



PARLIAMENT OF THE COOK ISLANDS

EXPLANATORY NOTE

INCOME TAX BILL

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

Clause 1 is the Short Title.

PART I INTERPRETATION

This Part gives interpretations for terms used throughout the Bill and contains detailed definitions of certain specific terms.

Clause 2 is the interpretation clause.

Clause 3 sets out circumstances defining control of companies.

Clause 4 defines the expression "dividends".

Clause 5 defines the expression "bonus issue".

PART II ADMINISTRATION

This Part describes the government department responsible for tax collection, and the duties of its officers.

Clause 6 sets out administrative details of the Revenue Management Division of the Ministry of Finance & Economic Management.

Clause 7 sets out secrecy requirements for officers of the Revenue Management Division.

PART III RETURNS AND ASSESSMENTS

This Part sets out the procedural aspects of tax assessments and tax returns.

- Clause 8** imposes an obligation on every taxpayer to furnish an annual income tax return to the Collector.
- Clause 9** allows a taxpayer to change tax return date to coincide with that taxpayer's annual balance of accounts.
- Clause 10** sets out certain adjustments which follow from a change in the return date under clause 9.
- Clause 11** provides for joint returns or assessments by partners, co-trustees or joint venturers.
- Clause 12** provides for returns by executives or administrators of a deceased taxpayer.
- Clause 13** allows the Collector to demand special returns and make special assessments for certain specified persons.
- Clause 14** is a general clause requiring furnishing of annual returns by every person as prescribed by the Act.
- Clause 15** requires tax returns to be furnished (1st March in each year, unless the taxpayer is otherwise authorised).
- Clause 16** allows the Collector to require other returns to be made.
- Clause 17** imposes a presumption as to authority to submit a return.
- Clause 18** provides for the Collector to make, in respect of every taxpayer, assessments of tax payable and the amount on which that tax is calculated.
- Clause 19** sets out the basic rates of income tax by reference to the First Schedule.
- Clause 20** provides for the Collector to make a determination of taxable income where business is controlled by non-residents and appears to produce insufficient taxable income.
- Clause 21** allows the Collector to make an assessment of the taxpayer's income and tax liability, and requires that person to pay the tax so assessed, unless an objection is successful.
- Clause 22** allows the Collector to amend assessments from time to time and requires the Collector to give notice of any new liability resulting from any such amendment.
- Clause 23** limits the time period for amended assessments by the Collector to 4 years, or 10 years in the case of a return which the Collector considers to have been fraudulent or misleading.
- Clause 24** emphasises the validity of assessments.

- Clause 25 deems assessments correct except in proceedings on objection under Part IV of the Bill.
- Clause 26 sets out what documents constitute satisfactory evidence of returns and assessments.
- Clause 27 requires the Collector to give notice of assessment to the taxpayer.

PART IV
OBJECTIONS TO ASSESSMENT

This Part sets out the procedure for objections to assessments, and also makes provision regarding costs, appeals from assessments or from the High Court's determination on an objection, and restates the obligation for the taxpayer to pay tax pending resolution of the objection or appeal.

- Clause 28 sets out procedures for originating an objection to an assessment for income tax, and imposes a time limit of 4 weeks (unless the Collector agrees to extend this time because of communication difficulties).
- Clause 29 requires the Collector to consider every objection and allows the Collector to alter an assessment pursuant to the objection. It also allows the objector to require the objection to be heard and determined by a Judge of the High Court if the Collector declines the objection.
- Clause 30 specifies usual High Court practice for the hearing of any objection, but disallows a hearing in open court.
- Clause 31 imposes the burden of proof in an objection on the objector.
- Clause 32 allows the High Court to award costs against either party, and to include interest in that award.
- Clause 33 provides that once an objection is determined, the High Court may confirm, adjust or cancel the assessment and require the Collector to alter the assessment accordingly.
- Clause 34 allows appeals from the High Court determination to the Court of Appeal of the Cook Islands.
- Clause 35 sets out the procedure for the determination of an objection to an assessment of income tax by proceedings in the High Court and further sets out filing requirements, notice requirements and time limits.
- Clause 36 restates the continued obligation to pay tax notwithstanding any objection or appeal to an assessment.
- Clause 37 preserves the Collector's right, in the event of an objection to an assessment, to assess tax on any other income of the objector.

PART V
INCOME TAX

This Part contains a provision imposing income tax, allows for the income tax rates to be as fixed from time to time, defines "absentee" and provides for a special exemption for savings or deposits with banks.

- Clause 38** defines "absentee" for the purposes of this Part V as a person whose home has not been in the Cook Islands during any part of that income year. There are two provisos; one in respect of ill health and the other in respect of Government service.
- Clause 39** is the operative provision which imposes on every person deriving income an obligation to pay income tax on that income year, and this clause clarifies the phrases "income year" and "year of assessment" in regard to this obligation.
- Clause 40** provides for the income tax rate to be as fixed from time to time.
- Clause 41** allows any taxpayer who is an individual natural person resident in the Cook Islands to have a special exemption from income tax in respect of the first \$1,000 of income derived by way of interest on deposit or savings with any bank in any income year. This special exemption may only be claimed by one individual taxpayer within any family.

