

SAMOA

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2012, No. 21

AN ACT to impose income tax, and to repeal the Income Tax Act 1974 and the Income Tax Rates Act 1974, and for related matters.
[25th June 2012]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

PART 1
PRELIMINARY

1. Short title and commencement-(1) This Act may be cited as the Income Tax Act 2012.

(2) This Act commences on 1 January 2013.

(3) This Act applies to tax years effective from 1 January 2013.

2. Interpretation - In this Act, unless the context otherwise requires:

“acquisition”, in relation to an asset, has the meaning in section 69;

“Act” includes Ordinance;

“amortisation deduction”, in relation to an intangible, means the deduction allowed under section 33;

“amount” includes an amount-in-kind;

“approved form” has the meaning in the Tax Administration Act 2012;

“approved fund” has the meaning in section 3;

“assessable income” has the meaning in section 14;

“asset” includes a capital asset, depreciable asset, intangible, goodwill, or trading stock;

“associate” has the meaning in section 4;

“bonus debenture” means a debenture issued by a company or an associate to a member when the amount of the debentures issued to each member is determined by reference to the number of membership interests held, the nominal or paid-up value of membership interests held, or by reference to any other basis relating to membership interests held;

“business” includes the following:

(a) a profession, trade, manufacture, or undertaking carried on for pecuniary profit, but does not include employment;

(b) a venture or concern in the nature of a trade or manufacture;

(c) an undertaking or scheme entered into or devised for the purpose of making a profit, being an undertaking or scheme not covered by paragraph (a) or (b).

“business income” has the meaning in section 15;

“capital asset” means any form of property and includes:

(a) an option, debt, chose in action, any other right, goodwill, and any other form of incorporeal property; and

(b) any form of property created or constructed, or otherwise coming to be owned without being acquired,

but does not include trading stock, primary produce, foreign currency, or a personal asset.

“Commissioner” has the meaning in the Tax Administration Act 2012;

“company”:

(a) means -

(i) a body or association of persons corporate or unincorporated, whether incorporated or formed in Samoa or elsewhere, and includes a public body; or

(ii) an association of persons created outside Samoa that has legal characteristics substantially similar to those of a company incorporated in Samoa; and

(b) does not include a partnership, statutory authority public authority or statutory authority.

“Comptroller” means the person appointed or acting as the Comptroller of Customs established under section 6 of the Customs Act 1977;

“consideration”, in relation to an asset, has the meaning in section 72;

“cost”, in relation to an asset, has the meaning in section 71;

“debt obligation” means an obligation to make a repayment of money to another person, including accounts payable and the obligations arising under promissory notes, bills of exchange, and bonds;

“depreciable asset” means any tangible personal property or structural improvement to real property that:

(a) has a useful life exceeding one (1) year; and

(b) is likely to lose value as a result of normal wear and tear, or obsolescence; and

(c) is used wholly or partly to gain or produce assessable income.

“depreciation deduction”, in relation to a depreciable asset, means a deduction allowed under section 29;

“disposal”, in relation to an asset, has the meaning in section 70;

“dividend” means any of the following:

(a) a distribution of profits, in money or kind, by a company to a member;

(b) a capitalisation of profits, whether by way of a bonus share or bonus debenture issue, or increase in the amount paid-up on membership interests, or otherwise involving a credit of profits to the share capital or share premium account;

(c) an amount returned by a company to a member in respect of a membership interest on a partial reduction in capital to the extent that the amount returned exceeds the amount by which the nominal value of the membership interest was reduced;

(d) an amount returned by a company to a member on redemption or cancellation of a membership interest, including on liquidation or dissolution of a company to the extent the amount distributed exceeds the nominal value of the membership interest;

(e) for reconstruction, reorganisation, or amalgamation of a company, an amount paid by the company to a member in respect of a membership interest in the company in excess of the nominal value of the membership interest before the reconstruction, reorganisation or amalgamation;

(f) the amount of a loan, payment for an asset or services, value of an asset or services provided, or a debt obligation released, by a company to, or in favour of, a member or an associate of a member to the extent to which the transaction is, in substance, a distribution of profits;

(g) any interest paid or payable on a bonus debenture.

“employee” means an individual engaged in employment;

“employer” means a person who engages or remunerates an employee;

“employer-provided fund” means a retirement fund created by an employer or an associate of an employer for the benefit of employees or dependants of employees in the case of the death of an employee;

“employment” includes the following:

- (a) a directorship or other office in the management of a company;
- (b) a position entitling the holder to a fixed or ascertainable remuneration;
- (c) the holding or acting in any public office.

“exempt income” has the meaning in section 17;

“fair market value” has the meaning in section 5;

“foreign currency exchange gain” means a gain attributable to currency exchange rate fluctuations derived in respect of a foreign currency transaction;

“foreign currency exchange loss” means a loss attributable to currency exchange rate fluctuations incurred in respect of a foreign currency transaction;

“foreign currency transaction” means:

- (a) a dealing in a foreign currency; or
- (b) the issuing of, or obtaining a debt obligation denominated in foreign currency; or
- (c) any other dealing in which foreign currency is denominated.

“foreign-source income” means income to the extent to which it is not derived from sources in Samoa;

“foreign tax credit” means a tax credit allowed under section 57;

“Government” means the Government of Samoa;

“income tax” means the income tax imposed under section 9;

“intangible” means any of the following:

- (a) a copyright, patent, design or model, plan, secret formula or process, trademark, or other like property or right used wholly or partly to gain or produce assessable income;
- (b) a customer list, distribution channel, or unique name, symbol, or picture, or other marketing intangible used wholly or partly to gain or produce assessable income;
- (c) a contractual right (including arising as a result of a prepayment of expenses) with a benefit for a period of more than one (1) year used wholly or partly to gain or produce assessable income;
- (d) an expenditure incurred wholly or partly to gain or produce assessable income that provides an advantage or benefit for a period of more than one (1) year, other than expenditure incurred to acquire any tangible personal or real property;

- (e) a fine, premium, or other capital amount paid or payable upon the grant or transfer of a lease of land or a structural improvement to land, or expenditure incurred pursuant to an obligation to effect improvements to land or a structural improvement to land, if the land or structural improvement is used wholly or partly to gain or produce assessable income;
- (f) preliminary expenditure.

“interest” means:

- (a) an amount, described as interest, discount, premium, or other similar description, whether periodical or a lump sum, as consideration for the use of money or being given time to pay, but does not include interest on a bonus debenture; or
- (b) an amount that is functionally equivalent to an amount referred to in paragraph (a); or
- (c) a commitment, guarantee, service, or similar fee payable in respect of a debt or other instrument or agreement giving rise to interest under paragraph (a) or (b).

“international agreement” means an agreement between the Government and the government of another country or an international organisation;

“International Financial Reporting Standards” means the most recent International Financial Reporting Standards issued by the International Accounting Standards Board or any successor entity taking over the role of issuing International Financial Reporting Standards;

“international organisation” means an organisation the members of which are sovereign powers or the governments of sovereign powers;

“liaison office” means an office the sole activity of which is representation;

“licensed financial institution” has the meaning in the Financial Institutions Act 1996;

“management fee” means an amount as consideration for the rendering of a managerial service, but does not include salary and wage income;

“member”, in relation to a company, means a shareholder or any other person with a membership interest in the company;

“membership interest”, in relation to a company, means a share or any other ownership interest in the company;

“Minister” means the Minister responsible for Revenue;

- “natural resource amount” means an amount (including a premium or like amount) as consideration for the extraction, removal, or sale of a living or non-living natural resource from land or sea, including under a licence or easement, or the grant of a right to take profits or produce;
- “non-resident international transportation income tax” means the non-resident international transportation income tax imposed under section 11;
- “non-resident person” means a person who is not a resident person;
- “non-resident trust” means a trust that is not a resident trust;
- “non-resident withholding tax” means the non-resident withholding tax imposed under section 10;
- “normal retiring age” means:
- (a) for retirement due to serious illness or permanent disability, the age at which the employee actually retired; or
 - (b) in any other case, the age at which an officer is retired under the Public Service Act 2004.
- “permanent establishment” means a fixed place of business through which the business of a person is wholly or partly carried on, and includes the following:
- (a) a place of management, branch, office, factory, warehouse, or workshop, but does not include a liaison office;
 - (b) a mine, oil or gas well, quarry, or other place of extraction of natural resources;
 - (c) a building site, or a construction, assembly or installation project, or supervisory activities connected with such site or project, but only if the site, project, or activities continue for more than six (6) months;
 - (d) the supplying of services by the person, including consultancy services, through employees or other persons engaged by the person for such purpose, but only if activities of that nature continue for the same or a connected project for a period or periods aggregating more than six (6) months in any 12-month period;
 - (e) a person (other than an agent of independent status) acting on behalf of another person (referred to as the “principal”), if the person -
 - (i) has and habitually exercises an authority to conclude contracts on behalf of the principal; or

(ii) habitually maintains a stock of goods from which the person regularly delivers goods on behalf of the principal.

“person” means an individual, partnership, trust, company, the Government, statutory authority, public authority or a foreign government, political subdivision of a foreign government, or international organisation for any income of the foreign government or international organisation in Samoa;

“personal representative”, in relation to a deceased person, has the meaning in the Trustee Act 1975;

“preliminary expenditure” means expenditure incurred by a person before the commencement of a business if the income to be derived by the person will be wholly and exclusively included in assessable income, other than expenditure incurred to acquire real property, a depreciable asset, or an intangible within paragraphs (a) - (e) of the definition of “intangible”;

“property income” has the meaning in section 16;

“provisional tax” means provisional tax payable under section 85;

“public authority” means the Public Trustee or a Ministry designated in the Schedule to the Ministerial and Departmental Arrangements Act 2003;

“public body” has the meaning in the Public Finance Management Act 2001;

“public office” means an office established by the Constitution, an Act, or otherwise to independently perform duties involving the exercise of Government functions;

“received”, in relation to a person, includes:

(a) applied on behalf of the person either at the instruction of the person or under any law; or

(b) reinvested, accumulated, or capitalised for the benefit of the person; or

(c) credited to an account, or carried to any reserve, or a sinking or insurance fund for the benefit of the person; or

(d) made available to the person.

“relative”, in relation to an individual, means:

(a) an ancestor, a descendant of any of the grandparents, or an adopted child, of the individual; or

(b) an ancestor, a descendant of any of the grandparents, or an adopted child, of a spouse of the individual; or

(c) a spouse of the individual or of any person specified in paragraph (a) or (b).

“rent” means any consideration for the grant of a lease or licence of, an easement over, or the right to take profits from, land or a structural improvement to land, including rent, premium, fine, or like amount, but not including a natural resource amount;

“resident company” means a company that:

- (a) is incorporated, registered, or formed in Samoa; or
- (b) has its central management and control in Samoa.

“resident individual” has the meaning in section 6;

“resident partnership” means a partnership that:

- (a) is formed in Samoa; or
- (b) has its central management and control in Samoa.

“resident person” means a resident individual, resident company, resident partnership, resident trust, the Government, statutory authority or public authority;

“resident trust” means a trust that:

- (a) is settled or established in Samoa; or
- (b) has a trustee that is a resident person.

“retirement fund” means a fund established for the payment of benefits on retirement, permanent disability, or death of a member of the fund;

“royalty” means an amount, however described, whether periodical or a lump sum, as consideration for any of the following:

- (a) the use of, or 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 right to use any motion picture film, video tape, compact disc, digital video disc, video compact disc, or similar item in connection with television, radio, or internet broadcasting;
- (c) the use of, or right to use visual image or sound, or both, transmitted by satellite, cable, optic fibre, or similar technology in connection with television, radio, or internet broadcasting;
- (d) the receipt of, or right to receive visual image or sound, or both, transmitted by satellite, cable, optic fibre, or similar technology in connection with television, radio, or internet broadcasting;
- (e) the use of or right to use any industrial, commercial, or scientific equipment;

- (f) the supply of any scientific, technical, industrial, or commercial knowledge, information, experience, or skill;
- (g) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any property, right, knowledge, information, or equipment referred to in paragraphs (a) to (f);
- (h) any forbearance in respect of the use or right to use any property, right, knowledge, information, equipment, or assistance referred to in paragraphs (a) to (g).

“salary and wage income” has the meaning in section 61;

“salary and wage income tax” means the salary and wage income tax imposed under section 59;

“Samoa National Provident Fund” means the Samoa National Provident Fund established under the National Provident Fund Act 1972;

“Samoa asset” has the meaning in section 62;

“sources in Samoa” has the meaning in section 7;

“spouse”, in relation to an individual, includes another individual who, although not legally married to the first-mentioned individual, lives with the individual on a genuine domestic basis in a relationship as a couple;

“statutory authority” means a body established by law performing Government functions and possessing rating or other taxing powers;

“structural improvement”, in relation to real property, includes a building, road, driveway, car park, pipeline, bridge, tunnel, airport runway, canal, dock, wharf, retaining wall, fence, power lines, water or sewerage pipes, drainage, landscaping, or dam;

“tax” means a tax imposed under this Act, and includes withholding tax and provisional tax;

“tax year” means the calendar year, and includes a substituted tax year or transitional tax year under section 34;

“taxable income” has the meaning in section 13;

“trading stock” includes:

- (a) property produced, manufactured, purchased, or otherwise acquired for manufacture, production, sale, or exchange; or
- (b) raw materials or consumables used in the production or manufacturing process; or

- (c) livestock, other than animals used as beasts of burden or working beasts; or
- (d) a share or interest in property referred to in paragraphs (a) to (c).

“trust” means a trust as defined in the Trustee Act 1975 and includes:

- (a) the estate of a deceased person; or
- (b) an entity, other than a company or partnership, created outside Samoa that has legal characteristics substantially similar to those of a trust settled or created in Samoa.

“trustee” has the meaning in the Trustee Act 1975 and includes:

- (a) the personal representative of a deceased person; or
- (b) a person that owes a fiduciary responsibility to an entity treated as a trust under paragraph (b) of the definition of “trust”.

“underlying ownership” in relation to a company, means a membership interest in the company held, directly or indirectly through an interposed entity or entities, by an individual or by a person not ultimately owned by individuals;

“use”, in relation to an asset, includes available for use and held;

“withholding tax” means an amount required to be withheld by a person from a payment under Division 4 of Part 7.

3. Approved fund-(1) The following funds are approved funds for the purposes of this Act:

- (a) the Samoa National Provident Fund; and
- (b) any other Government contributory pension scheme provided by an Act; and
- (c) an approved employer-provided fund.

