



Tonga

# **INCOME TAX (AMENDMENT) ACT 2013**

**Act No. 12 of 2013**





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## AN ACT TO PROVIDE FOR SOME MINOR AMENDMENTS TO THE INCOME TAX ACT 2007

I assent,  
TUPOU VI,  
28th June 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) Act 2013.
- (2) The Income Tax Act 2007, as amended, is in this Act referred to as the Principal Act.
- (3) This Act shall come into force upon gazettal except section 2 which shall come into force on 1 July 2013.

### 2 Section 2 amended

Section 2 of the Principal Act is amended –

- (a) in the definition of “Chief Executive Officer”:
  - (i) in the English version only, by deleting the word “services” and replacing it with “and customs”; and

- (ii) in the Tongan version only by, deleting the words “ngaahi ngaue” and inserting the words “mo e tute” after the words “tanaki pa’anga hu mai”; and
- (b) in the definition of “Minister”:
  - (i) in the English version only, by deleting the word “services” and replacing it with “and customs”; and
  - (ii) in the Tongan version only by, deleting the words “ngaahi ngaue” and inserting the words “mo e tute” after the words “tanaki pa’anga hu mai”.

### 3 Section 16 amended

Section 16 of the Principal Act is amended by –

- (a) repealing subsections (1), (2) and (3) and replacing it with the following –
  - “(1) The income derived by an individual entitled to privileges under the Diplomatic Privileges Act, Consular Conventions Act, Consular Relations Act and the Diplomatic Relations Act shall be exempt income to the extent provided in those Acts.
  - (2) The income derived by an Organisation, State or Mission entitled to privileges under the Diplomatic Privileges Act, Consular Conventions Act, Consular Relations Act and the Diplomatic Relations Act shall be exempt income to the extent provided in those Acts.
  - (3) The income derived by an individual or Organisation shall be exempt income to the extent provided in the Bretton Woods Agreements Act.”
- (b) inserting the following new subsections after subsection (6)-
  - “(7) The income derived by the Retirement Fund shall be exempt income to the extent provided in the Retirement Fund Act 1998.
  - (8) The income derived by the Health Promotion Fund shall be exempt income to the extent provided in the Health Promotion Fund Act 2007.
  - (9) The income derived by the National Retirement Benefits Scheme shall be exempt income to the extent provided in the National Retirement Benefits Scheme Act 2010.
  - (10) Interest income derived from investment in securities issued by the Government of Tonga shall be exempt income.”

### 4 Section 17 amended

Section 17 of the Principal Act is amended by deleting the words “Any employment income derived by an individual” and replacing it with “Any income derived by a person”.

**5 Section 19(2) amended**

Section 19(2) of the Principal Act is amended by adding the words “or lump sum” after the words “any other pension”.

**6 Section 20 repealed and replaced**

Section 20 of the Principal Act is repealed and replaced with the following -

**“20 Exempt retirement and death gratuities**

Any amount received by way of gratuity or lump sum from an approved retirement fund shall be exempt income if paid on the approved fund member ceasing service on the following grounds –

- (a) retirement;
- (b) death;
- (c) migration; or
- (d) medical reasons.”.

**7 Section 26(1) amended**

Section 26(1) of the Principal Act is amended by inserting the following new paragraphs in the appropriate place -

- “(j) amount paid to a person who is not a tax agent for assisting in the preparation of a tax return or objections to taxation decisions or transacting business with the Minister under the revenue laws;
- (k) amount paid as a donation exceeding \$1,000; or
- (l) amount paid for sponsorship exceeding 5% of the gross income of the person.”.

**8 Section 37(1) amended**

Section 37(1) of the Principal Act is amended:

- (a) in the English version only, by deleting the words “in computing the chargeable” and replacing it with “against the business”; and
- (b) in the Tongan version only, by deleting the words “‘i hono fika’i ‘o e pa’anga hu mai ‘oku ala totongi mei ai” and replacing it with “mei he pa’anga hu mai ‘a e pisinisi”.

**9 Section 55 amended**

Section 55 of the Principal Act is hereby repealed and replaced with the following:

**“55 Taxation of Individuals**

- (1) In this section –

“**net business income**” is gross business income less the total amount of deductions allowable under this Act to the individual in deriving taxable business income;

“**net property income**” is gross property income less the total amount of deductions allowable under this Act to the individual in deriving taxable property income; and

“**property loss**” for a fiscal year is where the total amount of deductions allowed to the person in deriving taxable property income for the year exceeds the total amount of that income and the amount of the excess shall be the amount of the property loss.

- (2) Subject to this Act, the chargeable income of an individual is computed separately and the total amount of gross income of an individual is the sum of the following:
  - (a) the gross amount of employment income;
  - (b) the net business income; or
  - (c) the net property income.
- (3) A business loss or property loss cannot be offset against employment income.
- (4) A property loss cannot be offset against net business income or a business loss.”

## 10 New Section 65A

The Principal Act is amended by inserting a new Section 65A in the appropriate place:

### “65A Tongan Source Income of Non-resident persons

Subject to this Act, a non-resident person receiving income for services performed in Tonga on a project, wherever paid, shall be subject to tax at the rate prescribed in the Order referred to in section 6 if the person is in Tonga for a period or periods aggregating less than ninety (90) days within any twelve month period.”

## 11 Section 86 amended

Section 86 of the Principal Act is amended by inserting new a subsection (4) as follows:

- “(4) An employer making a payment of employment income to an employee shall be required to lodge a withholding tax statement as may be prescribed in the Regulations even if no withholding tax is payable.”

**12 Section 90(1) amended**

Section 90(1) of the Principal Act is amended by inserting the following paragraph (d) -

“(d) section 79”.

**13 Second Schedule amended**

The Second Schedule of the Principal Act is amended in the table by deleting “Buildings” and replacing it with “Structural improvements”.

Passed by the Legislative Assembly this 27<sup>th</sup> day of June 2013.