

INCOME TAX ACT

ANALYSIS

Title

1. Short Title, and commencement

PART I **INTERPRETATION**

2. Interpretation
3. Defining when a company is under the control of any persons, and when two companies consist substantially of the same shareholders
4. Meaning of "dividends"
5. Meaning of "bonus issue"

PART II **ADMINISTRATION**

6. Revenue Management Division
- 6A. Delegations by Collector
7. Officers to maintain secrecy

PART III **RETURNS AND ASSESSMENTS**

8. Annual Returns
9. Returns to annual balance date
10. Adjustments consequential on change in return date
11. Returns by partners, co-trustees, and joint ventures
12. Returns by executors or administrators
13. Collector may in certain cases demand special returns and make special assessments
14. Other annual returns
15. Date by which returns are to be furnished
16. Collector may require other returns to be made
17. Presumption as to authority
18. Collector to make assessments
19. Basic rates of income tax
20. Arbitrary assessment where business controlled by non-residents appears to produce insufficient taxable income
21. Assessment where default made in furnishing returns
22. Amendment of assessments
23. Limitation of time for amendment of assessment
24. Validity of assessment not affected by failure to comply with Act
25. Except in proceedings on objection, assessments deemed correct
26. Evidence of returns and assessments
27. Notice of assessment to taxpayer

PART IV
OBJECTIONS TO ASSESSMENTS

- 28. Objections to assessments, how originated
- 29. Collector may amend assessment, or objection may be submitted to High Court
- 30. Hearing of objections by High Court
- 31. Burden of proof on objector
- 32. Costs
- 33. Court may confirm, cancel or alter the assessment
- 34. Appeals to Court of Appeal
- 35. Appeals from assessments
- 36. Obligation to pay tax not suspended by objection or appeal
- 37. Determination of objection not to affect other income

PART V
INCOME TAX

- 38. Meaning of "absentee"
- 39. Income tax imposed
- 39A. Taxation of income from more than one source
- 40. Rates to be fixed
- 41. Special exemption for savings or deposits with Banks [repealed]

Exempt Income

- 42. Incomes wholly exempt from taxation
- 43. Concessions for contributing to economic development and development industries [repealed]
- 44. Standard supplemental deduction for individuals
- 45. 100% depreciation rate for new property

Assessable Income

- 46. Items included in assessable income
- 47. Income derived from use or occupation of land
- 48. Income credited in account or otherwise dealt with
- 49. Amounts remitted to be taken into account in computing income
- 50. Apportionment of income received in anticipation
- 51. Valuation of trading stock including livestock
- 52. Income derived from disposal of trading stock
- 53. Sale of trading stock for inadequate consideration
- 54. Sum received from sale of patent rights
- 55. Payment of excessive remuneration or share of profits to relatives
- 56. Agreements purporting to alter incidence of taxation to be void
- 56A. Transfer Pricing

Deductions in calculating Assessable Income

- 57. No deductions unless expressly provided
- 58. Expenditure or loss incurred in the production of assessable income
- 59. Certain deductions not permitted
- 60. Deductions for repair, maintenance, and depreciation
- 61. Deduction in respect of buildings on native leaseholds
- 62. Expenditure incurred in borrowing money or obtaining lease

- 63. Deduction in respect of premium paid on account of leased machinery
- 64. Deduction for sums expended on purchase of patent rights
- 65. Deduction for patent expenses
- 66. Deduction for scientific research
- 67. Deduction of testamentary annuities charged on property
- 68. Contributions to employee's superannuation fund
- 69. Losses incurred may be set off against future profits
- 70. Special exemption in respect of gifts of money to charitable organisations
- 71. Losses incurred in subsistence food production activities
- 71A. Thin Capitalisation

Companies and Associations

- 72. Profits of mutual associations in respect of transactions with members
- 73. Assessment of banking companies
- 74. Overseas insurance companies other than life insurance companies
- 75. Overseas shipping freight and passage money

Non-resident film renters

- 76. Assessment of film renters for income tax [repealed]

Income Derived by Trustees

- 77. Income derived by trusts
- 78. Income received by trustee after death of deceased person
- 79. Deduction from estate income of irrecoverable book debts of deceased taxpayer

Country of Derivation of Income

- 80. Liability for assessment of income derived from the Cook Islands and abroad
- 81. Taxation of salary or wages earned outside the Cook Islands
- 82. Place of residence, how determined
- 83. Classes of income deemed to be derived from the Cook Islands
- 84. Apportionment where income derived partly in the Cook Islands and partly elsewhere
- 85. Credits in respect of income tax paid in a country or territory outside the Cook Islands
- 86. Arrangements for relief from double taxation

PART VI **IMPLEMENTATION OF ARRANGEMENTS FOR RELIEF FROM DOUBLE** **TAXATION**

- 87. Interpretation

Credits for Foreign Tax

- 88. Determination of claims for credits
- 89. Notice of determination to taxpayer
- 90. Except in proceedings on objection, determination deemed correct
- 91. Evidence of determination
- 92. Objections to determinations
- 93. Application of Part IV to objections to determinations
- 94. Information for credit to be furnished within four years
- 95. Maximum credits

96. Recovery of excess credit allowed through not taking into account refund of foreign tax

Miscellaneous

97. Ascertainment of Cook Islands tax on income

PART VII

WITHHOLDING TAX ON DIVIDENDS, INTEREST AND ROYALTIES

98. Interpretation

99. Application of this Part

100. Withholding tax imposed

101. Deduction of withholding tax

102. Withholding tax on dividends not paid in money

Payment and Assessment of Withholding Tax

103. Payment of deductions of withholding tax to Collector

104. Statement to be delivered to Collector

105. Withholding tax to be final in certain cases

106. Annual tax on withholding income in certain cases

107. Person deriving withholding income to pay withholding tax to Collector

108. Failure to make deductions of withholding tax or to make payments to Collector

109. Assessment of withholding tax and of amounts to be accounted for or paid under this Part

Penalties and Offences

110. Additional tax for default in making or paying deductions of withholding tax

111. Penal tax for default in making or paying deductions of withholding tax

112. Offences

Miscellaneous Provisions

113. Withholding tax on dividends paid to company under control of non-resident

114. Deductions of withholding tax deemed to be received and derived by person entitled to payment

115. Application of other Parts of this Act

116. Distribution of capitalised amount

PART VIII

AGENTS AND NON-RESIDENTS

Interpretation

117. "Absentee" defined

Agents Generally

118. Agent to make returns and be assessed as principal

119. Rate and amount of tax payable by agent

120. Liability of principal not affected

121. Agent may recover tax from principal

122. Agent may retain from money of principal amount required for tax

123. Assessment deemed authority for payment of tax by agent

124. Agent to be personally liable for payment of tax

125. Relation of principal and agent arising in effect

Special Cases of Agency

126. Liability of mortgagee in possession

127. Guardian of person under disability to be agent

128. Person having control of land or of rents and profits to be agent of absentee or person under disability

129. Liability of new companies for tax payable by former companies with substantially the same shareholders or under the same control

130. Companies deemed agent of debenture holders

131. Modification of agency provisions in respect of income from company debentures

132. Recovery of income tax payable in respect of alimony or maintenance

Agents of Absentees and Non-residents

133. Liability of agent of absentee principal for returns and tax

134. Partner of absentee deemed agent

135. Master of ship or captain of aircraft deemed agent of absentee owner

136. Tenant, mortgagor, or other debtor to be agent of absentee landlord, mortgagee, or other creditor

137. Person having disposal of income deemed agent

138. Company to be agent of absentee shareholders

139. Banking company to be agent of absentee depositors

140. Premiums on insurance effected with persons not carrying on business in the Cook Islands

141. Liability as agent of employer of non-resident taxpayer

142. Non-resident trader to be agent of employees in the Cook Islands

143. Agents in the Cook Islands of principals resident abroad

PART VIII(A) **SEABED MINING**

143A. Interpretation

143B. Taxation of Contractors and Subcontractors

143C. Exploration and development Expenditure

143D. Contributions to Environmental Fund

143E. Ring-Fencing of Mining Operations

143F. Disposal of a Title or Information

143G. Farm-out Agreements

143H. Disposal of interest in an entity holding a title

143I. Withholding Tax

143J. Imposition of additional profits tax

143K. Cash Balance

143L. Procedure relation to additional profits tax

143M. Provisional tax instalments of additional profits tax

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

144. Application of this Part

Tax Deductions

- 145. Tax deductions to be made by employers
- 146. Tax deductions from amounts credited to or applied for employees
- 147. Benefits and superannuation and other payments deemed to be salary or wages
- 148. Payment to be made by employee where tax deduction exceeds source deduction payment
- 149. Tax code
- 150. Amount of total tax deduction where several deductions are made for one week
- 151. Increased deductions to cover deficiency in deductions from advance payments
- 152. Amount of tax deductions for pay period current when tax altered
- 153. Power of Collector to reduce tax deductions

Duties of Employer as to making deductions

- 154. Records to be kept by employer
- 155. Payment of tax deductions to Collector

Employee's duties where deductions are not made

- 156. Employee to pay deductions to Collector

Pay-period Taxpayers

- 157. Interpretation
- 158. Tax of pay-period taxpayers to be determined by amount of tax deductions or by assessment
- 159. Adjustment of excessive tax deductions

Assessment and Payment of Income Tax

- 160. Assessment and payment of income tax

Crediting Tax Deductions

- 161. Tax deductions to be credited against tax assessed
- 162. Lost tax deduction certificates
- 163. Tax deductions for which no certificate issued

Recovery of Tax Deductions

- 164. Recovery of tax deductions from employers
- 165. Employer failing to make tax deductions
- 166. Unpaid tax deductions, etc, to constitute a charge on employer's property

Offences and Penalties

- 167. Offences
- 168. Penal tax for default in making or paying tax deduction
- 169. Additional tax for default in making tax deduction or in paying any amount due to Collector

Miscellaneous Provisions

- 170. Agreements not to make tax deductions to be void
- 171. Amount of tax deductions deemed to be received by employee

172. Application of other Parts to amounts payable under this Part

PART X

PROVISIONAL TAX ON INCOME OTHER THAN SOURCE DEDUCTION PAYMENTS

- 173. Application of this Part
- 174. Certain income derived by non-residents not to be included in provisional income
- 175. Amount of provisional tax
- 176. Adjustments for variations in exemptions or rebates
- 177. Allowance for provisional tax paid by agent
- 178. Taxpayer to estimate amount of provisional tax subject to adjustment by Collector
- 179. Payment of provisional tax by instalments
- 180. Interim returns
- 181. Estimated assessable income
- 182. Additional tax where income underestimated
- 183. Alteration of provisional tax by Collector
- 184. Voluntary payments of additional provisional tax

Terminal Tax

- 185. Assessment and payment of terminal tax
- 186. Provisional tax to be credited against tax assessed

Application of Other Parts

- 187. Application of other Parts of this Act to provisional tax

PART XI

PAYMENT AND RECOVERY OF TAX

- 188. Due date for payment of tax
- 189. Payment of tax
- 190. If default made in payment of tax, additional tax to be charged
- 191. Mode of recovery of unpaid tax
- 192. Deduction of income tax from payment due to defaulters
- 193. Procedure in High Court where defendant absent from Cook Islands or not traced
- 194. Particulars of claim or demand
- 195. Collector may appear in legal proceedings by officer of the Public Service
- 196. Costs against Collector
- 197. Proceedings not affected by vacancy or change in office of Collector
- 198. Statute of limitation
- 199. Crown Proceedings Act not affected
- 200. Recovery of tax paid by one person on behalf of another
- 201. Payment of income tax by persons leaving the Cook Islands

PART XII

REFUNDS AND RELIEF FROM TAX

- 202. Refund of excess tax
- 203. Power of Collector in respect of small amounts
- 204. Relief from additional tax
- 205. Relief in cases of serious hardship

PART XIII
PENALTIES

- 206. Penalty for failure to furnish returns, etc.
- 207. Proceedings for offences
- 208. Information may be laid within 10 years
- 209. Penal tax in case of evasion
- 210. Nature of penal tax
- 211. Assessment of penal tax
- 212. Objections to penal tax
- 213. Recovery of penal tax
- 214. Recovery of penal tax from executors or administrators
- 215. Recovery of penal tax not affected by conviction of taxpayer
- 216. Publication of names of tax evaders

PART XIV
GENERAL PROVISIONS

- 217. Keeping of business records
- 218. Taxpayer identification number
- 219. Collector to have power to inspect books and documents
- 220. Information to be furnished on request of Collector
- 221. Inquiry before a Judge of the High Court
- 222. Inquiry by Collector
- 223. Offences
- 224. Employers to make returns as to employees
- 225. Return of interest paid on deposits
- 226. Returns as to debentures and interest thereon
- 227. Power to extend time
- 228. Annual report
- 229. Regulations
- 230. Application of Act
- 231. Repeals and savings

PART XV
TERMINATING PROVISIONS

- 232. Provisions continuing to apply as amended
- 233. Section 47 Income Tax Act 1972
- 234. Rebate in respect of low income earners

SCHEDULES

An Act to consolidate the law relating to income tax

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 Act 1997.

(2) This Act shall come into force on 1 July 1997.

PART I
INTERPRETATION

2. Interpretation - In this Act, unless the context otherwise requires -

"Additional tax" means additional tax charged under section 190;

History: Amended by section 2 of Income Tax Amendment Act 2002 with application from 1 July 1997

"Agent" means any person declared by this Act to be an agent for the purposes of income tax;

öAircraftö means any machine that can derive support in the atmosphere from the reactions of the air.ö

History: Inserted by Income Tax Amendment Act 2002 with application from 1 July 1997

"Annual rates" means the rates of income tax fixed for any year of assessment by operation of this Act or any amendment thereto;

"Annual taxing Act" means an Act by which the rates of income tax are determined for any year;

"Approved annuity" means an annuity issued by an insurance company approved by the Collector for the time being;

öArmö length transactionö means a transaction between independent persons dealing with each other at armö length;

History: Definition inserted by Income Tax Amendment Act 2013 with application from 1 January 2014

"Assessable income" means income of any kind which is not exempted from income tax otherwise than by way of a special exemption expressly authorised as such by this Act;

"Bank" means any person licensed to carry on banking business in or from the Cook Islands under the Banking Act 2003;

History: Definition amended by Income Tax Amendment Act 2011 (No.2) with application from 1 September 2011

"Banking company" means any company carrying on in the Cook Islands the business of banking;

"Basic rates" means the rates of income tax specified in the Schedule 1;

"Basic tax deductions" means the amounts of tax deductions specified in the Schedule 2;

"Bonus Issue" has the meaning assigned to it by section 5;

"Book and document" and "book or document" include all books, accounts, rolls, records, registers, electronic information storage media, papers and other documents;

"Business" includes any profession, trade, manufacture or undertaking carried on for pecuniary profit;

"Charitable purpose" includes every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community;

"Comptroller of Customs" means the Comptroller of Customs appointed pursuant to the Customs Act 1913 or any Act passed in substitution for that Act;

"Collector of Inland Revenue" or "Collector" means the Treasurer of the Revenue Management Division (RMD) of the Ministry of Finance and Economic Management;

"Company" means any body corporate whether incorporated in the Cook Islands or elsewhere, but does not include a local or public authority;

"Cook Islands", when referring to a geographic area,-

- (a) has the meaning given by Article 1 of the Constitution of the Cook Islands; and
- (b) includes the territorial sea and exclusive economic zone of the Cook Islands as those terms are defined in sections 3 and 8 of the Territorial Sea and Exclusive Economic Zone Act 1977;

History: Definition inserted by Income Tax Amendment Act 2013 with application from 1 January 2014

ōCook Islands trustō means any trust that is established and administered in the Cook Islands and that is subject to income tax under this Act.

History: Definition inserted by Income Tax Amendment Act 2015 with application from 22 June 2015

"Cook Islands Company" means a company incorporated in the Cook Islands;

"Debenture" means any promissory note, debenture stock, bill of exchange, bond or other negotiable instrument;

"Department" means the Revenue Management Division (RMD) of the Ministry of Finance and Economic Management;

"Dividends" has the meaning assigned by section 4;

"Employee" means a person who receives or is entitled to receive a source deduction payment;

"Employer" means a person who pays or is liable to pay a source deduction payment and includes -

- (a) the manager or other principal officer in the case of an unincorporated body of persons other than a partnership;
- (b) each partner in the case of a partnership;
- (c) each person in whom the property has become vested or to whom the control of the property has passed in the case of the estate of a deceased person, a trust, a company in liquidation, or an assigned estate, or in any other case where property is vested or controlled in a fiduciary capacity;

"Employment income" means income which consists of salary, wages, allowances, overtime pay, pension, annuity, directors' fees, bonuses, management fees, gratuities, retiring allowances, extra salary or any emolument of any other kind paid or payable in relation to the taxpayer's employment.

"Entity" means-

- (a) a government (whether state, regional, or local); and
- (b) a company, partnership, trust, or similar body or association;

History: Definition inserted by Income Tax Amendment Act 2013 with application from 1 January 2014

"Extra emolument" in relation to any person, means a payment in a lump sum (whether paid in one sum or in two or more instalments) made to that person in respect of or in relation to the employment of that person (whether regularly for a period of time or not), being a payment which is not regularly included in salary or wages payable to that person for a pay period, but not being overtime pay and includes any such payment made ó

- (a) by way of bonus, gratuity, redundancy payment or share of profits;
- (b) by way of a retrospective increase in salary or wages, to the extent that the payment accrues from the commencement of the increase until the beginning of the first pay period for which the increase is incorporated in salary or wages, and to the extent that in respect of any week ending with a Saturday in that time the total of the increase for that week and of the salary or wages for that week exclusive of the increase, and of any other salary or wages earned by that person for that week, exceeds \$4;
- (c) on the occasion of that person's retirement from employment, to the extent that the payment is deemed by section 46(2) (a) to be income, but does not include a payment of exempt income or a lump sum payment made on the occasion of that person's retirement from employment to the extent that the payment is not deemed by section 46(2) (a) to be income.

"Immovable property" includes a title, mining information, and prospecting information;

History: Definition inserted by Income Tax Amendment Act 2013 with application from 1 January 2014

"Income from employment" means salary or wages or an extra emolument; "Income tax" means income tax imposed under this Act;

"Income year" means, in respect of the income of any person, the year in which that income has been derived by that person;

"Interest" includes payments assimilated to interest and for the purpose of clarity is deemed to include discounts on bills of exchange, promissory notes and other negotiable instruments;

"Investment income" means interest and dividends;

"Lease" means any disposition whatever by which a leasehold estate is created;

"Leasehold estate" includes any estate however created other than a freehold estate;

"Local authority" means an Island Council, District or Vaka Council, or Village Committee, and includes any incorporated instrument of local government in the Cook Islands whether possessing rating powers or not;

"Mineral" has the meaning given by section 7(1) of the Seabed Minerals Act

History: Definition amended by Income Tax Amendment Act 2013 with application from 1 January 2014

"Mining information" has the meaning given by section 143A

History: Definition inserted by Income Tax Amendment Act 2013 with application from 1 January 2014

"Minister" means the Minister responsible for Finance and Economic Management; "Monthly remittance certificate" means a monthly remittance certificate under section 155;

"Natural resource amount" means ó

(a) an amount (including a premium or like amount) as consideration for the right to take minerals or a living or non-living resource from land or sea; or

(b) an amount calculated in whole or part by reference to the quantity or value of minerals or a living or non-living resource taken from land or sea;

History: Definition inserted by Income Tax Amendment Act 2013 with application from 1 January 2014

"Non-resident agent" means an agent within the meaning of this Act, who, being in the Cook Islands, has no fixed and permanent place of business or abode there;

"Non-resident trader" means any person who, being in the Cook Islands, carries on business there without having any fixed or permanent place of business or abode there;

"Notice" means a notice in writing given by causing the same to be delivered to any person or to be left at that person's usual or last known place of abode or business in the Cook Islands or elsewhere, or to be sent by post addressed to such usual or last known place of abode or business, or if there are several such places then to any of them;

"Officer" includes any person employed in the Department;

"Overseas company" means any company other than one incorporated in the Cook Islands;

"Paid" includes distributed, credited or dealt with in the interest of or on behalf of a person, and "pay" and "payment" have corresponding meanings;

"Patent rights" means the right to do or authorise the doing of anything which would but for that right be an infringement of a patent;

"Pay-period" in relation to an employee receiving regular payments of salary or wages means the period for which any such payment is made or payable;

"Pay-period taxpayer" means a pay-period taxpayer under section 157(1);

"Penal tax" means penal tax charged under section 209;

"Permanent establishment" means a fixed place of business through which the business of a person is wholly or partly carried on, and includes the following:

- (a) a place of management, branch, office, factory, warehouse, or workshop other than a liaison office (being an office that has representation of a person's business as its sole activity; and
- (b) a mine site, oil or gas well, quarry, or other place of exploration for, or extraction of, natural resources, including a boat or ship that provides a base for the exploration or extraction of natural resources; and
- (c) a building site, or a construction, assembly or installation project, or supervisory activities connected with such a site or project, but only if the site, project, or activities continue for more than 6 months; and
- (d) the furnishing of services by the person, including consultancy services, through employees or other personnel engaged by the person for such a purpose, but only if the site, project, or activities continue for more than 6 months; and
- (e) a person (other than an agent of independent status) acting on behalf of another person (the principal), if the first-mentioned person-
 - (i) has and habitually exercises an authority to conclude contracts on behalf of the principal; or
 - (ii) habitually maintains a stock of goods from which the person regularly delivers goods on behalf of the principal

History: Definition inserted by Income Tax Amendment Act 2013 with application from 1 January 2014

"Person" includes a company, a corporation sole, and also a body of persons, whether incorporated or not, and a local or public authority;

"Prescribed" means prescribed by the Collector;

"Prospecting information" has the meaning given by section 143A

History: Definition inserted by Income Tax Amendment Act 2013 with application from 1 January 2014

"Public authority" means every department or other instrument of the Executive Government of the Cook Islands;

"Reconciliation statement" means a reconciliation statement under section 155;

"Reduced deduction", in relation to an employee, means a tax deduction the amount of which is fixed at less than the maximum amount, in accordance with the employee's tax code;

"Salary or wages", in relation to any person, means salary, wages, or allowances (whether in cash or otherwise), including all sums received or receivable by way of overtime pay, bonus, gratuity, extra salary, commission, or remuneration of any kind, in respect of or in relation to the employment of that person; and includes the value of any benefits of the kinds referred to in section 46(2) (b), determined in case of dispute as provided in that section; and also includes a periodic payment by way of superannuation, pension, retiring allowance, or other allowance or annuity in respect of or in relation to the past employment of that person or of

any person of whom that person is or has been the spouse or a child or dependent; but does not include -

(a) a payment of exempt income, or an extra emolument, or a withholding payment;
or

(b) any payment which is declared by regulations under this Act not to be salary or wages.

"Seabed Minerals Act" means the Seabed Minerals Act 2009

History: Definition inserted by Income Tax Amendment Act 2013 with application from 1 January 2014

"Source" means:

(a) Employment income derived from a payer:

Provided that all employment income derived from a payer which is, or is substantially funded by, the Government of the Cook Islands shall, with the exception of superannuation, be deemed to have been derived from one payer:

Provided also that, where a taxpayer derives employment income from more than one payer by reason of a change of payer, the taxpayer's employment income shall be deemed to have been derived from one payer, except in the case of part-time secondary employment undertaken by a taxpayer having regular full-time employment; or

(b) Other income, being income other than employment income.

"Source deduction payment" means a payment by way of salary or wages, an extra emolument, or a withholding payment;

"Shareholder" includes any member of a company whether the capital of that company is divided into shares or not and "share" includes any interest in the capital of a company;

"Superannuation fund" means the New Zealand Government Superannuation Fund and any superannuation fund established for the benefit of the employees of any employer and approved for the time being by the Collector for the purposes of this Act;

"Tax" means income tax and includes, for the purposes of section 86

(a) A tax, levy, or duty of any type imposed on or payable by a taxpayer in a country or territory outside the Cook Islands (a foreign jurisdiction);

(b) An amount deemed to be a tax, levy, or duty in a foreign jurisdiction;

(c) A credit of tax in a foreign jurisdiction.

History: Replaced by Income Tax Amendment Act 2011 with application from 1 September 2011

"Tax code", in relation to an employee, means that employee's tax code under section 149;

"Tax deduction" means a tax deduction made or required to be made under Part IX;

"Tax deduction certificate" means a tax deduction certificate under section 155;

"Taxable income" means the residue of assessable income after deducting the amount of all special exemptions to which the taxpayer is entitled;

"Taxpayer" means a person chargeable with income tax, whether on that person's own account or as the agent or trustee of any other person, and includes the executor or administrator of a deceased taxpayer;

öTitleö has the meaning given by section 7(1) of the Seabed Minerals Act

History: Definition inserted by Income Tax Amendment Act 2013 with application from 1 January 2014

"Trustee" includes an executor and administrator;

öUnderlying ownershipö, in relation to an entity, means an interest in the entity held directly, or indirectly through an interposed entity or entities, by an individual or by an entity not ultimately owned by individuals

History: Definition inserted by Income Tax Amendment Act 2013 with application from 1 January 2014

"Withholding income" has the meaning given to it in section 98

History: Definition inserted by Income Tax Amendment Act 2011 (No.2) with application from 1 September 2011

"Withholding payment" means a payment which is declared by regulations under this Act to be a withholding payment for the purposes of Part IX;

"Year" means a year commencing on 1 January and ending with 31 December, both of those days being included;

"Year of assessment" means the year for which income tax is payable.

3. Defining when a company is under the control of any persons, and when two companies consist substantially of the same shareholders - (1) For the purposes of this Act a company shall be deemed to be under the control of the person or persons -

(a) by whom more than one-half of the shares, or more than one-half of the paid-up capital, or more than one-half of the voting power is held; or

(b) who has or have by any other means whatsoever control of the company; or

(c) who, by reason of the shareholding at the end of any income year, would be entitled to more than one-half of the profits for that year if those profits were distributed by way of dividend at the end of that year.

(2) For the purposes of this Act two companies shall be deemed to consist substantially of the same shareholders if not less than one half of the paid-up capital of each of those companies is held by shareholders in the other or if not less than one half in nominal value of the allotted shares in each of them is held by shareholders in the other. Shares in one company held by another company shall for this purpose be deemed to be held by the shareholders in the last mentioned company.

(3) Where a nominee of any person holds any shares, nominal capital, paid-up capital or voting power in a company, or has by any other means whatsoever any power of control of a company, or is entitled to a share of profits distributed by a company then, for the purposes of this section, those shares or

that capital or that voting power or that power of control or that title to profits as the case may be, shall be deemed to be held by that person, and in every such case that person and the nominee or nominees of that person shall be deemed to be one person.

(4) In this section "nominee" in relation to any person, means any other person who may be required to exercise voting power in relation to any company in accordance with the direction of that person, or who holds shares or debentures directly or indirectly on behalf of that person; and includes the spouse of that person and any relative of that person by blood, marriage, or adoption.

4. Meaning of "dividends" - (1) For the purposes of this Act "dividends" in relation to any company, includes -

(a) all sums distributed in any manner and under any name among all or any of the shareholders of the company including amounts capitalised and distributed by way of a bonus issue;

(b) the value of any other property of any kind whatsoever distributed by the company to any of its shareholders as such;

(c) all amounts received by any shareholder in respect of shares (whether in money or money's worth) upon the winding up of the company in excess of the amount paid-up on those shares;

(d) where any property of the company is sold or otherwise disposed of to a shareholder without consideration or for a consideration which, in the opinion of the Collector, is less than its market price or its true value; the excess of the market price of that property on the day it was sold or disposed of over the price (if any) realised on the sale or disposition or, if there is no market price, the excess of the price deemed to have been realised pursuant to a determination of the Collector under section 60(5) (b) over the price (if any) realised on the sale or disposition;

and "dividend" has a corresponding meaning:

Provided that where any money advanced by a company to or for the benefit of any shareholder and deemed by virtue of this section to constitute a dividend is subsequently repaid to the company, the Collector may amend in such manner as may be thereby rendered necessary the assessment made in respect of income derived by that shareholder during the income year in which the advance was made, and may at any time notwithstanding anything in section 202 refund any tax found to have been paid in excess of the amount properly payable;

(2) Where any company that has reduced the amount of the paid-up capital of any shareholder by writing off losses incurred by the company is subsequently wound up and there is distributed to that shareholder upon the winding up an amount (whether in money or money's worth) in excess of the amount paid-up on that person's shares in the company, the expression "dividends" shall, for the purposes of this Act, be deemed not to include the amount so distributed to such extent as the Collector thinks just and reasonable, having regard to the amount of the paid-up capital lost by the shareholder and any other relevant considerations.

(3) Where -

(a) any capital asset of a company has been realised, whether voluntarily or involuntarily, and the Collector is satisfied that the whole or part of any profit arising from any such realisation in excess of the cost to the company of that asset (not being an amount that is required to be taken into account under any provision of this Act for the purpose of assessing income tax) is

subsequently included in any payment or other transaction referred to in subsection (1); or

(b) the Collector is satisfied that a company has otherwise made a capital profit or a capital gain, including a capital gain by way of gift, and that the whole or part of any such profit or gain (not being an amount that is required to be taken into account under any provision of this Act for the purpose of assessing income tax) is subsequently included in any payment or other transaction referred to in subsection (1); then

the expression "dividends" shall, for the purposes of this Act, be deemed not to include that profit or gain to the extent to which that profit or gain exceeds any capital losses incurred in the income year (or, as the case may be, the accounting year of the company corresponding with that year) in which that profit or gain was made or in any subsequent year (being losses not already taken into account under this subsection or under section 5(3) or in calculating the assessable income of the company for any year):

Provided that where any amount, being the whole or part of any increase arising from the writing up of any asset, has been excluded from -

(i) the expression "dividends" in accordance with the provisions of this subsection; or

(ii) the expression "bonus issue" in accordance with the provisions of section 5(3);

the cost of that asset shall, for the purposes of this subsection, be deemed to be increased by that amount.

5. Meaning of "bonus issue" - (1) For the purposes of this Act the expression "bonus issue" in relation to a company, means a capitalisation of the whole or part of the amount for the time being standing to the credit of any of the company's reserve accounts or to the credit of the company's profit and loss account or of the whole or part of any amount otherwise available for capitalisation, being in any such case a capitalisation by way of -

(a) the allotment on or after the date of commencement of this Act, of fully paid-up or partly paid-up shares in the company; or

(b) the giving on or after that date of credit in respect of the whole or part of the amount unpaid on any shares in the company.

(2) Where any company that has reduced the amount of the paid-up capital of any of its shareholders by writing off losses incurred by the company subsequently makes a capitalisation of the whole or part of any amount specified in subsection (1), being a capitalisation by way of -

(a) the allotment to those shareholders of fully paid-up or partly paid-up shares in the company; or

(b) the giving to those shareholders of credit in respect of the whole or part of the amount unpaid on any shares in the company;

the expression "bonus issue" shall, for the purposes of this Act, be deemed not to include the paid-up value of the shares so allotted or the credit so given, as the case may be, to such extent as the Collector thinks just and reasonable, having regard to the amount of the paid-up capital lost by those shareholders and any other relevant considerations.

(3) Where -

(a) the Collector is satisfied that the whole or part of -

(i) any profit (in excess of the cost to a company of an asset) as specified in section 4 (3) (a); or

(ii) any capital profit or gain as specified in section 4(3)(b);
is subsequently included in any transaction referred to in subsection (1); or

(b) a company has written up any capital asset (other than goodwill), and the Collector is satisfied that the whole or part of any increase arising from any such writing up in excess of the cost to the company of that asset (not being an amount that is required to be taken into account under any provision of this Act for the purpose of assessing income tax) is subsequently included in any transaction referred to in subsection (1),

the expression "bonus issue" shall, for the purposes of this Act, be deemed not to include that profit or gain or increase to the extent to which that profit or gain or increase exceeds any capital losses incurred in the income year (or, as the case may be, the accounting year of the company corresponding with that year) in which that profit or gain or increase was made or in any subsequent year (being losses not already taken into account under this subsection or under section 4 (3) or in calculating the assessable income of the company for any year):

Provided that where any amount, being the whole or part of any increase arising from the writing up of any asset, has been excluded from -

(c) the expression "bonus issue" in accordance with the provisions of this subsection; or

(d) the expression "dividends" in accordance with the provisions of section 4(3);

the cost of that asset shall, for the purposes of this subsection, be deemed to be increased by that amount.

(4) To the extent to which the Collector is satisfied that any transaction referred to in subsection (1) includes any amount that constitutes premiums paid to a company in respect of the issue of share capital by the company, the transaction shall be deemed not to be included in the expression "bonus issue" for the purposes of this Act.

PART II

ADMINISTRATION

6. Revenue Management Division - (1) There shall be a Division of the Ministry of Finance and Economic Management responsible for the administration of this Act to be called the Revenue Management Division.

(2) There shall be an official seal of the Revenue Management Division which shall be in the custody of the Collector.

(3) Any certificate, notice, or other document bearing the written, stamped, or printed signature of the Collector shall, until the contrary is proved, be deemed to have been duly signed by the person by whom it purports to have been signed.

(4) Judicial notice shall be taken of every such signature and of the fact that the person whose signature it purports to be holds or held the office of Collector.

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.

History: Section 6A inserted by Income Tax Amendment Act 2002 with application from 12 December 2002

7. Officers to maintain secrecy - (1) The Collector and every other officer of the Department-

(a) shall maintain and aid in maintaining the secrecy of all matters relating to this Act which come to the knowledge of the officer and shall not communicate any such matters to any person, except for the purpose of giving effect to this Act or any other enactment imposing taxes or duties payable to the Crown; and

(b) shall, before beginning to perform any official duty under this Act, take and subscribe to an oath of fidelity and secrecy to maintain secrecy in conformity with this section.

(2) Without limiting the generality of paragraph (a) of subsection (1), it is hereby declared that no officer of the Department shall be required to produce in any Court any book or document or to divulge or communicate to any Court any matter or thing coming under the notice of the officer in the performance of duties as an officer of the Department, except when it is necessary to do so for the purpose of giving effect to any provision of this Act or any other enactment imposing taxes or duties payable to the Crown.

(3) Every person who wilfully acts in contravention of the provisions of this section or in contravention of the true intent of any such oath shall be liable on conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$500.

PART III

RETURNS AND ASSESSMENTS

8. Annual returns - Subject to the provisions of this Act and of any regulations under this Act, every taxpayer shall for the purposes of the assessment and levy of income tax furnish to the Collector in each year a return or returns in the prescribed form or forms setting forth a complete statement of all assessable and non-assessable income derived by that taxpayer during the preceding year, together with such other particulars as may be prescribed.

9. Returns to annual balance date - (1) Instead of furnishing a return in accordance with the provisions of section 8 for any year ending with 31 December, any taxpayer may, with the consent of the Collector, elect to furnish a return for the year ending with the date of the annual balance of the accounts of the taxpayer, and in any such case the income derived during that year shall for the purposes of this Act be deemed to have been derived during the year ending with the 31 December nearest to that date.

(2) For the purposes of this section and of section 10, 30 June in any year shall be deemed to be nearer to the last preceding 31 December than to the next succeeding 31 December.

(3) Any election made by a taxpayer for the purposes of this section shall continue in force unless and until the taxpayer alters it with the prior approval in writing of the Collector.

10. Adjustments consequential on change in return date - (1) In this section -

"the return date" means the last day of the period for which a return of income is required to be made;

"the original return date" means, in the case of a taxpayer who has changed return date, whether before or after the coming into force of this Act, the return date immediately prior to the new return date;

"the new return date" means, in the case of a taxpayer who has changed return date, whether before or after the coming into force of this Act, the date to which the change was made or, if there has been more than one change, means the date to which the last change was made.

