



MONTSERRAT

CHAPTER 17.01

INCOME TAX ACT and Subsidiary Legislation

Revised Edition
showing the law as at 1 January 2002

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

INCOME TAX ACT

Act 19 of 1967 .. in force 1 January 1968	
Amended by Acts:	
24 of 1968 .. in force 1 January 1968	
14 of 1969 .. in force 1 July 1968	
6 of 1975 .. in force 1 January 1975	
35 of 1975 .. in force 1 January 1975 (Part)	
	in force 1 January 1976 (Remainder)
9 of 1976 .. in force 1 January 1975 (Part)	
	in force 1 January 1976 (Remainder)
17 of 1976 .. in force 1 January 1977	
19 of 1980 .. in force 4 December 1980	
2 of 1986 .. in force 1 January 1986	
5 of 1991 .. in force 1 April 1989 (section 2)	
	in force 28 March 1991 (Remainder)
3 of 1994 .. in force 26 February 1994	
13 of 1995 .. in force 8 January 1996	
8 of 1998 .. in force 24 November 1998	
8 of 1999 .. in force 10 November 1999	

Page

3

INCOME TAX (EMPLOYMENT) RULES – Section 44

S.R.O. 3/1968 .. in force 1 January 1968	
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73

Continued on the Inside Cover ...

INCOME TAX RULES

S.R.O.s 2/1946 and 21/1959

87

INCOME TAX (APPEAL) RULES

S.R.O. 13/1932

111



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Page

3

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CHAPTER 17.01

INCOME TAX ACT

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

SECTION

1. Short title
2. Interpretation

PART II

IMPOSITION OF INCOME TAX

3. Charge of income tax
4. Basis of assessment
5. Surcharge

PART III

EXEMPTIONS

6. Exemptions
7. Exemption: interest from housing loans
8. Exemption: interest paid on certain loans
9. Government loans
10. Relief to hotel proprietors from income tax
11. Relief to pioneer industries from income tax
12. Exemption of international business companies

PART IV

COMPUTATION OF CHARGEABLE INCOME

13. Deductions allowed
14. Restriction on deductions: management charges

15. Special deductions for capital expenditure
16. Deductions not to be allowed
- 17(1). Allowance for trade loss
- 17(2). Tax holiday losses
18. Insurance and shipping Companies
19. Trading by non-residents
20. Pensions and superannuation funds
21. Books of account to be kept

PART V

PERSONS ASSESSABLE

22. Married women
23. Deceased person
24. Partnerships
25. Chargeability of trustees etc
26. Chargeability of agent of person residing out of Montserrat
27. Acts etc. to be done by trustees
28. Agents etc., of non-residents to be assessed
29. Indemnification of representative
30. Income derived from property transferred to minors
31. Income of property transferred in trust to be income of transferor in certain cases
32. Dispositions for short periods
33. Apportionment of profits of certain companies among members

PART VI

PERSONAL ALLOWANCES

34. General deduction
35. Deduction for mortgage interest paid on residential property

PART VII

RATES OF TAX, ETC

36. Rates of tax
37. Rates of tax on companies, etc
38. Tax to be deducted from certain payments

39. Deduction of tax from Government stock
40. Deduction of tax from payments made to non-residents
41. Surcharge

PART VIII

ADMINISTRATION

42. Appointment of administrative authority
43. Official secrecy
44. Making rules
45. Forms
46. Signature on notices
47. Service of notices
48. Refusal or neglect to accept letters
49. Assessment not void by reason of errors
50. Time limits

PART IX

RETURNS AND ASSESSMENTS

51. Return of personal income
52. Returns by employers
53. Official information and official secrecy
54. Power of Comptroller to require accounts and returns
55. List to be prepared by representative or agent
56. Returns of interest
57. Manager of corporate bodies of persons
58. Comptroller to make assessments
59. Transactions designed to avoid liability to tax
60. Appointment of agent in the United Kingdom
61. Omissions and undercharges to be rectified
62. Comptroller or Commissioners may require a person to attend
63. List of persons assessed
64. Notices to be served on persons assessed
65. Relief in respect of error or mistake

PART X

OBJECTIONS AND APPEALS

66. Revision of assessment and re-assessment
67. Objections to revised assessments
68. Appeals to High Court
69. Appeals to Court of Appeal

PART XI

COLLECTION AND RECOVERY OF TAX

70. Collection of tax
71. Deduction on payment of emoluments
72. When tax deducted from payments to non-residents is due and payable
73. Definition of emoluments for purposes of section 71
74. Tax in arrears
75. Penalty for non-payment of tax
76. Recovery of tax by levy on goods etc
77. Priority of claim for tax
78. Sale by tax authorities
79. Commission to Bailiff
80. Committal to prison
81. Recovery of tax from and assessment of persons leaving Montserrat
82. Repayment of tax
83. Power to remit tax
84. Exit Certificates

PART XII

PENALTIES

85. Penalty for offences
86. Penalty for incorrect returns
87. Penalty for false statements and returns
88. Time limit for proceedings
89. Savings for criminal proceedings
90. Power of Attorney General to conduct proceedings

PART XIII

DOUBLE TAXATION RELIEF

91. Relief for tax paid in the Commonwealth
 92. Double taxation arrangements
 93. Tax credits
 94. Time limit for claims
 95. Adjustment of tax deducted from dividends and set-off
- SCHEDULE 1: Deduction of Tax from Payments to Non-Residents
SCHEDULE 2: Rates of Tax

CHAPTER 17.01

INCOME TAX ACT

*(Acts 19 of 1967, 24 of 1968, 14 of 1969, 6 of 1975, 35 of 1975,
9 of 1976, 17 of 1976, 19 of 1980, 2 of 1986, 5 of 1991,
3 of 1994, 13 of 1995, 8 of 1998 and 8 of 1999)*

AN ACT TO IMPOSE A TAX ON INCOMES AND TO REGULATE THE COLLECTION THEREOF.

Commencement

[1 January 1968]

PART I

PRELIMINARY

Short title

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

Interpretation

2. In this Act, unless the context otherwise requires—

“body of persons” means any body politic, corporate or collegiate and any company, fraternity, fellowship or society of persons whether corporate or not corporate;

“capital expenditure” means the net expenditure after deducting any grants, subsidies or other payments received from third parties on account of the gross expenditure;

“chargeable income” means the aggregate amount of the income of any person from the sources specified in section 3 remaining after allowing the appropriate deductions and exemptions under this Act;

“Commissioners” means the Commissioners of Income Tax appointed under section 42;

“the Commonwealth” shall be deemed to include those territories and their dependencies which are prescribed;

“Commonwealth Income Tax” means any income tax charged under any law in force in any part of the Commonwealth other than the United Kingdom;

- “**Company**” means any company incorporated or registered under any law in force in Montserrat or any company incorporated or registered outside Montserrat;
- “**Comptroller**” means the Comptroller of Inland Revenue appointed under section 42 and includes any officer acting for or deputed by him;
- “**double taxation relief**” means any relief or credit given in respect of income tax charged in any other territory;
- “**individual**” does not include a body of persons;
- “**industrial company**” means a company which has been declared a development company under the Fiscal Incentives Act;
- “**off-shore company**” means a company which is resident and registered in Montserrat but carries on its entire activities outside Montserrat, and the expression includes an off-shore trust company;
- “**person**” includes a body of persons;
- “**plant or machinery**” excludes expenditure on loose plant, tools, containers, cases, china, glass, soft furnishings and similar objects of a short life or for which the cost of renewals is a deduction allowed in computing the profits;
- “**prescribed**” means prescribed by rules under this Act;
- “**section**” means a section of this Act;
- “**tax**” means the income tax imposed by this Act;
- “**trade**” means any trade, manufacture, business, and any adventure or concern in the nature of trade, and shall include farming, market gardening, husbandry and the occupation of land for any commercial purpose;
- “**year of assessment**” means the period of twelve months commencing on the 1st day of January in each year.
(Amended by Act 35 of 1975)

PART II

IMPOSITION OF INCOME TAX

Charge of income tax

3. Income tax shall, subject to the provisions of this Act, be payable at the rate or rates specified hereafter upon the income of any person accruing in or derived from Montserrat or elsewhere and whether received in Montserrat or not in respect of—

- (a) gains or profits from any trade, profession or vocation, for whatever period of time such trade, profession or vocation may have been carried on or exercised;
- (b) gains or profits from any employment, including the estimated annual value of any quarters or board or residence or of any other allowance or benefit granted in respect of employment whether in money or otherwise other than in respect of any passage to or from Montserrat granted for leave purposes;
- (c) the annual value of land and improvements thereon used by or on behalf of the owner or used other than at full rental value by the occupier, for the purpose of residence or enjoyment, and not for the purpose of gain or profit, such annual value being deemed to be the gross rental value fixed under the Property Tax Act or 5% of the estimated market value of the property whichever is the greater;
- (d) dividends, interest or discounts;
- (e) any pension, charge or annuity;
- (f) rents, royalties, premiums and any other profits arising from property;
- (g) any annual gains or profits not falling under any of the foregoing heads:

Provided that the income of a building society shall, subject to the provisions of this Act be taxable at the rate specified hereafter from the year of assessment commencing on the 1st day of January 1996, and during each subsequent year of assessment:

Provided also that in the case of income arising outside of Montserrat which is earned income or which arises to a person who is not ordinarily resident in Montserrat, or not domiciled in Montserrat, the tax shall be payable on the amount received in Montserrat, except that where any trade, profession or vocation is carried on or exercised partly within and partly outside Montserrat by a resident body of persons or by a resident individual whose home is in Montserrat, the whole of the gains or profits from any such trade, profession or vocation shall be deemed to have accrued in or to have been derived from Montserrat:

Provided also that tax shall not be payable in respect of any income arising outside of Montserrat and accruing to any person who is in Montserrat for some temporary purpose only and not with any intent to establish his residence therein and who has not actually resided in Montserrat at one or more times for a period equal in the whole to six months in the basic year.

(Amended by Act 13 of 1995)

Basis of assessment

4. (1) Tax shall be charged, levied, and collected and paid annually for each year of assessment upon the total chargeable income of any person for the basic year.

(2) The basic year shall be the period of twelve months ending on the 31st December immediately preceding the year of assessment:

Provided that where the Comptroller is satisfied that any person usually makes up the accounts of his trade, to some date other than the 31st December, he may permit the profits of that trade to be computed for the purposes of this Act upon the income of the year terminating on such date and that year shall accordingly be deemed to be the basic year:

Provided also that where such permission has been given in respect of any year of assessment the profits for each subsequent year of assessment shall be computed by reference to a basic year terminating on a like date:

Provided also that where a change occurs in the date to which accounts are made up the Comptroller may make such adjustment for any year or years as in his opinion is just and reasonable, so that the tax payable shall not be less than the tax which would have been payable for that year of assessment if no change in the date had occurred. (*Amended by Act 9 of 1976*)

(3) Subject to the provisions of this Act, tax shall be chargeable and charged for any year of assessment for which income arose in the basic year from the sources described in section 3 notwithstanding that no such income arose in the year of assessment.

Surcharge

5. (1) There shall be charged, levied, collected and paid upon the tax as assessed and payable in accordance with the provisions of this Act, a surcharge at the rates and to the extent specified in section 41 of this Act:

Provided that such surcharge shall not apply to an off-shore company or an industrial company, or to an individual to whom section 36 applies.

(2) For the purposes of Parts X, XI, XII and XIII of this Act, the surcharge payable by any person for any year of assessment shall be deemed to be and shall be treated in all respects as if it were part of the tax payable by such person for such year of assessment:

Provided that the said surcharge may be paid and collected in such instalments during the remainder of the year of assessment for which the surcharge is payable as the Comptroller shall deem to be reasonable, and the provisions of section 75 relating to penalty and interest for the non-payment of tax in arrear shall not apply if the surcharge is paid in accordance with this proviso.

(*Inserted by Act 35 of 1975 and amended by Act 9 of 1976*)

PART III

EXEMPTIONS

Exemptions

6. There shall be exempt from the tax—
- (a) the official emoluments received by the Governor of Montserrat;
 - (b) the income of any local authority, trade union, or friendly society in so far as such income is not derived from a trade carried on by such local authority, trade union or friendly society. In calculating the income of any local authority for the purposes of this paragraph the income of the local authority derived from the supply of water or from markets, abattoirs, cemeteries and wharves shall be exempt from tax;
 - (c) *Repealed by Act 13 of 1995.*
 - (d) the income of any ecclesiastical, charitable or educational institution of a public character in so far as such income is not derived from a trade carried on by such institution except by a charity and that trade subserves one of the main purposes of the charity;
 - (e) the emoluments payable to members of the permanent consular services of foreign countries in respect of their offices rendered by them in their official capacity;
 - (f) the emoluments payable for Imperial funds to members of Her Majesty's Forces and to persons in the permanent service of the Imperial Government in the Island in respect of their offices under the Imperial Government;
 - (g) wound and disability pensions granted to members of Her Majesty's Forces;
 - (h) gratuities granted to members of Her Majesty's Forces in respect of services rendered during war;
 - (i) the income of the Government Savings Bank or other Government institutions which the Governor in Council may declare to be exempt;
 - (j) the income derived by the Chief Minister from the occupation of his official residence;
 - (k) any sum received by way of gratuity on termination of a contract of employment with government;
 - (l) the income of any approved Pension or Superannuation Scheme;

(m) *Repealed.*

- (n) income arising from a scholarship held by a person receiving full-time instruction at a University, college, school, or other educational establishment. The expression “**scholarship**” includes any exhibition, bursary or any other similar educational endowment;
- (o) income arising from the business of shipping carried on by a person not resident in Montserrat provided that the Comptroller is satisfied that an equivalent exemption from income tax is granted by the country in which such person is resident or persons resident in Montserrat and, if that country is a country other than the United Kingdom, to persons resident in the United Kingdom;

The expression “**business of shipping**” herein means the business carried on by an owner of ships, and for the purposes of this definition the expression “**owner**” includes charterer;

For the purposes of this part of this section a company shall be deemed to be resident in the country in which the central management and control of its business is situate:

Provided that nothing in this section shall be construed to exempt in the hands of the recipients any dividends, interests, bonuses, salaries or wages paid wholly or in part out of the income so exempted;

- (p) any house owned and used by a person as the residence for his family and himself;
- (q) education allowances payable to designated officers under the Overseas Service Act 1961;
- (r) the income of ministers of religion derived from their occupation as such;
- (s) the income derived from any allowance made to a member of the Executive or Legislative Council or to a public officer by way of entertainment, travel and subsistence allowances, or in respect of any means of transport for the purposes of carrying out the duties of his office;
- (t) inducement allowances payable to designated officers under the Overseas Service (Montserrat) Agreement, 1961, ratified and confirmed by the Overseas Service Act, 1961; (*Inserted by Act 14 of 1969*)
- (u) the income arising from agricultural enterprises including fishing, farming, market gardening and livestock raising; (*Inserted by Act 35 of 1975*)

- (v) the income arising outside Montserrat to a person who is a visitor to Montserrat for some temporary purpose, and who has not resided in Montserrat for a period exceeding six months during the basic year; *(Inserted by Act 35 of 1975)*
- (w) the income of a financial institution as defined by section 2 of the Banking Act, in relation to which there has been in existence for the whole or any part of the year of assessment a valid "B" licence granted under the provisions of section 5 of that Act;¹ *(Inserted by Act 19 of 1980)*
- (x) the income of an enterprise approved under the Fiscal Incentives Act, to the extent provided for in that Act in relation to relief from income tax for that enterprise; *(Inserted by Act 19 of 1980)*
- (y) the income of any individual or person in relation whom the Governor in Council has made an Order declaring such individual or person to be tax exempt either generally or in relation to any particular income or any particular year of assessment; *(Inserted by Act 19 of 1980)*
- (z) pensions payable to persons who are 62 years of age and over from a pension fund or scheme approved by Governor in Council; *(Inserted by Act 5 of 1991)*
- (za) pensions payable to persons from pension funds or schemes approved by the Governor in Council. *(Inserted by Act 3 of 1994)*

Exemptions: Interest from housing loans

7. (1) Subject to this section, where any person whether or not resident in Montserrat, lends money to any other person by way of mortgage in connection with the purchase, construction or reconstruction of residential accommodation in Montserrat, either for owner occupancy or for rental purposes there shall be exempt from tax any income accruing to the mortgagee by way of interest on the loan secured by and any service charge payable under such mortgage.

(2) The mortgage referred to in subsection (1) must be approved by the Governor in Council and shall be a mortgage in respect of which the rate of interest and service charge do not exceed seven per cent. *(Amended by Act 13 of 1995)*

(3) Where income accrues to a company or building society by way of interest or service charge which is exempt from tax under this section, such exempt income may be distributed by way of dividend to the shareholders and any distribution so made, whether during the period of exemption or at any subsequent time, shall, subject to the satisfaction of the

¹ see S.R.O. 81/2000 re the Bank of Montserrat and S.R.O. 86/2000 re Family Radio Station

Comptroller be exempt from tax in the hands of such shareholders.
(Amended by Act 13 of 1995)

(4) The rate of interest of service charge and the mortgage limit specified in subsection (2) may by Order made by the Governor in Council be varied from time to time.

(5) In this section—

“residential accommodation” means any place of accommodation used solely for residential purposes and includes residential accommodation with a shop attached to it.

(Inserted by Act 2 of 1986)

Exemption: Interest paid on certain loans

8. (1) When a company or a building society carries on a business which consists of the lending of moneys in relation to mortgages, the interest from which is exempt under section 7, the Governor in Council may by Order published in the *Gazette* exempt in the hands of the debenture holder the amount of any interest payable by that company or society in respect of debenture borrowing by it for the purpose of financing the purchase, construction or reconstruction of houses where he is satisfied as to the reasonableness of—

- (a) the period during which the debenture issue is to be repaid; and
- (b) the rate of interest payable thereon by the company or society.

(2) Where an Order is made under this section in respect of the debenture borrowing, the company or society shall maintain such special account as the Comptroller may require showing—

- (a) the total borrowings; and
- (b) the amount loaned by the company or society under mortgage the interest from which is exempt under section 7.

(3) Any order made under this section may be revoked by a further Order by the Governor in Council from such date as he may specify therein, if he is of the opinion that such borrowings are being or have been applied other than under mortgages the interest from which is exempt under section 7, but nothing in this subsection shall be so construed as to prohibit the placing of such borrowings on short term Treasury bills investment or short term deposit with a recognised financial institution prior to the lending out under a programme of mortgage loans.

(Inserted by Act 2 of 1986)

Government loans

9. The Governor in Council may by Order published in the *Gazette* provide that the interest payable on any loan charged on the public revenue

of Montserrat shall be exempted from the tax, either generally or only in respect of interest payable to persons not resident in Montserrat; and such interest shall as from the date and to the extent specified in the Order be exempt accordingly.

Relief to hotel proprietors from income tax

10. (1) Notwithstanding anything to the contrary contained in this Act—

(a) in any case approved by the Governor in Council, in which the erection of a hotel or of any extension to a hotel is commenced after the first day of January 1960, and in which a licence has been granted to any person in respect of such hotel under the Hotels Aid Act, such person shall be exempt from the tax in respect of the income arising from such hotel in each of the five years of assessment next after the year of assessment in which the erection or extension of such hotel, as the case may be, is completed and where any part of the said income is distributed as dividends to shareholders in any company to which a licence as aforesaid has been granted, any dividend so distributed shall be exempt from the tax in the hands of a shareholder, and thereafter such person or company shall be allowed in each of any five of the eight years of assessment next following to set off against the income as aforesaid arising from such hotel a maximum of one-fifth of the capital expenditure upon such hotel or extension thereof, as the case may be, so, however, that no such set-off be allowed in any year of assessment later than the thirteenth year of assessment next after the year of assessment in which the erection or the extension of such hotel, as the case may be, is completed and any dividend distributed during any year of set-off shall be exempt from Tax in the hands of a shareholder;

(b) in any case approved by the Governor in Council in which a licence has been granted to any person under the Hotels Aid Act, but which is not within the contemplation of paragraph (a) of this subsection, such person shall be allowed in each of any ten of the twelve years of assessment next after the year of assessment in which the licence is granted to set-off against the income as aforesaid arising from the hotel amount not exceeding one-tenth of the capital expenditure upon such hotel, so, however, that no such set-off be allowed in any year after the thirteenth year of assessment in which the capital expenditure was incurred.

(2) Where the capital expenditure is allowed to be set off against the income arising from a hotel, section 17 of this Act shall not apply in respect of such expenditure.

(3) No loss incurring in connection with any hotel, in any year in respect of which an allowance is granted under this section, shall be set off against profits arising from any other trade, business or vocation carried on by the person to whom the allowance is granted.

