IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

"INLAND REVENUE (AMENDMENT) BILL"

S.C.S.D. No. 64/2022	Petitioner	Uthula Suranga Ranaweera, No. 27/8 8, Duwawatha, Niyadagala Road, Homagama.
	Counsel	Canishka Witharana with H.M. Thilakarathna and Sawani Rajakaruna
	Intervenient Petitioner	Akila Viraj Kariyawasam, Assistant Leader, United National Party of "Sirikotha", No. 400, Kotte Road, Pitakotte.
	Counsel	Faisz Musthapha, PC, with Faiza Markar, Amarasiri Panditharathna and Neomal Pelpola
S.C.S.D. No. 65/2022	Petitioners	1. Indika Padma Kumara, No. 115 Heenatiyangala Road, Kalutara South. 2. Chathura Pandigama, No. 83, Bandaranayake Mawatha, Matugama.

3. Heshan Salinga Brandigampola,
No. 1034/14/B, Pothuarawa
Road, Malabe.

4. Thilina Kasun Manamendra,
No. 124/6, Rajamahavihara
Road, Mirihana, Kotte.

Counsel — Chathura Galhena with Dharani Weerasinghe and Viduri Sulakkhana

Intervenient Petitioner — Palitha Range Bandara,
General Secretary,
United National Party of "Sirikotha",
No.400, Kotte Road, Pitakotte.

Counsel — Eraj de Silva with Daminda Wijerathna, Janagan Sundramoorthy, Zul Luthufi, Naveed Ahmed and Chrishella Dias

S.C.S.D. No. 66/2022 Petitioners — 1. The High Court Judges' Association,
Judges' Chamber,
High Court of Civil Appellate,
Matara.

2. Hon. Lal Ranasinghe Bandara,
Secretary,
High Court Judges' Association,
Judges' Chamber,
High Court of Civil Appellate,
Matara.

Counsel — Dr. Romesh de Silva, PC, with
Sugath Caldera and Niran Anketell

S.C.S.D. No. 67/2022 Petitioners

1. The Judicial Service Association,
Magistrates Court Complex,
Nugegoda.

2. Naleen Prasanna Alwis,
Magistrate,
President,
Judicial Service Association of
Sri Lanka,
Magistrates Court Complex,
Nugegoda.

Counsel — Dr. Romesh de Silva, PC, with
Sugath Caldera and Niran Anketel

S.C.S.D. No. 68/2022 Petitioners

1. Prime Land Residencies PLC,
No. 75, D S Senanayake
Mawatha, Colombo 08.

2. Myland Developments PLC,
No. 136/19, Kandy Road,
Kadawatha.

	Counsel	Manoj Bandara with Laknath Jayawickrama and Rushani Thiyagaraj
S.C.S.D. No. 69/2022	Petitioner	1. Sabaragamuwa University Teachers Association, Sabaragamuwa University of Sri Lanka, P.O. Box 02, Belihuloya, 70140

2. Srimanna Seneviratne
Rajakaruna Mahaadhikaralage
Don Hasintha Rangana
Wijesekara,
No. 158/1, Ihala Bopitiya Road,
Pelmadulla, Rathnapura.

3. Pussella Gamaathi Ralalage
Naleen Indika Pussella,
No. 168/2, Kendalanda, 2nd Lane,
Homagama.

	Counsel	Upul Kumarapperuma with Kaneel Maddumaage and Radha Kuruwitabandara.
S.C.S.D. No. 70/2022	Petitioner	Dasanayake Lekamge Sanjeewa Prasad, No. 508/8, Galle Road, Panadura.
	Counsel	Uditha Egalahewa, PC, with Vishva Vimukthi and Shenal Fernando
S.C.S.D. No. 71/2022	Petitioner	Kulani Kanchana Ranaweera, No. 58/4, Neelammahara Road, Maharagama.
	Counsel	Saliya Pieris, PC, with Anjana Rathnasiri, Suren Gnanaraj, Niranjan Arulpragasam, Sakuni Weeraratne and Rasara Jayasuriya
		Respondent
	Counsel for the State	Wigneswaran, DSG, with Manohara Jayasinghe, DSG, Shiloma David, SC, and Nisal Kohana, SC, for the Hon. Attorney General.

BEFORE:

Hon. Buwaneka Aluwihare, PC - Judge of the Supreme Court

Hon. Murdu N. B. Fernando, PC - Judge of the Supreme Court

Hon. Janak De Silva - Judge of the Supreme Court

The Court assembled for hearings at 9.30 a.m. on 31st October and 3rd November, 2022.

A Bill titled "Inland Revenue (Amendment), a Bill to amend the Inland Revenue Act No. 24 of 2017" (Bill) was published as a Supplement to Part II of the Gazette of 7th October 2022, and placed on the Order Paper of Parliament on 21st October 2022 in accordance with Article 78(1) of the Constitution.

The jurisdiction of Court to determine the constitutionality of the Bill has been invoked by the Petitioners in terms of Article 121(1) of the Constitution. Court heard all the Petitioners, Intervenient Petitioners and the Hon. Attorney-General.

Jurisdiction of Court

This Court is exercising the jurisdiction vested on it in terms of Article 120 of the Constitution which requires it to determine whether the Bill in its entirety or any of its provisions is inconsistent with the Constitution. When a primary determination is made as provided in Article 123(1) as to any inconsistency with the Constitution, the consequential determinations the Court is required to make are specified in Article 123(2) which reads:

> *"(2) Where the Supreme Court determines that the Bill or any provision thereof is inconsistent with the Constitution, it shall also state –*
>
> *(a) whether such Bill is required to comply with the provisions of paragraphs (1) and (2) of Article 82; or*

(b) whether such Bill or any provision thereof may only be passed by the special majority required under the provisions of paragraph (2) of Article 84; or

(c) whether such Bill or any provision thereof requires to be passed by the special majority required under the provisions of paragraph (2) of Article 84 and approved by the People at a Referendum by virtue of the provisions of Article 83,

and may specify the nature of the amendments which would make the Bill or such provision cease to be inconsistent."

Synopsis of the Bill

The Bill contains 42 clauses that fall into two broad categories. First, it is aimed at correcting numerous typographical and other errors in the Inland Revenue Act No. 24 of 2017 (Principal Enactment). These errors range from errors in the Sinhalese text to clarification of ambiguous provisions and are not contested by the Petitioners. The second category of provisions of the Bill is intended to amend several provisions of the Principal Enactment with a view to increasing the tax base and increasing tax revenue. They are also aimed at eliminating several exemptions and allowances provided for in the Principal Enactment. These changes are being challenged by the Petitioners.

At the outset, the learned DSG informed Court that several clauses of the Bill will not be proceeded with whilst certain changes will be made by way of Committee Stage Amendments. They are as follows:

1. Clause 9 amends Section 46(5)(c) of the Principal Enactment. This amendment deals with the issue of transfer of assets between "associates" and provides that after 1st April, 2021 an additional condition will apply. The additional condition is that the person to whom the asset is transferred should have a tax rate less than or equal to the tax rate applicable to the

transferor. The rationale for this Clause is that the benefit under the section cannot accrue in respect of a transfer of an asset made to an "associate" who is subject to a lesser tax rate and thereby create a situation where assets are transferred between associates to evade taxes. **By inadvertence this Clause has stated that the tax rate should be "not less than" instead of "less than or equal to". Accordingly, a Committee Stage Amendment is being moved to correct this typographical error.**

2. Clause 15 amends Section 83(3)(1A) of the Principal Enactment mandating the deduction of Advance Personal Income Tax (formerly known as PAYE) with effect from the date of enactment. PAYE was mandatory under the principal enactment (and previous tax Acts); however, it was made optional after the 2021 Amendment. **Committee Stage Amendments are made to this Clause to reflect the fact that the relevant date would be 1st December, 2022.**

3. Clause 16 amends Section 84A(1A) of the Principal Enactment by providing the necessary cross-reference for the Advance Personal Income Tax rate. **Committee Stage Amendments are made to this Clause to reflect the fact that the relevant date would be 1st December, 2022.**

4. Clause 17 amends Section 85(1B) and (1C) of the Principal Enactment and seeks to re-introduce withholding taxes on service fees. **Committee Stage Amendments are made to this Clause to reflect the fact that the relevant date would be 1st December, 2022.**

5. Clause 19 amends Section 88(1A) of the Principal Enactment and reintroduces dividends paid by a resident company to a resident person as a final withholding payment. The importance of a final withholding payment is that no further tax will be payable at the end of the year of assessment in respect of the source of income where there has been a final withholding.

Committee Stage Amendments are made to this Clause to reflect the fact that the relevant date would be 1st December, 2022.

