



# PARLIAMENT OF THE COOK ISLANDS

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## INCOME TAX AMENDMENT BILL

### EXPLANATORY NOTE

The Income Tax Amendment Bill 2015 (the **Bill**) amends the Income Tax Act 1997 (the **Income Tax Act**).

This note does not form part of the Bill but is intended to indicate its effect, and to identify the more important aspects of the Bill.

- Clause 1** provides that the title of the Bill, when enacted, is the Income Tax Amendment Act 2015.
- Clause 2** provides that *clauses 8 to 11 and 14 and 15* of the Bill come into force on 1 January 2016. The remainder of the Bill comes into force when it receives the Queen's Representative's assent.
- Clause 3** provides that the Bill amends the Income Tax Act 1997.
- Clause 4** amends section 2 of the Income Tax Act by inserting a definition of **Cook Islands trust**. This definition is intended to distinguish between trusts that are established and administered in the Cook Islands and international or foreign trusts. This delineation is important because, under the Income Tax Act, beneficiary income derived through Cook Islands trusts is not subject to income tax (the trustee is, however, subject to income tax), while beneficiary income derived by residents through international or foreign trusts is subject to income tax.
- Clause 5** amends section 42(1) of the Income Tax Act by inserting *new paragraph (ha)*. This amendment exempts income derived by a beneficiary through a Cook Islands trust from income tax. This exemption does not apply to Cook Islands trustee income or to income derived by a resident of the Cook Islands as a beneficiary of an international or a foreign trust (both of which are subject to income tax under the Income Tax Act). Section 42(1)(g) of the Income Tax Act is also amended to clarify that income derived by beneficiaries of a trust for charitable purposes is exempt from income tax.

**Clause 6** amends section 44(2) of the Income Tax Act by repealing paragraph (b). This provision is no longer necessary because beneficiary income received from a Cook Islands trust is no longer taxable, and it is considered that the supplemental deduction should apply to income from an international trust or a foreign trust.

**Clause 7** amends section 83(1) of the Income Tax Act by inserting a *new paragraph (ia)* after paragraph (i). The intention of this amendment is to ensure that income derived by a trustee of a Cook Islands trust is deemed to be income derived in the Cook Islands. This is despite the fact that the trustee income may be generated in another country.

**Clause 8** amends the definition of **withholding income** in section 98 of the Income Tax Act.

The definition of **withholding income** is amended by inserting a *new paragraph (b)* into the definition. This amendment clarifies that, under the Income Tax Act, withholding income includes, inter alia, income comprising interest payments made by banking companies to residents of the Cook Islands who have failed to provide the banking company with their taxpayer identification number (RMD number).

**Clause 9** amends section 100 of the Income Tax Act by substituting subsection (5) and adding *new subsection (6)*.

Section 100(1) of the Income Tax Act provides a withholding tax rate of 15%. *New section 100(5)* provides for an exception to subsection (1). The exception applies to withholding income that comprises interest paid by a banking company to persons who are resident in the Cook Islands and have not provided the banking company with their taxpayer identification number (RMD number). In these circumstances, a default withholding tax rate of 30% will apply to the withholding income as opposed to the non-resident rate of 15% provided for in subsection (1).

Section 100(4) of the Income Tax Act provides that withholding tax paid is a final tax and that the withholding income does not need to be included as part of the taxpayer's assessable income. *New section 100(6)* provides that subsection (4) does not apply to withholding tax imposed in accordance with *new subsection (5)*.

**Clause 10** amends section 104 of the Income Tax Act by adding *new subsections (2) to (5)*.

*New section 104(2)* sets out new requirements for banking companies that pay non-withholding income interest to account holders (ie, interest paid to resident account holders who have provided their RMD number to the banking company). Banking companies must, by no later than 15 February of each year, issue these account holders with an interest earnings certificate for the previous income year (ie, 1 January to 31 December).

*New sections 104(3) and (4)* set out further requirements for banking companies that pay non-withholding income interest to account holders (ie, interest paid to resident account holders who have provided their RMD number to the banking company). Banking companies must, by no later than 15 February of each year, provide the Revenue Management Division with specified information regarding the interest amounts paid.

*New sections 104(2) to (5)* apply to interest paid on or after 1 January 2015. This means that banking companies required to comply with subsections (2) to (5) for the first time in 2016 must provide information regarding interest paid amounts for the entire previous income year (ie, 1 January 2015 to 31 December 2015).

- Clause 11** amends section 112(1) of the Income Tax Act by amending paragraph (b) and adding *new paragraphs (c) and (d)*. This amendment provides that banking companies that fail to comply with any of the requirements in sections 104(2) and (5) and sections 104(3) to (5) commit an offence against the Income Tax Act.
- Clause 12** amends section 188 of the Income Tax Act by adding *new subsections (3) and (4)*. These amendments clarify the Collector's ability to fix a retrospective due date for payment of tax where there is a delay in issuing an amended notice of assessment and that delay is due to the neglect, default, or omission of the taxpayer.
- Clause 13** amends section 190 of the Income Tax Act by repealing and substituting a *new subsection (3)*. This amendment provides that where the Collector fixes a new due date for payment of tax under section 188(2) or (4), this due date is deemed to be the due date for the purposes of determining additional tax under section 190(1).
- Clause 14** amends Schedule 1 of the Income Tax Act by omitting and substituting the first item in the second column of the table in clause 3. The effect of this amendment is to reduce the basic income tax rate for each dollar of taxable income over \$11,000 up to \$19,000 from 18.5 cents to 17.5 cents (ie, the first tax bracket) with effect from 1 January 2016.
- Clause 15** repeals and replaces Schedule 2A of the Income Tax Act. The purpose of the amendment is to change the PAYE deduction rates to correspond with changes to the basic income tax rate for each dollar of taxable income over \$11,000 up to \$19,000 from 18.5 cents to 17.5 cents (ie, the first tax bracket).
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