

(2) Where the Commissioner-General is satisfied that any non-governmental organization is engaged, in any year of assessment, in –

- (a) rehabilitation and the provision of infrastructure facilities and livelihood support to displaced persons in any area identified by the Government for the purposes of such rehabilitation and provision; or
- (b) any other activity approved by the Minister as being of humanitarian in nature, taking into consideration the nature and gravity of any disaster and the magnitude of relief required to be provided consequently,

the Commissioner-General may reduce or remove the tax payable by such non-governmental organization for that year of assessment if it appears that such reduction is just and equitable in all the circumstance of the case.

(3) Where any charitable institution provides in any year of assessment institutionalized care for the sick or the needy and where the Commissioner-General is satisfied that the cost of provision of such care is borne by such charitable institution, the Commissioner-General may, subject to specified conditions, grant a tax credit against the tax payable on the charitable institution's taxable income for the year of assessment, provided it appears to the Commissioner-General that such reduction or remission is just and equitable in all the circumstances of the case.

CHAPTER VII

INTERNATIONAL

Division I: Residence and Sources

69. (1) An individual shall be a resident in Sri Lanka for a year of assessment if the individual –

Resident persons.

- (a) resides in Sri Lanka;

- (b) is present in Sri Lanka during the year and that presence falls within a period or periods amounting in aggregate to one hundred and eighty three days or more in any twelve month period that commences or ends during the year;
- (c) is an employee or an official of the Government of Sri Lanka and his spouse is posted abroad during the year; or
- (d) is an individual who is employed on a Sri Lanka ship, within the meaning of the Merchant Shipping Act, during the period the individual is so employed.

(2) A partnership shall be resident in Sri Lanka for a year of assessment if –

- (a) it was formed in Sri Lanka; or
- (b) at any time during the year the management and control of the affairs of the partnership are exercised in Sri Lanka.

(3) A trust shall be resident in Sri Lanka for a year of assessment if –

- (a) it was established in Sri Lanka;
- (b) at any time during the year a trustee of the trust is resident in Sri Lanka; or
- (c) at any time during the year a person resident in Sri Lanka directs or may direct senior managerial decisions of the trust, whether the direction is made alone or jointly with other persons or directly or through one or more interposed entities.

(4) A company shall be resident in Sri Lanka for a year of assessment if –

- (a) it is incorporated or formed under the laws of Sri Lanka;
- (b) it is registered or the principal office is in Sri Lanka;
or
- (c) at any time during the year the management and control of the affairs of the company are exercised in Sri Lanka.

70. (1) An individual who is resident in Sri Lanka only by reason of paragraph (c) of subsection (1) of section 69, shall be so resident from the start of the one hundred and eighty three day period. Otherwise, a person who is resident in Sri Lanka during a year of assessment shall be treated as a resident for the whole of the year.

Change of residence.

(2) Subject to subsection (4), where a non-resident person becomes resident in Sri Lanka, the net cost of an asset held by the person immediately before becoming resident shall be equal to the market value of the asset at that time.

(3) Subject to subsection (4), when a person resident in Sri Lanka ceases to be resident in Sri Lanka, the person shall be treated as having immediately before the person ceases to be so resident realised all assets owned by the person and deriving in respect of each an amount equal to the market value of the asset at the time of the realisation.

(4) Provisions of subsections (2) and (3) shall not apply to an asset that is a domestic asset of the person immediately before becoming a resident or after ceasing to be a resident, respectively.

71. (1) Income of a person from an employment that has a source in Sri Lanka shall be calculated separately from income from that employment that has a foreign source.

Source of income and quarantining of foreign losses.

(2) Income or loss of a person from a business or investment that has a source in Sri Lanka shall be calculated separately from income or loss from that business or investment that has a foreign source.

(3) A person's income from an employment, business, investment or other source shall be treated as a source in Sri Lanka to the extent to which –

- (a) the amounts directly included in calculating the income that has a source in Sri Lanka, exceed;
- (b) the amounts directly deducted in calculating that income that has a source in Sri Lanka.

(4) A person's loss from a business or investment shall have a source in Sri Lanka to the extent to which the amounts referred to in paragraph (b) of subsection (3) exceed those referred to in paragraph (a) of subsection (3).

