

PARLIAMENT OF THE COOK ISLANDS



VALUE ADDED TAX AMENDMENT BILL

2017 (No. 2)

Act?

This note does not form part of the Bill but is intended to indicate the effect of the clauses.

This Bill amends the Value Added Tax Act 1997 (the **principal Act**). The purpose of the Bill is to provide a tax amnesty and enable things to be done under the principal Act electronically.

Clause 1 relates to the Title.

Clause 2 relates to commencement and provides that the Act will come into force on the date on which it receives the Queen's Representative's assent.

Clause 3 provides that the principal Act amended is the Value Added Tax Act 1997.

Clause 4 amends section 2 of the principal Act, which defines certain terms used in that Act. This clause inserts a definition of "records" that cross-refers to the definition of that term in section 42(1) of the principal Act. The effect of this is to apply the section 42(1) definition for the purposes of the principal Act as a whole.

Clause 5 inserts new sections 32A and 32B into the principal Act.

New section 32A is similar to *new section 204(2)* of the Income Tax Act 1997 (as proposed in the Income Tax Amendment Bill 2017) and enables registered persons who are liable to pay additional value added tax to take advantage of the amnesty in this new provision. The amnesty period begins on 1 August 2017 and ends with the close of 31 December 2017. A taxpayer who wishes to take advantage of the amnesty must have paid all outstanding value added tax or enter into an arrangement with the Collector to do so.

New section 32B is similar to *new section 17A* of the Income Tax Act (as proposed in the Income Tax Amendment Bill 2017) and enables registered persons to declare previously undeclared amounts.

To take advantage of the amnesty, a registered person must—
• provide the return of undeclared amounts to the Collector during the amnesty period:

- pay the outstanding tax payable on the undeclared amounts and, in addition, pay a penalty equal to 20 percent of the amount of the tax payable on the undeclared amounts;
 - pay the required tax either within the amnesty period or under a payment arrangement acceptable to the Collector.
- When the registered person pays the outstanding tax and penalty amount, the person is freed from liability to pay any further tax or penalty in respect of the undeclared income. The payment is regarded as final.

The amnesty period starts on 1 August 2017 and ends with the close of 31 December 2017.

Clause 6

amends section 41B of the principal Act, which provides for the imposition of penal tax. Section 41B(1)(b) and (2)(b) are amended by deleting the expression "or documents" so that those provisions refer to "records" rather than documents. The expression "or documents" will no longer be necessary because the new general definition of "records" includes documents.

Clause 7

amends section 42 of the principal Act, which provides for rules relating to record keeping. Two amendments are made to section 42(1), which defines "records":

The first amendment is to provide that the definition applies for the purposes of the principal Act generally, not just for section 42. The term "records" is also used in sections 18(5) and (6), 19(6), 35(5), and 38(2)(c) of the principal Act.

The second amendment ensures that documents in electronic format are records for the purposes of the Act. The definition of "records" in section 42(1) includes both summary documents (books of account) and source documents (such as tax invoices, credit notes, and debit notes). The reference to summary documents explicitly includes books of accounts in electronic format. However, currently there is no equivalent reference in relation to source documents. Section 42(1) is amended to explicitly provide that the reference to source documents includes documents in electronic format. This avoids any argument that, on a literal reading of section 42(1), only summary documents can be kept in electronic format.

Clause 8

inserts new section 47B into the principal Act, which provides for the doing of acts or things under the Act electronically.

Subsection (1) empowers the Collector to authorise any of the following to be done electronically through a computer system or mobile electronic device (such as a mobile phone or tablet)—

- the furnishing of an application for registration under section 12 or an application for cancellation of registration under section 13;
- the furnishing of a tax return under section 15 or the furnishing of any other document under the Act (e.g. a notification of a change in status under section 14);

- the payment VAT or any other amount under the Act (such as additional tax under section 24);
- the payment of a refund of VAT under section 29;
- the service of notice of any document by the Collector under the Act;
- the doing of any other act or thing that is required or permitted to be done under the Act.

While subsection (1) provides that the Collector may authorise the acts or things specified in that subsection to be done by a taxpayer electronically, subsection (2) empowers the Collector to require the acts or things specified in subsection (1) to be done by a taxpayer electronically through the use of a computer system or mobile electronic device.

Subsection (3) provides that the Collector may do anything referred to in subsection (1) electronically through the use of a computer system or mobile electronic device.

Subsection (2) and (3) are subject to subsection (4), which provides that subsections (2) and (3) do not apply to a taxpayer if the Collector is satisfied that the taxpayer does not have the capacity to receive or make communications or payments electronically. For example, the taxpayer may be a small business without capacity to file tax returns or pay tax electronically. It is intended, in the initial stages of the operation of section 47B, that it would apply only to large taxpayers who clearly have the capacity to communicate with the Collector electronically.

Subsection (5) provides that, for the avoidance of doubt, an electronic communication made by, or to, the Collector under subsection (2) or (3) is treated as a notice in writing.

Subsection (6) provides that the Regulations may specify the procedures for the doing of any act or thing electronically under section 47B.