

REPUBLIC OF KIRIBATI
(No. 3 of 1993)

I assent,


Beretitenti
5/7/0 1993

AN ACT TO AMEND THE INCOME TAX ACT 1990;
AND FOR CONNECTED PURPOSES

Commencement:
1993

Made by the Maneaba ni Maungatabu and assented to by the Beretitenti.

Short Title and commencement

1. This Act may be cited as the Income Tax (Amendment) Act 1993 and shall be deemed to have come into operation on 1 January 1993.

Interpretation

2. In this Act, unless the context otherwise requires, "principal Act" means the Income Tax Act 1990.

Amendment of section 3

3. Section 3 of the principal Act is amended by repealing subsection (3) and substituting the following subsection -

"(3) This Act binds the Republic and for the purposes of this Act, unless the context otherwise requires, "person" includes the Republic."

Amendment of section 11

4. Section 11 of the principal Act is amended by adding the following subsection -

"(6) Where a taxpayer changes the method of accounting for foreign currency under subsection (5) the taxpayer shall make such adjustments to income and deductions of the current and past tax years as the Board considers reasonable."

Amendment of section 23

5. Section 23 of the principal Act is amended by -

- (a) renumbering the section as section "23(1)"; and
- (b) adding the following subsection -

"(2) Without prejudice to subsection (1), any distributions of such club, mutual insurance company, or other similar body that would otherwise be treated as dividend shall not be denied an income character for the purposes of this Act on the basis of the doctrine of mutuality."

Amendment of section 34

6. Section 34 of the principal Act is amended as follows -

- (a) by repealing subsections 2, 5, 8, and 9;
- (b) by repealing the word "(3)" occurring in line one of subsection (4) and substituting the word "(2)";
- (c) by repealing the words "paragraph 1 of" occurring in line 4 of subsection (4); and
- (d) by renumbering -
 - (i) subsection "(3)" as subsection "(2)";
 - (ii) subsection "(4)" as subsection "(3)";
 - (iii) subsection "(6)" as subsection "(4)";
 - (iv) subsection "(7)" as subsection "(5)";
 - (v) subsection "(10)" as subsection "(6)";
 - (vi) subsection "(11)" as subsection "(7)";
 - (vii) subsection "(12)" as subsection "(8)"; and
 - (viii) subsection "(13)" as subsection "(9)".

Amendment of section 37

7. Section 37 of the principal Act is amended by adding the following subsection -

"(5) For the purposes of this section 'property income' shall not include interest income."

Amendment of section 46

8. Section 46 of the principal Act is amended by adding the following subsection -

"(5) Where a taxpayer's principal source of income is from employment, the deductions under sections 47, 48 and 49 shall be reduced in accordance with subsection (3) on the basis that the period of assessment is that part of the year during which the taxpayer is employed."

Amendment of section 47

9. Section 47 of the principal Act is amended as follows -

- (a) by repealing the words "\$900" in subsection (1) and substituting the words "the amount specified in paragraph 1 of Schedule 9"; and
- (b) by repealing the words "\$1700" in subsection (3) and substituting the words "the amount specified in paragraph 2 of Schedule 9".

Amendment of section 48

10. Section 48 of the principal Act is amended as follows -

- (a) by repealing the words "\$900" in subsection (1) where it first occurs and substituting the words "the amount specified in paragraph 3 of Schedule 9";

- (b) by repealing the words "\$900" in subsection (1) where it next occurs and substituting the words "that amount"; and
- (c) by repealing the words "\$900" in subsection (2) and substituting the words "the amount specified in paragraph 3 of Schedule 9".

Amendment of section 50

11. Section 50 of the principal Act is amended by adding the following subsection -

"(7) For the purposes of subsection (3), the education deduction shall also be reduced where pursuant to an agreement within section 78(1)(d) an education allowance is paid to a taxpayer which is exempt from tax pursuant to such agreement."

Amendment of section 52

12. Section 52 of the principal Act is amended by repealing the words "\$100" wherever it occurs and substituting the words "\$250".

Insertion of new section 63A

13. The following section is inserted immediately after section 63 -

"Partial termination of trusts

63A.(1) Section 63 shall apply to the partial termination of a trust.

(2) For the purposes of section 63, a trust shall be treated as partially terminated where there is a payment to beneficiaries of the corpus of the trust or where there is a payment to beneficiaries which is unusual in amount."

