



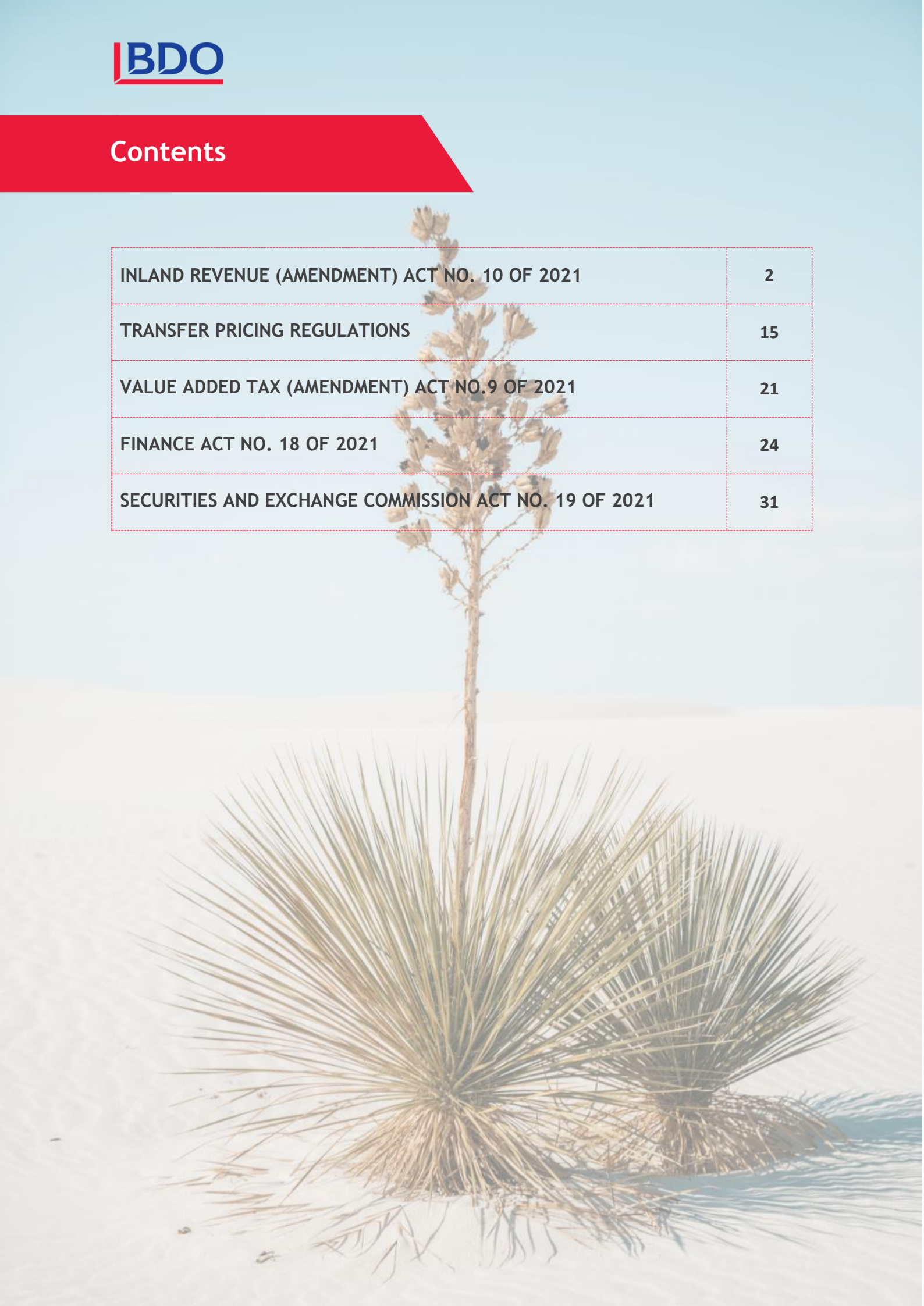
# LEGISLATIVE CHANGES 2021





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The background of the page is a photograph of a desert landscape. In the foreground, there are two yucca plants with long, thin, spiky leaves. One plant is larger and has a tall, thin stem with a cluster of small, dried flowers at the top. The ground is sandy and light-colored. The sky is a clear, light blue.



**INLAND REVENUE (AMENDMENT)  
ACT NO. 10 OF 2021**



## Income Tax

The Inland Revenue (Amendment) Act No. 10 of 2021 was certified on the 13<sup>th</sup> of May 2021, and unless otherwise specified is effective from such date.

### A. KEY EXEMPTIONS

#### Interest Income

- Received by a charitable institution where the interest is applied solely for the purpose of providing care to children, the elderly or the disabled in a home maintained by such charitable institution (with effect from April 01, 2018).
- On any loan granted by a person outside Sri Lanka to any person in Sri Lanka or to the GoSL. (with effect from April 01, 2018)
- On any foreign currency account in any commercial bank or in any specialized bank with the approval of the CBSL on or after January 1, 2020
- The interest earned from the “Special Deposit Account” opened and maintained with an authorized dealer in Sri Lanka as prescribed by regulations made by the Minister under section 29 read with section 7 of the Foreign Exchange Act, No. 12 of 2017 (excluding the subsequently renewed accounts), either in any designated foreign currency or in Sri Lanka Rupees on or after April 8, 2020;
- Any welfare society (a fund or a society which has been set up or formed for the welfare of its members or their respective families and contributions are made by its members, including benevolent fund which promotes the savings of members, but other than any company which is incorporated or registered under any law in force in Sri Lanka or elsewhere and a partnership) on or after April 1, 2020
- On interest earned by a multinational company (a company that is part of a group of associated companies, with business establishments in two or more countries) on any deposit opened and maintained in foreign currency in any domestic bank, if such deposit is maintained to cover its import expenditure on or after April 1, 2021
- A gain from the realisation of Sri Lanka international sovereign bonds issued by or on behalf of the Government of Sri Lanka and received or derived by a commercial bank or authorized dealer who made an aggregate investment not less than USD 100 million in such bonds on or after April 1, 2021.
- Income earned by any non-resident person other than a Sri Lankan Permanent establishment by way of interest, discount or realization of any gain on any sovereign bond in local or foreign currency w.e.f April 1, 2018.
- Any person by way of interest or discount paid or allowed, on any sovereign bond denominated in Foreign Currency including Sri Lanka Development Bonds w.e.f April 1, 2018.
- interest or discount accrued or derived on or after April 1, 2021 by any Samurdhi community-based banks established under the Department of Samurdhi Development from security or treasury bonds under the Registered Stocks and Securities Ordinance (Chapter 420) or treasury bills under the Local Treasury Bills Ordinance



## Dividend Income (on or after January 1, 2020)

- Dividend payment attributable to or derived from gains and profits from dividend received by the resident company. Gains and profits from dividend means the dividend received by that company after the deduction of expenses or losses, if any, subject to the provisions of the Act and income tax paid or payable on such dividend received by that company.
- Foreign dividend income of any person who holds substantial participation in the such non-resident company.
- Dividends paid to a non-resident shareholder
- Dividend paid by a company engaged in any businesses in accordance with the provisions of Part IV of the Finance Act, No. 12 of 2012 and which has entered into an agreement with the Board of Investment of Sri Lanka established under the Board of Investment of Sri Lanka Law No. 4 of 1978:
  - Entrepot trade involving import, minor processing and re-export;
  - 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;
  - Providing front-end services to clients abroad;
  - Headquarters operations of leading buyers for management of financial supply chain and billing operations;
  - Logistics services including bonded warehouse or multi-country consolidation in Sri Lanka.
- Dividends and gains on the realisation of units or amounts derived as gains from the realization of capital assets of a business or investment by a unit holder, from real estate investment trust listed in the Colombo Stock Exchange and licensed by the Securities and Exchange Commission of Sri Lanka (w.e.f April 1, 2021).

