



ANALYSIS

- | Title | |
|---|--|
| 1. Short Title | 9. Expenditure or loss exclusively incurred in the production of assessable income |
| 2. Application | 10. Losses incurred may be set off against future profits |
| 3. Interpretation | 11. Taxation of salary or wages earned outside the Cook Islands |
| 4. Taxation of income from more than one source | 12. Mode of recovery of unpaid tax |
| 5. Special exemptions for dependents of taxpayer | 13. Penalty for failure to furnish returns, etc |
| 6. Rebate for expenditure on energy conservation | 14. Taxpayer identification number |
| 7. Incomes wholly exempt from taxation | |
| 8. Concessions for farming and fishing industries | |

1989-90, No. 37

An Act to amend the Income Tax Act 1972

(26 March 1990)

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

1. Short Title - This Act may be cited as the Income Tax Amendment Act 1989-1990 and shall be read together with and deemed part of the Income Tax Act 1972 (hereinafter referred to as "the principal Act").

2. Application - This Act shall come into force as follows:

- (a) Sections 3, 4, 5, 6, 7, 8, 9, 10 and 11 shall apply with respect to income derived during the income year which commenced on 1 January 1990, and every subsequent income year;
- (b) Sections 12, 13 and 14 shall be deemed to have come into force on 1 January 1990.

3. Interpretation - Section 2 of the principal Act is hereby amended by deleting from the definition of "salary or wages" the words "directors fees" (as inserted by section 3 of the Income Tax Amendment Act 1984).

Price \$1.50

4. Taxation of income from more than one source - (1) the principal Act is hereby amended by inserting after section 41 the following new section:-

"41A. Taxation of income from more than one source

- (1) For the purposes of assessing income tax, every taxpayer who derives income from more than one source shall be assessed and liable for income tax under this Act as if his income from each source was his only source of income.

Provided that any rebates of income tax or special exemptions allowable to the taxpayer under this Act shall be used exclusively in determining the income tax liability on the taxpayer's largest source of income, with the exception of the rebate provided by section 46B of this Act which may be allocated by the Collector over any source or sources of income:

(2) For the purposes of this section -

"Business income" means income of the types deemed to be assessable income by sections 50(1) (a), (c), (e), (f) and (h), and section 51 of this Act;

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

"Investment income" means interest and dividends;

"Rental income" means income derived from the rental of property, and includes income of the type deemed to be assessable income by section 50(1)(d) of this Act;

"Source means:

(a) a payer of employment income;

Provided that all employment income derived from a source 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 source;

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

or

- (b) Business income; or
- (c) Investment income; or
- (d) Rental income.

(3) Where a taxpayer has beneficial ownership of 10% or more of the shares in a company from which he derives income, all such companies in which he has such beneficial ownership of shares shall be deemed to be one source of income.

(4) The provisions of this section shall not apply to any absentee, company or trustee."

(2) Paragraph 5 of the Second Schedule to the principal Act is hereby repealed.

5. Special exemptions for dependents of taxpayer - Section 46A of the principal Act (as inserted by section 5 of the Income Tax Amendment Act 1980) is hereby amended as follows:

- (a) By deleting the word "\$3500" in subsection (2) and substituting it with the word "\$4000";
- (b) By deleting the word "\$3500" in subsection (3) and substituting it with the word "\$4000".

6. Rebate for expenditure on energy conservation - The principal Act is hereby amended by inserting after section 46A (as inserted by section 5 of the Income Tax Amendment Act 1980) the following new section -

"46B. Rebate for expenditure on energy conservation

- (1) Subject to this section, where the Collector is satisfied that a taxpayer has, in any income year, incurred energy conservation expenditure, he may allow to the taxpayer a rebate of income tax for that income year of an amount equal to 50 cents for each complete \$1 of the amount of that energy conservation expenditure:

Provided that where the rebate allowable under this section exceeds the tax that would otherwise be payable by the taxpayer, the unused portion of rebate shall not be available to be carried forward to a subsequent income year, or to be used by another taxpayer.

