



MINISTRY OF FINANCE AND ECONOMIC MANAGEMENT

COLLECTOR'S RULING 2014/01
SUBJECT: **Withholding Tax on Royalty Payments**

Background

1. The purpose of this Ruling is to outline the Collector's interpretation of when withholding tax should be deducted from royalty payments made to non-residents.
2. This Ruling does not address the deduction of withholding tax from dividend and interest payments.
3. All references to legislative provisions in this Ruling are references to the Cook Islands *Income Tax Act 1997*.
4. **Attachment A (Decision-Making Model)** and **Attachment B (Working Examples)** to this Ruling provide additional guidance for taxpayers. **Attachment C (Legislation)** to this Ruling contains a full extract of relevant legislative provisions.

Summary

5. Part VII of the *Income Tax Act 1997* imposes withholding tax at a rate of 15% on royalty payments made to non-residents.
6. Royalties include "**royalties or other like payments dependent upon production from or the use of any real or personal property, whether or not they are instalments of the purchase price of any property**" (ss.46(1)(e)) and "**all payments for the supply, in connection with the carrying on of a business, of scientific, technical, industrial or commercial knowledge, information, assistance, or services**" (ss.46(1)(f)). [emphasis added]
7. A royalty payment will become "withholding income" and be subject to withholding tax if:
 - It is not exempt from income tax;
 - It was derived from the Cook Islands; and
 - It was paid to a person who is not resident in the Cook Islands.

Ruling

8. Part VII of the *Income Tax Act 1997* provides the legislative basis to impose withholding tax on royalty payments made to non-residents.
9. Part VII applies to any withholding income paid or derived (s.99).
10. Every person who derives withholding income is liable to pay withholding tax at a rate of 15% on that income (ss.100(1)).

11. The obligation to deduct withholding tax from withholding income rests with the person who makes the payment of withholding income (ss.101(1)).
12. "Withholding income" is defined relevantly as income that is **derived from the Cook Islands** and is a **royalty** paid to a person who is **not resident in the Cook Islands** (s.98). It does not include income that is **exempt from income tax** (s.98).
13. Whether or not a royalty payment is subject to withholding tax depends on whether it comes within the definition of "withholding income".
14. This is determined by a four-stage enquiry:
 1. Is the income exempt from income tax?
 2. Is the income a royalty?
 3. Is the income derived from the Cook Islands?
 4. Is the income being paid to a person who is not resident in the Cook Islands?

First Enquiry: Is the income exempt from income tax?

15. Withholding income does not include income that is wholly exempt from income tax (s.98).
16. Income derived by a person who is not resident in the Cook Islands from personal (including professional) services performed by that person within the Cook Islands during a visit to the Cook Islands is wholly exempt from income tax if:
 - The **person's** visit does not exceed a period or periods exceeding 30 days (s.42(1)(d)(i)); and
 - The income is subject to any tax in the person's country of residence that is substantially of the same nature as income tax payable in the Cook Islands (s.42(1)(d)(ii)); and
 - The services are performed for or on behalf of a **person who is not resident in the Cook Islands** (s.42(1)(d)(iii)).
17. For the purposes of this enquiry, "person" is defined to include a company, a corporation sole, a body of persons (whether incorporated or not) and a local or public authority (s.2).
18. The residence of a "person" is determined as follows:
 - A person other than a company is deemed to be resident in the Cook Islands if the person's home is in the Cook Islands and they have been personally present in the Cook Islands for more than 183 days in a 12 month period (ss.82(1)); and
 - A company is deemed to be resident in the Cook Islands if the company is incorporated in the Cook Islands or has its **head office** in the Cook Islands (ss.82(2)).
19. The "head office" of a company is the centre of its administrative management (ss.82(3)). The physical location of a company's centre of administrative management is a question of fact that is determined by examining the nature of the company's business and its trading activities.

Second Enquiry: Is the income a royalty?

