



ANALYSIS

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2002, No. 10

An Act to amend the Income Tax Act 1997

(12 December 2002)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same as follows:

1. Short title and commencement — (1) This Act may be cited as the Income Tax Amendment Act 2002 and shall be read together with and deemed part of the Income Tax Act 1997 (“the principal Act”).
 - (2) Except as provided in subsections (3) to (7), this Act comes into force on the day after the date on which it receives the Royal assent.
 - (3) **Sections 2 and 8** of this Act are deemed to have come into force **on 1 July 1997**.
 - (4) **Section 7 and subsection (1) of section 15** of this Act are deemed to have come into force on 1 July 2001.
 - (5) Section 4 of this Act is deemed to have come into force on 1 January 2002.
 - (6) **Sections 5, 12, 13, and 14**, and subsections (2) and (3) of section 15 of this Act are deemed to have come into force on 1 July 2002.
 - (7) **Section 10** of this Act comes into force on 1 January 2003.

2. Interpretation — **Section 2** of the principal Act is amended by—
 - (a) Omitting from the definition of the term “additional tax” the expression “section 182”, and substituting the expression “section 190”; and

- (b) Inserting in its appropriate alphabetical order the following definition:
 “Aircraft” means any machine that can derive support in the atmosphere from the reactions of the air.”

3. New section 6A inserted— The principal Act is amended by inserting, after section 6, the following section:

“6A. Delegations by Collector— (1) The Collector may from time to time by written instrument delegate to any person all or any of the functions or powers of the Collector under this Act, except the power of delegation conferred by this section.

- (2) A delegation—
- (a) May be made subject to such restrictions and conditions as the Collector thinks fit; and
 - (b) May be made to a person or to a specified class of persons; and
 - (c) May be made either generally or in relation to a particular matter; and
 - (d) May be revoked in writing by the Collector; and
 - (e) Does not prevent the exercise or performance by the Collector of the function or power delegated.
- (3) Except as provided in the instrument of delegation, a person to whom a function or power is delegated under this section may exercise or perform the function or power in the same manner and with the same effect as if it had been, conferred on the person directly by this Act and not by delegation.
- (4) Unless the context otherwise requires, every provision of this Act applying to the Collector in respect of the exercise or performance of a function or power applies, with any necessary modifications, to any person exercising or performing the function or power under a delegation made by Collector, as if the person were the Collector.
- (5) Every person purporting to act under a delegation made under this section is presumed to be acting in accordance with its terms in the absence of proof to the contrary.
- (6) A delegation continues in force according to its tenor unless and until revoked.”

4. Special exemption for savings or deposits with Banks— **Section 41** of the principal Act is amended by omitting from **subsection (1)** the expression “31 December 2001”, and substituting the expression “31 December 2006”.

5. New section 44 substituted— The principal Act is amended by repealing **section 44**, and substituting the following section:

- “44. Standard supplemental deduction for individuals— In calculating the assessable income for any income year of any person who is an individual natural person resident in the Cook Islands (not merely acting as a trustee), a deduction will be allowed, in addition to any other deduction allowed under this Act, for the amount calculated under the following formula:

Income — Deduction

where —

“Income” is the person’s aggregate assessable income from all sources for the income year, before allowing for any deductions for the income year, excluding—

- (a) Interest, other than interest on deposit or savings with any Bank; and
- (b) A dividend received by the person from any company that elects to deduct the dividend under section 59(k) of this Act; and
- (c) Income derived as a beneficiary under a trust.

“Deduction” is the aggregate of the amounts that the person may deduct in calculating the person’s assessable income for the income year, excluding any amount deductible under this section;

Provided that the amount allowed as a deduction under this section shall be not less than nil nor more than—

- (a) \$3,000 in respect of the income year ending 31 December 1997; or
- (b) \$10,000 in respect of any other income year.

