



ANALYSIS

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2011, No. 10

An Act to amend the Income Tax Act 1997

(26 August 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 is the Income Tax Amendment (No. 2) Act 2011, and must be read with, and forms part of, the Income Tax Act 1997 (the "Principal Act").

(2) Section 9 comes into force on 31 August 2011.

(3) The rest of this Act comes into force on 1 September 2011.

2. Interpretation - (1) Section 2 of the Principal Act is amended by repealing the definition of "Bank" and substituting the following definition –

““Bank” means a person licensed to carry on banking business in or from the Cook Islands under the Banking Act 2003”.

(2) Section 2 of the principal Act is amended by inserting the following definition in its appropriate alphabetical order –

““withholding income” has the meaning given to it in section 98”.

3. Standard supplemental deduction for individuals – Section 44 of the principal Act is amended by omitting the words “, other than interest on deposit or savings with any Bank”.

4. Interpretation – (1) Section 98 of the Principal Act is amended by repealing the definition of “person” and substituting the following definition –

““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”.

(2) Section 98 of the principal Act is amended by inserting the following definition in its appropriate alphabetical order –

““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”.

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

“99. Application of this Part – This Part applies -

- (a) to withholding income paid or derived on or after 1 September 2011; and
- (b) despite anything to the contrary in this Act.”

6. New section 100 substituted – The principal Act is amended by repealing section 100 and substituting the following section -

“100. Withholding tax imposed – (1) Every person who derives withholding income is liable to pay withholding tax at a rate of 15% on that income.

(2) If a person has entered into a fixed term deposit with a bank before 1 July 2011 and that deposit has not matured before 1 September 2011, the amount of interest paid on that deposit that is subject to withholding tax must be calculated using the formula -

$$\text{interest subject to withholding tax} = \frac{a}{b} \times c$$

where –

“a” is the number of days from 1 September 2011 until the last day of the fixed term deposit (both dates inclusive)

“b” is the total period of the fixed term deposit, expressed in days

“c” is the total interest paid on the fixed term deposit over its total period.

(3) Subsection (2) overrides section 99(a).”

7. New section 105 substituted – The principal Act is amended by repealing section 105 and substituting the following section -

“105. Withholding tax to be final in certain cases - (1) Non-assessable withholding income must not be included in the assessable income of a person who derives non-assessable withholding income.

(2) In this section, “non-assessable withholding income” means withholding income that is -

- (a) a dividend or royalty; or
- (b) interest that is paid to -
 - (i) a natural person; or
 - (ii) a person who is not resident in the Cook Islands.”

8. New section 106 substituted – The principal Act is amended by repealing section 106 and substituting the following section -

“106. Annual tax on withholding income in certain cases – (1) Assessable withholding income derived by a person in an income year must be included in the assessable income of that person for that income year.

(2) However, a credit against the income tax assessed for that person’s assessable income for that income year must be given to that person.

(3) The credit must -

- (a) be equal to the withholding tax deducted or paid to the Collector for that person’s assessable withholding income for that income year; but
- (b) not include any penalty imposed under section 110 or penal tax imposed under section 111.

(4) In this section, “assessable withholding income” means all withholding income other than non-assessable withholding income (as defined in section 105(2)).”

9. Consequential amendment – Sections 5 to 8 of the Income Tax Amendment Act 2011 (No. 7) are consequentially repealed.

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