20. A "royalty" is defined as a payment of any of the kinds referred to in section 46(1)(e) and section 46(1)(f)(s.98).

Section 46(1)(e)- Royalties and other like payments dependent upon production from the use of real or personal property, whether or not they are instalments of the purchase price of any property

21. Royalties and other like payments falling within section 46(1)(e), made by a person to obtain the right to use and exploit all forms of property, will commonly include:
- Payments for the right to use copyrights, patents, trademarks, designs or models, plans, secret formulas or processes;
 - Payments to develop or use copyright in software;
 - Payments for the right to exploit natural resources; and
 - Payments for the right to use films or tapes for motion picture screening, television broadcasting or radio broadcasting.
22. Transactions involving the purchase of 'over-the-counter' computer software are not normally classified as royalty payments, unless the purchaser is paying to use copyright in the program (as opposed to using a copy of the program).
23. Payments falling within section 46(1)(e) do not include payments for the use of industrial, commercial or scientific equipment.
24. Payments falling within section 46(1)(e) may include payments that are instalments of the purchase price for any property.
25. The Collector will undertake a transactional analysis to determine whether a payment is a royalty or a like payment dependent upon production from the use of real or personal property.

Section 46(1)(f) - Payments for the supply, in connection with the carrying on of a business, of scientific, technical, industrial or commercial knowledge, information, assistance or services

26. Payments falling within section 46(1)(f) refer to the supply of scientific, technical, industrial and commercial 'know-how'.
27. 'Know-how' refers to special unrevealed knowledge and experience. It is more than general specialist knowledge and is not supplied where a person uses their customary skills or general business acumen to execute work for another party.
28. Contracts involving payments for know-how can be distinguished from contracts involving payments involving ordinary services rendered in the following ways:
- A know-how product has already been created and does not depend on the performance of services to bring the product into existence;

- A know-how product is transferred for use by the purchaser, whereas payments involving ordinary services rendered involve the application of existing knowledge, skills and expertise; and
 - The property in a know-how product remains with the seller (subject to the specific terms of the contract), whereas property in a product created as the result of ordinary services rendered will generally transfer to the buyer.
29. Payments falling within section 46(1)(f) commonly include:
- Payments for unrevealed technical data, samples, patterns or details of processing/production methods required for industrial reproduction of a product or a process;
 - Payments for unrevealed information on market trends;
 - Payments for unpublished information on future technological advances; or
 - Payments for access to unpublished information contained in a database.
30. The types of payments falling within section 46(1)(f) include payments for the supply of any assistance or services that are ancillary or subsidiary to enabling the application of the know-how knowledge or information.
31. Whether services or assistance supplied are ancillary or subsidiary to enabling the application of know-how knowledge or information, or are supplied as ordinary services rendered is a question of fact and will be determined on a case-by-case basis.

Third Enquiry: Is the income derived from the Cook Islands?

32. Certain types of income are deemed to have been derived from the Cook Islands.
33. These incomes include royalties and other like payments referred to in section 46(1)(e) and payments of any of the kinds referred to in section 46(1)(f)(s.83(1)(i)).
34. These incomes are deemed to have been derived from the Cook Islands if:
- They are **paid by a person who is resident in the Cook Islands** and are not paid in respect of a business carried on by the person outside the Cook Islands through a fixed establishment outside the Cook Islands (s.83(1)(i)(i)); or
 - They are **paid by a person who is not resident in the Cook Islands** and are deductible by the person in calculating the person's assessable income for the purposes of taxation in the Cook Islands (s.83(1)(i)(ii)).
35. These deeming provisions will be relied on for the purposes of determining whether a royalty payment comes within the definition of "withholding income".
36. For the purposes of this enquiry, "paid" is defined to include distributed, credited or dealt with in the interest or on behalf of a person (s.2 and s.48).

37. See paragraphs 17-19 of this Ruling for guidance on the definition of "person" and how to determine residency.

Fourth Enquiry: Is the income being paid to a person who is not resident in the Cook Islands?

38. For the purposes of this enquiry, "paid" is defined to include distributed, credited or dealt with in the interest or on behalf of a person (s.98 and s.48).
39. For the purposes of this enquiry, "person" is defined to include a company, a corporation sole, a body of persons (whether incorporated or not), a local or public authority, the Crown in the right of the Government of the Cook Islands and every instrumentality or agency of the Government (s.98).
40. See paragraphs 18-19 of this Ruling for guidance on how to determine residency.