(2) If in any case the new return date is an earlier date than the original return date, the taxpayer shall furnish a return for the period from the original return date up to and including the new return date in the succeeding year, and if the new return date is a later date than the original return date, the taxpayer shall furnish a return for the period from the original return date up to and including the new return date in the same year.

(3) All returns of income made in accordance with subsection (2) shall be deemed to be returns of income derived during the year ending with the 31 December nearest to the new return date, and the income derived by a taxpayer during that period shall, for the purposes of assessment, be added to any other income derived for the same year, and that taxpayer shall be assessed and liable for income tax accordingly.

(4) Where, for the purposes of this section, a taxpayer is assessed for income tax on a return made for a period of less than a year, that taxpayer shall be entitled, by way of special exemptions, only to an amount bearing the same proportion to the total exemption to which that taxpayer would be entitled for a full year as the number of days in that period bears to the number of days in a year, and where a taxpayer is assessed on a return or returns for a period of more than a year, the deduction to which that taxpayer shall be entitled by way of special exemptions shall be proportionately increased.

(5) Where, for the purposes of this section, a taxpayer is assessed for income tax on a return made for a period of less than a year, that taxpayer shall be entitled, by way of rebates from income tax under this Act, only to an amount bearing the same proportion to the total rebates to which that taxpayer would be entitled apart from this section as the number of days in that period bears to the number of days in a year and where a taxpayer is assessed on a return or returns for more than a year, the rebates to which that taxpayer would otherwise be entitled shall be proportionately increased.

(6) Where, for the purposes of this section, a taxpayer is assessed for income tax on a return made for a period that is less or greater than a year, the rate of tax shall be determined as for a year, and for the purposes of this subsection the taxable income of a taxpayer shall be deemed to have been derived at a uniform daily rate throughout the period for which the return has been made and where that period is less than a year that daily rate shall be deemed to have been continued for a year.

(7) Where a taxpayer has been assessed for income tax on a return made to any date other than 31 December in any year, the income derived by that taxpayer shall be deemed to have been assessed for tax to that date, and not to the 31 December nearest to that date.

(8) For the purpose of giving effect to the provisions of this section and section 9, the Collector may for any year or years of assessment make all such assessments or additional assessments as the Collector may deem necessary, notwithstanding anything in this Act.

11. Returns by partners, co-trustees and joint venturers - (1) When income is derived by two or more persons as partners, co-trustees or otherwise the following provisions shall apply -

(a) in the case of trustees, they shall make a return of that income, and shall be jointly assessable thereon and jointly and severally liable for the tax so assessed;

(b) in the case of partners -

(i) they shall make a joint return of the income of the partnership, setting forth the amount of that income and the shares of the several partners therein;

(ii) each partner shall make a separate return of all income derived by that partner and not included in any such joint return;

(iii) there shall be no joint assessment but each partner shall be separately assessed and liable for the tax payable on the person's total income, including the person's share of the income of any partnership in which the person is a partner;

(c) in any case other than that of co-trustees or partners, each person by whom income is so derived shall include in that person's return the amount of that person's share of the joint income, and shall be assessed and liable accordingly.

(2) For the purposes of this Act a husband and wife carrying on business together or deriving income jointly shall be deemed not to be carrying on business as partners or deriving income jointly, unless in fact they are carrying on a business or deriving the income jointly under a bona fide deed of partnership.

(3) Instead, the income derived from the business or jointly must be apportioned according to the amount in fact earned by each party.

(4) If a husband and wife carrying on business together or deriving income jointly do not apportion the income in accordance with subsection (3), or the Collector considers that the apportionment is not appropriate, the Collector may, in his or her complete discretion, apportion the income between the

husband and wife in any manner that he or she thinks fit, having regard to all the circumstances of the business or joint enterprise concerned.

History: Subsections 11(3) and (4) inserted by Income Tax Amendment Act 2013 with application from 1 January 2014

12. Returns by executors or administrators - (1) The executor or administrator of a deceased taxpayer shall in respect of all income derived from that taxpayer in that taxpayer's lifetime make the same returns as the taxpayer ought to have made or would have been bound to make if the taxpayer had remained alive; and the Collector may, from time to time, require the executor or administrator to make such further returns relative to that income as the Collector thinks necessary, and may assess the executor or administrator for income tax on that income in the same manner in which the Collector may have assessed the taxpayer had the taxpayer remained alive.

(2) The tax so assessed shall be deemed to be a liability incurred by the deceased taxpayer in the lifetime of the deceased taxpayer, and the deceased taxpayer's executor or administrator shall be liable for the same accordingly.

13. Collector may in certain cases demand special returns and make special assessments - (1) This section applied to the following persons -

- (a) an agent;
- (b) a non-resident trader;
- (c) a person who is believed by the Collector to be about to leave the Cook Islands or to be about to discontinue the carrying on of business in the Cook Islands;
- (d) a person who has ceased to carry on business in the Cook Islands or to derive assessable income;
- (e) the executors or administrators of a deceased taxpayer in respect of income derived by that taxpayer in that taxpayer's lifetime;
- (f) a person who has become bankrupt, or a company which is in the course of being wound up.

(2) The Collector may at any time during the income year, require any person to whom this section applies to make a return of income derived from any specified transaction or transactions, or during any specific period, and may assess the person for income tax on the income so returned, or when default is made in making such a return, or the Collector is dissatisfied therewith, then on such sums as the Collector thinks reasonable, and shall give notice of the assessment to the person so assessed.

(3) Any person so assessed shall have the same right of objection as if the person had been assessed in the ordinary course.

(4) Tax so assessed shall be payable on demand, which may be made in and by the notice of assessment, or at any later date, and the tax shall be recoverable in the same manner as income tax assessed in the ordinary course and assessed.

(5) Tax so assessed shall be calculated at the rate applicable to the income year in respect of which the assessment is made.

(6) No assessment made under this section shall in any manner preclude a subsequent assessment of the same person in the ordinary course in respect of the whole of the income derived by the person during the income year with respect to which the assessment under this section was made, but in

such case the tax paid under the earlier assessment shall be credited in the subsequent assessment.

14. Other annual returns - In addition to the foregoing returns every person, whether a taxpayer or not, shall make to the Collector such annual returns as may from time to time be prescribed for the purposes of this Act.

15. Date by which returns to be furnished - (1) The annual return of income required under this Act to be furnished in any year by any taxpayer in respect of income derived by the taxpayer in the preceding year shall be furnished to the Collector not later than 1 March in that first-mentioned year, where -

(a) the taxpayer is not authorised to furnish the return under section 9 for all accounting year ending with a balance date other than 31 December in the preceding year; and

(b) the taxpayer is not required to pay provisional tax on the taxpayer's income under Part X.

(2) The annual return of income required under this Act to be furnished in any year by any taxpayer to whom subsection (1) does not apply shall be furnished to the Collector in that year not later than the date specified in clause 1 of the Third Schedule.

(3) Where the income of a taxpayer for the preceding year consisted exclusively or principally of income other than income from employment or withholding income and the taxpayer satisfies the Collector that the taxpayer is unable to furnish the required return by the due date thereof, the Collector, upon application in that behalf in writing by or on behalf of the taxpayer on or before that date, or within such further period as the Collector may allow in any case or class of case, may extend the time for furnishing the required return to such date as the Collector thinks proper.

16. Collector may require other returns to be made - In addition to the foregoing returns every person, whether a taxpayer or not, shall, as and when required by the Collector, make such further or other returns as the Collector requires for the purposes of this Act.

17. Presumption as to authority - A return purporting to be made by or on behalf of any person shall for all purposes be deemed to have been made by that person or by that person's authority, as the case may be, unless the contrary is proved.

18. Collector to make assessments - (1) From the returns made as aforesaid and from any other information in the Collector's possession the Collector shall in and for every year, and from time to time and at any time thereafter as may be necessary, make assessments in respect of every taxpayer, setting forth the amount upon which tax is payable and the amount of the tax.

(2) Every such assessment shall be made in such form and manner as the Collector thinks fit, and shall be signed by the Collector.

19. Basic rates of income tax - (1) The Collector shall in any year of assessment assess the income tax of any taxpayer at the basic rate set out in Schedule 1.

(2) If the basic rate for any year of assessment is higher or lower than the basic rate applicable to that year as a consequence of any amendment to the Schedule 1 made after the date of the assessment, the amount of every assessment of income tax made under this section in respect of that year shall be adjusted accordingly, and every such assessment shall have the same effect as if the amount thereof as so adjusted had been specified in that assessment.

20. Arbitrary assessment where business controlled by non-residents appears to produce insufficient taxable income - (1) Where any business carried on in the Cook Islands -

- (a) is controlled exclusively or principally by persons not resident in the Cook Islands; or
- (b) is carried on by a company not resident in the Cook Islands or by a company in which more than one half of the shares are held by persons not residing in the Cook Islands; or
- (c) is carried on by a company which holds or on behalf of which other persons hold more than one half of the shares in a company not resident in the Cook Islands,

and it appears from the returns made to the Collector that the business produces no taxable income or less than the amount of taxable income which in the opinion of the Collector might be expected to arise from that business, the person carrying on the business in the Cook Islands shall, notwithstanding anything in this Act, be assessable for and liable to pay income tax on a taxable income of such amount as the Collector determines, being either -

- (e) such proportion as the Collector determines of the total receipts (whether cash or credit) of the business; or
- (f) such proportion as the Collector determines of the total purchase money paid or payable (whether in cash or by the granting of credit) in the conduct of the business.

(2) For the purposes of this section the place of residence of any person other than a company, and the place of residence of any company, shall be determined in accordance with the provisions of section 82.

21. Assessment where default made in furnishing returns - If any person makes default in furnishing any return, or if the Collector is not satisfied with the return made by any person, or if the Collector has reason to suppose that any person, although that person has not made a return, is a taxpayer, the Collector may make an assessment of the amount on which, in the Collector's judgment, tax ought to be levied and of the amount of that tax, and that person shall be liable to pay the tax so assessed, save in so far as that person establishes on objection that the assessment is excessive or that the person is not chargeable with tax.

22. Amendment of assessments - (1) The Collector may from time to time and at any time make all such alterations in or additions to an assessment as the Collector thinks necessary in order to ensure the correctness thereof, notwithstanding that the tax already assessed may have been paid.

(2) If any such alteration or addition has the effect of imposing any fresh liability or increasing any existing liability, notice thereof shall be given by the Collector to the taxpayer affected.

23. Limitation of time for amendment of assessment - When any person has made a return and has been assessed for income tax for any year, it shall not be lawful for the Collector to alter the assessment so as to increase the amount thereof after the expiration of 4 years from the end of the year in which the assessment was made or, in any case where in the opinion of the Collector the return so made is fraudulent or wilfully misleading or omits all mention of income which is of a particular nature or was derived from a particular source in respect of which a return is required to be made, after the expiration of 10 years from the end of the year in which the assessment was made.

24. Validity of assessment not affected by failure to comply with Act - The validity of an assessment shall not be affected by reason that any of the provisions of this Act have not been complied with.

25. Except in proceedings on objection assessments deemed correct - Except in proceedings on objection to an assessment under Part IV, no assessment made by the Collector shall be disputed in

any Court or in any proceedings either on the ground that the person so assessed is not a taxpayer or on any other ground, and except as aforesaid, every assessment and all the particulars thereof shall be conclusively deemed and taken to be correct, and the liability of the person so assessed shall be determined accordingly.

26. Evidence of returns and assessments - The production of any document under the hand of the Collector purporting to be a copy of or extract from any return or assessment shall in all Courts and in all proceedings be sufficient evidence of the original, and the production of the original shall not be necessary, and all Courts shall in all proceedings take judicial notice of the signature of the Collector either to the original or to any such copy or extract.

27. Notice of assessment to taxpayer - (1) As soon as conveniently may be after an assessment is made the Collector shall cause notice of the assessment to be given to the taxpayer.

(2) The omission to give any such notice shall not invalidate the assessment or in any manner affect the operation thereof.

PART IV **OBJECTIONS TO ASSESSMENTS**

28. Objections to assessments, how originated - (1) Any person who has been assessed for income tax may object to the assessment by delivering or posting to the Collector a written notice of objection stating shortly the grounds of that person's objection so that it reaches the Collector within the time specified in that behalf in the notice of assessment, not being less than six weeks after the date on which that notice of assessment is given.

(2) If the Collector is satisfied that there is no suitable mail or means of delivery by which a written notice of objection can reach the Collector within the time so specified, then advice to the Collector by radio, telephone, facsimile or other electronic means that the taxpayer objects to an assessment will constitute an effective notice of objection if -

(a) the advice is received by the Collector within the time so specified; and

(b) the taxpayer posts to the Collector by the next available mail a written statement setting out shortly the grounds of the objection.

(3) No notice of objection given after the time so specified shall be of any force or effect unless the Collector accepts the same and gives notice to the objector accordingly.

29. Collector may amend assessment, or objection may be submitted to High Court - (1) The Collector shall consider every objection and may alter the assessment pursuant thereto.

(2) If an objection is not allowed by the Collector, the objector may, within three months after the date on which notice of the disallowance is given to the objector by or on behalf of the Collector, by notice in writing to the Collector require that the objection be heard and determined by the High Court before a Judge thereof, and in that event the objection shall be heard and determined in the High Court and the High Court shall for the purpose of hearing and determining the objection, whatever the amount involved, have all the powers vested in it in its ordinary civil jurisdiction as if in an action between the objecting taxpayer and the Collector.

(3) If the Collector, after considering the objection, has allowed the objection in part and has reduced the assessment, the reduced assessment shall be the assessment to be dealt with by the High Court.

30. Hearing of objections by High Court - (1) The procedure for the institution, hearing, and

determination of such proceedings in the High Court shall be in accordance with the ordinary practice of that Court.

(2) No objection to an assessment of income tax shall be heard by a Judge in open Court.

31. Burden of proof on objector - On the hearing and determination of all objections to assessments of income tax the burden of proof shall be on the objector, and the Court may receive such evidence as it thinks fit, whether receivable in accordance with law in other proceedings or not.

32. Costs - On the determination of any objection the High Court may award against the Collector or against the objector such costs as it deems just (including interest on tax payable or received).

33. Court may confirm, cancel or alter the assessment - On the determination of any such objection the High Court may either confirm or cancel the assessment, or increase or reduce the amount thereof, and the assessment shall be altered by the Collector, if necessary, so as to conform to that determination.

34. Appeals to Court of Appeal - The determination of the High Court on any such objection shall be subject to appeal to the Court of Appeal of the Cook Islands.

35. Appeals from assessments - (1) In this Act the term "appeal" means a proceeding in the High Court under this Part for the determination of an objection made under this Act to an assessment of Income tax, and the term "appellant" means the person by whom any such objection has been made.

(2) The parties to the appeal shall be the appellant, and the Collector as respondent.

(3) For the purpose of every appeal -

(a) the Collector shall state and sign a case setting forth the facts as alleged by the Collector, the nature of the assessment made by the Collector, the ground of objection thereto, and the question for the determination, of the Court;

(b) the case, so stated and signed, shall be filed by the Collector in the High Court, and the filing of the case shall be deemed to be the institution of the appeal;

(c) a copy of the case so filed shall be sent by the Collector to the appellant.

(4) Within 14 days after the filing of the case by the Collector or within such further time as the Collector may allow, the appellant may, if the appellant thinks fit, file an answer to the case. The answer shall set forth the facts as alleged by the appellant and the grounds of the appeal.

(5) The case as stated and filed by the Collector shall not be conclusive as to the matters set forth therein, either against the appellant or the Collector except so far as agreed to in writing by or on behalf of the Collector and the appellant.

(6) After the filing of the case by the Collector, the Registrar of the Court shall on the application of the Collector or of the appellant, appoint a time and place for the hearing of the appeal, that time not being earlier (except with the consent of the Collector and the appellant) than 21 days after the date of the filing of the case.

(7) Reasonable notice by post or otherwise of the time and place so appointed shall be given by the person on whose application the appointment has been made to the other party to the appeal.

(8) At the time and place so appointed, a Judge of the High Court or, in the absence of a Judge, the

Registrar of the Court may adjourn the hearing to any other time or place, and so on from time to time.

(9) If either party fails to appear at the hearing, the Court shall in its discretion either adjourn the hearing or determine the appeal in the same manner as if both parties were present.

(10) The procedure at the hearing of the appeal shall be the same, with all necessary modifications, as if the appeal were an action in which the appellant is the plaintiff and the Collector is the defendant.

36. Obligation to pay tax not suspended by objection or appeal - The obligation to pay and the right to receive and recover any tax shall not be suspended by any objection or appeal, but if the objector succeeds the amount (if any) of the tax received by the Collector in excess of the amount which, according to the decision on the hearing of the objection or appeal, was properly payable shall forthwith be refunded to the objector by the Collector.

37. Determination of objection not to affect other income - The determination of an objection under any of the foregoing provisions shall relate solely to the income which is the subject of the assessment objected to, and shall not affect the right of the Collector to assess tax on any other income of the objector, or to amend the assessment objected to in any manner rendered necessary by the assessment of tax on other such income.

PART V **INCOME TAX**

38. Meaning of "absentee" - "Absentee" means, in this Part, a person whose home has not been in the Cook Islands during any part of the income year:

Provided that a taxpayer shall not be deemed to be an absentee within the meaning of this Part if the Collector is satisfied that the absence of the taxpayer from the Cook Islands during the income year has been for the sake of the taxpayer's health, or of the health of the spouse or of any child of the taxpayer; and

Provided further that no person who is absent from the Cook Islands in the service in any capacity of the Government of the Cook Islands, nor the spouse of any such person if the spouse is also absent from the Cook Islands with that person, shall by reason of such absence be deemed to be an absentee within the meaning of this Part.

39. Income tax imposed - (1) Subject to the provisions of this Act, there shall be levied and paid for the use of the Crown for the year commencing on 1 January in each year, tax herein referred to as income tax.

(2) Subject to the provisions of this Act, income tax shall be payable by every person deriving income on all such income derived by that person during the year for which the tax is payable.

(3) The year in which income is so derived is in this Act referred to as the income year and the year for which income tax is payable is in this Act referred to as the year of assessment.

39A. Taxation of income from more than one source - (1) For the purposes of assessing income tax, every taxpayer who is an individual natural person resident in the Cook Islands (not merely acting as a trustee) who derives income from more than one source shall be assessed and liable for income tax in accordance with section 40.

40. Rates to be fixed - Income tax shall be assessed and levied on the taxable income of every taxpayer at the basic rates set out in Schedule 1.

41. *Repealed*

History: Section 41 repealed by Income Tax Amendment Act 2011 with application from 1 September 2011

Exempt Income

42. Incomes wholly exempt from taxation - (1) The following incomes shall be exempt from taxation: (a) the income, other than income received in trust, of a local authority or of a public authority;

(b) income derived from sinking funds in respect of any public debt or of the debt of any local authority;

(c) income derived by any person from any pension or allowance in respect of any war or in respect of any disability or disablement attributable to or aggravated by service in any naval, military, air or police forces granted by the Government of the Cook Islands or by any other Government;

(d) income derived by a person who is not resident (within the meaning of this Part of this Act) in the Cook Islands, from personal (including professional) services performed by that person within the Cook Islands during a visit to the Cook Islands if -

(i) that visit does not exceed a period of 30 days; and

(ii) in the country or territory in which that person is resident that income, being exempt from income tax in the Cook Islands, is chargeable with any tax which in the opinion of the Collector is substantially of the same nature as income tax under this Act and;

(iii) those services are performed for or on behalf of a person who is not resident (within the meaning of this Part) in the Cook Islands:

Provided that this paragraph shall not apply to the income derived in any income year by a person who is present within the Cook Islands for a period or periods exceeding in the aggregate 30 days during that year;

(e) income derived in the form of payments in the nature of alimony or maintenance made to a person by that person's spouse or former spouse out of income belonging to that spouse or former spouse;

(f) income from a superannuation fund or approved annuity, and income derived by the trustees of a superannuation fund;

(g) income (not being income of the kind referred to in paragraph (h)) derived by trustees in trust for charitable purposes or derived by beneficiaries of such a trust or derived by any society or institution established exclusively for such purposes and not carried on for the private pecuniary profit of any individual;

History: Section 42(1)(g) amended by Income Tax Amendment 2015 with application from 22 June 2015

(h) income derived directly or indirectly from any business carried on by or on behalf of or for the benefit of trustees in trust for charitable purposes within the Cook Islands, or derived directly or indirectly from any business carried on by or on behalf of or for the benefit of any society or institution established exclusively for such purposes and not carried on for the private pecuniary profit of any individual:

Provided that if the aforesaid purposes are not limited to the Cook Islands the Collector may apportion the income between such persons within the Cook Islands and the like purposes out of the Cook Islands, and may allow to the trustees, society, or institution a partial exemption accordingly;

(ha) income derived by a person as a beneficiary of a Cook Islands trust;

History: Section 42(1)(ha) inserted by Income Tax Amendment 2015 with application from 22 June 2015

(i) income derived by any society or association, whether incorporated or not, which is, in the opinion of the Collector, established substantially or primarily for the purpose of promoting any amateur game or sport if that game or sport is conducted for the recreation or entertainment of the general public, and if no part of the income or other funds of the society or association is used or available to be used for the private pecuniary profit of any proprietor, member, or shareholder thereof;

(j) income derived by any society or association whether incorporated or not, which is in the opinion of the Collector, established substantially or primarily for the purpose of advertising, beautifying, or developing any island, village, or other district so as to attract trade, tourists, visitors, or population, or to create, increase, expand, or develop amenities for the general public, if no part of the income or other funds of the society or association is used or is or may become available to be used for any other purpose, not being a charitable purpose;

(k) income derived by any person from any maintenance or allowance provided for or paid to that person in respect of attendance at an educational institution in terms of a scholarship or bursary;

(l) income derived by any trustee in trust for any sick, accident, or death benefit fund, not being income derived directly or indirectly from any business carried on by or on behalf of or for the benefit of that trustee;

(m) income derived by any person from any compensation received by that person under the Cook Islands Workers Compensation Ordinance 1964, whether as a lump sums or by weekly payments;

(n) income of the South Pacific Commission regional or international organisations and the income so far as it is derived from the funds of those organisations of persons who are not ordinarily resident in the Cook Islands employed by those organisations;

(o) income of the United Nations or of any specialised agency of the United Nations and the income in so far as it is derived from the funds of the United Nations or any such agency of persons who are not ordinarily resident in the Cook Islands employed by the United Nations or any such agency;

(p) income derived by any person pursuant to the Welfare Act 1989, except income derived under section 40 of that Act (and commonly known as an old age pension);

History: Amended by Income Tax Amendment Act 2014 with application from 1 March 2014

(q) income presently exempted from income tax by any other Act or Ordinance to the extent of the exemption so provided;

(r) income derived directly from a foreign source of funds given or exceeded in the context of international foreign aid to any employer resident outside the Cook Islands (including any

government) by any person who is not ordinarily resident in the Cook Islands employed by any such employer pursuant to any agreement or agreements between the Cook Islands Government and the employer or donor in connection with any development project in the Cook Islands or the provision of specialised services to any public authority within the meaning of this Act; in which the case the Minister shall supply to the Collector a certificate in respect of each such agreement or agreements;

(s) income derived pursuant to a contract of employment between a foreign government a regional or international organisation, or an employee, and the Government under a supplementation or similar scheme or any public authority as defined in section 2;

(t) Income derived by consular and diplomatic personnel as may by regulation be exempted.

(u) New Zealand superannuation entitlements received by any person under the New Zealand Superannuation and Retirement Income Act 2001 (or any previous equivalent enactment) on or before 31 December 2012.

History: Section 42(1)(u) inserted by Income Tax Amendment 2014 (No 1) with application from 9 October 2014

(2) For the purposes of this section the expression "sick, accident, or death benefit fund" means any fund established for the benefit of the employees of any employer, or of the members of any incorporated society or for the benefit of the widows and dependents of any deceased employees of any employer, or of any deceased members of any incorporated society, and approved for the time being by the Collector.

43. *Repealed*

History: Section 43 repealed by Income Tax Amendment Act 2013 with application from 1 January 2014

44. Standard supplemental deduction for individuals (1) In calculating the assessable income for any income year of any person who is a natural person (not merely acting as a trustee), a deduction must be allowed, in addition to any other deduction allowed under this Act, as follows:

(a) for a person who is resident in the Cook Islands, a deduction of ϕ

(i) the person's taxable income for that year; or

(ii) \$11,000 of the person's taxable income if the person's taxable income for that year is more than \$11,000:

(b) for a person who is not a resident in the Cook Islands, a deduction of the amount calculated as follows:

$$a \times \frac{b}{365}$$

where ϕ

a is the person's taxable income for that year, or \$11,000 of the person's taxable income if the person's taxable income for that year is more than \$11,000

b is the number of days the person is present in the Cook Islands during that year

(c) for a person who permanently leaves or permanently arrives in the Cook Islands, a deduction of the amount calculated in accordance with the formula set out in paragraph (b)

(2) In this section, taxable income, in relation to a person, does not include:

(a) a dividend received by the person from any company where the company has elected to deduct the dividend under section 59(k);

(b) *Repealed*

History: Section 44(2) (b) repealed by Income Tax Amendment Act 2015 with application from 22 June 2015

45. 100% depreciation rate for property - (1) Notwithstanding the actual useful life of the asset, in calculating the deduction which the Collector allows under the first proviso to section 60(1) on account of depreciation of an asset used in the production of income, the annual rate of depreciation will be one hundred per cent (100%) if the asset is acquired by the taxpayer on or after 1 April 1997 and has not been used or held for use in the Cook Islands, other than as trading stock, by any person before the date upon which the taxpayer acquired it.

(2) Subsection (1) will not apply in respect of assets - (a)

listed in the Fifth Schedule; or

(b) used or held for use by the taxpayer as part of a business if, in respect of the income derived by the taxpayer from the business in the year in which the asset is acquired, the taxpayer is entitled to an income tax concession under -

(i) *Repealed*

History: Section 45(2) (b) (i) repealed by Income Tax Amendment Act 2013 with application from 1 January 2014

(ii) Part VII of the Development Investment Board Act 1996; or

(c) acquired after 31 December 2005 and principally used or based in the island of Rarotonga; or

(d) acquired after 31 December 2010.

History: Amended by Income Tax Amendment Act 2003 with application from 12 December 2002.
Section 45(2) amended by Income Tax Act 2005 with application from 1 January 2006

Assessable Income

46. Items included in assessable income - (1) Without in any way limiting the meaning of the term, the assessable income of any person shall include, unless otherwise provided in this Act -

(a) all profits or gains derived from any business (including any increase in the value of stock in hand at the time of the transfer or sale of the business, or on the reconstruction of a company);

(b) all salaries, wages, or allowances (whether in cash or otherwise), and all sums received or receivable by way of bonus, gratuity, extra salary, or emolument of any kind in respect of or in relation to the employment or service of the taxpayer;

(c) all profits or gains derived from the sale or other disposition of any real or personal

property or any interest therein, if the business of the taxpayer comprises dealing in such property, or if the property was acquired for the purpose of selling or otherwise disposing of it, and all profits or gains derived from the carrying on or carrying out of any undertaking or scheme entered into or devised for the purpose of making a profit;

(d) all rents, fines, premiums, or other revenues (including payments for or in respect of the goodwill of any business, or the benefit of any statutory licence or privilege) derived by the owner of land from any lease, licence, or easement affecting the land or from the grant of any right of taking the profits thereof;

(e) all royalties or other like payments dependent upon production from or the use of any real or personal property, whether or not they are instalments of the purchase price of any property, including income derived from renting, otherwise issuing, or exhibiting or causing to be exhibited films or trailers of films;

History: Section 46(1)(e) amended by Income Tax Amendment Act 2011 with application from 1 January 2014

(f) all payments for the supply, in connection with the carrying on of a business, of scientific, technical, industrial or commercial knowledge, information, assistance, or services;

(g) all dividends and annuities, other than an approved annuity;

(h) income derived from any other source whatsoever.

(2) For the purposes of paragraph (b) of subsection (1) -

(a) Where any bonus, gratuity, or retiring allowance (not being money paid to any director of a company pursuant to its articles of association) is paid in a lump sum in respect of the employment or service of the taxpayer on the occasion of the taxpayer's retirement from such employment or service only 5 percent of that lump sum shall be deemed to be income;

(b) without limiting the meaning of the term "allowances" as used in that paragraph the said term shall be deemed to include (in the case of a taxpayer who in any income year has been provided in respect of any office or position held by the taxpayer with board or lodging, or the use of house or quarters, or has been paid an allowance in lieu of being so provided with board or lodging or with the use of a house or quarters) the value of such benefits, such value to be determined in case of dispute by the Collector;

(c) the Collector may from time to time determine whether and to what extent any allowance in respect of or in relation to the employment or service of any person constitutes a reimbursement of expenditure exclusively incurred by that person in the production of assessable income, and the allowance, to the extent so determined, shall be exempt from income tax.

(3) For the purposes of paragraph (g) of subsection (1) where any securities have been acquired by purchase or otherwise during the income year, the Collector may apportion between the transferor and the transferee any interest due or accruing due at the date of the transfer and not then paid.

47. Income derived from use or occupation of land - (1) The assessable income of any person shall, for the purposes of this Act, be deemed to include -

(a) all profits or gains derived from the use or occupation of any land; and

(b) all profits or gains derived in any income year from the extraction, removal, or sale of

any minerals or timber, whether by the owner of the land from which they are obtained or by any other person, reduced by an amount equal to the cost of those minerals or that timber:

Provided that in any case where profits or gains from any minerals or timber are derived in two or more income years and an estimated proportion of the total cost thereof is claimed as a deduction in respect of each of those years the total amount of those deductions in respect of all those years shall not exceed the total cost of the minerals or timber.

(2) For the purposes of paragraph (b) of subsection (1) "timber" shall be deemed to include standing timber and "sale" shall be deemed to include any disposition by way of a licence or easement, or the grant of any right of taking any profits or produce from land.

48. Income credited in account or otherwise dealt with - For the purposes of this Act every person shall be deemed to have derived income although it has not been actually paid to or received by that person, or has already become due or receivable, but has been credited in account or reinvested, or accumulated or capitalised or carried to any reserve, sinking or insurance fund or otherwise dealt with in the interest or on the behalf of that person.

49. Amounts remitted to be taken into account in computing income - (1) Where the amount of any expenditure or loss incurred by a taxpayer has been taken into account in calculating that assessable income for any income year and subsequently the liability of the taxpayer in respect of that amount is remitted in whole or in part, the assessable income derived by the taxpayer during that year shall be deemed to be increased by the amount so remitted and the taxpayer shall be assessable and liable for income tax accordingly.

(2) Where the amount of any expenditure or fees incurred by a taxpayer has been taken into account in calculating for the purposes of section 69 the amount of any loss incurred by the taxpayer in any income year and subsequently the liability of the taxpayer in respect of that amount has been remitted in whole or in part, the amount of the loss that may be carried forward under section 69 shall be deemed to be reduced by the amount so remitted.

(3) For the purposes of this section a liability in respect of any expenditure or loss shall be deemed to have been remitted to the extent to which the taxpayer has been discharged from that liability without fully adequate consideration in money or money's worth.

(4) For the purposes of giving effect to the provisions of this section the Collector may at any time alter any assessment notwithstanding anything to the contrary in section 23.

50. Apportionment of income received in anticipation - (1) When income is derived by any person in any year by way of fines premiums or payment for goodwill on the grant of a lease or in any other like manner by way of anticipation the Collector at the request of that person during the next succeeding year may apportion that income between the income year and any number of subsequent years not exceeding five, and the part so apportioned to each of those years shall be deemed to have been derived in that year and shall be assessable for income tax accordingly.

(2) Any such apportionment may be at any time cancelled by the Collector and thereupon the income so apportioned or the part thereof on which income tax has not yet been paid shall become assessable for income tax as if derived during the year preceding that in which the apportionment was so cancelled.

51. Valuation of trading stock including livestock - (1) For the purposes of this section "trading stock" includes anything produced or manufactured and anything acquired or purchased for purposes of manufacture, sale or exchange, and also includes livestock but does not include land.

(2) Where any taxpayer owns or carries on any business, the value of that taxpayer's trading stock at the beginning and at the end of every income year shall be taken into account in ascertaining whether or not the taxpayer has derived assessable income during that year.

(3) The value of the trading stock of any taxpayer to be taken into account at the beginning of any income year shall be its value as at the end of the last preceding income year:

Provided that where the taxpayer's business is commenced and the trading stock is acquired during the income year the value of the trading stock as at the beginning of the income year shall be deemed to be an amount equal to its cost price.

(4) The value of the trading stock of any taxpayer to be taken into account at the end of any income year shall be at the option of the taxpayer its cost price, its market selling value, or the price at which it can be replaced.

(5) Where the value of the trading stock of any taxpayer at the end of any income year exceeds the value of the taxpayer's trading stock at the beginning of that year, the amount of the excess shall be included in the taxpayer's assessable income for that year.

(6) Where the value of the trading stock of any taxpayer at the beginning of any income year exceeds the value of the taxpayer's trading stock at the end of that year the amount of the excess shall be allowed as a deduction in calculating the assessable income of the taxpayer for that year.

(7) Where in any income year the whole or any part of the assets of a business owned or carried on by any taxpayer is sold or otherwise disposed of (whether by way of exchange or gift or distribution in terms of will or on an intestacy or otherwise howsoever and whether or not in the ordinary course of the business of the taxpayer or for the purpose of putting an end to that business or any part thereof) and the assets sold or otherwise disposed of consist of or include any trading stock, the consideration received or receivable for the trading stock, or as the case may be the price which under this Act the trading stock is deemed to have realised, shall be taken into account in calculating the taxpayer's assessable income for that year and for the purpose of calculating the taxpayer's assessable income for that year or for any subsequent income year the person acquiring the trading stock shall be deemed to have purchased it at the amount of that consideration or price.

The foregoing provisions of this subsection shall with the necessary modifications, apply in any case where a share or interest in any trading stock is sold or otherwise disposed of by any taxpayer.

(8) Subject to the provisions of sections 52 and 53 the price specified in any contract of sale or arrangement as the price at which any trading stock is sold or otherwise disposed of as aforesaid shall be deemed for the purposes of this section to be the consideration received or receivable for the trading stock.

52. Income derived from disposal of trading stock - (1) Where any trading stock is sold together with other assets of a business the part of the consideration attributable to the trading stock shall be determined by the Collector and the part of the consideration so determined shall be deemed to be the price paid for the trading stock by the purchaser.

(2) For the purposes of this section any trading stock which has been disposed of otherwise than by sale shall be deemed to have been sold and any trading stock so disposed of and any trading stock which has been sold for a consideration other than cash shall be deemed to have realised the market price thereof at the date of the disposition or sale but where there is no market price trading stock shall be deemed to have realised such price as the Collector determines.

(3) The foregoing provisions of this section shall with the necessary modifications apply in any case where a share or interest in any trading stock is sold or otherwise disposed of together with other assets of a business or with a share or interest in other assets of a business.

(4) For the purposes of this section "trading stock" includes anything produced or manufactured and anything acquired or purchased for purposes of manufacture sale or exchange and also includes any other real or personal property sold or disposed of by the taxpayer where the business of the taxpayer comprises dealing in such property or the taxpayer acquired the property for the purpose of sale or other disposal, and also includes livestock.

53. Sale of trading stock for inadequate consideration - (1) Where any trading stock is sold or otherwise disposed of without consideration in money or money's worth or for a consideration that is less than the market price or the true value thereof at the date of the sale or other disposition, the following provisions shall apply:

(a) the trading stock shall be deemed to have been sold at and to have realised the market price thereof at the date of the sale or other disposition but where there is no market price shall be deemed to have been sold at and to have realised such price as the Collector determines;

(b) the price which under this section the trading stock is deemed to have realised shall be taken into account in calculating the assessable income of the person selling or otherwise disposing of the trading stock;

(c) the person acquiring the trading stock shall for the purpose of calculating that person's assessable income be deemed to have purchased the trading stock at the price which under this section the trading stock is deemed to have realised.

