



## MINISTRY OF FINANCE AND ECONOMIC MANAGEMENT

### Revenue Management Division

#### Public Consultation – Tax residency rules for companies

22/11/2021

The Revenue Management Division of the Ministry of Finance and Economic Management (Revenue Management) has commenced a public consultation for a proposed amendment to the Income Tax Act 1997<sup>1</sup> tax residency rules for companies.

The deadline for providing feedback is 4 pm on 29 November 2021.

#### Consultation Feedback

Feedback should be sent via email to Revenue Management at [taxconsultation@cookislands.gov.ck](mailto:taxconsultation@cookislands.gov.ck) and [tax.info@cookislands.gov.ck](mailto:tax.info@cookislands.gov.ck). Requests for additional time for feedback submission will be considered on an exceptional and limited basis only and an opportunity for a consultation may be considered. Any such request must be submitted to Andrew Simmonds [taxconsultation@cookislands.gov.ck](mailto:taxconsultation@cookislands.gov.ck) and CC to Marie Francis [marie.francis@cookislands.gov.ck](mailto:marie.francis@cookislands.gov.ck) before 4 pm on 25 November 2021.

#### Why the change to residency rules for companies?

The Cook Islands Government recognises that the current residency rules for companies are not in the best interests of the Cook Islands and the financial services industry because the rules bring what is in substance foreign-sourced income by non-residents into the Cook Islands tax base.

Cook Islands income tax is currently imposed on the world-wide income of a company that is resident in the Cook Islands; and a company is currently tax resident if it is incorporated in, or has its centre of management in, the Cook Islands.

Companies are incorporated in the Cook Islands either under the Companies Act 2107<sup>2</sup> (referred to as domestic companies or Cook Islands companies) or under the International Companies Act 1981-2<sup>3</sup> (referred to as “international companies”). Unlike domestic companies, international companies are primarily governed, managed and owned from outside of the Cook Islands and typically derive income from outside of the Cook Islands (referred to as “foreign-sourced income”).

#### What is the effect of the change to residency rules for companies?

The effect of the proposed change to the tax residency rules would mean that most international companies would not be resident in the Cook Islands and thereby an international company would only be assessed for tax purposes on income derived from the Cook Islands. The requirement to apply for a Taxpayer Identification Number<sup>4</sup> from Revenue Management (RMD Number) and the filing of annual returns<sup>5</sup> will remain.

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<sup>1</sup> See <http://www.mfem.gov.ck/rmd-tax/rmd-tax-legislation-policy/rmd-tax-acts-and-regulations>

<sup>2</sup> See <https://registry.justice.gov.ck/public/help.aspx?redirected=1&cn=SystemRequirements>

<sup>3</sup> See <https://www.fsc.gov.ck/cookislandsFscApp/content/regulatory-framework/legislation>

<sup>4</sup> See section 218 of the Income Tax Act 1997

<sup>5</sup> See section 8 of the Income Tax Act 1997



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#### How the change to residency rules for companies will be implemented

The change to the residency rules for companies will be implemented by repealing the two current tests of a company incorporated in the Cook Islands or a company with its centre of management in the Cook Islands with three new tests for a company to be resident in the Cook Islands in following manner:

1. Repeal sections 82(2) and 82(3) of the Income Tax Act 1997<sup>6</sup> and replace them with the following provision:

Section 82(2): A company shall be resident in the Cook Islands within the meaning of this Part if any of the following are true -

- a. its directors, in their capacity as directors, exercise control of the company in the Cook Islands, even if the directors' decision-making also occurs outside the Cook Islands;
- b. its place of effective management is in the Cook Islands;
- c. It is a Cook Islands Company<sup>7</sup>, and at any moment in time during the income year, there are three or more Cook Island resident directors.

#### Current section 82(2) and 82(3) of the Income Tax Act 1997

82. Place of residence, how determined –

(1) For the purposes of this Part, a natural person is deemed to be resident in the Cook Islands if-

- (a) the person's home is in the Cook Islands; and
- (b) the person is personally present in the Cook Islands for more than 183 days in a 12-month period.

(2) A company shall be deemed to be resident in the Cook Islands within the meaning of this Part if the company -

- (a) is incorporated in the Cook Islands, or
- (b) has its head office in the Cook Islands.

(3) For the purposes of this Act the head office of a company means the centre of its administrative management.

#### What is the anticipated date of implementation?

The anticipated date that the changes will come into effect is 1 January 2022.

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<sup>6</sup> See <http://www.mfem.gov.ck/rmd-tax/rmd-tax-legislation-policy/rmd-tax-acts-and-regulations>

<sup>7</sup> See section 2 "Cook Islands company" of the Income Tax Act 1997