(2) An employer-provided fund is an approved employer-provided fund if all of the following conditions are satisfied:

- (a) the fund is an indefinitely continuing fund established by an employer solely for either or both of the following purposes -
 - (i) the provision of benefits to employees of the employer when the employee retires or is permanently disabled;
 - (ii) the provision of benefits to dependents of employees when an employee of the employer dies;

- (b) the fund is authorised to accept contributions only from the employer, an associate of the employer, employees of the employer, and employees of an associate of the employer;
- (c) employees have been fully informed of their rights to receive benefits from the fund;
- (d) the rights of employees and dependants to receive benefits from the fund in respect of employer and employee contributions, and income accruing thereon, are fully secured;
- (e) the contributions to the fund by the employer and employee are reasonable;
- (f) the eligibility and withdrawal provisions are reasonable, and the retirement age at which benefits are paid is not less than the normal retiring age;
- (g) the benefits to which employees or dependants are entitled are not excessive having regard to -
 - (i) the remuneration paid to the employee; and
 - (ii) the period of service; and
 - (iii) other benefits that may be provided to the employee by the employer or associate;
- (h) at all times, the amount of loans to, and cost of investment assets in, the employer and associates of the employer does not exceed 10% of the cost of all assets of the fund;
- (i) the amount of the fund is not in excess of the amount necessary to provide benefits having regard to contributions reasonably expected to be made to, and income reasonable expected to be earned by, the fund in succeeding years;
- (j) any provision for the variation of the terms of the fund is reasonable and any variation is subject to the Commissioner's approval;
- (k) the Commissioner has certified the fund as an approved employer-provided fund.

(3) The Commissioner may certify an employer-provided fund to be an approved fund even though the requirements of subsection (2) have not been fully complied with provided there has been substantial compliance with those requirements.

4. Associate-(1) Subject to subsection (2), two (2) persons are associates if the relationship between them is such that one (1) may reasonably be expected to act in accordance with directions, requests,

suggestions, or wishes of the other, or both persons may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of a third person.

(2) Two (2) persons are not associates solely by reason of the fact that one (1) person is an employee or client of the other or both persons are employees or clients of a third person.

(3) Without limiting subsection (1), the following are treated as associates:

- (a) an individual and a relative of the individual, except if the Commissioner is satisfied that neither person may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of the other;
- (b) a partner in a partnership and the partnership, if the partner, either alone or together with an associate or associates under another application of this section, controls 50% or more of the rights to income or capital of the partnership;
- (c) a trust and a person who benefits or may benefit under the trust;
- (d) a member of a company and the company, if the member, either alone or together with an associate or associates under another application of this section, controls either directly or through one (1) or more interposed persons -
 - (i) fifty per cent or more of the voting power in the company; or
 - (ii) fifty per cent or more of the rights to dividends; or
 - (iii) fifty per cent or more of the rights to capital;
- (e) two (2) companies, if a person, either alone or together with an associate or associates under another application of this section, controls either directly or through one (1) or more interposed persons -
 - (i) fifty per cent or more of the voting power in both companies; or
 - (ii) fifty per cent or more of the rights to dividends in both companies; or
 - (iii) fifty per cent or more of the rights to capital in both companies.

(4) In applying subsection (3)(b), (d), or (e), holdings that are attributable to a person from an associate are not reattributed to another associate.

5. Fair market value-(1) The fair market value of an asset, property, service, or benefit at a particular time is the ordinary open market value of the asset, property, service, or benefit at that time.

(2) If it is not possible to determine the fair market value of an asset, property, service, or benefit at a particular time under subsection (1), the fair market value is the consideration of a similar asset, property, service, or benefit would ordinarily fetch in the open market at that time, adjusted to take account of the differences between the similar asset, property, service, or benefit and the actual asset, property, service, or benefit.

(3) For the purposes of subsection (2), an asset, property, service, or benefit is similar to another asset, property, service, or benefit, as the case may be, if it is the same as, or closely resembles, the other asset, property, service, or benefit in character, quality, quantity, functionality, materials, and reputation.

(4) If the fair market value of an asset, property, service, or benefit cannot be determined under subsection (1) or (2), the fair market value is the amount determined by the Commissioner provided the valuation is consistent with generally accepted valuation principles.

(5) This section is subject to section 78.

6. Resident individual-(1) Subject to subsections (2) and (3), an individual is a resident individual for a tax year if the individual:

- (a) has his or her home in Samoa during the year; or
- (b) is present in Samoa for a period of, or periods amounting in aggregate to, 183 days in any 12-month period commencing or ending in the tax year; or
- (c) is a citizen of Samoa who is an officer or employee of the Government or a statutory authority.

(2) An individual who is a resident individual under subsection (1) in relation to a tax year, in this section referred to as the “current tax year”, but who was not a resident individual for the preceding tax year is treated as a resident individual in the current tax year only for the period commencing on the day on which the individual was first present in Samoa.

(3) An individual who is a resident individual under subsection (1) for the current tax year but who is not a resident individual for the following tax year is treated as a resident individual in the current tax

year only for the period ending on the last day on which the individual was present in Samoa.

7. Sources in Samoa-(1) Salary and wage income is received from sources in Samoa:

- (a) to the extent to which the income is received in respect of employment exercised in Samoa, wherever paid; or
- (b) if the income is paid by, or on behalf of, the Government or a statutory authority, wherever the employment is exercised.

(2) Business income derived by a resident person is derived from sources in Samoa except to the extent that it is attributable to a business carried on by the person through a permanent establishment outside Samoa.

(3) Business income derived by a non-resident person is derived from sources in Samoa to the extent to which it is directly or indirectly attributable to:

- (a) a business carried on by the person through a permanent establishment in Samoa; or
- (b) sales in Samoa of goods or merchandise of the same or similar kind as those sold by the person through a permanent establishment in Samoa; or
- (c) any other business activity carried on in Samoa of the same or similar kind as that carried on by the person through a permanent establishment in Samoa.

(4) Despite subsections (2) and (3), the following are derived from sources in Samoa:

- (a) a dividend paid by a resident company;
- (b) rent from the lease of real property in Samoa;
- (c) a gain arising on the disposal of real property in Samoa;
- (d) a gain arising on the disposal of a membership interest in a company whose assets consists solely or principally of real property in Samoa;
- (e) an insurance premium in respect of the insurance of a risk in Samoa;
- (f) a natural resource amount if it relates to the taking of minerals or a living or non-living resource from land in, or from the territorial waters of, Samoa;
- (g) interest, a royalty, management fee, fee for personal (including professional) services, pension, charge, annuity, or other amount not specifically mentioned (other than salary and wage income) if it is -

(i) paid by a resident person, other than as an expenditure of a business carried on by the person outside Samoa through a permanent establishment; or

(ii) paid by non-resident person as an expenditure of a business carried on by the person through a permanent establishment in Samoa.

8. Act binds the Government - This Act binds the Government.

PART 2 **INCOME TAX**

Division 1 *Liability for Income Tax*

9. Income tax imposed-(1) Subject to this Act, income tax is to be levied and paid for the use of the Government for each tax year.

(2) Income tax is to be assessed and levied for each tax year at the rate or rates specified in Schedule 1 on a person who has taxable income for the year.

(3) Subject to subsection (6), the income tax imposed on a person under subsection (1) for a tax year is computed by applying the rate or rates of tax applicable to the person under Schedule 1 to the taxable income of the person for the year, with any tax credits allowed to the person for the year subtracted from the resulting amount.

(4) If a person is allowed more than one (1) tax credit for a tax year, the credits are applied in the following order:

(a) the foreign tax credit allowed under section 57; and

(b) the tax credits allowed under sections 50(4), 85, and 103.

(5) Instead of taxation under subsection (1), certain classes of income (including the income of certain classes of persons) may be subject to:

(a) tax as provided in section 10, 11, or 59; or

(b) withholding of tax as a final tax as provided in section 104.

(6) If, for a tax year, an individual has both taxable income, and salary and wage income, the tax payable on the taxable income is computed according to the following formula:

A – B

where:

A is the amount of income tax that would be payable on an amount of taxable income equal to the aggregate of the individual's taxable income and salary and wage income for the year; and

B is the amount of income tax that would be payable on an amount of taxable income equal to individual's salary and wage income for the year.

(7) The reference to "salary and wage income" in subsection (6) is a reference to salary and wage income subject to salary and wage income tax.

10. Non-resident withholding tax imposed-(1) Subject to this Act, non-resident withholding tax is to be levied and paid for the use of the Government for each tax year.

(2) Non-resident withholding tax is to be levied at the rate specified in Schedule 1 on a non-resident person who has derived interest, royalty, insurance premium, management fee, fee for personal (including professional) services, or natural resource amount from sources in Samoa.

(3) The non-resident withholding tax payable by a non-resident person under subsection (1) is computed by applying the rate of tax specified in Schedule 1 to the gross amount of the interest, royalty, insurance premium, management fee, fee for personal (including professional) services, or natural resource amount derived by the person.

(4) Subsection (1) does not apply to the following:

(a) an amount that is exempt income;

(b) interest, a royalty, management fee, fee for personal (including professional) services, or natural resource amount that is attributable to a business carried on by the non-resident person through a permanent establishment of the person in Samoa and, in that case, the amount is taxable under section 9;

(c) an insurance premium derived by a company subject to tax under section 45 or 46.

(5) The tax payable under subsection (1) is discharged if the tax has been withheld under section 96 and paid to the Commissioner under section 99.

(6) An amount is derived for the purposes of this section when the amount is received.

11. Non-resident international transportation income tax imposed-(1) Subject to this Act, non-resident international transportation income tax is to be levied and paid for the use of the Government for each tax year.

(2) Non-resident international transportation income tax is to be assessed and levied at the rate specified in Schedule 1 on a non-resident person operating a ship or aircraft in international traffic.

(3) The tax payable under subsection (1) is computed by applying the rate specified in Schedule 1 to the gross amount derived by the non-resident person for the carriage of passengers, livestock, mail, merchandise, or goods embarked or loaded in Samoa.

(4) This section does not apply to the following:

- (a) an amount that is exempt income;
- (b) a passenger who is in Samoa solely as a result of being in transit between two (2) places outside Samoa;
- (c) the transshipment of livestock, mail, merchandise, or goods.

(5) The tax payable under this section is discharged if the tax has been paid under section 83 or 84.

(6) In this section, “international traffic”, in relation to a ship or aircraft, means any operation of the ship or aircraft except as between two (2) places in Samoa.

12. General provisions relating to taxes imposed under sections 10 and 11 - Subject to this Act, the tax imposed under sections 10 and 11 on a person is a final tax on the income in respect of which it is imposed and:

- (a) the income is not included in assessable income in computing the taxable income of the person for any tax year; and
- (b) no deduction is allowed under this Act in computing the taxable income of the person for any tax year for any expenditure or loss incurred by the person in gaining or producing the income; and
- (c) the amount on which tax is imposed under section 10 or 11 is not reduced by a deduction allowed under this Act or any loss carried forward; and
- (d) the tax payable by the person under section 10 or 11 is not reduced by any tax credits allowed under this Act.

Division 2
Taxable Income

13. Taxable income - The taxable income of a person for a tax year is the total assessable income of the person for the year reduced by the total amount of deductions allowed to the person for the year.

Division 3
Assessable Income

14. Amounts included in assessable income-(1) Subject to this Act, the assessable income of a person for a tax year is the total of the following amounts derived by the person during the year:

- (a) salary and wage income;
- (b) business income;
- (c) property income;
- (d) an amount included in assessable income under this Act;
- (e) any income according to ordinary concepts not covered by paragraphs (a) to (d).

(2) If a person has been allowed a deduction for an expenditure or loss incurred, or bad debt written off, in a tax year in the computation of the taxable income of the person for the year and, subsequently, the person has received, in cash or in kind, an amount as a reimbursement or recovery of, or an indemnity for the expenditure or loss, or debt, the amount received is:

- (a) included in the assessable income of the person for the tax year in which it is received; and
- (b) treated as income of the same character as the income to which the deduction related.

(3) An amount is not included in assessable income if the amount is:

- (a) exempt income; or
- (b) an amount subject to tax under section 10, 11, or 59.

(4) Subject to this Act:

- (a) the assessable income of a resident person includes amounts derived from all sources in and outside Samoa; and
- (b) the assessable income of a non-resident person includes only amounts derived from sources in Samoa.

(5) Unless the Act provides otherwise, the rules in Division 6 of this Part apply in determining when an amount is derived for the purposes of this Act.

15. Business income-(1) The following amounts are included in the business income of a person conducting a business for a tax year:

- (a) the gross proceeds from the carrying on of a business derived by the person during the year, including the consideration for the disposal of trading stock and the gross fees from the provision of personal (including professional) services;
- (b) the gross income from the investment of the capital of a business derived by the person during the year, including dividends, interest, royalties, and rents;
- (c) the net gain derived by the person during the year from -
 - (i) a venture or concern in the nature of a trade or manufacture, or from an undertaking or scheme entered into or devised for the purpose of making a profit; or
 - (ii) the disposal of an asset (other than trading stock or an asset subject to subparagraph (i)) held on revenue account by a person in carrying on a business;
- (d) any other income according to ordinary concepts arising from the conduct of a business derived by the person during the year;
- (e) any other amount included in the business income of the person under this Act for the year.

(2) For the purposes of subsection (1)(c)(i) and subject to subsection (3), the net gain arising from a venture or concern in the nature of trade or manufacture, or an undertaking or scheme entered into or devised for the purpose of making a profit is the amount by which the gross proceeds derived by the person from the venture, concern, undertaking, or scheme exceed the expenditures or losses incurred in conducting the venture, concern, undertaking, or scheme.

(3) An expenditure or loss is taken into account in computing the net gain under subsection (2) only if the expenditure or loss is allowed as a deduction under this Act (ignoring section 19(1)(f)).

(4) The net gain arising on disposal of an asset to which subsection (1)(c)(ii) applies is the consideration for the disposal of the asset reduced by the cost of the asset at the time of disposal.

16. Property income-(1) Subject to subsection (2), the following amounts are included in the property income of a person for a tax year:

- (a) a dividend, interest, royalty, rent, natural resource amount, or other amount arising from the provision, use, or exploitation of property derived by the person during the year;
- (b) the net gain arising on disposal of an asset acquired by the person with the purpose or intention of disposal for a profit;
- (c) a pension, charge, or annuity, or any supplement to a pension, charge, or annuity derived by the person during the year;
- (d) a benefit paid by a retirement fund derived by the person during the year.

(2) Property income does not include an amount that is business income or salary and wage income.

(3) The net gain arising on disposal of an asset to which subsection (1)(b) applies is the consideration for the disposal of the asset reduced by the cost of the asset at the time of disposal.

17. Exempt income-(1) The amounts listed in Schedule 2 are exempt income for the purposes of this Act.

(2) Subject to subsection (3), a provision in another Act providing that an amount is exempt income does not have legal effect unless also provided for in this Act.