Amendment of section 73

14. Section 73 of the principal Act is amended -

- (a) by repealing the words "the rate of 40%" from subsection (6) and substituting the words "the maximum tax rate applied to the chargeable income of resident individuals under Schedule 1";
- (b) by adding at the end of subsection (7) the words "and individuals who are relatives or associates are to be counted as one person"; and
- (c) by adding the following subsection -

"(8) Subsections (3), (4), (5) and (6) shall not apply to any tax year where the tax rates for companies under Schedule 2 are no less than the tax rates for resident individuals under Schedule 1 (disregarding any personal deductions, individual tax rebates, chargeable income taxed at a nil rate and chargeable income of less than \$50,000 taxed at a rate exceeding the company rate on such income by 5% or less)."

Amendment of section 76

15. Section 76 of the principal Act is amended as follows -

- (a) by deleting paragraph (a) of subsection (1); and
- (b) by inserting the words "(other than interest income)" in paragraph (b) of subsection (1) after the words "property income".

Amendment of section 80

16. Section 80 of the principal Act and its heading are repealed and the following heading and section are substituted -

"Income of Government exempt

80. Income of the Republic of Kiribati and any local government council shall be exempt from income tax."

Amendment of section 83

17. Section 83 of the principal Act is amended by adding the following subsection -

"(5) A life insurance policy shall not be prevented from falling within subsection (1) or (3) by the fact that -

- (a) it covers the life of the spouse of the employee or taxpayer and not the employee or taxpayer;
- (b) it covers other lives in addition to those permitted under subsections (1) and (3) and paragraph (a); or
- (c) it is for the benefit of other people in the event that the employee or taxpayer, and any spouse and child of the employee or taxpayer are deceased."

Amendment of section 93

18. Section 93 of the principal Act is amended by deleting subsection (3) and substituting the following -

"(3) Subsection (9) of section 114 applies to this section and in its application shall extend to contesting the amount of income tax for which no assessment has been issued at the time of application of section 93(1) or (2)."

Amendment of section 107

25. Section 107 of the principal Act is amended as follows -

- (a) by adding the words "or to the Court of Appeal" after the words "105" occurring in the second line of subsection (2);
- (b) by repealing subsection (4) and substituting the following subsection -

"(4) Notwithstanding any other provision of this Act, the Board may, on the ground of a person's imminent departure from Kiribati, demand the immediate payment of any tax under an assessment and the tax shall be due and payable accordingly."; and
- (c) by repealing the words "assessed to tax" in subsection (5) and substituting the words "to whom a demand is made".

Amendment of section 113

26. Section 113 of the principal Act is amended as follows -

- (a) by repealing the words "Instalment payments of tax" in the section heading and substituting the words "Provisional tax payable";

- (b) by repealing the words "three instalments of tax on that income" in lines 2 and 3 of subsection (1) and substituting the words "a provisional tax on that income by 3 instalments";
- (c) by repealing the words "3 instalments of tax" in subsection (2) and substituting the words "a provisional tax by 3 instalments";
- (d) by inserting the words "payment by" between the word "each" and "instalment" in the first line of subsection (3);
- (e) by inserting after subsection (3) the following subsections -
 - "(3A) Where rates of tax are changed, the average rate of tax referred to in subsection (3) shall be the percentage that the income tax, after any foreign tax credit, would bear to the chargeable income in the most recent assessment received by the taxpayer if the new rates of tax had applied for the tax year to which the assessment relates.
 - (3B) Where a taxpayer has not received an assessment of tax, the Board may estimate the taxpayer's chargeable income for the tax year and any payment of the provisional tax payable under subsection (1) or (2) shall be one quarter of the amount of tax calculated by applying the appropriate tax rate scale for the taxpayer to that estimated chargeable income less the amount of tax estimated by the Board to be referable to income subject to withholding of tax under Part XVII.";
- (f) by repealing the word "instalment" and substituting the word "payment" occurring in the first line of subsection (5);
- (g) by inserting the words "of a provisional tax" occurring between the words "instalment" and "payable" in the first line of subsection (5);
- (h) by repealing the word "instalment" occurring between the words "any" and "of" in the first line of subsection (6);
- (i) by repealing the word "instalment" occurring in the first line of subsection (7) and substituting the words "payment for the provisional tax";
- (j) by repealing the word "instalment" occurring in paragraph (a) of subsection (7) and substituting the word "payment";
- (k) by repealing the word "instalment" occurring in the first line of subsection (8) and substituting the words "payments for the provisional tax"; and
- (l) by repealing the word "instalment" occurring in paragraph (b) of subsection (8) and substituting therefor the words "payment for the provisional tax".

