



JOINT SELECT COMMITTEE TO CONSIDER AND REPORT ON

**THE INCOME TAX (AMENDMENT) BILL, 2018
THE MUTUAL ADMINISTRATIVE ASSISTANCE TAX MATTERS BILL, 2018
AND THE TAX INFORMATION EXCHANGE AGREEMENTS BILL, 2018**

REPORT

Third Session Eleventh Parliament (2017/2018)



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Committee Mandate

Pursuant to resolutions of the House of Representatives on Monday May 28, 2018 and of the Senate on Tuesday June 5, 2018, a Joint Select Committee was established to consider and report on the **Income Tax (Amendment) Bill, 2018**, the **Mutual Administrative Assistance in Tax Matters Bill, 2018**, and the **Tax Information Exchange Agreements Bill, 2018** by June 30, 2018.

Committee Membership

Mr. Colm Imbert, MP
Mr. Faris Al-Rawi, MP
Ms. Marlene Mc Donald, MP
Dr. Lovell Francis, MP
Mr. Fazal Karim, MP
Mr. Rodney Charles, MP
Mr. Clarence Rambharat
Mr. Daniel Dookie
Dr. Lester Henry
Mr. Saddam Hosein
Mr. Stephen Creese
Mr. Paul Richards

Secretariat Support

Ms. Chantal La Roche, Legal Officer II	Secretary
Mrs. Delrene Liverpool-Young, Legal Officer I	Assistant Secretary
Ms. Simone Yallery, Legal Officer I	Assistant Secretary
Ms. Aaneesa Baksh, Graduate Research Assistant	Researcher
Ms. Rachel Nunes, Graduate Research Assistant	Researcher

Contact

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Joint Select Committee Income Tax (Amendment) Bill, 2018, the Mutual Administrative Assistance in Tax Matters Bill, 2018, and the Tax Information Exchange Agreements Bill, 2018
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Date Laid in HOR:

Date Laid in Senate:

HOR Paper No.:

Senate Paper No.:

PARL No.: 14/3/77

MANDATE

1. Pursuant to resolutions of the House of Representatives on Monday May 28, 2018, and of the Senate on Tuesday June 5, 2018, a Joint Select Committee was established:

“to consider and report by June 30, 2018 on the Income Tax (Amendment) Bill, 2018, the Mutual Administrative Assistance in Tax Matters Bill, 2018, and the Tax Information Exchange Agreements Bill, 2018. ”

MEMBERSHIP OF THE COMMITTEE

2. The following persons were appointed to serve on the Committee:

- Mr. Colm Imbert, MP
- Mr. Faris Al-Rawi, MP
- Ms. Marlene Mc Donald, MP
- Dr. Lovell Francis, MP
- Mr. Fazal Karim, MP
- Mr. Rodney Charles, MP
- Mr. Clarence Rambharat
- Mr. Daniel Dookie
- Dr. Lester Henry
- Mr. Saddam Hosein
- Mr. Stephen Creese
- Mr. Paul Richards

CHAIRMANSHIP

3. At its **First meeting** on Wednesday June 6, 2018, your Committee elected Mr. Colm Imbert, MP to be its Chairman, in accordance with Standing Order 112 (7) of the House of Representatives and Senate Standing Order 102 (7) of the Senate.

SECRETARIAT AND TECHNICAL SUPPORT

4. The following persons were assigned to provide Secretariat support to the Committee:

▪ Ms. Chantal La Roche, Legal Officer II	Secretary
▪ Mrs. Delrene Liverpool-Young, Legal Officer I	Assistant Secretary
▪ Ms. Simone Yallery, Legal Officer I	Assistant Secretary
▪ Ms. Aaneesa Baksh, Graduate Research Assistant	Researcher
▪ Ms. Rachel Nunes, Graduate Research Assistant	Researcher

MEETINGS

5. Since its appointment, your Committee has held three (3) meetings on the following dates:
 - i. Wednesday June 6, 2018.
 - ii. Tuesday August 21, 2018.
 - iii. Wednesday August 29, 2018.

6. The Minutes of the Meetings are attached at **Appendix I**.

INTERIM REPORT

7. On June 29, 2018 in the House of Representatives and July 2, 2018 in the Senate, the Committee presented an Interim Report which detailed the work of completed to date. The Committee requested an extension to September 14, 2018, which was granted.

WORK TO DATE

8. Your Committee engaged in preliminary discussions on at its **First meeting** held Wednesday June 6, 2018:
 - the purpose of each Bill referred to the Committee; and
 - the requirements for Trinidad and Tobago to become compliant with the international standard on exchange of information on request (the EOIR standard) as indicated by the Global Forum.

The Way Forward

9. Your Committee was cognizant of the imminent prorogation of the Third Session of the Eleventh Parliament and at its **Second meeting** on Tuesday August 21, 2018 agreed to the following in an effort to advance the work of the Committee keeping in mind its immediate international obligations:
 - I. Consider and report on the Income Tax (Amendment) Bill, 2018 by September 14, 2018 during the Third Session, Eleventh Parliament.
 - II. Defer consideration of the **Tax Information Exchange Agreements Bill, 2018** and the **Mutual Administrative Assistance in Tax Matters Bill, 2018**.

CONSIDERATION OF THE INCOME TAX (AMENDMENT) BILL, 2018

10. The **Income Tax (Amendment) Bill, 2018** seeks to amend the Income Tax Act, Chap 75:01 by:
 - meeting Trinidad and Tobago's international requirements coming out of the Trinidad and Tobago's 2015 Mutual Evaluation Report under the forty (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.

- amending the long title of the Act to now provide for the sharing of information with certain Government entities and under certain international sharing arrangements.
- creating the offence where any person who had possession of or control over any document information, etc. relating to the income or items of income of any person, communicated that information to any person.
- deleting the provision which will no longer empower the President to authorise the sharing of information.
- making it clear that the secrecy provisions do not apply in an evidentiary process where criminal proceedings have commenced.
- making it clear that where the Board of Inland Revenue is required by a written law to disclose taxpayer information to certain agencies, that the Board will be required to do so.
- allowing for taxpayer information which was disclosed to be used as evidence in proceedings in respect of an offence.
- prohibiting the Board from sharing taxpayer information it receives under a tax information sharing agreement with any agency under specific circumstances.
- empowering the Chairman of the Board of Inland Revenue to provide taxpayer information that can be reasonably 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.
- restricting the use by the recipient of the taxpayer information received to the use only for the purpose for which it was provided.
- retaining the taxpayer information for as long as is necessary for the purpose it was collected.
- prohibiting the disclosure other than for the purpose of collection without the prior consent of the taxpayer.
- amending the Act by providing that arrangements for relief from double taxation entered into by Trinidad and Tobago with the Government of another country, may have an 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.
- making provision for sharing of information in the Board's possession notwithstanding the privacy limitations under the Data Protection Act, Chap 22:04.

APPROACH TO DELIBERATIONS – THE INCOME TAX (AMENDMENT) BILL, 2018

Technical Support

11. The following technocrats from the Legislative Drafting Department assisted the Committee during the consideration of the Bill:

- | | | |
|--------------------|---|------------------------------------|
| ▪ Ms. Ida Eversley | - | Deputy Chief Parliamentary Counsel |
|--------------------|---|------------------------------------|

Clause by Clause Analysis

12. In keeping with the Committee’s decision to focus on consideration of the Income Tax (Amendment) Bill, 2018, the Committee commenced its clause by clause examination of the Bill and was provided with a clause by clause analysis by the technocrats of the Legislative Drafting Department which is found at **Appendix II**.

13. At its **Third meeting** held on Wednesday August 29, 2018, your Committee continued and completed its clause by clause analysis of the Bill with assistance and guidance of technocrats of the Legislative Drafting Department.

MAIN ISSUES DISCUSSED – THE INCOME TAX (AMENDMENT) BILL, 2018

14. With the assistance of the technical team, your Committee identified and discussed the following issues:

Clause 5:

- Whether new subsection (6) is drafted clearly to convey that it is limited to the Proceeds of Crime Act and the Anti-terrorism Act.
- Whether a judicial control component should be included.
- Whether to include elements of the due process and if included, the resultant elimination of the three-fifths majority requirement.

Clause 6

- Whether provisions apply to citizens of Trinidad and Tobago.
- Limiting new Section 4A to information that applies to a foreign jurisdiction’s domestic law and to a treaty between Trinidad and Tobago and that foreign jurisdiction.
- The meaning of “statistical information” in new section 4D and what it encompasses.
- Whether to insert an appropriate definition of “statistical information” in New Section 4D.
- Whether the Canadian and South African legislation were considered in relation to the definition of “statistical information”.

REPORT

15. Your Committee wishes to report that it was severely constrained due to the Parliamentary recess and scheduling conflicts. Consequently, the Committee was unable to convene meetings until August 2018.

