



Government of the Republic of Trinidad and Tobago

**Presentation by the Hon. Colm Imbert, Minister of Finance, M.P.**

**In the House of Representatives**

**On Friday 2<sup>nd</sup> November, 2018 -**

## **Income Tax (Amendment) Bill, 2018**

Madam Speaker, before you this afternoon is the Income Tax (Amendment) Bill, 2018, aimed at amending the Income Tax Act, Chap. 75:01 to ensure that Trinidad and Tobago meets its international obligations under the Global Forum on Transparency and Exchange of Information for Tax Purposes, the FATF 40 Recommendations and the Tax Information Exchange Agreements (United States of America) Act No. 4 of 2017.

### **Background**

Madam Speaker, when the Income Tax (Amendment) Bill, 2018 was first read in Parliament on May 25, 2018, I gave a brief synopsis of the rationale behind the proposed amendments and the context in which the Bill

was being treated as a matter of priority in the legislative agenda of this Government. Today, however, Madam Speaker, I propose to give a more detailed and in-depth account of the events leading up to this Government's decision to introduce amendments to the existing Income Tax Act Chap. 75:01 as well as subsequent events that have shaped the approach taken since the Bill's first reading.

### **Global Forum**

Madam Speaker, the proposed amendments to the Income Tax (Amendment) Bill, 2018 are part of the process of ensuring that Trinidad and Tobago becomes compliant with the International Standard on Exchange of Information on request, commonly referred as the EOIR standard, as indicated by the Global Forum on Transparency and Exchange of Information for Tax Purposes. The EOIR Standard provides for the exchange on request of "foreseeably relevant" information for the administration or enforcement of the domestic tax laws of a requesting party.

The intention, Madam Speaker, is that by adopting this Standard, which would facilitate the effective exchange of information for tax purposes, party States can mitigate against the ever-increasing risk of tax avoidance

and tax evasion which, as we are aware, threatens government revenues annually. Under this framework, Madam Speaker, it is more likely that corporations and individuals will be unable to successfully hide their assets from tax authorities.

In order to ensure that Contracting States are compliant, the Global Forum conducts in-depth monitoring and peer review of the implementation of the international standards of transparency and the exchange of information for tax purposes, the EOIR standard. All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are reviewed.

This peer review, Madam Speaker, is conducted in a two-phased process: the Phase 1 review assesses the quality of jurisdictions' legal and regulatory framework for the exchange of information and the Phase 2 review addresses the practical implementation of that framework.

On October 4, 2011, Trinidad and Tobago became a member of the Global Forum. Prior to obtaining membership, however, this country

underwent a Phase 1 review in light of Trinidad and Tobago being identified by the Global Forum as a jurisdiction relevant in view of the proposed establishment of the Trinidad and Tobago International Financial Centre.

The Report generated by the Global Forum as a result of the Phase 1 review identified several deficiencies in Trinidad and Tobago's legal and regulatory framework system that hinder this country from effectively exchanging information in accordance with international standards. Regrettably, Madam Speaker, no progress was made during 2011 – 2015 to address the shortcomings that would enable this country to progress to Phase 2 of the peer review process.

The resulting effect, Madam Speaker, is that Trinidad and Tobago, now a Member of the Global Forum, was given an overall rating of non-compliant at the Ninth Plenary Meeting of the Global Forum in November 2016. In order to receive a positive rating, the Global Forum required Trinidad and Tobago to take the necessary steps to bring the country in compliance with the current standards and to also implement the new Global Forum Standards by June 2017.

Given the short time frame, Madam Speaker, this could not be achieved. After much hard work, this Government, through the enactment of three pieces of legislation, the first of which is the Income Tax (Amendment) Bill, 2018 that is now before the House, proposes to correct the legislative and regulatory deficiencies identified by the Global Forum.

You would recall Madam Speaker, that on the last occasion that I addressed the House on the Income Tax (Amendment) Bill, I indicated that Trinidad and Tobago was expected to undergo its Second Peer Review in June 2018.

Madam Speaker, the review was in fact launched as indicated. Part of the review process includes the completion of an EOIR Peer Review Questionnaire which was submitted on August 3, 2018 to peers of Trinidad and Tobago for comments and questions. Trinidad and Tobago responded to these comments and questions in mid-October 2018.

Madam Speaker, this questionnaire and its accompanying responses would now form the basis on which an on-site visit would be conducted by the Global Forum. This on-site visit is expected to take place no later than mid-January 2019. Madam Speaker, the ideal is for this country to have in place enacted legislation that can be reviewed by the assessors upon their visit.

