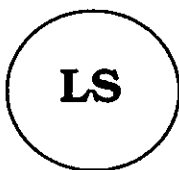


COMMONWEALTH OF DOMINICA

ACT No. 5 OF 1992.

I assent

C.A. SEIGNORET
President.

11th June, 1992.

AN ACT TO AMEND THE INCOME TAX ACT, CHAP. 67:01.

(Gazetted 18th June, 1992.)

BE IT ENACTED by the Parliament of the Commonwealth of
Dominica as follows:

1. This Act may be cited as the –

Short title.

INCOME TAX (AMENDMENT) (No. 2) ACT, 1992.

2. In this Act the Income Tax Act is referred to as “the Act”.
Interpretation.
Chap. 67:01.

Repeal and replacement of the Second Schedule of the Act. Chap. 67:01.

3. The Second Schedule of the Act is repealed and replaced as follows:

“SECOND SCHEDULE

CAPITAL ALLOWANCES

ARRANGEMENT OF PARAGRAPHS

- PART I - INTERPRETATION
- PART II - CLASSIFICATION OF ASSETS
- PART III - USEFUL LIVES AND DEPRECIABLE ASSETS
- PART IV - RESIDENTIAL BUILDING EXPENDITURE
- PART V - DISPOSAL OF DEPRECIABLE ASSETS

PART I

INTERPRETATION

1. In this Schedule –

“allowances granted” means in relation to previous years of assessment, the sum of the annual allowances granted under this Schedule or under the corresponding provision of the previous Ordinance or both;

No. 28 of 1966.

“disposal” means scrapping, loss, destruction, sale, exchange, compulsory acquisition or alienation by gift of an asset;

“disposal value” means in relation to –

- (a) the scrapping of an asset, the scrap value thereof;
- (b) the loss or destruction of an asset, any amount received for the re-

mains thereof together with any amount accrued as compensation or indemnity for loss or destruction;

- (c) the sale of an asset, the net proceeds of sale;
- (d) the exchange of an asset, the market value of any asset acquired through the exchange adjusted to take account of any monetary exchange made;
- (e) the compulsory acquisition of an asset, the amount for which it was acquired; and
- (f) the gift of an asset, the market value thereof,

but in any case where the amount or net proceeds or the market value exceeds the cost, the disposal value shall be limited to the cost price;

“expenditure incurred” by any person does not include –

- (a) part of any expenditure incurred by a person that is reimbursed to that person by way of subsidy or grant by the Government or some other person unless the subsidy or grant has formed part of his assessable income;
- (b) notwithstanding paragraph (a) the expenditure incurred by a person shall not be reduced on account of the expenditure qualifying for the investment tax credit under the First Schedule of the Fiscal Incentives Act.

2. Where under a hire purchase agreement or similar transaction, the use and enjoyment of an asset is obtained by a person to whom this Schedule applies for a period of time at the end of which the property in the asset will or may pass for no consideration or a nominal consideration he shall be deemed to have –

- (a) acquired the asset at the time the agreement or transaction was entered into; and
- (b) incurred expenditure thereon of an amount equal to the total amounts, excluding interest payable under the agreement or transaction at the time the asset was acquired.

3. Where any property, in respect of which allowances have been granted under this Schedule or the previous Ordinance is disposed of together with other assets for a total consideration –

- (a) which does not allocate separate prices for separate items; or
- (b) which allocates either a nominal consideration to some assets, or a consideration which in the opinion of the Comptroller does not represent the true market value of the assets, he may apportion the total consideration among the several assets in a manner in order to arrive at a true market value of the assets in respect of which allowances were granted and that value shall be the disposal value

of the assets for the purpose of this Schedule.

No. 28 of 1966. 4. (1) Where any asset in respect of which allowances were granted under this Schedule or the previous Ordinance or both, is disposed of by the owner to a purchaser other than by way of a transaction at arm's length the asset shall be deemed to have been disposed of at market value and that value shall apply to both the vendor and purchaser.