(2) The foregoing provisions of this section shall with the necessary modifications apply in any case where a share or interest in any trading stock is sold or otherwise disposed of without consideration in money or money's worth or for a consideration that is less than the true value of the share or interest at the date of the sale or other disposition.

(3) For the purposes of this section "trading stock" includes anything produced or manufactured, and anything acquired or purchased for purposes of manufacture sale or exchange and also includes livestock and any other real or personal property where the business of the person by whom it is sold or disposed of comprises dealing in such property or the property was acquired by that person for the purpose of sale or other disposal.

54. Sum received from sale of patent rights - (1) Where any taxpayer sells any patent rights, any sum received by that person or owing to that person in respect of the sale, after deducting the appropriate amount specified in subsection (2) (so far as that amount has not been otherwise allowed as a deduction from the taxpayer's assessable income for that or any other income year), shall be deemed to be assessable income and shall be deemed to be derived by the taxpayer during the income year in which the sum is received by or becomes owing to the taxpayer.

(2) The total amount that may be deducted from any such sum shall be -

(a) where the taxpayer actually devised the invention to which the patent relates, the amount of the expenditure incurred by the taxpayer in connection with the devising of the invention or (where the sale does not include the whole of the patent rights in respect of the invention) such proportion of that expenditure as the Collector thinks just;

(b) where the taxpayer acquired the patent rights, an amount bearing the same proportion to the total cost of the patent rights to the taxpayer as the unexpired term of the patent rights at

the date of the sale bears to the unexpired term thereof at the date of their acquisition by the taxpayer.

(3) For the purpose of this section the sum received by or owing to any taxpayer in respect of the sale of any patent rights shall be deemed to include the value of any consideration (otherwise than in cash) received or owing in respect of the sale and the value of that consideration shall be determined in case of dispute by the Collector.

(4) The foregoing provisions of this section shall, so far as they are applicable and with the necessary modifications, apply in any case where the sale is in respect of a share or interest in any patent rights.

55. Payment of excessive remuneration or share of profits to relatives - (1) Where -

(a) any taxpayer carries on any business or undertaking and employs or engages any relative of a director or shareholder of the company to perform services in connection with that business or undertaking; or

(b) any taxpayer carries on business in partnership with any person whether or not any other person is a member of the partnership; and

(i) any relative of the taxpayer is employed or engaged by the partnership to perform services in connection with the business; or

(ii) (where one of the partners is a company) any relative of a director or shareholder of that company is employed or engaged by the partnership to perform services in connection with the business; or

(c) any taxpayer carries on business in partnership with any relative or with any company a director or shareholder of which is a relative of the taxpayer or, being a company, carries on business in partnership with any relative of a director or shareholder of the company whether or not any other person is a member of the partnership, and the Collector is of the opinion that the remuneration salary share of profits or other income payable to or for the benefit of that relative or company under the contract of employment or engagement or the terms of the partnership exceeds such an amount as is reasonable having regard to the nature and extent of the services rendered, the value of the contributions made by the respective partners by way of services or capital or otherwise and any other relevant matters, the Collector may allocate the total profits or income of the business or undertaking before deduction of any amount payable to that relative or company between the parties to the contract or the partners or any of them in such shares and proportions as the Collector considers reasonable and the amounts so allocated shall be deemed to be income derived by the persons to whom those amounts are so allocated and by no other person.

(2) Where any sum paid or credited by a company being or purporting to be remuneration for services rendered by any person who is a relative of a director or shareholder of the company is allocated to that company in accordance with subsection (1) the amount so allocated to the company shall be deemed to be a dividend paid by the company to that person and received by that person as a shareholder of the company.

(3) For the purposes of this section the term "relative" means a husband or wife or a relative by blood within the fourth degree of relationship (whether legitimate or illegitimate) or a relative by marriage or adoption and includes a trustee for a relative.

(4) This section shall apply whether the contract of service or employment or the partnership was entered into before or after the coming into force of this Act.

(5) This section shall not apply to a bona fide contract of employment or to a bona fide contract of partnership. For the purposes of this section a contract of employment or a contract of partnership shall be deemed to be bona fide if it complies with the following conditions -

- (a) the contract is in writing or by deed signed by all the parties thereto; and
- (b) no partner and no person employed or engaged under the contract was under the age of 21 years at the date on which the contract was signed; and
- (c) the contract is binding on the parties thereto for a term of not less than 3 years and is not capable of being terminated by any party thereto before the expiry of that term; and
- (d) each party to the contract has a real and effective control of the remuneration, salary, share of profits, or other income to which that party is entitled under the contract.

56. Agreements purporting to alter incidence of taxation to be void - Every contract, agreement, or arrangement made or entered into, whether before or after the coming into force of this Act, shall be absolutely void in so far as, directly or indirectly, it has or purports to have the purpose or effect, or one of its purposes or effects, of in any way altering the incidence of income tax, or relieving any person from liability to pay income tax.

History: Amended by Income Tax Amendment Act 2004 with application from 1 January 2004

56A. Transfer Pricing (1) Subject to subsection (2), the Collector may, in respect of any transaction that is not an arm's length transaction, distribute, apportion, or allocate income, gain, deductions, or tax credits between the parties to the transaction as is necessary to reflect the tax position that would have been realized in an arm's length transaction.

(2) If a party to a transaction to which subsection (1) applies is located in, and subject to tax in, the Cook Islands, and another party to the transaction is located outside the Cook Islands, any distribution, apportionment, or allocation of income, gain, deductions, or tax credits must be made in accordance with regulations made under this Act.

(3) The allocation of income and deductions to a permanent establishment in the Cook Islands of a non-resident person or a permanent establishment outside the Cook Islands of a resident person must be made in accordance with regulations made under this Act.

History: Inserted by Income Tax Amendment Act 2013 with application from 1 January 2014

Deductions in calculating Assessable Income

57. No deductions unless expressly provided (1) Except as expressly provided in this Act no deduction shall be made in respect of any expenditure or loss of any kind for the purpose of calculating the assessable income of any taxpayer.

(2) Subsection (3) applies if a taxpayer is required to deduct tax from a payment under Part VII or IX (the payment) and the taxpayer is allowed a deduction under this Act from the total income derived by the taxpayer for making the payment.

(3) The deduction by the taxpayer must not be made, and is not allowable as a deduction, until the payment has been paid to the Collector.

History: Subsections 57(2) and (3) inserted by Income Tax Amendment Act 2013 with application from 1 January 2014

58. Expenditure or loss incurred in the production of assessable income - In calculating the assessable income of any taxpayer, any expenditure or loss may, except as otherwise provided in this Act, be deducted from the total income derived by the taxpayer in the income year in which the expenditure or loss is incurred, to the extent the expenditure or loss is -

(a) incurred in gaining or producing the assessable income for any income year; or

(b) necessarily incurred in carrying on a business for the purpose of gaining or producing the assessable income for any income year.

59. Certain deductions not permitted - Notwithstanding anything to the contrary in section 58, in calculating the assessable income derived by any person no deduction, except as expressly provided in this Act, shall be made in respect of any of the following sums or matters -

(a) investment, expenditure, loss or withdrawal of capital; money used or intended to be used as capital; money used in the improvement of premises occupied; or interest which might have been made on any such capital or money if laid out at interest:

Provided that nothing in this paragraph will prevent any deduction for dividends;

(b) bad debts except debts which are proved to the satisfaction of the Collector to be in fact bad and to have been actually written off as bad debts by the taxpayer in the income year:

Provided that all amounts at any time received on account of any such bad debts shall be credited as income in the year in which they are received, and shall be subject to tax accordingly;

Provided further that, if, in the opinion of the Collector, the amount of debts written off as bad in any income year is excessive the Collector may, notwithstanding anything in section 23, reopen any assessment made in respect of any previous year being a year in which the Collector considers that the debts had in fact become bad;

(c) any expenditure or loss recoverable under any insurance or right of indemnity;

(d) payments of any kind made by a husband to his wife or by a wife to her husband;

Provided that with the consent of the Collector granted before the deduction is claimed by the taxpayer and subject to section 55 a deduction may be made in respect of a payment by payment is for services rendered (not being domestic services or services performed at or in connection with the home or services performed at the home in connection with any business carried on wholly or partly at the home) or is otherwise a bona fide payment and that the payment was exclusively incurred in the production of be assessable income of the husband or wife as the case may be for the income year;

(e) rent of any dwelling house or domestic offices, save that, so far as any such dwelling house or offices are used in the production of the assessable income, the Collector may allow a deduction of such proportion of the rent as the Collector may think just and reasonable;

(f) income tax, additional tax, penal tax and tax imposed in any country outside the Cook Islands being a tax which in the opinion of the Collector, is substantially of the same nature as income tax imposed under this Act, and any additional tax for late payment of tax, any interest, any penalty and any additional tax imposed under the penal provisions of the laws of that country or territory;

(g) interest and dividends, except in so far as the Collector is satisfied that they are payable on capital employed in the production of the assessable income;

(h) any expenditure or loss incurred by any taxpayer in gaining or producing assessable income which consists of income from employment;

(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.

(i) any expenditure or loss to the extent to which it is of a private or domestic nature;

(j) any expenditure or loss to the extent to which it is incurred in gaining or producing income which is exempt from income tax.

(k) dividends except to the extent that -

(i) the company elects to deduct the dividends; and

(ii) the dividends included in the assessable income of a person in the same income year under section 46(1) (g) of this Act; and

(iii) the company that pays the dividends notifies the recipient that the dividends are included in the assessable income of any person under this Act and that the dividends are excluded from the definition of income for the purposes of section 44; and

(iv) the recipient of the dividend is not exempt from tax in respect of the dividend.

History: Section 59(ha) inserted by Income Tax Amendment Act 2002 with application from 12 December 2002. Section 59(k) amended and 59(k)(iv) inserted by Income Tax Amendment Act 2001 with application from 1 January 1999. Section 59(k) (ii) amended by Income Tax Amendment Act 2004 with application from 1 January 2004. Note: Section 59(ha) does not apply to the calculation of assessable income derived in any income year ending on or before 30 June 2003.

60. Deductions for repair, maintenance and depreciation- (1) Notwithstanding anything to the contrary in section 58, in calculating the assessable income derived by any person from any source no deduction shall, except as expressly provided in this Act, be made in respect of any of the following sums or matters: namely, the repair of premises, or the repair of plant, machinery, or equipment used in the production of income beyond the amount usually expended in any year for those purposes:

Provided that in cases where depreciation of any asset, whether caused by fair wear and tear or by the fact of such asset becoming obsolete or useless, cannot be made good by repair, the Collector may allow such deduction as the Collector thinks just; and

Provided further that where the Collector is satisfied that any repairs of any such asset do not increase the capital value of the asset, or that the repairs increase that value by an amount less than the cost of the repairs or alterations, the Collector may allow such deduction as the Collector thinks just.

(2) Without limiting the discretion of the Collector under subsection (1), the Collector may refuse in whole or in part to allow any deduction under that subsection in any case where the Collector is not satisfied that complete and satisfactory accounts have been kept by or on behalf of the taxpayer.

(3) Where the Collector has, for any year of assessment (whether before or after the commencement of this Act), allowed a deduction in respect of the depreciation of any asset and the

taxpayer at any time afterwards sells or otherwise disposes of that asset at a price or for a consideration in excess of the amount to which the value of the asset has been reduced by that allowance, the Collector may make a revised assessment for that or any subsequent year without allowing such deduction or without allowing such portion thereof as the Collector thinks fit, and may recover the additional amount of income tax accordingly.

(4) For the purpose of giving effect to subsection (3), the Collector may at any time alter any assessments, notwithstanding anything to the contrary in section 23.

(5) For the purposes of subsection (3) -

(a) where any asset has been sold together with other assets of a business, the part of the consideration attributable to that asset shall be determined by the Collector, and the part of the consideration so determined shall be deemed to be the price at which that asset was sold by the vendor and purchased by the purchaser;

(b) where any property is sold, distributed, or otherwise disposed of without consideration or for a consideration which, in the opinion of the Collector, is less than the market price or the true value of the property at the date of the sale, distribution, or other disposition, that property shall be deemed to have been sold at and to have realised that market price or, if there is no market price, shall be deemed to have been sold at and to have realised such price as the Collector determines.

61. Deductions in respect of buildings on native leaseholds-(1) The Collector, in calculating the assessable income derived by any taxpayer during any income year, may allow such deduction as the Collector thinks fit in respect of any sum expended by the taxpayer -

(a) in acquiring or erecting any building on any native freehold land which the taxpayer holds on lease; or

(b) in purchasing the unexpired period of any lease of native freehold land.

(2) In ascertaining the amount that may be deducted under this section in respect of any income year, the amount expended by the taxpayer in respect of the acquisition or erection of the building or in respect of the purchase of the lease shall be apportioned by the Collector over the unexpired period of the lease (including any period in respect of which a right of renewal exists) calculated from the date of the acquisition or erection or purchase as the case may be (whether that date falls before or after the coming into force of this Act), and the amount deducted in respect of any income year shall not in any case exceed the amount apportioned to that year:

Provided however that in ascertaining the amount to be deducted the Collector shall take into account the amount by which the value of any building has already been reduced by the allowance of depreciation under the provisions of any previous legislation relating to the payment of income tax: and

Provided further that where the unexpired portion of a lease is sold to any company over which the vendor has control, as defined in section 3, or to any partnership over which the vendor has control, the amount of the annual deductions shall be limited to the amount to which the vendor would have been entitled had the sale not taken place.

(3) Where the Collector has for any year of assessment allowed a deduction under the provisions of this section and the taxpayer at any time afterwards sells the unexpired period of the lease, the Collector may make a revised assessment in respect of that year of assessment without allowing that deduction or without allowing such portion thereof as the Collector thinks fit, and may recover the additional amount of income tax accordingly.

(4) For the purpose of giving effect to subsection (3) the Collector may at any time alter any assessment notwithstanding anything in section 23.

(5) Where the unexpired period of the lease has been sold together with other assets of a business the consideration attributable to the sale of the lease and of any buildings erected on the demised land shall be determined by the Collector and the part of the consideration so determined shall be deemed to be the price at which the lease and buildings were sold by the vendor and purchased by the purchaser.

(6) A taxpayer to whom this section applies may elect whether to claim a deduction hereunder or to claim a deduction for depreciation under section 60, but any deduction made under this section shall be in substitution for any deduction for depreciation which may be allowable under section 60.

62. Expenditure incurred in borrowing money or obtaining lease - The Collector may, in calculating the assessable income of any taxpayer, allow such deduction as the Collector thinks fit in respect of expenditure incurred by the taxpayer during the income year for the preparation, stamping, and registration of any lease of property used in the production of the taxpayer's assessable income or of any renewal of such lease, or in the borrowing of money employed by the taxpayer as capital in the production of assessable income.

63. Deduction in respect of premium on account of leased machinery - (1) The Collector may, in the calculation of the assessable income of any taxpayer, allow such deduction as the Collector thinks fit in respect of any premium or fine, or any consideration in the nature of a premium or fine paid by the taxpayer in respect of the lease of any machinery used by the taxpayer in the production of income, or in respect of the renewal of any such lease, or in respect of the assignment or transfer of any such lease.

(2) In ascertaining the amount that may be deducted in any year under this section the total amount paid by the taxpayer as aforesaid shall be apportioned by the Collector over the period of the lease unexpired at the date of payment, and the amount deducted for any year shall not in any case exceed the amount apportioned to that year.

64. Deduction for sums expended on purchase of patent rights - (1) The Collector, in calculating the assessable income derived by any taxpayer during any income year, may allow such deduction as the Collector thinks fit in respect of any sum expended by the taxpayer on the purchase of any patent rights used by the taxpayer in the production of assessable income for that income year.

(2) In ascertaining the amount that may be deducted under this section in respect of any income year the total amount payable by the taxpayer in respect of the purchase of any patent rights shall be apportioned by the Collector over the term of the patent rights unexpired at the date of the purchase, and the amount deducted in respect of any income year shall not in any case exceed the amount apportioned to that year.

(3) Where, at any time before the expiry of any patent rights purchased by a taxpayer, the patent rights have come to an end without being subsequently revived or have been sold by the taxpayer, an amount bearing the same proportion to the total sum expended by the taxpayer on the purchase of the patent rights as the unexpired term of the patent; rights at the date of their so coming to an end or being sold bears to the unexpired term at the date of their purchase by the taxpayer (so far as that amount has not been otherwise allowed as a deduction from the taxpayer's assessable income for that or any other income year) shall be allowed as a deduction from the assessable income derived by the taxpayer during the income year in which the patent rights have so come to an end or been sold.

(4) All references in this section to "the taxpayer", in relation to any taxpayer who has died after expending any sum on the purchase of any patent rights, shall be deemed to be references to that

taxpayer's personal representatives and to the trustees of the taxpayer's estate and (so far as the Collector thinks just and equitable) to the beneficiaries of the taxpayer's estate.

65. Deduction for patent expenses - (1) In calculating the assessable income derived by any taxpayer during any income year, the Collector may allow a deduction in respect of any expenditure incurred by the taxpayer during that year in connection with the grant, maintenance, or extension of a patent used by the taxpayer in the production of assessable income for that year.

(2) Where a patent has been granted in respect of any invention, the Collector, in calculating the assessable income derived during any income year by any taxpayer who has used the patent in the production of assessable income for that year and who, whether alone or in conjunction with any other person, actually devised the invention, may allow such deduction as the Collector thinks fit in respect of any expenditure incurred by the taxpayer in connection with the devising of the invention (not being expenditure in respect of which, or of assets representing which, a deduction is otherwise allowable).

66. Deduction for scientific research - In calculating the assessable income derived by any taxpayer during any income year, the Collector may allow a deduction in respect of any expenditure incurred by the taxpayer during that year in connection with scientific research directly relating to the trade or business carried on by the taxpayer, except so far as the expenditure relates to an asset in respect of which a deduction for depreciation is allowable under this Act.

67. Deduction of testamentary annuities charged on property - (1) Notwithstanding anything to the contrary in this Act, where property has been devised or bequeathed by will subject to the payment of an annuity or has been made subject to the payment of an annuity by order of the High Court or by a deed of family arrangement and that property or any property substituted therefore has been transferred to a beneficiary and is charged with payment of the annuity or any part thereof, any amount paid in any income year on account of that annuity by the owner of that property or substituted property shall be allowed as a deduction in calculating the income derived by the owner from that property or substituted property in that income year, so far as that income extends:

Provided that no deduction shall be allowed under this section where the owner for the time being of the property or substituted property (not being a beneficiary) is a person who has acquired the same by purchase subject to the condition that the person assumes the liability for the whole or any part of the annuity charged thereon; and

Provided also that, to the extent that an annuity payable by the owner of the property or substituted property under a deed of family arrangement represents, in the opinion of the Collector, consideration for the purchase of the property or substituted property by the owner, the annuity shall not be allowed as a deduction under this section.

(2) In this section the term "beneficiary" in relation to any property, means a person to whom that property has been devised or bequeathed by will, or a person who is entitled pursuant to a provision in a will to purchase, subject to payment of an annuity, that property, being property that forms part of the estate of the testator; and includes a person who is entitled to the property pursuant to an order of the High Court or pursuant to a deed of family arrangement.

68. Contributions to employees' superannuation fund - (1) In calculating the taxable income of any employer the Collector may allow a deduction of any amount set aside or paid by the employer as or to a fund to provide individual personal benefits, pensions, or retiring allowances to employees of that employer:

Provided that a deduction shall not be allowed under this section unless the Collector is satisfied that the fund has been established or the payment made in such a manner that

the rights of the employees to receive the benefits, pensions or retiring allowances have been fully secured.

(2) The Collector shall have an absolute discretion as to whether or not a deduction should be allowed under this section of the whole or any part of any amount set aside or paid as aforesaid and there shall be no right of objection to any determination of the Collector under this section.

69. Losses incurred may be set off against future profits - (1) For the purposes of this section any loss incurred by a taxpayer shall be ascertained in accordance with the provisions of this Act for the calculation of assessable income.

(2) Any taxpayer who satisfies the Collector that the taxpayer has, in any income year, whether before or after the coming into force of this Act, incurred a loss shall, subject to this section, be entitled to claim that such loss be carried forward and, so far as may be, deducted from or set off against the taxpayer's assessable income for a subsequent year:

Provided that no claim to a deduction or set off will be allowed under this section in respect of any loss which has been deducted from or set off against the assessable income of the taxpayer under the provisions of any previous legislation relating to income tax; and

Provided also that any relief under this section shall be given so far as possible from the first succeeding assessment, and so far as it cannot then be given, shall be given from the next succeeding assessment, and so far as it cannot then be given, shall be given from the next succeeding assessment, and so on; and

Provided also that -

(a) where, if a profit had been made from the transaction in which the loss was incurred, the amount of the profit would not have been assessable income, no " relief shall be given under this section in respect of that loss; and

(b) where, if a profit had been made as aforesaid, and the amount of the profit would have been assessable income, the amount of the loss carried forward to any year shall be deducted from or set off against the taxpayer's assessable income for that year as far as that income extends.

(3) Notwithstanding anything in the foregoing provisions of this section, if in respect of any year of assessment any taxpayer, being a company, claims to carry forward any loss made by it in any former income year, the claim shall not be allowed unless the Collector is satisfied that the shareholders of the company on the balance date of the company for the year to which the loss claimed is to be carried forward were substantially the same as the shareholders of the company on the balance date of the company for the year in which the loss was incurred.

(4) For the purposes of subsection (3), the shareholders of a company at any date shall not be deemed to be substantially the same as the shareholders on any other date unless, on both such dates, not less than 40 percent of the paid-up capital of the company was held by or on behalf of the same persons, nor unless, on both such dates, not less than 40 per cent in nominal value of the allotted shares in such company were held by or on behalf of the same persons.

(5) For the purposes of subsection (4), shares in a company held by or on behalf of another company shall be deemed to be held by the shareholders of such last mentioned company and shares held by or on behalf of the trustee of the estate of a deceased shareholder, or by or on behalf of the persons entitled to those shares as beneficiaries under the will or intestacy of a deceased shareholder, shall be deemed to be held by that deceased shareholder.

70. Special exemption in respect of gifts of money to charitable organisations - (1) For the purpose of assessing income tax, every taxpayer shall, subject to this section, be entitled to a deduction of any gift or gifts of money made to a charitable organisation in the income year.

(2) Where a deduction is claimed pursuant to subsection (1) that claim shall be:

not less than \$200 and not greater than \$5,000;

(3) No exemption shall be allowed under this section unless the taxpayer furnishes to the Collector sufficient documentary evidence, such as receipts, evidencing the payment of donations.

(4) For the purposes of this section the term "gift" includes a subscription paid to a society, institution, association, organisation, trust, or fund only if the Collector is satisfied that the subscription does not confer any rights arising from membership in that or from any other society, institution, association, organisation, trust or fund.

(5) For the purpose of this section "charitable organisation" includes a society, institution, association, organisation or trust declared to be a charitable organisation pursuant to subsection (6) and which is not carried out for the private pecuniary profit of any individual and the funds of which are applied wholly or principally to any charitable purposes within the Cook Islands.

(6) The Minister may by public notice declare that a society, institution, association, organisation or trust is a charitable organisation for the purpose of this section and such notice shall take effect from the date specified in the notice.

History: Section 70(6) amended by Income Tax Amendment Act 2008 with application from 1 January 2009

71. Losses incurred in subsistence food production activities - (1) This section applies if and to the extent that -

(a) A natural person engages in one or more agricultural, horticultural, aquaculture or fishing activities (referred to in this section as "specified activities", including without limitation -

(i) All forms of animal husbandry, including poultry-keeping and bee keeping; and

(ii) Growing and managing trees or plants for the production of fruit, vegetables or other edible crops; and

(iii) Any form of cultivation or gathering of shellfish; and

(iv) Any form of fishing; and

(b) the natural person primarily engages in the specified activity or activities for the purposes of the production and gathering of food for consumption by the natural person, consumption by the natural person's dependents or barter transactions involving the acquisition of food or other goods for home consumption; and

(c) the natural person nevertheless derives some assessable income from the activities; and

(d) the natural person incurs expenditure or loss in carrying on the specified activities which is deductible in calculating the natural person's assessable income.

(2) In any case to which this section applies, the expenditure or loss incurred by the natural person

may be deducted, notwithstanding any other provision in this Act, only to the extent to which the natural person derives assessable income from any of the specified activities.

(3) To the extent to which the expenditure or loss cannot be deducted in the year in which it is incurred because insufficient assessable income is derived from the specified activities in that year, the expenditure or loss can be carried forward and treated for the purposes of this Act as if it were expenditure or loss incurred by the natural person in carrying on the specified activities in the immediately succeeding income year and, subject to this section, deducted accordingly.

71A. Thin Capitalisation ó (1) Subject to subsection (2), if a foreign-controlled resident company, other than a bank, has a debt-to-equity ratio in excess of 1.5 to 1 at any time during an income year, a deduction is disallowed for the interest paid by the company during that year on that part of the debt that exceeds the 1.5 to 1 ratio for the period when the ratio was exceeded.

(2) If the debt-to-equity ratio of a foreign-controlled resident company exceeds 1.5 to 1 for an income year, subsection (1) does not apply if, at all times, during the year, the amount of the debt of the company does not exceed the arm's length debt amount.

(3) In this section ó

“arm's length debt amount”, in relation to a foreign-controlled resident company, means the amount of debt that a bank that is not an associate of the company would be prepared to lend to the company having regard to all the circumstances of the company

“debt”, in relation to a foreign-controlled resident company, means the greatest amount, at any time during an income year, of the debt obligation of the company on which interest is payable as determined according to International Financial Reporting Standards

“debt obligation” means an obligation to make a repayment of money to another person, including an obligation arising under a promissory note, bill of exchange, or bond, but not including accounts payable or an obligation to make a repayment of money in respect of which no interest is payable

“equity”, in relation to a foreign-controlled resident company, means the greatest amount, at any time during an income year, of the equity of the company as determined according to International Financial Reporting Standards and includes an obligation to make a repayment of money in respect of which no interest is payable

“foreign-controlled resident company” means a resident company in which 50% or more of the shares in the company are held, directly or indirectly, by a non-resident company either alone or together with an associate or associates

“International Financial Reporting Standards” means the most recent International Financial Reporting Standards issued by the International Accounting Standards Board or any successor body taking over the role of issuing International Financial Reporting Standards.

(4) For the purposes of this section, two persons are associates of each other if-

- (a) one person acts or may act in accordance with the directions, requests, suggestions, or wishes of the other person; or
- (b) both persons act or may act in accordance with the directions, requests, suggestions, or wishes of a third person.

History: Section 71A inserted by Income Tax Amendment Act 2013 with application from 1 January 2014

Companies and Associations

72. Profits of mutual associations in respect of transactions with members - (1) Where an association enters into transactions with its members, or with its members and others, any profit or surplus arising from those transactions which would be included in the profits or gains of the association if the transactions were not of a mutual character shall be deemed to be profits or gains arising from those transactions and to be assessable income of the association except that, in calculating the assessable income of the association, the Collector shall allow as expenses any sums which -

(a) represent a discount rebate dividend or bonus granted or paid by the association to members or other persons in respect of amounts paid or payable by or to them on account of their transactions with the association, being transactions which are taken into account in calculating the assessable income; and

(b) are calculated by reference to the said amounts or to the magnitude of the said transactions and not by reference to any share or interest in the capital of the association.

(2) Where any discount, rebate, dividend or bonus is granted or paid to any person by an association, it shall form part of the assessable income of that person if the transaction from which it arises is of such a nature that any payment in respect thereof by that person to the association would be allowed as a deduction in calculating the assessable income of that person.

(3) For the purposes of this section, a discount, rebate, dividend, or bonus shall be deemed to have been granted or paid to a person when it has been credited in account or otherwise dealt with in the interest or on the behalf of that person.

(4) In this section "association" includes any body or association of persons, whether incorporated or not.

73. Assessment of banking companies - Every banking company shall be assessable and liable for income tax in the same manner as if it were a company other than a banking company.

74. Overseas insurance companies other than life insurance companies - (1) For the purposes of this Act the assessable income of an overseas insurance company shall include the amount of gross premiums derived by the company in respect of business (other than life assurance business) transacted in the Cook Islands.

(2) Income tax on the assessable income of an overseas insurance company determined in accordance with subsection (1) shall be assessed at the rate set out in Schedule 1.

History: Section 74(2) amended by Income Tax Amendment Act 2013 with application from 1 January 2014

(3) For the purposes of this section "overseas insurance company" means a company mainly carrying on the business of insurance or guarantee against loss, damage, or risk of any kind whatever, and whose main place of business is situated outside the Cook Islands.

(4) For the purposes of this section, two persons are associates of each other if ó

(a) one person acts or may act in accordance with the directions, requests, suggestions, or wishes of the other person; or

(b) both persons act or may act in accordance with the directions, requests, suggestions, or wishes of a third person.

75. Taxable income from ships and aircraft owned by non-residents 6 (1) For the purposes of this Part, 5% of the gross amount paid or payable to the owner of a ship for the carriage of merchandise, goods, livestock, mail, or passengers by the ship to outside of the Cook Islands is deemed to be taxable income derived by the owner from the Cook Islands, irrespective of whether-

- (a) the amount is payable in or outside the Cook Islands; or
- (b) the ship calls at 1 or more other ports in the Cook Islands before finally leaving.

(2) Subsection (1) 6

- (a) overrides any other provision of this Act and no other tax is assessable on the income earned from the carriage concerned; but
- (b) applies only if the owner of the ship is not a resident of the Cook Islands.

(3) For the purposes of this Part, the amount paid or payable to the owner of an aircraft who is not a resident of the Cook Islands for the carriage of merchandise, goods, livestock, mail, or passengers by the aircraft to outside of the Cook Islands must be included in the total income derived by the owner from the Cook Islands, irrespective of whether-

- (a) the amount is payable in or outside the Cook Islands; or
- (b) the aircraft calls at 1 or more other airports in the Cook Islands before finally leaving.

(4) Subsection (3) applies unless an Order in Council made under subsection (5) applies otherwise.

(5) The Queen's Representative may, by Order in Council, do either or both of the following:

- (a) exempt 1 or more persons specified in the order from the application of subsection (3), as from a date specified in the order;
- (b) vary the application of subsection (3) for 1 or more persons specified in the order by requiring only income from certain routes of carriage or types of carriage to be included in the total income of the persons, as from a date specified in the order.

(6) In this section, owner, in relation to a ship or aircraft, means the person to whom the ship or aircraft belongs or to whom the ship or aircraft is chartered.

History: Section 75 repealed and substituted with section 75 by Income Tax Assessment Act 2014 with application from 1 January 2014

76. Repealed

History: Section 76 repealed by Income Tax Amendment Act 2013 with application from 1 January 2014

Income derived by Trustees

77. Income derived by trusts - (1) Subject to the provisions of section 42(1) (h) every trust shall be liable for income tax on assessable income derived in each year in accordance with clause 4 of Schedule 1.

History: Section 77(1) amended by Income Tax Amendment Act 2013 with application from 1 January 2014

(2) Nothing in this section shall affect the liability of any trust to pay income tax at the rate then

applicable for any year prior to the coming into force of this Act.

78. Income received by trustee after death of deceased person - It is hereby declared that any amount received in any income year by the trustee of the estate of a deceased person shall be deemed to be assessable income derived by the trustee in that year if it does not represent assessable income derived by the deceased person during that person's lifetime, but would have been included in assessable income if the person had been alive when it was received.

79. Deduction from estate income of irrecoverable book debts of deceased taxpayer - Where the amount of any debt owing to a deceased taxpayer at the date of death has been included in the assessable income of the taxpayer or of the trustee of the taxpayer's estate for any income year, and the debt or any part of it is proved to the satisfaction of the Collector to be irrecoverable and to have been actually written off by the trustee as a bad debt, the amount so written off shall be deemed to be a loss incurred by the trustee in the income year in which the amount was written off, and shall be allowable as a deduction, first against any income derived by the trustee in that income year which is assessable to the trustee as income not derived by a beneficiary entitled in possession to the receipt thereof under the trust during that year, and then, as to any balance, against any income derived in that year by or in trust for a beneficiary who has a vested interest in the capital of the estate to the extent that the loss is chargeable against the capital of that beneficiary; and any balance not allowed as a deduction in that year shall, so far as it extends, be allowable as a deduction in the same manner successively in subsequent years.

Country of Derivation of Income

80. Liability for assessment of income derived from the Cook Islands and abroad - (1) Subject to the provisions of this Act, all income derived by any person who is resident in the Cook Islands at the time when the person derives that income shall be assessable for income tax, whether it is derived from the Cook Islands or from elsewhere.

(2) Subject to the provisions of this Act, all income derived from the Cook Islands shall be assessable for income tax, whether the person deriving that income is resident in the Cook Islands or elsewhere.

(3) Subject to the provisions of this Act, no income which is neither derived from the Cook Islands nor derived by a person then resident in the Cook Islands shall be assessable for income tax.

81. Taxation of salary or wages earned outside the Cook Islands - (1) Notwithstanding anything to the contrary in this Act, where a taxpayer earns income, being income from salary or wages, in a country or territory outside the Cook Islands, and that income has been subjected in the country or territory in which it was earned to a tax which in the opinion of the Collector, is substantially of the same nature as income tax under this Act, then the Collector may determine that that income is not assessable income, and will not be subjected to any further taxation under this Act in the Cook Islands.

(2) For the purposes of this section the term "salary or wages" shall be taken to mean income from an employment source only, being income which is derived from personal exertion.

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.

History: Section 82(1) repealed and substituted with section 82(1) by Income Tax Amendment Act 2013 with application from 1 January 2014

(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.

83. Classes of income deemed to be derived from the Cook Islands - (1) Subject to the provisions of section 84, the following classes of income shall be deemed to be derived from the Cook Islands -

- (a) income derived from any business carried on in the Cook Islands;
- (b) all salaries, wages allowances and emoluments of any kind earned in the Cook Islands in the service of any employer or principal, whether resident in the Cook Islands or elsewhere;
- (c) income derived by any person as the owner of land in the Cook Islands;
- (d) income derived by any person from money lent or used in the Cook Islands (whether on security or otherwise);
- (e) income derived from shares in or membership of a Cook Islands company, or from debentures issued by a Cook Islands company or by a local or public authority;
- (f) income derived from debentures or other securities issued by the Government of the Cook Islands, or from any contract made with the Government of the Cook Islands;
- (g) any pension or annuity payable by the Government of the Cook Islands, or out of any superannuation fund established in the Cook Islands;
- (h) income derived from the sale or other disposition of any property, corporeal or incorporeal, situated in the Cook Islands;
- (i) income derived by a beneficiary under any trust, so far as the income of the trust fund is derived from the Cook Islands;
- (ia) income derived by a trustee of a Cook Islands trust;

History: Inserted by Income Tax Amendment Act 2015 with application from 22 June 2015

- (j) income derived from contracts made or wholly or partly performed in the Cook Islands; (k) income derived from the carriage by sea or by air of merchandise, goods, livestock, mail, or passengers shipped or embarked in the Cook Islands;

(l) royalties and other like payments of any of the kinds referred to in section 46(1) (e) and payments of any of the kinds referred to in section 46(1) (f) being royalties or payments -

- (i) that are paid by a person who is resident in the Cook Islands and are not paid in

respect of a business carried on by the person outside the Cook Islands through a fixed establishment outside the Cook Islands; or

(ii) that are paid by a person who is not resident in the Cook Islands and are deductible by the person in calculating the person's assessable income for the purposes of taxation in the Cook Islands,

(la) an amount derived on disposal of a mineral extracted in the Cook Islands;

(lb) a natural resource amount if it relates to the taking of minerals or a living or non-living resource from the Cook Islands;

(lc) an amount-

(i) derived on disposal of immovable property, or an interest in immovable property, in the Cook Islands; or

(ii) derived on disposal of an interest in an entity, if the interest derives 20% or more of its value, directly or indirectly, from immovable property in the Cook Islands; or

(iii) an amount included in assessable income under section 143D (5) or (6), 143F (1), (2) (a), or (4), or 143G (3);

(m) income derived directly or indirectly from any other source in the Cook Islands.

