



**MINISTER OF FINANCE**  
The Honourable Colm Imbert  
Government of the Republic of Trinidad and Tobago

November 12<sup>th</sup> 2018

**The Hon. Mrs. Kamla Persad-Bissessar S.C., M.P.**  
Leader of the Opposition  
Office of the Leader of Opposition  
3<sup>rd</sup> & 4<sup>th</sup> Floors  
11 Charles Street  
**Port-of-Spain**

Dear Mrs. Persad-Bissessar S.C.,

**RE: THE INCOME TAX (AMENDMENT) BILL, 2018**

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I refer to the Bill at caption which is currently at the Committee of the Whole stage at the 2<sup>nd</sup> reading of the Bill as amended after the House of Representative's adoption of the Report of the Joint Select Committee.

As you are aware this Bill was laid in the House and referred to a Joint Select Committee on May 25<sup>th</sup>, 2018 and contains only 10 clauses, 4 of which are standard procedural clauses, such at the title, and 5 of which follow the previously settled FATCA/FATF approach. The only clause that introduces new legislative provisions is clause 5. The Bill forms a key component of the country's compliance with its international obligations as outlined hereunder. You would no doubt appreciate that the Bill seeks to address long outstanding commitments made by your administration in respect of the Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum), a technical body in the Organization for Economic Co-operation and Development (OECD) and the negative consequences of a premature assessment of Financial Action Task Force (FATF) compliance requested by your Government. It also critically addressed the national issue of the need to tackle financial criminality relative to the Proceeds of Crime Act and the Anti-Terrorism Act.

Enactment of the Bill at caption is now critical to avoiding the direct repercussions of non-compliance with our global standards.

Please note that our Global Forum and FATF obligations both require Trinidad and Tobago to enact legislation that complies with these global standards before the end of *November 2018*. In this regard, you would recall that during the on-going parliamentary debate on the Bill, the Attorney General and I requested that the Opposition provide its specific concerns so that the Parliament could work towards achieving common ground in the shortest possible time.

As you are aware the standing orders of the House of Representatives require that amendments to be proposed for consideration at the Committee Stage of the Parliament be reduced into writing and circulated to members. The Opposition has not to date submitted or offered an amendment to the Bill either in writing or orally on the floor of the Committee of the Whole.

Accordingly, we now wish to provide the Opposition with an overview of Trinidad and Tobago's simultaneous international obligations with the Global Forum and the FATF as well as the Government's proposed amendments to address the sole legislative drafting concern in the Minority Report of the Opposition on this Bill; *and our proposed amendment to address this concern.*

#### **THE GLOBAL FORUM**

As you would appreciate, Trinidad and Tobago became aware of the Global Forum standards in the latter part of 2010 and under your administration joined the Global Forum on October 4<sup>th</sup> 2011. The country underwent its Phase 1 Peer Review process in August 2010 and its report was published in December 2010 at which time the Global Forum identified several deficiencies in our legal and regulatory framework that hinder the country from effectively exchanging information in accordance with the international standards. Despite no material steps towards progress having been made since the Phase 1 Peer Review, your administration gave the Global Forum a further commitment to these goals on behalf of the country when then Minister of Finance, Mr. Larry Howai attended the 7<sup>th</sup> Plenary meeting in Berlin, Germany during October 28-29, 2014 and announced that Trinidad and Tobago would be among fifty-five countries to sign the Berlin Declaration on Transparency and Fairness in Tax Matters and enact legislation or regulations to effectuate the Multilateral Competent Authority Agreement. By Cabinet Minute No. 3072 dated November 11<sup>th</sup> 2014, your administration committed Trinidad and Tobago to the implementation of the new Common Reporting Standards (CRS) for the automatic exchange of information with the Global Forum, and to a timeline of **September 2017** for the first exchanges automatically in accordance with this standard. The manner of achieving same required Trinidad and Tobago to negotiate thirteen (13) separate agreements with sovereign states members of the Global Forum. However, the implementation of the CRS was not dealt with prior to the September 2015 general election.

