

**INCOME AND NON-MONETARY BENEFITS TAX  
ACT, 2010**

*(Act 10 of 2010)*

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**INCOME AND NON-MONETARY BENEFITS  
TAX ACT, 2010**

*(Act 10 of 2010)*

*I assent*

A handwritten signature in black ink, appearing to read "Michel".

J. A. Michel  
President

*2nd July, 2010*



**AN ACT to provide for taxation of income and non-monetary benefits and for connected matters.**

**ENACTED** by the President and the National Assembly.

**PART I - PRELIMINARY PROVISIONS**

**1.(1) This Act may be cited as the Income and Non-Monetary Benefits Tax Act, 2010.**

Short title and  
commencement

(2) This Act shall come into operation on 1st July 2010 and apply to —

- (a) emoluments paid on or after that date; and
- (b) non-monetary benefits provided on or after that date.

Interpretation

2. In this Act, unless the context requires otherwise —

“associate” has the same meaning as in the Business Tax Act, 2009;

Act 28 of 2009

“Business Tax Act” means the Business Tax Act, 2009;

“commencement date” means 1st July, 2010;

“day care worker” means an employed person whose duties primarily involve supervision of pre-school children attending a registered day care centre;

“domestic worker” means an employed person who is solely engaged in the performance of domestic work at a person's residence, including cooking, security, gardening, laundering, child minding, caring for an elderly or invalid person, or cleaning of the residence;

“emoluments” means any cash remuneration received by an employed person and includes —

- (a) any salary, wage, allowance, gratuity, bonus, commission, leave pay, payment in lieu of leave, overtime pay, fee, pension, director's fee, management fee and work condition supplement;
- (b) any amount as consideration for the agreement by an employed person to —

- (i) enter into employment;
  - (ii) accept any conditions of employment or any changes to the employed person's conditions of employment; or
  - (iii) a restrictive covenant in respect of any past, present or prospective employment;
- (c) an amount received on termination of employment, whether paid voluntarily or under an agreement, including any compensation for redundancy or loss of employment;

**“employed person”** means a person gainfully employed in Seychelles whether under a contract of service, as a director or a member of the board of a body corporate, or as the holder of an office and includes—

- (a) a person, though not bound by a formal contract of service, who is subject to the control of another person as to the manner and method in which the first mentioned person carries out that person's duties, or
- (b) a person working on an approved Government employment project or scheme under the Unemployment Relief Scheme Act, 1995;

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**“employer”** means a person who engages or remunerates an employed person and, in the absence of other evidence of employment, the person by whom or on whose behalf the payment for services rendered is made;

**“exempt emolument”** means an emolument specified in the Second Schedule;

“fair market value” has the same meaning as in section 4 of the Business Tax Act;

“income tax” means the tax imposed under section 4 of this Act;

“individual” means a natural person;

“non-monetary benefits” means any benefit provided to an employed person in respect of the person's employment or to an associate of the employed person, including any right, privilege, service or facility and includes a right, benefit, privilege, service or facility that is or is to be provided under an arrangement for or in relation to the performance of work and benefits listed in the Fourth Schedule to this Act;

“person” includes —

- (a) an individual, partnership, entity or trust; or
- (b) a government body;

“prescribed” means prescribed by regulations made under this Act or another revenue law;

“provides”, in relation to a benefit, means the provision of a benefit in respect of the employment of an employed person whether or not —

- (a) the benefit is also provided by reason of, or in relation directly or indirectly to, any other matter or thing;
- (b) the employment will occur, is occurring, or has occurred;
- (c) the benefit is surplus to the needs or wants of

the recipient (i.e., the employed person or an associate of the employed person);

- (d) the benefit is also provided to another person;
- (e) the benefit is, or is required to be, provided or used in connection with that employment; and
- (f) the benefit is provided as a reward for services rendered, or to be rendered, by the employed person;

“received” includes —

- (a) applied or provided on behalf of the employed person either at the instruction of the employed person or under any law;
- (b) credited to an account for the benefit of the employed person or an associate of the employed person;
- (c) made available to the employed person; or
- (d) an amount not actually received by or paid over, but is reinvested, accumulated, carried to or paid into an insurance or pension fund or any other fund, however designated or otherwise dealt with on behalf of the employed person or as the employed person directs;

“records” means the records that must be kept by an employer pursuant to the record keeping obligations of revenue laws including this Act;

“Revenue Administration Act” means the Revenue Administration Act, 2009; Act 27 of 2009

“Revenue Commissioner” means the Revenue Commissioner appointed under section 4 of the Seychelles Revenue Commission Act, 2009; Act 26 of 2009



“tax on non-monetary benefits” means the tax payable by an employer under this Act where the employer provides whether directly or indirectly a non-monetary benefit to an employed person or to an associate of an employed person;

“tax year” means the period of twelve months beginning on the 1<sup>st</sup> January in any year and ending on 31<sup>st</sup> December in that year.

