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Third Session Eleventh Parliament Republic of
Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

AN ACT to amend the Income Tax Act

THE INCOME TAX (AMENDMENT) BILL, 2018

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

This Bill seeks to amend the Income Tax Act to meet our international requirements coming out of Trinidad and Tobago's 2015 Mutual Evaluation Report under the 40 Recommendations of the Financial Action Task Force and Trinidad and Tobago's obligations under the Tax Information Exchange Agreement with the United States of America and the Global Forum.

The Bill first contains Preambulatory clauses which are required where a Bill seeks to infringe the fundamental rights guaranteed by section 4 of the Republican Constitution. Since the Bill would require the Board of Inland Revenue to share personal information on individuals in its possession with certain Government agencies and under international tax information sharing agreements, this amounts to an infringement of the right of a person to privacy and family life and as such, the Bill would contravene sections 4 and 5 of the Constitution. The Bill would therefore have to be passed in both Houses of Parliament with a three-fifths majority votes of all members as required by section 13(2) of the Republican Constitution.

Clause 1 of the Bill would provide for the short title of the Act for which this is the Bill.

Clause 2 of the Bill would provide that the Act for which this is the Bill would have effect even though it is inconsistent with the Constitution.

Clause 3 of the Bill would provide for the interpretation of the word "Act".

Clause 4 of the Bill would amend the long title of the Act to now provide for the sharing of information with certain Government entities and under certain international sharing arrangements.

Clause 5 of the Bill would set out the amendments to section 4. Paragraph (a)(i) provides for the deletion of section 4(2)(a) of the Income Tax Act. Section 4(2) creates an offence where any person who had possession of, or control over any document, information, return or assessment lists relating to the income or items of income of any person, communicates that information to any person.

Under subsection (2)(a) however, no offence would be seen to occur where the information is shared with a person who the President authorizes the information to be communicated with. This exemption has been identified by the United States of America and the OECD as being contrary to our obligations under agreements to share tax information which also requires the information received by the Board to be kept confidential. The subparagraph is therefore being deleted to no longer empower the President to authorize such sharing.

Subparagraph (ii) provides for the insertion of five new subsections after subsection (3).

New subsection (4) would make it clear that the secrecy provisions do not apply in an evidentiary process where criminal proceedings have commenced.

New subclause (5) makes it clear that where the Board of Inland Revenue is required by a written law to disclose taxpayer information to certain agencies, the Board is required to disclose the information.

New subsection (6) provides for the sharing of taxpayer information in the possession of the Board with specific entities. So, proposed subsection (6)(b) would provide for the sharing of taxpayer information with the Financial Intelligence Unit for the purposes of allowing the Financial Intelligence Unit to do the analysis it is required to do under the Financial Intelligence Unit of Trinidad and Tobago Act, Chap. 72:01.

Proposed subsection (6)(b) would provide for the sharing of taxpayer information with the division of the Police Service responsible for the financial investigation or fraud or for the investigation of offences under the Proceeds of Crime Act and the Anti-Terrorism Act, the laying of information or the preferring of an indictment.

Proposed subsection (7) allows for the taxpayer information which was disclosed to be used as evidence in proceeding in respect of the offence.

Proposed subsection (8) seeks to prohibit the Board from sharing taxpayer information it receives under a tax information sharing agreement with any agency unless the jurisdiction supplying the information has laws allowing for such sharing and the jurisdiction consents to such sharing. This is a requirement of the tax information sharing agreements.

Clause 6 would provide for the insertion of new sections after section 4.

Proposed new section 4A would empower the Chairman of the Board of Inland Revenue to provide taxpayer information that can reasonably be regarded as necessary to determine a tax interest, penalty or other amount that is, or may become payable by the taxpayer to a foreign tax administration.

Proposed new section 4B restricts the use by the recipient of taxpayer information received under section 4(6) to use only for the purpose for which it was provided. The taxpayer information is also only to be retained for as long as is necessary for the purpose it was collected and cannot be disclosed other than for the purpose of collection without the prior consent of the taxpayer.

Proposed section 4C sets out offences for persons who receive taxpayer information under section 4 or 4A who use the information for the purposes other than for which it was collected or where it is retained longer than necessary or where the recipient discloses it further without the consent of the individual to whom the taxpayer information relates. Where a person commits an offence under this section he is liable on summary conviction to a fine of one hundred thousand dollars (\$100,000.00) and imprisonment for twenty (20) years and on conviction on indictment to a fine of one hundred and fifty thousand dollars (\$150,000.00) and imprisonment for thirty (30) years.

Proposed section 4D provides for the interpretation of the phrase "taxpayer information" as used in sections 4 to 4C.

