



*Tonga*

**INCOME TAX (AMENDMENT) (NO. 2) ACT  
2013**

**Act 20 of 2013**





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# INCOME TAX (AMENDMENT) (NO. 2) ACT 2013

Act 20 of 2013

## AN ACT TO AMEND THE INCOME TAX ACT TO PROVIDE FOR A SIMPLIFIED TAXATION SYSTEM FOR SMALL BUSINESS

I assent,  
TUPOU VI,  
5<sup>th</sup> November 2013.

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

### 1 Short title and commencement

- (1) This Act may be cited as the Income Tax (Amendment) (No. 2) Act 2013.
- (2) This Act shall come into force on a date to be specified by the Minister of Revenue and Customs by Notice published in the Gazette.
- (3) In this Act, “Principal Act” means the Income Tax Act 2007 as amended.

### 2 Section 2 amended

Section 2 of the Principal Act is amended by inserting the following terms and their definitions in the correct alphabetical order –

“**annual gross turnover**”, in relation to a person, means the gross turnover of the person for a fiscal year;

“**gross turnover**”, in relation to a person conducting a business for a tax period, means the total business income received by the person from the

conduct of the business for the period without deduction of expenditures or losses, but not including the following -

- (a) exempt income;
- (b) an amount subject to taxation under section 6 or 7;
- (c) an amount for which withholding tax is a final tax under section 90;

“**small business tax**” means the tax imposed under section 8; and

“**tax period**”, in relation to the small business tax, means –

- (a) for the computation of the annual gross turnover of a person, the fiscal year;
- (b) for a person subject to section 8(2), the fiscal year; or
- (c) for a person subject to section 8(3), the quarter;”.

### 3 Section 5 amended

Section 5 of the Principal Act is amended in subsection (4)(a) by deleting “6 or 7” and substituting “6, 7, or 8”.

### 4 Section 8 inserted

The Principal Act is amended by inserting the following new section after section 7

–

#### “8 Tax on small business

- (1) There is hereby imposed a small business tax for a tax period on a person, other than a company, who –
  - (a) conducts a business solely in Tonga;
  - (b) is not a taxable person for the purposes of the consumption tax; and
  - (c) has an annual gross turnover that is less than \$100,000.
- (2) If the annual gross turnover of a person is \$50,000 or less –
  - (a) the small business tax shall be paid by the person for a fiscal year; and
  - (b) the amount of small business tax payable by the person for a fiscal year shall be determined according to the Third Schedule.
- (3) If the annual gross turnover of the person is more than \$50,000 -
  - (a) the small business tax shall be payable by the person quarterly; and

- (b) the amount of small business tax payable by the person for each quarter shall be 2% of the gross turnover of the person for the quarter.
- (4) In determining the annual gross turnover of a person for a tax period for the purposes of this section or the Third Schedule, the Chief Executive Officer may have regard to the annual gross turnover of an associate or associates of the person for the period.
- (5) A person to whom subsection (1) applies may apply, in writing, to the Chief Executive Officer for section 5 to apply instead of this section.
- (6) If the Chief Executive Officer is satisfied that a person who has lodged an application under subsection (5) will keep proper records, the Chief Executive Officer may grant the application subject to such conditions as the Chief Executive Officer may specify by notice in writing to the applicant.
- (7) An approval under subsection (6) for section 5 to apply to a person shall remain in force until the Chief Executive Officer, on application in writing, permits the person to be subject to this section.
- (8) An application under subsection (7) shall not be made within three years of the date of service of the notice granting the person permission for section 5 to apply.
- (9) In this section –
- “**business**” does not include professional services; and
- “**professional services**” means medical, dental, legal, accounting, financial, managerial, engineering, architectural, consulting, or other similar services.”.

## 5 Section 9 amended

Section 9 of the Principal Act is amended by deleting “6 and 7” and “6, 7 and 8” wherever it appears in the section, including in the heading, and substituting “6, 7, or 8”.

## 6 Section 68 amended

Section 68 of the Principal Act is amended –

- (a) in the heading, by inserting at the end the words “**and small business tax returns**”;
- (b) by inserting the following new subsection after subsection (1) –
- “(2) A person liable to small business tax must lodge a small business tax return –

- (a) for a person to whom section 8(2) applies, within four months after the end of the fiscal year; or
- (b) for a person to whom section 8(3) applies, within 28 days after the end of the quarter.”;
- (c) by renumbering the current subsection (2) as subsection (3) and after the words “income tax” inserting “or small business tax return”; and
- (d) by renumbering current subsection (3) as subsection (4) and –
  - (i) after the words “income tax” inserting “or small business tax return for a fiscal year or quarter, as the case may be,”; and
  - (ii) deleting the words “for a period of less than twelve months” and substituting “that may be a date before the due date for the return for the fiscal year or quarter to which the return relates”.

## 7 Section 70A inserted

The Principal Act is amended by inserting the following new section after section 70 –

### “70A Small business tax assessments

- (1) If a person lodges a small business tax return for a tax period –
  - (a) the Chief Executive Officer shall be treated as having made an assessment of the person’s gross turnover and small business tax payable for the period equal to those respective amounts as specified in the return; and
  - (b) the small business tax return lodged under section 68(2) shall be treated for all purposes of this Act and the Revenue Services Administration Act 2002 as a notice of the assessment served on the person by the Chief Executive Officer on the day the return was lodged with the Chief Executive Officer.
- (2) If a person fails to lodge a small business tax return for a tax period –
  - (a) the Chief Executive Officer may, based on any available information and according to the Chief Executive Officer’s best judgement, make an assessment of the person’s gross turnover and small business tax payable for the period; and
  - (b) as soon as possible after making an assessment under paragraph (a), the Chief Executive Officer shall serve the person with a notice of the assessment stating the following –
    - (i) the person’s gross turnover for the period;
    - (ii) the amount of small business tax due;
    - (iii) the amount of any penalty and interest payable in respect of the small business tax due;
    - (iv) the time, place and manner of objecting to the assessment.

- (3) Section 71 shall apply to a small business tax assessment with the necessary changes made and, for the purposes of amending a small business tax assessment or requiring a revised small business tax return, the reference in section 71(2)(b), 71(4)(b), 71(5), and 71(8)(a) to “five years” shall be treated as a reference to 3 years.”.

## 8 Section 72 amended

Section 72 of the Principal Act is amended –

- (a) in the heading by inserting at the end of the words “and small business tax”;
- (b) by making the existing section subsection (1); and
- (c) by inserting the following new subsection –
- “(2) The small business tax payable by a person for a tax period shall be due by the due date for lodging the person’s small business tax return for the period.”.

## 9 Section 92 amended

Section 92 of the Principal Act is amended by deleting subsection (2) and substituting the following subsection –

- “(2) An application for a refund under subsection (1) shall be lodged in the form and manner prescribed in the Regulations –
- (a) in relation to small business tax, within 3 years after the date on which the tax was paid; or
- (b) in relation to any other tax, within five years after the date the tax was paid.”.

## 10 Third Schedule inserted

The Principal Act is amended by inserting the following new Schedule after the Second Schedule –

**“THIRD SCHEDULE**  
(Section 8)

**SMALL BUSINESS TAX RATES**

The rates of small business tax for the purposes of section 8(2) are -

Annual Gross Turnover	Small Business Tax Payable
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\$10,000 or less	\$100
\$10,001 - \$30,000	\$250
\$30,001 - \$50,000	\$500

Passed by the Legislative Assembly this 9<sup>th</sup> day of September 2013.