(3) Subsection (2) does not apply to a provision in another Act that is in force at the commencement of this Act.

Division 4 *Allowable Deductions*

18. Allowable deductions-(1) Subject to this Act, a person is allowed a deduction for a tax year for the following:

- (a) an expenditure or loss on revenue account to the extent incurred by the person during the tax year in gaining or producing assessable income;
- (b) the cost of trading stock disposed of by the person during the year as determined under section 36 or 39;
- (c) the total amount, as determined under section 29 or 36, by which the depreciable assets of the person have declined in value during the year;
- (d) the total amount, as determined under section 33 or 36, by which the intangibles of the person have declined in value during the year;

- (e) the net loss incurred by the person during the year from -
 - (i) a venture or concern in the nature of a trade or manufacture; or
 - (ii) an undertaking or scheme entered into or devised for the purpose of making a profit; or
 - (iii) the disposal of an asset (other than trading stock or an asset subject to subparagraph (i) or (ii)) held on revenue account by a person in carrying on a business; or
 - (iv) the disposal of an asset referred to in section 16(1)(b);
- (f) any other amount allowed as a deduction under this Act.

(2) For the purposes of subsection (1)(e)(i) and (ii), and subject to subsection (3), the net loss arising from a venture or concern in the nature of trade or manufacture, or an undertaking or scheme entered into or devised for the purpose of making a profit is the amount by which the expenditures or losses incurred in conducting the venture, concern, undertaking, or scheme exceed the gross proceeds derived by the person from the venture, concern, undertaking, or scheme.

(3) An expenditure or loss is taken into account under subsection (2) only if the expenditure or loss is allowed as a deduction under this Act (ignoring section 19(1)(f)).

(4) The net loss arising on disposal of an asset to which subsection (1)(e)(iii) or (iv) applies is the cost of the asset at the time of disposal reduced by the consideration for the disposal.

(5) A net loss is allowed as a deduction under subsection (1)(e)(iv) only if the person has notified the Commissioner, in writing, that the asset was acquired by the person with the purpose or intention of disposal for a profit.

(6) A notice under subsection (5) must be lodged with the Commissioner within seven (7) days of acquiring the asset or within such further time as the Commissioner may allow.

(7) Unless the Act provides otherwise, the rules in Division 6 of this Part apply in determining when an amount is incurred for the purposes of this Act.

19. Deduction not allowed-(1) Except as otherwise provided for in this Act, no deduction is allowed for the following:

- (a) an expenditure or loss to the extent to which it is of a domestic or private nature;

- (b) an expenditure or loss to the extent incurred by an employee in deriving salary and wage income;
- (c) an expenditure or loss to the extent to which it is incurred in gaining or producing exempt income;
- (d) an investment, expenditure, or loss to the extent to which it is capital or a capital nature;
- (e) an expenditure or loss to the extent recoverable under a contract of insurance, guarantee, surety, or indemnity;
- (f) an expenditure or loss that is taken into account in computing -
 - (i) a net gain included in business income under section 15(1)(c) or property income under section 16(1)(b); or
 - (ii) a net loss allowed as a deduction under section 18(1)(e);
- (g) a dividend or other distribution of profits, an amount of capital withdrawn, or a sum used or intended to be used as capital;
- (h) an amount carried to a reserve fund, a provision for expected expenditures or losses, or an amount capitalised in any way;
- (i) a contribution paid by an employer or an employee to a retirement fund that is not an approved fund;
- (j) income tax or capital gains tax payable in Samoa or elsewhere, including any penalty or interest payable in respect of income tax or capital gains tax payable;
- (k) a fine or penalty imposed under an Act in relation to any person or enactment of another country in relation to a resident person.

(2) If a person is allowed a deduction for a payment from which the person is required to withhold tax under section 93, 94, 95, or 96, the deduction is not allowed until the tax withheld has been paid to the Commissioner.

20. Bad debts-(1) A person is allowed a deduction for a tax year for a bad debt if the following conditions are satisfied:

- (a) the amount of the debt -
 - (i) was previously included in the assessable income of the person; or
 - (ii) is money lent by the person in the normal course of carrying on a business of money lending to gain or produce assessable income; and

- (b) the debt or part of the debt is written off in the person's financial accounts for the tax year in accordance with international financial reporting standards; and
- (c) there are reasonable grounds for believing that the debt is irrecoverable.

(2) The amount of the deduction allowed to a person under this section for a tax year must not exceed the amount of the debt written off in the person's financial accounts for that year.

21. Repairs - A person is allowed a deduction for a tax year for expenditure incurred by the person during the year on the repair of a depreciable asset.

22. Expenditure in borrowing money or obtaining lease - A person is allowed a deduction for a tax year for expenditure incurred by the person during the year:

- (a) for the preparation, stamping, registration, or renewal of a lease of real property to the extent that the property is used in gaining or producing assessable income; or
- (b) in borrowing money employed as capital to the extent that the capital is used in gaining or producing assessable income.

23. Scientific research expenditure-(1) A person is allowed a deduction for a tax year for scientific research expenditure to the extent incurred by the person during the year in gaining or producing assessable income.

(2) In this section:

“scientific research” means any activity in the fields of natural or applied science for the development of human knowledge;

“scientific research expenditure” means, in relation to a person, the cost of scientific research undertaken for the purposes of developing the person's business, including any contribution to a scientific research institution that is used by the institution in undertaking research for the purposes of developing the person's business, but does not include:

- (a) expenditure incurred for the acquisition of a depreciable asset or intangible; or
- (b) expenditure incurred for the acquisition of real property or a structural improvement to real property; or
- (c) expenditure incurred for the purpose of ascertaining the existence, location, extent, or quality of a natural deposit; and

“scientific research institution” means an association, institute, college, or university that undertakes scientific research.

24. Contribution to an approved fund-(1) An employer is allowed a deduction for a tax year for the amount of a contribution paid by the employer during the year to an approved fund in respect of an employee, other than by way of deduction from the salary or wages of the employee, or which is otherwise recovered from the employee.

(2) In this section, if the approved fund is the Samoa National Provident Fund, “employee” and “employer” have the meaning in the National Provident Fund Act 1972.

25. Retiring allowances payable to employees - An employer is allowed a deduction for a tax year for a bonus, gratuity, retiring allowance, or lump sum redundancy amount paid to an employee during the year.

26. Pensions to former employees-(1) Subject to subsection (2), an employer is allowed a deduction for a tax year for a pension paid during the year to a former employee or a surviving spouse of a former employee in consideration of the past services of the employee if:

- (a) the amount of the pension is reasonable having regard to the circumstances of the employee’s former employment; and
- (b) the pension is payable to the former employee under a deed for a fixed period or for life or, in the case of a pension payable to a surviving spouse of the former employee, for a fixed period or for life, or until the surviving spouse remarries; and
- (c) except for the death of the former employee while in employment of the employer or the early retirement due to serious illness or permanent disability, the former employee retired on or after the normal retiring age.

(2) No deduction is allowed under subsection (1) if:

- (a) for an employer that is a company, the employee was or is a director of the company and either -
 - (i) the former employee was not employed as a full-time permanent employee of the employer; or

- (ii) the former employee or the surviving spouse has sufficient income or capital for his or her own support; or
- (b) in any other case, the former employee or the surviving spouse has control over the payment of the pension because of any relationship with the employer.

27. Education and other beneficial gifts-(1) Subject to subsection (2), a person is allowed a deduction for a tax year for:

- (a) a maintenance payment, allowance, scholarship, or bursary paid or provided by the person during the year for or towards the education of a citizen of Samoa, other than an associate of the person, at any place of education in Samoa or elsewhere; or
- (b) a gift or benefit made or provided by the person during the year -
 - (i) to a place of education in Samoa; or
 - (ii) to the Government, or a local or public authority, other than a fee or tax, if the gift is for the purpose of encouraging the economic, social, or cultural development of Samoa; or
 - (iii) to the Government through the Ministry responsible for Education, Sports and Culture to promote and encourage the development in Samoa of:
 - (A) youth work, including out of school training, promotion of income generating activities, general educational development, and other functions of a like nature; or
 - (B) sporting or cultural activities.

(2) The total amount allowed to a person under subsection (1) as a deduction for a tax year must not exceed the lesser of:

- (a) ten percent of the taxable income of the person for the year not taking into account the deduction allowed under this subsection; or
- (b) \$500.

(3) Subject to subsection (4), a person carrying on business is allowed a deduction for a tax year for a cash donation made to:

- (a) a sporting body registered under the Incorporated Societies Ordinance 1952 provided the accounts of the sporting body are audited by an accounting firm; or
- (b) the Samoa Association of Sports and National Olympic Committee.

(4) A person is allowed deduction under subsection (3) for a tax year only if the total cash donations referred to in that subsection made by a person in the tax year are equal to or exceed \$5,000.

28. Carry forward of losses-(1) If the total deductions allowed to a person for a tax year (other than the deduction allowed under this section) exceed the person's total assessable income for that year, the person has a loss for the year equal to the amount of the excess.

(2) If a person has a loss for a tax year, the amount of the loss is carried forward to the following tax year and allowed as a deduction against the person's total assessable income for that following year.

(3) If a loss is not wholly deducted in a tax year under subsection (2), the un-deducted amount is carried forward to the next following tax year and applied as specified in subsection (2) in that year, and so on until the loss is fully deducted.

Division 5

Depreciation and Amortisation

29. Depreciation of depreciable assets-(1) A person is allowed a deduction for a tax year for the amount by which the person's depreciable assets have declined in value during the year through use in gaining or producing assessable income.

(2) Subject to this section, the amount of the deduction allowed under subsection (1) must be computed under either the straight-line method in accordance with section 30 or the declining balance method in accordance with section 31.

(3) A person must apply the same method of depreciation to a depreciable asset during the whole of the period that the person owns the asset.

(4) A structural improvement to real property can be depreciated only under the straight-line method and the cost of a structural improvement does not include the cost of the land on which the improvement is situated.

(5) If a depreciable asset is used by a person during a tax year partly to gain or produce assessable income and partly for another use, the amount allowed as a deduction under subsection (1) for the year is the proportion of the amount referred to in subsection (2) that relates to the use of the asset to gain or produce assessable income.

(6) If a depreciable asset is not used by a person in gaining or producing assessable income for the whole of the tax year, the depreciation deduction for the year is computed according to the following formula:

$$\frac{A \times B}{C}$$

where:

- A** is the depreciation deduction computed under section 30 or 31 after taking into account subsection (5);
- B** is the number of days in the tax year the asset is used in gaining or producing assessable income; and
- C** is the number of days in the tax year.

30. Straight-line depreciation-(1) Subject to section 29(5) and (6), the depreciation deduction allowed under section 29(1) to a person for a tax year in respect of a depreciable asset under the straight-line method is computed by applying the rate of depreciation for the asset determined under international financial reporting standards against the cost of the asset (ignoring previously allowed depreciation deductions).

(2) The total deductions allowed, or that would be allowed but for section 29(5), to a person under this section in respect of a depreciable asset for the current tax year and all previous tax years must not exceed the cost of the asset.

31. Declining balance depreciation-(1) Subject to section 29(5) and (6), the depreciation deduction allowed under section 29(1) to a person for a tax year in respect of a depreciable asset under the diminishing value method is computed by applying the rate of depreciation for the asset determined under international financial reporting standards against the written down value of the asset at the beginning of the year.

(2) Subject to subsection (3), the written down value of a depreciable asset at the beginning of a tax year is:

- (a) if the asset was acquired during the year, the cost of the asset; or
- (b) in any other case, the cost of the asset as reduced by the total depreciation deductions allowed to the person in respect of the asset in previous tax years.

(3) If section 29(5) applies to a depreciable asset for a tax year, the written down value of the asset is computed under subsection (2)(b) on the basis that the asset has been used solely to gain or produce assessable income.

32. Disposal of a depreciable asset-(1) Subject to subsections (2) and (3), if a person disposes of a depreciable asset in a tax year, no depreciation deduction is allowed for that year and:

- (a) if the consideration for the disposal of the asset exceeds the written down value of the asset at the beginning of the tax year, the excess is included in the assessable income of the person for the year; or
- (b) if the written down value of the asset at the beginning of the tax year exceeds the consideration for the disposal of the asset, the person is allowed a deduction in that year for the excess.

(2) If subsection (1) applies to a depreciable asset that has been used partly in gaining or producing assessable income and partly for another use, the amount included in assessable income under subsection (1)(a) or allowed as a deduction under subsection (1)(b) is the fair proportional part that relates to the use of the asset in gaining or producing assessable income.

(3) Section 31(2) and (3) apply in determining the written down value of a depreciable asset at the beginning of a tax year.

33. Amortisation of intangibles-(1) A person is allowed a deduction for a tax year for the amount by which the person's intangibles have declined in value during the year through use in gaining or producing assessable income.

(2) The decline in value of an intangible of a person for a tax year is computed by applying the rate of amortisation specified in subsection (3) against the cost of the intangible (ignoring previously allowed amortisation deductions).

(3) The rate of amortisation is:

- (a) for preliminary expenditure, 25%; or
- (b) for an intangible with a useful life of more than 10 years or that does not have a useful life, 10%; or
- (c) for any other intangible, the rate of amortisation applicable under international financial reporting standards.

(4) If an intangible is used by a person in a tax year partly to gain or produce assessable income and partly for another use, the amount allowed as a deduction under subsection (1) is the proportion of the amount computed under subsection (2) that relates to the use of the intangible to gain or produce assessable income.

(5) If an intangible is not used for the whole of the tax year in gaining or producing assessable income, the amortisation deduction for the year is computed according to the following formula:

$$\frac{A \times B}{C}$$

where:

- A** is the amortisation deduction computed under subsection (2) after taking into account subsection (4);
- B** is the number of days in the tax year the intangible is used in gaining or producing assessable income; and
- C** is the number of days in the tax year.

(6) The total deductions allowed, or that would be allowed but for subsection (4), to a person under this section in respect of an intangible for the current tax year and all previous tax years must not exceed the cost of the intangible.

(7) Subject to subsection (8), if a person disposes of an intangible in a tax year, no amortisation deduction is allowed for that year and:

- (a) if the consideration for the disposal of the intangible exceeds the written down value of the intangible at the beginning of the year, the excess is included in the assessable income of the person for the year; or
- (b) if the written down value of the intangible at the beginning of the year exceeds the consideration for the disposal of the intangible, the excess is allowed as a deduction for the year.

(8) If subsection (7) applies to an intangible that has been used partly in gaining or producing assessable income and partly for another use, the amount included in assessable income under subsection (7)(a) or allowed as a deduction under subsection (7)(b) is the proportion that relates to the use of the intangible in gaining or producing assessable income.