On completion of the on-site visit, the assessors are expected to prepare a report for circulation to and consideration of each member of the Peer Review Group (PRG). A full report with comments and objections is to be prepared for consideration at the PRG meeting expected to occur in May 2019. At that meeting, Trinidad and Tobago will be called upon to account in respect of any inadequacies that we may have not addressed since the 2011 Phase 1 Peer Review.

Madam Speaker, the reason why I have gone to great-lengths to explain the process is to indicate the seriousness of the passage of this Bill before this House. Trinidad and Tobago will be required to appear before the assessors and the PRG who are representatives of other countries

forming the Global Forum to explain why this country has not put systems in place to become compliant, if that is indeed the case by May 2019. Madam Speaker, there will be a consequence for the inaction of this country. I have spoken in this place on more than one occasion on the phenomenon of de-risking which is real and potentially dangerous to Trinidad and Tobago's financial sector if this country does not put its house in order. The passage of this Bill is one step required to put this country on the right path.

### **The Financial Action Task Force**

Madam Speaker, the amendments to the Income Tax Act also address the obligations under the Financial Action Task Force 40 Recommendations commonly referred to as FATF. As you know, Madam Speaker, FATF deals with the global international standards on combatting money laundering and the financing of terrorism and proliferation. Madam Speaker, my address will be brief as I intend to defer the more substantive discussion on this issue to the Attorney General.

During the Fourth Round of the mutual evaluation process, in which Trinidad and Tobago's compliance with the FATF 40 Recommendations and

the level of effectiveness of this country's anti-money laundering and countering the financing of terrorism system was analysed, a number of deficiencies were identified as it pertains to our legislative framework. 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 counterparts in relation to money laundering, terrorist financing, predicate offences and tracing the proceeds and instrumentalities of crime.

The mutual evaluation report (MER) coming out of the mutual evaluation process identified that section 4 of the Income Tax Act led to deficiencies particularly impacting on the ability of the Financial Intelligence Unit to perform its core functions as well as deficiencies in the Proceeds of Crime Act, Chap. 11:27. Madam Speaker, these deficiencies can be resolved through amendments to the Income Tax Act.

### **Income Tax (Amendment) Bill, 2018**

Madam Speaker, it is in this context that the amendments to the Income Tax Act, are being debated before this House. Madam Speaker, I



now propose to take you through the amendments which are relatively short as the Bill comprises ten (10) clauses.

Madam Speaker, **Clause 1** of the Bill is the short title and provides the name of the Act, the Income Tax (Amendment) Act, 2018.

**Clause 2** provides that the Act shall have effect even though it is inconsistent with sections 4 and 5 of the Constitution.

**Clause 3** is the interpretation clause which provides that reference to the term “the Act” in the context of this Bill means the Income Tax Act, Chap. 75:01.

**Clause 4** of the Bill proposes to amend the long title of the Act 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.”

Madam Speaker, the rationale behind this amendment is that the existing wording of the long title fails to recognise the expanded scope of the Income Tax Act which, by way of this Bill, would now allow for the sharing of personal information in its possession with entities, notably the Financial Intelligence Unit of Trinidad and Tobago and the Trinidad and Tobago Police Service, once specified criteria has been met.

Madam Speaker, as you are aware, these are standard preliminary sections in most legislative instruments. I now, however, propose to delve into the more substantive clauses of the Bill.

**Clause 5** of the Bill, Madam Speaker, deals with amendments to section 4 of the Income Tax Act. Clause 5 of the Bill amends subsection 4(2)(a) of the Act and proposes to insert five (5) new subsections after subsection 4(3) of the Act, more particularly subsections (4), (5), (6), (7) and (8).

Madam Speaker, section 4 of the Income Tax Act, which is often referred to as the “official secrecy” provision, prohibits the Board of Inland

Revenue from disclosing taxpayer information and in fact mandates that such information be treated as secret and confidential. As a result, section 4(2) of the Act makes it an offence to disclose such information except in the circumstance where the President authorizes such disclosure and the disclosure is for the purposes of the Income Tax Act or any other written law administered by the Board of Inland Revenue.

The challenge with this provision, Madam Speaker, is that it is incompatible with not only the exchange of information for tax purposes but also with the ability of law enforcement agencies, namely the Trinidad and Tobago Police Service, and statutory agencies such as the Financial Intelligence Unit, whose remit requires disclosure of taxpayer information, to perform their core functions under the Proceeds of Crime Act, Chap. 11:27 and the Financial Intelligence Unit of Trinidad and Tobago Act, Chap. 72:01. Should this be left unresolved, Madam Speaker, this country's ability to comply with the global international standards on combatting money laundering and the financing of terrorism and proliferation as well as those standards set by the Global Forum will be negatively impacted.