(2) Notwithstanding subsection (1), where pursuant to –

- (a) the amalgamation, reconstruction or merger of a company and the transfer of the asset to that other company; or
- (b) the transfer of assets from an individual to a company or to a relative,

No. 28 of 1966. there is a substantial identity between the former owner and the new owner, the assets shall in relation to both be deemed to have been disposed of at their costs minus the sum of the annual allowances granted with respect to those assets under this Schedule or under the corresponding provision of the previous Ordinance or both.

(3) For the purposes of subparagraph (2) there shall be deemed to be a substantial identity between the former owner and the new owner –

- (a) under subparagraph (2)(a) where at the end of the basis period for the year of assessment in which the assets were

transferred, shares in the company acquiring the assets, carrying –

- (i) the right to exercise not less than eighty percent of the voting power in the company;
- (ii) the right to receive not less than eighty percent of any dividends that might be paid by the company; or
- (iii) the right to receive not less than eighty percent of any capital distribution in the event of a winding up or of a reduction in the share capital of the company,

were beneficially held by persons or relatives of those persons who at the time the assets were transferred beneficially held in the disposing company shares carrying rights of those kinds;

- (b) under subparagraph (2)(b) where at the end of the year of assessment in the basis period for which the assets were transferred –
 - (i) in the case of a transfer to a company, shares carrying rights of the kind specified in subparagraph

(3)(a) were beneficially held by the vendor or relatives of the vendor; or

(ii) in the case of a transfer to a relative, the assets were leased by the new owner to the former owner or to a company in which shares carrying rights of the kind specified in subparagraph (3)(a) were beneficially held by the vendor or relatives of the vendor.

5. In subparagraphs (2) and (3), "relative" means –

- (a) the spouse of a person; or
- (b) a lineal ancestor, child or other lineal descendent, brother, sister, uncle, aunt, nephew or niece of a person or his spouse.

PART II

CLASSIFICATION OF ASSETS

1. (1) For the purpose of determining the allowances deductible under Part III of this Schedule with respect to real property used by a person in his business the real property shall be classified in accordance with subparagraph (2).

(2) Real property is classified as follows–

- (a) commercial real property means hotels, guest houses and restaurants; and

-
- (b) industrial real property includes –
- (i) buildings in which goods are manufactured or processed;
 - (ii) buildings used for the purpose of trade which consists in the storage of goods or material which are to be used in the manufacture of other goods or materials;
 - (iii) buildings used for the purpose of trade which consists in the storage of goods or materials which will be subjected in the course of trade to any process; and
 - (iv) buildings used for the purpose of trade which consists in the storage of goods or materials which have been manufactured, produced or subjected in the course of trade to any process but have not been delivered to any purchaser.

(3) Real property utilised for more than one purpose in a business shall be classified as commercial or industrial depending on the dominant purpose for which the property is used.

(4) For the purpose of determining the allowances deductible under this Schedule with

respect to real property the cost or value of land shall not be taken into account.

2. (1) For the purpose of determining the allowances deductible under Part III of this Schedule with respect to plant and machinery used in a business, the plant and machinery shall be classified in accordance with subparagraphs (2), (3) and (4).

(2) Five year plant and machinery includes the following –

- (i) aircraft and aircraft accessory equipment;
- (ii) bicycles;
- (iii) motor cars, lorries, omnibuses, vans, jeeps, tractors, land rovers, traction and hauling equipment;
- (iv) motor cycles;
- (v) office appliances - accounting, adding and calculating machines, cash registers, duplicating and copying machines, typewriters, computers and computer accessories; and
- (vi) trailers.