Source of  
emoluments  
and non-  
monetary  
benefits

3.(1) For the purposes of this Act, a person shall be deemed to be employed in Seychelles where he or she is paid an emolument or provided with a non-monetary benefit —

- (a) by a person who is a resident or carrying on business or has the place of effective management or control of his or her business in Seychelles;
- (b) by any person on behalf of a person referred to in paragraph (a); or
- (c) from a source in Seychelles,

and, the person who pays the emolument or provides the non-monetary benefit or on whose behalf the emolument is paid or non-monetary benefit is provided shall be deemed to be the employer of the person receiving the emolument or the benefit, and the emolument or the non-monetary benefit shall be liable to tax under this Act.

(2) An amount is an emolument of an employed person notwithstanding that it has been paid —

- (a) to the employed person by an associate of the employer or by a third party under an arrangement with the employer or an associate of the employer;
- (b) to an associate of the employed person; or

- (c) by a past employer or a prospective employer of the employed person.

(3) For the purposes of subsection (1), a person who performs any service or carries out any functions in Seychelles on behalf of or at the request of another person not resident in Seychelles shall be deemed to be employed in Seychelles, the person who benefits in Seychelles from those services or functions shall be deemed to be the employer of the first mentioned person and the emolument paid or received in respect of those services or functions shall be deemed to have been paid by the person who benefits in Seychelles from the services or functions and shall be liable to withhold and remit tax at the rate specified in the First Schedule.

(4) An employed person shall be deemed to have received an emolument or a non-monetary benefit although the emolument or the non-monetary benefit or any part thereof is not actually received by or paid over to that person but is reinvested, accumulated, carried to or paid into an insurance or pension fund or any other fund, however designated or otherwise dealt with on behalf of the person or as the person directs.

## **PART II - TAX ON INCOME AND NON-MONETARY BENEFITS**

4.(1) Subject to subsection (3), income tax at the rate specified in the First Schedule is levied upon emoluments received by an employed person in Seychelles and is payable to the Revenue Commissioner in accordance with this Act.

Imposition  
of tax on  
income and  
on non-  
monetary  
benefits

(2) Tax on non-monetary benefits at the rate specified in the Third Schedule is levied upon non-monetary benefits received by an employed person in Seychelles and is payable to the Revenue Commissioner in accordance with this Act.

(3) No tax is imposed under this Act on emoluments or at



non- monetary benefits that are exempt emoluments specified in the second Schedule or exempt non-monetary benefits specified in the Fourth Schedule.

(4) The tax imposed under subsection (1) is imposed on the gross amount of emoluments received and no deduction is allowed for any loss or outgoing incurred by the employed person in deriving emoluments.

(5) The tax imposed under subsection (2) is imposed on the fair market value of the non-monetary benefits.

### PART III - COLLECTION OF TAX

Withholding  
of tax from  
payment of  
emolument

5.(1) Subject to subsection (3), an employer shall withhold tax at the rate specified in the First Schedule from the gross amount of emoluments as prescribed.

(2) An employer required to withhold tax under this section shall do so at—

- (a) the time the amount is paid to the employed person; or
- (b) the time the amount is credited to the account of the employed person; or
- (c) the time the amount is dealt with on the employed person's behalf or otherwise made available to the employed person.

(3) The obligation of an employer to withhold tax under subsection (1)—

- (a) is not reduced or extinguished because the employer has a right, or is otherwise obliged, to deduct any other amount from a payment of emoluments; and
- (b) applies notwithstanding any law that provides

that any amount of emoluments is not to be reduced or subject to attachment.

(4) In the event that an employer fails to satisfy the provisions of this section, the Revenue Commissioner may invoke the powers under Part V of the Revenue Administration Act, 2009 to ensure compliance.

Act 27 of 2009

(5) This section does not apply to emoluments that are exempted by Schedule 2 of this Act.

6.(1) Tax required to be withheld by an employer shall be paid to the Revenue Commissioner within 21 days after the end of the month in which the employer was required to withhold the tax.

Payment of  
tax withheld

(2) In the event that an employer fails to satisfy the provisions of this section, the Revenue Commissioner may invoke the powers under Part V of the Revenue Administration Act, 2009 to ensure compliance.

