

2016 **Income Tax (Automatic Exchange of Financial Account Information and Other Matters) Amendment** No. 04

Examined and certified by:


Clerk of the Parliament

In the name and on behalf of Her Majesty Queen Elizabeth the Second I hereby assent to this Act this 26th day of September, 2016




Queen's Representative

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Amendments to other enactments

An Act to amend the Income Tax Act 1997 to enable the Cook Islands to provide for—

- (a) **the exchange of tax information in accordance with the Common Reporting Standard; and**
- (b) **other mutual assistance in tax matters; and**
- (c) **other tax-related matters.**

The Parliament of the Cook Islands enacts as follows—

- 1 Title**
This Act is the Income Tax (Automatic Exchange of Financial Account Information and Other Matters) Amendment Act 2016.
- 2 Commencement**
This Act comes into force on the day on which it receives the Queen's Representative's assent.

3 Principal Act amended

This Act amends the Income Tax Act 1997.

4 Section 42 amended (Income wholly exempt from taxation)

Section 42(1) is amended by inserting the following paragraph after paragraph (n)—

“(na) income of the organisations of the Pacific Catastrophe Risk Insurance Facility and the income derived from any of those organisations by any person employed by any of them, where that person is not ordinarily resident in the Cook Islands or that person was not ordinarily resident at the time of taking up that employment;”.

5 Section 86 amended (Arrangements for relief from double taxation)

(1) Section 86 is amended by repealing subsection (1) and substituting the following subsection—

“(1) The Minister or any other person acting with authority delegated for the purpose by Cabinet may from time to time enter into agreements with the Government of any country or territory outside the Cook Islands—

“(a) affording relief from double taxation in relation to income tax and any taxes of a similar character imposed by the laws of that country or territory; or

“(b) providing for the exchange of information in relation to all taxes imposed by the laws of that country or territory; or

“(c) giving effect to the Cook Islands’ obligations under the Convention on Mutual Administrative Assistance in Tax Matters (as amended by the 2010 Protocol), including assistance in claiming debt and the collection of tax from other jurisdictions,—

and, despite anything to the contrary in this Act or any other enactment, such agreements have effect in relation to income tax and all other taxes and, subject to the provisions of this section, have effect according to their tenor.”

6 New Part VIA inserted

The following Part is inserted after Part VI—

“Part VIA**“Implementation of arrangements to exchange tax information or provide other mutual assistance in tax matters****“96A Interpretation**

“(1) In this Part, unless the context otherwise requires,—

CRS means the Common Reporting Standard set out in Part II.B of the Standard for Automatic Exchange of Financial Account Information in Tax Matters approved by the Council of the Organisation for Economic Co-Operation and Development on 15 July 2014

MAC means the Convention on Mutual Administrative Assistance in Tax Matters (as amended by 2010 Protocol)

MCAA means the Multilateral Competent Authority Agreement on

Automatic Exchange of Financial Account Information to which the Competent Authority of the Cook Islands became a signatory as from 29 October 2015.

- “(2) The CRS must be applied consistently with Part III.B (the **CRS Commentary**) of the Standard for Automatic Exchange of Financial Account Information in Tax Matters.

“96B Regulations

- “(1) The Queen’s Representative may, by Order in Executive Council, make any regulations that the Queen’s Representative deems necessary or expedient for implementing or giving effect to the provisions of—

“(a) the CRS:

“(b) the MAC:

“(c) the MCAA:

“(d) any other international agreement, arrangement, convention, or standard that relates to or affects income tax or other taxes to which the Government of the Cook Islands is a party or signatory, whether with any other country or territory or any international organisation:

“(e) any amendment from time to time made to any international agreement, arrangement, convention, or standard referred to in any of paragraphs (a) to (d).

- “(2) Without limiting subsection (1) or section 229, such regulations may—

“(a) create offences in respect of the contravention of, or non-compliance with, the regulations; and provide for the imposition of fines not exceeding \$10,000 for an individual and not exceeding \$100,000 for a body corporate, including the imposition of different fines in respect of a first offence, a second offence, and subsequent offences:

“(b) incorporate by reference any provisions (including definitions) referred to in subsection (1), with the modifications (if any) specified in the regulations:

“(c) subject to section 7, provide arrangements for the exchange of tax information in accordance with any provisions referred to in subsection (1):

“(d) require that information to be provided at the times and in the form and manner specified in the regulations:

“(e) impose obligations on relevant financial entities (including obligations to obtain from specified persons details of their place of residence for tax purposes):

“(f) provide that a reference in the regulations to any international agreement, arrangement, convention, or standard to which subsection (1) refers, or a provision of it, is to be construed as a reference to the agreement, arrangement, convention, or standard, as amended from time to time:

“(g) make different provision in relation to different periods of time:

“(h) make different provision for different cases or circumstances:

“(i) contain any incidental, supplemental, transitional, transitory, or saving provision.

“(3) Any provision of any international agreement, arrangement, convention, or standard to which subsection (1) refers may be provided for by regulations whether or not the provision has come into force for the Cook Islands, but the regulations may not come into force before the provision comes into force for the Cook Islands.

“(4) No regulation made under this section may be treated or regarded as invalid because it deals with any matter already provided for by any Act.”

7 Section 155 amended (Payment of tax deductions to Collector)

Section 155(1) is amended by inserting the following proviso after paragraph (e)—

“Provided that where it is apparent from the reconciliation statement that the total amount of all tax deductions shown on the tax deduction certificates delivered to employees exceeds the total amount of all tax deductions shown on the monthly remittance certificates provided to the Collector under subsection (1)(a), the shortfall must be paid by the same 15 February by which the reconciliation statement is due;”.

8 Section 219 amended (Collector to have power to inspect books and documents)

Section 219(1)(b) is amended by inserting “or giving effect to Part VIA” after “section 186”.

9 Section 220 amended (Information to be furnished on request of Collector)

Section 220(1) is amended by inserting “or giving effect to Part VIA” after “section 186”.

10 Section 221 amended (Inquiry before a Judge of the High Court)

Section 221(1) is amended by inserting “or giving effect to Part VIA” after “section 186”.

11 Amendments to other enactments

The Acts listed in the Schedule are amended as set out in that schedule.

Schedule

Amendments to other enactments

Captive Insurance Act 2013

In section 48(1), insert “Part VIA of the Income Tax Act 1997 (so far as it relates to the Common Reporting Standard),” after “Financial Transactions Reporting Act 2004,”.

Foundations Act 2012

In section 87(1), insert “Part VIA of the Income Tax Act 1997 (so far as it relates to the Common Reporting Standard),” after “Financial Transactions Reporting Act 2004,”.

International Companies Act 1981-82

In section 249(2), insert “Part VIA of the Income Tax Act 1997 (so far as it relates to the Common Reporting Standard),” after “Financial Transactions Reporting Act 2004,”.

International Partnerships Act 1982

In section 72(1), insert “, Part VIA of the Income Tax Act 1997 (so far as it relates to the Common Reporting Standard),” after “Financial Transactions Reporting Act 2004”.

International Trusts Act 1984

In the Schedule, add the following item—

“Part VIA of the Income Tax Act 1997 (so far as it relates to the Common Reporting Standard)”.

Limited Liability Companies Act 2008

In the First Schedule, add the following item—

“Part VIA of the Income Tax Act 1997 (so far as it relates to the Common Reporting Standard)”.

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

Printed under the authority of the Cook Islands Parliament—2016.