(5) A person's income from a foreign source from an employment shall be calculated as the person's worldwide income from that employment (calculated notwithstanding subsection (1)) less any income with a source in Sri Lanka from that employment.

(6) A person's foreign source of income or loss from a business or investment shall be calculated as the person's worldwide income or loss from that business or investment (calculated notwithstanding subsection (2)) –

- (a) less any income with a source in Sri Lanka from that business or investment; or
- (b) plus any loss with a source in Sri Lanka from that business or investment.

(7) For the purposes of section 19, a person may deduct an unrelieved loss –

- (a) in the case of a foreign source loss from an investment, only in calculating the person's foreign source income from an investment; and

- (b) in the case of a foreign source loss from a business, only in calculating the person's foreign source income from a business or investment.

72. (1) An amount directly included in calculating the income shall be a source in Sri Lanka where it consists of –

Source directly to be included and amounts to be deducted.

- (a) consideration received, a gain or an amount, referred to in paragraph (b), (c) or (d) of subsection (2) of section 6 or paragraph (b) of subsection (3) of section 7 to the extent to which a domestic asset or domestic liability is involved; and
- (b) subject to paragraph (a), a payment that has a source in Sri Lanka.

(2) An amount directly deducted in calculating income shall have a source in Sri Lanka where it consists of –

- (a) to the extent to which it relates to domestic assets, an allowance referred to in subsection (1) of section 13 or section 16 or expenditure referred to in subsection (1) of section 14;
- (b) a loss from the realisation of a capital asset or liability of a business or an investment asset where the asset or liability involved shall be a domestic asset or domestic liability; and
- (c) subject to paragraphs (a) and (b), a payment that has a source in Sri Lanka.

73. (1) The following payments shall have a source in Sri Lanka:-

Source of payments.

- (a) payments received in respect of employment –
 - (i) to the extent derived in respect of employment in Sri Lanka, wherever paid; or

- (ii) if paid by, or on behalf of, the Government of Sri Lanka, wherever the employment is;
- (b) dividends paid by a resident company;
- (c) interest, charges, annuities, a royalty, technical service fee, or similar payment if –
 - (i) paid by a resident person, other than as an expenditure of a business carried on by the resident person through a permanent establishment outside Sri Lanka; or
 - (ii) paid by a non-resident person as an expenditure of a business carried on by the non-resident person through a Sri Lankan permanent establishment;
- (d) winnings from lottery, betting, or gambling relating to a game of chance held in Sri Lanka;
- (e) natural resource payments made in respect of or calculated by reference to natural resources taken from land or the sea situated within Sri Lanka or its territorial waters;
- (f) rent paid for the use of, right to use or forbearance from using an asset situated in Sri Lanka;
- (g) premiums for general insurance paid to and proceeds from general insurance paid by a person in respect of the insurance of any risk in Sri Lanka;
- (h) payments received by a person who conducts a relevant transport business in respect of –
 - (i) the carriage of passengers who embark or cargo, mail or other moveable tangible assets that are embarked in Sri Lanka, other than as a result of transshipment; or

- (ii) rental of containers and related equipment which are supplementary or incidental to carriage referred to in subparagraph (i);
- (i) payments received by a person who conducts a business of transmitting messages by cable, radio, optical fibre or satellite or electronic communication in respect of the transmission of messages by apparatus established in Sri Lanka, whether or not such messages originate in Sri Lanka;
- (j) payments, including service fees, of a type not mentioned in paragraph (c), (h) or (i) for or attributable to service rendered or a forbearance from rendering service –
 - (i) in Sri Lanka, regardless of the place of payment; or
 - (ii) where the payer is the Government of Sri Lanka, irrespective of the place of exercise, rendering or forbearance;
- (k) proceeds of life insurance and retirement, termination and pension payments not falling within paragraph (a) if –
 - (i) paid by a resident person, other than as an expenditure of a business carried on by the resident person through a permanent establishment outside Sri Lanka;
 - (ii) paid by a non-resident person as an expenditure of a business carried on by the non-resident person through a Sri Lankan permanent establishment; or
 - (iii) paid by, or on behalf of, the Government of Sri Lanka;