7.(1) If an employer—

Failure to pay  
tax withheld

- (a) fails to withhold tax as required by section 5; or
- (b) having withheld tax fails to pay the tax to the Revenue Commissioner as required by section 6,

the employer is personally liable to pay to the Revenue Commissioner the amount of tax and any penalty and additional tax due in respect of the failure.

(2) The Revenue Commissioner may invoke the powers under Part V of the Revenue Administration Act, 2009 and any other provision of that Act to ensure compliance with the obligations imposed by this section.

8. An employer liable for an amount of tax under section 7 as a result of failing to withhold tax is entitled to d

Employer's  
limited right  
to recover

recover the tax (but not any penalty or additional tax due in respect of the failure) from the employed person.

Recovery of  
tax from  
employed  
person

9.(1) If an employer fails to withhold tax as required by section 5, the Revenue Commissioner may recover the tax from the employed person provided the total amount recovered does not exceed the tax that should have been withheld.

(2) Notwithstanding the recovery of any tax under subsection (1), the employer continues to be liable for —

- (a) any other legal action in relation to the failure; and
- (b) the imposition of any penalty or additional tax in respect of the failure.

(3) In the event that subsection (2) applies to an employer, the Revenue Commissioner may invoke the powers under Part V of the Revenue Administration Act, 2009 and any other applicable provision of that Act to ensure compliance.

Tax  
withholding  
statement

10. An employer withholding tax under section 5 shall furnish the employed person and the Revenue Commissioner with a withholding tax statement in accordance with the Regulations.

Priority of  
withheld tax

11.(1) The tax withheld by an employer under section 5 from a payment of emoluments —

- (a) is held by the employer on behalf of the Government; and
- (b) is not subject to attachment in respect of any debt or liability of the employer.

(2) In the event of the death, liquidation or bankruptcy of an employer who has withheld tax from the payment of

emoluments, the withheld tax does not form part of the employer's estate and the Revenue Commissioner has first claim for that amount before any distribution of property is made with the exception of any money claimed by the Seychelles Pension Fund.

(3) An amount of tax that an employer is required to withhold under section 5 is —

- (a) a first charge on the emoluments to which the withholding relates; and
- (b) deducted prior to any other amount that the employer may be required to deduct from the payment by virtue of an order of any Court or under any other law.

12. An employer who has withheld tax under section 5 and remitted the tax to the Revenue Commissioner in compliance with section 6 of this Act is indemnified against any claim by the employed person for payment of the deducted amount.

Indemnity

13. The tax withheld under section 5 is a final tax on the emoluments of the employed person.

Withheld tax  
a final tax

14.(1) Tax shall be computed on the total non-monetary benefits received in respect of a month or where the employment is for a period less than a month on the total non-monetary benefits provided in respect of that period.

Computation of  
tax and liability  
to pay tax on  
non-monetary  
benefits

(2) An employer that provides non-monetary benefits to an employed person is liable to pay tax in respect of that non-monetary benefit at the time of the provision of the non-monetary benefit and the tax shall be paid to the Revenue Commissioner by the 21<sup>st</sup> day of the month following the month in which the liability arose.

(3) Tax payable by an employer in respect of non-

monetary benefits shall be calculated in accordance with the rates set out in the Third Schedule to the nearest Seychelles Rupee and any amount of cents shall be disregarded.

#### PART IV - GENERAL PROVISIONS

Power to  
prevent tax  
debtors  
from  
leaving  
Seychelles

15.(1) Where the Revenue Commissioner has reason to believe that a person liable to remit income tax withheld from an employed person or to remit tax or pay a penalty in respect of providing non-monetary benefits may leave Seychelles before the date on which the tax or penalty is due and payable, the tax or penalty shall be due and payable on such date as the Revenue Commissioner notifies to that person.

(2) Where the Revenue Commissioner is of the opinion that any person is about to or likely to leave Seychelles without paying income tax due or tax on non-monetary benefits or penalty, the Revenue Commissioner may invoke the provisions of the Revenue Administration Act, 2009 to prevent that person from leaving Seychelles until the person has paid the tax due or penalty or has made alternative arrangements acceptable to the Revenue Commissioner.

Objections  
and appeals

16.(1) An employer or an employed person dissatisfied with a revenue decision concerning the application of this Act to that person may object to that decision in accordance with Part IV of the Revenue Administration Act, 2009.

(2) An employer or an employed person dissatisfied with an objection decision concerning the application of this Act to that person may appeal from that decision in accordance with Part IV of the Revenue Administration Act, 2009.

