

Tax Administration

Chartered Accountancy Strategic Level Corporate Taxation (TAX)

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9. TAX ADMINISTRATION

1. Tax payment method

The IRA stipulates three different methods for the payment of income tax. Depending on relevant circumstances;

- a. Payment by withholding
- b. Payment by installments
- c. Payment by assessment
- d. Payment as specified in a notice for payment

1.1. Payment by withholding

The tax regime in Sri Lanka historically imposes WHT on both domestic as well as cross border payments. WHT on domestic payments eases revenue collection (e.g. APIT) while WHT on cross border payments are adopted by most countries to ensure that the fair share of tax is retained in the host country. As regards cross border payments, provisions of treaty override comes into effect if a Double Tax Avoidance Agreement (“DTA”) has been entered between the host and home country. In the absence of a DTA with the home country, WHT on cross border payments are imposed at the rates specified in the domestic statute.

1.1.1. Withholding by Employer

Section 83A instructs employers to deduct an Advance Personal Income Tax from income from employment at the rates specified in First Schedule to the Act from the following employees;

1. A non-resident or non-citizen of Sri Lanka
2. A resident and citizen of Sri Lanka who gives his consent

The APIT tables and other details were published by the Department of Inland Revenue. The tables specify the rates to be deducted on both primary as well as secondary employment at different rates. Accordingly, an employee shall furnish to an employer, with a declaration nominating the employment as the employee’s primary employment except any employee who is having one employment.

The IRA does not recognize the APIT that has been deducted from employment income as a final tax. However, under section 94(1) (1)(ii) there is no requirement to submit a Return of income where an individual has only employment income which has been subject to WHT.

An employer must provide an employee with a withholding tax certificate within 21 days from the end of the year of assessment to which it relates, or where an employment ceases

during the year of assessment, at the time that the employment ceases. The withholding tax certificate must be in the required form and contains pertinent information in relation to the withholding tax affairs of the employee in respect of that employment, including the amount of income received by the employee for that year of assessment and the amount of tax withheld.

1.1.2. Withholding from Investment Returns.

Subject to Subsection (3), a person shall withhold tax at the rate provided under paragraph 10 of the First Schedule.

- Rewards from betting and gaming – 14%

ADVANCE INCOME TAX (AIT) – Section 84A

Where a taxpayer who is resident in Sri Lanka make a request to deduct Advance Income Tax from the payment of dividend, interest, discount, charge, natural resource payment, rent, royalty, premium or similar periodic payment that has a source in Sri Lanka from a withholding agent, such withholding agent should deduct advance income tax as specified by CGIR.

1.1.3. Withholding from service fees and contract payments (Section 85)

A person shall withhold tax at the rates specified below where such person pays a dividend, interest, discount, charge, natural resource payment, rent, royalty, premium, service fee or an insurance premium with a source in Sri Lanka to a non resident person.

- Interest or discount paid – 5%
- All other payments – 14%

Moreover, Gazette No. 2064/51 specifies a special tax rate of 2% as applicable on payments made to non-resident persons providing land, sea or air transportation or telecommunication services.

1.1.4. WHT payment compliance

Taxes withheld in the manner explained above during a month needs to be remitted in favour of the Commissioner General of Inland Revenue within 15 days after the end of each calendar month. If there is any non-compliance of such procedure, the withholding agent (i.e. the person who is required to withhold taxes from a payment) would be denied from claiming a deduction for such payment when computing his assessable income and shall be liable solely or jointly with the withholder for the tax not withheld and paid to the Commissioner General.

1.1.5. WHT information Compliance

On an annual basis, the withholding agent shall submit to the Department of Inland Revenue an annual statement with particulars of WHT liable payments made during

the particular year of assessment along with details such as name, address and tax identification number of the withholder, tax withheld from each payment during each period etc.

This needs to be submitted to the Department within 30 days from the end of the year of assessment (i.e. by 30th April of the immediately succeeding year of assessment.)

1.1.6. Withholding tax certificate (Sec. 87)

A withholding agent is required to furnish to the withholder a withholding tax certificate in due time. (i.e. in case of withholding by employers, by 30th day of the immediately succeeding year of assessment or within 20 days from cessation of employment, and in all other cases, within 30 days after the end of the month) and in the form specified which sets out the amount of payments made to the withholder during the period and tax withheld by the withholding agent from those payments.

1.1.7. Credit for non-final withholding tax

A withholder is entitled to claim a tax credit for taxes paid in the following manner, for the year of assessment in which the payment is derived –

- (a) Tax withheld by a withholding agent from payment made to the withholder, as specified above
- (b) A withholding agent who fails to withhold tax has paid such tax that should have been withheld in the same manner and at the same time as tax that is withheld, in terms of section 86(3) of the Act, or
- (c) Where the withholding agent fails to withhold tax, the withholder has paid such tax within 15 days after the end of the calendar month in which the payment is received, in terms of section 86(4) of the Act.

However, a credit cannot be claimed for the above tax paid, if same is in relation to a payment which is a final withholding payment.

1.2. Tax Payable by instalment (Section 90)

Any person, who derives or expects to derive assessable income during a year of assessment from the following sources, is required to pay tax in quarterly installments;

- Those who conduct a business or investment and
- receives income from employment but not subject to withholding tax under section 83

Due dates for installment payments

- In the case of a person whose year of assessment is twelve-month period ending on thirty first of March, shall pay instalments of tax on or before the fifteenth day respectively of August, November, February and fifteenth day of the next succeeding year of assessment: or

- In any other case on or before the fifteenth day after each three-month period commencing at the beginning of each year of assessment and a final instalment on or before the fifteenth day after the end of each year of assessment., unless it coincides with the end of one of the three-month period.

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

Where

A - Is the current estimated tax payable under section 91 0or 92 by the instalment payer for assessment payment.

B - number of installment remaining as payable for the year of assessment.

C - tax already paid during the year of assessment.

In terms of the guidelines issued by the Department of Inland Revenue for filing the Statement of estimated tax and calculation of instalment payments, any Economic Service Charge (ESC) paid, Notional Tax credit and any advance instalment payment made for the current quarter are permitted to be deducted in ascertaining the net instalment payment, i.e. to be deducted from C in the formula above.

Credit for tax paid by instalments

A person who has paid tax by way of instalments for a year of assessment is entitled to claim a tax credit for such tax paid for that year of assessment.



Tax payable by Installments

ABC (Pvt) Ltd is a limited liability company and it has estimated its income tax liability to be Rs. 14,500,000 for the year of assessment 2021/22. The company has provided the following information;

| | WHT credit available | ESC credit available |
|-------------------------|----------------------|----------------------|
| 1 st Quarter | 250,000 | 1,500,000 |
| 2 nd Quarter | 125,000 | 2,300,000 |
| 3 rd Quarter | 75,000 | 1,100,000 |
| 4 th Quarter | 55,000 | 950,000 |

The actual tax liability for the year of assessment 2021/22 was Rs. 16,750,000.

