

**5. Chargeable income. Cases**

5. (1) Income tax shall, subject to the provisions of this Act, be payable by every person at the rate or rates specified hereafter for each year of assessment in respect of all income, profits or gains respectively described hereunder-

(a) the annual profits or gains arising or accruing-

(i) to any person residing in the Island from any kind of property whatever, whether situated in the Island or elsewhere; and

(ii) to any person residing in the Island from any trade, business, profession, employment or vocation whether carried on in the Island or elsewhere; and

(iii) to any person, whether a Commonwealth citizen or not, although not resident in the Island, from any property whatever in the Island, or from any trade, business, profession, employment or vocation exercised within the Island, or from the provision to any person residing in the Island of industrial or commercial information or advice, or management or technical services, or similar services or facilities, or plant or equipment on hire (otherwise than under a bona fide hire-purchase agreement as defined in subsection (1) of section 2 of the Hire-Purchase Act);

(b) profits or gains accruing in or derived from the Island or elsewhere, and whether received in the Island or not in respect of-

(i) dividends (other than those falling within exception (b) of paragraph (1) of the table contained in section 34), discounts, interests, (including interest referred to in section 31A), annuities, pensions or other annual sums;

(ii) rents, royalties, premiums and any other profits arising from property;

(iii) any employment or vocation;

(iv) distributions (not falling within sub-paragraph (i) ) by a body corporate subject to company profits tax,

(v) the sale or redemption of any units in a money market fund as defined in section 31A (6), which fund are acquired under a policy of insurance issued on or after the 1st of June, 1999.

(c) all emoluments arising or accruing to any person (or any member of his family or household) by reason of his office or employment of profit:

Provided that-

(i) the said emoluments shall not include-

(A) any payment made to an employee in respect of meal allowance in relation to work done outside

of normal working hours; or

(B) any payment of an allowance in respect of the provision of a uniform or the laundering thereof to an employee who falls within any of the categories specified in Appendix B of Part I of the Second Schedule, and who the Commissioner is satisfied is required to wear a uniform for the purpose of protection or identification in the interest of safety, security or public health, or for any purpose as may be required by law or pursuant to any international agreement so, however, that, the maximum amount of allowance which shall be allowable shall be \$5,739 per annum in respect of the provision of uniform and \$3,395 per annum in respect of laundry or such other amounts as the Minister may be order prescribe."

(ii) the said emoluments shall not include emoluments of an office or employment of profit held by a person in the course of a trade, profession or business if either-

(A) any emoluments of that office or employment were taken into account in the case of that person in computing the profits or gains of that trade, profession or business for the purposes of income tax for the year of assessment, or

(B) the office or employment is such that the emoluments thereof would ordinarily be taken into account in computing the profits or gains of that trade, profession or business;

(iii) the annual value of accommodation provided among the emoluments of any person shall, for the purposes of this paragraph, be determined by the Commissioner having regard to such regulations (if any) as may be prescribed by the Minister but, subject to section 40A, as regards any person -

(A) where the annual value is not greater than the total emoluments (other than the value of accommodation) paid or payable for the year of assessment to such person, such annual value shall be deemed not to exceed 15 per cent of such emoluments;

(B) where the annual value is greater than the total emoluments (other than the value of accommodation), such annual value shall be deemed to be 15 per cent of the average of the annual value plus other emoluments including emoluments paid by connected persons.

(iv) the said emoluments shall not include-

(A) any lump sum paid out of the Consolidated Fund or any other fund or account designated by the Minister as being a public fund or account, or

(B) such other sums as may be excepted by the Minister by order subject to affirmative resolution by the House of Representatives, being sums (or portions of sums) paid in respect of termination of employment whether by way of commutation of pension, terminal gratuity, severance pay or compensation for accident, illness, redundancy, loss of office or wrongful dismissal, or otherwise,

and any order under sub-paragraph (B) may include provision whereby portions of sums mentioned

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in that sub-paragraph which are not excepted by the order may be treated as income accruing over such period as may be specified in the order;

(v) where by reason of a person's employment a motor vehicle is made available (without any transfer of the property in it) for the private use of that person or members of his family or household, then the value of any benefit accruing therefrom shall be determined by the Commissioner having regard to such regulations (if any) as may be prescribed by the Minister;

(vi) the said emoluments shall not include any sum paid in respect of the maintenance of a telephone made available at the residence of a person and used for purposes connected with his employment;