Provided further that where a taxpayer either leaves the Cook Islands permanently or arrives in the Cook Islands permanently, the \$10,000 shall be proportionately adjusted according to the following formula:

$$10,000 \times \frac{a}{b}$$

- a = number of days personally present in the Cook Islands
- b = number of days in the year.”

6. 100% depreciation rate for property acquired on or after 1 April 1997 and before 1 April 2003 — Section 45 of the principal Act is amended by—

- (a) Inserting in subsection (1), immediately after the expression “1 April 1997”, the words “and before 1 April 2003”; and
- (b) Omitting the, marginal note, and substituting the following marginal note:

“100% depreciation rate for property acquired on or after 1 April 1997 and before 1 April 2003”.

7. Certain deductions not permitted — Section 59 of the principal Act is amended by inserting, after paragraph (h), the following paragraph:

- “(ha) any expenditure or loss incurred by the taxpayer in gaining or producing assessable income derived from outside the Cook Islands for any income year, where the aggregate of such expenditure and losses exceeds such assessable income for that income year;”.

8. Overseas shipping freight and passage money — Section 75 of the principal Act is amended by—

- (a) Inserting in subsection (1), immediately after the words “in this Act”, the words “but subject to subsections (1A), (1B), and (1C)”; and

- (b) Inserting, after subsection (1), the following subsections:

“(1A) Notwithstanding subsection (1), the Queen’s Representative may from time to time by Order in Executive Council exempt any specified person from being assessed for income tax on the amount deemed to be taxable income under subsection (1) in respect of aircraft belonging to or chartered by that person; and the Order takes effect on such date (whether the date of the making of that Order or any earlier or later date) as may be specified in that Order.

(1B) The Queen’s Representative may not make an Order in Executive Council under subsection (1A) unless advised by the Minister responsible for Civil Aviation and the Minister of Finance that, in their opinion, —

- (a) It is in the public interest to make the Order in Executive Council; or
- (b) In corresponding circumstances, an aircraft operator resident in the Cook Islands would not be liable to or would be exempt from income tax imposed by the laws of the country or territory outside the Cook Islands in which that specified person is resident.

(1C) For the avoidance of doubt, no person exempted by an Order in Executive Council made under subsection (1A) shall, in respect of the carriage (by aircraft) referred to in subsection (1), be assessable for income tax under this Act.”; and

- (c) Adding the following subsection:

“(3) In paragraph (b) of subsection (1 B), — “Aircraft operator” means a person engaged in the business of operating any aircraft for the carriage of merchandise, goods, livestock, mail, or passengers shipped or embarked on that aircraft at any airport; and

“Income tax”, in relation to any country or territory outside the Cook Islands, means any tax which, in the opinion of the Minister responsible for Civil Aviation and the Minister of Finance, is substantially of the same nature as, income tax imposed under section 39.”

9. If default made in payment of tax, additional tax to be charged— Section 190 of the principal Act is amended by—

- (a) Repealing subsection (1), and substituting the following subsection:

“(1) Subject to this section, if any tax remains unpaid at the expiration of 1 month after the due date thereof, (whether assessed or not) or after the date of demand, as the case may be, the following shall be added thereto by way of additional tax, and shall be payable accordingly:

- (a) A one-off charge of; 5 percent of the amount of unpaid tax; and
- (b) A further 1 percent per month calculated and compounded on the amount from time to time outstanding, for each complete month during which that amount remains unpaid”; and

- (b) Adding the following subsection:

“(4) In paragraph (b) of subsection (1), “the amount” means the

aggregate of the amount of unpaid tax and the charge specified in paragraph (a) of that subsection.”