Compute;

- i. The 4 quarterly installments payable
- ii. The balance income tax payable for the year of assessment 2021/22

1.3. Tax Payable by assessment (Section 82)

Tax payable on assessment are;

- a. Where a person has taxable income in relation to a gain from realization of an investment asset (i.e. capital gain); or
- b. Where a person is required to file a return of income on a self-assessment basis and who has a tax payable on taxable income.

Due dates for tax payable on assessment

A person is required to pay tax on assessment, if any, by the following dates;

- a. Where the person has a taxable capital gain – within one month after the realization of the asset
- b. Where the person has to file a Return of income on self-assessment basis – within 6 months after the end of the year of assessment for which such return of income relates to

Example

If the Return of income relates to the year of assessment 2020/21, the due date for paying tax on assessment is 30th September 2021.

1.3.1. Capital Gains tax to be paid by partnerships, trusts and executors (Section 96)

Each trustee of a trust is responsible for performing the obligations in relation to payment of Capital Gain Tax by a Trust. Where the trust has more than one trustee, such obligations shall apply jointly and severally to all trustees but may be discharged by any one of them.

Each partner of a partnership is responsible for performing the obligations in relation to payment of Capital Gain Tax by a partnership. Such obligation shall apply jointly and severally to all partners but may be discharged by any one of them.

An executor in relation to a deceased person, is responsible for performing any obligations in relation to payment of Capital Gain Tax in respect of such deceased person.

1.3.2. Statement of Estimated Tax payable (Section 91)

A person who is required to pay tax by instalments for a year of assessment, should file a statement of estimated tax payable with the Commissioner General, by the date on which the first installment is due. (i.e. for the year of assessment ending 31st March 2021 by 15th August 2020.)

The Commissioner General has specified the form of the Statement of Estimated tax payable, which requires the taxpayer to provide the following information;

- a. Estimated assessable income from each source for the year
- b. Total estimated deductible qualifying payments and reliefs
- c. Estimated taxable income
- d. Estimated tax liability on such taxable income
- e. Estimated foreign tax credits
- f. Estimated tax payable
- g. Other information under declaration section

The Commissioner General may specify any other information required to be submitted along with such statement.

Revision of Statement of Estimated Tax payable (section 91)

A person's estimate of tax payable declared as stated above would remain in force for the whole of the year of assessment, until and unless the person files a revised statement of estimated tax payable with the Commissioner General. Such revised statement would apply only for calculation of installments payable after the date the revised estimate is filed with the Commissioner General.

Instances where a statement of estimated tax payable is not required (Section 92)

The Commissioner General is empowered to specify by written notice instances where a person or class of persons who are required to pay tax by instalments, is not required to submit a statement of estimated tax payable. In such event, the Commissioner General shall make an estimate of the person's estimated tax payable for the year of assessment, which may be based on the tax payable for the previous year of assessment with an uplift, and serve a written notice on such person stating such estimate and the manner in which it is calculated. Where such notice has been served, the estimated tax payable of the person shall be such amount estimated by the Commissioner General.

2. Income Tax Returns

Chapter XI of the Act is a short, but important section that crystallizes taxpayers' obligation to file tax and information returns and enables applications for extensions of time to file. This section imposes on taxpayers the requirement to furnish the Commissioner-General with a tax return if required by law, within the time and at the place specified by that law, or as demanded by the Commissioner-General. The Commissioner-General may specify-

- (a) the form for returns;
- (b) the information to be furnished on the return and attachments, if any, required to be filed with the return; and
- (c) the manner of filing.

Taxpayers must attest to the accuracy and completeness of tax returns. If a return or part of a return was prepared by some other person for reward, that other person must also sign the return. The Commissioner-General may, by notice in writing, require a person to file fuller or additional returns (**Section 126**).

Instances where a return of income is not required to be filed (Section 94)

A return of income is not required to be filed by a person in the following instances;

- a. Where the person is a resident individual
 1. Who has no tax payable on taxable income for the year of
 2. Whose tax payable on taxable income for the year relates exclusively to employment income which has been subject to withholding tax under section 83 of the Act
- b. Where the person is a non-resident person who has no tax payable on taxable income for the year

The above provision will not affect the following circumstances

- The Commissioner General is empowered to serve a written notice on a person requiring the person to file a return
- A person may elect to file a return of income even though the person is not required to file same, where that person ceased an employment during the year

2.1. Notice to require filing

This section allows the Commissioner-General to require taxpayers who have failed to furnish a return to do so. A taxpayer who complies with such a notice may still, however, be liable for interest and a late filing penalty due to the failure to file (**Section 127**).

2.2. Return deemed to be furnished by due authority

This section provides a presumption that a return purported to have been furnished by a taxpayer was in fact furnished by that person and provides that a taxpayer's signature attests that the taxpayer is aware of all matters contained in the return. A taxpayer therefore cannot claim not to have read the return and therefore not to be liable for misstatements on that return (**Section 128**).

2.3. Information returns

This section confirms that provisions applying to returns also apply to a return of information. This includes, for example, rules about signing the return and late filing penalties (Section 129).

2.4. Extension of time to file returns

This section allows the Commissioner-General to permit a taxpayer to file late but clarifies that this does not alter the due date for payment unless an extension of time to pay is expressly granted. The Commissioner-General may grant the extension of time to file only if the taxpayer applies for the extension before the due date. A taxpayer who files within the extension deadline but pays the tax late will be liable for late payment penalty and interest, if no extension of time for payment was granted (Section 130).

2.5. Tax return duly filed

It confirms that unless the contrary is proved, a return filed by or on behalf of the taxpayer is treated as filed by the taxpayer or with the taxpayer's authority (**Section 130**).

2.6. Capital Gain Tax Return (Section 93)

A person who has taxable income in relation to a gain from realization of an investment asset, is required to file a capital gain tax Return, within one month after the realization of such asset.

A capital gain tax return shall be in the manner and form specified by the Commissioner General setting out the following;

- a. Assessable income in relation to the capital gain, including calculation of the gain
- b. Taxable income in relation to such capital gain and the tax payable on it
- c. Any tax paid by installment attributable to such gain for which a tax credit is available
- d. Any other information that the Commissioner General may specify

3. Assessments

Chapter XII of the Act sets out the rules that govern assessments. There can be more than one assessment event for a particular tax period, e.g., the initial assessment (self-assessment) by the taxpayer and a subsequent revised assessment by the Commissioner-General. Assessments and revised assessments must be made within four years except in the case where there is a fraud or a failure to furnish a tax return. This Chapter provides the IRD with the authority to undertake default, advance, and amended assessments. The Commissioner-General need not to provide detailed reasons in support of the assessment, but the taxpayer may object to the assessment in accordance with the proceedings set out in Chapter XIII.

The IRA provides for making the following 4 types of income tax assessments, under respective circumstances;

1. Self-Assessment
2. Default Assessment
3. Advance Assessment
4. Amended or additional assessment

3.1. Self-assessments (Sec. 132)

This section provides the baseline rules for taxpayer assessments. Assessments are to be made in the manner prescribed by this Act and by the relevant law to which the Act applies.

