

TAX STRUCTURE BOOKLET OF THE U.S. VIRGIN ISLANDS



**JOHN P. DEJONGH, JR.
GOVERNOR**

**CLAUDETTE WATSON-ANDERSON, CPA
DIRECTOR**

FOREWORD

This booklet is issued to provide general information regarding taxation in the U.S. Virgin Islands. It contains information that was current at the time of publication.

The *Tax Structure of the U.S. Virgin Islands* booklet has been prepared by the Virgin Islands Bureau of Internal Revenue (BIR). While every effort has been made to ensure that the information contained in this publication is complete and accurate, it is not intended to be a substitute for the provisions of the statutes themselves or for court decisions, regulations, or rulings interpreting applicable statutory provisions in light of specific facts.

The contact information for the BIR's St. Thomas office is:

Virgin Islands Bureau of Internal Revenue
6115 Estate Smith Bay – Suite 225
St. Thomas, U.S. Virgin Islands 00802
Telephone: (340) 715-1040
Fax: (340) 714-9345 or 774-2672

The contact information for the BIR's St. John office is:

Virgin Islands Bureau of Internal Revenue
P. O. Box 8305
St. John, Virgin Islands 00831
Telephone: (340) 777-1446
Fax: (340) 777-1425

The contact information for the BIR's St. Croix office is:

Virgin Islands Bureau of Internal Revenue
Leroy A. Quinn Government Finance Center
4008 Estate Diamond, Plot 7B
Christiansted, US Virgin Islands 00820
Telephone: (340) 773-1040
Fax: (340) 773-1006

ORGANIZATION OF THE VIRGIN ISLANDS GOVERNMENT

The organization of the Government of the United States Virgin Islands (the Virgin Islands) rests upon the Revised Organic Act of 1954, 48 U.S.C. §1397, 68 Stat. 497, in which the U.S. Congress declared the U.S. Virgin Islands (the Virgin Islands) to be an unincorporated U.S. territory. The executive power of the Virgin Islands is vested in the Governor who, together with the Lieutenant Governor, is elected by qualified Virgin Islands voters for a four-year term. The Governor is limited to two consecutive terms.

The Virgin Islands Bureau of Internal Revenue (the BIR) is responsible for the administration of the internal revenue laws of the Virgin Islands. The Director of the BIR is appointed by the Governor, with the advice and consent of the Virgin Islands Legislature, and serves at the discretion of the Governor.

The legislative power of the Virgin Islands is vested in a unicameral legislature consisting of 15 senators: seven from St. Croix, seven from St. Thomas, and one Senator-at-Large from St. John. Senatorial elections are held every two years.

A non-voting delegate, who is elected by Virgin Islands' voters for a two-year term, represents the Virgin Islands in the United States House of Representatives. The delegate can sit and vote in committee.

The judicial power of the Virgin Islands is vested in the District Court of the Virgin Islands, Supreme Court and Superior Court of the Virgin Islands, as provided in the Revised Organic Act of 1954. The District Court of the Virgin Islands functions as a United States Federal district court in all causes arising under the Constitution, treaties, and laws of the United States. The Supreme Court of the Virgin Islands functions as an appellate court for appeals from the decisions of the Superior Court. Appeals from the decisions of the District Court of the Virgin

Islands are made to the U.S. Court of Appeals for the Third Circuit, which is based in Philadelphia, Pennsylvania.

The U.S. Tax Court does not have jurisdiction to hear tax cases arising under the income tax laws applicable in the Virgin Islands. However, a V.I. taxpayer can file a timely petition in the District Court of the Virgin Islands prior to payment of any asserted income tax deficiency, similar to the procedure that applies in the U.S. Tax Court.

The Virgin Islands tax system includes income, container, gross receipts, excise, highway user's, hotel room, real property, entertainment, franchise, fuel, gift, inheritance, personal use, tire and stamp taxes. Other fees and license requirements are also in effect for such services as registering vehicles, obtaining driver's licenses, and obtaining business licenses.

Whenever the Virgin Islands tax laws require the filing of tax returns, statements, notices, or schedules, the form or other documents should be directed to the Bureau of Internal Revenue, 9601 Estate Thomas, St. Thomas, US Virgin Islands, 00802, unless otherwise indicated in this or another BIR publication or release. All checks must be made payable to the Virgin Islands Bureau of Internal Revenue.

INCOME TAX LAWS IN EFFECT IN THE VIRGIN ISLANDS

GENERAL PRINCIPLES

The sources of the Virgin Islands income taxing authority include the Internal Revenue Code of 1986 (the IRC) and the Naval Service Appropriations Act of 1922, which established the principle that the IRC applies in the Virgin Islands under a “mirror system” whereby the “Virgin Islands” is substituted for the “United States” wherever necessary to give the IRC the proper effect in the Virgin Islands, and vice versa.