16. As a result, the Committee took a decision to focus on consideration of the Income Tax (Amendment) Bill, 2018. Furthermore, your Committee reports that it has completed its work on the Income Tax (Amendment) Bill, 2018, only.

RECOMMENDATION

The Income Tax (Amendment) Bill, 2018

17. In relation to the **Income Tax (Amendment) Bill, 2018**, your Committee recommends that the House agree with its proposed amendments to the **Income Tax (Amendment) Bill, 2018** attached at **Appendix III**, and consider and adopt the Bill as amended by the Committee. For ease of reference, a consolidated version of the amended Bill is attached at **Appendix IV**.

The Tax Information Exchange Agreements Bill, 2018 and the Mutual Administrative Assistance in Tax Matters Bill, 2018

18. In relation to the **Tax Information Exchange Agreements Bill, 2018** and the **Mutual Administrative Assistance in Tax Matters Bill, 2018**, your Committee asks that the House take note of the need to consider this legislation at the earliest opportunity, to ensure that Trinidad and Tobago meets its obligations on the implementation of the international standards on tax transparency as required by the Global Forum.
19. Your Committee therefore recommends the resumption of proceedings on the **Tax Information Exchange Agreements Bill, 2018** and the **Mutual Administrative Assistance in Tax Matters Bill, 2018** in the Fourth Session, Eleventh Parliament, and that a Committee be appointed to continue work on these Bills.

Respectfully submitted,

Sgd.

Mr. Colm Imbert, MP
Chairman
September 17, 2018

List of Appendices

Appendix I	Minutes of Proceedings and Attendance Record
Appendix II	Matrix of Amendments and Explanations Income Tax (Amendment) Bill, 2018
Appendix III	List of Proposed Amendments – The Income Tax (Amendment) Bill, 2018
Appendix IV	Consolidated Version of the Bill with Amendments
Appendix V	Consolidation of Amendments to the Income Tax Act Chap. 75:01
Appendix VI	Minority Report

**Minutes of Proceedings
and
Attendance Record**

Attendance Record

JOINT SELECT COMMITTEE TO CONSIDER AND REPORT ON JOINT SELECT COMMITTEE ON THE INCOME TAX (AMENDMENT) BILL, 2018, THE MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS BILL, 2018 AND THE TAX INFORMATION EXCHANGE AGREEMENTS BILL, 2018
Third Session (2017/ 2018) Eleventh Parliament

Meetings	Mr. Colm Imbert	Mr. Faris Al-Rawi	Dr. Lovell Francis	Ms. Marlene Mc Donald	Mr. Fazal Karim	Mr. Rodney Charles	Mr. Daniel Dookie	Mr. Clarence Rambharat	Mr. Saddam Hosein	Dr. Lester Henry	Mr. Paul Richards	Mr. Stephen Creese
First Meeting 06.06.2018	✓	ABSENT	✓	✓	EXCUSED	✓	✓	✓	✓	EXCUSED	✓	ABSENT
Second Meeting 21.08.2018	✓	EXCUSED	✓	✓	✓	EXCUSED	✓	✓	✓	✓	✓	✓
Third Meeting 29.08.2018	✓	✓	ABSENT	✓	✓	✓	✓	✓	✓	✓	✓	✓



**JOINT SELECT COMMITTEE ON THE INCOME TAX (AMENDMENT) BILL, 2018,
MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS BILL, 2018 AND
THE TAX INFORMATION EXCHANGE AGREEMENTS BILL, 2018**

**MINUTES OF THE FIRST MEETING HELD IN THE A.N.R. ROBINSON ROOM (WEST),
LEVEL 9, OFFICE OF THE PARLIAMENT, TOWER D, IWFC
#1A WRIGHTSON ROAD, PORT OF SPAIN ON JUNE 6, 2018 at 11:00 A.M.**

PRESENT

Mrs. Brigid Annisette-George, MP - Speaker of the House

Committee Members

Mr. Colm Imbert, MP	-	Member
Ms. Marlene McDonald, MP	-	Member
Mr. Rodney Charles, MP	-	Member
Mr. Clarence Rambharat	-	Member
Mr. Daniel Dookie	-	Member
Mr. Saddam Hosein	-	Member
Mr. Paul Richards	-	Member
Dr. Lovell Francis, MP	-	Member

Secretariat

Ms. Chantal La Roche	-	Secretary
Mrs. Delrene Liverpool-Young	-	Assistant Secretary
Ms. Aaneesa Baksh	-	Graduate Research Assistant
Ms. Rachel Nunes	-	Graduate Research Assistant

ABSENT/EXCUSED

Mr. Fazal Karim, MP	-	Member <i>[Excused]</i>
Dr. Lester Henry	-	Member <i>[Excused]</i>
Mr. Faris Al-Rawi, MP	-	Member
Mr. Stephen Creese	-	Member

COMMENCEMENT

1.1 The meeting was called to order by the Speaker of the House at 11:08 a.m.

ANNOUNCEMENTS BY THE SPEAKER

- 2.1 The Speaker informed Members that Ms. Chantal La Roche would serve the Committee as Secretary, Mrs. Delrene Liverpool-Young and Ms. Simone Yallery would serve as Assistant Secretaries and Ms. Rachel Nunes and Ms. Aaneesa Baksh would serve as Researchers.

ELECTION OF CHAIRMAN

- 3.1 The Speaker advised that her role was to facilitate the election of a Chairman and invited nominations.
- 3.2 Mr. Daniel Dookie nominated Mr. Colm Imbert for the chairmanship and this nomination was seconded by Ms. Marlene McDonald.
- 3.3 There being no further nominations, Mr. Colm Imbert was declared Chairman. The Speaker wished the Members productive deliberations, and invited Mr. Imbert to take the Chair.

(The Speaker exited the meeting and Mr. Colm Imbert assumed his role as Chairman)

- 3.4 The Chairman thanked Members for electing him to serve as the Chairman.

ANNOUNCEMENTS BY THE CHAIRMAN

- 4.1 The Chairman advised that the following Members asked to be excused from the day's meeting:
- a) Mr. Fazal Karim, MP (out of the jurisdiction).
 - b) Dr. Lester Henry (out of the jurisdiction).

QUORUM

- 5.1 The Chairman proposed and Members agreed to a quorum of three (3) persons, inclusive of the Chair with representation of at least one Member from each House.

DISCUSSIONS ON THE WAY FORWARD

- 6.1 The Chairman gave a brief synopsis of the purpose of each Bill referred to the Committee and the requirements for Trinidad and Tobago to become compliant with the international standard on exchange of information on request (the EOIR standard) as indicated by the Global Forum.
- 6.2 The Chairman instructed the Secretariat to request of the Chief Parliamentary Counsel a table detailing each of the clauses of the three (3) Bills inclusive of the purpose and meaning of each clause.

Determination of the Second Meeting

6.3 The Chairman proposed and the Committee agreed that the Committee's Second Meeting will be held on Wednesday June 20, 2018 at 10:00 a.m.

ADJOURNMENT

7.1 There being no other business, the Chairman thanked Members and adjourned the meeting to Wednesday June 20, 2018 at 10:00 a.m.

7.2 The adjournment was taken at 11:23 a.m.

I certify that these Minutes are true and correct.

Chairman

Secretary

June 6, 2018



**JOINT SELECT COMMITTEE ON THE INCOME TAX (AMENDMENT) BILL, 2018,
MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS BILL, 2018 AND
THE TAX INFORMATION EXCHANGE AGREEMENTS BILL, 2018**

**MINUTES OF THE RESCHEDULED SECOND MEETING HELD IN THE A.N.R.
ROBINSON ROOM (WEST), LEVEL 9, OFFICE OF THE PARLIAMENT, TOWER D, IWFC
#1A WRIGHTSON ROAD, PORT OF SPAIN ON AUGUST 21, 2018 at 10:00 A.M.**

PRESENT

Committee Members

Mr. Colm Imbert, MP	-	Member
Ms. Marlene McDonald, MP	-	Member
Dr. Lovell Francis, MP	-	Member
Mr. Fazal Karim, MP	-	Member
Mr. Clarence Rambharat	-	Member
Mr. Daniel Dookie	-	Member
Mr. Saddam Hosein	-	Member
Mr. Paul Richards	-	Member
Mr. Stephen Creese	-	Member
Dr. Lester Henry	-	Member

Secretariat

Ms. Chantal La Roche	-	Secretary
Ms. Simone Yallery	-	Assistant Secretary
Ms. Aaneesa Baksh	-	Graduate Research Assistant
Ms. Rachel Nunes	-	Graduate Research Assistant

ABSENT/EXCUSED

Mr. Faris Al-Rawi, MP	-	Member <i>[Excused]</i>
Mr. Rodney Charles, MP	-	Member <i>[Excused]</i>

CALL TO ORDER

1.2 The meeting was called to order by the Chairman at 10:08 a.m.

ANNOUNCEMENTS BY THE CHAIRMAN

2.1 The Chairman advised that the following Members asked to be excused from the meeting:

- i. Mr. Faris Al-Rawi, MP (out of the jurisdiction)
- ii. Mr. Rodney Charles, MP (out of the jurisdiction)

CONFIRMATION OF THE MINUTES OF THE FIRST MEETING

- 3.1 The Committee considered the Minutes of the First Meeting held on Wednesday June 6, 2018.
- 3.2 There being no amendments, the motion for the confirmation of the Minutes was moved by Ms. Marlene McDonald and seconded by Mr. Daniel Dookie.