As a general matter, assessments may be based upon the information supplied by the taxpayer in a tax return and upon any other relevant information available to the Commissioner-General. Where a taxpayer calculates the amount of tax in a tax return as required by the relevant law, the taxpayer's self-assessment is an assessment. (One implication of this is that the amount of tax self-assessed is due, without requiring an assessment or review by the Commissioner-General (Section 132).

Self assessment is the most common type of assessment that is made by the taxpayer.

- a) A self assessment taxpayer who has filed a self-assessment return in the approved form in respect of a tax period (year) shall be treated as having assessed income tax payable as set out in the Return (including a "nil" amount) for that period.
- b) If the taxpayer has a loss for the period and filed a self-assessment Return, the taxpayer shall be treated as having assessed the amount of the loss set out in the Return.
- c) A taxpayer who has made a self-assessment Return may, within 30 months (i.e. 2 ½ years) of filing the respective self-assessment tax Return, apply to the Commissioner General stating the required amendments with relevant reasons, for making an amendment to the self-assessment already made. (Sec. 136)

- d) The Commissioner General may accept or refuse the request, by giving his reasons in writing.
- e) If the Commissioner General has not decided on such an application within 90 days, the Commissioner General is deemed to have decided to disallow the application and serve notice to the taxpayer on the 90th day after the application was filed.

2.2 Default Assessments (Sec. 133)

This section enables the Commissioner-General to make an assessment of the tax payable, based upon best judgement and information available if a taxpayer fails to file a tax return as required. The Commissioner-General must serve the taxpayer with notice of the default assessment.

- a) If a taxpayer has failed to file a tax Return for a tax period (year of assessment) the Assistant Commissioner may make a default assessment of tax (including a NIL amount) payable for that period, based on available evidence and to the best of his judgment.
- b) The default assessment notice shall be in writing, specifying the following:
 - i. Relevant tax period
 - ii. Amount of tax assessed
 - iii. Penalty (assessed) in respect of tax assessed
 - iv. Interest on late payments in respect of the tax assessed
 - v. Due date of payment of tax, penalty, and interest, which is not less than 30 days from the date of service of the notice
 - vi. The manner of objecting to the assessment
- c) Default assessment applies only for a tax that is collected by assessment.
- d) A default assessment shall not change the due date for payment of tax under the assessment, and late payment interest and the late payment penalty shall remain payable based on the original due date.
- e) Even after a default assessment, the requirement of filing tax Return will remain, but a Return filed after a default assessment is not a self-assessment.
- f) A default assessment may be made at any time (i.e. without any time bar)

2.3 Advance Assessments (Section 134)

This section facilitates an assessment of a taxpayer in advance of the usual due date, by notice in writing, if the Commissioner-General has reasonable grounds to believe that a taxpayer may leave Sri Lanka before the regular due date.

- a) Where the taxpayer has not filed a tax Return, and the tax is collected by assessment, the Assistant Commissioner may issue an advance assessment. An advance assessment is made before the due date of taxpayer's tax Return.

- b) Even if an advance assessment is made, the taxpayer is not relieved from the requirement of filing a tax Return
- c) Assistant Commissioner may specify that the tax and the penalty due shall be payable immediately
- d) A tax Return filed by the taxpayer after an advance assessment, is not a self-assessment Return.
- e) The advance assessment notice shall specify the following;
 - i. The relevant tax period
 - ii. Amount of tax assessed
 - iii. Penalty (assessed) in respect of tax assessed
 - iv. Due date of payment of tax and penalty, which may be a date before the tax would otherwise be due for such period
 - v. The manner of objecting to the assessment

2.4 Amended or additional assessment

This section enables the Commissioner-General to make a new assessment or revise an assessment previously made, if the Commissioner-General is of the opinion that the original assessment was incorrect and the new or revised assessment is made within the required time limits. The original assessment may be amended mainly for two reasons by the Assistant Commissioner.

- To correct the error of a carry forward loss declared for a year of assessment.
 - To correct the incorrect declaration of profit or income declared for a year of assessment.
- a) The Assistant Commissioner may amend an original assessment of a taxpayer (self-assessment, default or advance assessment) for a tax period by making necessary alterations or additions, based on such evidence available and to the best of his judgement, to ensure that (in case of a loss carried forward) the taxpayer is assessed on the correct amount of carried forward loss; and (in any other case), the taxpayer is liable for the correct amount of tax payable (including a NIL amount).

Under the IRA, a nil amount or a loss is treated as an assessment through it does not give rise to a demand for a payment.

- b) Time restrictions may apply, depending on circumstances, for making an amended assessment (an assessment revised upward or downward)
 - i. In the case of fraud, or gross or willful neglect, by or on behalf of the taxpayer, an original assessment can be amended (i.e. the assessment can be reduced or an additional assessment can be made) at any time.
 - ii. The original assessment can be amended (or additional assessment can be made), in the case of self-assessment, within 30 months (i.e. 2 ½ years) counted from the date of filing self-assessment Return, or in any other

assessment, within 30 months from the date of serving the assessment by the Assistant Commissioner.

iii. Assistant Commissioner may further amend an original assessment, not later than:

- Four years from the date of filing the self-assessment return by the taxpayer (in the case of self-assessment) or from serving the original assessment by the Assistant Commissioner (regarding other assessments); or
- One year from the date of serving the Notice of amended assessment by the Assistant Commissioner

Whichever period ends later.

However, in the event of further amending an original assessment under the latter option within one year from serving the amended assessment, Assistant Commissioner is restricted to amend only the alterations or additions made in the amended assessment to the original assessment.

It means that, where an assessment can be revised after aforesaid four-year period under the latter option, the Assistant Commissioner cannot make any change to the original assessment.

Further, it should be noted that, if an original assessment has not been revised or an additional assessment has not been made within 2 ½ years referred to in (ii) above, such original assessment cannot be amended at all under (iii) above.

c) The amended or additional assessment notice shall specify the following;

- i. Relevant tax period
- ii. The original assessment to which the amended assessment relates
- iii. The amount of tax assessed and the basis upon which the amended or additional assessment has been made
- iv. Any penalty (assessed) in respect of tax assessed
- v. Any late payment interest payable in respect of the tax assessed
- vi. Due date of payment of tax, penalty and interest (not less than 30 days from the date of service of the notice)
- vii. The manner of objecting to the assessment.

2.4.1 Time limit to amend assessment

If amendment is to be made for a self-assessment

- a. If the assessment is based on fraud or wilful evasion no time limit to issue the assessment.

b. Otherwise 30 months from the date of the self-assessment return filed.

In case of other assessments 30 months is calculated from the date the original notice of assessment served on the taxpayer.

2.4.2 Further Amendments

Further amendment is possible within latter of

- (a) four years after
 - i. the date of return furnished for self-assessment by the tax payer.
 - ii. In any other case from the date of the original assessment served.

No amended assessment can be issued within 1 year from the earlier assessment. (**Section 135**).