Specifically, the Naval Service Appropriations Act provided in pertinent part that “the income tax laws in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in the Virgin Islands of the United States, except that proceeds of such taxes shall be paid into the treasuries of said islands.” Consequently, the income tax provisions of the IRC, the Treasury Regulations promulgated thereunder, and Revenue Rulings and Revenue Procedures issued by the Internal Revenue Service (the IRS) are generally applicable in the Virgin Islands with certain limitations.

Three principles underscore the application of the IRC to the Virgin Islands. First, the effect of the Naval Service Appropriations Act was to create a separate taxing structure in the Virgin Islands by mirroring the provisions of the IRC. Second, for the purposes of applying the IRC to the Virgin Islands, a domestic corporation is a corporation incorporated in the Virgin Islands, while a foreign corporation is one chartered elsewhere, including the United States. Third, provisions of the IRC are not mirrored if to do so would produce a clearly erroneous result, such as the provisions which deal specifically with the territories.

Significant Changes Made by the Tax Reform Act of 1986

The Tax Reform Act of 1986 (TRA) made several changes to the income tax laws applicable to the Virgin Islands. First, TRA provided that the Revised Organic Act of 1954 would be treated as if it had been enacted before the IRC, so that the IRC controls in cases of conflict. TRA specified that the Revised Organic Act of 1954 will have no effect on any person's liability to the United States.

Second, the U.S. Treasury Department was also given the authority to specify sections of the IRC that would not be mirrored in the Virgin Islands, but it has not done so to date.

Third, TRA allowed the Virgin Islands to enact nondiscriminatory local income taxes in addition to those contained in the mirror system. However, the Virgin Islands Legislature has not enacted such taxes to date.

Fourth, TRA gave the Virgin Islands the authority to reduce or rebate all or part of the Virgin Islands tax liabilities of individuals and corporations attributable to V.I. source income or income effectively connected with a V.I. trade or business, other than the V.I. tax liabilities of citizens or residents of the United States who are not bona-fide residents of the Virgin Islands (IRC § 934 (b) (1)).

Fifth, TRA gave the Virgin Islands the authority to reduce or rebate the tax on all non-U.S. income of certain qualified foreign corporations, generally defined as a corporation where less than 10 percent of the total voting power is the corporation's stock and the total value of the corporation's stock is owned by one or more U.S. persons (IRC § 934 (b) (3)).

Finally, the enactment of §932 of the IRC altered the way that U.S. individuals are taxed in the Virgin Islands, as more fully discussed later in this booklet.

Tax Administration

Utilizing the IRC, Treasury Regulations, IRS Revenue Rulings, and IRS Revenue Procedures gives the Virgin Islands the benefit of a sophisticated and successful income tax system. Further, it enables V.I. taxpayers to use the hundreds of IRS forms and accompanying instructions in print for filing returns, preparing supporting schedules, filing claims, making payments, and so forth. Only a few of these forms have been modified for local use. In particular, the forms for transmitting payroll withholding, Forms 501VI and 941VI, and the form for informing employees of the amount of tax withheld, Form W-2VI, have been modified for use in the Virgin Islands. Any questions in interpreting Federal Forms for use in the Virgin Islands should be referred to the BIR.

All references to the District Director or the Commissioner of the Internal Revenue Service should be interpreted to mean the Director of the Virgin Islands Bureau of Internal Revenue. Similarly, all references to the Internal Revenue Service, the Federal Depository, and similar references should be interpreted as the BIR. Directions in forms or in instructions pamphlets that refer to District Directors, the Commissioner of Internal Revenue, the Internal Revenue Service, Federal Depository, and so forth are appropriate for use in the Virgin Islands, with the above mentioned caveat.

A Virgin Islands taxpayer has the same appeal rights concerning disputed income taxes as his or her counterpart does in the United States. The taxpayer is entitled to a "one level of appeal" hearing, at which the standards and guidelines for settlement are substantially similar to those in the United States.

A statutory notice of deficiency (a 90-day letter) is issued in cases where agreement on income tax matters is not reached. Since the U.S. Tax Court does not have jurisdiction to hear

V.I. income taxes cases, the taxpayer may take his or her case directly to the District Court of the Virgin Islands without first paying the deficiency.

The Processing Accounts and Returns Branch of all three islands is centrally located on St. Thomas. The primary responsibilities of this branch are the processing of all tax returns and the depositing of all revenues received by the BIR. St. Croix has its own daily deposit function. Excise tax collections are also carried out separately on all three islands. Other processing functions, such as the issuance of tax clearance letters for the Stop Tax Evasion Program (STEP), have also been decentralized to the St. Croix and St. John districts.

