PARLIAMENT

REPUBLIC OF TRINIDAD AND TOBAGO

FOURTH SESSION OF THE ELEVENTH PARLIAMENT (2018/2019)

REPORT OF
THE SPECIAL SELECT COMMITTEE
ESTABLISHED TO CONSIDER AND REPORT ON THE INCOME TAX (AMENDMENT) BILL, 2018

Ordered to be printed

TOGETHER WITH THE MINUTES OF PROCEEDINGS

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1. COMMITTEE MANDATE AND ESTABLISHMENT

1.1 At a sitting of the House of Representatives held on Friday November 23, 2018, a Special Select Committee was established by the House of Representatives (House) to consider and report on the Income Tax (Amendment) Bill, 2018.

1.2 The Committee was established in accordance with Standing Orders 95 and 96 of the House of Representatives, with a composition that should have reflected the "balance of parties in the House". However, it was indicated at the aforementioned sitting, that no Opposition Members would be serving on the Committee. Attempts were made to obtain the names of the Opposition Members who were to serve on the Committee but none were received.

1.3 As agreed to by the House, the mandate of the Committee is to:

i. to consider and report on a Bill entitled "The Income Tax (Amendment) Bill, 2018"; and
ii. to report by Friday November 30, 2018.

1.4 The following Members were appointed to serve on the Special Select Committee:

- Mr. Colm Imbert Member
- Mr. Faris Al-Rawi Member
- Mr. Fitzgerald Hinds Member
- Mr. Randall Mitchell Member
- Opposition Member to be named (1)
- Opposition Members to be named (2)

1.5 At its first meeting held on Monday November 26, 2018, your Committee elected Mr. Colm Imbert to be its Chairman in accordance with Standing Order 96(4) of the House of Representatives.

1.6 The Committee held two (2) meetings on Monday November 26, 2018 and Wednesday November 28, 2018. The Minutes of the Meetings are found at **Appendix I.**

POWERS OF THE COMMITTEE

1.7 By Standing Order 111 of the House of Representatives the Committee has the power, inter alia:

a. to send for persons, papers and records;

b. to sit notwithstanding any adjournment of the House;

c. to adjourn from place to place;

d. to report from time to time;
e. to appoint specialist advisers either to supply information which is not otherwise readily available, or to elucidate matters of complexity within the Committee's order of reference;
f. to communicate with any other Committee on matters of common interest; and
g. to meet concurrently with any other Committee for the purpose of deliberating, taking evidence or considering draft reports.

Secretariat Support

The following officers were assigned to assist the Committee:

- Ms. Simone Yallery — Secretary
- Ms. Kimberly Mitchell — Assistant Secretary
- Ms. Keiba Jacob — Assistant Secretary

Contact

The Secretary
Special Select Committee Income Tax (Amendment) Bill, 2018
Office of the Parliament
Level 3, Tower D
The Port of Spain International Waterfront Centre
1A Wrightson Road Port of Spain Republic of Trinidad and Tobago
Tel: (868) 624-7275 Ext 2535 or 2250; Fax: (868) 625-4672
Email: sscitb2018@ttparliament.org

2. INTRODUCTION

Parliamentary History of the Income Tax (Amendment) Bill

2.1 At a sitting of the House of Representatives held on May 25, 2018 the Income Tax (Amendment) Bill, 2018 was introduced and read a First time and referred to a Joint Select Committee established for its consideration and report by June 30, 2018 in accordance with Standing Order 64(1)(c) of the House of Representatives.

2.2 An Interim Report detailing the work of the Committee was presented in the House of Representatives on June 29, 2018 and in the Senate on July 02, 2018 with a request for an extension to September 14, 2018, which was granted.

2.3 A Final Report was presented in the House of Representatives on September 17, 2018 and in the Senate on September 18, 2018.

2.4 At a sitting of the House of Representatives on Wednesday September 26, 2018, the Income Tax (Amendment) Bill, 2018 was carried over to the Fourth Session.

2.5 The Report of the Joint Select Committee appointed 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 was debated and adopted in the House of Representatives on November 02, 2018.

2.6 In accordance with Standing Order 66(4) of the House of Representatives the Bill was read a Second Time, after which the Bill was committed to the Committee of the Whole in accordance with Standing Order 68(1) of the House of Representatives on November 02, 2018.

2.7 On November 02, 2018, the Committee of the Whole considered and approved Clauses 1 to 4 of the Bill without amendment, this progress was reported to the House.

2.8 The Committee Stage of the Bill resumed on November 23, 2018 at which time the clauses 6-10 were considered and adopted with amendments.

2.9 The Bill was then withdrawn from the Committee of the Whole and referred to a Special Select Committee established to consider and report on the Income Tax (Amendment) Bill, 2018 by November 30, 2018.

Approach to Deliberations on the Income Tax (Amendment) Bill, 2018

2.10 The Committee discussed the approach to be adopted due to Bill's importance and imminent reporting deadline given by the House. It determined that deliberations should commence immediately with the following approach to the Bill:

- A consideration of the underlying factors in relation to tax transparency, anti-money laundering and counter-terrorism financing as they apply to the Bill.
- A Public Hearing to be held on Wednesday November 28, 2018.
- Technical Support from the Office of the Chief Parliamentary Counsel
- Clause by Clause Analysis

Public Hearing[1]:

2.11 In accordance with Rule 30, General Rules of the Conduct of Proceedings of Committees of the Standing Orders of the H.O.R., the Committee agreed to hold a public meeting to receive comments from the following stakeholders:

i. The Bankers Association of Trinidad and Tobago;
ii. National Anti-Money Laundering Committee;
iii. Financial Intelligence Unit of Trinidad and Tobago;
iv. Financial Investigation Branch – Trinidad and Tobago Police Service;
v. American Chamber of Commerce of Trinidad and Tobago;
vi. Trinidad and Tobago Chamber of Industry and Commerce;
vii. Delegation of the European Union to Trinidad and Tobago;
viii. European Business Chamber of Trinidad and Tobago
ix. Inland Revenue Division;
x. Ministry of Finance.

Technical Support:

2.12 The Committee also engaged the assistance of the following technocrats from the Legislative Drafting Department who assisted the Committee during the consideration of the Bill:

- Ms. Lorraine John - Deputy Chief Parliamentary Counsel
- Ms. Megan Doyle - Parliamentary Counsel II (Ag.)

Clause by Clause Analysis:

2.13 The Committee completed its clause by clause examination of the Bill with the assistance and guidance of the technocrats of the Legislative Drafting Department.

2.14 The technocrats also provided a Matrix of Amendments and Explanations to assist the Committee in its deliberations, found at **Appendix II**.

2.15 The Committee caused the preparation of the redrafted Bill by the Chief Parliamentary Counsel's Department.

[1] https://www.youtube.com/watch?v=vOI03rjjJa8

Consideration of the Issues arising out of Income Tax (Amendment) Bill, 2018

2.16 The Committee considered it necessary to examine and understand the following issues in relation to the Bill:

A. Global Forum Obligations:

- **Transparency and Exchange of Information for Tax Purposes**
- **Requirement for Compliance with the EOIR Standard**

B. Financial Action Task Force Obligations:

- **Financial Action Task Force (FATF) Forty Recommendations and Eleven Immediate Outcomes**

C. Consequences for non-passage of Income Tax (Amendment) Bill, 2018

Global Forum: Transparency and Exchange of Information for Tax Purposes

2.17 According to The Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews document, the *"Global Forum … is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by jurisdictions which participate in the work of the Global Forum. The Global Forum is charged with in-depth monitoring and peer review of the implementation of the standards of transparency and exchange of information for tax purposes."*[2]

2.18 The monitoring conducted by the Global Forum relates primarily to compliance with two (2) internationally agreed standards on exchange of information for tax purposes:

- Exchange of Information on Request (EOIR)
- Automatic Exchange of Information (AEOI)

2.19 By being a member jurisdiction of the Global Forum, a commitment is given to implement the international standard on EOIR as well as to implement the new standard on AEOI.

2.20 Implementation of these international standards aides significantly in the fight against tax evasion, while encouraging greater international co-operation and enhanced transparency of corporate bodies, arrangements and financial information[3]. **Trinidad and Tobago has committed to implementation of both standards.**

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[2] OECD (2011), Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Trinidad and Tobago 2011: Phase 1: Legal and Regulatory Framework, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, https://doi.org/10.1787/9789264096936-en.

[3] Global Forum on Transparency and Exchange of Information for Tax Purposes, About the Global Forum : http://www.oecd.org/tax/transparency/about-the-global-forum/

2.21 In July 2016, the Global Forum presented to the G20 countries a list of countries that did not satisfactorily implement agreed international standards, which include those on EOIR and AEOI.

2.22 In order to avoid being placed on this list, jurisdictions were required to meet at least two (2) of the following three (3) benchmarks:

i. at least a "Largely Compliant" rating with respect to the Exchange Of Information on Request standard;
ii. a commitment to implement the Automatic Exchange Of Information standard, with first exchanges in 2018 (with respect to the year 2017) at the latest; and
iii. Participation in the Multilateral Convention on Mutual Administrative Assistance on Tax Matters or a sufficiently broad exchange network permitting both EOIR and AEOI[4].

2.20 Trinidad and Tobago has been identified, due to Trinidad and Tobago's failure to meet at least two (2) of the benchmarks, as *"the **only jurisdiction** which has not yet made sufficient progress towards satisfactory implementation of the tax transparency standards.*[5]*"*

Global Forum: Requirement for Compliance with the EOIR Standard

2.21 According to the 2016 Terms of Reference to monitor and review progress towards transparency and exchange of information on request for tax purposes:

"Exchange of information for tax purposes is effective when reliable information, foreseeably relevant to the tax requirements of a requesting jurisdiction is available, or can be made available, in a timely manner and there are legal mechanisms that enable the information to be obtained and exchanged.

It is helpful, therefore, to conceptualise transparency and exchange of information as embracing three basic components:

i. availability of information
ii. appropriate access to the information, and
iii. *the existence of exchange of information mechanisms.*[6]*"*

2.22 In the case of Trinidad and Tobago, discussions with a delegation from the Global Forum revealed that the compliance issues being experienced require amendments to the Income Tax legislation[7].

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[4] Global Forum on Transparency and Exchange of Information for Tax Purposes, "Strong progress seen on international tax transparency" http://www.oecd.org/tax/transparency/strong-progress-seen-on-international-tax-transparency.htm
[5] Global Forum Annual Report, 2017: http://www.oecd.org/tax/transparency/global-forum-annual-report-2017.pdf
[6] 2016 Terms Of Reference To Monitor And Review Progress Towards Transparency And Exchange Of Information On Request For Tax Purposes http://www.oecd.org/tax/transparency/about-the-global-forum/publications/terms-of-reference.pdf
[7] JSC Income Tax Hansard Record 2018.06.06

2.23 Additionally, the Committee noted that Trinidad and Tobago is required to do the following, within the specified timelines:

i. Trinidad and Tobago's Second Peer Review on Global Forum compliance was launched in June 2018. Trinidad and Tobago was required to complete a Second Peer Review Questionnaire by August 2018 which was submitted on time; and

ii. The Peer Review Questionnaire is to be followed by an Onsite Review to assess implementation of the Global Forum requirements. Trinidad and Tobago's Onsite Review was originally scheduled for November 2018. However, the Global Forum indicated that the Onsite Review could not take place in the absence of both the enacted legislative amendments and the completed Questionnaire. Therefore the November 2018 Onsite Review has been deferred to January 2019 pending enacted legislative amendments. To facilitate the onsite in January 2019, the legislation should be enacted by December 2018.

2.24 The Committee further noted the comments submitted by the Organisation for Economic Co-operation and Development on the Income Tax (Amendment) Bill, 2018 in September 2018 which required immediate attention. These comments are at **Appendix III**.

Money Laundering and Counter Terrorism

Background on Trinidad and Tobago's Standing concerning Money Laundering and Counter Terrorism

2.25 The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. The FATF is therefore a "policy-making body" which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas[8].

2.26 FATF has developed the *"Financial Action Task Force (FATF) Forty Recommendations and Eleven Immediate Outcomes"* which are aimed at combatting money laundering and the financing of terrorism and proliferation.

2.27 The Caribbean Financial Action Task Force (CFATF) is an organisation of states and territories of the Caribbean basin which have agreed to implement common counter-measures against money laundering and terrorism financing[9].

2.28 Through the conduct of mutual evaluations by groups of experts drawn primarily from within member states, CFATF assesses compliance with the FATF Recommendations.

[8] FAFT, About, Who we are: http://www.fatf-gafi.org/about/whoweare/

[9] Caribbean Financial Action Task Force: https://www.cfatf-gafic.org/

2.29 Trinidad and Tobago was assessed under the 4th Round of Mutual Evaluations conducted by CFATF and deemed to be non-compliant with the FATF Recommendation 40, which has led to deficiencies in realisation of Immediate Outcomes 2 and 6[10].

2.30 According to a Review of Trinidad And Tobago's Compliance with the FATF Recommendations and Methodology, *"The Mutual Evaluation Report (MER) spoke to deficiencies in Trinidad and Tobago's compliance with FATF Recommendation 40 for which we were rated Partially Compliant. These deficiencies specifically included the restriction placed by Section 4 of the Income Tax Act as there is no provision for income tax officials to exchange information with their foreign counter-parts in relation to Money Laundering, Terrorist Financing, predicate offences and tracing the proceeds and instrumentalities of crime. The MER identified that Section 4 led to deficiencies both in Immediate Outcomes 2 and 6, particularly impacting on the ability of the Financial Intelligence Unit to perform its core functions.[11]"*

Consequences of the non-passage of the Bill

2.31 At a public hearing held on November 28, 2018, the Ambassador, EU Delegation to Trinidad and Tobago indicated that the European Parliament discussed certain defensive measures based on the findings of the Financial Action Task Force (FATF), in which Trinidad and Tobago was placed on '*the list of countries considered high-risk with regard to money laundering and terrorism financing*'.

2.32 The Ambassador explained that the European Parliament has a delegated authority to follow the proceedings of the FATF and can initiate steps independent of international organisations such as the Global Forum and the FATF.

2.33 As such the following measures will be implemented if Trinidad and Tobago continues to be non-compliant with the requirements of the Global Forum and FATF:

i. defensive measures in non-tax areas linked to the use of the European Fund for Sustainable Development;
ii. defensive measures in tax areas which will include administrative measures such as:
    - reinforced monitoring of certain transactions;
    - enhanced due diligence from regulators for banks to conduct transactions;
    - increased audit risks for taxpayers using structures and arrangements in place in this jurisdiction;
    - mandatory disclosure by tax intermediaries; and
    - increased cost of doing business.

2.34 The Bankers Association of Trinidad and Tobago indicated that there may be special documentation requirements and loss of the products and services provided by correspondent

[10] Review Of Trinidad And Tobago's Compliance With The FATF Recommendations And Methodology, Office of the Chief Parliamentary Counsel
[11] Review Of Trinidad And Tobago's Compliance With The FATF Recommendations And Methodology, Office of the Chief Parliamentary Counsel

banks such as wire-transfers, foreign cash notes, letters of credit, standby letters of credit, access to capital, invalidity of credit cards.

2.34 Furthermore, during the public hearing held on Wednesday November 28, 2018 the Deputy Chairperson of NAMLC cautioned that if the Income Tax (Amendment) Bill, 2018 was not passed by November 30, 2018, and this would result in a downgrading of Trinidad and Tobago from a 'grey' list to a 'black' list. This in turn will result in measures meted out to Trinidad and Tobago by correspondent banks, some of which are highlighted at paragraph 2.33.

Stakeholder Comments on the Income Tax (Amendment) Bill, 2018

2.35 The Committee held its Second Meeting on Wednesday November 28, 2018, in public, at which the following stakeholders appeared[12]:

i. Delegation of the European Union to Trinidad and Tobago
ii. Bankers Association of Trinidad and Tobago
iii. National Anti-Money Laundering and Counter Financing of Terrorism Committee
iv. Board of Inland Revenue
v. Financial Intelligence Unit of Trinidad and Tobago
vi. Financial Investigation Branch of the Trinidad and Tobago Police Service
vii. American Chamber of Commerce of Trinidad and Tobago
viii. Trinidad and Tobago Chamber of Industry and Commerce
ix. Deputy Permanent Secretary, Ministry of Finance

2.36 Stakeholders expressed support for the Income Tax (Amendment) Bill, 2018 and indicated having no issues with the legislation.

2.37 The Committee noted that generally, the stakeholders had no significant concerns with the Bill. The following is a summary of the comments made by stakeholder representatives:

Stakeholder	Comments
Ambassador – EU Delegation to Trinidad and Tobago	- Discussed the process of compliance Trinidad and Tobago would need to undergo and the requirements that need to be met in order to be deemed compliant. - EU Ambassador explained the main driver behind the tax transparency standard and EU and Global interest in tax transparency. - Outlined the consequences of the non-passage of the Income Tax (Amendment) Bill.
Bankers Association of Trinidad and Tobago	- Outlined the consequences of the non-passage of the Bill. - No issue with the legislation.

[12] A complete list of persons who appeared before the Committee is at Appendix VII.

Stakeholder	Comments
	- Approved of the FATCA approach for the reciprocal exchange of information between competent authorities. - In support of the international requirement to dismantle secrecy provisions to allow for the reciprocal exchange of information. - In support of judicial oversight.
National Anti-Money Laundering and Counter Financing of Terrorism Committee	- Outlined the establishment, roles and functions of the Committee. - Indicated that the Bill has evolved from the deficiencies identified in the Mutual Evaluation Report of Trinidad and Tobago published in 2016. - Discussed the key areas that needed amendment namely; FIU requirements, forms of international co-operation across sectors including law enforcement and the effectiveness of the legislation. - Outlined the consequences of the non-passage of the Bill. - Outlined reporting deadline to CFAFT by November 30, 2018 on the status of Trinidad and Tobago's legislative amendments which includes the Income Tax (Amendment) Bill, 2018 and another reporting deadline of January 2019 for FATF.
Financial Intelligence Unit of Trinidad and Tobago	- Outlined the steps to become compliant. - Discussed consequences of non-compliance and non-passage of the Bill. - Outlined different types of suspicious transactions.
Financial Investigations Branch – TTPS	- Discussed the provisions of the Bill related to facilitating the TTPS greater access to information. - Outlined the positive consequences of the passage of the Bill as it relates to the completion of investigations related to financial crimes in a timelier manner.
Trinidad and Tobago Chamber of Industry and Commerce	- Endorsed the passage of the Income Tax (Amendment) Bill, 2018. - Discussed the negative impact on trade if the Bill is not passed particularly as it relates to the withdrawal of correspondent banking services to the commercial banking sector in Trinidad and Tobago.
Board of Inland Revenue	- Discussed the importance of the Bill as it relates to the operations of the BIR. - Discussed the production order (an Order from the Judge which allows the TTPS to approach BIR for information) as it relates to the Proceeds of Crime Act.

Stakeholder	Comments
	- Discussed the practicability/impracticability of elevating the request to come from the Commissioner of Police. - Discussed the deadline for the operationalisation of the Bill to meet Global Forum and FATF requirements. - Discussed the benefits to be derived by this jurisdiction from international tax information exchange and plugging the tax leakage gap - No issue with the Bill.
Ministry of Finance	- Discussed the importance of the Mutual Administrative Assistance Convention in Tax Matters (MAAC), which will allow the Inland Revenue Division and eighty-five counterpart tax authorities in other jurisdictions to share information. - Informed that the signing of MAAC is one of the recommendations made by the Global Forum for Trinidad and Tobago to become compliant. - Indicated that attempts were made to sign the MAAC, however it could not be signed until the secrecy provisions in the Income Tax Act were fixed, which is what the Income Tax (Amendment) Bill is seeking to address.
American Chamber of Commerce	- the fines relating to the breach of secrecy provisions were considered to be too low; - the provision of a standard of proof that a judge must be satisfied that there should be TTPS involvement; and - the need for judicial supervision. - the three Bills should be considered together. - the Bill was clear and unambiguous. - the Chamber would have no reservations with the Bill provided that items (i) to (iii) were addressed.
Ministry of Finance	- The signing of MAAC is one of the recommendations made by the Global Forum for Trinidad and Tobago to become compliant. - Attempts have been made to sign the MAAC, however it could not be signed until the secrecy provisions in the Income Tax Act were fixed which is what the Income Tax (Amendment) Bill is seeking to address. - The Mutual Administrative Assistance Convention in Tax Matters (MAAC) will allow the Inland Revenue Division and eighty-five counterpart tax authorities in other jurisdictions to share information.
EUROCHAMTT	- Received written submission from stakeholder at **Appendix IV**

Critical Issues Discussed in Clause by Clause examination of the Income Tax (Amendment) Bill, 2018

2.38 With the assistance of the technical team, the Committee did a Clause by Clause examination of the Bill which is detailed in the Minutes of the Second (2nd) Meeting (Appendix I). The Committee identified and discussed the following critical issues:

Clause 5:

- whether judicial scrutiny should be included.
- The standard of proof which should be applied in clause 5.
- Whether the standard of proof replicates the standard contained in the Proceeds of Crime Act, Chap. 11:27
- The interpretation of the words 'any written law' in relation to the Interpretation Act, Chap. 3:01.