2.5 Application for Making an Amendment to a Self-assessment

When the self-assessment return has been filed by the tax payer and after that if there is any amendment is due according to the view of the tax payer may make an application to CGIR, within 30 days of the self-assessment return. CGIR may decide either to accept the application or not. Such decision shall be conveyed to the tax payer within 90 days of application being filed. (**Section 136**).

4. Objections and Appeals

Chapter VI provides taxpayers with the process for challenging a tax assessment or other decision of the officers of the IRD and provides procedural safeguards and required timelines for both taxpayers and the Commissioner-General. Notably, the Chapter streamlines and makes more efficient the review and appeal processes. However; taxpayers are required to pay or provide security for their disputed tax debts and that interest will be charged on unpaid amounts. This type of procedure is guaranteed to recover taxes within shorter periods and also no incentives will be allowed for taxpayers for delaying in resolving disputes or to bring frivolous disputes forward.

- a) Except as provided under the Chapter on “Objections and appeals” in the IRA, any decision relating to payment of a tax under that Act should not be disputed at the Tax Appeal Commission, in any Court or Tribunal or any other proceedings on any other grounds; and the amount and particulars of every assessment made by the Commissioner General in respect of a taxpayer should be treated as correct and the liability of the taxpayer should be determined by the Assistant Commissioner accordingly. (Sec. 137)
- b) In a conflict between the provisions under the IRA and any other written law, the provisions of the IRA shall prevail. (Sec. 138)

3.1 Administrative Review (Section 139)

A taxpayer who is dissatisfied with an assessment or other decision, may request the Commissioner General to review the decision.

A request for administrative review must be made to the:

- Commissioner-General in writing
- Not later than thirty days after the taxpayer was notified of the decision,
- And must specify in detail the grounds upon which it is made.

Writing an appeal

ABC Limited has filed the Income Tax Return for the year of assessment 2020/21 on the 30th of November 2021. The Department of Inland Revenue has issued an assessment dated 15th December 2021. The reasons for the assessment and the explanation provided by the accountant for each of the reasons mentioned have been given as follows;

| Reasons given | Accountant's explanation |
|--|--|
| Entertainment allowance paid to employees amounting to Rs. 1,500,000 has been disallowed under section 10. | This amount has been considered for PAYE purposes |
| Tax payable has not been paid | The withholding tax credit on Interest income amounting to Rs. 450,000 has not been considered. The installment payments have been all made on or before the due date. |
| The bad debt of Rs. 2,300,000 is a provision and has been disallowed under section 10 | This amount has been written off as a bad debt as the company lawyer has sent a letter of demand and the company is hoping to institute legal action |

Draft an Appeal to the Commissioner General against the assessment issued.

The Commissioner General is required to acknowledge the receipt of every request within 30 days of receipt, and if so acknowledged, the date of acknowledgement shall be treated as the date of receipt of such request.

If the objection (request for review) is against an assessment made in the absence of a Return, the request shall be sent together with a Return duly made.

This request shall be considered by an office other than the officer who made the assessment or decision. The Commissioner General shall notify the taxpayer in writing of the decision and the reasons for same.

The Commissioner General shall give effect to the decision by confirming the assessment, making an amended assessment or an additional assessment or taking such other necessary action.

Request for administrative review does not suspend the collection of tax, unless the Commissioner General grants an extension of time as specified in the Act. (Sec. 142). CGIR may hear the evidence & maintain the records for such hearing and also ensure that CGIR shall determine the administrative review within 90 days.

Where a taxpayer has not made a valid request within thirty days as specified, CGIR can accept late requests for review in case of

- Absence in country
- Sickness or
- Any other acceptable reason

If a person is dissatisfied with the results of an administrative review, the person may appeal to the Tax Appeal Commission.

General provisions relating to appeals

- *Section 141* (Burden of Proof) lays the burden of proof on the taxpayer or person making an objection to an assessment.
- *Section 142* (Appeals do not Suspend Collection of Amounts) makes clear that despite an objection or appeal, the tax liability remains due and payable, unless the Commissioner-General grants an extension of time. The Commissioner may decide to accept payments in installments or appropriate security for the disputed tax liability.

Appeal Procedure

Explain the appeal procedure to be followed, in the event a default assessment is received under the Inland Revenue Act No. 24 of 2017.

3.2.3 Finality of Assessment

Section 143 stipulates that if the deadlines imposed for a review of an assessment is not used or decision is missed, an assessment is treated as final. The Commissioner-General

may nevertheless issue a new or a revised assessment within the timelines permitted and a taxpayer may file an amended return but only if the tax shown on the amended return exceeds the tax assessed.

Provides that if a person is dissatisfied with the results of an administrative review, the person may appeal to the Tax Appeal Commission (TAC) with a copy to the Commissioner General within 30 days of the Commissioner General's decision. This appeal may only occur after -

- a decision has been received from the Commissioner-General; or
- Ninety days have lapsed since the request for administrative review was made.

3.3 Appeal to TAC

Procedure to be taken up with the Tax Appeals Commission upon the receipt of the determination of the CGIR.

- Receipt of the determination of the CGIR.
- Notify the Tax Appeals Commission (TAC) that the company intends to prefer an appeal within 30 days from the receipt of the determination.
- TAC to forward a copy of such notification to the CGIR and require him to transmit in writing to the TAC and the aggrieved party and his authorized representative the reasons for determination.
- The CGIR transmits his reasons in writing within 30 days of receiving the request from the TAC.
- The person aggrieved may, if he is not satisfied with the reasons given by the CGIR prefer an appeal to the TAC within 30 days from the date of receipt of the reasons from the CGIR.
- 25% of the tax as determined by the Commissioner General to be paid or a bank guarantee to be provided for an equal amount. Any amounts paid will be lying to the credit of the tax payer until the appeal is finally disposed of. A non-refundable payment of Rs. 2,500 to be made.
- The secretary to the TAC to fix a date, time and place for the hearing of the appeal and to give 42 days notice within 30 days of the receipt of an appeal from the aggrieved party.
- TAC to make a decision on the appeal within 270 days from the date of commencement of its sittings for the hearing of the appeal.

The TAC may;

1. Reduce the amount of the assessment by the overcharged amount; or
2. Increase the amount of the assessment by the under charged amount; or
3. Confirm or annul the assessment

The TAC may require the Appellant to furnish security for payment of tax, which may become payable by the appellant as may seem to the TAC to be proper

The burden of proof shall be on the taxpayer or the person making an objection to an assessment to show that the assessment is incorrect. (sec. 141)

Appeal to the TAC does not suspend the collection of tax, unless the Commissioner General grants an extension of time as specified in the Act. (Sec. 142)

The taxpayer may be allowed appeal against the assessment to Tax Appeal Commission after the deadline for appeals has passed if the Tax Appeal Commission is satisfied that owing to absence from Sri Lanka, sickness or other reasonable cause the taxpayer was prevented from giving notice of appeal within 30 days, and that there has been no unreasonable delay on the appellant's part.