The Computer Operations Branch is responsible for the automated processing of all tax information on computer systems located on both St. Thomas and St. Croix. The primary services rendered by the BIR's computer branch are transmittal of taxpayer refunds to the Department of Finance for issuance, billing for outstanding tax liabilities, and provisions of current management information.

The Audit Enforcement Branch has agents on St. Thomas and on St. Croix. The agents receive IRS training. Audit procedures and forms are generally the same as those of the IRS. This branch is responsible for the classification and examination of income tax and local tax returns.

The Delinquent Accounts and Returns Branch is responsible for the collection of all unpaid internal revenue taxes of the Virgin Islands, other than real property taxes, stamp taxes, and franchise taxes. Revenue Officers in the Delinquent Accounting and Returns Branch receive IRS training, and collection procedures and forms are generally the same as those used in the United States, including levies, liens and seizures. The Delinquent Accounts and Return Branch posts revenue officers on both St. Thomas and St. Croix as well.

The Criminal Investigations Division is responsible for the investigation of tax fraud and tax evasion cases. Criminal cases are referred to the Department of Justice for prosecution. The special agents of the Criminal Investigation Division receive IRS training at Glenco, Georgia.

INDIVIDUAL INCOME TAX

General. Individuals who are bona fide residents of the Virgin Islands file Form 1040 with the Virgin Islands and pay tax on their worldwide income to the Virgin Islands. If a V.I. resident taxpayer has non-V.I. source income, he or she must also complete V.I. Form 1040 INFO (Non-Virgin Islands source income of Virgin Islands residents) and attach it to Form 1040 before filing it with the BIR.

The V.I. tax liability for all other U.S. citizens or residents with V.I. income is computed a fraction of the taxpayer's total liability, based on the ratio of adjusted gross income. Such individuals must file signed identical returns with the United States and the Virgin Islands by April 15 of the following year (assuming a calendar year taxpayer), using IRS Form 8689 to figure out what portion of their income tax must be paid to the Virgin Islands. This form must be attached to both returns. The U.S. return should be filed with the IRS Center, Philadelphia, PA 19255, and the V.I. return should be filed with the BIR in St. Thomas. When this procedure is followed, both a taxpayer's payments to the Virgin Islands and V.I. employer withholdings are credited against his or her U.S. tax liability.

Section 932 of the IRC provides that the United States will be treated as including the Virgin Islands for purposes of determining the U.S. tax liability of U.S. citizens or residents with Virgin Islands income, and the Virgin Islands will be treated as including the United States for purposes of determining V.I. tax liability. In effect, this ensures that U.S. citizens who do not reside in the Virgin Islands are not treated as non-resident aliens by the Virgin Islands for tax purposes. IRS Publication 570, Tax Guide for Individuals With Income From U.S. Possessions, discusses the filing requirements of V.I. residents and U.S. residents with V.I. income.

In addition, taxpayers who fall under §932 of the IRC can exchange Virgin Islands and U.S. real estate free of tax under the like-kind exchange rules of the IRC §1031.

Bona fide residents of the Virgin Islands

The American Jobs Creation Act of 2004 imposed new rules for determining who is a bona fide resident of the Virgin Islands. Beginning in tax year 2006, the following three tests must be met in order to be considered a bona resident of the Virgin Islands:

1. Taxpayer must meet the Presence Test
2. Taxpayer must not have another tax home; and
3. Taxpayer must not have a closer connection to the U.S. or a foreign country.

Presence Test: Taxpayers meet the presence text for the tax year if they meet one of the following conditions:

1. They were present in the Virgin Islands for at least 183 days during the year.
2. They were present in the U.S. for no more than 90 days during the tax year.
3. They had \$3,000.00 or less of earned income from U.S. sources and were present for more days in the Virgin Islands than in the U.S. during the year.
4. They had no significant connection to the U.S. during the tax year.

Tax Home and Closer Connection Tests: Under the tax home test, to be a bona fide resident, an individual generally cannot have a tax home outside of the Virgin Islands during any part of the taxable year. There are special rules for students, government officials and seafarers. Under the closer connection test, to be a bona fide resident, an individual cannot have a closer connection to the U.S. or a foreign country than to the Virgin Islands.

Regulation §1.937-1, 2006-9 I.R.B. 524, provides greater details and examples of the new residency rules.

Temporary Workers. Persons who perform any work in the Virgin Islands receive V.I. source income and thus must pay tax to the Virgin Islands on their V.I. source income using Form 8689 as discussed above.