Report

2.39 In accordance with Standing Order 114(1) of the House of Representatives your Committee wishes to report that it has completed its work.

Recommendation

2.40 The Committee recommends that the Parliament agree with its proposals for amendments to the Bill, attached at **Appendix V**. Your Committee further recommends that the House consider and adopt the **Income Tax (Amendment) Bill, 2018**, as amended.

2.41 For ease of consideration, a consolidated version of the **amended Income Tax (Amendment) Bill, 2018** is attached at **Appendix VI** and a consolidated version of the **Income Tax Act Chap 75:01** (inclusive of consequential amendments) is attached at **Appendix VII**.

Respectfully submitted,

Sgd
Mr. Colm Imbert, MP
Chairman
November 30, 2018

Appendix I- Minutes and Verbatim

SPECIAL SELECT COMMITTEE ON THE INCOME TAX (AMENDMENT) BILL, 2018

MINUTES OF THE FIRST MEETING HELD IN THE A.N.R. ROBINSON MEETING ROOM (WEST), LEVEL 9, OFFICE OF THE PARLIAMENT, TOWER D, IWFC, #1A WRIGHTSON ROAD, PORT-OF-SPAIN ON MONDAY NOVEMBER 26, 2018 AT 4:30 P.M.

PRESENT

Mrs. Bridgid Annisette-George, MP	-	Speaker of the House
Committee Members		
Mr. Colm Imbert, MP	-	Member
Mr. Faris Al-Rawi, MP	-	Member
Mr. Fitzgerald Hinds, MP	-	Member
Mr. Randall Mitchell, MP	-	Member
Secretariat		
Ms. Simone Yallery	-	Secretary
Ms. Keiba Jacob	-	Assistant Secretary
Ms. Kimberly Mitchell	-	Assistant Secretary

COMMENCEMENT

1.1 The meeting was called to order by the Speaker of the House at 4:35 p.m.

ANNOUNCEMENTS BY THE SPEAKER

2.1 The Speaker informed Members that Ms. Simone Yallery would serve the Committee as Secretary, and Ms. Keiba Jacob and Ms. Kimberly Mitchell would serve as Assistant Secretaries.

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. Faris Al-Rawi nominated Mr. Colm Imbert for the chairmanship and this nomination was seconded by Mr. Fitzgerald Hinds.

3.3 There being no further nominations, Mr. Colm Imbert was declared Chairman. The Speaker wished the Members productive and co-operative deliberations. Mr. Colm Imbert was invited to take the Chair.

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

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

QUORUM

4.1 The Chairman advised that the Committee is required to establish a quorum in accordance with Standing Order 112(5) of the House of Representatives:

> *"Unless the House (or Senate) otherwise directs a quorum shall be three (3) Members. In ascertaining whether there is a quorum present, the Member in the Chair shall not be excluded."*

4.2 The Chairman recommended a quorum of three (3) Members inclusive of the Member in the Chair. The Committee agreed.

TERMS OF REFERENCE

5.1 The Chairman reminded Members of the Committee's mandate:

iii. to consider and report on a Bill entitled "The Income Tax (Amendment) Bill, 2018"; and

iv. to report by Friday November 30, 2018.

5.2 The Chairman referred Members to Standing Order 69(1) of the House of Representatives on the procedure in a Select Committee after Second Reading:

> *"any Committee to which a Bill is committed after second reading shall not discuss the general merits and principles of the Bill but only its details."*

DISCUSSION ON THE WAY FORWARD

6.1 The Chairman reminded Members of the following documents which were circulated with the Notice of the Meeting:

- Income Tax (Amendment) Bill, 2018 (as adopted by the HOR on November 02, 2018);
- Report of the JSC Income Tax (Amendment) Bill, 2018;
- Matrix of Amendments and Explanations on the Income Tax (Amendment) Bill, 2018; and
- Review of Trinidad and Tobago's compliance with FATF Recommendations and Methodology.

6.2 The Chairman proposed and Members agreed that the Second Meeting of the Committee be held on Wednesday November 28, 2018 at 1:30 p.m. (in camera) and 2:00 p.m. (in public) with the following stakeholders:

- The Bankers Association of Trinidad and Tobago;
- National Anti-Money Laundering Committee;
- Board of Inland Revenue;
- Financial Intelligence Unit of Trinidad and Tobago;
- Financial Investigations Branch – Trinidad and Tobago Police Service;
- American Chamber of Commerce of Trinidad and Tobago;
- Trinidad and Tobago Chamber of Industry and Commerce;
- EurochamTT; and
- Delegation of the European Union to Trinidad and Tobago.

6.3 The Committee requested the following information from the Chief Parliamentary Counsel to be submitted no later than 4:00 p.m. on Tuesday November 27, 2018:

i. to identify the clauses in the Income Tax (Amendment) Bill, 2018 which require a special majority and to provide the reasons why the clauses identified require a special majority;
ii. the reasons for going with a Special Majority Bill instead of a simple majority Bill; and
iii. to modify the Matrix on the Income Tax (Amendment) Bill, 2018 document to reflect the requested information.

Other Matters:

6.4 The Chairman invited nominations for Vice-Chairman. Mr. Randall Mitchell nominated Mr. Faris Al-Rawi for the vice-chairmanship and this nomination was seconded by Mr. Fitzgerald Hinds.

6.5 There being no further nominations, Mr. Faris Al-Rawi was declared Vice-Chairman.

ADJOURNMENT

7.1 There being no other business, the Chairman thanked Members and adjourned the meeting to Wednesday November 28, 2018 at 1:30 p.m.

7.2 The adjournment was taken at 4:49 p.m.

I certify that these minutes are true and correct.

Chairman

Secretary

November 27, 2018

SPECIAL SELECT COMMITTEE ON THE INCOME TAX (AMENDMENT) BILL, 2018

MINUTES OF THE SECOND MEETING HELD IN THE A.N.R. ROBINSON MEETING ROOM (WEST), LEVEL 9, OFFICE OF THE PARLIAMENT, TOWER D, IWFC, #1A WRIGHTSON ROAD, PORT-OF-SPAIN ON WEDNESDAY NOVEMBER 28, 2018 AT 1:30 P.M.

PRESENT

Committee Members

Mr. Colm Imbert, MP	-	Chairman
Mr. Faris Al-Rawi, MP	-	Member
Mr. Fitzgerald Hinds, MP	-	Member
Mr. Randall Mitchell, MP	-	Member

Secretariat

Ms. Simone Yallery	-	Secretary
Ms. Keiba Jacob	-	Assistant Secretary
Ms. Kimberly Mitchell	-	Assistant Secretary

COMMENCEMENT

1.1 The meeting was called to order at 1:41p.m.

CONFIRMATION OF MINUTES OF THE FIRST MEETING

2.1 The Committee examined the Minutes of the First Meeting held on Monday November 26, 2018.

2.2 There being no further corrections, the motion for the confirmation of the minutes was moved by Mr. Fitzgerald Hinds and seconded by Mr. Randall Mitchell.

PRE-HEARING DISCUSSIONS

4.1 The Chairman advised Members that representatives from following stakeholders were present to appear before the Committee to share comments on the Bill:

- xi. The Bankers Association of Trinidad and Tobago;
- xii. National Anti-Money Laundering Committee;
- xiii. Inland Revenue Division;
- xiv. Financial Intelligence Unit of Trinidad and Tobago;
- xv. Financial Investigation Branch – Trinidad and Tobago Police Service;
- xvi. American Chamber of Commerce of Trinidad and Tobago;

xvii. Trinidad and Tobago Chamber of Industry and Commerce;
xviii. Delegation of the European Union to Trinidad and Tobago; and
xix. Ministry of Finance.

4.2 The Chairman also informed Members that the European Business Chamber in Trinidad and Tobago (EUROCHAMTT) communicated its inability to appear before the Committee however gave the undertaking to provide a written submission.

4.2 The Committee engaged in brief discussions on the approach to be employed during the hearing with various representatives.

4.3 The meeting was suspended at 1:52 p.m.

PUBLIC HEARING

5.1 The meeting resumed in public at 2:07 p.m.

5.2 The following stakeholders appeared before the Committee:
i. Ambassador, Delegation of the European Union to Trinidad and Tobago;
ii. The Bankers Association of Trinidad and Tobago;
iii. National Anti-Money Laundering Committee;
iv. Inland Revenue Division;
v. Financial Intelligence Unit of Trinidad and Tobago;
vi. Financial Investigation Branch – Trinidad and Tobago Police Service;
vii. American Chamber of Commerce of Trinidad and Tobago;
viii. Trinidad and Tobago Chamber of Industry and Commerce; and
ix. Ministry of Finance.

5.3 The issues discussed during the meeting included the concerns and implications which would result from the failure to pass the Income Tax (Amendment) Bill, 2018. Further details of stakeholder comments may be found in the Verbatim Notes of the public hearing.

5.4 The public meeting ended at 4:56 p.m.

CLAUSE BY CLAUSE CONSIDERATION OF THE BILL

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

6.1 The meeting reconvened at 5.05 p.m.

6.2 The Chairman welcomed the technocrats.

6.3 Representing the Office of the Chief Parliamentary Counsel were:

Ms. Lorraine John - Deputy Chief Parliamentary Counsel (Ag.)

Ms. Megan Doyle - Parliamentary Counsel II (Ag.)

6.4 The clause by clause consideration of the Bill proceeded as outlined in **Appendix I** to these Minutes.

6.5 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

7.1 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

8.1 The Secretariat circulated to the Committee, EUROCHAMTT's submission dated November 28, 2018.

ADJOURNMENT

9.1 There being no other business, the Chairman thanked Members and adjourned the meeting.

9.2 The adjournment was taken at 5:27 p.m.

I certify that these Minutes are true and correct.

Chairman

Secretary

November 29, 2018

Appendix I

Clause	Marginal Note	Issues Raised/Amendment Proposed	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	In paragraph (a) (ii) – (a) in proposed subsection (5) – (i) insert after the words "disclose to the" the words "individual or"; and (ii) insert after the words "entity and the" the words "individual or"; (b) in proposed subsection (6) – (i) delete paragraph (b) and substitute the following paragraph: " (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, where such information is required for Chap. 11:11	**Agreed**

Clause	Marginal Note	Issues Raised/Amendment Proposed	Decision Taken
		the purpose of investigating whether an offence- (i) under the Proceeds of Crime Act; (ii) under the Anti-Terrorism Act; (iii) under the Prevention of Corruption Act; or (iv) involving fraud or dishonesty; has been committed, may have been committed, or the identity of the person who may have committed such an offence; and"; and (ii) insert after subsection (6), the following subsection: " (6A) A member of the police service under subsection (6) who is conducting a financial investigation or investigating an offence under subsection (6)(b) shall apply to the Court *ex parte* and without notice, for an order directing the Board to disclose such taxpayer	

Clause	Marginal Note	Issues Raised/Amendment Proposed	Decision Taken
		information as the Court thinks fit."; and (c) in proposed subsection (8) – (i) delete the words "Notwithstanding subsection (6), where" and substitute the words "Where"; and (ii) insert after the word "agreement" the words "for the exchange of information in relation to taxes".	
6	New sections 4A to 4D	A. In proposed section 4B – (a) "delete the words" "4(6)(a) and (b)" and substitute the words "4(6)"; (b) in paragraph (c) by deleting – (i) the words "of collection" and substituting the words "for which it was collected"; and (ii) the words "taxpayer" and substituting the word "Board"; B. In proposed section 4C delete the words "or 4A"; C. In proposed section 4D in the definition of "taxpayer information" by inserting after the word after the word "individual" the words "entity or legal arrangement".	**Agreed.**
7	Section 93 amended	Insert after the words "section 93" the words "(1)".	**Agreed**
8	Section 93A inserted	In proposed section 93A –	**Agreed**

Clause	Marginal Note	Issues Raised/Amendment Proposed	Decision Taken
		(a) in subsections (2) and (3), insert after the word "individual" the words ", entity or legal arrangement"; and (b) in subsection (5) – (i) in paragraph (a), delete the words "one hundred" and substitute the words " three hundred"; and (ii) in paragraph (b), delete the words "one hundred and fifty" and substitute the words "five hundred".	
9	Section 117 amended	None	**Agreed**
10	Section 117A amended	Delete the word ", other".	**Agreed**

VERBATIM NOTES OF THE SECOND MEETING OF THE SPECIAL 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, HELD IN THE ANR ROBINSON MEETING ROOM (WEST), (IN CAMERA) AND ANR ROBINSON MEETING ROOM (EAST), LEVEL 9, (IN PUBLIC), OFFICE OF THE PARLIAMENT, TOWER D, THE PORT OF SPAIN INTERNATIONAL WATERFRONT CENTRE, #1A WRIGHTSON ROAD, PORT OF SPAIN, ON WEDNESDAY, NOVEMBER 28, 2018 AT 2.07 P.M.

PRESENT

Mr. Colm Imbert	Chairman
Mr. Faris Al-Rawi	Member
Mr. Fitzgerald Hinds	Member
Mr. Randall Mitchell	Member
Ms. Simone Yallery	Secretary
Ms. Kimberly Mitchell	Assistant Secretary
Ms. Keiba Jacob	Assistant Secretary

DELEGATION OF THE EUROPEAN UNION TO TRINIDAD AND TOBAGO

His Excellency Arend Biesebroek	Ambassador

Mr. Chairman: Good afternoon. Your Excellency Arend Biesebroek, you are the Ambassador of the Delegation of the European Union to Trinidad and Tobago. I am formally reconvening the Special Select Committee meeting set up to exam the Income Tax (Amdt.) Bill, 2018 and to report back to the Parliament—we have a very tight deadline—to report back to the Parliament on Friday of this week.

This hearing is being broadcast live on the Parliament Channel 11, and on the Parliament Radio 105.5 FM and the Parliament's YouTube Channel, *ParlView*.

May I introduce the Members of the Committee, Mr. Fitzgerald Hinds, MP, Member; Mr. Faris Al-Rawi, MP, Member; myself as Chairman, Colm Imbert, MP; and Mr. Randall Mitchell, MP, Member.

Have you, Ambassador, been able to look at the legislation in terms of what we are seeking to achieve?

His Excellency Biesebroek: Thank you, hon. Minister. Yes indeed I received the piece of legislation. I have read through it. I need to say that on the technical merits of the piece of legislation, I would have to consult with the Code of Conduct Group or the DG TAGUD of the European Commission to assess the details; the technical merits it is up to the Code of Conduct Group to assess.

Mr. Chairman: Perhaps, Attorney General, you want to lead off?

Mr. Al-Rawi: Yes, Please. Welcome, Your Excellency, to this Special Select Committee. Before us is an exercise of consultation and addressing some of the issues that our country wants some clarification on as we proceed. May I just ask, perhaps by way of question and answer, that we proceed along a path of just leading some information? Maybe it would be easier if I were to ask you to direct questions and ask you to respond to the issues.

So, Ambassador, are you aware that the Global Forum has been in a working session with Trinidad and Tobago?

His Excellency Biesebroek: I have not been formally informed of the method, but I understand that this is work in progress. But I am not privy of the details of the discussions that have been taking place recently.

Mr. Al-Rawi: Of course. Would you assist us by leading us through the process of compliance from your perspective as the Ambassador for the European Union in identifying what you need us to be aware of in terms of process, steps, to treat with compliant issues? Perhaps you may wish to explain what compliance is required, and what the steps along that way include?

His Excellency Biesebroek: Yes, hon. Minister. For the European Union to—the

European Union has been corresponding with the Government of Trinidad and Tobago since mid-2017, I think, directly with the Ministry of Finance, with the Minister at a certain point in time. We have also been engaging with the Embassy of Trinidad and Tobago in Brussels to discuss the criteria for compliance under the EU.

The European Union has identified a number of criteria that, in the process, Trinidad and Tobago has committed to comply with, and in the most recent exchange of correspondence, the Code of Conduct Group, which is, by the way, a group of the Member States of the European Union, it is not the institutions, but it is the Member States that follow this process, had identified three remaining criteria that needed to be addressed. And I think the first one is to become largely compliant with the requirements of the OECD Global Forum on transparency and tax exchange.

The second criterion that was identified was to sign a multi-national agreement on automatic exchange of tax information and the third criterion would be the elimination of harmful tax practices.

Mr. Al-Rawi: Thank you, Ambassador. Could you please assist us in explaining the manner in which this approach is intended to happen? Is it something that is done in a phased operational step, or is it something that is done in one fell swoop?

His Excellency Biesebroek: The situation is that Trinidad and Tobago was listed in December 2017 as non-compliant and the process is that the country can be delisted provided that the country makes sufficient progress in meeting the requirements to become compliant. And as I mentioned, the three elements that are being discussed are precisely to become largely compliant with the Global Forum, and the two other remaining elements, which is the signatory of the multinational agreement on tax exchange and harmful tax practices.

Mr. Al-Rawi: Ambassador, thank you. In describing it that we must make progress, could you please inform as to how often that progress is monitored, and where it is monitored and by whom?

His Excellency Biesebroek: Yes, well the progress is monitored on a regular basis. So in as far as the European Union is concerned, there are no specific deadlines that are set because you are already listed. So, the question is that the moment Trinidad and Tobago thinks it has made sufficient progress and can meet the additional requirements, it is committed to meet the additional requirements, they can request the Code of Conduct Group, which is again the Member States at the Council to the European Union, to proceed with delistment. And then, the Code of Conduct Group will then assess the proposals, the progress that is made, and the commitments that will be made on its technical merits.

Mr. Al-Rawi: So, Ambassador, the Code of Conduct Group looks at the progress of countries, and in our case Trinidad and Tobago, as it relates to two entities, as far as I am aware. One is the progress that you have made on the Global Forum track, which is not what the European Union itself in the Code of Conduct does. The Code of Conduct observes what the Global Forum process is in another arena. And it also observes the process of countries, and Trinidad and Tobago specifically, in the FATF progression.

Are you aware and can you speak to the particulars of how progress moves in either Global Forum, or FATF, or is that something outside of your purview?

His Excellency Biesebroek: For the review for tax purposes for the non-cooperative tax jurisdictions the process is outlined. The moment you feel that you have made sufficient progress, and you are ready to make additional commitments in order to meet the requirements that the European Union has identified the EU, the Code of Conduct Group is ready to assess the proposals.

Mr. Al-Rawi: Does the EU take notice of the publications made by the Global Forum and the FATF?

His Excellency Biesebroek: Clearly those are elements that are taken into account when the EU is making assessments.

Mr. Al-Rawi: Are you aware that the Plenary Sessions for the Global Forum and for the FATF happen on periodical basis?

His Excellency Biesebroek: Yes, I am aware of that.

Mr. Al-Rawi: Are you aware that the Global Forum Plenary Session for consideration of Trinidad and Tobago's issue was held in Uruguay held on the 20^{th} to 22^{nd} of November?

His Excellency Biesebroek: I was not aware of that, but I understand that indeed it took place, yes.

Mr. Al-Rawi: Are you aware that the FATF, the Financial Action Task Force, held its Plenary Session in October of 2018?

His Excellency Biesebroek: No, I am not aware of the proceedings of that FATF at this particular point in time.

Mr. Al-Rawi: Okay. Could you tell us whether Trinidad and Tobago has been listed negatively, blacklisted, on the basis of having appeared on the FATF, the Financial Action Task Force, ICRG publication, that is, the International Co-operation Review Group of the Financial Action Task Force? Are you aware and can you tell us whether the European Union has blacklisted Trinidad and Tobago on the basis that is has appeared on that document published?

His Excellency Biesebroek: Trinidad and Tobago was listed on the list of countries that were considered high-risk with regard to money laundering and terrorism financing. That is indeed the case and that was done based on the findings of the FATF. They were published at the time. Correct.

Mr. Al-Rawi: Thank you. So you have thankfully confirmed that we were listed on the back of the publications by the FATF?

His Excellency Biesebroek: Yes, at the time and there were discussions in the European Parliament. The situation was that this was what they called a delegated authority—delegated power of the European Commission to follow the outcome of the proceedings of the FATF. What they are doing now is they are installing their own assessment procedure, looking at the FATF requirements, but also looking at some additional elements.

Mr. Al-Rawi: So, is it true to say then that the European Union, the Council of Europe, takes steps independent of international organizations such as the Global Forum and the FATF, and it does so on the basis of publications coming from those entities amongst other things?

His Excellency Biesebroek: That is correct. But they will make additional assessment of the situation.

Mr. Al-Rawi: Are you aware that Trinidad and Tobago wrote to the European Parliament indicating its position on the blacklisting by the Council of Europe?

His Excellency Biesebroek: I have not seen that correspondence.

Mr. Al-Rawi: Okay, well I can inform you that Ambassador Connelly in fact presented a statement to the European Parliament and to the Council indicating Trinidad and Tobago's position that it was in high level commitment and compliance to working its process out, and that it asked the European Parliament to take notice of the fact that Trinidad and Tobago was working on its progress. So I just wanted to get those parameters from you, so I am just giving you that information.

Could I ask you a few further questions? You spoke about three criterion that the Code of Conduct Group looks at: becoming largely compliant with the OECD, Global Forum and tax transparency measures; secondly, signing on to the multilateral agreements; and thirdly, making sure that there was an elimination of harmful tax practices.