Some of the proposed amendments, Madam Speaker, therefore seek to address these challenges by creating exceptions to the official secrecy rule. Before I delve into these exceptions, Madam Speaker, I will first deal with the proposed amendment to subsection 4(2).

Clause 5(a)(i) seeks to delete Subsection 4(2)(a) which is the provision that empowers the President to authorize the sharing of information which was flagged by the Global Forum as being contrary to this country's obligations under agreements to share tax information. This subparagraph is therefore being deleted to no longer empower the President to authorize such sharing.

Madam Speaker, Clause 5 also introduces exceptions by way of a new subsection 4(4). The proposed subsection (4) seeks to ensure that the secrecy provisions do not apply in respect of criminal proceedings, whether they be on indictment or on summary conviction, that have commenced by way of laying an information or preferring an indictment pursuant to the provisions of the Proceeds of Crime Act and the Anti-terrorism Act.

The new subsection (5) creates another exception to section 4(1) and (2). By virtue of the amendment, where there is a written law authorizing disclosure of taxpayer information to an individual or an entity, the Board of Inland Revenue is required to disclose such information to the entity within a reasonable time. The entity must, however, comply with subsection (6) as it pertains to the information disclosed.

Under the proposed subsection (6), the Board of Inland Revenue will now be required to disclose taxpayer information to the Director of the Financial Intelligence Unit solely for the purpose of enabling the FIU to do its analysis under the Financial Intelligence Unit of Trinidad and Tobago Act. The Board will also now be required to provide taxpayer information to a member of the police service of the rank of Superintendent or above attached to the Division or Unit of the police service responsible for financial investigations or fraud.

In the case of the police service, this information will be provided solely for the purpose of, firstly, investigating whether an offence has been committed under the Proceeds of Crime Act and the Anti-terrorism Act;

secondly, the laying of information or thirdly, the preferring of an indictment in specified circumstances. The amendment also makes provision for information to be disclosed upon the request of the taxpayer to whom it concerns.

Madam Speaker, the insertion of a new subsection (7) seeks to ensure that any taxpayer information disclosed under section (4) which reveals an offence under section 4C of the Act can be used as evidence in any criminal proceedings.

Madam Speaker, as it pertains to the proposed subsection (8), it is important to note that Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that the confidentiality of such information would be preserved. For that reason, the new subsection (8) seeks to, notwithstanding the exceptions set out in subsection (6), prohibit the disclosure of taxpayer information received pursuant to a tax information sharing agreement for non-taxation purposes.

This, of course, Madam Speaker, is unless the jurisdiction supplying the taxpayer information has laws allowing for and consented to such sharing.

**Clause 6** of the Bill seeks to introduce four new sections to the Act, sections 4A, 4B, 4C and 4D.

Madam Speaker, the new section 4A proposes to create another exception to section 4 of the Act in that it requires the Board of Inland Revenue to provide taxpayer information to a foreign tax administration where that information is foreseeably relevant to the administration and enforcement of the domestic tax laws of another jurisdiction with which Trinidad and Tobago has an arrangement for double taxation relief or exchange of information in relation to taxes.

Madam Speaker, the test of “foreseeably relevant” as set out in the section ensures that requests for taxpayer information by foreign tax administrations are not speculative in that they have no nexus to an open inquiry or investigation. In other words, Madam Speaker, that wording is

meant to safeguard against fishing expeditions and protect taxpayer information against speculative probes.

The proposed section 4B, Madam Speaker, places restrictions on the use of taxpayer information provided by the Board of Inland Revenue pursuant to section 4(6) of the Act. The section is meant to ensure that the information provided would only be used for the purposes permitted and that confidentiality is preserved. Madam Speaker, a similar approach has been adopted by the Data Protection Act, in an effort to safeguard information.

As a deterrent against non-compliance with section 4B, section 4C seeks to introduce offences for breaches of section 4B with appropriate penalties for non-compliance. It is important, Madam Speaker, that the seriousness of breaching section 4B be reflected in the penalties set out. For that reason, the penalties involve both a fine and a custodial sentence. Section 4C provides that where there is a breach of section 4B, a person is liable to, on summary conviction, a fine of one hundred thousand dollars and to imprisonment for a term of twenty years. In the case where the person has been convicted, on indictment, the penalty is more severe – a fine of one



hundred and fifty thousand dollars and to imprisonment for a term of thirty years.

Section 4D is an interpretation provision and seeks to provide an interpretation to the phrases “taxpayer information” and “statistical information” which feature throughout sections 4 to 4C.