## Business Income

- The gains and profits earned or derived by any person from the sale of produce from agro farming (as defined) within the period of five years of assessment commencing from April 1, 2019.
- The gain and profits earned or derived by any person from providing information technology and enabled services (prescribed in gazette notification 2234-06 dated 29<sup>th</sup> June 2021) on or after January 1, 2020.
- Any service rendered in or outside Sri Lanka to any person to be utilized outside Sri Lanka, where the payment for such services is received in foreign currency and remitted through a bank to Sri Lanka on or after January 1, 2020.
- Any foreign source (subject to exceptions) where such gains and profits are earned or derived in foreign currency and remitted through a bank to Sri Lanka on or after January 1, 2020;
- Vocational Education Institution  
Gains and profits earned or derived by any Vocational Education Institution
  - which is standardized under TVET concept (Technical and Vocational Education and Training) and regulated by the Tertiary and Vocational Education Commission,
  - if such institution has doubled their student intake for such year of assessment compared to the student intake in the year of assessment immediately preceding that year of assessment.
  - Exemption is available for a period of five years commencing on April 1, 2021.  
(For this purpose, if such institution which doubled the student intake as provided in for first year and maintained the same student intake of the first year for the period of next four years shall be deemed as an institution which fulfilled the requirement of exemption in each year of such period of four years)
- any business of export of gold, gems or jewellery or from the business of cutting and polishing of gems which are brought to Sri Lanka and exported after such cutting and polishing, where such gains and profits earned in foreign currency are remitted through a bank to Sri Lanka, with effect from April 1, 2021;

## Others

- Any sum received by any person from the president fund or the National Defence Fund w.e.f April 1, 2018.
- Any sum received by any Public Corporation out of the funds voted by parliament from consolidated fund or out of any loan arranged w.e.f April 1, 2018.
- Any amount derived on or after April 1, 2018, by any non-resident person as any payment for air craft, software licenses or as for other related services from the Sri Lanka Airlines Limited.
- Any amount derived by any non-resident person from laboratory service or standards certification service on or after January 1, 2020.
- Any religious institution which is registered with Ministry by way of Grants and Donation on or after January 1, 2020.

## B. KEY CONCESSIONS

### Listing of companies

Aggregate income tax payable by any company (other than on gains from the realization of investment assets) which lists its shares on or after January 1, 2021 but prior to December 31, 2021 in the Colombo Stock Exchange licensed by the Securities and Exchange Commission of Sri Lanka will be halved for the year of assessment commencing from April 1, 2021 (2021/2022).

### Dividends paid by Multi-national companies (MNCs)

Income tax payable on gains and profits from dividend by Multi-National Companies shall be

- **reduced by 25%** for the year of assessment commencing from April 1, 2021 (2021/2022) and
- **reduced by 50%** for the two years of assessment immediately succeeding that year of assessment (2022/2023 and 2023/2024)

subject to the fulfilment of conditions either,

- increase in exports (other than specified undertakings) by thirty per centum in year of assessment commencing from April 1, 2021 (2021/2022) compared to the immediately preceding year of assessment; or
- - increase in exports (other than specified undertakings) by fifty per centum in year of assessment commencing from April 1, 2022 (2022/2023) and maintains such status in the subsequent year of assessment, compared to the years of assessment 2020/2021.

## C. REMITTANCE TAX

A non-resident person who carries on a business in Sri Lanka through a permanent establishment, is liable to pay income tax at the rate of 14% at the time of such remittance. However, the tax rate applicable will be 0% if the total income earned is retained in Sri Lanka and the following conditions are satisfied;

- a. Retain the total income earned in any year of assessment commencing on or after April 01, 2021 in Sri Lanka for a minimum of three years commencing from the first day of the succeeding year of assessment in which the income is earned;
- b. Invested the same in Sri Lanka to
  - (i) expand its business or
  - (ii) acquire shares or securities from Colombo Stock Exchange or
  - (iii) Acquire any treasury bill, treasury bond of Sri Lanka International Sovereign Bond issued on behalf of the government of Sri Lanka



## D. INVESTMENT INCENTIVES

Gains and profits received or derived from business (other than any gains from the realization of capital assets and liabilities of the business) by a person from following new undertakings (which is not formed by splitting-up or re-construction of an existing undertaking) commenced on or after April 1, 2021. Tax exemption can be claimed during the specified period subject to the meeting the stipulated criteria.

The tax exemption period for the below sectors shall be reckoned from the year of assessment in which

- the undertaking commences to make profits from transactions entered into in that year of assessment; or
- from the commencement of the year of assessment immediately succeeding the year of assessment in which the undertaking completes a period of two years reckoned from the date on which the undertaking commences to carry on commercial operations, *whichever occurs earlier*.

Sector	Criteria	Tax holiday
Recycled construction materials	<ul style="list-style-type: none"> <li>○ sells construction materials recycled in a selected separate site established in Sri Lanka</li> <li>○ recycle the materials which were already used in the construction industry.</li> </ul> <p>In the event the recycled materials are used by the same person for construction services, this exemption can be claimed by deeming such materials as have been sold to the construction service business at market price</p>	10 years
Business commenced after vocational education	<ul style="list-style-type: none"> <li>○ business commenced on or after April 1, 2021</li> <li>○ by an individual</li> <li>○ after successful completion of vocational education from any institution which is standardized under TVET concept and regulated by the Tertiary and Vocational Education Commission.</li> </ul>	5 years
Manufacture and supply of boats or ships in Sri Lanka	<ul style="list-style-type: none"> <li>○ an undertaking commenced by a resident person</li> <li>○ in manufacturing of boats or ships in Sri Lanka and received or derived</li> <li>○ any gains and profits from the supply such boats or ships.</li> </ul>	7 years
Renewable energy projects	<ul style="list-style-type: none"> <li>○ “renewable energy project” established with a capacity to generate a minimum of 100MW solar or wind power and</li> <li>○ supplies such power to national grid.</li> </ul>	7 years
Construction and installation of communication towers	<ul style="list-style-type: none"> <li>○ any undertaking commenced on or after January 1, 2021</li> <li>○ by any resident person</li> <li>○ who constructs and installs the communication towers and related appliances using local labour and local raw materials in Sri Lanka or</li> <li>○ provide required technical services for such construction or installation.</li> </ul>	5 years
Letting bonded warehouse	<ul style="list-style-type: none"> <li>○ any undertaking commenced on or after January 1, 2021</li> <li>○ for letting bonded warehouse or warehouses related to the offshore business in the Colombo and Hambanthota Ports</li> </ul>	Unspecified

## E. QUALIFYING PAYMENTS - ON SPECIFIC INDUSTRIES

- Expenditure incurred by any financial institution by way of cost of acquisition or merge of any financial institution;
  - expenditure incurred with effect from April 1, 2021
  - Cost is ascertained considering all facts and confirmed by Central Bank  
Treated as a deductible expenditure shall be apportioned in equal amounts over period of three years of assessment and be deductible commencing from the year of assessment where the expenditure is incurred. Any non-deducted amount can be carried forward to be deducted in future years.
- Expenditure incurred by any person on or after April 1, 2021;
  - In production of film at a cost of not less than Rs. 5,000,000/- (including promotional expenditure)
  - In the construction and equipping a new cinema at a cost not exceeding Rs. 25,000,000/-
  - In upgrading a cinema at a cost of not exceeding Rs. 10,000,000/-  
Allowed a deduction as qualifying payment to one third of the taxable income. Any amount not deducted can be carried forward to deduct in the next succeeding year.