Amendment of section 114

27. Section 114 of the principal Act is amended -

- (a) by inserting the words "bank or any other financial institution, or any other" in paragraph (1)(b) before the words "person owing"; and
- (b) by inserting the words "or having derived" after the words "person deriving" wherever occurring in this section.

Amendment of section 115

28. Section 115 of the principal Act is amended by repealing the words "and includes the Republic" and ", including the Republic" in subsection (1).

Amendment of section 116

29. Section 116 of the principal Act is amended by repealing the words " , including the Republic," in subsection (1).

Amendment of section 117

30. Section 117 of the principal Act is amended by repealing the words " , including the Republic" in subsection (1).

Amendment of section 118

31. Section 118 of the principal Act is amended by repealing the words " , including the Republic," in subsection (1).

Amendment of section 129

32. Subsection (5) of section 129 of the principal Act is repealed and the following subsection substituted -

"(5) Notwithstanding the secrecy provisions of the Internal Revenue Board Act and section 133 of this Act, the Board may disclose the tax file number of a taxpayer to any person in the performance of its function under, or in connection with this Act or any other Act or as required by any other legal duty."

Repeal

33. Regulations 4, 5, 6, 7, 9 and 12 of the Income Tax Regulations 1990 are hereby repealed.

New Schedule 9 added

34. After Schedule 8 of the principal Act, the following Schedule is added -

"SCHEDULE 9

(Sections 47, 48)


Personal deductions

- (1) The personal deduction for the purposes of section 47(1) is \$900.
- (2) The personal deduction for the purposes of section 47(3) is \$1700.
- (3) The personal deduction for the purposes of section 48 is \$900."

This printed impression has been examined by me with the Bill which passed the Maneaba ni Maungatabu on 17th May 1993 and is found by me to be a true and correctly printed copy of the said Bill.


↑ Clerk to the Maneaba ni
Maungatabu

Published by exhibition at the Maneaba ni Maungatabu this 21st day of July
1993.


↑ Clerk to the Maneaba ni
Maungatabu

INCOME TAX AMENDMENT ACT 1993

EXPLANATORY MEMORANDUM

This Act seeks to implement certain important refinements and changes to the Income Tax Act 1990 ("the Act") as recommended by our tax consultant and the Tax Division of the Ministry of Finance and Economic Planning and approved by the Government.

These refinements and changes include, inter alia, the clarification that the Act binds the Republic (clause 3); the Republic and local government council being exempt from the payment of income tax (clause 16); deductions relating to contribution to Provident Fund and life insurance which, under this Act may be extended to include contributions made by an employee in respect of spouse or child of such employee (clause 17); due date for payment of tax is extended to cover any tax owing by the taxpayer which means that the Internal Revenue Board may prevent any taxpayer leaving Kiribati with the tax unpaid (clause 25).

Further details of such proposed refinements and changes to the Act as contained in this Act are set out as follows -

Amendment of section 3 - Interpretation (Section 3)

1. The amendment relating to the Republic makes clear that the Republic is subject to similar obligations in relation to enforcement of the income tax as other persons. Some provisions of the current law make this expressly clear while others do not. It is felt as a matter of clarification that a general provision to that effect should be inserted in the interpretation provision. Section 80 of the Act will also be amended to ensure that the Republic as a result is not subject to income tax itself. Further, specific references to the Republic (in sections 115 to 118 of the Act) as a person in the body of the legislation will be omitted.

Amendment of section 11 - Accounting for foreign currency (Section 4)

2. This section incorporates Regulation 4 of the Income Tax Regulations 1990 into the principal Act where it properly belongs. In view of section 11(5) of the Act there was the need for this provision to complement the said section. However it was omitted in the Act through inadvertence and the gap thus created was filled by Regulation. This section therefore seeks to make section 5 of the Act more complete and meaningful.

Amendment of section 23 - Mutuality (Section 5)

3. This section amplifies and clarifies Regulation 5 of the Income Tax Regulations (which makes the doctrine of mutuality inapplicable in Kiribati) and incorporates the said Regulation into the Act. Its purpose is to clarify that any distributions by a club, a mutual insurance company or other similar body which would otherwise be treated as dividends should not lose their character as income under the Act on the basis of the doctrine of mutuality.

