



PARLIAMENT OF THE COOK ISLANDS

INCOME TAX AMENDMENT BILL

EXPLANATORY NOTE

This note does not form part of the Bill but is intended to indicate the effect of the clauses.

This Bill amends the Income Tax Act 1997 to

- extend the secrecy provisions to cover information that is subject to an information sharing agreement with another country or is obtained by an agent of the Department;
- provide for the taxation of the trustee income of resident and non-resident trustees of foreign trusts;
- enhance provisions that implement the application of the OECD Common Reporting Standard in the Cook Islands concerning the exchange of tax information between different jurisdictions;
- lower the lowest tax rate for individuals from 17.5 cents to 17 cents and lower certain other tax rates;
- provide for a tax amnesty and tax debt forgiveness for unpaid additional tax and undeclared income;
- enable things to be done under the Act electronically;
- provide for other tax-related matters.

Clause 1 relates to the Title.

Clause 2 relates to commencement. Clauses 27 to 29 (which implement changes to tax rates) come into force on 1 January 2018. The rest of the Act comes into force on the date on which it receives the assent of the Queen's Representative.

Clause 3 provides that the Income Tax Act 1997 is the principal Act amended by this Bill.

Clause 4 amends section 2 of the principal Act, which defines certain terms used in the Act.

A new definition of *records* is inserted to replace the definitions of *book and document* and *book or document*. The new definition cross-refers to the definition of *records* in section 217(3) of the Act. The effect of this change is that the definition will apply for the purposes of the Act as a whole and not just section 217.

The definition of *notice* is amended to include the electronic service of notices as provided for under *new section 228A* (see clause 26).

Clause 5 replaces section 7 of the principal Act, which requires officials to maintain the secrecy of official tax information. The *new section 7*

- covers information held by the Revenue Management Division (**RMD**) under any other Act it administers or that imposes taxes or duties payable to the Crown:
- prevents the unauthorised disclosure of any information held under an information sharing agreement with another country or obtained by an agent of, or any other person engaged to provide services to, the RMD:
- covers all records as defined in section 2:
- increases the penalty for contravening section 7 from \$500 to \$5,000.

Clause 6 amends section 8 of the principal Act, which provides for Annual Returns. This clause adds a *new subsection (2)*, which enables the Collector to dispense with the requirement to file a tax return in the case of PAYE taxpayers who meet prescribed criteria.

Clause 7 corrects a typographical error in section 13 of the principal Act, which relates to special returns and special assessments.

Clause 8 inserts a new section 17A into the principal Act, which relates to the proposed tax amnesty for previously undeclared income. This amnesty applies to taxpayers who, before 1 August 2017, derived taxable income from any source within or outside the Cook Islands, but have not declared that income.

New section 17A enables a taxpayer to provide a return of the undeclared income in accordance with the section and thereby take advantage of the amnesty. To take advantage of the amnesty, a taxpayer must

- provide the return of undeclared income to the Collector during the amnesty period:
- pay the outstanding tax payable on the undeclared income and, in addition, pay a penalty equal to 20 percent of the amount of the tax payable on the undeclared income:

- pay the required amounts either within the amnesty period or under a payment arrangement acceptable to the Collector.

When the taxpayer pays the outstanding tax and penalty amount, the taxpayer is freed from liability to pay any further tax or penalty in respect of the undeclared income. The payment is regarded as final.

The amnesty period starts on 1 August 2017 and ends with the close of 31 December 2017.

- Clause 9** corrects an incorrect cross-reference in section 59 of the principal, which relates to deductions that are not permitted.
- Clause 10** removes unnecessary duplicated text from section 69 of the principal Act, which relates to the setting off of losses against future profits.
- Clause 11** amends section 77 of the principal Act, which relates to income derived by trusts. Section 77 currently makes trust income taxable, subject to exemptions in section 42 for charitable trusts and income derived by a person as a beneficiary of a trust.

This clause adds *new subsections (3) to (6)*.

New subsection (3) applies to trustees of foreign trusts who are not resident in the Cook Islands when they derive income from foreign trusts, but who may be resident at other times. A non-resident trustee of such a trust is liable for tax on income that the trustee derives from the trust if a settlor of the trust is a Cook Islands resident, the trust is a superannuation fund, or the trust is a testamentary trust where a trustee of the trust is resident in the Cook Islands.

New subsection (4) provides, however, that a non-resident trustee is not liable for the tax if the trustee is resident outside the Cook Islands at all times during the income year concerned.

New subsection (5) renders a resident trustee of a foreign trust liable for tax on income that the trustee derives from the trust.

New subsection (6) provides, however, that a resident trustee is not liable for the tax if no settlor of the trust is a Cook Islands resident, the trust is not a superannuation fund, and the trust is not a testamentary trust.

- Clause 12** inserts *new section 96C* into the principal Act and relates to the OECD's Common Reporting Standard (the **CRS**) for exchanging tax information between member jurisdictions.

Subsection (1) specifies dates for the purposes of certain definitions in the CRS. In particular,ô

- a new account is a financial account maintained by a reporting financial institution opened on or after 1 January 2017;
- a pre-existing account is a financial account maintained by a reporting financial institution as of 31 December 2016.