## F. QUALIFYING PAYMENTS - INDIVIDUALS

- Personal allowance - Rs. 3,000,000, for each year of assessment commencing on or after January 1, 2020
- Expenditure relief - Following payments subject to a maximum of Rs.100,000 per month or Rs.1.2 million per annum is deductible, with effect from January 1, 2020 in calculating the Personal Income Tax: -
  - Health expenditure including contributions to medical Insurance
  - Vocational education or other educational expenditure incurred locally by such individual or on behalf of such individual's children
  - Payment of interest on housing loans
  - Contributions made to any local pension scheme, other than for a scheme under the employer or on behalf of the employer, by an employee
  - Expenditure incurred for the purchase of equity or security
- A resident individual who has acquired solar panels to fix on his premises and connected to the national grid, Rs. 600,000 for each year of assessment, up to the total expenditure on such solar panels or up to the amounts paid to a bank in respect of any loan obtained to acquire such solar panels.
- Contribution made by a resident individual in money or otherwise to establish a shop for a female individual who is from a Samurdhi beneficiary family as instructed and confirmed by the Department of Samurdhi Development - w.e.f April 1, 2021

## G. TAX RELIEF MEASURES TO FACILITATE POST COVID 19 ECONOMIC RECOVERY

- Commissioner General shall write off any income tax arrears payable by any small and medium enterprises commencing from April 1,2019 if;



- Such arrears due to any assessment made up to the year of assessment ending March 31, 2019
- Which is outstanding as at June 26, 2020 in the records of the Commissioner General.
- If such assessment is made as per the provisions of Inland revenue acts No. 24 of 2017, No 10 of 2006, No. 38 of 2000 or No. 28 of 1979
- Subjected to the deduction of any refunds duly claimed
- Where return has been duly filed by the small and medium enterprises and the tax declared in the return has been paid it will not be amended by IRD for the year of assessment 2019/2020, where the Assistant Commissioner is satisfied that there is no fraud or willful neglect involved.
- The Commissioner General shall not impose any penalties or initiate any criminal proceedings against a person who;
  - Files return for the year of assessment 2019/2020 before June 30, 2021.
  - Make the final tax payment for the year of assessment 2019/2020 before June 30, 2021.

## H. ADVANCE PERSONAL INCOME TAX

An employer is required to deduct Advance Personal Income Tax with effect from April 1, 2020 on any employment payment made to his employee,

- a) if such employee is a non-resident or non-citizen of Sri Lanka; or
- b) if a resident and citizen of Sri Lanka gives his consent, as specified by the Commissioner General.

## I. ADVANCE INCOME TAX

With effect from April 1, 2020, a taxpayer who is a resident in Sri Lanka may make a request to the withholding agent to deduct Advance Income Tax from the payment of dividend, interest, discount, charge, natural resource payment, rent, royalty, premium or similar periodic payment that the payment or allocation has a source in Sri Lanka. On the receipt of such request, a withholding agent shall deduct Advance Income Tax as specified by the Commissioner General.

## J. WITHHOLDING TAX (WHT)

There is no mandatory obligation to withhold tax on dividend, interest, discount, charge, natural resource payment, rent, royalty, premium or retirement payment after January 1, 2020 on resident payments. Withholding tax at the rate of 14% will continue to apply on payments as winnings from a lottery, reward, betting or gambling.

WHT on service fee with a source in Sri Lanka paid to resident individual has been removed with effect from January 1, 2020. However, the payments made as interest on deposits, discount, charge, natural resource payment, rent, royalty, premium service fee or an insurance premium with a source in Sri Lanka will have an exposure to WHT if paid to a non-resident person. The relevant WHT rates are as follow;

- Interest or discharge - 5%
- All other payments - 14%

The following income subject to WHT will be final withholding payments on or after January 1, 2020;

- amounts paid as winnings from a lottery, reward, betting or gambling, other than amounts received in conducting a business consisting of betting and gaming;
- payments made to a non-resident person who is not a citizen of Sri Lanka or to a non-resident entity that is subject to withholding, other than payments derived through a Sri Lankan Permanent Establishment; and
- Interest paid or treated as being derived by a non-resident individual who is a citizen of Sri Lanka other than following:
  - (i) Interest paid and falling within the relief threshold of Rs. 3,000,000/- for a year of assessment
  - (ii) Payments consist of assessable income other than interest if such total does not exceed the relief threshold.

#### K. BASIS OF COMPUTATION - EMPLOYMENT INCOME

##### Changes retrospectively effective from 01.04.2018

In calculating an individual's gains and profit from employment income for a year of assessment the following shall be excluded-

- A discharge or reimbursement of the person's dental, medical or health insurance expenses where benefit is available "in the same **grade** of the service" on equal terms.
- Contributions made by an employer to an employee's account with a pension, provident, **gratuity** or savings fund or savings society.

#### L. BASIS OF COMPUTATION - BUSINESS INCOME

##### Deduction of expenses

- **Special Deductions for repairs and improvements**

From April 01, 2021, any expense incurred in relation to repairs of a depreciable asset used in the production of income shall be deducted without any restriction, irrespective of whether it is capital nature or not.

The deduction of expenses for improvements will continue to be restricted as follows;

- the case of **improvement** to a class 4 depreciable assets, five percent of the written down value of the asset at the end of the previous year.
- In all other cases, 20% of written down value of the asset at the end of the previous year.

*"improvement" means the expenditure incurred by a person to make additions or alterations to a depreciable asset which enhances the value of such asset, but excludes the expenditure incurred to maintain or repair a depreciable asset which temporarily enhances the value of such asset.*

- **Marketing and communication expenses**

For any year of assessment commencing on or after April 1, 2021, marketing and communication expenses incurred by a person in the production of income shall be deducted irrespective of whether it is of a capital nature or not in calculating a person's income from a business.



Marketing and communication expenses means any expenses incurred by any person in-

- a. Carrying out a market research by such person or any institution in Sri Lanka on his behalf;
- b. The development or production of marketing, advertising and communication campaign to the extent that such development or production is carried out in Sri Lanka;
- c. Advertising on mainstream media or social media including television, radio, print or as outdoor advertising;
- d. Product launches or campaign activation carried out by such person or by any local institution on his behalf;
- e. Development and printing of point-of-sale material by such person or by any local institution on his behalf.

- **Temporary concession on marketing and communication expenses**

Every person shall be entitled to an additional deduction of Marketing and communication expenses equal to 100% of the total expensed from above for three years of assessment commencing from April 1, 2021 subject to the following;

- a. the payment shall be made to a person who is not an associated person of the tax payer;
- b. internal marketing expenses, salaries of marketing staff, expenditure on maintaining an internal marketing department, expenditure on corporate social responsibility initiatives and foreign travel expenses shall not be considered for the purpose of the additional deduction;
- c. expenditure shall be attributable to goods and services with 65% of local value addition, the mode of calculation of which shall be as specified by the Commissioner General;
- d. the total additional deduction shall not exceed Rs. 500,000,000 in any year of assessment;
- e. the Commissioner General shall specify the further requirements.

- **Deductible amount of finance cost (w.e.f. April 1, 2021)**

Section 18 restriction on deducting financial costs will only be applicable to a company incorporated in or outside Sri Lanka (other than a financial institution) which has an issued share capital. Therefore, this restriction on deductibility will not apply to other entities like partnerships, sole proprietorships etc.

Previously, the threshold on deductibility was computed differently for manufacturing companies and non-manufacturing companies. However, the law has now been revised to apply a common base of **4 x** total of the issued share capital and reserves of the company as at the end of the year. Further the finance cost is to be matched with ***value of financial instruments on which the financial cost incurred during the year.***

- **Temporary Concession on Deductible amount of finance cost**

- a. Finance cost (other than Brought Forward finance cost from previous years) is deductible in full in the year of assessment 2021/2022.
- b. Year of assessment 2021/2022 shall not be recognized for the six-year period of which every person entitled to carried forward the disallowed finance cost.