- (l) gifts and other ex gratia payments to the extent received in respect of business or investment conducted with domestic assets; and
- (m) payments not mentioned in the above paragraphs –
 - (i) made in respect of the acquisition of a domestic asset, incurring of a domestic liability or realisation of such an asset or liability;
 - (ii) received in respect of activity conducted or a forbearance from conducting activity in Sri Lanka –
 - (iia) except, in relation to a resident person, to the extent attributable to a foreign permanent establishment; and
 - (iib) in relation to a non-resident person, to the extent attributable to a Sri Lankan permanent establishment or any other activity (including sales in Sri Lanka of goods and merchandise) of the same or similar kind as that conducted by the non-resident person through a Sri Lankan permanent establishment; or
 - (iii) made to any foreign entertainer or artist for activity relating to Sri Lanka.

(2) In this Section –

“relevant transport business” means a business of land, sea or air transport operator or charterer carrying passengers, cargo, mail or other moveable tangible assets; and

“technical service fee” means a service fee for managerial, technical, or consultancy services, including a fee for the provision of services of technical or other personnel.

74. An amount shall be treated as foreign sourced to the extent that it does not have a source in Sri Lanka. Foreign Source.

Division II: Double Taxation Agreements and Mutual Administrative Assistance Agreements

75. (1) The Minister may give effect to any double taxation agreement or mutual administrative assistance agreement with a foreign government or governments that has been approved by Parliament and published in the *Gazette*. Double taxation agreements and mutual administrative assistance agreements.

(2) Subject to the provision of subsection (3), where there is any conflict between the terms of a double taxation agreement having legal effect in Sri Lanka and the provisions of this Act, the double taxation agreement prevails.

(3) Subject to the provision of subsection (4), where a double taxation agreement provides that any income from a Sri Lankan source is exempt or excluded from tax, or the application of the agreement results in a reduction in the rate of Sri Lankan tax, the benefit of that exemption, exclusion, or reduction shall not be available to a body that, for the purposes of the agreement, is a resident of the other contracting state when fifty percent or more of the underlying ownership or control of that body is held by an individual or individuals who are not residents of that other contracting state for the purposes of the agreement.

(4) Provision of subsection (3) shall not apply if the resident of the other contracting state is a company listed on a stock exchange in that other contracting state.

(5) In this section –

“double taxation agreement” means an international agreement relating to the avoidance of double taxation and the prevention of fiscal evasion; and

“mutual administrative assistance agreement” means a tax information exchange agreement or other international agreement for mutual administrative assistance in relation to taxation matters.

Division III: Transfer Pricing

Profits and income or loss from international transactions between associates.

76. (1) Any income, gains and profits arising in, derived or accruing from, or any loss incurred by any person in Sri Lanka engaged in any international transaction entered into with its associated enterprises shall be ascertained having regard to the arm’s length price.

(2) For the purpose of this section –

(a) any business organization that has a permanent establishment in Sri Lanka shall be deemed to be a person for the ascertainment of the income, gains or profits arising in or derived from or any loss incurred in Sri Lanka from such permanent establishment;

(b) “permanent establishment” –

(i) in relation to a country with which an agreement has been entered into on avoidance of double taxation means, a permanent establishment defined in an agreement for the relief of double taxation where an agreement is in force between the government of Sri Lanka and the government of any territory in

which any person and their agencies, branches or establishments in Sri Lanka is resident; or

- (ii) in relation to a country with which an agreement has not been entered into on avoidance of double taxation, includes any business connection or a fixed place of business through which the business of the enterprise is wholly or partly carried out irrespective of the number of days of such business carried out in Sri Lanka;
- (c) any income, gains or profits arising, derived or accruing from, or any loss incurred in any transaction between a permanent establishment and its head office or other related branches in Sri Lanka, in which case the permanent establishment shall be treated as a distinct and separate entity from its head office and related branches, shall be ascertained having regard to the arm's length price; and
- (d) "international transaction" means a transaction between two or more associated enterprises, either one or both of whom are non-residents, in the nature of purchase, sale or lease of tangible or intangible property, or provision of services, lending or borrowing of money or any other transaction having a bearing on the income, gain or profits, losses or assets of such associated enterprises, and includes any allocation or apportionment of, or any contribution to any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such associated enterprises under any mutual agreement or arrangement between two or more such associated enterprises.