Amendment of section 34 - Depreciation (Section 6)

4. There are two aspects of this proposed amendment namely -
 - (i) That the pro-rata rule in section 34 of the Act be repealed and allow a full year's depreciation.

Under the existing legislation the depreciation allowance is determined by the time the asset is taken into use by a taxpayer in a tax year. This method proved ineffective in that it takes most of valuable administrative time from other more important tasks.

The abolition of the pro-ration rule would not only assist in improving the tax administration but also eliminate the complex calculations which could increase the probability of errors.

- (ii) The other aspect is to simplify the Income Tax Act by combining the new and used asset depreciation schedules.

There are two initial categorised rates specified in Schedule 5 of the Income Tax Act to choose from when calculating the depreciation allowances, one for brand new unused capital asset and second hand bought in capital asset.

As all capital assets are imported there is no economic reason to differentiate depreciation rates between new and used assets unless, perhaps, the assets are produced locally. Even then, there are more effective ways to subsidise local production of equipment than through the tax system. Split asset schedules of this type are difficult to calculate for ordinary taxpayers, time consuming in ascertaining correct amounts by accountants and tax officials and most importantly are subject to abuse and avoidance.

Consequently and based on the above section 34 of the Act has been amended accordingly. The existing Schedule 5 will also be amended in due course with a view to incorporating the proposed change in the manner set out in the Appendix to this Explanatory memorandum.

Amendment of section 37 - Losses (Section 7)

5. Interest income as property income (see section 16(1)(c)) of the Act is subject to the quarantining provisions of section 37(3) of the Act with the result that a loss on a rental property can be offset against interest income from a bank account. This was not intended. One of the purposes of section 37(3) was to confine rental losses to offset against rental income. This amendment will ensure that this is the result under section 37.

Amendment of Section 46 - Individual as a tax unit (Section 8)

6. Tax Office has continued its practice under the old legislation of prorating the individual, spouse and child deductions where a taxpayer is only employed for part of the year. It is not perfectly clear whether this practice is authorised by section 46(3) of the Act. Its abolition would be costly in terms of revenue in view of the prevalence of short term work in Kiribati. The legislation will be clarified by this amendment to support the practice (and also to make clear that it does not apply to other personal deductions).

Amendment of sections 47 and 48 - Deduction in respect of individuals (Section 9) and Deduction in respect of a spouse (Section 10)

7. In the recent adjustments to the tax rate scale effected by the Beretitenti, acting in accordance with the advice of the Cabinet, inflexibility has become apparent arising from the inability to adjust the main personal allowances which affect virtually all taxpayers (namely the individual and the spouse deductions). The Bill will overcome this problem by moving the specification of the amounts of these deductions in sections 47 and 48 of the Act to a new schedule so that in future it will be possible to adjust them at the same time as the tax rate scale.

Amendment of section 50 - Education deduction (Section 11)

8. This section also incorporates Regulation 6 of the Income Tax Regulations 1990 into the Act to complement section 50 of the Act and close an unintended loophole. It makes clear that where a taxpayer receives an education

allowance which is exempt from tax, any applicable education deduction shall also be reduced accordingly.

Amendment of section 52 - Interest deduction (Section 12)

9. To increase the incentive to save and to reduce the tax compliance burdens on individuals, the Act increases the effective exemption of interest from \$100 to \$250 (\$200 to \$500 for married taxpayers). This will eliminate the need to report interest income and pay tax for about 800 of the 1,000 or so taxpayers who currently receive interest income in excess of \$100.

Insertion of new section 63A - Partial termination of trusts (Section 13)

10. This section incorporates Regulation 7 of the Income Tax Regulations 1990 (which deals with partial termination of trusts) into the Act. It complements section 63 of the Act and removes a loophole which was not intended by the legislature (Maneaba ni Maunqatabu).

Amendment of section 73 - Closely held companies (Section 14)

11. The alignment of company and personal tax rates by the Income Tax Act (Amendment of Schedule) Instrument 1991 means that some of the provisions dealing with closely held companies can be put in suspension. These measures were designed to prevent the use of companies to avoid the higher individual tax rates that previously prevailed.

Amendment of section 76 - Income of overseas technical personnel (Section 15)

12. In the light of the new rate schedule that applies from 1992 to overseas technical personnel along with citizens of Kiribati, section 76(1)(a) of the Act can be repealed, which is one purpose of this amendment.