6. Clause 21 amends Section 92A of the Principal Enactment. The proposed amendment seeks to provide for situations where an estimate of the tax payable may be determined by the Department of Inland Revenue. **This Clause will not be proceeded with and a Committee Stage Amendment will be moved in this regard.**

7. Clause 29 of the Bill amends Section 139 of the Principal Enactment whereby the time to request administrative review has been limited to 14 business days, with effect from 1st April 2023, and the time given to the Commissioner General has also been reduced. **Clause 29 will not be proceeded with and a Committee Stage Amendment will be moved in this regard.**

8. Clause 33 amends Section 179(1) and (4) of the Principal Enactment, and provides for the penalty to be imposed for delayed payment even if an extension has been granted, if an appeal is pending. The rationale for this provision is that a taxpayer who obtains an extension and then utilises the appeal provisions would be liable for a penalty if such person delays to make the payment by the due date. **This Clause will not be proceeded with and a Committee Stage Amendment will be moved in this regard.**

9. Clause 36 amends the First Schedule to the Principal Enactment on the applicable tax rates and periods. **Committee Stage Amendments will be moved so that the personal income tax rates are effective from 1st December, 2022. This would necessitate a change not just simply the dates, but the relevant tables as well.**

10. Clause 39(2) and (3) amend paragraph (2)(a) and (f) of the Fifth Schedule to the Principal Enactment. **Committee Stage Amendments will be made to Clause 39(2) to reflect the personal income tax-free threshold being adjusted to 1st December, 2022 instead of 1st October, 2022.**

11. Clause 41 makes provision to facilitate two different tax rates during the year of assessment commencing on 1st April 2022 (in view of a change of rates occurring in the middle of the year of assessment). **Committee Stage Amendments will be made to reflect the date change to 1st December, 2022.**

In view of the amendments to be made at the Committee Stage as indicated, some of the grounds on which the Bill and its provisions was sought to be impugned by the Petitioners was not proceeded with. Nevertheless, the provisions regarding the increase in the tax rate, the minimum tax bracket and the elimination of several allowable deductions are at the forefront of the Petitioners' concerns.

Policy Justification

The learned DSG sought to explain the justification for the tax policy changes reflected in the Bill by reference to several Cabinet decisions and the Annual Report of the Ministry of Finance, Economic Stabilisation and National Policies 2021.

A Cabinet Memorandum dated 28th May, 2022 was submitted for revenue mobilization to address deteriorating economic conditions and ensure economic stability. Numerous tax policy changes were contemplated and sought to be placed before the Cabinet of Ministers, including an immediate revision of Personal Income Tax Rates effective from 1st October, 2022 the reimposition of withholding tax, and an increase in the Corporate Income Tax rates. This was approved by Cabinet and follow up actions taken as required by law to present the Bill to Parliament.

The proposed changes contained in the Bill has been approved by the Cabinet of Ministers based on Cabinet Memoranda dated 11th March 2022, 28th May 2022, 5th September 2022 and 3rd October 2022.

In these Cabinet Memoranda, the present economic situation and its causes have been explained as follows:

(a) The low tax regime introduced in late 2019 is "now being looked as policies that led to a significant loss of government revenue".

(b) The revenue to GDP ratio has fallen from 12.7% in 2019 to 8.7% in 2021 (inclusive of loss of revenue due to the COVID-19 pandemic).

(c) the Budget Deficit has risen from 9.6% in 2019 to 12.2% in 2021.

(d) The Government debt to GDP ratio has increased from 86.9% in 2019 to 104.6% in 2021.

(e) The fiscal imbalance has significant adverse spillover effects over the economy.

(f) At present, the situation has aggravated to a very critical level where the General Treasury has to increasingly obtain Central Bank financing to make government expenditures, including a substantial part of interest, salaries, pensions and Samurdhi payments etc.

(g) This is clearly unsustainable and hence the need of a strong fiscal consolidation plan.

(h) During the technical negotiations, the International Monetary Fund (IMF) has remarked that Sri Lanka requires more aggressive revenue measures to reach anticipated revenue targets in addition to the reforms announced.

(i) The Capacity Development Mission of the IMF fielded during 6-17 June, 2022 recommended several policy reforms to structurally raise revenue.

(j) This has been further endorsed by the IMF Staff Level Agreement reached on 1st September, 2022 to support Sri Lanka's comprehensive economic reform programme with a 48-month arrangement under the Extended Fund Facility of about US$ 2.9 Billion.

(k) The programme aims to reach a primary surplus of 2.3% of GDP by 2025 by making personal income tax more progressive and broadening the tax base for corporate income tax and VAT.

A detailed assessment of the economic condition highlighting both external and internal factors and the fiscal consolidation policy measures that needs to be made to address the unprecedented economic crisis is outlined in the Annual Report of the Ministry of Finance, Economic Stabilisation and National Policies 2021. Some of the important excerpts are:

> *"Whilst the pandemic induced a significant fiscal shock, the fiscal position was weak even prior to this event. In late 2019, the Government introduced extraordinary tax revisions through tax rate cuts and narrowing tax bases of core taxes such as Corporate and Personal Income Taxes and Value Added Tax (VAT). Several tax exemptions, concessions, and deductions were also introduced as a part of this tax policy package. Although these extraordinary revisions were made in order to stimulate a flagging economy, the revenue foregone due to the tax cuts combined with the impact of the pandemic is estimated to be more than Rs. 500 billion or 3.3 percent of GDP in 2020."*
>
> *"The deterioration of the fiscal position, among other factors, resulted in the downgrade of the sovereign credit rating to near default levels. The rating actions restricted Sri Lanka's access to international capital markets."*

"Government revenue as a percentage of GDP significantly declined to single-digit levels of 9.1 percent in 2020 and further to 8.7 percent in 2021, which is historically low and far below the average of 24.5 percent in emerging and developing Asia. Sri Lanka's tax to GDP ratio was amongst the lowest in the world even before the pandemic, and the 2019 tax cuts have pushed Sri Lanka even further towards the bottom. The low tax regime introduced in late 2019, the imposition of import restrictions to cushion the pressure from the external sector, combined with a deceleration of economic activity due to the pandemic, resulted in a dismal performance of the mobilization of government revenue in 2021. Moreover, the tax base also narrowed in 2020 and 2021, largely due to policy changes in Value Added Tax (VAT), income tax thresholds and removal of mandatory Pay-As-You-Earn (PAYE) and Withholding Tax (WHT). The total number of registered corporate and non-corporate income taxpayers declined by 72.8 percent to 409,814 by end 2021 from 1,505,552 in 2019. With the revision of PAYE, the number of PAYE taxpayers sharply declined by 97.2 percent to 32,702 in 2021 from 1,149,883 in 2019."

"Recurrent expenditure alone was around two times of government revenue in 2021, indicating the lack of sufficient revenue to meet even operational spending requirements of the Government."

"The Government introduced a low tax regime in end 2019 with significant reduction in tax rates, reduced tax base, and a range of exemptions and other concessions. Although this provided immediate relief to businesses and the general public, this resulted in a sharp reduction of government revenue with adverse fiscal and macroeconomic outcomes as observed thereafter."

"In 2021, government revenue collection was unprecedentedly challenged by the impact of COVID-19 pandemic on the economy combined with the extraordinary tax cuts in late 2019. Government revenue sharply declined in 2020 and 2021 both in nominal terms and as a percentage of GDP. The revenue mobilized in 2021 was much similar to the revenue collected in 2015 due to tax base erosion, significant rate cuts in late 2019 and the pandemic induced measures. In nominal terms, the total revenue including grants increased moderately by 6.6 percent to Rs. 1,463.8 billion in 2021 from Rs. 1,373.3 billion in 2020. Total revenue as a percentage of GDP fell sharply at its lowest to 8.7 percent in 2021 which is well below 24.5 percent of GDP in the emerging and developing Asia."

"Despite the large revenue shortfall recorded in 2020, the Government further introduced a plethora of tax holidays, tax concessions and deductions and tax exemptions in 2021 derailing the announced fiscal consolidation efforts."

"The low tax regime together with the impact of the pandemic on revenue mobilization led to a significant decline in income tax revenue by 37.3 percent or Rs. 159.5 billion to Rs. 268.2 billion in 2020, in nominal terms, from Rs. 427.7 billion in 2019. This marked a decline in income tax revenue to GDP ratio to 1.8 percent in 2020 from 2.9 percent in 2019."

Accordingly, it appears that the tax policy changes introduced by the Bill is aimed largely at correcting the imbalances created by the tax rate cuts and incentives granted in 2019 and 2020.

Scope of Examination

The principle that, in tax matters, the legislator is the best judge and must benefit from greater freedom of classification has been adopted in many courts.