From September 2015 to date the country has made significant progress in addressing the deficiencies outlined in the Phase 1 Report which are critical to achieving an overall highly effective regime for the exchange of information. In this context, the Government sent a high-level representation to the 9<sup>th</sup> Global Forum plenary meeting held in Tbilisi, Georgia, on November 2 – 4, 2016.

The country however remains faced with a critical obstacle to further progress which can only be addressed by the Bill at caption. The Ministry of Finance in October 2015 requested the Global Forum's extension of time for meeting the deadlines that your administration agreed to and in the period November 2015 to May 2018 engaged in a direct working relationship with the Global Forum. This included the sharing of all work engaged in the FATCA legislation which directly impacts the Global Forum obligations, the passage of FATCA legislation, the passage of FATF driven legislative reforms and the drafting and approval of all necessary legislation and processes required to meet the obligations under the Global Forum.

Notably, on January 24<sup>th</sup>, 2017 our country applied to the Global Forum to become a party to the Multilateral Convention on Mutual Assistance on Tax Matters (MAC). The MAC is a multilateral instrument for international tax-cooperation developed by the OECD that provides all forms of assistance in tax matters: exchange of information on request, spontaneous exchange, automatic exchange (including pursuant to the standard for Automatic Exchange of Financial Account Information in Tax Matters), tax examinations abroad, simultaneous tax examinations and assistance in tax collection. It guarantees extensive safeguards for the protection of taxpayers' rights and provides a legal basis for other forms of cross-border tax cooperation, including assistance in collection of taxes, or the undertaking of joint tax examinations with partner administrations. Upon signing the MAC, Trinidad and Tobago will strongly affirm its commitment to fight international offshore tax avoidance and evasion and be allowed to rapidly expand our network of information exchange partners and swiftly implement the transparency measures of the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project.

Entering into the MAC will obviate the need for negotiating bilateral independent tax information exchange agreements, which would take years to implement, taking the country far beyond the deadlines for Global Forum compliance. The Global Forum has however indicated in no uncertain terms that Trinidad and Tobago will not be allowed to become a party to the MAC without first amending the Income Tax Act, Chap. 75:01 to provide for the sharing of information under a number of double taxation agreements. The Bill therefore seeks to remove the restrictions contained in Section 4 of the Income Tax Act which is a non-negotiable prerequisite to our country becoming a party to the MAC. This is the next critical milestone in Global Forum compliance. Please also note that operationalization of the Tax Information Exchange Agreements (United States of America) Act, 2017 is also linked to such amendments. The Tax Information Exchange Agreements (United States of America) Act, 2017 was introduced in September 2016 and having been referred to a joint select committee, took at least ten (10) months to be enacted. Any repeat of such a protracted timeline is inimical to the country's position. Failure to enact the Bill at caption urgently will lead to Trinidad and Tobago being non-compliant with both the Global Forum and obligations in respect of FATCA.

The captioned Bill therefore seeks to fulfil these obligations, made on behalf of the citizens of Trinidad and Tobago, to become compliant with the international standard on Exchange of Information on Request and the Automatic Exchange of Information as established by the Global Forum and by extension FATCA. It would be noted that the Bill seeks to introduce provisions that are materially the same as those contained in the Tax Information Exchange Agreements (United States of America) Act, 2017, which was enacted on March 20, 2017. The Global Forum's network consists of 154 jurisdictions, including many Commonwealth Caribbean jurisdictions which are able to satisfy the standard of the Global Forum because of the absence of a secrecy provision similar to the Section 4 of the Income Tax Act in their laws.