CONTACT

Please contact our office on 29365 if you have any questions in relation to this Ruling.

Please note that this Ruling is the Collector's view only and is non-binding.

This ruling is signed by me on the *19th* day of *September* 2014.



Andrew Haigh

Collector of Inland Revenue

Attachment B – Examples

Example 1

Firex Ltd (a Cook Islands trust company) operates an asset protection trust providing business in the Cook Islands. Peter is a New Zealand based lawyer and financial services consultant who holds the majority of the shares in Firex Ltd. Peter visits the Cook Islands 3-4 times a year to provide expert legal and financial advice to Firex Ltd. He spends a combined total of 33 days in Rarotonga during the income year. Peter invoices Firex Ltd for services provided while he is in Rarotonga, and sends separate invoices for related services provided from New Zealand.

Collector's Interpretation

The Collector will consider:

- Is the income exempt from income tax?
 - Is the income a royalty?
 - Is the income derived from the Cook Islands?
 - Is the income being paid to a person who is not resident in the Cook Islands?
1. The income is not wholly exempt from income tax because Peter spent more than 30 days in the Cook Islands during the income year (s.42(1)(d)(i)) and the services were not performed for or on behalf of a person not resident in the Cook Islands (s.42(1)(d)(iii)).
 2. The payments made by Firex Ltd to Peter were not dependent on the use of any real or personal property owned by Peter, nor do they involve the supply of any specialised and unrevealed knowledge or information. Instead, Peter was providing ordinary services to Firex Ltd using customary legal and financial skills and expertise. Therefore the payments made to Peter by Firex Ltd are not royalties.
 3. All payments made by Firex Ltd to Peter are deemed to have been derived from the Cook Islands because they were paid by a person resident in the Cook Islands and were not paid in respect of a business carried on by Firex Ltd outside the Cook Islands through a fixed establishment outside the Cook Islands (s.83(1)(i)(ii)).
 4. All payments made by Firex Ltd to Peter are paid to a person who is not resident in the Cook Islands because Peter's home is not in the Cook Islands and he has not been personally present in the Cook Islands for more than 183 days in a 12 month period (ss.82(1)).

The payments made by Firex Ltd to Peter are not withholding income and Part VII of the *Income Tax Act 1997* does not apply. However Peter will need to file a Cook Islands tax return.

Example 2

Hooked-Up Ltd is a Cook Islands incorporated company that operates a boat charter business in the Cook Islands. The boat breaks down and Hooked-Up Ltd takes the boat to New Zealand for it to be repaired by a New Zealand company. The repairs require the services of a marine mechanic and involve the replacement of standard engine parts and electrical components. The boat is returned to the Cook Islands after it has been repaired. Hooked-Up Ltd makes a good faith payment for half of the repairs and replacement parts to the New Zealand company before the work begins. The balance of the invoice is paid after the boat returns from New Zealand.

Collector's interpretation

The Collector will consider:

- Is the income exempt from income tax?
 - Is the income a royalty?
 - Is the income derived from the Cook Islands?
 - Is the income being paid to a person who is not resident in the Cook Islands?
5. There is no indication that the payments made by Hooked-Up Ltd to the New Zealand company are exempt from income tax.
 6. The payments made by Hooked-Up Ltd to the New Zealand company for the engine parts and electrical components are not royalty payments because they do involve a right to use any real or personal property owned by the New Zealand company. The payments for the supply of marine mechanical services are not royalties because this service did not require the provision of any specialised and unrevealed knowledge or information on behalf of the mechanic. Instead, the marine mechanic applied existing customary skills and knowledge.
 7. All payments made by Hooked-Up Ltd are deemed to have been derived from the Cook Islands because they were paid by a person resident in the Cook Islands and were not paid in respect of a business carried on by Hooked-Up Ltd outside the Cook Islands through a fixed establishment outside the Cook Islands (s.83(1)(i)(ii)).
 8. All payments made by Hooked-Up Ltd are paid to a person who is not resident in the Cook Islands because the New Zealand company is not incorporated in the Cook Islands and does not have its head office here (ss.82(2)).