Appeal to the tax appeal commission

ABC Limited has been issued an assessment for the year of assessment 2015/16, which disputes the position taken by the company that it is not required to pay income tax on the income it receives in foreign currency under the exemption available under Section 13(ddd). The company has made a valid appeal and the Commissioner General of Inland Revenue has made an inquiry into the matter in dispute and has made a determination confirming the assessment. The company has just received the notice of determination made by the Commissioner General of Inland Revenue.

Advise ABC Limited on the procedure to be taken up with the Tax Appeals Commission in respect of the assessment issued and confirmed for the year of assessment 2015/16, indicating the relevant timelines.

3.4 Appeal to the Court of Appeal (Sec 144)

Section 144 allows either party to a proceeding before the Tax Appeal Commission who is dissatisfied with the decision of the Tax Appeal Commission to file a notice of appeal with the Court of Appeal within one month after being notified of the decision. The appealing party must serve a copy of the notice of appeal on the other party to the proceeding before the Tax Appeal Commission.

- An appeal to the Court of Appeal, which may be made only on a point of law, may not be made unless an appeal request to the Appeal Commissioners has first been made, and -
 - A decision has been received from the Tax Appeal Commission; or
 - Ninety days have elapsed since the request for appeal to the Tax Appeal Commission was made and no response to the request for appeal has been received from the Tax Appeal Commission.
- If an appeal is made from a decision of the Tax Appeal Commission, the Tax Appeal Commission must provide a written statement of their decision, including

a summary of the evidence, their finding of the facts, and their conclusions on the points of law involved.

5. Recovery of Tax

The Commissioner General may proceed with this remedy once the tax payer is in default. (Section 160) Recovery Action should be commenced before the expiry of 5 years from the date on which the taxpayer was in default.

Period of limitation for collection (Section-161)

CGIR may institute action within five years of the date on which the tax payer was in default

Eg: Department can make an assessment within four years of the end of the year of assessment. Assume an assessment is issued just at the end of the period and the notice of assessment also served. If the tax payer does not make an appeal and does not pay the tax the CGIR has additional six years to collect the tax

5.1. Collection through court proceedings (Section-163)

Tax is due and payable and shall be a debt to the Government. Where a person fails to pay tax when it is due, the CGIR may commence proceeding in a court of competent jurisdiction to recover the debt outstanding in respect of the amount due.

A certificate with the signature of CGIR stating the name of defaulter the amount of tax shall be sufficient to the court to give a judgement.

5.2. Seizure of property-Through a lien (Section-164)

- Where a tax payer fails to pay a tax by the due date a lien in favour of CGIR is created in that amount (Interest + penalty + cost of collection) on all property belong to tax payer.
- A lien shall arise at midnight at the commencement of the date of default.

5.3. Execution against tax payer's property (Section165)

When the Tax payer is in default the CGIR may cause execution to be levied on the tax payers' property when the tax payer has failed to pay tax within thirty days after service of the notice.

5.4. Sale of seized property. (Section-166)

- The CGIR shall sell the seized property pursuant to a levy. The sales proceeds first to be charged against the expenses of recovery then against the liability for penalties, interest and then tax. Excess be returned to the taxpayer.
- The date time and place of sale shall be published in a gazette.

5.5. Departure Prohibition Order (Section-167)

CGIR may issue a prohibition order to stop (through immigration authorities) a tax payer from leaving Sri Lanka if the tax payer is in default and fails to pay or make satisfactory arrangement for the payment of the tax in default. This prohibition order shall remain in force until withdrawn by the CGIR.

5.6. Priority in bankruptcy. (Section-168)

Provide for priority in bankruptcy for tax debts, in the case of individual the trustee and the liquidator of a company which is being wound up.

5.7. Offset Against payment (Section-169)

Where a government Department, institution, or Ministry is about to make a payment to any person (other than salary and wages) that Department may apply the whole or part of that payment in respect of taxes default under 152 with consent of that person.

5.8. Collection from Third Parties (Section-170)

If the tax payer is in default, the CGIR may serve a notice in writing on a third-party debtor. After receiving the notice, the third part debtor shall remit such moneys to the CGIR and on receiving such notice, the third-party debtor shall not pay any amount to the taxpayer until the CGIR withdraws the notice.

A notice can be served on the taxpayers employer required to withhold and pay to the CGIR some part of future wages or salary that becomes payable to the tax payer. However, first Rs 75,000.00 of the wages per month shall not be subject to such order.

5.9. Compliance with Notice (Section-171)

A third party who acts upon 170 shall be treated as having acted with the authority of the taxpayer. This section shall apply irrespective of any other written law, contract, or agreement.

If the third party is unable to comply with the notice due to lack of money in the name of the taxpayer the Third party can notify the CGIR in writing with the reasons for such inability.

5.10. Preservation of Assets (Section -172)

If the Commissioner General feels that the taxpayer will not pay the full amount of tax owing and when due or the taxpayer will take steps to frustrate the recovery of the tax, the CGIR may make an application to the District Court requesting for an "Asset preservation order" to preserve the Assets.

This preservation order is valid for 90 days and may be extended by the court on application by the CGIR.

A person who fails to comply with such preservation order shall become personally liable.

5.11. Non -arm's length transferees (Section-173)

If a taxpayer's liability has not been satisfied after levy of execution on property known to the CGIR, a person who has received assets of the tax payer in a transaction that is not at arm's length in the period of one year preceding the date of the levy, is secondarily liable for the tax to the extent of the value of the assets received.

5.12. Transferred tax liabilities (Section-174)

When a taxpayer has a liability in relation to a business carried on by the taxpayer and the tax payer has transferred all or some of the assets of the business to an associate transferee shall be personally liable for the transferred liability of the tax payer in relation to the business.

5.13. Receivers (Section-175)

Receivers are required to notify the CGIR of the receiver's appointment within 14 days after being appointed.

Receiver may not dispose of an asset situated within Sri Lanka held in the receiver's capacity as receiver, without the prior permission of the CGIR.

Receiver means a person who, with respect to an asset situated in Sri Lanka is a liquidator of a company or other entity, appointed out of court or by a court, a trustee in bankruptcy, a mortgagee in a procession, an executor, administrator, or heir of a deceased individual's estate. Conducting affairs of an incapacitated individual, a successor in a corporate reorganization

5.14. Collection from parties other than tax payers - Eg ; Managers of entity (Section -149)

Instances where an entity fails to pay tax on time, manager of the entity shall be jointly and severally liable with the entity. Amounts payable to CGIR under this section shall be personal tax liability of the Manager. However, if the manager who has exercised the degree of care, diligence, and skill reasonably prudent of his capacity such liability will not be fall upon him.

"Manager" means a person act as the manager, in case of a company a director, the chief executive officer, chief financial officer, of the company.

6. Default in payment (Section-152)

The CGIR may send a notice to the tax payer demanding payment when a tax is not paid by the due date on which it became due and payable. If payment is not made

within twenty one (21) days after service of the notice, the CGIR has the right to institute action to collect amounts specified in the notice.