The Government of Trinidad and Tobago has given the highest priority to achieving compliance and has continuously made vigorous efforts to meet these obligations. Following the application to become a party to the MAC, in April 2017 the country entered the fast-track process which allows for remedying deficiencies in the shortest possible time to achieve compliance with the global standard. To this end, in 2017 the Government prepared and laid in Parliament the Mutual Administrative Assistance in Tax Matters Bill, 2017. Following this, technical officers representing Trinidad and Tobago worked together with the Global Forum Secretariat to agree to amendments to the Bill that would satisfy the requirements of the Global Forum, thereby expediting compliance. The Government also sent a high-level representation to the 10<sup>th</sup> Plenary meeting held in Yaoundé, Cameroon during November 15-17, 2017.

Pursuant to the Government's high-level political commitment, a suite of legislation was finalised, including the captioned Bill, the Mutual Administrative Assistance in Tax Matters Bill, 2018 (incorporating the changes agreed with the Secretariat) and the Tax Information Exchange Agreements Bill, 2018. The amendments to the Income Tax Act **are a critical first step**, creating the foundation upon which the other enactments will be built. Government continues to work closely with the Global Forum to achieve compliance, including meetings with the Secretariat in February 2018 at which time, at the suggestion of the Government, the Secretariat also met with representatives of the Opposition.

It is of grave concern to the Government as well as the private sector that Trinidad and Tobago remains **the only country rated as non-compliant** by the Global Forum. In this regard the Bankers Association of Trinidad and Tobago and the Trinidad and Tobago Chamber of Commerce, et al, recently called upon the Opposition to fully support the passage of this critical legislation as continued non-compliance has dire consequences for the economy of our country.

#### **FINANCIAL ACTION TASK FORCE (FATF)**

Trinidad and Tobago remains subject to the FATF International Standards on Combatting Money Laundering and the Financing of Terrorism and Proliferation (the FATF 40 Recommendations). At the

request of your administration our country pre-maturely underwent its 4<sup>th</sup> Round Mutual Evaluation process which resulted in CFATF publishing the adopted Mutual Evaluation Report (MER) in June 2016, assessing the technical compliance and effectiveness of our AML/CFT framework as at January 2015. The deficiencies outlined in the MER resulted in Trinidad and Tobago being placed in two review processes: (i) The FATF International Cooperation Review Group (ICRG) process; and (ii) the Enhanced follow-up review by the CFATF.

Trinidad and Tobago continues to be on-track with key elements of the ICRG Action Plan, which commenced in November 2017 and runs until May 2019. This includes completion of the relevant action item in Immediate Outcome 2 in respect of removing the restriction on the provision of assistance in the case of certain tax offences (by the repeal of section 22(2)(k) of the Mutual Legal Assistance in Criminal Matters Act, Chap. 11:24). This technical compliance element however forms the substratum of the effectiveness of the system, which Immediate Outcome 2 assesses. The country is therefore required to demonstrate, when requests are received, that implementation of this new regime is occurring, mutual legal assistance is occurring in a timely manner and assistance for information on tax offences and fiscal matters are provided in response to such requests where the legal pre-requisites are satisfied.

Immediate Outcome 2 is also tied to FATF Recommendation 40, deficiencies in which must be addressed under the Enhanced follow-up process. The captioned Bill addresses deficiencies pertinent to this process and which is of the utmost importance, as Trinidad and Tobago is due to apply to CFATF for re-ratings in **November 2018**. This is a mandatory milestone as set out in the CFATF 4<sup>th</sup> Round MEVAL procedures and non-compliance will result in a delay of at least one year in the re-rating process. The failure to achieve such progress can ultimately result in FATF and CFATF calling for enhanced due diligence measures to be applied to transactions with natural and legal persons from our country as well as further countermeasures as determined by the FATF.

It is therefore critical that continued priority be given to such critical areas including Recommendation 40. The current restrictions in the Income Tax Act were specifically cited in the MER as impacting on compliance with the requirement 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, as well as to the ability of law enforcement to form joint investigative teams.