(2) For the purposes of this section:

"Energy conservation expenditure" means the cost, including installation, of a new energy saving device and any addition thereto, which is installed and used in connection with a private residential dwelling in the Cook Islands.

"Energy saving device" means a solar water heating system or a photovoltaic panel energy system, or such other device as may be notified from time to time by the Collector in the Gazette;

"New" means not having previously been used.

(3) The provisions of this section shall not apply to any absentee, company, partnership, or trustee."

7. Incomes wholly exempt from taxation - the principal Act is hereby amended as follows:- (1) By deleting paragraph (p) of subsection (1) of section 48 and replacing it with the following paragraph

"(p) 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."

(2) By inserting in paragraph (r) of subsection (1) of section 48, after the word "persons" the words, "who are not ordinarily resident in the Cook Islands".

(3) By deleting paragraph (x) of subsection (1) of section 48 (as inserted by section 10 of the Income Tax Amendment Act 1984) and replacing it with the following paragraph:

"(x) 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".

8. Concessions for farming and fishing industries - The principal Act is hereby amended by inserting, after section 49A (as inserted by section 6 of the Income Tax Amendment Act 1980), the following new section:

"49B Concessions for farming and fishing industries

- (1) Income derived by a producer from direct sales of produce shall be deemed not to be assessable income and shall be exempt from income tax.

(2) For the purposes of this section -

"Direct sales" means sales of produce made by a producer, such produce having been grown, raised or caught, as the case may be, by that producer;

"Farming" means the business of growing or raising agricultural, animal or poultry products;

"Fishing" means the business of catching fish or shellfish;

"Produce" means the primary products of farming or fishing, in their natural state, or butchered, or dressed for human or animal consumption;

"Producer" means any person engaged in the business of farming or in the business of fishing, with the exception of any foreign enterprise required to register under the Development Investment Act 1977, or any enactment in substitution thereof."

9. Expenditure or loss exclusively incurred in the production of assessable income - (1) Section 63 of the principal Act is hereby amended as follows; by deleting subsection (1) and substituting it with the following new subsection:

"(1) In calculating the assessable income of any person deriving income from one or more source, any expenditure or loss exclusively incurred in the production of the assessable income for any income year may, except as otherwise provided in this Act, be deducted from the total income derived by the taxpayer from that source for that income year."

(2) By deleting subsection (2) and replacing it with the following new subsection:

"(2) For the purposes of this section, the term "source" shall have the same meaning as is assigned to it in section 41A of this Act."

10. Losses incurred may be set off against future profits - Subsection (2) of section 74 of the principal Act is hereby amended as follows: (1) By inserting the words "from that source" after the word "income" and before the word "for".

(2) By inserting after the word "years" the words "the term 'source' having the same meaning as is assigned to it in section 41A of this Act".

11. Taxation of salary or wages earned outside the Cook Islands - the principal Act is hereby amended by inserting, after section 86, the following new section:

"86A 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, with the concurrence of the Minister, 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."

12. Mode of recovery of unpaid tax - Section 207 of the principal Act is hereby amended by the addition of the following proviso:

"Provided that where the Collector is satisfied that the unpaid tax is in fact irrecoverable, he may, with the concurrence of the Minister, write off the unpaid tax."

13. Penalty for failure to furnish returns, etc. - Subsection (2) of Section 221 of the principal Act is hereby amended as follows: (1) By deleting the word "\$200" and substituting it with "\$500".

(2) By deleting the word "\$5" and substituting it with "\$100".

(3) By adding the following proviso:

"Provided that if the person is a company that person shall be liable to a fine not exceeding \$5000, and not less than \$1000."

14. Taxpayer identification number - the principal Act is hereby amended as follows: (1) By inserting, after section 231, the following new section:

"231A Taxpayer identification number - A taxpayer identification number may be allocated to a taxpayer by the Collector, such number to be used in all taxation matters concerning the taxpayer".

(2) By inserting in subsection (2) of section 162, after the words "as the Collector requires," the words, "including particulars."

This Act is administered in the Inland Revenue Department.