



**Tuvalu**

# **INCOME TAX (AMENDMENT) ACT 2008**

**Act 10 of 2008**





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## AN ACT FOR THE AMENDMENT OF THE INCOME TAX ACT

ENACTED BY THE PARLIAMENT OF TUVALU  
24 November 2008

Commencement [1 July 2009]

### 1 Short title

This Act may be cited as the Income Tax Amendment Act.

### 2 Interpretation

The “Principal Act” referred to herein is the Income Tax Act 1992.

### 3 Commencement

- (1) This Act shall come into force on a date to be notified by the Minister responsible for administering government finances in Tuvalu.
- (2) Different parts of this Act may be brought into force on different dates.

### 4 Amendment of section 2

Section 2 of the Principal Act is amended by deletion therefrom of the definition of “specified level of taxable income” and by addition thereto of the following definition:

“**presumptive taxpayer**” means a person liable for tax under section 5A;

**5 Amendment of section 4**

Section 4 of the Principal Act is amended as follows:

- (i) By adding after the word “applying” in section 4(1), the words “the provisions of this Act, including”;
- (ii) By adding a new section 4(9) as follows:  
“(9) Notwithstanding the other provisions of this section, the Minister may also issue advance binding rulings as to the approach or interpretation to be adopted in applying the provisions of this Act to persons generally, without first having received a written application from any particular applicant, and such rulings shall be applied without any fees being payable.”

**6 Amendment of section 5**

Section 5 of the Principal Act is amended as follows:

- (i) By deletion thereof of section 5(2)(b);
- (ii) By renumbering of section 5(2)(c) as section 5(2)(b).

**7 Introduction of section 5A**

The Principal Act is amended by insertion, after section 5, of the following section 5A:

**“5A Presumptive tax**

- (1) Notwithstanding section 21, Schedule 4 and the other provisions of this Act, presumptive tax is imposed for each quarter on a person carrying on a business whose annual gross income –
  - (a) Where the business was in existence throughout the whole of the previous year, was less than \$100,000 in that previous year;
  - (b) In any other case, is reasonably expected to be less than \$100,000 in the current year,

Provided that any person who is liable for presumptive tax, may elect by notifying the Taxation Officer (which election shall have effect for not less than 3 years) to instead pay income tax on their taxable income under section 5.

- (2) The presumptive tax payable by a person for a quarter shall be \$100.
- (3) Presumptive tax shall be a final tax on the taxable income from businesses of taxpayers upon whom it is imposed. No allowances, deductions or reductions shall be permissible in respect of presumptive tax.

- (4) A presumptive taxpayer shall file a presumptive tax return for each quarter within 15 days of the end of the quarter.
- (5) Presumptive tax shall be due by the due date for filing the presumptive return for the quarter, regardless of any assessment.
- (6) The Taxation Officer may assess presumptive tax payable by a taxpayer in the event that a presumptive taxpayer fails to file a presumptive tax return or if the Taxation Officer is dissatisfied with said return.
- (7) Said assessment shall be made, *mutatis mutandis*, in the same fashion and according to the same rules as pertain to other tax types provided for by this Act.”.

## **8 Amendment of section 37(7)(b)( i)**

Section 37(7)(b)(i) of the Principal Act is amended by deletion of the words “being the last day of the month immediately following that in which withholding or collection was required in terms of this section” and substitution therefor of the words “being the 15th day of the month immediately following that in which withholding or collection was required in terms of this section.”

## **9 Amendment of section 41**

Section 41 of the Principal Act is amended as follows:

- (a) By deleting section 41(1)(a) and substituting therefor the following provision:

“(a) in relation to any year, an individual deriving income in excess of the threshold established by Schedule 6 hereto.”
- (b) By amending section 41(1)(b) by deleting therefrom the words “any gross income” and substituting therefor the words “income in excess of the threshold established by Schedule 6 hereto.”
- (c) The following proviso shall be attached to section 41(2): “ Provided that presumptive taxpayers, and employees to whom section 41A applies, shall not be subject to the requirements of this subsection in respect of their business income and their income from employment, but subject to the particular regimes appearing in this Act for taxation of same.”

## **10 Introduction of section 41A**

The Principal Act is amended by insertion, after section 41, of the following section 41A:

**“41A Taxpayers whose only income is employment income**

- (1) This section applies to individuals whose sole income is derived from employment.
- (2) Said individuals may, for each year of income, request the giving by the Taxation Officer of an income statement.
- (3) An income statement should contain the amount of gross income derived from employment, the sources of same, the amounts of source deductions or withholding deductions, together with such information as the Taxation Officer considers necessary.
- (4) Whether or not an income statement is requested, unless the Taxation Officer considers otherwise, the total income tax payable in respect of employment income shall be deemed to be equal to the amounts withheld from that income or otherwise collected from employers under section 37(1) of this Act and any returns made by employers in relation thereto shall be deemed to be in substitution for any return which otherwise would be required from employees.”

