

(4) Every regulation made by the Minister other than a regulation referred to in subsection (2), shall come into operation on the date of its publication in the *Gazette* or on such other date as may be specified in the regulation.

(5) Every regulation referred to in subsection (2) shall as soon as convenient after its publication in the *Gazette*, be brought before Parliament for approval. Any such regulation which is not so approved shall be deemed to be rescinded as from the date of disapproval, but without prejudice to anything previously done thereunder. Notification of the date on which a regulation shall be deemed rescinded shall be published in the *Gazette*.

## CHAPTER XX

### INTERPRETATION

Interpretation.

**195.** (1) In this Act, unless the context otherwise requires-

“agricultural business” means the business of producing agricultural, horticultural or any animal produce and includes an undertaking for the purpose of rearing livestock or poultry;

“approved accountant” means –

- (a) an accountant who is a member of the Institute of Chartered Accountants of Sri Lanka; or
- (b) an accountant who is a fellow member of the Association of Accounting Technicians of Sri Lanka incorporated under the Companies Act, No. 7 of 2007 in relation to any person, or any partnership other than a company where the turnover of the business of the person or partnership for the year does not exceed one hundred million rupees;

“arrangement” means –

(a) an action, agreement, course of conduct, dealing, promise, transaction, understanding or undertaking, whether express or implied, whether or not enforceable by legal proceedings and whether unilateral or involving more than one person; or

(b) a part of an item described in paragraph (a);

“asset” includes a tangible or intangible asset, currency, goodwill, know-how, property, a right to income or future income, a benefit that lasts longer than twelve months and a part of an asset;

“Assistant Commissioner” includes a Deputy Commissioner appointed under this Act;

“authorised officer,” in relation to a function, means the tax official employed in the Department and authorised in writing by the Commissioner-General to perform the function;

“authorised representative” means any individual who is authorized in writing by a person to act on his behalf from time to time for the purposes of this Act and who is -

(a) in any case-

(i) a member of the Institute of Chartered Accountants of Sri Lanka;

(ii) an attorney-at-law;

(iii) an employee regularly employed by that person; or

(iv) a member of the Sri Lankan Institute of Taxation established under the Sri Lanka Institute of Taxation Act, No. 21 of 2000;

(v) an individual approved by the Commissioner-General and registered as an auditor under the Companies (Auditors) Regulations;

(vi) an individual specified by the Commissioner-General of any other kind;

(b) in the case of an individual, a relative;

(c) in the case of a company, a director or the secretary of that company;

(d) in the case of a partnership, a partner of that partnership;

(e) in the case of a body of persons, a member of such body;

“body” means a company, partnership, trust or other body of persons whether formed in Sri Lanka or elsewhere;

“business”-

(a) includes-

(i) a trade, profession, vocation or isolated arrangement with a business character however short the duration of the arrangement; and

(ii) a past, present or prospective business; but

(b) excludes an employment;

“capital asset”-

(a) means each of the following assets:-

(i) land or buildings;

- (ii) a membership interest in a company, partnership or trust;
- (iii) a security or other financial asset;
- (iv) an option, right or other interest in an asset referred to in the foregoing paragraphs; but

(b) excludes trading stock or a depreciable asset;

“charitable institution” means the trustee or trustees of a trust or corporation or an unincorporated body of persons established for a charitable purpose only or engaged solely in carrying out a charitable purpose;

“charitable purposes” means a purpose for the benefit of the public or any section of the public in or outside Sri Lanka, of any of the following categories:

- (a) the relief of poverty;
- (b) the advancement of education or knowledge other than by any institution established for business purposes or by any institution established under the Companies Act;
- (c) activities for the protection of the environment or eco-friendly activities;
- (d) the advancement of religion or the maintenance of religious rites and practices or the administration of a place of public worship;
- (e) any other purpose beneficial to the community, not falling within any of the above categories;

“Commissioner-General” means the Commissioner-General of Inland Revenue appointed under section 97 and includes a Deputy Commissioner-General,

Senior Commissioner, Commissioner or Senior Deputy Commissioner who is specially authorised by the Commissioner-General either generally or for some specific purpose, to act on behalf of the Commissioner-General;