In ***San Antonio School District v. Rodrigues*** [1973] 411 US I (quoted with approval in G.K. Krishnan v State of Tamil Nadu A.I.R. 1975 SC 583 at page 592) it was held:

> *"Thus, we stand on familiar ground when we continue to acknowledge that t**he Justices of this court lack both the expertise and the familiarity with local problems so necessary to the making of wise decisions with respect to the raising and disposition of public revenues**. Yet, we are urged to direct the States either to alter drastically the present system or to throw out the property tax altogether in favour of some other form of taxation. **No scheme of taxation, whether the tax is imposed on property, income, or purchases of goods and services, has yet been devised which is free of all discriminatory impact. In such a complex arena in which no perfect alternatives exist, the Court does well not to impose too rigorous standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection Clause**."*(Emphasis added)

P.M. Ashwathanarayana Setty v. State of Karnataka (A.I.R. 1989 SC 100 at page 118) it was held:

> *"Though other legislative measures dealing with economic regulation are not outside Art. 14, it is well recognised that the State enjoys the widest latitude where measures of economic regulations are concerned. These measures for fiscal and economic regulations involve an evaluation of diverse and quite often conflicting economic criteria and adjustment and balancing of various conflicting social and economic values and interests. **It is for the State to decide what economic and social policy it should pursue and what discriminations advance those special and economic policies.** In view of the inherent complexity of these fiscal adjustments, Courts give a larger discretion to the Legislature in the matter of its preferences of economic and*

social policies and effectuate the chosen system in all possible and reasonable ways."(Emphasis added)

In, ***The Secretary to the Government of Madras & Anr. vs. P.R. Sriramulu & Anr.*** (A.I.R. 1996 SC 676)*,* the Supreme Court of India observed:

> ***"It is also well settled that lack of perfection in a legislative measure does not necessarily imply its constitutionality as no economic measure has so far been discovered which is free from all discriminatory impact and that in such a complex area in which no fool proof device exists, the Court should be slow in imposing strict and rigorous standard of scrutiny by reason of which all local fiscal schemes may be subjected to criticism under the equal protection clause."*** (Emphasis added)

In ***Income Tax Officer, Shillong and Another. vs. N. Takim Roy Rymbai*** (A.I.R. 1976 SC 670 at page 674) the Supreme Court of India held that:

> *"While it is true that a taxation law cannot claim immunity from the equality clause in Article 14 of the Constitution, and has to pass, like any other law, the equality test of that Article, it must be remembered that the State has, in view of the intrinsic complexity of fiscal adjustments of diverse elements, a considerably wide discretion in the matter of classification for taxation purposes. Given legislative competence, the legislature has ample freedom to select and classify persons, districts, goods, properties, incomes and objects it would not tax. So long as the classification is made within this wide flexible range by a taxing statute does not transgress the fundamental principles underlying the doctrine of equality, it is not vulnerable on the ground of discrimination merely because it taxes or exempts from tax some incomes or objects and not others.* ***Nor the mere fact that a tax falls more heavily on some in the same category, is by itself a ground to render law invalid.****"* (Emphasis added)

This has always been a long-standing principle in our courts. A review of the jurisprudence establishes that the Court has established the following criteria for considering the constitutionality of tax legislation:

(a) **In terms of Article 148 of the Constitution, Parliament has full control over public finance and one of the vital components of such control is the control of the sources of finance i.e. imposition of taxes, levies and rates.** [**Appropriation Bill** (Decisions of the Supreme Court on Parliamentary Bills (2007-2009), Vol. IX, 44 at page 45, **Appropriation Bill** (Decisions of the Supreme Court on Parliamentary Bills (2010-2012), Vol. X, 109 at pages 110, 113), **Betting and Gaming Levy (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 23 at pages 26-27), **Strategic Development Projects (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 33 at page 34), **Notaries (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 41 at page 42), **Powers of Attorney (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 49 at page 50), **Registration of Documents (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 57 at page 58), **Nation Building Tax (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 73 at page 75), **Appropriation Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 101 at page 109), **Fiscal Management (Responsibility) (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 53 at page 55)]

(b) **The Legislature enjoys a wide discretion in formulating policy on economic matters of the country. The Supreme Court has always confined the scrutiny of any Bill strictly in accordance with the jurisdiction conferred by Articles 121 and 123 of the Constitution. The policy making power is left to the authorities in whom it is vested by law. The Supreme Court has been**

reluctant to intervene in matters of policy unless such policy is found to be manifestly unreasonable.

[**Foreign Exchange Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 88 at page 95)].

(c) **In fiscal legislation, it is a matter for the Legislature to decide what considerations relating to the amelioration of hardship or to the interests of the economic progress of the people should be given effect to. In taxation matters, the Legislature has the greatest freedom of classification to determine which category or class of persons who should be granted concessions or not.**

[**Finance (Amendment) Act of 1978** [Decisions of the Constitutional Court of Sri Lanka (Volume VI) 1978, **Inland Revenue (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (1978-1983), Vol. I, 99 at page 100), **Inland Revenue (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (1991-2003), Vol. VII, 105 at pages 106-107), **Finance Bill** (Decisions of the Supreme Court on Parliamentary Bills (2004-2006), Vol. VIII, 32 at page 33), **Value Added Tax (Amendment) Bill**, (Decisions of the Supreme Court on Parliamentary Bills (2004-2006), Vol. VIII, 47 at page 50), **Default Taxes (Special Provisions) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2007-2009), Vol. IX, 63 at page 64), **Betting and Gaming Levy (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 23 at page 29), **Strategic Development Projects (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 33 at page 37,38), **Notaries (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 41 at page 46), **Powers of Attorney (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 49 at page 53, 54), **Inland Revenue (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills

(2013), Vol. XI, 69 at page 70), **Nation Building Tax (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 73 at page 79), **Fiscal Management (Responsibility) (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 53 at page 54), **Nation Building Tax (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 65, 66), **Value Added Tax (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 76 at page 76), **Foreign Exchange Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 88 at page 95), **Inland Revenue Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 105 at page 107), **Inland Revenue (Amendment) Bill** (S.C.S.D. Nos. 1-3/2021), **Surcharge Tax Bill** (S.C. (SD) 19-21/2022 and 23-29/2022)].

(d) **Decisions based on economic considerations must largely be left to the Legislature in view of the inherent complexity of fiscal adjustment of diverse elements that requires to be made.**

[**Inland Revenue (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (1978-1983), Vol. I, 99 at page 100), **Default Taxes (Special Provisions) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2007-2009), Vol. IX, 63 at page 64), **Inland Revenue Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 105 at page 107), **Inland Revenue Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 105 at page 107), **Inland Revenue Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 105 at page 107)]

(e) **In deciding whether the taxation law is discriminatory or not, it is necessary to bear in mind that the State has a wide discretion in selecting persons or objects it will tax, and that a statute is not open to attack on the ground that it taxes persons or objects and not others. It is only when within the range of its selection, the law operates unequally, and that cannot be justified on the basis of any valid classification, that it would violate the right to equality.**

[**Finance (Amendment) Act 1978** (The Constitutional Court of Sri Lanka, Vol. VI, 1978), **Inland Revenue (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (1991-2003), Vol. VII, 105 at page 106), **Finance (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2004-2006), Vol. VIII, 89, 90), **Inland Revenue (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2004-2006), Vol. VIII, 91, 92), **Finance Bill** ((Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 12 at page 19), **Fiscal Management (Responsibility) (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 53 at page 54), **Nation Building Tax (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 65 at page 66), **Value Added Tax (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 76 at page 77), **Inland Revenue Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 105 at page 107)].

(f) **Revenue measures sought to be introduced by any Bill would not generally be considered as inconsistent with Article 12 of the Constitution unless they are manifestly unreasonable or manifestly discriminatory**.

[**Inland Revenue (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2004-2006), Vol. VIII, 29 at page 31] **Value Added Tax (Amendment) Bill**, (Decisions of the Supreme Court on Parliamentary Bills

(2004-2006), Vol. VIII, 79), **Finance Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 12 at page 20), **Value Added Tax (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 76 at page 79), **Surcharge Tax Bill** (S.C. (SD) 19-21/2022 and 23-29/2022)].

(g) **The power to tax retrospectively is an incident of sovereignty and is co-extensive with the subjects to which the sovereignty extends. It is unlimited in its range acknowledging in its very nature no limits so that security against its abuse, if any, is to be found only in the responsibility of the legislature which imposes the tax on the people who are to pay it.**

[**Nation Building Tax (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 65 at page 66)].

(h) **Retrospective taxation cannot be regarded as unreasonable unless it is clearly prohibitive.**

[**Finance Bill** (Decisions of the Supreme Court on Parliamentary Bills (2004-2006), Vol. VIII, 32 at page 34), **Value Added Tax (Amendment) Bill**, (Decisions of the Supreme Court on Parliamentary Bills (2004-2006), Vol. VIII, 47 at pages 49-50), **Finance Bill** ((Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 12 at page 18), **Betting and Gaming Levy (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 23 at pages 25-26), **Powers of Attorney (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 49 at page 52), **Registration of Documents (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 57 at page 60), **Nation Building Tax (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 73 at page 77), **Value Added Tax (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 76 at page 78)]

(i) **Where retrospective effect is given only to the application of a revenue measure and not the imposition of a penalty for an offence, the bar against retrospectivity contained in Article 13(6) of the Constitution would not apply.**

[**Protection of Government Revenue (Special Provisions) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2004-2006), Vol. VIII, 106 at page 107), **Finance Bill** ((Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 12 at page 18), **Betting and Gaming Levy (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 23 at page 25), **Strategic Development Projects (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 33 at page 36), **Notaries (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 41 at page 44), **Powers of Attorney (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 49 at page 52),), **Registration of Documents (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 57 at page 59), **Nation Building Tax (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2013), Vol. XI, 73 at page 76)

(j) **The laws fixing taxes cannot be questioned on the ground that the tax is heavy and oppressive.**

[**Ananthakrishnan v. Madras** AIR (1952) 395 at 408 quoted with approval in **Nation Building Tax (Amendment) Bill** (Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Vol. XIII, 65 at page 66)].