Subsection (1) also specifies some deadlines for due diligence purposes. These are

- 31 December 2017 for high value individual accounts;
- 31 December 2018 for low value individual accounts;
- 31 December 2018 for the review of pre-existing entity accounts.

Subsection (2) defines the term "Reportable Jurisdiction".

Subsection (3) expressly provides for regulations made under section 96B of the principal Act to

- incorporate the content of the Commentary to the CRS;
- give effect to the general reporting requirements and due diligence requirements set out in Annex 5 of the CRS. This Annex provides for the *Wider Approach to the Common Reporting Standard*, under which jurisdictions may extend due diligence procedures to cover all non-residents or residents of jurisdictions with which they have an exchange of information instrument in place.

Clause 13 amends the heading to Part VII of the principal Act so that it refers to income derived from interests in land, as provided for in the amendment to section 98 in clause 14.

Clause 14 amends section 98 of the principal Act, which relates to the interpretation of terms used in Part VII. This clause amends the definition of "withholding income" to include payments derived from leases, licences, rentals, or other interests in any land in the Cook Islands and paid to a person who is not resident in the Cook Islands. Currently, the term covers interest, dividends, natural resource amounts, or royalties that are derived from the Cook Islands and paid to a person who is not resident in the Cook Islands and also covers interest payments paid by a banking company to residents who have not provided their RMD number to the bank.

The definition determines who has to pay withholding tax, which is calculated at the rate of 15% on the taxable income.

Clause 15 amends section 101 of the principal Act, which relates to the obligation to deduct withholding tax. This clause adds *new subsection (5)*, which specifies who is responsible for deducting withholding tax where the payment is made under a

lease, licence, rental, or other interest in any land in the Cook Islands and paid to a person who is not resident in the Cook Islands.

- Clause 16** amends section 104 of the principal Act, which relates to statements of withholding income. This clause changes from 15 February to 31 January the operative dates for providing a statement, issuing an interest earnings certificate and providing other details.
- Clause 17** amends section 155 of the principal Act, which relates to the payment of tax deductions to the Collector. This clause changes from 20 January to 31 January the operative date for providing employees with tax deduction certificates, and changes from 15 February to 31 January the operative date for providing reconciliation statements.
- Clause 18** amends section 204 of the principal Act, which relates to relief from additional income tax under section 190 that is due because of default in paying tax. A *new subsection (2)* is added to enable taxpayers who are liable to pay additional income tax to take advantage of the amnesty in this new provision. A taxpayer is entitled to obtain remission of the whole of the amount of additional tax owing if
- the taxpayer has paid all other outstanding income tax (if any) that is payable by the taxpayer as at 1 August 2017 and has agreed to meet the taxpayer's other existing and future obligations under this Act; or
 - the taxpayer enters into an acceptable agreement or arrangement with the Collector and agrees to
 - pay all that other outstanding tax under a payment arrangement with the Collector; and
 - meet the taxpayer's other existing and future obligations under the Act.
- Clause 19** amends section 206 of the principal Act, which relates to the penalties for failing to furnish a tax return and related offences. This clause inserts *new subsection (1B)*, which provides that the penalty for committing an offence against section 206(1)(f) is imprisonment for a term not exceeding 2 years or a fine not exceeding \$100,000, or both. That offence is aiding, abetting, or inciting any other person to commit any offence against the Act or against any regulation made under the Act.
- Clause 20** amends section 217 of the principal Act, which relates to the obligation to keep business records. Section 217(3) defines "records" for the purposes of this section. As provided in clause 4, this definition is being applied generally for the purposes of the Act. In addition to that amendment, this clause makes 2 other amendments.

The first amendment is to consequentially amend section 217(3) to state that it applies for the purposes of the Act and not just this section. Accordingly, where the term "records" appears (*see* sections 7, 143L, 154, 219, 220, and 222), it has the meaning given in section 217(3).

The second amendment is to insert in section 217(3) a reference to documents in electronic format. This amendment makes it clear that the summary and source documents referred to in section 217(3) can be in electronic format.

Clause 21 inserts *new section 217A* into the principal Act, which relates to the keeping of records relating to resident foreign trusts. The records to be kept must enable the Collector to ascertain

- documents evidencing the creation and constitution of the trust:
- particulars of settlements and distributions:
- the names and addresses of the settlors and of the recipients of distributions:
- the names and contact particulars of resident foreign trustees:
- a record of the assets and liabilities of the trust.

Clause 22 amends section 219 of the principal Act, which relates to the Collector's power to inspect business records.

References to "book and document" and "book or document" are consequentially replaced with "records".

New subsection (1C) is inserted to cover the situation where a hard or electronic copy of information on an electronic information storage media is not able to be made available as required under section 219(1A). In this case, it is provided that the Collector or an authorised officer may seize and retain the electronic information storage media to copy the relevant information or records. The Collector or authorised officer can retain the electronic information storage media only for so long as is necessary to copy the relevant information or records stored on the media.