### Extension of other temporary concessions

- a. Enhanced Capital Allowances to be extended for a further 3 years until Y/A 2023/2024.
- b. Additional 100% deduction on R&D expenditure (as defined in Section 15) to be extended for a further 2 years until Y/A 2022/2023

- **SME companies**

An SME Company is entitled to be taxed at a concessionary rate of income tax. However, when such company no longer satisfies the SME criteria then it will be liable to pay tax at the normal corporate income tax rate. There is a restriction on deducting losses incurred at a lower rate against profits taxed at a higher rate. However, this restriction will not apply to an SME w.e.f April 1, 2021.

The definition of SME has been widened to include the following;

“The person’s or its associate’s aggregate annual gross turnover is less than Rs. 500,000,000, if such associate is an entity or entities.”

Accordingly, any person who has associates will continue to be treated as SMEs where the aggregate turnover of all such associates does not exceed Rs. 500,000,000.

### Banking business

- **Loans provided to person completing vocational education**

Where a financial institution provides a loan for new businesses commenced on or after April 1, 2021 by any individual after successful completion of vocational education from any Vocational Education Institution, the cost of funds on such loan shall be deemed to be incurred in the production of income of such financial institution and deductible when computing the assessable income from business.

- **Specific provision for a debt claim**

A person conducting a banking business is entitled to deduct specific provision for a debt claim in accordance with the relevant directives made by the Central Bank of Sri Lanka. The amending law has defined “directives made by the Central Bank of Sri Lanka” to mean “any directives issued to make specific provisions relating to bad and doubtful debts under subsection (1) of section 76J of the Banking Act No. 30 of 1988 or under subsection (1) of section 12 of the Finance Business Act, No. 42 of 2011 or under subsection (1) of section 9 of the Finance Companies Act, No. 78 of 1988 by the Central Bank of Sri Lanka and applicable to the relevant year of assessment, but **excludes any directives issued in relation to the adaption of Sri Lanka Accounting Standards.**”

Where a person conducting a banking business has previously allowed specific provision for a debt claim and such amount has been reversed, reduced or paid during the year in full or in part, such amount shall be taxed as that person’s income.

Persons conducting a banking business will be required to prepare and retain records in respect of specific provision for a debt claim, in the form prescribed by the CGIR. “debt claim” has been defined as *“does not include the right to receive a payment on deposits, debentures, stocks, treasury bills, promissory notes, bills of exchange and bonds”*.

#### M. CAPITAL GAIN TAX

Gains from the realization of investment assets will be taxed at the rate of 10% as Capital Gains. The calculation of Capital Gain is based on the consideration received and the cost of the investment asset.

“Consideration Received” has been redefined as the amount received or receivable or the assessed value at the time of realization of such asset, *whichever is higher w.e.f April 1, 2021.*

“Assessed value” means the value at the time of realization, certified by a professionally qualified valuer in a valuation report.

The tax official has been given the authority to determine the consideration if the assessed value is not indicative of the market value.

#### N. MAINTAINING SEPARATE ACCOUNTS

With effect from the year of assessment commencing from April 1, 2021, where any person is engaged in business or investment activity and the income tax payable shall be calculated by applying different tax rates for such part of taxable income from any gains and profits from business or investment activity or may have exempted amounts as the case may be, such person shall maintain and prepare the financial statements to separately identify such part of taxable income from gains and profits in applying each income tax rate to each part of the taxable income or to identify the exempted gains and profits.

#### O. YEAR OF ASSESSMENT

Where a trust or company is unable to submit the accounts for the period of twelve months of the year of assessment (31<sup>st</sup> March), they may apply to the Commissioner General requesting that the accounts based on an alternative period of twelve months be used to compute the income tax payable for a given year of assessment.

#### P. PAYMENT OF TAX IN QUARTERLY INSTALLMENTS

Other income will also be considered when making quarterly instalments. In calculating the estimated Tax Payable the advance personal income tax deducted by an employer or to be deducted by the employer for the year of assessment can be deducted prior to applying the formula given for installment payments.

A partner in a partnership will be entitled to a tax credit in calculating the amount of current instalment payable on his/her share of the tax credit from the partnership (without right to refund).



## Q. E-FILING TAX RETURNS

A company which is incorporated in or outside Sri Lanka or a public corporation **shall only** file its tax returns electronically using a computer system or mobile electronic device with effect from April 1, 2021.

## R. INDIVIDUAL TAXATION RATE

The following income tax rates will apply on the taxable profits of an individual with effect from 01<sup>st</sup> January 2020;

### i. Personal Income tax rates

Taxable Income	Income Tax Rate
First Rs. 3 Mn	6%
Next Rs. 3 Mn	12%
Balance	18%

### ii. Income tax rate applicable on the terminal benefits (Commuted pension, retiring gratuity, ETF or Approved compensation) on or after January 1, 2020;

Total Terminal Benefits from Employment	Income Tax Rate
First Rs. 10 Mn	Exempt
Next Rs. 10 Mn	6%
Balance	12%

### iii. An individual's gains and profits from the consideration received in respect of gems and jewelry and amount received on the supply of electricity to national grid generated using renewable energy resource shall be taxed at the maximum rate of 14% with effect from April 1, 2021.

### iv. The income from a business of betting and gambling, manufacture and sale or import and sale of any liquor or tobacco product shall be taxed at the rate of 40%

## S. TAX RATE FOR PARTNERSHIP

Taxation on partnership is re-introduced and the tax rates are as follows from 1<sup>st</sup> January 2020

Where the partnership income includes gains from the realization of an investment asset such gains to be taxed at the rate of 10%. Any balance to be taxed at the rate mentioned below;

Taxable income for a Year of Assessment	Tax Payable
Not exceeding Rs. 1,000,000/-	0% of the amount in excess of Rs. 0
Exceeding Rs. 1,000,000/-	6% of the amount in excess of Rs. 1,000,000/-

#### U. TAX RATE FOR TRUST

The tax rate applicable for trusts will be 18% with effect from January 1, 2020.

#### V. TAX RATE FOR COMPANY

The profits of a company will be taxed as a single business where there is only one tax rate that is applicable. However, where multiple tax rates apply to different activities and sources of income, each such different activity and source shall be treated as distinct businesses and sources.

The following income tax rates will apply on the taxable profits with effect from 01<sup>st</sup> January, 2020;

Industry	Income Tax Rate
Gain and profit from SME (subject to exceptions), Exports (as defined), Specified undertaking, Promotion of Tourism, Education, Healthcare, Construction, and Agro Processing	14%
Dividend received from resident company	14%
Gains and profits derived by any export company which is registered with the Board of Investments of Sri Lanka from the consideration received in respect of health protective equipment and similar products supplied to the Ministry of Health, Department of Health Services, Sri Lanka Army, Sri Lanka Navy, Sri Lanka Airforce, Sri Lanka Police and COVID Center	14%
Gains and profits of any company which lists its shares on or after January, 1 2021, but prior to December 31, 2021, in the Colombo Stock Exchange licensed by the Securities and Exchange Commission of Sri Lanka, for three years of assessment commencing from April 1, 2022	14%
Gains and profits from the consideration received in respect of gems and jewellery	14%
Gains and profits from the supply of electricity to national grid generated using renewable energy resource ( April 1, 2021)	14%
Manufacturing	18%
Trading, Banking, Finance, Insurance, etc. (Standard Rate)	24%
Manufacture and sale or import and sale of any Liquor or Tobacco and conducting Betting and Gaming	40%

#### I. TAX RATE FOR UNIT TRUST MUTUAL FUND AND NON GOVERNMENTAL ORGANIZATIONS

The tax rate applicable for unit or mutual funds and Non-Governmental organisations trusts will be 24% with effect from January 1, 2020.