The payments made by Hooked-Up Ltd to the New Zealand company are not withholding income and Part VII of the *Income Tax Act 1997* does not apply.

Example 3

Cool Designs Ltd is a Cook Islands incorporated company who purchased pre-packaged industry-specific software from Billy Bob Pty Ltd, a United States domiciled company. The initial cost of the software was \$100,000, including an annual licence fee of \$20,000 and a monthly maintenance and support fee of \$3,000. The licence fee allowed Cool Designs Ltd to use and access 10 copies of the software, in accordance with the licence conditions. Property rights in the licensed software were retained by Billy Bob Pty Ltd. The maintenance and support fee enabled Cool Designs Ltd to access an operational support service. The operational support service involved the provision of product-specific technical expertise by an IT firm subcontracted by the United States based company.

Collector's Interpretation

The Collector will consider:

- Is the income exempt from income tax?
 - Is the income a royalty?
 - Is the income derived from the Cook Islands?
 - Is the income being paid to a person who is not resident in the Cook Islands?
1. There is no indication that the payments made by Cool Designs Ltd to the United States company are exempt from income tax.
 2. The licence fee is a royalty because it is dependent upon the use of real or personal property owned by the United States company (s.46(1)(e)). The maintenance and support fee is a royalty because it is a payment for a service that involves the provision of unrevealed product-specific technical knowledge and information (s.46(1)(f)).
 3. The payments were made by a person resident in the Cook Islands because Cool Designs Ltd is incorporated here (ss.82(2)). These payments are therefore deemed to have been derived from the Cook Islands (s.83(1)(i)(ii)).
 4. The payments were made to a person who is not resident in the Cook Islands because the United States company is not incorporated in the Cook Islands and does not have its head office here (ss.82(2)).

Cool Designs Ltd must deduct withholding tax of 15% from the annual licence fee of \$20,000 and pay this to the Revenue Management Division. The United States company will therefore receive \$17,000 per year for the licence fee.

Cool Designs Ltd must also deduct withholding tax of 15% from the monthly maintenance and support fee of \$3,000 and pay this to the Revenue Management Division.

The United States company will therefore receive \$17,000 per year, plus \$2,550 monthly, under the purchase agreement. As withholding tax is a final tax the United States company will not have to file an income tax return in the Cook Islands.

Example 4

Supersonic Ltd is a Cook Islands Incorporated company that operates a local TV station. Supersonic Ltd does not carry out any business outside the Cook Islands. Supersonic Ltd pays Downunder Network Pty Ltd, an Australian domiciled company, a monthly fee of \$1,000 as consideration for the right to broadcast five episodes of the Australian TV series "Packed to the Floorboards". The payment does not transfer ownership in the broadcasting rights to Supersonic.

Collector's interpretation

The tax implications of any transaction depend on the facts. The Collector will consider:

- Is the income exempt from income tax?
 - Is the income a royalty?
 - Is the income derived from the Cook Islands?
 - Is the income being paid to a person who is not resident in the Cook Islands?
1. There is no indication from the facts that the income is exempt from income tax.
 2. The \$1,000 payments are royalty payments because they allow Supersonic Ltd to use and exploit property rights (i.e. broadcasting rights) owned by Downunder Network Pty Ltd for commercial gain. Property in the broadcasting rights are not transferred as a result of the payments and are retained by Downunder Network Pty Ltd.
 3. The payments of \$1,000 are deemed to be derived from the Cook Islands because they were paid by a person resident in the Cook Islands (Supersonic Pty Ltd) and were not paid in respect of a business carried on by Supersonic Ltd outside the Cook Islands through a fixed establishment outside the Cook Islands (s.83(1)(i)(i)).
 4. The payments of \$1,000 were made to a person not resident in the Cook Islands because Downunder Network Pty Ltd is not incorporated in the Cook Islands (s.82(2)).

Supersonic Ltd is required to deduct 15% withholding tax from the \$1,000 payments made to Downunder Network Pty Ltd.