Tax Procedures for Non-resident Alien Individuals. Individuals who are not U.S. citizens or residents of the United States or the Virgin Islands must continue to file Form 1040NR with the Virgin Islands and pay tax to the Virgin Islands on V.I. income, taking a foreign credit where applicable for the taxes paid.

Puerto Rico Residents. U. S. citizens who reside in Puerto Rico and have Virgin Islands or Virgin Islands and U.S. source income must file Forms 1040 and 8689 with BIR and the IRS reporting only the Virgin Islands and U.S. source income.

Puerto Rico Residents who are resident aliens with Virgin Islands income are required to file Form 1040 with the BIR. While the law is unclear regarding the filing requirements of Puerto Rico resident aliens with Virgin Islands and U.S. income, the BIR suggests those individuals file Form 1040 and 8689 with the BIR and the IRS Philadelphia Service Center.

If the individual also has Puerto Rico income, deductions must be prorated by the percentage of the Virgin Islands and U.S. adjusted gross income to the total adjusted gross income. The individuals are allowed the full personal exemption(s) deduction, however, Puerto Rico residents who work in the Virgin Islands are not entitled to the Earned Income Credit.

CHANGE OF RESIDENCY NOTIFICATION

Internal Revenue Code section 937(c) establishes a new requirement that individuals notify the IRS of any changes in residency to or from the Virgin Islands. Taxpayers must file Form 8898 with the IRS on the due date of the income tax returns, including extensions. Form

8898 must not be attached to the Form 1040 or 1040NR. Form 8898 must be filed with the Philadelphia Service Center.

CORPORATE TAX

Tax Procedures for Domestic and Foreign Corporations. A domestic corporation for Virgin Islands income tax purposes is one that is organized under the laws of the Virgin Islands. A foreign corporation is one that is not organized in the Virgin Islands, including a corporation organized in the United States. A domestic corporation pays income taxes on its worldwide income to the Virgin Islands, generally using Form 1120. A foreign corporation pays V.I. income taxes only on its V.I. source income and its income effectively connected with a Virgin Islands trade or business, using Form 1120F. The subchapter S election of corporations organized in the U.S. is not valid in the Virgin Islands, therefore, such corporations are deemed foreign corporations required to file Form 1120F.

Ten Percent Surcharge. The Virgin Islands imposes a ten-percent surcharge on the total Virgin Islands income tax liability of all corporations, both domestic and foreign. This surcharge was authorized by the U.S. Congress in 1976 and first enacted by the Virgin Islands Legislature for calendar year 1985. It is found in §581, Chapter 16, Title 33 of the Virgin Islands Code. The surcharge is due when regular tax payments (estimated and final) are due. For example, a corporation that falls within the 15 percent bracket under the IRC would owe tax at a 16.5 percent rate (15 percent plus 1.5 percent) and would pay 110 percent of the amount otherwise due under the Internal Revenue Code as estimated tax payments and with the extension request and/or final return. This ten-percent surcharge cannot be claimed as a deduction by the corporate taxpayer.

Consolidated Returns. A Virgin Islands corporation cannot file a consolidated income tax return with a related U.S. tax liability.

Sales of V.I. Real Property by Foreign Corporations. The Foreign Investment in Real Property Tax Act of 1980 is applicable to foreign corporation owning real property interest in the Virgin Islands, as well as to nonresident alien individuals. Under this Act as applicable to the Virgin Islands, a foreign corporation (or nonresident alien individual) pay tax attributable to gain from the sale of V.I. real property to the BIR under the terms of §897 of the IRC. IRC §1445 provides for a withholding tax on a disposition of V.I. real property that occurs after January 1, 1985, if the disposition does not meet one of the specific exceptions set out in IRC §1445. U.S. corporations, trust, and partnerships, but not individuals, are subject to withholding rules.

Requests for reduced withholding pursuant to the treasury regulations promulgated under IRC §1445, should be directed to Office of the Chief Counsel, at 9601 Estate Thomas, St. Thomas, V.I. 00802, or 4008 Estate Diamond – Lot 7B, Christiansted, St. Croix, V.I. 00820-4421 on St. Croix.

Ruling Requirements for Certain Outbound Transactions. Section 367 of the IRC, which requires a ruling where a reorganization occurs between a domestic corporation and a foreign subsidiary or parent, must be considered whenever a liquidation, merger, or other form of reorganization occurs between a V.I. corporation and its foreign subsidiary or parent, including a U.S. corporation. Ruling requests should be directed to the Director of the BIR at 9601 Estate Thomas, St. Thomas, V.I. 00802.