New subsection (2A) is inserted, which relates to the obligation under section 219(2) for the owner or manager of any property or business to provide reasonable assistance in an investigation under the Act. This new provision ensures that reasonable assistance includes providing access to

- information on an electronic information storage device, including the entering of a password or any other basis of authentication for access to the media, such as fingerprint, voice, or iris recognition:

- decryption information necessary to decrypt data to which access is sought under section 219.

A person who fails to provide reasonable assistance, including as required under *new subsection (2A)*, may be guilty of an offence under section 223(1)(a).

New subsection (4) defines “electronic information storage media” to include both primary and portable electronic information storage media. The reference primary storage media includes computers and mobile electronic devices such as mobile phones (including smart phones, such as iPhones and Blackberrys), digital cameras, mp3 players (such as iPods), and tablets (such as iPads). The reference to portable storage media includes portable hard drives, cd-roms, DVDs, and USB sticks. The definition includes also any other facility for the electronic storage of information, such as “cloud” storage.

Clause 23 amends section 220 of the principal Act, which relates to the obligation to furnish records when requested by the Collector.

The reference to “books and documents” is replaced with “records”.

New subsection (1A) is inserted, which relates to the situation where a person fails to produce a hard or electronic copy of information or records as required under section 220(1). This new subsection provides that the Collector or an authorised officer may seize the electronic information storage media on which the information or records are stored and copy the relevant information or records. The Collector or authorised officer can retain the electronic information storage media only for so long as is necessary to copy the relevant information or records stored on the media. The definition of “electronic information storage media” in *new section 219(4)* applies for the purposes of section 220. The definition includes both primary and portable electronic storage media.

New subsection (1B) is inserted, which relates to the situation where a person’s electronic information storage media has been seized under *new subsection (1A)* and obliges the person to provide reasonable assistance to the Collector or authorised officer to access the information or records stored on the media. It is expressly provided that this includes the entering of a password or any other basis of authentication for access to the media (such as fingerprint, voice, or iris recognition), and providing decryption information necessary to decrypt data on the media. A person who fails to provide reasonable assistance as required under *new subsection (1B)* may be guilty of an offence under section 223(1)(a).

Clause 24 amends section 222 of the principal Act, which relates to inquiries by the Collector.

References to “books and documents” are replaced with “records”.

New subsection (1A) is inserted, which provides that section 220(1A) and (1B) apply if a person fails to produce records as required under subsection (1).

Clause 25 amends section 223(2) of the principal Act, which relates to the penalty for contravening any of sections 219 to 222 and 224 of the Act (provisions relating to the inspection of records, collection of information, and tax inquiries). This clause increases the penalty from \$1,000 to \$10,000.

Clause 26 inserts new section 228A into the principal Act, which provides for things to be done electronically under the Act.

Any of the following things will be able to be done electronically through a computer system or mobile electronic device (such as a mobile phone or tablet)ô

- furnishing an application for a taxpayer identification number or registration or an application for cancellation of a taxpayer identification number or registration:
- furnishing of a tax return or any other document as required under the Act:
- the payment of tax or any other amount (such as penal tax) under the Act:
- the payment of a refund of tax:
- the service of notice of any document by the Collector as required under the Act:
- the doing of any other act or thing that is required or permitted to be done by the Collector under the Act.

While *subsection (1)* provides that the Collector may authorise the acts and things specified in that subsection to be done by a taxpayer electronically, *subsection (2)* empowers the Collector to require the things specified in *subsection (1)* to be done by a taxpayer electronically through the use of a computer system or mobile electronic device.

Subsection (3) provides that the Collector may do anything referred to in *subsection (1)* electronically through the use of a computer system or mobile electronic device.

Subsection (4) provides that *subsections (2) and (3)* do not apply to a taxpayer if the Collector is satisfied that the taxpayer does not have the capacity to receive or make communications or payments electronically. For example, the taxpayer may be a small business without capacity to file tax returns or pay tax electronically. It is intended, in the initial stages of the operation of section 228A that it would apply only to large taxpayers who clearly have the capacity to communicate with the Collector electronically.

Subsection (5) provides that, for the avoidance of doubt, an electronic communication made by, or to, the Collector under *subsection (2) or (3)* is treated as a notice in writing.

Subsection (6) provides that further procedural matters may be provided for in the regulations.

- Clause 27** reduces from 17.5 cents to 17 cents the lowest tax tier rate for individuals (in clause 3 of Schedule 1 of the principal Act).
- Clause 28** reduces from 18.5% to 17% the basic tax deduction for the lowest tier of secondary income where a person is paid weekly (in clause 2(1)(b)(i) of the Second Schedule). This clause also reduces from 27.5% to 27% the basic tax deduction for the middle tier of secondary income where a person is paid weekly (in clause 2(1)(b)(ii)).
- Clause 29** replaces Schedule 2A of the principal Act, which sets out the PAYE deductions rates as from 1 January 2018. This schedule is amended as a consequence of the reduction in the lowest tax tier rate from 17.5 cents to 17 cents in clause 26.
- Clause 30** enables the Collector to write off all outstanding turnover tax.
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