Could you assist me in identifying, with respect to each of these, what—well let me put it to you this way. Are you aware as to whether Trinidad and Tobago has in fact signed any treaties with other countries that would comply with the tax exchange information aspects?

His Excellency Biesebroek: No, I am not aware of that. I have not been given additional information about progress that was made since the early exchange of correspondence that ended with a letter that was sent by the Code of Conduct Group to the hon. Minister in February 2018.

Mr. Al-Rawi: Would it be correct to say that the correct entity to speak to that would be the Global Forum?

His Excellency Biesebroek: Well, I think they are parallel processes. I think it is very important indeed to speak with the Global Forum. As I mentioned, one of the criteria it uses for the European Union is for Trinidad and Tobago to become largely compliant with the Global Forum. So that is indeed correct.

But in addition, there is the parallel process or the subsequent process of the assessment that takes place by the European Union, where they also look at some of the additional criteria, and that is the code of Code of Conduct Group that is assessing the progress and commitments and measures adopted.

I think it is important also that Trinidad and Tobago engages with the Code of Conduct Group in that regard.

Mr. Al-Rawi: With respect to the elimination of harmful tax practices as one of the three issues, could you assist in explaining what that refers to? Is it reference to the base erosion and harmful tax practices, what people commonly refer to as the BEPS issue?

His Excellency Biesebroek: I understand that to be the case and there was an element of free zones, a treatment which is probably linked to the BEPS situation. Yes.

Mr. Al-Rawi: And with respect to tax transparency which is in the first issue in Trinidad and Tobago needing to become largely compliant with tax transparency, does the European Union have a point of view as to what tax transparency is?

His Excellency Biesebroek: Yes the European Union has a clear idea, I think, about what tax transparency is, yes.

Mr. Al-Rawi: Is that the elimination of secrecy provisions?

His Excellency Biesebroek: I do not know. I am not a technician dealing with the technical elements of the tax exchange information criteria. I think the detailed questions need to be discussed with the Code of Conduct Group which is composed of the financial attachés of the Member States and colleagues from the European Commission working with the Directorate General for Taxation.

Mr. Chairman: Let me come in here. Ambassador, if Trinidad and Tobago continues to be noncompliant or continues to be on the list of non-cooperative jurisdictions for tax purposes, what are the repercussions of that?

His Excellency Biesebroek: If you look at the Council conclusions that were adopted in December 2017, a number of defensive measures have been specified, and some relate to defensive measures in non-tax areas which are linked to the use of the European Fund for Sustainable Development, but also looking at defensive measures in tax areas. And, the Member States—the Council agreed that to ensure coordinated action, the Member States should apply at least one of the following administrative measures in tax area: reinforce monitoring of certain transactions, increase audit risks for taxpayers benefiting from the regimes at stake, increase audit risks for taxpayers using structures or arrangements involving this jurisdiction.

And then without prejudice to these measures that could be taken in the spheres of competence of the Member States, additional defensive measures of legislative nature in tax area could be applied by the Member States and they list the number: non-deductibility of cost, control foreign company rules, withholding tax measures, limitation of participation exemption, switch over rule, reverse of the burden of proof, special documentation requirements, and mandatory disclosure by tax intermediaries, or specific tax schemes with respect to cross-border arrangements.

2.25 p.m.

So there are a number of measures that the Member States could adopt if they choose to do so. In addition, they are expected to adopt one of the three measures that I mentioned at the beginning.

Mr. Chairman: Would you describe those repercussions as serious?

Mr. Biesebroek: I think over time they could become serious because I think they could increase the cost of doing business.

Mr. Chairman: Would it lead to the loss of correspondent banking, de-risking, and so on?

Mr. Biesebroek: That might eventually be one of the consequences.

Mr. Hinds: Ambassador, no doubt part of your responsibility in Trinidad and Tobago is to increase trade with the European Union.

Mr. Biesebroek: Correct.

Mr. Hinds: How would this delisting or de-risking affect our relationship with the European Union, in particular as it relates to trading?

Mr. Biesebroek: I think delisting would certainly be helpful because it would facilitate financial transactions and avoid any of the defensive measures that I mentioned, so that it would be beneficial for the trade relationship. Not adopting the measures may make it more difficult for businesses to do—for enterprises, rather, to do business with Europe. It would make it more difficult for the banking sector to do business.

Mr. Al-Rawi: Would it not be true to say, Your Excellency, that if Trinidad and Tobago remained non-compliant and did not demonstrate progression in taking itself out of non-compliance that the banking sector in the European basin would have extreme difficulties in conducting any transactions with us? How does one conduct a transaction under a blacklist and enhanced due diligence?

Mr. Biesebroek: Well, I do not think that—if you look at the measures that are being requested the idea is to stop the transactions, but they ask for more due diligence, more audits. So basically it becomes more work for the bank to carry out the transactions because they need it to provide the guarantees that they do proper transactions.

Mr. Chairman: Allow me to come here. There was a parallel problem in the United States when we were moving towards becoming compliant with their FATCA legislation, where banks, American banks, and American financial institutions, just decided it was not worth the trouble doing business with Trinidad and Tobago, because of the increased due diligence the increased compliance requirements became expensive, it became tedious, and difficult for them, and they just stopped doing business with Trinidad citizens and Trinidad banks. Because of this increased burden that comes on financial institutions in the EU as a result of us being on this list of non-cooperative jurisdictions, do you see that being a possibility that European banks will say, look, this is too much trouble, this is too much due diligence, I cannot be bothered. I would go and do business with China, or—well, maybe that is a bad example—but some other country.

Mr. Biesebroek: I think it would be very difficult for me to speculate about the "reasonings" that the banks would make. I think the banking sector, probably here in Trinidad and Tobago, would be better placed to provide that feedback. I do not know. I—

Mr. Chairman: Sure. They are coming next.

Mr. Biesebroek: It is clear that they are required to do additional checks and balances audits, so clearly that makes the business more difficult.

Mr. Chairman: Sorry, Minister Mitchell.

Mr. Mitchell: Thank you. Ambassador, just one question. I just want to back up a little bit. So the EU and their position in the Global Forum, they are very interested in the free exchange of tax information and transparency as it relates to tax, in particular, the tax avoidance and tax evasion problem. Why is that so important to the EU, and why is that so important worldwide now to treat with that problem?

Mr. Biesebroek: I think what you mentioned is not just important for Europe, it is important for any country to ensure that its citizens, its taxpayers, indeed declare their income and pay the right amount of taxes over their income. And I think, as the Panama Papers have shown, it does not always happen, so the better transparency exists, and the better countries exchange information with each other over the income that citizens of the other country may have collected in the country concerned, the patronage, because it ensures that the taxes are paid when they are due.

Mr. Mitchell: So for a small jurisdiction like ours, I mean you have been here for some time now, where we would have experienced a sharp decline in oil revenues, is it your opinion that it would be a tremendous benefit for our jurisdiction, our Government, our tax collection agencies, if we were to also have that agreement for the exchange of information with—tax information with other jurisdictions in terms of persons who may be avoiding or evading taxes here in our jurisdiction?

Mr. Al-Rawi: Ambassador, just a further question from me, does the European Union have any form of assistance in terms of jurisdictions that remain in this noncompliant state? Are there any programmes that the European Union is engaged in currently or intends to engage in, in this regard?

Mr. Biesebroek: Yes. Well, first of all we try to engage with the countries concerned. There was a workshop that was organized here in Trinidad and Tobago a number of months ago, together with the other Caribbean countries, to explain the process to the Ministries of Finance of the different Caribbean countries. Caricom has recently agreed on a programme to be financed under the European Development Fund, managed by our regional delegation in Barbados that would provide—well that can provide assistance to the countries that would want, or would need support in order the become compliant. So, yes, the programme is coming up. I think the decision was taken recently, and in addition to that we are open to look at needs on another basis where they are formulated by the countries concerned. So whenever Trinidad and Tobago has a specific need in becoming compliant in one of the other areas, we are happy to look at that.

Mr. Chairman: Thank you very much, Your Excellency. I think that is sufficient for the day, and thank you very much for attending this live hearing on this Income Tax (Amdt.) Bill, and we welcome your offer of assistance.

Mr. Biesebroek: Thank you. Thank you very much.

OFFICIALS OF BANKERS ASSOCIATION

OF TRINIDAD AND TOBAGO

Mr. Joel Chadha	Chair BATT Legal Committee
Mr. Baldath Ramkissoon	Chair BATT FOREX Committee
Ms. Charlotte Bellemare	Chair BATT Compliance Committee
Ms. Susan Williams	Chief Compliance Officer, RBL

OFFICIAL OF REPUBLIC BANK

Ms. Karen Yip Chuck

Mr. Chairman: Good afternoon. I understand you are the representatives of the Bankers Association, legal and compliance, among other things. I was told by the president this morning, we had a discussion about something else, this is of the Bankers Association. We are live on the Parliament Channel, Channel 11, and the Parliament radio station, 105.5, and the Parliament YouTube channel. Perhaps you may wish to introduce yourself and identify a leader of the team.

Ms. Yip Chuck: Well, I will introduce the team. Republic Bank is the sitting president of BATT, and therefore a lot of the chairpersons of the different subcommittees are Republic Bank representatives.

[*Introductions made*]

I am actually not on the BATT committee, but I am with Republic and also representing the Chamber, which I would speak on later.

Mr. Chairman: We have just completed an interview with the European Commission delegate and now we have the Bankers Association. I would like to go straight into it. What would happen if we are unable to pass this Income Tax (Amdt.) Bill? Could you try and put it into layman's language so people would understand what would happen?

Mr. Ramkissoon: Thank you, Chair. De-risking is a phenomenon that has been engaging our attention for several years. The Caribbean region has been a region classified as one of high-risk for various reasons, and as a result of that, the region has been prone to the phenomenon of de-risking by correspondent banks. In simple terms, what it really means is that the range of products and services that are offered to a bank, for instance in Trinidad and Tobago, really the banks become precluded from that. So, for instance, if we think of a business sending out a wire to settle with their supplier, or for instance, foreign cash notes, these are services that are provided by correspondent banks. Businesses, for instance, for trading purposes, would require for instance the traditional trade financial instruments, letters of credit, standby letters of credit. The banks themselves, for instance, for foreign currency funding can tap into correspondent bank lines for funding for various reasons. So these are an idea of some of the range of products and services that corresponding banks provide to responding banks like ourselves. We do use correspondent banking partners because we do not have physical operations in jurisdictions outside of Trinidad and Tobago to make the financial services available. We therefore need partners. If, therefore, we do not have these financial partners on the correspondent banks, it therefore means that these are services and products that are no longer going to be available, and it would therefore really have a very negative impact for banks to be able to execute and to provide the type of services that are required for us. And that has wide-ranging consequences, including, at a national level, the ability to really pin down or impact negatively on the country's wealth or gross domestic product.

Mr. Chairman: Attorney General.

Mr. Al-Rawi: Perhaps your Chair of Legal, Mr. Chadha, and welcome to you all, could give us some perspective on the legislation? Have you had a view of this Income Tax (Amdt.) Bill? If so, what is your view? Do you have concerns in relation to the Bill?

Mr. Chadha: Good afternoon, everyone. We have had a preliminary look at the last draft that was circulated. I think, you know, from where we are sitting, at the end of the day this is something that has to be sorted for the reasons just ventilated. In terms of the actual legislation, I do not think we are that far away, and I understand there are concerns on both sides, what the Opposition has ventilated and what yourselves have put forward. I actually think, you know, we are down to a couple of specific areas which has been circulated to the wider party, and at least from where we are sitting, we think this is something that can be agreed on fairly quickly. I mean, I do not see any particular obstruction to getting this done in an expeditious time.

Mr. Al-Rawi: Thank you. So let us dive into the issue directly; what is the issue? So the Bill is 10 clauses long. Could you assist us because we have been trying to get to the crux of what is in fact an issue as a Committee, and certainly as a Parliament. What does the Bankers Association, and in particular the legal committee, view as being an issue and what is the potential prescription to solve that?

Mr. Chadha: I mean, I think a lot of it came down to the secrecy of one's tax affairs, and I think that was in the response provided recently. I think that was, from our perspective, that was addressed where the amendment was made—

Mr. Chairman: You are speaking about the sharing of tax information with these other jurisdictions—

Mr. Chadha: Correct.

Mr. Chairman:—and we have to get around the current secrecy provision in the Income Tax Act to allow the sharing of tax information.

Mr. Chadha: That is correct.

Mr. Al-Rawi: Perhaps I could ask a few questions, maybe to be a little bit more pointed. What is the bank's position in relation to the sharing of tax information with foreign jurisdictions, other tax entities, competent authorities in other jurisdictions? What is the bank's position—the banker's position in relation to that?

Mr. Chadha: Once there is legislative reform to provide for that, we do not have an issue, as was the case with FATCA.

Mr. Al-Rawi: Right.

Mr. Chadha: Remember that was one of the biggest issues that—

Mr. Al-Rawi: So you approve of the FATCA approach for the reciprocal exchange of information, taxpaying information between competent authorities?

Mr. Chadha: Yes, absolutely.

Mr. Al-Rawi: Great. Secondly, what is the Bankers' view in relation to the international requirements that say from FATF, Financial Action Task Force and Global Forum, that you must dismantle your secrecy provisions to allow for that exchange?

Mr. Chadha: We are in support of that, especially with regard to the new provisions which were put forward whereby, for example, it was done by way of a High Court Order, then we would have no issue in such a regard.

Mr. Chairman: You are referring to the judicial oversight—

Mr. Chadha: Correct.

Mr. Chairman:—when a police officer would seek to get access to tax information, no problem. What I would like—and you are in support of that, judicial oversight?

Mr. Chadha: Yes.

Mr. Chairman: What I would like you all to do for us, could you give us some examples of transactions that may no longer be possible? And let me just throw out some. You spoke about wire transfers. This would be to pay for goods and materials, and so on? This may no longer be possible. What about credit cards? Could it affect credit cards?

Mr. Chadha: Absolutely.

Mr. Chairman: So your credit cards may no longer be valid?

Mr. Chadha: Yeah. But there is a whole suite of products that the correspondent banks—

Mr. Chairman: Well, let us hear.

Mr. Chadha: Sure. So I am just going to pass it on to—

Mr. Chairman: I think the public—the reason why we are having a live hearing, we want the public to know what would happen to them if this legislation is not passed.

Mr. Ramkissoon: Sure. And perhaps, maybe what I can do is start at the beginning. Really of a working capital cycle, a business needs to—whatever material, their international supplier wishes to have some guaranteed form of payments, and therefore your standard letter of credit, a confirmed letter of credit is required. This would be, for instance, one example of a product that would no longer be available because it is the International Bank that really provides these guarantees. So the business is impacted right away in terms of the access for capital. Let us say we get past that hurdle, now the business has exported, and the business, or the local manufacturer has to actually be repaid.

Mr. Chairman: He wants to get paid?

Mr. Ramkissoon: Yes.

Mr. Chairman: Right.

Mr. Ramkissoon: The wire that is supposed to be coming into his account will be impacted because you do not have a correspondent banking relationship.

Mr. Chairman: So he cannot get paid?

Mr. Ramkissoon: Correct. And of course that will have a very negative impact. Credit cards are also an example, because when we think of it, behind the background in a credit card you really have the banks that are settling, including our correspondent banks, and of course if we do not have the privilege of the services of our correspondent banks, then really the ability to settle on your credit card also becomes impacted. For the travel period we all need to have some cash in our hands for safety, et cetera, for tipping, et cetera. Cash notes are a service that is provided by correspondent banks. And of course—

Mr. Chairman: I would like you to clarify that. A lot of people do not know that, that foreign banks provide the US dollar cash notes to local banks through correspondent banks. I do not think there is any appreciation of where US dollar currency comes from. You know, there is a view that it is in some cupboard somewhere and they take it out, but it is not so; it is provided to the local banks by foreign banks. Could you elaborate on that please?

Mr. Ramkissoon: Indeed, Chairman. Yes, so it is actually a product of correspondent banks, and not all correspondent banks are permitted to provide this actual product. So there is really in this region, really, a very limited offering of this product from a correspondent bank. And I will share with you. It was actually in the public domain when a correspondent bank actually de-risked in Guyana a couple of years ago, and therefore the Central Bank of Guyana no longer had access to cash note services. So, yes, it is a product and really your shipment of cash notes do tend to come in from a correspondent bank, and therefore the availability of foreign currency cash notes, and these cash notes are normally the hard currency, including EC dollars, Canadian dollars, Sterling. The normal destinations that a citizen will travel to and require cash notes for those jurisdictions, those are brought in from our correspondent banks. So those are some examples of the type of products and—

Mr. Chairman: Great. Sorry, I would like to kind of move on to another point. What do you see in this legislation that is not safe or a risk to citizens? What is the danger to citizens of this legislation from the perspective of the bankers?

Mr. Ramkissoon: From the perspective of the bank, I mean, from what we see the model is pretty much similar to what we had with FATCA; there are layers, there are protections. So really there is hardly anything, I would say, perhaps we really see nothing in there that is very debilitating or prohibitive—

Mr. Chairman: Sorry I interrupted you. You were going to say something?

Mr. Ramkissoon: I was just really expanding, but I think there is a good sense of the offerings of the product services.

Mr. Chairman: So you see nothing in this Bill that is any different from what has been done before with FATCA, and so on, and the safeguards are there?

Mr. Ramkissoon: Indeed. And what I can also share with the Committee as well is that we constantly engage with our correspondent banks, and our correspondent banks are very, very keen really in having the legislation and the oversight, et cetera, in place. So they are actively monitoring it. As recent as this week one of our correspondent banks came in and that really was the opening matter that came up, you know. So they are following the progress.

Mr. Al-Rawi: Are you aware if any corresponding banks have suspended services or cautioned in a way of an actual stop?

Mr. Ramkissoon: Not at this point in time. I believe—yeah. I believe—

Mr. Chairman: I actually heard of two that have happened.

Mr. Ramkissoon: Yes.

Mr. Chairman: I heard of an American bank that has actually decided to no longer provide services, and I heard of a Chinese bank that is a bit concerned. Perhaps your colleague could help us.

Mr. Al-Rawi: And just to assist on the same point, I was actually informed by the president of BATT that there have been losses of relationships. Can you confirm whether that is in fact correct?

Ms. Bellemare: Good afternoon, everyone. I do not think there have been complete losses of relationships. What we have been seeing is a more intense scrutiny of our operations and our transactions, and what the correspondent banks have been doing is basically reducing or eliminating some of the services that they would be offering, and that is the, I guess, the beginning of the impact that we are seeing. So in some cases, as Baldath mentioned, they would have removed the cash services. What we also may have seen, not with Republic Bank specifically, would be removal of cash letter services, which is basically where they would encash foreign cheques that are deposited, because of the risk associated with that. So we are seeing, and from a compliance perspective, we are seeing a lot more scrutiny from our correspondent banks. Now, it is very routine that they would perform a KYC on us, biannually, or once or twice per year. Those—the questioning is becoming—

Mr. Al-Rawi: Know your customer, KYC.

Ms. Bellemare: Sorry?

Mr. Al-Rawi: Sorry. There are a lot of people that do not speak acronyms.

Ms. Bellemare: I am so sorry. KYC, "know your customer". The "know your customer" questionnaire-ing of the banks has become quite in-depth and very detailed, so that we have been required to give additional information. We are seeing the intensity, you know, that intensity happening from the correspondent banks and it tells us that they are scrutinizing us a lot more closely.

Mr. Al-Rawi: A previous chairman of BATT, Anya Schnoor, in talking about FATCA, had used an expression which I find very helpful, and I would like your view. She had described the failure to implement FATCA as death by a thousand cuts. Is this what you are referring to?

Ms. Bellemare: Well, I guess we can put it into those terms, yes; a slow and painful death.

2.55 p.m.

Mr. Al-Rawi: Can I ask you a question as a regional group—

Mr. Chairman: Before you do that, I got the impression that other members of the team wanted to say something on this matter.

Mr. Chadha: No, it was just to support what Charlotte was just relaying. While there has not been a complete termination or suspension of services, you are seeing certain products withdrawn from the local market—by some of the correspondent banks, AG.

Mr. Al-Rawi: As a regional group, and in particular wearing your hat as Republic bankers now having a larger footprint in the Caribbean, how do you match up jurisdictions like Barbados, Bahamas, Cayman, all of whom have dismantled their secrecy provisions in law with what Trinidad and Tobago is faced with now? How does that affect your profitability and your intra-banking as a group, having now acquired banks in other territories?

Mr. Chadha: Well, I mean, having acquired or being in the process of acquiring?

Mr. Al-Rawi: In the process of.

Mr. Chadha: I can tell you there is an enhanced due diligence, especially on the regulatory side. From the feedback I got from the other members of the Legal Committee whose organizations are not necessarily in the process of doing an acquisition, et cetera, they are also feeling the brunt of the enhanced due diligence from regulators. So from the regulatory standpoint there is definitely an uptake in the level and the amount of enquiries coming from the regulators.