“company” -

(a) means a corporation, unincorporated association or other body of persons;

(b) includes –

(i) a friendly society, building society, pension fund, provident fund, retirement fund, superannuation fund or similar fund or society; and

(ii) a government excluding the Sri Lankan government, a political sub-division of a government, or a public international organization; but

(c) excludes a partnership or trust; and

(d) the following shall be deemed to be a company:-

(i) a partnership in which at least twenty of the partners have limited liability for the debts of the partnership; and

(ii) a unit trust or mutual fund to which section 59 applies;

“Department” means the Inland Revenue Department;

“depreciable asset” –

(a) means an asset to the extent to which it is employed in the production of income from a

business and which is likely to lose value because of wear and tear, obsolescence or the passing of time; but

- (b) excludes goodwill, an interest in land, a membership interest in an entity and trading stock;

“dividend”–

- (a) means a payment derived by a member from a company, whether received as a division of profits, in the course of a liquidation or reconstruction, in a reduction of capital or share buy-back or otherwise;

- (b) includes a capitalisation of profits –

- (i) whether by way of a bonus share issue, increase in the amount paid-up on shares or otherwise; and

- (ii) whether an amount is distributed or not; and

- (c) excludes a payment to the extent to which it is –

- (i) matched by a payment made by the member to the company;

- (ii) debited to a capital, share premium or similar account; or

- (iii) otherwise constitutes a final withholding payment or is included in calculating the income of the member;

“domestic asset” means –

- (a) an asset owned by a resident person (other than foreign land or buildings or an asset held by a

foreign permanent establishment of the person)  
or held by a Sri Lankan permanent  
establishment;

(b) an interest in land or a building situated in Sri  
Lanka; and

(c) shares in a resident company;

(d) a membership interest in a body, if more than  
fifty *per cent* of the value of the interest is  
derived, directly or indirectly through one or  
more interposed bodies, from land or buildings  
in Sri Lanka;

“eligible investment business” means a business or  
investment comprising predominately of owning,  
investing or trading in –

(a) capital assets;

(b) financial instruments; or

(c) other similar assets;

“employee” means an individual engaged in  
employment;

“employer” means the person who engages or remunerates  
an employee in employment or pays a pension or  
other remuneration to a former employee or to any  
other person for the past services of such former  
employee, and includes in the case of an entity  
specified in Column I hereunder, the person specified  
in the corresponding entry in Column II:

<i>Column I</i>	<i>Column II</i>
A company or a body of persons whether corporate or unincorporate	Director, Secretary, Manager or other principal officer of such company or body of persons
A partnership	The precedent partner or any active partner resident in Sri Lanka, and in the case of a partnership of which no active partner is resident in Sri Lanka, the agent of such partnership in Sri Lanka
A trust	The trustee or trustees of the trust
A non- resident person	The agent or attorney of such person in Sri Lanka
A Government Institution	Accountant or Director of Finance or Administrative Officer or Head of the Department or Institution, or Secretary to the Ministry or Chairman of Commission or Committee or any other person who pays remuneration

“employment” –

(a) means –

- (i) a position of an individual in the employment of another person;
- (ii) a position of an individual as manager of an entity;



- (iii) a position of an individual entitling the individual to a fixed or ascertainable remuneration in respect of services performed;
- (iv) a public office held by an individual;
- (v) a position of an individual to whom any payment is made or due by or from an employer or who receives any other benefit as an employee or in a similar capacity;
- (vi) a position as a corporation or company director; and

(b) includes a past, present or prospective employment;

“entertainment” means the provision to any person of food, beverages, tobacco, accommodation, amusement, recreation or hospitality of any kind;

“entity” means a company, partnership or trust, but excludes an individual;

“expenditure” or “expense” means a payment made that reduces the assets of the person making the payment;

“export” includes specified undertaking;

“financial institution” means –

- (a) any company or body of persons carrying on banking business and includes a licenced specialized bank, within the meaning of the Banking Act, No. 30 of 1988;
- (b) a non-banking financial institution regulated in the same way as a bank in paragraph (a); or

- (c) any other category of person as may be prescribed;

“foreign permanent establishment” means a fixed place of business of a resident person situated in a foreign country where the business is conducted continuously for at least six months, but excludes any place at which only activities of a preparatory or auxiliary nature are conducted;