MATTERS ARISING FROM THE MINUTES

4.1 As per Item 6.2:

The Chairman informed Members that the following documents were circulated:

- Matrix of Amendments and Explanation on each Bill; and
- Consolidation of Amendments to the Income Tax Act, Chap 75:01.

INTERIM REPORT

- 5.1 The Chairman informed Members of the following:
 - i. an Interim Report was laid in both Houses of Parliament (June 29, 2018 in the House of Representative and July 2, 2018 in the Senate); and
 - ii. the Committee was granted an extension of time to September 14, 2018 to complete its work.

DISCUSSIONS ON THE WAY FORWARD

- 6.1 The Chairman gave a synopsis of the purpose of each Bill referred to the Committee and the requirements for Trinidad and Tobago to become compliant with the International Standard on Exchange of Information on request (the EOIR standard) as indicated by the Global Forum. The Chairman then sought feedback on the way forward
- 6.2 The Chairman gave an undertaking to provide the following information for circulation to Members:
 - i. CARICOM's position on the Global Forum;
 - ii. the current status of Trinidad and Tobago on the Global Forum;
 - iii. the date of the next review of the Global Forum; and
 - iv. a copy of the statement issued by Global Forum on Trinidad and Tobago.

EXAMINATIONS OF MATRICES

Representatives of the Office of the Chief Parliamentary Counsel were invited to join the meeting at this time

7.1 The following technocrats from the Office of the Chief Parliamentary Counsel were present to assist the Committee:

Ms. Ida Mariana Eversley
Ms. Kimberley Superville

Deputy Chief Parliamentary Counsel
Legal Counsel I

7.2 The Chairman invited the technocrats to present on each matrix and provide explanations on the rationale and effect of each of the Bills before the Committee.

7.3 The Chairman sought the advice of the technocrats on the order of priority the Committee should adopt for examining each Bill. After some discussion, the technocrats advised and the Committee agreed that the Bills should be considered in the following order:

1. The Income Tax (Amendment) Bill, 2018
2. The Mutual Administrative Assistance in Tax Matters Bill, 2018
3. The Tax Information Exchange Agreements Bill, 2018

7.4 The Committee then commenced its examination of the Income Tax (Amendment) Bill, 2018, with the assistance of the technocrat team from the Legislative Drafting Department.

OTHER MATTERS

8.1 The Chairman requested that the technocrats provide the following information:
i. amended Clause 6 (New Section 4A) of the Income Tax (Amendment) Bill, 2018; and
ii. the relevant sections of the Data Protection Act, Chapter 22:04 which require the amendments in the Income Tax (Amendment) Bill, 2018.

Determination of the Third Meeting

8.2 The Chairman proposed and the Committee agreed that the Committee's Third Meeting will be held on Wednesday August 29, 2018 at 10:00 a.m.

ADJOURNMENT

9.1 There being no other business, the Chairman thanked Members and adjourned the meeting to Wednesday August 29, 2018 at 10:00 a.m.

9.2 The adjournment was taken at 11:07 a.m.

I certify that these Minutes are true and correct.

Chairman

Secretary

August 23, 2018



**JOINT SELECT COMMITTEE ON THE INCOME TAX (AMENDMENT) BILL, 2018,
MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS BILL, 2018 AND THE
TAX INFORMATION EXCHANGE AGREEMENTS BILL, 2018**

**MINUTES OF THE THIRD MEETING HELD IN THE A.N.R. ROBINSON ROOM (WEST),
LEVEL 9, OFFICE OF THE PARLIAMENT, TOWER D, IWFC
#1A WRIGHTSON ROAD, PORT OF SPAIN ON WEDNESDAY AUGUST 29, 2018 at 10:00 A.M.**

PRESENT

Committee Members

Mr. Colm Imbert, MP	-	Chairman
Mr. Faris Al-Rawi, MP	-	Member
Ms. Marlene McDonald, MP	-	Member
Mr. Rodney Charles, MP	-	Member
Mr. Fazal Karim, MP	-	Member
Mr. Clarence Rambharat	-	Member
Mr. Daniel Dookie	-	Member
Dr. Lester Henry	-	Member
Mr. Saddam Hosein	-	Member
Mr. Paul Richards	-	Member
Mr. Stephen Creese	-	Member

Secretariat

Ms. Chantal La Roche	-	Secretary
Ms. Simone Yallery	-	Assistant Secretary
Ms. Aaneesa Baksh	-	Graduate Research Assistant
Ms. Rachel Nunes	-	Graduate Research Assistant

ABSENT/EXCUSED

Dr. Lovell Francis, MP	-	Member [<i>Absent</i>]
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CALL TO ORDER

1.1 The meeting was called to order by the Chairman at 10:17 a.m.

CONFIRMATION OF THE MINUTES OF THE SECOND MEETING

2.1 The Committee considered the Minutes of the Second Meeting held on Tuesday August 21, 2018.

- 2.2 There being no amendments, the motion for the confirmation of the Minutes was moved by Ms. Marlene McDonald and seconded by Mr. Paul Richards.

MATTERS ARISING FROM THE MINUTES

3.1 As per Item 6.2:

- i. The Chairman informed Members that the following four (4) documents provided by the Chairman were circulated:
 - a. Copy of Responses submitted by Chairman dated Aug. 29, 2018;
 - b. Confirmed Decision of the CARICOM 39th Heads of Government Conference;
 - c. Organisation for Economic Co-operation and Development (OECD) Global Forum Rating for Trinidad and Tobago: and
 - d. Letter to Chair of the Code of Conduct Group dated Nov. 21, 2017.
- ii. The Chairman explained the contents of the four (4) documents which were circulated to the Committee and invited Members' comments and questions on the contents.
- iii. The Chairman indicated his intention to send a representative from Trinidad and Tobago with the CARICOM delegation to the Global Forum in Brussels.

3.2 As per Item 8.1:

The Chairman informed Members that the following documents prepared by Chief Parliamentary Counsel were circulated:

- i. Matrix of Sections of the Data Protection Act, Chap 22:04 referred to in the three tax Bills.
- ii. Amended Consolidated Income Tax Act, Chap. 75:01.
- iii. Amended Income Tax (Amendment) Bill, 2018 with OECD Comments.
- iv. Amended Explanatory Note Income Tax (Amendment) Bill, 2018.

EXAMINATION OF THE BILL

Representatives of the Office of the Chief Parliamentary Counsel were invited to join the meeting at this time

- 4.1 The following officials from the Office of the Chief Parliamentary Counsel were present to assist the Committee:

Chief Parliamentary Counsel's Department

Ms. Ida Mariana Eversley
Ms. Kimberley Superville

Deputy Chief Parliamentary Counsel
Legal Counsel I

- 4.2 The Chairman invited the technocrats to provide explanations on the ‘Matrix of the Sections of the Data Protection Act, Chap 22:04 referred to in the three tax Bills’ and to present the updated Income Tax (Amendment) Bill, 2018 with the OECD comments.
- 4.3 The Committee commenced the examination of Clauses 1 to 10 of the Income Tax (Amendment), Bill, 2018. A summary of the
- 4.4 Amendments made to the Income Tax (Amendment), Bill, 2018 were as follows:
- i. Insert the word “**and**” at the end of **New subsection (6)(b)(i) [Clause 5]**; and
 - ii. Insert an appropriate definition of “statistical information” in New Section 4D (Clause 6).
- 4.5 A summary of the issues discussed with regard to the Income Tax (Amendment) Bill, 2018 are attached as **Appendix I** to these Minutes.
- 4.6 The Chairman thanked the representatives of CPC’s Department for their attendance and excused them from the meeting.

DISCUSSIONS ON THE WAY FORWARD

Presentation of the Final Report

- 5.1 The Chairman indicated that there was no need for another meeting and the Draft Report of the Committee and the amendments to the Income Tax (Amendment) Bill, 2018 will be circulated for Members’ approval.

OTHER MATTERS

- 6.1 The Chairman requested that the Attorney General circulate the following information to Members:
- i. a memorandum indicating Trinidad and Tobago’s system and how it compares to other countries in the world with a specific focus on the South African model indicated by Mr. Saddam Hosein.