Mr. Chairman: Let me ask another question. I mean it is a speculative question, you do not have to answer if you cannot. If we do not pass this legislation how soon will we be begin to feel the pain of not being able to wire transfer, pay for goods, receive payment for goods, use the credit cards, et cetera, et cetera? Anybody.

Ms. Yip Chuck: I would like to jump in on this one. Rather than be speculative on the time frame, maybe it could be 18 to 24 months. What I would really like to point out is, for the Republic Financial Holdings group, where 70 per cent of our revenue really is from the Trinidad market space, what we have seen in the past is that when some jurisdictions in which we operate in, for example, Suriname and Guyana, when Guyana was blacklisted and when we entered Suriname about three years ago and they had lost correspondent banking relationships when it was under the old RBC, the strength of continuing to provide banking services in those jurisdictions really stemmed from Trinidad. Because our parent company of the group was in Trinidad, our correspondent banks were able to still serve those jurisdictions because of the strength of Trinidad and the parent company relationship stemming from Trinidad.

So for Trinidad and Tobago to be affected and our parent company to be affected would have significant impact on the rest of the jurisdictions in which we operate, and that is critical.

Mr. Chairman: Mr. Hinds, you have any questions?

Mr. Hinds: Thank you very much, Mr. Chairman. Just for the benefit of the ordinary citizen who would interface, who would have enjoyed your services, your clients, what exactly do you mean by "correspondent banking relationships" and what do you mean by "enhanced due diligence"?

Mr. Chadha: You want to start off with the correspondent banking or enhanced due diligence?

Ms. Bellemare: So correspondent banking relationships are really relationships with foreign banks, where they offer you, to put it in very simple terms, they offer you an account in a foreign currency. So, for example, Republic Bank we would have accounts with banks in the US, and those are basically set up to facilitate our customers.

So you can have an account with a US bank, but when you have an account with Republic Bank—a US account—that account is really hosted at a US bank. We have accounts in many currencies to facilitate trade, as you know, with many jurisdictions and with different continents. So that our relationships span maybe about 40 banks internationally in terms of different currencies, and that is basically what correspondent banking is, when you have a correspondent bank.

Mr. Chairman: Let me see if I could put it in layman's language as I understand it. Let us say a Trinidad and Tobago citizen, a parent, has a child studying at the University of Kansas, and they want to do a wire to pay tuition fees. You would not have a correspondent bank in Kansas. You might have it in New York or Los Angeles, or something like that. So in order to send that money to the school in Kansas, it has to go through the correspondent bank in New York or Los Angeles.

Ms. Bellemare: Correct.

Mr. Chairman: And if you do not have a bank to pass through it will never get to Kansas. Is that correct?

Ms. Bellemare: That is very correct, yes. So to get to anywhere in the US, to get to anywhere in Europe, for example, if we have an account with Barclays—I am just calling hypothetically—Barclays in London or if we had an account with Royal Bank of Scotland for a Euro account, that would facilitate our transactions in France, in Spain, in any of the European countries.

Mr. Chairman: And if you lost that relationship with the Barclays in London, hypothetically, it will be very difficult.

Ms. Bellemare: If we lost any of the relationships we cannot conduct any transactions in those currencies.

Mr. Chairman: And that means citizens in Trinidad and Tobago will not be able to conduct those transactions.

Ms. Bellemare: And even, you know, a much more far-reaching impact in terms of our imports, availability of products on the local market—

Mr. Chairman: Food.

Ms. Bellemare: Food. Our import bill for food is very high. It means that we would be very limited in terms of what is available on the local market.

Mr. Chairman: Mr. Hinds.

Mr. Hinds: Yes, I wanted to get a little more elucidation on the question of "enhanced due diligence". What does that mean to the ordinary man?

Mr. Chadha: Well the legislation provides a bare minimum amount of due diligence that has to be conducted, both on a customer and on a transaction. Enhanced due diligence for a transaction could mean the provision of extra documentation. So, for example, if there is a wire there is extra scrutiny. You start to look at patterns of funds, et cetera, the persons involved, both the receiving party and the sending party, the numerous parties involved. So what all that actually results in is both an extra cost and time. You know, it could be notarized documents being sought from the customers, et cetera. There is a time impact in having to assess and evaluate all the documentation provided.

When we do business with a so-called high risk country, we also go through that process of asking for enhanced due diligence on both the customer and the transaction as a whole. So in the event that we were to either remain on this blacklist or corporate correspondent banking relationships become even more tenuous, then we will have to face that enhanced due diligence, I would say. It would become par for the course.

Ms. Bellemare: Sorry, I just wanted to add to what Joel is saying. In addition to that, also increases—even if we were to maintain our correspondent relationships, the cost of doing business can be impacted where we would now be required to pay higher fees—transactions. They would be increasing the fees on the respondent banks, which in turn would impact our customers in terms of wires, drafts, whatever the service might be.

Mr. Chairman: What I have learned with respect to this problem is that some foreign banks just decide it is not worth the trouble to do business with a bank in Trinidad, because of the cost and the tedious nature of all the paper work and the due diligence, and so on. Is that correct to say?

Ms. Bellemare: That is correct. For the correspondent banks the Caribbean represents a high volume low profit income, and a lot of banks are making that decision. Is it the risk? And then the risk associated with the Caribbean, is it worth the risk of maintaining relations in the Caribbean for a low profitability.

Mr. Chairman: Nickle and dime stuff. Mr. Mitchell, you wanted to ask a question?

Mr. Mitchell: I just have a few questions.

Mr. Chairman: Mr. Hinds, we will come back to you.

Mr. Hinds: No, I am through.

Mr. Mitchell: I am catching up on all this here now. So if we do not pass the legislation we will be non-compliant with the Global Forum, and if we are non-compliant we run the risk of de-risking, which is these foreign banks ending their relationships with banks in our jurisdiction. But you just spoke about something else. So an alternative to de-risking might be that there may be an increased cost; an increased cost for auditing, an increased cost for the risk that we now present, and that increased cost will be passed on to the customer. Am I correct, or may be passed on to the customer?

Ms. Bellemare: I guess depending on what the cost is and where the cost is allocated, yes.

Mr. Mitchell: So customers in terms of doing trade externally, they may have to provide more frequent audited statements and that is a cost, et cetera? Am I correct?

Mr. Chadha: Yes, that is correct.

Mr. Mitchell: I just want to go back to something Mr. Ramkissoon said. In your example you gave about an exporter who exports an item and may not be paid. But in practice that exporter will be paid, so he may opt to perhaps open an account in a foreign jurisdiction, and that may very well lead to capital flight. Am I correct?

Mr. Ramkissoon: That is one possibility, where the client, the exporter, retains his account, and of course if he is on board in a jurisdiction where he can actually open an account, it can lead to that, where the foreign currency flows do not really get back into Trinidad and actually reside outside.

Mr. Mitchell: And in your opinion do you think some of our manufacturers may very well choose to set up in other jurisdictions where the cost may be less to do business?

Mr. Ramkissoon: That one is a difficult one to really speculate on. I do know from our clients really they do maintain accounts, and they really do, for their working capital utilize their funds. So it is difficult, and we really do not have the evidence or so to speculate more on that.

Mr. Mitchell: It is speculative. Two more questions. With respect to the credit card business, so citizens may not be able to buy something on Amazon, because the credit card companies may choose to end their business with our banks within this jurisdiction, or it could be that the cost to enter into transactions with your credit card may go up. Am I correct?

Mr. Ramkissoon: Yes, increased costs at some point in time pushes at some point in some place. Some of it the bank may subsidize it to some extent, but if it continues to escalate you may have to make a decision as to whether the degree of absorption or subsidizing the cost whether if there is a point in time that you need to translate or move some of these costs on.

Mr. Chairman: Can I jump in here on a question Mr. Mitchell asked? I have discovered in the last couple years that many merchants in the United States refuse to accept credit cards issued in Trinidad and Tobago, and they will only allow an online purchase if it is from a US bank. Let us say, for example, a Trinidad and

Tobago citizen went abroad, opened a small account in Bank of America, or something like that, they can then purchase online. I am just giving you information I have received. I have no experience of this. JC Penny for example, you cannot buy anything online at JC Penny with a Trinidad and Tobago credit card. You have to have a US credit card. Do you think that more and more of this can possibly happen, that merchants will refuse to accept cards that are issued in Trinidad and Tobago from Trinidad and Tobago citizens for online purchases as a result of this issue?

Ms. Yip Chuck: Well I will say that with respect to the credit cards that are issued in Trinidad, I mean those are not just solely issued by Republic Bank or any of the other financial institutions.

Mr. Chairman: I am talking about a Visa Card.

Ms. Yip Chuck: Well right, so that we are in partnership with Visa and Master Card or a Discover or an AMEX or something, and all of those, because of the strength of those international banks, are widely accepted. The instance where you have many of the companies on the Internet that do not accept a card from Trinidad and Tobago is not a new phenomenon, that has always been the case. There are ways, that once, I think, the billing address is in a foreign address—

Mr. Chairman: Yes you can do that, but that loophole is being plugged as well. Even Visa Cards—let us use Visa as an example, where the card has both a US address and a Trinidad address, in the past there were certain online retailers that would accept the US address. Even that, they are going behind the card to see where it was issued.

Ms. Yip Chuck: Well clearly I am not shopping as much online as you are. [*Laughter*] If I happen to encounter that—

Mr. Al-Rawi: That is why there is tax on online—

Mr. Chairman: Good one.

Mr. Al-Rawi: Mr. Chairman, could I ask a question?

Mr. Chairman: No, Mr. Mitchell had one more. Okay, so Mr. Mitchell, let us go.

Mr. Mitchell: So from my previous questions and answers, I get the impression that the failure to pass this legislation will increase the cost of living in Trinidad and Tobago. But lastly, and this one is of paramount concern to me, the money service businesses because, I mean, when you look at the socioeconomic background of the persons who use these, they really depend on the remittances from their relatives abroad, et cetera. So that is the MoneyGram and the Western Union. Can you explain the negative fallout or the negative impact to persons who rely on these money service business, if this legislation is not passed and we are non-compliant and we are de-risked, et cetera, et cetera?

Ms. Bellemare: Well simply put, those businesses would become non-existent, so that remittances would become a thing of the past. I know that remittances account for a fairly high percentage—

Mr. Chairman: Could you just slow down? You say that if those businesses are affected they will become non-existent?

Ms. Bellemare: I said if the legislation is not passed there is a possibility that there will no longer be a remittance business, because those businesses operate in foreign currencies.

Mr. Al-Rawi: It happened in Panama and Belize. I was saying, Mr. Chairman, in the FATF world this is well known, that remittances have completely shut down. In Jamaica it is shrinking. In Belize it was dismantled, and people were literally without jobs because remittances are at complete closure. I was just going to ask a question.

Mr. Chairman: Just one minute Mr. AG. Are you finished Mr. Mitchell?

Mr. Mitchell: Yes.

Mr. Al-Rawi: I thank member Mitchell for that excellent line of enquiry there on a very, very important point. We have been talking Global Forum, but there is FATF, and Trinidad and Tobago is on the ICRG, the International Corporation Review

Group, progress, and the Bankers Association has been making constant enquire of the Attorney General's Office as to whether we are on track for our positions.

In terms of the Financial Intelligence Unit, because this legislation touches that, and I have heard you say that you have no problem with the legislation, could you tell us a little bit about the banking sector and suspicious transactions, suspicious activities? Because we know that the FIU observed $22.5 billion in suspicious transactions and activity reports, and 13 billion of them were stopped. Could you tell us a little bit about the banks' concern, if any, about the elimination of terrorist financing, money laundering, corruption, as it relates to suspicious activities and transactions?

Ms. Williams: Could you just repeat the question please?

Mr. Al-Rawi: The banking sector has an obligation as a financial institution, under the Proceeds of Crime Act, to make sure that it complies with the Financial Intelligence Unit requirements, and the proceeds of crime requirements and the anti-terrorism requirements, that you report suspicious activities and suspicious transactions.

Ms. Williams: Correct.

Mr. Al-Rawi: This legislation is also required by the FATF. The FATF says that you must request a re-rating by November 30th. That is the deadline date for re-rating. Is the bank concerned that if we are not able to keep our ratings and comply with FIU matters, because this Bill specifically talks about the FIU, what is the bank's position in relation to that? Because Global Forum is only one part of the conversation. The FATF is another part of to the conversation. Tell us a little bit about your suspicious transactions and activities in terms of what this Bill does.

Ms. Williams: I mean we would continue to do our monitoring and continue to report as normal. Whether the legislation is passed or not, we have what it is we have to do. There are certain breaches that we would look for, and once we identify any sort of suspicious activity, whether tax evasion, whether co-mingling, whatever it is, we will continue to report to the FIU in the normal course of business and do what we are supposed to do.

Mr. Chairman: What I wanted to do now, we have the next group from National Anti-Money Laundering and Counter Financing of Terrorism Committee, so perhaps we could thank—so I would like to thank you very much for coming, for your very forthright responses and hopefully we will see you again. Thank you very much.

Ms. Yip Chuck: Chair, can I just ask that a number of the representatives here are also from the Chamber of Industry and Commerce, so that rather than go outside—

Mr. Al-Rawi: You are all welcome to sit right there. That is a public gallery.

Mr. Chairman: Okay, what you are asking is that you want to go next?

Ms. Yip Chuck: If you could facilitate that, because it is really the same group here.

Mr. Chairman: Do we have anybody else from the Chamber here?

Ms. Yip Chuck: Because you were looking at the AMCHAM separately, right? This is the Chamber of Industry and Commerce. We may have one more party to join us. Otherwise, really, three of the people are sitting here at the moment.

Mr. Chairman: I will tell you what, we will not keep you long. We will just deal with the—because we have quite a few people. Just give us a little while, and as soon as we finish the other one. We have the Trinidad and Tobago Chamber at seventh position, so we will bring you up immediately after the National Anti-Money Laundering. So as soon as we are finished with the next group, we will bring the Chamber.

Ms. Yip Chuck: Okay, because I feel a lot of the information that we shared will be similar.

National Anti-Money Laundering and
Counter Financing of Terrorism Committee

Ms. Susan François	Director, Financial Intelligence Unit of Trinidad and Tobago
Mr. Nigel Stoddard	Deputy Director, Financial Intelligence Unit of Trinidad and Tobago
Ms. Kylene Dowden	Legal Counsel, Trinidad and Tobago Securities and Exchange Commission
Ms. Keisha Celestine	Legal Counsel, Trinidad and Tobago Securities and Exchange Commission
Insp. Avinash Singh	Financial Investigations Branch, TTPS
Mrs. Vyana Sharma	Deputy Chair, NAMLC and Legal Counsel Anti-Terrorism Desk, Ministry of the Attorney General and Legal Affairs
Ms. Nadira Rahamatula	Manager AML, Central Bank of Trinidad and Tobago
Ms. Giselle Samuel	Senior Legal Counsel, Central Bank of Trinidad and Tobago
Mr. Shastri Singh	Examiner II, Central Bank of Trinidad and Tobago

Mr. Chairman: Good afternoon, I am told that this group has a long name called the "National Anti-Money Laundering and Counter Financing of Terrorism Committee", and clearly a lot of people in it too. So that we are live on the Parliament Channel, Channel 11, on the Parliament radio station, 105.5, and on the Parliament's YouTube channel, Parlview.

Could you please identify yourselves and perhaps a leader of the group?

Mrs. Sharma: Good afternoon, Chair, thank you very much. I am Vyana Sharma, Legal Counsel in the Ministry of the Attorney General and Legal Affairs, and I am the Deputy Chairman of NAMLC, and before I go into the remit and mandate for NAMLC, I would like the members at NAMLC to introduce themselves.

Mr. Chairman: Fine, great, I was going to ask you for the mandate anyway. So if you could get your team to introduce themselves.

[*Introductions made*]

Mr. Chairman: Back row.

[*Introductions made*]

Thank you and now perhaps you could tell us about your remit and your mandate.

Mrs. Sharma: Thank you, Chair. NAMLC was established in 2006 as the National Committee for Money Laundering and Combating the Financing of Terrorism, to monitor Trinidad and Tobago's compliance for ML and TF.

So the remit of NAMLC was revised in 2014 and the composition of NAMLC is as follows: the Director of the Compliance Unit at the Ministry of National Security or Anti-Money Laundering and Combating the Financing of Terrorism, the Senior Legal Advisor to the Attorney General, Ministry of the Attorney General and Legal Affairs, the Director of Public Prosecutions, the Commissioner of Police, the Chief Immigration Officer, Comptroller of Customs and Excise, the Deputy Permanent Secretary of the Ministry of Finance, the head of the Financial Investigation Branch—

Mr. Chairman: Which Deputy Permanent Secretary? This one here?

Mrs. Sharma: Yes, Mr. Chairman. The head of the Financial Investigations Branch of the Trinidad and Tobago Police Service, the head of the Central Authority Unit of the Ministry of the Attorney General and Legal Affairs, a legal advisor formally in the Ministry of Justice, which is no longer applicable, the representative of the Legislative Drafting Department of the Ministry of the Attorney General and Legal Affairs, a representative of the Trinidad and Tobago Securities and Exchange Commission and a representative of the Central Bank of Trinidad and Tobago.

The mandate of NAMLC is to make recommendations for the formulation of the national policy in respect of anti-money laundering and combating the financing of terrorism, and to engage with AML/CFT stakeholder community on the design and updating the implementation of action plans, priority steps and risk assessments. It is to facilitate capacity enhancement across all national sectors, and engage with the private sector as well and facilitate exchange of information between the public and private sector through the creation of awareness workshops, publications, electronic sources of information and national AML/CFT fora.

To act as a forum of consultation and collaboration among reporting and supervisory authorities, accountable institutions and organs of this state. Also to promote and maintain productive stakeholder relationships by coordinating the strategic level fora for the discussion of topical issues, including international developments and initiatives to inform to the AML/CFT policy, and allow the authorities to identify priorities, bottlenecks and possible challenges towards implementation of these policies. To provide technical assistance to the AML/CTF stakeholder community by periodically reviewing the overall needs assessment of the various organizations that are involved, or within the AML/CFT framework for Trinidad and Tobago, conducting national risk assessments of the AML/CFT risks and vulnerabilities in the various sectors, and providing awareness raising seminars, symposiums, on AML/CFT legal framework and implementation of issues.

To assist with the preparation and coordination of mutual evaluation visits, on-site visits with various Ministries and agencies. To evaluate the progress and results of the AML/CFT activities and formulate proposals and recommendation for the Minister of National Security in his capacity as prime contact to the Caribbean Financial Action Task Force, together with the Minister of Finance and the Attorney General and the Minister of Legal Affairs. So that, Chair, is a summary of the mandate and composition of NAMLC.

3.25 p.m.

Mr. Chairman: And have you looked, has the committee looked at the proposed legislation before us?—the Income Tax (Amdt.) Bill?

Mrs. Sharma: Thank you, Chair. The National Anti-Money Laundering Committee has looked at the proposed Bill that is before us. The Bill has evolved from the deficiencies identified in the Mutual Evaluation Report of Trinidad and Tobago which was published in June 2016.

Mr. Chairman: This is FATF you are talking about?

Mrs. Sharma: The FATF.

Mr. Chairman: This Mutual Evaluation Report.

Mrs. Sharma: That was published—

Mr. Chairman:—with respect to the Financial Action—

Mrs. Sharma: Task—

Mr. Chairman: Caribbean Financial Task Force.

Mrs. Sharma: Caribbean Financial Action Task Force, which Trinidad and Tobago is a member of, the Caribbean Financial Action Task Force, and it falls as an umbrella body of the FATF, the Financial Action Task Force.

So, our Mutual Evaluation Report for Trinidad and Tobago was published in June 2016, and it identified certain deficiencies in key areas that we needed to amend and look at, more specifically in relation to this Bill, I can identify Recommendation 29 that deals with the Financial Intelligence Unit requirements, Recommendation 40 that deals with forms of international cooperation amongst sectors including law enforcement and FIU and supervisory sectors.

Then it deals with the effectiveness of that system, so you look at the International Cooperation for Immediate Outcome 2, in how the whole system is working. So, you demonstrate the effectiveness of your legislation in showing whether you are able to exchange this information and how effectively you are doing it.

Mr. Chairman: Okay. For the non-lawyers among us, could you summarize that in layman's language? Are you saying that the Financial Action Task Force has told Trinidad and Tobago that unless we, one: share tax information with other jurisdictions, other competent authorities, and two: allow the law enforcement agencies to access taxpayer information in certain circumstances such as with respect to a matter involving the proceeds of crime, and if we do not do that, we will be in severe trouble?

Mrs. Sharma: Yes, indeed, Chair. There are some milestones that Trinidad and Tobago is currently under. So upon the completion of our report, Trinidad and Tobago entered into two processes. And these two processes have led us to a point where we are at now, where we have to report to CFATF by Friday 30^{th} November.

Mr. Chairman: Which Friday?

Mrs. Sharma: This Friday.

Mr. Chairman: The day after tomorrow?

Mrs. Sharma: The day after tomorrow.

Mr. Chairman: Okay.

Mrs. Sharma: In terms of the deficiencies that we have identified for technical compliance, the ratings we are expected as a country to report on the status of our legislative amendments which include this Bill. So that we are expected to, in accordance with the procedures set forth by the CFATF, to report on Friday.