“generally accepted accounting principles” means—

- (i) those adopted, from time to time, by the Institute of Chartered Accountants (Sri Lanka); and
- (ii) the International Financial Reporting Standards;

“gift” means a transfer without consideration or a transfer with consideration to the extent that the market value of the property exceeds the market value of the consideration;

“interest” includes –

- (a) a payment, including a discount or premium, made under a debt obligation that is not a repayment of capital; and
- (b) a swap or other payment functionally equivalent to interest;
- (c) a commitment, guarantee or service fee paid in respect of a debt obligation or swap agreement; and
- (d) a distribution by a building society;

“investment” means –

- (a) the owning of one or more assets, including one or more assets of a similar nature or that are used in an integrated fashion, and
  - (i) includes a past, present or prospective investment; but
  - (ii) excludes a business or employment; or
- (b) a game of chance, including lotteries, betting or gambling;

“investment asset” –

- (a) means a capital asset held as part of an investment, but-
- (b) excludes the principal place of residence of an individual, provided it has been owned by the individual continuously for the three years before disposal and lived in for at least two of those three years (calculated on a daily basis);

“land or buildings” includes a structural improvement to land or buildings, an interest in land or buildings or an interest in a structural improvement to land or buildings, and includes the following:—

- (a) a lease of land or buildings;
- (b) a lease of a structural improvement to land or buildings; or
- (c) an exploration, prospecting, development, or similar right relating to land or buildings; and
- (d) information relating to a right referred to in paragraph (c);

“lease” means an arrangement providing a person with a temporary right in respect of an asset of another person, other than money, and includes a licence, profit-a-prendre, option, rental agreement, royalty agreement or tenancy;

“local authority” means any Municipal Council, Urban Council, or Pradeshiya Sabha and includes any Authority established by or under any law to exercise, perform and discharge powers, duties and functions, corresponding or similar to the powers, duties and functions exercised, performed and discharged by any such Council or Sabha;

“manager”, in relation to an entity –

- (a) means a councillor, director, manager, member, officer or other person who participates or may participate, whether alone or jointly with other persons, in making senior management decisions on behalf of the entity; and
- (b) includes–
  - (i) a working partner of a partnership and a trustee of a trust;
  - (ii) a person treated as a manager of an entity by any law; and
  - (iii) a non-resident person with respect to a Sri Lankan permanent establishment owned by the person;

“member” in relation to an entity means any person who owns a membership interest in the entity;

“membership interest” in an entity means a right, whether of a legal or equitable nature, including a contingent right, to participate in income or capital of the entity and includes the interest of a partner in a partnership, the interest of a beneficiary in a trust and shares in a company;

“Minister” means the Minister assigned the subject of Finance;

“natural resource” means minerals, petroleum, water or any other non-living or living resource that may be taken from land or the sea;

“natural resource payment” means a payment, including a premium or like amount, for the right to take natural resources from land or the sea or calculated in whole or part by reference to the quantity or value of natural resources taken from land or the sea;

“net cost” for an asset or liability at a particular time is equal to –

- (a) in the case of a depreciable asset, its share of the written down value of the pool to which it belongs at that time (paragraph 4 of the Fourth Schedule) apportioned according to the market value of all the assets in the pool; and
- (b) in the case of any other asset or a liability, the amount by which cumulative costs for the asset or liability exceed cumulative consideration received for the asset or liability to the time;

“non-governmental organization” means any organization or association, whether incorporated or unincorporated, formed by a person or a group of persons on a voluntary basis and which is non-governmental in nature, and established and constituted –

- (a) for the provision or relief and services of a humanitarian nature to the poor and destitute, the sick, orphans, widows, youth, children; or
- (b) generally for the provision of relief to the needy,

unless such organization or association is determined by the Commissioner-General not to be a non-governmental organization, but in all cases does not include an approved charity;

“non-traditional goods” means goods other than black tea not in packet or package form and each packet or package weighing not more than one kilogram, crepe rubber, sheet rubber, scrap rubber, latex or fresh coconuts, or agricultural, horticultural or dairy produce, includes and organic tea in bulk;