ADJOURNMENT

- 7.1 There being no other business, the Chairman thanked Members and adjourned the meeting.
- 7.2 The adjournment was taken at 11:27 a.m.

I certify that these Minutes are true and correct.

Chairman

Secretary

August 29, 2018

Appendix I

Clause	Marginal Note	Issues Raised	Decision Taken
1	Short Title	None	Agreed
2	Act inconsistent with Constitution	None	Agreed
3	Interpretation	None	Agreed
4	Long Title amended	None	Agreed
5	Section 4 amended	<ul style="list-style-type: none"> ▪ Whether new subsection (6) is drafted clearly to convey that it is limited to Proceeds of Crime Act and Anti-terrorism Act. ▪ Whether there should be the inclusion of a judicial control component. ▪ Inclusion of the elements of the due process of the law and consequently no requirement for the three-fifths majority. 	Agreed In Clause 5 (a)(ii), new subsection (6)(b)(i): <ul style="list-style-type: none"> ▪ Insert the word “and” after the words “Anti-terrorism Act;”.
6	New sections 4A to 4D	<ul style="list-style-type: none"> ▪ Whether our citizens’ information will be shared with other foreign competent authorities. ▪ Limiting new Section 4A to information that applies to a foreign jurisdiction’s domestic law and to a treaty between Trinidad and Tobago and that foreign jurisdiction. ▪ The meaning of “statistical information” in new section 4D and what it encompasses. ▪ Whether to insert a form of words similar to the South African legislation in relation to statistical information ▪ The age of the South African legislation. 	Agreed In new section 4A: <ul style="list-style-type: none"> ▪ Insert the words “that is foreseeably relevant” after the words “taxpayer information”. ▪ Delete all the words appearing after “the administration” and insert the following words “and enforcement of domestic laws of another jurisdiction with which there is an arrangement for double taxation relief or exchange of information in relation to taxes.” In new section 4D: <ul style="list-style-type: none"> ▪ Delete the words “of any kind” in the definition of “taxpayer information”.

Clause	Marginal Note	Issues Raised	Decision Taken
		<ul style="list-style-type: none"> ▪ Whether the Canadian legislation was considered in relation to ‘statistical information’. ▪ Whether to insert an appropriate definition of “statistical data”. 	<ul style="list-style-type: none"> ▪ Insert an appropriate definition of “statistical information”.
7	Section 93 amended	<ul style="list-style-type: none"> ▪ Delete paragraph (a). ▪ Insert paragraphs (a) and (b): “(a) by inserting after the words “that country,” the words “for the receipt and sharing of information relative to such arrangements,”; and (b) in paragraph (a) by deleting the words “; or” and substituting the word “;”; ▪ Renumber paragraphs (b) and (c) as paragraphs (c) and (d). 	Agreed
8	Section 93A inserted	None	Agreed
9	Section 117 amended	None	Agreed
10	Section 117A amended	None	Agreed

Matrix of Amendments and Explanations

—

The Income Tax (Amendment) Bill, 2018

INCOME TAX (AMENDMENT) BILL, 2018

MATRIX OF AMENDMENTS AND EXPLANATIONS

CLAUSE	AMENDMENT	REASON FOR AMENDMENT
1-3	<i>Preliminary clauses Long title, Inconsistency with Constitution and Interpretation</i>	
4	<p>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”.</p>	<p><i>The long title is being amended to recognise the expanded scope of the Income Tax Act to now allow for the sharing of personal information in its possession in certain circumstances. That is to say the sharing with-</i></p> <p><i>(a) The FIU;</i></p> <p><i>(b) The Police Service; and</i></p> <p><i>(c) Under Tax Information Sharing Agreements such as the FACTA and for the purposes of double taxation agreements</i></p>
5	<p>Section 4 is amended to insert new subsections:</p> <p>(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.</p> <p>(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).</p> <p>(6) Notwithstanding sub-sections (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)-</p> <p>(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</p>	<p><i>Section 4 of the Income Tax Act is where the Official Secrecy provisions exist. The Board often utilises this section in order to protect the information of tax payers in its possessions. Unfortunately this has meant that this section is often used to deny law enforcement and statutory agencies whose remit requires disclosures such as the FIU from access to information they require. The amendment would therefore require the Board to provide information to certain stakeholders (FIU and Police Services) while ensuring that information so provided can be used in proceedings for an offence. The Board however cannot disclose information in circumstances</i></p>

CLAUSE	AMENDMENT	REASON FOR AMENDMENT
	<p>Financial Intelligence Unit of Trinidad and Tobago Act; and</p> <p>(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-</p> <p>(i) investigating whether an offence has been committed under the Proceeds of Crime Act and the Anti-terrorism Act;</p> <p>(ii) the laying of information; or</p> <p>(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</p> <p>(c) provide information relative to the taxpayer to the taxpayer, upon his request.</p> <p>(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.</p> <p>(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.</p>	<p><i>where the tax payer information is being sought for non-taxation purposes and belongs to a tax payer from a jurisdiction which has not consented to the sharing of that information. We recognise that this is contrary to our FATF requirements to sharing without delay however there are competing international requirements that have to be settled outside of this forum.</i></p> <p><i>Under the FIU Act, the FIU is required to keep confidential information in its possession and it is therefore felt that the FIU Act offers the protection to the information that would have been previously been afforded the protection of the Board. There were consultations between the Board, FIU and the TTPS on this draft.</i></p>
6	<p>Providing information to a foreign tax administration</p> <p>4A. Notwithstanding sections 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.</p>	<p><i>Again since section 4 restricts the Board from sharing personal information of taxpayers and it is necessary under our international tax information sharing arrangements to allow/ require the Board to share that information. The proposed section 4A would therefore require the Board to</i></p>

CLAUSE	AMENDMENT	REASON FOR AMENDMENT
<p>Restriction on use of taxpayer information</p> <p>Offences for breaches of section 4B</p> <p>Interpretation of the phrase “tax payer information”</p>	<p>4B. Where taxpayer information has been provided under section 4(6), the recipient of such information shall—</p> <ul style="list-style-type: none"> (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. <p>4C. A person who receives taxpayer information under section 4 or 4A and who breaches section 4B commits an offence and is liable-</p> <ul style="list-style-type: none"> (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. <p>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</p>	<p><i>provide tax payer information to foreign tax administrations.</i></p> <p><i>Proposed section 4B would seek to protect the information which has left the control and protection of the Board by setting restrictions in the use of the tax payer information similar to what is provided for in the Data Protection Act.</i></p> <p><i>Proposed section 4C would seek to create a deterrent for unlawful sharing of personal information provided by the Board by making breaches of this section an offence carrying a penalty in the magistracy of \$100,000.00 and 20 years imprisonment or in the high court \$150,000.00 and 30 years imprisonment.</i></p>

CLAUSE	AMENDMENT	REASON FOR AMENDMENT
	<p>form relating to one or more taxpayer that is-</p> <p>(a) obtained for the purposes of this Act; or</p> <p>(b) prepared from information referred to in paragraph (a),</p> <p>but does not include, statistical information. ”.</p>	<p><i>Proposed section 4D would seek to interpret “Taxpayer information, for the purposes of section 4 to 4D</i></p>
7	<p>The Act is amended in section 93-</p> <p>(a) in paragraph (a) –</p> <p>(i) by inserting after the words “that country,” the words “for the receipt and sharing of information relative to such arrangements,”; and</p> <p>(ii) by deleting the words “; or” and substituting the word “;”;</p> <p>(b) in paragraph (b) by deleting the word “.” and substituting the words “; or”; and</p> <p>(c) by inserting after paragraph (b), the following new paragraph:</p> <p>“ (c) they provide for the collection, 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.”.</p> <p>93. (1) If the President by Order declares that arrangements specified in the Order have been made with the Government of any country for the receipt and sharing of information relative to such arrangements, with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that country, and that it is expedient that those arrangements should have effect, then subject to section 95 the arrangements shall,</p>	<p><i>Section 93 of the Income Tax provides for relief from double taxation. The section provides for the declaration by the President of certain arrangements which would provide relief from being taxed in two countries while providing still for charging income arising from sources outside of T&T to persons not resident in T&T, determining income to be attributed to such persons and determining income to be attributed to person resident in T&T who have special relationships with persons outside of Trinidad and Tobago as declared agreements. The provision however did not allow for the sharing of personal information. Early Double Taxation Agreements did not contain provisions for the sharing of personal information however with the current thrust to ensure that tax evasion and tax avoidance does not occur more and more Modern Double Taxation Agreements make provision for the sharing of personal information.</i></p> <p><i>Section 93 therefore had to be amended to recognise and allow for the collection, sharing and receipt of personal information</i></p>