Any transaction entered into by an enterprise with a person, other than an associated enterprise shall, for the purposes of subsection (1) be deemed to be an international transaction entered into between two associated enterprises, if there exists a prior agreement between such enterprises and other person and, by which the terms of such transaction are determined in substance between such enterprises and other person which results in the reduction of or would have the effect of reducing the amount of tax payable.

Without prejudice to the generality of the provision of this subsection, the allowance for any expense or interest arising from an international transaction shall also be determined having regard to the arm's length price.

(3) (a) Where it appears to the Transfer Pricing Officer that the income, gain or profits or the loss referred to in subsection (1), have not been ascertained having regard to the arm's length price, he may initiate a transfer pricing audit.

(b) Where it appears to an Assistant Commissioner in the course of his audit that the income, gain, profits or the loss referred to in subsection (1) have not been ascertained having regard to the arm's length price he shall refer to the Transfer Pricing Officer for the determination of arm's length price and if the Transfer Pricing Officer decides to proceed with a transfer pricing audit he shall initiate such transfer pricing audit.

(c) When determining the arm's length price, the Transfer Pricing Officer may in writing addressed to the person referred to in subsection (1) require him to prove to the satisfaction of the Transfer Pricing Officer, that such income, gain or profits or such loss, as the case may be, has in fact been ascertained having regard to the arm's length price. Where such person fails to so prove, the Transfer Pricing Officer may determine, the arm's length price.

(d) For the purposes of subsection (1), a Transfer Pricing Officer may give notice in writing to any person requiring him to furnish within the period specified in such notice, information in relation to any transactions between such person and any other persons.

(e) The arm's length price shall be determined in accordance with the arm's length principle and on the basis of the application of the most appropriate method as specified for that purpose.

(f) After determining arm's length price of the cases initiated under paragraph (a) or (b) of subsection (2), Transfer Pricing Officer shall prepare a preliminary order determining the arm's length price and refer to the Technical Review Committee which is appointed by the Deputy Commissioner-General of the subject of transfer pricing, for review.

(g) The Technical Review Committee shall review the determined arm's length price in the preliminary order and shall confirm, reduce or enhance the arm's length price and refer to the Transfer Pricing Officer –

- (i) a final order, if all the members of the Committee are in agreement; or
- (ii) an interim order in any other circumstances where all the members of the Committee are not in agreement.

(h) Transfer Pricing Officer shall communicate the final order or the interim order as the case may be to such person.

(i) A person, who is dissatisfied with the interim order may communicate his dissatisfaction to the Dispute Resolution Panel referred to in section 78 of this Act and the Dispute Resolution Panel shall issue a final order under subsection (4) of section 78.

(j) Where person or partner of a partnership has not communicated their dissatisfaction on an interim order received to the Dispute Resolution Panel, the interim order shall be deemed to be a final order.

(k) The Transfer Pricing Officer shall, subject to the provisions of section 135, assess the amount of income, gain or profits and issue assessment in accordance with the final order of the Technical Review Committee or the Dispute Resolution Panel as the case may be.

(l) Such person or partner of a partnership who is aggrieved by such assessment made based on the final order, may within thirty days of the notice of assessment make an appeal to the Commissioner-General under Chapter XIII.

(4) The provisions of this section shall not apply in a case where the computation of income under subsection (2) has the effect of reducing the income, gain or profits chargeable to tax or increasing the loss, as the case may be, computed on the basis of entries made in the books of account in respect of any year of assessment in which the international transaction was entered into.

(5) Notwithstanding anything to the contrary in any other section of this Act or any other law, no exemption or tax benefit provided under any of the provisions of this Act or any other law, shall be granted in respect of the amount of income, gain or profits by which the total income, gain or profits of the associated enterprises is increased after the computation of income, gain or profits under this section and in accordance with the arm's length price.

(6) An advance pricing agreement may be entered into between any person and the Commissioner-General in respect of arm's length price for the purposes of this section in the manner that may be specified.