Example 5

Spark Pty Ltd is a Cook Islands company that provides internet telecommunications services to individuals and businesses in the Cook Islands. Spark Pty Ltd enters into a contract with an Australian domiciled company who design and supply DSL modems and related software. Under the contract, Spark Pty Ltd purchased 800 DSL modems from the Australian company at a cost of \$160,000. The modems have built-in software which enables them to connect with local telephone networks. The software needs to be modified so it will function on Cook Islands telephone networks. Spark Pty Ltd pay an additional \$20,000 to purchase the copyright in the software from the Australian Company.

Collector's Interpretation

The tax implications of any transaction depend on the facts. The Collector will consider:

- Is the income exempt from income tax?
 - Is the income a royalty?
 - Is the income derived from the Cook Islands?
 - Is the income being paid to a person who is not resident in the Cook Islands?
1. There is no indication from the facts that the income is exempt from income tax.
 2. Both payments in this instance involve purchase transactions and do not constitute royalty payments. The \$160,000 payment for the DSL modems results in the acquisition of property in the DSL modems. The \$20,000 payment results in the acquisition of the copyright rights in the DSL software. Neither transaction involves the acquisition of the right to use property. Both transactions involve the acquisition of the property itself.
 3. The payments are deemed to be derived from the Cook Islands because they were paid by a person resident in the Cook Islands (Spark Pty Ltd), and were not paid in respect of a business carried on by Spark Pty Ltd outside the Cook Islands, through a fixed establishment outside the Cook Islands (s.83(1)(l)(i)).
 4. The payments were made to a person not resident in the Cook Islands because the Australian company was not incorporated in the Cook Islands (s.82(2)).

The payments made by Spark Pty Ltd to the Australian company are not withholding income and Part VII of the Income Tax Act 1997 does not apply.

Example 6

Bookworm Ltd is a New Zealand incorporated bookstore which has its head office in the Cook Islands. Bookworm Ltd does not carry on any business outside the Cook Islands. Ink Pty Ltd is a New Zealand incorporated publishing company which owns copyright in a book called "Adventures on Fantasy Island". Bookworm Ltd enters into an agreement with Ink Pty Ltd to purchase 500 copies of the book at a cost of \$10,000, as well as \$5,000 for the exclusive right to sell "Adventures on Fantasy Island" in the Cook Islands.

Collector's interpretation

The tax implications of any transaction depend on the facts. The Collector will consider:

- Is the income exempt from income tax?
 - Is the income a royalty?
 - Is the income derived from the Cook Islands?
 - Is the income being paid to a person who is not resident in the Cook Islands?
1. There is no indication from the facts that the income is exempt from income tax.
 2. There are two separate transactions here - a \$10,000 payment to acquire 500 copies of "Adventures on Fantasy Island", and a \$5,000 payment to acquire the exclusive rights to sell the book in the Cook Islands. The \$10,000 payment is not a royalty because it is a sale of property and does not give Bookworm Ltd any right to use or exploit the copyrighted material. The \$5,000 payment is a royalty because it grants the exclusive right to sell the property in the Cook Islands to Bookworm Ltd.
 3. Bookworm Ltd is deemed to be a resident in the Cook Islands because it has its head office in the Cook Islands (s.82(2)). Bookworm Ltd does not carry on any business outside the Cook Islands, despite the fact it is incorporated in New Zealand. Therefore, all payments made by Bookworm Ltd to Ink Pty Ltd are deemed to have been derived from the Cook Islands because they were paid by a person resident in the Cook Islands, and were not paid in respect of a business carried on by Bookworm Ltd outside the Cook Islands through a fixed establishment outside the Cook Islands (s.83(1)(i)).

4. All payments made by Bookworm Ltd to Ink Pty Ltd were paid to a person not resident in the Cook Islands because Ink Pty Ltd is not incorporated in the Cook Islands and does not have its head office here (s.82(2)).

Bookworm Ltd is required to deduct 15% withholding tax from the \$5,000 payment made to Ink Pty Ltd and pay this amount to the Revenue Management Division.