CLAUSE	AMENDMENT	REASON FOR AMENDMENT
	<p><i>notwithstanding anything in any written law, have effect in relation to income tax in so far as—</i></p> <p><i>(a) they provide for relief from tax; or ;</i></p> <p><i>(b) they provide for—</i></p> <p><i>(i) charging the income arising from sources in Trinidad and Tobago to persons not resident in Trinidad and Tobago; or</i></p> <p><i>(ii) determining the income to be attributed to such persons and their agencies, branches or establishments in Trinidad and Tobago; or</i></p> <p><i>(iii) determining the income to be attributed to persons resident in Trinidad and Tobago who have special relationships with persons not so resident; or</i></p> <p>(c) they provide for the collection, 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.</p>	
<p>8</p>	<p>New section 93A inserted:</p> <p>Exemption from Chap. 22:04</p> <p>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.</p> <p>(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.</p> <p>(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</p>	<p><i>This proposed section is similar to what is provided for in the Tax Information Exchange Agreements (United States of America) Act, 2017 and the Mutual Administrative Assistance in Tax Matters Bill, 2018. It recognises the provisions that exist in the Data Protection Act, and creates exemptions to the provisions which would prohibit the receiving, use and sharing of personal information in the possession of a public body except with the consent of the person to whom the information belongs. The Data Protection Act goes a little further in respect of personal information that is requested to be shared with a person or institution outside of Trinidad and Tobago by requiring the receiving</i></p>

CLAUSE	AMENDMENT	REASON FOR AMENDMENT
	<p>have comparable safeguards as required by the Data Protection Act.</p> <p>(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.</p> <p>(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 –</p> <p>(a) on summary conviction to a fine of one hundred thousand dollars and to imprisonment for a term of three years; and</p> <p>(b) on conviction on indictment to a fine of one hundred and fifty thousand dollars and to imprisonment for a term of five years.”.</p>	<p><i>country to have similar Data Protection safeguards as Trinidad and Tobago. Some countries do not have such safeguards, such as the United States of America, it therefore becomes necessary to allow the sharing in those circumstance even if the country does not have the same safeguards as we do..</i></p>
<p>9</p>	<p>Section 117(1) of the Act is amended by inserting after the words “this Act”, the words “or any other written law over which the Board has oversight,</p>	<p><i>Section 117 of the Income Tax Act empowers the Board to require any person for the purposes of the Income Tax Act to require any person to give it information in such manner and detail as it may determine. This does not apply to persons engaged in confidential professional relationships with the owner of the information. The section also empowers the Board to inspect any record of any moneys, funds or other assets held by that person on his own behalf or by any other person.</i></p> <p><i>The provision limits the Board to only matters under the income Tax Act, however since there would be other pieces of legislation for which the power of the</i></p>

CLAUSE	AMENDMENT	REASON FOR AMENDMENT
		<i>Board is required, an amendment to this section was necessary to capture this power.</i>
10	Section 117A of the Act is amended in subsection (1), by deleting all the words after the words “and other” and substituting the words “, other enactments for similar purposes and double taxation agreements	<p><i>Section 117A was inserted into the Income Tax Act as a consequential amendment under the Tax Information Exchange Agreements (United States of America) Act, 2017. The OECD was however of the view that the words “other similar enactments” would not capture the Mutual Administrative Assistance in Tax Matters and Double taxation Agreements as they are not on all fours with the t is recognised however that the Tax Information Exchange Agreements (United States of America) Act, 2017 as that is basically an information exchange agreements like TIEAs.</i></p> <p><i>It has therefore become necessary to amend this section to recognise the other enactments for similar purposes (TIEAs) and double taxation agreements.</i></p>

June 26, 2018

List of Proposed Amendments

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The Income Tax (Amendment) Bill, 2018

**LIST OF PROPOSED AMENDMENTS TO
THE INCOME TAX (AMENDMENT) BILL, 2018**

Clause	Extent Amendment
5	In paragraph (a) (ii), in proposed subsection 6(b)(i), insert after the words “Anti-terrorism Act;”, the word “and”.
6	<p>A. In proposed section 4A, delete all the words after the words “taxpayer information”, and substitute the words “that is foreseeably relevant to the administration and enforcement of the domestic laws of another jurisdiction with which there is an arrangement for double taxation relief or exchange of information in relation to taxes.”.</p> <p>B. In proposed section 4D-</p> <p style="padding-left: 40px;">(a) insert after the words “section 4 to 4C –”, the following new definition :</p> <p style="padding-left: 80px;">“statistical information” means quantitative facts or figures which can be gathered in connection with or incidental to any census from which conclusions or information can be drawn but from which individual taxpayers cannot be identified; and”;</p> <p style="padding-left: 40px;">(b) in the definition of “taxpayer information” by deleting the words “of any kind”.</p>
7	<p>A. Delete paragraph (a) and substitute the following new paragraphs:</p> <p style="padding-left: 40px;">“(a) by inserting after the words “that country,” the words “for the receipt and sharing of information relative to such arrangements;”, and</p> <p style="padding-left: 40px;">(b) in paragraph (a) by deleting the words “; or” and substituting the word “;”,.”.</p> <p>B. Renumber paragraphs (b) and (c) as (c) and (d) respectively.</p>

APPENDIX IV

The Income Tax (Amendment) Bill, 2018 with Amendments

12TH September, 2018

THE INCOME TAX (AMENDMENT) BILL, 2018

EXPLANATORY NOTES

(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 US and the Global Forum.

The Bill first contains Pre-ambulatory 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 agencies, 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) would provide for the amendment of section 4. Subparagraph (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 does 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 and 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.

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, the laying of information or the preferring of an indictment.

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

New subsection (8) prohibits the Board from sharing taxpayer information it receives under a tax information 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 sharing information 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 to a foreign tax administration authority 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~~ **is foreseeably relevant to the administration and enforcement of the domestic laws of another jurisdiction with which there is an arrangement for double taxation relief or exchange of information in relation to taxes.**

Proposed new section 4B which 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 of 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 the person commits an offence under this section he is liable on summary conviction to a fine of one hundred thousand (\$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 phrases “statistical information” and “taxpayer information” as used in section 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 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 which would prevent the sharing information in the possession of the Board. The Data Protection Act also restrict 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. 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 with the consent of the country supplying 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 the person 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.

A BILL

An Act to amend the Income Tax Act

Preamble WHEREAS it is enacted by section 13(1) of the 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

(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).

Chap. 12:07

(6) Notwithstanding sub-sections (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 Financial Intelligence Unit of Trinidad and Tobago Act; and
- (b) provide taxpayer information to a

Chap.72:01

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;
and

(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 sections 4(1) and (2), the Board shall provide taxpayer information **that is foreseeably relevant** to the administration **and enforcement of the domestic laws of another jurisdiction with which there is an arrangement for double taxation relief or exchange of information in relation to taxes.**

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 phrases “statistical information” and “taxpayer information”

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

“statistical information” means quantitative facts or figures which can be gathered in connection with or incidental to any census from which conclusions or information can be drawn but from which individual taxpayers cannot be identified; and

“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.”

Section 93 amended

7. The Act is amended in section 93-

- ~~(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 “;”;~~

- (a) by inserting after the words “that country,” the words “for the receipt and sharing of information relative to such arrangements,”; and**
- (b) in paragraph (a) by deleting the words “; or” and substituting the word “;”;**

- ~~(b)~~ **(c)** in paragraph (b) by deleting the word “.” and substituting the words “; or”;
- ~~(c)~~ **(d)** 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.”.

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed in 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 members of the Senate.

Clerk of the Senate

**Consolidation of Amendments to the Income
Tax Act Chap. 75:01**

CONSOLIDATION OF AMENDMENTS TO THE INCOME TAX ACT, CHAP. 75:01

**This consolidation is not an approved consolidation of the Law Revision Commission
and may contain errors or omissions**

Short title	1. This Act may be cited as the Income Tax Act.
Interpretation	2. (1) In this Act— “Appeal Board” means the Appeal Board established under the Tax Appeal Board Act; “assessment” includes a re-assessment; “Board of Inland Revenue” or “Board” means the Board of Inland Revenue established by section 3; “body of persons” means any body politic, corporate or collegiate and any company, fraternity, society or fellowship and persons, whether corporate or not corporate; “chargeable income” means the aggregate amount of the income of any person from the sources specified in section 5 remaining after allowing the appropriate deductions and exemptions under this Act; “child” includes a step-child, an illegitimate child or an adopted child; “close company” has the same meaning as in the Third Schedule of the Corporation Tax Act; “company” has the meaning assigned to that expression for the purposes of the Corporation Tax Act by section 2(1) thereof; “corporation tax” means the tax charged under the Corporation Tax Act by section 3 thereof; “distribution” has the meaning assigned to that expression in section 49; “earned income” means any income of an individual arising in respect of— (a) any gains or profits immediately derived by the individual from any trade, business, profession or vocation carried on, or exercised by the individual either as an individual or in the case of a partnership as a partner personally acting therein; or