PARTNERSHIPS

Virgin Islands partnerships and foreign partnerships with Virgin Islands income file their Form 1065, U.S. Partnership Return of Income with the BIR. If the partnership is engaged in a trade or business in the Virgin Islands, then each member, whether a resident or non-resident of the Virgin Islands, must report his or her share of the partnership income to the BIR. If the partnership is created or organized in a jurisdiction other than the Virgin Islands, but has V.I. income, it must file a Form 1065 with the BIR and report its Virgin Islands source income. The partnership's resident or non-resident partners must report their share of V.I. income to the BIR, following the filing procedures set out in IRC §932 if they are individuals.

WITHHOLDING FROM WAGES, SOCIAL SECURITY TAXES AND UNEMPLOYMENT TAXES

General Rules. The V.I. law covering the withholding on wages by employers and remittance to the V.I. Government is the same as the United States as it relates to the dates of remittance, the amounts to be remitted, the calculation of withholding amounts, and the notification to employees of the amounts withheld by January 31 of the following year. Taxpayers should consult Circular E (Publication 15) for the applicable amounts and dates. The withholding and remittance of social security taxes (FICA) and Federal Unemployment Taxes (FUTA) also follow the same procedures as in the United States.

Remittance of Income Tax Withholding. Income tax withheld from wages paid for services performed in the Virgin Islands, whether by a V.I. employer, an U.S. employer, or an employer based elsewhere, are remitted to the BIR. Deposits made during the quarter as required by Circular E are made to the BIR on Form 501VI, Withholding Tax Deposit. Form 941VI Employer's Quarterly Withholding Tax Return, must be filed by the last day of the following quarter. At this time, the employer must pay the amount due on the return minus the credit given for any deposits made. IRS Forms 941 and 809 cannot be used for this purpose. All payments must be made directly to the BIR. There is no procedure in place for deposits to be made to a bank or to the IRS and then transferred to the BIR.

Rules for FICA and FUTA. FICA and FUTA are in forced in the Virgin Islands, but are remitted to the IRS Center, Philadelphia, PA 19255, not to the BIR. IRS Circular SS (Publication 80) sets out the procedures for handling FICA and FUTA taxes.

Form W-2VI and Form W-3SS. By January 31, each employer must give a wage and tax statement to each employee who earned wages for services performed in the Virgin Islands during the preceding year. In the Virgin Islands a special Form W-2VI (*See Appendix: Exhibit 9*) must be used. Similarly, Form W-3SS (*See Appendix: Exhibit 10*), also a special form used in the

Virgin Islands, must be used to transmit Copy Form A of Form W-2VI to the Social Security Administration, while Copy 1 of Form W-3SS must be used to transmit Copy 1 of Form W-2VI to the BIR.

Self-employed residents of the Virgin Islands must use Form 1040SS to report self-employment income and pay self-employment tax to the IRS Center, Philadelphia, PA 19255. Form 1040SS may be obtained at the Federal Building, Room 216, Veteran's Drive, Charlotte Amalie, St.Thomas, Virgin Islands 00802, (340) 774-7870 or at the BIR offices.

PENSION, PROFIT SHARING AND EMPLOYEE BENEFIT PLANS

The Virgin Islands is considered to be a state for the provisions of the Employee Retirement Income Security Act of 1974. Generally, the IRS must approve a plan falling within the purview of the Act. Additionally, all provisions governing employee benefits are mirrored to the Virgin Islands. For example, a V.I. employer can set up a "cafeteria plan" under IRC §125 if the plan otherwise qualifies.

CHARITABLE ORGANIZATIONS

Tax-Exempt Charitable Organizations. A charitable organization that is a branch of a national charity, such as the American Red Cross, does not need to file an application for tax-exempt status with the BIR for recognition as a charitable organization. Such an organization should, however, provide the BIR with a copy of the national organization's exemption letter from the IRS in order to obtain a letter exempting the organization from certain V.I. taxes. Other organizations can apply for tax-exempt status under IRC §501(c)(3) by filing Form 1023. Upon receiving a favorable determination letter, contributions to the organization are deductible as charitable contributions.

Under current practice as developed between the BIR and the IRS, the BIR reviews and forwards each completed Form 1023 to the IRS for final approval to ensure that the charitable

deductions are allowable to both V.I. and U.S. contributors. Once the IRS issues a letter granting tax-exempt status, the BIR issues a similar letter granting exemption from certain V.I. taxes, including the gross receipts tax, excise tax, and entertainment tax, which are separately discussed in this publication. IRS approval takes four to five months on average, but can take longer. Form 1024 is used to apply for tax exemption by organizations that do not qualify as charities, such as business leagues.