Ministerial  
discretion

17. The Minister may, for socio-economic benefit of Seychelles, by Order published in the Gazette, treat the emoluments and non-monetary benefits derived by any class or category of employed persons —



- (a) as exempt emoluments and non-monetary benefits; or
- (b) as subject to a reduced rate of tax,

if the Minister is of the opinion that the employment carried on by the class or category of persons has assisted or will assist in the socio-economic development of Seychelles.

**18.** An employer shall maintain such records as are prescribed under the Revenue Administration Act, 2009 or any other revenue law including this Act.

Records

**19.(1)** The Minister may make regulations for the proper and efficient administration of this Act including —

Regulations

- (a) matters required to be prescribed under this Act;
- (b) amending the Schedules;
- (c) making saving or transitional provisions consequent on the enactment of this Act, and
- (d) prescribing penalties for the contravention of regulations.

(2) If regulations made under this section are of a transitional nature and are made within six months after the commencement of this Act, the regulations may provide that they take effect from the commencement date.

## FIRST SCHEDULE

*Section 4(1)*

### RATE OF INCOME TAX

**1.** The rate of income tax payable by an employed person in respect of emoluments (other than an employed person who is not a citizen of Seychelles) shall be as follows —



- (a) for emoluments paid in the period 1st July, 2010 - 31st December 2010, 18.75% of gross amount of emoluments paid; and
- (b) for emoluments paid on or after 1st January 2011, 15% of the gross amount of emoluments paid.

2. Notwithstanding paragraph 1 above, the rate of income tax payable by an employed person in respect of emoluments (other than an employed person who is not a citizen of Seychelles) shall be as follows:

- (a) in the case of a domestic worker employed by an individual, R50 per month in respect of the total emoluments received by the worker during the month;
- (b) in the case of a day care worker employed by an individual, the lower of—
  - (i) R100 per month in respect of the total emoluments received by the worker during the month; or
  - (ii) 10% of the total emoluments received by the worker per month or part of month; and
- (c) in the case of employed persons of an Agricultural Processor in possession of a Certificate granted under the Agriculture and Fisheries (Incentives) Act, 2005 R100 per month in respect of the total emoluments received by the person during the month;
- (d) in the case of employed persons of a Boat Owner in possession of a Certificate granted under the Agriculture and Fisheries (Incentives) Act, 2005 R100 per month in

respect of the total emoluments received by the person during the month.

3. The rate of income tax payable by an employed person who is not a citizen of Seychelles in respect of emoluments shall be as follows—

- (a) for emoluments paid in the period 1st July - 31st December 2010, 10% of the gross amount of emoluments paid; and
- (b) for emoluments paid on or after 1st January 2011, 15% of the gross amount of emoluments.

## SECOND SCHEDULE

*Section 4(3)*

### EXEMPT EMOLUMENTS

1. The following are exempt emoluments—

- (a) an emolument derived by an employed person working on an approved government employment project or scheme;
- (b) an emolument derived by a person entitled to privileges under the Privileges and Immunities (Diplomatic, Consular and International Organisations) Act;
- (c) an emolument derived by a priest or other similar representative of a recognised religious organisation;
- (d) an emolument derived by a person registered with the National Arts Council as entertainers;
- (e) an emolument being a reimbursement for the use of a motor vehicle provided to the employed person by the employer provided that a logbook is maintained by the employed person;

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- (f) an emolument being a reimbursement by an employer of an employed person for the cost of using employee's own motor vehicle for the benefit of the employer where the reimbursement does not exceed the following amount—

0-100 km @SR4 per km

101km and above @ SR3 per km

(a log book is required to be kept);

- (g) an emolument being a per diem paid at the rate not exceeding that specified by regulations;
- (i) an emolument being a shoe allowance subject to the shoe being accepted as identifiable as part of a uniform or a safety shoe;
- (j) a bonus paid provided that the bonus is paid no more than once a year under the scheme and does not exceed the lower of—
  - (i) 1/12 of the employed person's annual base salary; or
  - (ii) SR 10,000;
- (k) a compensation payment to the extent that—
  - (i) the compensation is paid pursuant to section 62A of the Employment Act, 1995; and
  - (ii) the concessionary treatment of such compensation payment is capped pursuant to subparagraph 47(2)(b)(i) of the Employment Act, 1995;
- (l) a service charge distribution payment made under an approved service charge distribution scheme provided that the payment is

distinguishable from any other emolument on the employed person's payment advice and the employer's payroll system;

- (m) retirement pension provided under the Social Security Fund and the Seychelles Pension Fund or any other pension provided under any other legislation;
- (n) private pension funds established by an employer where contributions are made by the employer on behalf of the employed person.