(2) For the purposes of paragraph (d) of subsection (1) of this section "money lent" includes -

(a) money advanced, deposited, or otherwise let out, whether on current account or otherwise;

(b) any credit given (including the forbearance of any debt), whether on current account or otherwise.

History: Section 83(1) amended by inserting subsections (1a), (1b), and (1c) by Income Tax Assessment Act 2013 with application from 1 January 2014

84. Apportionment where income derived partly in the Cook Islands and partly elsewhere -

Whenever by reason of the manufacture, production, or purchase of goods in one country and their sale in another, or by reason of successive steps of production or manufacture, or of extraction and processing, in different countries, or by reason of the making of contracts in one country and their performance in another, or for any other reason whatever, the source of any income is not exclusively in the Cook Islands, that income shall be apportioned between its source in the Cook Islands and its source elsewhere, or attributed to one of such sources to the exclusion of the other, in such manner as the Collector thinks just and reasonable, having regard to the nature and relative importance of the sources of that income; and the income, so far as so apportioned or attributed to a source in the Cook Islands, shall be deemed to be derived from the Cook Islands and shall be assessable for income tax accordingly.

History: Section 84 amended by Income Tax Amendment Act 2013 with application from 1 January 2014

85. Credits in respect of income tax paid in a country or territory outside the Cook Islands - (1) For the purposes of this section the term "income tax" means -

(a) in respect of any country or territory outside the Cook Islands, any tax which, in the

opinion of the Collector, is substantially of the same nature as income tax imposed under this Part; but does not include -

(i) any additional tax for late payment of tax or any interest or any penalty or additional tax imposed under the penal provisions of the laws of that country or territory;

(ii) any amount in respect of tax which under the law of that country or territory a company paying a dividend has deducted, or was authorised to deduct, from the dividend and which the person deriving the dividend was not personally liable to pay;

(b) in respect of the Cook Islands, income tax imposed under this Part;

but does not include any additional tax for late payment of tax or any interest or any penalty or additional tax imposed under this Act.

(2) Subject to the provisions of this section, where a person who is resident in the Cook Islands derives income from a country or territory outside the Cook Islands, income tax paid in that country or territory in respect of that income shall be allowed as a credit against income tax payable in the Cook Islands in respect of that income.

(3) The provisions of Part VI, as far as they are applicable and with the necessary modifications, shall, for the purposes of subsection (2) of this section apply as if the provisions of that subsection were an agreement as defined in section 87 (1) made between the Government of the country or territory outside the Cook Islands and the Government of the Cook Islands.

86. Agreements for relief from double taxation and the exchange of information -(1) The Minister may from time to time enter into agreements with the Government of any country or territory outside the Cook Islands (contracting state) with a view of affording relief from:

(a) 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) for the exchange of information in relation to all taxes imposed by the laws of that country or territory; and such agreements shall, notwithstanding anything to the contrary in this Act or any other enactment, have effect in relation to income tax and all other taxes and every such agreement shall, subject to the provisions of this section, have effect according to its tenor.

(2) Without limiting the generality of the foregoing provisions it is hereby declared that any agreement to which effect is given under this section may contain provision, in relation to any of those taxes ó

(a) for relief from tax

(b) for charging the income from any sources in the Cook Islands to persons not resident in the Cook Islands;

(c) for determining the income to be attributed to persons not resident in the Cook Islands and their agencies, branches, or establishment in the Cook Islands;

(c) for determining the income to be attributed to persons resident in the Cook Islands who have special relationships with persons not so resident;

(d) for facilitating the exchange of tax information.

(3) Any such agreement may include provisions for the relief from tax for periods before the

commencement of this Act or before the making of the agreement, and provisions as to income which is not itself subject to double taxation.

(4) Any such agreement under this section may be at any time amended or revoked by a subsequent agreement; and any such amending or revoking agreement may contain such transitional provisions as appear to the Minister to be necessary or expedient.

(5) Where any such agreements are made under this section the obligation as to secrecy imposed by this Act shall not prevent the Collector from disclosing to any authorised officer of the contracting state such information as is required to be disclosed under the agreement.

(6) Subject to subsection (7), when an agreement made under this section provides that income derived from the Cook Islands is exempt or excluded from Cook Islands tax or the application of the agreement results in a reduction in the rate of Cook Islands tax, the benefit of that exemption, exclusion, or reduction is not available to any entity that, for the purposes of the agreement, is a resident of the contracting state when 50% or more of the underlying ownership of that entity is held by an individual or individuals who are not residents of the contracting state for the purposes of the agreement.

(7) Subsection (6) does not apply if the resident of the contracting state is a company listed on a stock exchange in that contracting state.

History: Section 86 amended by Income Tax Amendment Act 2011 with application from 1 September 2011.
Section 86 amended by Income Tax Amendment Act 2013 with application from 1 January 2014

PART VI

IMPLEMENTATION OF ARRANGEMENTS FOR RELIEF FROM DOUBLE TAXATION

87. Interpretation - (1) In this Part, unless the context otherwise requires:

"Agreement" means a convention or agreement made between the Government of a territory outside the Cook Islands and the Government of the Cook Islands, with a view to affording relief from double taxation in relation to foreign tax imposed by the laws of that territory and Cook Islands tax, being an arrangement made under section 86;

"determination" means a determination of the Collector made pursuant to section 88; and includes an amended determination;

"foreign tax" means tax, other than Cook Islands tax, that is the subject of an agreement;

"Cook Islands tax" means income tax imposed as such by this Act.

(2) For the purposes of this Act, a reference in an agreement to profits of an activity or business shall, in relation to Cook Islands tax, be read, where the context so permits, as a reference to taxable income derived from that activity or business.

Credits for Foreign Tax

88. Determination of claims for credits - (1) Where a taxpayer claims a credit for foreign tax in accordance with the provisions of an agreement, the Collector shall determine whether a credit is allowable and, if so, the amount of the credit.

(2) The Collector may from time to time and at any time amend a determination as the Collector thinks necessary in order to ensure the correctness thereof.

(3) A determination shall not form part of an assessment of Cook Islands tax.

89. Notice of determination to taxpayer - (1) As soon as conveniently may be after a determination is made, the Collector shall cause notice of the determination to be given to the taxpayer.

(2) The notice under this section may be included in a notice of assessment given to the taxpayer pursuant to section 27.

90. Except in proceedings on objection, determination deemed correct - Except in proceedings on objection thereto under Part IV, no determination shall be disputed in any Court or in any proceedings and, except as aforesaid, every such determination shall conclusively be deemed to be correct.

91. Evidence of determination - The production of any document signed by the Collector purporting to be a copy of or an extract from a notice of a determination shall in all Courts and in all proceedings be sufficient evidence of the original, and the production of the original shall not be necessary; and all Courts shall in all proceedings take judicial notice of the signature of the Collector either to the original or to any such copy or extract.

92. Objections to determinations - (1) Any taxpayer affected by a determination may object to the determination by delivering or posting to the Collector a written notice of objection stating shortly the grounds of the objection, within one month after the date on which notice of the determination is given to the taxpayer by or on behalf of the Collector:

Provided that where the determination is an amended determination the taxpayer shall have no further right of objection than the taxpayer would have had if the amendment had not been made, except to the extent to which, by reason of the amendment, the amount of the credit for foreign tax is reduced.

(2) No notice of objection given after the time prescribed by subsection (1) shall be of any force or effect unless the Collector accepts the objection and gives notice to the objector accordingly.

93. Application of Part IV to objections to determinations - Subject to the provisions of this Part, the provisions of Part IV, as far as they are applicable and with the necessary modifications, shall apply to every objection to a determination, as if -

(a) references in Part IV to an assessment were references to a determination, unless the context otherwise requires; and

(b) references in section 29 (3) to a reduction of an assessment and to the reduced assessment were references to the amendment of a determination and to the amended determination respectively; and

(c) references in section 33 to an increase or reduction of the amount of an assessment were references to an increase or reduction of the amount of the credit for foreign tax.

94. Information for credit to be furnished within four years - A credit for foreign tax shall not be allowed unless, within four years after the end of the income year in which the taxpayer derived the income against the Cook Islands tax on which the credit is claimed, or within such further period, not exceeding two years, as the Collector allows in any case or class of cases, the taxpayer claiming the credit -

(a) makes application in writing to the Collector for the credit; and

(b) furnishes to the Collector all information (including information in relation to any amount to which the taxpayer is entitled in respect of any relief or repayment of the foreign tax)

necessary for determining the amount of the credit.

95. Maximum credits - Where, under the provisions of an agreement, a credit for foreign tax is allowable in respect of any income, the amount of that credit shall not exceed the amount of Cook Islands tax payable in respect of that income.

96. Recovery of excess credit allowed through not taking into account refund of foreign tax - Where -

(a) a credit for foreign tax payable either directly or by deduction, being a tax which a taxpayer is personally liable to pay, has been allowed against Cook Islands tax payable by the taxpayer in respect of the same income; and

(b) that credit has not taken into account any refund or repayment of the foreign tax received by the taxpayer, whether before or after that credit was allowed; and

(c) the amount of that credit was in excess of the amount that would have been allowed if only the amount of the foreign tax not refunded or repaid to the taxpayer had been taken into account in calculating the credit,

the amount of that excess shall be deemed to be income tax due and payable to the Collector on the 30th day after the date of the notice of determination of the credit or the date of the receipt by the taxpayer of that refund or repayment, whichever date is the later, and the provisions of this Act shall apply accordingly.

Miscellaneous

97. Ascertainment of Cook Islands tax on income - Where for the purpose of the application of the provisions of an agreement or for any other purposes of this Act, it is 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, the amount of tax shall be ascertained in accordance with the following formula:

$$\frac{a}{b} \times c$$

where -

a is the income in respect of which it is necessary to ascertain the amount of Cook Islands tax; and

b is the amount of the assessable income that was taken into account in calculating item c; and

c is the amount of income tax payable by the taxpayer (before allowing any credit for foreign tax from that income tax) in respect of the income derived by the taxpayer in that income year.

PART VII

WITHHOLDING TAX ON DIVIDENDS, INTEREST, NATURAL RESOURCE AMOUNTS AND ROYALTIES

History: Heading amended by Income Tax Amendment Act 2013 with application from 1 January 2014

98. Interpretation - In this Part, unless the context otherwise requires, -

"paid", in relation to withholding income, includes distributed, credited or dealt with in the interest or on behalf of a person; and "pay" and "payment" have corresponding meanings;

"person" includes a company, a corporation sole, a body of persons whether incorporated or not, a local or public authority, the Crown in right of the Government of the Cook Islands, and every instrumentality or agency of the Government.

"received", in relation to withholding income, includes credited or dealt with in the interest or on behalf of a person; and "receive" and "receipt" have corresponding meanings;

"resident in the Cook Islands" means deemed to be resident in the Cook Islands within the meaning of Part V;

"royalties" means payment of any of the kinds referred to section 46 (1) (e) and (f).

Withholding income-

(a) means interest, dividends, natural resource amounts, or royalties that are derived from the Cook Islands and paid to a person who is not resident in the Cook Islands; and

(b) includes interest payments paid by a banking company to a person who is resident in the Cook Islands and has not provided the banking company with the person's taxpayer identification number (RMD number); but

(c) does not include any income exempt from income tax under this Act.

History: Section 98 amended by inserting new definitions by Income Tax Amendment Act (No.2) 2011 with application from 1 September 2011. Section 98 amended by removing and substituting definition of Withholding income by Income Tax Amendment Act 2013 from 1 January 2014. Section 98 amended by removing and substituting definition of Withholding income by Income Tax Amendment Act 2015 from 1 January 2016

99. Application of this Part - This part applies-

(a) to withholding income paid or derived on or after 1 September 2011

(d) despite anything to the contrary in this Act.

History: Section 99 repealed and replaced by Income Tax Amendment Act 2011 with application from 1 September 2011

100. Withholding tax imposed (1) Every person who derives withholding income shall be liable to pay withholding tax at a rate of 15% on that income.

(2) If a person has entered into a fixed term deposit with a bank before 1 July 2011 and that deposit has not matured before 1 September 2011, the amount of interest paid on that deposit that is subject to withholding tax must be calculated using the formula-

Interest subject to withholding tax =

$$\frac{A}{B \times C}$$

Where-

ōäö is the number of days from 1 September 2011 until the last day of the fixed term deposit (both dates inclusive)

ōbö is the total period of the fixed term deposit, expressed in days

ōcö is the total interest paid on the fixed term deposit over its total period.

(3) Subsection (2) overrides section 99(a).

(4) Withholding tax paid under this section is the final tax in respect of the income for which it is paid and that income must not be included as assessable income of the person for any other purpose of this Act.

(5) Despite subsection (1), the amount of withholding tax is 30% if the withholding income is interest paid by a banking company to a person who is resident in the Cook Islands and has not provided the banking company with the person's taxpayer identification number (RMD number).

(6) Subsection (4) does not apply to withholding tax imposed in accordance with subsection (5).

History: Section 100 amended by Income Tax Amendment Act 2004 with application from 1 July 1997. Section 100 repealed and replaced by Income Tax Amendment Act (No.2) 2011 with application from 1 September 2011. Subsection 100 (4) inserted by Income Tax Amendment Act 2013 with application from 1 January 2014. Subsection 100 (5) inserted by Income Tax Amendment Act 2013 with application from 1 January 2015. Section 100(5) repealed and replaced by Income Tax Amendment Act 2015 with application from 22 June 2015. Subsection 100 (6) inserted by Income Tax Amendment Act 2015 with application from 22 June 2015

101. Deduction of withholding tax - (1) Any person who makes a payment of withholding income, shall, at the time of making the payment, make a deduction of withholding tax there from of an amount determined in accordance with section 100.

(2) Where -

(a) a payment consisting of withholding income has been made to an agent or other person in the Cook Islands for or on behalf of the person entitled to the payment; and

(b) the withholding tax payable in respect of that withholding income has not been deducted, or has not been deducted in full under subsection (1), the agent or other person shall at the time of receiving the payment, make deduction therefrom of the amount of the withholding tax or, as the case maybe, of the amount of the deficiency in that tax.

(3) Where a person (referred to in this subsection as "the payer") makes a deduction of withholding tax under subsection (1) from a payment of withholding income, the payer shall, at the time of making the payment, advise the person to whom the payment is made (whether or not that person is the person entitled to the payment), in writing, of the amount of the deduction made by the payer from the payment.

(4) This section shall not apply where the withholding income consists of a dividend of any of the kinds referred to in section 4 (1) (b) or (d).

102. Withholding tax on dividends not paid in money - (1) Where -

(a) any withholding income that consists of a dividend of any of the kinds referred to in section 4 (1) (b) or (d) is to be paid by a company to any person; and

(b) the company would, but for section 101 (4), be required to make a deduction of withholding tax under that section from the dividend,

that company shall not pay the dividend to or in the interest of or on behalf of any person until an amount equal to the amount of the withholding tax that but for section 101 (4) would have been required to be deducted has been paid to the Collector in respect of the dividend.

(2) Where -

(a) any withholding income that consists of a dividend of any of the kinds referred to in subsection (1) is paid to an agent or other person in the Cook Islands for or on behalf of the person entitled to the dividend; and

(b) that agent or other person would, but for section 101 (4), be required to make a deduction of withholding tax under that section from the dividend, -

that agent or other person shall not pay the dividend to or in the interest of or on behalf of any person until an amount equal to the amount of the withholding tax that (but for section 101 (4)) would have been required to be deducted has been paid to the Collector in respect of that dividend.

(3) A person who has paid to the Collector an amount equal to the withholding tax in relation to any dividend in accordance with this section may, in writing, request the Collector to inform the company by which the dividend is to be paid, or any person to whom the dividend has been paid, that that amount has been so paid in respect of that dividend, and, upon receipt of such a request, the Collector shall, in writing, inform that other person accordingly.

Payment and Assessment of Withholding Tax

103. Payment of deductions of withholding tax to Collector - (1) Every person who makes deductions of withholding tax from, or is liable to pay withholding tax in respect of, payments that consist of withholding income shall, not later than the 20th day of the month next after the month in which the person has made any such deductions or, as the case may be, become liable to withholding tax, pay to the Collector the amount of the deductions or, as the case may be, the amount of the withholding tax for which the person has become liable.

(2) The Collector may extend the time for payment of any amount of withholding tax in such cases and to such extent as the Collector thinks fit.

(3) Every person who pays money to the Collector in accordance with subsection (1) shall, at the time of such payment, advise the Collector, in writing, of the name and address of the person whose liability pursuant to section 100 to pay withholding tax is thereby met either in whole or in part.

104. Statement to be delivered to Collector - Every 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 in accordance with section 103, shall, not later than 15 February next after the end of that year, deliver to the Collector a statement showing particulars of the withholding income, the persons entitled to receive that income, and the withholding tax relating thereto.

(2) A banking company that in a year pays interest on an account that is not liable to withholding tax in accordance with section 100 must, on or before 15 February of the following year, issue the recipient with an interest earnings certificate stating-

- (a) the amount of interest paid; and
- (b) the income year to which the amount relates.

(3) A banking company must, on or before 15 February of each year, provide the Revenue Management Division with the following information in respect of each customer to whom the banking company paid interest on an account in the previous year that was not liable to withholding tax in accordance with section 100-

- (a) the amount of interest paid;
- (b) the income year to which the amount relates; and
- (c) the customer's details, including the customer's name and the customer's taxpayer identification number (RMD number).

(4) The information referred to in subsection (3) must be provided in a form approved by the Collector.

(5) Subsections (2) to (4) apply to interest paid on or after 1 January 2015.

History: Section 104 amended by inserting subsections 104(2) - (5) by Income Tax Amendment Act 2015 with application from 22 June 2015

105. *Repealed*

Section 105 repealed by Income Tax Amendment Act 2013 with application from 1 January 2014

106. Annual tax on withholding income in certain cases ó (1) Assessable withholding income derived by a person in an income year must be included in the assessable income of that person for that income year.

(2) However, a credit against the income tax assessed for that person's assessable withholding income for that income year must be given to that person.

(3) The credit must-

- (a) be equal to the withholding tax deducted or paid to the collector for that person's assessable withholding income for that income year; but
- (b) not include any penalty imposed under section 110 or penal tax imposed under section 111.

(4) In this section, "assessable withholding income" means all withholding income other than non-assessable withholding income (as defined in section 105(2))

History: Section 106 repealed and replaced by Income Tax Amendment Act (No.2) 2011 with application from 1 September 2011

107. Person deriving withholding income to pay withholding tax to Collector - Where for any reason -

- (a) a deduction of withholding tax is not made or is not made in full in accordance with this Part from any payment consisting of withholding income; or
- (b) a payment that is required to be made to the Collector in accordance with section 102 of an amount equal to the withholding tax in respect of a dividend to which that section relates has,

in contravention of that section, not been made or not been made in full to the Collector -

the person who derives the withholding income shall pay to the Collector an amount equal to the amount of the deduction or, as the case may be, the payment that should have been made and was not made, and that amount shall be due and payable to the Collector on the 20th day of the month next after the month in which the deduction was required to be made, or, as the case may be, the dividend was paid, or in either case on such later date as the Collector may in any case allow.

108. Failure to make deductions of withholding tax or to make payments to Collector - (1) Where a person fails to make any deduction of withholding tax from any withholding income in accordance with that person's obligations under section 101, the amount in respect of which default has been made shall constitute a debt payable by that person to the Collector, and shall be deemed to have become due and payable to the Collector on the 20th day of the month next after the month in which the payment of that withholding income was made.

(2) Where a person has, in contravention of section 102, paid a dividend without payment to the Collector of an amount equal to the withholding tax in relation to that dividend, that amount or, as the case may be, so much thereof as has not been paid to the Collector shall constitute a debt payable by that person to the Collector, and shall be deemed to have become due and payable to the Collector on the day on which that dividend was paid.

(3) The right of the Collector to recover the amount in respect of which default has been made in the manner referred to in subsection (1) or subsection (2) from a person who has made default shall be in addition to any right of the Collector to recover that amount from the person chargeable with withholding tax to which that amount relates and nothing in this Part shall be construed as preventing the Collector from taking such steps as the Collector thinks fit to recover that amount from both of those persons concurrently, or from recovering that amount wholly from one of those persons, or partly from one and partly from the other of those persons.

(4) Where any amount recoverable in accordance with this Part from the person chargeable with the withholding tax to which that amount relates is in fact paid by another person, the amount so paid may be recovered by that other person from that first-mentioned person.

(5) Every person who receives withholding income shall, subject to section 109, remain liable for the payment of withholding tax thereon until such withholding tax is paid by or on behalf of that person.

(6) Where any person makes a deduction pursuant to section 101 and fails to make a payment to the Collector equal to the amount so deducted, the person from whose withholding income such deduction is made shall be entitled to recover from the person first mentioned the difference between the amount deducted and the amount paid to the Collector.

109. Assessment of withholding tax and of amounts to be accounted for or paid under this Part - (1) The Collector may, in respect of any person who is chargeable with withholding tax, make an assessment of the amount of withholding income on which in the Collector's judgment withholding tax ought to be levied and of the amount of that tax, and that person shall be liable to pay the tax so assessed, except so far as the person establishes on objection that the assessment is excessive or that the person is not chargeable with the tax so assessed.

(2) The Collector may make an assessment of any amount which in the Collector's judgment any person is liable to account for or pay to the Collector under this Part, and any person who is so assessed shall be liable to pay the amount so assessed, except so far as that person establishes on objection that the assessment is excessive or that the person is not liable to account for or pay the amount so assessed.

(3) Sections 22, 24, 25, 26, and 27 shall apply, so far as may be, with respect to every assessment made under subsection (1) or subsection (2) as if -

(a) the expression "tax already assessed" used in section 22 included withholding tax already assessed under subsection (1) of this section or, as the case may be, an amount already assessed under subsection (2) of this section; and

(b) the term "taxpayer" used in sections 22, 25 and 27 included a person who is chargeable with withholding tax or, as the case may be, a person who is assessed or is liable to be assessed under subsection (2) of this section.

(4) An assessment made under this section shall be subject to objection in the same manner as an assessment of income tax levied under section 39, and the provisions of Part IV shall apply, so far as may be, to an objection to an assessment made under this section as if the terms "income tax" and "tax" used in Part IV included withholding tax or, as the case may be, an amount assessed under subsection (2).

Penalties and Offences

110. Additional tax for default in making or paying deductions of withholding tax - (1) Where-

(a) any person, being a person under an obligation under this Part to make a deduction of withholding tax from withholding income, fails wholly or in part to make the deduction; or

(b) any person who has made a deduction of withholding tax fails wholly or in part within the prescribed time to pay the amount of the deduction to the Collector; or

(c) any person who is liable to pay any amount to the Collector under this Part fails to pay the amount on the due date for payment thereof; -

then unless the Collector is satisfied that the person has not been guilty of wilful neglect or default, that person shall be liable, without conviction, in addition to any other penalty to which the person may be liable, to a penalty equal to 5 percent of the amount in respect of which default has been made and a further 1 percent of the amount for each complete month in which the default continues.

(2) For the purposes of paragraph (b) of subsection (1), a deduction of withholding tax shall be deemed to have been made if and when payment is made of the net amount of withholding income.

(3) A penalty imposed under this section shall for all purposes be deemed to be of the same nature as the amount or part thereof in respect of which it is imposed, and shall be recoverable accordingly.

(4) Subject to the provisions of this Part, the provisions of the other Parts, as far as they are applicable and with the necessary modifications, shall apply with respect to the amount of every penalty imposed under this section as if it were additional tax under section 190 and as if the person liable to the penalty were the taxpayer.

111. Penal tax for default in making or paying deductions of withholding tax - (1) Where -

(a) any person, being a person under an obligation under this Part to make a deduction of withholding tax from a payment of withholding income, fails wholly or in part to make the deduction; or

(b) any person knowingly applies or permits to be applied the amount of any withholding

tax or any part thereof for any purpose other than the payment thereof to the Collector, -

that person shall be chargeable by way of penalty, in addition to any other penalty to which that person may be liable, with an additional amount (hereinafter referred to as penal tax) not exceeding an amount equal to treble the amount in respect of which default has been made (herein after referred to as the deficient deduction).

(2) For the purposes of paragraph (b) of subsection (1), a deduction of withholding tax shall be deemed to have been made if and when payment is made of the net amount of any withholding income, and the amount of any tax shall be deemed to have been applied for a purpose other than the payment thereof if that amount is not duly paid to the Collector:

Provided that no person shall be chargeable with penal tax under paragraph (b) of subsection (1) if that person satisfies the Collector that the amount of the withholding tax has been accounted for, and that the person's failure to account for it within the prescribed time was due to illness, accident, or other cause beyond the person's control.

(3) Penal tax imposed by this section shall for all purposes be deemed to be of the same nature as the deficient deduction, and shall be recoverable accordingly.

(4) Subject to the provisions of this Part, the provisions of the other Parts, as far as they are applicable and with the necessary modifications, shall apply with respect to all penal tax imposed under this section as if -

(a) it were penal tax under section 209; and

(b) the person chargeable with the penal tax imposed under this section were the taxpayer; and

(c) the deficient deduction were deficient tax payable for the same year of assessment as that in which the deficient deduction became due and payable to the Collector.

112. Offences - (1) Without limiting the application of section 206, it is hereby declared that every person commits an offence against this Act who;

(a) being a person under an obligation under this Part to make a deduction of withholding tax from a payment of withholding income, fails wholly or in part to make the deduction; or

(b) knowingly applies or permits to be applied the amount of any withholding tax or any part thereof for any purpose other than the payment thereof to the Collector; or

(c) being a banking company, fails wholly or in part to issue the recipient with an interest earnings certificate in accordance with sections 104(2) and (5); or

(d) being a banking company, fails wholly or in part to provide the Revenue Management Division with information in accordance with sections 104(3) and (5).

History: Section 112 amended by inserting subsections 112(1) (c) and (d) by Income Tax Amendment Act 2015 with application from 1 January 2016

(2) For the purposes of paragraph (b) of subsection (1), a deduction of withholding tax shall be deemed to have been made if and when payment is made of the net amount of any payment of withholding income, and the amount of any withholding tax shall be deemed to have been applied for a purpose other than the payment thereof if that amount is not duly paid to the Collector:

Provided that no person shall be convicted of an offence under paragraph (b) of subsection (1) if the person satisfies the Court that the amount of the withholding tax has been accounted for, and that the person's failure to account for it within the prescribed time was due to illness, accident, or other cause beyond the person's control.

Miscellaneous Provisions

113. Withholding tax on dividends paid to company under control of non-resident - Where -

(a) shares in a company that is resident in the Cook Islands were formerly held by a person not resident in the Cook Islands and while those shares were so held the company was under the control of that person or was deemed under this Act to be under the control of persons of whom that person was one; and

(b) that person has sold or otherwise disposed of those shares to another company that is resident in the Cook Islands and is under the control of that person or is deemed under this Act to be under the control of persons of whom that person is one; and

(c) any part of the price at which that other company acquired those shares remained unpaid after the acquisition by that other company of those shares or thereafter remained owing in any way directly or indirectly to that person and whether or not secured by mortgage or otherwise -

any dividends paid in respect of those shares to that other company while any part of that price remains unpaid or owing as aforesaid shall, to the extent to which that price is unpaid or owing at the time when the dividends are paid to that other company, be deemed to have been paid to that person and to have been derived as dividends by that person at that time, and the provisions of this Act (including this Part) shall apply accordingly.

114. Deductions of withholding tax deemed to be received and derived by person entitled to payment - Where any withholding tax has been deducted from a payment consisting of withholding income, the amount so deducted -

(a) as between the person by whom the deduction was made and the person entitled to the payment consisting of the withholding income from which the deduction was made, shall be deemed to have been received by the person entitled to that payment -

(i) in any case where the deduction was made under section 101 (1), at the time at which the payment consisting of the withholding income was made;

(ii) in any case where the deduction was made under section 101 (2), at the time at which the payment consisting of the withholding income was received, for or on behalf of the person entitled to that payment, by an agent or other person in the Cook Islands;

(b) for the purposes of this Act (including this Part), shall be deemed to have been derived by the person entitled to the payment consisting of the withholding income at the same time and in the same manner as the residue of that payment.

115. Application of other Parts of this Act - Subject to the provisions of this Part, the provisions of the other Parts, as far as they are applicable and with the necessary modifications shall apply with respect to withholding tax as if it were income tax levied under section 39.

116. Distribution of capitalised amount - Where a company to which this Part applies makes a bonus issue, and -

(a) at any time within 3 years of making the bonus issue the company makes a distribution of any amount (whether in money or money's worth) that in the opinion of the Collector is either directly or indirectly a distribution of any amount capitalised by the bonus issue; and

(b) the Collector was not satisfied that the distribution was not pursuant to any arrangement, scheme, or intention in existence at the time when the bonus issue was made,-

this distribution shall be deemed to be a further bonus issue made by the company at the time of the distribution and the provisions of this Part shall apply accordingly.

PART VIII **AGENTS AND NON-RESIDENTS**

Interpretation

117. "Absentee" defined - In this Part "absentee" means -

(a) any person (other than a company) who is for the time being out of the Cook Islands; (b)

any overseas company unless it has a fixed and permanent place of business in the Cook Islands at which it carries on business in its own name;

(c) any overseas company which is declared by the Collector to be an absentee for the purposes of this Act by notice given to that company or to its agent or attorney in the Cook Islands, so long as that declaration remains unrevoked.

Agents Generally

118. Agent to make returns and be assessed as principal - (1) Every agent shall make returns of the income in respect of which that person is an agent, and shall be assessed thereon in the same manner as if that person were the principal, save that the agent shall be entitled to no special exemption or rebates from income tax other than such exemption or rebates (if any) as the principal may be entitled to.

(2) Every person liable to furnish a return as agent for any person shall furnish a separate return for each person for whom that person is agent, in addition to that person's own individual return.

119. Rate and amount of tax payable by agent - Except where otherwise expressly provided by this Act the rate of tax for which an agent shall be so assessed and liable shall be determined by reference to the total taxable income of the principal, but it shall be charged and payable only on the income in respect of which the agency exists, and in the same proportion which that income bears to the total income of the principal.

120. Liability of principal not affected - (1) Nothing in this Act relating to an agent shall be so construed as to release the principal from liability to make returns and to be assessed and chargeable with tax.

(2) No assessment of the agent shall preclude an assessment of the principal for the same tax, nor shall an assessment of the principal preclude an assessment of the agent for the same tax, and the principal and agent shall be jointly and severally liable for all tax for which the agent is liable.

(3) When two or more persons are liable to be assessed as agents in respect of the same tax, they shall be jointly and severally liable therefor.

121. Agent may recover tax from principal - Any agent who pays any tax on behalf of a principal may recover the amount so paid from that principal, or may deduct the amount from any money belonging or payable to the principal which is in the agent's possession or control.

122. Agent may retain from money of principal amount required for tax - An agent may from time to time during the income year, or at any later time, retain out of any money belonging or payable to the principal such sums as may reasonably be deemed sufficient to pay the tax for which the agent is or may become liable.

123. Assessment deemed authority for payment of tax by agent - An assessment made by the Collector shall as between an agent and the principal, be a sufficient authority for the payment by the agent of the tax so assessed, and the agent shall be entitled as against the principal to reimbursement accordingly.

124. Agent to be personally liable for payment of tax - (1) Every agent shall be personally liable for the tax on income in respect of which that person is an agent.

(2) When the Collector is satisfied that an agent has no money of the principal with which the agent can pay the tax, and that the agent has not paid away any such money after notice of the assessment of the tax, and that immediate enforcement of payment by the agent would be a cause of hardship, the Collector may allow the agent such further period for the payment thereof, not exceeding six months after the date of the notice of assessment, as the Collector thinks necessary, and the additional tax imposed by section 190 on taxpayers in default shall not accrue until the expiry of the period so allowed.

125. Relation of principal and agent arising in effect - When the Collector is satisfied that any person carrying on business in the Cook Islands (in this section called "the resident") is so far under the control of any other person carrying on business in the Cook Islands or elsewhere (in this section called "the controller") that the relation between them is in effect that of agent and principal, the Collector may treat the resident's business as that of the controller, and as being carried on by the resident on the controller's behalf, and may require returns to be made, and may make assessments accordingly, and the controller and the resident shall accordingly be liable for income tax as principal and agent in terms of this Part.

Special Cases of Agency

126. Liability of mortgagee in possession - For the purposes of this Act, a mortgagee in possession of any land or other property shall be deemed to be the agent of the mortgagor in respect of any income derived by that mortgagee from that land or other property on behalf of or for the benefit of the mortgagor, and the mortgagee shall make returns and be assessable and liable for tax on that income accordingly.

127. Guardian of person under disability to be agent - Every person who, as guardian, committee, or otherwise, has the receipt, control, or disposition of any income derived by a person under any legal disability shall for the purposes of this Act be the agent of that person in respect of that income, and shall make returns and be assessable and liable for income tax accordingly.

128. Person having control of land or of rents and profits to be agent of absentee or person under disability - Every person who on 31 December in any year has the control or management of any land, or the receipt, control, or disposal of the rents or profits thereof, on behalf of an owner of that land who is an absentee or is under any legal disability, shall for the purposes of this Act be the agent of the owner and shall make returns of those rents or profits received and be assessable and liable for income tax on those rents or profits accordingly.

129. Liability of new companies for tax payable by former companies with substantially the same shareholders or under the same control - (1) In this section -

"company" means a Cook Islands company or an overseas company within the meaning of this Act:

"new company" means a company carrying on business in the Cook Islands and consisting substantially of the same shareholders as an original company or being under the control of the same persons as an original company:

"original company" means a company which, having at any time carried on business in the Cook Islands, has, whether before or after the passing of this Act, ceased to carry on business in the Cook Islands; and includes any such company that has been wound up.

(2) Where an original company has been wound up, its shareholders and directors at the commencement of its winding up shall respectively be deemed to be the shareholders and the persons having the control of the company for the purposes of this section.

(3) Where an original company was, when it ceased to carry on business in the Cook Islands, liable under this Act for any income tax or was liable to be assessed for any such tax, and that tax has not been paid, the new company shall, for the purposes of this Act, be deemed to be the agent of the original company and shall be liable for all tax payable by the original company.

(4) The new company shall be liable for all tax for which the original company would have been liable if it had continued to carry on business in the Cook Islands.

130. Companies deemed agent of debenture holders - Save as otherwise provided in section 131, every company which has issued debentures, whether charged on the property of the company or not, shall for the purposes of this Act be the agent of all debenture holders whether absentees or not, in respect of all income derived by them from those debentures, and shall make returns and be assessable and liable for income tax on that income accordingly.

131. Modification of agency provisions in respect of income from company debentures - (1) The duty to act as the agents of debenture holders imposed on companies by section 130 shall not apply with respect to debentures issued to any person resident in the Cook Islands if the company that has issued the debentures has supplied to the Collector, before it has been assessed in any year for income tax in respect of the income derived from those debentures, a certified list specifying the number of the debentures or other particulars sufficient to identify them, the names, addresses, and descriptions of the persons to whom the debentures have been issued, the interest derived or derivable therefrom, and such other particulars as may be prescribed.

(2) Where any such list is supplied the person named therein as the holder of any debentures shall be personally responsible for the making of returns, and shall be assessable and liable for income tax (though not to the exclusion of any other person) in respect of the income derived from those debentures at the rate fixed in respect thereof, unless and until that person satisfies the Collector, before the person has been assessed for income tax in any year, that the person has transferred or assigned the debentures, and has given notice to the Collector in the prescribed form of the name, address, and description of the transferee or assignee.

