

- (a) royalties, fees, or other similar payments for the use of any tangible or intangible asset;
- (b) compensation for any services, including management services, performed for the permanent establishment; or
- (c) interest on moneys lent to the permanent establishment, except in connection with a banking business.

(4) Nothing in subsection (3) prevents a deduction for an amount paid or payable by a permanent establishment as a reimbursement of actual expenses incurred by the non-resident person to third parties if the reimbursement is otherwise deductible under this Act.

(5) The total expenditures incurred by the head office of a non-resident person and allocated to a permanent establishment of the person in The Gambia for the purposes of computing the chargeable income of the person for a tax year shall not exceed one-quarter of one *per cent* of the worldwide total turnover of the person for that year.

(6) In this section, "total turnover", in relation to a non-resident person for a tax year, means the gross revenue (including the gross proceeds from the disposal of any asset used in business) received or receivable by the person in the tax year.

75. Foreign-source income of a non-resident person

The foreign-source income of a non-resident person is exempt from income tax.

Sub-Part IV - Tax Treaties

76. Tax treaties

(1) The Minister may, by an Order published in the *Gazette*, declare that a tax treaty has legal effect in The Gambia.

(2) An Order made under subsection (1) may be varied or revoked by the Minister by a subsequent Order published in the *Gazette*.

(3) Subject to subsection (4), if the terms of a tax treaty having legal effect under subsection (1) are inconsistent with the terms of this Act, the terms of the treaty shall prevail.

(4) Nothing in subsection (3) prevents the operation of Part VII of this Chapter.

(5) In this section, "tax treaty" means –

- (a) an agreement between the Government of The Gambia and the government of a foreign country providing for the relief from double taxation and the prevention of fiscal evasion; or
- (b) an agreement between the Government of The Gambia and the government of a foreign country providing for reciprocal administrative assistance in the enforcement of income tax liabilities.

PART VII - ANTI-TAX AVOIDANCE

77. Transactions between associates

(1) The Commissioner-General may, in respect of any transaction between persons who are associates, distribute, apportion, or allocate income, deductions, or tax credits between the persons as is necessary to reflect the income that the persons would have realised in an arm's length transaction.

(2) In making any adjustment under subsection (1), the Commissioner-General may determine the geographic source of income and the nature of any income, payment, or loss as revenue, capital, or otherwise.

78. Re-characterisation of income and deductions

(1) For the purposes of determining the liability of any person to tax under this Act, the Commissioner-General may –

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

(2) In this section, "tax avoidance scheme" means any transaction in which one of the main purposes of a person in entering into the transaction is the avoidance or reduction of a person's liability to tax under this Act.