

## Public Consultation – International Companies

### 1. Introduction

The Revenue Management Division (“RMD”) of the Ministry of Finance and Economic Management are undertaking consultation regarding proposed withholding tax changes. The changes arise due to recommendations from the OECD’s Base Erosion and Profit Shifting (“[BEPS](#)”) Project and concerns of the European Commission’s Code of Conduct Group (Business Taxation) (“[the Code of Conduct Group](#)”). This consultation document contains a proposal to introduce normal domestic law obligations for International Companies as follows:

- a. Withholding tax deductions from payments of non-resident Cook Island sourced income;
- b. Filing tax returns and keeping records;
- c. Fines and penalties for failure to comply with certain obligations; and
- d. Customs duty, value added tax (“VAT”) and departure tax.

For the purposes of this consultation an “International Company” means a company incorporated pursuant to the [International Companies Act 1981-82](#) and includes such companies that are also:

- Registered as an international shipping company; or
- Licensed to carry on a banking business under the [Banking Act 2011](#).

### 2. Background

In 2015 the Council of the European Union developed a list of non-cooperative jurisdictions for taxation which its members would take certain measures against. To develop the list of jurisdictions the Cook Islands were evaluated against tax transparency, fair taxation and anti-BEPS criterion.

The Code of Conduct Group identified areas of concern. This resulted in the creation of a committee to address the Code of Conduct Group’s concerns (“the EU Response Committee”). The EU Response Committee consists of the Treasurer of RMD, Commissioner of the Financial Services Commission, Chief Executive Officer of the Financial Services Development Authority and Secretary of Foreign Affairs.

In December 2018 the Cook Islands’ Government agreed to amend legislation, tax the profits of international companies and join the Inclusive Framework on BEPS. During the drafting of the required legislative changes it was identified that other normal domestic tax law obligations should be provided for in order to properly administer the reforms and remove preferential treatment as required under the Inclusive Framework on BEPS. For this reason some items have necessarily become incorporated as part of the general removal of exemptions from income tax for International Companies and are the policy changes subject to this consultation.

### **3. Guidance on proposed changes**

#### **3.1. Withholding Tax**

Withholding tax is a final tax imposed at a rate of 15% and deducted from payments of interest, dividends, natural resource amounts and royalties that are derived in the Cook Islands and paid to a person who is not resident in the Cook Islands. Refer to sections 98 “Withholding Income”, 100(1) “withholding tax imposed” and 101(1) “deduction of withholding tax” of the [Income Tax Act 1997](#).

The withholding tax obligation is introduced under the policy changes by way of removing the restriction on the application of domestic income tax law on International Companies. See proposed amendment draft Bills listed below.

#### **3.2. Filing tax returns and keeping records**

The following returns are required to be filed with RMD by the due date in the prescribed form together with any required business accounts:

- A return of income for the purpose of assessing and levying income tax
- A return of value added tax for the purpose of assessing and levying VAT payable
- A return of departure tax collected from passengers for the purpose of payment to RMD

Refer to sections 8 “annual returns” of the [Income Tax Act 1997](#), 15 “returns” of the [Value Added Tax Act 1997](#) and 6 “duties of carrier” of the [Departure Tax Act 2012](#).

#### **3.3. Fines and penalties**

Penalties may apply whenever obligations under the domestic law are not complied with to the satisfaction of the Collector of RMD. Refer to fines, penalties and additional tax under the Acts referred to in this consultation document.

#### **3.4. Proposed draft Amendment Bills**

The proposed draft amendment bills may be found at:

<http://www.mfem.gov.ck/rmd-tax/rmd-tax-legislation-policy/policy-rulings#consultations>

Refer section 2 “company” of the draft Income Tax Amendment Bill 2019, section 249 “application of other Acts to International Companies” of the draft International Companies Amendment Bill 2019 and section 55 “exemption from taxes and stamp duty” of the Banking Amendment (Removal of tax exemption) Bill 2019.

### **4. Other acts**

In addition to removing exemptions for International Companies from normal domestic tax law, consultation is also sought on the removal of exemptions from normal domestic tax and duty obligations relating to the following acts:

- a. Value Added Tax Act 1997;
- b. Customs, Boarder and Revenue Protection Act 2012;
- c. Customs Tariff Act 2012; and
- d. Departure Tax Act 2012.

These other acts relate to business activities which are unlikely to be associated with International Companies which operate as financial institutions.

## **5. Consultation guidance**

### **5.1. Consultation period**

Consultation begins on Friday 15 March 2019 and closes on Friday 12 April 2019.

### **5.2. Consultation documents**

Consultation documents can be obtained from the [MFEM website](#) under Tax Legislation & Policy, Public Consultations.

### **5.3. Consultation feedback**

This is a public consultation therefore submissions and comments made by participants in relation to this consultation are available for publication at the discretion of RMD. Please submit your comments and feedback to [taxconsultation@cookislands.gov.ck](mailto:taxconsultation@cookislands.gov.ck)

### **5.4. Evidentiary support**

RMD welcomes your feedback and comments and insights on the proposed policy changes. However, for each statement of a material fact, statistic or expert opinion that you rely upon in your submission you are required to supply an authoritative reference to support the statement. RMD reserves the right to discount such statements if there is unsatisfactory or non-substantive evidentiary material to support the statement.