(4) For the purposes of this section, the question whether the erection or extension of a hotel was commenced before the first day of January, 1960, shall be for determination by the Governor in Council which shall also for the purpose of this section determine on what date the erection or extension of a hotel is completed. Such determination in each case shall be final.

(5) Relief under paragraph (a) of subsection (1) of this section shall not be granted to any person unless such person—

- (a) has applied in writing to the Governor in Council, for approval of relief under the said paragraph in respect of a hotel or extension thereof; and
- (b) has notified the Governor in Council in writing of the date on which he intends to commence the erection or extension as the case may be, of the hotel.

(6) Where any case has been approved by the Governor in Council for the purposes of paragraph (a) of subsection (1) of this section, the Governor in Council shall issue to the Comptroller a certificate stating the fact of such approval and the dates fixed by him as the dates on which the erection or extension, as the case may be, of the hotel was commenced and completed.

(7) Any person authorised by the Governor in Council in writing so to do, may at any reasonable time enter upon the premises on which a hotel or any extension of a hotel is to be, or is being erected, for the purpose of obtaining such information as will enable the Governor in Council to inform the Comptroller in accordance with the requirements of subsection (6) of this section.

(8) The Governor in Council may by regulations make any provision which in his opinion is necessary or expedient for the better carrying into effect of the provisions of this section.

(9) In this section the expression “**capital expenditure**” means such sum as the Comptroller is satisfied has been expended on—

- (a) advertising, publicising and promoting the business of the hotel prior to the commencement of such business;
- (b) the purchase of building materials for the construction of the hotel and on effecting such construction;
- (c) the purchase of any existing hotel where—
 - (i) an existing hotel has been purchased;
 - (ii) there has been a *bona fide* change of ownership; and

- (iii) the purchaser qualifies for relief under the Hotels Aid Act, in respect of the buildings comprising the hotel:

Provided that no account shall be taken of any sum paid in respect of the purchase price of the land on which such hotel stands or in respect of goodwill;

- (d) the purchase of articles of hotel equipment and on the installation of such articles of hotel equipment; and for the purposes of this definition the expressions “**articles of hotel equipment**”, “**building materials**”, “**construct**”, and “**hotel**” have the same meanings as are respectively assigned to them by section 2 of the Hotels Aid Act.

Relief to pioneer industries from income tax

11. The grant of exemption from income tax to hotels under section 10 of this Act and to approved enterprises under the provisions of the Fiscal Incentives Act, shall not confer any exemption from completion of returns under section 51 or 52 or the producing of accounts (including Balance Sheets) under section 52. *(Amended by Act 19 of 1980)*

Exemption of international business companies

12. Notwithstanding anything contained in this Act—

- (a) a company incorporated under the International Business Companies Act; and
- (b) all dividends, interest, rents, royalties, compensations and other amounts paid by that company to persons who are not resident in Montserrat; and
- (c) capital gains realised in respect of shares, debt obligations or other securities of that company, by persons who are not resident in Montserrat,

are exempt from the provisions of this Act. *(Inserted by Act 13 of 1995)*

PART IV

COMPUTATION OF CHARGEABLE INCOME

Deductions allowed

13. (1) For the purpose of computing the chargeable income of any person there shall be deducted all outgoings and expenses wholly and exclusively incurred during the basic year by such person in the production of the income, including—

- (a) sums paid by such person by way of interest on money borrowed by him, where the Comptroller is satisfied that the interest was paid on capital employed in acquiring the income; (*Substituted by Act 9 of 1976*)
- (b) rent paid by any tenant of land or buildings occupied by him for the purpose of acquiring the income;
- (c) any sum expended for repair of premises, plant and machinery employed in acquiring the income, or for the renewal, repair or alteration of any implement, utensil or article so employed;
- (d) bad debts incurred in any trade, business, profession or vocation, proved to the satisfaction of the Comptroller to have become bad during the basic year, and doubtful debts to the extent that they are respectively estimated to the satisfaction of the Comptroller to have become bad during the said year notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of the said year:

Provided that all sums recovered during the said year on account of amounts previously written off or allowed in respect of bad or doubtful debts shall for the purposes of this Act be treated as receipts of trade, business, profession or vocation for that year;
- (e) rates and taxes on lands or buildings (but not including income tax);
- (f) any contribution to an approved pension or superannuation fund which is an ordinary annual contribution; and any contribution which is not an annual contribution shall be spread forward over such number of years as the Comptroller may deem reasonable having regard to the circumstances in which such contribution was made;
- (g) premiums paid on any insurance policy covering loss by fire, earthquake, hurricane, riot, civil commotion, flood, burglary, or other disaster on property used in acquiring the income upon which the tax is payable or on property upon the income from which or upon the value for the use of which the tax is payable;
- (h) annuities or other annual payments whether payable within or out of Montserrat, either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation thereof, or as a personal debt or obligation by virtue of any contract; Provided that no voluntary allowances or payments, of any description, shall be deducted;

- (i) any annual sums paid by such person (being an employer) by way of contribution on behalf of an employee in respect of a fund or scheme approved by the Governor in Council in respect of a fund or scheme for providing medical care, housing or recreational facilities for employees;
- (j) any contribution made by any person for the advancement of sports and cultural development activities;
- (k) such other deductions (not being deductions of the kind disallowed by section 16) as may be prescribed.

(Amended by Acts 2 of 1986 and 5 of 1991)

(2) The Governor in Council may by rules provide for the method of calculating or estimating the deductions allowed under this section.

Restriction on deductions: management charges

14. Notwithstanding section 13, where a person carrying on business in Montserrat incurs expenditure by way of management charges, being expenditure payable—

- (a) to a non-resident (such non-resident not being engaged in business in Montserrat giving rise to such management charges); or
- (b) by a branch of a non-resident company to its head office or to some other branch outside Montserrat of such company;

a deduction shall be allowed of the lessor of—

- (i) the amount of such management charges, or
- (ii) five percent of the deduction (exclusive of management charges) allowable under section 13 or such higher amount as in the opinion of the Comptroller is reasonable and any amount of management charge not allowed as a deduction by reason of this subsection shall be deemed not to be a management charge for the purposes of section 40 and Schedule 1.

(Inserted by Act 2 of 1986)

Special deductions for capital expenditure

15. (1) In computing the chargeable income of a person engaged in a trade, profession, business or vocation there shall be allowed—

- (a) a deduction (hereinafter called an initial deduction) of one tenth of the capital expenditure incurred during the basic year on the erection, alteration or acquisition of a building or structure which is or is intended to be an industrial building or structure occupied for a trade specified in subsection (6) of this section and of one fifth of the capital expenditure incurred during the basic year on the provision, alteration or

improvement of plant or machinery used or to be used for the purposes of a trade, business, profession or vocation;

- (b) a deduction (hereinafter called an annual deduction) of a reasonable amount for wear and tear of—
- (i) an industrial building or structure as is owned and used for a trade specified in subsection (6) of this section;
 - (ii) any plant or machinery as is owned by a person and used in a trade, business, profession or vocation;
 - (iii) a deduction to the owner of such a building of ten percent of the cost per year for a period of ten years from the year in which it is first occupied as a commercial building of any commercial building constructed for that purpose between the period 1st April 1998 and 31st March 2003. A “**commercial building**” means a building constructed wholly or substantially for the purposes of providing premises for the establishment of a trade, business or profession with or without habitable domestic accommodation and which is accepted as such a building by the Comptroller of Income Tax. (*Inserted by Act 8 of 1998*)

(2) The same deductions shall be allowed to a person who incurs the expenditure described in paragraph (a) of subsection (1) of this section and—

- (a) leases the industrial building or structure to another person who occupies it for the purpose of a trade specified in subsection (6) of this section;
- (b) hires the plant or machinery to another person who uses it for the purpose of his trade, business, profession or vocation.

Where the deductions so allowed to a person who leases the building or hires the plant exceed the rent or hire received, relief shall be given to that person as a loss under section 17.

(3) Where such industrial building or structure or plant or machinery is sold, destroyed or put out of use as being worn out, obsolete or otherwise useless or no longer required there shall in the basic period in which such event occurs—

- (a) where there are no sale, insurance, salvage or compensation moneys or where the written down value of the asset immediately before the event exceeds those moneys, be made a deduction (hereinafter called a balancing deduction) of a sum equal to the written-down value or as the case may be the excess over the said moneys;
- (b) where the sale, insurance, salvage or compensation moneys exceed the written down value of the asset immediately before the event, be made an addition (hereinafter called a

balancing addition) to the profits as otherwise determined for the basic period of a sum equal to the amount of such excess:

Provided that a balancing addition shall not exceed the aggregate of any deductions granted under this section.

(4) No deduction shall be allowed for any year if the deduction, when added to the deductions allowed in previous years will make the aggregate amount of the deductions exceed the capital expenditure.

(5) Where a building which is or was intended to be an industrial building or structure is not used or ceases to be used as such, then, unless the building or structure has been so used for a period of not less than ten years any initial deductions granted shall be cancelled, and such additional assessments as are necessary shall be made without regard to the time limits imposed by this Act.

(6) A building or structure shall be deemed to be an industrial building or structure for the purposes of this section where it is in use for the purpose of—

- (a) a trade carried on in a mill, factory, or other similar premises; or
- (b) a trade which consists in the manufacture of goods or materials or the subjection of goods or materials to any process; or
- (c) a trade which consists in the storage of goods or materials which are to be used in the manufacture of other goods or materials or to be subjected in the course of a trade to any process,

and in particular the said expression includes any building or structure provided by the person carrying on such a trade or undertaking for the welfare of workers employed in that trade or undertaking and in use for that purpose. (*Amended by Act 2 of 1986*)

(7) Subsection (6) of this section shall apply in relation to a part of a trade or undertaking as it applies to a trade or undertaking:

Provided that where part only of a trade or undertaking complies with the conditions set out in the said provisions, a building or structure shall not, by virtue of this subsection, be an industrial building or structure unless it is in use for the purposes of that trade or undertaking.

(8) Notwithstanding anything in subsections (6) and (7) of this section, but subject to the provisions of subsection (9) of this section, the expression “**industrial building or structure**” does not include any building or structure in use as, or as part of, a dwelling house, retail shop, showroom or office or for any purpose ancillary to the purposes of a dwelling house, retail shop, showroom or office.

(9) Where part of the whole of a building or structure is, and part thereof is not, an industrial building or structure, and the capital

expenditure which has been incurred on the construction of the second mentioned part is not more than one tenth of the total capital expenditure which has been incurred on the construction of the whole building or structure, the whole building or structure and every part thereof shall be treated as an industrial building or structure.

(10) In this section—

- (a) where the building or structure is not used as an industrial building or structure in the same basic period as that in which any expenditure was first incurred the expression “**incurred during the basic year**” means the total of the expenditure incurred in the years up to and including such basic year;
- (b) “**written down value**” means the remainder of the capital expenditure after deducting therefrom any initial deductions and all annual deductions.

Deductions not to be allowed

16. (1) For the purpose of computing the chargeable income of any person no deduction shall be allowed in respect of—

- (a) domestic or private expenses including *inter alia*—
 - (i) the cost of travelling between residence and place of business;
 - (ii) the rent of any dwelling house or domestic offices or any part thereof as is not used in connection with the carrying on by him of his trade, business, profession or vocation;
 - (iii) any remuneration, or interest on capital, paid or credited to himself;
 - (iv) the cost price of any goods taken out of the business for the use of the proprietor or any partner or their families;
- (b) any disbursements or expenses not being money necessarily, wholly and exclusively laid out or expended for the purpose of acquiring the income;
- (c) any capital withdrawn or any sum employed as capital;
- (d) any capital employed in improvements;
- (e) any sum recoverable under an insurance or contract of indemnity;
- (f) rent of or cost of repairs to any premises or part of premises not paid or incurred for the purpose of producing the income;
- (g) any amounts paid or payable for income tax or surtax either within Montserrat or in respect of any territory outside Montserrat with which there is a double taxation agreement

between that territory and Montserrat except to the extent that the tax payable outside Montserrat remains unrelieved;

- (h) any amount paid or payable to a shareholder or any associate of a shareholder by way of salary, wages, overtime, bonus, commission, director's fees, retiring allowances, management expenses or other payment for services including perquisites in excess of the respective amounts paid or payable during the basic year immediately preceding the year of assessment 1975:

Provided that the Comptroller may allow such increases or amounts as may in any case appear to him to be just and reasonable:

Provided further that—

- (i) in the case of a Company incorporated or registered after the year of assessment 1974; or
- (ii) in the case of a person whose employment commenced after the basic year immediately preceding the year of assessment 1975,

the Comptroller may allow as a deduction such amount as may appear to him to be just and reasonable having regard to the size and nature of the business.

For the purposes of this section “**associate**” in relation to a shareholder means an individual who is the spouse of a shareholder or is a relative of a shareholder or of his spouse.

(Inserted by Act 17 of 1976)

(2) Notwithstanding section 13, in ascertaining the chargeable income of any person for any year of assessment, no deduction shall be allowed in respect of any amount paid or payable to a non-resident to which section 40 applies unless the Comptroller is satisfied that the withholding tax chargeable thereon has been paid. *(Inserted by Act 2 of 1986)*

Allowance for trade loss

17. (1) Where the amount of a loss incurred in the basic year in any trade, business, profession or vocation carried on by any person either solely or in partnership is such that it cannot be wholly set-off against his income from other sources for the same year, the amount of such loss shall to the extent to which it is not allowed against his income from other sources for the same year be carried forward and shall subject as is hereinafter provided, be set-off against what would otherwise have been his chargeable income for all following years in succession, provided that the amount of any such loss allowed to be set-off in computing the chargeable income of any year shall not be set-off in computing the chargeable income of any other year and provided also that in no case shall such set-off be allowed to an extent which would reduce the tax payable for any year of

assessment to less than one-half of the amount which would have been payable had the set-off not been allowed and provided also that no loss should be relieved either against other income for the same year or carried forward under this section unless it is shown that the trade was being carried on for the year of loss on a commercial basis and with a view to the realisation of profits in the trade.

Tax holiday losses

(2) No loss incurred during a tax holiday period shall be set-off against the income from other sources for the same year, but the net loss incurred during the whole of the tax holiday period shall be available to be carried forward to the post-holiday period for set-off under the provisions of subsection (1).

Insurance and shipping companies

18. Notwithstanding anything to the contrary contained in this Act it is hereby provided that—

- (a) In the case of an insurance company (other than a life insurance company) where the gains or profits accrue in part outside Montserrat, the gains or profits on which tax is payable shall be ascertained by taking the gross premiums and interest and other income received or receivable in Montserrat (less any premiums returned to the insured and premiums paid on re-insurances), and deducting from the balance so arrived at a reserve for unexpired risks at the percentage adopted by the company in relation to its operations as a whole for such risks at the end of the basic year and adding thereto a reserve similarly calculated for unexpired risks outstanding at the commencement of the basic year, and from the net amount so arrived at deducting the actual losses (less the amount recovered in respect thereof under re-insurance), the agency expenses in Montserrat and a fair proportion of the expenses of the head office of the company;
- (b) In the case of a life insurance company, whether mutual or proprietary, the gains or profits on which tax is payable shall be the investment income less the management expenses (including commission):

Provided that where such a company received premiums outside Montserrat the gains or profits shall be the same proportion of the total investment income of the company as the premiums received after deducting from the amount so arrived at the agency expenses in Montserrat and a fair proportion of the expenses of the head office of the company;

- (c) (i) In the case of a shipowner or owner of aircraft, the gains or profits of his business as shipowner or owner of

- aircraft shall, if he produces or causes to be produced to the Comptroller the certificate mentioned in subparagraph (ii) of this paragraph, be taken to be a sum bearing the same ratio to the sums payable in respect of fares or freight for passengers, goods, or mails shipped in Montserrat as his total profits for the relevant accounting period shown by that certificate bear to the gross earnings for that period;
- (ii) The certificate shall be a certificate by the Taxing Authority of the place in which the principal place of business of the shipowner or owner of aircraft is situated and shall state—
 - (A) that the shipowner or owner of aircraft has furnished to the satisfaction of that Authority an account of the whole of his business; and
 - (B) the ratio of the gains or profits for the relevant accounting period as computed according to the Income Tax Law of that place (after deducting interest on any money borrowed and employed in acquiring the gains and profits) to the gross earnings of the owner's fleet or aircraft for that period;
 - (iii) If the gains or profits of a shipowner or owner of aircraft have for the purpose of assessment in Montserrat under this Act been computed on any basis other than the ratio of the gains or profits shown by a certificate as aforesaid and an assessment has been made accordingly the shipowner or owner of aircraft shall, upon production of such a certificate at any time within six years from the end of the year of assessment be entitled to such adjustment as may be necessary to give effect to the said certificate and to have any tax paid in excess refunded;
 - (iv) In this paragraph the expression “**shipowner or owner of aircraft**” means an owner or charterer of ships or aircraft whose principal place of business is situated outside Montserrat, but in a part of the Commonwealth.

Trading by non-residents

19. (1) Where a person not resident in Montserrat (hereinafter in this section referred to as a non-resident person) carries on a business with a resident person and it appears to the Comptroller that owing to the close connection between the resident person and the non-resident person, and to the substantial control exercised by the non-resident person over the resident person, the course of business between those persons can be so arranged and is so arranged that the business done by the resident person in pursuance of his connection with the non-resident person, produces to the resident person either no profits or less than the ordinary profits which

might be expected to arise from that business, the non-resident persons shall be assessable and chargeable to tax in the name of the resident person as if the resident person were an agent of the non-resident person.

(2) Where it appears to the Comptroller that the true amount of the gains or profits of any non-resident person chargeable with tax in the name of a resident person cannot in any case be readily ascertained, the Comptroller may, if he thinks fit, assess and charge the non-resident person on a fair and reasonable percentage of the turnover of the business done by the non-resident person through or with the resident person in whose name he is chargeable as aforesaid, and in such case the provisions of this Act relating to the delivery of returns or particulars by persons acting on behalf of others shall extend so as to require returns or particulars to be furnished by the resident-person of the business so done by the non-resident person through or with the resident person, in the same manner as returns or particulars of income to be charged are to be delivered by persons acting for non-resident persons:

Provided that the amount of the percentage shall in such case be determined having regard to the nature of the business.

(3) Nothing in this Act shall render a non-resident person chargeable in the name of a broker or general commission agent, or other whom such broker, general commission agent or agent is not an authorised person carrying on the regular agency of the non-resident person or a person chargeable as if he were an agent in pursuance of subsections (1) and (2) of this section, in respect of gains or profits arising from sales or transactions carried out through such a broker or agent.

(4) The fact that a non-resident person executes sales or carries out transactions with another non-resident person in circumstances which would make him chargeable in pursuance of subsections (1) and (2) of this section in the name of a resident person shall not of itself make him chargeable in respect of gains or profits arising from those sales or transactions.

(5) Where a non-resident person is chargeable to tax in the name of any attorney, factor, agent, receiver, branch, or manager in respect of any gains or profits arising from the sale of goods or produce manufactured or produced out of Montserrat by the non-resident person, the person in whose name the non-resident person is so chargeable may, if he thinks fit, apply to the Comptroller to have the assessment to tax in respect of those gains or profits made or amended on the basis of the profits which might reasonably be expected to have been earned by a merchant or, where the goods are retained by or on behalf of the manufacturer or producer, by a retailer of the goods sold, who had bought from the manufacturer or producer, by a retailer of the goods sold, who had bought from the manufacturer or producer direct, and, on proof to the satisfaction of the Comptroller of the amount of the profits on the basis aforesaid the assessment shall be made or amended accordingly.

Pensions and superannuation funds

20. (1) Where any employer establishes a superannuation fund for the provision of pensions or annuities for the persons employed in any trade or business in Montserrat either on retirement at a specified age, or on becoming incapacitated, or for the widows, children or dependents or persons who have been so employed on the death of those persons, he may apply to the Governor in Council for approval of such fund.

(2) For the purpose of this section, “**superannuation fund**” means a fund which is approved for these purposes by the Governor in Council, and subject as hereinafter provided, the said Governor in Council shall not approve any fund unless it is shown to his satisfaction that—

- (a) the fund is a fund *bona fide* established under irrevocable trust in connection with some trade or undertaking carried on in Montserrat by a person residing therein; and
- (b) the fund has for its sole purpose the provision of annuities for all or any of the following persons in the events respectively specified, that is to say, for persons employed in the trade or undertaking, either on retirement at a specified age or on becoming incapacitated at an earlier age, or for the widows, children or dependents of persons who are or have been employed on the death of those persons; and
- (c) the employer in the trade or undertaking is a contributor to the fund; and
- (d) the fund is recognised by the employer and employed persons in the trade or undertaking:

Provided that the Governor in Council may, if he thinks fit and subject to such conditions, if any as he thinks proper to attach to the approval, approve a fund, or any part of a fund as a super-annuation fund for the purposes of this section—

- (i) notwithstanding that the rules of the fund provide for the return in certain contingencies of contributions paid to the fund; or
- (ii) if the main purpose of the fund is the provision of such annuities as aforesaid, notwithstanding that such provision is not its sole purpose; or
- (iii) notwithstanding that the trade or undertaking in connection with which the fund is established is carried on only partly in Montserrat by a person not residing therein.