## TRANSFER PRICING REGULATIONS

Tax Time

36•-  
+  
246•+  
X  
7,131•+  
0•X  
721•-  
4•X  
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The Inland Revenue Act No. 24 of 2017 in section 76, 77 and 78 provide the law relating to Transfer Pricing (“TP”) in Sri Lanka. The Minister of Finance by gazette extraordinary No. 2217/7 dated 2<sup>nd</sup> March 2021 published the regulations relating to transfer pricing (“TP Regulations”) and will be effective from the 1<sup>st</sup> of April 2020.

Transfer pricing laws govern transactions between associated enterprises and mandates that all transactions between such undertakings must be concluded at Arm’s Length Price (“ALP”). The TP regulations provide the methodologies in determining the Arm’s length price. The regulations also specify the criteria to be used in determining the most appropriate method for evaluating transactions between associated undertakings.

Transfer Pricing requires that transactions between associated enterprises should be at “arm’s length price”. In determining the arm’s length price, the following will be taken into consideration;

- Functions performed
- Assets employed
- Risks undertaken

## A. APPLICATION OF TRANSFER PRICING REGULATIONS

The regulations apply to international transactions as well as domestic transactions. In the event of international transactions, transactions between a Permanent Establishment (PE) and its Head Office or other branches of the Head Office also fall within the purview of transfer pricing.

In the case of domestic transactions, transactions between a local entity and its associate enterprises under the following criteria are considered. Domestic transactions specified by the regulations include transactions where:

- One of the AE’s are enjoying tax exemptions under the BOI regime or the previous Inland Revenue Acts.
- The AE enjoys different/ concessionary tax rates
- The AE is incurring a tax loss in the current year of assessment or the immediately preceding year of assessment which is brought forward to the current year.

## B. IDENTIFYING ASSOCIATED ENTERPRISES (“AE”)

Two enterprises will be deemed to the AEs if at any time during the year of assessment, any of the following conditions are satisfied;

### 1. Participation in capital

- any person or enterprise holds, directly or indirectly shares or otherwise carrying the majority of the voting power in the other enterprise
- any person or enterprise holds, directly or indirectly, shares carrying not less than fifty percent of the voting power in each of such enterprise

## 2. Through Management

- more than half of the board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of one enterprise, are appointed by the other enterprise
- more than half of the board of directors or members of the governing board, or one or more of the executive directors or members of the governing board, of each of the two enterprises are appointed by the same person or persons

## 3. Exercising Control

- loans advanced by one enterprise to another enterprise constitute not less than 51% of the book value of the total assets of the other enterprise provided that it is not given by a **financial institution** which is not considered as an associated enterprise under any other item of the regulation
- loans and equity provided by one enterprise to another enterprise constitute not less than 51% of the book value of the total assets of the other enterprise provided that it is not given by a **financial institution** which is not considered as an associated enterprise under any other item of the Regulation
- one enterprise guarantee not less than 25% of the total borrowings of the other enterprise

## 4. Other

- 90% or more of the raw materials, semi-finished goods and consumables required for the manufacture or processing of goods or articles carried out by one enterprise, or of purchases required for the sale, are supplied by the other enterprise, or by person specified by the other enterprises, and the prices and other conditions relating to the supply are influenced by such other enterprise
- the goods or articles manufactured or processed by one enterprise are sold/transferred to another enterprise or to persons specified by the enterprises, and the prices and other conditions relating thereto are influenced by such enterprise or vice versa
- where one enterprise is controlled by an individual or jointly by such individual and his relative, and the other enterprise is controlled by such individual or his relative or jointly by such individual and his relative or jointly by relative of such individual
- where one enterprise is a firm, association of persons or body of individuals, the other enterprise holds not less than ten per cent interest in such firm, association of persons or body of individuals
- where the controlled transaction differs from the transactions that would have been made or imposed by any person not directly participating in the management, control or capital as mentioned in Section 76 or 77, but confers a potential advantage to the enterprise

## C. DETERMINING ARM'S LENGTH PRICE

The transactions between two associated enterprises (AEs) shall be within an arm's length price, according to the Section 76 and Section 77 of the Act. The arm's length price shall be determined by the application of the most appropriate method to the facts and circumstances of the case from any of the methods outlined below.

1. CUP method
2. Resale price method
3. Cost plus method
4. Transactional net margin method (TNMM)
5. Profit split method.

### Pricing Methods

#### Comparable Uncontrolled Price Method

The method compares the price charged for property or services transferred in a controlled transaction with the price charged for property or services in a comparable transaction undertaken between independent parties. To be considered a CUP, an uncontrolled transaction has to meet high standards of comparability.

#### Resale Price Method

The Resale Price Method (RPM) is based on the gross margin or difference between the price at which a product is purchased and the price at which it is on-sold to a third party. The resale price less the arm's-length gross margin is considered to be the arm's-length transfer price for the goods. This method is typically most appropriate to distributors and resellers.

#### Cost Plus Method

The Cost Plus method seeks to determine an arm's-length range of prices for a transaction by identifying the costs incurred by the vendor of the goods or services in a controlled transaction and then adding an arm's-length mark-up to that cost base. The mark-up should be comparable to what a third party would earn if it performed comparable functions, bore comparable risks, owned the same assets and operated in comparable market conditions.

#### Transactional Net Margin Method

The TNMM tests the net profit margin earned in a controlled transaction with the net profit margin earned by the related party on the same transaction with a third party or the net margin earned by a third party on a comparable transaction with another third party.

The net profit margin can be measured against a number of bases including sales, costs or assets, and in practice is typically applied by targeting an operating margin within a set range.

#### Profit Split Method

The Profit Split Method (PSM) seeks to determine the way that a profit arising from a particular transaction would have been split between the independent businesses that were party to the transaction. The PSM divides the profit based upon the relative contribution of each related party business to the transactions enterprise as determined by their functional profile and, where possible, external market data.



### Arm's length Range

The application of the pricing to the transactions carried out with associated enterprises during the year of assessment the interquartile range is considered to be the arm's length range. Where the actual price for a controlled transaction between associated enterprises is within the arm's length range, the actual price shall be treated as the arm's length price. If the price not within the arm's length range, the median (50th percentile) in the arm's length range will be treated as the arm's length price for such transaction

## D. DOCUMENTATION REQUIRED

The TP regulations require taxpayers who are engaging in transactions with AEs to maintain certain documentation in order to establish that the transactions are done at an arm's length price. The following documents have been specified under the transfer pricing regulations.

1. Local File
2. Master File
3. Country by Country Report

### Threshold to prepare and maintain the Documentation

Document name	Threshold to prepare	List of documents/ information to be included
Local File	Aggregate controlled transactions exceeds 200Mn (LKR) from each year of assessment.	Annexure I of TP Regulations (The transaction excludes dividend and granting/repayment of loan capital).
Master File	Enterprises whose declared gross revenue exceeds 50 million Euro or its equivalent in LKR for each Y/A as recorded in the books of account commencing from Y/A 2020/ 2021.	Annexure II of TP Regulations
Country by Country Report	Each Ultimate Parent of the MNE group that is resident for tax purposes in Sri Lanka/ Constituent Entity (in the absence of an international agreement) shall file this if the group total consolidated group revenue less than 750 Million Euro or its equivalent in LKR during the financial year immediately preceding the Reporting Fiscal Year as reflected in its Consolidated Financial Statements for such preceding Fiscal Year.	Annexure III of TP Regulations

### Submission of Transfer Pricing Documentation

The taxpayer who is required for the maintain the documentation for transfer pricing need to be submit to the Commissioner General of Inland Revenue with within 60 calendar days of the written request being duly issued to taxpayer.

### Preparation and Submission of Transfer Pricing Disclosure Form

Enterprises, who aggregate controlled transactions that exceed LKR 200 million with associated enterprises shall prepare and file an annual transfer pricing disclosure form along with the Return of Income as per the format disclosed in Annexure IV

### Non-requirement of maintaining fresh documents

Where any controlled transaction continues to have effect over more than one year of assessment, fresh documentation need not be maintained separately in respect of each year of assessment, unless there is any significant change. Such as the nature or terms of such transaction, the assumptions made.