It must be reiterated that when the Bill is enacted, a requesting country must still meet specific pre-requisites before any taxpayer information is shared. Thus, not every citizen's tax information will be subject to being *automatically* shared with foreign counterparts. On the other hand, failure of Trinidad and Tobago to enact these amendments will result in FATF and Global Forum non-compliance leading to negative consequences for the country and by extension each citizen. The consequences of non-compliance will result in the termination of correspondent banking relationships and international trading relationships for trade settlements and payments, increased risk of enhanced due diligence measures and sanctions due to the high levels of non-compliance country wide, resultant reputation risk and competitive disadvantage to citizens of Trinidad and Tobago, and a dramatic increase in the cost of doing business. It is to be further noted that non-compliance with the FATF and Global Forum has cascading effects in terms of compliance with other regimes including the Council of the European Union list of non-cooperative jurisdictions for tax purposes and the European Union 5<sup>th</sup> AML Directive.

It is with a view to avoiding these penalties that we must enact this Bill and the legislation it precedes. The Government stands shoulder to shoulder with the international community in its position that on-going partnership and collaboration between tax governance and tax administration is critical in the fight against tax evasion and in protecting the integrity of tax systems and provides an opportunity to make significant strides in the fight against corruption and tax evasion. As a country, we must be fully committed to

operationalize compliance with all international tax transparency standards required for the domestic information gathering framework for implementation of the FATCA regime and the international infrastructure for exchange of information on request, the automatic exchange of information, confidentiality of data and beneficial ownership from the Global Forum as well as the FATF 40 Recommendations. This international thrust compliments this Government's focus on anti-corruption and tackling white-collar crime which includes tax evasion and avoidance. Against the background of the Financial Intelligence Unit having received 877 suspicious transaction reports (STRs) and suspicious activity reports (SARs) in 2017 covering over \$22 Billion in transactions (which stands in stark contrast with \$4.5 Billion in STRs and SARs for the cumulative period 2011 to 2016), Government has moved aggressively to finalise the "follow-the-money" suite of legislation.

### **THE INCOME TAX AMENDMENT BILL**

The Joint Select Committee, which comprises members of the Government, Opposition and Independent Benches **unanimously** agreed to the Bill at caption being treated with **as a priority** in recognition of it being a critical pre-requisite to compliance with the aforementioned international obligations. The Opposition has been seized of this short Bill comprising a mere ten (10) clauses for the past six (6) months and the Government has continuously requested the Opposition to articulate its concerns and recommendations to bring this matter to a timely conclusion. Thus far the only concern of the Opposition which can be clearly identified is contained in the Report of Joint Select Committee at page 63 in relation to **Clause 5(6)(b)**.

The Opposition has proposed that the South African legislation stand as a good precedent for consideration. The Government categorically stated in the debate of the Report and at the Committee Stage of the Bill on November 2<sup>nd</sup> 2018 that it is willing to consider the merits of same notwithstanding the fact that South Africa has not yet undergone its 4<sup>th</sup> Round Mutual Evaluation process and as such does not serve as a reliable precedent for compliance with the FATF. It is to be noted that the only issue is the issue of Judicial authorisation for the TTPS to receive taxpaying information as the South Africa's Tax Administration Act, 2011, at section 70(3) allows for the disclosure of taxpayer information to its Financial Intelligence Centre by its relevant tax administration.

In the circumstances and with only one (1) issue on the table, the Government has drafted an amendment to the Bill, which we consider sufficient to address the sole issue identifiable as arising from the Opposition's Minority Report. This amendment is herewith enclosed together with a marked up version of the Bill and the Act as amended in the JSC and as is proposed to be further amended. We also enclose herewith a table of the clauses of the Bill against issues and proposals. We remind that this Bill has been drafted in conjunction with the Global Forum.