And then there is also the consideration in which we have to report. That reporting will take place this week, and we will also have to ensure that a submission is made to the FATF in January, prior to the FATF meeting which is held in February, 2019.

And that reporting requirement will allow the FATF to analyze and review the country's submission in relation to the exchange of information amongst competent authorities which this Bill seeks to allow for, and assess and determine whether we are compliant with the requirement that has been set forth, and we have achieved, to a certain extent, or a measurable extent the deficiency, that we are addressing the deficiencies sufficiently.

Mr. Chairman: Okay. And if this Bill is not passed, what happens?

Mrs. Sharma: The consequences of this Bill not being passed will be quite severe because our status quo right now for Trinidad and Tobago is that we are currently on the FATF grey list. We have been put on the FATF grey list because we are currently in the international corporation review group, which is a working group to look at countries and measure their progress in key areas. One of the key areas treats squarely on international cooperation exchange of information.

Mr. Chairman: I think I got it in terms of us not being compliant. But what I am trying to find out is, if we continue to be non-compliant, what is going to happen to Trinidad and Tobago and the people of Trinidad and Tobago, the economy?—people who have to do banking, you know, both here and abroad. What is going to happen to all of us?

Mr. Al-Rawi: Mr. Chairman, we are not non-compliant. We are in a process where we have made progress and therefore, they have noted in their publications—

Mr. Chairman: So that we are on a watch list.

Mr. Al-Rawi: Yeah. So, we are on a constant monitor where the internationals groups have said to you, "Trinidad and Tobago, you are doing well". "You have achieved all the milestones you have set out", and they have publicly commended us for that. And one of these milestones that we have to achieve this Friday, is this Bill.

Mr. Chairman: Thanks for that clarification. What happens if we do not pass this Bill? Could you put it in ordinary language?

Mrs. Sharma: Well, the consequence of not passing the Bill means that you have not met—

Mr. Chairman: You have not met the—

Mrs. Sharma:—you have not met the criteria.

Mr. Chairman: And then what happens?

Mrs. Sharma: And then it means that you will then be downgraded, and you could then be blacklisted—

Mr. Chairman: Seriously?

Mrs. Sharma:—or measures can be applied because it is a technical body requirement.

Mr. Chairman: So if we are blacklisted, if we are taken off the grey list and put on the black list because of our failure to pass this Bill, what happens to us as a country?

Mrs. Sharma: Well, the consequences are severe. So, the FATF has set out a list of the enhanced measures, due diligence measures in Recommendation 19, and it identifies the measures that correspondent banks would consider and apply to your financial sector, and your risk to the global financial market, your risk to other FATF members, and other FSRBs meaning other sub-regional bodies. So there is a measured approach taken by FATF.

Mr. Chairman: No problem. Ms. François, you wanted to come in here? Just now, Mr. Hinds.

Ms. François: Yes, Chair.

Mr. Chairman: Go ahead.

Ms. François: Thank you. Chair, just for me to reiterate and support what Vyana has just said, that Trinidad and Tobago is on the FATF public list of high risk and other monitored jurisdictions. So right away, we are on this list and it is called "high risk".

FATF has called upon countries to consider the strategic deficiencies applying to Trinidad and Tobago, as well as with other countries. And the ironic thing about this is that, the FIU has the responsibility under the law to publish a list on its website and internally that Trinidad and Tobago is publicly identified by FATF as a country with strategic deficiencies. So, we are being placed on the same list with countries such as the Democratic People's Republic of North Korea, Iran, Yemen and the like. So that is the situation that we are in now.

If it is that we do not do enough come the February plenary, we are going to be put on the blacklist; that is the clear indication from FATF. But February plenary, is not the point of assessment. The point of assessment is going to take place by the FATF ICRG which is called the joint group, in the first week in January.

So, we have to prepare a report, while people are having fun at Christmas time, we are preparing this report which has to go to the joint group by January 4th, wherein we have to show that we have made sufficient progress.

So the passage of the legislation is the first step; that will show that we have the foundation upon which to build the effectiveness. We need sufficient time as an AML/CFT stakeholder in order to show effective implementation of this legislation. So if we have, at least, six weeks, two months, at least we have some time to show effective implementation of this legislation.

Mr. Chairman: If I could stop you, not only do we have to give ourselves the legislative framework to share information, tax information and so on, and allow the law enforcement agencies to do what they are required to do, after having done that, we have to put it into action, and we have to show that we are actually implementing it. So time is of the essence.

Ms. François: Yes. Of course, it is.

Mr. Al-Rawi: The deadline for reporting is this Friday. Friday the 30th is the deadline by which you must seek your re-ratings. If you do not seek re-ratings, then you are going to slide in your listing.

Ms. François: Yeah. Chair, may I just remind that there are two re-ratings that we are looking at. Re-ratings on the technical side which means that we have passed the legislation, and that assessment is—sorry, that submission has to take place by November the 30th. Then we are seeking re-rating on the effectiveness side, which we have to send that report in early January. So it is two assessments we faced by CFATF in 2015, so it is two sets of re-ratings, if you want to call it, that we are facing now.

And may I just add to what Vyana was saying as well, with respect to the countermeasures which would be applied to a country which has been blacklisted by FATF, we need to simply look at what FATF has said about the Democratic People's Republic of Korea and Iran.

And there is a call on all countries, all member countries of FATF, all members, and urges them to apply effective countermeasures and targeted financial sanctions in accordance with the UN resolutions to protect their financial sectors from money laundering, financing of terrorism and weapons of mass destruction. So that is the call by FATF for countries on that blacklist. So all countries in the world globally must comply with FATF's call for countermeasures. And these countermeasures would basically include not trading with the country which is on the blacklist, not conducting transactions with that country which is on the blacklist.

And we just have to look at the situation which took place in 2000, 2001, 2002, with Cayman Islands, Bahamas, St. Kits/Nevis, those countries which were blacklisted by the FATF, and some of them say that they are still recovering from the negative consequences of that blacklisting. Thank you, Chairman.

Mr. Chairman: I notice we have representatives of the Financial Investigations Branch, Central Bank, in this group, and the Securities and Exchange Commission. So perhaps we can save some time, because we were bringing you separately, but since you are all here perhaps, Inspector, you want to give us the perspective from the police in terms of why this legislation is so important?

Mr. Singh: The legislation allows the police, obviously, to have greater access to information so long as the jurisdiction that sends the information has similar laws and consents. So it is of great benefit for us to have the information so that the investigations could move along in a quick time.

Mr. Chairman: What happens if you do not get it?

Mr. Singh: Well, it delays the investigation. If we are not able to access that type of information, we may not be able to explore angles that we would usually be able to do locally in respect of local agencies.

Mr. Chairman: Now, there is some ambiguity as to whether this legislation applies only to offences under the Proceeds of Crime Act and also the terrorist financing legislation. Could you clear this up? Could you give an example of what type of tax information a police officer would be seeking to—and we are amending it to allow judicial oversight, so you will have to apply to a court to get it. What sort of information? And then what—give me an example of a circumstance where the police might want to go an access this kind of information?

Mr. Singh: Our purpose is to ascertain, would be to ascertain the legitimate income of a person. So, an example would be, we may be investigating someone who we suspect to be involved in money laundering, as well as other offences, may be drug trafficking. To ascertain his legitimate income, his declared income, to the Board of Inland Revenue, might be one aspect of being able to find his true source of income. It may not be his true source of income, he may declare a lesser amount, to evade taxes. He may declare a larger amount for the sole purpose of laundering money. So it is one of the agencies we would go to, to start to build a picture to find a person's legitimate income.

Mr. Chairman: And if you do not have this instrument in your arsenal, it is going to be difficult for the police to do any sort of comprehensive investigation on alleged money laundering or an alleged offence under the Proceeds of Crime.

Mr. Singh: Yes. Definitely.

Mr. Chairman: Okay. Securities and Exchange Commission, why is this legislation important?

Ms. Dowden: Thank you, Chair. Mainly for the fact that a lot of the securities transactions that occur in Trinidad and Tobago rely heavily on the banking sector. So any sort of de-risking imposed on the country as pertains to correspondent banks would affect the securities sector directly. There are many wire transfers that the local broker dealers rely on when they are making their transactions on behalf of their clients. You would also look at certain collective investment schemes that would invest heavily in US securities and those—

Mr. Chairman: All right. We are not all bankers. What is a collective investment scheme?

Ms. Dowden: That is similar to your mutual funds.

Mr. Chairman: A mutual fund. Okay.

Ms. Dowden: Like Unit Trust Corporation.

Mr. Chairman: Right.

Ms. Dowden: So say your US dollar mutual funds—

Mr. Chairman: Right.

Ms. Dowden:—would invest in US securities.

Mr. Chairman: Like the Money Market—$US Unit Trust Money Market fund.

Ms. Dowden: Yes, Chair.

Mr. Chairman: Fine.

Ms. Dowden: So those sort of investments rely on the relationship between the investments advisor in Trinidad and the broker dealer in the US. And if it is that there are negative statements made against Trinidad in the US, for example, and those broker dealers have to impose enhanced due diligence on our local investment advisors, local broker dealers, there will be an increased cost. There may be de-risking as well, of our—

Mr. Chairman: So it will affect the local stock market?

Ms. Dowden: Yes, it would.

Mr. Al-Rawi: Are you aware if any stockbrokers have complained that they have lost services and bankability?

Ms. Dowden: What we have been hearing is that there is an increased cost. There has been no complete loss of ability at the moment, but there has been an increase in cost.

Mr. Chairman: Okay. I have a particular question, I would like this clarified. This Bill has two branches. One, is to allow the sharing of taxpayer information with competent authorities in other jurisdictions. The other is to allow the police to get access to taxpayer information when you are investigating a particular crime on the Proceeds of Crime and so on. I am told that the second one is a FATF requirement. Can we get clarity on that?—the requirement for the police.

Mrs. Sharma: Chair, if I may? The FATF requirement as set forth in Recommendations 40 and 29, and then Immediate Outcome 2, more so for Recommendation 40, they identified the deficiency where there is the secrecy provision in the Income Tax Act. For Trinidad and Tobago that prohibits the BIR from sharing that taxpayer information with our law enforcement authorities and therefore, thereby preventing and hindering the investigation of the offence. So there are comprehensive investigations.

Mr. Chairman: So what FATF said is that for the investigation of financial crimes this is necessary, that the police should be able to get access to taxpayer information under certain circumstances; and this is not possible at this point in time.

Mr. Al-Rawi: Mr. Chair, it is also for terrorist financing. Right?

Ms. Dowden: Yes. Please, Chair.

Mr. Al-Rawi: And they put it in black and white as a specific point in that recommendation.

Mr. Chairman: So FATF has said that we must—

Mrs. Sharma: You must have this in place—

Mr. Chairman:—amend our law. You must amend the Income Tax Act—

Mrs. Sharma:—for technical compliance.

Mr. Chairman:—to allow law enforcement access to taxpayer information in these circumstances, investigation of a crime under Proceeds of Crime or terrorist financing and that is in writing.

Mrs. Sharma: Yes, for the requirement, and it is set forth in Recommendation 40 and any other predicate offences.

Mr. Chairman: And when are we supposed to achieve this?—the amendment of the law to deal with that matter.

Mrs. Sharma: We are rated right now, partially compliant for this recommendation and we would be seeking a re-rating, so this would be due by Friday, it would be included—

Mr. Chairman: The same Friday, the day after tomorrow?

Mrs. Sharma: —in our re-ratings application—

Mr. Chairman: So by the day—yes. Just a minute, Mrs. Sharma. By the day after tomorrow, the police should have the ability to access taxpayer information in these circumstances for terrorist financing, Proceeds of Crime, by Friday of this week, the day after tomorrow?

Mrs. Sharma: Yes, please, in accordance with the procedures.

Mr. Chairman: Right. Mr. Hinds.

Mr. Hinds: Thank you very much, Chairman. I would like to direct this question to Madam François of the FIU in particular. Sometime ago, very recently, your organization under law reported to this country's Parliament that you had encountered in the course of your work and observations, you had encountered some

$22 billion worth of suspicious financial transactions going through our banking system. Is that correct?

Ms. François: That is correct.

Mr. Hinds: So the question is: What are the implications for the deficiency that was just highlighted by Mrs. Sharma in respect of that observation of $22 billion worth of suspicious transactions in our country's jurisdiction?

Ms. François: The $22 billion identified, TT dollars to be clear, involved both a completed transaction and an attempted transaction which together totalled, I think, approximately $20 billion. The fact that the reporting entity was able to stop the attempted transaction from it entering into the financial system, shows the extent of their due diligence and that they are, in fact, implementing their legal obligations with respect to anti-money laundering and counter financing of terrorist obligations, and that transaction was a fraudulent transaction.

The other transaction was a completed transaction however, there was insufficient, we found, the reporting entity, as well as the FIU did not have enough to go on to reach the threshold of reasonable grounds to suspect that the transaction was related to money laundering. So at the point in time—and we still have identified that as a suspicious transaction, but it is undergoing more analysis as we get more information.

So the FIU's mandate under the law is to follow the money trail. So, we follow the money trail from the source, identify where it came from in the first instance, and then to the ultimate destination. So that analysis is conducted to determine whether, in fact, this money that we are looking at is legitimate earnings, it came from criminal conduct or is intended for use by terrorists; so that is the money trail.

And with the respect to this particular legislation that we are looking at now, which is the amendment to the Income Tax Act to give the FIU or to enable the FIU to access taxpayer information for the purpose of conducting its analysis, that information is important to the FIU in determining whether earnings are legitimate.

So although there is a suspicion transaction filed with us by the reporting entity, that does not necessarily mean that this person is committing a criminal act. So, we have to conduct analysis to determine whether we can clear that person, for example, or we need to pass on that case to law enforcement. And tax evasion is criminal conduct under the law which can lead to a money laundering offence.

And based on the FIU's analysis throughout the years, we have encountered several or many cases of suspected tax evasion. We have seen indicators such as, and I can just repeat some of them, if you wish?

Mr. Hinds: Sure.

Ms. François: Okay. Tax evasion indicators that we have observed include co-mingling, that is, putting business proceeds into our personal accounts. So business accounts are supposed to have business proceeds, and personal accounts are supposed to have personal proceeds, so you must not confuse both. So if you need to show how much your business earned, that is what the business account is for.

We have seen large deposits of cash into personal accounts, and the source of this money is unverifiable because it is cash, and it is unverifiable in the sense that the reporting entities may not have been able to receive a clear explanation for the source. And sometimes as well, persons—you may think that the person appeared before the counter to deposit the money, but oftentimes persons use the night safe for cheques and cash. So it is only when this money is being counted by the bank to go into the account, they see this money. So, they have to put it into an account and then ask for an explanation.

Then we are seeing business funds being repatriated abroad and there is no reasonable explanation for it. Why is it this money is going in that particular way?

Structuring of transactions. You know the banks will have a certain reporting threshold, so transactions over that, they may ask more questions. So persons in order to avoid that, they will put in money, many deposits, but consistently below that reporting threshold.

And finally, this is a very important one, is complex transactions. And the purpose of these complex transactions would be to hide who actually owns the money, so that way, again, persons can avoid the tax liability. And the FIU's analysis throughout the years, this is from 2011 to present, has consistently identified tax evasion as being in the top five categories of suspected criminal conduct leading to money laundering. And, in fact, I could say from 2011—2018, we have sent about nearly 300 reports to the chairman of the Board of Inland Revenue on suspected cases of tax evasion.

And it is important to know that the amount of money involved in the suspected tax evasion cases is pretty high in terms of being a category. It generally numbers three or four in the top producers of illicit proceeds that the FIU is seeing.

Mr. Hinds: So that this amendment to the Income Tax Bill that we are treating with at the moment, proposes to give to you, the FIU, and you the Trinidad and Tobago Police Service, access to tax information, and that information must, from what you have said, be of great value and assist you in determining what those transactions really are about, and in the case of the police, working towards prosecution. Am I correct?

Ms. François: That is correct, Chair.

Mr. Hinds: So without access to that information, your work as an FIU and your work as a police service, the only organization chartered to do that kind of work in Trinidad and Tobago is adversely affected, it is stunted, it is stymied. Am I correct, Inspt. Singh?

Mr. Singh: Yes. I just want to clear the air on one issue and that is with respect to the point, the issue in relation to us having access. Currently we do have, we can get access to that information by virtue of section 32 of the Proceeds of Crime Act.

What this provision in the Income Tax (Amdt.) Bill will allow, is for us to get it quicker. The process of going through section 32 means that we have to do, based on the complexity of the matter, an affidavit, an application, and a draft order. We need to go to the High Court and have a judge look at it. That process takes time. If the case is a complex one, the affidavit is going to take time, days to complete. So that is the issue there, it is not that we do not have access to it, we do have access to it, but this provision will allow us to have it quicker.

Mr. Hinds: So time is critical, and more than that, Mrs. Sharma, finally, the CFATF having looked at what we already have, feels that it is a deficiency and it ought to be improved in the way we are now offering this amendment today to the Parliament. Am I correct?

Mrs. Sharma: Yes, please. It has been identified as a deficiency in the Mutual Evaluation Report.

Mr. Hinds: Thank you very much.

Mr. Al-Rawi: Can I ask you, Mrs. Sharma, to just let the country know some of the training and qualification work that you do at CFATF and under Global Forum? And can I also ask you to tell the country other examples of other laws where there is this kind of access permitted?

Mr. Chairman: And could I ask you, Mrs. Sharma, because we have some other people to interview, if you could summarize it quickly for us, please?

Mrs. Sharma: Sure. So in relation to my role at CFATF, I am a co-chair for the working group on FATF issues, so we look and measure countries' compliance in the CFATF and their level of compliance with the standard. So, I am the co-chair for that working group in reviewing other members' jurisdiction. We recently had the CFATF plenary meeting that took place in Barbados, and I did review the Mutual Evaluation Report for Cayman Islands where there was a measurement and a review of their process.

I am also trained as a Global Forum assessor or a Global Forum with the standard, the common reporting standard and the automatic exchange of information, so I am able to provide input to the NAMLC and to the Global Forum working team in relation to specifically the requirements as set forth by the Global Forum for the criterion listed.

And furthermore, in relation to the removal of the requirement for accession on to MAC. So those are the two questions, the last one being the query in relation to countries that have already acceded to—

Mr. Al-Rawi: Examples of countries that have laws of the type that are coming here?

3.55 p.m.

Ms. Sharma: Countries that have laws of the type in the Caribbean are: Barbados and Jamaica have already been identified as compliant. So those are two that come to mind quickly, both in relation to the Global Forum requirements or the CFATF.

Mr. Chairman: So we are not doing anything unusual?

Ms. Sharma: No.

Mr. Chairman: In fact we are behind the other major countries in the Caribbean?

Ms. Sharma: Yes, we are behind in terms of the leap that Trinidad and Tobago has to make, our leap being a very wide—a long one.

Mr. Al-Rawi: Would you tell the country about Trinidad and Tobago's place in the line having been reviewed first whereas other countries who are reviewed later than us are in fact ahead of us?

Ms. Sharma: Well, Trinidad and Tobago has been reviewed first by the CFATF because we are first in line, so we have had our mutual evaluation report prepared in June 2016, and we are therefore—hence the reason we are expected to provide this update by Friday, because the procedures set forth and we agreed to that.

Mr. Chairman: So we are way behind?

Ms. Sharma: So we are way behind with other countries.

Mr. Chairman: I would just like to ask Mr. Mitchell: Did you want to ask any questions?

Mr. Mitchell: One quick question. I know that you are in charge of—part of your mandate is for the formulation of national policy as it pertains to money laundering and terrorist financing. In terms of money laundering, can you tell us what are the negative impacts to a country on the proliferation of money laundering in the system? Now we have heard about lack of productivity. We have also heard that money laundering is suspected to be a main driver behind the 2008 financial collapse. But, just tell us in layman's terms, what are the negative affects to money laundering in a developing economy like ours?

Mr. Chairman: Ms. Francois can you handle that?

Ms. Francois: I would just like to say firstly, money laundering is from criminal proceeds. So, any criminal act could generate proceeds which are laundered. And the criminal acts we are looking at include things such as: trafficking in human beings for all different reasons, trafficking in arms, ammunition, corruption, bribery, fraud, murder, kidnapping, robbery, theft, tax crime. So all these crimes generate money which can be laundered. So, if the money launderer—the criminal—is allowed to be successful at money laundering what naturally happens then, we go back to the old adage, crime really pays. So then therefore there will be nothing to stop persons from continuing to commit crime, because the benefits are being reaped. And I think that is something that we must remember.

Too often it is said that money laundering is a white collar crime. Money laundering takes place after, I call, the real crime, the crime which generated the money. After that crime is money laundering. So, without that first crime, which is all the things I spoke to you about: trafficking in arms, corruption, fraud, murder, kidnapping, robbery, tax extortion, forgery, et cetera. Without those crimes having first taken place there could be no money laundering. So you just have to consider the consequences of crime going unchecked, of criminals benefiting wholescale without anyone to stop them, and that would be the consequences we face.