Exempt Income

- Clause 42** specifically exempts certain types of income from income tax. For example, income received by a local or public authority is tax exempt. When a person derives both exempt income and income which is not exempt, that person's assessable income for the year is only that which is not exempt.
- Clause 43** is a transitional provision dealing with the variation certificates granted pursuant to sections 49 and 49A of the Income Tax Act 1972, and gives effect to Government policy by providing that the Minister may not make any serve of such declaration unless an application has been received before 1 February 1997.
- Clause 44** sets out a standard supplemental deduction for individuals, which will be \$3,000 for the income you earn 31 December 1997 and \$6,000 in respect of any other income year.
- Clause 45** provides for a 100% annual depreciation rate for new assets acquired after 1 July 1997, with certain specified exemptions in subsection 2 of that clause.

Assessable Income

- Clause 46** sets out various types of receipt which are deemed to be assessable income. Many of them are receipts which would obviously be regarded as income in the ordinary sense such as business profits or gains, salary or wages, interest, rent etc. Others are less obviously income, such as profits or gains from sale of land

in certain circumstances or a payment in respect of the goodwill of a business derived by the owner of land from a lease.

- Clause 47** further specifies income derived from use or occupation of land as being included in assessable income.
- Clause 48** deems income to have been derived in certain circumstances whether or not the person has received it.
- Clause 49** provides that where a taxpayer incurs an expenditure or loss which has been taken into account in calculating assessable income, and the taxpayer's liability is subsequently remitted in whole or in part, the taxpayer's assessable income derived in the income year is increased by the amount remitted. The liability is deemed to have been remitted to the extent to which it has been discharged for less than full consideration in money or money's worth.
- Clause 50** allows the Collector at the taxpayer's request to apportion income received in anticipation between the current income year and any number of subsequent years not exceeding 5, with the part apportioned in respect of those subsequent years being assessable for tax as if derived in that year.
- Clause 51** sets out provisions for valuation of trading stock including livestock, with that value to be taken into account in ascertaining whether or not a taxpayer has derived assessable income during an income year.
- Clause 52** deals with income derived from disposing trading stock, with the Collector determining the part of the consideration for the business assets which is attributable to the trading stock. The clause also sets out various interpretations of terms used in recording disposal of trading stock and the deeming of income derived from that disposal.
- Clause 53** deals with sale of trading stock for inadequate consideration, and deems it to have been sold at the market price thereof at the date of sale, by determination by the Collector. In other respects this clause mirrors the preceding clause.
- Clause 54** provides that any sums received or owing (less a deduction if appropriate for the cost of devising the patent right) on a sale of the patent right are to be included in the assessable income of the vendor in the year of receipt or in the year they become receivable.
- Clause 55** deals with payment of excessive remuneration or share of profits to relatives of a director or shareholder of a company, and allows the Collector to allocate total profits or income of the business or undertaking before deduction of any amount and to reapportion the amounts allocated as the Collector considers reasonable.
- Clause 56** renders void any agreement purporting to alter the incidence of income tax, or relieving any person from liability to pay income tax, void.

Deductions in Calculating Assessable Income

- Clause 57** provides that in calculating any taxpayer's assessable income, deductions for any expenditure or loss are only to be made as expressly provided in the Act.
- Clause 58** provides for an expenditure or loss to be deductible when incurred in gaining or producing assessable income for any income year or when necessarily incurred in carrying on a business for the purpose of gaining or producing the assessable income for any income year.
- Clause 59** sets out certain deductions (for example those of a capital nature, bad debts or other recoverable losses, payments by one spouse to another and so on) which are not permitted.
- Clause 60** deals with deductions for repair, maintenance and depreciation and contains provisos whereby the Collector may allow deductions for such costs. The clause also provides for the Collector to make a revised assessment if the asset in respect of which the deduction was allowed is later sold or otherwise disposed of for a consideration greater than the amount to which the asset's value had been reduced by the allowance.
- Clause 61** enables the Collector to allow a deduction in respect of any sum expended by a taxpayer in constructing improvements on any native freehold land or in purchasing the unexpired period of any lease of native freehold land, and contains certain mechanisms for calculation of the allowable deductions.
- Clause 62** enables the Collector to allow a deduction in respect of expenditure incurred by the taxpayer for preparation stamping and registration of any lease of property used in production of the taxpayer's assessable income.
- Clause 63** enables the Collector to allow a deduction in respect of any premium paid by the taxpayer for lease of any machinery used in the production of income, and allows for apportionment of any amount paid by the taxpayer over the period of the lease.
- Clause 64** enables the Collector to allow a deduction for any sum expended on the purchase of patent rights used by that taxpayer in the production of assessable income, and again in a similar manner to clause 63 which allows for apportionment of that amount paid. The clause contains an amplified definition of "taxpayer", to include any natural person's trustees and personal representatives.
- Clause 65** enables a tax deduction to be made in respect of expenditure made in connection with the grant, maintenance, or extension of a patent used by the taxpayer in the production of assessable income, and further allows a deduction, if a taxpayer actually devised the patented invention, of expenditure incurred in connection with that devising.
- Clause 66** allows for a deduction in connection with scientific research directly related to the trade or business carried on by the taxpayer.