**11 Introduction of section 57A**

The Principal Act is amended by insertion, after section 57, of the following section:

**“57A Penalty payable where tax return not furnished by due date**

- (1) Where any person who is required under this Act to furnish a tax return by a due date, or by any extended due date under section 43 of this Act, has not filed that tax return by that due date, there shall be payable (in addition to any interest payable under section 58 of this Act and any late payment penalty under sections 59 and 60 of this Act) a late furnishing penalty of \$500.
- (2) Where the due date that any tax return is required to be furnished by under subsection (1) of this section does not fall on a business day, the due date shall be the next business day following the due date.”

**12 Introduction of section 63A**

The Principal Act is amended by insertion, after section 63, of the following section:

**“63A Penalties payable where income tax payable shown in a tax return has been understated**

- (1) Where, without reasonable cause, any person who is required under this Act to furnish a tax return has understated the amount of income tax

payable required to be shown on that tax return, there shall be payable a penalty which shall be:

- (a) if the understatement was due to gross carelessness on the part of the person, fifty percent (50%) of the tax understated; or
  - (b) if the understatement was due to a deliberate attempt to avoid payment of tax, one hundred percent (100%) of the tax understated.
- (2) Notwithstanding subsection (1) of this section, where income tax has been understated and an additional penalty under that subsection is to be applied, the amount of that additional penalty will be reduced to:
- (a) 25% of that that would otherwise apply under subsection (1) if the person voluntarily disclosed the existence of the understatement before any inquiries in relation to that understatement had been initiated by the Taxation Officer; or
  - (b) 50% of that that would otherwise apply under subsection (1) if the person voluntarily disclosed the existence of the understatement immediately after inquiries in relation to that understatement had been initiated by the Taxation Officer.
- (3) Nothing in this section shall be taken as:
- (a) relieving any person to whom this section applies from any interest or late payment penalty chargeable under this Act; or
  - (b) precluding the granting of relief from interest or late payment penalties otherwise chargeable where other provisions of this Act so allow.”

### **13 Introduction of sections 76A to 76D**

The Principal Act is amended by insertion, after section 76, of the following sections:

#### **“76A Recovery of unpaid tax from persons owing money to the person owing tax**

- (1) Where any income tax or other amount imposed under this Act has not been paid by its due date, the Taxation Officer may by notice in writing require a person:
  - (a) owing money to the person liable to pay the income tax or other amount outstanding;
  - (b) holding money for, or on behalf of, the person liable to pay the income tax or other amount outstanding;

- (c) who is liable to make payments of salary or wages or other similar payments to the person liable to pay the income tax or other amount outstanding; or
  - (d) having authority from some other person to pay money to the person liable to pay the income tax or other amount outstanding;
- to pay the money to the Government or its nominated agent on the dates set out in the notice, up to the amount of the income tax or other amount outstanding due.
- (2) A copy of a notice issued under subsection (1) of this section shall be forwarded to the person liable to pay the income tax or other amount outstanding.
  - (3) A person making a payment under a notice under subsection (1) of this section shall be treated as having made the payment on behalf of the person liable to pay the income tax or other amount outstanding and the person liable to pay the income tax or other amount outstanding shall not bring an action against the person making payment for recovery of that amount.
  - (4) The Taxation Officer shall reduce the amount of the income tax or other amount outstanding by the person liable to pay them, by the amount of any payment made on that person's behalf under subsection (3) of this section.
  - (5) Where any person who receives a notice under subsection (1) of this section transfers any money to which the notice applies to the person who he owes money to or is holding money on behalf of, or otherwise does not pay such money in accordance with the notice, that person shall, if the Taxation Officer agrees, become personally responsible for the amount outstanding under the notice and the other provisions of this Act shall apply as if the person who received the notice was the agent of the person liable to pay the income tax or other outstanding amount.

#### **76B Recovery of unpaid tax from seizure and sale of property belonging to debtors**

- (1) Where any income tax or other amount imposed under this Act has not been paid by any person by its due date, the Taxation Officer may request that the Minister to make an order placing restrictions on that person's movable property until the income tax or other amount has been paid.
- (2) Where a person to whom subsection (1) of this section applies, has not paid, or made arrangements satisfactory to the Taxation Officer to pay, the income tax or other amount due within 30 days of the order of the Minister obtained under that subsection, the Taxation Officer may enter any place and seize any movable property.