(3) Where such fund is approved, then—

- (a) any income of such fund arising in the territory shall be exempt;

- (b) any contributions to the fund by the employer shall be allowed as prescribed.

Books of account to be kept

21. Any person engaged in any trade or business or in any profession shall keep in the English language proper books of account sufficient to record all transactions necessary in order to ascertain the gains and profits made or the loss incurred in each such business or profession, and any such person who fails to comply with this provision shall be guilty of an offence against this Act, and in addition to any penalty incurred he shall be liable to pay any tax to which he may be assessed under the provisions of this Act.

PART V

PERSONS ASSESSABLE

Married women

22. Any income accruing to a married woman during the basic year to which this Act applies shall be charged to tax in her own name. (*Substituted by Act 2 of 1986*)

Deceased person

23. (1) When any person dies during the year preceding the year of assessment and such person would but for his death have been chargeable to tax for the year of assessment or when any person dies during the year of assessment or within two years after the expiration thereof and no assessment has been made upon him for that year, the personal representative of such person shall be liable to and charged with the payment of the tax with which such person would have been chargeable, and shall be answerable for doing all such acts, matters and things as such person if he were alive would be liable to do under this Act, provided that in the case of a person dying during the year preceding the year of assessment if his personal representative distributes his estate before the commencement of the year of assessment such personal representative shall pay the tax at the rate or rates in force at the date of distribution of the estate, if the rate of tax for the year of assessment has not been fixed at that date.

(2) In addition to and without prejudice to the liability of the personal representative or to the liability of any person under any other provision, the provisions of subsection (1) of this section shall *mutatis mutandis*, apply to any person charged by the deceased with the payment of the tax, or whether any person is so charged or not, to every heir (including a testamentary heir or legatee), to every person who has taken possession of or received any property of the deceased, or to whom any property passes

for any beneficial interest in possession, and also to every trustee, tutor, guardian, curator, committee or other person in whom any interest in the property so passing or the management thereof is at any time vested.

(3) Any person interested may, on giving five days notice to the person charged with or accountable for, the payment of the tax, apply to the judge in a summary manner to compel the person so charged or accountable, to make the necessary return and to pay the tax.

(4) On any such application, the judge may give all necessary directions and make such orders as may be necessary.

Partnerships

24. Where a trade, business, profession or vocation is carried on by two or more persons jointly—

(1) The income of any partner from the partnership shall be deemed to be the share to which he was entitled during the year preceding the year of assessment in the income of the partnership (such income being ascertained in accordance with the provisions of this Act) and shall be included in the return of income to be made by such partner under the provisions of this Act.

(2) (a) The precedent partner that is to say, the partner who of the partners resident in Montserrat—

(i) is first named in the agreement of partnership; or

(ii) if there be no agreement is named singly or with precedence to the other partners in the usual name of the firm; or

(iii) is the precedent acting partner if the partner named with precedence is not an acting partner,

shall make and deliver a return of the income of the partnership for any year supported by the statement of account including balance sheet, such income being ascertained in accordance with the provisions of this Act, and declare therein the names and addresses of the other partners in the firm together with the amount of the share of the said income to which each partner was entitled for that year.

(b) The Comptroller may require any person resident in Montserrat who is or acts as a partner to make or deliver the return.

(c) Where no partner is resident in Montserrat, the return shall be made and delivered by the attorney, agent, manager or factor of the firm resident in Montserrat.

(d) The provisions of this Act with respect to the failure to deliver returns or particulars in accordance with a notice

from the Comptroller shall apply to any return required under this section.

Chargeability of trustees etc.

25. (1) A receiver, trustee, guardian, curator or committee, having the direction, control or management of any property or concern on behalf of any person, shall be assessed to tax in respect of the income derived from such property or concern in like manner and to the like amount as such person would be assessable if he had received such income, and every such receiver trustee, guardian, curator or committee shall be answerable for doing all matters and things required to be done under this Act for the purpose of assessment and payment of tax:

Provided that nothing in this section shall affect the liability of any person represented by any such receiver, trustee, guardian, curator or committee to be himself charged to tax in his own name.

(2) A trustee under a will, deed, settlement or other disposition shall likewise be chargeable to tax in respect of income arising under such will, deed, settlement or other disposition, where such income arises to two or more beneficiaries or where the whole of the income is not distributed, tax to be charged at the rate specified in section 37.

Chargeability of agent of person residing out of Montserrat

26. A person not resident in Montserrat whether a British Subject or not, shall be assessable and chargeable in the name of his trustee, guardian, curator or committee or of any attorney, factor, agent, receiver, branch or manager, whether such attorney, factor, agent, receiver, branch or manager has the receipt of the income or not, in like manner as such non-resident person would be assessed and charged if he were resident in Montserrat and in the actual receipt of such income:

Provided that in the case of a person who is not resident in Montserrat no deduction shall be allowed in respect of earned income.

(Amended by Act 8 of 1998)

Acts etc., to be done by trustees

27. The person who is chargeable to tax under sections 25 and 26 shall be answerable for all matters required to be done by virtue of this Act for the assessment of the income of any person for whom he acts and for the payment of the tax chargeable thereon.

Agents etc., of non-residents to be assessed

28. Any resident agent, trustee, mortgager or other person who transmits rent, interest or income derived from any source whatever within Montserrat to a non-resident person shall be deemed to be the agent of such non-resident person and shall be assessed and shall pay the tax accordingly.
(Amended by Act 35 of 1975)

Indemnification of representative

29. Every person answerable under this Act for the payment of tax on behalf of another person may retain out of money coming to his hands on behalf of such other person so much thereof as shall be sufficient to pay such tax and shall be and is hereby indemnified against any person whatsoever for all payments made by him in pursuance and by virtue of this Act.

Income derived from property transferred to minors

30. (1) Where any person transfers property to a minor otherwise than in exchange for valuable and sufficient consideration, either directly or indirectly or through the intervention of a trust or by any means whatsoever, such person shall nevertheless, during the period of the minority of the transferee be liable to be assessed on the income derived from such property, or from property substituted therefor, as if such transfer had not been made.

(2) Where such a transfer has been made as is envisaged in subsection (1) of this section then subsequent to such period of minority unless the Comptroller is satisfied that such transfer was not made for the purpose of evading the tax imposed by this Act the transferor shall continue to be assessed in respect of the income derived from such property or from property substituted therefor, as if such transfer had not been made.

(3) Where in the case of any transfer covered by this section the transferee has in fact paid or suffered any tax in respect of the income in ascertaining the total tax chargeable on the transferor in respect of his own income and that charged on him under this section an allowance shall be made equal to the tax paid or suffered already by the transferee.

Income of property transferred in trust to be income of transferor in certain cases

31. (1) Where a person transfers property in trust and provides that the corpus of the trust shall revert either to the transferor or to such person as he may determine at a future date, or where a trust provides that during the lifetime of the transferor no disposition or other dealing with the trust property shall be made without the consent, written or otherwise, of the transferor, such person shall nevertheless be liable to be taxed on the income derived from the property transferred in trust, or from property substituted therefor, as if such transfer had not been made.

(2) In this section “**disposition**” includes any trust, grant, covenant, agreement or arrangement.

Dispositions for short periods

32. Except where otherwise provided in this Act any income which by virtue or in consequence of any disposition made, directly or indirectly, by any person after the 1st day of January, 1962 (other than a disposition made

for valuable and sufficient consideration), is payable to or applicable for the benefit of any other person for a period which cannot exceed six years shall be deemed for all purposes of this Act to be income of the person, if living, by whom the disposition was made, and not to be the income of any other person.

Apportionment of profits of certain companies among members

33. (1) With a view to preventing the avoidance or reduction of tax it is hereby enacted that where it appears to the Comptroller that a company has not distributed to its shareholders as dividends within nine months of the end of any year or shorter accounting period, a reasonable proportion of its total income from all sources which are assessable to tax and which could have been distributed without detriment to the company's existing business, the Comptroller may, at any time within six years of the end of such accounting period, direct that that proportion shall be deemed to have been paid as dividend to its members for such period.

(2) This section shall not apply to any company unless—

- (a)* not more than five persons together exercise control, directly or indirectly, over the company's affairs; or
- (b)* not more than five persons possess or are entitled to acquire the greater part of the issued share capital; or
- (c)* if, the whole of the total income was so deemed to be dividend, not less than 50% thereof would be deemed to be the income of not more than five persons:

Provided that for the purposes of this section persons who are relatives of one another, persons who are nominees of any other person together with that other person, persons in partnership, and persons interested in any shares or obligations of the company which are subject to any trust or are part of the estate of a deceased person, shall respectively be treated as a single person.

For the purpose of this subsection, "**relative**" means husband, wife, ancestor, lineal descendent, brother or sister.

(3) In having regard to what is a reasonable proportion, the Comptroller may disregard all sums connected with the repayment of debt or connected with any transaction designed to avoid tax.

(4) The Comptroller may require a company by notice in writing, to produce within a time specified its balance sheets and accounts and such further particulars as he may require including particulars of the membership of the company.

(5) Where a company has failed to furnish any or all of the particulars required within the specified time, the Comptroller may to the best of his judgement estimate the reasonable profit and issue a direction accordingly.

(6) In issuing any direction under this section the Comptroller shall—

- (a) issue it to the company in writing;
- (b) specify the reasonable proportion as a sum or a proportion of the total income, or as a percentage rate of dividend;
- (c) specify the date on which the dividend shall be deemed to have been paid.

(7) Where a company having furnished such particulars as the Comptroller requires, objects to any direction issued by him, it may within fifteen days of the receipt of the direction appeal to the Commissioners, whereupon the provisions in this Act relating to objections and appeals shall apply.

(8) Where a direction has been issued, then in computing the total chargeable income of any member of the company, his share of the reasonable proportion, as determined on appeal when necessary, shall be included in the computation of the total chargeable income of that member, and any dividends which have been paid or which may be in the future out of the reasonable proportion, shall be disregarded.

(9) Any additional tax which may become chargeable and leviable under this section may in default of payment by the member be charged and levied on the company.

PART VI

PERSONAL ALLOWANCES

General deduction

34. In ascertaining the chargeable income of an individual who was resident in Montserrat during the basic year and who has completed a return and given the prescribed particulars there shall be allowed a deduction of—

- (a) \$5,000 on any year of assessment commencing on or after January 1, 1987;
- (b) \$6,000 on any year of assessment commencing on or after January 1, 1990;
- (c) \$7,000 on any year of assessment commencing on or after January 1, 1991;
- (d) \$10,000 on any year of assessment commencing on or after January 1, 1992;

- (e) \$13,000 on any year of assessment commencing on or after January 1, 1995;
- (f) \$15,000 on any year of assessment commencing on or after January 1, 1999.
- (Substituted by Act 8 of 1998)*

Deduction for mortgage interest paid on residential property

35. A resident individual shall be entitled to a deduction in respect of any amount paid during the basic year by way of interest on a mortgage or loan in respect of the acquisition of or improvements to residential property but the deduction allowable for any year of assessment in respect of such expenditure shall not exceed \$5,000 for mortgages or loans issued after 1st April, 1986 and \$3,000 in the case of mortgages or loans issued prior to 1st April, 1986. *(Substituted by Act 2 of 1986)*

PART VII

RATES OF TAX, ETC

Rates of Tax

36. Tax at the rates set out in Schedule 2 shall be charged, levied and collected on the chargeable income of any individual resident in Montserrat or doing business in Montserrat during the basic year. *(Substituted by Act 5 of 1991)*

Rates of tax on companies, etc

37. Tax shall be charged, levied and collected on the chargeable income of any company, building society or any body of persons at the rate of twenty *per centum*. *(Substituted by Act 2 of 1986 and amended by Act 13 of 1995)*

Tax to be deducted from certain payments

38. (1) Where the Accountant General or any officer makes any payment to any person on behalf of the Government in pursuance of a contract other than a contract exempted by the Governor in Council by Order the Accountant General or the officer, as the case may be, shall deduct fifteen percent or such lesser sum as may be determined by the Comptroller and pay the amount so deducted to the Comptroller.

(2) The amount of tax so deducted shall be set off first against the amount owing by the person in pursuance of section 71 and any balance against the tax payable by that person for the year of assessment in which such deduction is made.

(Inserted by Act 3 of 1994)

Deduction of tax from Government stock

39. (1) When the Accountant General or other appointed officer pays interest on any loan charged on the Public Revenue of Montserrat other than a loan on which exemption has been given wholly or partly under section 9 he shall deduct from such interest tax at the rate prescribed in section 37 and shall forthwith pay over such deductions to the account for income tax.

(2) On making each payment to the person entitled to the interest he shall give a certificate stating the name of the person, the date, the amount of the interest and of the tax deducted.

(3) The amount so deducted shall be deemed to be payment of tax by the person named, and in computing the total chargeable income of that person, the gross amount of the interest shall be included.

Deduction of tax from payments made to non-residents

40. (1) Every person who makes any payments to a non-resident shall deduct tax from such payments in accordance with and in the manner specified in Schedule 1 and shall carry out such other obligations as are imposed by that Schedule.

(2) For the purposes of this section, a person, including a partnership, to whom any payment is made to which this section applies shall be presumed, unless the contrary is proved, to be a non-resident if such payment is made to an address outside Montserrat.

(3) Nothing in this section shall prevent the Comptroller from directing the deduction of a lesser amount than that provided in Schedule 1 where he is satisfied that the person to whom the payment is made is a resident of a country with which an international agreement made under section 92 exists and where there is provision for a lower rate of withholding tax to be deducted other than that provided in Schedule 1.

(4) In this section—

“resident in Montserrat” in relation to a year of assessment means—

(a) in the case of an individual, that—

- (i) his permanent place of abode is in Montserrat and that he is physically present therein for some period of time during the basic year unless the Comptroller is satisfied that his absence throughout the whole of the basic year was for the purpose of education, medical treatment, the performance of duties on behalf of the Government or for any other purpose which, in the opinion of the Comptroller is reasonable; or
- (ii) he is physically present in Montserrat for not less than 183 days during the basic year; or

- (iii) he is physically present in Montserrat for some period of time during the basic year and that such period is continuous with a period of physical presence during the basic year for the immediately preceding or succeeding year of assessment of such duration as to qualify him for the status of a resident for such preceding or succeeding year under subparagraph (ii);
- (b) in the case of an estate of a deceased person, that immediately prior to his death the deceased person qualified for the status of a resident under paragraph (a);
- (c) in the case of a trust or a body of persons, that such trust or body of persons was established in Montserrat.

Branch profits of non-resident company liable to withholding tax on dividends remitted

- (5) (a) Every non-resident company carrying on business in Montserrat shall be liable to withholding tax under section 40 on the remitted profits of such business for any year of assessment to the extent provided by this section in addition to its liability to income tax as if such profits were profits derived by a wholly owned subsidiary of a non-resident company.
- (b) Notwithstanding subsection (1), where any company to which this section applies shows to the satisfaction of the Comptroller that any part of its chargeable income in respect of any year of assessment has not been remitted, then subsection (1) shall not apply.
- (c) The profits of a non-resident company which shall be liable to withholding tax by reason of this section shall be the whole of the chargeable income, accrued from carrying on of business in Montserrat, remaining after the deduction of any income tax payable in respect of such chargeable income.

(Substituted by Act 2 of 1986)

Surcharge

41. (1) A surcharge shall be levied, collected and paid by a company, building society or a body of persons, or any individual to whom section 36 does not apply, at the rate of fifty cents on every dollar of tax liability.

(2) For the purpose of this section “**tax liability**” means the tax as assessed and payable in accordance with the provisions of this Act.

*(Inserted by Act 9 of 1976 and
amended by Acts 5 of 1991 and 13 of 1995)*

PART VIII

ADMINISTRATION

Appointment of administrative authority

42. (1) For the due administration of this Act the Governor, acting after consultation with the Public Service Commission, may appoint the Comptroller of Inland Revenue and such Officers and persons as may be necessary.

(2) The Governor in Council may appoint Commissioners for the purpose of hearing appeals against assessments and performing such other duties as may be assigned to them by this Act or as may be prescribed, and such Commissioners shall be furnished with warrants of appointment under the hand of the Governor.

Official secrecy

43. (1) Every person having any official duty or being employed in the administration of this Act shall regard and deal with all documents, information, returns, assessment lists, and copies of such lists relating to the income or items of income of any person as secret and confidential, and shall make and subscribe a declaration in the form prescribed to that effect before a Magistrate, or any other person duly authorised to administer oaths.

(2) Every person having possession of or control over any documents, information, return or assessment lists or copies of such lists relating to the income or items of income of any person, who at any time communicates or attempts to communicate such information or anything contained in such documents, returns, lists or copies to any person—

- (a)* other than a person to whom he is authorised by the Governor to communicate it; or
- (b)* otherwise than for the purposes of this Act, shall be guilty of an offence against this Act.

(3) Where provision is made for the granting of double taxation relief under Part XIII of this Act the obligation as to secrecy imposed by this section shall not prevent the disclosure of the authorised officers of the Government of a territory of such facts as may be necessary to enable the proper relief to be given there or in Montserrat.

Making rules

44. (1) The Governor in Council may make rules generally for carrying out the provisions of this Act, and may, in particular, by those rules provide—

- (a) for the form of return, claims, statements and notices under this Act;
- (b) for the collection of tax by instalments or by means of deductions made from emoluments;
- (c) for any such matters as are authorised by this Act to be prescribed; and
- (d) for any other matter or thing, whether similar or not to those abovementioned, in respect of which it may be expedient to make rules for the purpose of carrying this Act into execution.

(2) All rules purporting to be made in pursuance of this section shall be published in the *Gazette* and shall come into operation on such publication or at such other time as may be stated in such rules.

Forms

45. (1) Any form prescribed by this Act, or prescribed by any rule made under the authority of this Act with such variations and additions as the circumstances of the particular case may require, or forms to the like effect, may be used in the cases to which they respectively apply, and shall be deemed good, valid and sufficient.

(2) Unless or until forms are prescribed any document required or used for the purposes of this Act may be in such form as the Comptroller, or in Court matters the Court, Judge or Magistrate may prescribe or approve or use.

(3) It shall not be necessary to publish in the *Gazette* any form prescribed or to be used under the authority of this Act and when a rule prescribes forms, it shall be sufficient to describe such forms in the rule and to indicate the place at which such forms may be seen or obtained.

Signature on notices

46. (1) Every notice to be given by the Comptroller under this Act shall be signed by him or by a person from time to time appointed by him for that purpose, and every such notice shall be valid if the signature of the Comptroller is duly printed or written thereon.

(2) Any notice given by the Commissioners may be signed by one Commissioner or other person so appointed by them for that purpose.

(3) A signature attached to any notice and purporting to be the signature of any person so appointed shall be taken to be the signature of that person until the contrary be shown.

Service of notices

47. Notice may be served on a person either personally or by being sent through registered post to his last known business or private address, and

shall in the latter case be deemed to have been served in the case of persons resident in Montserrat not later than fourteen days succeeding the day when posted and in the case of persons not so resident, one month succeeding the day on which the notice would have been received in the ordinary course of the post, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

Refusal or neglect to accept letters

48. Where the person to whom there has been addressed a letter containing any notice which may be given under the provisions of this Act refuses to accept delivery of such letter, or is informed by an employee of the Post Office of the fact that there is a letter awaiting him at the Post Office and such person refuses or neglects to take delivery of such letter, such notice shall be deemed to have been served upon him on the date of his refusal or on which he was informed that there was a letter awaiting him at the Post Office.

Assessment not void by reason of errors

49. (1) No assessment, warrant or other proceeding purporting to be made in accordance with the provisions of this Act, shall be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect, or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Act, and if the person assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.

(2) An assessment shall not be impeached or affected—

(a) by reason of a mistake therein as to—

- (i)* the name or surname of a person liable; or
- (ii)* the description of any income; or
- (iii)* the amount of tax charged;

(b) by reason of any variance between the assessment and the notice thereof:

Provided that in case of assessment the notice thereof shall be duly served on the person intended to be charged, and such notice shall contain, in substance and effect, the particulars on which the assessment is made:

Provided further that any such mistake shall be corrected immediately in the assessment and notice thereof.

Time limits

50. Where a time limit is laid down in this Act for the rendering of a return or of particulars, or any lists and information required under any section, or giving notice of objection or appeal the respective authority to

whom any document, information or notice has to be supplied, or being satisfied that owing to absence from Montserrat, sickness or other reasonable cause an extension of time is reasonable may extend the time limit accordingly.