(9) Section 31(2) and (3) apply, with the necessary changes made, in determining the written down value of an intangible at the beginning of a tax year.

Division 6
Tax Accounting

34. Substituted tax year-(1) A company carrying on a business may, with the written approval of the Commissioner, adopt a period of 12 months other than the calendar year as the tax year of the company (referred to as the “substituted tax year”) and that period is the tax year for the company for each succeeding year unless, with the written approval of the Commissioner, another period of 12 months is adopted as the company’s tax year.

(2) If a company's tax year changes as a result of subsection (1), the period between the last full tax year prior to the change and the date on which the new tax year commences is treated as a separate tax year referred to as the "transitional tax year".

(3) A provision of this Act applicable to a substituted tax year or a transitional tax year is the provision applicable for the calendar year in which the substituted tax year or transitional tax year commenced.

35. Method of tax accounting-(1) Subject to this Act, the taxable income of a person for a tax year must be computed in accordance with international financial reporting standards.

(2) The following persons must account for assessable income, and expenditures and losses on an accrual basis:

- (a) a company;
- (b) a partnership;
- (c) a person accounting for value added goods and services tax on an invoice or accrual basis under section 20 of the Value Added Goods and Services Tax Act 1992/1993.

(3) A person to whom subsection (2) does not apply may account for assessable income, and expenditures and losses on a cash or accrual basis, provided the same basis is used for determining both assessable income, and expenditures and losses.

(4) The Commissioner may specify that any class of persons must account for income tax purposes on a cash or accrual basis.

36. Simplified tax accounting for small business-(1) The taxable income for a tax year of a person conducting a small business is computed in accordance with this Act subject to the following modifications:

- (a) the assessable income, and expenditures and losses of the business are accounted for on a cash basis;
- (b) the rate of depreciation of the depreciable assets for the purposes of section 30 or 31 and the rate of amortisation of intangibles for the purposes of section 33 is 100%;
- (c) section 39 does not apply to the person and a deduction is allowed for the cost of trading stock acquired during the year;
- (d) the period for retention of records under section 81(2) and amendment of assessments under section 37 of the Tax Administration Act 2012 is two (2) years.

- (2) The business of a person is a small business if:
- (a) the person carrying on the business is an individual; and
 - (b) the annual total assessable income of all businesses carried on by the person is less than the value added goods and services tax registration threshold; and
 - (c) the person is not a registered person under the Value Added Goods and Services Tax Act 1992/1993.

(3) In this section, “value added goods and services tax registration threshold” means the amount declared under section 47(1) of the Value Added Goods and Services Tax Act 1992/1993.

37. Cash-basis accounting - A person accounting for income tax purposes on a cash basis derives an amount when it is received by the person and incurs expenditure when it is paid by the person.

38. Accruals-basis accounting-(1) A person accounting for income tax purposes on an accrual basis derives an amount when it is due to the person and incurs expenditure when it is payable by the person.

(2) An amount is due to a person at the time the person becomes entitled to receive it even if the time for discharge of the entitlement is postponed or the amount is payable by instalments.

(3) If a person has been allowed a deduction for expenditure incurred in gaining or producing assessable income and the person has not paid the liability or a part of the liability to which the deduction relates within one (1) year after the end of the tax year in which the deduction was allowed, the unpaid amount of the deduction is included in the assessable income of the person for the first tax year following the end of the 1-year period.

(4) An amount to which subsection (3) applies has the same character as the income to which the deduction relates.

(5) If the amount of an unpaid liability is included in assessable income under subsection (3) and the person subsequently pays the liability or a part of the liability, the person is allowed a deduction for the amount paid in the tax year in which the payment is made.

39. Trading stock-(1) The amount that a person is allowed as a deduction for a tax year for the cost of trading stock disposed of during the year is computed in accordance with the following formula:

$$(A + B) - C$$

where:

A is the opening value of the trading stock of the person for the year; and

B is the cost of trading stock acquired by the person during the year; and

C is the closing value of trading stock of the person for the year.

(2) The opening value of trading stock of a person for a tax year is:

(a) the closing value of the trading stock of the person for the previous tax year; or

(b) if the person commenced business in the year, the value of any trading stock acquired by the person prior to the commencement of the business.

(3) The value referred to in subsection (2)(b) is the lesser of:

(a) the cost of the trading stock; or

(b) the fair market value of trading stock determined at the time the trading stock is brought into the business.

(4) Subject to subsection (5), the closing value of the trading stock of a person for a tax year is the lower of cost or fair market value of the trading stock of the person on hand at the end of the year.

(5) A person carrying on the business of primary production may adopt and fix a standard value with respect to livestock or a class of livestock.

(6) A person accounting for income tax purposes on a cash basis may compute the person's cost of trading stock under the prime-cost method or absorption-cost method, and a person accounting for income tax purposes on an accrual basis must compute the person's cost of trading stock under the absorption-cost method.

(7) If particular items of trading stock are not readily identifiable, a person may account for that trading stock under any method recognised by international financial reporting standards, but the last-in-first-out method may be used only if its use is consistent with the nature of the person's business.

(8) If a person disposes of trading stock together with other assets:

(a) the consideration for the person disposing of the trading stock; and

(b) the cost for the person acquiring the trading stock, is that proportion of the total consideration as represented by the fair market value of the trading stock at the time of disposal.

(9) For the purposes of this section, "absorption-cost method", "last-in-first-out method", and "prime-cost method" have their meaning under international financial reporting standards.

40. Change in tax accounting method-(1) A person may apply, in writing, to the Commissioner for a change in the person's method of accounting and the Commissioner may, by notice in writing, approve the application but only if satisfied that the change is necessary to properly compute the taxable income of the person.

(2) If a person's method of accounting changes, the person must make adjustments in the tax year of change to items of income, deduction, or credit, or to any other items affected by the change so that no item is omitted and no item is taken into account more than once.

Division 7
Miscellaneous Rules

41. Income of joint owners-(1) If property is jointly owned by two (2) or more persons, any income, or expenditures or losses relating to the property must be apportioned among the owners according to their respective interests in the property.

(2) If the interests of the owners of jointly-owned property cannot be ascertained, the owners of the property are treated as having an equal interest in the property.

42. Benefits-in-kind-(1) In determining whether an amount that is a benefit-in-kind is included in assessable income, the fact that the benefit is not otherwise convertible to cash is to be disregarded.

(2) Subject to this Act, the value of a benefit-in-kind included in assessable income is the fair market value of the benefit at the time that the benefit is derived determined by ignoring any restriction on transfer.

43. Classes of income-(1) Subject to this Act, an expenditure or loss relating to:

- (a) the derivation of more than one (1) class of income; or
- (b) the derivation of a class of income and to some other purpose,

is apportioned on any reasonable basis taking account of the relative nature and size of the activities or purposes to which the expenditure or loss relates.

(2) The following are treated as a separate class of income:

- (a) salary and wage income;
- (b) other income included in assessable income; and
- (c) exempt income.

44. Cessation of source of income - If:

- (a) an amount is derived by a person in a tax year from a business, activity, investment, or other source that had ceased before the amount was derived; and
 - (b) had the amount been derived before the business, activity, investment, or other source ceased it would have been included in the assessable income of the person,
- this Act applies to the amount on the basis that the business, activity, investment, or other source had not ceased at the time the amount was derived.

*Division 8**Rules Relating to Particular Industries*

45. Life insurance-(1) The taxable income for a tax year of a company licensed under the Insurance Act 2007 to carry on a life insurance business in Samoa is the total assessable income derived by the company during the year from the investment of premiums paid under life policies and the company is liable for tax on the taxable income at the rate set out in Schedule 1.

(2) In this section:

- “life insurance business” means the business of issuing life policies; and
- “life policy” has the meaning in the Insurance Act 2007.

46. Short-term insurance-(1)The assessable income for a tax year of a company licensed under the Insurance Act 2007 to carry on a short-term insurance business in Samoa is the sum of the following amounts:

- (a) the gross premiums derived by the company for the insurance of any risk, including premiums on reinsurance, but not including premiums returned to the insured;
- (b) any other amounts derived by the company in carrying on the business included in assessable income under this Act, including any commission or expense allowance derived from the reinsurance of any risk, and any income derived from investments;
- (c) the amount of the company’s reserve for unexpired risks deducted in the previous tax year under subsection (2)(c).

(2) The total deductions allowed for a tax year to a company licensed under the Insurance Act 2007 to carry on a short-term insurance business in Samoa is the sum of the following amounts:

- (a) the amount of the claims admitted by the company during the year less any amount recovered or recoverable under any contract of re-insurance, guarantee, security, or indemnity;
- (b) the amount of agency expenses incurred by the company in the year;
- (c) the balance of the company's reserve for unexpired risks at the end of the year at the percentage adopted by the company provided the percentage is in accordance with international financial reporting standards;
- (d) the total amount of any other expenditure or loss to the extent incurred by the company in carrying on the business during the year allowed as a deduction under this Act.

(3) If a company carries on a short-term insurance business to which this section applies and any other business, the business income derived by the company from the short-term insurance business is treated as a separate class of income for the purposes of section 43.

(4) In this section:

“claim” does not include a claim made under a life policy;

“life insurance business” has the meaning in section 45;

“life policy” has the meaning in section 45;

“risk” does not include a risk insured under a life policy; and

“short-term insurance business” means any insurance business other than a life insurance business.

Division 9

Application of Income Tax to Persons

Subdivision 1 Individuals

47. Taxable income of individuals - The taxable income of each individual is computed separately.

Subdivision 2 Partnerships

48. Principles of taxation for partnerships-(1) The income and losses from activities conducted by a partnership are taxed in accordance with this Subdivision.

(2) The presence or absence of a written partnership agreement is not decisive in determining whether a partnership relationship exists between persons.

(3) A partnership must file a partnership return of income in accordance with section 80, but is not liable to pay income tax.

(4) Any election, notice, or statement required to be filed in relation to a partnership's activities must be filed by the partnership and binds all the partners.

49. Computation of taxable income and loss of a partnership-

(1) Subject to subsection (3), the taxable income of a partnership for a tax year is:

(a) the assessable income of the partnership for that year computed as if the partnership were a resident person; less

(b) the total amount of deductions allowed under this Act for expenditures or losses to the extent incurred by the partnership in gaining or producing that income, other than the deduction allowed under section 28.

(2) Subject to subsection (3), a partnership has a loss for a tax year if the amount in subsection (1)(b) exceeds the amount in subsection (1)(a) for the year, and the amount of the excess is the amount of the loss.

(3) For the purposes of calculating the taxable income or loss of a partnership under this section, and despite section 12, the assessable income of the partnership includes amounts subject to tax under section 10 or 11.

50. Taxation of partners-(1) The assessable income of a partner in a partnership for a tax year includes:

(a) so much of the partner's share of the taxable income of the partnership for the year as is attributable to a period when the partner was a resident person; and

(b) so much of the partner's share of the taxable income of the partnership for the year as is attributable to a period when the partner was a non-resident person and attributable to income derived from sources in Samoa.

(2) A partner in a partnership is allowed a deduction for a tax year for:

- (a) so much of the partner's share of a loss of the partnership for the year as is attributable to a period when the partner was a resident person; and
- (b) so much of the partner's share of a loss of the partnership for the year as is attributable to a period when the partner was a non-resident person and attributable to income derived from sources in Samoa.

(3) For the purposes of subsections (1)(b) and (2)(b), income derived from sources in Samoa does not include amounts subject to tax under section 10 or 11.

(4) If the assessable income of a partner under subsection (1)(a) or the share of a loss under subsection (2)(a) includes the partner's share of income to which section 10 or 11 applies, the partner is entitled to a tax credit for the partner's share of the tax paid under section 10 or 11 in relation to that income.

(5) A tax credit allowed to a partner under subsection (4) for a tax year is applied in accordance with section 9(4).

(6) A tax credit or part of a tax credit allowed to a partner under subsection (4) for a tax year that is not credited under section 9(4) for the year is applied in accordance with section 66 of the Tax Administration Act 2012.

(7) Income derived, or expenditure or loss incurred, by a partnership retain its character as to geographic source and type of income, expenditure, or loss in the hands of the partners, and is allocated to partners on a *pro rata* basis.

(8) Subject to subsection (9), a partner's share of the taxable income or a loss of a partnership is equal to the partner's percentage interest in the income of the partnership as set out in the partnership agreement.

(9) If the allocation of income in the partnership agreement does not reflect the contribution of the partners to the partnership's operations, a partner's share of the taxable income or a loss of a partnership is equal to the partner's percentage interest in the capital of the partnership.

Subdivision 3 Trusts

51. Principles of taxation of trusts-(1) Income derived by the trustee of a trust is taxed either to the trustee or the beneficiary of the trust in accordance with this Subdivision.

(2) A trustee is not liable for income tax in relation to the income of a trust except as provided for in this Subdivision.

(3) The trustee of a trust must file a trust return of income in accordance with section 80 in relation to the trust.

52. Taxation of beneficiaries-(1) An amount derived by a trustee of a trust in respect of which a beneficiary of the trust has an indefeasibly vested interest is treated as derived by the beneficiary.

(2) If a beneficiary is treated as having derived an amount under subsection (1), the beneficiary is treated as having incurred any expenditure or loss incurred by the trustee to the extent to which it relates to gaining or producing an amount to which subsection (1) applies.

(3) For the purposes of subsections (1) and (2):

(a) an amount derived retains its character and geographic source in the hands of the beneficiary; and

(b) an amount is treated as derived, and expenditures and losses are treated as incurred by the beneficiary at the time the income was derived or expenditures and losses were incurred by the trustee.

(4) The assessable income of a resident beneficiary includes a distribution received by the beneficiary from a non-resident trust except to the extent that the distribution represents an amount derived by the trustee of the non-resident trust:

(a) to which subsection (1) applies; or

(b) that has been taxed to the trustee under section 53; or

(c) that would have been exempt income if derived by the resident beneficiary.

(5) In this section:

“distribution” includes the amount of a loan, payment for goods or services, value of an asset or service provided, or the amount of a debt obligation released by a non-resident trust in favour of a resident beneficiary of the trust to the extent that the transaction is, in substance, a distribution of income accumulated in the trust; and

“resident beneficiary”, in relation to a trust, means a beneficiary of the trust who is a resident person.

53. Taxation of trustees-(1) The trustee of a trust is liable for tax for a tax year in respect of the taxable income of the trust for the year at the rate or rates specified in Schedule 1.

(2) If a trustee has paid tax on the taxable income of a trust under this section, that income is not taxed again in the hands of the beneficiary.

(3) The trustee of a trust is personally liable for a tax liability arising in respect of the taxable income of the trust that is not satisfied out of the assets of the trust and, if there is more than one (1) trustee, the trustees are jointly and severally liable.