Mr. Al-Rawi: Central Bank, may I ask for your perspectives on this, the importance of this Bill?—because you regulate the entire financial sector under the purview that you do? And the last question that I will ask, we have Securities Exchange Commission, Financial Intelligence Unit of Trinidad and Tobago, Trinidad and Tobago Police Service, Central Bank of Trinidad and Tobago, head of National Anti-Money Laundering Committee who sits in the CFATF working group. The question I will ask all of you after Central Bank comes in is: What if anything do you have by way of concern with the law that is before us now, in the Bill that is before the Parliament? Central Bank.

Ms. Rahamatula: Thank you. I will take the first shot at that. I think I support everything my colleagues have said before, as well as the BATT comments on the continuing to impact. So I think it is rather than rehash that it is very important to reiterate the point that this country signed on to certain international conventions, some of which facilitate, or require, in fact, the sharing of information in respect of money laundering, terrorist financing, and tax evasion. So that essentially in nutshell is the critical importance of this Bill, because the amendments seek to address requirements that we are required to conform to and—

Mr. Chairman: Agreed as a country years ago, not recently—

Ms. Rahamatula: That is right.

Mr. Chairman:—years ago under the previous administration, in some instances, to do all of this.

Ms. Rahamatula: Yes.

Mr. Chairman: Okay. Thank you. I really appreciate your contributions. We now have the Chambers of Commerce in the back, so I think we have heard more than enough—

Mr. Al-Rawi: Mr. Chairman, insofar as this goes into report, and I am so sorry to interrupt, could I just ask Central Bank to finish its point?

Mr. Chairman: Yes, no problem. Okay AG, okay, no problem.

Would any of the other reps from the Central Bank like to say anything? The back?

Ms. Samuel: Not at this time, Chair.

Mr. Chairman: No problem.

Ms. Samuel: We will defer it to a next.

Mr. Chairman: I know. I know. So that Ms. Rahamatula, please proceed.

Ms. Rahamatula: Just to end on that point. It is simply to demonstrate, once you have signed on to the convention as a country we need to demonstrate that commitment, that we are willing to do what is necessary, and that reflects well at the international level, and that previous speakers would have spoken about the impact in terms of the trade, if the country is perceived as high risk or to not be complying with international standards, that has a real impact on everyone. So, I would end there, just to say that essentially that is the importance.

Mr. Chairman: So, you are in total support of this legislation?

Ms. Rahamatula: Once the legislation meets the requirements in terms of the sharing of information, the FATCA concerns as well as the global—[*Inaudible*]

Mr. Chairman: Thank you very much.

Mr. Al-Rawi: Does anyone have any opposition to the legislation in the several entities that are here?

Ms. Sharma: No AG, we do not.

Mr. Chairman: Thank you very much.

4.02 p.m.: *Committee suspended*.

4.07 p.m.: *Committee resumed*.

[*Officials enter Committee room*]

AMCHAM T&T

Mr. Nirad Tewarie	Chief Executive Officer
Ms. Aurelia Bruce	Research Officer

Trinidad and Tobago Chamber of Industry and Commerce

Ms. Karen Yip Chuck	Director
Mr. Joel Chadha	Member
Mr. Baldath Ramkissoon	Member
Mr. Suresh Cassie	Member

Mr. Chairman: All right, we have a composite of the Trinidad and Tobago Chamber of Commerce and the American Chamber of Commerce. Is there a TT inside of there somewhere? [*Inaudible*] Okay, fine. At this Select Committee hearing is live. Is it on? It is live on—I just was just checking because it has been activating the live and deactivating as people come in and out. It is on Channel 11, the Parliament Channel; it is 105.5 radio, the Parliament radio station, and it is on the Parliament's YouTube Channel *Parlview*. This Committee has four members at this time, Mr. Fitzgerald Hinds, MP, Mr. Faris Al-Rawi, who would join us very shortly, MP; myself as Chairman; and Mr. Randall Mitchell, MP.

So far we have consulted with a number of groups: The Ambassador to the delegation of the European Union of Trinidad and Tobago, the Bankers Association of Trinidad and Tobago, the National Anti-Money Laundering and Counter Financing of Terrorism Committee, which included representatives of a wide range of groups, such as the Financial Intelligence Unit, the Securities and Exchange Commission, the Financial Investigations Branch of the Trinidad and Tobago Police

Service, the Attorney General, Office of the Attorney General, Central Bank of Trinidad and Tobago. All of those persons are represented on the National Anti-Money Laundering and Counter Financing of Terrorism Committee.

So, we took the opportunity while we are interviewing that committee to also interview the individual entities, FIU, police force, et cetera. And now we have the two chambers together for reasons of efficiency, and I would like to start off immediately. Perhaps the representatives of the American Chamber can tell us why this legislation is so important, and why it is critical with respect to banking really.

Mr. Tewarie: Good afternoon—

Mr. Chairman: I am so sorry, you should also introduce yourself. My apologies.

Mr. Tewarie: Good afternoon, Mr. Chair and members of the Committee and staff, colleagues. I am Nirad Tewarie, I am the CEO of AMCHAM Trinidad and Tobago.

[*Officials introduce themselves*]

Mr. Chairman: Thank you very much. So, Mr. Tewarie over to you.

Mr. Tewarie: Mr. Chair, thank you for the opportunity to come before the Select Committee. We recognize the importance of not only this, but the legislation required to ensure that we effectively combat, well combat money laundering and terrorism financing, but as well equally, important tax evasion because, a system which allows corruption to flourish is a system which disincentivizes business activity. So, this is important, or these pieces of legislation—I know we are here discussing one, but these pieces of legislation are extremely important in making the jurisdiction more efficient, fairer and ensuring that the kind of business that takes place here is business that we want to take place. With regard to this specific piece of legislation, we understand it to be a critical part of the legislation required to ensure that we are able to participate effectively and fully in the international financial system, which, as it stands, is an integral and essential component of facilitating trade. So, that is the answer to your—

Mr. Chairman: If it is not passed what would happen?

Mr. Tewarie: Well, I think you have heard from more competent authorities than us.

Mr. Chairman: We want as wide a perspective as possible.

Mr. Tewarie: If this piece of legislation is not passed it is our understanding that at some point in the near future our correspondent banking relationships would be at risk, and therefore we may be—we will be unable to participate in the international financial system in the way that we are accustomed and in a way befitting our status as the largest economy in the Caricom, as the largest financial services sector in the Caricom, and as the financial hub of the Caribbean. However, it is also our understanding that this piece of legislation alone will not solve that problem, and therefore we are very concerned not only about this piece of legislation, but the other pieces of legislation that are required to ensure that the effects which we have been talking about do not, in fact, come to pass.

Mr. Chairman: Certainly, but this Committee is simply about this Bill only. It is the only Bill that this Committee is empowered to look at. We have a mandate to look at it. Could I ask the Trinidad and Tobago Chamber for their comments?

Ms. Yip Chuck: Chair, the Chamber endorses the passage of the Income Tax (Amdt.) Bill as it is meant to give the green light to sharing of information—of tax information with the foreign agencies, and we would like to quote here that over 2017 and 2018 we have seen that public sales of foreign exchange have averaged about US $5.4 billion. It was previously about US $6 to $7 billion per annum, 2016, 2015.

Mr. Chairman: It was actually over $7 billion at one point in time.

Ms. Yip Chuck: Which really signifies the amount of trade that our business community does, and is dependent on foreign exchange, which really needs the passage of this Bill to continue to facilitate.

Mr. Chairman: Okay. Is there any other member of the Chamber who would like to say anything? The Trinidad and Tobago Chamber, that is?

Mr. Al-Rawi: Mr. Chair, may I ask a specific question?

Mr. Chairman: Now, let us hear from them first. Is there any other point you all would like to make? Okay, let me ask you a question. What will happen if this Bill is not passed? I ask the Chamber that, the Trinidad and Tobago Chamber, sorry.

Mr. Ramkissoon: So, thanks for that question, Chair. We do see on trade that there would be a negative impact largely hinged on the fact that the possible withdrawal of correspondent banking services to the commercial banking sector would be impacted, and that will translate down to all forms of businesses.

Mr. Chairman: AG.

Mr. Al-Rawi: Thank you. Question to AMCHAM please. What specific concerns do you have in relation to the Bill?

Mr. Tewarie: Thank you, AG. If you would permit me. I mean our first concern relates to the process and the fact that we are backed up against a deadline again, when we were aware that we needed to pass this legislation well in advance. We do not think it engenders confidence in the entire economy, because as you are well aware as a commercial attorney in a previous life, investment decisions are taken on the balance of the whole on the system. And so when all parts of the system work effectively we are much more likely to be attractive. Specifically on the Bill, we do think that the fines for breaching the secrecy provisions are quite low. I mean TT $100,000, TT $150,000 in today's world is, I mean, it might be an incentive rather than a disincentive.

Mr. Chairman: you deal in US dollars.

Mr. Tewarie: We are dealing in TT, US, Euros, hopefully Bitcoin sometime soon.

Mr. Al-Rawi: [*Inaudible*]—fines, and?

Mr. Tewarie: We agree with the suggestion. We are in receipt of the letters both to and from the Minister of Finance and the Opposition Leader.

Mr. Chairman: Sure.

Mr. Tewarie: We do agree with the suggestion that some base level of—I forget what it is called?—evidentiary burden be established for the judicial oversight. I mean, I think that makes sense.

Mr. Al-Rawi: Yes.

Mr. Tewarie: So those were two. And inasmuch as this amendment Bill deals with the secrecy provisions or waiver of the secrecy provisions of the Income Tax Act, we have a question and a suggestion regarding the Auditor General. We have seen in the past where the Auditor General has not been able to get information from BIR in pursuing audits and following the money as it were. And we wonder why the Auditor General is not included in the list of institutions that would be a beneficiary of the waiver of the secrecy clause.

Mr. Chairman: You see we are trying to focus on the dealing with our international obligations as it relates to the EU Global Forum and FATF. There are several amendments we need to make to the Income Tax Act, but we did not want to widen the scope of this legislation in order to create avenues for opposition so that we are focusing directly on the FATF requirements and the Global Forum requirements. That will come, what you are asking about.

Mr. Al-Rawi: So, if I were to say, if we were to treat with increasing the fines, providing for a standard of proof that a judge must be satisfied that there should be TTPS involvement, which is not an obstacle as you would have heard the TTPS say a while ago. Right? Because their problem with the POCA, the Proceeds of Crime Act, is that it is burdensome. So if we were to adjust the fines, allow for judicial supervision with a standard of proof stated, AMCHAM would be happy with that particular perspective?

Mr. Tewarie: Yes, and we did also note, or we do also note, that the legislation is specific to which part and what rank of the police service can access the legislation.

Mr. Al-Rawi: So, do you find this Bill vague or imprecise in any fashion?

Mr. Tewarie: I am not sure if I am being asked what you lawyers call a leading question, but to me, in my reading of the Bill, I am able to understand what is being asked and what the Bill seeks the address, and in that regard it is clear. But I am not a lawyer.

Mr. Chairman: No, that is all right. Mr. Hinds.

Mr. Hinds: Thank you very much. In particular AMCHAM, my business is not to give evidence from here, but I feel that I owe it to you to tell you—

Mr. Chairman: To lead evidence of or to examine witness.

Mr. Hinds:—that this Bill, in response to your implied question as to why do we get to the deadline hour, I feel I owe it to you since you have been kind enough to come here to assist us today, to have you know on the 28th of May this was put to the Parliament, and of course it went to a Joint Select Committee, and go on and on and on, up until today. So, the delay has its tracing in that kind of history. But in addition to this, five clauses of the current Bill are particularly and intimately familiar to every one of us 41 sitting in the Parliament, because we have traversed those identical clauses before. They are a replication of what we dealt with already in FATCA. And, the first four clauses of this Bill are "in-operational", like the title, short title and that sort of thing.

So, we have really engaged in some time wasting, which has brought us to where we are today. And finally, as a follow-up on what the Chairman said a while ago, and I think I am obliged to tell you as well, since you mentioned you would like to see the other pieces of legislation, to many citizens of this country that would mean, very specifically, the other two Bills that had gone to the Parliament on May the 28th along with this income tax measure. The CFATF and the Global Forum have made it abundantly clear to the Government of Trinidad and Tobago that it is only this Income Tax (Amdt.) Bill that is critical to take us out the troubles that you have identified.

Mr. Chairman: Let me just say something as well; AG you can come in after me. The Global Forum and the EU have constantly moved the goal post. As we get to the point where we think we are compliant with the last set of "conditionalities" that they told us, they change again. These organizations meet on a, is it biannual? More than biannual?

Mr. Al-Rawi: So FATF sits—

Mr. Chairman: Not FATF, I am talking about Global Forum EU, and then FATF sits—

Mr. Al-Rawi: Two plenaries in Global Forum and then four plenaries in CFATF and FATF. So they meet six times per years.

Mr. Chairman: So, as they meet new things come at us and one of the things we did with this legislation just to make sure we were not caught off-guard, is that we sent the draft legislation to the global forum, to the OECD secretariat, and ask them to look at it and to comment. And they reviewed it and they made minor adjustments to the language, but they did not trouble the substance of the legislation. So that we could have been here a long time ago. But, as I said, the goal post keeps moving. Now we have issues which will be dealt with in due course with respect to free zones. That is a new thing that has just come out of the blue, that the Global Forum has defined a free zone as a potential for harmful tax practices because you have varying rates of taxing at free zone. So that every other month something new arises. So that also contributed to the delay.

Mr. Al-Rawi: Just the add, specifically in terms of process, the process involved—and this is on the record—us having to fast track the global forum. So, because we signed on in 2010, 2011, 2014 we gave commitments to observe certain things. We were specifically told that we had to negotiate 13 treaties. No treaties were done. We were compelled therefore to get into the global forum fast track process and we bounced because they said you cannot come into this fast track unless you amend your Income Tax Act, and then that Income Tax Act allows you to unlock the multilateral treaty which you can sign on to. And therefore, if you do that, then you can get into the point.

So, it is just like FATCA. In FATCA we had to go and agree to be part of FATCA, we signed the inter-governmental agreement, and then we brought the inter-government agreement into law with the FATCA Bill. By passing the Income Tax (Amdt.) Bill, we would be allowed to sign the multilateral treaty, and then the multilateral treaty can come in into legislation. So that is the difference. But this has involved literally the Ministry of Finance and the Attorney General's office working with the Global Forum on a day-by-day basis almost, and the goal post shifted.

4.25 p.m.

Mr. Chairman: One of the problems we faced in going to these meetings with the Global Forum is that we wanted to sign the multilateral treaty which will allow us to enter into arrangements with other jurisdictions quickly, but they told us that they would not allow us to sign the treaty until we pass this income tax amendment law. Reason being, that it would be a nonsense, because the treaty commits to the sharing of information—of tax information—to the Global Forum countries.

So that, unless our laws already allow us to do that, it would be a nonsense for us to sign the treaty with the Global Forum countries. So they refused permission to Trinidad and Tobago to sign the treaty that deals with mutual assistance. That is one of the other Bills. All the other Bill is, is the incorporation into our domestic law of that multilateral treaty which we cannot sign and the way this legislation is constructed, that type of legislation, is that you sign the treaty and then you come to Parliament with a Bill to incorporate the treaty into domestic law. We cannot even get to the point of signing the treaty because they said that we must amend section 4 of the Income Tax Act first. So this is why this Bill is so important as an essential precursor to anything else. If we do not pass this we are just “spinning top in mud”. The other legislation is irrelevant.

Mr. Al-Rawi: Just remember there are two goals, right. FATF says Friday. You do not meet that, “you gone on FATF.” Global Forum is another story. So there are two things in one.

Mr. Tewarie: Mr. Chair, through you, as I said, we fully support the passage of these pieces of legislation. We do recognize the competing concerns in an evolving system around privacy as well and I gather the Committee and the Parliament are looking at that based on the reports. So whether we pass this Bill and then the next two, or whether we pass all three together is of zero import to us as long as we do pass all three and pass them and become compliant by what seems like an end of December deadline in reality for the Global Forum component as it were. We understand the FATF is different.

Our concern though stems from the fact that we are one of just a handful of countries in whose company we do not want to be, who have been blacklisted and who find ourselves in this position, when we quite frankly should be one of the economic leaders in the world. And unless we can fix that it is okay to say why we got here, but now we are here and we have to, from our point of view, and this is not a self-interested business point of view, this is for the country and for every citizen who wants to have the ability to receive a remittance, to send their child to school and send money to them or for businesses that need to do large and complex wire transfers. We need to have a system that facilitates our participation in the global economy, because our reality is that we are a tiny country and we cannot rely on internal markets and our physical and geographic space alone to be sustainably happy and prosperous.

Mr. Chairman: Okay. So this Bill is important.

Mr. Tewarie: It is important as are the other two, Mr. Chair.

Mr. Chairman: We are not examining the other two Mr. Tewarie. We will get there. Does anybody else from the Chambers want to say anything? Okay. Thank can you very much.

OFFICIALS OF THE BOARD OF INLAND REVENUE

Ms. Allison Raphael	Chairman and Commissioner
Ms. Shireen Aziz	Chief State Counsel
Ms. Shahista Khan	Commissioner, Audit/Compliance
Ms. Neela Ram	ICT Director

Mr. Chairman: Board of Inland Revenue, could you all identify yourselves please. Are we live?

Ms. Jacobs: Yes.

Mr. Chairman: Okay. Thank you. Just to let you know we are live on the channel 11, 105.5 radio and Parlview, YouTube channel of the Parliament. And this is the Special Select Committee that was established to examine the Income Tax (Amdt.) Bill which deals specifically with section 4 of the Income Tax Act, among other things, to facilitate the sharing of tax information with other tax authorities, similar to what we did with FATCA, amount some other things. The members of the Committee are Mr. Fitzgerald Hinds, MP, Mr. Faris Al-Rawi, MP, myself, Mr. Colm Imbert, Chairman, and Mr. Randall Mitchell, MP. Could I get straight into the business of the Committee and ask the Board of Inland Revenue first up, introduce yourself, your team.

[*Introductions made*]

Mr. Chairman: Can I ask the Inland Revenue Division to tell us, what are your thoughts about this piece of legislation? What do you think of it?

Ms. Raphael: It is important to us with respect to the exchange of information. Because, as I heard you before, you said it so lovely, the issues surrounding the necessity for this information because, right now, as you said, we cannot sign any agreements. Now once we have that exchange of course we would get from other jurisdictions and of course we would use that in the whole compliance process. So it really important, very much so.

Mr. Chairman: So it will assist quickly if we ask citizens of Trinidad and Tobago or Trinidad and Tobago companies that are doing business in Europe, for example, they will provide you with information on these activities. I will help you in your compliance here in Trinidad and Tobago.

Ms. Raphael: That is correct.

Mr. Chairman: Do you have any objection to the legislation?

Ms. Raphael: With respect, there is one little area if I could mention, with respect to the police.

Mr. Chairman: Yes.

Ms. Raphael: Right now we have the Production Order and it works very well with respect to the police getting information from us. And I would suggest that we keep that.

Mr. Chairman: Now, could you clarify what that means for the general public?

Ms. Raphael: What is the Production Order? I do not know if I could assist with the detail of—

Mr. Chairman: Yes. We are not all lawyers here.

Ms. Raphael: I am not one either. So I will ask—Ms. Aziz are you okay to speak what the Production Order is about and what it entails?

Ms. Aziz: Under the POCA, the Proceeds of Crime Act, the police would go to the High Court to get an Order from the judge. It is called a Production Order which enables the police to come to the Board of Inland Revenue to request information on certain taxpayers. Normally they would serve the BIR with the Order and we would get—access to the information as required under the Order for the police officers to collect. Now that is the Order we use to get the information. Without the Order we do not normally give that information to the police present.

Mr. Chairman: But the police told us that that is tedious and cumbersome for them and not for you.

Ms. Aziz: Well, for us it is not tedious in the sense that when they present us with the Order we just have to access the information.

Mr. Chairman: I understand. But what they told us it takes quite a while to get to that point.

Mr. Al-Rawi: Mr. Chair, the reason that it has been negatively treated by FATF, FATF reviewed the Proceeds of Crime Act, in particular sections 31, 32, 34 of the Proceeds of Crime Act, sections 44 and 45, and they held the view that Trinidad and Tobago needed to come to standard with other jurisdictions, that is, to have an exception from the secrecy provisions. Because what is done under POCA is done on a balance of probabilities. So it is not a warranting type of information on reasonable grounds. It is at a different level and that is what the burdensome aspect is.

So the judicial authorization on reasonable grounds is very different from judicial authorization on balance of probabilities and we have been singled out in the Mutual Evaluation Report as being non-compliant for that reason and a need to amendment the law. So it is chalk and cheese. So from the BIR's perspective it is one thing, but from every other country, Barbados, Bahamas, et cetera, there are actually no secrecy provisions that apply to TTPS equivalence.

Mr. Chairman: What the police is telling us is that the standard of evidence that they have to produce is quite high and it takes them quite a while before they could even arrive at the court and make their application to the judge under POCA, under the Proceed of Crimes Act whereas this legislation allows them to do it much quicker and it makes the process more efficient. What I would like, AG, if you would help me, I am a non-lawyer, we have three standards. We have reasonable cause, we have balance of probabilities and we have beyond a reasonable doubt and those are all in ascending order of difficulty. So reasonable cause is the lowest threshold, then balance of probabilities, then beyond a reasonable doubt. Right now we are at balance of probabilities which is in the middle in terms of the evidentiary standard that the police have to reach under proceeds of crime. And as the AG has pointed out, this has been found to be a deficiency on the part of Trinidad and Tobago.