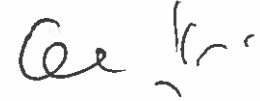
We caution that Trinidad and Tobago will be considered by the Plenary of the Global Forum in Uruguay on November 20-22, 2018 and that it remains imperative that we are able to preserve the opportunity to for our country to indicate that we will be able to complete the Income Tax Amendment Bill in November 2018 so that we may be permitted to sign the MAC and move to BEPS. This progressive approach will take us out of being the only country in the Global Forum to be non-complaint. We will have the opportunity to be moved out of this disastrous situation in the follow up process of the Global Forum.

We also remind that Trinidad and Tobago will be required to address its on going work at the CFATF Plenary in the period November 19-23, 2018 in Barbados. Again we remind that the deadline for compliance in the progress report to the FATF and CFATF on this issue is November 2018.

It remains imperative that Trinidad and Tobago achieve compliance with these global regimes. Failure to comply will have increasingly catastrophic consequences for all citizens of our country. To this end, and

bearing in mind that these matters are time-sensitive, I request that the Opposition urgently furnish us with its written response with immediacy.

I remain  
Yours sincerely



Colm Imbert

**Table: Income Tax (Amendment) Bill 2018**

Clause No.	Section of Income Tax Act Chap. 75:01	Marginal Note of Clause	Clause	Opposition Concerns	Explanation
1		Short Title	This Act may be cited as the Income Tax (Amendment) Act, 2018.	No comment from the Opposition –	Short title of the Bill
2		Act inconsistent with Constitution	This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.	No comment from the Opposition –	Inconsistency with Constitution
3		Interpretation Chap. 75:01	In this Act, "the Act" means the Income Tax Act.	No comment from the Opposition –	Interpretation
4		Long title amended	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".	No comment from the Opposition –	The long title is being expanded to reflect the amendments to the Act.
5	Section 4 Official secrecy	Section 4 amended by inserting new subsections (4), (5), (6), (7), (8),	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. (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).	No comment from the Opposition –	New subsection (4) makes it clear that the secrecy provisions do not apply in an evidentiary process where criminal proceedings have commenced under the Proceeds of Crime Act 11:27 and the Anti-Terrorism Act Chapter 12:07.  New subsection (5) makes it clear that the Board of Inland Revenue must comply with a written law which requires it to disclose taxpayer information to certain agencies.

Clause No.	Section of Income Tax Act Chap. 75:01	Marginal Note of Clause	Clause	Opposition Concerns	Explanation
5			<p>(6) Notwithstanding sub-sections (1) and (2), a person having an official duty or being employed in the administration of this Act shall, for the purposes of subsection (5)-</p> <p>(a) provide taxpayer information to the Director of the Financial Intelligence Unit of Trinidad and Tobago (hereinafter referred to as the "FIU") solely for the purpose of enabling the FIU to do its analysis under the Financial Intelligence Unit of Trinidad and Tobago Act; and</p> <p>(b) provide taxpayer information to a member of the police service of the rank of Superintendent or above attached to the Division or Unit of the police service responsible for financial investigations or fraud, solely for the purpose of-</p> <p>(i) investigating whether an offence has been committed under the Proceeds of Crime Act and the Antiterrorism Act;</p> <p>(ii) the laying of information; or</p> <p>(iii) the preferring of an indictment, where such information can reasonably be regarded as being necessary for the purpose of ascertaining the circumstances in which an offence under any written law may have been committed, or the identity of the person who may have committed an offence; and</p> <p>(c) provide information relative to the taxpayer to the taxpayer, upon his request.</p>	<p>Proposed Clause (5)(6)(b) is potentially dangerous provision as it can be subject of abuse. All that is required is that a charge be laid in order for a person's tax information to be provided to members of the police service. The provision of taxpayer's information should be such that it should be managed by the oversight of a judicial officer. This will in fact prevent any potential abuses of such important information and ensure that a person's constitutional right to privacy is properly protected.</p> <p>The Bill provides for the provision of taxpayer's information to members of the police service in relation to offences under the Proceeds of Crime Act and the Anti-Terrorism Act. On examination of the South African legislation, Section 71 of the Tax Administration Act 2011 states that offences (other than tax offences) require an order of the Court for it to be provided to the South</p>	<p>Government proposes that disclosure of taxpayer information to the TTPS be granted by a High Court Judge.</p> <ul style="list-style-type: none"> <li>• New subsection (6)(a) provides for the sharing of taxpayer information by the Board of Inland Revenue with the Director of the Financial Intelligence Unit strictly for a limited purpose. <ul style="list-style-type: none"> <li>○ Equivalent to South African Law - The Tax Administration Act 2011 of South Africa, Section 70(3) allows for the disclosure to the Financial Intelligence Centre.</li> </ul> </li> <li>• New subsection (6)(b) provides for the sharing of taxpayer information by the Board of Inland Revenue with the division of the police service responsible for investigation of financial crimes or fraud for investigating whether a crime has been committed under the Proceeds of Crime Act 11:27 and the Anti-Terrorism Act Chapter 12:07. <ul style="list-style-type: none"> <li>○ The Government has not received any proposals from the Opposition to re-draft this Clause but is amenable to an amendment introducing judicial oversight to this process. Draft is enclosed.</li> </ul> </li> </ul>