Example 7

Peter runs a Cook Islands incorporated accounting firm. He purchases a computer software program online from a United States domiciled software developer called Fixxer Ltd. The program costs \$150 and is designed to allow Peter to input client information directly into business activity statements. Peter is required to agree to an online 'end-user licence agreement' before he can download and install the software program. Under the license agreement, Peter is permitted to use the software for business purposes on three separate computers. Peter is prohibited from copying, leasing or redistributing the computer software program and does not acquire the right to use the copyright in the program.

Collector's interpretation

The tax implications of any transaction depend on the facts. The Collector will consider:

- Is the income exempt from income tax?
 - Is the income a royalty?
 - Is the income derived from the Cook Islands?
 - Is the income being paid to a person who is not resident in the Cook Islands?
1. There is no indication from the facts that the income is exempt from income tax.
 2. The 'licence agreement' does not give Peter the right to use the copyright in the software program. Software transactions that allow a purchaser to use a copy of a program, as opposed to using the copyright in the program, are not treated as royalty payments.
 3. The payments are deemed to be derived from the Cook Islands because they were paid by a person resident in the Cook Islands (Peter) and were not paid in respect of a business carried on by Peter outside the Cook Islands through a fixed establishment outside the Cook Islands (s.83(1)(i)).
 4. The payments were made to a person not resident in the Cook Islands because Fixxer Ltd was not incorporated in the Cook Islands (s.82(2)).

The payment made by Peter is not withholding income and Part VII of the *Income Tax Act 1997* does not apply.

Example 8

Sun and Fun Ltd is a Cook Islands incorporated company that operates a resort in the Cook Islands. Sun and Fun Ltd engage an Australian marketing and advertising company, Marketing 4U Ltd, to promote the resort to various travel agents in Australia. Sun and Fun Ltd pays Marketing 4U Ltd a monthly retainer for these services.

Collector's Interpretation

The Collector will consider:

- Is the income exempt from income tax?
 - Is the income a royalty?
 - Is the income derived from the Cook Islands?
 - Is the income being paid to a person who is not resident in the Cook Islands?
9. There is no indication that the payments made by Sun and Fun Ltd to the Australian company are exempt from income tax.
 10. The payments made by Sun and Fun Ltd were not dependent on the use of any real or personal property owned by Marketing 4U Ltd, nor do they involve the supply of any specialised and unrevealed knowledge or information. Instead, Marketing 4U Ltd was providing ordinary services to Sun and Fun Ltd using customary marketing and advertising skills and expertise. Therefore, the payments made to Marketing 4U Ltd by Sun and Fun Ltd are not royalties.
 11. The payments made by Sun and Fun Ltd to Marketing 4U Ltd are deemed to have been derived from the Cook Islands because they were paid by a person resident in the Cook Islands and were not paid in respect of a business carried on by Sun and Fun Ltd outside the Cook Islands through a fixed establishment outside the Cook Islands (s.83(1)(i)(ii)).
 12. All payments made by Sun and Fun Ltd to Marketing 4U Ltd are paid to a person who is not resident in the Cook Islands because Marketing 4U Ltd is not resident in the Cook Islands as it is not incorporated in the Cook Islands or does not have its head office in the Cook Islands (s.82(2)(3)).

The monthly payment made by Sun and Fun Ltd to Marketing 4U Ltd is not withholding income and Part VII of the *Income Tax Act 1997* does not apply.

Attachment C – Legislation

Section 2. Interpretation - In this Act, unless the context otherwise requires –

"Paid" includes distributed, credited or dealt with in the interest of or on behalf of a person, and "pay" and "payment" have corresponding meanings;

"Person" includes a company, a corporation sole, and also a body of persons, whether incorporated or not, and a local or public authority;

Section 42. Incomes wholly exempt from taxation –

(1) The following incomes shall be exempt from taxation:

(d) income derived by a person who is not resident (within the meaning of this Part of this Act) in the Cook Islands, from personal (including professional) services performed by that person within the Cook Islands during a visit to the Cook Islands if -