- Clause 67** sets out the circumstances (for example where property is either devised or bequeathed by will subject to the payment of an annuity or is charged with an annuity in any other circumstances) when that annuity may be deductible when assessing the taxpayer's income.
- Clause 68** sets out the circumstances where there can be a deduction by an employer who contributes to an employees' fund to provide individual personal benefit pensions or retiring allowances. The Collector has sole and absolute discretion as to whether a deduction should be made.
- Clause 69** sets out the circumstances where a taxpayer can carry forward losses to subsequent assessable income year.
- Clause 70** sets out the circumstances where a taxpayer that is a company shall be entitled to a deduction for any gift or gifts of money made to a charitable organisation in the income year.
- Clause 71** applies to an individual taxpayer involved in agricultural, horticultural, aquaculture or fishing activities primarily for their own or dependents' consumption or for barter transactions. Deductions for the costs in carrying out that activity will only be allowed to the extent of the individual's gross assessable income from any of the activities. While this means that the person cannot use a loss from these activities to offset other income they derive, the loss can be carried forward for offset against future income from those activities.

Companies and Associations

- Clause 72** provides that where an association enters into transactions with its members or with its members and others, profits or gains of the association if the transactions were not of mutual character will be deemed to be profits or gains arising from the transactions and to be assessable income of the association. The clause sets out the circumstances as to the calculation of the assessable income of the association and the deduction that the Collector shall allow.
- Clause 73** provides that every banking company shall be assessable and liable for income tax as with any other company.
- Clause 74** provides for overseas insurance companies to pay tax on income including premiums derived by the company for business transacted in the Cook Islands, other than life assurance business.
- Clause 75** sets out the circumstances where a percentage of amounts derived by a person who conducts services for overseas shipping freight and passengers embarking from the Cook Islands is deemed taxable income.

Non-resident film renters

- Clause 76** provides that where a non-resident rents films to exhibitors in the Cook Islands, that person shall pay an amount equal to 10% of the gross rents so derived in assessable income of that person can be liable for income tax to that amount.

Income derived by Trustees

- Clause 77** subject to exemptions contained in the Act every trust shall be liable for income tax on assessable income.
- Clause 78** sets out the circumstances where income received by a trustee after death of a deceased person will be assessable income.
- Clause 79** provides the circumstances where irrecoverable book debts of a deceased taxpayer can be deducted from any assessable income of the estate.

Country of Derivation of Income

- Clause 80** sets out the circumstances where income derived by a person who is resident in the Cook Islands is assessable and for when income derived from the Cook Islands is assessable for income tax whether the person deriving it is a resident or not.
- Clause 81** allows the Collector to determine whether a taxpayer's income, earned outside of the Cook Islands by way of salary or wages and subjected to income tax in another country, is assessable income subject to tax in the Cook Islands.
- Clause 82** provides how residency is determined.
- Clause 83** lists the classes of income that are deemed to be derived from the Cook Islands.
- Clause 84** provides for an apportionment of assessable income where income is derived partly in the Cook Islands and partly elsewhere.
- Clause 85** sets out the circumstances where a person who is a resident in the Cook Islands derives income from a country or territory outside of the Cook Islands income paid in that country or territory shall be allowed as a credit against income tax payable in the Cook Islands in respect of that income.
- Clause 86** allows the Minister to enter into arrangements with governments of other countries to afford relief for taxpayers from double taxation in relation to income tax or taxes of a similar character imposed by the laws of that country or territory.

PART VI
IMPLEMENTATION OF ARRANGEMENTS FOR
RELIEF FROM DOUBLE TAXATION

This part concerns the implementation of arrangements for relief from double taxation and the mechanism for tax credits to be allowed.

Clause 87 is the interpretation clause setting out the definitions in relation to relief from double taxation arrangements.

Credits for Foreign Tax

Clause 88 provides that the Collector shall determine whether a credit is allowable and if so the amount of the credit.

Clause 89 provides for the Collector to issue to the taxpayer a notice of determination as to whether the tax credit is allowable, which notice may be included in the notice of assessment.

Clause 90 provides that except in proceedings on objection under Part IV, no determination of the Collector shall be disputed and such determination shall be conclusively deemed to be correct.

Clause 91 provides that the production of any document purporting to be a copy of the original shall be sufficient evidence of the original so long as it is signed by the Collector.

Clause 92 allows for the taxpayer to object to the Collector's determination.

Clause 93 provides that the method of objection shall be the same as in Part IV of the Bill.

Clause 94 stipulates a time period (four years) by which a credit must be claimed.

Clause 95 provides a maximum amount of credit to be given.

Clause 96 provides that where a taxpayer has been given a refund or repayment of tax after the tax credit was allowed the tax credit can be adjusted by the Collector taking into account that repayment or refund.

Miscellaneous

Clause 97 sets out the formula necessary to ascertain the amount of Cook Islands tax payable by a taxpayer in respect of any income of a particular nature or from a particular source derived by the taxpayer in an income year.