Accordingly, in exercising its constitutional jurisdiction over fiscal statues, this Court is mindful of the full control Parliament exercises over public finance under the Constitution including imposing of taxes and levies. Various budgetary, economic and monetary policies have to be taken into account. As a result, the Court acknowledged that the State needs greater flexibility in classification for tax

legislation purposes. The State has the right to decide who should or should not be taxed. It is only when the law operates unequally within the range of its selection, and when that cannot be justified on the basis of any valid classification, that it would violate the right to equality. Fiscal policy will not be in conflict with Article 12 of the Constitution unless it is found to be manifestly unreasonable or manifestly discriminatory.

Therefore, it came as no surprise to Court that all the counsel for the Petitioners broadly sought to impugn the Bill on the basis of *'manifestly unreasonable or manifestly discriminatory'* albeit that basic proposition was built upon distinct submissions constructed on different propositions.

Mr. Canishka Witharana appearing for the Petitioner in S.C. (S.D.) 64/2022 submitted that the proposed tax rates are manifestly unreasonable as it violates the ability to pay principle. It was submitted that Clauses 15, 36, 37 and 39 of the Bill would deprive the fundamental right of the citizens and the basic right to live by compelling to pay taxes beyond their ability to pay and therefore violate Articles 12(1) read with Articles 3 and 4 of the Constitution.

Mr. Chathura Galhena appearing on behalf of the Petitioners in S.C. (S.D.) 65/2022 submitted that Table (A) and (B) of the Bill have created retrospective offences in violation of Article 13(6) of the Constitution. It was further contended that the proposed tax regime will result in middle-income earners having to pay more tax than the high-income earning individuals and as such violate Article 12(1) of the Constitution.

Mr. Manoj Bandara on behalf of the two Petitioners in S.C. (S.D.) 68/2022 contended that the Inland Revenue (Amendment) Act No. 10 of 2021 offered certain tax incentives for a period of three years to companies that listed their shares on the Colombo Stock Exchange and acting on this representation the two Petitioner companies listed their shares. The Bill now seeks to limit the incentive to

six months in violation of the legitimate expectation and classify them with companies that did not list their shares which is inconsistent with Article 12(1) of the Constitution. He further contended that the right to life of their employees is violated as the personal tax relief of Rs. 100,000/= envisaged in the Bill is not adequate to cover the living expenses of an average citizen. On this basis it was submitted that Clauses 36(3)(b), 36(3)(a)(ii) and 39(2)(a) of the Bill are inconsistent with Article 12(1) and 12(2) of the Constitution.

Mr. Upul Kumarapperuma appearing on behalf of the Petitioners in S.C. (S.D.) 69/2022 submitted that the Bill frustrates the legitimate expectation of the people since the Government is trying to change the tax policy without having a public discussion about it and without consulting the experts and individuals who are severely affected by the tax changes. In addition, he argued that the new tax system is unfair, uncertain, inconvenient to the public and contrary to established principles of taxation. Specifically, it was submitted that subsection 29(1) of the Bill is inconsistent with subsections 12(1) and 14(1)(g) of the Constitution.

Mr. Saliya Pieris PC appearing for the Petitioners in S.C.(S.D.) 71/2022 submitted that the fiscal measures in the Bill are manifestly unreasonable, arbitrary and violative of the right to equality embodied in Articles 12(1) and 14(1)(g) of the Constitution read with Articles 27(2), 27(7), 27(8) and 27(9) in as much they are regressive in effect and have a disproportionate impact on the standard of living of the lower and middle classes of the society. It was further submitted that the proposed amendments have the effect of taxing earnings at significantly higher rates (with an increment of over 100%), narrowing of the tax bracket slabs and reducing the minimum taxable threshold from Rs. 3 million to Rs. 1.2 million. It was contended that equity in taxation requires the State to consider *inter alia* the ability to pay and the principle of marginal utility of money and that the Bill ignores these principles of equitable taxation because it has a regressive impact on the middle

class. Therefore, it was submitted that the proposed tax revisions operate unequally with the middle-class income earner having to curtail use for essentials while the high-income earners would only have to cut down on luxuries.

Mr. Uditha Egalahewa PC on behalf of the Petitioners in S.C. (S.D.) 70/2022 adopting a similar approach submitted that, the decision to impose not only an additional tax burden on the "low middle income" working class which is struggling financially to survive, but also to do so at a percentage increase which is sharper than what is imposed for high income earners is manifestly violative of the principle of equitable taxation. He conceded that tax incentives granted by Parliament may be withdrawn provided the affected parties are given a prior hearing.

The Petitioners partially argue that the proposed tax rates are regressive and therefore inequitable. Taxes that impose a higher relative burden on those with higher incomes are termed progressive, while taxes that impose a heavier relative burden on those with low income are regressive.

In this context, the concept of equitable taxation must be considered from the outset. Documents submitted to the Court indicate that even among economists there is a difference of opinion about what constitutes fair taxation. Mr. Kumarapperuma appearing for the Petitioners in S.C.(S.D.) 69/2022 drew our attention to an article titled *"2022 October Taxes: A signal why suspending democracy will not save the country"* (Sunday Morning Newspaper dated 30th October 2022) by Dr. Nishan de Mel, where he discusses the problems with the proposed tax system. He critiques the regressive tax outcome on the middle class. Nevertheless, Wilson Prichard in "*What Might an Agenda for Equitable Taxation Look Like?*" (Summary Brief Number 16 International Center for Tax and Development, page 2) states:

> *"The simplest version of an equitable tax agenda is to argue that all taxation should be progressive. This, however, is widely understood to be too*

simplistic. The equity of a tax system is best understood in the context of the entire fiscal system; that is, how revenue is collected and how it is spent. A highly progressive tax may be very bad for the poor if the revenue that is raised is not spent on subsidies or services that benefit them. More commonly, a regressive tax may be very good for the poor if the revenue is spent overwhelmingly to benefit poorer groups, as even regressive taxes collect the bulk of revenue from wealthier individuals."

Therefore, economists do not agree on the indicators that should be taken into account when determining whether a tax system is equitable. Simply because the tax rates are regressive does not necessarily mean that the system is regressive. Moreover, according to *Prichard* (Supra.) the equity of a tax system is best understood in the context of the entire fiscal system; that is, how revenue is collected and how it is spent. However, according to the Petitioners the Bill violates the principle of equitable taxation by establishing a regressive taxing system allegedly targeting the middle class. The question is how well equipped is a Court of law to make a call on what is an equitable tax regime.

Moreover, there is no equity in tax as held by Rowlat J. in ***Cape Brandy Syndicate v. CIR*** [(1921) 1 K.B. 64]. In ***Perera & Silva Ltd., v. Commissioner General of Inland Revenue*** [79(II) N.L.R. 164 at 167] Thamotheram J. quoted with approval the following statement in *C. N. Beatie- Elements of the Law of Income and Capital Gains Taxation* at page 2;

"*It has frequently been said that, there is no equity in a taxing statute. This means that tax being the creature of statute, liability cannot be implied under any principle of equity but must be found in the express language of some statutory provision. The ordinary canons of construction apply in ascertaining the meaning of a taxing statute: "the only safe rule is to look at the words of the enactments and see what is the intention expressed by these*

words." If in so construing the statute the language is found to be so ambiguous that it is in doubt whether tax is attracted or not, the doubt must be resolved in favour of the taxpayer, because it is not possible to fall back on any principle of common law or equity to fill a gap in a taxing statute."

Since fiscal liability cannot be implied under any principle of equity, conversely equity has no role to play in fiscal statues. Accordingly, we are of the view that the notion of equitable taxation has no place in the analysis Court must make in determining whether the tax is manifestly unreasonable or discriminatory for purposes of Article 12(1) of the Constitution. As Edmund Burke said so eloquently, *"to tax and to please, no more than to love and to be wise, is not given to men"*.

Nevertheless, though most counsel argued that the proposed tax system targets the middle class, the reference to the middle class was only *ipse dixit*. No definition of what constitutes the middle class has been provided to guide the Court. The reality is that we do not seem to have a universally accepted definition of the middle class. Riana Razafimandimby Adrianjaka in *Middle-Class Composition and Growth in Middle-Income Countries* [ADBI Working Paper Series No. 753 June 2017, page 1] states:

"…the size indicators adopted by the various studies do not necessarily converge, the middle-class being itself a complex concept, hugely context-dependent, which cannot easily be measured."

In these circumstances, the Court is in any event unable to conclude that the proposed tax rates are regressive and have a discriminatory impact on the middle class. We reiterate the principle according to which a tax law cannot be attacked on the ground that it taxes persons or objects and not others. It is only when within the range of its selection, the law operates unequally, and that cannot be justified on the basis of any valid classification, that it would violate the right to equality.

In fact, the learned DSG drew the attention of Court to the proposed tax structure and submitted that the proposed tax rates appear excessive only because the Petitioners sought to compare it against the reduced tax rates introduced in 2021. We are not privy to the reasons for the introduction of the reduced tax rates in 2019 and 2021. Nevertheless, they have been identified as a grave error that has eroded government revenues. It is wrong to assess the constitutionality of the proposed tax system on the basis of a prior tax system that has proven to be economically flawed.