- (b) any gains or profits from any employment or office including any contribution of the employee paid by the employer on behalf of the employee to an approved fund or scheme referred to in section 27(1)(c) or paid by the employer on behalf of the employee under an approved pension fund plan referred to in sections 28 to 33 and the estimated annual value of any quarters or board, residence or of any other allowance granted in respect of employment whether in money or otherwise; or
- (c) any pension, superannuation or other allowances, deferred pay or compensation for loss of office, given in respect of the past services of the individual or of the husband or parent of the individual or given to the individual in respect of the past services of any deceased person whether the individual or husband or parent of the individual has contributed to such pension, superannuation or other allowance or not;

“employer”, in relation to an employee or officer, means the person from whom the employee or officer receives his remuneration;

“former year of assessment” means the period of twelve months commencing on the 1st January in each year that before 20th April 1965 [that is, the date of commencement of the Income Tax (Amendment) Act, 1963] was the year for which tax was charged, levied and collected upon the chargeable income of any person for the year immediately preceding that year;

“guardian”, in relation to an infant, includes parent;

“incapacitated person” means an infant, person of unsound mind, idiot or insane person;

“management charges” means charges made for the provision of management services and charges made for the provision of personal services and technical and managerial skills, head office charges, foreign research and development fees and other shared costs charged by head office;

“Minister” means the Minister responsible for Finance;

“non-resident company” has the meaning assigned to that expression for the purposes of the Corporation Tax Act in section 2 thereof;

“penalty” means any amount or other sum (other than interest) imposed or charged on a person in addition to any tax payable on an assessment made under the provisions of this Act, and includes a fine recoverable on summary conviction;

“person” includes, subject to subsection (2), a company;

“participator” has the same meaning as in paragraph 4 of the Third Schedule to the Corporation Tax Act;

“resident company” has the meaning assigned to that expression for the purposes of the Corporation Tax Act by section 2 thereof;

“royalties” has the meaning assigned to that expression for the purposes of the Corporation Tax Act by section 2 thereof;

“separated” means in relation to the marital status of an individual, that the individual is living apart from his or her spouse under—

- (a) an order of a Court of competent jurisdiction;
- (b) a written agreement of separation; or
- (c) any other circumstances where the separation is likely to be permanent;

“short term capital gains” means chargeable gains accruing on the disposal of an asset within twelve months of its acquisition;

“tax” means income tax imposed by this Act;

“total income” means the aggregate amount of income of a person from the sources specified in section 5, before making any deductions allowed by—

- (a) any provision of this Act other than sections 10, 11 and 16;
- (b) the Income Tax (In Aid of Industry) Act;

“trade” includes a business, and every trade, manufacture, adventure or concern in the nature of a trade or business;

“withholding tax” means the tax so referred to in section 50;

“year of income” means the period of twelve months commencing on 1st January in each year.

(2) For years of income after the year of income 1965 the provisions, other than section 50 of this Act relating to the charge of income tax shall not apply to the profits or gains accruing or arising—

- (a) to a resident company; or
- (b) to a non-resident company, if the profits or gains are within the charge (as defined by section 2(1) of the Corporation Tax Act) to corporation tax.

ADMINISTRATION

Board of Inland
Revenue

3. (1) For the purposes of this Act there is hereby established a Board of Inland Revenue.

(2) The Board shall consist of five Commissioners whose offices shall be public offices within the meaning of section 3 of the Constitution of Trinidad and Tobago.

(3) The President shall appoint one of the Commissioners to be Chairman and the Chairman shall preside at all meetings of the Board.

(4) Subject to any Regulations made by the President for the purpose, the Board may regulate its own procedure.

Official secrecy

4. (1) Every person having any official duty or being employed in the administration of this Act shall regard and deal with all documents, information, returns, assessment lists, and copies of such lists relating to the income or items of the income of any person, as secret and confidential, and shall make and subscribe a declaration in the form prescribed to that effect before a Magistrate.

(2) Any person having possession of or control over any document, information, returns, or assessment lists or copies of such lists relating to the income or items of income of any person who at any time communicates or attempts to communicate such information or anything contained in such documents, returns, lists or copies to any person—

~~(a) other than a person to whom he is authorised by the President to communicate it; or~~

(b) otherwise than for the purposes of this Act or any other written law administered by the Board,

is guilty of an offence.

(3) Where, under any law in force in any Commonwealth country provision is made for the allowance of relief from income tax in respect of the payment of income tax in Trinidad and Tobago, the obligation as to secrecy imposed by this section shall not prevent the disclosure to the authorised officers of the Government in that Commonwealth country of such facts as may be necessary to enable the proper relief to be given in cases where relief is claimed from income tax in Trinidad and Tobago or from income tax in that Commonwealth country aforesaid.

(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.

(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 Financial 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; and
 - (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 sub-section (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.

Providing information to a foreign tax administration

4A. Notwithstanding sections 4(1) and (2), the Board shall provide taxpayer information that is foreseeably relevant to the administration and enforcement of the domestic laws of another jurisdiction with which there is an arrangement for double taxation relief or exchange of information in relation to taxes.

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 phrases “statistical information” and “taxpayer information”

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

“statistical information” means quantitative facts or figures which can be gathered in connection with or incidental to any census from which conclusions or information can be drawn but from which individual taxpayers cannot be identified; and

“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.

CHARGING PROVISIONS

Charging provisions

†5. (1) Income tax shall, subject to the provisions of this Act, be payable at the rate or rates specified hereafter for each year of income upon the income of any person accruing in or derived from Trinidad and Tobago or elsewhere, and whether received in Trinidad and Tobago or not in respect of—

- (a) gains or profits from farming, agriculture, forestry, fishing or other primary activity;**
- (b) gain or profits from operation of mines or the exploitation of natural or mineral resources;**
- (c) gains or profits from any other trade or business;**
- (d) gains or profits from the practice of any profession or vocation or management charges for the provision of personal services and technical and managerial skills;**

- (e) gains or profits from any employment or office including pensions or emoluments within the meaning of section 100 and any contribution of the employee paid by the employer on behalf of the employee to an approved fund or scheme referred to in section 27(1)(c) or paid by the employer on behalf of the employee under an approved pension fund plan referred to in sections 28 to 33 and the estimated annual value of any quarters or board or residence or of any other allowance granted in respect of employment or office whether in money or otherwise;
- (f) short-term capital gains;
- (g) interest, discounts, annuities or other annual or periodical sums;
- (h) rents for real property and royalties from the operation of mines, quarries or other natural resources;
- (i) rentals and royalties for the use or the right to use—
 - (i) copyrights, artistic or scientific works, patents, designs, plans, secret processes or formulae, trade marks, motion picture films, films or tape for radio and television broadcasting, or other like properties or rights; or
 - (ii) information concerning industrial, commercial or scientific knowledge, experience or skill;
- (j) premiums, commissions, fees and licence charges;
- (k) dividends or other distributions;
- (l) gains or profits or amounts deemed to be income of that person under this Act;
- (m) any annual gains or profits not falling under any of the foregoing paragraphs.

(2) In the case of income arising outside Trinidad and Tobago to a person who is not ordinarily resident or not domiciled therein, tax shall be payable on the amount received in Trinidad and Tobago, so however, that where any employment or office is exercised by any such person in Trinidad and Tobago, gains or profits from the employment or office, whether received in Trinidad and Tobago or not, shall be treated as income arising therein.

(3) The Capital Gains (Supplementary Provisions) Rules set out in the First Schedule shall have effect for the computation of short-term capital gains and generally for the purposes of the charge to tax thereon.

(4) Where a person has ceased to hold any employment or office and any pension or annual payment is paid to him, or his widow or child, or to any relative or dependant of his by the person by whom he was employed, or by the successors of that last-mentioned person, then, notwithstanding that the pension or annual payment is paid voluntarily or is capable of being discontinued, any amount paid in respect of that pension or annual payment shall be deemed to be income of the person to whom, and for the year of income in which, it is so paid.

(5) Notwithstanding anything in this Act or any other rule of law to the contrary, where income arises to a person from any activities on the continental shelf (this expression here having the same meaning as in the Continental Shelf Act) such income shall for all the purposes of this Act be deemed to have accrued in or to have been derived from Trinidad and Tobago.

(6) Notwithstanding subsection (1)(e), where under a contract of employment the employer is liable to pay an amount by way of severance pay upon the termination of the employment of an employee by reason of the redundancy of the position held by the employee or upon the retirement, or other termination of the employment, by reason of ill health—

(a) so much of the amount as does not exceed three hundred thousand dollars shall be exempt from tax; and

(b) the remainder, if any, of the amount—

(i) shall be treated as income for the year in which the employment is terminated and, irrespective of when payment is received, shall not be treated as income of any other year;

(ii) shall not form part of the chargeable income of the employee but shall be separately charged to tax at his average rate of tax for the year of income immediately preceding the year in which the employment is terminated.