(4) The taxable income of a resident trust for a tax year is the assessable income derived by the trustee for the year reduced by the sum of the following:

- (a) any part of that amount to which section 52(1) applies for the year; and
- (b) the total deductions allowed under this Act in respect of expenditures or losses incurred by the trustee for the year, other than expenditures or losses to which section 52(2) applies.

(5) The taxable income of a non-resident trust for a tax year is the total amount derived by the trustee from sources in Samoa for the year included in assessable income reduced by the sum of the following:

- (a) any part of that amount to which section 52(1) applies for the year; and
- (b) the total deductions allowed under this Act in respect of expenditures or losses incurred by the trustee for the year that relate to the gaining or producing of amounts derived from sources in Samoa included in assessable income, other than expenditures or losses to which section 52(2) applies.

Subdivision 4 Companies

54. Taxation of companies - A company is liable for income tax separately from its members.

55. Change in control of a company-(1) Subject to subsection (2), a company can carry a loss forward for a tax year (referred to as the “loss year”) under section 28 to a subsequent tax year (referred to as the “carry forward year”) only if the same person holds more than 50% of the underlying ownership of the company in the loss year, the carry forward year, and all intervening tax years.

(2) Subsection (1) does not prevent the carry forward of loss by a company if the company:

- (a) carries on the same business in the loss year, the carry forward year, and all intervening tax years; and
- (b) does not, until the loss has been fully deducted, engage in any new business or investment after the change if the principal purpose of the company or the members of the company is to utilise the loss so as to reduce the income tax payable on the income arising from the new business or investment.

56. Co-operatives-(1) A co-operative society is allowed a deduction for a tax year for:

- (a) a rebate paid by the society to a member in respect of the member's transactions with the society in the tax year provided the income from the transactions has been included in the assessable income of the society; and
- (b) a dividend made by the society to a member in the tax year.

(2) A rebate received by a member of a co-operative society in a tax year must be included in the assessable income of the member to the extent to which it relates to transactions between the member and the co-operative society in respect of which the member was allowed a deduction.

(3) In this section, "co-operative society" means a co-operative society registered under the Co-operative Societies Ordinance 1952.

Division 10
International

57. Foreign tax credit-(1) If a resident person derives taxable foreign-source income in respect of which the person has paid foreign income tax, the person is allowed a foreign tax credit of an amount equal to the lesser of:

- (a) the foreign income tax paid; or
- (b) the Samoan income tax payable in respect of the income.

(2) For the purposes of subsection (1)(b), the Samoan income tax payable in respect of taxable foreign-source income derived by a resident person in a tax year is computed by applying the average rate of Samoan income tax applicable to the person for the year against the net foreign-source income of the person for the year.

(3) The foreign tax credit of a resident person for a tax year is computed separately for the business income of the person that is foreign-source income and the other foreign-source income of the person.

(4) If subsection (3) applies, deductions are apportioned for the purposes of paragraph (b) of the definition of “net foreign-source income” in subsection (9) in accordance with section 43 on the basis that the business income that is foreign-source income and the other foreign-source income are separate classes of income.

(5) A foreign tax credit is allowed under this section only if the foreign income tax is paid within two (2) years after the end of the tax year in which the foreign-source income to which the tax relates was derived by the resident person or within such further time as the Commissioner may allow on application in writing by the resident person.

(6) A person is treated as having paid foreign tax if:

- (a) the person is a partner in a partnership and the partnership has paid the tax; or
- (b) the person is a beneficiary of a trust and the trustee has paid the tax; or
- (c) the person is the trustee of a trust and a beneficiary of the trust has paid the tax.

(7) A foreign tax credit allowed under this section is applied in accordance with section 9(4).

(8) Any foreign tax credit or part of a foreign tax credit allowed under this section for a tax year that is not credited under section 9(4) is not refunded, carried back to the preceding tax year, or carried forward to the following tax year.

(9) In this section:

“average rate of Samoan income tax”, in relation to a resident person for a tax year, means the percentage that the Samoan income tax payable by the person for the year (before the allowance of any tax credit under this Act) is of the taxable income of the person for the year;

“Samoan income tax” means income tax imposed under this Act;

“foreign income tax” includes a foreign withholding tax, but does not include any penalty tax, additional tax, or late payment interest payable in respect of a foreign income tax liability;

“net foreign-source income”, in relation to a resident person for a tax year, means the total taxable foreign-source income of the person for the year, as reduced by any deductions allowed to the person under this Act for the year that:

- (a) relate exclusively to the derivation of the foreign-source income; and
- (b) are apportioned to the derivation of foreign-source income in accordance with section 43 on the basis that foreign-source income is a separate class of income.

“taxable foreign-source income” means foreign-source income included in assessable income.

58. Thin capitalisation-(1) Subject to subsection (2), if a foreign-controlled resident company, other than a licensed financial institution, has a debt-to-equity ratio in excess of three (3) to one (1) at any time during a tax year, a deduction is disallowed for the interest paid by the company during that year on that part of the debt that exceeds the three (3) to one (1) ratio for the period the ratio was exceeded.

(2) If the debt to equity ratio of a foreign-controlled resident company exceeds three (3) to one (1) for a tax year, subsection (1) does not apply if, at all times during the year, the amount of debt of the company does not exceed the arm’s length amount of debt.

(3) In this section:

“arm’s length amount of debt”, in relation to a foreign-controlled resident company, means the amount of debt that a licensed financial institution that is not related to the company would be prepared to lend to the company having regard to all the circumstances of the company;

“debt”, in relation to a foreign-controlled resident company, means the greatest amount, at any time during a tax year, of the debt obligations of the company on which interest is payable as determined according to International Financial Reporting Standards;

“debt obligation” does not include accounts payable or a debt obligation on which no interest is payable;

“equity”, in relation to a foreign-controlled resident company, means the greatest amount, at any time during a tax year, of the equity of the company as determined according to International Financial Reporting Standards and includes debt obligations on which no interest is payable; and

“foreign-controlled resident company” means a resident company in which 50% or more of the underlying ownership of the company is held by a non-resident person either alone or together with an associate or associates.

PART 3

SALARY AND WAGE INCOME TAX

59. Salary and wage income tax imposed-(1) Subject to this Act, salary and wage income tax is to be levied and paid for the use of the Government for each tax year.

(2) Salary and wage income tax is to be levied for each tax year at the rate or rates specified in Schedule 1 on an employee who receives salary and wage income from sources in Samoa during the fortnight.

(3) The salary and wage income tax imposed on an employee under subsection (1) for a fortnight is to be computed by applying the rate or rates of tax applicable to the employee under Schedule 1 to the gross amount of salary and wage income received by the employee during the fortnight.

(4) The salary and wage income tax payable by an employee under this section is discharged if the tax has been withheld from the payment of the salary and wage income under section 93.

(5) For the purposes of the salary and wage income tax, each fortnight commences on a Monday.

60. Salary and wage income tax a final tax - Salary and wage income tax is a final tax on the employee's salary and wage income subject to the tax and:

- (a) the income is not included in assessable income in computing the taxable income of the employee for any tax year but is taken into account under section 9(6); and
- (b) no deduction is allowed under this Act in computing the taxable income of the employee for any tax year for an expenditure or loss incurred by the employee in gaining or producing salary and wage income; and
- (c) the amount of salary and wage income is not reduced by a deduction allowed under this Act or a loss carried forward; and
- (d) the salary and wage income tax payable by an employee is not reduced by any tax credits allowed under this Act.

61. Salary and wage income-(1) Subject to this section, the following amounts, other than exempt income, are included in the salary and wage income of an employee:

- (a) salary, wages, extra salary or wages, or other remuneration received by the employee in respect of employment, including leave pay, payment instead of leave, stipend, overtime pay, bonus, commission, fee, gratuity, or work condition supplement;
- (b) the value of a fringe benefit, other than an exempt fringe benefit, received by the employee in respect of employment as determined under Schedule 3;

- (c) the amount of any allowance received by the employee in respect of employment, including a cost of living, subsistence, rent, utility, education, entertainment, meeting, or travel allowance, except any allowance to the extent expended in the performance of the employee's duties of employment;
 - (d) the amount of any expenditure incurred by the employee that is reimbursed by the employer, other than expenditure to the extent incurred on behalf of the employer in the performance of the employee's duties of employment;
 - (e) any pension, annuity, or supplement to a pension or annuity received by the employee in respect of employment, including a past employment;
 - (f) a bonus, gratuity, retiring allowance, or other amount received by the employee on retirement from or termination of employment, whether paid voluntarily or under an agreement, including any compensation for redundancy or loss of employment.
- (2) The following fringe benefits are exempt fringe benefits:
- (a) a contribution made to a retirement fund by an employer for the benefit of an employee;
 - (b) a fringe benefit the value of which (after taking into account the frequency with which similar benefits are provided by the employer) is so small as to make accounting for it unreasonable or administratively impracticable;
 - (c) a meal or refreshment provided in a canteen, cafeteria, or dining room operated by or on behalf of an employer solely for the benefit of employees and which is available to all non-casual employees on equal terms;
 - (d) a fringe benefit that is exempt income.
- (3) In determining whether a benefit is a fringe benefit or the value of a fringe benefit, any restriction on transfer of the benefit and the fact that the benefit is not otherwise convertible to cash are to be disregarded.
- (4) Subject to subsection (6), the amount included in the salary and wage income of an employee under subsection (1)(f) in respect of a bonus, gratuity, or retiring allowance received by an employee on retirement on or after the normal retiring age or a compensation payment received by the employee for redundancy or loss of office is:

- (a) if the bonus, gratuity, retiring allowance, or compensation payment does not exceed the specified sum, 5% of the amount; or
- (b) if the bonus, gratuity, retiring allowance, or compensation payment exceeds the specified sum, the total of the following amounts -
 - (i) 5% of the specified sum; and
 - (ii) the excess over the specified sum.

(5) If an employee to whom subsection (4) applies has derived another bonus, gratuity, or retiring allowance from a subsequent employment, the period of service and the salary and wage income from the earlier employment are not taken into account in calculating the specified sum for the subsequent employment.

(6) Subsection (4) does not apply to:

- (a) an amount paid to a relative of the employer; or
- (b) if the employer is a partnership, an amount paid to a relative of a partner in the partnership; or
- (c) if the employer is a company, an amount paid to a relative of a member of the company,

except to the extent that the amount represents the amount that would have been paid if the employer and employee were dealing at arm's length.

(7) An amount is received by an employee in respect of employment regardless of whether it is paid or provided by:

- (a) the employer of the employee; or
- (b) an associate of the employer; or
- (c) a third party under an arrangement with the employer or an associate of the employer (referred to in this section as a "third party arranger").

(8) An amount is received by an employee even though it is paid or provided to an associate of the employee by the employer of the employee, an associate of the employer, or a third party arranger.

(9) In this section, "specified sum", in relation to the employment of an employee, means:

- (a) if the employee has 10 years or more service with the employer, one-third of the total salary and wage income received by the employee during the three (3) years immediately before the date of retirement or termination; or
- (b) in any other case, an amount computed in accordance with the following formula:

$$\frac{A \times B}{10}$$

where:

- A** is the number of complete years of service of the employee in the employment; and
- B** one-third of the total salary and wage income received by the employee during the three (3) years immediately before the date of retirement or termination.

PART 4 **CAPITAL GAINS TAX**

62. Interpretation - In this Part, unless the context otherwise requires:

- “capital gain” means a gain arising on disposal of a capital asset computed under section 65, but does not include an exempt capital gain;
- “capital loss” means a loss arising on disposal of a capital asset under section 65, but does not include an exempt capital loss;
- “exempt capital gain” has the meaning in section 66;
- “exempt capital loss” has the meaning in section 66;
- “net capital gain” has the meaning in section 64;
- “net capital loss” has the meaning in section 64;
- “personal asset” means:
 - (a) household furniture and effects exclusively for use of the owner or a relative in a private residence; or
 - (b) a motor vehicle used solely for private purposes; or
 - (c) an item for the private use or adornment of the owner or a relative that has a cost not exceeding \$1,000.
- “Samoan asset” means:
 - (a) land, a structural improvement to land, or an interest in land or an interest in a structural improvement to land, including a lease, where the land is located in Samoa; or
 - (b) a share in a company, or interest in a partnership or trust, if the assets of the company, partnership, or trust are solely or principally Samoan assets under paragraph (a); or
 - (c) a capital asset of a permanent establishment in Samoa.

63. Capital gains tax imposed-(1) Subject to this Act, capital gains tax is to be levied and paid for the use of the Government for each tax year.

(2) Capital gains tax is to be assessed and levied for each tax year at the rate specified in Schedule 1 on every person who has a net capital gain for the tax year.

(3) The capital gains tax imposed on a person under subsection (1) for a tax year is to be computed by applying the rate of tax specified in Schedule 1 to the net capital gain of the person for the year with any tax credits allowed under section 67 for the year subtracted from the resulting amount.

64. Net capital gain or loss-(1) The net capital gain of a resident person for a tax year is to be computed according to the following formula:

$$A - B$$

where:

A is the sum of the total capital gains derived by the person on the disposal of capital assets during the tax year and the total foreign currency exchange gains derived by the person during the tax year; and

B is sum of the total capital losses incurred by the person on the disposal of capital assets during the tax year and the total foreign currency exchange losses incurred by the person during the tax year.

(2) If component “**B**” of the formula in subsection (1) exceeds component “**A**” for a tax year, the amount of the excess is the net capital loss of the resident person for the year.

(3) The net capital gain of a non-resident person for a tax year is computed according to the following formula:

$$A - B$$

where:

A is the sum of the total capital gains derived by the person on the disposal of capital assets that are Samoan assets during the tax year; and

B is sum of the total capital losses incurred by the person on the disposal of capital assets that are Samoan assets during the tax year.

(4) If component “B” of the formula in subsection (3) exceeds component “A” for a tax year, the amount of the excess is the net capital loss of the non-resident person for the year.

(5) For the purposes of this section:

- (a) a foreign currency exchange gain derived by a resident person is reduced by any part of the gain included in the assessable income of the person or that is exempt income; and
- (b) a foreign currency exchange loss derived by a resident person is reduced by any part of the loss allowed to the person as a deduction or, if there had been a gain instead of a loss, the gain would have been exempt income.

65. Capital gain and capital loss-(1) A person derives a capital gain on disposal of a capital asset if the consideration for disposal exceeds the cost of the asset at the time of disposal, and the amount of the excess is the amount of the capital gain.

(2) For the purposes of subsection (1), the cost of an asset at the time of disposal is increased by 5% per annum computed from 1 January after the date of acquisition of the asset until the date of disposal.