The Petitioners broadly submitted that the minimum cost of living for a family of 3.8 was around Rs. 116,000 which is more than the tax-free limit of Rs. 100,000. The learned DSG countered that this assertion is palpably and demonstrably wrong. He contended that the Petitioners had suppressed the vital fact that on average in Sri Lanka each household has 1.8 wage earners as evinced in the Department of Census and Statistics, Household Income and Expenditure Survey 2019, which Survey the Petitioners have relied upon.

Accordingly, it was submitted that the expenditure of a typical household should be compared against the income of a typical household, which will have 1.8 income earners rather than one income earner as sought to be done by the Petitioners. Therefore, the personal income tax waiver threshold for the typical household (as opposed to a single person) would be Rs. 180,000 (i.e. 100,000 x 1.8 = 180,000), which is Rs. 64,000 more than the average expenditure of Rs. 116,000 relied upon by the Petitioners. In other words, the tax exemption threshold for a typical household is 155% of the average expenditure relied upon by the Petitioners (i.e. 180,000/ 116,000 x 100). As a result, the Petitioners' main argument is fundamentally misleading.

The learned DSG further submitted that the Colombo Consumer Price Index relied upon by the Petitioners to demonstrate a **minimum** cost of living, actually indicates

the **average (mean)** cost of living in **Colombo**. It has been pointed out that the average cost of living is quite different from the minimum cost of living. The average is distorted by high spenders. This is especially true when the average is that of Colombo, which has the highest concentration of people who are high spenders. The Table below (Table 7) taken from the Department of Census and Statistics, Household Income and Expenditure Survey 2019, demonstrates how the average household expenditure in Colombo is almost double that of the national average expenditure per month.

Table 07: Mean and median household expenditure per month by sector, province and district-2019,2016

Sector/Province /District	Mean		Median	
	(Rs.)	(Rs.)	(Rs.)	(Rs.)
	2019	2016	2019	2016
Sri Lanka	**63,130**	**54,999**	**47,544**	**40,186**
Sector				
Urban	95,392	77,337	69,300	54,350
Rural	57,652	51,377	44,996	38,377
Estate	38,519	34,851	36,265	30,884
Province				
Western	90,243	74,505	68,290	54,753
Central	56,783	50,334	43,488	38,626
Southern	57,854	52,271	45,322	39,065
Northern	44,020	42,537	38,089	33,742
Eastern	46,947	38,407	39,128	31,582
North -Western	59,681	55,514	45,970	39,518
North -Central	52,337	48,176	42,924	38,025
Uva	46,237	39,140	35,275	30,190

Sabaragamuwa	47,215	42,810	39,331	32,646
District				
Colombo	108,893	90,670	81,082	64,981
Gampaha	84,413	64,563	65,037	49,437
Kalutara	65,970	64,268	54,828	46,099
Kandy	66,997	54,400	48,432	39,878
Matale	49,533	47,744	40,240	37,859
Nuwara Eliya	41,969	44,059	39,770	36,155
Galle	58,504	53,350	45,628	39,830
Matara	59,750	47,322	48,806	35,595
Hambantota	54,169	56,890	42,086	43,004
Jaffna	42,213	43,571	36,999	34,553
Mannar	49,881	46,795	44,755	39,439
Vavunia	56,086	51,754	46,366	42,043
Mullaitivu	34,181	32,576	25,126	23,457
Kilinochchi	37,237	28,483	33,980	23,952
Batticaloa	41,374	32,807	35,409	27,586
Ampara	52,924	42,646	42,578	36,323
Trincomalee	44,876	39,247	38,829	29,360
Kurunegala	57,769	55,718	44,586	39,156
Puttalam	63,736	55,076	50,106	40,259
Anuradhapura	52,796	48,299	43,362	38,984
Polonnaruwa	51,295	47,910	41,193	36,588
Badulla	46,971	41,234	34,471	30,486
Moneragala	44,943	35,487	36,273	29,462
Ratnapura	44,864	38,589	38,074	29,623
Kegalle	50,340	48,511	42,352	38,025

This Table also shows that examination of the mean is not appropriate because the mean (or, as it is often called, the "mean") is clearly skewed by people with very high incomes. In as much as Colombo skews the national average and remains an outlier, amongst the other districts, within Colombo, the concentration of the

highest earners and spenders creates a very significant difference between the Average expenditure and the Median Expenditure.

We therefore agree with the learned DSG that it is essential to look at median spending rather than average spending. If the national median household expense (Rs. 47,544) is taken as a measure, the new tax-free threshold for 1.8 household income (Rs. 180,000) is more than four times the national median household expenditure by the 2019 rates.

However, given that there has been 84% inflation from 2019 until October 2022 (based on a CCPI index of 132.4 in December 2019 and 243.8 in October 2022, i.e. 243.8/132.4 x 100), it is most appropriate to increase median household spending by 84% in 2019. This would result in a sum of Rs. 87,481 as the median household expenditure in today's terms, including inflation. Yet, this is still approximately Rs. 92,000 (i.e. 180,000 - 87,481 = 92,519) lower than the tax-free threshold for 1.8 income earners. In other words, the tax exemption threshold for a standard household (Rs. 1,80,000) is more than twice the median national household expenditure (Rs. 87,481) **adjusted for inflation.**

We note that this expenditure is in relation to the median household of 3.8 persons. Thus, even where there is a single-earner family, the tax-free threshold of Rs. 100,000 is significantly higher than the median expenditure for a household adjusted for inflation (i.e. 100,000 - 87,481 = 12,519, which is 14% higher than the median expenditure). This is by no means *"manifestly unreasonable"*.

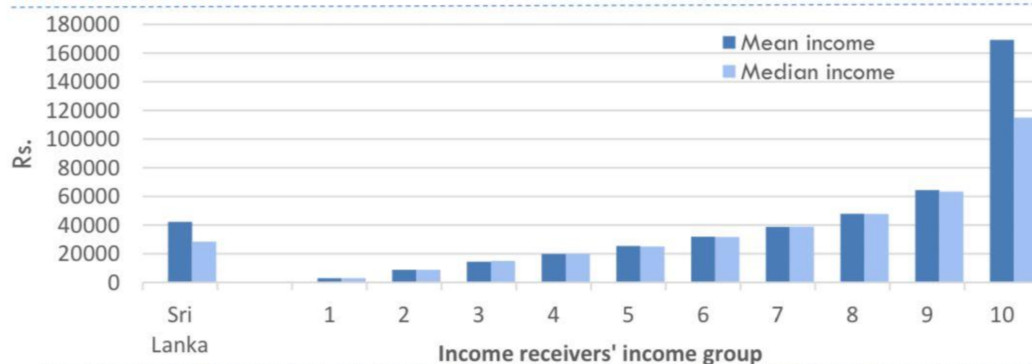
The learned DSG forcefully submitted that the reasonableness of the Bill, which sets the tax-free threshold at Rs. 100,000 a month, is also evinced by the following table.

Table 2. 9: Mean and median monthly Income receivers' income by income receivers' income decile - 2019

Income receivers' income decile group	Income receivers' income		
	Income group	Mean income	Median income
	(Rs.)	(Rs.)	(Rs.)
All groups		**42,308**	**28,465**
1	Less than or equal 5,850	3,033	3,000
2	5,851 – 11,834	8,810	8,860
3	11,835 – 17,133	14,509	15,000
4	17,134 – 22,500	19,890	20,000
5	22,501 – 28,465	25,424	25,000
6	28,466 – 35,000	31,860	31,686
7	35,001 – 42,577	38,770	38,917
8	42,578 – 54,257	47,911	47,820
9	54,258 – 79,000	64,455	63,396
10	More than 79,000	169,189	115,000

Figure 2.6

Mean median income distribution of income receivers' income by income receivers' income decile 2019



Source: Income and Expenditure Survey 2019
Department of Census and Statistics, Sri Lanka

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This graph shows the median income for one person. Again, we can see that the outliers exist in the top 10% of the society. If the above table is adjusted for inflation until October 2022 (i.e at the rate of 84%) we obtain the following data:

Monthly Income Earners Income				
	Mean Income		**Median Income**	
	2019	**2022 October**	**2019**	**2022 October**
Decile 1	3,033	5,581	3,000	5,520
Decile 2	8,810	16,210	8,860	16,302
Decile 3	14,509	26,697	15,000	27,600
Decile 4	19,890	36,598	20,000	36,800
Decile 5	25,424	46,780	25,000	46,000
Decile 6	31,860	58,622	31,686	58,302
Decile 7	38,770	71,337	38,917	71,607
Decile 8	47,911	88,156	47,820	87,989
Decile 9	64,455	118,597	63,396	116,649
Decile 10	169,189	311,308	115,000	211,600
National	42,308	77,847	28,465	**52,376**

Accordingly, the learned DSG submitted that only the top 20% of income earners will be taxed under the proposed tax regime. Even out of that, the Median wage earner in the 9th Decile (i.e. the person in the middle of the top 10% - 20% income earners) would only pay a sum of Rs. 999 as taxes. The Median wage earner in the 10th Decile (i.e. the person in the middle of the top 10% income earner) would only pay a sum of Rs. 12,588 as taxes.

In the circumstances above, it is our opinion that the Petitioners have not established that the proposed tax system is manifestly unreasonable or manifestly discriminatory.