- (3) Movable property that has been seized under this section shall be stored in a place approved by the Taxation Officer for the storage of such property.
- (4) If movable property has been seized under this section, the Taxation Officer shall, as soon as practicable after the seizure, serve on the owner of the movable property or the person who had custody or control of the movable property immediately before seizure, a notice in writing —
  - (a) identifying the movable property;
  - (b) stating the movable property that has been seized under this section and the reason for seizure; and
  - (c) setting out the terms of subsections (6), (7) and (8).
- (5) The Taxation Officer shall not be required to serve a notice under subsection (4) if, after making reasonable enquiries, the Taxation Officer does not have sufficient information to identify the person on whom the notice should be served.
- (6) The Taxation Officer may authorise any movable property seized under this section to be delivered to the person on whom a notice under subsection (4) has been served if that person has paid, or makes an arrangement to pay to the satisfaction of the Taxation Officer any income tax or other amount due under this Act.
- (7) If subsection (6) does not apply, the Taxation Officer shall detain the movable property seized under this section —
  - (a) in the case of perishable property, for such period as the Taxation Officer considers reasonable having regard to the condition of the property; or
  - (b) in any other case, for 21 days after the seizure of the property.
- (8) If the detention period in subsection (7) has expired, the Taxation Officer may sell the seized property by public auction or in such other manner as the Taxation Officer may determine.
- (9) The proceeds of disposal under subsection (8) shall be applied as follows —
  - (a) first toward the cost of seizing, keeping and selling the seized property;
  - (b) then towards the payment of the income tax or other amount due under this Act; and
  - (c) the balance, if any, shall be paid to the owner of the property.
- (10) The Taxation Officer may request the assistance of the Tuvalu Police Force in delivering and putting into place any order made by a court under subsection (2) of this section.

**76C Persons with unpaid tax over \$500 not allowed to leave Tuvalu**

- (1) Where any income tax or other amount imposed under this Act in excess of \$500 has not been paid by any person by its due date, the Taxation Officer may by notice in writing to the Principal Immigration Officer, require that the Principal Immigration Officer shall prevent that person from leaving Tuvalu, until the person:
  - (a) makes payment in full; or
  - (b) makes an arrangement satisfactory to the Taxation Officer for the payment of the tax or other amount.
- (2) In any case to which this section applies, where the conditions of paragraphs (a) or (b) of subsection (1) of this section have been met, the Taxation Officer shall by letter immediately inform the Principal Immigration Officer of that fact and the Principal Immigration shall forthwith no longer prevent the person to whom the conditions applies from leaving Tuvalu.

**76D Business of persons with unpaid tax over \$500 may be temporarily closed**

- (1) Where any income tax or other amount imposed under this Act in excess of \$500 has not been paid by its due date by any person, being a person who is operating a business, the Taxation Officer may by notice in writing inform that person of an intention to close down part or the whole of that person's business, until the person:
  - (a) makes payment in full; or
  - (b) makes an arrangement satisfactory to the Taxation Officer for the payment of the tax or other amount.
- (2) In any case to which this section applies, where the conditions of paragraphs (a) or (b) of subsection (1) of this section have not been met within 7 days of the person to which it relates having received the notice, the Minister may by letter order the immediate closure of part or the whole of that person's business until the conditions in paragraph (a) or (b) of subsection (1) of this section have been met.
- (3) Where the Minister makes an order hereunder, the Taxation Officer shall affix in a conspicuous place on the front of the premises or part of a business which has been closed, a notice bearing the words "CLOSED TEMPORARILY FOR NOT PAYING OUTSTANDING TAX".
- (4) Any person who, contrary to the provisions of this section, carries on the business or part of the business concerned or who commits any breach of an order made under this section, commits a Category 1 offence.

- (5) The Taxation Officer may request the assistance of the Tuvalu Police Force in delivering and putting into place any order made by the Minister under subsection (2) of this section.”

#### **14 Amendment of Schedule 5**

Schedule 5 of the Principal Act is amended as follows:

- (i) By deletion from Part A of paragraph (1)(b) and substitution therefor of the following subparagraph:
- “(b) where the employment to which the emolument relates is the employee’s principal employment, the amount of the tax to be withheld shall be based on formulae provided by the Taxation Officer which reflect the tax rates specified in paragraph 1 of Schedule 6;”.

#### **15 Amendment of Schedule 6**

Schedule 6 of the Principal Act is amended as follows:

- (i) By deletion of paragraph 1(a) and substituting therefor the following paragraph:
- “(a) Taxable income of an individual, not exceeding four thousand dollars - 0%”
- (ii) By re-lettering of current paragraph 1(b) as 1(d), and consequent re-lettering of subsequent paragraphs which are currently paragraphs 1(c) to 1(f) as 1(e) to 1(h)
- (iii) By insertion of the further paragraphs 1(b) and 1(c) as follows:
- “(b) Taxable income of an individual, exceeding four thousand dollars but not exceeding six thousand dollars - 15%
- (c) Taxable income of an individual, exceeding six thousand dollars – 30%”
- (iv) By relettering of current paragraphs 1(g) and 1(h) as paragraphs 1(i) and 1(j). d
- (v) By deleting paragraph 2.