Madam Speaker, section 93 of the Income Tax Act 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 Trinidad and Tobago to persons not resident in Trinidad and Tobago. The section also provides for determining income to be attributed to such persons and determining income to be attributed to persons resident in Trinidad and Tobago who have special relationships with persons outside of the country.

The provision, however, did not expressly allow for the sharing of personal information. Madam Speaker, it is proposed to amend section 93(1)

of the Income Tax Act to make provision for the President, in the case of relief from double taxation, to make arrangements with the Government of any country, as specified in an Order, for the collection, receipt and sharing of information by the Board of Inland Revenue.

Madam Speaker, with the current global thrust aimed at reducing the occurrence of tax evasion and tax avoidance, the approach has been to make provision for the sharing of information in double taxation agreements. The amendment in Clause 7 therefore seeks to streamline local legislation with international standards.

**Clause 7** of the Bill, Madam Speaker, proposes to amend section 93(1) of the Income Tax Act to make provision for the receipt and sharing of information relative to double taxation agreements.

**Clause 8** seeks to introduce a new section 93A to the Income Tax Act. Section 93A proposes to create exceptions to the privacy limitations set out in the Data Protection Act, Chap. 22:04.

Madam Speaker, the proposed section 93A exists in similar fashion under existing legislation, that is, the Tax Information Exchange Agreements (United States of America) Act, Chap. 76:51. Therefore, Madam Speaker, the concept is not new.

We recognise that several provisions under the Data Protection Act are incompatible with our efforts to become compliant with our international obligations. We have therefore sought to create, by virtue of the new section 93A, exceptions to the provisions in the Data Protection Act which would prohibit the receiving, use and sharing of personal information in the possession of the Board of Inland Revenue without the express consent of the person to whom the information belongs.

In addition, Madam Speaker, the Data Protection Act also prohibits the disclosure of information outside of Trinidad and Tobago unless the country receiving the information has similar data protection safeguards as Trinidad and Tobago. The challenge that we face with this provision, Madam Speaker, is that some of the countries with which we have tax information sharing

agreements do not have similar safeguards existing in their legislative framework. It is for that reason that we view it as necessary to allow for the sharing of information in circumstances where similar safeguards do not exist in foreign jurisdictions.

In order to deter against the abuse of the exceptions provided by this section, the proposed section 93A also makes it an offence for a person to use or disclose information other than the purposes for which it was obtained. As with the other penal provision, Madam Speaker, the seriousness of this offence warrants a fine and custodial sentence. The section provides that a person who commits such an offence is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for a term of three years and on conviction on indictment to a fine of one hundred and fifty thousand dollars and to imprisonment for a term of five years.

Madam Speaker, **Clause 9** of the Bill proposes to amend section 117(1) of the Income Tax Act by inserting after the words “this Act”, the words “or any other written law over which the Board has oversight”.

Section 117(1) of the Act deals with the information gathering powers of the Board of Inland Revenue. Madam Speaker, section 117(1) states that the Board of Inland Revenue may obtain information for any purpose related to the administration and enforcement of the Income Tax Act from any person with respect to their income, assessment or assets or from any third party with respect to the income, assessment, or assets of a taxpayer. The section, however, Madam Speaker, does not apply to persons engaged in confidential professional relationships with such persons.

We have therefore sought, through the proposed amendment, to expand the scope of the Board's information gathering powers to any other written law over which the Board has oversight.

**Clause 10**, Madam Speaker, proposes to amend section 117A. (1) of the Act by deleting all the words after the words "and other" and adding the words "enactments for similar purposes and double taxation agreements."

The existing section 117A. (1), Madam Speaker, restricts the power of the Board of Inland Revenue to gather any financial information and compel

a financial institution or any of its officers to appear before it to give evidence for the purpose of the Tax Information Exchange Agreements (United States of America) Act. The proposed amendment seeks to expand the applicability of the Board's powers to other tax information sharing agreements and double taxation agreements.

### **Conclusion**

Madam Speaker, in light of the preceding, it is critical that the Income Tax (Amendment) Bill, 2018 be enacted. Madam Speaker, this Bill is the foundation to a number of other pieces of legislation, namely the Mutual Administrative Assistance in Tax Matters Bill, 2018 and the Tax Information Exchange Agreements Bill, 2018 all of which are presently before this House for consideration.

Madam Speaker, the continued non-enactment of the relevant legislation, including this Bill will not only affect Trinidad and Tobago's progress to becoming compliant with the Global Forum and the FATF 40 Recommendations but will also worsen our international reputation.

Madam Speaker, I beg to move.