



ANALYSIS

- | | | | |
|----|--|-----|--|
| 1. | Short title and commencement | 8. | Annual tax on withholding income in certain cases |
| 2. | Interpretation | 9. | Collector to have power to inspect books and documents |
| 3. | Special exemption for savings or deposits with Banks | 10. | Information to be furnished on request of Collector |
| 4. | Agreements for relief from double taxation | 11. | Inquiry before a Judge of the High Court |
| 5. | New section 99 substituted | 12. | Schedule |
| 6. | Withholding tax imposed | | |
| 7. | Withholding tax to be final in certain cases | | |

2011, No. 7

An Act to amend the Income Tax Act 1997

(14 July 2011)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short title and commencement - (1) This Act may be cited as the Income Tax Amendment Act 2011, and shall be read with and form part of the Income Tax Act 1997 ("the Principal Act").

(2) This Act shall come into force on the 1st of September 2011.

2. Interpretation - Section 2 of the principal Act is hereby amended by deleting the definition of "Tax" and substituting the following new definition –

"Tax" means income tax and includes, for the purposes of section 86 -

- (a) A tax, levy, or duty of any type imposed on or payable by a taxpayer in a country or territory outside the Cook Islands (a foreign jurisdiction);
- (b) An amount deemed to be a tax, levy, or duty in a foreign jurisdiction;
- (c) A credit of tax in a foreign jurisdiction.

3. Special exemption for savings or deposits with Banks – Section 41 of the principal Act is hereby repealed.

4. Agreements for relief from double taxation – The principal Act is amended by repealing section 86 and substituting the following –

“86. Agreements for relief from double taxation and the exchange of information - (1) The Minister may from time to time enter into agreements with the Government of any country or territory outside the Cook Islands with a view of affording relief from -

- (a) double taxation in relation to income tax and any taxes of a similar character imposed by the laws of that country or territory; or
- (b) for the exchange of information in relation to all taxes imposed by the laws of that country or territory; and

such agreements shall, notwithstanding anything to the contrary in this Act or any other enactment, have effect in relation to income tax and all other taxes and every such agreement shall, subject to the provisions of this section, have effect according to its tenor.

(2) Without limiting the generality of the foregoing provisions it is hereby declared that any agreement to which effect is given under this section may contain provision, in relation to any of those taxes -

- (a) for relief from tax;
- (b) for charging the income from any sources in the Cook Islands to persons not resident in the Cook Islands;
- (c) for determining the income to be attributed to persons not resident in the Cook Islands and their agencies, branches, or establishment in the Cook Islands;
- (d) for determining the income to be attributed to persons resident in the Cook Islands who have special relationships with persons not so resident;
- (e) for facilitating the exchange of tax information.

(3) Any such agreement may include provisions for the relief from tax for periods before the commencement of this Act or before the making of the agreement, and provisions as to income which is not itself subject to double taxation.

(4) Any such agreement under this section may be at any time amended or revoked by a subsequent agreement; and any such amending or revoking agreement may contain such transitional provisions as appear to the Minister to be necessary or expedient.

(5) Where any such agreements are made under this section the obligation as to secrecy imposed by this Act shall not prevent the Collector from disclosing to any authorised officer of the Government with which the agreements are made such information as is required to be disclosed under the agreement.”

5. New section 99 substituted - The principal Act is amended by repealing section 99 and substituting the following section -

“99. Application of this Part - (1) This part shall apply notwithstanding anything to the contrary in any other Part.

(2) This Part shall apply to income (in this Act referred to as withholding income) being income that is deemed under this Act to be derived from the Cook Islands and which consists of dividends or royalties paid to a non resident of the Cook Islands, or interest paid to either a resident or non resident of the Cook Islands, but does not include any other income that is exempt from income tax.

(3) Without limiting the generality of subsection (2) all interest paid to any person by the Crown in right of the Government of the Cook Islands and every instrumentality or agency of the Government shall be deemed to be income derived in the Cook Islands.”

6. Withholding tax imposed – The principal Act is further amended by repealing section 100 and substituting the following -

“100. Withholding tax imposed - Every person who derives withholding income shall be liable to pay withholding tax upon that income and -

- (a) where dividends and royalties are paid to any person who is not resident in the Cook Island; or
- (b) where interest is paid to any person who is either resident or non-resident in the Cook Islands by a Cook Islands licensed bank;

the amount of the withholding tax shall be fifteen per cent (15%) of the dividends, interest or royalties so paid.”

7. Withholding tax to be final in certain cases – The principal Act is further amended by repealing section 105 and substituting the following -

“105. Withholding tax to be final in certain cases - Notwithstanding anything in this Act, withholding income that consists of dividends or royalties derived by a person who is not resident in the Cook Islands and withholding income that consists of interest, shall not be included in the assessable income of the person by whom that withholding income is derived, and the amount of income tax for which that person is liable in respect of the amount of that withholding income in any income year shall be determined exclusively and finally by the total amount of tax for which that person is liable in accordance with section 100 in respect of that income.”