10. New section 201 substituted— The principal Act is amended by repealing section 201, and substituting the following section:

- “(1) This section applies where—
- (a) an individual natural person is liable to pay tax; and (b) an amount of tax that that person is liable to pay has not been paid at the expiration of 6 weeks after the due date thereof (whether assessed or not), or after the date of demand, as the case may be.
- (2) Where this section applies, the Collector may, subject to subsection (3), issue an overseas travel prohibition notice to the person concerned.
- (3) No overseas travel prohibition notice may be issued where—
- (a) The amount of tax referred to in subsection (1)(b) has been paid; or
 - (b) The Collector considers that satisfactory arrangements have been made for the payment of that tax.
- (4) A notice under subsection (2)—
- (a) May be in such form and manner as the Collector thinks fit, and must be signed by the Collector; and
 - (b) Must specify the amount of tax that remains unpaid, the year of assessment in respect of which it is payable, and the due date of that tax or (as the case may be) the date of demand for that tax; and
 - (c) May be issued to the person concerned—
 - (i) By personal delivery to that person; or
 - (ii) By delivering the notice to that person’s usual or last known place of residence or business; or
 - (iii) By sending the notice by pre-paid post to that person at his or her usual or last known place of residence or business; or
 - (iv) By sending the notice by facsimile to that person’s usual or last known place of residence or business.
- (5) No person in respect of whom an overseas travel prohibition notice is in force may leave the Cook Islands (whether permanently or otherwise).
- (6) Every person commits an offence against this Act who acts in contravention of or fails to comply with subsection (5).
- (7) The Collector must revoke an overseas travel prohibition notice as soon as practicable where—
- (a) The amount of tax referred to in subsection (1)(b) is paid;
 - (b) Arrangements that are considered satisfactory by the Collector have been made for the payment of that tax.
- (8) The Collector may from time to time issue a notice to any operator of vessels or aircraft traveling from the Cook Islands to any destination outside the Cook Islands specifying the names of persons in respect of whom an overseas travel prohibition notice is in force.
- (9) A notice under subsection (8) may be in such form and manner as the Collector thinks fit, must be signed by the Collector, and may be issued to the operator concerned:
- (a) In the case of an individual natural person, in the manner provided in paragraph (c) of subsection (4); and
 - (b) In the case of a body (whether incorporated or not), —
 - (i) By delivering the notice to an officer of the body; or
 - (ii) By delivering the notice to the usual or last known place of residence or business of an officer of the body; or

- (iii) By sending the notice by pre-paid post to an officer of the body at the usual or last known place of residence or business of that person; or
- (iv) By delivering the notice to the registered office of the body; or
- (v) By sending the notice by pre-paid post addressed to the body at the registered office of the body; or
- (vi) By sending the notice by facsimile to the registered office of the body.

(10) Where any person in respect of whom an overseas travel prohibition notice is in force leaves the Cook Islands (whether permanently or otherwise) on board a vessel or an aircraft, the operator of the vessel or aircraft commits an offence against this Act if a notice under subsection (8) specifying that person as a person in respect of whom an overseas travel prohibition notice is in force has, before the person concerned so left the Cook Islands, been issued to that operator.

(11) Every person convicted of the offence specified in subsection (10) is jointly and severally liable to pay the amount of tax outstanding in respect of the person who left the Cook Islands at the time that person left the Cook Islands.

(12) In any proceedings against a person for an offence specified in subsection (10), it is a defence for that person to prove that he or she took all reasonable steps to prevent the person concerned leaving the Cook Islands on board the vessel or aircraft concerned.

(13) In this section,—

“Operator” in relation to any vessel or aircraft —

- (a) Means any person who causes or permits the vessel or aircraft to be used for the transportation of things or persons from the Cook Islands; and
- (b) Includes any owner, charterer, or lessee of the vessel or aircraft for the time being; and
- (c) Includes any agent or other representative of a person specified in paragraph (a) or (b); and

“Vessel” has the meaning given to it by section 2 of the Shipping Act 1998.”

11. Relief from additional tax— **Section 204** of the principal Act is amended by—

- (a) Omitting from subsection (1) the words “subject to the provisions of this section”; and
- (b) Repealing subsection (2).