(3) Seven year plant and machinery includes the following –

- (i) aerated beverage plant (electrical);
- (ii) bakery machinery and plant;
- (iii) block and brick manufacturing machinery and plant;
- (iv) cigarette manufacturing machinery;

-
- (v) cinematography equipment - projectors, fans, public address systems and other electrical appliances and furniture used for seating;
 - (vi) clothing trade - general machinery used in the clothing trade including sewing machines;
 - (vii) copra crushing and refining plant;
 - (viii) cranes;
 - (ix) diesel engines and motors;
 - (x) electrical lifts;
 - (xi) electrical undertakings including generating plants;
 - (xii) engineering workshops - electrical equipment, lathes and milling machines, welding plant, tools and instruments;
 - (xiii) furniture workshops - electrical and other equipment;
 - (xiv) furniture;
 - (xv) ice manufacture and cold storage - electrical plant and insulation, refrigeration machinery, compressors, condensers, tanks, etc.;
 - (xvi) neon signs;
 - (xvii) photographic equipment;

-
- (xviii) plant and machinery not specified as either five or nine year machinery or equipment;
 - (xix) printing type;
 - (xx) pumps - electric pumps;
 - (xxi) radio equipment - amplifiers and receivers;
 - (xxii) refrigeration and deep freeze cabinets;
 - (xxiii) shipping - canoes, launches, lighters and sail boats;
 - (xxiv) stores; and
 - (xxv) timber merchants - saw milling machinery and electrical motors.

(4) Nine year plant and machinery includes the following -

- (i) aerated beverage plant (steam);
- (ii) clothing trade - steam boilers, engines and similar machinery and plant;
- (iii) electrical undertakings - mains and other equipment, water turbines and transformers;
- (iv) engineering workshops - heavy plant;
- (v) garages - gasoline and kerosene tanks and pumps;
- (vi) gas - gas holders and containers and other plant;

-
- (vii) ice manufacture and cold storage - steam and gas engines;
 - (viii) oil tanks and pumps;
 - (ix) printing - plant and machinery;
 - (x) pumps - other than electric pumps;
 - (xi) radio equipment - lines and speakers;
 - (xii) scales;
 - (xiii) timber merchants - steam engines and boilers; and
 - (xiv) waterworks - appliances and apparatus used for storage, purification, conveyance, measurement or regulation of water.

PART III

AMOUNT OF THE CAPITAL ALLOWANCES

1. In ascertaining the assessable income of any person for any year of assessment from the carrying on of any business by that person or by a lessee from that person there shall be deducted an annual allowance in respect of expenditure incurred for the construction, acquisition or improvement of assets listed in Part II of this Schedule.

2. The deduction allowable under paragraph 1 with respect to the construction, acquisition or improvement of any asset listed in Part II

of this Schedule shall begin in the year of assessment in the basis period for which the asset was first brought into use or, if later, the year of assessment in the basis period for which the expense is incurred.

3. (1) The deduction allowable under paragraph 1 shall be an amount equal to the percentage of the cost of the assets as specified in subparagraphs (2), (3), (4) or (5).

(2) The deduction allowable for commercial real property shall be determined in accordance with the following table:

COMMERCIAL REAL PROPERTY

<u>Assessment Year</u>	<u>Percentage of Cost</u>
1	4
2-33	3

(3) The deduction allowable for industrial real property shall be four percent for the year of assessment in the basis period for which the expenditure was incurred and in the next twenty-four succeeding years of assessment.

(4) The deduction allowable for five year plant and machinery shall be twenty percent for the year of assessment in the basis period for which expenditure was incurred and in the next four succeeding years of assessment.

(5) The deduction allowable for seven year plant and machinery shall be determined in accordance with the following table:

SEVEN YEAR PLANT AND MACHINERY

<u>Assessment Year</u>	<u>Percentage of Cost</u>
1	15
2	15
3	14
4	14
5	14
6	14
7	14

(6) The deduction allowable for nine year plant and machinery shall be determined in accordance with the following table:

NINE YEAR PLANT AND MACHINERY

<u>Assessment Year</u>	<u>Percentage of Cost</u>
1	12
2	11
3	11
4	11
5	11
6	11
7	11
8	11
9	11

4. (1) For assessment years 1993 and thereafter, the allowance allowable under paragraph 1 with respect to the construction, acquisition or improvement of any asset listed in Part II of this Schedule and which was put into use by the person claiming the allowance before January 1, 1992 shall be determined in accordance with subparagraph (2), (3) or (4).