PART IX

RETURNS AND ASSESSMENTS

Return of personal income

51. (1) It shall be the duty of every person chargeable with tax to deliver to the Comptroller on or before the thirty-first day of March in each year or such other date as may be prescribed a true and correct return of the whole of his income from every source whatever for the basic year and if absent from Montserrat to give the name and address of an agent residing in Montserrat.

(2) In the case of persons deriving income from any employment or by way of pensions such returns are to be rendered not later than the thirty-first day of January in each year.

(3) Any person who wilfully fails to comply with the provisions of this section shall be guilty of an offence against this Act.

Returns by employers

52. (1) The Comptroller may by notice in writing require any employer to furnish him within the prescribed time with a return for any year containing—

- (a)* the names and places or residence of all persons employed by him; and
- (b)* the payments and allowances made to those persons in respect of that employment.

The expression “**payments and allowances**” in this subsection shall be deemed to include not only monies earned as salary, wages, overtime, or bonus, but also the annual value of any residence, quarters, board and lodging, or other allowances or benefits in kind received by an employee in respect of his services.

(2) Where the employer is a company or body of persons, the manager or other principal officer shall be deemed to be the employer for the purpose of this section, and any director of a company, or person engaged in the management of a company, shall be deemed to be a person employed.

Official information and official secrecy

53. The Comptroller may require any officer in the employment of the Government or any municipality or other public body to supply such particulars as may be required for the purposes of this Act and which may be in the possession of such officer:

Provided that no such officer shall by virtue of this section be obliged to disclose any particulars as to which he is under any statutory obligation to observe secrecy.

Power of Comptroller to require accounts and returns

54. The Comptroller may by notice in writing require any person or the agent or attorney of any person or the secretary, attorney, manager, agent or other principal officer of any company to furnish him within a reasonable time or such time as may be prescribed with—

- (a) a return of income; and
- (b) such accounts (including a balance sheet at the terminal date of such accounts) and particulars as may seem necessary to the Comptroller for the purpose of this Act.

List to be prepared by representative or agent

55. Every person who, in whatever capacity, is in receipt of any money or value being income arising from any of the sources mentioned in this Act for or belonging to any person shall, whenever required to do so by any notice from the Comptroller, prepare and deliver within the time therein stated a list in a form approved by the Comptroller, signed by him, containing—

- (a) a true and correct statement of all such income;
- (b) the name and address of every person to whom the same shall belong.

Returns of interest

56. (1) Every person carrying on the trade or business of banking or any other trade or business which pays interest on sums of money received or retained shall whenever so required by notice furnished to the Comptroller within the time therein stated particulars of the names and addresses of the persons to whom interest was paid or credited and of the amount of the interest for the period specified.

(2) The Accountant General shall furnish the like particulars when required in respect of the Government Savings Bank.

(3) No particulars shall be required to be furnished where the amount of such interest applicable to any person does not exceed \$50.

(4) The Comptroller may require any bank or other person at any time to furnish a return showing the amounts credited or paid to any person by such bank or other person in respect of—

- (a) interest or dividends on investments abroad; and for
- (b) remittances from abroad,

together with the names and addresses of the persons to whom such sums were paid or credited.

Manager of corporate bodies of persons

57. The manager or other principal officer of every corporate body of persons or society shall be answerable for doing all such acts, matters and things as are required to be done by virtue of this Act for the assessment of such body or persons or society and for payment of the tax.

Comptroller to make assessments

58. (1) The Comptroller shall proceed to assess every person chargeable with the tax as soon as may be after the date prescribed for delivering the returns.

(2) Where a person has delivered a return, the Comptroller may—

- (a) accept the return and make an assessment accordingly; or
- (b) refuse to accept the return and, to the best of his judgement, determine the amount of the chargeable income of the person and assess him accordingly.

(3) Where a person has not delivered a return and the Comptroller is of the opinion that such person is liable to pay tax, he may, according to the best of his judgement, determine the amount of the chargeable income of such person and assess him, accordingly, but such assessment shall not effect any liability otherwise incurred by such person by reason of his failure or neglect to deliver a return.

Transactions designed to avoid liability to tax

59. (1) Where the Comptroller has reasonable grounds to believe that the main purpose or one of the main purposes for which any transaction was or transactions were effected (whether before or after the commencement of this Act) was the avoidance or reduction of liability to tax for any year, he may, if he determines it to be just and reasonable, direct that such adjustments shall be made as respects liability to tax as he may deem appropriate so as to counteract the avoidance or reduction of liability to tax which would otherwise be effected by the transaction or transactions:

Provided that this subsection shall not apply to any transaction the main purpose or one of the main purposes for which was to affect the succession by a resident company, incorporated for that purpose to any business carried on by an individual or partnership.

(2) Without prejudice to the generality of the powers conferred by subsection (1) of this section the powers conferred thereby extend—

- (a) to the charging with tax of persons who, but for the adjustments, would not be chargeable to the same extent; and
- (b) to the charging of a greater amount of tax than would be chargeable but for the adjustments.

Appointment of agent in the United Kingdom

60. For the purpose of facilitating the assessment of the income of persons residing in the United Kingdom, the Governor may appoint an agent in the United Kingdom who shall make enquires on behalf of the Comptroller in respect of any such person as may apply to be dealt with through an agent, and shall ascertain and report to the Comptroller the amount of the chargeable income of such person in accordance with this Act, and shall forward to the Comptroller the accounts and computation upon which his report shall enter the amount reported in the assessment list:

Provided that if it appears to the Comptroller that an error has occurred in the accounts or computation he may refer the report for further consideration:

Provided also that nothing in this section shall affect the right of objection and appeal provided in this Act.

Omissions and undercharges to be rectified

61. Where it appears to the Comptroller that a person liable to tax has not been assessed, or has been charged on a lesser amount than he ought, or has received deductions or allowances to which he is not entitled, the Comptroller may, within the year of assessment or within six years after the expiration thereof, assess such person at such amount or additional amount according to his judgement ought to have been charged, and the provisions of this Act as to notice of assessment, appeal and other proceedings shall apply to such assessment or additional assessment and to the tax charged thereunder.

Comptroller or Commissioners may require a person to attend

62. (1) The Comptroller or the Commissioners may by notice in writing require any person to attend and give evidence with respect to his income, and to produce all books or other documents in his custody or under his control relating to such income.

(2) The Comptroller may at any reasonable time enter into any premises or place where any business is carried on or any property is kept, or anything is done in connection with any business, or any books or records are or should be kept pursuant to this Act and audit or examine the books and records and—

- (a) if during the course of such audit or examination it appears to him that there has been any violation of this Act or of a Regulation, he may seize, take away and retain any of the accounts, records or other documents that may be relevant and cause copies to be made of the same. In the absence of proof to the contrary, a document certified by the Comptroller to be a copy made pursuant to this subsection shall be admissible in evidence and shall have the same probative force as the original document would have had if it had been proven in the ordinary way, and the original document shall be returned to the person from whom it was seized not later than fourteen days after the date of seizure; and
- (b) he may examine stock-in-trade or property described by any inventory which may in his opinion assist him in determining the accuracy of an inventory or in ascertaining the information that is or should be in the books or records or the amount of tax payable under this Act, and count all monies, bills of exchange, money orders and other documents which are on the premises or in the place.

(Inserted by Act 35 of 1975)

(3) No person shall hinder, molest or interfere with any person doing anything that he is authorized by or pursuant to this section to do, or prevent or attempt to prevent any person doing any such thing, and notwithstanding any other law to the contrary, every person shall do anything that he is required by this section to do. *(Inserted by Act 35 of 1975)*

(4) Without restricting the generality of this section, this section shall not apply to banks and lawyers, their employees and officers, as it applies to any other business, persons and premises. *(Inserted by Act 35 of 1975)*

List of persons assessed

63. (1) After completing his assessments the Comptroller shall prepare or cause to be prepared a register of person liable to pay tax and certify the same.

(2) Such register (herein called the assessment lists) shall contain the names and addresses of the persons assessed to tax, the amount of the chargeable income of each person the amount of the tax payable by him, and such other particulars as may be prescribed.

Notices to be served on persons assessed

64. After making assessment in respect of a person for a year of assessment the Comptroller shall cause to be delivered to such person a notice of assessment or re-assessment as the case may be showing the amount of the tax payable by that person in respect of that year of

assessment and informing him of his rights under section 66. (*Substituted by Act 35 of 1975*)

Relief in respect of error or mistake

65. (1) If any person who has paid the tax charged upon him for any year alleges that the assessment and charge to tax for that year was excessive by reason of some error or mistake in the return or statement made by him for the purposes of the assessment, he may at any time not later than six years after the end of the year of assessment, apply in writing to the Comptroller for relief:

Provided that no relief shall be given under this section in respect of an error or mistake as to the basis on which the liability of the applicant ought to have been computed where the return or statement was in fact made on the basis or in accordance with the practice generally prevailing at the time when the return or statement was made.

PART X

OBJECTIONS AND APPEALS

Revision of assessment and re-assessment

66. (1) Any person who disputes his assessment or re-assessment or any part thereof may, within 21 days or such longer period as the Comptroller may in any particular case determine, after the date of service of the notice of assessment or notice of re-assessment as the case may be, apply for revision of the assessment or re-assessment by delivering to the Comptroller a notice of disagreement.

(2) A notice of disagreement shall be in writing and shall state the precise grounds on which the assessment or re-assessment is disputed.

(3) No notice of disagreement will be accepted unless such notice is accompanied with a return in respect of the relevant year of assessment. (*Inserted by Act 3 of 1994*)

(4) On receipt of a notice of disagreement, as soon as conveniently possible thereafter, the Comptroller shall give to the person who has applied for revision of the assessment or re-assessment as the case may be, an opportunity to argue his case orally or in writing and require such person to produce all books and other documents in his possession or under his control as the Comptroller may deem necessary and thereafter the Comptroller may review the assessment or re-assessment in dispute and shall either confirm the same or make a revised assessment.

(5) The Comptroller, as soon as he has either confirmed the assessment or re-assessment in dispute or made a revised assessment, shall

deliver to the person who has applied for revision of the assessment or re-assessment a notice of revised assessment as the case may be.

(6) A person who has received a notice of confirmation or a notice of revised assessment may not apply to the Comptroller for a further revision of that assessment or re-assessment as confirmed or of that revised assessment save only for the purpose of correcting an arithmetical error.

(Substituted by Act 35 of 1975)

Objections to revised assessments

67. (1) Any person who has applied for revision of an assessment or re-assessment and who has received notice of confirmation or notice of revised assessment may, within 30 days after the date of service of such notice object to the confirmed assessment or the revised assessment as the case may be, by delivering to the Commissioners six (6) copies of a notice of objection.

(2) A notice of objection shall state the precise grounds on which the confirmed assessment or the revised assessment is objected to and the particular matters to be determined by the Commissioners.

(3) The Commissioners shall decide the place, date and time for the hearing of the objection and shall cause the objector and the Comptroller to be notified of that place, date and time at least fourteen days before the appointed date.

(4) At the hearing of an objection by the Commissioners—

- (a) the proceedings shall be *in camera*;
- (b) the objector and the Comptroller may appear in person or may be represented by counsel, a solicitor or an agent; but the Commissioners may require the objector to attend in person and produce all books and other documents in his possession or control relating to his income;
- (c) the Commissioners may require the Comptroller to attend in person and give evidence on oath or otherwise and to produce all documents in his possession or control relating to the income of the objector;
- (d) the Commissioners may summon any witness, require him to give evidence on oath or otherwise and to produce all books and other documents in his possession or control that they consider may be of assistance in determining the objection;
- (e) the onus of proof shall be on the objector.

(5) Upon the conclusion of the hearing of an objection or as soon as conveniently possible thereafter, the Commissioners shall determine the particular matters in issue and shall by order under their hand direct the Comptroller to act in accordance therewith—

either

- (a) by confirming the assessment, reassessment or revised assessment objected to; or
- (b) by making a settled assessment as the case may require.

(6) The Commissioners shall transmit one copy of any order made under subsection (5) to the objector and one copy to the Comptroller and shall attach in each case a written statement of the reasons in support of their determination of the objection.

(7) Where the Commissioners are not unanimous in their decision the objection shall be determined by the decision of the majority.

(8) Upon the receipt of an order by the Commissioners pursuant to subsection (5) the Comptroller shall—

- (a) if he is directed to confirm the assessment, re-assessment or revised assessment objected to, within seven days deliver to the objector a notice of confirmation; or
- (b) if he is directed to make a settled assessment, within seven days make a settled assessment to give effect to the determination of the objection by the Commissioners and shall deliver to the objector a notice of such settled assessment.

(9) If an objector on receiving a notice of settled assessment believes that the same is not in accordance with the directions of the Commissioners, he may apply to the Commissioners who shall determine the content of the notice of settled assessment which shall then be delivered by the Comptroller to the objector.

(Substituted by Act 35 of 1975)

Appeals to High Court

68. (1) Any person—

- (a) who has disputed an assessment or re-assessment and who has received a notice of confirmation or a notice of revised assessment; or
- (b) who has objected to the Commissioners and who has received a notice of settled assessment or a notice of determination,

may appeal from the decision of the Comptroller or a decision of the Commissioners, as the case may be, to a Judge of the High Court.

(2) Notice of Appeal to the High Court shall be lodged within 30 days after the date of the service of the notice of confirmation or the notice of revised assessment or the notice of settled assessment and a copy thereof shall be delivered to the Comptroller.

(3) The Comptroller may appeal from the decision contained in an order of the Commissioners to the High Court within 30 days after the date

on which the order was received and shall deliver a copy of the appeal to the Commissioners and to the person in respect of whose assessment the order was made.

(4) A notice of appeal to the High Court shall contain particulars, shortly stated, of the assessment appealed against and shall state the grounds on which the appeal is made.

(5) Either party to an appeal may appear in person or may be represented by counsel or solicitor at the hearing of the appeal but the High Court may require the appellant to appear in person.

(6) Except as may be otherwise provided in any rules made under subsection (11) not less than 14 days notice shall be given to the appellant and to the respondent in an appeal of the date fixed for the hearing of such appeal.

(7) In any appeal to the High Court—

(a) the proceedings shall be held *in camera* unless the person whose assessment is in issue requests that the hearing shall be in open court and in such a case the appeal shall be heard in open court;

(b) the onus of proof shall be on the appellant;

(c) costs shall be in the discretion of the Judge hearing the appeal and shall be such sum as the Judge shall determine.

(8) At the conclusion of the proceedings in an appeal the High Court shall by order—

(a) confirm the assessment in issue; or

(b) refer the assessment back to the Comptroller with directions for making a final assessment.

(9) Where the High Court has referred an assessment back to the Comptroller with directions for making a final assessment, the Comptroller shall make a final assessment in accordance with those directions and shall deliver to the person whose assessment was in issue a notice of final assessment.

(10) If the person whose assessment was in issue in an appeal to the High Court believes that the notice of final assessment is not in accordance with the directions of the High Court, he may apply, in chambers, to the Judge who made the order or, if that Judge cannot hear the application, to any other Judge for an order determining the content of the notice of final assessment which shall then be delivered by the Comptroller to that person.

(11) The Chief Justice of the Supreme Court may make rules governing appeals to the High Court and providing for the method of tendering evidence and appointing places for the hearing of such appeals and prescribing the procedure to be followed.

(12) For the purpose of subsections (4), (7), (8), (9) and (10), “assessment” means—

- (i) an assessment or re-assessment confirmed by the Comptroller or by order of the Commissioners under the provisions respectively of subsection (4) of section 66 and paragraph (a) of subsection (5) of section 67;
- (ii) a revised assessment;
- (iii) a settled assessment;
- (iv) an additional assessment as the context requires.

(Substituted by Act 35 of 1975)

Appeals to Court of Appeal

69. (1) Either the appellant or the respondent in an appeal to a Judge of the High Court may appeal to the Court of Appeal and every such appeal shall be made within the time and in the manner laid down for appeals from the High Court to the Court of Appeal and shall be subject in all respects to the law relating to such appeals.

(2) Where there is adequate reason why the time limits in respect of an objection to the Commissioners or in respect of an appeal to a Judge of the High Court could not be complied with the Commissioners or a Judge of such Court, as the case may be, may extend those time limits for a fixed period as may be determined by them or by him.

(3) Subject to subsection (1) of section 59 and to subsection (1) of this section—

- (a) a final assessment or an assessment confirmed by a Judge of the High Court; and
- (b) subject also to an appeal to a Judge of such High Court, a settled assessment or an assessment confirmed by order of the Commissioners,

shall be final and binding and except in proceedings on appeal under this Act shall not be questioned in any Court or in any proceedings.

(Substituted by Act 35 of 1975)

PART XI

COLLECTION AND RECOVERY OF TAX

Collection of tax

70. (1) Except in the case of deduction of tax at source under section 40, and on payment of emoluments, tax shall be payable on or before the thirtieth day of June in the year of assessment.

(2) Where a person carries on a trade, such person shall pay to the Accountant General, an amount of tax equal to that last assessed by the Comptroller, in three equal instalments during the months of February, April and June in the year of assessment, notwithstanding that no assessment has been made. In cases where the Comptroller is satisfied that the person carrying on the trade is likely to suffer a loss or reduction of profits, he may make any necessary adjustments to the assessments payable which he regards as fair and reasonable. The amounts paid shall be set off for the purpose of collection against the tax levied under an assessment and if too much has been paid a repayment shall be made, or if too little has been paid, the outstanding tax shall be recovered in accordance with the provisions of this Act.

The collection of tax shall, in cases where notice of objection has been given, remain in abeyance until such objection is determined:

Provided that the Comptroller may in such case enforce payment of that portion of the tax (if any) which is not in dispute or a sum not less than 75% of the tax assessed.

(3) The Comptroller may agree with the appellant the amounts of tax which is not in dispute, and where the Comptroller fails to agree upon the amount of tax he may refer the matter to the Commissioners for their decision.

(4) Where any payment has been held over pending the result of a notice of objection, the tax outstanding under the assessment as determined on such objection or appeal, as the case may be, shall be payable within thirty days from the day on which the objection was determined, and if such tax is not paid within such period, payment thereof may be enforced under the provisions of this Act.

(5) Notwithstanding that a case has been required to be stated or is pending before the Judge in Chambers or the Court of Appeal, tax shall be paid within thirty days of the determination of the Appeals in accordance with the decision of the Commissioners or of the Judge, and if the amount of the assessment is altered by the order of judgement of the Court of Appeal, then—

- (a) if too much tax has been paid, the amount overpaid shall be refunded with such interest if any, as the Judge or the Court of Appeal may allow; or
- (b) if too little tax has been paid, the amount unpaid shall be deemed to be arrears of tax (except so far as any penalty is incurred on account of arrears) and shall be paid and recovered accordingly.

(6) Where after assessment has been made in accordance with the provisions of this Act any amount collected pursuant to the provisions of section 71 is found to be in excess of the tax shown to be payable in the assessment, such excess shall be refunded as soon as practicable thereafter

and in any case, not later than three months after the assessment has been made.

(Substituted by Act 35 of 1975)

Deduction on payment of emoluments

71. (1) Notwithstanding anything in this Act contained, on the making of any payment of or on account of any emoluments, tax shall, subject to and in accordance with any rules made under section 44, be deducted or withheld by the person making the payment.

(2) The tax directed to be deducted or withheld pursuant to the provisions of subsection (1) of this section shall be paid to the Accountant General by the person deducting or withholding the same at such time or times and by such date or dates as may be prescribed in the rules made under section 44 and on the payment thereof the Accountant General shall send to the payer a receipt which shall to the extent of the amount referred to therein be a good and sufficient discharge of the liability of the payer for any amount deducted or withheld pursuant to the provisions of this section.

(3) If any person fails to remit to the Accountant General any amount directed to be deducted or withheld pursuant to the provisions of subsection (1) of this section by such date or dates as may be prescribed in the rules made under section 44, he shall be liable to a penalty of five *per centum* of the amount or part thereof not remitted or \$1,000, whichever is the greater in addition to the amount itself with interest on the amount at the rate of ten *per centum* per annum. *(Amended by Act 8 of 1999)*

(4) From the returns made as aforesaid and from any other information in his possession the Comptroller shall in and for every year and from time to time, make assessments, in respect of every taxpayer, setting forth the amount upon which tax is payable and the amount of the tax.

(5) Every such assessment shall be made in the form and manner prescribed by regulations, and in default of such regulations, or so far as they do not extend, then as the Comptroller thinks fit.

Public Officers to furnish information to the Comptroller

(6) It shall be the duty of every public officer to furnish the Comptroller on his application in writing with any information required by him for the purpose of this Act, and which may be in his possession or which he may be able to procure.

(7) All amounts deducted or withheld by any person pursuant to the provisions of subsection (1) of this section shall be deemed to be held in trust by such person for Her Majesty, her heirs and successors for the use of Montserrat and shall be kept by such person separate and apart from his own moneys and shall not be subject to attachment in respect of any debt or liability of the said person and in the event of any liquidation, assignment,

or bankruptcy the said remains apart and forms no part of the estate in liquidation, assignment or bankruptcy.