(3) A person incurs a capital loss on disposal of a capital asset if the cost of the asset at the time of disposal exceeds the consideration for the disposal, and the amount of the excess is the amount of the capital loss.

(4) A capital gain derived by a person on disposal of a capital asset is reduced by any part of the gain that is included in the assessable income of the person or that is exempt income.

(5) A capital loss incurred by a person on disposal of a capital asset is reduced by any part of the loss that is allowed as a deduction or, if there had been a gain instead of a loss, the gain would have been exempt income.

66. Exempt capital gain or loss-(1) The following capital gains and losses are exempt capital gains and losses:

- (a) a capital gain or loss derived on disposal of a capital asset acquired on or before 31 December 1989;
- (b) a capital gain or loss made on disposal of the individual’s principal place of residence, provided the residence has been the individual’s principal place of residence during the whole of the period in which the individual owned the residence;

- (c) a capital gain or loss made on disposal of a capital asset held for more than three (3) years;
 - (d) a capital gain or loss made on disposal of a capital asset by a resident person if the asset is not a Samoan asset and was acquired by the person before becoming a resident person;
 - (e) a capital gain or loss made on disposal of a capital asset that is used solely to derive exempt income;
 - (f) a capital gain or loss on disposal of a capital asset by the personal representative of a deceased person that would have been an exempt capital gain or loss if disposed of by the deceased person immediately before the person's death.
- (2) Subject to subsection (3), if:
- (a) a building is constructed after 31 December 1989 on land to which subsection (1)(a) applies; or
 - (b) a capital improvement is made after 31 December 1989 to a building on land to which subsection (1)(a) applies,
- the building or capital improvement is treated as a separate capital asset acquired at the time of commencement of the construction of the building or the commencement of the improvement.
- (3) Subsection (2) does not apply to a capital improvement the total value of which does not exceed \$2,000.
- (4) If a capital improvement is made to a capital asset of a person, other than land, to which subsection (1)(a) applies and the cost of the improvement exceeds 25% of the fair market value of the asset at the time of commencement of the improvement, the asset is treated as acquired by the person at the time of commencement of the improvement for a consideration equal to the fair market value of the asset at that time.
- (5) For the purposes of subsection (1)(b):
- (a) the principal place of residence of an individual is the residence where the individual mainly lives, and an individual and their spouse must have the same principal place of residence; and
 - (b) the principal place of residence of an individual includes any form of residential accommodation, but does not include land that is adjacent to the residence; and
 - (c) if a building of an individual is used partly as a principal place of residence of the individual and partly for some other use, the capital gain on disposal of the

building must be apportioned between the two (2) uses on any reasonable basis and only that part of the gain relating to use as a principal place of residence is exempt under subsection (1)(b).

67. Foreign capital gains-(1) If a resident person has made a capital gain on disposal of a capital asset in respect of which foreign tax has been paid and the capital gain has been taken in account in calculating the net capital gain of the person for the tax year in which the asset was disposed, the person is allowed a tax credit for that year of an amount equal to the lesser of:

- (a) the foreign tax paid in respect of the disposal of the asset;
- or
- (b) the Samoan capital gains tax in respect of the disposal of the asset.

(2) A tax credit allowed under subsection (1) reduces the amount of capital gains tax payable under section 63 in respect of the net capital gain that included the capital gain in respect of which the foreign tax was paid.

(3) A tax credit allowed for a tax year that is not credited under this section is not refunded, carried back to the preceding tax year, or carried forward to the following tax year.

(4) A tax credit is allowed under subsection (1) only if the foreign tax is paid within two (2) years after the end of the tax year in which the capital gain to which it relates was derived by the resident person or within such further time as the Commissioner may allow on application in writing by the resident person.

(5) The Samoan capital gains tax in respect of the disposal of the asset is computed by applying the rate of capital gains tax in Schedule 1 to the amount of the capital gain.

(6) In this section, "foreign tax" means income tax or capital gains tax imposed by the government of another country or a political subdivision of a government of another country, but does not include penalty, additional tax, or interest payable in respect of a foreign tax liability.

PART 5 **COMMON RULES**

68. Joint owners-(1) For the purposes of this Act, if an asset is jointly owned by two (2) or more persons, any gain or loss made on disposal of the asset must be apportioned among the owners according to their respective interests in the asset.

(2) If the interests of the owners of a jointly owned capital asset cannot be ascertained, the owners of the asset are treated as having an equal interest in the asset.

69. Acquisition-(1) A person acquires an asset if the person begins to own the asset, including, in the case of an asset that is a right or option, the granting of the right or option to the person.

(2) A person acquires an asset when the person begins to own the asset, including, when a person acquires legal title to the asset and, in the case of an asset that is a right or option, when the person is granted the right or option.

70. Disposal-(1) A person makes a disposal of an asset if the person parts with the ownership of the asset, including when the asset is:

- (a) sold, exchanged, transferred, or distributed; or
- (b) cancelled, redeemed, relinquished, destroyed, lost, expired, or surrendered.

(2) A person disposes of an asset when the person parts with the ownership of the asset, including when a person ceases to have legal title to the asset and when the asset is sold, exchanged, transferred, distributed, cancelled, redeemed, relinquished, destroyed, lost, expired, or surrendered.

(3) If a person creates an asset in another person being an asset that did not previously exist, the person is treated as having made a disposal of the asset to the other person and the disposal occurs when the asset is created.

(4) The transmission of an asset by succession or under a will is treated as a disposal of the asset by the deceased and the disposal occurs when the asset is transmitted.

(5) The vesting of an asset of a person (referred to as the “owner”) in a liquidator, trustee-in-bankruptcy, or receiver is not treated as a disposal of the asset or part of it for the purposes of this Act and acts done in relation to the asset by the liquidator, trustee-in-bankruptcy, or receiver are treated as done by the owner.

71. Cost-(1) Subject to this Act, this section establishes the cost of an asset for the purposes of the Act.

(2) Subject to this section, the cost of an asset of a person, other than an intangible, is the sum of the following amounts:

- (a) the total consideration given by the person for the asset, including the fair market value of any consideration in kind determined when the asset is acquired and, if the

asset is constructed, produced, or developed, the cost of construction, production, or development;

(b) any incidental expenditure incurred by the person in acquiring or disposing of the asset;

(c) any expenditure incurred by the person to install, alter, renew, reconstruct, or improve the asset.

(3) Subject to this section, the cost of an intangible of a person is:

(a) for an intangible referred to in paragraph (a), (b), or (c) of the definition of “intangible” in section 2, the total expenditure incurred by the person in acquiring, creating, improving, or renewing the intangible, and any incidental expenditure incurred in acquiring or disposing of the intangible; or

(b) for an intangible referred to in paragraph (d), (e), or (f) of the definition of “intangible” in section 2, the amount of the expenditure.

(4) The cost of an asset of a person includes any amount given for the grant of an option to the person to acquire the asset.

(5) The cost of an asset of a person is reduced by the amount of any deduction allowed to the person under Part 2 for amounts included in the cost of the asset, excluding a depreciation or amortisation deduction.

(6) An amount is included in the cost of an asset on the date that it is paid.

(7) If a person disposes of a part of an asset, the cost of the asset is apportioned between the part of the asset retained and the part disposed of in accordance with their respective fair market values determined when the person acquired the asset.

(8) The cost of an asset of a person excludes the amount of any grant, subsidy, rebate, commission, or other assistance received or receivable by the person in respect of the acquisition of the asset, except to the extent to which the amount is included in the assessable income of the person.

(9) In subsection (8), “other assistance” does not include a loan repayable with or without interest.

(10) If the acquisition of an asset by a person is:

(a) the derivation of an amount included in the assessable income or salary and wage income of the person, the cost of the asset is the amount so included plus any amount paid by the person for the asset; or

(b) the derivation of an amount that is exempt income, the cost of the asset is the exempt amount plus any amount paid by the person for the asset.

72. Consideration-(1) Subject to this Act, this section establishes the amount of consideration for the disposal of an asset for the purposes of the Act.

(2) The consideration for disposal of an asset by a person is the total amount received or receivable by the person for the asset, including the fair market value of any consideration in kind determined at the time of the disposal.

(3) The consideration for disposal of an asset by a person includes the consideration for the grant of an option by the person in relation to the asset if the person has not been subject to tax in respect of any income or capital gain made on the grant of the option.

(4) If an asset has been lost or destroyed by a person, the consideration for the disposal of the asset includes any compensation, indemnity, or damages received or receivable by the person as a result of the loss or destruction, including amounts received or receivable:

- (a) under an insurance policy, indemnity, or other agreement;
or
- (b) under a settlement; or
- (c) as a result of a judicial decision.

(5) If two (2) or more assets are disposed of by a person in a single transaction and the consideration for each asset is not specified, the total consideration received or receivable by the person is apportioned among the assets disposed of in proportion to their respective fair market values determined at the time of the disposal.

(6) An amount is included in the consideration for an asset on the date that it is received.

73. Deferral of recognition of gain or loss-(1) For the purposes of this Act and subject to subsection (2), no gain or loss is taken to arise on the disposal of an asset:

- (a) between spouses as part of a divorce settlement or under an agreement to live apart; or
- (b) by reason of the transmission of the asset on the death of a person to the personal representative of the person or beneficiary of the estate; or
- (c) by reason of the loss or destruction, or compulsory acquisition of the asset ("replaced asset") if the consideration for the disposal is reinvested by the recipient in an asset of a like kind ("replacement asset") within one (1) year of the disposal or within such further time as the Commissioner may allow on application in writing.

(2) If the person acquiring an asset referred to in subsection (1)(a) or (b) is a non-resident person at the time of the acquisition, subsection (1) applies only if:

- (a) a subsequent disposal of the asset by the non-resident will give rise to an amount included in assessable income of, or allowed as a deduction to, the non-resident person; or
- (b) the asset is a Samoan asset.

(3) If subsection (1)(a) or (b) applies, the person acquiring the asset is treated as:

- (a) acquiring an asset of the same character as the person disposing of the asset; and
- (b) acquiring the asset for an amount equal to the cost of the asset for the person disposing of the asset at the time of the disposal.

(4) If subsection (1)(c) applies, the cost of the replacement asset is the cost of the replaced asset at the time of disposal:

- (a) increased by the amount by which any consideration given by the person for the replacement asset exceeds the consideration for the replaced asset; or
- (b) reduced by the amount by which any consideration for the replaced asset exceeds the cost of acquiring the replacement asset.

74. Non-arm's length transaction - Subject to section 78, if an asset is disposed of by a person to an associate:

- (a) the person disposing of the asset is treated as having received consideration equal to the fair market value of the asset determined at the time of disposal; and
- (b) the person acquiring the asset is treated as having a cost equal to the amount determined under paragraph (a).

75. Foreign currency exchange gains and losses-(1) A foreign currency exchange gain is derived and a foreign currency exchange loss is incurred when the gain or loss is realised.

(2) In determining whether a person has derived a foreign currency exchange gain or incurred a foreign currency exchange loss in respect of a foreign currency transaction, account must be taken of the person's position under a hedging contract entered into by the person in relation to the transaction.

(3) A foreign currency exchange loss incurred by a person is taken into account under this Act only if prior approval was obtained from the Central Bank of Samoa by the person to enter into the foreign currency transaction giving rise to the loss.

(4) In this section, "hedging contract" means a contract entered into by a person for the purpose of eliminating or reducing the risk of adverse financial consequences that might result for the person under another contract from currency exchange rate fluctuations.

76. Foreign currency translation-(1) Income, an expenditure or loss, consideration, cost, foreign tax, or other amount taken into account under this Act must be expressed in tala.

(2) Subject to subsection (3), if any income, expenditure or loss, consideration, cost, foreign tax, or other amount is in a currency other than tala, the amount must be translated to tala at the Central Bank of Samoa mid-exchange rate applying between the foreign currency and tala on the date the amount is taken into account for the purposes of this Act.

(3) With the prior written permission of the Commissioner, amounts taken into account in computing the business income of a person for a tax year may be translated to tala at the average mid-exchange rate for the tax year between the foreign currency and tala.

PART 6 **ANTI-AVOIDANCE**

77. Income splitting-(1) If a person attempts to split income with another person, the Commissioner may adjust the taxable income of both persons to prevent any reduction in tax payable as a result of the splitting of income.

(2) A person is treated as having attempted to split income when:

- (a) the person transfers income or the right to income, directly or indirectly, to another person; or
- (b) the person transfers property, including money, directly or indirectly, to another person with the result that the other person receives or enjoys the income from that property,

and the reason or one of the reasons for the transfer is to lower the total tax payable upon the income of the transferor and the transferee.

(3) In determining whether a person attempts to split income, the Commissioner must consider the value, if any, given for the transfer.

78. Transfer pricing-(1) Subject to subsection (2), the Commissioner may, in respect of any transaction between persons who are associates, distribute, apportion, or allocate any income, gain, deduction, loss, or tax credit between the persons as is necessary to reflect the outcome that would have been realised in an arm's length transaction.

(2) Regulations may be made under section 106 providing for:

- (a) any distribution, apportionment, or allocation of income, a gain, deduction, loss, or tax credit in the case of a transaction between associates if a party to the transaction is located in and subject to tax in Samoa, and another party to the transaction is located outside Samoa; or
- (b) the allocation of income and deductions to a permanent establishment in Samoa of a non-resident person or a permanent establishment outside Samoa of a resident person.

(3) In this section, "arm's length transaction" means a transaction between independent persons dealing at arm's length with each other.

79. Tax avoidance schemes-(1) For the purposes of determining the liability to tax under this Act of any person, the Commissioner may:

- (a) determine the character of a transaction or part of it that was entered into as part of a tax avoidance scheme; or
- (b) disregard a transaction that does not have substantial economic effect; or
- (c) determine the character of a transaction if the form of the transaction does not reflect the substance.

(2) In this section:

"scheme" means an agreement, arrangement, understanding, or undertaking, whether express or implied and whether or not enforceable, and includes a unilateral action; and

"tax avoidance scheme" means any scheme if one of the purposes of a person in entering into the scheme is the avoidance or reduction of any person's liability to tax under this Act.

PART 7 **PROCEDURAL RULES**

Division 1

Procedural Rules for Income Tax

80. Filing of income tax returns-(1) A person who is liable for income tax or has a loss under section 28(1) for a tax year must file

an income tax return for the year within three (3) months after the end of the tax year.

(2) A partnership or the trustee of a trust must file an income tax return for a tax year within three (3) months after the end of the tax year.

(3) An income tax return must be in the approved form and filed in the prescribed manner.

81. Income tax records-(1) A person must keep such accounts, documents, and records as enable the computation of the income tax payable by the person for a tax year.