Mr. Al-Rawi: Mr. Chair, there is actually a very landmark judgement that came. I am sure you are all aware of it in a particular case to deal with Norwich Pharmacal orders, which is production of information orders as it relates to financial disclosure. And the Norwich Pharmacal standard is mere suspicion and our Court of Appeal has upheld that. So, to maintain the proceeds of crime, balance of probability standard, is to be out of tune with what our own courts are actually saying here, that the entire Court of Appeal unanimously agreed in a landmark decision given just this month that mere suspicion ought to authorize a bank to disclose the same type of information that the Board of Inland Revenue is being asked to do. We understand this is not being done without judicial filter and there are remedies for it as well. So that is the importance of this.

Mr. Chairman: Okay.

Ms. Raphael: Could I?

Mr. Chairman: Sure.

Ms. Raphael: Could I suggest that we elevate the request from the Commissioner of Police, rather than, I think the law speaks to a Superintendent? Is it an Inspector?

Mr. Chairman: I am not sure if that is practical. AG is that practical?

Ms. Raphael: It is not practical?

Mr. Al-Rawi: It is not practical because of the—well first of all there is a safeguard. In the TTPS there is a senior/junior operation factor. So senior officer signs off on it. But to even put it at the Commissioner of Police is to lose sight of the fact that the Commissioner of Police can delegate responsibilities. But one Commissioner of Police in the realm of money laundering, tax evasion, financing of terrorism, which as you heard the FIU point out relates to matters such as murder, kidnapping, trafficking in human beings, that would be to restrict the system. So the safeguard is that a judge says give it and respectfully if under the Production Orders the BIR is already happy with the judge giving it, what is the difference?

Mr. Chairman: Okay. Is there anything else the Board of Inland Revenue would like to say?

Ms. Raphael: There is a deadline for the provision of the information with respect to the Global Forum. I think it is September 2019. So I just want to say it is important that the Bill is passed as soon as possible.

Mr. Chairman: That is the full operationalization, just like FATCA where we had deadlines to pass legislation, deadlines to draft guidelines and deadlines to put it into operation. That is an operational guideline. So there a lot of lead time to get to that point. For example, if we pass the legislation now it will probably take about nine to 10 months before we would be ready to share the information of the Global Forum countries.

Ms. Raphael: Right, but of course we have some administrative work to do.

Mr. Chairman: And the deadline that we are aware of is this week. That is our deadline.

Ms. Raphael: I understand that.

Mr. Chairman: But where did you get that September 2019 from?

Ms. Raphael: The Global Forum.

Mr. Al-Rawi: This is the CRS standard she is referring to—

Ms. Raphael: CRS, yes.

Mr. Al-Rawi:—Mr. Chairman, which is the Automatic Exchange of Information which is the replication of FATCA. It is just FATCA times 13 countries.

Mr. Chairman: So what it is, is that the system is actually in effect and the information is being shared.

Mr. Al-Rawi: Yes.

Mr. Chairman: Right.

Mr. Al-Rawi: So they would automatically exchange.

Mr. Chairman: And that would take quite some time to get.

Mr. Al-Rawi: Correct. So that is 13 versions of FATCA, which is why we have been so adamant for the last two years to warn of the need for this. So, Madam Chair, if I could ask a question. So I take it that you are entirely happy from a legal point of view, through Ms. Aziz, with all of the clauses in the Bill which replicate FATCA, that is clauses 6, 7, 8, 9 and 10, right, because those are FATCA replicants that allows you to process, receive and exchange, right? You have commented on the contentment of the BIR to have a judge deal with disclosure and the first four clauses of the Bill which are the long title, this Act means Income Tax Act, Proclamation, you are fine with that as well.

Ms. Raphael: Yeah, we are fine with that.

Mr. Al-Rawi: So effectively then, is it correct to say that there are no other concerns on the Bill?

Ms. Raphael: Nope. Yeah, I would say so. I will just let her speak.

Mr. Al-Rawi: Sure.

Ms. Raphael: She has a little thing.

Ms. Aziz: We did review the Bill AG and besides that one concern we have everything else appears to be in order for us.

Mr. Al-Rawi: Appreciated.

Ms. Aziz: I was involved in the drafting as well.

Mr. Al-Rawi: "Oooh," that is good to know. [*Laughter*]

Mr. Chairman: Thank you very much.

Mr. Mitchell: Mr. Chairman.

Mr. Chairman: "Oooh," I am so sorry.

Mr. Al-Rawi: Mr. Mitchell was catching my eyes on this side.

Mr. Mitchell: Just for the benefit of the population, how pervasive is tax avoidance and tax evasion in this country?

Ms. Raphael: I will say now there are many theories on how vast it is. There is currently an IMF person in Trinidad doing what we called the "VAT gap". So we are trying to determine how large the gap, what we called the "tax gap".

Mr. Mitchell: Have we any indication how large it is?

Ms. Raphael: Well I know studies have been done. I know one was done by Prof. Theodore. So he suggested a particular gap.

Mr. Mitchell: What was that gap?

Ms. Raphael: I cannot recall at this point in time, but I did not agree with it. I will say that. I do not know if I can say that.

Mr. Al-Rawi: I recall it. It is in the several billions of dollars of Trinidad and Tobago currency.

Ms. Raphael: That is correct.

Mr. Mitchell: I am not sure if the study addressed it. In terms of tax evasion, who is more likely to evade taxes? What category? Is it the wealthy companies? Is it the average man in the streets? The middle class persons? Who?

Ms. Raphael: Everyone. Once you give them the opportunity they will. So what we do is we have, we collect information and we use that information. And from looking at that information and comparing it, of course, to the returns that are being filed, yes, we see it. But we have information and we go after the—

Mr. Al-Rawi: But, Madam Chair, is it not true to say that the vast majority of people who are paying taxes by PAYE, Pay as You Earn, that is literally the entire public service of Trinidad and Tobago, for instance. They would have a very difficult time in tax evading because their employers do the deductions, automatically.

Ms. Raphael: Well before, employment income, yes, we have a safeguard there.

Mr. Al-Rawi: So if that is the case that the vast majority of the working population who has PAYEs on the track would it not be equally true to say that it is the people that are self-reporting, self-employed or declaring by themselves in a higher income tax bracket than being employed, that are really the people at risk?

Ms. Raphael: They are the persons, but employed persons are also self-employed. There are many people who have their own business.

Mr. Chairman: Right. I agree, they have the second form of income.

Ms. Raphael: That is correct. So we are aware of that.

Mr. Mitchell: As well as the companies who are able to afford, likewise lawyers and accountants to do the evading.

Ms. Raphael: You are telling me that, right? You are telling me that, right. Okay, noted. [*Laughter*]

Mr. Mitchell: So let me just touch on the Production Order. I have read and I have heard that, well I know that business in this globalized economy, in this globalized place are very mobile. I have heard that some Eastern Europeans may come to Trinidad, set up business quickly and then abscond without paying taxes and the businesses may be illegal. So would you not agree that the section, the new section 4, subsection (6), where you have production of the information, the taxpayer information provided much quicker to the police and to the FIU, would that not be a benefit to our governance, our tax administration, our ability to detect crime and the proceeds of crime, et cetera?

Ms. Raphael: Well, for the tax department the information is for tax purposes. With respect to the police that would be for, if they get it faster—

Mr. Mitchell: It would benefit.

Ms. Raphael: It would benefit the crime situation, yes.

Mr. Chairman: Thank you very much, BIR or IRD. What do you prefer to be called? IRD?

Ms. Raphael: Are we online?

Mr. Chairman: We are live.

Ms. Raphael: Inland Revenue Division.

Mr. Chairman: Thank you very much, representatives of the Inland Revenue Division, thank you.

OFFICIAL OF THE MINISTRY OF FINANCE

Ms. Savitree Seepersad Deputy Permanent Secretary

Mr. Chairman: Thank you. We are back with the live session of the Special Select Committee of the House of Representatives examining the Income Tax (Amdt.) Bill, 2018. And we have with us Ms. Savitree Seepersad, Deputy Permanent Secretary, Ministry of Finance. Ms. Seepersad could you just give us an understanding of your role with respect to the discussions and the meetings and other interface with the Global Forum and EU.

Ms. Seepersad: Good afternoon, Chair, and members. My role with respect to the Global Forum—I will be very specific to the Global Forum. I represent the Ministry of Finance and Trinidad and Tobago on all matters relating to the Global Forum as well as, all matters that will relate to our obligations to the Global Forum requirements, our EU requirements, as well as our recent BEPS Inclusive Framework, because we recently joined the BEPS Inclusive Framework where there is some correlation with the other two and those responsibilities fall within my purview. I am responsible for coordinating all the activities to ensure and try to get

Trinidad and Tobago compliant with these particular organizations.

Mr. Chairman: Thank you. And in so doing, in fulfilling this mandate you have travelled to other countries to attend meetings relating to the Global Forum requirements for Trinidad and Tobago.

Ms. Seepersad: Yes. Very specific, I would have attended meetings, training actually for our fast-track for the Global Forum, as well as, I would have attended the last two plenaries of the Global Forum. There is an annual plenary with all Global Forum members. Actually, I recently came back from Uruguay.

Mr. Chairman: Uruguay?

Ms. Seepersad: Yes, the last forum took place in Uruguay last week.

Mr. Chairman: Can you tell us whether Trinidad and Tobago attempted to sign on to the, what is known as the MAAC. Could you tell us what the acronym "MAAC" mean?

Ms. Seepersad: The MAAC is, actually a convention. It is the Mutual Administrative Assistance Convention in Tax Matters. Now, just to give you an idea of what the MAAC is all about. Now, I will step back a little, if it is okay with the members.

Mr. Chairman: Please, please.

Ms. Seepersad: The Global Forum—Trinidad and Tobago is currently the only country that is non-compliant with the Global Forum based on our first round peer review.

Mr. Chairman: How many other countries are there?

Ms. Seepersad: The Global Forum currently consist of 154 jurisdictions.

Mr. Chairman: And we are the only one who is non-compliant?

Ms. Seepersad: And we are the only one that would have been reviewed on the first round and deemed non-compliant. At present we are undergoing our second round review. So, for the first round review the major issues that we have as far as deficiencies would be being able to exchange information, which is where the Income Tax (Amdt.) Bill comes in, as well as being able to exchange with a number of jurisdictions, and that is where the MAAC comes in. So I would just speak to both of them.

Mr. Chairman: So MAAC, M-A-A-C, "what they stand for"?

Ms. Seepersad: It is Mutual Administrative Assistance in Tax Matters Convention. Yeah, it is a convention.

Mr. Chairman: Fine. And that would include sharing of tax information between our Inland Revenue Division and their counterpart tax authorities in these other countries?

Ms. Seepersad: Correct. So any member who has already join the MAAC, and at present I believe there are over 85 jurisdictions that have joined the MAAC, we will be able to immediately exchange that information and they share with us.

Mr. Chairman: Alright. So once we sign, are allowed to sign, accede to the Convention on Mutual Administrative Assistance in Tax Matters convention, we would immediately get access to 85 countries with respect to sharing of tax information?

Ms. Seepersad: Yes.

Mr. Chairman: And that will go a long way towards making us compliant?

Ms. Seepersad: That is certainly going to help with respect to one of the recommendations that was made that we were not able to exchange information with the jurisdictions.

Mr. Chairman: I understand Trinidad and Tobago attempted, through the fast track process, to accede or signed the mutual assistance convention and we were not allowed to. Could you elaborate on this?

Ms. Seepersad: There are two things. With respect to the fast track process, because Trinidad and Tobago did not do anything since our review in 2011 to about

2015/2016 when we really started to get some work done, we were recommended amongst some other countries to attempt a fast track process really to see whether we did any sort of progress over that period in time. So we attempted the process. At the end of it we remained in the same position literally. In fact I think, although we remained non-compliant the shortcomings appeared to be a little more than it was in 2011.

4.55 p.m.

Mr. Chairman: Is it true to say that if we do not pass this Income Tax (Amdt.) Bill we would not be allowed to sign this convention?

Ms. Seepersad: That is correct.

Mr. Chairman: So this is a prerequisite to the convention?

Ms. Seepersad: It is.

Mr. Chairman: And the convention is incorporated into one of the pieces of legislation that were before the Parliament previously?

Ms. Seepersad: Yes, Sir.

Mr. Chairman: But we must pass the Income Tax (Amdt.)Bill first, remove the secrecy provisions and then we will be allowed to go to the next stage, the signing of the Mutual Assistance Convention in tax matters?

Ms. Seepersad: That is correct. Because when we did request to become party to the MAC we were told that there were issues with our competent authorities not being able to obtain and share information—

Mr. Chairman: So you were told that because the Inland Revenue Division of Trinidad and Tobago is unable to share information in the manner required by global forum, they would not allow us to become a member—

Ms. Seepersad: To become party to the—

Mr. Chairman:—party to the Mutual Assistance Convention. Okay? Any members have any questions? Okay. Thank you very much, Ms. Seepersad.

This public hearing is now suspended.

Appendix II - Matrix of Explanations and Amendments – Income Tax (Amendment) Bill, 2018

CLAUSE	AMENDMENT	REASON FOR AMENDMENT	RATIONALE FOR SPECIAL MAJORITY
1-3	*Preliminary clauses Long title, Inconsistency with Constitution and Interpretation*		**Not applicable**
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".	***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-*** ***(a) The FIU;*** ***(b) The Police Service; and*** ***(c) Under Tax Information Sharing Agreements such as the FACTA and for the purposes of double taxation agreements***	**Not applicable**
5	**Section 4 is amended to insert 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.**	***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***	**Section 4(4) – Not applicable.** **The Court has an inherent jurisdiction**

CLAUSE	AMENDMENT	REASON FOR AMENDMENT	RATIONALE FOR SPECIAL MAJORITY
	(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 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 member of the police service of the rank of Superintendent or above attached to the Division or Unit of the police service responsible for financial investigations or fraud, solely for the purpose of-** **(i) investigating whether an offence has been committed under the Proceeds of Crime Act and the Anti-terrorism Act;** **(ii) the laying of information; or** **(iii) the preferring of an indictment,** **where such information can reasonably be regarded as being necessary for the purpose of ascertaining the circumstances in which an offence under any written law may have been committed, or the identity of the**	***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 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***	**to subpoena information.** **Section 4(5) – Not applicable.** **This provision does not require a special majority because it is based on a written law which authorises disclosure.** **Section 4(6) – Not applicable.** **This provision does not require a special majority because it is based on subsection (5), which is based on a written law which authorises disclosure.**

CLAUSE	AMENDMENT		REASON FOR AMENDMENT	RATIONALE FOR SPECIAL MAJORITY
		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.**	***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.*** ***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.***	**Section 4(7) – Not applicable.** **Section 4(8) – Not applicable.** **This provision does not require a special majority because the information is received from another jurisdiction.**
6	Providing information to a foreign tax administration	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.	***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***	**<u>Section 4A- Special majority required.</u>** **Section 4(c) of the Constitution protects the right of the individual to respect for his private and family life.**

CLAUSE	AMENDMENT	REASON FOR AMENDMENT	RATIONALE FOR SPECIAL MAJORITY
		allow/ require the Board to share that information. The proposed section 4A would therefore require the Board to provide tax payer information to foreign tax administrations.	**This provision would infringe the right of the individual to respect for his private and family life guaranteed under section 4(c) of the Constitution since it would permit the Board to disclose taxpayer information to another jurisdiction without the taxpayer's consent or knowledge.** **This infringement therefore requires a special three-fifths parliamentary majority in accordance with section 13 of the Constitution.**
	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	***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***	**The invasion of privacy under this provision would *<u>not</u>* be considered unreasonable or disproportionate to the legitimate aim of combatting money laundering and terrorism financing. This provision can be considered to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual.**

CLAUSE	AMENDMENT	REASON FOR AMENDMENT	RATIONALE FOR SPECIAL MAJORITY
	the prior consent of the taxpayer.	***information similar to what is provided for in the Data Protection Act.***	**Section 4B(a) and (b) – Not applicable.**
			<u>Section 4B(c) – Special majority required.</u> **Section 4(c) of the Constitution protects the right of the individual to respect for his private and family life.** **This provision would infringe the right of the individual to respect for his private and family life guaranteed under section 4(c) of the Constitution since it would permit the Board to disclose taxpayer information to a third party without the taxpayer's consent or knowledge.** **This infringement therefore requires a special three-fifths parliamentary majority in accordance with**
	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	***Proposed section 4C would seek to create***	

CLAUSE	AMENDMENT	REASON FOR AMENDMENT	RATIONALE FOR SPECIAL MAJORITY
	dollars and to imprisonment for a term of thirty years.	***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.***	**section 13 of the Constitution.**
Interpretation of the phrase "tax payer information"	4D. For the purposes of section 4 to 4C- "taxpayer information" means information of any kind which can be attached to or identify an individual, and in any form relating to one or more taxpayer that is- (a) obtained for the purposes of this Act; or (b) prepared from information referred to in paragraph (a), but does not include, statistical information. ".	***Proposed section 4D would seek to interpret "Taxpayer information, for the purposes of section 4 to 4D***	**The invasion of privacy under this provision would not be considered unreasonable or disproportionate to the legitimate aim of combatting money laundering and terrorism financing. This provision can be considered to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual.** **Section 4C- Not applicable.**

CLAUSE	AMENDMENT	REASON FOR AMENDMENT	RATIONALE FOR SPECIAL MAJORITY
			Section 4D – Not applicable.
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 “;”; (b) in paragraph (b) by deleting the word “.” and substituting the words “; or”; and (c) by inserting after paragraph (b), the following new paragraph: “ (c) they provide for the collection, 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.”. ***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—*	***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***	**Section 93(1)(a) and (b) – Not applicable.** **<u>Section 93(1)(c) – Special majority required.</u>** **Section 4 (c) of the Constitution protects the right of the individual to respect for his private and family life.** **This provision would infringe the right of the individual to respect for his private and family life guaranteed under section 4(c) of the Constitution since the effect of the Order would enable the Board to disclose taxpayer information to the Government of any country without the taxpayer’s consent or knowledge.**

CLAUSE	AMENDMENT	REASON FOR AMENDMENT	RATIONALE FOR SPECIAL MAJORITY
	(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.**	***Modern Double Taxation Agreements make provision for the sharing of personal information.*** ***Section 93 therefore had to be amended to recognise and allow for the collection, sharing and receipt of personal information***	**This infringement therefore requires a special three-fifths parliamentary majority in accordance with section 13 of the Constitution.** **The invasion of privacy under this provision would *<u>not</u>* be considered unreasonable or disproportionate to the legitimate aim of combatting money laundering and terrorism financing. This provision can be considered to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual.**
8	**New section 93A inserted:** 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	***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***	**Section 93A(1), (2), (4) and (5) – Not applicable.** **<u>Section 93A(3) – Special majority required.</u>**

CLAUSE	AMENDMENT	REASON FOR AMENDMENT	RATIONALE FOR SPECIAL MAJORITY
	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.”.	***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 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 n not have the same safeguards as we do..***	**Section 4(c) of the Constitution protects the right of the individual to respect for his private and family life.** **This provision would infringe the right of the individual to respect for his private and family life guaranteed under section 4(c) of the Constitution since the taxpayer does not have to consent to the disclosure of his taxpayer information by the Board.** **This infringement therefore requires a special three-fifths parliamentary majority in accordance with section 13 of the Constitution.** **The invasion of privacy under this provision would <u>*not*</u> be considered unreasonable or disproportionate to the legitimate aim of combatting money laundering and terrorism financing. This provision can be considered to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual.**

CLAUSE	AMENDMENT	REASON FOR AMENDMENT	RATIONALE FOR SPECIAL MAJORITY
9	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,	***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.*** ***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 Board is required the amendment to this section was necessary to capture this power.***	**Section 117(1) - Special majority required.** **Section 4(c) of the Constitution protects the right of the individual to respect for his private and family life.** **This provision would infringe the right of the individual to respect for his private and family life guaranteed under section 4(c) of the Constitution since it would permit the Board to disclose taxpayer information under other pieces of legislation (besides the Income Tax Act) without the taxpayer's consent or knowledge.** **This infringement therefore requires a special three-fifths parliamentary majority in accordance with section 13 of the Constitution.** **The invasion of privacy under this provision would *not* be considered unreasonable or disproportionate to the legitimate aim of**

CLAUSE	AMENDMENT	REASON FOR AMENDMENT	RATIONALE FOR SPECIAL MAJORITY
			combatting money laundering and terrorism financing. This provision can be considered to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual.
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	***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***	**<u>Section 117A- Special majority required.</u>** **Section 4(c) of the Constitution protects the right of the individual to respect for his private and family life, and section 4(g) of the Constitution protects the right of the individual to freedom of movement.** **This provision would infringe the right of the individual to respect for his private and family life guaranteed under section 4(c) of the Constitution since it would permit the Board to disclose taxpayer information without the taxpayer's consent or knowledge.**