### Submission Country-by-Country Report

The Country-by-Country Report is required to be filed no later than 12 months after the last day of the Reporting Fiscal Year of the MNE Group.

## E. PENALTIES

The regulations 6 (f) have stipulated certain penal provisions for non-compliance with the TP regulations as referred to in Section 184 of the IRA as tabulated below

Non-compliance with TP regulation	Penalty
Required documents have not been maintained	1% of aggregate value of transactions with AEs
Required documents have not been submitted	A sum not exceeding Rs. 250,000
Non-disclosure of any required information	2% of aggregate value of transaction with its AEs
Required documents have not been submitted on the specified date	A sum not exceeding Rs. 100,000
The taxpayer has - (a) concealed the particulars of his income, or furnished inaccurate particulars of such income; and (b) sought to evade by reason of concealment of particulars of his income or the furnishing of inaccurate particulars of such Income	200% of the value of additional tax

**VALUE ADDED TAX (AMENDMENT)  
ACT NO.9 OF 2021**



## VALUE ADDED TAX (VAT):

Value Added Tax (Amendment) Act No. 09 of 2021 (“VAT Amendment Act”) was certified on the 13th of May 2021.

### IMPOSITION OF VAT

Value Added Tax (VAT) is the main indirect tax revenue source in Sri Lanka. The VAT law imposes this tax on consumer consumption of goods and services and at the point of import. There were several changes that were made since 1<sup>st</sup> December 2019.

### RATE REVISIONS

- The VAT rate has been reduced from 15% to 8% on imports and/or supply of goods or supply of services with effect from 01st December 2019
- The VAT rate applicable on financial services remain unchanged at 15%.
- VAT is payable on garments and fabric which are sold locally by a company approved by the Board of Investment (BOI). The VAT rate on sale of garments has been reduced from Rs. 100 to Rs. 25 with effect from 1st January 2021.

### REGISTRATION THRESHOLD

The registration threshold for VAT was Rs. 3 million per quarter or Rs. 12 million per annum. With effect from 01<sup>st</sup> January 2020, the VAT registration threshold was increased to Rs.75 million per quarter or Rs. 300 million per annum.

The VAT Amendment Act allows a taxpayer to voluntarily register for VAT (optional VAT scheme) upon a written request made by any person who supplies goods or services and carries on a taxable activity or who imports any taxable goods, even if such person is not within the VAT registration threshold. However, any person registered under this optional VAT scheme will not be eligible for registration under the Simplified Value Added Tax Scheme except in the following circumstances:

- Taxable supplies exceed Rs. 75 million per quarter or Rs. 300 million per annum; or
- An exporter who proves to the satisfaction of the Commissioner General that his total supplies have been exported; or
- A person who is willing to register for the Simplified Value Added Tax Scheme as a Registered Identified Supplier as approved by the Commissioner General.



The criteria for zero rating have been revised in the VAT Amendment Act. The zero rating is available only for goods and services where the payment is received in foreign currency through a bank licensed under the Banking Act, No.30 of 1988 within a period of six months from the end of the taxable period. Any input tax attributable to zero rated supply of goods or services shall not be deducted if the payment in respect of supply of goods or services is not received in foreign currency through a bank in Sri Lanka licensed under the Banking Act, No. 30 of 1988 within a period of six months from the end of the taxable period.

### Exemptions

The following exemption have been introduced;

- Sale of Condominium housing units other than any lease or rent of residential accommodation with effect from December 1, 2019.
- Information technology and enabling services (prescribed in gazette notification 2234-07 dated 29th June 2021) on or after January 1, 2020.
- Supply of services in respect of inbound tours, by a travel agent registered with the Sri Lanka Tourism Development Authority with effect from April 1,2020.
- Quantities supplied/ donated of health protective equipment and similar products by export oriented BOI companies to the Ministry of Health and Indigenous Medical Services, Department of Health Services, Tri Forces and Sri Lanka Police on their request on or after April 29, 2020.
- Machinery and equipment including medical, surgical, surgical and dental instruments, apparatus, accessories and parts thereof, hospital/ medical furniture and drugs, chemical and similar items required for the provision of health services to address the COVID 19 Pandemic from May 20, 2020.
- If any commodity has been exempted from VAT at its importation point the domestic production of that commodity will also be exempt from VAT.

**FINANCE ACT NO. 18 OF 2021**



## KEY FEATURES

1. Imposition of a tax on voluntary disclosure of undisclosed taxable supplies, income and assets
2. Introduced provisions to write off tax arrears and penalties under certain laws.
3. Date of commencement of the Act 15<sup>th</sup> September 2021

## STEP BY STEP GUIDE TO THE VOLUNTARY DISCLOSURE



## ELIGIBILITY FOR TAX AMNESTY

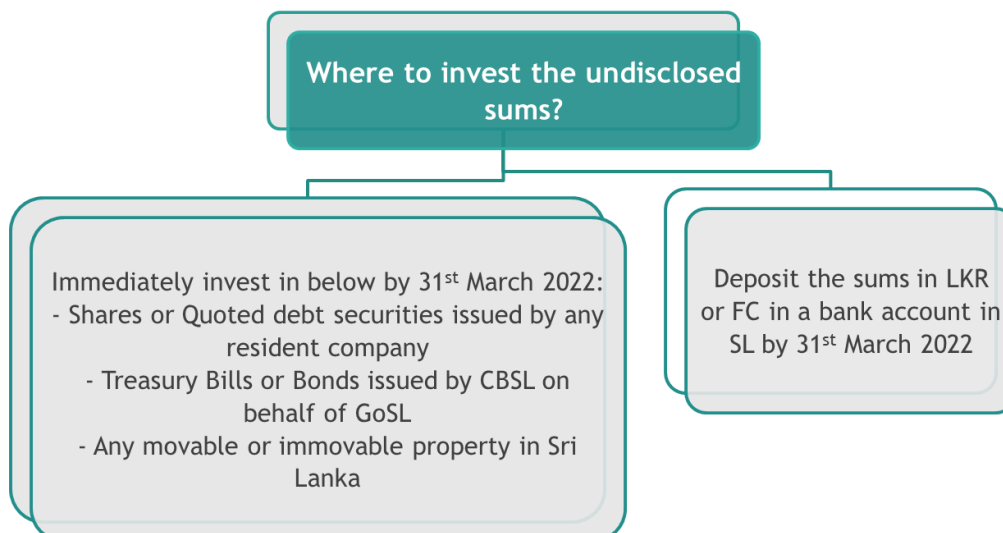
Any person who has not disclosed any taxable supply, income or asset which was required to be disclosed in a Value Added Tax Return for any taxable period ended on or prior to 31<sup>st</sup> March 2020 or in a return of income for any year of assessment ended on or prior to 31<sup>st</sup> March 2020 under the following laws:

- Inland Revenue Act No. 28 of 1979
- Inland Revenue Act No. 38 of 2000
- Inland Revenue Act No. 10 of 2006
- Inland Revenue Act No. 24 of 2017 “IRA”
- Value Added Tax Act No. 14 of 2002 “VAT”

## SPECIFIC EXCLUSIONS

1. Any person with investigations or legal proceedings in respect of undisclosed taxable supplies, income or an asset and/or convicted of an offence under the following laws:
  - Prevention of Money Laundering Act, No. 5 of 2006
  - Convention on the Suppression of Terrorist Financing Act, No. 25 of 2005
  - Bribery Act (Chapter 26)
  - Conventions Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, No. 1 of 2008
2. Any person who has an ongoing assessment under the Inland Revenue Acts, VAT Act, Betting and Gaming Levy Act, Finance Act, No. 11 of 2002, Stamp Duty Act, No. 43 of 1982 or Stamp Duty (Special Provisions) Act, No. 12 of 2006.