Forms 1023 and 1024 may be obtained from the BIR's Office of Chief Counsel on St. Thomas or St. Croix. Exempt organizations are required to file Form 990, Return of Organization Exempt Form Income Tax, with the BIR and the IRS by the 15th day of the fifth month after the organization's accounting period ends.

Homeowners' Associations. Form 1120H (*See Appendix: Exhibit 13*) is used by homeowners' associations to request a partial tax exemption, and must be filed with the BIR annually. Exemption is automatic with the filing; a letter of approval from the BIR is not issued.

FEDERAL ESTATE TAX

The Federal estate tax is not mirrored in the Virgin Islands, but is administered by the IRS. Federal estate tax returns are filed with, and any taxes owed are paid to, the IRS Center, Philadelphia, PA 19255 not to the Virgin Islands. Federal estate tax is payable by all U.S. estates having a value that exceeds the total of the exemptions granted by the IRS. Certain exemptions for non-U.S. situs assets apply to persons who are born or naturalized in the Virgin Islands and who die while resident in the Virgin Islands (or another possession).

VIRGIN ISLANDS INHERITANCE TAXES

Although a Virgin Islands inheritance tax is set out in Chapter 1, Title 33 of the V.I. Code, all inheritances after 1984 are exempt from taxation. Specifically, under Section 5 of Chapter 1, an inheritance is exempt from the payment of inheritance taxes if the decedent, when living, would have been considered a “nonresident not a citizen of the United States” under 26 U.S.C. §2501(c), if the decedent was a resident of the Virgin Islands, or if the decedent owned property in the Virgin Islands at the time of his or her death.

GIFT TAXES

Federal Gift Tax. U.S. citizens residing in the Virgin Islands who make gifts in excess of the annual exclusion (generally \$10,000 per recipient) must file a Federal gift tax return with the IRS Center, Philadelphia, PA 19255. Again, a limited exemption may apply for gifts of V.I. assets by V.I. residents who were naturalized or born in the Virgin Islands.

Virgin Islands Gift Tax. Similar to the Virgin Islands inheritance tax, although Virgin Islands law contains gift tax provisions in Chapter 2, Title 33, VIC, all gifts are exempt from the tax. Specially, a person is exempt from gift tax if he or she is considered a “nonresident not a citizen of the United States” under 26 U.S.C. §2501(c), or if the person was a resident of the Virgin Islands at the time the gift was made. The exemption from gift tax is effect for gifts made after September 18, 1984.

CUSTOMS DUTIES

Custom duties in the Virgin Islands are imposed under the U.S. Customs law and are administered by the Customs Service, a division of the U.S. Treasury Department. Customs duties are generally imposed at the rate of six percent ad valorem on all articles, goods, merchandise, and commodities that are manufactured or that originate outside the territorial

sovereignty of the United States and are brought into the Virgin Islands. However, the Virgin Islands Legislature has the authority to reduce the customs duties, and has exempted certain tourist and construction items from all custom duties. Certain other exemptions apply, including exemptions stemming from Danish law.

MISCELLANEOUS LOCAL INTERNAL REVENUE TAXES

The following local internal revenue taxes are codified in Chapters 3, 4, and 5 of Title 33 of the Virgin Islands Code.

Gross Receipts Tax

In General. The Virgin Islands gross receipts tax is a tax on total receipts from the conduct of a business within the Virgin Islands, without reduction for cost of goods sold or services or any other expenses. A taxpayer's tax year for gross receipts tax purposes should generally follow the taxpayer's fiscal year for income tax purposes.

\$9,000-Per-Month Exemption. The gross receipts tax falls into the following two categories:

1. Those businesses with annual gross receipts of \$225,000 or more, and
2. Those businesses with annual gross receipts of less than \$225,000.

Businesses in the first category pay a tax of five percent on their entire gross receipts, while businesses in the second category pay a tax of five percent on receipts in excess of \$9,000 per month. The \$9,000-per-month exemption is lost if not used in one month. For example, a business with gross receipts of \$7,000 in one month and \$10,000 in a second month would owe tax on \$40 in the second month, while a business with gross receipts of \$8,000 in each month would owe no tax.

Gross Receipts Tax Exemption. Commissions earned on the sale of V.I. lottery tickets gross income of banks, gross income of franchised bus operators, receipt of certain costume jewelry manufacturers, and receipts from farming and fishing are not subject to gross receipts tax. Reverse osmosis water product plant operators may be eligible for a partially exempt from the gross receipts tax. The tax does not apply to premiums on insurance written or on airline tickets, but commissions earned by insurance agents and travel agents are subject to the gross receipts tax. Also, Economic Development Commission beneficiaries may also be exempt from the gross receipts tax.