(6A) For the purposes of subsection (6), ill health shall not be regarded as the reason for retirement or other termination of the employment of an employee unless the Board is satisfied, on such evidence that it may require, that ill health was the reason for the termination of employment.

(6B) The provisions of subsection (6)(a) and (b) in relation to the taxation of an amount paid by an employer to an employee on the termination of the employment of an employee by reason of redundancy, shall apply to a payment not otherwise chargeable to or not, either directly or indirectly, in consideration or in consequence of, or otherwise in connection with, the termination of the holding of an office or employment or any change in the functions or emoluments of an employee, including any payment in commutation of annual or periodical payments, whether chargeable to tax or not, which would otherwise have been made.

(6C) For the purposes of subsection (6B), any payment made to the spouse or any relative or dependant of a person who holds or has held an office or employment, or made on behalf of or to the order of that person, shall be treated as a payment made to that person, and any valuable consideration other than money shall be treated as a payment of money equal to the value of that consideration at the date when it was given.

(6D) A payment referred to in subsection (6B) does not include a lump sum payment made—

- (a) under an approved pension scheme under section 28;
- (b) under an approved pension fund plan or an approved deferred annuity plan under section 28;
- (c) under a fund or contract approved by the Board under section 134(6A);
- (d) in connection with the termination of the holding of an office or employment by the death of the holder or made on account of the injury to or disability of the holder of the office or employment.

(7) For the purposes of subsection (6)—

- “severance pay” includes any payment in lieu of notice and any payment made in relation to past service of the employee;
- “average rate of tax” means such rate, expressed as a percentage, as results from dividing the tax payable in respect of a year of income by the amount of the chargeable income of that year.

RELIEF IN CASES OF DOUBLE TAXATION

Relief in cases
of double
taxation

93.(1) If the President by Order declares that arrangements specified in the Order have been made with the Government of any country **for the receipt and sharing of information relative to such arrangements**, with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that country, and that it is expedient that those arrangements should have effect, then subject to section 95 the arrangements shall, notwithstanding anything in any written law, have effect in relation to income tax in so far as—

- (a) they provide for relief from tax; ~~or~~ ;
- (b) they provide for—
 - (i) charging the income arising from sources in Trinidad and Tobago to persons not resident in Trinidad and Tobago; or
 - (ii) determining the income to be attributed to such persons and their agencies, branches or establishments in Trinidad and Tobago; or

- (iii) determining the income to be attributed to persons resident in Trinidad and Tobago who have special relationships with persons not so resident; **or**
- (c) they provide for the collection, 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.**

(2) Part I of the Fifth Schedule shall have effect where arrangements which have effect by virtue of this section provide that tax payable under the laws of the country concerned shall be allowed as a credit against tax payable in Trinidad and Tobago.

(3) The President may by Regulations, subject to negative resolution, add to, vary or amend the provisions of the Fifth Schedule.

(4) Where, under any arrangements which have effect by virtue of this section, relief may be given either in Trinidad and Tobago or in the country with the Government of which the arrangements are made in respect of any income, and it appears that the assessment to income tax made in respect of the income is not made in respect of the full amount thereof or is incorrect having regard to the credit, if any, which falls to be given under the arrangements, any such assessment may be made as is necessary to ensure that the total amount of the income assessed and the proper credit, if any, is given in respect thereof, and, where the income is entrusted to any person in Trinidad and Tobago for payment, any such assessment may be made on the recipient of the income under this Act.

(5) Any arrangements to which effect is given under this section may include provision for relief from tax for periods before the commencement of this section or before the making of the arrangements and provisions as to income which is not itself subject to double taxation, and the preceding provisions of this section shall have effect accordingly.

(6) Any Order made under this section may be revoked by a subsequent Order and such revoking Order may contain such transitional provisions as appear necessary and expedient.

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.**

94. Where under an arrangement to which section 93 refers provision is made whereby income, gains or profits are to be treated as arising in Trinidad and Tobago, such income, gains or profits shall, for all the purposes of this Act, be deemed to be the income, gains or profits of the person entitled thereto.

95. (1) To the extent appearing from the following provisions of this section and Parts II and III of the Fifth Schedule, relief from income tax shall be given in respect of income tax payable under the law of any country outside Trinidad and Tobago by allowing the last-mentioned tax as a credit against income tax payable in Trinidad and Tobago, notwithstanding that there are not for the time being in force any arrangements under section 93 providing for such relief.

(2) (a) The said relief (hereinafter referred to in this section and in Parts II and III of the Fifth Schedule as “unilateral relief”) shall be such relief as would fall to be given under Part I of the Fifth Schedule if arrangements with the Government of the foreign country containing such provision as appears in so much of Part II of the Fifth Schedule as applies to that country were in force by virtue of section 93 and any reference occurring in the said Part I which imports a reference to relief under arrangements for the time being in force by virtue of section 94 shall be deemed to import also a reference to unilateral relief.

(b) The total credit to be allowed by way of unilateral relief in the case of any income shall not, if the country is within prescribed Commonwealth countries, exceed one-half and in any other case one-quarter of the sum of the limits specified in paragraphs 5 and 6(1) of Part I of the Fifth Schedule; and

(c) Part I of the Fifth Schedule shall, as respects unilateral relief, have effect subject to the provisions set out in Part III of the Schedule.

(3) Where unilateral relief may be given in respect of any income and it appears that the assessment to income tax made in respect of the income is not made in respect of the full amount thereof or is incorrect having regard to the credit, if any, which falls to be given by way of unilateral relief, any such assessment may be made as is necessary to ensure that the total amount of income is assessed and the proper credit, if any, is given in respect thereof, and where the income is entrusted to any person in Trinidad and Tobago for payment, any such assessment may be made on the recipient of the income under this Act.

(4) References in this section and in Parts II and III of the Fifth Schedule to tax payable or tax paid under the law of a country outside Trinidad and Tobago include only references to taxes which are charged on income or profits and correspond to income tax in Trinidad and Tobago and, without prejudice to the generality of the preceding words, a tax which is payable under the law of a province, State or other part of a country, or which is levied by or on behalf of a municipality or other local body, shall not be deemed for the purposes of this subsection to correspond to income tax.

Power to vary
withholding tax

96.(1) If the President by Order so provides, the rate of withholding tax shall be reduced to the extent so provided as respects any person, notwithstanding that there are not for the time being in force any arrangements under section 93 providing for such relief.

(2) Until arrangements are made with the Commonwealth countries set out in Part IV of the Fifth Schedule, the provisions in Part V of that Schedule shall continue to have effect for the purpose of double taxation relief with respect to those countries; and subsection (1) shall have effect for the purposes of withholding tax.

Powers of
inspection of
records

117.(1) The Board may for any purpose related to the administration or enforcement of this Act **or any other written law over which the Board has oversight**, require any person, except a person engaged in confidential professional relationship with such person, to give it information in such manner and detail and at such time as the Board may from time to time require by notice in writing with respect to his income or assessment or assets or the income or assessment or assets of any other person or to permit it or any person duly authorised by it in writing to inspect any record of any moneys, funds or other assets held by that person on his own behalf or which may be held by him for, or any moneys due by him to, any other person.

(2) Notwithstanding any rule of law to the contrary, but subject to this section, the Board may, for the purpose of determining any objection to an assessment, require by writing any bank or any officer thereof to furnish information in writing or may summon any such officer to appear before it to give evidence respecting the assessment or to furnish statements of accounts and affairs verified in the manner specified by it, and the Board may examine such officer on oath or otherwise.

(3) Where the Board proposes to exercise the powers conferred on it under subsection (2) it shall give notice of its intention to do so to the person who has disputed his assessment and shall inform such person of his rights under this section.

(4) If the person who has disputed his assessment is aggrieved by the proposals of the Board to exercise its powers under subsection (2), he may, within seven days of receipt of notice thereof from the Board, apply to a Judge in Chambers for a declaration of his rights in the matter, and the Judge shall hear and determine such application and shall make such order as the justice of the case requires.

(5) A person is guilty of an offence who—

- (a) fails to give to the Board any information in accordance with this section; or
- (b) fails to produce for the inspection of the Board or any person duly authorised by it any records which he may be required by the Board or such duly authorised person to produce.

Tax
Information
Exchange
Agreements

117A.(1) The Board shall have the power to gather –

- (a) any financial information and other information; and
- (b) any financial institution or any officer of the financial institution to appear before it to give evidence or be examined under oath or otherwise;
- (c) any supporting documentation in respect of paragraph (a) or (b),

for the purpose of the Tax Information Exchange Agreements (United States of America) Act, 2017 and other ~~enactments for a similar purpose~~, **other enactments for similar purposes and double taxation agreements.**

(2) A financial institution which fails or whose officer fails to comply with a requirement under subsection (1) commits an offence.

