) amended by No.19 of 1997, S.7)

Effect of this Act on Repealed Legislation

136. (1) Any order made under section 10, 30 or 61 of the Repealed Legislation shall, for the purposes of this Act, be treated as if it were made under section 82, 94 or 130, as the case may be.

(2) Where, under this Act -

- (a) any deduction is available in respect of the cost of any asset (other than depreciation under section 34) or activity; or
- (b) any gain or loss on any asset or liability is subject to this Act and was not subject to the Repealed Legislation,

the value of such asset, activity or liability on the date that this Act comes into operation shall be used in the calculation of any income or deduction as from that date.

(3) Where a depreciation deduction arose pursuant to the Repealed Legislation, the deduction under section 34 shall be calculated as if the Repealed Legislation continued in force.

Transitional arrangement not covered under this Part

137. The Beretitenti, acting in accordance with the advice of the Cabinet, may, by order, prescribe transitional arrangements with respect to any matter which is not covered by any of the provisions of this Part.

Assessments under Repealed Legislation

138. Any Income Tax assessment and any Notice of Assessment made in accordance with section 100, and served in accordance with any Regulations made hereunder, in respect of income tax for any tax year prior to 1990 shall be deemed to be an assessment or a Notice of assessment, as the case maybe, made and served in accordance with the Repealed Legislation and any such assessment or Notice of Assessment shall in all respects be valid and apply as if it had been properly made and served by the Minister in accordance with the Repealed Legislation.
(S.138 inserted by No.19 of 1997, S.8)

SCHEDULES**SCHEDULE 1****(section 6)****Resident individual tax rate scale**

The chargeable income of any resident individual taxpayer shall be subject to tax at the following rates -

\$1 - 1,800	. . .	nil
\$1,801 - 15,000	. . .	20% on the excess over \$1,800
\$15,001 - 20,000	. . .	25% on the excess over \$15,000
\$20,001 - \$50,000	. . .	30% on the excess over \$20,000
above \$50,000	. . .	35% on the excess over \$50,000

SCHEDULE 2**(section 7)****Resident company tax rate scale**

(1) The chargeable income of any resident company shall be subject to tax at the following rates -

\$1 - \$25,000	. . .	20%
\$25,001 - \$50,000	. . .	30%
\$50,001 and above	. . .	35% on the excess over \$50,000

(2) Where the total chargeable income of companies which are associates exceeds \$50,000 (disregarding any tax loss incurred by any of the companies), the tax rates in paragraph (1) shall be applied to that total and the average rate of tax on that total shall then be applied separately to the chargeable income of each company.

(3) Paragraph (2) shall not apply to corporations wholly or partly controlled by the Republic of Kiribati unless the Minister directs the Board to apply paragraph (2).

SCHEDULE 3**(section 8)****Trustees' tax rate scale**

The chargeable trust income of any trustee referred to in section 8(1) shall be subject to tax at the rate equivalent to the maximum tax rate applied to the chargeable income of resident individuals under Schedule 1.

SCHEDULE 4**(section 32)****Provisions allowable as deductions**

Any taxpayer who is accounting for tax purposes on an accrual basis may claim a deduction for a reasonable provision in respect of any of the following matters -

- (a) annual leave;
- (b) repairs;
- (c) slipping of ships; and
- (d) non-accountable leave grant

SCHEDULE 5
Rates of depreciation **(section 34)**

Asset type	Amount of Depreciation Deduction
Industrial building	5% of cost
Motor vehicles	20% of the written down value
Furniture & fittings	25% of the written down value
Ship	10% of cost
Tanks, referred to in section 34(2)(e)	3% of cost
Any other article, machinery or plant	25% of the written down value

SCHEDULE 6
Property income tax rate scale of minors **(section 6(3))**

(1) The chargeable property income of any resident unmarried minor shall be subject to tax at the rate equivalent to the maximum tax rate applied to the chargeable income of resident individuals under Schedule 1.

(2) In calculating the chargeable income that is property income of any resident unmarried minor, deductions shall be allocated between property and other income in such manner as the Board considers reasonable.

SCHEDULE 7
Exempt income **(section 75(b))**

Any amount paid to any designated officer under the Overseas Service Aid (Kiribati) Agreement 1980 between the Republic and the Government of the United Kingdom and Northern Ireland or under any other similar arrangement between the Republic and any foreign Government or International Organisation.

SCHEDULE 8
Pioneer industries **(section 82)**

1(1) The Beretitenti, acting in accordance with the advice of the Cabinet, may, by order, declare any company which proposes to carry on a business in Kiribati of a kind or type specified in the order to be a pioneer company with respect to that business.

(2) An order shall also state the following particulars

- (a) the output of the specified kind or type of business in the form of any goods, produce, intangible property or services to which the order relates;

- (b) if the income of the company which is subject to the order is to be taxed at a rate other than 10%, then the income tax treatment to be accorded to income derived from the sale, provision or other dealing with the output of the pioneer company; and
- (c) the date of production, being the date by which, in the opinion of the Cabinet, the pioneer company may reasonably be expected to derive income of the kind and type specified in sub-paragraph (b).

2. In formulating its advice, the Cabinet -

- (a) shall have regard to the economic and any other benefit likely to accrue to Kiribati from the making of an order under this Schedule; and
- (b) shall only advise that an order should be made if it is of the opinion that it would be in the public interest to make such an order.

3(1) Any application for an order under paragraph 1 shall be made to the Board for reference to the Cabinet in accordance with the provisions of this paragraph.