“partnership” means an association of two or more individuals or corporations carrying on business jointly for the purpose of making profit, irrespective of whether the association is recorded in writing;

“payment” means the conferring of value or a benefit in any form by one person on another person and includes –

- (a) the transfer by one person of an asset or money to another person or the transfer by another person of a liability to the one person;
- (b) the creation by one person of an asset that on creation is owned by another person or the decrease by one person of a liability owed by another person;
- (c) the provision by one person of services to another person; and
- (d) the making available of an asset or money owned by one person for use by another person or the granting of use of such an asset or money to another person;

“person” means an individual or entity and includes a body of persons corporate or unincorporate, an executor, non-governmental organization and charitable institution;

“precedent partner” means the partner who, of the active partners resident in Sri Lanka –

- (a) is first named in the agreement of partnership;
- (b) if there is no such agreement, is specified by name or initials singly or with precedence to the other partners, in the usual name of the partnership; or
- (c) is the first name in the statement made under section 4 of the Business Names Act, No.7 of 1987;

“public corporation” means any corporation, board or other body which was or is, established by or under, any written law, other than the Companies Act, No. 07 of 2007, with capital wholly or partly provided by the Government, by way of grant, loan or other form;

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

- (a) applied on behalf of the person either at the instruction of the person or under any law;
- (b) reinvested, accumulated or capitalised for the benefit of the person;
- (c) credited to an account, or carried to any reserve, or a sinking or insurance fund for the benefit of the person; or
- (d) made available to the person;

“rent” –

- (a) means a payment, including a payment of a premium or like amount, for the use of or right to use property of any kind;
- (b) includes a payment for the rendering of, or the undertaking to render, assistance ancillary to a use or a right referred to in paragraph (a); but
- (c) excludes a natural resource payment or a royalty;

“residence” or “resident” with respect to a person is determined in accordance with section 69;

“royalty” means a payment, including a payment of a premium or like amount, derived as consideration for –

- (a) the use of or right to use a copyright of literary, artistic or scientific work, including cinematograph films, software or video or audio recordings, whether the work is in electronic format or otherwise;
- (b) the use of or right to use a patent, trade mark, design or model, plan, or secret formula or process;
- (c) the use of or right to use any industrial, commercial, or scientific equipment;
- (d) the use of or right to use information concerning industrial, commercial or scientific experience;
- (e) the rendering of or the undertaking to render assistance ancillary to a matter referred to in paragraph (a), (b), (c) or (d); or



- (f) a total or partial forbearance with respect to a matter referred to in paragraph (a), (b), (c), (d) or (e);

“senior citizen” with respect to a year of assessment means an individual who is –

- (a) a citizen of Sri Lanka during the year of assessment;
- (b) resident in Sri Lanka for the year of assessment; and
- (c) who is sixty years old or above at any time during the year of assessment;

“service fee” means a payment to the extent to which, based on market values, it is reasonably attributable to services rendered by a business of a person, but excludes interest, rent or a royalty;

“shareholder” means a person who is a member of a company;

“Small and Medium Enterprise” means a person who satisfies the following conditions:—

- (a) the person who conducts business solely in Sri Lanka other than an individual who is engaged in providing professional services individually or in partnership being an individual who is professionally qualified;
- (b) the person does not have an associate that is an entity; and
- (c) the person’s annual gross turnover is less than Rs. 500,000,000;

“specified undertaking” means an undertaking which is engaged in –

- (a) entrepot trade involving import, minor processing and re-export;
- (b) offshore business where goods can be procured from one country or manufactured in one country and shipped to another country without bringing the same into Sri Lanka;
- (c) providing front end services to clients abroad;
- (d) headquarters operations of leading buyers for management of financial supply chain and billing operations;
- (e) logistic services such as bonded warehouse or multi-country consolidation in Sri Lanka;
- (f) transshipment operations;
- (g) freight forwarding;
- (h) supply of services to any exporter of goods or services or to any foreign principal of such exporter directly, being services which could be treated as essentially related to the manufacture of such goods or provision of such services exported by such exporter either directly or through any export trading house, including any service provided by an agent of a ship operator to such agent’s foreign principal, and the payment for such services are made by such exporter or foreign principal to such person in Sri Lanka in foreign currency;
- (i) production or manufacture, and supply to an exporter of non-traditional goods; and