(3) Every person, being the transferee or assignee of any debentures, shall in like manner remain personally liable in respect thereof (though not to the exclusion of any other person) unless and until the person has given notice to the Collector in the prescribed form of the transfer or assignment of the debentures.

(4) Any tax paid by the former holder of any debentures in respect of the income derived therefrom by a subsequent holder shall be deemed to be paid on behalf of that subsequent holder as far as it does not exceed the tax to which the subsequent holder might have been liable in respect of those debentures, and

may be recovered by the former holder from the subsequent holder accordingly.

132. Recovery of income tax payable in respect of alimony or maintenance - (1) This section applies with respect to any income tax that may become payable in respect of income received by or on behalf of any person as alimony or maintenance, pursuant to the order of any Court or pursuant to any deed or agreement (whether the order, deed, or agreement has been made or entered into before or after the coming into force of this Act).

(2) In any case to which this section applies the person bound by any such order, deed or agreement to pay any money as alimony or as maintenance as aforesaid, shall, for the purpose of the payment of the income tax thereon, be deemed to be the agent of the person to whom or on whose behalf the money has been paid or is payable, and all the provisions of this Act as to the liability of agents shall apply with respect to that person accordingly.

(3) It shall be no defence in any proceedings against an agent for the recovery of any income tax to which this section relates that any amount in respect of income tax has been paid by that agent to the person entitled to receive any money as alimony or maintenance.

Agents of Absentees and Non-residents

133. Liability of agent of absentee principal for returns and tax - Every person who in the Cook Islands carries on any business for and on behalf of a principal who is an absentee shall for the purposes of this Act be the agent of that principal in respect of all income derived by the principal through the business so carried on in the Cook Islands by means of that agent, and the agent shall make returns and be assessable and liable for income tax on that income accordingly, whether the income comes into the possession or control of the agent or not.

134. Partner of absentee deemed agent - Every person who in the Cook Islands carries on business in partnership with an absentee shall for the purposes of this Act be the agent of that absentee in respect of the absentee's share of the income of the business, and shall make returns and be assessable and liable for income tax accordingly.

135. Master of ship or captain of aircraft deemed agent of absentee owner - (1) When an absentee, by means of any ship or aircraft owned by or under charter to the absentee, carries on the business of the carriage of merchandise, mail, or passengers, the master of that ship, or the captain of that aircraft, as the case may be, shall (though not to the exclusion of any other agent) be the agent of that absentee for the purposes of this Act in respect of all assessable income so derived by the absentee, and shall be assessable and liable for income tax accordingly.

(2) Pending the payment of any tax assessed against such an absentee or against any person who is the absentee's agent for the purposes of this Act, the Comptroller of Customs shall withhold the clearance of the ship or aircraft in respect of which the tax is payable.

136. Tenant, mortgagor, or other debtor to be agent of absentee landlord, mortgagee, or other creditor - (1) Any tenant, mortgagor, or other person who transmits from the Cook Islands to any landlord, mortgagee, or other creditor, being an absentee, any rent, interest, or other money being income derived by that absentee from the Cook Islands, shall for the purposes of this Act be the agent of that absentee in respect of all money so transmitted at any time, and the agent shall in respect of all such money make returns and be assessable and liable for income tax accordingly.

(2) For the purposes of this section any money paid by or on account of a person resident in the Cook Islands from a fund situated out of the Cook Islands shall be deemed to be money transmitted by that person from the Cook Islands.

137. Person having disposal of income deemed agent - Every person who in the Cook Islands has the

receipt, control, or disposal of any income derived by a principal who is an absentee shall for the purposes of this Act be the agent of the principal in respect of that income, and shall make returns and be assessable and liable for income tax on that income accordingly.

138. Company to be agent of absentee shareholders - A Cook Islands company shall be the agent of all absentee shareholders and of all absentee holders of debentures and the company shall make returns and be assessable accordingly on all income paid or credited by the company to any such shareholder or debenture holder while that shareholder or debenture holder is an absentee.

139. Banking company to be agent of absentee depositors - Every banking company, and every other company, local or public authority, or other person, who in the course of business receives or holds money by way of deposit and pays or credits interest thereon shall for the purposes of this Act be the agent of all depositors who are absentees, and shall make returns and be assessable and liable for income tax accordingly on any interest which is paid to a depositor while that depositor is an absentee.

140. Premiums on insurance effected with persons not carrying on business in the Cook Islands - (1) Where any person in the Cook Islands enters into a contract of insurance or guarantee against loss, damage, or risk of any kind whatever (not being a contract of life insurance) with any insurer and the insurer does not carry on business in the Cook Islands the insurer shall be liable to income tax, at the rate set out in Schedule 1 as being applicable to overseas insurance companies, on the amount of premium paid or payable by insured in respect of the contract.

History: Section 140(1) amended by Income Tax Amendment Act 2013 with application from 1 January 2014

(2) Where the amount of premium paid or payable in respect of any such contract is not disclosed, the amount shall be deemed to be the same amount as would be chargeable in respect of a similar contract of insurance or guarantee effected with a company carrying on business in the Cook Islands.

(3) Every insured person shall be deemed to be the agent of the insurer with whom such contract is made, and shall make returns and be assessable and liable for income tax accordingly.

(4) Every person who exports any goods from the Cook Islands shall notify the Collector if the goods are insured, and, if so, the name and description of the person or company with whom the goods are insured, and the amount of the premium payable in respect thereof.

141. Liability as agent of employer of non-resident taxpayer - (1) The employer or the agent of the employer of every non-resident taxpayer shall, for the purposes of this Act, be the agent of such non-resident taxpayer in respect of the salary, wages, or other emoluments received by the non-resident taxpayer, and shall make returns and be assessable and liable for income tax thereon accordingly.

(2) Where any non-resident taxpayer has made default in the payment of any income tax payable by the non-resident taxpayer, in respect of salary, wages, or other emoluments, the amount of that tax shall, on application by the Collector, be deducted by the employer or the employer's agent from any salary, wages, or other emoluments thereafter to be paid, and shall be paid to the Collector on behalf of the non-resident taxpayer.

(3) Where any non-resident taxpayer is in receipt of any pension or annuity payable out of any superannuation fund established in the Cook Islands, any income tax that may become payable by the non-resident payer in respect of the pension or annuity shall, on application by the Collector, be deducted from any instalment or instalments of the pension or annuity thereafter to be paid, and shall be paid to the Collector on behalf of the taxpayer.

(4) For the purposes of this section the term "non-resident taxpayer" means any person who, being liable for income tax in respect of salary, wages, or other emoluments derived from the Cook Islands,

or in respect of any annuity or pension derived from the Cook Islands, has no fixed or permanent residence or place of abode in the Cook Islands.

142. Non-resident trader to be agent of employees in the Cook Islands - (1) Every non-resident trader shall be the agent of all persons in that trader's employment in the Cook Islands in respect of the salary, wages, or other emoluments received by them, and shall make returns and be assessable and liable for income tax thereon accordingly.

(2) The agent in the Cook Islands of a non-resident trader shall, for the purposes of this section, be under the same obligations as the non-resident trader.

143. Agents in the Cook Islands of principals resident abroad - When any person in the Cook Islands, as agent for a principal who is resident in a country or territory outside the Cook Islands and is not resident in the Cook Islands, is instrumental in procuring the purchase from that principal of goods or merchandise which are in the Cook Islands or are to be imported into the Cook Islands in pursuance of or in consequence of that purchase, whether the contract of purchase is made in the Cook Islands or elsewhere, the principal shall in respect of the sale by the principal of the goods or merchandise be deemed to be carrying on business in the Cook Islands through the agent; and the income derived from that business shall be deemed to be derived from the Cook Islands, in the same manner and to the same extent as if the contract had been made in the Cook Islands, and shall be assessable for income tax accordingly, and the agent shall make returns to pay tax accordingly.

PART VIII (A) **SEABED MINING**

143A. Interpretation (1) In this Part, unless the context otherwise requires

“Commencement date”, in relation to a contractor, means the start of the first income year of the contractor to which this part applies.

“Commencement of commercial production” means the first day of the first period of 30 consecutive days during which the average level of production on the 25 highest production days in the 30-day period reaches a production level as determined by the Collector with the advice of the Seabed Minerals Commissioner.

“Contractor” means a person issued with a title.

“Development expenditure” means capital expenditure incurred in undertaking recovery operations authorized under a mining license (other than expenditure incurred to acquire plant, machinery, equipment, or other property depreciated under this Act) and includes expenditure incurred in acquiring

(a) an interest in a title other than an interest referred to in paragraph (a) of the definition of exploration expenditure; or

(b) information relating to mining operations other than information referred to in paragraph (b) of the definition of exploration expenditure.

“Environmental fund” means a fund or account required to be established under Chapter 8 of the Seabed Minerals Act in relation to a title to provide for the future payment of remedial work to the title area and is managed jointly by the contractor and the Seabed Minerals Authority.

“Exploration expenditure” means expenditure incurred in undertaking operations authorized under a prospecting permit, exploration licence, or retention lease (other than expenditure

incurred to acquire plant, machinery, equipment, or other property depreciated under the Act), including expenditure incurred in acquiring ó

(a) a prospecting permit, exploration licence, or retention lease from the Government or under a farm-out agreement; or

(b) prospecting information from the Government or under a farm-out agreement.

õFarm-out agreementö means an agreement to which section 143G applies.

õMining informationö means information associated with recovery operations.

õMining operationsö means prospecting, exploration, or recovery operations, or operations undertaken under a retention lease.

õpersonö includes an entity.

õProspecting information means information associated with prospecting or exploration operations, or operations associated with a retention lease.

õSeabed Minerals Authorityö means the Cook Islands Seabed Minerals Authority established by section 16 of the Seabed Minerals Act.

õSeabed Minerals Commissionerö means the Seabed Minerals Commissioner appointed under section 24 of the Seabed Minerals Act.

õSubcontractorö means a person supplying services to a contractor in respect of mining operations undertaken by the contractor, other than a person supplying services as an employee.

(2) Unless the context otherwise requires, any term that is used but not defined in this Part, but is defined in the Seabed Minerals Act has the meaning given to it by the Seabed Minerals Act.

Application of Income Tax to Seabed Mining Operations

143B. Taxation of Contractors and Subcontractors ó (1) Contractors and subcontractors are subject to tax in accordance with this Act but subject to the modifications in this Part.

(2) If there is any inconsistency in the taxation of a contractor or subcontractor as between this Part and other Parts of this Act, this Part prevails.

(3) The rate of income tax applicable to a contractor is ó

(a) for a company resident in the Cook Islands, 20%; and

(b) for a company that is not a resident of the Cook Islands, 28%.

143C. Exploration and Development Expenditure ó (1) A contractor is allowed a deduction for exploration expenditure incurred by the contractor in relation to a title area in the income year in which the expenditure is incurred.

(2) Subject to subsection (3), a contractor is allowed a depreciation deduction under this Act on a straight-line basis for development expenditure incurred by the contractor in relation to a title area on the basis that the useful life of the expenditure is the lesser of ó

(a) the expected life of the recovery options in the title area to which the development expenditure

relates; and

(b) 10 years.

(3) If development expenditure is incurred by a contractor before commencement of commercial production, subsection (2) applies on the basis that the expenditure was incurred at the time of commencement of commercial production.

143D. Contributions to Environmental Fund ó (1) A contribution made by a contractor to an environmental fund under the terms of a title granted to the contractor is allowed as a deduction in the income year in which the contribution was made.

(2) Subject to subsection (3), expenditure incurred by a contractor in carrying out remedial work as directed by the Seabed Minerals Authority in respect of a title granted to the contractor is allowed as a deduction in the income year in which the expenditure is incurred.

(3) A deduction is not allowed under subsection (2) to the extent that the remedial work is paid for, directly or indirectly from money made available out of the contractor's environmental fund for the title in respect of which the remedial work is undertaken.

(4) An amount accumulated in an environmental fund or withdrawn from an environmental fund to pay for remedial work as directed by the Seabed Minerals Authority is exempt income.

(5) Any amount withdrawn from an environmental fund and returned to the contractor is included in assessable income of the contractor for the income year in which the amount was withdrawn and returned to the contractor.

(6) Any surplus in an environmental fund of a contractor at the time of completion of all mining operations to which the fund relates is included in the assessable income of the contractor for the income year in which the operations are completed.

143E. Ring-Fencing of Mining Operations ó (1) A deduction for expenditures or losses incurred, wholly or partly, by a contractor in undertaking mining operations in a title area during an income year is allowed only against the assessable income derived by the contractor from such operations in the title area during the year.

(2) If the total deductions of a contractor in respect of mining operations undertaken by the contractor in a title area during an income year exceed the total assessable income derived from such operations in the area for the year, the excess is carried forward and allowed as a deduction against the assessable income of the contractor from mining operations in the title area in the next following income year of the contractor.

(3) An amount that is not deducted under subsection (2) is carried forward to the next following income year of the contractor and allowed as a deduction in accordance with subsection (2) in that year and so on until the amount has been fully deducted or all mining operations in the title area cease.

(4) If a contractor has an excess carried forward under subsection (2) for more than one income year, the excess of the earliest period is allowed as a deduction first.

(5) If a contractor has ceased mining operations in a title area and the contractor has a loss under subsection (2) in relation to the title area, the contractor may elect, by notice in writing to the Collector, to treat the loss as a loss under subsection (2) in relation to another title area in which the contractor undertakes mining operations if the area covered by the second-mentioned title area falls wholly within the area covered by the first-mentioned title area.

(6) If-

- (a) a contractor has ceased mining operations in a title area; and
- (b) the contractor has a loss under subsection (2) in relation to title area; and
- (c) subsection (5) does not apply to the contractor, the contractor may elect, by notice in writing to the Collector, to treat the loss as a loss under subsection (2) in relation to mining operations undertaken by the contractor in another title area.

143F. Disposal of a Title or Information ó (1) Subject to section 143G, if a contractor disposes of an interest in a title the cost of which was deducted under section 143C(1), or otherwise recovers or recoups an amount deducted under section 143C(1), the consideration for the disposal, or the amount recovered or recouped. Is included in the assessable income of the contractor for the income year in which the disposal occurs, or the amount is recovered or recouped.

(2) Subject to section 143G, if, during an income year, a contractor disposes of a title or information the cost of which was deducted under section 143C (2), no deduction is allowed for the cost of the title or information for that year and-

(a) if the consideration for the disposal exceeds the written down value of the title or information at the time of disposal, the amount of the excess is included in the assessable income of the contractor for the income year in which the disposal occurred; or

(b) if the written down value of the title or information at the time of disposal exceeds the consideration for the disposal, the contractor is allowed a deduction for the amount of the excess in the income year in which the disposal occurred.

(3) In this section, written down value, in relation to a title or mining information of a contractor, means the acquisition cost of the title or information reduced by the depreciation deductions allowed to the contractor in respect of the title or information under section 143C(2).

(4) Except when subsection (2) applies, if a contractor recovers or recoups an amount deducted as development expenditure under section 143C(2), the amount recovered or recouped is included in the assessable income of the contractor in the income year in which the amount is recovered or recouped.

143G. Farm-out Agreements ó (1) This section applies if the following conditions are satisfied:

(a) a contractor has entered into an agreement with a person (the transferee) for the transfer of an interest in a title; and

(b) the consideration given by the transferee undertaking wholly or partly includes the transferee undertaking some or all of the contractor's work commitments under the title.

(2) If this section applies, and the transfer of the interest in the title occurs at the time the agreement is entered into, the consideration received by the contractor for the interest does not include the value of any work undertaken by the transferee on behalf of the contractor.

(3) If this section applies and the transfer of the title is deferred until the transferee completes some or all of the work commitments of the contractor under the title ó

(a) any amount in money payable under the agreement before the transfer of the title is included in the assessable income of the contractor in the income year in which the amount is payable; and

(b) the value of any work undertaken by the transferee on behalf of the contractor is not included

in ó

- (i) the consideration received by the contractor for the transfer of title; or
- (ii) the assessable income of the contractor.

(4) If a title referred to in subsection (3) is subsequently transferred, the consideration received by the contractor does not include any amount included in the assessable income under subsection (3).

143H. Disposal of interest in an entity holding a title ó (1) Subject to subsection (2), the assessable income of a person for an income year includes the net gain arising on disposal of an interest in an entity, if the interest derives 20% or more of its value, directly or indirectly, from immovable property in the Cook Islands.

(2) The amount of the gain included in assessable income under subsection (1) is-

- (a) if the interest derives more than 50% of its value directly or indirectly, from immovable property in the Cook Islands, the full amount of the gain; or
- (b) for any other case, the amount calculated according to the following formula:

$$a \times \frac{b}{c}$$

where ó

a is the amount of the gain; and

b is the value of the interest derived, directly or indirectly, from the immovable property in the Cook Islands; and

c is the total value of the interest

(3) If there is a 10% or more change in the underlying ownership of a contractor, the contractor must immediately notify the Collector, in writing, of the change.

(4) If the person disposing of the interest to which the notice under subsection (3) relates is a non-resident person, the contractor is liable, as agent of the non-resident person, for any income tax payable by the non-resident person in respect of the disposal.

143I. Withholding Tax ó (1) Subject to subsection (2), a non-resident subcontractor who derives a fee for the provision of services (services fee) to a contractor in respect of mining operations in the Cook Islands is liable to pay withholding tax at the rate of 15% on the gross amount of the services fee.

(2) Subsection (1) does not apply if the services giving rise to the fee are rendered by the subcontractor through a permanent establishment in the Cook Islands.

(3) A services fee to which subsection (2) applies is derived from the Cook Islands for the purposes of section 83 and is subject to income tax under section 39.

(4) A contractor paying a services fee to a subcontractor that is subject to tax under subsection (1) must withhold tax from the gross amount paid at the rate specified in subsection (1).

(5) A contractor required to withhold tax under subsection (4) from a services fee paid by the contractor

to a subcontractor must withhold the tax at the earlier of ó

- (a) the time the fee is credited to the account of the non-resident subcontractor; or
- (b) the time the fee is actually paid.

(6) Tax withheld by a contractor under subsection (4) must be paid to the Collector by the 20th day after the end of the month in which the contractor was required to withhold the tax.

(7) Withholding tax imposed under subsection (1) is a final tax on the services fee and the fee is not included in the assessable income of the subcontractor.

(8) Sections 103(2) and (3), 104, 107, 108, and 109 apply to tax imposed under subsection (1) on the basis that the services fee is withholding income and the tax is withholding tax.

(9) In this section, non-resident subcontractor means, -

- (a) for an individual or company, the individual or company is not a resident under section 82; or
- (b) for any other person, the person is formed, organized, or settled outside the Cook Islands.

Additional Profits Tax

143J. Imposition of additional profits tax ó (1) A contractor that has a positive cash balance in relation to a title area for an income year is liable to pay additional profits tax for that year.

(2) The additional profits tax payable in relation to a title area for an income year is 25% of the positive cash balance of the contractor for the year.

(3) The additional profits tax payable by a contractor for an income year is in addition to the income tax imposed on the taxable income of the contractor for the year.

(4) If a contractor has made an election under section 143E (5) or (6), the title areas to which the election relates are treated as a single title area for the purposes of the additional profits tax.

143K. Cash Balance ó (1) If a contractor has taxable income for a title area for an income year, the cash balance of the contractor for the title area for the year is the taxable income of the contractor for the title area for the year subject to the following adjustments:

- (a) the following amounts are deducted from the taxable income of the contractor:
 - (i) the total capital expenditure incurred by the contractor for the year in acquiring plant, machinery, equipment, or other property depreciated under the Act to the extent that the property is used to derive amounts included in assessable income in relation to the title area; and
 - (ii) the total development expenditure to the extent incurred by the contractor for the year to derive amounts included in assessable income in relation to the title area; and
 - (iii) the income tax paid or payable by the contractor on the taxable income for the year in relation to the title area; and
 - (iv) the adjusted negative cash balance as brought forward from the previous income year as determined under subsection (3); and

(b) the following amounts are added to the taxable income of the contractor:

- (i) the total deduction allowed to the contractor for depreciation of plant, machinery, equipment, or other property for the year in relation to the title area; and
- (ii) the total deduction allowed to the contractor for depreciation of development expenditure for the year in relation to the title area; and
- (iii) the total deduction allowed for interest and other financial charges incurred by the contractor for the year in relation to the title area; and
- (iv) the total deduction allowed to the contractor in relation to derivative financial instruments or foreign currency hedges for the year in relation to the title area; and
- (v) any excess carried forward under section 143E for the income year in relation to the title area.

(2) If a contractor has a loss for a title area for an income year, the cash balance of the contractor for the title area for the year is the amount of the loss subject to the following adjustments:

- (a) the loss is increased by the amounts specified in subsection (1)(a); and
- (b) the loss is reduced by the amounts specified in subsection (1)(b).

(3) If the cash balance for the previous income year is negative, the amount deducted under subsection (1)(a) (iv) is the negative cash balance for the previous income year increased by 120%.

(4) If the cash balance of a contractor for a title area for an income year is positive, the cash balance for that year is treated as zero for the title area for the next following income year.

(5) If a contractor commenced mining operations in a title area before the commencement date, the cash balance of the contractor for the first income year of the contractor commencing on or after that date is calculated on the basis that this Part applied from the commencement of mining operations.

143L. Procedure relation to additional profits tax 6 (1) A contractor liable for additional profits tax must furnish an additional profits tax return for an income year by the same date as the income tax return is due for that year.

(2) An additional profits tax return for an income year must be furnished in the prescribed form and manner.

(3) The additional profits tax payable by a contractor for an income year is due and payable on the same date as the income tax is due and payable by the contractor for that year.

(4) A contractor must keep such accounts, documents, and records as enable the computation of the additional profits tax payable by the contractor for an income year.

(5) Subject to section 143M, this Act applies to additional profits tax as if it is income tax, with the necessary changes made, in relation to the following:

- (a) the assessment and collection of additional profits tax and penal tax imposed in respect of an additional profits tax liability, including the keeping of records and investigations;
- (b) appeals relating to a liability for additional profits tax or to penal tax imposed in respect of an additional profits tax liability;

(c) the application for a refund of additional profits tax overpaid:

(d) offences and penal tax.

143M. Provisional tax instalments of additional profits tax ó (1) a contractor liable for additional profits tax for an income year must pay the tax in 2 instalments.

(2) Instalments of additional profits tax for an income year are due and payable at the same time as instalments of provisional tax payable by the person for the year are due.

(3) The amount of each instalment is 50% of the additional profits tax estimated by the contractor to be payable for the year.

(4) The provisions in this Act relating to the furnishing and revision of, and amendment to, an estimate of income tax payable for the purposes of paying provisional tax and to the liability for additional tax underestimates apply, with the necessary changes made, to estimates of additional profits made.

History: Part VIIIA inserted by Income Tax Amendment Act 2013 with application from 1 January 2014

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

144. Application of this Part - (1) This Part of this Act shall apply notwithstanding anything in any other Part.

(2) This Part shall apply to salary or wages for any period on or after 1 July 1997, and to other source deduction payments which are paid or would normally be paid on or after that date, notwithstanding that any such other source deduction payment may as to the whole or any part thereof be for a period before that date.

(3) If any question is raised as to whether or not a source deduction payment is as to the whole or any part thereof subject to this Part, it shall, subject to any regulations made for the purposes of this Part, be determined by the Collector.

(4) It shall be a ground for objection under Part IV to an assessment of the amount of any tax deduction that any determination of the Collector made for the purposes of this section is erroneous in fact.

145. Tax deductions to be made by employers - (1) For the purpose of enabling the collection of income tax from employees by instalments, where an employee receives a source deduction payment from an employer, the employer or other person by whom the payment is made shall, at the time of making the payment, make a tax deduction therefrom in accordance with this Part and by reference to the basic tax deductions set out in Schedule 2:

Provided that if a tax deduction is not made by the employer in any such case section 156 shall apply to the employee.

History: Section 145(1) amended by Income Tax Amendment Act 2013 with application from 1 January 2014

(2) Where in the case of a regular full-time employment an employee receives salary or wages from any one employer for part only of the pay period, that salary or wages shall be deemed to be for the whole of the pay period.

(3) For the purposes of this section, where an employee receives salary or wages in respect of work performed by the employee as a piece worker or out-worker and the employee is paid on a production basis, that salary or wages shall be deemed to be for the period from the commencement of the performance of the work until the completion of the work.

(4) Where a source deduction payment for any pay period is paid in two or more separate sums, all sums so paid shall, for the purpose of calculating the amount of the tax deduction, be aggregated, and the employer may at the employer's option, make the tax deduction wholly from one sum, or in part from each of any two or more sums:

Provided that where, by reason of the size or nature of the employer's business or organisation, the dispersal of employees, or difficulty in assembling particulars, or for any other reason approved by the Collector, it is impracticable for an employer to pay overtime pay for a pay period at the same time as the other salary or wages for the pay period, the overtime pay of any employee for the pay period may, for the purpose of calculating the amount of the tax deduction, be aggregated with the employee's salary or wages (other than overtime pay) for a subsequent pay period in respect of both pay periods,

(a) the amounts of the employee's salary or wages (other than overtime pay) are substantially the same; and

(b) the amounts of the tax deductions applicable to the employee's salary or wages are the same; and

(c) the tax code applicable to the employee is the same:

Provided also that, where it is the practice of an employer to pay overtime pay for an interval of time which is of the same length as a pay period of an employee but does not coincide with any such pay period, the overtime pay of the employee for any such interval may, for the purposes of the first proviso to this subsection, be deemed to be overtime pay for the pay period during which that interval ends, if the amounts of the employee's salary or wages (other than overtime pay) for that interval and for that pay period are substantially the same.

146. Tax deductions from amounts credited to or applied for employees - Where a source deduction payment, though not actually paid, is credited to or applied on account of any employee entitled thereto, the amount so credited or applied shall, for the purposes of this Part, be deemed to be paid when it is so credited or applied, and a tax deduction in respect thereof shall be made accordingly.

147. Benefits and superannuation and other payments deemed to be salary or wages. Where in respect of employment an employee receives or enjoys a benefit referred to in section 46(2)(b), or any other benefit in kind which is included in salary or wages, or receives a payment by way of superannuation, pension, retiring allowance, or other allowances, or annuity which is included in salary or wages as defined in section 2, the value of the benefit (whether in money or otherwise) or, as the case be, the amount of the payment shall be deemed to accrue from day to day, and accordingly in each case the amount, so accrued for any days in a pay period of the employee shall be deemed to be that employee's salary or wages for the pay period, or, as the case may be, part of that employee's salary or wages for the pay period.

148. Payment to be made by employee where tax deduction exceeds source deduction payment -

(1) Where, at the time when a source deduction payment is made or deemed to be made, the amount of the source deduction payment available in money is less than the amount of the tax deduction, or there is no amount available in money, the employee shall forthwith pay to the employer the amount of the deficiency in the tax deduction or, as the case may be, the amount of the tax deduction, and every amount so paid on any date shall be deemed to be a tax deduction made by the employer on that date from the source deduction payment made or deemed to be made to

the employee.

(2) If an employee makes default in paying to the employer any amount payable under this section, or any of any such amount, the amount in respect of which default has been made shall be deemed for the purposes of section 156 to be a tax deduction that should have been made and was not made, and the provisions of that section shall apply accordingly.

149. Tax Codes - (1) For the purposes of this Part, the tax code of any employee in relation to any source deduction payment (not being a source deduction payment that is an extra emolument and not being a source deduction payment that is a withholding payment) shall be such one of the following codes as applies to the employee in respect of that source deduction payment in accordance with this section; namely -

(a) "No declaration", signifying an employee who has not delivered to the employer a tax code declaration in the form authorised by the Collector and containing such particulars as the Collector requires, nor a tax code certificate;

(b) "P", signifying an employee in relation to whom the source deduction payment is a payment that exceeds a source deduction payment from any other employer;

(c) "S", signifying an employee in relation to whom the source deduction payment is a payment that is less than a source deduction payment from any other employer.

(2) Subject to this Act, where any employee desires that a reduced deduction shall apply to the employee (whether or not the same or any other reduced deduction has previously applied), the employee may deliver to the employee's employer a tax code declaration in a form authorised by the Collector, and containing such particulars as the Collector requires, and specifying the employee's tax code as determined by those particulars, and that tax code shall apply to the employee in accordance with this section.

(3) Where any employee considers that it is or will be undesirable or impracticable for the employee to deliver a tax code declaration to the employee's employer, the employee may deliver the declaration to the Collector, and in any such case the Collector shall issue to the employee a tax code certificate addressed to the employer and specifying the employee's tax code as determined by the particulars contained in the declaration. The employee may deliver that certificate to the employee's employer, and that tax code shall apply to the employee in accordance with this section.

(4) When an employee has delivered a tax code declaration or a tax code certificate to the employee's employer, the tax code shall, subject to this Act, apply to the employee in respect of all source deduction payments made by the employer to the employee after the delivery of the declaration or certificate and before the tax code ceases in accordance with subsection (5) or subsection (6) to apply to the employee:

Provided that, except in the case of salary or wages for the first pay period of a new employment of the employee, the tax code shall not apply in respect of the salary or wages for any pay period commencing before the date of the delivery of the declaration or certificate to the employer.

(5) Where a tax code applies to an employee on the last day of a year, the tax code shall not apply to the employee in respect of any source deduction payment made by the employer to the employee after that day, not being a payment of salary or wages for a pay period current on that day:

Provided that where there is no change in the tax code of the employee and the employee delivers a further tax code declaration or tax code certificate to the employer not later than 10

days after 1 January in the next year, the tax code specified in that declaration or certificate shall be deemed to have commenced to apply to the employee immediately after the former tax code ceased to apply to the employee.

(6) Where an employee, being an employee to whom a "P" or "S" tax code previously applied, ceases to be entitled to the use of that tax code, the tax code shall not apply to the employee in respect of any such deduction payment made by the employer to the employee after the date on which that entitlement ceased, not being a payment of salary or wages for a pay period current on that date:

Provided that where the employee delivers a further tax code declaration or tax code certificate to the employer not later than three days after the date of giving the notice required by subsection (7), the tax code specified in that declaration or certificate shall be deemed to have commenced to apply to the employee immediately after the former tax code ceased to apply to the employee.

(7) Where a tax code ceases under subsection (6) to apply to an employee by reason of the employee, being an employee to whom a "P" or "S" tax code previously applied, ceasing to be entitled to the use of that code, the employee shall not later than four days after the date on which the employee became aware that the tax code ceased to apply, give notice in writing of that fact to the employer or (where the tax code declaration was delivered to the Collector) to the Collector, stating the reason why a "P" or "S" tax code, as the case may be, ceased to apply and the date it ceased to apply. No employer or other person making a source deduction payment shall be liable for making a reduced deduction according to a tax code after it has ceased under subsection (6) to apply to the employee but before the employer has received notice (whether under this subsection or otherwise) that the "P" or "S" tax code has ceased to apply to the employee.

(8) A reduced deduction applying to an employee in respect of the employee's employment by any employer shall not apply to the employee in respect of the employee's employment by any other employer, not being a successor of the first-mentioned employer in the same employment.

(9) The Collector may vary any of the requirements of this section in relation to any employee or class of employees in such cases and to such extent as the Collector thinks fit, and in every such case this section shall apply as so varied.

(10) For the purposes of this Act a tax code declaration or tax code certificate which is delivered to an employer before the beginning of any year but is expressed to relate to that year shall be deemed to be delivered on 1 January in that year.

150. Amount of total tax deduction where several deductions are made for one week - Except as otherwise provided in this Act, where during any week ending with a Saturday an employee has engaged in more than one employment (whether with the same employer or with two or more employers) the amount of the total tax deduction required to be made in respect of all payments of salary or wages made to the employee for that week or any part thereof shall be deemed to be the amount of the tax deduction that would have been required to be made if all those payments had been one payment made by one employer for that week, and where that total tax deduction is not made in full section 156 shall apply accordingly:

Provided that, where the employee left one regular full-time employment before engaging in another regular full-time employment, the employee shall not be deemed for the purposes of this section to have been engaged in both those employments in the one week.

151. Increased deductions to cover deficiency in deductions from advance payments - (1) Where the amount of the tax deduction to be made from any salary or wages is increased, and before the date of the increase an employee has received from an employer a payment of salary or wages to the whole, or a part of which the increase applies, and the proper tax deduction, taking the increase into account as far as it applies, has not been made in full at the time of the payment, the amount of the deficiency

shall be added to the tax deduction required to be made from the next payment of salary or wages made to the employee in the same employment, and the amount of the tax deduction so required to be made shall be deemed to be increased accordingly.

(2) Where any salary or wages become subject to tax deductions under this Part, and before the date of their becoming so subject an employee has received from an employer a payment of salary or wages of which the whole or a part is so subject, and the proper tax deduction has not been made in full at the time of the payment, the amount of the deficiency shall be added to the tax deduction required to be made from the next payment of salary or wages made to the employee in the same employment, and the amount of the tax deduction so required to be made shall be deemed to be increased accordingly.

152. Amount of tax deductions for pay period current when tax altered - (1) Notwithstanding anything to the contrary in this Part, this section shall apply where the amount of the tax deduction for the time being in force in relation to any payment of salary or wages is reduced or increased by an amendment made to the basic tax deductions.

(2) Where this section applies, the amount of the tax deduction to be made from a payment of salary or wages to an employee for a pay period current on the date on which an altered tax deduction commences to apply shall be as follows:

(a) where the pay period does not exceed a month, the tax deduction in respect of the whole of the payment for the pay period shall be the amount of the altered tax deduction;

(b) where the pay period exceeds a month, the tax deduction shall be ascertained -

(i) by calculating, on the basis specified in clause 2 of Schedule 2, parts of the payment for the pay period that are for the respective portions of the pay period before and after the altered tax deduction commences to apply; and

(ii) by calculating in respect of each such part of the payment, the amount of the tax deduction that would be required to be made from a payment of salary or wages equal to that part for a pay period equal to the portion of the pay period to which that part relates; such calculation to be made according to the tax deduction in force in that portion of the pay period and in the manner provided in clause 2 of Schedule 2-

and the total of the amounts of the tax deductions calculated under subparagraph (ii) of this paragraph shall be the amount of the tax deduction to be made from the payment of salary or wages for the pay period.

(3) Where this section applies and section 150 also applies, the amount of the total tax deduction required to be made in accordance with section 150 in respect of all payments of salary or wages made to an employee for a week current on the date on which an altered tax deduction commences to apply shall be made in accordance with the altered tax deduction:

Provided that where all the payments made to any employee for that week are for services rendered to that date, the amount of that total tax deduction shall be calculated in accordance with the tax deductions in force in the portion of the week in which the services are rendered.

(4) Where this section applies, and on or after the date on which an altered tax deduction commences, if a payment of salary or wages is made to an employee;

(a) For a pay period that ended before that date; or

(b) Where section 150 applies, for services rendered in a week that ended before that date, -

the amount the tax deduction to be made or, as the case may be, the amount of the total tax deduction required to be made, shall be calculated in accordance with the tax deduction in force in that pay period or week.

History: Section 152(2)(b) (i) and (ii) amended by Income Tax Amendment Act 2013 with application from 1 January 2014

153. Power of Collector to change tax deductions - (1) Notwithstanding anything in the foregoing provisions of this Part, the Collector may, in such circumstances and to such extent as the Collector thinks fit, reduce or increase the amount of the tax deduction required to be made from any source deduction payment that has been or will be made to any employee or class of employees, or may make such adjustment as in the Collector's opinion is equitable, for the purpose in either case of meeting the circumstances of any case or class of employees upon or subject to such terms and conditions as the Collector requires.

(2) In every such case the provisions of this Part shall apply as if they had been amended in accordance with the decisions or requirements of the Collector for the time being in force under this section.