(8) Every person who shall have deducted or withheld any tax pursuant to the provisions of subsection (1) of this section, shall deliver personally or send by post within such time or times as may be prescribed by rules made under section 44 to the person from whose emoluments the tax was deducted or withheld or to such other person, as may be prescribed by rules made under the said section, such certificate or account relating to the amount of tax deducted by him as may be prescribed by the said rules.

(9) If any person fails to comply with the provisions of subsection (3) of this section or shall fail to deliver or send to the Comptroller within such time or times as may be prescribed by rules made under the said section any return, account or certificate or any copy thereof which he may be required by the said rules to deliver or send to the Comptroller for the purpose of rendering him accountable to the Comptroller for any tax directed to be deducted or withheld by him pursuant to the provisions of this section, he shall be guilty of an offence and liable on conviction by a court of summary jurisdiction to a fine not exceeding \$100 for every day during which such failure continues:

Provided that it shall be a good and sufficient defence to any complaint brought under this subsection that any failure was not due to the wilful neglect or default of the defendant or of any person acting on his behalf. (*Amended by Act 8 of 1999*)

Validity of assessment

(10) The validity of an assessment shall not be affected by reason that any of the provisions of this Act have not been complied with by the tax payer.

(11) No action shall lie against any person for withholding or deducting any sum of money in compliance or intended compliance with the provisions of subsection (1) of this section.

(12) Where by this Act any obligation is imposed on any person to deduct or withhold any tax pursuant to the provisions of subsection (1) of this section any agreement made by any such person not to withhold or deduct such tax shall be void and of no force or effect whatsoever.

(13) Every person from whose emoluments any amount shall be deducted or withheld pursuant to the provisions of subsection (1) of this section shall upon the amount being so deducted or withheld be deemed to have paid the same and shall thereupon cease to be liable for tax to the extent of the amount so deducted.

When tax deducted from payments to non-residents is due and payable

72. Any tax deducted or deductible from the payment of any income to which section 40 applies to a non-resident shall be due and payable by the person responsible for making such deduction within fifteen days after the

end of the month during which that tax was deducted or deductible. (*Inserted by Act 2 of 1986*)

Definition of emoluments for purposes of section 71

73. For the purposes of section 71 the expression “**emoluments**” means all salary, wages, overtime, bonus, commission or other amounts for services, perquisites, directors fees, retiring allowances or pension arising or accruing in or derived from or received in Montserrat and which are assessable to income tax but shall not include any salary or share of profits arising from a trade, profession or vocation carried on by any person either by himself or in partnership with any other person.

Tax in arrears

74. Where the whole tax or an instalment or the amount agreed or determined as in section 70 is not paid on or before the prescribed date or dates then such tax shall be deemed to be in arrears and it shall be lawful for the Comptroller, in his official name, to sue for and recover the tax or such portion thereof as a civil debt in a court of competent jurisdiction or to issue a warrant under his hand directed to the Bailiff setting out in the same or in the Schedule thereto the several sums due on account of the tax from the person against whom the warrant is directed.

Penalty for non-payment of tax

75. When any tax in excess of \$20 becomes in arrears a sum of five *per centum* shall be added thereto, and failing payment within one month of the date of such fine, twelve *per centum* per annum from the due date of payment shall be added thereto, and the provisions of this Act relating to the collection and recovery of tax shall apply to the collection and recovery of such a sum:

Provided that where the tax is paid within one month from the due date and the Comptroller is satisfied that the failure to pay on or before the due date was not due to wilful negligence the fine of five *per centum* may be waived.

(Substituted by Act 35 of 1975)

Recovery of tax by levy on goods, etc

76. (1) Where tax is in arrear the Comptroller and Bailiff may, immediately on receipt of a warrant, proceed to levy upon the goods, chattels and lands of the persons against whom the warrant is directed and to sell in the manner provided in section 78 so much of the same as may be required to satisfy the several sums due on account of the tax from the person against whom the warrant is directed.

(2) Where the amount of tax due or penalty or interest chargeable or otherwise payable under this Act is \$20 or less, such amount shall be deemed to have been remitted. (*Inserted by Act 13 of 1995*)

(3) Notwithstanding the provisions of subsection (1) of this section, where the Comptroller believes that any person is indebted to or liable to make a payment to another person or is in possession of or has access to moneys belonging to another person and that other person owes tax deemed to be in arrear under section 74, the Comptroller may deliver to such first mentioned person a demand for the payment, stating the name of the person owing tax in arrear and the amount of that tax including any fine or penalty due under this part of this Act, and where that first mentioned person is the employer of the person owing tax in arrear, the amount demanded for each pay period expressed either as a dollar amount or a percentage of the remuneration.

(4) Every person who receives a demand for payment under subsection (2) relating to one of his employees shall account to the Comptroller, at the same time as, but for the provisions of this section, he would have paid to the employee, for the amount demanded by the Comptroller or the amount of the employee's tax in arrear, whichever is the less, and shall continue to do so on each occasion that the employee is entitled to be paid until the employee's indebtedness under subsection (2) is satisfied.

(5) Every person who receives a demand for payment under subsection (2) relating to some person other than one of his employees shall, if he is indebted to or liable to make a payment to that other person, account to the Comptroller for the amount of his indebtedness or the amount which he is liable to pay to that person or the amount of that person's tax in arrear, whichever is the less.

(6) Every person who has discharged any liability to a person owing tax in arrear under this Act after receiving a demand for payment under subsection (2) without complying with subsection (3) or (4) is liable to account to the Comptroller for an amount equal to the liability discharged, or for which he was required under subsection (3) or (4) to account to the Comptroller, whichever is the less.

(7) Any amount accounted for under subsection (3) or (4), operates as a discharge of any liability of the person accounting for that amount to the person to whom a payment would but for this section have been made, to the extent of the amount accounted for to the Comptroller.

(Substituted by Act 35 of 1975)

Priority of claim for tax

77. (1) No property, goods or chattels whatever, belonging to any person at the time any tax becomes in arrear, shall be liable to be taken by virtue of any execution or other process, warrant or authority whatever, or by virtue of any assignment, or any account or pretence whatever, except at the suit of the landlord for rent, unless the person at whose suit the execution or seizure is made, or to whom the assignment was made pays or causes to be paid to the Comptroller before the sale or removal of the goods or chattels,

all arrears of tax which are due at the time of seizure, or which are payable for the year in which the seizure is made.

(2) In case of neglect or refusal to pay the tax so claimed the Bailiff or the Comptroller shall distrain the goods and chattels notwithstanding the seizure or assignment, and shall proceed to the sale thereof for the purpose of obtaining payment of the whole of the tax charged and claimed and the reasonable costs and charges attending such distress and sale. The Bailiff and the Comptroller so doing shall be indemnified by virtue of this Act.

(Substituted by Act 35 of 1975)

Sale by tax authorities

78. (1) Subject to subsection (2) every sale under this Act shall be by public auction held at such time and place as the Comptroller or Bailiff may direct.

(2) A notice of an intended sale shall be given in at least three issues of a newspaper circulating in Montserrat but in no case shall a sale take place before the expiration of 90 calendar days from the date of publication of the first notice.

(3) The proceeds of a sale under this Act shall be applied to the payment of the tax due and the expenses of levy and sale, and the surplus, if any, shall be paid on application to the person entitled thereto.

(Substituted by Act 13 of 1995)

Commission to Bailiff

79. (1) There shall be paid to the Bailiff in respect of the duties performed by him under this Act, a commission of two and a half *per centum*—

(a) on arrears collected by him;

(b) on the net proceeds of any sale over and above all other expenses of the levy and sale under this Act, not exceeding the amount of commission on arrears to which he would have been entitled had there been no sale.

(2) All sums of money received or recovered by the Bailiff as commission shall be paid into the Treasury.

Committal to Prison

80. (1) If no sufficient distress be found whereby the tax charged upon a person by virtue of this Act may be levied and it is shown by the Bailiff or Comptroller to the satisfaction of a Magistrate that such person either has or had since the date of the levy the means to pay the same, and has refused or neglected or refuses or neglects to pay the same the Magistrate may, by warrant under his hand, commit such person to prison, there to be kept until payment be made of the tax charged or security given to his satisfaction for payment thereof together with such further sum as he may adjudge to be

reasonable for the cost and expense of apprehending and conveying such person to prison, where he shall be detained and kept according to the tenor and effect of the warrant:

Provided that the order of the Magistrate committing such person aforesaid to prison shall be made in open court:

Provided also that no imprisonment under this section shall operate as an extinguishment of the tax charged.

(2) Proof of the means of the person making default may be given in such manner as a Magistrate may think just, and any person aforesaid and any witness may be summoned and examined under the Criminal Code.

(3) A Magistrate may issue his warrant to the Superintendent of Prisons directing the liberation of any defaulter, and, on receipt thereof the Superintendent of Prisons shall forthwith release and discharge such defaulter out of custody, unless he is under detention for some other cause than that set forth in the warrant of commitment.

Recovery of tax from and assessment of persons leaving Montserrat

81. (1) If in any particular case the Comptroller has reason to believe that a person who has been assessed to tax may leave Montserrat before such tax becomes payable without having paid such tax, he may by notice in writing to such person demand payment of such tax within the time to be limited in such notice. Such tax shall thereupon be payable at the expiration of the time to be limited and shall, in default of payment unless security for payment thereof be given to the satisfaction of the Comptroller, be recoverable forthwith in the manner provided by this Act.

(2) If in any particular case the Comptroller has reason to believe that tax upon any chargeable income may not be recovered, he may at any time and as the case may require—

- (a) forthwith by notice in writing require any person to make a return and to furnish particulars of any such notice within the time to be specified in such notice;
- (b) make an assessment upon such person in the amount of the income returned, or if default is made in making such return or the Comptroller is dissatisfied with such return, in such amount the Comptroller may think reasonable; and
- (c) by notice in writing to the person assessed require that the tax be paid forthwith or that security for payment of the tax assessed be forthwith given to his satisfaction, and may by notice in writing to the person assessed require that the tax be paid forthwith or that security for the payment of the tax assessed be forthwith given to the satisfaction of the Comptroller.

Charging tax before year of assessment

(3) Notwithstanding any of the provisions of this Act, if in any particular case the Comptroller has reason to believe that tax upon any income chargeable to such tax may not be recovered, he may at any time—

- (a) by notice in writing to the person by whom the tax would be payable to determine a period for which tax shall be charged and require such person to render within the time specified therein, returns and particulars of such income for that period;
- (b) make an assessment upon such in the amount of the income returned, or if default is made in making a return, or the Comptroller is dissatisfied with such returns, in such amount as the Comptroller may think reasonable.

(4) Notice of assessment made in accordance with the provisions of subsections (2) and (3) of this section shall be given to the person assessed and any case so assessed (in accordance with the provisions of subsections (2) and (3) of this section) shall be payable on demand made in writing under the hand of the Comptroller, and shall in default of payment unless security for the payment thereof be given to the satisfaction of the Comptroller, be recoverable forthwith.

(5) Any person who has paid the tax in accordance with a demand made by the Comptroller or who has given security for such payment under subsections (2) and (3) of this section shall have the rights of objection and appeal conferred by this Act and the amount paid by him shall be adjusted in accordance with the result of any such objection or appeal.

(6) The provisions of subsections (2) and (3) of this section shall not affect the powers conferred upon the Comptroller by section 60.

Repayment of tax

82. (1) If it is proved to the satisfaction of the Comptroller that any person for any year of assessment has paid tax, by deduction or otherwise, in excess of the amount with which he is properly chargeable, such person shall be entitled to have the amount so paid in excess refunded. Every claim for repayment under this section shall be made within six years from the end of the year of assessment to which the claim relates.

(2) Except as regards sums repayable on an objection or appeal, no repayments shall be made to any person in respect of any year of assessment provided he has received a notice of assessment, as regards which—

- (a) that person has failed or neglected to deliver a return within the prescribed time, unless it is proved to the satisfaction of the Comptroller that such neglect or failure to deliver a true and correct return did not proceed from any fraud or wilful act or omission; or

(b) that person has been assessed in a sum excess of the amount contained in his return.

(3) The Comptroller shall give a certificate of the amount to be repaid and upon the receipt of the certificate the Accountant General shall cause repayment to be made in conformity therewith.

Power to remit tax

83. The Governor in Council may remit the whole or any part of the tax payable by any person including any interest or fees or other charges payable if he is satisfied that it would be just and equitable to do so.

Exit Certificates

84. (1) Subject to the provisions of subsection (4) of this section no person shall leave or attempt to leave Montserrat nor shall any ticket entitling any person to leave Montserrat be issued to any person nor shall any accommodation on any aircraft or ship be provided for any person to leave Montserrat unless such person has in his possession and produces to the airline or shipping agents and the immigration authority an exit certificate, dated not more than one year before the date of departure, duly signed by or on behalf of the Comptroller, certifying that such person—

(a) does not owe any income tax; or

(b) has made satisfactory arrangements for the payment of any income tax payable by him.

(2) Notwithstanding the provisions of any law to the contrary, the provisions of subsection (1) of this section shall not apply to any member of the Executive Council or of Legislative Council.

(3) Any person who neglects to comply with or acts in contravention of the provisions of this section shall be guilty of an offence against this Act:

Provided that it shall be a good defence to any proceedings against any person in respect of an offence against this section to prove that the certificate required by subsection (1) of this section could properly have been issued and that there has been undue delay on the part of the Comptroller in issuing the same.

(4) Subsection (1) of this section shall not apply to—

(a) any member of the Military, Naval or Air Forces of Her Majesty or of any foreign state;

(b) any person in the diplomatic or consular service of a foreign state unless any such person is also engaged in any business or other employment in Montserrat;

(c) any person to whom the provisions of the Diplomatic Privileges Act apply;

- (d) any person under 16 years;
 - (e) any passenger in-transit;
 - (f) any person who—
 - (i) is in Montserrat for some temporary purpose only and does not carry on any trade, business, vocation or profession, or render personal services for gain or profit therein, nor has carried on such trade, business, vocation, profession nor rendered such services at any time during the previous twelve months; and
 - (ii) is not a person whose name has been notified to the Commissioner of Police by the Comptroller as owing income tax;
 - (g) any patient and any nurse or companion travelling with a patient who is going aboard for emergency medical treatment. *(Inserted by Act 8 of 1998)*
- (5) (a) The Comptroller may in his discretion at any time after a certificate is issued under subsection (1) of this section, revoke such a certificate.
- (b) The Comptroller shall serve notice of any revocation upon the person to whom the certificate was issued at his last known place of business or private address and upon service of such notice the certificate shall become invalid.
- (c) The Comptroller shall immediately inform the Commissioner of Police of such revocation.
- (6) Any person aggrieved by the refusal of the Comptroller to grant a certificate under subsection (1) or by the revocation of a certificate under subsection (5) may appeal to the Commissioners, whose decision shall be final.
- (Substituted by Act 35 of 1975)*

PART XII

PENALTIES

Penalty for offences

- 85.** Any person who without reasonable excuse (whether or not liability to tax is involved)—
- (a) is guilty of a breach of official secrecy;
 - (b) refuses, fails or neglects to render any return or statement;

- (c) refuses, fails or neglects to furnish when required any accounts or particulars;
- (d) refuses, fails or neglects to attend or to give evidence when required to do so;
- (e) fails to pay over any tax which he is required to deduct;
- (f) in any other way does not comply with this Act or the rules made under this Act,

shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding \$2,000 and in default of payment to imprisonment for a term not exceeding four months, and after judgement has been given for that penalty to a further penalty of \$100 for every day during which the refusal, failure or neglect to render any document or to pay over any tax continues. *(Amended by Act 8 of 1999)*

Penalty for incorrect returns

86. (1) Any person who without reasonable excuse—

- (a) in any returns, accounts, statements or particulars made by him omits the whole or any part of any income assessable under this Act;
- (b) renders any return, accounts, or statement which is not true and correct;
- (c) gives incorrect or incomplete particulars in any claim for allowances under Part VI of this Act; and any person who aids, abets, assists, counsels, incites or induces another person to commit any such offence;

shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding \$4,000 and in default of payment to imprisonment for a term not exceeding eight months. *(Amended by Act 8 of 1999)*

(2) A person who commits any offence within subsection (1) of this section may be proceeded against before the Commissioners within six years of the date on which the offence is alleged to have occurred, and in such case shall forfeit a sum of not exceeding twice the amount of the tax evaded or attempted to be evaded by the omission or untrue or incorrect Return, Accounts or Statement and such penalty shall be recovered in the same manner as any other penalty added to the assessment.

Penalty for false statements and returns

87. (1) Any person—

- (a) for the purpose of obtaining any allowance, deduction, rebate, reduction or repayment in respect of tax for himself or any other person, or who in any return, account or particulars made or furnished with reference to tax

knowingly makes any false statement or false representation;
and

- (b) who aids, abets, assists, counsels, incites or induces another person—
 - (i) to make or deliver any false return or statement under this Act; or
 - (ii) to keep or prepare false accounts particulars concerning any income on which tax is payable under this Act,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding twelve months. (*Amended by Act 8 of 1999*)

(2) Any person who commits any offence within subsection (1)(a) of this section may be proceeded against before the Commissioners within six years of the date on which the offence is alleged to have occurred, and in such case shall forfeit a sum not exceeding three times the amount of the tax evaded or attempted to be evaded by the omission or untrue and incorrect Return, Accounts, or Statements and such penalty shall be recovered in the same manner as any other penalty under this Act and the increased tax shall be added to the assessment.

Time limit for proceedings

88. Any proceeding for the recovery of a penalty in respect of an offence shall be commenced within six years of the date on which the offence is alleged to have occurred.

Savings for criminal proceedings

89. The provisions of this Act shall not affect any criminal proceedings under any other Act.

Power of Attorney General to conduct proceedings

90. (1) Notwithstanding anything contained in section 85, 86, 87, 88 or 89 of this Act, the Attorney General may institute, take over or discontinue any proceedings brought under this Act and may cause any such proceedings to be brought in or transferred to any Court as he shall deem fit.

(2) Where proceedings are contemplated or pending, the Attorney General may demand from any person whether a taxpayer or not, any returns, books of accounts, statements or particulars in relation to any person's tax liability.

(3) Any person who refuses, fails or neglects to deliver to the Attorney General any document or thing demanded under the provisions of subsection (1) of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding \$2,000 or to imprisonment for two years.

(Inserted by Act 9 of 1976)

PART XIII

DOUBLE TAXATION RELIEF

Relief for tax paid in the Commonwealth

91. (1) Subject to the provisions of subsection (3) of this section if any person who has paid by deduction or otherwise or is liable to pay tax under this Act for any year of assessment on any part of his income, proves to the satisfaction of the Comptroller that he has paid, by deduction or otherwise or is liable to pay Commonwealth income tax for that year in respect of the same part of his income, he shall be entitled to relief from tax on that part of his income at a rate determined in subsection (2) of this section.

(2) (a) In the case of a resident in Montserrat the relief shall be—

- (i) if his rate of Commonwealth income tax does not exceed one half of his rate of tax in Montserrat, at his rate of Commonwealth income tax;
- (ii) in any other case, at half his rate of tax in Montserrat.

(b) In the case of a person not resident in Montserrat the relief shall be—

- (i) if his rate of Commonwealth income tax does not exceed his rate of tax in Montserrat, at half his rate of Commonwealth income tax;
- (ii) in any other case, at a rate equal to the excess of his rate of tax over one half of Commonwealth income tax.

(3) No relief shall be granted in accordance with the provisions of subsection (1) of this section in respect of Commonwealth income tax charged in any part of the Commonwealth unless the Legislature of that part has provided for relief in respect of tax charged on income both in that part and in Montserrat in a manner similar to that part provided for this section.

(4) The expression “**rate of tax**” when applied to tax paid or payable under this Act, means the rate determined by dividing the amount of the tax paid or payable for that year (Double Taxation Relief being left out of account) by the total income for that year, except that where the income

which is the subject of a claim to relief under this section is computed by reference to the provision of section 18 of an amount other than the ascertained amount of the actual profits, the rate of tax shall be determined by the Comptroller.

(5) Where a person is, for any year of assessment, resident in Montserrat and in a part or place in which Commonwealth income tax is chargeable, he shall, for the purposes of this section, be deemed to be resident where, during that year, he resides for the longer period.

Double taxation arrangements

92. (1) If the Governor in Council by Order declares that arrangements specified in the Order have been with the Government of any territory outside of Montserrat with a view to affording relief from double taxation in relation to income tax or any tax of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect, the arrangements shall have effect in relation to income tax notwithstanding anything to the contrary contained in any enactment.

