



I assent,

GEORGE TUPOU V,

10th July, 2008.

AN ACT

TO AMEND THE INCOME TAX ACT 2007

[30 June, 2008]

BE IT ENACTED by the King and the Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

1. This Act may be cited as the Income Tax (Amendment) Act 2008.
2. The Income Tax Act 2007 is in this Act referred to as the Principal Act.
3. Section 2 of the Principal Act shall be amended as follows –
 - (a) insert after the definition of “business income”, the definition of “business loss” as follows –

“business loss” has the meaning in section 37(3);
 - (b) delete the term “presumptive income taxpayer” and its definition; and
 - (c) in the English version only, in the definition of “resident person”, insert the word “the” before the word “meaning”,
4. Section 5 of the Principal Act shall be amended as follows –
 - (a) in subsection (1) delete the word “and” and substituting with “or an Order”;
 - (b) in subsection (3)(b), delete –
 - (i) “90” and substitute “89”; and
 - (ii) “92” and substitute “91”;
 - (c) in subsection 4(a) delete “section 6, 7 or 8” and substitute “sections 6 or 7”; and

- (d) in subsection 4(b) delete “91” and substitute “90”.
- 5.** Section 6 of the Principal Act shall be amended as follows –
- (a) in subsection (1) delete the word “and” and substituting with “or an Order”;
- (b) in subsection (1)(d) delete the word “or” and add new paragraphs (f) and (g) as follows –
- “f) rent; or
- (g) natural resource amount.”;
- (c) in subsection (2)(b), after the word “royalty” wherever it appears, add “, rent or natural resource amount”;
- (d) in subsection (3) –
- (i) after “royalty” add the words “, rent, natural resource amount,”; and
- (ii) delete “(3)” and substitute “(2)”;
- (e) in subsection (4) delete “80” and substitute “79”.
- 6.** Section 7(1) of the Principal Act shall be amended by deleting the word “and” and substituting with “or an Order”
- 7.** Section 9 of the Principal Act shall be amended as follows –
- (a) in the heading, delete “6, 7, and 8” and substitute “6 and 7”;
- (b) delete paragraph “(a)” and substitute with the following
- “(a) the income shall not be included in gross income in computing the chargeable income of the person for any fiscal year.”;
- (c) delete paragraph “(c)” and substitute with the following –
- “(c) the amount on which tax is imposed shall not be reduced by any loss.”; and
- (d) in paragraph (d) delete “6, 7, or 8” and substitute “section 6 and 7”.
- 8.** Section 16 of the Principal Act is amended by inserting a new subsection (6) as follows –
- “(6) The income derived by the European Investment Bank to the extent provided by Gazette No. 9 of 2006”.
- 9.** Section 19(2) of the Principal Act is amended by replacing the words “scheme approved by His Majesty in Council” with the words “received from an approved retirement fund”.

10. Section 22 of the Principal Act is amended as follows –
 - (a) in the heading by adding the word “approved” before the word “retirement”;
 - (b) in subsection (2) –
 - (i) by inserting “an approved” before “retirement”; and
 - (ii) in the English version only, delete “a”.
11. Section 26(2) of the Principal Act is amended by deleting that subsection and substituted with the following new subsection (2) –

“(2) A person required to withhold tax from an amount paid by the person shall not be allowed a deduction for the amount until the withheld tax has been paid to the Chief Commissioner.”
12. Section 43 of the Principal Act is amended as follows –
 - (a) in the definition of “financial lease”, in paragraph (b), delete “accounting” and substitute “financial reporting”;
 - (b) in subsection (4)(b), after “associates”, insert “or if no amount is stated as the cost or value of the asset in the lease agreement”.
13. Section 44(8) of the Principal Act in the English version only, is amended by deleting “used” and substituting as “applied”.
14. Section 45(7) of the Principal Act is amended by deleting “or the loan”.
15. Section 49(4)(b) of the Principal Act is amended by deleting “or intangible”.
16. Section 56(7) of the Principal Act is amended by deleting that subsection and substituting the following new subsection (7) –

“(7) The gross income of a resident beneficiary includes a distribution received by the beneficiary to the extent to which the distribution is foreign-source income derived by the trustee of the trust that was not taxed to the beneficiary under subsection (3) or the trustee under subsection (6) in the fiscal year in which it was derived by the trustee.”
17. Section 58(1) of the Principal Act is amended, in the definition of “carry forward losses”, by deleting “an interest deduction carried forward under section 34,”.
18. Section 68(1) of the Principal Act is amended by deleting –
 - (a) “, other than a presumptive income taxpayer,”; and
 - (b) “two” and substitute with “four”.
19. Section 70 of the Principal Act is amended in subsection (4)(b), delete “and minimum income tax”.

- 20.** Section 71(9)(b) of the Principal Act is amended by deleting “or minimum income tax”.
- 21.** Section 73(1)(a) of the Principal Act is amended by deleting “showing the gross amount of income tax specified in section 7(2) in respect of the ship” and substitute” in the form and manner prescribed”.
- 22.** Section 74(3) of the Principal Act is amended by deleting “gross amount specified in section 7(2)” and substitute “amount on which tax is payable under section 7”.
- 23.** Section 79 of the of the Principal Act is amended by –
- (a) in subsection (2), deleting “of – (a) in the case of an insurance premium, 5% (b) in the case of rent, 7.5%; or (c) in any other case, 15%” and substitute “specified in the Order referred to in section 6 of this Act”; and
 - (b) adding new subsection (4) immediately after subsection (3) as follows –

“(4) A non-resident may appoint a representative to withhold and pay the withholding tax due under this section on behalf of the payer.”
- 24.** Section 90(2) of the Principal Act is amended by deleting paragraph (a) and substitute with the following new paragraph (a) –
- “(a) the income shall not be included in gross income in computing the chargeable income of the person who derives it for any fiscal year;”
- 25.** The First Schedule of the Principal Act is amended by –
- (a) in clause 1 –
 - (i) in the definition of “benchmark rate”, delete “rediscount rate” and substitute “weighted average lending rate”;
 - (ii) add the following definition of “cost” immediately after “benchmark rate” as follows –

“cost” means –

 - (a) the actual cost to the employer in acquiring the motor vehicle in the first year;
 - (b) the depreciated cost in the 2nd to 4th years of ownership of the motor vehicle; and
 - (c) the fair market value of the vehicle in subsequent years.
 - (b) in clause 9, delete “Act” and substitute “Schedule”.