- (j) the performance of any service of ship repair, ship breaking repair and refurbishment of marine cargo containers, provision of computer software, computer programmes, computer systems or recording computer data, or such other services as may be specified by the Minister by notice published in the Gazette, for payment on foreign currency;
- (k) sale for foreign currency, of any gem or jewellery, being a sale made in Sri Lanka by any person authorized by the Central Bank of Sri Lanka to accept payment for such sale in foreign currency;

“Sri Lankan permanent establishment” means a place in Sri Lanka where a non-resident person carries on business or that is at the disposal of the person for that purpose and includes –

- (a) a place in Sri Lanka where a person has, or is using or is installing substantial equipment or substantial machinery;
- (b) a place in Sri Lanka where a person is engaged in a construction, assembly or installation project for ninety days or more, including a place where a person is conducting supervisory activities in relation to such a project;
- (c) the provision of services in Sri Lanka, but only if activities of that nature continues (for the same or a connected project) for a period of one hundred and eighty three days or more in any twelve month period; and

- (d) a place in Sri Lanka where an agent performs any function on behalf of the business of a non-resident person –
  - (i) including, in the case of an insurance business, the collection of premiums or the insurance of risks situated in Sri Lanka; but
  - (ii) excluding a case involving a general agent of independent status acting in the ordinary course of business as such;

“tax” means a compulsory payment to the government imposed under this Act regardless of whether that payment is designated as a tax, fee, duty, levy or otherwise, and, unless the context otherwise requires, includes withholding tax, instalments, interest, late fee, or penalty in relation to a tax;

“tax official” means –

- (a) the Commissioner-General; and
- (b) Deputy Commissioners General, Senior Commissioners, Commissioners, Senior Deputy Commissioners, Deputy Commissioners and Assistant Commissioners;

“tax return” means a return, including an information return, that a person is required to file with the Department, in which information about that person’s or some other person’s possible tax liability is provided;

“taxpayer” means—

- (a) a person who is required to pay tax under this Act including a person who has zero chargeable or taxable income or a loss for a year of assessment; or

- (b) a person who is required to withhold tax and pay it to the Department;

“trading stock” means assets owned by a person that are sold or intended to be sold in the ordinary course of a business of the person, work in progress on such assets, inventories of materials to be incorporated into such assets and consumable stores;

“Transfer Pricing Officer” means any officer of Inland Revenue specified by the Commissioner-General as a Transfer Pricing Officer;

“trust” means an arrangement under which a trustee holds assets;

“trustee” means an individual or body corporate holding assets in a fiduciary capacity for the benefit of identifiable persons or for some object permitted by law and whether or not—

- (a) the assets are held alone or jointly with other individuals or bodies corporate; or
- (b) the individual or body corporate is appointed or constituted trustee by personal acts, by will, by order or declaration of a court or by operation of the law; and
- (c) includes –
  - (i) an executor, administrator, tutor or curator;
  - (ii) a liquidator, receiver, trustee in bankruptcy or judicial manager;
  - (iii) a person having the administration or control of assets subject to a usufruct or other limited interest;

- (iv) a person who manages the assets of an incapacitated individual; and
- (v) a person who manages assets under a private foundation or other similar arrangement;

“underlying ownership” –

- (a) in relation to an entity, means membership interests owned in the entity, directly or indirectly through one or more interposed entities, by individuals or by entities in which no person has a membership interest; or
- (b) in relation to an asset owned by an entity, is determined as though the asset is owned by the persons having underlying ownership of the entity in proportion to that ownership of the entity;

“USD” means the United States Dollar;

“withholdee” means a person receiving or entitled to receive a payment from which tax is required to be withheld under this Act; and

“withholding agent” means a person required to withhold tax from a payment under this Act.

**196.** (1) For the purposes of this Act, two persons are associates or associated persons where the relationship between the two is –

Associated persons.

- (a) that of an individual and a relative of the individual;
- (b) that of partners in the same partnership;
- (c) that of an entity and a person referred to in subsection (2); or

- (d) in any case not covered by paragraphs (a) to (c), such that one may reasonably be expected to act, other than as employee, in accordance with the directions, requests, suggestions or intentions of the other.