Clause No.	Section of Income Tax Act Chap. 75:01	Marginal Note of Clause	Clause	Opposition Concerns	Explanation
				<p>African Police Service or the National Director of Public Prosecutions. As such, it is the views of the members undersigned that a similar safeguard be provided in the current legislation.</p>	
			<p>(7) Where the taxpayer information disclosed under this section discloses an offence referred to in section 4C, the taxpayer information may be used as evidence in any proceedings in respect of the offence.</p>	<p>No comment from the Opposition -</p>	<p>New subsection (7) allows for the use of taxpayer information for evidential purposes for specific offences.</p>
			<p>(8) <del>Notwithstanding subsection (6),</del> Where taxpayer information is received by the Board from another jurisdiction under 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.</p>	<p>No comment from the Opposition -</p>	<p>New subsection (8) prohibits the Board of Inland Revenue 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.</p>
6	new Section 4A	<p>New sections 4A - providing information to a foreign tax administration</p>	<p>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.</p>	<p>No comment from the Opposition -</p>	<p>New section 4A would empower the Chairman of the Board of Inland Revenue to provide taxpayer information to a foreign tax administration authority that is foreseeably relevant to the administration and enforcement of the domestic laws of that jurisdiction provided that there is an arrangement for double taxation relief or exchange of taxpayer information.</p>
		<p>4B - restricting on use of</p>	<p>4B Where taxpayer information has been provided under section 4(5)(a) and (b), the</p>	<p>No comment from the Opposition -</p>	<p>New subsection 4B restricts the use by the FIU and TTPS of the taxpayer information</p>

Clause No.	Section of Income Tax Act Chap. 75:01	Marginal Note of Clause	Clause	Opposition Concerns	Explanation
		taxpayer information	<p>recipient of such information shall—</p> <p>(a) only use the information for the purpose for which it was provided;</p> <p>(b) only retain the taxpayer information for as long as is necessary for the purpose collected; and</p> <p>(c) not disclose the taxpayer information for purposes other than the purpose for which it was collected <del>of collection</del> without the prior consent of the taxpayer Board.</p>		<p>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 that purpose without the prior consent of the Board of Inland Revenue.</p>
		4C - offences for breaches of section 4B	<p>4C A person who receives taxpayer information under section 4 or 4A and who breaches section 4B commits an offence and is liable—</p> <p>(a) on summary conviction to a fine of <i>one hundred thousand dollars</i> and to imprisonment for a term of <i>twenty years</i>; or</p> <p>(b) on conviction on indictment to a fine of <i>one hundred and fifty thousand dollars</i> and to imprisonment for a term of <i>thirty years</i>.</p>	<p>No comment from the Opposition –</p>	<p>New subsection 4C creates a deterrent for the unlawful sharing of personal information by making breaches of this section an offence carrying a penalty of \$100,000.00 and 20 years imprisonment on summary conviction or a penalty of \$150,000.00 and 30 years imprisonment on indictment.</p>
		4D interpretation of the phrases “statistical information” and “taxpayer information” inserted	<p>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”</p> <p>“taxpayer information” means information of <del>any kind</del> 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</p>	<p>No comment from the Opposition –</p>	<p>New subsection 4D provides a definition of the terms “statistical information” and “Taxpayer information” for the purposes of section 4.</p>