## UNDISCLOSED TAXABLE SUPPLY OR INCOME HELD AS MONEY





## UNDISCLOSED TAXABLE SUPPLY OR INCOME INVESTED IN ASSET

If any person has invested his amount of undisclosed taxable supply, income or asset prior to September 15, 2021, in:

- a) shares issued by a resident company
- b) treasury bills or treasury bonds issued by the CBSL on behalf of GoSL
- c) any quoted debt securities issued by a resident company in SL
- d) any movable or immovable property in or outside SL; or
- e) a bank in Sri Lanka as a deposit (in any account maintained in LKR or FC)

Such person is also allowed to make a Declaration under the Finance Act and above investments, or deposits can be declared

## TAX ON VOLUNTARY DISCLOSURE (TVD)

TVD on disclosure of any movable and immovable Property = Market Value of such property on the date of declaration X 1%

TVD on disclosure of any amount other than movable and Immovable Property = amount or income invested or deposited X 1%

The tax paid will not be an expenditure or a tax credit as per IRA Act and will not be refunded under any circumstances.

### How to pay the tax - IRD guidelines (Sep 17<sup>th</sup> 2021)

- Existing taxpayers - use the same TIN for payment of TVD
- New taxpayers - obtain a TIN from the IRD to make the payment
- Use the formal tax paying-in-slip of the IRD to pay the tax.

### Details for the payment slip

- Tax type code - 28
- Payment period code - 22000
- Payment category - S
- Payment voucher code - not required
  
- Pay the tax to the Bank of Ceylon Branch located at IRD Head Office or to any other branch
  
- When paying the Tax for amounts to be declared in a currency other than LKR, the Tax must be paid @ 1% of the equivalent amount in LKR calculated according to the exchange rate on the date of the payment of Tax.

## TAX ON VOLUNTARY DISCLOSURE (TVD)

1. Pay the TVD
2. Submit the duly filled declaration on or before 31<sup>st</sup> March 2022 with supporting documents. Format of the declaration is specified in the Act and published on the IRD portal for individuals and entities.
3. Declarants are required to attach following documents
  - Photostat copy of paying-in slip
  - Certified copy of NIC/Passport
  - Authentic documents to prove the ownership, date of acquisition and cost or market value of the asset declared in the declaration.
  - If the declarant intends to collect the acceptance of the declaration by registered post to another address which was not mentioned in the declaration, a request letter which such details.

## ACCEPTANCE OF THE DECLARATION

1. If the declaration is in accordance with the Act - the CGIR will inform the declarant in writing within 30 days of receipt
2. If the declaration is not in accordance with the Act - the CGIR will reject the declaration and inform the declarant in writing with reasons for rejection (by registered post) within 30 days of receipt. In this event, the declarant can remedy the errors and submit a fresh declaration within 30 days of receipt of the rejection letter.
3. If no acknowledgement is received within 30 days - the declaration is deemed to be accepted

CGIR and any officer of the IRD shall preserve and aid in preserving official secrecy in respect of the identity of the declarant and anything contained in the declaration.

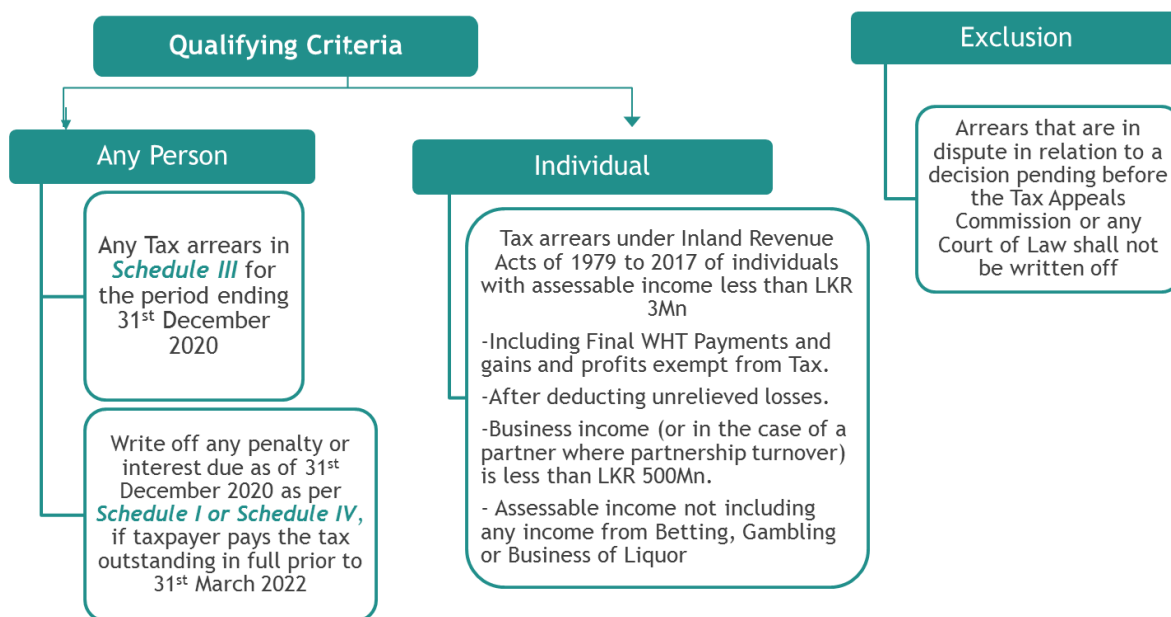
## IMMUNITY GRANTED TO DECLARANTS

A declarant whose declaration has been accepted by Commissioner General is entitled to enjoy full exemption from liability to pay any tax, penalty, interest or from any investigation and prosecution under the following laws in relation to any period ending on or prior to March 31, 2020:

- Inland Revenue Acts of 1979, 2000, 2006 and 2017
- Value Added Tax Act No. 14 of 2002 (unless tax has been collected by the declarant)

Immunity is not available if the declarant has provided false or incorrect information

## PROVISIONS TO WRITE OFF TAX ARREARS UNDER CERTAIN LAWS



## TAX ARREARS TO BE WRITTEN OFF - SCHEDULE III

PART A	PART B
<ul style="list-style-type: none"> <li>• Wealth Tax and Gifts Tax imposed under Inland Revenue Act, No. 28 of 1979</li> <li>• Turnover Tax Act, No. 69 of 1981</li> <li>• Surcharge on Wealth Tax Act, No. 25 of 1982</li> <li>• Surcharge on Wealth Tax Act, No. 08 of 1989</li> <li>• Surcharge on Income Tax Act, No. 26 of 1982</li> <li>• Surcharge on Income Tax Act, No. 12 of 1984</li> <li>• Surcharge on Income Tax Act, No. 7 of 1989</li> <li>• National Security Levy Act, No.52 of 1991</li> <li>• Save the Nation Contribution Act, No. 5 of 1996</li> <li>• Goods and Services Tax Act, No. 34 of 1996</li> <li>• Surcharge on Income Tax Act, No. 6 of 2001</li> <li>• Debits Tax Act, No. 16 of 2002</li> <li>• Social Responsibility Levy imposed under Finance Act, No. 5 of 2005</li> <li>• Economic Service Charge Act, No. 13 of 2006</li> <li>• Nation Building Tax Act, No. 9 of 2009</li> <li>• Economic Service Charge imposed under Finance Act, No. 11 of 2004</li> </ul>	<ul style="list-style-type: none"> <li>• Optional Value Added Tax imposed under section 25H of the Value Added Tax Act, No.14 of 2002</li> <li>• VAT Advance Payment deducted under section 26A of the Value Added Tax Act, No.14 of 2002</li> </ul>