PART VII
WITHHOLDING TAX ON DIVIDENDS, INTEREST AND ROYALTIES

This Part of the Bill concerns the assessment and payment of withholding tax on income derived from dividends and royalties.

- Clause 98** is the interpretation section relating to definitions applicable to this part of the Bill.
- Clause 99** sets out what income shall be withholding income to which this part of the Bill shall apply.
- Clause 100** requires every person who derives withholding income to pay withholding tax upon that income.
- Clause 101** provides for the deduction of withholding tax and the method by which that is to occur.
- Clause 102** applies to the payment of withholding tax on dividends not paid in money and sets out the criteria when that payment shall apply.

Payment and Assessment of Withholding Tax

- Clause 103** applies to the method of payment of deductions of withholding tax to the Collector.
- Clause 104** stipulates that a person who in any year makes any deduction of withholding tax from any payment of withholding income or pays to the Collector any amount in respect of withholding tax shall make a statement to the Collector.
- Clause 105** provides the circumstances where withholding tax is to be final in respect of a non-resident.
- Clause 106** provides that a non-resident's withholding income shall be included in the assessable income of that person for that year and allows a credit for the amount of withholding tax deducted or paid to the Collector.
- Clause 107** provides the circumstances where a person who derives withholding income is to pay withholding tax to the Collector when not otherwise paid pursuant to the other clauses of the Bill.
- Clause 108** sets out the rights of the Collector when there is a failure by a taxpayer to make deductions of withholding tax or to make payments of withholding tax to the Collector.
- Clause 109** allows the Collector to make an assessment of what a person's withholding income is, and provides that the person may object to the Collector's assessment.

Penalties and Offences

- Clause 110** allows the Collector to impose a penalty in cases of default of payment to or deduction of withholding tax.
- Clause 111** enables penal tax to be charged in addition to any other penalty in cases of default.

- Clause 112** provides that a person commits an offence who fails to make payment or deduct withholding tax in accordance with the Bill.

Miscellaneous Provisions

- Clause 113** applies to withholding tax on dividends paid to a company under the control of a non-resident.
- Clause 114** provides the circumstances where deductions of withholding tax are deemed to have been received and derived by a person entitled to payment.
- Clause 115** relates to the application of the provisions as to withholding tax to other parts of the Bill.
- Clause 116** applies when the Collector deems distribution of capitalised amounts to be a further bonus issue.

PART VIII **AGENTS AND NON-RESIDENTS**

This Part contains general provisions about the liability of principals and agents in respect of tax payments and assessments, sets out certain special cases of agency, and sets out provisions relating to agents of non-residents and absentees.

Interpretation

- Clause 117** defines "absentee" for the purposes of Part VIII, and that definition includes a person out of the Cook Islands for the time being, an overseas company, unless it has a fixed and permanent place of business in the Cook Islands, and an overseas company declared to be an absentee by the Collector.

Agents Generally

- Clause 118** imposes a liability on an agent to make returns of income and be assessed on those returns as if that agent were a principal, except that an agent has no special exemption or rebate entitlement additional to any entitlement of the principal. The clause also requires a separate return to be made by the agent for each principal of that agent.
- Clause 119** relates the rate and amount of tax payable by the agent to that payable by that agent's principal but limits it only to the income in respect of which the agency exists.
- Clause 120** preserves the liability of the principal to make returns and be assessed and chargeable with tax notwithstanding any agency arrangement, and provides for joint and several liability of two or more agents in respect of the same tax.
- Clause 121** allows any agent paying tax on behalf of a principal to recover the tax from that principal, or from monies held by the agent on behalf of that principal.

- Clause 122** allows an agent to retain a reasonable sum for payment of tax out of any monies which that agent holds on behalf of the principal.
- Clause 123** deems an income tax assessment to be sufficient authority, as between the agent and the principal, for the agent to pay tax on behalf of the principal and claim reimbursement of that tax.
- Clause 124** imposes a personal liability on the agent for payment of tax, but allows the Collector to extend the time for payment of that tax at the Collector's discretion.

Special Cases of Agency

- Clause 125** allows the Collector to treat a relationship between two persons which contains an element of control as a relationship between agent and principal, and require returns to be made and make assessment, and impose liability for income tax accordingly.
- Clause 126** provides for a mortgagee in possession of any land or property to be the agent of the mortgagor in respect of income relating to that land or property, and imposes income tax liability accordingly.
- Clause 127** imposes a similar obligation on any person with receipt control or disposition of income derived by a person under legal disability, on the basis of a deemed agency.
- Clause 128** is a provision essentially similar to clause 127 and relates specifically to rents or profits of land owned by an absentee or someone under a legal disability. Again, an agency relationship is imposed for the purposes of income tax.
- Clause 129** imposes a liability on new companies for tax payable by former companies if that new company has substantially the same shareholders or is under the same control as the former company. This clause contains specific definitions of "company", "new company", and "original company".
- Clause 130** deems companies to be the agents of debenture holders for the purposes of income tax assessment and liability.
- Clause 131** modifies agency provisions in respect of income from company debentures and provides that the deemed agency set out in Clause 130 does not apply in certain circumstances where the Collector has been advised of the name and details of the debenture holders, who are personally liable for income tax in respect of those debentures.
- Clause 132** imposes an obligation to pay income tax on the recipient of any alimony or maintenance income, and also on the person obliged to pay such income as agent of the recipient.