(7) The determination of arm's length price referred to in subsection (1) may be subject to safe harbor rules specified by the Commissioner-General.

77. (1) Any income, gain or profits arising in, derived or accruing from, or any loss incurred in by any person in Sri Lanka engaged in any transaction, other than transactions referred to in subsection (1) of section 76 entered into with its associated enterprises shall be ascertained having regard to the arm's length price.

Profits and
income or loss
from
transactions
between
associates.

- (2)(a) Where it appears to the Assistant Commissioner in the course of his audit, the income, gains or profits or the loss referred to in subsection (1), have not been ascertained having regard to the arm's length price, he may initiate a transfer pricing audit.
- (b) When determining the arm's length price the Assistant Commissioner may in writing address to the person, referred to in subsection (1) and require him to prove to the satisfaction of the Assistant Commissioner, that such profits and income or such loss, as the case may be, has in fact been ascertained having regard to the arm's length price. Where such person fails to so prove, the Assistant Commissioner may determine, the arm's length price.
- (c) For the purposes of subsection (1), the Assistant Commissioner may give notice in writing to any person requiring him to furnish within the period specified in such notice, information in relation to any transaction between such person and any other person.
- (d) The arm's length price shall be determined in accordance with the arm's length principle and on the basis of application of the most appropriate method, as specified for that purpose.

- (e) After determining arm's length price, the Assistant Commissioner shall prepare a preliminary order and refer to the Technical Review Committee, for review.
- (f) The Technical Review Committee shall review the determined arm's length price in the preliminary order and shall confirm, reduce or enhance the arm's length price and refer to the Assistant Commissioner -
 - (i) a final order, where all the members of the Committee are in agreement; or
 - (ii) a interim order in any other circumstances where all the members of the Committee are not in agreement.
- (g) Assistant Commissioner shall communicate the final order or the interim order as the case may be to such person or partner of such partnership.
- (h) A person, who is dissatisfied with the interim order may communicate his dissatisfaction to the Dispute Resolution Panel and the Dispute Resolution Panel shall issue a final order under subsection (4) of section 78.
- (i) Where a person has not communicated his dissatisfaction on an interim order, the interim order is deemed to be a final order.
- (j) The Assistant Commissioner shall subject to the provisions of section 135 assess the amount of income, gain or profits and issue assessment in accordance with the final order of the Technical Review Committee or the Dispute Resolution Panel as the case may be.

- (k) If such a person who is aggrieved by such assessment made based on the final order, may, within thirty days of the notice of assessment make an appeal to the Commissioner-General.

(3) The provisions of this section shall not apply in a case where the computation of income, gain or profits under subsection (2) has the effect of reducing the income, gain or profits chargeable to tax or increasing the loss, as the case may be, computed on the basis of entries made in the books of account in respect of any year of assessment in which the transaction was entered into.

(4) Notwithstanding anything in any other section of this Act or any written law, no exemption or tax benefit provided under any of the provisions of this Act or any written law, shall be granted in respect of the amount of income, gain or profits by which the total income, gain or profits of the associated enterprises is increased after the computation of income, gain or profits under this section and in accordance with the arm's length price.

(5) The determination of arm's length price referred to in subsection (1) may be subject to safe harbor rules.

For the purpose of sections 76 and 77 –

- (a) “a person” –
 - (i) shall be an associated enterprise of another enterprise, if one person participates directly or indirectly or through one or more intermediaries in the management, control or capital of the other person; or
 - (ii) shall be deemed to be an associated enterprise of another person if one person participates directly or indirectly or through one or more intermediaries in

the management, control or capital, in such manner or to such extent as may be specified;

- (b) a person referred to in paragraph (a) shall include a permanent establishment;
- (c) “Transfer Pricing Officer” means any officer of the Inland Revenue Department designated by the Commissioner-General as a Transfer Pricing Officer;
- (d) “safe harbor” means circumstances in which the Commissioner-General may propose a simplification measure that shall accept the transfer price declared by a person under certain conditions;
- (e) “Arm’s Length Price” means for the purpose of ascertaining income, gain or profits arising in, derived or accruing from or losses incurred in any transaction, operation or scheme entered into between two associated enterprises calculated in accordance with the arm’s length principle, as that where a connected transaction is carried out taking into account the terms and conditions that would have been used in comparable independent transactions.