## PENALTY OR INTEREST TO BE WRITTEN OFF UPON PAYMENT OF TAX

Schedule I	Schedule IV
<ul style="list-style-type: none"><li>• Inland Revenue Act No. 28 of 1979</li><li>• Inland Revenue Act No. 38 of 2000</li><li>• Inland Revenue Act No. 10 of 2006</li><li>• Inland Revenue Act No. 24 of 2017</li><li>• Value Added Tax Act No. 14 of 2002</li></ul>	<ul style="list-style-type: none"><li>• Betting &amp; Gaming Levy Act, No. 40 of 1988</li><li>• Finance Act, No. 11 of 2002</li><li>• Stamp Duty Act, No. 43 of 1982</li><li>• Stamp Duty (Special Provisions) Act, No. 12 of 2006</li></ul>

## REFUNDS TO BE OFFSET AGAINST ARREARS

- Subject to a confirmation in writing, refunds duly claimed will be set off against any tax arrears written off.
- Setting off penalty is limited to the period before the refund is due





**SECURITIES AND EXCHANGE  
COMMISSION ACT NO. 19 OF 2021**



10/1/2016	4.32
9/1/2016	4.01
8/1/2016	3.65
7/1/2016	3.49
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11/1/2015	5.45
10/1/2015	5.90
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8/1/2015	4.32
7/1/2015	5.78
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The new Securities and Exchange Commission Act No. 19 of 2021 ('the Act ') has been certified by the speaker on 21<sup>st</sup> September 2021 and it was made law. It repeals and replaces the Securities and Exchange Commission Act No. 36 of 1987.

The process of drafting the Act commenced in the year 2007 with the assistance of experts from the World Bank and experts from Sri Lanka, in an attempt to keep abreast with the laws that are followed by other countries with regard to security market. The new Law is drafted preliminary to cater to the demands of the market, regulate market institutions, public offers of securities and market intermediaries, deal with market misconduct, overcome the challenges faced by the securities market regulators and at the same time to protect the investors and provide for enforcement measures.

The Act comprises of seven Parts and at the beginning of each Part, the 'object and purpose' of that particular Part is described in a broad manner. Thus, providing an indication of what is sought to be achieved through the provisions contains in such Part.

Seven Parts are as follows.

**Part I** - Preliminary matters such as Application, object and purpose of the Act,

**Part II** - Markets and Market Institutions,

**Part III** - Issue of Securities,

**Part IV** - Trade in Unlisted Securities,

**Part V** - Market Misconduct,

**Part VI** - Finances, and

**Part VII** - provides for general matters such as the implementation of the Act and punishments and enforcement mechanisms.

## THE SALIENT FEATURES OF THE ACT

The Act contains many important provisions that will ensure efficiency, predictability and consistency in the regulation of the country's securities market.

### **Markets and Market Institutions**

The provisions contained in Part II under Markets and Market Institutions are one of the most important part of the new Law. Section 27, 37 and 56 in this part respectively stipulate the rights and duties of an Exchange, a Clearing House and a Central Depository. Furthermore, it elaborates the requirements that must be fulfilled if a license is to be obtained, when a license may be cancelled and the right of recourse if a licensed is cancelled, the effect of the rules of these market institutions, appointment of directors and duties of an auditor and many more.

Furthermore, Section 188 defines as to who 'market intermediaries' are, as well as individual definitions of those who belongs to this category. It is pertinent to note that the Act has redefined the 'Market Intermediaries' and has added a few more categories of persons. They are 'corporate finance advisor', 'market maker', 'derivatives broker' and 'derivatives dealer. This introduction of market makers is vital since they play an important role in the functioning of the market with a direct contact with investors. Further certain requirements have been identified in Chapter 3 of Part III under the heading 'Protection of clients' assets. These regulations will ensure continued and efficient exchange of securities between the buyers and sellers.

In addition to the market intermediaries, as per Section 97 of the Act, the Commission may require the registration of those who deal with clients for and on behalf of a market intermediary. This helps to earn public confidence.

#### **Issue of Securities and maintenance of good corporate governance practices**

Part III deals with 'Issue of Securities' and the object and purpose of this Part is to regulate the issue of securities, to ensure timely disclosure of financial information by listed companies, to require auditors to disclose financial irregularities, to issue license to market intermediaries and register their representatives, and to protect assets of the clients.

As per Section 80, the Commission having taken into consideration 'the volume of securities, class of securities, the number and type of investors, the nature of the issuer or the nature of the securities market' may by rules made under this, require that the approval of the Commission be obtained prior to certain type of public offers of unlisted companies. This is done in order to ensure accountability of funds solicited from the public,

Based on the disclosures made to the public, if any wrongdoing is detected the Commission or the market institutions will be entitled to call for information from listed companies. Even though this is currently carried out by the Colombo Stock Exchange, these provisions have been specifically included in the new Act.

Furthermore, the approval of the Commission for certain appointments of the market institutions and comply with fit and proper criteria by the directors or chief executive officer of a listed company is also vital. Another new feature is that Auditors of listed companies, market institutions and market intermediaries have been obliged to report certain irregularities that he become aware of during the ordinary course of the performance of his duties.

#### **Main Market Offences**

**Part V** of the Act deals with the main market offences. The object and purpose of this Part shall be to facilitate for the deterrence and the taking of enforcement action against -

- a) all types of market manipulation including false trading, market rigging and securities fraud; and
  - b) insider trading,
- with a view to establishing a fair, orderly and transparent securities market.

This Part is divided into two Chapters containing '**Prohibited Conduct**' and '**Insider Trading**'.

As per Section 128 to 132 of the Act, false trading and market rigging, stock market manipulations, making false or misleading statements, frequently inducing persons to deal in securities and use of manipulative and deceptive devices are the five offences which have been identified under Prohibited Conduct. Thus, the Act has clearly spelt out the Prohibited Conduct, therefore it is not difficult to understand as to what ingredients must be present to establish the commission of an Offence under this Part.

The Act has clearly described the aspects relating to insider trading. Thus, when a person is considered to be an insider, what exactly such person is prohibited from doing, what would amount to information, what are the information which has a material effect to price/value of securities, when such information is generally available and also defenses available in respect of a charge of insider trading have been clearly elaborate in the Act. This will help to avoid any uncertainty or ambiguity relating to those aspects.

As per Section 147 of the Act, a person who contravenes sections 128, 129, 130, 131, 132 and/or subsections (2) and (3) of section 137 commits an offence and shall be liable on conviction to a fine of not less than ten million rupees or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment. Furthermore, steps will be taken to institute criminal proceedings in High Court for offences under this Part, unlike the Magistrate's Court proceeding which were followed under the previous Act. Furthermore, the prosecution will be conducted by the Attorney General.

The right of the Commission to recover damages and seek civil penalties is another new feature that has been introduced by Section 152 of the Act. Such proceedings can be instituted against a person who has committed an offence under Part 5 of the Act. Furthermore, the Commission has the discretion to enter into an agreement with any person to pay with or without admission of liability an amount equal to three times the gross amount of the pecuniary gain made, or the loss avoided by such person as determined by the Commission.

#### **Power of the Commission to impose administrative sanctions and protect investors' Assets**

This is another new feature introduced by the new Act. Depending on the nature and manner of the contravention, non-compliance or breach and its impact, Section 178 of the Act stipulated that the Commission has the discretion to impose administrative sanctions such as reprimand, penalty, restitution, imposing a moratorium on or prohibiting trading etc. Furthermore, Section 179 of the Act has stipulated the steps that can be taken by the Commission to protect investors' Assets.

Provisions for the protection of Whistle blowers have been included to facilitate the restricting of market malpractices. This is clearly spelt out in Section 172 of the Act.

The Commission has been vested with wider powers and discretion to perform its functions in meaningful and effective manner. At the same time there are several checks and balances to control such powers vested to the Commission and not to exceed their authority. Thus, striking the right balance to regulate the stock market in keeping with current international best practices.



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