12. Part A of First Schedule amended - (1) **Part A of the First Schedule** to the principal Act is amended by omitting paragraph (b) of **clause 3**, and substituting the following paragraphs:

- “(b) in respect of any income year ending on or after 1 July 2003—
 - (i) in the case of a company that is deemed to be resident in the Cook Islands within the meaning of Part V, a rate of 20c for every \$1 of that income;
 - (ii) in the case of a company that is not deemed to be resident in the Cook Islands within the meaning of Part V, a rate of 28c for every \$1 of that income; and
- (c) in respect of any income year commencing after 31 December 1997 other than an income year specified in paragraph (a) or (b), a rate of 20c for every \$1 of that income.”

(2) **Part A of the First Schedule** to the principal Act is amended by omitting from **clause 5** (as substituted by section 2 of the Income Tax Amendment (No.2) Act 1997) the expression “Part C” wherever it occurs, and substituting in each case the expression “Part D”.

13. New Part C of First Schedule substituted and new Part D of First Schedule inserted— The principal Act is amended by repealing **Part C of the First Schedule**, and substituting the Parts specified in the Schedule to this Act.

14. Consequential repeal— The Income Tax Amendment Act 1998 (1998, No. 19) is consequentially repealed.

15. Transitional— (1) Nothing in section 7 of this Act applies in respect of the calculation of assessable income derived in any income year ending on or before 30 June 2002.

(2) Notwithstanding sections 5 and 14 of this Act, in respect of the calculation of assessable income derived in any income year ending on or before 30 June 2003,—

(a) **Section 44** of the principal Act continues in force as if it had not been repealed and substituted by section 5 of this Act; and

(b) The Income Tax Amendment Act 1998 (1998, No. 19) continues in force as if it had not been repealed by **section 14** of this Act.

(3) Notwithstanding **sections 12(2), 13, and 14** of this Act, in respect of the calculation of tax on taxable income derived in any income year ending on or before 30 June 2003, -

(a) Part A of the First Schedule to the principal Act continues in force as if **clause 5 of that Part** (as substituted by **section 2** of the Income Tax Amendment (No.2) Act 1997) had not been amended by **subsection (2) of section 12** of this Act; and

(b) **Part C of the First Schedule** to the principal Act continues in force as if it had not been repealed and substituted by **section 13** of this Act; and

(b) The Income Tax Amendment Act 1998 (1998, No. 19) continues in force as if it had not been repealed by **section 14** of this Act.

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

SCHEDULE**Section 13****NEW PARTS C AND D OF FIRST SCHEDULE****“PART C**Rates referred to in clause 4 of Part A of this Schedule

On so much of the taxable income as—	The rate of tax for every dollar shall be—
Does not exceed \$20,000.	25 cents
Exceeds \$20,000	30 cents

Provided that the rate of tax for every dollar shall be 20 cents on secondary income, being so much of the person's taxable income that is equal to the greater of zero or an amount calculated using the following formula:

a—b

a = \$20,000

b = the amount of the person's primary source of income

1. For the purposes of this Part C, for each person who earns income from more than one source, the primary source of income shall be the total of:
 - (a) Investment income (*if any*) for the income year; and
 - (b) Income from commercial and residential rentals (*if any*) for the income year; and
 - (c) Majority income.
2. Majority income is determined by reference to a person's total non-investment income (being income from all sources excluding rental income and investment income), and is either—
 - (a) A person's largest source of income (if that largest source is more than 50% of that person's total non-investment income); or
 - (b) A person's income from all sources other than the largest source of income (if the largest source is less than 50% of that person's total non-investment income).

PART DRates referred to in clause 5 of Part A of this Schedule

On so much of the taxable income as—	The rate of tax for every dollar shall be—
Does not exceed \$4,000	20 cents
Exceeds \$4,000 and does not exceed \$24,000	25 cents
Exceeds \$24,000	30 cents