Clause 7 of the Bill would seek to amend section 93(1) of the Act to include a new paragraph (c) which would provide that arrangements for relief from double taxation entered into by Trinidad and Tobago with the Government of another country and for which the President has made an Order, may have effect in relation to income tax in so far as it provides for the collection by sharing and receipt of information by the Board where required.

Clause 8 of the Bill recognizes that there are several secrecy provisions under the Data Protection Act, Chap. 22:04 which would prevent the sharing information in the possession of the Board. The Data Protection Act, Chap. 22:04 also restricts how information collected can be used and prevents the sharing with countries which do not have equivalent safeguards. The Bill now makes provision for sharing notwithstanding these privacy limitations by introducing a new section 93A. The clause goes on to

provide however, that the Board cannot disclose information it receives with other agencies for non-taxation purposes where the country supplying the information has laws allowing for such sharing and consents to the sharing of the information. The clause also provides that where information is received under this Act, a person who discloses the information other than for the purposes of the Act, commits an offence and he is liable on summary conviction to a fine of one hundred thousand dollars (\$100,000.00) and imprisonment for three years and on conviction on indictment to a fine of one hundred and fifty thousand dollars (\$150,000.00) and to imprisonment for five years.

Clause 9 of the Bill would seek to amend section 117 of the Act. Section 117 of the Act empowers the Board to require the provision of information relative to the Income Tax Act, Chap. 75:01. It is, however, necessary to empower the Board to be able to require that information be provided relative to other written laws for which the Board is responsible for example the Petroleum Taxes Act, Chap. 62:01 and the Corporation Taxes Act, Chap. 75:02. The clause therefore seeks to amend subsection (1) to allow for this.

Clause 10 of the Bill would amend section 117A of the Act. Section 117A was introduced as a consequential amendment to the Tax Information Exchange (United States of America) Bill, 2017 to empower the Board to require—

- (a) financial information and other information; and
- (b) that a financial institution or an officer of the financial institution to appear before the Board to give evidence for the purpose of the Tax Information Exchange (United States of America) Bill, 2017 and other enactments for a similar purpose.

The OECD is of the view that Double Taxation Agreements do not fall into the category of “other enactments for a similar purpose” and it therefore becomes necessary to amend the section to allow Double Taxation Agreements to be included in the section. The clause therefore seeks to make such amendment.

BILL

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[, 2018]

WHEREAS it is enacted by section 13(1) of the Preamble Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any Act does so declare, it shall have effect accordingly:

And whereas it is provided in section 13(2) of the Constitution that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House:

And whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:

- Enactment ENACTED by the Parliament of Trinidad and Tobago as follows:
- Short title **1.** This Act may be cited as the Income Tax (Amendment) Act, 2018.
- Act inconsistent with Constitution **2.** This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.
- Interpretation
Chap. 75:01 **3.** In this Act, “the Act” means the Income Tax Act.
- Long title amended **4.** The Act is amended in the long title by inserting after the word “thereof”, the words “and to provide for the sharing of information with certain Government entities and under certain international sharing arrangements”.
- Section 4 amended **5.** Section 4 of the Act is amended—
- (a) in subsection 4, by—
- (i) deleting subsection (2)(a); and
- (ii) inserting after subsection (3), the following new subsections:
- “ (4) Subsections (1) and (2) do not apply in respect of criminal proceedings, either on indictment or on summary conviction that have been

commenced by the laying of information or the preferring of an indictment, under the Proceeds of Crime Act and the Anti-terrorism Act.

Chap. 11:27

Chap. 12:07

(5) Notwithstanding subsections (1) and (2) where a written law authorizes the disclosure by the Board of any taxpayer information to an individual or entity, the Board shall, within a reasonable time, so disclose to the entity and the entity shall in respect of the taxpayer information so disclosed comply with subsection (6).

(6) Notwithstanding subsections (1) and (2), a person having an official duty or being employed in the administration of this Act shall, for the purposes of subsection (5)—

(a) provide taxpayer information to the Director of the Financial Intelligence Unit of Trinidad and Tobago (hereinafter referred to as the “FIU”) solely for the purpose of enabling the FIU to do its

analysis under the
F i n a n c i a l
Intelligence Unit of
Trinidad and Tobago
Act; and

- (b) provide taxpayer information to a member of the police service of the rank of Superintendent or above attached to the Division or Unit of the police service responsible for financial investigations or fraud, solely for the purpose of—
- (i) investigating whether an offence has been committed under the Proceeds of Crime Act and the Anti-terrorism Act;
 - (ii) the laying of information;
 - or
 - (iii) the preferring of an indictment,

where such information can reasonably be regarded as being necessary for the purpose of ascertaining the

circumstances in which an offence under any written law may have been committed, or the identity of the person who may have committed an offence; and

- (c) provide information relative to the taxpayer to the taxpayer, upon his request.