CLAUSE	AMENDMENT	REASON FOR AMENDMENT	RATIONALE FOR SPECIAL MAJORITY
		information exchange agreements like TIEAs. *It has therefore become necessary to amend this section to recognise the other enactments for similar purposes (TIEAs) and double taxation agreements.*	**This provision would also infringe the right of the individual to freedom of movement guaranteed under section 4(g) of the Constitution since it would permit the Board to summon any financial institution or officer of the financial institution to appear before it to give evidence or to be examined under oath.** **These infringements therefore require a special three-fifths parliamentary majority in accordance with section 13 of the Constitution.** **The invasion of privacy and freedom of movement under this provision would *not* be considered unreasonable or disproportionate to the legitimate aim of combatting money laundering and terrorism financing. This provision can be considered to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual.**

CLAUSE	AMENDMENT	REASON FOR AMENDMENT	RATIONALE FOR SPECIAL MAJORITY

November 27, 2018

Appendix III - Comments from the OECD

Comments from OECD

- Subsections 4(5) and (6) – what is the purpose of having both of these subsections?
- A general comment on sections 4 to 4C – these sections refer to "taxpayer information" – it is still difficult to understand how there is not a domestic tax interest included in these sections given the definition of taxpayer information. Perhaps if you were to refer to "information or documents" in 4(8) and redraft it as follows (amending words are in italics): "Notwithstanding subsection (6), *where information or documents, including taxpayer information, are received from another jurisdiction with which there is an arrangement for double taxation relief or exchange of information in relation to taxes which has the force of law,* the Board shall not disclose*….*"
- Section 4A could be redrafted as follows: "*Notwithstanding sections 4(1) and 4(2), where there is an arrangement for double taxation relief or exchange of information in relation to taxes which has the force of law the obligation as to secrecy imposed by any enactment shall not prevent the Board from disclosing to any authorised officer of the government with which arrangements have been made such information as is required to be disclosed for the purposes of the arrangement.*
- In section 4(5), should it not say: "…within a reasonable time, so disclose to the ***individual or*** entity and the ***individual or*** entity shall in respect of…"?
- At the end of section 4(8) the ". should be removed.
- In section 4B should this only refer to sections 4(6)(a) and (b), rather than all of section 4(6)?
- With regard to section 4B(c), we don't understand how this section applies because under section 4(6) the information is provided to the FIU or law enforcement, so how can it be used for the purpose of collection. Also, should it refer to "prior consent of the Board", rather than the taxpayer?
- With regard to section 4C, we suggest deleting reference to section 4A, unless Trinidad and Tobago's laws apply extraterritorially. How would sanctions be applied against a foreign competent authority? Also, if there is a breach of confidentiality, then the provisions of the EOI agreement would apply.
- With regard to section 4C, why does this only apply to a breach of section 4B?
- In section 4D, should it read as follows: "…attached to or identify an individual, ***entity or legal arrangement***, and in any form…"
- With respect to section 93 (1), should it read as follows: *"…Government of any country with a view to affording relief……………of that country or for the receipt and sharing of information relative to such arrangements, and that it is expedient…"*
- In sections 93A(2) and (3), should it read as: "individual, *entity or legal arrangement…*"?
- In section 117(1), should the following words be added in "…this Act, *any other written law over with the Board has oversight or an arrangement for double taxation relief or exchange of information in relation to taxes which has the force of law*"?

- **Section 117(1) refers to "confidential professional relationship", what does this mean?**
-
- **In Section 117A(1), we suggest the following:**
- **The Board shall have the power to -**
- **gather any financial information other information from banks and other financial institutions,**
- **summon any financial institution or any officer of the financial institution to appear before it to give evidence or be examined under oath or otherwise; and**
- **require a bank or other financial institution to provide 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 similar purposes or any other arrangement for double taxation relief or exchange of information in relation to taxes which has the force of law.**
- **In respect of section 117A (2), how does this subsection apply because FIs (and their officers) do not have any obligations under subsection 117A(1). Also, this subsection appears to be missing words and there is a period midsentence.**
- **General comment on overall draft – there is inconsistent references to EOI agreements. For instance, s.4(8) refers to tax information sharing agreement, section 4A refers to an arrangement for double taxation relief or exchange of information in relation to taxes, section 93 refers to any arrangement with another Government, and section 117A refers to double taxation agreements. Further, none of these terms appear to be defined. One of these terms or the term used above "*arrangement for double taxation relief or exchange of information in relation to taxes which has the force of law*" needs to be picked, defined and used consistently throughout the bill.**
- **Comment regarding the penalties – why are the terms of imprisonment different between subsection 93A(5) and section 4C (we note that the term of imprisonment set out in the TIEA Bill, section 10 is the same as subsection 93A(5))?**

September 2018

Appendix IV - EUROCHAMTT Submission

EUROCHAMTT

EUROCHAMTT
European Business Chamber in Trinidad and Tobago
18 O'Connor Street, c/o TTCSI, Woodbrook,
Port of Spain, Trinidad & Tobago, W.I.
info@eurochamtt.org

28th November, 2018

Ms. Simone Yaller
Secretary
Special Select Committee on
the Income Tax (Amendment) Bill 2018
Parliament Republic of Trinidad and Tobago
Level G-9, Tower D
The Port of Spain International Waterfront Centre
1A Wrightson Road
Port of Spain

Dear Ms. Yaller

Invitation - Special Select Committee on the Income Tax (Amendment) Bill 2018

We are grateful for the privilege of being invited to submit our comments to the Special Select Committee on the Income Tax (Amendment) Bill 2018 and we remain at your disposal should the Committee have any questions for our Chamber.

As the Committee would be already aware, the Income Tax (Amendment) Bill 2018 is one among the three bills currently under review in Parliament, affecting Trinidad and Tobago's compliance with the OECD Global Forum on Transparency and Information Exchange for Tax Purposes and secondly the EU standards on transparency for tax purposes requiring compliance with OECD and more. The other two bills are the Mutual Administrative Assistance in Tax Matters Bill, 2018 and the Tax Information Exchange Agreements Bill, 2018. The concerns and comments submitted by the European Business Chamber in Trinidad and Tobago relate to the OECD and EU standards as explained above.

We are of the view that comprehensive work has been done regarding these bills. In 2011, Trinidad and Tobago would have received from the OECD Peer Review, the 40 recommendations regarding legislative, regulatory and practices to be amended in order to be compliant. In 2018, the Ministry of Finance, Trinidad and Tobago received technical assistance from the OECD Global Forum and this technical assistance included assistance with the clauses in the existing legislation that needed to be amended and new clauses to be added.

Parliament referred the three Bills to a Joint Select Committee to consider and report on the Bills and that Committee reviewed the amendments between June and September and a final report to Parliament was submitted by the Committee and adopted by Parliament on 2 November 2018.

Based on our understanding, the only clauses of concern currently being raised by Members of Parliament, relate to the disclosure of taxpayer information to the Division of the Police Service responsible for any financial investigation or fraud whereby taxpayer information must be disclosed by the Board of Inland Revenue. Our Chamber however notes that deterrent clauses have been added to the Bill and it would be considered an offence for i) persons who receive taxpayer information and use the information for the purposes other than for which it was collected or ii)where it is retained longer than necessary or iii) where the recipient discloses it further without the consent of the individual to whom the taxpayer information relates.

We note that under the amendments, a person committing an offence would be 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.

EUROCHAMTT is of the view that while the legislative and regulatory changes are required for Trinidad and Tobago to be compliant with OECD and EU tax standards, there would likely be very few cases where ordinary taxpaying citizens and businesses are affected by the new international rules.

EUROCHAMTT is of the view that the consequences of not complying would be worst for this country in terms of pressure from the international community, its international image and attractiveness for investors. More specifically, investors from the EU states would be subjected to sanctions from their own Governments for operating in non-compliant countries. These are expected to make the cost of doing business in Trinidad and Tobago higher for these companies.

As part of our submission, please refer to supporting document 1, which relates to The EU list of non-cooperative jurisdictions for tax purposes, Council conclusions (adopted on 5/12/2017) and supporting document 2, a copy of the recent press release of the Bankers Association of Trinidad and Tobago.

The European Commission in Brussels has Indicated that it will apply defensive non-tax measures, such as limiting access to EU funding, except for aid development in noncompliant countries. It will apply stricter reporting requirements for multinationals that have a presence in blacklisted jurisdictions.

The European Commission has also encouraged its Member States to implement effective tax sanctions, such as: stricter monitoring of certain transactions, increase audit risks for taxpayers benefiting from the disputed regimes, or increase audit risks for taxpayers using structures or arrangements involving blacklisted jurisdictions. It has also recommended that EU members take certain tax defensive measures of legislative nature, such as the non-deductibility of costs, withholding tax measures, application of controlled foreign company rules, limitation of the participation exemption, etc. on those companies who are operating in non-cooperative jurisdictions;

In addition to sanctions from the European Commission, the banking sector has indicated that Failure to pass this legislation could disrupt the smooth flow of correspondent banking relationships between domestic banks and our international correspondents.

Our Chamber remains open to answering any further questions you may have and look forward to the conclusions of the process towards compliance.

Your sincerely

Ms. Marianna Polacka, M.Sc., PMP
Secretary

Bankers of Trinidad & Tobago
For Immediate Release
Sunday 4th November 2018

Media Release

BATT calls for full cooperation on the passing of the Income Tax (Amendment) Bill 2018

The Bankers Association of Trinidad & Tobago (BATT) is pleased to note the presentation of the Income Tax (Amendment) Bill 2018 by the Finance Minister on November 2nd and is calling for full cooperation on the passing of this Bill.

BATT urges the Opposition to support the passage of the legislation and swiftly pass meaningful tax reform legislation in respect of the Income Tax (Amendment) Bill, 2018 to ensure Trinidad and Tobago's compliance with the International Standard on Exchange of Information on request, commonly referred as the EOIR standard. The proposed amendments would facilitate the exchange of information for tax purposes and effectively combat money laundering and terrorism financing. This is in line with BATT's efforts to ensure a stronger and more stable financial sector macroeconomic framework that sustains economic growth.

The amendments designed to improve compliance will advance Trinidad and Tobago's international ratings and will enable banks to efficiently maintain cross-border correspondent banking relationships.

While BATT notes the concerns expressed by some members of the Opposition, we would like to ensure the general public that adequate mechanisms are in place internationally and domestically to prevent any abuse of the information shared with any jurisdiction. As with the passage of the FATCA legislation, only information relative to citizens of foreign jurisdiction will be eligible for sharing with those jurisdictions.

Failure to pass this legislation could disrupt the smooth flow of correspondent banking relationships between domestic banks and our international correspondents. Cognizant of the vital role that correspondent banking plays in the functioning of the local financial services industry and the wider economy, BATT urges cooperation in the passage of the Income Tax (Amendment) Bill, so as to ensure compliance with international financial integrity standards.

BATT looks forward to increased efforts towards expediting this objective and pledges its support to accomplishing this goal.

About The Bankers' Association of Trinidad & Tobago

The Bankers Association of Trinidad & Tobago, BATT, was formed in 1997. The eight (8) member banks of BATT include the Bank of Baroda (Trinidad & Tobago) Limited, Citibank (Trinidad & Tobago) Limited, First Caribbean International Bank (Trinidad & Tobago) Limited, First Citizens Bank Limited, JMMB Bank (Trinidad & Tobago) Limited, Republic Bank Limited, Scotiabank Trinidad and Tobago Limited and RBC Royal Bank (Trinidad & Tobago) Limited. The association brings together these member banks under a common platform to address issues facing the commercial banking sector.

Appendix V - List of amendments recommended by the Committee

THE INCOME TAX (AMENDMENT) BILL, 2018

First Column Clause		Second Column Extent of Amendments
5	Chap. 11:11	In paragraph (a) (ii) – (a) in proposed subsection (5) – (i) insert after the words “disclose to the” the words “individual or”; and (ii) insert after the words “entity and the” the words “individual or”; (b) in proposed subsection (6) – (i) delete paragraph (b) and substitute the following paragraph: “ (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, where such information is required for the purpose of investigating whether an offence- (i) under the Proceeds of Crime Act; (ii) under the Anti-Terrorism Act; (iii) under the Prevention of Corruption Act; or (iv) involving fraud or dishonesty; has been committed, may have been committed, or the identity of the person who may have committed such an offence; and”; and

First Column Clause	Second Column Extent of Amendments
	(ii) insert after subsection (6), the following subsection: " (6A) A member of the police service under subsection (6) who is conducting a financial investigation or investigating an offence under subsection (6)(b) shall apply to the Court *ex parte* and without notice, for an order directing the Board to disclose such taxpayer information as the Court thinks fit."; and (c) in proposed subsection (8) – (i) delete the words "Notwithstanding subsection (6), where" and substitute the words "Where"; and (ii) insert after the word "agreement" the words "for the exchange of information in relation to taxes".
6	A. In proposed section 4B – (a) in paragraph (c), delete – (j) the words "of collection" and substitute the words "for which it was collected"; and (ii) the word "taxpayer" in the second place it occurs and substitute the word "Board"; B. In proposed section 4C – (a) in the chapeau, delete the words "or 4A"; (b) in paragraph (a), delete the words "one hundred" and substitute the words " three hundred"; and (c) in paragraph (b), delete the words "one hundred and fifty" and substitute the words "five hundred"; and C. In proposed section 4D, in the definition of "taxpayer information" insert after the words "individual," the words "entity or legal arrangement".
7	Insert after the words "section 93" the words "(1)".
8	In proposed section 93A –

First Column Clause	Second Column Extent of Amendments
	(a) in subsections (2) and (3), insert after the word "individual" the words ", entity or legal arrangement"; and (b) in subsection (5) – (i) in paragraph (a), delete the words "one hundred" and substitute the words " three hundred"; and (ii) in paragraph (b), delete the words "one hundred and fifty" and substitute the words "five hundred".
10	Delete the words ", other".

November 30, 2018

The Income Tax (Amendment) Bill, 2018 with Amendments

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 entitles 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

Chap. 12:07

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

(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

Chap.72:01

(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, where such information is required for the purpose of investigating whether an offence-

(i) under the Proceeds of Crime Act;

(ii) under the Anti-Terrorism Act;

(iii) under the Prevention of Corruption Act; or

(iv) involving fraud or dishonesty;

has been committed, may have been committed, or the identity of the person who may have committed such an offence; and

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

(6A) A member of the police service under subsection (6) who is conducting a financial investigation or investigating an offence under subsection (6)(b) shall apply to the Court *ex parte* and without notice, for an order directing the Board to disclose such taxpayer information as the Court thinks fit.

(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 for the exchange of information in relation to taxes, 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~~ for which it was collected without the prior consent of the ~~taxpayer~~ Board.

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 three hundred thousand dollars and to imprisonment for a term of twenty years; or

(b) on conviction on indictment to a fine of five hundred 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, entity or legal arrangement 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(1)-

~~(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"; and

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

" (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.".

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, entity or legal arrangement.

(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, entity or legal arrangement 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 three hundred thousand dollars and to imprisonment for a term of three years; and

(b) on conviction on indictment to a fine of five hundred thousand dollars and to imprisonment for a term of five years.”.

Section 117 amended

9. 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,".

Section 117A amended

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.".

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

Clerk of the House

I confirm the above

Speaker

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

Clerk of the House

Passed in the Senate this day of , 2018.

Clerk of the Senate

I confirm the above

Speaker

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.

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.

Certain income to be deemed income for purposes of Act

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.

Unilateral relief

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.

Short title

2. 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 individual or entity and the individual or 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)-

(c) 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

(c) 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, where such information is required for the purpose of investigating whether an offence-

(i) under the Proceeds of Crime Act;

(ii) under the Anti-Terrorism Act;

(iii) under the Prevention of Corruption Act; or

(iv) involving fraud or dishonesty;

has been committed, may have been committed, or the identity of the person who may have committed such an offence; and

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

(6A) A member of the police service under subsection (6) who is conducting a financial investigation or investigating an offence under subsection (6)(b) shall apply to the Court *ex parte* and without notice, for an order directing the Board to disclose such taxpayer information as the Court thinks fit.

(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~~ an agreement for the exchange of information in relation to taxes, 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.

Quire the Chairman of the Board of Inland Revenue to provide

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~~ for which it was collected without the prior consent of the ~~taxpayer~~ Board.

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 three hundred thousand dollars and to imprisonment for a term of twenty years; or

(b) on conviction on indictment to a fine of five hundred 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, entity or legal arrangement, 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 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 **for the receipt and sharing of information relative to such arrangements,** 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.

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, entity or legal arrangement.

(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, entity or legal arrangement 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 three hundred thousand dollars and to imprisonment for a term of three years; and

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

Certain income to be deemed income for purposes of Act

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.

Unilateral relief

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.

Appendix VIII - List of References and Entities who Appeared

Caribbean Financial Action Task Force. https://www.cfatf-gafic.org/

FAFT. Who we are. http://www.fatf-gafi.org/about/whoweare/

Global Forum Annual Report. 2017. http://www.oecd.org/tax/transparency/global-forum-annual-report-2017.pdf

House of Representatives. Hansard Record on JSC Income Tax 2018.06.06.

OECD. 2011. Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reveiws: Trinidad and Tobago 2011: Phase 1: Legal and Regulatory Framework, Global Forum on Transparency and Exchange of Information for Tax Purposes. Paris. https://doi.org/10.1787/9789264096936-en.

OECD. Global Forum on Transparency and Exchange of Information for Tax Purposes. About the Global Forum. http://www.oecd.org/tax/transparency/about-the-global-forum/

OECD. Global Forum on Transparency and Exchange of Information for Tax Purposes. 2016 Terms of Reference To Monitor And Review Progress Towards Transparency And Exchange Of Information On Request For Tax Purposes. http://www.oecd.org/tax/transparency/about-the-global-forum/publications/terms-of-reference.pdf

Review of Trinidad And Tobago's Compliance With The FATF Recommendations And Methodology

Entities who Appeared

1. DELEGATION OF THE EUROPEAN UNION TO TRINIDAD AND TOBAGO

NO	NAMES	POSITION
1.	His Excellency Arend Biesebroek	Ambassador, DELEGATION OF THE EUROPEAN UNION TO TRINIDAD AND TOBAGO

2. BANKERS ASSOCIATION OF TRINIDAD AND TOBAGO

NO	NAMES	POSITION
1.	Mr. Joel Chadha	Chair BATT Legal Committee
2.	Mr. Baldath Ramkissoon	Chair BATT FOREX Committee
3.	Ms. Charlotte Bellemare	Chair BATT Compliance Committee
4.	Ms. Susan Williams	Chief Compliance Officer, RBL

3. NAMLC – NATIONAL ANTI-MONEY LAUNDERING AND COUNTER FINANCING OF TERRORISM COMMITTEE

NO	NAMES	POSITION
1.	Ms. Susan Francois	Director, Financial Intelligence Unit of Trinidad and Tobago
2.	Mr. Nigel Stoddard	Deputy Director, Financial Intelligence Unit of Trinidad and Tobago
3.	Ms. Kylene Dowden	Legal Counsel, Trinidad and Tobago Securities and Exchange Commission

4.	Ms. Keisha Celestine	Legal Counsel, Trinidad and Tobago Securities and Exchange Commission
5.	Insp. Avinash Singh	Financial Intelligence Branch, TTPS
6.	Mrs. Vyana Sharma	Legal Counsel, Anti-Terrorism desk, Ministry of the Attorney General and Legal Affairs
7.	Ms. Nadira Rahamatula	Manager AML, Central Bank of Trinidad and Tobago
8.	Ms. Giselle Samuel	Senior Legal Counsel, Central Bank of Trinidad and Tobago
9.	Mr. Shastri Singh	Examiner II, Central Bank of Trinidad and Tobago

4. BOARD OF INLAND REVENUE

NO	NAMES	POSITION
1.	Allison Raphael	Chairman and Commissioner
2.	Ms. Shireen Aziz	Chief State Counsel
3.	Ms. Shahista Khan	Commissioner, Audit/Compliance
4.	Ms. Neela Ram	ICT Director

5. FINANCIAL INTELLIGENCE UNIT OF TRINIDAD AND TOBAGO

NO	NAMES	POSITION
1.	Ms. Susan Francois	Director, Financial Intelligence Unit of Trinidad and Tobago

2.	Mr. Nigel Stoddard	Deputy Director, Financial Intelligence Unit of Trinidad and Tobago

6. FINANCIAL INVESTIGATIONS BRANCH, TTPS

NO	NAMES	POSITION
1.	Insp. Avinash Singh	Financial Investigation Branch

7. AMCHAM T&T

NO	NAMES	POSITION
1.	Mr. Nirad Tewarie,	Chief Executive Officer
2.	Ms. Aurelia Bruce	Research Officer

8. TRINIDAD AND TOBAGO CHAMBER OF INDUSTRY AND COMMERCE

NO	NAMES	POSITION
1.	Ms. Karen Yip Chuck	Director
2.	Mr. Joel Chadha	Member
3.	Mr. Baldath Ramkissoon	Member
4.	Mr. Suresh Cassie	Member

8. MINISTRY OF FINANCE

NO	NAMES	POSITION
1.	Ms. Savitree Seepersad	Deputy Permanent Secretary