(i) that visit does not exceed a period of 30 days; and

(ii) in the country or territory in which that person is resident that income, being exempt from income tax in the Cook Islands, is chargeable with any tax which in the opinion of the Collector is substantially of the same nature as income tax under this Act and;

(iii) those services are performed for or on behalf of a person who is not resident (within the meaning of this Part) in the Cook Islands:

Provided that this paragraph shall not apply to the income derived in any income year by a person who is present within the Cook Islands for a period or periods exceeding in the aggregate 30 days during that year;

Section 46. Items included in assessable income –

(1) Without in any way limiting the meaning of the term, the assessable income of any person shall include, unless otherwise provided in this Act -

(e) all royalties or other like payments dependent upon production from or the use of any real or personal property, whether or not they are instalments of the purchase price of any property;

(f) all payments for the supply, in connection with the carrying on of a business, of scientific, technical, industrial or commercial knowledge, information, assistance, or services:

Section 48. Income credited in account or otherwise dealt with –

For the purposes of this Act every person shall be deemed to have derived income although it has not been actually paid to or received by that person, or has already become due or receivable, but has been credited in account or reinvested, or accumulated or capitalised or carried to any reserve, sinking or insurance fund or otherwise dealt with in the interest or on the behalf of that person.

Section 82. Place of residence, how determined –

(1) For the purposes of this Part, a natural person is deemed to be resident in the Cook Islands if-

(a) The person's home is in the Cook Islands; and

- (b) *The person is personally present in the Cook Islands for more than 183 days in a 12 month period.*

(2) *A company shall be deemed to be resident in the Cook Islands within the meaning of this Part if the company -*

- (a) *is incorporated in the Cook Islands, or*
(b) *has its head office in the Cook Islands.*

(3) *For the purposes of this Act the head office of a company means the centre of its administrative management.*

Section 83. *Classes of income deemed to be derived from the Cook Islands –*

(1) *Subject to the provisions of section 84, the following classes of income shall be deemed to be derived from the Cook Islands*

(i) *royalties and other like payments of any of the kinds referred to in section 46(1) (e) and payments of any of the kinds referred to in section 46(1) (f) being royalties or payments –*

(i) *that are paid by a person who is resident in the Cook Islands and are not paid in respect of a business carried on by the person outside the Cook Islands through a fixed establishment outside the Cook Islands; or*

(ii) *that are paid by a person who is not resident in the Cook Islands and are deductible by the person in calculating the person's assessable income for the purposes of taxation in the Cook Islands,*

Section 98. *Interpretation - In this Part, unless the context otherwise requires, -*

"paid", in relation to withholding income, includes distributed, credited or dealt with in the interest or on behalf of a person; and "pay" and "payment" have corresponding meanings;

"person" includes a company, a corporation sole, a body of persons whether incorporated or not, a local or public authority, the Crown in right of the Government of the Cook Islands, and every instrumentality or agency of the Government||.

"received", in relation to withholding income, includes credited or dealt with in the interest or on behalf of a person; and "receive" and "receipt" have corresponding meanings;

"resident in the Cook Islands" means deemed to be resident in the Cook Islands within the meaning of Part V;

"royalties" means payment of any of the kinds referred to section 46 (1) (e) and (f).

"withholding income"-

(a) *means income that is derived from the Cook Islands and is-*

i. *a dividend or a royalty that is paid to a person who is not resident in the Cook Islands; or*

ii. *interest paid to -*

(A) *a person who is resident in the Cook Islands by a bank; or*

(B) *a person who is not resident in the Cook Islands by a person who is resident in the Cook Islands; but*

(b) *does not include any income that is exempt from income tax.*

Section 99. *Application of this Part - This part applies –*

(a) *to withholding income paid or derived on or after 1 September 2011*

(b) despite anything to the contrary in this Act.

Section 100. Withholding tax imposed – (1) Every person who derives withholding income shall be liable to pay withholding tax at a rate or 15% on that income.

Section 101 Deduction of withholding tax – (1) Any person who makes a payment of withholding income, shall, at the time of making the payment, make a deduction of withholding tax there from of an amount determined in accordance with section 100.