Agents of Absentees and Non-residents

- Clause 133** obliges any person who carries on business for and on behalf of an absentee principal to make returns and be assessable and liable for income tax on income derived by that principal through business carried on in the Cook Islands by means of the agent, whether the agent gains possession or control of the income or not.
- Clause 134** deems the business partner of an absentee to be the agent of that absentee in respect of the absentee's income tax liability.
- Clause 135** deems the master of a ship or the captain of an aircraft to be the agent of any absentee owner of that aircraft for the purposes of the Bill and imposes income tax liability on that agent. The clause also allows the Comptroller of Customs to withhold clearance of the ship or aircraft in respect of which tax is payable by such an agent.
- Clause 136** deems a tenant, mortgagor or other debtor to be the agent of an absentee landlord mortgagee or other creditor in respect of income derived from interests in land, and again imposes tax liability on that agent.
- Clause 137** deems a person in the Cook Islands who has receipt control or disposal of any income derived by an absentee principal to be an agent of that principal and liable for income tax accordingly.
- Clause 138** deems a Cook Islands company to be an agent of absentee shareholders for purposes of income tax liability.
- Clause 139** deems a banking company or any other authority or person holding money by way of deposit and paying or crediting interest on that money to be the agent of all absentee depositors for income tax purposes, and imposes a liability on that company or other entity to pay tax on any interest exceeding \$1,000 in any year.
- Clause 140** deems every insured person to be the agent of an insurer who does not carry on business in the Cook Islands, for the purposes of that insurer's liability for income tax, and imposes an obligation on any exporter of insured goods from the Cook Islands to notify the name and details of the company with which the goods are insured and the amount of the premium payable in respect of those goods, for the purposes of assessment of income tax pursuant to this clause.
- Clause 141** deals with non-resident taxpayers, whose employer is deemed to be those taxpayers' agent in respect of the salary and wages or other emoluments received by non-resident taxpayers, and imposes liability accordingly for income purposes. The clause also allows for deduction of any income tax payable from a non-resident taxpayer's salary or other benefits, and defines "non-resident taxpayer" specifically for the clause.
- Clause 142** deems a non-resident trader to be the agent of all that trader's employees in the Cook Islands for income tax purposes, and imposes obligations on that agent accordingly.

- Clause 143** deems any principle residing outside the Cook Islands who procures sale by an agent within the Cook Islands of goods or merchandise located in or imported into the Cook Islands to be carrying on business in the Cook Islands through the agent, deems the income derived from such a business to be derived from the Cook Islands and imposes income tax obligations on the agent accordingly.

PART IX
TAX DEDUCTIONS BY EMPLOYERS FROM
SALARY, WAGES AND OTHER SOURCE
DEDUCTION PAYMENTS

This Part deals with the deduction of tax at source, and the payment of that tax to the Revenue Management Division by an employer paying salary, wages or other like payments to a taxpayer.

- Clause 144** states that this Part IX applies to salary or wages for any period on or after 1 July 1997, and any other source deduction payments on or after that date, and allows determination by the Collector of any questions raised as to whether or not the source deduction payment is subject to this Part IX.

Tax Deductions

- Clause 145** requires an employer or a person who makes a "source deduction" payment (which includes salary or wages) to make a tax deduction from that payment in accordance with this Part IX and with reference to the basic tax deductions set out in the Second Schedule. The clause imposes an analogous obligation on an employee if the employer fails to make the tax deduction from this source deduction payment. Subclauses 2 and 3 of this clause deal with payment for part only of a pay period, and deduction for any other basis of payment (e.g. outworkers). Subclause 4 deals with an employer's rights and obligations where a source deduction payment for any pay period is paid in two or more separate sums, and allows the Collector to approve aggregation of overtime pay with an employee's salary for subsequent pay periods for reasons of impracticability or other reasons as approved by the Collector.
- Clause 146** requires a tax deduction to be made from any amount credited to or applied for the account of employees, whether or not those amounts are actually paid, and deems the time of such crediting to be the time of payment.
- Clause 147** deems benefits and superannuation and other like payments to be salary or wages, and deems the value of such benefits to accrue from day to day for the purposes of re-calculation of such benefits as salary or wages.
- Clause 148** imposes an obligation on an employee to make a payment of any amount by which a tax deduction exceeds the source deduction payment received by that employee, and contains default provision if such a tax deduction is not paid accordingly.