8. Annual tax on withholding income in certain cases – The principal act is further amended by repealing section 106 and substituting the following -

“106. Annual tax on withholding income in certain cases - Withholding income (not being dividends or royalties derived by a person who is not a resident of the Cook Islands, and interest derived by any person) derived by any person in any income year shall be included in the assessable income of that person for that year, and against the income tax assessed in respect of that assessable income for

2011, No. 7

Income Tax Amendment

that income year there shall be allowed a credit equal to withholding tax (but not including any additional tax or penal tax) deducted or paid to the Collector in respect of that withholding income.”

9. Collector to have power to inspect books and documents – Section 219 of the principal Act is amended by –

(a) Deleting section 219(1) and replacing it with the following –

“(1) Notwithstanding anything to the contrary in any other Act, including without limitation Sections 227 and 249 of the International Companies Act 1981-82, Section 23 of the International Trusts Act 1984, and Section 72 of the Limited Liability Companies Act 2008, the Collector or any officer of the Department authorised in that behalf shall at all times have full and free access to all books and documents for the purpose of inspecting such books or documents, whether in the custody or under the control of a public officer or a body corporate or any other person, for the purposes of inspecting any books and documents which the Collector or the officer of the Department considers necessary, relevant, or likely to provide information, for the purposes of –

- (a) collecting any tax or duty which the Collector is authorized to collect;
- (b) giving effect to agreements described in section 86.

(1A) The Collector or the officer of the Department referred to in subsection (1) may, without fee or reward, make extracts from or copies of any books or documents to which they have full and free access under subsection (1).

(1B) Notwithstanding subsection (1), the Collector or an officer of the Department must not enter private premises in the exercise of their powers except with the consent of the occupier or pursuant to a warrant issued under subsection (3).”

(b) Inserting after section 219(2) the following -

“(3) A Judge of the High Court who, on written application made on oath, is satisfied that the exercise by the Collector or the officer of the Department of their inspection functions for the purpose described in subsection (1) requires physical access to a private premises, may issue to the Collector or an officer of the Department a warrant to enter the premises. Every such warrant must –

- (a) be in the form prescribed in Schedule 6; and
- (b) specify the name of an officer of the Department, whether in name or in general, who may act under the warrant; and

- (c) specify whether other persons may accompany the officer of the Department acting under the warrant; and
- (d) state the period of its validity, starting on the date of its issue and ending one (1) month after the date of its issue, or less if the Judge of the High Court considers appropriate; and
- (e) specify the particular agreement in section 86(1), if applicable, that the Collector is acting pursuant to, and state that the requirements of such agreement have been met.”

10. Information to be furnished on request of Collector – Section 220 of the principal Act is amended by –

- (a) in section 220(1) inserting after “Act”, where it first occurs the following –

“(including giving effect to agreements described in section 86);”

- (b) adding at the end of section 220(1) the words –

“This section shall not be limited by sections 227 and 249 of the International Companies Act 1981-82, section 23 of the International Trusts Act 1984, and section 72 of the Limited Liability Companies Act 2008;”

- (c) inserting after section 220(3) the following –

“(4) A person or a public authority to which a request is made, if they believe the request is improper may, within 14 days from the date the request was received apply to the High Court to have the request discharged or varied and the court on hearing such application may discharge the request or make such variation to it as it thinks fit.”

11. Inquiry before a Judge of the High Court – Section 221(1) of the principal Act is amended by inserting after “Act”, where it first occurs, the following –

“(including giving effect to agreements described in section 86).”

12. Schedule - The Schedule to the principal Act is hereby amended by adding after Schedule 5 the following Schedule –

“SIXTH SCHEDULE

Form of Warrant

Warrant to access private premises

Section 219(3), Income Tax Act 1997

1. To every officer of the Revenue Management Division of the Ministry of Finance and Economic Management (**you**) authorised by the Treasurer of the Revenue Management Division of the Ministry of Finance and Economic Management under **section 219(3)** of the Income Tax Act 1997.
(*or TO [full name], officer of the Revenue Management Division of the Ministry of Finance and Economic Management (**you**) authorised by the Treasurer of the Revenue Management Division of the Ministry of Finance and Economic Management under section 219(3) of the Income Tax Act 1997*)
2. I am satisfied, on written application made on oath by *[full name]*, that there are reasonable grounds for believing that the exercise by you of your inspection functions for the purposes described in **section 219(1)(b)** of the Income Tax Act 1997 requires physical access to private premises, namely *[location]*.
3. You may enter those private premises under this warrant and you have the powers given by **section 219** of the Income Tax Act 1997.
4. Other persons whom you consider necessary for the effective exercise of your inspection powers may (*or may not*) accompany you.
5. This warrant is valid from *[date of issue]* and expires on *[date of expiry that is one (1) month or less from the date of issue]*.

Dated at.....this day of.....20.....

Judge of the High Court”

This Act is administered by the Revenue Management Division of the Ministry of Finance and Economic Management