(2) The application -

- (a) shall be made by the company which proposes to commence the business or by any other person intending to be concerned in the formation of any such company; and
- (b) shall contain the following particulars -
 - (i) the nature of the business which it is proposed that the company shall commence;
 - (ii) a detailed estimate of any benefit to the economy to be expected from the business;
 - (iii) the estimated date of production;
 - (iv) the estimated amount and purpose of the capital to be employed in the business and the source from which that capital will be obtained;
 - (v) the conditions under which workers will be employed, their numbers and provisions for their housing;
 - (vi) evidence that the business will be provided with effective and competent management; and
 - (vii) such other particulars or information as the Board may require.

4(1) The terms of any order which it is proposed should be made under paragraph 1 shall be published in Kiribati in such manner as the Cabinet may direct.

(2) The publication of such an order shall include a notice that any person who objects to the making of such order may state the grounds of his objection in writing to the Cabinet on or before such day, not being less than 1 month after the date of such publication, as may be specified in the notice.

(3) The order shall be laid before the Maneaba ni Maungatabu not less than 48 hours before the commencement of the next meeting of the Maneaba ni Maungatabu after the order is issued and shall not be made before that day and until every valid objection thereto has been considered by the Cabinet.

(4) Where the terms of any proposed order have been varied in consequence of any objection, the Beretitenti, acting in accordance with the advice of the Cabinet, may make the order, as so amended, without further notice under this paragraph.

5(1) The chargeable income from the specified type or kind of business arising from the sale, provision or other dealing with the output of any pioneer company for each year comprised within its tax concession period (or such shorter period as the order specifies) shall be taxed at the rate of 10% unless the order referred to in paragraph 1 specifies a different rate which shall not be higher than the standard rate of tax as specified under section 9 of this Act.

(2) Where the order specifies a different rate of tax or that the income is exempt from tax, the income shall be taxed accordingly.

(3) In the calculation of chargeable income, the Board may determine the allocation of deductions of the company between the income subject to special taxation under this Schedule and its other income.

6(1) An order may be revoked or amended by the Beretitenti, acting in accordance with the advice of the Cabinet, in any case where it appears to the Cabinet that any estimate made in the application or any information supplied by the applicant in connection with such application was recklessly or wilfully erroneous and misleading.

(2) Upon the revocation of an order under sub-paragraph (1), notice thereof shall be published in Kiribati in such manner as the Cabinet may direct, and the revocation shall have effect for the purposes of this Act from the commencement of the year in which the order is revoked.

7. An order -

- (a) shall be made once only in respect of a particular nominated business, whether to the company that obtained the order or another company;
- (b) shall not be granted to the same company in respect of a business that is similar to the business specified in the order; and
- (c) shall not be granted in respect of a business similar to that of another company that has received an order, if there is 50% or more commonality in the underlying ownership or control of the applicant company and the other company.

8. Notwithstanding the provisions of paragraph 1, an order may be made under that paragraph in favour of an individual or partnership of individuals whose names are specified in the order; and paragraphs 1(2)(b) and 5(1) shall apply in such a case, on the basis that the tax rate specified is 15%, and as if such an individual were a company.

9(1) The value of the specified type or kind of business shall be determined by the Board at the end of its tax concession period and notified in writing to the taxpayer.

(2) In calculating any chargeable income later arising from a sale, at a profit, of that business as a going concern, such value shall be treated as the cost of the business.

9A(1) Notwithstanding any provision of this Schedule but subject to subparagraph (3), any new business established on any outer island shall be deemed to be a business established by a pioneer company for the purposes of paragraph 1(1) of this Schedule.

(2) Accordingly the chargeable income arising from the sale, provision or other dealing with the output of any such business for each year comprised in the period starting from the date such business is established and ending with the year in which the 5th anniversary of the date on which such business starts production falls, shall be exempt from tax.

(3) The Minister, acting in accordance with the advice of the Cabinet, may revoke any pioneer status acquired by virtue of subparagraph (1) in any case where it appears to the Cabinet that -

(a) the social and economic development of the outer island concerned was not the principal purpose of establishing the business; or

(b) it is otherwise in the public interest to do so.

(c) For the purposes of this paragraph -

“outer island” means any of the islands of which the land territory of Kiribati is comprised and more particularly specified in Schedule 2 to the Constitution, with the exception of South Tarawa and Kiritimati”.

10. In this Schedule -

"date of production" means the date of production specified in the relevant order;

"order" means an order made under paragraph 1;

"tax concession period" means the period starting from the date of the order and ending with the year in which the 5th anniversary of the date of production falls; however where the order relates to mining the period shall end with the year in which the 10th anniversary of the date of production falls.

SCHEDULE 9

(Sections 47,48)

Personal deductions

- (1) The personal deduction for the purposes of section 47(1) is \$900.
- (2) The personal deduction for the purposes of section 47(3) is \$1700.
- (3) The personal deduction for the purposes of section 48 is \$900.

This printed impression has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on 19th December, 1989 and is found by me to be a true and correctly printed copy of the said Bill.

Clerk to the Maneaba ni
Maungatabu

I certify that the above Act, was on the 19th December, 1989, passed by the Maungatabu on a certificate of urgency under section 68(3)(a) of the Constitution

Speaker

Published by exhibition -
(a) at the Public Office of the Beretitenti this
day of 1989.

Secretary to the Cabinet

(b) at the Maneaba ni Maungatabu this
day of 1989.

Clerk to the Maneaba ni
Maungatabu.