(vii) where a credit card is provided for any person (hereinafter in this section referred to as the employee) by reason of his employment then-

(A) without prejudice to the provisions of section 13, on each occasion that the employee uses the credit card to obtain money, goods or services, he shall be treated as having received from his employment an emolument of an amount equal to the expense incurred by the person providing the credit card in or in connection with the provision of the money, goods or services obtained but the actual money, goods or service obtained by the employee by the use of the credit card, shall be disregarded; and

(B) the expense incurred by the person providing the credit card shall be treated as reduced by any part of that expense made good to that person by the employee;

(viii) the said emoluments shall not include any sums used by employees to acquire shares or shares options pursuant to a plan approved under the Employees Shares Ownership Plan Act to the extent that the sums so used are relieved of income tax under that Act.

(ix) where under the terms of a contract or arrangement any person (in this section called "the employee") is under an obligation to render personal services to another person (in this section called "the employer") whether on his own behalf or on behalf of a company, and -

(A) the employee is subject to, or to the right of supervision, direction or control by the employer as to the manner in which he renders those services; and

(B) the remuneration for the services would not, apart from this paragraph, be treated as emoluments,

then, the relevant services shall be treated as duties of an office or employment of profit held by the employee and the income arising or accruing therefrom shall be treated as emoluments of that office or employment and accordingly, the employer shall deduct from the remuneration, the income tax payable.

(2) [*Deleted by Act 4 of 1986.*]

(3) For the purposes of this Act a trade, business, employment, profession or vocation shall not be

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treated as being exercised otherwise than within the Island solely by reason that contracts made in the course thereof are made outside the Island, if they are made as a result of or in connection with activities pursued within the Island.

(4) Where a person (in this subsection called the operator) carries out a transaction which apart from this subsection would not be treated as the exercise by him of a trade or business, it nevertheless shall be so treated if-

(a) similar transactions are carried out by other persons (whether before or after the first mentioned transaction), otherwise than in the course of activities which (apart from this subsection) constitute a trade or business, but in circumstances which make those similar transactions relevant (as mentioned below) for the purposes of this subsection; and

(b) the first-mentioned transaction would, if those similar transactions had instead been carried out by the operator, be treated (apart from this subsection) as the exercise of a trade or business;

and a similar transaction is relevant for the purposes of this subsection if it is carried out-

(i) by an immediate relative of the operator's, or

(ii) where the operator or an immediate relative of his is a trustee or settlor of a settlement, by any settlor or trustee of that settlement, or

(iii) by a body corporate of which the operator or the operator and immediate relatives of his, has or have control, or

(iv) where the operator is a body corporate, by a body corporate which has control of the operator,

or if it is carried out by any other person under an agreement or arrangement between him and the operator whereby the whole or a part of any profit arising from the transaction passes to the operator or any person mentioned in subparagraphs (i) to (iv):

Provided that a similar transaction carried out by a person mentioned in sub-paragraphs (i) to (iv) is not so relevant if the operator proves that it was not carried out under an agreement or arrangement with him.

(5) For the purposes of subsection (1)-

(a) references to the members of a person's family or household are references to that person's spouse, his children and their spouses, his parents, servants, dependants and guests;

(b) "credit card" includes a card, token, document, object or other thing given to a person by another person who undertakes-

(i) that on the production of it (whether or not some other action is also required) he will supply

money, goods and services (or any of them) on credit; or

(ii) that where, on the production of it to a third party (whether or not some other action is also required) the third party supplies money, goods and services (or any of them) he will pay the third party for them (whether or not taking any discount or commission),

and the use of any object to operate a machine provided by the person giving the object or by a third party shall be treated as production of the object to that person or third party, as the case may be.

(6) For the year 1983 or any subsequent year of assessment, the income derived exclusively from the carrying on by an approved farmer of a prescribed agricultural activity as defined in subsection (14) of section 36D, shall be relieved from income tax.

(7) Where a person acquires the right to receive the amount (with or without interest) stated in a bond, certificate of deposit, debenture, note or other similar instrument issued to him or any other person, then any profits or gains accruing to him -

(a) from the disposal of that right; or

(b) except so far as it is a right to receive interest, from exercise of that right, and which would, but for this provision not be taken into account as profits of a trade or business or be otherwise chargeable to tax shall be treated as profits or gains chargeable to tax under subsection (1) (b).