Mr. Kumarapperuma submitted that the Bill frustrates the legitimate expectation of the people since the Government is trying to change the tax policy without having a public discussion. The proposition that rules of natural justice must be followed when exercising legislative power is completely misconceived in law. There is no requirement for a hearing to be given to affected parties prior to the exercise of legislative power, whether it is primary or delegated in nature.

In ***Bates v. Lord Hailsham of St Marylebone and others***[(1972) 3 All E.R. 1019] Megarry J. held as follows (at page 1024):

> *"Let me accept that in the sphere of the so-called quasi-judicial the rules of natural justice run, and that in the administrative or executive field there is a general duty of fairness.* ***Nevertheless, these considerations do not seem to me to affect the process of legislation, whether primary or delegated.*** *Many of those affected by delegated legislation, and affected very substantially, are never consulted in the process of enacting that legislation; and yet they have no remedy."* (Emphasis added)

Mr. Pieris PC, Mr. Kumarapperuma and Mr. Bandara contended that the Bill is inconsistent with Article 12(1) of the Constitution as it violates the legitimate expectation held by the respective Petitioners. The submission was also made by reference to vested rights which they alleged to have based on the representations made by the Government. To put it simply, the argument is that where benefits have been granted to the taxpayer in the form of exemptions and concessions, the Legislature cannot withdraw them.

However, as the learned DSG correctly pointed out, there is no vested right with respect to Parliament's policy decisions on tax measures. The Supreme Court of Canada in addressing a similar contention in ***Gustavson Drilling*** [1977] 1 S.C.R. 271, (at page 282-283), wherein it was contended that the Appellant in the said case had a continuous or a "vested right" to deduct exploration and drilling expenses incurred, which was sought to be withdrawn by a subsequent Income Tax Act observed;

> "***No one has a vested right to continuance of the law as it stood in the past; in tax law it is imperative that legislation conform to changing social needs and governmental policy. A taxpayer may plan his financial affairs in reliance on the tax laws remaining the same; he takes the risk that the legislation may be changed."*** (Emphasis added)

Moreover, as explained earlier the new tax policy is to meet the grave economic situation the country is facing partly due to introduction of a low tax regime at the end 2019 with significant reduction, both in tax rates, as well as the tax base, and a range of exemptions and other concessions granted. In ***United Policyholders Group and Others v. Attorney General of Trinidad and Tobago*** [2016] UKPC 17 the appellants, who are all residents of Trinidad and Tobago, were holders of life policies issued by the Colonial Life Insurance Company (CLIC). Their claim arose out of the banking crisis in early 2009 when CLIC was in serious financial difficulties. The

claim was based on assurances of support given for CLIC by the then government, which they say created a “legitimate expectation” enforceable in law. They asserted that the new government failed to honour that expectation. The claim succeeded in the High Court but was dismissed in the Court of Appeal. Lord Carnwath JSC held (para. 121):

> *“In summary, the trend of modern authority, judicial and academic, favours a narrow interpretation of the Coughlan principle, which can be simply stated. Where a promise or representation, which is “clear, unambiguous and devoid of relevant qualification”, has been given to an identifiable defined person or group by a public authority for its own purposes, either in return for action by the person or group, or on the basis of which the person or group has acted to its detriment, the court will require it to be honoured, unless the authority is able to show good reasons, judged by the court to be proportionate, to resile from it. In judging proportionality* ***the court will take into account any conflict with wider policy issues, particularly those of a “macro-economic” or “macro-political” kind.****”*(Emphasis added)

A similar approach to policy changes and the ability of the legislature to do so was upheld in **<u>National Authority on Tobacco and Alcohol (Amendment) Bill</u>** (Decisions of the Supreme Court on Parliamentary Bills (2014-2015), Vol. XII, 15 at page 19)where this Court rejected the argument that there was a vested right to use a trademark on cigarette packaging and held;

> “***A policy once formulated is not good for ever. The Government has the power to change the policy.*** *The executive power is not limited to frame a particular policy. It has untrammelled power to change, re-change, adjust and readjust the policy taking into account the relevant and germane considerations. It is entirely in the discretion of the Government how a policy should be shaped.”* (Emphasis added)

We therefore reject the contention that the Bill violates the legitimate expectation or vested rights of the Petitioners.

Mr. Kumarapperuma submitted that Clause 1(4) and the proposed sub-paragraph (1B)(b) to paragraph 1 of the First Schedule to the Inland Revenue Act (Table B), inserted by Clause 36(1)(b) of the Bill is inconsistent with Article 13(6) read with Articles 3 and 4(d) of the Constitution. It was also contended that Clause 1(5) and the proposed sub-paragraph (1C) to paragraph 1 of the First Schedule to the Inland Revenue Act (Table C), inserted by Clause 36(1) of the Bill and Clause 39(2)(a)(iii) and (iv) of the Bill are inconsistent with Articles 12(1) and 14(1)(g) read with Articles 3 and 4(d) as well as Article 13(6) of the Constitution. Furthermore, he contended that Clause 39(2)(b) of the Bill is inconsistent with Articles 13(6), 12(1) and 14(1)(g) read with Articles 3 and 4(d) as well as Article 13(6) of the Constitution.

These submissions were premised on the date on which the new tax regime was to take effect i.e. 1st October 2022 as set out in the draft Bill that was gazetted. However, the learned DSG at the outset informed that the date is to be changed to 1st December 2022 by a Committee Stage Amendment.

Where retrospective effect is given only to the application of a revenue measure and not the imposition of a penalty for an offence, the bar against retrospectivity contained in Article 13(6) of the Constitution would not apply. In the Bill, read with the Committee Stage Amendments, even the application of the revenue measures is not done with retrospective effect.

Taxes on Salaries of Judges

Dr. Romesh De Silva PC appearing for the Petitioners in S.C.S.D. 66/2022 and 67/2022 submitted that Clause 36 of the Bill is inconsistent with Articles 3, 4, 108 and 111C read with Article 12(1) of the Constitution in so far as it is sought to be applied to the members of the High Court Judges' Association and the Judicial Service Association. On this basis, a declaration was sought that Clause 36 of the Bill shall not become law in respect of the members of the respective associations unless passed in accordance with the special majority specified in Article 83 of the Constitution and approved by the People at a Referendum.

The Petitioners in S.C.S.D. 66/2022 and 67/2022 are respectively the High Court Judges' Association and the Judicial Service Association. The High Court, District Court and Magistrates Court judges are members of these two associations. Dr. De Silva PC submitted that they are *the face of the judiciary* in Sri Lanka and subjecting them to taxes similar to all citizens is impermissible for three different reasons, namely:

(a) Judges are a separate and distinct category
(b) The foundation/gravamen of the judiciary is the independence of the judiciary
(c) Judges do not have to pay income tax

We will consider each of these assertions separately.

Judges are a separate and distinct category

It was suggested that judges are a distinct and distinct category/category and cannot be categorized with the rest of the population. Dr. De Silva PC emphasized that the judiciary is a distinct branch of government exercising the judicial power of the people and that judges are required to live a very different life to the rest of the population. The attention of Court was drawn to several chapters in the book

"*Judicial Conduct: Ethics and Responsibilities"* by A.R.B. Amerasinghe which sets out various restrictions and fetters upon a judge such as keeping a low profile, limitations on association, association with persons regularly attending court, contact with politicians, political activity by members of a judge's family, misconduct in private life and isolation to name a few.

There is no doubt that judges are called upon to lead very different lives from other citizens by sacrificing the common rights and freedoms offered to all citizens. As rightly pointed out by A.R.B. Amerasinghe in *"Judicial Conduct: Ethics and Responsibilities"* (page 1), for a very long-time judges have been compared with priests and the courts in which they officiate described as temples. This is due in part to the fact that they are expected to live a life of relative seclusion in privacy. Indeed, taking up judicial office is itself a sacrifice and judges are entitled to certain rights and privileges.

We were referred to the decisions in ***High Court Judges Association and Others v. Lionel Fernando, Co-Chairman, National Salaries and Cadre Commission and Others*** [S.C. 66/2008, S.C.M. 4.5.2009] and ***Chathurika Silva v. Sunil Hettiarachchi, Secretary, Ministry of Education and Others*** [SC/FR/222/2018, S.C.M. 18.06.2020] to further support the proposition that Judicial Officers form a separate and distinct class.

In the ***High Court Judges Association*** case, this Court held that if there is a national wage policy, the judiciary should be classified separately. The dispute arose due to the National Salaries and Cadre Commission classifying High Court Judges and Judges of the Original Courts together with the Public Service without taking account of their duties, functions and responsibilities. We respectfully endorse that decision. Taking into account the duties, functions and responsibilities of judicial officers, they cannot be classified with public officials.

In ***Chathurika Silva*** case, this Court held that the established practice to admit children of Judicial Officers to State Schools cannot be changed without formulating a criterion in consultation with the relevant stakeholders. The decision was based on legitimate expectation and we see no reason to disagree with the reasoning.