(7) Where the taxpayer information disclosed under this section discloses an offence referred to in section 4C, the taxpayer information may be used as evidence in any proceedings in respect of the offence.

(8) Notwithstanding subsection (6), where taxpayer information is received by the Board from another jurisdiction under a tax information sharing agreement, the Board shall not disclose such taxpayer information to other agencies for non-taxation purposes unless the jurisdiction supplying the taxpayer information has laws allowing for such sharing and the jurisdiction has consented to such sharing.”.

New sections 4A to
4D inserted

6. The Act is amended by inserting after section 4, the following new sections:

“Providing information to a foreign tax administration”
4A. Notwithstanding section 4(1) and (2), the Board shall provide taxpayer information to a foreign tax administration that can reasonably be regarded as necessary for the purposes of determining any tax interest, penalty or other amount that is or may become payable by the taxpayer.

Restriction on use of taxpayer information
4B. Where taxpayer information has been provided under section 4(6), the recipient of such information shall—

- (a) only use the information for the purpose for which it was provided;
- (b) only retain the taxpayer information for as long as is necessary for the purpose collected; and
- (c) not disclose the taxpayer information for purposes other than the purpose of collection without the prior consent of the taxpayer.

Offences for breaches of section 4B
4C. A person who receives taxpayer information under section 4 or 4A and who breaches section 4B commits an offence and is liable—

- (a) on summary conviction to a fine of one hundred thousand dollars and to imprisonment for a term of twenty years; or

(b) on conviction on indictment to a fine of one hundred and fifty thousand dollars and to imprisonment for a term of thirty years.

Interpretation
of the phrase
“tax payer
information”

4D. For the purposes of section 4 to 4C—

“taxpayer information” means information of any kind which can be attached to or identify an individual, and in any form relating to one or more taxpayer that is—

(a) obtained for the purposes of this Act;
or

(b) prepared from information referred to in paragraph (a),

but does not include, statistical information.”.

7. The Act is amended in section 93—

Section 93 amended

(a) in paragraph (a)—

(i) by inserting after the words “that country,” the words “for the receipt and sharing of information relative to such arrangements,”; and

(ii) by deleting the words “; or” and substituting the word “;”;

(b) in paragraph (b), by deleting the word “.” and substituting the words “; or”; and

(c) by inserting after paragraph (b), the following new paragraph:

“(c) they provide for the collection by sharing and receipt of information by the Board

where required under any arrangement with another Government of any country specified in the Order under this section.”.

Section 93A inserted **8.** The Act is amended by inserting after section 93, the following new section:

“Exemption
from
Chap. 22:04 93A. (1) Notwithstanding sections 6, 38 and 40 of the Data Protection Act, the Board may, for the purposes of section 93, process information collected by it under this Act.

(2) Notwithstanding sections 6, 30 and 31 of the Data Protection Act, the Board shall for the purposes of section 93, receive information on an individual.

(3) Notwithstanding section 46 of the Data Protection Act, information received by the Board under section 93 shall be disclosed under an agreement even if the individual to whom the information relates does not consent to the disclosing of his information or the jurisdiction does not have comparable safeguards as required by the Data Protection Act.

(4) Notwithstanding any other written law, where the Board receives information for the purposes of section 93, it shall not share that information with any person unless so permitted under this Act.

(5) Where information has been obtained or received under section 93, a person who uses or discloses the

information other than for the purposes for which it is obtained or received commits an offence and is liable—

- (a) on summary conviction to a fine of one hundred thousand dollars and to imprisonment for a term of three years; and
- (b) on conviction on indictment to a fine of one hundred and fifty thousand dollars and to imprisonment for a term of five years.”.

9. Section 117(1) of the Act is amended by inserting Section 117 amended after the words “this Act”, the words “or any other written law over which the Board has oversight,”.

10. Section 117A of the Act is amended in sub-Section 117A amendedsection (1), by deleting all the words after the words “and other” and substituting the words “, other enactments for similar purposes and double taxation agreements.”.

Passed in the House of Representatives this day
of , 2018.

Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed in the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House, that is to say by the votes of members of the House.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day of , 2018.

Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all the members of the Senate, that is to say by the votes of Senators.

Clerk of the Senate

I confirm the above.

President of the Senate

No. 12 of 2018

THIRD SESSION
ELEVENTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to amend the Income Tax Act

Received and read the

First time

Second time

Third time