- Clause 149** sets out employee tax codes in relation to any source deduction payment, namely "No Declaration", "P" (a primary deduction code), or "S" (a secondary deduction code). The clause also deals in its subclauses with delivery of tax code declarations and a tax code certificate to the employees/employers and makes various provisions for application of this tax code, changing of tax codes and entitlement to use of tax codes by the employee.
- Clause 150** deals with a total tax deduction where several deductions are made for one week, where an employee has engaged in more than one employment (whether with the same employer or with two or more employers).
- Clause 151** allows for increased deductions to be made to cover any deficiency in tax deductions made for advance payments by way of anticipation or an increase in the amount of tax deduction to be made.
- Clause 152** applies where the amount of the tax deductions for the time being in force in relation to any payment of salary or wages is reduced or increased by an amendment made to basic tax deductions, and provides a mechanism for the commencement of application of that altered tax deduction.
- Clause 153** empowers the Collector to reduce the amount of any tax deduction to be made from a source deduction payment for reasons of equity or for special circumstances as determined by the Collector.

Duties of Employer as to Making Deductions

- Clause 154** requires an employer to keep records of all source deduction payments made to an employee and the amount of tax deductions made from such payment and requires such an employer to keep safe custody of those records.
- Clause 155** sets out a timetable for payments of tax deductions to the Collector by every employer who made tax deductions from source deduction payments, and that employer's obligation to render a tax deduction certificate to the employees and reconciliation statement to the Collector in respect of any tax deductions. Subclauses 2, 3 and 4 contain various details as to application of this clause.

Employer's Duties where Deductions not made

- Clause 156** imposes an obligation on an employer to pay tax deduction and furnish a return to the Collector if for any reason the tax deduction is not made or is not made in full at the time of making of the source payment or payment, and sets out a timetable for payment of that by the employee.

Pay-period Taxpayers

- Clause 157** sets out the circumstances in which an employee is deemed to be a pay period taxpayer, to assist with interpretation of this Part IX, but allows the Collector discretion to deem an employee not to be a pay-period taxpayer in certain circumstances.

- Clause 158** provides for an exclusive and final determination to be made of the amount of income tax for which a pay-period taxpayer is liable on the basis of the total amount of tax deductions made from that income, unless the taxpayer has furnished a return within the following year. Where the taxpayer has filed action within the following year, the Collector may allow the amount assessed in accordance with Part V to be the final amount of income tax rather than the tax deduction made under this Part IX. (Subclause 2 states that the taxpayer shall not furnish a return of income for any income tax year unless the return is made for the purpose of an assessment under Part V, or the taxpayer is required to do so by the Collector).
- Clause 159** allows for adjustments of excessive tax deductions and directs the Collector if the Collector is satisfied that a refund is due to the taxpayer, to pay out the amount of an excess tax deduction. The clause imposes a 6 year time limit on such deduction.

Assessment and Payment of Income tax

- Clause 160** provides for assessment and payment of income tax, and this assessment is subject to clause 158 (which deals with pay-period taxpayers). This clause 160 requires income tax payable under any assessment to be paid on 1 October of the year next succeeding the income year or as otherwise specified in the notice of assessment.

Crediting Tax Deductions

- Clause 161** requires every employee who furnishes a return of any assessable income to the Collector to also send to the Collector with that return a tax deduction certificate to enable adjustment to be made of the amounts of the tax deductions shown in the certificates to be credited in payment of income tax liabilities, with a refund of any excess to the employee. The clause also allows for adjustments if the tax deduction certificate is incorrect, and for the employer and the employee to be jointly and severally liable to pay to the Collector any amount overcredited by the Collector in respect of excess income tax.
- Clause 162** allows the Collector to apply the previous clause 161 notwithstanding the loss or destruction of a tax deduction certificate.
- Clause 163** allows the Collector to apply clause 161 in circumstances where an employer may have made a tax deduction from a source deduction payment and fail to deliver a tax deduction certificate to the employee in respect of that deduction.

Recovery of Tax Deductions

- Clause 164** preserves the amount of every deduction as a sum held in trust for the Crown and not liable to any dealings in the name of (or in the bankruptcy or liquidation of) the employer. Such tax deduction amount shall rank (in the event of bankruptcy or liquidation of the employer or similar circumstances) in priority immediately after preferential claims for wages payable to any employee and in priority to all other claims.

Clause 165 constitutes any tax deduction which should have been made under this Part IX as a debt payable by the employer to the Collector on the 20th day of the month following the month in which the source deduction payment (to the employee) was made. The Collector has a right to recover such amount from the employer, in addition to the Collector's right to recover that amount from the employee.

Clause 166 provides for any unpaid tax deductions or other sums which the employer is liable to pay to the Collector under this Part IX to be a charge on all real and personal property of the employer subject to any mortgages or other such charges existing at the time of creation of the tax liability charge. Subclauses of this clause 166 allow the Collector to register the charge on any property, for registration to constitute notice to other parties of the existence amount or priority of the charge, and provide certain other mechanisms for release of the charges or re-arrangement of priority and allow the High Court to make an order for sale of the property subject to the charge appropriate. The clauses are deemed to apply subject to clause 164.

Offences and Penalties

Clause 167 sets out offences including failure to make a tax deduction, application of the amount of the tax deduction for other purposes, false tax declarations or any unauthorised alterations of tax code certificate or tax deductions certificates. The clause provides a penalty of a maximum of twelve months' imprisonment or \$10,000 fine for any such offence and contains certain provisions relating to timing of tax deductions for the purposes of determining whether an offence has been committed under that section.