The tax payer shall be in default, twenty-one days after service of the notice in respect of any amounts remaining unpaid. However, where the tax payer has entered in to payment arrangement with CGIR or extension has been (Sec-151) granted by CGIR twenty-one-day rule shall not apply.

6.1. Liability of tax payer and due date- Section (145(5))

Where a tax payer fails to pay tax on the due date, the tax payer shall be liable for any costs incurred by the CGIR in taking action to recover the unpaid tax (Section-145(5))

6.2. Extinguishment of uncollectible amounts (Section-162)

If the CGIR is unable to recover an amount of tax, interest, or penalty due and payable by a person, the Minister may with the consent of CGIR and approved by the cabinet order the extinguishment of the liability as a debt due to the Government.

7. Penalties and Criminal Proceedings

The IRA provides two courses of action for the CGIR to adopt in case of non-payment of tax. They are,

1. Penalties under chapter XVII by CGIR
2. Criminal proceedings under chapter XVIII by competent court

Although, there is no imprisonment on the first category of offences and the latter offence is subjected to both fine and imprisonment, it is appropriate to treat these two types of activities as civil action and criminal action.

7.1. Offences under Chapter XVII

Criminal offences and civil offences are generally different in terms of their punishment. Criminal cases will have jail sentence as a potential punishment, whereas civil cases generally only result in monetary damages or orders to do or not do something. In the case of Criminal cases it may involve both jail sentences and monetary punishment in the form of fines.

Hence the offences under the chapter xvii has the characteristics of civil offences. The offences are,

1. Failure to register or notify the changes in tax payer. (Sec. 177)
2. Late filling of tax returns (Sec. 178)
3. Late Payments (Sec. 179)
4. Negligent or Fraudulent under payment (Sec. 180)
5. False or misleading statements (Sec. 181)
6. Failure to maintain documents or provide facilities (Sec. 182)

8. Failure to comply with 3rd party notice (Sec. 183)
9. Transfer pricing penalties (Sec. 184)
10. Failure to comply with notice to give information (Sec. 185)

Burden of Proof

As per sec. 176(4), burden of proof on all the above cases are on the Commissioner General of Inland Revenue. The proof of the cases is to be done on a balance of probability.

I. Penalty on failure to register or notify the changes in tax payer. (Sec. 177)

When a person has a taxable income, he is required to register with the CGIR not later than 30 days after the end of the basis period for that year.

In addition to this he should notify any changes of Name, Address place of business, etc. If he fails to register he is shall be liable to pay a penalty of Rs. 50,000.00

Example:

Mr. A has a taxable income of Rs. 750,000.00 for the Y/A 2020/21. However, he has not registered for income tax. If A has not registered on or before 30th April 2021, he is subjected to pay a penalty of Rs. 50,000.00 for failure to in terms of Sec. 177.

II. Late filling of tax returns (Sec. 178)

The penalty imposed on late filing of tax returns are;

- a. 5% of the amount of tax payable plus 1% of the amount of tax due for each month or part of the month.
- b. Fifty thousand plus, further 10,000 for each month or part whichever high

Example:

Mr. B carries a business of wholesale and retail trade and he is a registered tax payer for the year of assessment 2020/2021 he has failed to furnish the tax return on the 30th November as required by Law.

However, tax payer has furnished the tax return on the 31st March 2022. The tax due on the return amounts to 2,000,000. The penalty on the late return will be calculated as follows.

| | |
|--|-----------|
| Tax due on 30th November 2021 but not paid as per return | 2,000,000 |
| Penalty (5%) | 100,000 |
| | 2,100,000 |
| Penalty for December (2,000,000 x 1%) | 20,000 |
| January (2,000,000 x 1%) | 20,000 |
| February (2,000,000 x 1%) | 20,000 |
| March (2,000,000 x 1%) | 20,000 |
| Total Penalty & Tax - | 2,180,000 |

In addition to this interest will also be accrued to the total amount of tax at 1 ½ % for each month.

III. Late Payments (Sec. 179)

- A person who fails to pay all or part of a tax due for a tax period within 14 days of the due date shall be liable to pay 20% of the amount of tax.
- If he fails to pay all or part of tax on due date **specified in a notice of assessment** the penalty of 20% will be payable.
- When a person fails to pay all or part of **the instalment** after the 14 days of due date shall be liable to pay 10% of the amount of the tax due.

However, no penalty is due if CGIR has given extension period for the instalment payments.

Late filing and penalties

Compile a brief memorandum addressed to the board of directors of ABC Limited on the consequences such as time bar provisions and penalties arising from late filing of income tax return in terms of the Inland Revenue Act No. 24 of 2017.

IV. Negligent or Fraudulent underpayment (Sec. 180)

Where tax is underpaid or incorrect statement or material omission as a result of intentional conduct or negligent. If under payment is,

- i. Higher than 10 million or
- ii. Higher than 25% of the person's tax liability

Penalty to be charged - 75% of the underpayment.

If the above conditions are not satisfied it will be 25% of the under payment.

Example:

Mr. X has to furnish the tax return. As per return tax payable amount is 200,000.00. However, it is found after the audit the amount under paid is 300,000.00. The penalty is calculated as follows.

| | |
|---------------------------------|---------|
| Persons tax liability - | 200,000 |
| 25% of the person's liability - | 50,000 |
| Amount of under payment - | 150,000 |

Therefore, amount of under payment is higher than 25% of the person's liability. Hence penalty will be 75% of the under payment. That is $300,000 \times 75\% = 225,000$

V. **False or Misleading statements (Sec. 181)**

If any person makes a statement to a tax official that is Misleading or false statement which would result in the tax liability being computed to be less than correct amount or If it is a refund it would have been higher than actual amount if the statement accepted by the tax official, the person is liable to pay penalty greater of,

- 50,000 or
- The amount by which tax payable or refund would have reduced or increased if it were determined on the basis of such false statement.

The statement includes,

1. Any document, notice, certificate, any report etc.
2. Any information which is also be furnished under this Act
3. Any reply made by a person to any question asked by any tax official.

Example:

Mr. D is the owner of a Manufacturing business. He has provided false statement of debtor balance in respect of whole sale dealer. It is found that debtors balance declared as Rs. 100,000 is less than actual value for the Y/A 2020/21 due to this it is found that the total tax payable amount reduced to 28,000.00. Hence penalty on the above misleading statement, would amount to Rs. 50,000.00

VI. **Failure to maintain documents or provide facilities (Sec. 182)**

Under Sec. 120(3), it is necessary to keep proper book and records by any person who is carrying on a business. Failure to maintain proper records render the person liable to a penalty of 1,000.00 per day till failure continues. However, CGIR shall issue warning notice and if he complied with the notice NO penalties will be levied.

Failure to provide facilities & assistance to tax official - maximum penalty of 10,000.00 shall be imposed.

VII. **Failure to comply with third party notice (Sec. 183)**

When a tax payer is in default, the CGIR may serve a notice to a third-party debtor. On receiving such notice, the third party debtor, shall pay the CGIR the amount the tax payer is in default. Third party debtor means a person who owes money to defaulter.