Filing Requirements. Businesses with gross receipts of more than \$225,000 per year are required to file monthly reports on Form 720V.I. The returns are due 30 days following the last day of the month concerned. Businesses with gross receipts of \$225,000 or less per year are required to file an annual report with the BIR by the 30th day following the last day of the year concerned on Form 720-B. For a calendar year business, the return is due on January 30th of the following year.

A business that is exempt from payment of the gross receipts tax is still required to file a return. Beneficiaries of the territory's Economic Development Program are required to file Form 720V.I. monthly, indicate on their gross receipts, and write "EDC Beneficiary – Exempt" across the bottom of the return. Tax-exempt charitable organizations, homeowners' associations, and other entities and individuals that receive business receipts but are not required to pay gross receipts tax should still file monthly or annually returns, depending on whether or not their actual gross receipts exceed \$225,000.

Related Entities or Individuals. Corporations sharing more than 50 percent common ownership, businesses owned by the same taxpayer or members of a family, and other related businesses only get one \$9,000-per-month exemption for all related businesses and must combine all receipts from all the businesses to determine whether the \$225,000 threshold has been reached.

Excise Tax

In General. All persons, firms and corporations doing business in the Virgin Islands, except those that are specifically exempt, must pay excise tax on all goods, merchandise, or commodities manufactured in or brought into the Virgin Islands for sale or disposition in the course of a trade or business, for processing or manufacturing, or for any other business purpose. The excise tax is based on the invoice value of such merchandise, plus a mark-up of five percent. Rates of tax depend upon the applicable category, and range from two percent to twenty-five percent.

Drugs, medicine, and clothing are taxed at two percent; tires are taxed at five percent; self-propelled vehicles, firearms, ammunition and bicycles are taxed at ten percent; U.S. beers are taxed at \$1.55 per case; foreign beers at \$2.08 per case; liquor at \$6.00 per case or \$2.50 per wine gallon, whichever is greater; brandies and wines at \$2.04 per case or \$0.85 per wine gallon, whichever is greater; cigarettes at 25 percent; tobacco (exclusive of cigars) at 20 percent; some leather goods and perfumes at 3 percent; rums at \$4.70 per case or \$1.96 per wine gallon, whichever is greater; and carbonated drinks at a rate of 3 percent plus \$0.36 per case. Under the Anti-litter and Beautification Act of 1990, the "catch-all" rate for other items is four percent, unless an exemption applies.

Contractors doing business in the Virgin Islands on government projects are liable for excise tax on their imports. For equipment imported under a lease or rental agreement for a period of 180 days or fewer, the excise tax is based on the actual rental charge or on an appropriate arms-length rental charge.

Payment. Cargo (both foreign and domestic) imported into the Virgin Islands for business purpose is cleared by the U.S. Customs Service and the BIR. An importer is required to pay excise tax on cargo to the BIR at the time of entry unless the importer has a qualifying excise tax bond or rider to its Custom bond. Most merchants have such bond or riders, which give them

until the 15th day of the following month to pay the BIR. Payment of the excise tax is submitted using Form 721V.I., Excise Tax Return.

Exemptions. The importation or manufacture of the following categories of merchandise is exempt from the V.I. excise tax: certain educational materials including books; most food stuff; coal; fuel oil; molasses using in the production of rum, animal and poultry feed; commercial fertilizers; motor vehicles requiring licensing for highway use; goods, merchandise and commodities brought into the Virgin Islands for disposition in the course of export trade; and certain sales to the U.S. or V.I. Governments. Certain specific tourist and construction items are exempt from excise taxes as well as from customs duties.

Imports of exempt items are required to complete Form 721-TC V.I., Non-Taxable Excise Tax Return, for items exempted pursuant to Bill No. 14-0411 (Tourist and Construction Items) or Form 721 EP V.I., Non-Taxable Excise Return, for items not exempted under Bill 14-0411.

Hotel Room Tax

The Virgin Islands imposes a tax on hotel room rentals. The tax applies to an individual who stays in a hotel or a guest house as well as one who rents or leases an apartment, condominium, or residence for a day, week or month if the total rental or lease period is less than 90 days. Guests pay a hotel room tax of ten percent of their gross room rate, which is the total sum charged to a guest for the use of one or more rooms plus any additional charges, such as an energy surcharge or a maintenance fee, but not charges for food, beverages, and gratuities. It is collected by the hotel or other lessor and remitted to the Bureau monthly on Form 722 V.I. by the 30th day of the following month.

Highway User's Tax

A highway user's tax is imposed in the Virgin Islands to provide funding for highway construction and maintenance. Every person or firm registering a vehicle requiring licensing in the Virgin Islands for the first time must pay a highway user's tax based upon the unladen weight of the vehicle at the rate of sixteen cents per pound, with a minimum tax of \$25.00.