(2) A person and an entity are associated persons where –

- (a) the person controls the entity or may benefit from fifty percent or more of the rights to income, capital or voting power of the entity –
  - (i) either alone or together with persons who, under another application of this section, are associated with the person; and
  - (ii) whether directly or through one or more interposed entities; or
- (b) the person, under another application of this section, is an associate of a person referred to in paragraph (a).

(3) In this section, “relative” in relation to an individual, means the individual’s child, spouse, parent, grandparent, grandchild, sibling, aunt, uncle, nephew, niece or first cousin, including by way of marriage or adoption.

Domestic expenditure.

**197.** (1) Where an individual incurs expenditure in respect of himself, the expenditure shall be domestic expenditure to the extent that it is incurred –

- (a) in maintaining the individual, including in providing shelter as well as meals, refreshment, entertainment or other leisure activities;
- (b) in the individual commuting from home;

- (c) in acquiring clothing, including shoes, for the individual, other than clothing that is not suitable for wearing outside of work;
- (d) in educating the individual, other than education that is directly relevant to a business conducted by the individual and that does not lead to a degree or diploma; or
- (e) in paying any personal debts, including credit card debts, of the individual.

(2) Where another person incurs expenditure in making a payment to or providing any other benefit for an individual, the expenditure shall be domestic expenditure except to the extent that –

- (a) the payment or benefit shall be included in calculating the income of the individual;
- (b) the individual provides consideration of an equal market value for the payment or benefit; or
- (c) the amount of the expenditure is so small as to make it unreasonable or administratively impracticable to account for it.

(3) Expenditure referred to in subsections (1) and (2) shall include interest incurred with respect to money borrowed that is used in a manner referred to in those subsections.

**198.** (1) For the purposes of this Act, the term “financial instrument” – Financial instruments.

- (a) means –
  - (i) a debt claim or debt obligation;
  - (ii) a derivative instrument;



- (iii) a foreign currency instrument; and
  - (iv) any other instrument prescribed by regulations or, in the absence of regulations, treated as a financial instrument by generally accepted accounting principles; but
- (b) except to the extent as may be prescribed by regulations, excludes a membership interest in an entity.

(2) For the purposes of this Act –

- (a) “debt claim” means a right to receive a payment under a debt obligation;
- (b) “debt obligation” means an obligation to make a payment to another person that is denominated in money, including accounts payable and the obligations arising under deposits, debentures, stocks, treasury bills, promissory notes, bills of exchange and bonds.

(3) For the purposes of this Act, a person –

- (a) derives a financial gain when the person derives interest or gains with respect to a financial instrument; and
- (b) incurs a financial cost when the person incurs interest or losses with respect to a financial instrument.

(4) For the purposes of this Act, a person –

- (a) derives a relevant financial gain when the person derives a financial gain with respect to a derivative or foreign currency instrument; and

- (b) incurs a relevant financial cost when the person incurs a financial cost with respect to a derivative or foreign currency instrument.

(5) The Minister may by regulation prescribe -

- (a) the derivative instruments; and
- (b) the foreign currency instruments.

## CHAPTER XXI

### SPECIAL PROVISIONS

**199.** (1) The Minister may, on behalf of the Government, enter into, amend, or terminate a mutual administrative assistance agreement with a foreign government or governments.

Implementation  
of Mutual  
Administrative  
Assistance  
Agreements.

(2) A mutual administrative assistance agreement for which Parliament has issued an instrument of ratification shall have legal effect in Sri Lanka according to its terms.

(3) If there is any conflict between the terms of a mutual administrative assistance agreement to which subsection (2) applies and any other law, the mutual administrative assistance agreement shall prevail.

(4) If a tax treaty or mutual administrative assistance agreement having legal effect in Sri Lanka provides for exchange of information, or reciprocal assistance in the recovery of tax or service of process, the Commissioner-General shall use the powers available under this Act or any other law to meet Sri Lanka's obligations under the treaty or agreement on the basis that a reference in this Act or other law:

- (a) to "tax" includes a foreign tax to which the exchange of information or reciprocal assistance relates;