Nevertheless, the question before us is whether judges should be required to pay taxes when all citizens, obviously above a minimum threshold, are required to pay taxes. In a welfare state, public finances must sustain free public services such as education and health and other subsidized services. We are of the view that there is no logical reason as to why judges should not be called upon to contribute on a non-discriminatory basis, directly or indirectly, to the State coffers along with other members of the public despite the differences identified above. These differences do not have a rational relationship to the purpose of taxation, which is to increase government revenues. The public services provided through public funds are available to all judicial officers. In fact, in ***The Judges v. The Attorney-General for the Province of Saskatchewan*** [Privy Council Appeal No. 118 of 1936] the Privy Council held that neither the independence nor any other attribute of the judiciary can be affected by a general income tax which charges their official incomes on the same footing as the incomes of other citizens.

The foundation/gravamen of the judiciary is the independence of the judiciary

Dr. De Silva PC next contended that the independence of the judiciary is a foundational value of the Republic which finds expression throughout the Constitution. Our attention was drawn to the preamble (SVASTI) of the Constitution which assures to all People the independence of the judiciary as the intangible heritage that guarantees the dignity and well-being of succeeding generations of the People of Sri Lanka.

We strongly agree that the independence of the judiciary is a fundamental value of the Republic. Indeed, long before we became a Republic, the Soulbury Constitution constitutionally recognized the principle of judicial independence by creating the Judicial Service Commission. Although the 1972 Constitution made no provision for a Judicial Service Commission, its re-introduction by the 1978 Constitution is evidence of the desire of the State to embed the independence of the judiciary as a functional and foundational constitutional principle. In fact, this Court in **Industrial Disputes (Special Provisions) Bill** [S.C.(S.D.) No. 30/2022] held that Sovereignty in Article 3 of the Constitution must be interpreted to include the right to an independent judiciary.

Dr. De Silva PC argued that the independence of the judiciary is guaranteed through security of tenure, income security and non-interference. As a result, it was argued that judges' salaries cannot be reduced by an act of the executive or legislature. In particular, it was submitted that Article 108(2) of the Constitution which specifically provides that the salaries of the Judges of the Supreme Court and Court of Appeal cannot be reduced must be read as a limitation on Parliament in determining the salaries of superior court judges and not as an exclusion of the minor judiciary from the general principle that judges' salaries must not be reduced.

It was submitted that there is a general principle that the salaries of the judges shall not be reduced during their term of office which is recognized by judicial precedent and in several international declarations and guidelines. Our attention was drawn to the decision in ***Senadhira v. The Bribery Commissioner*** (63 N.L.R. 313 at page 317) where it was held that their *"full salaries are absolutely secured to them during the continuance of their commissions"*. Clause 31 of the Beijing Principles, August 1995 states that *the remuneration and conditions of judges should not be altered to their disadvantage during their term of office, except as part of a uniform public economic measure to which the judges of a relevant court, or a majority of them,*

have agreed. In the UN Basic Principles on the Independence of the Judiciary, it is provided in clause 11 that *the term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and age of retirement shall be adequately secured by law*. The Latimer House Guidelines for the Commonwealth II.2. states that *as a matter of principle, judicial salaries and benefits should be set by an independent commission and should be maintained*.

We are of the view that Article 108(2) of the Constitution applies only to the salaries of the Judges of the Supreme Court and Court of Appeal which cannot be reduced. Nonetheless, we agree with the argument that it should not be interpreted as an exclusion of the minor judiciary from the general principle that judicial salaries should not be reduced.

Indeed, there is a general principle that the judges salaries cannot be reduced during their tenure of office. This general principle now forms part of the constitutional guarantees for the establishment of judicial independence. The judges of the High Court, District Court and the Magistrates Court and all other Judicial Officers within the meaning of Article 111M of the Constitution is entitled to this protection. The reason for the recognition of such a general principle can be garnered from the eloquently penned statement of Alexander Hamilton in Federalist Paper No. 79 which reads:

> *"NEXT to permanency in office, nothing can contribute more to the independence of the judges than a fixed provision for their support. The remark made in relation to the President is equally applicable here. In the general course of human nature, A POWER OVER A MAN's SUBSISTENCE AMOUNTS TO A POWER OVER HIS WILL. And we can never hope to see realized in practice, the complete separation of the judicial from the legislative power, in any system which leaves the former dependent for pecuniary resources on the occasional grants of the latter. The enlightened*

friends to good government in every State, have seen cause to lament the want of precise and explicit precautions in the State constitutions on this head. Some of these indeed have declared that PERMANENT salaries should be established for the judges; but the experiment has in some instances shown that such expressions are not sufficiently definite to preclude legislative evasions. Something still more positive and unequivocal has been evinced to be requisite. The plan of the convention accordingly has provided that the judges of the United States "shall at STATED TIMES receive for their services a compensation which shall not be DIMINISHED during their continuance in office.''

The issue for determination is whether a tax that is imposed on all citizenry without directly or indirectly targeting the judicial officers runs counter to the general principle that the salaries of judges should not be diminished during the tenure of office.

In this context, it is important to consider the decision in ***Evans v. Gore*** [253 U.S. 245 (1920)] where the Compensation Clause in the US Constitution aimed at securing the permanency of the salaries of judges was considered at length in relation to imposition of taxes. It was held that *the primary purpose of the prohibition against diminution was not to benefit the judges, but, like the clause in respect of tenure, to attract good and competent men to the bench and to promote that independence of action and judgment which is essential to the maintenance of the guaranties, limitations, and pervading principles of the Constitution, and to the administration of justice without respect to persons and with equal concern for the poor and the rich.* The Court held that the compensation is protected from diminution in any form, whether by a tax or otherwise, and is assured to him in its entirety for his support.

Dr. De Silva PC urged Court to adopt this reasoning although ***Evans v. Gore*** (Supra.) was expressly overruled in ***United States vs. Hatter, Judge, United States District Court for the Central District of California, et al,*** [532 U.S. 557 (2001)]. It was contended that the approach taken in ***Hatter*** (Supra.) is narrow and provides only a weak protection to judicial independence for three reasons. Firstly, it fails to take into account that threats to the independence of a judge are not limited to cases of direct attack by the executive/legislature. A judge's independence could also be compromised by causing a sharp drop in his income and rendering a judge financially insecure, dependent and vulnerable. Secondly, the narrower approach fails to consider the link between tenure and salary. The protection of a fixed real income is a logical corollary to the protection of a judge's tenure. If a judge's real income is whittled down over time by whatever action, whether targeted or otherwise, the protection of his/her tenure becomes merely illusory. Thirdly, the narrower approach fails logically if the same approach is applied to judges' tenure. In addressing these points, it is apposite to refer to the dissenting judgment of Justice Holmes, with whom Justice Brandeis concurred, in ***Evans v. Gore*** (Supra. at page 265) where he held:

> "*The exemption of salaries from diminution is intended to secure the independence of the judges, on the ground, as it was put by Hamilton in the Federalist, (No. 79,) that "a power over a man's subsistence amounts to a power over his will." That is a very good reason for preventing attempts to deal with a judge's salary as such, but seems to me no reason for exonerating him from the ordinary duties of a citizen, which he shares with all others.* ***To require a man to pay the taxes that all other men have to pay cannot possibly be made an instrument to attack his independence as a judge. I see nothing in the purpose of this clause of the Constitution to indicate that the judges were to be a privileged class, free from bearing their share of***

the cost of the institutions upon which their well-being if not their life depends. [Emphasis added]

A similar approach was adopted in 1954 by the Supreme Court of Ireland in ***Majorie O'Byrne v. The Minister for Finance and the Attorney-General*** [Irish Reports 1954 No. 453 P.] when it held that to require a judge to pay taxes on his income on the same basis as other citizens and thus contribute to the expense of Government could not be said to be an attack upon his independence.

In 2001, the US Supreme Court in ***United States vs. Hatter, Judge, United States District Court for the Central District of California, et al,*** (Supra.) expressly overruled ***Evans v. Gore*** (Supra.). Breyer J held as follows;

"Although the Compensation Clause prohibits taxation that singles out judges for specially unfavourable treatment, ***it does not forbid Congress to enact a law imposing a nondiscriminatory tax (including an increase in rates or a change in conditions) upon judges and other citizens.*** *See O'Malley v. Woodrough, 307 U.S. 277, 282. Insofar as Evans v. Gore, 253 U. S. 245, 255, holds to the contrary, that case is overruled. See O'Malley, supra, at 283. T***here is no good reason why a judge should not share the tax burdens borne by all citizens***. See Evans, supra, at 265, 267 (Holmes, J., dissenting); O'Malley, supra, at 281-283.* ***Although Congress cannot directly reduce judicial salaries even as part of an equitable effort to reduce all Government salaries, a tax law, unlike a law mandating a salary reduction, affects compensation indirectly, not directly.*** *See United States v. Will, 449 U. S. 200, 226. And those prophylactic considerations that may justify an absolute rule forbidding direct salary reductions are absent here, where indirect taxation is at issue.* ***In practice, the likelihood that a nondiscriminatory tax represents a disguised legislative effort to influence the judicial will is virtually nonexistent. Hence, the potential threats to judicial independence that underlie the Compensation Clause****, see Evans,*

supra, at 251-252, ***cannot justify a special judicial exemption from a commonly shared tax, not even as a preventive measure to counter those threats. Because the Medicare tax is nondiscriminatory, the Federal Circuit erred in finding its application to federal judges unconstitutional****."*

Although Justice Scalia dissented with the decision of the Court, he unreservedly endorsed (at page 584) the position that a general tax may be imposed by the Government to which would be applicable to the salaries of the judges and reinforced the position that *the Government was not reducing the compensation of its judges but was acting as sovereign rather than employer, imposing a general tax*. He agreed with the principle that *"to subject judges to a general tax is merely to recognise that judges are also citizens, and that their particular function in government does not generate an immunity from sharing with their fellow citizens the material burden of the government"* and that ***Evans v. Gore*** (Supra.) was wrongly decided. Thus, insofar as the principle that judges are liable to be taxed is concerned the judgement is unanimous.