Automobiles that are imported for use as taxicabs are exempt from the imposition of highway user's tax. However, when such a vehicle is first registered in the Virgin Islands as a private vehicle, the person registering and licensing the vehicle must pay the highway user's tax no matter what period of time has elapsed since the vehicle was imported for use as a taxicab. Qualified charitable organizations are granted an exemption from the tax on up to two motor vehicles at a time.

Entertainment Tax

A five percent tax is imposed on the gross receipts derived from performances and entertainment including theatrical performances, motion pictures, boxing matches, circuses and concerts, but not dances. However, no tax is imposed where the performance or entertainment is sponsored by a recognized religious, charitable, civic educational or other organization not giving or promoting the performance or entertainment for profit.

The entertainment tax is due the business day following the performance or entertainment, if a BIR employee is not assigned to collect the tax at the performance or entertainment. The entertainment tax should be reported using Form 720-ENT, Entertainment Tax Return.

Fuel Tax

A tax of 7 cents per gallon is imposed upon the sale of gasoline and diesel fuel manufactured, sold, or consumed in the Virgin Islands. The tax is imposed upon the manufacturer or importer of fuel and is due within thirty (30) days after the end of the month concerned.

Fuel sold to the V.I. Government or fuel used to fuel aircraft, motorboats, yachts, or any other motor vehicle not operating on the public highways, or for industrial or other purposes not connected with the fueling of motor vehicles, is exempt from this tax.

Container Tax

The V.I. imposes a container tax on every individual, firm, business or association that brings in a container or flat rack container into the territory, a tax of \$50 on containers up to 39 feet and \$100 on containers that measure \$40 or more feet. Transshipment or in-bond containers are exempt from the container tax. The tax is filed on Form 721VI.

Vehicle Tire Tax

There is imposed on every person, business, partnership, firm, corporation or any association in the Virgin Islands that purchases tires, a tire tax of \$1.00 for tires 18 inches or under and \$2.00 on tires over 18 inches. The importer of the tire is responsible for submitting the tire tax to the BIR.

Rental Surcharge

There V.I. imposes a rental surcharge on the rental of automobiles. The tax is imposed on every person who rents a drive-yourself car in the Virgin Islands. The tax rate is \$3.75 per day. The tax is collected by the licensee, who is then responsible for making the reports and submitting the payments to the Bureau. The returns are due 30 days after the month concerned.

Gross Revenue Tax

The V.I. imposes a tax on the gross revenue of a casino licensee's gaming operations. The tax rate varies between 8 and 12 percent, depending on the number of years in existence. Gross revenue is defined as the total of all sums, including checks, whether collected or not, actually received by a casino licensee from gaming operations, less only the total of all sums paid out as winnings to patrons and a deduction for uncollectible gaming receivables. The deduction for uncollectible gaming receivables shall not exceed the lesser of: (1) 4 percent of the total sums received minus winnings paid to patrons; or (2) a reasonable provision for uncollectible patron checks received from gaming operations. The casino licensee must file a monthly tax return within the BIR within 30 calendar days following the last day of the month concerned to report the gross revenue tax.

Investment Alternative Tax

An investment alternative tax is imposed on the gross revenue of a casino licensee. The tax, in the amount of 2.5 percent of gross revenue, is due within 30 days following the last day of the fiscal year. Casino licensees must make partial payment of the investment alternative tax to the BIR on or before the 15th day of the first, fourth, seventh and tenth month of each year. The amount of the partial payment due is determined by calculating 1.25% of the estimated gross revenues for the three-month period immediately preceding the first day of the due date months. Casino licensees are exempt from paying the investment alternative tax on gross revenues received during the first fiscal year. An investment tax credit against the investment alternative tax is available for casino licensees who purchase bonds issued by the Casino Reinvestment Development Authority or who make approved eligible investments.

The contact information for the BIR for the St. Thomas

Virgin Islands Bureau of Internal Revenue

6115 Estate Smith Bay – Suite 225

St. Thomas, U.S. Virgin Islands 00802

Telephone: (340) 715-1040

Fax: (340) 714-9345 or 774-2672

The contact information for the BIR's St. John office is:

Virgin Islands Bureau of Internal Revenue

P. O. Box 8305

St. John, Virgin Islands 00831

Telephone: (340) 777-1446

Fax: (340) 777-1425

The contact information for the BIR's St. Croix office is:

Virgin Islands Bureau of Internal Revenue

Leroy A. Quinn Government Finance Center

4008 Estate Diamond, Plot 7B

Christiansted, US Virgin Islands 00820

Telephone: (340) 773-1040

Fax: (340) 773-1006