(2) In the case of any asset with respect to which an annual allowance was allowable under the Second Schedule in the assessment year 1992, the written down value of that asset at the end of assessment year 1992 shall be deemed to be the cost of the asset. The asset shall be deemed to be put into use in the basis period for the assessment year 1993, and the annual allowances for that asset in assessment years 1993 and thereafter shall be determined under paragraph 3.

(3) In the case of any asset with respect to which an annual allowance was not allowable under the Second Schedule in the assessment year 1992, no annual allowance shall be allowable in assessment years 1993 and thereafter.

(4) In this paragraph, the written down value of an asset at the end of the assessment year 1992 means –

- (a) where 1992 is the first year of assessment in the basis period for which the asset is acquired, the cost of the asset less the annual allowance allowed in respect of that asset for the assessment year 1992; or
- (b) where 1992 is an assessment year subsequent to the first year

of assessment in the basis period for which the asset is acquired, the written down value at the end of the basis period for the assessment year 1991 less the annual allowance allowed in respect of that asset for the assessment year 1992.

5. For assessment year 1993 and thereafter, the annual allowance under paragraph 1 with respect to the acquisition of any asset which is listed in Part II of this Schedule, which was put into business use by a person before January 1, 1992 and for which an annual allowance was not allowable under the Second Schedule in the assessment year 1992 shall be allowed only if the asset acquired from a person who is not –

- (a) a family member; or
- (b) a related company.

6. Where an asset is an existing asset which has been used for purposes other than the carrying on of a business, the allowance under paragraph 1 for the first and subsequent years of assessment in the basis period for which the asset is used in business shall be computed as if allowances had been allowed with respect to that asset from the first year of assessment in the basis period for which the asset was acquired.

7. Where an asset in respect of which deductions have been allowed ceases to be used for business purposes for one or more years of assessment but subsequently commences to be so used or is disposed of, notional annual allow-

ances calculated in accordance with paragraph 4 subparagraph (2) shall be calculated for each year during which the building was not used for business purposes in order to ascertain the written down value of the asset in relation to subsequent years of assessment.

8. Where the Comptroller is satisfied that by reason of the use of business assets on multiple shift work or in circumstances of abnormal wear and tear, he may authorise the deduction of a higher rate of allowance than is provided for under paragraph 3 as appears to him to be reasonable in the circumstances.

9. Where only part of an asset is to be used for business purposes and the capital expenditure incurred on that part of the asset which is not to be so used –

- (a) does not exceed ten percent of the total capital expenditure on the asset that asset shall be deemed to be used for business purposes;
- (b) exceeds ten percent but does not exceed 75 percent of the total capital expenditure, the portion of total capital expenditure qualifying for deduction under this Part shall be the proportion of that expenditure as the part of the asset used for business purposes bears to the entire building; or
- (c) exceeds 75 percent of the total capital expenditure the entire asset shall be deemed to be not used for business purposes.

PART IV
RESIDENTIAL BUILDING
EXPENDITURE

1. (1) When a person incurs capital expenditures on residential buildings either by –

- (a) the construction of a new dwelling house; or
- (b) the substantial reconstruction of an existing dwelling house,

for the purpose of letting and the expenditure is incurred in the basis period of the assessment year 1993 or thereafter, there shall be allowed as a deduction for the year of assessment, in the basis period for which the expenditure was incurred, and in the next succeeding nine years of assessment an amount equal to the lesser of five percent of that expenditure or 5000 dollars.