(2) On the making of an Order under this section with respect to arrangements relating to any territory forming part of the Commonwealth, section 91 shall cease to have effect as respects that territory except in so far as the arrangements otherwise provide.

(3) Any Order made under this section may be revoked by a subsequent Order.

(4) The Governor in Council may make rules for carrying out of the provisions of any arrangements having effect under this section.

(5) Notwithstanding anything in any enactment contained, an Order made under this section may be given retrospective effect from any date specified in the said Order.

Tax Credits

93. (1) The provisions of this section shall have effect where under section 92, tax payable (hereinafter called "foreign tax") in respect of any income in the territory with the Government of which the arrangements are made, is to be allowed as a credit against tax payable in respect of that income in Montserrat.

(2) The amount of the tax chargeable in respect of the income shall be reduced by the amount of the credit:

Provided that credit shall not be allowed against tax for any year of assessment unless the person entitled to the income is resident in Montserrat for that year.

(3) The credit shall not exceed the amount produced by applying the "rate of tax" as defined in section 91(4) to each amount of income assessable in Montserrat which is doubly taxed and the total credit shall not exceed the total tax chargeable before deducting any credit.

(4) In computing the amount of the income—

- (a) where the tax chargeable depends on the amount received in Montserrat the said amount shall be increased by the appropriate amount of the foreign tax in respect of the income;
- (b) where the income includes a dividend and under the arrangements foreign tax not chargeable directly or by deduction in respect of the dividend is to be taken into account in considering whether any, and if so, what credit is to be given against income tax in respect of the dividend, the amount of the income shall be increased by the amount of the foreign tax not so chargeable which falls to be taken into account in computing the amount of the credit; but notwithstanding anything in this Act a deduction shall be allowed of any amount by which the foreign tax in respect of the income exceeds the credit thereof.

(5) Paragraph (a) of subsection (4) (but not the remainder thereof) shall apply to the computation of total income for the purposes of determining the rate of tax mentioned in section 91(4).

(6) Where—

- (a) the arrangements provide, in relation to dividend of some classes but not in relation to dividends of other classes, that foreign tax not chargeable directly or by deduction in respect of dividends is to be taken into account in considering whether any, and if so what, credit is to be given against tax in respect of the dividends; and
- (b) a dividend is paid which is not of a class in relation to which the arrangements so provide,

then if the dividend is paid to a company which controls, directly or indirectly not less than one half of the voting power in the company paying the dividend, credit shall be allowed as if the dividend were a dividend of a class in relation to which the arrangements so provide.

(7) Credit shall not be allowed under the arrangements against tax chargeable in respect of the income of any person for any year of assessment if he elects that credit shall be allowed in the case of his income for that year.

Time limit for claims

94. (1) Any claim for an allowance for relief or by way of credit shall be made not later than six years after the end of the year of assessment and in the event of any dispute as to the amount allowable the claim shall be subject to objection and appeal in like manner as an assessment.

(2) Where the amount of any relief or credit given under this Act is rendered excessive or insufficient by reason of any adjustment of the

amount of any tax payable either in Montserrat or elsewhere, nothing in this Act limiting the time for the making of assessment or claims for relief shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than six years from the time when all such assessments, adjustments and other determinations have been made, whether in Montserrat or elsewhere, as are material in determining whether any, and if so what, credit fails to be given.

Adjustment of tax deducted from dividends and set-off

95. (1) Where the tax paid or payable by a company is affected by double taxation relief, the amount to be repaid in respect of the tax deductible from any dividend paid by the company shall be reduced as follows—

- (a) if no tax is chargeable on the recipient in respect of the dividend the reduction shall be an amount equal to tax on the amount on the gross dividend at the rate of double taxation relief applicable thereto;
 - (b) if the rate of tax chargeable on the recipient in respect of the dividend is less than the rate of double taxation relief applicable to the dividend, the reduction shall be an amount equal to tax on the gross dividend at the difference between those two rates.
- (2)** For the purposes of this section—
- (a) if the income of the person chargeable includes one dividend such as is mentioned in the preceding subsection, that dividend shall be deemed to be the highest part of his income;
 - (b) if his income includes more than one such dividend a dividend shall be deemed to be a higher part of his income than another dividend if the nett local rate applicable to the former dividend is lower than that applicable to the latter dividend;
 - (c) where the tax is chargeable at different rates in respect of different parts of any such dividend, or where tax is chargeable in respect of some part of any such dividend and is not chargeable in respect of some other part thereof, each part shall be deemed to be a separate dividend.
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SCHEDULE 1*(Section 40)***DEDUCTION OF TAX FROM PAYMENTS TO NON-RESIDENTS****Application**

1. (1) This Schedule applies to every person who makes any payment by way of—

- (a) a dividend;
- (b) interest or discounts;
- (c) rental, lease premium or licence in relation to immovable property;
- (d) rental of plant, machinery, equipment or other movable property;
- (e) royalty;
- (f) management charge;
- (g) commission or fee, not being in respect of an employment to which section 71 applies;
- (h) annuities or other periodic payments including payments by way of alimony or maintenance;
- (i) the distribution of income of a trust, being income of the kind specified in clauses (a) to (h);
- (j) any other payment of an income nature,

to a non-resident, and subject to sub-paragraph (2) does not apply to any other payments to a non-resident carrying on business or exercising employment in Montserrat.

(2) This Schedule also applies to any payment to a non-resident in respect of independent personal services performed in Montserrat other than by way of carrying on a business in Montserrat through a permanent establishment in Montserrat.

(3) Where the accounts of a business are maintained on an accrual basis and during the basic year any amount of the kind specified in sub-paragraph (1) and (2) is charged as an expense but payment is not made, tax shall be deducted and accounted for to the Comptroller as if payment had been made on the last day of such basic year.

(4) For the purposes of proviso (a) to paragraph 2, where the income accruing to a trust is of different kinds, it shall be treated as retaining such character for determining the rate of tax to be deducted therefrom by the trustee.

Deduction to be made by person making payment

2. Where any payment is made to which this Schedule applies, then such amount shall not form chargeable income of the person to whom the payment is made and the

person making such payment shall deduct tax from the gross amount of such payment at the rate specified in paragraph 3; Provided that:

- (a) where the income accrues to a trust and a non-resident beneficiary is entitled to the immediate benefit of the whole or part thereof, the trustee shall deduct the tax;
- (b) where income which accrues to a non-resident is payable by another non-resident, then, for the purposes of collection of the tax imposed by this section, the Comptroller may without relieving the payer of his obligations under this Schedule, impose the charge directly on the non-resident to whom the income accrues and the general provisions of Part XI relating to the recovery of tax shall apply;
- (c) where income accrues to a non-resident, payable to a bank or other agent on behalf of the non-resident, then for the purposes of collection of the withholding tax, such bank or agent shall deduct and account for the tax required to be deducted under this Schedule.

Rate of tax to be deducted

3. (1) Tax shall be deducted from the actual amount paid by way of—
- (a) dividends, at the rate of fifteen per cent;
 - (b) rental payments in respect of immovable property, at the rate of ten per cent;
 - (c) rental payments in respect of movable property at the rate of twenty per cent;
 - (d) fees payable to public entertainers at the rate of twenty per cent;
 - (e) any other payments of the kind specified in paragraph 1 at the rate of twenty per cent,

of every dollar of such payment and shall be the final liability in respect of such income.

(2) The provisions of section 13(1) of the Act shall not apply to the payments specified in subparagraph (1) of this paragraph of the Schedule. (*Inserted by Act 13 of 1995*)

Certificate and record of payments made and tax deducted

4. (1) Every person who has deducted any tax under this Schedule shall furnish to the person to whom payment is made, a certificate showing the gross amount of the payment made and the tax deducted therefrom.

(2) Every person making any payment to which this Schedule applies shall maintain a record showing in relation to each calendar year—

- (a) the nature of the payment;
- (b) the gross amount thereof;
- (c) the amount of tax deducted therefrom; and

- (d) the name and address of the non-resident and such record shall be kept available for examination by the Comptroller as and when required.

Returns of deductions and remittances of tax

5. Every person shall when making any payment under section 72 furnish a return in such form as the Comptroller may approve, showing the amount of tax deducted and remitted, together with a copy of all certificates issued under paragraph 4 in respect of such deduction of tax.

Personal liability where failure to deduct tax

6. (1) Where any person fails to deduct any tax under this Schedule he shall, in addition to any penalty for which he may be liable, be personally liable to pay to the Comptroller within the time specified in section 72 the amount which he has failed to deduct.

(2) Where any person pays to the Comptroller the amount of tax which he failed to deduct, such amount shall be deemed to have been deducted under this Schedule.

(3) The person making any payment to the Comptroller under this paragraph shall be entitled to recover such amount from the person to whom payment was made.

(4) Where any person has failed to deduct tax as required under this Schedule but the Comptroller is satisfied that tax deducted from earlier or later payments is sufficient to meet the amount of tax which he has failed to deduct, the Comptroller may absolve such person from his liability under sub-paragraph (1).

SCHEDULE 2

(Section 36)

RATES OF TAX

The rates of income tax for any year of assessment commencing on or after January 1, 1995 are as follows—

On every dollar of the first \$2,000 of chargeable income – 20 cents in the dollar;

On every dollar of the next \$5,000 of chargeable income from \$2,001 to \$7,000 – 25 cents in the dollar;

On every dollar beyond \$7,000 of chargeable income – 30 cents in the dollar.

The rate of income tax for the years of assessment commencing on or after January 1, 1999 are as follows—

On every dollar of the first \$2,500 of chargeable income – 20 cents in the dollar;

On every dollar of the next \$6,000 of chargeable income viz. from \$2,500 to \$8,500 – 25 cents in the dollar;

On every dollar beyond \$8,500 of chargeable income – 30 cents in the dollar.

INCOME TAX (EMPLOYMENT) RULES

ARRANGEMENT OF RULES

RULE

1. Short title
2. Interpretation
3. Filing of Declaration
4. Deduction of Tax on Emoluments
5. Deduction of Tax on Bonuses
6. Power of Comptroller Re Deduction
7. Deceased Employees
8. Exemptions from Deductions
9. Limits on Deductions
10. Determination of Questions
11. Payment of Tax Deducted
12. Accounting for Tax Deducted
13. Statement by Employers Re Bonuses
14. Annual Returns by Employers
15. Certificate Regarding Former Employee
16. Employer Ceasing Business
17. Death of Employee
18. Furnishing of Particulars
19. Record of Emoluments
20. Liability of Personal Representative
21. Change of Employer
22. Declaration by Employee
23. Tax Tables
24. Inspection of Wage Sheets
25. Notice of Complaint
26. Determination of Complaint
27. Notices
28. Proceedings
29. Failure to Deduct
30. Offences re. non-residents
31. Charges of Income
32. Obstruction

INCOME TAX (EMPLOYMENT) RULES—SECTION 44

(S.R.O. 3 of 1968)

Commencement

[1 January 1968]

Short title

1. These Rules may be cited as the Income Tax (Employment) Rules.

Interpretation

2. In these Rules unless the context otherwise requires—

“**appropriate form**” means a form approved by the Comptroller for use in any particular case authorised by these Rules;

“**declaration**” means the declaration referred to in rule 3(1);

“**employee**” means any person in receipt of emoluments;

“**employer**” means any person paying emoluments whether on his account or on behalf of another person;

“**total allowances**”, in relation to an individual, means the aggregate of any deductions to which an individual is entitled under the Income Tax Act 1967 in respect of himself, his wife, children or dependent relatives and includes that amount of the premiums payable by the individual in each year in respect of a policy or policies of insurance not exceeding seven per cent of the capital sum assured in respect of which the premium is payable or an amount equal to one sixth part of the gross income, whichever is the less, and any sum deducted from his emoluments by his employer for or in respect of any amount contributed to any scheme or fund as the Governor in Council may approve.

Filing of declaration

3. (1) Every person to whom any payment is made of or on account of any emoluments shall, for the purpose of enabling any deductions which may be made under section 71 of the Income Tax Act, file with the person making the payment a declaration in duplicate in a form approved by the Comptroller declaring such particulars as may be prescribed by rules made under the said Act:

Provided that a declaration shall not be filed by—

- (a) a person resident outside of Montserrat;
- (b) such persons as may be specified by, or who comply with, any conditions required by the Comptroller by notice published in the manner provided by these Rules unless the Comptroller in any particular case authorises any such person to file a declaration; and

Provided further that if any person entitled to file a declaration is at the time in the employment of more than one person by whom any emoluments are paid, he shall file a declaration with only such one of the persons by whom such emoluments are paid as he may consider to be the chief employer.

(2) The duplicate copy of every such declaration shall be forwarded to the Comptroller within seven days of such declaration having been made.

(3) Where an employee works under the general control and management of a person who is not his immediate employer, that person (referred to hereafter in this rule as the “principal employer”) shall be deemed to be the employer for the purpose of these Rules, and the immediate employer shall furnish the principal employer with such particulars of the employee’s emoluments as may be necessary to enable the principal employer to comply with the provisions of these Rules.

(4) If the employee’s emoluments are actually paid to him by the immediate employer—

- (a) the immediate employer shall be notified by the principal employer of the amount of tax to be deducted when the emoluments are paid to the employee and shall deduct the amount so notified to him accordingly; and
- (b) the principal employer shall make a corresponding deduction on making to the immediate employer the payment out of which the said emoluments will be paid.

(5) Every employer shall before employing, and in any event before paying any emoluments to an employee obtain from him his worker’s number which shall be prescribed by the Comptroller of Inland Revenue. In the event of doubt such number should be certified by the Comptroller before any payment is made.

Deductions of tax on emoluments

4. (1) Subject to the provisions of rules 5, 6 and 8 of these Rules, on the occasion of any payment of emoluments to an employee, the employer shall deduct as tax the amount appearing in the appropriate column of the table of the tax tables to be used opposite to that amount appearing in the first column of the said table which is the same as or the nearest to the amount of the emoluments due to the employee:

Provided that where—

- (a) the pay period for which the emoluments are to be paid is not provided for in the tax tables; or
- (b) the emoluments paid per pay period are greater than any amount provided for in the first column of the table to be used; or
- (c) the total allowances claimed exceed the amount provided for in the tax tables,

the amount to be deducted shall be determined by the Comptroller.

(2) In the event of the amount of the emoluments due to the employee being an amount exactly between two amounts appearing in the first column of the table to

be used, the tax to be deducted shall be that amount appearing in the appropriate column of the said table opposite to the larger of the two such amounts.

(3) For the purposes of this rule, the table of the tax tables to be used shall be that table of the tax tables prepared by the Comptroller pursuant to rule 23 of these Rules which takes into account total allowances and corresponds to the pay period for which the emoluments are to be paid, and the appropriate column shall be the column of the said table appearing under that range of total allowances specified in the table within which the total allowances specified in the table within which the total allowances of the employee or the greater part thereof from whom tax is to be deducted is included:

Provided that in the case of an employee—

- (a) resident abroad; or
- (b) from whom a declaration has not been received by the employer or who is not entitled in accordance with the provisions contained in the second proviso to rule 3(1) to file a declaration,

the table of the tax tables to be used shall be that prepared by the Comptroller pursuant to rule 23 of these Rules without taking into account total allowances and which corresponds to the pay period for which the emoluments are to be paid, and the appropriate column shall in such cases be the second column of that table.

Deduction of tax on bonuses

5. On payment of a bonus or payment of any sum to meet any retroactive increases of emoluments granted to an employee, the following deductions of tax shall, subject to the provisions of rules 6 and 8 of these Rules, be made by the employer in accordance with the following—

- (a) where the employee is at the date of the payment of the bonus in receipt of emoluments from the employer paying the bonus, then—
 - (i) the total amount of bonus shall be divided by the number of pay periods—daily, weekly, or monthly—(appropriate to the employee) in the year in which is paid; and
 - (ii) the resulting amount shall be added to the amount of emoluments (before tax was deducted) which were payable to the employee in the pay period immediately preceding the date on which the bonus is paid; and
 - (iii) the amount of tax which should have been deducted in the immediately preceding pay period aforesaid in respect of such aggregate sum shall be determined by reference to the appropriate tax table; and
 - (iv) the amount of tax to be deducted from the bonus shall be the difference between the tax, determined under paragraph (iii) and the tax, if any, actually deducted in the immediately preceding pay period aforesaid, multiplied by the number of pay periods in the year;

- (b) where the employee is at the date of the payment of the bonus no longer in receipt of emoluments from the employer paying the bonus the amount of tax to be deducted shall be computed in accordance with rule 5 and where the bonus is paid after five years of cessation of employment, deduction shall be made in accordance with the directions of the Comptroller;
- (c) in the case of a retroactive payment, the amount of tax to be deducted shall be the difference between the total tax that should have been deducted pursuant to rule 4 of these Rules if such payment had been spread evenly over those pay periods for which payment is made and added to the amounts of emoluments paid over such pay periods and the amount of tax deducted in respect of those pay periods prior to the making of the retroactive payment;
- (d) in the case of an annual payment the tax to be deducted shall be in accordance with the directions of the Comptroller or any table which may be prescribed.

Power of Comptroller re deduction

6. (1) The Comptroller may direct employers as to the amount of tax, if any, to be deducted from—

- (a) the emoluments of employees engaged in casual or seasonal employment; or
- (b) the emoluments of any other class of case which in the opinion of the Comptroller is a class of case of such a nature that deduction of tax by reference to the tax tables would be impracticable or would constitute undue hardship.

(2) Without prejudice to the foregoing provisions of this rule, any directions given pursuant to the provisions of this rule may, in particular include directions as to the manner in which the tax, if any, shall be deducted, the period over which such deduction shall be made and such other matters as the Comptroller may think fit and any employer to whom any such directions may be so given shall comply with the direction so given.

Deceased employees

7. If any emoluments are paid by an employer at any time after the date of death of an employee the employer by whom the emoluments are paid shall subject to the provisions of rule 8 of these Rules, on making any such payment, deduct in accordance with the provisions of these Rules the tax on those emoluments as if the deceased employee was still alive at the date of the payment.

Exemptions from deductions

8. Tax shall not be deducted by any employer from—

- (a) emoluments paid outside Montserrat to an employee outside of Montserrat; or

- (b) a pension benefit or retiring allowance arising out of an employment which was wholly carried on outside of Montserrat; or
- (c) the emoluments of any person to whom a notice published pursuant to paragraph (b) of rule 3(1) of these Rules applies,

unless the Comptroller, in any particular case, directs the employer to deduct tax.

Limits on deductions

9. The amount of tax to be deducted pursuant to any direction given by the Comptroller in any particular case shall in no event exceed the amount of tax which is deductible or would be deductible by reference to the tax tables where such tables provide for the deduction except in the case where an employee requests and such request is granted by the Comptroller that a greater amount of tax be deducted than is provided by the tables.

Determination of questions

10. If any question shall arise as to—

- (a) the amount of tax to be deducted on payment of any emoluments; or
- (b) whether or not any emoluments are of any class of case specified in rule 6 of these Rules or in a notice published pursuant to paragraph (b) of rule 3(1) of these Rules; or
- (c) whether or not payment of emoluments is a payment of a bonus or a retroactive payment,

such question shall be determined by the Comptroller.

Payment of tax deducted

11. Within the first fifteen days of every month, every employer will pay to the Accountant General the total amount of tax deducted by him in accordance with the provisions of these Rules during the immediately preceding month:

Provided that where an employer ceases to carry on business all amounts of tax deducted by him pursuant to these Rules and not paid to the Accountant General shall be paid by him to the Accountant General within seven days of the day on which the last payment of emoluments was made.

Accounting for tax deduction

12. Every payment of tax made pursuant to rule 11 of these Rules shall be accompanied by a return made out on the appropriate form by or on behalf of the employer and such return shall be forwarded by the Accountant General to the Comptroller.

Statements by employees re bonuses

13. Where the payment of a bonus or of any sum to meet any retroactive increases of emoluments granted to an employee is made at any time in any year and the whole or any part of such payment relates to any periods of any calendar year preceding the

year in which such payment is made, the employer shall within seven days of such payment being made deliver or send by post to the Accountant General a separate account of such payments made out on the appropriate form and showing the total of such emoluments paid and the total amount of tax deducted therefrom.

Annual returns by employers

14. (1) Within the month of January of each year next following a year in which tax was deducted from the emoluments of an employee the employer by whom tax was deducted shall, unless he has previously delivered or sent to the employee a certificate provided for by rules 15, 16 or 17 of these Rules deliver personally or send by post to the employee a certificate made out on the appropriate form and containing the following particulars namely—

- (a) the name and address of the employee;
- (b) the number used to identify the employee;
- (c) the total amount of all emoluments paid by him to the employee during the year immediately preceding that in which the certificate is by this rule required to be sent or delivered;
- (d) the total amount deducted by him for or in respect of any amount contributed by the employee to any scheme or fund approved by the Governor in Council;
- (e) the total amount of tax deducted in accordance with these Rules from those emoluments;
- (f) the appropriate code number of the tax table, if any, used in making the deductions of tax; and
- (g) the date when the employment commenced if subsequent to the first day of January in the year to which the certificate relates.