History: Section 153(1) amended by Income Tax Amendment Act 2013 with application from 1 January 2014

Duties of Employer as to Making Deductions

154. Records to be kept by employer - (1) Every employer who makes a source deduction payment to an employee shall keep a record in respect of the employee, showing the amount of the source deduction payment before making any tax deduction, and the amount of the tax deduction (if any) made thereon, and shall enter those amount in the record at the time of making the source deduction payment.

(2) Every employer shall take all reasonable precautions for the safe custody of all records that the employer is required to keep under this section and of all pay sheets and receipts for source deduction payments, and shall retain all such records, pay sheets, and receipts for not less than five years after the making of the payments to which they relate:

Provided that this subsection shall not require the retention of any records, pay sheets, or receipts in respect of which the Collector has notified the employer that retention is not required.

155. Payment of tax deductions to Collector - (1) Every employer shall -

(a) not later than the 20th day after the end of each month

(i) deliver to the Collector a monthly remittance certificate signed by the employer, being a certificate in the form authorized by the Collector and showing the total amount of all source deduction payments made by the employer to employees during the month and the total amount of all tax deductions (if any) made from those payments; and

(ii) pay to the Collector the amount of tax deductions from source deduction payments (if any) made by the employer during the month.

(b) not later than 20 January in each succeeding year, deliver to each employee a tax deduction certificate signed by the employer, being a certificate in a form authorised by the Collector and showing the total amount of all source deduction payments made by the

employer to the employee in the preceding year (not including payments included in a tax deduction certificate previously delivered to the employee), and the total amount of the tax deductions (if any) made from those payments;

(c) within 7 days after the employment of any employee ceases, deliver to the employee a tax deduction certificate signed by the employer, being a certificate in a form authorised by the Collector and showing the total amount of all source deduction payments made by the employer to the employee in the period of employment (not including payments included in a tax deduction certificate previously delivered to the employee) and the total amount of the tax deductions (if any) made from those payments;

(d) within 7 days after making any withholding payment to an employee or group of employees which is the final or only payment in respect of the services, contract, arrangement, dealing, or matter to which it relates, deliver to the employee, or, in the case of a group of employees, to one of the group, a tax deduction certificate signed by the employer, being a certificate in a form authorised by the Collector and showing the total amount of that payment or of all those payments (not including payments included in a tax deduction certificate previously delivered to the employee or group), and the total amount of the tax deductions (if any) made from that payment or from those payments;

(e) not later than 15 February in each succeeding year (except in cases to which subsection (2) applies), deliver to the Collector a reconciliation statement signed by the employer, being a certificate in a form authorised by the Collector and showing the total amount of all tax deductions (if any), paid to the Collector by the employer in respect of source deduction payments made in the preceding year, and the total amount of all tax deductions (if any) shown in tax deduction certificates delivered to employees in respect of those source deduction payments, together with an explanation if the two totals do not agree, and accompanied by signed copies of all those tax deduction certificates and by all tax code declarations and tax code certificates delivered to the Collector in the preceding year; and by all notices cancelling reduced deductions (if any) given to the taxpayer in that year under section 149(6);

(f) not later than the 15th day of the second month after the month in any year in which the employer disposes of or otherwise ceases to carry on any business in respect of which the employer has made any such tax deductions, comply with paragraph (e) in respect of those deductions as if the period from the beginning of that year to the date of the last of those tax deductions were a preceding year.

(2) Paragraph (e) of subsection (1) shall not apply to any employer in respect of any tax deduction made otherwise than in the course of a business carried on by the employer from a source deduction payment for which there is no pay period or from a withholding payment. In every such case the employee shall not later than the 20th day of the month next after the month in which the payment (if only one) (illegible) payment (in the case of two or more payments relating to the same services, contract, arrangement (illegible) or matter) is made, deliver to the Collector a signed copy of the tax deduction certificate signed by the employer to the employee, and of any tax code declaration or tax code certificate delivered to the employer by the employee, and shall also indicate on that copy of the tax deduction certificate the date delivered under this subsection.

(3) The Collector may vary any of the requirements of this section in relation to any employer or class of employers in such cases and to such extent as the Collector thinks fit, and in every such case this section shall apply as so varied.

(4) The executor or administrator of a deceased employer shall fulfil such of the obligations of the employer under this section as have not been fulfilled by the employer before the employer's death.

Employee's Duties where Deductions are not made

156. Employee to pay deductions to Collector - Where for any reason a tax deduction is not, made or is not in full at the time of the making of any source deduction payment or payments, the employee shall;

(a) not later than the 20th day of the month next after the month in which payment of the source deduction payment or payments was made, furnish to the Collector a return in the prescribed form of the source deduction payment or payments; and

(b) unless the employee is exempted from liability to pay the same or is not liable to pay the same, pay to the Collector an amount equal to the total of the tax deductions that should have been made and were not made, and that amount shall be due and payable to the Collector on the 20th day of the month, next after the month in which the source deduction payment or payments was or were made.

Pay-period Taxpayers

157. Interpretation - (1) For the purposes of this Act an employee shall, subject to subsections (2), be deemed to be a pay-period taxpayer in respect of any year if in that year;

(a) the employee did not derive any income except -

(i) income from employment not exceeding in the aggregate \$10,000; and

(ii) interest not exceeding in the aggregate \$1000; and

(iii) assessable income from any other source (before any deductions allowed under this Act) not exceeding \$500; and

(b) the employee is not an absentee as defined in section 38.

(2) Notwithstanding anything in subsection (1), any employee shall be deemed not to a pay-period in respect of any year, if the Collector so decides upon the grounds that subsection (1) would not have applied to the employee for that year had not the income of the employee from source deduction payments been diminished by reason of the occurrence in the year of the employee's retirement of the employee from employment or of some other event, including the employee's death, disability, or absence from the Cook Islands, causing the termination or suspension of the employee's employment, and that -

(a) the employee is not a person to whom subsection (1) would normally apply; or

(b) it appeared at any time during the year that subsection (1) would not apply to the employee for the year.

158. Tax of pay-period taxpayers to be determined by amount of tax deductions or by assessment -

(1) Notwithstanding anything in this Act, the amount of income tax for which a pay-period taxpayer is liable in respect of the income derived by the taxpayer in any year shall be determined exclusively

and finally by the total amount of the tax deductions required under this Part to be made from that income, except where the taxpayer has not later than the end of the next succeeding year or within such further period as the Collector may allow in any case or class of cases, furnished to the Collector a return of that income, in which case the amount of that income tax shall be the smaller of the following amounts:-

(a) the total amount of those tax deductions;

(b) the amount of the income tax that would be payable in respect of that income under an assessment made in accordance with Part V.

(2) Except where a return of income is furnished for the purpose of having the amount of income tax in respect of the income for the year assessed in accordance with Part V a pay-period taxpayer to whom this section applies shall not furnish a return of income for the year unless the Collector requires the taxpayer to do so.

159. Adjustment of excessive tax deductions - In any case where -

(a) the amount of income tax for which a pay-period taxpayer is liable in respect of the income derived by the taxpayer in any year is determined exclusively and finally, pursuant to section 158(1), by the total amount of the tax deductions required under this Part to be made from that income; and

(b) the Collector is satisfied that the total amount of the tax deductions made from payments of that income to the taxpayer is in excess of the total amount of the tax deductions required under this Part to be made from that income, the Collector shall pay to the taxpayer the amount of that excess, or, at the option of the Collector, credit that amount in payment of any tax due, by the taxpayer and unpaid:

Provided that no payment shall be made or credit given under this section after the expiration of the period of 6 years immediately after the end of the year in which that income was derived, except where written application for the payment or credit is made by or on behalf of the taxpayer before the expiration of that period.

Assessment and Payment of Income Tax

160. Assessment and payment of income tax - (1) Subject to section 158, the amount of income tax for which an employee is liable in respect of the income derived by him in any income year shall be assessed under Part V.

(2) All income tax payable under any assessment made in accordance with subsection (1) and not previously due and payable shall be due and payable on 1 October in the year next succeeding the income year, or on such earlier date as specified in that behalf in the notice of assessment given to the employee, not being less than 30 days after the date of the notice.

Crediting Tax Deductions

161. Tax deductions to be credited against tax assessed - (1) Every employee who is to furnish or who furnishes to the Collector a return of any assessable income derived by that employee in any income year shall, except where the Collector otherwise directs, forward to the Collector with the return all tax deduction certificates delivered to the employee in respect of tax deductions made in the income year from source deduction payments made to the employee.

(2) Where the Collector receives from an employee any tax deduction certificates in respect of tax

deductions made in the income year from source deduction payments made to the employee, or receives the amount of any tax deduction so made and not included in any tax deduction certificate, and the Collector has made an assessment of income tax in respect of the income derived by the employee in the income year or is satisfied that no income tax is payable in respect of that income, the Collector shall credit the total of the amounts of the tax deductions (but not including any additional tax or penal tax) shown in the certificate or received as aforesaid, in payment successively of:

- (a) the income tax (if any) payable by the employee in respect of the employee's taxable income for the income year;
- (b) the income tax (if any) due by the employee and unpaid in respect of any year before that income year;
- (c) the income tax (including provisional tax) (if any) due by the employee and unpaid in respect of any year after that income year and, if more than one, in the order of those years;

and shall refund to the employee an amount equal to the amount of the tax deductions not so credited.

(3) If the amount credited by the Collector under paragraph (b) of subsection (2) is less than the total of the income tax referred to in that paragraph, the Collector shall apply the amount so credited, so far as the in payment of such income tax as the Collector determines.

(4) If the Collector has reason to believe that any tax deduction certificate received by the Collector for the purposes of this section is incorrect in any particular, the Collector may retain the certificate for such period as the Collector thinks fit, and shall not deal with the certificate as required by the foregoing provisions of this section until the Collector is satisfied that the certificate is correct.

(5) Where the Collector has credited in payment of income tax, or made a refund in respect of, an amount shown in a tax deduction certificate which is in excess of the amount that the employer has deducted from a source deduction payment to which the certificate relates, the employer and the employee shall be jointly and severally liable to pay to the Collector the amount of the excess, and that amount shall be deemed to have become due and payable on 15 February in the year after the year to the whole or part of which the tax deduction action certificate relates.

162. Lost tax deduction certificates - Where the Collector is satisfied that a tax deduction certificate (illegible) lost or destroyed, and is satisfied as to the amount of the deductions shown in that certificate, the Collector shall apply section 161 in the same manner as if the certificate had been received by the Collector.

163. Tax deductions for which no certificate issued - Where the Collector is satisfied that any employer has made any tax deduction from a source deduction payment made to an employee, and has failed to deliver to the employee within the prescribed time a tax deduction certificate in respect of the deduction, the Collector shall apply section 161 in the same manner as if a tax deduction certificate showing the tax deduction had been delivered to the employee and received by the Collector.

Recovery of Tax Deductions

164. Recovery of tax deductions from employers - (1) The amount of every tax deduction made under this Part shall be held in trust for the Crown; and any amount so held in trust shall not be property of the employer liable to execution, and, in the event of the bankruptcy or liquidation of the employer or of an assignment for the benefit of the employer's creditors, shall remain apart, and form no part of the estate in bankruptcy, liquidation, or assignment.

(2) Where a tax deduction has been made under this Part and the employer has failed to deal with the amount of the tax deduction or any part thereof in the manner required by subsection (1) or the other

provisions of this Part, the amount of the tax deduction for the time being unpaid to the Collector shall, in the (illegible) of the assets of the employer upon the bankruptcy or liquidation of the employer or upon an assignment for the benefit of the employer's creditors rank, without limitation in amount and notwithstanding anything in any other Act, in order of priority immediately after preferential claims for wages or other sums payable to or on account of any employee, and in priority to all other claims.

165. Employer failing to make tax deductions - (1) Where an employer fails to make any tax deduction in accordance with the employer's obligations under this Part, the amount in respect of which default has been made shall constitute a debt payable by the employer to the Collector, and shall be deemed to have become due and payable to the Collector on the 20th day of the month next after the month in which payment of the source deduction payment was made.

(2) The right of the Collector to recover from the employer the amount in respect of which default has been made shall be in addition to any right of the Collector to recover that amount from the employee under this Part; and nothing in this Part shall be construed as preventing the Collector from taking such steps as the Collector thinks fit to recover that amount from the employer and from the employee concurrently, or from recovering that amount wholly from the employer or from the or partly from the employer and partly from the employee.

(3) Where any amount, including a penalty, recoverable in accordance with this Part from the employee is in fact paid by the employer, the amount so paid may be recovered by the, employer from the employee.

166. Unpaid tax deductions, etc to constitute a charge on employer's property - (1) Where an employer fails wholly or in part to make any tax deduction in accordance with the employer's obligations under this Part, or is liable to pay any sum to the Collector under this Part, an amount equal to the total for the time being unpaid to the Collector in respect of that tax deduction or sum (including any additional tax or penal tax), and in respect of any judgment obtained therefor (including any costs, fees, or expenses included in the judgment or otherwise payable by the employer to the Collector in respect thereof) shall be a charge on all the real and personal property of the employer.

(2) Every charge created by this section shall be subject to all mortgages, charges, or encumbrances existing at the time of the creation of the charge, but, subject to the provisions, of this section, shall have priority over all other mortgages, charges, or encumbrances. Notwithstanding anything in any other Act, if any property subject to the charge created by this section is also subject to a charge created by that other Act, the charges shall rank equally with each other unless by virtue of that other Act the charge created thereby would be deferred to the charge created by this section.

(3) The Collector may register any charge on any property created by this section under any registration Act to which the property is subject by depositing with the appropriate Registrar a certificate signed by the Collector stating the description of the property charged and the amount payable; and in every such case the Registrar shall, without payment of any fee, register the certificate as if it were an instrument registrable under the registration Act.

(4) Upon the registration of any such certificate under any registration Act it shall be deemed to be actual notice to all persons of the existence and amount of the charge, and the charge shall have operation and priority accordingly in relation to the property that is subject to the charge and to the registration Act:

Provided that in so far as any mortgagee that is registered in respect of that property before the registration of the charge secures any money that is advanced after written notice of the charge or of the registration of the charge has been given to the mortgagee, or to any solicitor for the time being acting for the mortgagee in respect of the mortgage, the charge shall have priority over the mortgage.

(5) When any registered charge has been satisfied, the Collector shall deposit with the appropriate Registrar a release of the charge, and the Registrar shall, without payment of any fee, register the release as if it were an instrument registrable under the registration Act.

(6) Any charge created by this section which is registered against any property shall operate to secure any amount secured by any prior unregistered charge and unpaid at the time of the registration of the charge, and also to secure any amount secured by any charge coming into existence after the registration of the charge, to the intent that the registered charge shall operate to secure the total of all amounts for the time being owing by the employer under all charges created by this section.

(7) If any amount constitutes by virtue of this section a charge on any property the High Court may make such order as it thinks fit, either for the sale of that property or any part thereof, or for the appointment of a receiver of the rents, profits, or income thereof, and for the payment of the amount of the charge and the costs of the Collector out of the proceeds of the sale or out of the rents, profits, or income.

(8) Where any property has been sold under any such order, the High Court may, on the application of the purchaser or the Collector, make an order vesting the property in the purchaser.

(9) Every such vesting order shall have the same effect as if all persons entitled to the property had been free from all disability and had duly executed all proper conveyances, transfers, and assignments of the property for such estate or interest as is specified in the order.

(10) This section shall apply subject to section 164.

Offences and Penalties

167. Offences - (1) Without limiting the application of section 206, it is hereby declared that every person commits an offence against this Act who -

(a) being an employer or other person by whom a source deduction payment is made to an employee, fails wholly or in part to make a tax deduction therefrom in accordance with that person's obligations under this Part; or

(b) knowingly applies or permits to be applied the amount of any tax deduction or any part thereof for any purpose other than the payment of the tax deduction to the Collector; or

(c) makes a false or misleading tax code declaration, or gives any false information, or misleads or attempts to mislead the Collector or any other officer, or any employer or other person, in relation to any matter or thing affecting a tax deduction or a reduced deduction; or

(d) delivers or maintains or attempts to deliver or maintain in contravention of this Part, a tax code declaration or a tax code certificate in respect of more than one employment, or otherwise obtains or attempts to obtain, in contravention of this Part, the benefit of a reduced deduction in respect of more than one employment; or

(e) alters any tax code certificate issued by the Collector, or falsely pretends to be the employee named in any such certificate, or possesses without lawful justification or excuse, a colourable imitation of any such certificate, or, in contravention of this Act, causes or attempts to cause any employer or other person to refrain from making a tax deduction, or to make a reduced deduction, by the production of any document other than a tax code certificate issued by the Collector and for the time being in force; or

(f) alters any tax deduction certificate, or falsely pretends to be the employee named in any such certificate, or, in contravention of this Act, obtains or attempts to obtain for the person's

own advantage or benefit credit with respect to, or a payment of, the whole or any part of the amount of a tax deduction made from a source deduction payment received by another person.

(2) Every person who commits an offence against paragraph (b) of subsection (1) shall be liable to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$10,000 or to both.

(3) For the purposes of paragraph (b) of subsection (1) a tax deduction shall be deemed to have been (illegible) and when payment is made of the net amount of any source deduction payment, and the amount deduction shall be deemed to have been applied for a purpose other than the payment thereof (illegible) of the tax deduction is not duly paid to the Collector:

Provided that no person shall be convicted of an offence under paragraph (b) of subsection (1) if that person satisfies the Court that the amount of the tax deduction has been accounted for, and that failure to account for it within the prescribed time was due to illness, accident, or other cause beyond the control of that person.

168. Penal tax for default in making or paying tax deduction - (1) Where:(a) any employer or other person by whom any source deduction payment is made fails wholly or in part to make a tax deduction therefrom in accordance with that person's obligations under this Part; or

(b) any person knowingly applies or permits to be applied the amount of any tax deduction or any part thereof for any purpose other than the payment of the tax deduction to the Collector;

that employer or other person shall be chargeable by way of penalty, in addition to any other penalty to which that person may be liable, with an additional amount (hereinafter referred to as penal tax) not exceeding an amount equal to treble the amount in respect of which default has been made (hereinafter referred to as the deficient deduction).

(2) For the purposes of paragraph (b) of subsection (1) a tax deduction shall be deemed to have been made if and when payment is made of the net amount of any source deduction payment, and the amount of the tax deduction shall be deemed to have been applied for a purpose other than the payment thereof if the amount of the tax deduction is not duly paid to the Collector:

Provided that no person shall be chargeable with penal tax under paragraph (b) of subsection (1) if that person satisfies the Collector that the amount of the tax deduction has been accounted for, and that failure to account for it within the prescribed time was due to illness, accident, or other cause beyond the control of that person.

(3) Penal tax imposed by this section shall for all purposes be deemed to be of the same nature as the deficient deduction, and shall be recoverable accordingly.

(4) Subject to the provisions of this Part, the provisions of the other Parts, as far as they are applicable and with the necessary modifications, shall apply with respect to all penal tax imposed under this section as if -

(a) it were penal tax under section 209; and

(b) the person chargeable with the penal tax imposed under this section were the taxpayer; and

(c) the deficient deduction were deficient tax payable for the same year of assessment as that in which the deficient deduction became due and payable to the Collector.

169. Additional tax for default in making tax deduction or in paying any amount due to Collector - (1)

Where -

(a) any employer or other person by whom any source deduction payment is made fails wholly or in part to make a tax deduction therefrom in accordance with obligations under this Part; or

(b) any person who has made a tax deduction fails wholly or in part within the prescribed time and in the prescribed manner to pay the amount of the tax deduction to the Collector; or
(c) any person who is liable to pay any amount to the Collector under this Part fails to pay the amount on the due date for payment thereof,

that employer or other person shall, unless the Collector is satisfied that the person has not been guilty of wilful neglect or default, be liable without conviction, as well as any other tax to which the person may be liable, to an additional tax equal to 5% of the amount in respect of which default has been made and a further 1% per month calculated and compounded on the amount from time to time outstanding, for each complete month during which that amount remains unpaid.

(2) For the purposes of paragraph (b) of subsection (1) a tax deduction shall be deemed to have been made if and when payment is made of the net amount of any source deduction payment.

(3) A penalty additional tax imposed under this section shall for all purposes be deemed to be of the same nature as the amount or part thereof in respect of which it is imposed, and shall be recoverable accordingly.

History: Subsection 169(3) amended by Income Tax Amendment Act 2013 with application from 1 January 2014

(4) Subject to the provisions of this Part, the provisions of the other Parts of this Act shall apply with respect to the amount of every additional tax imposed under this section as if it were additional tax under section 190 and as if the person liable to the additional tax were the taxpayer.

History: Subsection 169(4) amended by Income Tax Amendment Act 2013 with application from 1 January 2014

(5) For the purposes of subsection (1), the amount from time to time outstanding, in relation to a complete month, means the sum of any of the following that is outstanding at the end of that month:

(a) the 5% additional tax on the amount for which default was made; and

(b) any previous monthly compounded charges.

History: Section 169(1) amended by Income Tax Amendment Act 2013 with application from 1 January 2014.
Section 169(5) inserted by Income Tax Amendment Act 2013 with application from 1 January 2014

Miscellaneous Provisions

170. Agreements not to make tax deductions to be void - Where a tax deduction is required to be made under the provisions of this Part, any agreement not to make the tax deduction in accordance with those provisions shall be void.

171. Amount of tax deductions deemed to be received by employee - Where any amount has been deducted from a source deduction payment by way of tax deduction under this Part, the amount so deducted:-

(a) as between the employer and the employee, shall be deemed to have been received by the employee at the time of the source deduction payment;

(b) for the purposes of the other Parts, shall be deemed to have been derived by the employee at the same time and in the same way as the residue of the source deduction payment.

172. Application of other Parts to amounts payable under this Part - Subject to the provisions of this Part, the provisions of the other Parts of this Act shall apply with respect to every amount that any employer, employee, or other person is liable to account for or pay to the Collector under this Part as if the amount were income tax.

PART X

PROVISIONAL TAX ON INCOME OTHER THAN SOURCE DEDUCTION PAYMENTS

173. Application of this Part - (1) Notwithstanding anything in any other Part, provisional tax shall be payable by all provisional taxpayers in accordance with this Part.

(2) For the purposes of this Act every person who in any income year derives assessable income otherwise than from source deduction payments shall be deemed to be a provisional taxpayer in respect of that year;

Provided that a provisional taxpayer shall be relieved from an obligation to pay provisional tax in respect of the income of any income year in any case where the taxpayer did not derive in the income year preceding that income year any assessable income other than -

- (a) source deduction payments; or
- (b) withholding income; or
- (c) rents not exceeding in the aggregate \$100; or
- (d) interest not exceeding \$1,500.

(3) Subsections (1) and (2) shall not apply in the case where the provisional tax to be paid by a taxpayer does not exceed \$2,000.

History: Section 173(3) amended by Income Tax Amendment Act 2004 with application from 1 January 2004.
Section 173(3) amended by Income Tax Amendment Act 2013 with application from 1 January 2014

174. Certain income derived by non-residents not to be included in provisional income - Every reference in this Part, other than in this section, to assessable income, or to income, or to income other than source deduction payments, shall be read as not including income to which section 105 applies.

175. Amount of provisional tax - (1) Subject to this Part, the amount of provisional tax payable in respect of any income year by a provisional taxpayer shall be the amount of income tax assessable in respect of the income derived by the taxpayer in the base year in relation to that income year, after deducting from that income the amount (if any) of any tax deductions or withholding tax made from any source deduction amounts or withholding income included in the income derived in that base year.

(2) In any case where a provisional taxpayer in respect of any income year commenced during the income year in relation to that income year (or the accounting year of the taxpayer corresponding with the income year, where the taxpayer furnishes an annual return of income under section 9 for an accounting ending with an annual balance date other than 31 December) to derive income from any source, the amount of provisional tax payable in respect of the income derived in the income year

shall be such amount as the Collector estimates would have been the income tax assessable in respect of the income derived in an income year of the taxpayer had commenced at the beginning of the base year to derive income from that source.

(3) In this section the expression "base year", in relation to any income year, means the income year immediately preceding that first mentioned income year. Provided that where the income tax assessable, after deducting from that amount the amount (if any) of any tax deductions or withholding tax made from any source deduction payments or withholding income included in the income derived in relation to the first mentioned income year does not exceed \$20,000, the expression "base year" means the first mentioned income year.

History: Section 175(3) amended by Income Tax Amendment Act 2005 with application from 1 January 2006

176. Adjustments for variations in exemptions or rebates - Where in relation to any provisional taxpayer and to any income year it appears to the Collector that -

(a) the amount of the taxpayer's entitlement to any special exemption or rebate for the income year will differ for any reason from the amount of that taxpayer's entitlement for the preceding year; or

(b) the taxpayer is entitled to have a loss carried forward; or

(c) the taxpayer is entitled to have a loss carried forward but the amount of the entitlement has increased or decreased from the preceding year; or

(c) the entitlement itself has changed from the preceding year;

the Collector may increase or reduce the amount of any provisional tax otherwise payable by the taxpayer or may make such adjustment as is in the Collector's opinion equitable, for the purpose in either case of meeting the special circumstances of any case or class of cases, upon and subject to such terms and conditions as the Collector requires.

History: Subsection 176(b) repealed and subsections 176(b)-(d) substituted by Income Tax Amendment Act 2013 with application from 1 January 2014

177. Allowance for provisional tax paid by agent - Where an agent is liable to pay any amount of provisional tax in respect of the income of a principal, the provisional tax payable by the principal shall be reduced by that amount.

178. Taxpayer to estimate amount of provisional tax subject to adjustments Collector - (1) The amount of provisional tax payable by a taxpayer in respect of the income or an income year shall, subject to adjustment by the Collector, be ascertained in the first instance by the taxpayer to such extent in such manner as may be prescribed in the annual return that the taxpayer is required to furnish in it of the income of the preceding year, or as may be prescribed by the Collector in such other manner as the Collector thinks fit.

(2) If any provisional taxpayer makes default in furnishing the annual return that the taxpayer is required to furnish in an income year of the income of the preceding year, or if the Collector is not satisfied with the return made by any provisional taxpayer, or if the Collector has reason to suppose that any person, although that person has not made a return, is a provisional taxpayer, the Collector, may estimate the amount that ought to be the amount of the provisional tax for the income year and, save in so far as the taxpayer establishes by reason of the amendment of any assessment of income tax that the provisional tax as ascertained is excessive or that the taxpayer is not chargeable with the provisional tax, the provisional tax so ascertained shall be the provisional tax payable by the taxpayer in respect of the income of the income year, and the taxpayer shall be

liable, or deemed to have been liable, to pay the provisional tax as ascertained in the manner and at the time or times (whether before or after the provisional tax is so ascertained) specified in a notice given to the taxpayer by the Collector under subsection (3) having regard to the manner and time or times of payment and the amounts of the instalments (if any) that would be applicable if the taxpayer had furnished an annual return within the time fixed therefor under section 15 or, as the case may be, if the Collector had been satisfied with the return furnished by the taxpayer.

(3) After the Collector has ascertained the amount of the provisional tax the Collector may, where the Collector considers it necessary or advisable to do so, give notice to the taxpayer of the amount of the provisional tax and of the amount of any instalment thereafter to be paid, but the omission to give any such notice shall not relieve the taxpayer from liability to pay on the due date thereof any instalment of the provisional tax required to be ascertained by the taxpayer under subsection (1).

(4) The ascertainment of the amount of any provisional tax by the Collector shall not be open to objection by the taxpayer under Part IV.

179. Payment of provisional tax by instalments - (1) Subject to this section, provisional tax payable by any taxpayer in respect of the income derived by the taxpayer in any income year shall be payable in two equal instalments as follows:

(a) the first instalment shall be due and payable in that income year on the date by which that taxpayer is required under section 15(2) to furnish a return of the income derived by the taxpayer in the preceding year;

(b) the second instalment shall be due and payable on the date six months after the date on which that first instalment of provisional tax is due and payable.

(2) In any case where the Collector gives a notice to any taxpayer under section 178(3), the amount of any instalment of provisional tax that is payable after the Collector has given such notice shall be the amount specified in that behalf in the notice.

180. Interim returns - (1) The provisions of subsection (2) of this section shall apply in every case where a provisional taxpayer is liable in an income year to furnish a return of the income derived by that taxpayer in the preceding year (in this section referred to as "the required return") and to pay instalments of provisional tax in respect of the income of the income year, and pursuant to an extension of time granted under section 15(3) for furnishing the required return, the taxpayer is not required to furnish, and does not furnish, the required return by the due date for payment of the first instalment of the provisional tax.

(2) The taxpayer, not later than the due date for payment of the first instalment of the provisional tax in respect of income derived in the income year, or within such further period as the Collector may allow in any case or class of cases, shall furnish a return marked "Interim" in the prescribed form showing the estimated assessable income of the taxpayer for the preceding year and the taxpayer's calculation amount of the provisional tax which the taxpayer would be liable to pay in respect of the taxpayer's income for that income year if that estimated amount of assessable income had been the actual assessable income of the taxpayer for that preceding year and until the required return is furnished that amount of provisional tax so calculated shall be deemed to be the provisional tax payable by the taxpayer for that income year.

181. Estimated assessable income - (1) Where any taxpayer believes that the income derived by that taxpayer otherwise than from source deduction payments in the income year will be less than the income so derived by the taxpayer in the preceding year, the taxpayer may, before the expiration of one month after the due date for payment of any instalment of provisional tax, make an estimate of the amount of the taxpayer's assessable income for the income year and furnish to the Collector a

statement showing the amount so estimated and the amount of the provisional tax payable in accordance with subsection (2):

Provided that the taxpayer may, at any time before the expiration of one month after the due date for payment of the final instalment of provisional tax, make one or more revised estimates of those amounts and furnish to the Collector an amended statement or, as the case may be, amended statements accordingly.

(2) Subject to subsection (3), where a taxpayer duly furnishes to the Collector, in accordance with subsection (1), a statement or, as the case may be, an amended or a further amended statement, the amount of assessable income estimated or, as the case may be, last re-estimated by the taxpayer under that subsection, shall for the purposes of calculating the amount of provisional tax payable in respect of the income derived in the income year, be deemed to be the assessable income derived by that taxpayer in the preceding year and the amount of provisional tax payable for that income year shall be ascertained accordingly.

(3) Subject to the right of the taxpayer to re-estimate in accordance with the foregoing provisions where the Collector has reason to believe that the amount of any kind of income that will be or has been derived by the taxpayer in the income year is greater than the amount of that kind of income estimated by the taxpayer, the Collector (whose decision shall be final and conclusive) -

(a) may estimate the respective amounts that, in the opinion of the Collector, should have been the amounts estimated by the taxpayer under subsection (1) and shown in the statement furnished under that subsection; and

(b) may calculate the amount of the provisional tax that would have been payable if the amounts so estimated by the Collector had been shown in the statement,

and the amounts calculated shall be the amount of provisional tax payable by the taxpayer in respect of the income of that income year.

(4) The respective amounts of income as estimated by the Collector under subsection (3) shall not be greater than the corresponding amounts derived by the taxpayer in the year preceding the income year.

182. Additional tax where income underestimated - (1) Where, in respect of the income of any income year and a taxpayer has furnished -

(a) a statement in accordance with the provisions of section 181(1), and the Collector has not, in consequence thereof, made an estimate under section 181(3); or

(b) an amended or a further amended statement in accordance with the provisions of section 181(1), and the Collector has not, in consequence of the amended statement last furnished, made an estimate under section 181(3),

the taxpayer shall, subject to subsection (3) of this section, be liable to pay to the Collector, by way of additional tax, an amount calculated in accordance with subsection (2) of this section, if the amount of assessable income estimated or, as the case may be, last re-estimated by the taxpayer under section 181(1) is less than the assessable income derived by the taxpayer in the preceding year and is also less than 80 percent of the assessable income actually derived by the taxpayer in the income year.

(2) The amount of additional tax payable under this section shall be an amount equal to 10 percent of the amount by which the amount of income tax assessable in respect of the assessable income derived by the taxpayer in the income year exceeds; the amount of provisional tax calculated, under section

181(2) on the basis of -

- (a) the amounts set forth in the statement furnished by the taxpayer under section 181(1); or
- (b) where the taxpayer has furnished an amended or a further amended statement under that subsection, the amounts set forth in the amended statement last furnished under that subsection.

(3) Where the Collector is satisfied that the taxpayer has become liable to pay additional tax under this section by reason of the taxpayer's income for any income year being affected by, circumstances of which the taxpayer was not aware when furnishing to the Collector a statement under section 181(1), or (where the taxpayer furnished one or more amended statements) the last amended statement of the Collector may remit the additional tax or any part thereof.

(4) Additional tax payable under this section shall for all purposes be deemed to be of the same nature as the income tax that is assessed to the taxpayer in respect of the income of the income year, and shall be recoverable accordingly.

(5) The Collector may, in respect of any person who is chargeable with additional tax under this section, make an assessment of that additional tax, and that person shall be liable to pay the additional tax so assessed, except so far as that person establishes on objection that the assessment is excessive or that the person is not chargeable with the additional tax so assessed.

(6) An assessment made under this section shall be subject to objection in the same manner as an assessment of income tax levied under section 39, and the provisions of Part IV shall apply, so far as may be, to an objection to an assessment made under this section as if the terms "income tax" and "tax" used in that Part included additional tax under this section.

(7) Subject to subsections (5) and (6), the other provisions of this Act shall apply with respect to all additional tax payable under this section as if it were additional tax under section 190.

183. Alteration of provisional tax by Collector -(1) Where an alteration of the amount of provisional tax payable by any taxpayer is necessary, in the opinion of the Collector, whether by reason of the amendment of any assessment of income tax or by the operation of section 181(3) or otherwise, the Collector may make the necessary alteration and shall give to the taxpayer notice in writing of the altered amount.

(2) If the amount of the provisional tax is increased the additional amount payable in respect of any instalment of the provisional tax that became payable before the date of the notice shall become due and payable on a date to be specified in the notice, not being less than 30 days after the date of the notice.

(3) If the amount of the provisional tax is reduced the Collector shall credit the amount overpaid in respect of any instalment of the provisional tax in payment successively of -

- (a) any other instalment of the provisional tax due and unpaid at the date of the notice;
- (b) the income tax (if any) due by the taxpayer and unpaid in respect of the income of any year before the income year and for which the provisional tax is payable,

and shall refund to the taxpayer an amount equal to the amount of the overpayment not so credited. (4)

If the amount credited by the Collector under paragraph (b) of subsection (3) is less than the income tax referred to in that paragraph, the Collector shall apply the amount so credited in payment, so far as the amount extends, of such income tax as the Collector determines.

184. Voluntary payments of additional provisional tax - (1) Any taxpayer may at the taxpayer's option, at such time or times as the taxpayer thinks fit, make voluntary payments to the Collector of such amounts as the taxpayer thinks fit by way of additional provisional tax, being either -

(a) tax in excess of the provisional tax payable by the taxpayer in respect of the income of the income year; or

(b) tax in respect of an income year where no provisional tax is payable by the taxpayer in respect of the income of that income year.

(2) The penal provisions of this Act shall not apply to any additional provisional tax paid under this section.

Terminal Tax

185. Assessment and payment of terminal tax - (1) The amount of income tax for which a provisional taxpayer is liable in respect of the income derived by that taxpayer in any income year shall assessed under Part V.

(2) All income tax payable under any assessment made in accordance with subsection, (1), and not previously due and payable shall be due and payable on 1 October in the year next succeeding the income year or on such earlier date as is specified in the notice of assessment given to the taxpayer, not being less 30 days after the date of the notice.

186. Provisional tax to be credited against tax assessed - (1) Where any provisional taxpayer has paid provisional tax in respect of any income year, and the Collector has made an assessment of income tax in respect of the income derived by the taxpayer in the income year or is satisfied that no income tax is payable in respect of that income, the Collector shall credit the amount of the provisional tax paid by the taxpayer (not including any additional tax or penal tax) in payment successively of -

(a) the income tax (if any) payable by the taxpayer in respect of the income for the income year;

(b) the income tax (if any) due by the taxpayer and unpaid in respect of the income of any year before that income year;

(c) the income tax (including provisional tax) (if any) due by the taxpayer and unpaid in respect of the income of any year after that income year and, if more than one, in the order of those years,

and shall refund to the taxpayer an amount equal to the amount of the provisional tax not so credited.