A similar problem as that referred to above in relation to losses has been identified in section 76(1)(b) of the Act. This paragraph was intended to cover rental income not interest on a bank account and the further amendment proposed to section 76 of the Act achieves this purpose.

Amendment of section 80 - Income of Government exempt (Section 16)

13. The amendment of this provision to cover the Republic arises from the amendments to the interpretation provision outlined above. It should be noted that the exemption does not extend to government owned companies or corporations. These will only be exempt if another provision in the Act or any other statute operates to confer an exemption.

Amendment of section 83 - Contributions to the Provident Fund and life insurance (Section 17)

14. The intention of Part XI of the Income Tax Act 1990 is to encourage long term savings so that people are provided for in their old age. It is therefore appropriate to require that the taxpayer's life be insured to get the deductions under s.83 of the Act (or at least the life of the taxpayer's spouse). There seems to be no harm if other lives are also included, especially the children of the employee. Further, benefits to others should be permitted in the event that all the primary group are deceased. The provision is amended to cover these cases.

Amendment of section 93 - Agents for non-residents (Section 18)

15. This section incorporates Regulation 9 of the Income Tax Regulations 1990 into the Act. Its purpose is to extend the right of appeal created under section 93(3) to contesting the amount of income tax for which no assessment has been issued at the time of the application of section 93(1) or (2).

Amendment of section 107 - Due date for payment of tax (Section 25)

19. This amendment enables the tax authority to recover any tax due under the assessment despite any appeal to the Court of Appeal.

Further a tax collection problem that has emerged is the limitation of section 107(4) of the Act to tax due under an assessment made under section 100(4) of the Act. If a taxpayer has been issued with an ordinary assessment, rather than the special assessment under section 100(4) of the Act, there is no power to prevent the taxpayer leaving Kiribati with the tax unpaid. The power should extend to any tax owing by the taxpayer and this is achieved by the amendments.

Amendment of section 113 - Instalment payments of tax on income not subject to withholding of tax at source (Section 26)

- 20(a) There is a problem being encountered by the Tax Office during their revenue collection. Under sections 113 and 107 of the Act instalment tax is used for current year's tax payment and payment of arrears by instalment respectively. The use of one word in the Act to mean different actions has created confusion as to what does instalment arrangements actually cover, arrears as distinct to current?

Therefore, to solve the problem Section 113 has been changed with all other relevant references to **provisional tax**. Thus, it would clearly isolate instalments solely to arrangements for paying off arrears.

- (b) Further the amendment is necessary to cater for cases arising from changes in tax rates and the lack of any previous assessment.

Amendment of section 114 - Duties of agents, trustees, liquidators, etc. (Section 27)

21. Section 114 allows the Board to obtain payment of tax owing direct from third parties and reflects standard tax legislation around the world. For the removal of doubt, it is proposed to amend the section to make clear that banks and other financial institutions are subject to the procedures in the section and that the procedures can be applied to taxpayers who have derived income in the past as well as taxpayers currently deriving income.

Amendment to sections 115 - Payments to employees (Section 28)
116 - Payments to contractors (Section 29)
117 - International payments (Section 30)
118 - Domestic payments (Section 31)

22. These amendments are consequential upon the amendment to the interpretation provision (see above).

Amendment of section 129 - Tax file number (Section 32)

23. This section empowers the Board to supply tax file numbers of employees to any person who lawfully carries out his function under the Act or any other Act or as required by any other legal duty.

Repeal (Section 33)

24. These repeals are consequential upon the amendments made in sections 4, 5, 9, 11, 13, 18 and 32 of this Bill.

New Schedule 9 added (clause 34)

25. This amendment is consequential upon the amendment to sections 47 and 48 of the Act (see paragraph 7 above).

Appendix

SCHEDULE 5

Rates of Depreciation

(Sec. 34)

Asset Type	Amount of Depreciation deduction
Industrial building	5% of cost
Motor vehicles	20% of the written down value
Furniture & fittings	25% of the written down value
Ship	10% of cost
Tanks referred to in section 34(2)(e)	3% of cost
Any other article, machinery or plant	25% of the written down value

Michael N. Takabwebe
The Attorney General
6 November 1992

LEGAL REPORT

I hereby certify that in my opinion none of the provisions of the above Act conflict with the Constitution and that the Beretitenti may properly assent to the Act.

Michael N. Takabwebe
The Attorney General
16 June 1993