If a person fails to comply with this notice, he shall be liable for a penalty of 25% of the tax payable by the defaulter.

Example:

Mr. X as a third-party debtor asked to pay Rs. 300,000.00 on behalf of a default tax payer by the CGIR. Mr. X failed to comply with this notice. Mr. X is subject to penalty of Rs. 75,000.00 (25% of Rs. 300,000.00)

VIII. Transfer pricing penalties (Sec. 184)

1. Required documents not maintained – 1% of aggregate value of transaction.
2. Required document not furnished – Penalty of Rs. 250,000.00
3. Non-disclosure of required information – 2% of aggregate value
4. Documents have not been submitted on specified date – Rs. 100,000.00
5. Concealed the particulars of his income – 200% of the value of additional tax
6. Furnishing inaccurate particulars of income – 200% of the value of additional tax

IX. Failure to comply with notice to give information (Sec. 185)

Penalty of not exceeding 1 million

However, if a person liable for penalty shows reasonable cause for the failure to comply with the provision of the Law, the CGIR may

1. Refrain whole or in part from assessing the penalty
2. Remit or waive in whole or part & penalty that has been levied.

Further except under negligent and fraudulent under payments in all other cases the period of limitation for assessing a penalty shall be five years after the violation which causes the penalty. Person's liability to pay penalty arise on the making of an assessment by the CGIR.

Penalties

Explain the applicable penalties that will arise in relation to following offences.

1. When a company fails to register with the Commissioner General as required in section 102.
2. When a company has filed the Return for the year of assessment 2020/21 on 30th June 2022. The tax payable as per the Return amounts to Rs. 6,000,000.
3. When a company has made the 3rd quarter installment for the Y/A 2020/21 on 30th of May 2021.
4. When a company fails to pay correct amount of tax as a result of undisclosed income in income tax return. The amount underpaid is estimated to be Rs. 5,000,000. Such amount is less than 20% of the company's total tax liability.
5. When a company's value of transaction is less than arm's length price in relation to the transactions with associated enterprise.

6.2. Criminal Proceedings

Evasion

Sec189 – A person may guilty of an offence. If he,

1. Willfully evade or attempts to evade tax.
2. Willfully and fraudulently claim a refund of tax which the person is not entitled.

If the person is convicted under the offences stated above, he is liable to pay a fine not exceeding 10 million rupees or imprisonment for a term not exceeding two years or both such fine and imprisonment. In proceeding against any person for evasion the burden of proof that the person has evaded the tax lies on the tax department. The burden lies with the state to prove that a person has evaded tax by these means and must proof beyond reasonable doubt to make a person liable under this provision.

In the case of *Jayanetti Vs Mitrasena* the department prosecuted for making a false return of Income. One of the issues for decision in the appeal was statements of a confessional nature admissible in evidence. The confession was held admissible AC is not prevented by secrecy provisions from disclosing statements and facts in his possession to the state council.

In the case of *Chellappa Vs CIR* it was held that to attract punishment, the omission must be done deliberately with evil intention of defeating unlawfully the object of the state by knowingly presenting false picture.

1. If evidence confirm an undisclosed income it is possible to issue assessment. Then it is a rebuttable presumption that tax payer has not declared the correct income.
2. In such a case burden of proof will be on the tax payer to rebut the assessment is correct. However, in case of willful evasion or fraud, the burden of proof rest with the department.

6.3. Impeding administration

A person who willfully impedes or attempt to impede the Department shall be liable on conviction for a fine of not exceeding 1 million.

Impedes administration means,

1. Fails to comply with a request to produce documents or appear before official of the department.
2. Fails to file a return
3. Producing false identity member or making false statement.
4. Refuse to produce any document requested by tax official.
5. Fails to maintain records or fails to comply with notice.
6. Impedes the determination assessment or collection.

6.5. Failure to preserve secrecy (Sec. 191)

If any person fails to preserve secrecy and violates confidentiality provision under section 100, he is guilty of an offence and shall be liable on conviction for a fine not exceeding 1 million rupees or imprisonment for a term not exceeding one year or both fine and imprisonment.

6.6. Offences by tax officials

Any tax official who performs any duty under this Act ask for any pecuniary or other benefit in cash or in kind from any person except an officer lawfully entitled, commits as offence and liable on conviction for a fine not exceeding 1 million or imprisonment not exceeding 1 year or to both fine and imprisonment. Further in addition to this court may impose the tax that has not paid as a result of officer's wrongdoing which is not recoverable from the tax payer.

The CGIR may compound an offence with a fine (except under Sec. iii and iv) if the person concerned request the same in writing. However, request must be made to CGIR before commencement of the court proceedings.

7. Interest

7.1. Liability for Interest (157)

If a tax payer has not paid the tax by the due date, he is liable for interest from the due date. Unlike penalty, interest is payable even though extension of time for payment of tax given by the CGIR.

Interest to be calculated separately. In case of revised assessments, the due date for calculation of interest shall be the original due date of the tax.

7.2. Refund late interest (158)

If the CGIR has to pay back the interest recovered from the tax payer, which is not due from taxpayers, and has to be refunded to the tax payer from the due date of the tax payable or date of payment of the tax whichever is later.

Example:

Department issued an assessment on Mr. A for the Y/A 2020/21.

As per assessment the due date of tax payment is on or before 31st March 2020.

Tax payer made the payment with interest accrued to it. However, it has been transpired at the appeal that the return is acceptable as it is. The tax payer has paid the interest and taxes on 10th of March 2017. However, in case of tax refund, no interest shall be payable if this refund of tax has been made within 60 days of claim for such refund.

According to section 159

1. Rate of interest on any interest payable by the taxpayer- 1 ½ % per month or part of the month.
2. Rate of interest on any interest payable by the CGIR to a tax payer- ½ % per month or part of the month.

Example

A person's tax amounting to 100,000/- fell due on 1st June 2020. The tax and interest payable are calculated as follows.

| | |
|------------------------------------|---------|
| Tax due on 1st June 2020 - | 100,000 |
| Interest for June - 1 ½ % - | 1,500 |
| | 101,500 |
| Interest for July - 1 ½ % - | 1,522 |
| | 103,022 |
| Interest for August - - | 1,545 |
| | 104,567 |
| Interest for September - | 1,568 |
| Tax+Interest payable on 30.09.20 - | 106,135 |

The tax is Rs. 100,000/- and interest is 6135/-

8. Rulings

“Rulings” as a concept is not new to the Inland Revenue law. The same concept has been incorporated into the Inland Revenue Act No.10 of 2006 under Sec: 208A. The purpose of incorporating such a concept into tax law is to maintain consistency & uniformity in tax administration while providing a guidance to general public & to tax administrative officers. This concept has been brought into the new Inland Revenue Act in a more elaborative manner under the headings of “public & private rulings”.