Minority Report

Minority Report:

Members:

Mr. Rodney Charles, MP

Mr. Fazal Karim, MP

Mr. Saddam Hosein

COMPLIANCE ON PASSAGE OF INCOME TAX (AMENDMENT) BILL, 2018

Contained at paragraph 9 of the Draft Final Report of the Joint Select Committee to consider and report by June 30, 2018 on the Income Tax (Amendment) Bill, 2018, the Mutual Administrative Assistance in Tax Matters Bill, 2018, and the Tax Information Exchange Agreements Bill, 2018 (hereinafter called “**the Draft Final Report**”) it was stated:

*“Your Committee was cognizant of the imminent prorogation of the Third Session of the Eleventh Parliament and at its **Second meeting** on Tuesday August 21, 2018 agreed to the following in an effort to advance the work of the Committee keeping in mind its immediate international obligations:*

- I. Consider and report on the Income Tax (Amendment) Bill, 2018 by September 14, 2018 during the Third Session, Eleventh Parliament.*
- II. Defer consideration of the **Tax Information Exchange Agreements Bill, 2018** and the **Mutual Administrative Assistance in Tax Matters Bill, 2018.**”*

At the Second Meeting of the JSC, a proposal was made by the Chairman for the Committee to consider the Income Tax (Amendment) Bill, 2018 for the Parliament to consider the proposed amendments to the Income Tax Act before the end of the Third Session of Parliament. Member Saddam Hosein asked the Chairman if the Committee can get some indication from the Global Forum regarding the passage of the Income Tax Act Amendment.

The Chairman indicated that he will contact Global Forum to indicate to them that we are hoping to pass the Income Tax Amendment Bill by the end of September and what it will do to our compliance.

At the Third Meeting of the Committee, Member Charles raised the issue of the Income Tax Amendment Bill if passed, what will be our position. The Chairman indicated that it will place Trinidad and Tobago on a “watch list”. Member Charles inquired if that position was made in writing, the Chairman indicated it was.

Further on 10th September 2018, the Secretariat was requested by e mail (receipt of which was acknowledged on the same day) to provide the written assurance given by the EU to the Government that passage of the "Income Tax (Amendment) Bill" to the exclusion of the two others

under consideration, would be sufficient to ensure our "interim" removal from being the only country on the EU list of non-compliant states.

As such, the members undersigned are unsure as to the position if the amendments are approved by the Parliament whether it would in fact impact in any way on Trinidad and Tobago's compliance, as the Chairman failed to provide any written indication of such and the party whom informed him of the position that the passage of the Income Tax (Amendment) Bill will place us on the "watch list". It is even unclear as to the nature of compliance if Trinidad and Tobago is in fact placed on the "watch list".

To date this written assurance has not been supplied to members of the Committee. The undersigned are of the view that it would be a better use of parliamentary time to deal with the three Bills which formed the remit of the JSC and which are inextricably interlinked.

CARICOM MEETING ON THE GLOBAL FORUM

At the 38th Regular Meeting of the Conference of Heads of Government of the Caribbean Community, Montego Bay, Jamaica, 4- 6 July 2018, COFAP acknowledged "the reputational damage particularly with respect to Member States which host international financial centers, the policy over-reach as well as the unilateral and arbitrary process utilized by the European Union (EU) in the listing process of non-cooperative tax jurisdictions along with the unpredictability and uncertainty created thereby".

As such, it was agreed that a Task Force be formed in order "to undertake nuanced discussions for lobbying individual EU countries as well as the EU Council and other relevant institutions ...". The Task Force would comprise Prime Ministers of Antigua and Barbuda, Barbados, St. Kitts and Nevis, Saint Lucia and the Minister of Finance of Jamaica. Member Hosein at the Second Meeting of the Committee brought to the attention of the Chairman the notable absence of Trinidad and Tobago as part of the Task Force that will be meeting the relevant institutions of the EU.

The Chairman gave the undertaking of including the Minister in the Ministry of Finance on CARICOM's visit to the EU.

The Members undersigned indicate that based on the Chairman's statement regarding the flexibility in the approach of the EU, the meeting between the CARICOM and EU should be concluded before any amendments are made in the event that there is a shift in policy as CARICOM has acknowledged "the unilateral and arbitrary process utilized by the European Union (EU) in the listing process of non-cooperative tax jurisdictions along with the unpredictability and uncertainty created thereby".

CONCERNS REGARDING THE INCOME TAX (AMENDMENT) BILL, 2018

1. Lack of Judicial Oversight

Clause 5(6)(b) of the Bill allows for the Board of Inland Revenue to:

“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; and

(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;”

The Committee notes that it can be a potentially dangerous provision as it can be the subject of abuse. All that is required is that a charge be laid in order for a person’s tax information to be provided to members of the police service. The provision of taxpayer’s information should be such that it should be managed by the oversight of a judicial officer. This will in fact prevent any potential abuses of such important information and ensure that a person’s constitutional right to privacy is properly protected.

The Bill provides for the provision of taxpayer’s information to members of the police service in relation to offences under the Proceeds of Crime Act and the Anti-Terrorism Act. On examination of the South African legislation, **Section 71** of the Tax Administration Act 2011 states that offences (other than tax offences) require an order of the Court for it to be provided to the South African Police Service or the National Director of Public Prosecutions.

As such, it is the views of the members undersigned that a similar safeguard be provided in the current legislation.

*“71. **Disclosure in criminal, public safety or environmental matters.**—(1) **If so ordered by a judge** under this section, a senior SARS official must disclose the information described in subsection (2) to—*

(a) the National Commissioner of the South African Police Service, referred to in section 6 (1) of the South African Police Service Act, 1995 (Act No. 68 of 1995);
or

(b) the National Director of Public Prosecutions, referred to in section 5 (2) (a) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998).

(2) Subsection (1) applies to information which may reveal evidence—

(a) that an offence (other than a tax offence) has been or may be committed in respect of which a court may impose a sentence of imprisonment exceeding five years;

(b) that may be relevant to the investigation or prosecution of the offence; or

(c) of an imminent and serious public safety or environmental risk. (3) A senior SARS official may, if of the opinion that—

(a) SARS has information referred to in subsection (2);

(b) the information will likely be critical to the prosecution of the offence or avoidance of the risk; and

(c) the disclosure of the information would not seriously impair a civil or criminal tax investigation,

make an ex parte application to a judge in chambers for an order authorising SARS to disclose the information under subsection (1).

(4) The National Commissioner of the South African Police Service, the National Director of Public Prosecutions or a person acting under their respective direction and control, if—

(a) carrying out an investigation relating to an offence or a public safety or environmental risk referred to in subsection (2); and

(b) of the opinion that SARS may have information that is relevant to that investigation,

may make an ex parte application to a judge in chambers for an order requiring SARS to disclose the information referred to in subsection (2).

(5) SARS must be given prior notice of at least 10 business days of an application under subsection (4) unless the judge, based on urgency, allows a shorter period and SARS may oppose the application on the basis that the disclosure would seriously impair or prejudice a civil or criminal tax investigation or other enforcement of a tax Act by SARS.”

2. Privacy

The Bill impacts several crucial provisions contained in the Data Protection Act Chap. 22:04, namely exemptions from sections 6, 30, 31, 38, 40, 46 and 93. The Bill requires consultations with stakeholders such as the Financial Institutions and its impacts.

Further, it is noted that there is no proper definition or guidelines on the extent of the information that should be shared both domestically and internationally.

3. Application of the Bill

The Committee was informed that the Income Tax (Amendment) Bill, 2018 was being enacted to ensure compliance with EU requests and would be applicable only to, inter alia, EU citizens resident, earning income and doing business in TT. In addition, it could apply to TT residents who earn income from EU jurisdictions. Members of the Committee are concerned that as worded the Bill appears to affect the fundamental rights and freedoms of all citizens of Trinidad and Tobago and not those with EU/ Global Forum financial links.

RECOMMENDATIONS

1. That the Draft Final Report not be laid in Parliament in its current form as the members of the Committee require more time to deliberate, consult and make recommendation on the Income Tax (Amendment) Bill, 2018.
2. That on Proclamation of the Fourth Session of the Parliament that the Committee be reappointed in order to complete in mandates namely to consider and report on the Income Tax (Amendment) Bill, 2018, the Mutual Administrative Assistance in Tax Matters Bill, 2018, and the Tax Information Exchange Agreements Bill, 2018.
3. That in light of the commitment of the Members undersigned to ensure that Trinidad and Tobago becomes compliant with respect to its obligations to the Global Forum that we await the completion of the meeting between CARICOM and the EU in order to ensure that the amendments are in line with the conclusions of the discussions of the said meeting.

Dated 16th September 2018.

Signed:

Mr. Saddam Hosein

Mr. Rodney Charles, MP

Mr. Fazal Karim, MP