

AS AMENDED IN THE HOR

No. 7 of 2019

Fourth Session Eleventh Parliament Republic of
Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

AN ACT to amend the Income Tax Act, Chap. 75:01

THE INCOME TAX (AMENDMENT) BILL, 2019

Explanatory Note

(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, Chap. 75:01 to meet our international requirements coming out of Trinidad and Tobago's obligations under the Tax Information Exchange Agreement with the United States and the Global Forum.

The Bill first contains Preambulatory 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 introduce after section 4C a new clause 4D. The proposed new section 4D would empower the Board of Inland Revenue to provide taxpayer information to a foreign tax administration authority for 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.

Clause 5 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 6 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 restricts 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 three hundred thousand dollars (\$300,000.00) and imprisonment for three years and on conviction on indictment to a fine of five hundred thousand dollars (\$500,000.00) and to imprisonment for five years.

Clause 7 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) Act, 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) Act, 2017 and other enactments for a similar purpose.

Clause 8 of the Bill would amend section 117A of the Act. 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.

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WHEREAS it is enacted by section 13(1) of the ^{Preamble} 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, 2019.
- 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.
- New section 4D inserted **4.** The Act is amended by inserting after section 4C, the following new section:
- “ Providing information to a foreign tax administration 4D. 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.”.
- Section 93 amended **5.** 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 “;”;
- (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.”.

6. The Act is amended by inserting after section 93, Section 93A inserted 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 7. 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 8. Section 117A of the Act is amended—

- (a) in subsection (1), by deleting all the words after the words “and other” and substituting the words “, the Mutual Legal Assistance in Tax Matters Act, 2020 and double taxation agreements.”;**
- (b) by inserting after subsection (2) the following new subsections:**

“(3) For the purposes of section 117(1), information is subject to confidential professional relationship where the information reveals confidential communication between a client and

his legal representative if such communication is produced for the purposes of—

(a) seeking or providing legal advice; or

(b) use in existing or contemplated legal proceedings.

(4) Subsection (3), shall not apply to—

(a) information which is communicated or given with the intention of furthering a criminal purpose;

(b) documents or records delivered to his legal representative in an attempt to protect the documents or records from disclosure; and

(c) information on the identity of a person such as a director or beneficial owner of a company.

(5) Where there is a dispute as to whether or not information is subject to confidential professional relationship, this matter shall be determined by a Judge on the application of either party.

(6) For the purposes of this section “party” means the following—

(a) the requesting party; or

(b) a person against whom an order to produce information is sought or his legal representative.

(7) Legal professional privilege shall be governed by the laws of Trinidad and Tobago.”.

Passed in the House of Representatives this 4th day of March, 2020.

Clerk of the House

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 34 members of the House.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day of , 2020.

Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by 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 Senators.

Clerk of the Senate

I confirm the above.

President of the Senate

No. 7 of 2019

FOURTH SESSION
ELEVENTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

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Received and read the

First time

Second time

Third time