(2) Subject to this Act, a person must retain the records required under subsection (1) for the period specified in the Tax Administration Act 2012.

(3) The Commissioner may disallow a claim for a deduction for an expenditure or loss if a person is unable, without reasonable excuse, to produce a receipt or other record of the expenditure or loss, or to produce evidence relating to the circumstances giving rise to the claim for the deduction.

82. Due date for payment of income tax - The income tax payable by a person for a tax year is due on the date that the income tax return for the year is due.

83. Collection of non-resident international transportation income tax in relation to ships-(1) Subject to subsection (3), before the departure of a ship owned or chartered by a non-resident person from a port in Samoa, the master of the ship or the shipping agent in Samoa of the non-resident person:

(a) must file with the Commissioner a return showing the gross amount derived by the non-resident person from the carriage of passengers, livestock, mail, merchandise, or goods embarked or loaded in Samoa in respect of the ship and the non-resident international transportation income tax payable thereon; and

(b) pay the non-resident international transportation income tax due in respect of the ship with the return.

(2) The return required under subsection (1)(a) must be in the approved form and filed in the prescribed manner.

(3) The Commissioner may allow the return required under subsection (1)(a) to be filed within 30 days after departure of the ship from Samoa provided the non-resident owner or charterer has made

satisfactory arrangements for the payment of any non-resident international transportation income tax due in respect of the ship.

(4) The Comptroller must not grant a port clearance for a ship owned or chartered by a non-resident person until satisfied that:

(a) any non-resident international transportation income tax due in respect of the ship has been paid or that arrangements for payment of the tax have been made to the satisfaction of the Commissioner; or

(b) no tax is payable in respect of the ship.

(5) This section does not relieve the owner or charterer of the ship from liability to pay any non-resident international transportation income tax due that is not paid by the master of the ship or shipping agent in Samoa of the non-resident.

84. Collection of non-resident international transportation income tax in relation to aircraft-(1) The owner or charterer of an aircraft that is liable for non-resident international transportation income tax must file a return with the Commissioner for each quarter within 15 days after the end of the quarter.

(2) The return required under subsection (1) must be in the approved form and filed in the prescribed manner.

(3) A person that files a return under subsection (1) is treated as having made a self-assessment of the non-resident international transportation tax payable on the gross amount received for the carriage of passengers, livestock, mail, merchandise, or goods embarked or loaded in Samoa during the quarter as specified in the return.

(4) The non-resident international transportation income tax payable by the non-resident person is collected quarterly and is due on the due date for filing the return for each quarter.

(5) If the tax payable for a quarter is not paid within three (3) months after the due date, the Commissioner may issue to the Comptroller of Customs a certificate specifying the name of the non-resident person and the amount of tax due, and the Comptroller must refuse clearance from any airport in Samoa to any aircraft owned or chartered by the person until the tax due has been paid.

Division 2

Provisional Tax

85. Liability for provisional tax-(1) A person who is liable for income tax must pay instalments of provisional tax for a tax year by 31 March, 31 July and 31 October of the tax year.

(2) If the provisional tax payable by a person for a tax year is less than \$500, the provisional tax is payable in one amount due by 31 March of the tax year.

(3) Subject to this Division, the provisional tax payable by a person for a tax year is computed according to the following formula:

$$A - B$$

where:

A is the income tax assessed, including under a self-assessment, for the preceding tax year after reduction of any tax credit allowed to the person for that year, other than a tax credit allowed under this section or section 103; and

B is so much of **A** that was paid by amounts withheld under Division 4 of this Part.

(4) The amount of each instalment of provisional tax payable by a person for a tax year is one-third of the provisional tax payable or estimated under section 86 or 87 to be payable by the person for the year.

(5) Each instalment of provisional tax paid by a person during a tax year is allowed as a tax credit against the income tax liability of the person for the year in accordance with section 9(4) and if the amount of the credit allowed exceeds the income tax due for the year, the amount of the excess is applied in accordance with section 66 of the Tax Administration Act 2012.

86. Taxpayer's estimate of provisional tax payable-(1) A person must file an estimate of the provisional tax payable by the person for the tax year with the Commissioner by the due date for payment of the first instalment of provisional tax for the year if:

(a) the income tax payable by the person for the previous tax year has not been assessed, including under a self-assessment, by the due date for payment of the first instalment of provisional tax for a tax year; or

(b) the person commenced to derive amounts included in assessable income during the tax year.

(2) If there are reasonable grounds to believe that the income tax liability of a person for a tax year will be significantly lower than the income tax liability assessed for the previous tax year, the person may, at any time during the tax year, file an estimate of the provisional tax payable by the person for the tax year.

(3) An estimate filed by a person under subsection (1) or (2) remains in force for the whole of the tax year unless the person files a revised estimate with the Commissioner.

(4) An estimate filed under subsection (2) and a revised estimate filed under subsection (3) applies to the calculation of instalments of provisional tax for a tax year due both before and after the date the estimate or revised estimate was filed and:

- (a) the amount of any underpayment of provisional tax instalments made prior to filing the estimate or revised estimate must be paid by the person together with the first instalment due after the estimate or revised estimate was filed; or
- (b) the amount of any overpaid instalments of provisional tax is applied against future provisional tax instalments due.

87. Commissioner's estimate of provisional tax payable-(1) If a person fails to file an estimate of the provisional tax for a tax year as required under section 86(1), the provisional tax payable by the person for the year is the amount estimated by the Commissioner.

(2) The Commissioner's estimate under subsection (1) remains in force for the whole of the tax year unless the person files a revised estimate with the Commissioner.

88. Provisional tax underestimated-(1) If an estimate (including an estimate by the Commissioner under section 87(1) and a revised estimate under section 86(3) or 87(2)) of the provisional tax payable by a person for a tax year is less than 80% of the actual income tax payable by the person for the tax year (the difference is referred to as the "provisional tax shortfall"), the person is liable for a provisional tax shortfall penalty equal to:

- (a) if the under-estimate is due to fraud or wilful neglect, 50% of the provisional tax shortfall; or
- (b) in any other case, 10% of the provisional tax shortfall.

(2) For the purposes of subsection (1), the "actual income tax payable" by a person for a tax year is computed according to the following formula:

$$A - B$$

where:

- A the income tax assessed, including under a self-assessment, for the year after reduction of any tax credit allowed to the

person for the year, other than a tax credit allowed under this section or section 103; and

B is so much of **A** that was paid by amounts withheld under Division 4 of this Part.

(3) No penalty is imposed under subsection (1)(b) if the Commissioner is satisfied that the reason for the provisional tax shortfall was due to circumstances beyond the control of the person and all reasonable care was taken in making the estimate.

Division 3

Procedural Rules for Capital Gains Tax

89. Filing of capital gains tax return-(1) A person liable for capital gains tax for a tax year must file a capital gains tax return within three (3) months after the end of the tax year.

(2) A capital gains tax return must be in the approved form and filed in the prescribed manner.

90. Capital gains tax records-(1) A person must keep such accounts, documents, and records as enable the computation of the capital gains tax payable by the person for a tax year.

(2) A person must retain the records required under subsection (1) for the period specified in the Tax Administration Act 2012.

(3) The Commissioner may disallow the inclusion of the amount of expenditure in the cost of an asset if a person is unable, without reasonable excuse, to produce a receipt or other record of the expenditure.

91. Due date for payment of capital gains tax - The capital gains tax payable by a person for a tax year is due on the date that the capital gains tax return for the year is due.

92. Collection of capital gains tax payable by partnerships or trusts-(1) Each trustee of a trust is responsible for performing any duties or obligations imposed by this Act or the Tax Administration Act 2012 on the trust in respect of capital gains tax, including the payment of capital gains tax.

(2) Each partner in a partnership is responsible for performing any duties or obligations imposed by this Act or the Tax Administration Act 2012 on the partnership in respect of capital gains tax, including the payment of capital gains tax.

(3) The duties and obligations imposed under this section on the trustees of a trust or the partners in a partnership apply jointly and severally to the trustees or partners, as the case may be, but may be discharged by any of them.

Division 4
Withholding Tax

93. Withholding of tax from salary and wage income-(1) Subject to section 97, an employer must withhold tax from a payment of salary and wage income to an employee as prescribed.

(2) The obligation of an employer to withhold tax under subsection (1):

- (a) is not reduced or extinguished because the employer has a right, or is otherwise obliged, to withhold any other amount from a payment of salary and wage income; and
- (b) applies despite any law that provides that the salary and wage income of an employee is not to be reduced or subject to attachment.

94. Withholding of tax from interest - Subject to section 97, a licensed financial institution paying interest to a resident individual must withhold tax from the gross amount of the interest at the rate of 15%.

95. Withholding of tax from personal (including professional) services income-(1) Subject to section 97, a Government entity paying a fee to a resident person for personal (including professional) services must withhold tax from the gross amount of the fee at the rate of 10% if the fee is paid out of funds obtained under an international agreement.

(2) In this section, "Government entity" means:

- (a) the Government, including a department, division, or agency of the Government; or
- (b) a company controlled by the Government; or
- (c) a local or public authority.

96. Withholding of Tax from Payments to Non-resident Persons - Subject to section 97, a person paying an amount to a non-resident person that is subject to non-resident withholding tax must withhold tax from the gross amount paid at the non-resident withholding tax rate specified in Schedule 1.

97. No Withholding from Exempt Income - A person is not liable to withhold tax under this Division from an amount that is exempt income of the recipient.

98. Time of Withholding - A person required to withhold tax under this Division from an amount paid by the person must withhold the tax at the earlier of:

- (a) the time the amount is credited to the account of the recipient; or
- (b) the time the amount is actually paid.

99. Payment of Tax Withheld-(1) Tax required to be withheld by a person under this Division must be paid to the Commissioner within 15 days after the end of the month in which the person was required to withhold the tax.

(2) A person required to withhold tax under this Division is personally liable for the amount of tax if the person:

- (a) fails to withhold tax as required under this Division; or
- (b) having withheld tax, fails to pay the tax to the Commissioner as required under subsection (1).

(3) A person who is personally liable for an amount of tax under subsection (2) as a result of failing to withhold the tax is entitled to recover the tax from the recipient of the payment.

100. Recovery of Withholding Tax-(1) If a person fails to withhold tax as required under this Division, the Commissioner may recover the tax from the recipient of the payment provided the total amount recovered does not exceed the tax that should have been withheld.

(2) Despite the recovery of any tax under subsection (1), the person who failed to withhold the tax continues to be liable for:

- (a) any other legal action in relation to the failure; and
- (b) the imposition of interest and penalty in respect of the failure; and
- (c) the disallowing of a deduction for the expenditure to which the failure relates under section 19(2).

101. Tax Withholding Certificate-(1) A person withholding tax from a payment under this Division must give to the recipient of the payment a tax withholding certificate in the approved form and in the prescribed manner.

(2) A person who is required to file an income tax return for a tax year must attach to the return any tax withholding certificate as prescribed.

102. Annual Withholding Tax Statement-(1) A person withholding tax under this Division:

- (a) must, within two (2) months after the end of the tax year or within such further time as the Commissioner may allow by notice in writing, file with the Commissioner an annual withholding tax statement in the approved form and in the prescribed manner; and
- (b) may be required to file withholding tax statements on a monthly, quarterly, or six (6) monthly basis as may be prescribed, in addition to the requirement under paragraph (a).

(2) In this section, “tax year” means the calendar year.

103. Credit for Withholding Tax-(1) For the purposes of this Act, if tax has been withheld under this Division from income derived by a person, the amount of income included in the assessable income of the person is the amount derived before the withholding of the tax.

(2) Subject to subsections (3) and (4), if tax has been withheld under this Division from income derived by a person, the person is allowed a tax credit for the withholding tax against the income tax due by the person on the taxable income of the person for the tax year in which the tax was withheld.

(3) No tax credit is allowed if the tax withheld is a final tax on the income under section 12, 60, or 104.

(4) A tax credit allowed under this section is applied in accordance with section 9(4).

(5) A tax credit or part of a tax credit allowed to a person under this section for a tax year that is not credited under section 9(4) for the year is applied in accordance with section 66 of the Tax Administration Act 2012.

104. Withholding Tax a Final Tax-(1) This section applies to tax withheld during a tax year under section 94.

(2) If this section applies, the tax withheld is a final tax for the person who derived the income for which tax has been withheld and:

- (a) the income is not included in assessable income in computing the taxable income of the person who derives it for any tax year; and

- (b) no deduction is allowed under this Act in computing the taxable income of the person for any expenditure or loss incurred in gaining or producing the income; and
- (c) the income is not reduced by a deduction allowed under this Act or any loss carried forward; and
- (d) the tax withheld is not reduced by any tax credits allowed under this Act.

PART 8
MISCELLANEOUS

105. Arrangements for the relief of double tax and exchange of tax information-(1) The Minister may enter into an agreement with the government of another country (referred to as the “other contracting state”):

- (a) under which arrangements are made with the other contracting state for the prevention, mitigation, or discontinuance of the levying of tax under this Act and under the laws of the other contracting state, in respect of the same income or gain, or to the rendering of reciprocal assistance in the administration of, and collection of taxes under, this Act and under the laws of the other contracting state; or
 - (b) for the reciprocal exchange of information under a tax information exchange agreement.
- (2) Without limiting subsection (1), an agreement made under this section may contain provisions in relation to the following:
- (a) relief from double taxation;
 - (b) the taxation of income derived from sources in Samoa by non-resident persons or the taxation of capital gains in relation to Samoan assets of non-resident persons;
 - (c) the determination of the income, expenditures or losses, or capital gains or losses to be attributed to permanent establishments in Samoa of non-resident persons;
 - (d) the determination of the income attributable to resident persons who have special relationships with non-resident persons.
- (3) An agreement made under this section may include relief from double taxation for periods before the commencement of this Act or before the making of the agreement, or provisions relating to income that is not subject to double taxation.

(4) An agreement made under this section may be amended or revoked, at any time, by a subsequent agreement, and the subsequent agreement may contain such transitional provisions as appear to the Minister to be necessary or expedient.

(5) The secrecy obligation in section 9 of the Tax Administration Act 2012 does not prevent the disclosure of information or documents to any authorised officer of the other contracting state as is required to be disclosed under an agreement made under this section.

(6) If an agreement made under this section provides that income derived from sources in Samoa or capital gains on disposal of Samoan assets are exempt from tax or are subject to a reduction in the rate of tax, the benefit of that exemption or reduction is not available to any person who is a resident of the other contracting state if 50% or more of the underlying ownership of that person is held by an individual or individuals who are not residents of the other contracting state for the purposes of the agreement.

(7) To the extent that the terms of an agreement made under this section are inconsistent with the provisions of this Act, apart from subsection (6) and Part 6, the terms of the agreement prevail over the provisions of this Act.

