



ANALYSIS

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|--|--|
| 1. Short title | 8. Prescribed currencies |
| 2. Interpretation | 9. Payment of deductions of withholding tax to Collector |
| 3. Concessions for industries contributing to economic development | 10. Withholding tax to be final in certain cases |
| 4. Debentures issued free of tax | 11. Failure to make deductions of withholding tax or to make payments to Collector |
| 5. Interpretations | Schedule |
| 6. Application of this Part | |
| 7. Withholding tax imposed | |

1987, No. 6

An Act to amend the Income Tax Act 1972

(10 July 1987)

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 - This Act may be cited as the Income Tax Amendment Act 1987 and shall be read together with and deemed part of the Income Tax Act 1972 (herein referred to as "the principal Act").

2. Intepretation - section 2 of the principal Act is amended by repealing the definition for "Debenture" and substituting the following definition:

"Debenture" includes debenture stock and every instrument evidencing, acknowledging or securing or providing for the payment of any debt or debt obligation of a company, and also includes bills of exchange and promissory notes in respect of such debt or debt obligations".

3. Concessions for industries contributing to economic development - Section 49 of the principal Act is repealed and the following section substituted therefor -

"49. Concessions for contributing to economic development - (1) Where any new industry or enterprise is established in the Cook Islands, or where any industry or enterprise already existing in the Cook Islands is materially expanded, or where any person invests money in the Cook Islands and the Minister is satisfied that such establishment expansion or investment as the case may be, will contribute to the economic development of the Cook Islands, he may issue a tax variation certificate providing that the person or

persons contributing to the establishment or expansion of that industry or enterprise or undertaking the investment shall be entitled to such concessions in respect of taxation on the income derived, whether directly or indirectly, from that industry, enterprise, or investment as are specified in the certificate.

(2) The Minister shall refer all applications for concessions under this section to the Cabinet of the Cook Islands and shall have regard to any recommendations made by the Cabinet when making or declining to issue a certificate under this section.

(3) Concessions granted by the Minister under the authority of this section may take the form of exemption of all or part of the income from taxation, reduction in the rates of taxation on all or part of the income, allowance or special deductions from assessable income, or may be in such other form as the Minister considers desirable and appropriate to the particular case.

(4) A certificate issued under this section shall specify the period during which any concession is to apply, and the period as specified may from time to time be extended by the Minister by a subsequent certificate.

(5) Any certificate issued under this section may be made upon or subject to such conditions as the Minister thinks fit and may at any time be revoked by the Minister if the taxpayer fails to comply with any such conditions."

4. Debentures issued free of tax - Section 61 of the principal Act is amended by repealing subsection (2) and substituting the following subsections:

"(2) Where any debenture issued by a company purports to be issued free of income tax, such debenture shall for the purposes of this Part of this Act and the First Schedule to this Act be deemed to be an obligation for the payment of such amount of interest as, after deducting an amount at the rate mentioned in clause 2 of Part A of the First Schedule to this Act by way of income tax (the "relevant amount"), will leave an amount equal to the rate of interest specified in the debenture available for payment to the debenture holder.

(3) Where a debenture purporting to be issued free of income tax requires a deduction by way of income tax in the determination of the obligation for payment of interest under subsection (2) thereof, then the debenture holder shall be liable to pay income tax at the rate specified in clause 2 of Part A of the First Schedule of this Act upon the interest as determined under sub-section (2) of this section and the company shall be obliged to pay the relevant amount to the Collector as income tax on behalf of the debenture holder and the debenture holder shall subject to Part VII hereof be entitled to receive the full amount of interest specified in the debenture."

5. Interpretation - Section 103 of the principal Act (as amended by section 16 of the Income Tax Amendment Act 1984) is amended by inserting therein, in alphabetical order, the following definitions -

"borrowing" means a borrowing -

- (i) that is for an amount of \$10,000,000 or more; and
- (ii) that is made in a currency other than a prescribed currency; and
- (iii) the total amount of which is subject to identical terms and conditions and which is borrowed at one time whether or not from the same person.

"person" includes the Crown in right of the Government of the Cook Islands and every instrumentality or agency of the Government;

"prescribed currency" means a currency prescribed pursuant to section 105A;"

6. Application of this Part - Section 104 of the principal Act (as amended by section 17 of the Income Tax Amendment Act 1984) is amended by adding after subsection (2) the following subsection -

"(3) Without limiting the generality of subsection (2) all interest and royalties paid to any person by the Crown in right of the Government of the Cook Islands and every instrumentality or agency of the Government shall be deemed to be income derived in the Cook Islands."

7. Withholding tax imposed - Section 105 of the principal Act is repealed and the following section substituted therefor -

"105. Withholding tax imposed - Every person who derives withholding income shall be liable to pay withholding tax upon that income as follows -

(1) In every case where interest is paid by any person in relation to a borrowing, to a person who is not resident in the Cook Islands, the amount of the withholding tax shall be forty-nine per cent (49%) of the interest so paid.

(2) In every case where dividends interest (other than interest paid in relation to a borrowing) or royalties are paid by any person to a person who is not resident in the Cook Islands, the amount of the withholding tax shall be fifteen per cent (15%) of the dividends, interest or royalties so paid.

(3) In every other case, the amount of the withholding tax shall be five per cent (5%) of the withholding income."

8. Prescribed currencies - The principal Act is amended by inserting after section 105 the following new section:

"105A. Prescribed currencies - (1) The lawful currency of each of the countries set out in the Schedule to this Act shall for the purposes of this Part be prescribed currencies.

(2) The Queen's Representative may from time to time by Order in Executive Council amend the Schedule to this Act by -

- (i) adding thereto the name of a country in which case the lawful currency of that country shall be a prescribed currency; or
- (ii) deleting therefrom the name of a country in which case the lawful currency of that country shall cease to be a prescribed currency.

9. Payment of deductions of withholding tax to collector - Section 108 of the principal Act is amended by adding thereto the following subsections -

"(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 105 to pay withholding tax is thereby met either in whole or in part.

(4) The Collector shall, immediately after receiving the advice referred to in sub-section (3), issue and deliver to the person whose liability to tax is thereby met (whether in whole or in part) or such person's agent a receipt for the withholding tax so paid."

10. Withholding tax to be final in certain cases - Section 110 of the principal Act is amended by adding thereto the following proviso -

"Provided that nothing contained in this section shall affect the operation of section 61."

11. Failure to make deductions of withholding tax or to make payments to Collector - Section 113 of the principal Act is amended by adding after subsection (4) the following subsections -

"(5) Every person who receives withholding income shall, subject to section 114, remain liable for the payment of withholding tax thereon until such withholding tax is paid by him or on his behalf.

(6) Where any person makes a deduction pursuant to section 106 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."

SCHEDULE

Section 8

Prescribed Currencies

Federal Republic of Germany
Japan
Switzerland
United Kingdom of Great Britain
and Northern Ireland
United States of America.

This Act is administered by the Inland Revenue Department.