(2) The employer required by this rule to deliver or send a certificate to the employee shall make on the appropriate forms of two copies of the said certificate which he shall deliver personally or send by post to the Comptroller by the thirty-first day of January.

Certificate re former employee

15. (1) If the employer ceases to employ an employee from whose emoluments tax was deducted by him in accordance with these Rules he shall, not later than the day on which the last payment of emoluments was made, deliver personally or send by post to the employee a certificate on the appropriate form containing the following particulars namely—

- (a) the name and address of the employee;
- (b) the number used to identify the employee;
- (c) the date on which the employment ceased;
- (d) the total amount of all emoluments paid by him to the employee from the first day of January of the year in which the employment ceased

up to and including the day on which the last payment of emoluments was made to the employee;

- (e) the total amount deducted by him for or in respect of any amount contributed by the employee to any scheme or fund approved by the Governor in Council;
- (f) the total amount of tax deducted in accordance with these Rules from those emoluments; and
- (g) the appropriate code number of the tax table, if any, used in making the deductions of tax.

(2) The employer shall make on the appropriate form two copies of the said certificate which he shall deliver personally or send by post to the Comptroller the day on which the last payment of emoluments was made.

(3) Retirement on pension shall not be treated as cessation of employment for the purposes of this rule if the emoluments are paid by the same person both before and after the retirement.

Employer ceasing business

16. (1) If any employer ceases to carry on business he shall, with respect to each employee from whose emoluments any tax was deducted during the year in which the business ceased, personally deliver or send by post not later than the last day on which a payment of emoluments was made to that employee a certificate made out on the appropriate form and containing the particulars specified in rule 14 of these Rules for or in respect of a period beginning with the first day of the year in which the business ceased to be carried on and terminating on the day of cessation of that business:

Provided that in the case of a business commenced to the carried on in the year in which it ceases on a day other than the first day of January in that year, the date of commencement of the period for or in respect of which the particulars of the certificate shall relate, shall be the date on which the business commenced to be carried on in that year.

(2) The employer shall make on the appropriate forms two copies of the said certificate which he shall deliver personally or send by post to the Comptroller within one month of the day of cessation of the business.

Death of employee

17. (1) On the death of an employee the employer shall, not later than the fifteenth day of the month next following that in which the death occurred, deliver personally or send by post to the personal representative or next of kin of the deceased employee if known to him, the certificate mentioned in rule 15 of these Rules.

(2) The employer shall at the same time deliver personally or send by post to the Comptroller two copies of the said certificate made on the appropriate forms and shall insert thereon the name of the personal representative of the deceased employee, if known to him.

Furnishing of particulars

18. Every employer on making any payment of emoluments to an employee from whom tax is deducted pursuant to these Rules, shall furnish to the employee particulars of the payment including particulars of the gross emoluments for the pay period and of the amount of tax deducted therefrom, in such form as may be approved by the Comptroller:

Provided that the Comptroller may in his discretion exempt from the provisions of this rule all or any employers in respect of such classes of employees as he shall think fit. Any such exemption may at any time be revoked by the Comptroller.

Record of emoluments

19. Every employer on making any payment of emoluments to an employee shall keep to the satisfaction of the Comptroller a record of the emoluments paid to each such employee and the tax, if any, deducted therefrom on each payment thereof.

MISCELLANEOUS AND PENALTIES

Liability of personal representative

20. If an employer dies, anything which he would have been liable to do under these Rules shall be done by his personal representative, or, in the case of an employer who paid emoluments on behalf of another person, by the person succeeding him or if no person succeeds him, the person on whose behalf he paid the emoluments.

Change of employer

21. (1) This rule applies where there has been a change in the employer from whom an employee received emoluments in respect of his employment in any trade, business concern or undertaking or in connection with any property, or from whom an employee receives any annuity or pension or allowance in respect of past service.

(2) Where this rule applies the change shall not be treated as a cessation of employment for the purposes of rule 15 of these Rules, but, in relation to any matter arising after the change, the employer after the change shall be liable to do anything which the employer before the change would have been liable to do under these Rules if the change had not taken place:

Provided that the employer after the change shall not be liable for the payment of any tax which was deductible from emoluments paid to the employee before the change took place.

Declaration by employee

22. (1) The declaration which a person may file pursuant to rule 3(1) of these Rules, may include particulars of all or any of his total allowances as the employee by whom the declaration is filed may think fit.

(2) A person entitled and wishing to file a declaration under rule 3(1) of these Rules shall do so at the following times—

- (a) on the day on which his employment commences;
- (b) within seven days of the day on which a change occurs in the total allowances to which he is entitled;
- (c) within such time or times as may be specified by notice published by the Comptroller in the Official *Gazette* and at least one newspaper in Montserrat, or in such other manner as the Comptroller shall think fit:

Provided that the Comptroller may in his discretion permit any such person to file a declaration at any time other than the aforesaid times.

Tax tables

23. (1) The tax tables shall be constructed with a view to securing that so far as practicable the tax to be deducted pursuant to these Rules from the emoluments of any employee may be readily ascertained and with a view to securing that so far as practicable the total tax payable in respect of any emoluments is deducted from the emoluments paid during the year.

(2) Separate tables shall be prepared for daily, weekly and monthly pay periods. Such tables shall, make provision for such ranges of total allowances and for such amounts of emoluments as the Comptroller shall think fit.

(3) In addition to the tables required by paragraph (2) of this rule, tables shall be prepared relating to such of the pay periods referred to in that paragraph as the Comptroller shall think fit, but without taking into account any total allowances.

(4) For the purposes of this rule, references to the total tax payable shall in relation to the tables referred to in paragraph (2) of this rule be construed as references to the total tax estimated to be payable having regard only to the allowances provided for by these Rules and without aggregating emoluments from two or more sources or other income and in relation to the tables referred to in paragraph (3) of this rule shall be construed as references to the total tax estimated to be payable without having regard to any allowances whatever and without aggregating emoluments from two or more sources or other income.

Inspection of wage sheets

24. Every employer, when called upon to do so by the Comptroller or any person authorised in writing by him shall produce to the Comptroller such authorised person for inspection at the employer's premises, all wages sheets and other documents and records whatsoever relating to the calculation or payment of the emoluments of his employees or the deduction of tax therefrom or the accounting of any tax deducted therefrom.

Notice of Complaint

25. If any employee considers that any tax deducted by his employer is less than or in excess of the amount of tax that ought properly to be deducted in accordance with these Rules from his emoluments, he may in writing give notice of complaint, stating the grounds of his complaint, to the Comptroller.

Determination of complaint

26. In the event of the Comptroller being satisfied on the complaint of any employee made under rule 25 of these Rules that any tax in excess of the amount that ought properly to have been deducted in accordance with these Rules from the emoluments of the employee was deducted by the employer, he shall as soon as practicable cause the excess to be refunded to the employee.

Notices

27. Any notice published by the Comptroller pursuant to paragraph (b) of rule 3 (1) of these Rules shall be published in the Official *Gazette* and at least one newspaper in Montserrat or in such other manner as the Comptroller may think fit.

Proceedings

28. (1) Proceedings on complaint may be brought in accordance with the procedure set out in section 74 of the Income Tax Act 1967 for the recovery of the total amount of tax which an employer is liable to pay to the Accountant General within the times specified in rule 11 of these Rules with or without the complaint distinguishing the amounts which the employer is liable to pay in respect of each employee and with or without the complaint specifying the employees in question, and for the purposes of such proceedings, the said total amount shall be one matter or complaint; but nothing in this rule shall prevent the bringing of separate complaints for the recovery of each of the several amounts which the employer is liable to pay within the first fifteen days of every month in respect of his several employees.

(2) A certificate of the Comptroller that any amount of tax as is mentioned in paragraph (1) of this rule has not been paid to the Accountant General, or to the best of his knowledge and belief, to any person acting on his behalf, shall be sufficient evidence that the sum mentioned in the certificate is due and unpaid; and any document purporting to be such a certificate as aforesaid shall be deemed to be such a certificate until the contrary is proved.

Failure to deduct

29. If an employer shall wilfully fail or neglect to deduct tax in accordance with these Rules or any direction given thereunder by the Comptroller he shall be guilty of an offence and liable on conviction by a court of summary jurisdiction to a fine not exceeding \$1,000 and in default of payment to a term of imprisonment not exceeding four months and after judgment has been given for that penalty to a further penalty of \$50 for every day during the failure or neglect to deduct or pay over any tax continues.

Offences re. non-residents

30. If any person resident outside of Montserrat or any married woman whose income pursuant to rule 3(1) of these Rules is chargeable in the name of her husband, shall without the permission of the Comptroller, file a declaration with his or her employer, or if any employee in the employment of more than one employer shall contrary to the provisions of the proviso to paragraph (b) of rule 3(1) of these Rules file a declaration with more than one his employers, he shall be guilty of an offence

and liable on conviction by a court of summary jurisdiction to a fine not exceeding \$50.

Charges of income

31. If on a charge occurring in the total allowances of any person by whom a declaration has been filed which results in the total allowances of that person being less than the total allowances claimed by him in his declaration, such person shall wilfully fail or neglect to file a further declaration within the time specified in subparagraph (b) of rule 22(2) of these Rules he shall be guilty of an offence and liable on conviction by a court of summary jurisdiction to a fine not exceeding \$50.

Obstruction

32. If any person shall hinder, prevent or obstruct the Comptroller or any person authorised in writing by him from inspecting any wages sheets or other documents or records mentioned in rule 24 of these Rules after being called upon to produce the same, he shall be guilty of an offence and liable by a court of summary jurisdiction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding one month or to both such fine and imprisonment.

INCOME TAX RULES

ARRANGMENT OF RULES

RULES

1. Short title
2. Interpretation
3. Date for delivering returns
4. Method of determining the annual value of land and improvements
5. Depreciation or wear and tear
6. Form of declaration of secrecy
7. Form of income tax return.
8. Notice to deliver return
9. Form of notice to furnish particulars
10. Form of notice to employer to deliver statement
11. Form of notice to representative or agent
12. Assessment list
13. Form of notice of assessment
14. Payment of tax

SCHEDULES

INCOME TAX RULES

(S.R.O.s 2/1946 and 21/1959)

Short title

1. These Rules may be cited as the Income Tax Rules.

Interpretation

2. In these Rules—

“**Act**” means the Income Tax Act;

“**Comptroller**” means the Comptroller of Inland Revenue.

Date for delivering returns

3. Returns of income required to be delivered to the Comptroller under the provisions of section 51 of the Act shall be delivered—

- (a) in the case of public officers and pensioners not later than the 31st day of January of the year of assessment in respect of that portion of their income which is derived out of the public revenue of the Montserrat;
- (b) in every other case not later than the 31st day of March of the year of assessment:

Provided that the Comptroller may at his discretion extend the time for delivering the return to such date as he deems proper.

Method of determining the annual value of land and improvements

4. (1) The annual value of land and improvements thereon used by or on behalf of the owner, or used rent free by the occupier, for the purpose of residence or enjoyment, and not for the purpose of gain, shall be understood to be five per centum of the estimated value thereof less the following deductions—

- (a) the amount paid for land or house tax during the year immediately preceding the year of assessment;
- (b) the amount expended during the year immediately preceding the year of assessment on repairs, provided that this deduction shall not exceed one per centum of the estimated value of the property;
- (c) the amount expended during the year immediately preceding the year of assessment in insuring the property against fire, etc., provided that this deduction shall not exceed one and one quarter per centum of the estimated value of the property;
- (d) the amount of any interest on a mortgage or loan where the Comptroller is satisfied that the mortgage or loan was effected in connection with the purchase or improvement of the property.

(2) The Comptroller may, if they deem it necessary, appoint a fit and proper person or persons for the purpose of estimating the value of properties.

Depreciation or wear and tear

5. (1) The deduction to be allowed under the provisions of section 15 of the Act for wear and tear of property including plant and machinery shall be at such rate as the Comptroller may consider just and reasonable.

(2) Where full effect cannot be given to any such deduction in any year owing to there being no profits or gains chargeable for that year, or owing to the profits or gains chargeable being less than the deduction, the deduction or part of the deduction to which effect has not been given, as the case may be, shall, for the purpose of making the assessment for the following year, be added to the amount of the deduction for wear and tear for that year, and deemed to be part of that deduction, or, if there is no such deduction for that year, be deemed to be the deduction for that year and so on for succeeding years.

(3) No deduction for wear and tear shall be allowed for any year if the deduction, when added to the deductions allowed on account of previous years will make the aggregate amount of the deductions exceed the actual cost of the plant or machinery, including in that actual cost any expenditure in the nature of capital expenditure on the plant or machinery by way of renewal, improvement or reinstatement.

Form of declaration of secrecy

6. The declaration required to be made and subscribed under section 43 of the Act shall be in the form contained in Schedule A.

Form of income tax return

7. The return of income required to be delivered to the Comptroller under section 51 of the Act shall be in the form contained in Schedule B.

Notice to deliver return

8. The notice to a person who has not complied with the provisions of section 51 of the Act requiring him to make and deliver a return of his income shall be in the form contained in Schedule C.

Form of notice to furnish particulars

9. The notice to a person requiring him under section 54 of the Act to furnish particulars of his income shall be in the form contained in Schedule D.

Form of notice to employer to deliver statement

10. The notice to employers provided for under section 52(1) of the Act shall be in the form contained in Schedule E.

Form of notice to representative or agent

11. The notice to a representative or agent provided for under section 55 of the Act shall be in the form contained in Schedule F.

Assessment list

12. The assessment list provided for under section 63 of the Act shall contain the particulars set forth in Schedule G.

Form of notice of assessment

13. The notice required to be served under the provisions of section 64 of the Act shall be in the form contained in Schedule H.

Payment of tax

14. (1) Income tax, save as provided in paragraph (2), shall be payable in one sum on the 30th day of September of the year of assessment or within one month of the date of the service of the notice of assessment, whichever is the later.

(2) In the case of public officers and pensioners the income tax payable on that portion of their income which is derived out of the public revenue of Montserrat may be deducted in proportionate monthly amounts from the salary or pension payable respectively to the officer or pensioner.

SCHEDULE A

[r. 6]

CONFIDENTIAL

INCOME TAX ACT

“I of
a person having official duty under the Income Tax Act, hereby declare that I will regard and deal with the returns, assessment lists and copies of such lists relating to the income or items of the income of any person, as secret and confidential documents and that I will not at any time divulge in any manner anything contained in such returns, lists or copies, save as authorized by the Act.

“Declared before and in the presence of

Magistrate

SCHEDULE B

[r. 7]

CONFIDENTIAL

INCOME TAX ACT

File No. No. of Assessment

YEAR OF ASSESSMENT ENDING 31ST DECEMBER, 20.....

**RETURN TO MADE OF THE INCOME OF
THE PRECEDING YEAR ENDING 31ST DECEMBER, 20....**

To

Of

In pursuance of the provisions of the Income Tax Act, you are hereby required to prepare a true and correct statement of the whole of your income from every source whatsoever for the preceding year ended 31st December, 20, and to deliver the same to the Comptroller of Income Tax, duly signed by you, on or before the day of, 20

Dated this day of, 20.....

.....
For the Comptroller.

NOTE:—If further information is desired on any particular point you should apply to the Income Tax Office. Any person who wishes to keep a copy of the original return rendered can obtain a duplicate form for that purpose from the Income Tax Office.

NOTE SPECIALLY:— 1. Any person required to make a return who neglects duly to furnish the same is liable to a penalty not exceeding \$480 and in default of payment to imprisonment for any term not exceeding six months.

2. Any person knowingly making any false statement, etc., in any income tax return, or any person aiding or abetting in such offences, is liable to a penalty not exceeding \$2400 and in default of payment to imprisonment for any term not exceeding six months.

PERSONS LIABLE TO ASSESSMENT TO INCOME TAX

(1) All persons (which term includes all companies, corporations, societies, and other bodies of persons, whether corporate or not corporate), who derive from or receive in Montserrat any income from—

- (a) trade, business, profession or vocation;
- (b) employment, pension, charge or annuity; or
- (c) rents, royalties, premiums and any other profits arising from property.

NON-RESIDENTS IN MONTSEERRAT

(2) The income arising or accruing to any person not residing in Montserrat must be returned under the respective “Heads” hereof and the name of an agent or other representative in Montserrat of such non-resident person given.

(3) In the case of a firm carrying on business in Montserrat, the proprietors of which, or partners therein, are resident out of Montserrat, the full profits and shares of the profits of such non-resident proprietors or partners are returnable by the attorney, agent or representative of such non-resident proprietors or partners.

—————
(Section 1)

**DECLARATION AS TO PARTNERS IN A FIRM AND THE DIVISION
OF THE PARTNERSHIP PROFIT**

PARTICULARS OF THE SHARE OF EACH PARTNER IN THE PARTNERSHIP PROFITS OF THE
FIRM INCLUDING INTEREST ON CAPITAL AND SALARIES OF PARTNERS.

Name of partners as at 1st January, 20....	Residence of partners	State whether personally acting in the partnership	Basis of distribution of the partnership profits as at 1st January, 20....	Amount of each partnership's share on profits for year 20....

Date

.....
Precedent partner

—————

Inland Revenue
P O Box 99
Brades
Montserrat

INDIVIDUAL INCOME TAX RETURN



IRD Number:

Individual tax return for the period: 1 January to 31 December 20____.

1 If your IRD Number is not shown above, print it here:

2 If your correct name is not shown above print it here: First names
Surname

3 If your correct address is not shown above, print it here:

4 Did you receive any salary, wages or employment related benefits?

No Go to question 5.

Yes Copy the amounts of income from salary, wages or benefits below:

Employer / Payer	Total gross income	Total tax deductions
<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>

5 Did you have any Montserrat interest paid or credited to you?

No Go to question 6.

Yes Print the details here

Total gross interest
\$

6. Did you have any overseas income?

No Go to question 7

Yes Print the totals here. Staple proof of overseas tax paid to the front of the return

Total overseas tax paid	Total overseas income
\$ <input type="text"/>	\$ <input type="text"/>

Inland Revenue
P O Box 99
Brades
Montserrat

INDIVIDUAL INCOME TAX RETURN



7 Did you receive any rents?
No Go to question 8
Yes Print net rents here and complete the profit and loss statement attached to this return

Net rents
\$

8 Did you receive any income from self employment?
No Go to question 9
Yes Print net income here and complete the profit and loss statement attached to this return

Withholding tax deductions Self-employed income

9 Did you receive any other income?
No Go to question 10
Yes Print details here.

Name of payer	Type of income	Total other income
<input type="text"/>	<input type="text"/>	\$ <input type="text"/>
<input type="text"/>	<input type="text"/>	\$ <input type="text"/>
<input type="text"/>	<input type="text"/>	\$ <input type="text"/>

10 Add all income shown in questions 4 to 9 and print the total here

Total income
\$

11 General deduction for individuals
Deduct \$15,000 personal allowance or the amount of total income if less than \$15,000

Personal allowance deduction
\$

12 Are you claiming mortgage interest paid on a residential property?
No Go to question 13
Yes Print interest here and attach a copy of the mortgage interest statement from your lending institution to the front of the return. (Maximum \$5,000)
NB: Mortgage interest can only be claimed to the extent of your taxable income, i.e. if your total income is a loss then no mortgage interest can be claimed

Total mortgage interest
\$

Inland Revenue
P O Box 99
Brades
Montserrat

INDIVIDUAL INCOME TAX RETURN

IRD 7



13 Income after deductions
Subtract the deductions from questions 11 and 12 from total income as shown in question 10 and print answer here.

Income after deductions
\$

14 Are you claiming any losses brought forward?
No Go to question 15
Yes Print net loss amounts here.

	Amount brought forward	Amount claimed this year
	\$(<input type="text"/>)	\$(<input type="text"/>)

15 Taxable income
Subtract the loss at question 14 from income after deductions as shown in question 13 and print the answer here

Taxable income
\$

16 Did you pay any provisional tax for this income year?
No Go to question 17
Yes Print the total provisional tax here

Provisional tax paid
\$

17 Is this income tax return for a full year of working?
Yes Go to question 18
No Please provide details of the period worked

18 Declaration
Read this declaration and sign the return.

This is a true and correct return for the year ended 31 December 20

	Signature	Date
	<input type="text"/>	<input type="text"/>

Inland Revenue
P O Box 99
Brades
Montserrat

INDIVIDUAL INCOME TAX RETURN



Profit and Loss Statement

(To be completed by individuals who have rental income or self employment income, i.e. have answered 'yes' to either of questions 7 or 8.