Clause 168 provides for penal tax to be chargeable in addition to a tax payable or any other penalty, and contains mechanisms for the charging of such penal tax.

Clause 169 provides for additional tax (separate from penal tax) of 5% of any amount due and further 1% of that amount for each complete month during which default continues, to be payable in respect of any default in making a tax deduction or paying any amount due to the Collector. This clause also provides for recovery of such a penalty, application of other parts of the Bill, and timing of any tax deduction for the purposes of the clause.

Miscellaneous Provisions

Clause 170 declares any agreement not to make tax deductions to be void.

Clause 171 sets out the time when the amount of any tax deductions is deemed to have been received by an employee.

Clause 172 preserves the application of other Parts to any amount payable under this Part IX.

PART X
PROVISIONAL TAX ON INCOME
OTHER THAN SOURCE DEDUCTION PAYMENTS

This Part contains the mechanism for payment of income tax by taxpayers who do not receive source deduction payments or other payments of a similar nature and deems those taxpayers to be provisional taxpayers.

- Clause 173** sets out the application of Part X, and imposes an obligation on all provisional taxpayers (as defined in this clause) to pay provisional tax in accordance with Part X.
- Clause 174** deems certain income derived from non residents (mentioned in clause 105) not to be included in provisional income.
- Clause 175** sets out the method for calculating the amount of provisional tax payable by a provisional taxpayer in respect of any income year, and allows for estimation of that tax by the Collector in certain circumstances.
- Clause 176** allows the Collector to increase or reduce the amount of any provisional tax in special circumstances where an entitlement or rebate differs from the taxpayer's entitlement in the preceding year, or if there is an entitlement for the taxpayer to have a loss carried forward.
- Clause 177** allows for provisional tax to be paid by an agent on behalf of the principal in respect of the income of that principal.
- Clause 178** allows the taxpayer to estimate the amount of provisional tax to be payable subject to adjustment by the Collector, and also allows the Collector to make such an estimation in the event of default by the provisional taxpayer.
- Clause 179** allows for payment of provisional tax by six monthly instalments.
- Clause 180** allows a provisional taxpayer to furnish an interim return of income derived by that taxpayer if the provisional taxpayer is liable to furnish a return and pay instalments for provisional tax and has not done so by the due date for payment of the first instalment of the provisional tax. The Collector's discretion applies in relation to this interim return.
- Clause 181** allows the taxpayer to make an estimate of assessable income and furnish statement of that estimate (and to revise the estimate) and the amount of assessable income estimated is deemed to be the assessable income derived by that taxpayer in the preceding year with the provisional tax calculations accordingly.
- Clause 182** provides for additional tax to be payable by the taxpayer where that taxpayer's income was underestimated pursuant to the preceding clause 181.

Clause 183 allows for the Collector to alter the amount of provisional tax payable by any taxpayer and give notice in writing of that altered amount to the taxpayer. The clause also contains various sub clauses dealing with matters consequential to such alterations.

Clause 184 provides for voluntary payments of additional provisional tax by any taxpayer.

Terminal Tax

Clause 185 provides for assessment and payment of terminal tax on 1 October in the year following the income year, or on an earlier date as specified.

Clause 186 allows for provisional tax to be credited against any income tax payable by the taxpayer.

Application of Other Parts

Clause 187 applies all other Parts of the Income Tax Bill to every amount payable as provisional tax or otherwise, as if that amount were income tax.

PART XI **PAYMENT AND RECOVERY OF TAX**

Clause 188 sets out the date (1 October in each year) on which tax is payable and further allows the Collector to issue a notice of assessment stating such other date on which the tax is payable under that assessment.

Clause 189 states the place where payment of taxes and other money shall be made.

Clause 190 provides for an additional tax to be charged in the event of default but gives the Collector a discretion whether to do so after taking into account the taxpayer's reasons for any default and allows a non-resident an additional six months after due date in which to pay tax.

Clause 191 provides for unpaid tax to be recoverable as a debt through the High Court.

Clause 192 provides that where the taxpayer has made any default in the payment of any income tax the Collector may obtain that money from any person who wishes to make payment of an amount to the account of that taxpayer, and that a certain amount may be deducted to pay that tax from the wages or salary of the taxpayer. Such action must be preceded by certain notices and following the procedures set out in this clause. The clause deems it an offence for any other person to fail to make such payments to the Collector after receiving a notice to do so.

Clause 193 provides for the service of notice where the defendant cannot be found or is absent from the Cook islands.

Clause 194 provides what particulars are to be included in any claim or demand against the taxpayer.

- Clause 195** provides that the Collector may be represented in any legal proceedings by an officer of the Public Service after the issuance of a certificate in writing by the Collector enabling that representation.
- Clause 196** provides for the payment of costs awarded against the Collector in any Court proceedings.
- Clause 197** provides that any proceedings will not be affected by the vacancy or change of office of the Collector.
- Clause 198** negates the effect of any statute of limitation in respect of recovery of tax.
- Clause 199** states that the Crown Proceedings Act 1959 can apply to any proceedings under this Bill.
- Clause 200** provides that any tax paid for on behalf of another person may be collected from that person by the person who paid the tax.
- Clause 201** provides that before leaving the Cook Islands tax must have been paid or satisfactory arrangements for payment of the tax must be made and the Collector shall then accordingly issue a certificate to that effect and the section further sets out of the circumstances when the certificate will be applicable.