Clause No.	Section of Income Tax Act Chap. 75:01	Marginal Note of Clause	Clause	Opposition Concerns	Explanation
7	Section 93 Relief from double taxation	Section 93 amended	<p>(b) prepared from information referred to in paragraph (a), but does not include, statistical information.”</p> <p>The Act is amended in section 93-</p> <p>(a) in paragraph (a) –</p> <p>(i) by inserting after the words “that country,” the words “for the receipt and sharing of information relative to such arrangements;” and</p> <p>(ii) by deleting the words “; or” and substituting the word “;”;</p> <p>(b) in paragraph (b) by deleting the word “;” and substituting the words “; or”;</p> <p>(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.”</p>	<p>No comment from the Opposition –</p>	<p>Introduces a new section 93(1)(c) which provides a mechanism for the sharing of taxpayer information with another jurisdiction with which Trinidad and Tobago has entered into arrangements for double in respect of such arrangements.</p>
8	Section 93A	Section 93A inserted	<p>93A. (1) Notwithstanding sections 6, 38 and 40 of the Data Protection Act, the Board may, for the purposes of section 93, process information collected by it under this Act.</p> <p>(2) Notwithstanding sections 6, 30 and 31 of the Data Protection Act, the Board shall for the purposes of section 93, receive information on an individual, entity or legal arrangement.</p> <p>(3) Notwithstanding section 46 of the Data Protection Act, information received by the Board under section 93 shall be disclosed under an agreement even if the individual, entity or legal arrangement to whom the information relates does not consent to the disclosing of his information or the</p>	<p>The Bill impacts several crucial provisions contained in the Data Protection Act Chap. 22:04, namely exemptions from sections 6, 30, 31, 38, 40, 46 and 93.</p>	<p>Amendment pursuant to FATCA –</p> <p>New subsection 93A mirrors what is provided for in the Tax Information Exchange Agreements (United States of America) Act, No. 4 of 2017 and makes provision for sharing notwithstanding privacy limitations in the Data Protection Act, Chap. 22:04.</p>

Clause No.	Section of Income Tax Act Chap. 75:01	Marginal Note of Clause	Clause	Opposition Concerns	Explanation
			<p>jurisdiction does not have comparable safeguards as required by the Data Protection Act.</p> <p>(4) Notwithstanding any other written law, where the Board receives information for the purposes of section 93, it shall not share that information with any person unless so permitted under this Act.</p> <p>(5) Where information has been obtained or received under section 93, a person who uses or discloses the information other than for the purposes for which it is obtained or received commits an offence and is liable –</p> <p>(a) on summary conviction to a fine of one hundred thousand dollars and to imprisonment for a term of three years; and</p> <p>(b) on conviction on indictment to a fine of one hundred and fifty thousand dollars and to imprisonment for a term of five years.”</p>		
9	Section 117 Powers of inspection of records	Section 117 amended	<p>Section 117(1) of the Act is amended by inserting after the words “this Act”, the words “or any other written law over which the Board has oversight,</p>	No comment from the Opposition –	Section 117 is amended to broaden the scope of power of the Board of Inland Revenue to require the provision of information relative to other written laws for which the BIR has oversight including the Petroleum Taxes Act, Chap. 62:01 and the Corporation Taxes Act Chap. 75:02.
10	Section 117A	Section 117A amended	<p>Section 117A of the Act is amended in subsection (1), by deleting all the words after the words “and other” and substituting the words “, other enactments for similar purposes and double taxation agreements.”.</p>	No comment from the Opposition –	Amendment pursuant to FATCA - consequential amendment under the Tax Information Exchange Agreements (United States of America) Act, 2017.