106. Regulations-(1) The Head of State, acting on the advice of Cabinet, may make the following regulations:

- (a) to prescribe offences and fines of up to 100 penalty units or to imprisonment up to 12 months;
- (b) to provide other matters as are contemplated by, or necessary for giving full effect to and for the due administration of, this Act.

(2) Regulations made under subsection (1) may provide for any matter relating to saving or transitional nature consequent on the making of this Act which may be made within six (6) months from the commencement of this Act, and the regulations may apply retrospectively from the commencement of this Act.

107. Repeal and savings-(1) Subject to this section and section 104, the Income Tax Act 1974 and the Income Tax Rates Act 1974, and any subsidiary legislation made under those Acts are repealed (“repealed legislation”).

(2) Despite subsection (1):

- (a) section 7(1)(zb) of the Income Tax Act 1974 continues to apply until 31 December 2014; and
- (b) section 31 of the Income Tax Act 1974 continues to apply until 30 June 2013.

108. Transitional-(1) The repealed legislation continues to apply to tax years prior to 1 January 2013.

(2) A reference in this Act to a previous tax year includes, when the context requires, a reference to a tax year under the repealed legislation.

SCHEDULE 1

(Sections 9, 10, 11, 45, 59 and 63)

RATES OF TAX

(1) The rates of income tax applicable to an individual are as follows:

Taxable income (\$)	Rate of income tax
0 – 12,000	Nil
12,001 – 15,000	10%
15,001 – 20,000	20%
20,001 +	27%

(2) The rate of income tax applicable to a company is 27%.

(3) The rates of income tax applicable to a trustee are:

- (a) if the trustee is liable to tax in respect of a deceased estate, the rates of tax specified in clause (1); or
- (b) in any other case, 27%.

(4) The rate of non-resident withholding tax:

- (a) for an insurance premium under a life policy or arising from re-insurance, 7½%; or
- (b) for interest, a royalty, insurance premium (other than an insurance premium covered by paragraph (a)), management fee, fee for personal (including professional) services, or natural resource amount, 15%.

(5) The rate of non-resident international transportation income tax is 5%.

(6) The rate of income tax under section 45 is 10%.

(7) The rates of salary and wages income tax are as follows:

Salary and wage income for fortnight (\$)	Rate of salary and wage income tax
0 – 461	Nil
462 – 577	10%
578 – 769	20%
770 +	27%

(8) The rate of capital gains tax is 27%.

SCHEDULE 2 EXEMPT INCOME

(Section 17)

Part A – General Exemptions

- (1) The following are exempt income:
- (a) the income derived by a public authority or statutory authority, but not including income received in trust;
 - (b) a dividend paid by a resident company;
 - (c) the income from a sinking fund in respect of public debt or the debt of a statutory authority;
 - (d) the following pensions or allowances -
 - (i) a pension payable by or through the Samoa National Provident Fund;
 - (ii) a pension payable under the Parliamentary Pensions Scheme Act 1998;
 - (iii) a pension or allowance granted by a government in respect of a war, or for any disability or disablement attributable to or aggravated by service in a naval, military, air, or police force;
 - (iv) a pension or lump sum paid by a retirement fund that is not an approved fund;
 - (e) the first \$50 of interest derived by a resident individual from sources in Samoa in a tax year;
 - (f) alimony or maintenance;

- (g) the income derived by the trustee of an approved fund;
- (h) the income derived by a non-profit organisation;
- (i) a scholarship or bursary for attendance at an educational institution;
- (j) sick pay or allowances derived by an individual for a period of incapacity from work, if the pay or allowance was paid to the individual from a sick, accident, or death benefit fund of which the individual was a member at the commencement of the incapacity;
- (k) the income, other than business income, derived by the trustee of a sick, accident, or death fund;
- (l) the income derived by a Minister of Religion if -
 - (i) the sole occupation of the Minister is the spiritual guidance of a specific congregation in Samoa; and
 - (ii) the income comprises contributions made by members of the congregation; and
 - (iii) the Minister is approved by the Commissioner for the purposes of this paragraph;
- (m) the income derived by a person from personal (including professional) services performed by the person for the Government to the extent provided for under an international agreement;
- (n) the income derived by an international organisation to the extent provided for in an international agreement;
- (o) interest derived by a non-resident person -
 - (i) in respect of stocks or bonds issued by the Government or a local or public authority if the interest is paid outside Samoa; or
 - (ii) if the interest is exempt from tax pursuant to an international agreement;
- (p) the income derived by a non-resident individual, other than a public entertainer, from personal (including professional) services during a visit or visits to Samoa if -
 - (i) the individual is in Samoa for a period of, or periods amounting in aggregate to, no more than 30 days in a tax year; and
 - (ii) the income is subject to tax in the individual's country of residence and the tax is substantially of the same nature as income tax under this Act; and

- (iii) the services are performed for or on behalf of a non-resident person;
 - (q) the income of an individual, other than a citizen of Samoa, who holds office in Samoa as an official of a foreign government or international organisation to the extent provided in the Diplomatic Privileges and Immunities Act 1978;
 - (r) compensation derived by a person under the Accident Compensation Act 1989 whether paid as a lump sum or periodically;
 - (s) income derived by a non-resident person from the operation of a ship or aircraft in international traffic if an equivalent exemption is granted to resident persons carrying on a similar business by the foreign country in which the non-resident person has its central management and control;
 - (t) the first \$500 of income derived by a resident person, other than a company, from bonus payments made solely for the purpose of home purchase by a savings institution approved by the Commissioner;
 - (u) the foreign-source income, other than salary and wage income, of a temporary resident.
- (2) In this Part:
- “charitable purposes” means any one or more of the following:
- (a) the relief of poverty, sickness, or disability;
 - (b) the advancement of education or religion;
 - (c) the promotion of any other object beneficial to the community including any object that is charitable according to Samoan usage and custom.
- “non-profit organisation” means any one or more of the following:
- (a) an institution, society, or irrevocable trust established solely for charitable purposes;
 - (b) a company or society established principally for the purpose of promoting an amateur game or sport in Samoa if the game or sport is conducted for the benefit of the general public;
 - (c) a company or society established principally -
 - (i) to advertise, beautify, or develop a town or district so as to attract tourists, visitors, or population; or
 - (ii) to create, increase, expand, or develop amenities for the general public:

PROVIDED THAT no part of the income or other funds of the institution, society, trust, or company are used or are available for use for the pecuniary profit of a proprietor, member, or shareholder of the institution, society, trust, or company.

“public entertainer” includes theatre, motion picture, television, and radio artists, singers, musicians, dancers, lecturers, circus performers, boxers, wrestlers, golfers, athletes, and other professional sportspersons;

“sick, accident, or death fund” means a fund approved by the Commissioner established for the benefit of the employees of an employer, or of members of an incorporated society, or of the surviving spouse and dependents of a deceased employee or deceased member of an incorporated society; and

“temporary resident” means an individual who is:

- (a) not a citizen or permanent resident of Samoa; and
- (b) a resident individual solely or mainly for the purposes of engaging in employment in Samoa under a contract of employment of not more than three (3) years.

Part B – Tax Concessions

(1) The following amounts are exempt income:

- (a) the income derived by a non-resident person from personal (including professional) services performed in Samoa if the following conditions are satisfied -
 - (i) the non-resident person is approved by the Minister or belongs to a class of person approved by the Minister for the purposes of this clause;
 - (ii) the services are principally directed at assisting the Government in the settlement or development of Samoa;
 - (iii) the non-resident person is liable to tax in the non-resident’s country of residence;
- (b) the income derived by a non-resident employee from employment performed in Samoa for, or on behalf of, a non-resident employer if the non-resident employee is approved by the Minister or belongs to a class of person approved by the Minister for the purposes of this section;
- (c) a maintenance allowance, scholarship, or bursary derived by a non-resident individual if the following conditions are satisfied -

- (i) the non-resident individual is approved by the Minister or belongs to a class of person approved by the Minister for the purposes of this paragraph;
- (ii) the maintenance allowance, scholarship, or bursary is derived by the individual while in Samoa for the purpose of:
 - (A) providing professional expert advice or assistance; or
 - (B) making investigations; or
 - (C) receiving education, training, and experience;
 - (iii) the advice, assistance, investigation, education, training, or experience is pursuant to an international agreement for the purpose of providing (whether on a mutual, co-operative, multilateral, bilateral, or unilateral basis) professional, expert, educational, economic, technical, or cultural assistance, or administrative or other training, or facilities for making investigations;
- (d) the salary and wage income of an employee, other than a Samoan citizen, of a company registered under the Trustee Companies Act 1988, or licensed under the International Banking Act 2005 or the International Insurance Act 1988 but only if the employee remains in Samoa solely for the purposes of that employment;
- (e) income from the sale of primary production derived by a person carrying on the business of primary production in Samoa;
- (f) interest on loans from a non-resident person that, in the opinion of the Minister, are obtained and applied for the economic benefit of Samoa;
- (g) foreign-source income derived by a resident company if the following conditions are satisfied -
 - (i) in the opinion of Cabinet, the income would not, but for this exemption, have been derived by the company and the income significantly contributes to economic welfare in Samoa;
 - (ii) the company has been issued with a certificate by Cabinet certifying the matters stated in sub-paragraph (i);
 - (iii) the company does not have a permanent establishment in Samoa;

(h) the income of a person derived from the operation of a hotel if the capital investment in the hotel was made after 30 June 2003 and is held in a form approved in writing by the Minister for a period of -

(i) in the case of a category 1 hotel, five (5) years from the date specified by the Commissioner by notice in writing; or

(ii) in the case of a category 2 hotel, 10 years from the date specified by the Commissioner by notice in writing; or

(iii) in the case of a category 3 hotel, 15 years from the date specified by the Commissioner by notice in writing.

(2) In this Part:

“category 1 hotel” means a hotel providing first class accommodation and facilities that is approved by the Minister, acting on the advice of Cabinet, if the capital investment in the hotel is more than \$1 million and up to and including \$3 million;

“category 2 hotel” means a hotel providing first class accommodation and facilities that is approved by the Minister, acting on the advice of Cabinet, if the capital investment in the hotel is more than \$3 million and up to and including \$20 million;

“category 3 hotel” means a hotel providing first class accommodation and facilities that is approved by the Minister, acting on the advice of Cabinet, if the capital investment in the hotel is more than \$20 million;

“capital investment”, in relation to a hotel, does not include improvements or renovations of the hotel;

“commercial fishing” means the catching of fish, including shell fish and other seafood, in a fishing boat 11 metres or more in length in the course of carrying on a business by a company, partnership, or trust, but does not include game fishing;

“non-resident employee” means an employee who is a non-resident individual;

“non-resident employer” means an employer that is a non-resident person; and

“primary production” means production resulting directly from:

(a) the farming of land, including the production of crops and animal husbandry, but not including silviculture; or

- (b) the making of handicrafts, including any arts and crafts made in Samoa principally from the natural produce of Samoa; or
- (c) the catching of fish, including shell fish and other seafood, within the territorial waters of Samoa, but not including commercial fishing.

**SCHEDULE 3
VALUATION OF FRINGE BENEFITS**

(Section 61)

(1) The value of a fringe benefit included in the salary and wage income of an employee under section 61(1)(b) is determined in accordance with this Schedule.

(2) This Schedule does not apply to any allowance or reimbursement referred to in section 61(1)(c) or (d).

(3) Subject to clauses (5) and (6), if, during a fortnight, a motor vehicle is provided by an employer to an employee wholly for the private use of the employee, the value of the benefit for fortnight is the amount computed in accordance with the following formula:

$$\frac{(A \times 20\%) - B}{26}$$

where:

A is the cost to the employer of acquiring the motor vehicle or, if the vehicle is leased by the employer, the fair market value of the vehicle at the commencement of the lease; and

B is any payment made by the employee for the use of the motor vehicle or for its running costs.

(4) Subject to clauses (5) and (6), if, in a tax year, a motor vehicle is provided to an employee partly for private use and partly for use in employment, the value of the benefit for the fortnight is the amount computed in accordance with the formula in clause (3) reduced by the proportion of that amount representing use in employment.

(5) If a motor vehicle referred to in clause (3) or (4) is not provided for the whole of the fortnight wholly or partly for private use, the value of the benefit computed under those clauses, as the case may be, is based on the proportion of the fortnight that the vehicle was provided wholly or partly for private use.

(6) If an employer has held a motor vehicle to which this section applies for more than five (5) years, the value of component **A** in the formula in clause (3) is reduced by one-third.

(7) If, during a fortnight, the services of a housekeeper, driver, gardener, or other domestic assistant is provided by an employer to an employee, the value of the benefit for the fortnight is the total salary and wages income paid to the domestic assistant in that quarter for services rendered to the employee, as reduced by any payment made by the employee for such services.

(8) Subject to clause (9), if, during a fortnight, a loan is made by an employer to an employee, the value of the benefit for the fortnight is the amount computed in accordance with the following formula:

$$\frac{\mathbf{A} - \mathbf{B}}{26}$$

where:

A is the interest that would have been paid by the employee on the loan for the year in which the fortnight occurs if the loan had been made at the market lending rate; and

B is the interest payable, if any, by the employee on the loan for the year in which the fortnight occurs.

(9) The value of a benefit under clause (8) is reduced to the extent that the loan is used by the employee to derive amounts included in assessable income.

(10) If, during a fortnight, an obligation of an employee to pay or repay an amount owing by the employee to the employer is waived by the employer, the value of the benefit is the amount so waived.

(11) If, during a fortnight, property is transferred or services are provided by an employer to an employee, the value of the benefit is the cost to the employer of the property or services reduced by any payment made by the employee for the property or services.

(12) If, during a fortnight, accommodation or housing is provided by an employer to an employee, the value of the benefit is:

(a) when the employer or an associate owns the accommodation or housing, the fair market rent of the accommodation or housing; or

(b) in any other case, the rent paid by the employer for the accommodation or housing,

reduced by any payment made by the employee for the accommodation or housing.

(13) If, during a fortnight, a meal or refreshment is provided by an employer to an employee, the value of the benefit is the total cost to the employer of providing the meal or refreshment reduced by any amount paid by the employee for the meal or refreshment.

(14) If, during a fortnight, an employer makes a payment of expenditure not covered by one of the other clauses of this Schedule that gives rise to a private benefit to an employee, the value of the benefit is the amount so paid.

(15) If, during a fortnight, an employer has provided an employee with a benefit not covered by clauses (3) to (14), the value of the benefit is the fair market value of the benefit determined when it is provided reduced by any payment made by the employee for the benefit.

(16) In this Schedule:

“services” includes the making available of any facility.

**The Income Tax Act 2012 is administered
by the Ministry for Revenue.**

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