8.1. Public Rulings (sec 104:)

Public rulings set out the CGIR's interpretation with regard to the application of Inland Revenue Act. CGIR may issue public rulings in order to overcome the ambiguities that may be caused in interpreting the provisions of the Act. This may offer to all kinds of users of the Act an opportunity to rely upon the public rulings as a guidance in interpreting the grey areas of the Act.

A public ruling will be issued by the CGIR by publishing the notice of ruling in the Gazette and in Department web site. In publishing the ruling, it should be given a particular identification number & should state it to be a public ruling for all purposes of tax. Further a heading referring to the subject matter of the ruling has to be stated & then shall set out the interpretation made by CGIR under that heading.

Once a notice of ruling is published in the gazette & in the web site of the department the particular ruling comes into force from the date specified in the ruling as to be the effective date. If no such date is specified in the ruling the effective date shall be the date of publication. From that effective date onwards CGIR is bound by the ruling to follow the same until it is withdrawn by him. CGIR may withdraw any ruling issued by him at any time having published the notice of withdrawal in the gazette and in department's website.

If it is subsequently found that any public ruling issued by CGIR is inconsistent with any existing law, it is mandatory to withdraw such ruling as to the extent it is necessary to overcome that inconsistency. The effective date of withdrawal will be specified in the notice of the withdrawal that should be published in the gazette & Department' web site.

8.2. Private Rulings

As opposed to public Rulings, private rulings will be issued in respect of a particular transaction of a tax payer setting out CGIR's position on its tax application.

Accordingly, a particular tax payer who wishes to have a private ruling be issued in respect of him, shall make a written application to the CGIR making his request. The application shall state the full details of the questioned transaction, while submitting all the documents relevant to it, specify the question precisely and also provide a full statement by the applicant setting out his opinion regarding the tax application on the questioned transaction.

When receiving an application for a private ruling, it shall be referred to a committee namely "interpretation committee" consisting of senior officers of the department appointed by CGIR. The committee may decide whether to accept or to reject the application. On Acceptance of an application, the committee would commence their review over the facts & documents available, if needed may bases on certain assumptions & would issue the ruling to the relevant applicant. CGIR may specify a reasonable fee on the applicant in this regard.

A notice of a private ruling shall state that it is a private ruling & shall have an identification as to the applicable tax payer, tax period, & transaction & states the assumptions based on issuing the ruling. CGIR may publish the ruling in Department's web site but without disclosing the identity of the applicant. A ruling so issued is binding upon the CGIR with regard to the particular tax payer in whose respect it was issued subject to that full and complete details of the transactions have been provided to CGIR. However, the ruling does not bind the CGIR in respect of any other tax payer even though on similar transactions in that tax payer's respect.

CGIR may withdraw fully /partly any ruling issued by him at any time having served the notice of withdrawal on the relevant tax payer. The withdrawal becomes effective

from the date specified in the notice. Whenever it is found that a ruling so issued is inconsistent with an existing law, it is mandatory to withdraw the ruling to the extent that inconsistency can be overcome.

There may be instances where the CGIR may reject the applications made by Tax payers requesting private rulings. Such instances are specified in the section 108 of the Act in such an instance CGIR shall provide his reasons to reject the application.

Rulings whether it is public or private in nature, represent just the opinion of the CGIR regarding the application of the provisions of the Act. Therefore, no ruling can be challenged by any tax payer by a formal way of review or objections. If a tax payer considers any ruling issued by CGIR is inconsistent with the existing law he may choose not to follow it, however if an assessment was raised on a tax payer based on such a ruling it can be challenged in any of the manner stipulated in the IRA.

9. Obligations of representatives (Section 146)

For the purposes of the IRA, “representative” of a person means;

- i. In relation to an individual under a legal disability, the guardian or manager who received or is entitled to receive income on behalf of, or for the benefit of, the individual
- ii. For a company, a director or principal officer of the company or an authorized agent residing in Sri Lanka
- iii. Where the person is a partnership, a partner
- iv. Where the person is a trust, a trustee
- v. In relation to a body of persons (other than a partnership or company), an individual responsible for accounting for receipt and payment of money or funds on behalf of the body
- vi. If the person is the Government of Sri Lanka, or a public corporation or local authority in Sri Lanka, an individual responsible for accounting of receipt and payment of money or funds on behalf of the Government or such public corporation or local authority, respectively.
- vii. Where the person is a foreign government or a political subdivision thereof, an individual responsible for accounting for the receipt and payment of money or funds in Sri Lanka on behalf of the Government or political subdivision
- viii. If the person is a non-resident, a person controlling the person’s affairs in Sri Lanka, including a manager of a business of that person in Sri Lanka.

Every company carrying on business in Sri Lanka shall be represented for the purposes of IRA by a principal officer residing in Sri Lanka and where there is none, by an authorized agent residing in Sri Lanka and shall notify the Commissioner General of its appointed representative within one month after it commences business in Sri Lanka.

Every representative of a person shall be responsible for performing duties or obligations imposed by the IRA on the person, including maintaining records, filing returns and other documents, and the payment of tax.

Entity Managers' liability (section 149)

Where an entity (any taxpayer other than a partnership, unincorporated body, or an individual) fails to pay tax on time, every manager (manager includes a director, CEO, and CFO of a company) at the relevant time shall be jointly and severally liable for payment of tax.

10. Miscellaneous

10.1. Refunds (Section 150)

- a) A refund can be claimed, if a taxpayer has paid tax in excess of the tax assessed or payable. The Commissioner General shall make the refund after setting off the excess payment in the following manner;
 - i. First against any assessed liability, interest, late fees, or penalties under the Act
 - ii. Then, unless the taxpayer objects, retain (credit) an amount as an advance payment of tax to cover the tax due within the next 6 months
 - iii. Any balance shall be refunded to the taxpayer
- b) A refund or credit can be made only if the taxpayer applies for it within 4 years of the date of payment, or if made on the initiative of the Commissioner General, within the specified period.

10.2. Extension of time for payment (sec 151)

Taxpayer may apply for an extension of time for payment beyond the due date.

10.3. Default in payment (sec 152)

- a) The Commissioner General may send a notice containing specified information to the taxpayer demanding payment of tax not paid by the due date.
- b) The taxpayer shall be in default, 21 days after the service of the notice in respect of any remaining unpaid tax, unless a payment arrangement is made with the Commissioner General or granted an extension under section 151, in respect of such remaining tax.

10.4. Priority of tax (sec 153)

- a) A person, in the event of liquidation or bankruptcy of such person shall hold any WHT held by such person and any tax due on a notice under section 170 to recover and pay tax on behalf of a third party, in trust of the Government and such amounts shall not form part of the person's estate in the liquidation or bankruptcy.

- b) Such amount shall be paid to the Commissioner General before any distribution of property is made.

10.5. Order of payment of tax debts (sec 154)

- a) The order of liability-
 - i. Interest relating to the tax
 - ii. Penalties relating to the tax
 - iii. Principal amount of the tax
- b) The Commissioner General may apply the collected tax payment to any tax which has been assessed and due.



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