PART XII
REFUNDS AND RELIEF FROM TAX

- Clause 202** provides that where the Collector is satisfied that tax has been paid in excess of the amount properly payable the Collector shall advise the taxpayer who then has the option to make written application for a refund of that overpaid tax given at the time prescribed in the clause.
- Clause 203** allows the Collector discretion to refrain from issuing a notice of assessment or to collect or refund tax in respect of minor amounts.
- Clause 204** allows the Collector on receiving application in writing to grant relief to the taxpayer (in certain circumstances) from payment of additional tax as a penalty otherwise imposed under clause 190 of this Bill.
- Clause 205** allows the Collector in certain circumstances to give relief from taxation in cases of serious hardship.

PART XIII
PENALTIES

- Clause 206** is an offence provision against those who fail to furnish tax returns, make false returns or give false or misleading information or attempt to do so, refuse or fail to give evidence when required to do so, obstruct an officer, commit a breach of the Bill or aid, abet a person to commit an offence under the Bill. This clause further provides the penalties for such offences.

- Clause 207** provides that all proceedings for such offences shall be taken by way of prosecution in the High Court.
- Clause 208** provides a statutory period of 10 years in which time any charge against a taxpayer must be laid.
- Clause 209** provides for a penal tax to be charged (not exceeding the amount equal to treble the amount of deficient tax) in cases of evasion.
- Clause 210** provides that penal tax shall be deemed to be a tax of the same nature as the deficient tax and shall be deemed to be payable when and for the same year of assessment as the deficient tax.
- Clause 211** provides the mechanism by which the penal tax will be assessed by the Collector.
- Clause 212** allows the taxpayer to object to any assessment of penal tax and the grounds on which that objection can be made.
- Clause 213** provides for the recovery of penal tax.
- Clause 214** provides that penal tax can be assessed and recoverable from executors and administrators of a deceased taxpayer.
- Clause 215** provides that assessment and recovery of penal tax should not be affected by conviction of the taxpayer under the offence provisions of this Bill.
- Clause 216** provides that the Collector shall make a public list of names of persons evading tax under the circumstances and in the method provided in this clause.

PART XIV
GENERAL PROVISIONS

- Clause 217** requires a taxpayer to keep business records for a period of at least 10 years after the completion of transactions to which they relate to enable the Collector to assess that taxpayer's income.
- Clause 218** allows the Collector to allocate an identification number to the taxpayer.
- Clause 219** allows the Collector to inspect books and documents of a taxpayer.
- Clause 220** allows the Collector to compel a taxpayer to furnish in writing information and produce any books and documents, etc. which the Collector considers necessary for the purposes of enforcement of this Bill.

- Clause 221** allows the Collector to apply to the High Court to hold an inquiry for the purpose of obtaining any information with respect to liability of any person for any tax or duty which the Collector is authorised to collect or gather any information required for the purposes of the administration or enforcement of the Bill or any other Act administered by the Collector. The clause further sets out the procedure that must be followed in such cases.
- Clause 222** empowers the Collector to conduct his own enquiry and require any person to attend and give evidence for the Collector or produce any documents in that person's control relating to the taxpayer concerned and the clause further sets out a method which the Collector is to follow in conducting the inquiry under this section and the penalties in the case of any default.
- Clause 223** provides the offences and penalties therefor for any breach of clauses 219 to 222 (this Part) of the Bill.
- Clause 224** requires employers to make returns of all persons employed by the employer during that year.
- Clause 225** provides that any person who holds money by way of deposit and pays interest thereon shall as required by the Collector make a return of all such interest so paid during the year or other period to which the requisition of the Collector relates.
- Clause 226** requires every company or local or public authority to give such particulars as the Collector requires in respect of debentures issued by that person.
- Clause 227** provides the circumstances in which the Collector can grant an extension or extensions of time for any person to fulfil obligations under this Bill.
- Clause 228** requires the Collector to make an annual report to the Minister, a copy of which shall be laid before Parliament within 28 days after it has been furnished to the Minister or within 28 days after the commencement of the next ensuing session.
- Clause 229** empowers the Queen's Representative to make regulations from time to time by Order in Executive Council as may be deemed necessary or expedient to give effect to the provisions of the Bill and sets out the purposes for which such regulations can be made.
- Clause 230** provides the income year to which this Act shall first apply.
- Clause 231** sets out the repeals and savings provisions.

PART XV
TERMINATING PROVISIONS

- Clause 232** sets out the provisions of the Income Tax Act 1972 which shall apply in respect of the income year ending 31 December 1997 but not in respect of any subsequent income year.

Clause 233 provides that Section 47 of the Income Tax Act 1972 shall apply in respect of the income year ending 31 December 1997 but not in respect of any subsequent income year.

Clause 234 provides for the granting of a rebate in respect of low income earners.
