PARLIAMENT OF THE COOK ISLANDS

INCOME TAX (COMPANY RESIDENCE) AMENDMENT BILL 2021

EXPLANATORY NOTE

The Income Tax (Company Residence) Amendment Bill (the **Bill**) amends the Income Tax Act 1997 (the **principal Act**).

The Bill amends the principal Act to change the criteria for determining whether a company is resident in the Cook Islands for tax purposes.

Clause 1   sets out the Title of the Bill.

Clause 2   provides that the Bill will come into force on the day after the date on which it is assented to by the Queen's Representative.

Clause 3   provides that the Bill amends the Income Tax Act 1997.

Clause 4   amends section 82, which specifies how the place of residence of a natural person and a company is determined.

New subsection (2) replaces the test for a company's residence in the Cook Islands. The current test makes a company resident if the company is incorporated in the Cook Islands or its head office (the centre of its administrative management) is located in the Cook Islands.

The new test provides 3 ways for a company to be resident in the Cook Islands. They are—
- the directors exercise control of the company in the Cook Islands; or
- the place of effective management of the company is in the Cook Islands; or
- the company is a Cook Islands company and, at any moment in the income year, 3 or more of its directors are resident in the Cook Islands.

New subsections (3) and (4) provide the timing of the application of the new test. The new test applies to all companies on and from 1 January 2023. However, a company may elect to have the new test apply on and from 1

January 2022 if the company notifies the Collector before the close of 1 May 2022 that the company elects to be subject to *new subsection (2)*. *New subsection (5)* provides that the company must comply with procedures prescribed by the Collector of Inland Revenue about the notification of its election to be subject to the new test.

The test for tax residence of a natural person in the Cook Islands remains unchanged.

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