Dispute
Resolution
Panel.

78. (1) There shall be a Dispute Resolution Panel (hereinafter referred to as “the Panel”) for the purpose of resolution of disputes on interim order. The Panel shall consist of a Chairman and four members and a Secretary appointed by the Commissioner-General. Every member of the Panel so appointed shall hold office for a term not exceeding two years, but shall be eligible for reappointment.

(2) At the request of the Chairman, the Secretary to the Panel shall summon a meeting of the Panel. The quorum of a meeting shall consist of three members.

(3) Any person who is dissatisfied with the interim order made by the Transfer Pricing Officer or Assistant Commissioner may communicate in writing or by electronic mean by himself or by his authorized representative to the Commissioner-General, his dissatisfaction with such interim order. Every such communication shall be made to the Secretary to the Panel within fourteen days from the date of receipt of such interim order.

(4) Where such person has communicated his dissatisfaction with the interim order in terms of section 76 or 77 as the case may be, to the Commissioner-General, the Dispute Resolution Panel shall, within six months of the date of such communication of dissatisfaction on such interim order, make a final order and shall transmit such order in writing or by electronic mean to such person. A copy of such final order shall be sent to the Transfer Pricing Officer or to the Assistant Commissioner, as the case may be, for him to issue the assessment.

(5) A person who is aggrieved by the amount of an assessment made under section 135, may make an appeal to the Commissioner-General within thirty days of the notice of assessment and thereupon Chapter XIII of this Act shall apply.

79. No deduction shall be allowed for an amount incurred by a non-resident person as an expenditure of a business carried on by the non-resident person through a Sri Lankan permanent establishment that represents head office expenditure where the amount would exceed ten *per cent* of the person's assessable income. Head office expenditure.

Division IV: Relief From Double Taxation

80. A resident person (other than a partnership to which subsection (1) of section 53 applies or trust to which Foreign tax credit.

subsection (2) of section 57 applies) may claim a foreign tax credit for a year of assessment for any foreign income tax paid by the person and to the extent to which the foreign income tax is paid with respect to the person's assessable foreign income for the year.

Calculation of
foreign tax
credit.

81. (1) Foreign tax credits claimed under section 80 –

- (a) shall be calculated separately for each year of assessment and separately for assessable foreign income from each employment, business, investment or other source and further separately for each gain from the realisation of an investment asset; and
- (b) with respect to each calculation, shall not exceed the average rate of Sri Lankan income tax of the person for the year applied to the person's assessable foreign income.

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

(3) Any foreign tax credit or part of a foreign tax credit allowed under this section for a year that is not credited under paragraph (b) of subsection (3) of section 2 shall not be refunded, carried back to the preceding year or carried forward to the following year and, in the case of the realisation of an investment asset, shall not be credited in relation to the realisation of another investment asset.

(4) For the purposes of this section –

“average rate of Sri Lankan income tax” of a resident person for a year of assessment means the percentage that tax payable by the person under

paragraph (a) of subsection (1) of section 2 (calculated under subsection (3) of section 2 without any deduction for any foreign tax credit) is of the taxable income of the person for the year; and

“assessable foreign income” means foreign source income included in the assessable income of a resident person for a year of assessment from an employment, business, investment or other source as the case requires.

CHAPTER VIII

TAX PAYMENT PROCEDURE

Division I: Methods and Time for Payments

82. (1) Tax imposed under section 2 shall be payable by withholding under Division II, by instalment under Division III or on assessment under Division IV. Methods and time for payment.

(2) Tax shall be payable-

- (a) in the case of tax payable by withholding, at the time provided for in section 86;
- (b) in the case of tax payable by instalment, on the date by which the instalment is to be paid under section 90;
- (c) in the case of tax payable on assessment –
 - (i) on the date on which the capital gains tax return shall be filed under section 93 for a person with taxable income consisting of a gain from the realisation of an investment asset; or
 - (ii) on the date that is six months after the end of the year of assessment for which