(2) When a person incurs capital expenditure on residential buildings either by –

- (a) the construction of a new dwelling house; or
- (b) the substantial reconstruction of an existing dwelling house,

for the purpose of letting and the expenditure is incurred in the basis period of the assessment year 1993 or before, there shall be allowed as a deduction for the year of assessment, in the basis period for which the expenditure was incurred, and in the next succeeding nine years of assessment an amount equal to the lesser of five percent of that expenditure or 2500 dollars.

(3) Notwithstanding subparagraph (2) a person shall not be allowed a deduction in the assessment year 1993 and thereafter with respect to an expenditure incurred in the basis period for the assessment year 1992 or before if that person was not entitled to a deduction for the assessment year 1992.

2. (1) Where a person who has incurred capital expenditure to which this Part relates, disposes of the property prior to the grant of the full amount of the allowance to which he would have been entitled had the disposal not taken place, he shall cease to be entitled to any further deduction and the balance thereof shall, subject to paragraph 3, be allowable to the person who has acquired the property.

(2) Notwithstanding paragraph 2 subparagraph (1) where a property is disposed of on a date other than the end of a basis period the Comptroller may apportion the deduction allowable as between the parties in such manner as appears to him to be reasonable.

3. The deduction provided by paragraph 2 to a purchaser of property shall only apply where the purchaser acquired the property for the purpose of letting and not for the purpose of occupation by the owner.

4. In this Part –

“residential buildings” include dwelling houses and flats or apartments which are units of larger buildings; and

“substantial reconstruction of an existing dwelling house” means any extension, renova-

tion or repair of an existing dwelling house which in the opinion of the Comptroller is reasonable to render it fit –

- (a) for human habitation; or
- (b) to provide additional accommodation for human habitation.

PART V

DISPOSAL OF DEPRECIABLE ASSETS

1. (1) Where capital allowances have been granted to a person for previous years of assessment, whether before or after the coming into operation of this Act, in respect of industrial or commercial real property or plant and machinery and any of those assets is disposed of in the basis period for any year of assessment, a balancing allowance or a balancing charge shall be made in accordance with this Part.

(2) Where the cost of the asset exceeds the aggregate of –

- (a) the allowances granted for previous years of assessment; and
- (b) the disposal value,

the balancing allowance shall be allowed as a deduction for the year of assessment in the basis period for which the asset is disposed of.

(3) Where the disposal value of the asset exceeds the difference between –

- (a) the cost of the asset; and
- (b) the allowance granted for previous years of assessment,

the balancing charge shall be included in the assessable income of the person disposing of the asset for the year of the assessment in the basis period for which the asset is disposed of.

(4) Where a person has been granted allowances in respect of any asset and that person ceases to carry on business prior to the disposal of that asset, for purposes of this paragraph he shall be subject to the provisions of this paragraph in the event of the subsequent disposal of that asset.

2. (1) Where but for this paragraph the amount of any balancing charge would be taken into account in ascertaining the chargeable income of any person for a year of assessment, that person may elect by notice in writing to the Comptroller when furnishing his return of income for that year that in lieu of the balancing charge being taken into account it may be deducted from expenditure incurred on any replacement property acquired by him during the basis period for the year of assessment to replace the asset disposed of.

(2) Where an election is made under this paragraph the expenditure incurred on the replacement property shall be reduced by the amount of the balancing charge referred to in subparagraph (1) for the purpose of determining the written down value of replacement property and the annual allowance applicable thereto.

(3) Where an election is made under this paragraph in relation to the disposal of an asset giving rise to a balancing charge which exceeds the cost of the replacement property –

(a) no annual allowance shall be granted in respect of the replacement property; and

(b) the amount of the excess shall be included in the assessable income of the person disposing of the asset for the year of assessment in the basis period for which the asset is disposed of."

Commencement.

4. This Act shall be deemed to have come into operation on the 1st day of January, 1992 and shall apply to the assessment of income for the year of assessment 1993 and subsequent years.

Passed in the House of Assembly this 11th day of May, 1992.

M. ALBERTHA JNO. BAPTISTE
Clerk of the House of Assembly.

DOMINICA

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