Income	\$	
Other Income	\$	
Total Income		\$
Salary and Wages	\$	
Telephone	\$	
Utilities (Water & electricity)	\$	
Insurance	\$	
Rent	\$	
Office Supplies	\$	
Building Repairs / Maintenance	\$	
Equipment Repairs / Maintenance	\$	
Advertising	\$	
Motor Vehicle	\$	
Accounting and Legal	\$	
Travel	\$	
Interest	\$	
Depreciation	\$	
Other (Specify)	\$	
	\$	
Total Expenses		\$
Net income		\$

(Section 4)

Heads of Income (Col.1)	Sources of Income under each Head	Amount of income (Col 3) . If under any Head you have no income write the word "none" opposite the Head in this column	
	<p>TOTAL OF INCOME RETURNED.</p> <p><i>Deduct:—</i> Exhaustion, wear and tear</p> <p>Attach a statement showing (1) subjects on which the allowance is claimed, (2) values at the commencement of the preceding year, (3) rate per cent claimed, (4) what sums, if any, are written off in the proprietor's accounts.</p>	\$	¢

(Section 5)

DEDUCT:— “Encumbrances” on above income, viz :—

Mortgages or loans	Name and full address of person to whom payable	On what secured	For what precise purpose incurred	Amount paid for the preceding year ended, 20			
				\$	¢	\$	¢
\$ at%
\$ at%
\$ at%
Other legal obligations (if any)							
..... (State nature of payment and name and address of the person to whom payable)							
N.B – Voluntary payments of allowances are not deductible							
Net Income						\$	

(Section 8)

**CLAIM FOR RELIEF IN RESPECT OF CHILDREN OVER THE AGE OF TWELVE YEARS
AND UNDER TWENTY-FIVE YEARS OF AGE WHO ARE RECEIVING FULL TIME
INSTRUCTION AT UNIVERSITY ETC. OUTSIDE MONTERRAT**

Name of each child over the age of 12 years and under 25 years on 1st January, 20 ...		Date of Birth			Place of Birth	Whether child or stepchild	Was the child living on 1st January, 20...	Name of the University, College or School, etc.
Surname	Full Christian Name	Day	Month	Year				

(Section 10)

CLAIM FOR RELIEF IN RESPECT OF DEPENDANT RELATIVES. ALLOWABLE ONLY IN RESPECT OF AN INCAPACITATED CHILD, BROTHER, OR SISTER; AND IN RESPECT OF THE MOTHER (WHETHER INCAPACITATED OR NOT) OF A PERSON OR HIS WIFE (OR HER HUSBAND IN THE CASE OF A WOMAN.)

Full name of dependant.	State relation of dependent to you.	State income, if any of dependent	State proportion of your contribution towards support of dependent

(Section 11)

CLAIM FOR DEDUCTION IN RESPECT OF PREMIUMS PAID TO ANY LIFE INSURANCE COMPANY, ETC.

NOTE:— No allowance can be claimed for premiums on the lives of persons other than the taxpayer or his wife.

State whether the assurance is on the life of "self" or of "wife"	Name of insurance company	Amount of premiums paid during the year ended 31st December, 20	State by whom the premiums were paid
	Total		

N.B. No deduction is allowable in respect of any annual amount of premiums beyond one-sixth part of the chargeable income of the claimant before making this deduction and the deductions for wife and children. The receipts for any premiums paid or satisfactory proof that such premiums have been paid must be annexed for endorsement and allowance by the Comptroller. Premium receipts will be returned in due course.

(Section 12)

GENERAL DECLARATION

I declare that in the foregoing statement and in any statements or accounts sent herewith, I have given a full, just and true return and particulars of the whole of the income from every source whatsoever chargeable under the Income Tax Act, to the best of my judgment and belief, according to the directions and Rules of the said Act; also that the declarations, claims and statements in sections 1, 2, 4, 5, 6, 7, 8, 9, 10 and 11 inclusive of this Form, are true and correct to the best of my judgment and belief.

.....Signature
.....Business address.
.....Private address.

NOTE:—A woman must state after her signature whether married, widow or single.

SCHEDULE C

[r. 8]

INCOME TAX ACT

NOTICE TO A PERSON TO DELIVER A RETURN OF HIS INCOME

To _____ of _____

Take notice that you are hereby required to deliver to the Comptroller within fourteen days after the service of this notice upon you a true and correct return of your whole income as required by the Act, for the year 20.... and that you are liable to prosecution under section 85 of the Act.

Dated this _____ day of _____ 20 .

For the Comptroller

SCHEDULE D

[r. 9]

INCOME TAX ACT

NOTICE TO FURNISH PARTICULARS

To _____ of _____

Take notice that you are hereby required to furnish to the Comptroller within _____ days after the service of this notice upon you, replies to the inquiries set out on the other side hereof.

Dated this _____ day of _____ 20 .

For the Comptroller

SCHEDULE E

[r. 10]

INCOME TAX ACT

**NOTICE TO EMPLOYER TO DELIVER STATEMENT AS TO PERSONS
EMPLOYED BY HIM UNDER SECTION 52(1)**

To _____ of _____

Take notice that you are required to deliver to the Comptroller within _____ days after the service of this notice upon you, a full and correct statement as required by section 52 (1) of the Act, of the names and places of abode of and the salary or wages paid to all the persons employed by you (or the company as the case may be).

Dated this _____ day of _____ 20 .

For the Comptroller

RETURN OF PERSONS WHOLLY OR PARTLY EMPLOYED

*Christian Name and surname of persons employed	Nature of employment	Place of abode.	For the year ended 31st December, 20 ...					
			Amount of salary or wages		Amount of commission, bonuses, perquisites or other emoluments		Total	
			\$	¢	\$	¢	\$	¢

*Insert full name.

GENERAL DECLARATION

*I _____ do hereby declare that all the particulars required in this notice to be returned are in every respect fully and truly stated herein according to the best of my judgment and belief.

Signature

Description

Date

*Insert full name.

SCHEDULE F

[r. 11]

NOTICE TO A PERSON REFERRED TO IN SECTION 55

To _____ of _____

Take notice that you are hereby required to deliver to the Comptroller within _____ days after the service of this notice upon you, a list containing a true and correct statement of all money, value, profits or gains received by you and belonging to any persons, resident or non-resident, who are chargeable in respect thereof.

Dated this _____ day of _____ 20 .

For the Comptroller

RETURNS BY PERSONS IN RECEIPT OF MONEY, VALUE, PROFITS OR GAINS BELONGING TO ANY OTHER PERSON

Christian name, surname and address of owners	Sources of money, value, profits or gains	Amount received	
		\$	¢

SCHEDULE G

[r. 12]

Year of Assessment 20.....

ASSESSMENT LIST

- | | |
|--|--|
| 1. No. of assessment | 13. Net amount assessed by Comptroller. |
| 2. Name of person assessed. | 14. Relief from total income assessable, claimed and allowed (as amended where necessary)— |
| 3. Address. | (a) Earned income. |
| 4. File No. | (b) Resident or British Subject. |
| 5. Description of trade, profession, employment or other profits chargeable. | (c) Wife. |
| 6. Returns and assessments of preceding year of assessment, 20 .. | (d) Children. |
| (a) Gross amount returned. | (e) Dependants. |
| (b) Deductions claimed. | (f) Life Assurance. |
| (c) Gross amount assessed. | 15. Total relief |
| (d) Deductions allowed | 16. Net total on which tax is payable. |
| 7. Amount returned by employer. | 17. Tax payable. |
| 8. Particulars from return— | 18. Relief in respect of U.K. or Commonwealth Tax. Section 91/92. |
| (a) Gross amount. | 19. Amount of set off. |
| (b) Total deductions. | 20. Net tax payable |
| (c) Net amount. | 21. Date due. |
| 9. Gross amount assessed by Commissioners under each head in return. | 22. General notes. |
| 10. Deductions allowed under section 13. | 23. Particulars of payment. (Receipt No.) |
| 11. Allowance for exhaustion, wear and tear. | 24. Particulars of discharge or repayment. (Voucher No.) |
| 12. Losses of previous years allowed. | |
-

SCHEDULE H

Inland Revenue
P O Box 99
Brades
Montserrat

NOTICE OF ASSESSMENT
(Section 58 of the Income Tax Act)

IRD 9



Income of the year:	<input type="text"/>	IRD Number:	<input type="text"/>
Date of issue:	<input type="text"/>	Assessment Number:	<input type="text"/>
Amount payable / (refundable):	\$ <input type="text"/>	Due Date:	<input type="text"/>
Name:	<input type="text"/>		
Address:	<input type="text"/>		

If you dispute this assessment, written notice must be given to the Comptroller of Inland Revenue by the due date of this notice, stating the grounds of your dispute. No disagreement can be accepted unless it is accompanied with a return in respect of the relevant income year. The Income Tax Ordinance imposes a penalty of 5% of tax not paid by the due date and an additional 12% per annum on any unpaid balance.

Comptroller of Inland Revenue

CHARGEABLE INCOME		Note	TAX CALCULATION	
<u>Sources of Income</u>				
Employment income	<input type="text"/>	a	Income Tax Calculated on Income	<input type="text"/>
Net Trade/Profession Profits	<input type="text"/>	t	Add Company Surcharge (if applicable)	<input type="text"/>
Dividend / Interest Inc.	<input type="text"/>	c	Total Tax Calculated	<input type="text"/>
Pension Inc.	<input type="text"/>	c	<u>Less Tax Credits</u>	
Net Property Rental Inc.	<input type="text"/>	e	PAYE Paid	<input type="text"/>
Other Net Income	<input type="text"/>	f	Other Pre-paid Taxes	<input type="text"/>
Total Income Assessed	<input type="text"/>	g	Losses Allowed (S17)	<input type="text"/>
<u>Less Deductions</u>			Total Tax Credits	<input type="text"/>
Mortgage Interest	<input type="text"/>	h	Tax to pay / (Refund)	<input type="text"/>
Personal Allowance	15,000	i		
Other Deductions	<input type="text"/>	j		
Total Deductions	<input type="text"/>	k		
Total Chargeable Income (g-k)	<input type="text"/>	l		

Assessment Prepared By _____

NET TAX PAYABLE

If you do not object to this assessment the NET TAX AS ABOVE must be paid or remitted without further application or notice to the Comptroller on or before the _____ day of _____ 20____ being the date prescribed by Rule.

OBJECTIONS TO ASSESSMENT

If you object to the above assessment or any part thereof you may give notice of objection in writing to the Comptroller within fifteen days from the date of the service of this notice. *Such notice must state precisely the grounds of your objection to the assessment.* The Comptroller may, notwithstanding the lapse of the above period of fifteen days, allow an objection to the assessment if it is shown to their satisfaction that owing to absence from Montserrat, sickness or other reasonable cause, you were prevented from making the objection within fifteen days.

.....
For the Comptroller.

INCOME TAX (APPEAL) RULES

ARRANGEMENT OF RULES

RULE

1. Short title
2. Interpretation

PART I

APPEAL TO A JUDGE IN CHAMBERS

3. Notice of appeal
4. Service and filing of notice of appeal
5. Notice of hearing of appeal
6. Comptroller statement of facts and reasons
7. Copies to be supplied by the Registrar
8. Place for hearing appeals
9. Parties limited to grounds stated
10. Leave to amend
11. Extension of time
12. Withdrawal of appeal

PART II

CASE STATED FOR THE CONSIDERATION OF THE COURT OF APPEAL

13. Time to apply for a stated case
14. Form of case stated
15. Notice of hearing of stated case
16. Applicant for stated case to be deemed the appellant
17. Hearing by the Court of Appeal

PART III

MISCELLANEOUS

18. Service of documents
19. Judgment to be filed by the successful party
20. Application of Rules of Court
21. Fees to be taken by the Registrar

SCHEDULES

INCOME TAX (APPEAL) RULES

(S.R.O. 14/1932)

Short title

1. These Rules may be cited as the Income Tax (Appeal) Rules.

Interpretation

2. In these Rules—

“**case**” means a case stated on a question of law under section 69(3) of the Act;

“**Form**” means a form in Schedule I;

“**Judge**” means a Judge of the High Court in Chambers;

“**Act**” means the Income Tax Act.

PART I**APPEAL TO A JUDGE IN CHAMBERS****Notice of appeal**

3. A notice under section 66 of the Act shall be in Form A and it shall set out a full statement of the grounds of appeal by specifically stating the several facts and contentions of law upon which the appellant alleges that the assessment of the Comptroller was erroneous and it shall give an address in Montserrat at which documents may be served upon the appellant or his solicitor.

Service and filing of notice of appeal

4. A copy of every such appeal notice shall be filed with the Registrar together with an affidavit of service and the Registrar shall thereupon lay the same before the Judge who shall appoint a day for hearing the appeal. Instead of an affidavit of service there may be substituted an indorsement under the Rules of the Supreme Court in respect of the service of a Writ of Summons.

Notice of hearing of appeal

5. The Registrar shall forthwith cause due notice, in Form B, of the day appointed for the hearing of the appeal to be served on the Comptroller and the appellant or their respective solicitors. Not less than fourteen clear days' notice shall be given.

Comptroller statement of facts and reasons

6. (1) Within five days of the service of the notice the Comptroller shall file with the Registrar a statement of the material facts upon every point specified in the appeal notice as a ground of appeal together with the reasons in support of the assessment.

(2) The Judge may cause the statement and reasons to be sent back to the Comptroller for amendment and thereupon they shall be amended accordingly and returned to the Registrar.

(3) The Judge may direct the Registrar to request the Comptroller to send to the Registrar any papers in relation to the assessment that may appear to the Judge to be material for the determination of the appeal and any papers so sent to the Registrar shall be treated by him as confidential.

Copies to be supplied by the Registrar

7. Either party shall be entitled, on payment of the proper fee, to obtain from the Registrar a copy of the Comptroller statement of material facts and of the reasons in support of the assessment, and/or a copy of the appellant's grounds of appeal.

Place for hearing appeals

8. (1) An appeal under the Act shall be heard in Chambers unless the Judge hearing the appeal otherwise directs.

(2) If evidence is tendered it shall be taken orally unless the Judge otherwise directs.

(3) Either party may be represented by counsel or solicitor at the hearing of the appeal; and if it is intended that the appeal shall be attended by counsel for the appellant, it shall be so stated in the notice of appeal.

(4) The Comptroller and the appellant shall be entitled to be present at the hearing of the appeal.

(5) An appeal may be heard in vacation if the Judge so directs.

Parties limited to grounds stated

9. Without leave of the Judge an appellant shall not be entitled to rely upon any facts or contentions of law other than those stated in the notice of appeal, and without such leave the Comptroller shall not be entitled to rely upon any facts other than those stated by them under these Rules.

Leave to amend

10. The Judge may at any time allow any amendment upon such terms as he may think right.

Extension of time

11. The Judge may extend the time for doing any act or taking any proceeding under these Rules upon such terms as he may think just, and any such extension may be ordered although the application for it is not made until after the expiration of the time appointed or allowed.

Withdrawal of appeal

12. (1) An appellant may withdraw an appeal by filing with the Registrar a notice of withdrawal before the day fixed for hearing, and the appellant shall forthwith serve

on the Comptroller a copy of the notice of withdrawal. Upon the filing of a notice of withdrawal the assessment shall have full force and effect as a final and conclusive assessment.

(2) Where an appeal is withdrawn the Judge may, on the application of the Comptroller, order that the appellant shall pay such a sum for costs as the Judge may think just.

PART II

CASE STATED FOR THE CONSIDERATION OF THE COURT OF APPEAL

Time to apply for a stated case

13. An application by the appellant or the Comptroller for a case to be stated may be made orally to the Judge at the hearing of the appeal, or in writing within 7 days of the determination of the appeal. If the Judge desires to state a case of his own accord he shall do so within 7 days of the determination of the appeal.

Form of case stated

14. A case stated shall be in Form C with such modifications as may be necessary.

Notice of hearing of stated case

15. The Registrar on receipt of a stated case shall forthwith cause a copy of the case to be served on the respective parties or their solicitors together with a notice, in Form D, of the day appointed for hearing the case. Not less than 14 clear days' notice shall be given of the date of hearing.

Applicant for stated case to be deemed the appellant

16. (1) The party on whose application a case has been stated shall be deemed to be the appellant in the case.

(2) If the Judge states a case of his own accord he shall direct who shall be deemed to be the appellant.

Hearing by the Court of Appeal

17. Proceedings in the Court of Appeal shall be conducted as on the hearing of an appeal; and the Court of Appeal—

- (a) shall hear and determine any question of law arising on the case and shall reverse, affirm or amend the determination in respect of which the case has been stated; or
- (b) may remit the matter to the Comptroller with the opinion or direction of the Court thereon; or
- (c) may make such other order in relation to the matter and may make such order as to costs, as to the Court may seem fit.

PART III

MISCELLANEOUS

Service of documents

18. Any document to be served under these Rules shall be deemed to be duly served—

- (a) on the Comptroller, if left with the Comptroller or if sent by registered post addressed to “The Comptroller of Income Tax, Government Headquarter, Brades”;
- (b) on any other party, if served on such party personally or on his solicitor or sent by registered post to his address for service stated in the notice of appeal.

Judgment to be filed by the successful party

19. (1) Every judgment or order of the Judge in Chambers or of the Court of Appeal shall, unless otherwise directed by the Judge or the Court of Appeal, be drawn up by the successful party and filed by him with the Registrar.

(2) The Registrar shall forthwith send to the Comptroller a copy of every judgment or order filed by him.

Application of Rules of Court

20. Save as otherwise provided in the Act or in these Rules, the Rules of Court as to applications in Chambers, as to appeals, and as to the taxation of costs, shall with the necessary modification, if any, apply to appeals to a Judge in Chambers and to cases stated under the Act.

Fees to be taken by the Registrar

21. The fees specified in Schedule II shall be taken by the Registrar in proceedings under the Act and these Rules. Save as therein provided, the fees prescribed by the Rules of Court shall be taken by the Registrar so far as they may be applicable.

SCHEDULE I

FORM A

NOTICE OF APPEAL

[r. 3]

In the matter of The Income Tax Act

Appellant

and

The Comptroller of Income Tax

Respondents

TAKE NOTICE that the above named A.B., intends to appeal against the decision of the Comptroller given on the _____ day of _____ 20 .

And further take notice that you are required to attend the Judge in Chambers at the Court House, Brades on the day and at the time notified by the Registrar for the hearing of the said appeal against the decision of the Comptroller.

(If the appeal is to be attended by counsel, add:—

And further take notice that it is the intention of the said A.B., to attend the appeal by counsel).

The grounds of appeal are as follows:—

Dated the _____ day of _____ 20 .

(Signed) A.B.

or

C.D.

Solicitor for the said A.B.

The said A.B.'s (or C.D.'s) address for service is Brades.

FORM B

NOTICE OF DATE OF HEARING OF APPEAL

[Rule 5]

IN THE HIGH COURT OF JUSTICE

In the matter of The Income Tax Act

Between

A.B. of , Appellant

and

The Comptroller of Income Tax, Respondents

TAKE NOTICE that the Judge will hear this appeal on the day of

20 , at o'clock in the forenoon.

Dated the day of 20 .

Registrar

To

FORM C

STATED CASE

[Rule 14]

IN THE HIGH COURT OF JUSTICE

In the matter of The Income Tax Act

Between :

A.B. of , Appellant

and

The Comptroller of Income Tax, Respondents

This is a special case stated pursuant to Section 66 of the Income Tax Act.

(Here state the facts giving rise to the questions of law.)

The questions of law for the opinion of the Court of Appeal are whether

(Here state the question of law.)

(Signed) Y .Z.,
Judge

FORM D

NOTICE OF HEARING OF STATED CASE

[Rule 15]

IN THE HIGH COURT OF JUSTICE

In the matter of The Income Tax Act

Between:

A.B. of _____, Appellant

and

The Comptroller of Income Tax, _____ Respondents

Take notice that the Court of Appeal will hear the case stated in the above mentioned matter on the _____ day of _____ 20____, at the hour of _____ o'clock in the forenoon.

Dated the _____ day of _____ 20____.

Registrar

To _____

SCHEDULE II**FEES TO BE TAKEN BY THE REGISTRAR IN PROCEEDINGS
UNDER THE INCOME TAX ACT**

	\$	¢
On filing a notice of appeal (including hearing fee)	4.80	
For copy of statement of facts and reasons of Comptroller or copy of appellant's grounds of appeal (<i>Rule 7</i>)92	
For copy of case stated (<i>Rule 15</i>)92	
On filing notice of withdrawal (<i>Rule 12</i>)96	
On filing any judgment or order of a Judge or the Court of Appeal (<i>Rule 19</i>)	1.92	
On filing any exhibit or document other than those mentioned above.48	
On inspection of any exhibit or document24	
For every taxation of a bill of costs (including certificate)	2.40	

Printed by the Law Revision Unit of the Government of Montserrat
Authorised Printers for this revised edition