(2) In this Schedule, "approved service charge distribution scheme" means a scheme for the distribution of the service charges collected by operators from clients and distributed to all eligible employed persons provided that —

- (a) the scheme is well documented, has unambiguous criteria for qualifying for benefits under the scheme, and benefits under the scheme are freely available to all eligible employed persons; and
- (b) payments under the scheme are distributed widely, broadly and proportionately to all eligible employed persons.

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### **THIRD SCHEDULE**

#### *Section 4(2)*

#### **Rate of tax payable by employers in respect of non-monetary benefits**

1. An employer shall be liable to pay tax at the rate of 20% of the value of a non-monetary benefit provided to an employed person and such tax shall be computed in accordance with the Act in respect of each non-monetary benefit provided to the person employed.

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**FOURTH SCHEDULE****Section 2****Taxation of non-monetary benefits****1. Taxation of non-monetary benefits**

Item	Type of benefit provided to or on behalf of an employed person	Taxable value		Taxation treatment Exemption/Exception
1.	Accommodation	Type	Per month per employed person (SR)	(1) The provision of accommodation for business purposes if the period of the accommodation is three months or less.  (2) The provision of accommodation to an employed person in the construction and tourism sector.
		(a) onsite shelter	300	
		(b) dormitory accommodation	600	
		(c) one bedroom dwelling	2,500	
		(d) two bedroom dwelling	3,000	
		(e) three bedroom Dwelling	4,000	
		(f) four bedroom dwelling	5,000	
2.	Utilities: benefit includes utility bills such as electricity, water, telephone, cable tv, or home internet access	Full cost incurred by the employer		Utilities benefit provided to an employed person of the tourism sector

3.	Provision of clothing	Full cost incurred by the employer	Identifiable uniforms or safety clothing or protective clothing
4.	In-house benefit (perquisites)	Full cost incurred by the employer	Provided the total benefit in any one month does not exceed 20% of basic salary.
5.	Meals	SR 10 per meal per day or SR 300 per month whichever is lower	The provision of meals to an employed person in the construction and tourism sector.
6.	Motor vehicle	SR 70 per day or SR 2,000 per month whichever is the lower	<p>Not an employed person's benefit to the extent that:</p> <p>A vehicle logbook is maintained and the logbook substantiates that the employed person is in fact called out for after hours duties on a regular basis</p> <p>Private motor vehicle provided to an employed person in the tourism sector for the purpose of home to work travel.</p>
7.	Medical expenses	Full cost incurred by employer	Medical expenses incurred in respect of injuries/illness of an employed person arising during the performance of his/her work or at his/her place of employment.



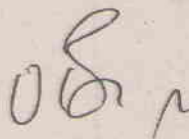
8.	Life insurance	Full cost incurred by employer	Where sum insured does not exceed SR 1 million per employed person.
9.	Health insurance	Nil	Applied to all employed persons.
10	Insurance eg house and contents, income protection, motor vehicle or fire and burglary insurance	Full cost incurred by employer	
11	Transport to/from work (excluding motor vehicle)	Full cost incurred by employer	Transportation cost provided to employed persons for the purpose of home to work travel.
12	Airline and ferry transport	Full cost incurred by employer	<p>Airline/ferry transport both domestic and international provided to employed person.</p> <p>Criteria</p> <p>The higher of</p> <ul style="list-style-type: none"> <li>- The actual expense incurred or the lowest economy airfare published.</li> <li>- Any business component airfares can be deducted from the total airfare benefit.</li> <li>- Provision of air fare at the start and conclusion of employment contract</li> </ul>

	Entertainment allowance/ reimbursement		SR 500 per month where it is accepted by SRC that the employed person will be reasonably expected to undertake entertainment on behalf of his/her employer. Where the allowance exceeds SR 500, an employed person shall be exempted subject to maintaining documents to support such large sum.
13	Tuition fees and training cost	Full cost incurred by employer	Subject to criteria approved by the Minister
14	Other	Fair market value of the benefit provided.	
15	Training Cost	Nil	The employed person should have been in employment one year or more and training is limited to training provided by registered tertiary institutions in Seychelles.

**2. The taxable value of a non-monetary benefit is reduced —**

- (a) to the extent that the benefit is used by the employed person in the performance of the employed person's duties of employment; or
- (b) by any payment made by the employed person for the benefit.

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 22nd June, 2010.



**Veronique Bresson**  
**Clerk to the National Assembly**