We are of the view that the reasoning in the above cases is logical and instructive on the issue of taxes on the salaries of judges. When a tax is applied across the board, as in this case, without directly or indirectly targeting the judges, it cannot be said to be an intrusion into the independence of the judiciary. Taxes are one of the main revenues generating measures to enhance public finance. Public services such as free health and free education in this country are run with public finance. They are open to all citizenry including judges of the superior courts and Judicial Officers within the meaning of Article 111M of the Constitution. In fact, the decision of this Court in ***Chathurika Silva*** is premised on the legitimate expectation that judges have of admitting their children to State schools. Hence there is no logical reason to exempt judges from making their contribution to the public coffers along with the other members of the community. To that extent, the classification is

permissible. Judges should have the same obligations as other citizens on taxing matters.

For the foregoing reasons, the three reasons adumbrated by Dr. De Silva PC calling for a wider approach similar to that adopted in ***Evans v. Gore*** (Supra.) is devoid of merit. However, before parting with this determination, it is necessary to address the third point made i.e. the narrower approach fails logically if the same approach is applied to judges' tenure. It was submitted that if only a targeted reduction which discriminates against judges violates the Constitution, is applied broadly to tenure as well, this approach would permit a rule of general application that incidentally also reduces the tenure of a judge. An example was provided where if for instance, a constitutional amendment was to stipulate that all those holding office under the Constitution (whether it be public office, judicial office or otherwise in the executive, legislature and judiciary) must retire at 60 years, the narrow approach would by extension countenance and permit such a limitation on tenure. The claim would be that the reduction is not targeted at judges but is a rule of general application. Another example is where a Constitutional amendment seeks to limit the number of years a judge of the Supreme Court or Court of Appeal can hold office independent of the age of retirement.

However, this overlooks the fact that unlike public officers and others holding office under the Constitution, the retirement age of the judges of the Supreme Court and Court of Appeal are specified in the Constitution. Any Constitutional amendment to the retirement age or the period of office impacting on incumbent judges, whether directly or indirectly, will impinge on the independence of the judiciary and violative of Article 3 which requires a Referendum.

Judges do not have to pay income tax

Finally, Dr. De Silva PC submitted that judges do not have to pay tax in terms of the Inland Revenue Act No. 24 of 2017 although in fact PAYE tax is presently deducted from their salaries. He invited Court to make a determination on this issue.

This Court is exercising its constitutional jurisdiction in terms of the Constitution which requires a determination on whether the Bill or any provision thereof is inconsistent with the Constitution. As correctly submitted by the learned DSG, in the context of the challenge to the Bill in issue, the interpretation of Inland Revenue Act No. 24 of 2017 is outside our constitutional jurisdiction where admittedly PAYE tax has been recovered from the salaries of judges from its inception.

The amendments that are to be moved at the Committee Stage of the Bill as intimated by the learned DSG is set forth below. The determination of this Court on the constitutionality of the Bill is conditional upon these amendments being moved at the Committee Stage. In this respect we draw the attention of the Hon. Attorney-General to Article 77(2) of the Constitution.

Amendments to be moved at the Committee Stage of the Bill

Page 8, Clause 9 - Delete line 6 and substitute the following-

"referred to in subsection (4) is equal or less"

Page 9, Clause 15 - (1) Delete lines 23 and 24 and substitute the following-

"to December 1, 2022 on";"

(2) Delete lines 28 and 29 and substitute the following-

"Personal Income Tax with effect from December 1, 2022 on any"

Page 10, Clause 16 (1) Delete lines 10 and 11 and substitute the following-

"effect from April 1, 2020 but prior to December 1, 2022, the"

(2) Delete lines 16 and 17 and substitute the following-

"(3) of section 84, with effect from December 1, 2022, a"

Page 10, Clause 17 (1) Delete lines 28 and 29 and substitute the following-

"words "a person shall, prior to December 1, 2022";"

Page 11, (2) Delete lines 2 to 4 (both inclusive) and substitute the following-

"effect from December 1, 2022, a person shall withhold tax

(3) Delete lines 9 to 11 (both inclusive) and substitute the following-

"from December 1, 2022, a person shall withhold tax";

Page 12, Clause 19 Delete lines 13 and 14 and substitute the following-

" "(aa) on or after December 1, 2022, dividends paid by a resident"

Page 12, Clause 21 (1) Delete lines 26 to 28 (both inclusive)

Page 13, (2) Delete lines 1 to 34 (both inclusive)

Page 16, Clause 29 Delete lines 21 to 34 (both inclusive)

Page 17, Clause 31 Delete lines 15 and 16 and substitute the following

' (6) The proceedings instituted on or after December 1, 2022, under this";

Page 18 Clause 33 Delete lines 5 to 19 (both inclusive)

Page 20, Clause 36 (1) Delete lines 6 to 37 (both inclusive) and substitute the following-

"(a) Taxable income for the first eight months period of the year of assessment commencing from April 1, 2022: -

Taxable Income	*Tax Payable*
Not exceeding Rs. 2,000,000	6% of the amount in excess of Rs.0
Exceeding Rs. 2,000,000 but not exceeding Rs. 4,000,000	Rs. 120,000 plus 12% of the amount in excess of Rs. 2,000,000
Exceeding Rs. 4,000,000	Rs. 360,000 plus 18% of the amount in excess of Rs. 4,000,000;

(b) Taxable income for the second four months period of the year of assessment commencing from April 1, 2022: -

Taxable Income	*Tax Payable*
Not exceeding Rs. 167,000	6% of the amount in excess of Rs.0
Exceeding Rs. 167,000 but not exceeding Rs. 333,000	Rs. 10,020 plus 12% of the amount in excess of Rs. 167,000
Exceeding Rs. 333,000 but not exceeding Rs. 500,000	Rs. 29,940 plus 18% of the amount in excess of Rs. 333,000
Exceeding Rs. 500,000 but not exceeding Rs. 667,000	Rs. 60,000 plus 24% of the amount in excess of Rs. 500,000

Page 21, (2) Delete lines 1 to 9 (both inclusive) and substitute the following-

Taxable Income	*Tax Payable*
Exceeding Rs. 667,000 but not exceeding Rs. 833,000	Rs. 100,080 plus 30% of the amount in excess of Rs. 667,000
Exceeding Rs. 833,000	Rs. 149,880 plus 36% of the amount in excess of Rs. 833,000;

Page 22, (3) Delete line 4 and substitute the following-

"2021, but prior to December 1, 2022: -";"

Page 31, Clause 39 (1) Delete lines 16 to 17 (both inclusive) and substitute the following-

"(iii) Rs. 2,000,000, for first eight months and Rs. 400,000 for second four months of"

(2) Delete line 33 and substitute the following-

"and sum of Rs. 800,000, incurred for the first eight"

Page 32, Clause 41 Delete lines 22 to 25 (both inclusive) and substitute the following-

"as first eight months and second four months by individuals and first six months and second six months by persons other than individuals. For the purpose of such calculation of business income, the person may use pro-rata basis (as 66% for first eight months and balance 34% for second four months by individuals and 50% for first six months and balance 50% for second six months by persons other than individuals) to arrive the taxable income for"

Page 35, In Columns I, II and III of Table 'C' substitute for the words and figures,

Column I	*Column II*	*Column III*
section of this Act	*section of the principal enactment*	*Date of operation*
14	73	01.04.2018
20	90	01.04.2021

of the following:-

Column I	*Column II*	*Column III*
section of this Act	*section of the principal enactment*	*Date of operation*
14	73	01.04.2018
15	83A	01.12.2022
16	84A	01.12.2022
17	85	01.12.2022
19	88	01.12.2022
20	90	01.04.2021

In conclusion, we wish to address another matter adverted to by some of the Petitioners. It was submitted that there has been corruption and mismanagement of public finances which has led to the present economic predicament. Accordingly, it was contended that it is unreasonable to get the public to pay higher taxes to overcome the situation.

This Court is exercising its constitutional jurisdiction over the Bill. These are not matters which we can take into consideration in this exercise. Nevertheless, we are mindful that the Court is the last bulwark to protect the Rule of Law and prevent any breach of public trust. Corruption and wastage of public finance must be addressed and violators dealt according to law irrespective of standing. In order to do so, the jurisdiction of Court must be properly invoked in the appropriate proceedings.

We hold that the Bill and its provisions are not inconsistent with the Constitution.

We place on record our deep appreciation of the assistance given by all learned President's Counsel and Counsel who appeared for the Petitioners and Intervenient Petitioners and the learned DSG for all the assistance rendered.

Buwaneka Aluwihare PC,

Judge of the Supreme Court

Murdu N. B. Fernando PC,

Judge of the Supreme Court

Janak De Silva,

Judge of the Supreme Court