(2) If the amount credited by the Collector under paragraph (b) of subsection (1) is less than the income tax referred to in that paragraph, the Collector shall apply the amount so credited in payment, so far as the amount extends, of such income tax as the Collector determines.

Application of Other Parts

187. Application of other Parts of this Act to provisional tax - Subject to the provisions of this Part, the same provisions of this Act shall apply with respect to every amount that any person is liable to pay to the Collector under this Part, whether as provisional tax or otherwise, as if the amount were

income tax.

PART XI
PAYMENT AND RECOVERY OF TAX

188. Due date for payment of tax - (1) Income tax shall, except where otherwise expressly made payable by such provision of this Act, be due and payable on 1 October in the year for which the tax is payable or such later date as may be fixed by the Collector in the notice of assessment.

(2) In any case where a notice of assessment in respect of any year has not been issued, and the delay is, in the opinion of the Collector, due to any neglect, default, or omission of the taxpayer, then the Collector shall fix a date when issuing the notice of assessment, which may be before the date of issue of the assessment, which date shall be considered to be the date on which the tax payable under that assessment became due and payable.

(3) This subsection applies if-

- (a) a notice of assessment has been issued in respect of any year; and
- (b) the Collector subsequently issues an amended notice of assessment (the amended notice); and
- (c) there is a delay in issuing the amended notice that, in the Collector's opinion, is due any neglect, default or omission of the taxpayer.

(4) If subsection (3) applies, -

- (a) the Collector must, when issuing the amended notice, fix a date on which the tax payable under the amended notice, including any increase, is due and payable; and
- (d) the date fixed may be a date before the amended notice is issued.

History: Section 188 amended by inserting subsections 188(3) and (4) by Income Tax Amendment Act 2015 with application from 22 June 2015

189. Payment of tax - Payment of taxes and other money payable under this Act shall be effected at the Revenue Management Division of the Ministry of Finance and Economic Management or at any nominated agency.

190. If default made in payment of tax, additional tax to be charged - (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;

(2) In any case in which an assessment is increased after the due date for payment of the tax and the Collector is satisfied that the taxpayer has not been guilty of wilful neglect or default in making due and complete returns for the purposes of that tax, the Collector shall, by notice to the taxpayer of the assessment or amended assessment, or in any subsequent notice, fix a new date for the payment of the tax, or of the increase, and the date so fixed shall be deemed to be the due date for payment of that tax or increase for the purposes of subsection (1).

(3) In any case which the Collector fixes a new due date for the payment of tax under section 188(2) or (4), the date fixed by the Collector is deemed to be the due date for payment of that tax, including any increase, for the purposes of subsection (1).

(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.

History: Subsection 190(1) repealed and replaced and subsection 4 inserted by Income Tax Amendment Act 2002 with application from 12 December 2002. Subsection 190(3) repealed and replaced by Income Tax Amendment Act 2015 with application from 22 June 2015

191. Mode of recovery of unpaid tax - All unpaid tax shall be recoverable by the Collector on behalf of the Crown by suit in the Collector's official name as a debt, whatsoever the amount involved, in the High Court:

Provided that where the Collector is satisfied that the unpaid tax is in fact irrecoverable, the Collector may write off the unpaid tax.

192. Deduction of income tax from payment due to defaulters - (1) Where any taxpayer has made default in the payment of any income tax payable by the taxpayer for any year of assessment, the Collector may from time to time by notice in writing require any person to deduct from any amount payable or to become payable by that person to the taxpayer such sum as may be specified in the notice, and to pay every sum so deducted to the Collector to the credit of the taxpayer within such time as may be specified in the notice.

(2) This section shall bind the Crown.

(3) Where any notice under this section relates to any wages or salary, the sums required to be deducted therefrom shall be computed so as not to exceed a deduction each week greater than 10 percent of the tax due and payable by the taxpayer at the date of the notice, or an amount equal to 20 percent of the wages or salary, whichever is the lesser.

(4) Any notice under this section may be at any time revoked by the Collector by a subsequent notice to the person to whom the original notice was given (hereinafter in this section referred to as "the debtor"), and shall be so revoked at the request of the taxpayer at any time when the Collector is satisfied that all income tax then due and payable by the taxpayer has been paid, and that the Collector holds to the credit of the taxpayer an amount not less than the amount of the income tax (if any) to become due and payable by the taxpayer during the current year of assessment.

(5) A copy of every notice given under this section in respect of any taxpayer and of the revocation of any such notice shall be given to the taxpayer by the Collector.

(6) Whenever pursuant to a notice under this section any deduction is made from any amount payable to any taxpayer, the taxpayer shall be entitled to receive from the debtor a statement in writing of the fact of the deduction and of the purpose for which it was made.

(7) The sum deducted from any amount pursuant to a notice under this section shall be deemed to be held in trust for the Crown, and, without prejudice to any other remedies against the debtor or any other person, shall be recoverable in the same manner in all respects as if it were income tax payable by the debtor.

(8) Every person commits an offence and shall be liable on conviction to a fine not exceeding \$10,000 who -

(a) fails to make any deduction required by a notice under this section to be made from any amount payable by him to a taxpayer:

(b) fails after making any such deduction to pay the sum deducted to the Collector within the time specified in the notice.

193. Procedure in High Court where defendant absent from Cook Islands or not traced - In any action High Court for the recovery of tax, if the defendant is absent from the Cook Islands or cannot after reasonable inquiry be found, service of the summons may with the leave of a Judge be effected by posting a duplicate or sealed copy thereof in a letter addressed to the defendant at the defendant's present or last known place of abode or business, whether in the Cook Islands or elsewhere.

194. Particulars of claim or demand - In an action in any Court for the recovery of tax it shall be sufficient if the particulars of claim or demand state the amount sought to be recovered and the date on which the same became payable, and such further particulars (if any) as the Collector thinks necessary in order to fully inform the defendant of the nature of the claim.

195. Collector may appear in legal proceedings by officer of the Public Service - In any action in the High Court for the recovery of tax, the Collector may be represented by some officer in the Cook Islands Public Service, and the certificate in writing of the Collector stating that any person so appearing is such an officer and that person appears for the Collector shall be sufficient evidence of the facts so stated and of that person's authority in that behalf.

196. Costs against Collector - In all proceedings in any Court for the recovery of tax, costs may be awarded to or against the Collector in the same manner as in other cases, but all costs so awarded against the Collector shall be payable out of money appropriated by Parliament and not otherwise.

197. Proceedings not affected by vacancy or change in office of Collector - No action instituted by the Collector for the recovery of tax, and no proceedings on objection to an assessment of tax, shall abate by reason of the vacancy in the office of Collector, or shall be deemed defectively constituted by reason of any change in the holder of that office, and every such action or proceeding shall be continued in the ordinary course as of the Collector and the Collector's successors in office were a corporation sole.

198. Statute of Limitation - No statute of limitation shall bar or effect any action or remedy for the recovery of tax.

199. Crown Proceedings Act not affected - Nothing in this Act shall be so construed as to limit or affect the application of the Crown Proceedings Act 1950, and all rights and remedies conferred upon the Crown in that Act and by this Act shall coexist and may be exercised independently of one another and tax may be recovered accordingly.

200. Recovery of tax paid by one person on behalf of another - Every person (in this section called "the agent") who in pursuance of this Act pays any tax for or on behalf of any other person shall be entitled to recover the amount so paid from that other person as a debt, or to retain or deduct that amount out of or from any money which is or becomes payable by the agent to that other person, and if the agent has paid the tax as mortgagee, then, until repaid, it shall be deemed to form part of the money secured by the mortgage, and shall bear interest accordingly.

201. Payment of income tax by persons leaving the Cook Islands - (1) This section applies whereô

(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), ð

- (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, ð

ðOperatorö in relation to any vessel or aircraft ð

- (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

ðVesselö has the meaning given to it by section 2 of the Shipping Act 1998.

History: Section 201 repealed and replaced by Income Tax Amendment Act 2002 with application from 1 January 2003

PART XII

REFUNDS AND RELIEF FROM TAX

202. Refund of excess tax - (1) In any case where the Collector is satisfied that tax has been paid in excess of the amount properly payable the Collector shall advise the taxpayer concerned of the excess payment and shall refund the amount paid in excess if written application for the refund is made by or on behalf of the taxpayer -

(a) in any case where the assessment of that tax has not been altered, within six years immediately after the end of the year in which the assessment was made;

(b) in any case where the original assessment has been altered (whether once or more than once), within six years after the end of the year in which the original assessment was made.

(2) In any case where an assessment has been altered so as to reduce the amount of tax payable and the Collector is satisfied that by reason of that alteration tax has been paid in excess of the amount properly payable, the Collector shall advise the taxpayer concerned of the excess payment and shall refund the amount so paid in excess by reason of that alteration if written application for the refund is made by or on behalf of the taxpayer within six years after the end of the year in which the alteration was made, notwithstanding that the application may be made after the time allowed by subsection (1).

203. Power of Collector in respect of small amounts - Notwithstanding anything in this Act, the Collector may refrain from either issuing a notice of assessment or collecting or refunding tax in any case where, as the case may be -

(a) the balance of any tax payable does not exceed \$5; or

(b) the tax paid exceeds the amount of the tax for which the taxpayer is liable by an amount not exceeding \$2.

204. Relief from additional tax - (1) On application for relief made in writing by or on behalf of any taxpayer who (whether before or after the commencement of this Act) has become liable for the payment of any additional tax under section 190, the Collector may, grant relief to the taxpayer-

(a) by the remission of the whole or part of the additional tax; or

(b) where the additional tax has been paid in whole or in part, by the refund to the taxpayer of the whole or any part of that tax which has been paid, with or without the remission of any part of the additional tax which has not been paid.

(2) Repealed

History: Subsection 204(1) amended and subsection 204(2) deleted by Income Tax Amendment Act 2002 with application from 12 December 2002

205. Relief in cases of serious hardship - (1) In any case where it is shown to the satisfaction of the Collector -

(a) that any taxpayer has suffered such loss or is in such circumstances that the payment of the full amount of the tax has entailed or would entail serious hardship; or

(b) that, owing to the death of any person who if the person had not died would have been liable to pay tax, the dependents of that person are in such circumstances that the payment of the full amount of the tax has entailed or would entail serious hardship,

the Collector or may, subject to the provisions of this section, release the taxpayer or the executor or administrator of the deceased taxpayer, as the case may be, wholly or in part from liability to pay tax, and may make such alterations in the assessment as are necessary for that purpose; and may, if the tax as previously assessed or any part thereof has been already paid, refund any tax paid in excess of the amount of the assessment as altered pursuant to this section.

(2) *Repealed*

History: Section 205(2) repealed by Income Tax Amendment Act 2013 with application from 1 January 2014

PART XIII
PENALTIES

206. Penalty for failure to furnish returns. etc. - (1) Every person commits an offence against this Act, who -

- (a) refuses or fails to furnish any return or information as and when required by this Act, or any regulation made under this Act, or by the Collector; or
- (b) willfully or negligently makes any false return, or gives false information, or misleads or attempts to mislead the Collector or any other officer in relation to any matter or thing affecting any person's liability to taxation; or
- (c) refuses or fails without lawful jurisdiction to duly attend and give evidence to the person, or to produce any book or paper required; or
- (d) obstructs any officer acting in the discharge of the officer's duties or in the exercise of the officer's powers under this Act;
- (e) commits any other breach of this Act for which no other penalty is expressly provided; or
- (f) aids, abets, or incites any other person to commit any offence against this Act or against any regulation made under this Act.

(1A) A person who commits an offence against subsection (1)(b) is liable on conviction to imprisonment for a term not exceeding 2 years or a fine not exceeding \$100,000, or both.

History: Subsection 1A inserted by Income Tax Amendment Act 2013 with application from 1 January 2014

(2) Every person who commits an offence against this Act for which no other penalty is prescribed shall be liable to a fine not exceeding \$10,000, and not less than \$500:

Provided that if the person is a company that person shall be liable to a fine not exceeding \$10,000, and not less than \$1000.

(3) In any proceedings against a person for refusing or failing to furnish any return or information as and when required by this Act or by the Collector, a certificate in writing signed by the Collector certifying that the return or information as required has not been received from that person at the place where or by the person to whom the return or information should have been furnished shall, in the absence of proof to the contrary, be sufficient evidence that the defendant has refused or failed to furnish the return or information.

207. Proceedings for offences - All proceedings for offences against this Act shall be taken by way of prosecution in the High Court and only upon the information of the Collector, or of some person authorised in writing by the Collector in that behalf, and the signature of the Collector to any warrant of authority under this section shall be judicially noted.

208. Information may be laid within 10 years - Notwithstanding anything in, any other Act or Ordinance any information in respect of any offence against this Act may be laid at any time within ten years after the termination of the year in which the offence was committed.

209. Penal tax in case of evasion - If any taxpayer evades or attempts to evade, or does any act with intent to evade, or makes default in the performance of any duty imposed by this Act or any regulations thereunder with intent to evade, the assessment or payment of any sum which is or may become chargeable by way of tax (which sum is hereinafter referred to as the deficient tax) the taxpayer shall be able, by way of penalty for that offence, with additional tax (hereinafter called penal tax) not exceeding an amount equal to treble the amount of the deficient tax.

210. Nature of penal tax - Subject to the provisions of this Part penal tax shall for all purposes be deemed to be tax of the same nature as the deficient tax, and shall be deemed to be payable in and for the same year of assessment as the deficient tax.

211. Assessment of penal tax - (1) The penal tax shall be assessed by the Collector in the same manner, so far as may be, as the deficient tax, but separately therefrom.

(2) An assessment of penal tax may be amended from time to time in the same manner as any other assessment.

(3) No assessment of penal tax shall be made or increased at any time after the expiration of 10 years after the year of assessment of the deficient tax.

212. Objections to penal tax - (1) Any assessment of penal tax shall be subject, in the same manner as any other assessment of tax, to objection on the ground that the person so assessed is not chargeable with penal tax, or on the ground that the amount so assessed is excessive having regard to the nature and degree of the offence or to the reason for the imposition of the penal tax, and notwithstanding that the amount so assessed is not in excess of treble the amount of the deficient tax.

213. Recovery of penal tax - An assessment of penal tax may be made and the tax so assessed shall be recoverable at any time, whether before or after the deficient tax has been assessed or has become assessable or payable or has been paid.

214. Recovery of penal tax from executors or administrators - (1) Penal tax shall be assessable against and recoverable from the executors or administrators of a deceased taxpayer, but, if so assessed, the amount thereof shall be recoverable only as a debt incurred by the deceased taxpayer in the deceased taxpayer's lifetime.

(2) No penal tax shall be recoverable from any person other than the taxpayer or the taxpayer's executors or administrators.

215. Recovery of penal tax not affected by conviction of taxpayer - The assessment or recovery of penal tax in respect of any offence shall not be in any manner barred or affected by the fact that the taxpayer has been convicted under this Act of the same or any other offence; but no person who has paid the penal tax assessed against that person for any offence shall be thereafter convicted of the same offence.

216. Publication of names of tax evaders - (1) The Collector shall make public a list of names of persons who -

- (a) have been convicted under section 206(1)(b) of wilfully making any false return, or of giving false information, or misleading or attempting to mislead the Collector, in relation to any matter or thing affecting their own or any other person's liability to tax; or
- (b) have been convicted under section 206 (1) (f) of aiding, abetting or inciting any person to commit any offence referred to in paragraph (a) of this subsection or;

(c) have been convicted of any offence under section 167 (1) (a) or (b); or

(d) have been charged with penal tax under section 168 or section 209.

(2) The Collector may omit from any list published under this section reference to any taxpayer to whom subsection (1) applies if the Collector is satisfied that, before any investigation or inquiry has been commenced in respect of the offence or evasion of which the taxpayer was convicted, the taxpayer voluntarily disclosed to the Collector or to any officer authorised by the Collector complete information and full particulars as to the offence or evasion.

(3) Every list published under this section shall include -

(a) the name, address and occupation or description of the taxpayer;

(b) such particulars of the offence or evasion as the Collector thinks fit; (c)

the year or years in which the offence or evasion occurred;

(d) the amount or estimated amount of the income not disclosed or of the tax evaded;

(e) the amount (if any) of the penal tax imposed.

(4) A copy of every list published under this section shall be laid before Parliament.

PART XIV **GENERAL PROVISIONS**

217. Keeping of business records - (1) Every person carrying on business or receiving income other than salary or wages shall keep sufficient records in the English or Maori language to enable that person's assessable income and allowable deductions to be readily ascertained by the Collector or any officer authorised by the Collector in that behalf, and shall retain all such records so kept and all matters relating to the business in existence at the date of the passing of this Act for a period of at least five years after the completion of the transactions, acts, or operations to which they relate.

(2) Despite subsection (1), a person is not required to retain any records in respect of which the Collector has notified the person, in writing, that retention is not required.

History: Section 217(1) amended by Income Tax Amendment Act 2013 with application from 1 January 2014.
Section 217(2) repealed and substituted by Income Tax Amendment Act 2013 with application from 1 January 2014

(3) For the purposes of this section the term "records" includes books of account, recording receipts documents or income or expenditure or purchases or sales, and also includes vouchers, invoices, receipts, and such other documents as are necessary to verify the entries in any such books of account and, in the case of an agent, records of all transactions carried out on behalf of that agent's principal.

(4) Every person who fails to comply with this section commits an offence against this Act.

218. Taxpayer identification number (RMD number) - For the purposes of this Act, each taxpayer must have an identification number, known as an RMD number, as allocated by the Collector.

History: Section 218 repealed and substituted by Income Tax Amendment Act 2013 with application from 1 January 2014

219. Collector to have power to inspect books and documents - (1) Notwithstanding anything to the contrary in any other Act, including without limitation Sections 227 and 249 of the International

Companies Act 1981-82, Section 23 of the International Trusts Act 1984, the Foundations Act 2012, the Captive Insurance Act 2013 and Section 72 of the Limited Liability Companies Act 2008, the Collector or any officer of the Department authorised in that behalf shall at all times have full and free access to all books and documents for the purpose of inspecting such books or documents, whether in the custody or under the control of a public officer or a body corporate or any other person, for the purposes of inspecting any books and documents which the Collector or the officer of the Department considers necessary, relevant, or likely to provide information, for the purposes of ó

- (a) collecting any tax or duty which the Collector is authorized to collect;
- (b) giving effect to agreements described in section 86.

(1A) The Collector or the officer of the Department referred to in subsection (1) may, without fee or reward, make extracts from or copies of any books or documents to which they have full and free access under subsection (1).

(1B) Notwithstanding subsection (1), the Collector or an officer of the Department must not enter private premises in the exercise of their powers except with the consent of the occupier or pursuant to a warrant issued under subsection (3).

(2) The Collector or any officer of the Department authorised in that behalf, may for the purpose of any investigation under this section require the owner or manager of any property or business to give all reasonable assistance in the investigation, and to answer all proper questions relating to any such investigation either orally, or, if the Collector or officer so requires, in writing, or by statutory declaration, and for that purpose may require the owner or manager or, in the case of a company, any officer of the company to attend at the premises with the Collector or officer.

(3) A Judge of the High Court who, on written application made on oath, is satisfied that the exercise by the Collector or the officer of the Department of their inspection functions for the purpose described in subsection (1) requires physical access to a private premises, may issue to the Collector or an officer of the Department a warrant to enter the premises. Every such warrant must ó

- (a) be in the form prescribed in Schedule 6; and
- (b) specify the name of an officer of the Department, whether in name or in general, who may act under the warrant; and
- (c) specify whether other persons may accompany the officer of the Department acting under the warrant; and
- (d) state the period of its validity, starting on the date of its issue and ending one (1) month after the date of its issue, or less if the Judge of the High Court considers appropriate; and
- (e) specify the particular agreement in section 86(1), if applicable, that the Collector is acting pursuant to, and state that the requirements of such agreement have been met.

History: Subsection 219(1) amended and replaced and subsection 219(3) inserted by Income Tax Amendment Act 2011 with application from 1 September 2011. Subsection 219(1) amended by Income Tax Amendment Act 2013 with application from 1 January 2014.

220. Information to be furnished on request of Collector - (1) Every person (including any officer employed in or in connection with any department of the Government or by any public authority, and any other public officer) shall, if required by the Collector or by any officer of the Department authorised in that behalf, furnish in writing any information and produce any books and documents which the Collector or officer considers necessary or relevant for any purpose relating to the

enforcement of this Act (including giving effect to agreements described in section 86), or any other Act administered by the Collector, and which may be in the knowledge, possession, or control of that person. This section shall not be limited by sections 227 and 249 of the International Companies Act 1981-82, section 23 of the International Trusts Act 1984, and section 72 of the Limited Liability Companies Act 2008.

(2) Without limiting the foregoing provisions of this section it is hereby declared that the information in writing which may be required under this section shall include lists of shareholders or companies, with the amount of capital contributed by and dividends paid to each shareholder, copies of balance sheets and of profit and loss accounts, and other accounts and statements of assets and liabilities of any person.

(3) The Collector or any officer of the Department authorised in that behalf may require any written information or particulars furnished under this section to be verified by statutory declaration or otherwise.

(4) A person or a public authority to which a request is made, if they believe the request is improper may, within 14 days from the date the request was received apply to the High Court to have the request discharged or varied and the court on hearing such application may discharge the request or make such variation to it as it thinks fit.

History: Section 220 amended by Income Tax Amendment Act 2011 with application from 1 September 2011.

221. Inquiry before a Judge of the High Court - (1) In any case in which the Collector deems it necessary 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 any other information required for the purposes of the administration or enforcement of this Act (including giving effect to agreements described in section 86) or any other Act administered by the Collector, the Collector may apply in writing to a Judge of the High Court to hold an inquiry under this section.

(2) For the purposes of any such inquiry, the Judge may summon, and examine on oath touching any matter relevant to the subject matter of the inquiry, all persons whom the Collector or any other interested person requires to be so called and examined.

(3) The Judge shall have all such jurisdiction and authority touching the, summoning and examination of any such person as the Judge would have in respect of a witness in a civil action within the Judge's ordinary jurisdiction and the person so summoned and examined shall, subject to this Act, have all such rights and be subject to all such liabilities as that person would have and be subject to if the person were such a witness as aforesaid.

(4) The Collector and every person who is interested in the subject matter of the inquiry may be represented by a barrister or solicitor, or, with the leave of the Court, by any other person who may examine, cross-examine, and re-examine, in accordance with the ordinary practice, any person so summoned;

Provided that every person so summoned may be cross-examined by the Collector or by the Collector's barrister or solicitor.

(5) Every examination under this section shall take place in Chambers.

(6) The statement of every person so examined shall be taken down in writing, and signed by that person in the presence of the Judge or Registrar of the High Court, and delivered to the Collector, and shall not form part of the records of the Court.

(7) No person summoned or examined under this section shall be excused from answering any question on the ground that the answer may incriminate that person or render that person liable to

any penalty or forfeiture.

(8) No statement made by any such person in answer to any question put to that person shall in criminal proceedings be admissible in evidence against that person, except upon a charge of perjury against that person in respect of testimony upon that examination.

(9) A person summoned under this section may receive such sum on account of travelling expense and loss of time as the Judge or Registrar of the High Court thinks reasonable and orders accordingly.

History: Subsection 221(1) amended by Income Tax Amendment Act 2011 with application from 1 September 2011

222. Inquiry by Collector - (1) The Collector may, for the purpose of obtaining any information with respect to the liability of any person for any tax or duty which the Collector is authorised to collect or any other information required for the purposes of the administration or enforcement of any Act administered by the Collector, by notice in writing require any person to attend and give evidence before the Collector or before any officer of the Department authorised in that behalf and to produce all books and documents in the custody or under the control of that person which contain or which the Collector or the authorising officer considers likely to contain any such information.

(2) The Collector may require any such evidence to be given on oath and either orally or in writing or for that purpose the Collector or the officer authorised as aforesaid may administer an oath.

(3) If any person required to give evidence under this section refuses or wilfully neglects to appear before the Collector or authorised officer or to take an oath as witness or if any person being sworn as a witness at any such inquiry refuses or wilfully neglects to answer any question touching the subject matter of the inquiry or to produce to the Collector or authorised officer any such document as aforesaid, that person shall be liable on conviction to a fine not exceeding \$500.

(4) Every person who wilfully gives false evidence at any inquiry under this section shall be guilty within the meaning of the Crimes Act 1969.

(5) A person required to attend before the Collector or an authorised officer may receive such sum on account of travelling expenses and loss of time as the Collector thinks reasonable and orders accordingly.

223. Offences - (1) Every person commits an offence who, in relation to sections 219 to 222 and 224 -

(a) acts in contravention of or, without lawful justification or excuse, fails to comply in any respect with any provision of any of those sections or any requirement imposed thereunder;

(b) wilfully deceives or attempts to deceive the Collector or any officer of the Department in the exercise of any powers or functions under any of those sections;

(c) with intent to deceive, makes any false or misleading statement or any material omission in any information given to the Collector or any officer of the Department for the purposes of any of those sections;

(d) resists, obstructs, or deceives any person who is exercising or attempting to exercise any power or function under any of those sections.

(2) Every person who commits an offence under subsection (1) for which no other penalty is prescribed shall be liable on conviction to a fine not exceeding \$1000.

History: Subsection 223(1) amended by Income Tax Amendment Act 2013 with application from 1 January 2014

224. Employers to make returns as to employees - Every person shall from time to time, as required by the Collector, make a return of all persons employed by that person during any year, and of all salaries or allowances and other emoluments received during that year by each person so employed.

225. Return of interest paid on deposits - Every bank, local or public authority, or other company or person who in the course of business holds money by way of deposit and pays interest thereon shall from time to time as required by the Collector, make a return of all interest so paid during the year or other period to whom the requisition of the Collector relates, together with the names, addresses, and occupations of the persons to whom such interest has been paid.

226. Returns as to debentures and interest thereon - Every company or local or public authority shall from time to time, as required by the Collector, make a return giving such particulars as the Collector requires relative to debentures issued by that company or local or public authority, the holders thereof, and the interest paid or payable thereon.

227. Power to extend time - Notwithstanding anything elsewhere in this Act, where any person within the Cook Islands is residing temporarily or permanently on some other island other than the island of Rarotonga, and by reason of a lack of or a delay in air and sea communication between that island and the island of Rarotonga, is unable to assert the person's rights or to fulfil the person's obligations under this Act within the proper time, then the Collector shall have power to grant that person such further extension or extensions of time as the Collector may deem necessary.

228. Annual Report - (1) The Collector shall as soon as practicable after 31 December in each year furnish to the Minister a report on the administration of this Act for the year ending on that date.

(2) A copy of the report shall be laid before Parliament within 28 days after it has been furnished to the Minister if Parliament is then in session and, if not, shall be laid before Parliament within 28 days after the commencement of the next ensuing session.

229. Regulations - (1) The Queen's Representative may from time to time, by Order in Executive Council, make all such regulations as the Queen's Representative may deem necessary or expedient for giving effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the general power to make regulations conferred by subsection (1), it is hereby declared that regulations may be made under this section for all or any of the following purposes:

(a) declaring any specified payment or payments of any specified class -

(i) to be included in or excluded from the definition of the term "extra emolument" in section 2; or

(ii) to be included in or excluded from the definition of the term "salary or wages" in section 2; or

(iii) to be a withholding payment or payments, or not to be a withholding payment or payments, for the purposes of Part VII;

(b) prescribing the amounts of the tax deductions to be made from withholding payments or from any specified withholding payment or from withholding payments of any specified class;

(c) providing, in relation to any specified withholding payment, or withholding payments of any specified class, or withholding payments not exceeding any specified amount, that, subject to any provisions of the regulations, the amount of income tax for which the person receiving the payment or payments is liable in respect of the payment or payments shall be

determined exclusively and finally by the total amount of the tax deductions required under Part IX to be made from the payment; or

(d) providing that a tax deduction may be made from a withholding payment, notwithstanding that the payment may be protected against assignment; or

(e) providing that a tax deduction may be made from the gross amount of a withholding payment, whether or not it consists wholly or partly of income, or from so much of a withholding payment as remains after the subtraction therefrom of any part thereof regarded as expenditure incurred in the production of the payment;

(f) providing that the Collector may determine what amount or proportion of any specified withholding payment or withholding payments of any specified class shall be regarded as expenditure incurred in the production of the payment or payments, and for the determination of the Collector to be final and conclusive, subject to any revocation or variation thereof by the Collector;

(g) providing that a tax deduction may be made from a withholding payment, whether the amount of the deduction relates exclusively to the income tax payable by the person receiving the payment or relates partly to that income tax and partly to income tax payable by any employee or subcontractor of that person; and providing in the latter case for that person to recover from the employee or subcontractor a part of the tax deduction and to retain that part but otherwise to comply with the provisions of Part IX in respect of any tax deduction made by that person from any payment to the employee or subcontractor;

(h) providing that the regulations or any of them shall not apply in respect of payments made to any specified person, or to persons of any specified class, to whom the Collector gives notice to that effect.

(3) All regulations made under this section shall be laid before Parliament within 28 days after the making thereof, if Parliament is then in session, and if not, shall be laid before the Parliament within 28 days after the commencement of the next ensuing session.

230. Application of Act - Except as otherwise provided herein, this Act shall apply with respect to the tax for the income year commencing on 1 January 1997 and for every subsequent year.

231. Repeals and savings - (1) The enactments and any sections enactments specified in the Fourth Schedule are hereby repealed and amended as stated in that Schedule.

(2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of any provision by this Act shall not affect any document made or anything whatsoever done under the provision so repealed or under any corresponding former provision and every such document or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act, shall continue and have effect as if it had been made or done under the corresponding provision of this Act and as if that provision had been in force when the document was made or the thing was done.

(3) For all purposes whatsoever in respect of any tax or duty which at the coming into force of this Act has been already assessed or paid or is still assessable or payable in or for the year ending with 31 December 1996 or in or for any previous year, in accordance with the provisions of any enactment hereby repealed or regulation hereby revoked, that enactment or, as the case may be, that regulation, and all the provisions thereof, including its penal provisions, and other acts of authority originating thereunder, shall, notwithstanding the repeal or, as the case may be, revocation thereof, be deemed to remain in full force and effect; and all proceedings under any such enactment or regulation, including proceedings for the recovery of any fine or penalty in respect of any offence

committed, whether before or after the commencement of this Act, may be instituted or continued accordingly as if the enactment concerned had not been repealed or, as the case may be, that regulation had not been revoked.

(4) All proceedings in respect of offences committed or alleged to be committed before the commencement of this Act against any enactment hereby repealed or regulation hereby revoked may be instituted or continued as if this Act had not been passed.

PART XV TERMINATING PROVISIONS

232. Provisions continuing to apply as amended - The following provisions 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), notwithstanding the coming into force of this Act, but with the amounts referred to in those provisions in all cases being divided by two -

- s.74A relating to special exemptions for gifts of money to charitable organisations;
- s.44 relating to rebates for dependant spouses;
- s.45 relating to rebates for other dependants;
- s.46 relating to special exemption for life insurance contributions;
- s.46A relating to special exemption for dependants of taxpayer.

233. Section 47 Income Tax Act 1972 - 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) notwithstanding the coming into force of this Act.

234. Rebate in respect of low income earners - (1) Where in the income year ending 31 December 1997 a taxpayer has an assessable income of \$2,500 or less, there shall be allowed from the income tax payable, a rebate equal to the amount of such income tax.

(2) Where in any income year a taxpayer has an assessable income greater than \$2,500 and less than \$2,750 there shall be allowed from the income tax payable a rebate of \$250 diminished by \$0.78 for each complete dollar of taxable income which exceeds \$2,500.

(3) The provisions of this section shall not apply to -

- (a) an absentee; or
- (b) any company, body corporate or trust.

This Act is administered by the Revenue Management Division

FIRST SCHEDULE

BASIC RATES OF INCOME TAX

History: Schedule 1 Repealed and new Schedule 1 inserted by Income Tax Amendment Act 2013 with effect from 1 January 2014

1. Overseas insurance companies ó For the purposes of section 40, the basic rate for each taxpayer that is an overseas insurance company is 3 cents for each dollar of taxable income.

2. Other companies ó For the purposes of section 40, the basic rate for each taxpayer that is a company (other than an overseas insurance company) is ó

(a) for a company deemed under section 82 to be resident in the Cook Islands, 20 cents for each dollar of taxable income:

(b) for a company not deemed under section 82 to be resident in the Cook Islands, 28 cents for each dollar of taxable income.

3. Natural persons ó For the purposes of section 40, the basic rate for each taxpayer who is an individual natural person (not merely acting as a trustee) is the amount set out in the following table:

Taxable income	Basic rate for each dollar of taxable income
\$19,000 or less	17.5 cents
\$19,001 to \$69,000	27.5 cents
More than \$69,000	30 cents

History: The first item in the second column of the table is amended by Income Tax Amendment Act 2015 by omitting ö18.5 centsö and substituting ö17.5 centsö with effect from 1 January 2016

4. Other taxpayers ó For the purposes of section 40, the basic rate for any other taxpayer for each income year is 30 cents for each dollar of taxable income.

5. Basic rates for income years before 2014 income tax year ó (1) this clause applies despite clauses 1 to 4.

(2) For the purposes of section 40, the basic rate for each taxpayer for any income year before the 2014 income year must be calculated in accordance with the First and Second Schedules of this Act as those Schedules read immediately before the commencement of the Income Tax Amendment Act 2013.

(3) Nothing in subclause (2) limits or affects the application of the Acts Interpretation Act 1924.

SECOND SCHEDULE

BASIC TAX DEDUCTIONS FOR SALARY OR WAGES

History: Second Schedule repealed and new Second Schedule inserted by Income Tax Amendment Act 2013 with effect from 1 January 2014

1. Interpretation ó (1) In this Schedule ó

õPrimary incomeö means the sum of the following incomes of a person in an income year:

- (a) investment income (if any) for the income year; and
- (b) commercial and residential rental income (if any) for the income year; and
- (c) majority income for the income year.

õSecondary incomeö means the sum of all incomes of a person in an income year excluding his or her primary income.

õTotal incomeö means the sum of the primary and secondary incomes of a person in an income year, whether an actual or estimated amount.

(2) For the purposes of subclause (1), majority income means ó

- (a) a person's largest source of non-investment income in an income year, if the amount is more than 50% of the person's total non-investment income; or
- (b) if the person's largest source of non-investment income in an income year is 50% or less of the person's total non-investment income, a person's income from all non-investment income other than that largest source.

(3) For the purposes of subclause (2), non-investment income, in an income year, means a person's income from a source other than investment income and rental income.

2. Payments for pay periods of weekly duration ó (1) From each payment of salary or wages where the payment is for a weekly pay period, the basic tax deduction ó

- (a) for the primary income, is the amount set out in Schedule 2A that corresponds to the weekly income amount:
- (b) for secondary income, is ó
 - (i) 18.5% of the amount set out in Schedule 2A that corresponds to the weekly income amount, if the employee's total income is \$30,000 or less for the income year; or
 - (ii) 27.5% of the amount set out in Schedule 2A that corresponds to the weekly income amount, if the employee's total income is more than \$30,000 but less than \$80,000; or
 - (iii) 30%, if the employee's total income is more than \$80,000.

(2) Subclause (1) (b) applies unless the Collector otherwise determines under section 153.

3. Payments for pay periods of more than weekly duration ó From each payment of salary or

wages where the payment is for a pay period that is more than one week, the basic tax deduction is the amount determined in the following manner:

Step 1: Calculate the part of the payment that is equivalent to one week. For this purpose, overtime pay included in the payment (if any) and the balance of the payment must be treated as accruing at a uniform daily rate throughout the pay period.