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

30<sup>th</sup> October, 2018

- 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

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

(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;

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

“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.

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

(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).**

Commented [IE1]: OECD Comments for consistency



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

**(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) by Order of the Court 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.**

**Proposed amendments to clause 5 (a)(ii) for proposed new subsections 4(6a) to (6C) for the Income Tax (Amendment) Bill, 2018 to provide for judicial oversight**

**(6A) Where a member of the police service under subsection (6) wishes to obtain taxpayer information, he shall apply to the High Court for a Production Order to require the Chairman of the Inland Revenue Division to provide the taxpayer information.**

**(6B) An application under subsection (6A) may be made *ex parte* and without notice.**

**(6C) An application under subsection (6A) shall be accompanied by an affidavit setting out the reasons for the request for the taxpayer information.**

**(6D) A Production Order under subsection (6A), shall require the Chairman of the Inland Revenue Division to provide the taxpayer information required in the application to the Court to the member of the police service under subsection (6).**

**(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.**

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

~~(8) Notwithstanding sub-section (6), where taxpayer information is received by the Board from another jurisdiction under a tax information sharing agreement or an agreement for the exchange of information in relation to taxation, 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.~~

Commented [IE2]: No need to notwithstand section 6

Commented [IE3]: OECD suggestion for consistency in language

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.

Commented [IE4]: OECD suggestion for clarity in language

Restriction on use of taxpayer information

4B. Where taxpayer information has been provided under section 4(6)(a) and (b), the recipient of such information shall-

Commented [IE5]: Clarity of language as this section should only apply to sections 6(a) and (b) and not paragraph (c)

- (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 it was collected without of the taxpayer Board.

Commented [IE6]:

Commented [IE7]: OECD and Ministry of Finance included comments for clarity the information is in the possession of the Board and it was felt that the approval of the Board rather than the tax payer is needed

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-

Commented [IE8]: Removed as the section is not to apply to section 4A

- (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

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

**“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.**

Commented [1E9]: OECD suggested insertion for clarity

### 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;

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

- (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;

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

- (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.

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

**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.

Commented [IE10]: OECD suggested insertion so that it is clear that the sharing of receipt of information is one of the arrangements that the President may make an order for

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

(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.

Commented [IE11]: Suggested by OECD for clarity

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

(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.

Commented [IE12]: Suggested by OECD for clarity

(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.



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

(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.

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

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.

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

(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.

November 9<sup>th</sup> 2018

**Annex to Letter to the Hon. Mrs. Kamla Persad-Bissessar S.C., M.P.**  
Leader of the Opposition  
Office of the Leader of Opposition  
3<sup>rd</sup> & 4<sup>th</sup> Floors  
11 Charles Street  
**Port-of-Spain**

Dear Mrs. Persad-Bissessar S.C.,

**RE: THE INCOME TAX (AMENDMENT) BILL, 2018**

---

**Proposed amendments to clause 5 (a)(ii) for proposed new subsections 4(6a) to (6C) for the Income Tax (Amendment) Bill, 2018 to provide for judicial oversight**

(6A) Where a member of the police service under subsection (6) wishes to obtain taxpayer information, he shall apply to the High Court for a Production Order to require the Chairman of the Inland Revenue Division to provide the taxpayer information.

(6B) An application under subsection (6A) may be made *ex parte* and without notice.

(6C) An application under subsection (6A) shall be accompanied by an affidavit setting out the reasons for the request for the taxpayer information.

(6D) A Production Order under subsection (6A), shall require the Chairman of the Inland Revenue Division to provide the taxpayer information required in the application to the Court to the member of the police service under subsection (6).