Step 2: Calculate the basic tax deduction for the notional weekly amount in accordance with clause 2 and the amounts set out in Schedule 2A.

Step 3: Multiply the amount calculated under Step 2 by the total payment for the pay period then divide that amount by the payment equivalent to one week.

4. Payments for other cases ó From each payment of salary or wages where neither clause 1 nor 2 applies, the basic tax deduction is, in respect of so much of the payment as is for the services of the employee during any week ending with a Saturday (calculated in accordance with section 150, if applicable), the amount that would be made under clause 1 and Schedule 2A if the payment or the part payment, as the case may be, were for a weekly pay period ending with that Saturday.

5. Payments for employees with ñno declarationñ tax code - (1) From each payment of salary or wages to an employee to whom a "no declaration" tax code applies under section 149, the basic tax deduction is 30 cents for every dollar or part of a dollar of payment.

(2) Subclause (1) applies regardless of whether the deduction is for primary income or secondary income.

6. Extra emoluments ó From each payment of an extra emolument, the basic tax deduction is 30 cents from every dollar or part of a dollar of payment.

SCHEDULE 2A

PAYE SCHEDULE FROM 1 JANUARY 2016

History: Schedule 2A repealed and new Schedule 2A inserted by Income Tax Amendment Act 2015 with effect from 1 January 2016

No Tax on weekly income below: \$212

Weekly Income		Weekly Income		Weekly Income		Weekly Income		Weekly Income		Weekly Income		Weekly Income		Weekly Income	
\$	Tax	\$	Tax	\$	Tax	\$	Tax	\$	Tax	\$	Tax	\$	Tax	\$	Tax
212	0.08	237	4.46	262	8.83	287	13.21	312	17.58	337	21.96	362	26.33	387	30.71
213	0.26	238	4.63	263	9.01	288	13.38	313	17.76	338	22.13	363	26.51	388	30.88
214	0.43	239	4.81	264	9.18	289	13.56	314	17.93	339	22.31	364	26.68	389	31.06
215	0.61	240	4.98	265	9.36	290	13.73	315	18.11	340	22.48	365	26.86	390	31.23
216	0.78	241	5.16	266	9.53	291	13.91	316	18.28	341	22.66	366	27.03	391	31.41
217	0.96	242	5.33	267	9.71	292	14.08	317	18.46	342	22.83	367	27.21	392	31.58
218	1.13	243	5.51	268	9.88	293	14.26	318	18.63	343	23.01	368	27.38	393	31.76
219	1.31	244	5.68	269	10.06	294	14.43	319	18.81	344	23.18	369	27.56	394	31.93
220	1.48	245	5.86	270	10.23	295	14.61	320	18.98	345	23.36	370	28.61	395	32.11
221	1.66	246	6.03	271	10.41	296	14.78	321	19.16	346	23.53	371	28.78	396	32.28
222	1.83	247	6.21	272	10.58	297	14.96	322	19.33	347	23.71	372	28.96	397	32.46
223	2.01	248	6.38	273	10.76	298	15.13	323	19.51	348	23.88	373	29.13	398	32.63
224	2.18	249	6.56	274	10.93	299	15.31	324	19.68	349	24.06	374	29.31	399	32.81
225	2.36	250	6.73	275	11.11	300	15.48	325	19.86	350	24.23	375	29.48	400	32.98
226	2.53	251	6.91	276	11.28	301	15.66	326	20.03	351	24.41	376	29.66	401	33.16
227	2.71	252	7.08	277	11.46	302	15.83	327	20.21	352	24.58	377	29.83	402	33.33
228	2.88	253	7.26	278	11.63	303	16.01	328	20.38	353	24.76	378	30.01	403	33.51
229	3.06	254	7.43	279	11.81	304	16.18	329	20.56	354	24.93	379	30.18	404	33.68
230	3.23	255	7.61	280	11.98	305	16.36	330	20.73	355	25.11	380	30.36	405	33.86
231	3.41	256	7.78	281	12.16	306	16.53	331	20.91	356	25.28	381	30.53	406	34.03
232	3.58	257	7.96	282	12.33	307	16.71	332	21.08	357	25.46	382	28.61	407	34.21
233	3.76	258	8.13	283	12.51	308	16.88	333	21.26	358	25.63	383	28.78	408	34.38
234	3.93	259	8.31	284	12.68	309	17.06	334	21.43	359	25.81	384	28.96	409	34.56
235	4.11	260	8.48	285	12.86	310	17.23	335	21.61	360	25.98	385	29.13	410	34.73
236	4.28	261	8.66	286	13.03	311	17.41	336	21.78	361	26.16	386	29.31	411	34.91

Weekly Income \$	Tax	Weekly Income \$	Tax	Weekly Income \$	Tax	Weekly Income \$	Tax	Weekly Income \$	Tax	Weekly Income \$	Tax	Weekly Income \$	Tax	Weekly Income \$	Tax	Weekly Income \$	Tax
412	35.08	449	41.56	486	47.68	523	54.51	560	60.98	597	69.46	634	79.64	671	89.81		
413	35.26	450	41.73	487	47.86	524	54.68	561	61.16	598	69.74	635	79.91	672	90.09		
414	35.43	451	41.91	488	48.03	525	54.86	562	61.33	599	70.01	636	80.19	673	90.36		
415	35.61	452	42.08	489	48.21	526	55.03	563	61.51	600	70.29	637	80.46	674	90.64		
416	35.78	453	42.26	490	48.38	527	55.21	564	61.68	601	70.56	638	80.74	675	90.91		
417	35.96	454	42.43	491	48.56	528	55.38	565	61.86	602	70.84	639	81.01	676	91.19		
418	36.13	455	42.61	492	48.73	529	55.56	566	62.03	603	71.11	640	81.29	677	91.46		
419	36.31	456	42.78	493	48.91	530	55.73	567	62.21	604	71.39	641	81.56	678	91.74		
420	36.48	457	42.96	494	49.08	531	55.91	568	62.38	605	71.66	642	81.84	679	92.01		
421	36.66	458	43.13	495	49.26	532	56.08	569	62.56	606	71.94	643	82.11	680	92.29		
422	36.83	459	43.31	496	49.43	533	56.26	570	62.73	607	72.21	644	82.39	681	92.56		
423	37.01	460	43.48	497	49.61	534	56.43	571	62.91	608	72.49	645	82.66	682	92.84		
424	37.18	461	43.66	498	49.78	535	56.61	572	63.08	609	72.76	646	82.94	683	93.11		
425	37.36	462	43.83	499	49.96	536	56.78	573	63.26	610	73.04	647	83.21	684	93.39		
426	37.53	463	44.01	500	50.13	537	56.96	574	63.43	611	73.31	648	83.49	685	93.66		
427	37.71	464	44.18	501	50.31	538	57.13	575	63.61	612	73.59	649	83.76	686	93.94		
428	37.88	465	44.36	502	50.48	539	57.31	576	63.78	613	73.86	650	84.04	687	94.21		
429	38.06	466	44.53	503	50.66	540	57.48	577	63.96	614	74.14	651	84.31	688	94.49		
430	38.23	467	44.71	504	50.83	541	57.66	578	64.24	615	74.41	652	84.59	689	94.76		
431	38.41	468	44.88	505	51.01	542	57.83	579	64.51	616	74.69	653	84.86	690	95.04		
432	38.58	469	45.06	506	51.53	543	58.01	580	64.79	617	74.96	654	85.14	691	95.31		
433	38.76	470	45.23	507	51.71	544	58.18	581	65.06	618	75.24	655	85.41	692	95.59		
434	38.93	471	45.41	508	51.88	545	58.36	582	65.34	619	75.51	656	85.69	693	95.86		
435	39.11	472	45.58	509	52.06	546	58.53	583	65.61	620	75.79	657	85.96	694	96.14		
436	39.28	473	45.76	510	52.23	547	58.71	584	65.89	621	76.06	658	86.24	695	96.41		
437	39.46	474	45.93	511	52.41	548	58.88	585	66.16	622	76.34	659	86.51	696	96.69		
438	39.63	475	46.11	512	52.58	549	59.06	586	66.44	623	76.61	660	86.79	697	96.96		
439	39.81	476	46.28	513	52.76	550	59.23	587	66.71	624	76.89	661	87.06	698	97.24		
440	39.98	477	46.46	514	52.93	551	59.41	588	66.99	625	77.16	662	87.34	699	97.51		
441	40.16	478	46.63	515	53.11	552	59.58	589	67.26	626	77.44	663	87.61	700	97.79		
442	40.33	479	46.81	516	53.28	553	59.76	590	67.54	627	77.71	664	87.89	701	98.06		
443	40.51	480	46.98	517	53.46	554	59.93	591	67.81	628	77.99	665	88.16	702	98.34		
444	40.68	481	47.16	518	53.63	555	60.11	592	68.09	629	78.26	666	88.44	703	98.61		
445	40.86	482	47.33	519	53.81	556	60.28	593	68.36	630	78.54	667	88.71	704	98.89		
446	41.03	483	47.51	520	53.98	557	60.46	594	68.64	631	78.81	668	88.99	705	99.16		
447	41.21	484	47.68	521	54.16	558	60.63	595	68.91	632	79.09	669	89.26	706	99.44		
448	41.38	485	47.86	522	54.33	559	60.81	596	69.19	633	79.36	670	89.54	707	99.71		

Weekly Income		Weekly Income		Weekly Income		Weekly Income		Weekly Income		Weekly Income		Weekly Income	
\$	Tax	\$	Tax	\$	Tax	\$	Tax	\$	Tax	\$	Tax	\$	Tax
708	99.99	745	110.16	782	120.34	819	130.51	856	140.69	893	150.86	930	161.04
709	100.26	746	110.44	783	120.61	820	130.79	857	140.96	894	151.14	931	161.31
710	100.54	747	110.71	784	120.89	821	131.06	858	141.24	895	151.41	932	161.59
711	100.81	748	110.99	785	121.16	822	131.34	859	141.51	896	151.69	933	161.86
712	101.09	749	111.26	786	121.44	823	131.61	860	141.79	897	151.96	934	162.14
713	101.36	750	111.54	787	121.71	824	131.89	861	142.06	898	152.24	935	162.41
714	101.64	751	111.81	788	121.99	825	132.16	862	142.34	899	152.51	936	162.69
715	101.91	752	112.09	789	122.26	826	132.44	863	142.61	900	152.79	937	162.96
716	102.19	753	112.36	790	122.54	827	132.71	864	142.89	901	153.06	938	163.24
717	102.46	754	112.64	791	122.81	828	132.99	865	143.16	902	153.34	939	163.51
718	102.74	755	112.91	792	123.09	829	133.26	866	143.44	903	153.61	940	163.79
719	103.01	756	113.19	793	123.36	830	133.54	867	143.71	904	153.89	941	164.06
720	103.29	757	113.46	794	123.64	831	133.81	868	143.99	905	154.16	942	164.34
721	103.56	758	113.74	795	123.91	832	134.09	869	144.26	906	154.44	943	164.61
722	103.84	759	114.01	796	124.19	833	134.36	870	144.54	907	154.71	944	164.89
723	104.11	760	114.29	797	124.46	834	134.64	871	144.81	908	154.99	945	165.16
724	104.39	761	114.56	798	124.74	835	134.91	872	145.09	909	155.26	946	165.44
725	104.66	762	114.84	799	125.01	836	135.19	873	145.36	910	155.54	947	165.71
726	104.94	763	115.11	800	125.29	837	135.46	874	145.64	911	155.81	948	165.99
727	105.21	764	115.39	801	125.56	838	135.74	875	145.91	912	156.09	949	166.26
728	105.49	765	115.66	802	125.84	839	136.01	876	146.19	913	156.36	950	166.54
729	105.76	766	115.94	803	126.11	840	136.29	877	146.46	914	156.64	951	166.81
730	106.04	767	116.21	804	126.39	841	136.56	878	146.74	915	156.91	952	167.09
731	106.31	768	116.49	805	126.66	842	136.84	879	147.01	916	157.19	953	167.36
732	106.59	769	116.76	806	126.94	843	137.11	880	147.29	917	157.46	954	167.64
733	106.86	770	117.04	807	127.21	844	137.39	881	147.56	918	157.74	955	167.91
734	107.14	771	117.31	808	127.49	845	137.66	882	147.84	919	158.01	956	168.19
735	107.41	772	117.59	809	127.76	846	137.94	883	148.11	920	158.29	957	168.46
736	107.69	773	117.86	810	128.04	847	138.21	884	148.39	921	158.56	958	168.74
737	107.96	774	118.14	811	128.31	848	138.49	885	148.66	922	158.84	959	169.01
738	108.24	775	118.41	812	128.59	849	138.76	886	148.94	923	159.11	960	169.29
739	108.51	776	118.69	813	128.86	850	139.04	887	149.21	924	159.39	961	169.56
740	108.79	777	118.96	814	129.14	851	139.31	888	149.49	925	159.66	962	169.84
741	109.06	778	119.24	815	129.41	852	139.59	889	149.76	926	159.94	963	170.11
742	109.34	779	119.51	816	129.69	853	139.86	890	150.04	927	160.21	964	170.39
743	109.61	780	119.79	817	129.96	854	140.14	891	150.31	928	160.49	965	170.66
744	109.89	781	120.06	818	130.24	855	140.41	892	150.59	929	160.76	966	170.94

Weekly Income		Weekly Income		Weekly Income		Weekly Income		Weekly Income		Weekly Income		Weekly Income	
\$	Tax	\$	Tax	\$	Tax	\$	Tax	\$	Tax	\$	Tax	\$	Tax
1004	181.39	1041	191.56	1078	201.74	1115	211.91	1152	222.09	1189	232.26	1226	242.44
1005	181.66	1042	191.84	1079	202.01	1116	212.19	1153	222.36	1190	232.54	1227	242.71
1006	181.94	1043	192.11	1080	202.29	1117	212.46	1154	222.64	1191	232.81	1228	242.99
1007	182.21	1044	192.39	1081	202.56	1118	212.74	1155	222.91	1192	233.09	1229	243.26
1008	182.49	1045	192.66	1082	202.84	1119	213.01	1156	223.19	1193	233.36	1230	243.54
1009	182.76	1046	192.94	1083	203.11	1120	213.29	1157	223.46	1194	233.64	1231	243.81
1010	183.04	1047	193.21	1084	203.39	1121	213.56	1158	223.74	1195	233.91	1232	244.09
1011	183.31	1048	193.49	1085	203.66	1122	213.84	1159	224.01	1196	234.19	1233	244.36
1012	183.59	1049	193.76	1086	203.94	1123	214.11	1160	224.29	1197	234.46	1234	244.64
1013	183.86	1050	194.04	1087	204.21	1124	214.39	1127	224.56	1198	234.74	1235	244.91
1014	184.14	1051	194.31	1088	204.49	1125	214.66	1162	224.84	1199	235.01	1236	245.19
1015	184.41	1052	194.59	1089	204.76	1126	214.94	1163	225.11	1200	235.29	1237	245.46
1016	184.69	1053	194.86	1090	205.04	1127	215.21	1164	225.39	1201	235.56	1238	245.74
1017	184.96	1054	195.14	1091	205.31	1128	215.49	1165	225.66	1202	235.84	1239	246.01
1018	185.24	1055	195.41	1092	205.59	1129	215.76	1166	225.94	1203	236.11	1240	246.29
1019	185.51	1056	195.69	1093	205.86	1130	216.04	1167	226.21	1204	236.9	1241	246.56
1020	185.79	1057	195.96	1094	206.14	1131	216.31	1168	226.49	1205	236.66	1242	246.84
1021	186.06	1058	196.24	1095	206.41	1132	216.59	1169	226.76	1206	236.94	1243	247.11
1022	186.34	1059	196.51	1096	206.69	1133	216.86	1170	227.04	1207	237.21	1244	247.39
1023	186.61	1060	196.79	1097	206.96	1134	217.14	1171	227.31	1208	237.49	1245	247.66
1024	186.89	1061	197.06	1098	207.24	1135	217.41	1172	227.59	1209	237.76	1246	247.94
1025	187.16	1062	197.34	1099	207.51	1136	217.69	1173	227.86	1210	238.04	1247	248.21
1026	187.44	1063	197.61	1100	207.79	1137	217.96	1174	228.14	1211	238.31	1248	248.49
1027	187.71	1064	197.89	1101	208.06	1138	218.24	1175	228.41	1212	238.59	1249	248.76
1028	187.99	1065	198.16	1102	208.34	1139	218.51	1176	228.69	1213	238.86	1250	249.04
1029	188.26	1066	198.44	1103	208.61	1140	218.79	1177	228.96	1214	239.14	1251	249.31
1030	188.54	1067	198.71	1104	208.89	1141	219.06	1178	229.24	1215	239.41	1252	249.59
1031	188.81	1068	198.99	1105	209.16	1142	219.34	1179	229.51	1216	239.69	1253	249.86
1032	189.09	1069	199.26	1106	209.44	1143	219.61	1180	229.79	1217	239.96	1254	250.14
1033	189.36	1070	199.54	1107	209.71	1144	219.89	1181	230.06	1218	240.24	1255	250.41
1034	189.64	1071	199.81	1108	209.99	1145	220.16	1182	230.34	1219	240.51	1256	250.69
1035	189.91	1072	200.09	1109	210.26	1146	220.44	1183	230.61	1220	240.79	1257	250.96
1036	190.19	1073	200.36	1110	210.54	1147	220.71	1184	230.89	1221	241.06	1258	251.24
1037	190.46	1074	200.64	1111	210.81	1148	220.99	1185	231.16	1222	241.34	1259	251.51
1038	190.74	1075	200.91	1112	211.09	1149	221.26	1186	231.44	1223	241.61	1260	251.79
1039	191.01	1076	201.19	1113	211.36	1150	221.54	1187	231.71	1224	241.89	1261	252.06
1040	191.29	1077	201.46	1114	211.64	1151	221.81	1188	231.99	1225	242.16	1262	252.34

Weekly Income		Weekly Income		Weekly Income		Weekly Income		Weekly Income		Weekly Income		Weekly Income		Weekly Income	
\$	Tax	\$	Tax	\$	Tax	\$	Tax	\$	Tax	\$	Tax	\$	Tax	\$	Tax
1300	262.79	1337	272.96	1374	283.14	1411	293.31	1448	303.21	1485	313.66	1522	323.84	1559	334.153
1301	263.06	1338	273.24	1375	283.41	1412	293.59	1449	303.49	1486	313.94	1523	324.11	1560	334.53
1302	263.34	1339	273.51	1376	283.69	1413	293.86	1450	303.76	1487	314.21	1524	324.39	1561	335.13
1303	263.61	1340	273.79	1377	283.96	1414	294.14	1451	304.04	1488	314.49	1525	324.66	1562	335.3
1304	263.89	1341	274.06	1378	284.24	1415	294.41	1452	304.31	1489	314.76	1526	324.94	1563	335.173
1305	264.16	1342	274.34	1379	284.51	1416	294.69	1453	304.86	1490	315.04	1527	325.21	1564	336.03
1306	264.44	1343	274.61	1380	284.79	1417	294.96	1454	305.14	1491	315.31	1528	325.49	1565	336.33
1307	264.71	1344	274.89	1381	285.06	1418	295.24	1455	305.41	1492	315.59	1529	325.76	1566	336.63
1308	364.99	1345	275.16	1382	285.34	1419	295.51	1456	305.69	1493	315.86	1530	326.04	1567	336.93
1309	265.26	1346	275.44	1383	285.61	1420	295.79	1457	305.96	1494	316.14	1531	326.31	1568	337.23
1310	265.54	1347	275.71	1384	285.89	1421	296.06	1458	306.24	1495	316.41	1532	326.59	1569	337.53
1311	265.81	1348	275.99	1385	286.16	1422	296.34	1459	306.51	1496	316.69	1533	326.86	1570	337.83
1312	266.09	1349	276.26	1386	286.44	1423	296.61	1460	306.79	1497	316.96	1534	327.14	1571	338.13
1313	266.36	1350	276.54	1387	286.71	1424	296.89	1461	307.06	1498	317.24	1535	327.41	1572	338.43
1314	266.64	1351	276.81	1388	286.99	1425	297.16	1462	307.34	1499	317.51	1536	327.69	1573	338.73
1315	266.91	1352	277.09	1389	287.26	1426	297.44	1463	307.61	1500	317.79	1537	327.96	1574	339.03
1316	267.19	1353	277.36	1390	287.54	1427	297.71	1464	307.89	1501	318.06	1538	328.24	1575	339.33
1317	267.46	1354	277.64	1391	287.81	1428	297.99	1465	308.16	1502	318.34	1539	328.53	1576	339.63
1318	267.74	1355	277.91	1392	288.09	1429	298.26	1466	308.44	1503	318.61	1540	328.83	1577	339.93
1319	268.01	1356	278.19	1393	288.36	1430	298.54	1467	308.71	1504	318.89	1541	329.13	1578	340.23
1320	268.29	1357	278.46	1394	288.64	1431	298.81	1468	308.99	1505	319.16	1542	329.43	1579	340.53
1321	268.56	1358	278.74	1395	288.91	1432	299.09	1469	309.26	1506	319.44	1543	329.73	1580	340.83
1322	268.84	1359	279.01	1396	289.19	1433	299.36	1470	309.54	1507	319.71	1544	330.03	1581	341.13
1323	269.11	1360	279.29	1397	289.46	1434	299.64	1471	309.81	1508	319.99	1545	330.33	1582	341.43
1324	269.39	1361	279.56	1398	289.74	1435	299.91	1472	310.09	1509	320.26	1546	330.63	1583	341.73
1325	269.66	1362	279.84	1399	290.01	1436	300.19	1473	310.36	1510	320.54	1547	330.93	1584	342.03
1326	269.94	1363	280.11	1400	290.29	1437	300.46	1474	310.64	1511	320.81	1548	331.23	1585	342.33
1327	270.21	1364	280.39	1401	290.56	1438	300.74	1475	310.91	1512	321.09	1549	331.53	1586	342.63
1328	270.49	1365	280.66	1402	290.84	1439	301.01	1476	311.19	1513	321.36	1550	331.83	1587	342.93
1329	270.76	1366	280.94	1403	291.11	1440	301.29	1477	311.46	1514	321.64	1551	332.13	1588	343.23
1330	271.04	1367	281.21	1404	291.39	1441	301.56	1478	311.74	1515	321.91	1552	332.43	1589	343.53
1331	271.31	1368	281.49	1405	291.6	1442	301.84	1479	312.01	1516	322.19	1553	332.73	1590	343.83
1332	271.59	1369	281.76	1406	29194	1443	302.11	1480	312.29	1517	322.46	1554	333.03	1591	344.13
1333	271.86	1370	282.04	1407	292.21	1444	302.39	1481	312.56	1518	322.74	1555	333.33	1592	344.43
1334	272.14	1371	282.31	1408	292.49	1445	302.66	1482	312.84	1519	323.01	1556	333.63	1593	344.73
1335	272.41	1372	282.59	1409	292.76	1446	302.94	1483	313.11	1520	323.29	1557	333.93	1594	345.03
1336	272.69	1373	282.86	1410	293.04	1447	303.21	1484	313.39	1521	323.56	1558	334.23	1595	345.33

Weekly Income		Weekly Income		Weekly Income		Weekly Income		Weekly Income		Weekly Income		Weekly Income		Weekly Income	
\$	Tax	\$	Tax	\$	Tax	\$	Tax	\$	Tax	\$	Tax	\$	Tax	\$	Tax
1596	345.63	1633	356.73	1670	367.83	1707	378.93	1744	390.03	1781	401.13	1818	412.23	1855	423.33
1597	345.93	1634	357.03	1671	368.13	1708	379.23	1745	390.33	1782	401.43	1819	412.53	1856	423.63
1598	346.23	1635	357.33	1672	368.43	1709	379.53	1746	390.63	1783	401.73	1820	412.83	1857	423.93
1599	346.53	1636	357.63	1673	368.73	1710	379.83	1747	390.93	1784	402.03	1821	413.13	1858	424.23
1600	346.83	1637	357.93	1674	369.03	1711	380.13	1748	391.23	1785	402.33	1822	413.43	1859	424.53
1601	347.13	1638	358.23	1675	369.33	1712	380.43	1749	391.53	1786	402.63	1823	413.73	1860	424.83
1602	347.43	1639	358.53	1676	369.63	1713	380.73	1750	391.83	1787	402.93	1824	414.03	1861	425.13
1603	347.73	1640	358.83	1677	369.93	1714	381.03	1751	392.13	1788	403.23	1825	414.33	1862	425.43
1604	348.03	1641	359.13	1678	370.23	1715	381.33	1752	392.43	1789	403.53	1826	414.63	1863	425.73
1605	348.33	1642	359.43	1679	370.53	1716	381.63	1753	392.73	1790	403.83	1827	414.93	1864	426.03
1606	348.63	1643	359.73	1680	370.83	1717	381.93	1754	393.03	1791	404.13	1828	415.23	1865	426.33
1607	348.93	1644	360.03	1681	371.13	1718	382.23	1755	393.33	1792	404.43	1829	415.53	1866	426.63
1608	349.23	1645	360.33	1682	371.43	1719	382.53	1756	393.63	1793	404.73	1830	415.83	1867	426.93
1609	349.53	1646	360.63	1683	371.73	1720	382.83	1757	393.93	1794	405.03	1831	416.13	1868	427.23
1610	349.83	1647	360.93	1684	372.03	1721	383.13	1758	394.23	1795	405.33	1832	416.43	1869	427.53
1611	350.13	1648	361.23	1685	372.33	1722	383.43	1759	394.53	1796	405.63	1833	416.73	1870	427.83
1612	350.43	1649	361.53	1686	372.63	1723	383.73	1760	394.83	1797	405.93	1834	417.03	1871	428.13
1613	350.73	1650	361.83	1687	372.93	1724	384.03	1761	395.13	1798	406.23	1835	417.33	1872	428.43
1614	351.03	1651	362.13	1688	373.23	1725	384.33	1762	395.43	1799	406.53	1836	417.63	1873	428.73
1615	351.33	1652	362.43	1689	373.53	1726	384.63	1763	395.73	1800	406.83	1837	417.93	1874	429.03
1616	351.63	1653	362.73	1690	373.83	1727	384.93	1764	396.03	1801	407.13	1838	418.23	1875	429.33
1617	351.93	1654	363.03	1691	374.13	1728	385.23	1765	396.33	1802	407.43	1839	418.53	1876	429.63
1618	352.23	1655	363.33	1692	374.43	1729	385.53	1766	396.63	1803	407.73	1840	418.83	1877	429.93
1619	352.53	1656	363.63	1693	374.73	1730	385.83	1767	396.93	1804	408.03	1841	419.13	1878	430.23
1620	352.83	1657	363.93	1694	375.03	1731	386.13	1768	397.23	1805	408.33	1842	419.43	1879	430.53
1621	353.13	1658	364.23	1695	375.33	1732	386.43	1769	397.53	1806	408.63	1843	419.73	1880	430.83
1622	353.43	1659	364.53	1696	375.63	1733	386.73	1770	397.83	1807	408.93	1844	420.03	1881	431.13
1623	353.73	1660	364.83	1697	375.93	1734	387.03	1771	398.13	1808	409.23	1845	420.33	1882	431.43
1624	354.03	1661	365.13	1698	376.23	1735	387.33	1772	398.43	1809	409.53	1846	420.63	1883	431.73
1625	354.33	1662	365.43	1699	376.53	1736	387.63	1773	398.73	1810	409.83	1847	420.93	1884	432.03
1626	354.63	1663	365.73	1700	376.83	1737	387.93	1774	399.03	1811	410.13	1848	421.23	1885	432.33
1627	354.93	1664	366.03	1701	377.13	1738	388.23	1775	399.33	1812	410.43	1849	421.53	1886	432.63
1628	355.23	1665	366.33	1702	377.43	1739	389.53	1776	399.63	1813	410.73	1850	421.83	1887	432.93
1629	355.53	1666	366.63	1703	377.73	1740	389.83	1777	399.93	1814	411.03	1851	422.13	1888	433.23
1630	355.83	1667	366.93	1704	378.03	1741	390.13	1778	400.23	1815	411.33	1852	422.43	1889	433.53
1631	356.13	1668	367.23	1705	378.33	1742	390.43	1779	400.53	1816	411.63	1853	422.73	1890	433.83
1632	356.43	1669	367.53	1706	378.63	1743	390.73	1780	400.83	1817	411.93	1854	423.03	1891	434.13

Weekly Income		Weekly Income		Weekly Income		Weekly Income		Weekly Income		Weekly Income		Weekly Income		Weekly Income	
\$	Tax	\$	Tax	\$	Tax	\$	Tax	\$	Tax	\$	Tax	\$	Tax	\$	Tax
1892	434.43	1906	438.63	1920	442.83	1934	447.03	1948	451.23	1962	455.43	1976	459.63	1990	463.83
1893	434.73	1907	438.93	1921	443.13	1935	447.33	1949	451.53	1963	455.73	1977	459.93	1991	464.13
1894	435.03	1908	439.23	1922	443.43	1936	447.63	1950	451.83	1964	456.03	1978	460.23	1992	464.43
1895	435.33	1909	439.53	1923	443.73	1937	447.93	1951	452.13	1965	456.33	1979	460.53	1993	464.73
1896	435.63	1910	439.83	1924	444.03	1938	448.23	1952	452.43	1966	456.63	1980	460.83	1994	465.03
1897	435.93	1911	440.13	1925	444.33	1939	448.53	1953	452.73	1967	456.93	1981	461.13	1995	465.33
1898	436.23	1912	440.43	1926	444.63	1940	448.83	1954	453.03	1968	457.23	1982	461.43	1996	465.63
1899	436.53	1913	440.73	1927	444.93	1941	449.13	1955	453.33	1969	457.53	1983	461.73	1997	465.93
1900	436.83	1914	441.03	1928	445.23	1942	449.43	1956	453.63	1970	457.83	1984	462.03	1998	466.23
1901	437.13	1913	441.33	1929	445.53	1943	449.73	1957	453.93	1971	458.13	1985	462.33	1999	466.53
1902	437.43	1916	441.63	1930	445.83	1944	450.03	1958	454.23	1972	458.43	1986	462.63	2000	466.83
1902	437.73	1917	441.93	1931	446.13	1945	450.33	1959	454.53	1973	458.73	1987	462.93		
1904	438.03	1918	442.23	1932	446.43	1946	450.63	1960	454.83	1974	459.03	1988	463.23		
1906	438.33	1919	442.53	1933	446.73	1947	450.93	1961	455.13	1975	459.33	1989	463.53		

THIRD SCHEDULE

DATES FOR FURNISHING RETURNS OF INCOME BY CERTAIN TAXPAYERS

1. Dates by which taxpayers to whom section 15(2) of this Act applies are required to furnish annual of income

Month of Balance Date	Date by which annual return of income to be furnished (being the date next succeeding the balance date)
January	1 st day of June
February	1 st " " of July
March	1 st " " of August
April	1 st " " of September
May	1 st " " of October
June	1 st " " of November
July	1 st " " of December
August	1 st " " of January
September	1 st " " of February
October	1 st " " of March
November	1 st " " of April
December	1 st " " of May

2. Interpretation - For the purpose of clause 1 of this Schedule the expression "balance date", in relation to income tax on income derived by any taxpayer in any year or other period, means the date of the annual balance of the taxpayer's accounts for that year or other period, being a year or other period in respect of which the taxpayer is required by this Act to furnish a return of income.

FOURTH SCHEDULE

ENACTMENTS REPEALED AND AMENDED

1. **Repeal and Savings**

(i) The Income Tax Act 1972 is repealed.

(ii) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of the Income Tax Act 1972 ("the 1972 Act") shall not (except as otherwise provided in this Act) affect the validity of any document made or anything done under the provisions of the 1972 Act, and every such document or thing so far as it is subsisting or in force at the time of the repeal of the 1972 Act and could have been made or done under this Act shall continue and have effect as if it shall have been made or done under the corresponding provisions of this Act and as if that provision were in force when the document was made or the thing done.

2. **Consequential repeal of certain sections**

(i) Section 72 of the Ports Authority Act 1994-95 is repealed with effect from 1 July 1997,

(ii) Section 35 of the Te Aponga Uira o Tumu-Te-Varovaro Act 1991 is repealed with effect from 1 July 1997, and the following section substituted:

"35. Exemption from taxation - (1) The Authority shall be liable to income tax and value added tax but shall be exempt from imposts duties levies and fees of whatsoever kind in respect of the following approved purposes:

(a) the importation of all fuel, plant, machinery, tools and equipment necessary for the purpose of generating energy to be supplied to consumers;

(b) the importation of plant, machinery, motor vehicle, tools and equipment necessary for maintaining the generation and transmission of energy to consumers by way of an electric supply line owned by the Authority.

(2) No exemption shall be allowed pursuant to subsection (1), unless the General Manager has first provided a declaration to the Comptroller of Customs stating that the item is to be used only for one or more of such approved purposes."

(iii) Section 24 of the Airport Authority Act 1985 is repealed with effect from 1 July 1997

(iv) Sections 41 and 41A of the Cook Islands Development Bank Act 1978 are repealed with effect from 1 July 1997.

3. **Consequential amendments to the Development Investment Act 1995-96** - (1) The Development

Investment Act 1995-96 is amended by adding the following section:

"27A. Investment incentives and concessions established - (1) Incentives and concessions as specified in the Schedule to the Development Investment Act 1977 are hereby established and shall, notwithstanding any other legislation, override and supersede the effects of any provision therein where and when any or all of these have been granted by Cabinet and, where -necessary approved by the Executive Council to any enterprise.

(2) Cabinet may decide from time to time what specific enterprise or activity set out in the Investment Code shall be eligible for any of the incentives and concessions specified in the Schedule to the Development Investment Act 1977.

(3) Except where an application for the incentive or concession relating to the assessment or payment of tax under the Income Tax Act 1997 or the Value Added Tax Act 1997 has been made to the Development Investment Board and received before 28 May 1997, the Development Investment Board may not grant any incentive or concession which would reduce any amount of income tax or value added tax but any grant made by the Board of an incentive or concession in respect of an application made before that date, will continue to take effect according to its terms."

FIFTH SCHEDULE

Assets not eligible for 100% depreciation rate

- 1. Buildings principally used for private residential or ancillary purposes.
- 2. Motor cars, except when acquired for use principally in the business of renting cars.
- 3. Furniture and fittings of any dwelling, except when acquired for use principally in the business of operating a hotel, motel or other premises for hire of accommodation.

SIXTH SCHEDULE

History: Sixth Schedule inserted by the Income Tax Amendment Act 2011 with application from 1 September 2011

Form of Warrant

Warrant to access private premises

Section 219(3), Income Tax Act 1997

1 To every officer of the Revenue Management Division of the Ministry of Finance and Economic Management (**you**) authorised by the Treasurer of the Revenue Management Division of the Ministry of Finance and Economic Management under **section 219(3)** of the Income Tax Act 1997. (or TO [*full name*], officer of the Revenue Management Division of the Ministry of Finance and Economic Management (**you**) authorised by the Treasurer of the Revenue Management Division of the Ministry of Finance and Economic Management under section **219(3)** of the Income Tax Act 1997)

2 I am satisfied, on written application made on oath by [*full name*], that there are reasonable grounds for believing that the exercise by you of your inspection functions for the purposes described in **section 219(1)(b)** of the Income Tax Act 1997 requires physical access to private premises, namely [*location*].

3 You may enter those private premises under this warrant and you have the powers given by **section 219** of the Income Tax Act 1997.

4 Other persons whom you consider necessary for the effective exercise of your inspection powers may (or may not) accompany you.

5 This warrant is valid from [*date of issue*] and expires on [*date of expiry that is one (1) month or less from the date of issue*].

Dated atí í í í í í ..this day ofí í í í í í 20í í .

Judge of the High Courtö
