



Western Samoa

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1976, No. 19

AN ACT to amend the Income Tax Administration Act 1974.

BE IT ENACTED by the Legislative Assembly of Western Samoa in Parliament assembled as follows:—

[17 December 1976]

1. Short title—This Act may be cited as the Income Tax Administration Amendment Act 1976, and shall be read together with and deemed part of the Income Tax Administration Act 1974* (hereinafter referred to as the principal Act).

2. Application—Except where this Act otherwise provides, this Act shall apply with respect to the tax on income derived in the income year commencing on the 1st day of January 1977 and in every subsequent year.

3. Provisional taxpayers—Section 68 of the principal Act is amended by omitting the words "(other than a company)"

4. Interim returns—The principal Act is amended by repealing section 74, and substituting the following section:—

"74. Interim returns—(1) The provisions of this section shall apply in every case where a provisional taxpayer is liable in an income year to furnish a return (in this section referred to as the required return) of income derived by him in the preceding year (in this section referred to as the specified year) and to pay instalments of provisional tax in respect of the income year, and—

- (a) He is not required by or Part III to furnish, and does not furnish, the required return by the due date for payment of the first instalment of the provisional tax; or
- (b) Pursuant to an extension of time granted under subsection (3) of section 22 for furnishing the required return, he is not required to furnish, and does not furnish, the required return by the due date for payment of the first instalment of the provisional tax.

(2) The taxpayer, not later than the due date for payment of the first instalment of the provisional tax in respect of income derived in the income year, or within such further period as the Commissioner in his discretion may allow in any case or class of cases, shall furnish a return marked "Interim" in the prescribed form showing the estimated taxable income of the taxpayer for the specified year and his calculation of the amount of the provisional tax which he would be liable to pay in respect of his income for that income year if that estimated amount of taxable income had been his actual taxable income for that specified year and, until the required return is furnished, that amount of provisional tax so calculated shall subject to subsection (3) be deemed to be the provisional tax payable by the taxpayer for that income year.

(3) Until the required return is furnished, the provisional tax payable by the taxpayer in respect of the income derived for an income year shall not be less than would be payable in accordance with section 69 if every reference in subsection (1) and (2) of that section to the "last preceding year" or the "last preceding income year" were a reference to the year immediately preceding the specified year.

(4) Where the taxpayer has paid any instalment of provisional tax, being provisional tax the amount of which has been calculated in accordance with subsection (2) or sub-

section (3), and subsequent to that payment the taxpayer furnishes the required return, any underpayment of provisional tax which has occurred shall be due and payable to the Commissioner on the same day as the return is furnished."

5. Transitional provisions for payment of income tax by companies—The principal Act is amended by inserting after section 74 the following new section:—

"74A. Transitional provisions for payment of income tax by companies—(1) Subject to the section, income tax payable by any company on income derived in the income year that commenced on the 1st day of January 1976 shall be due and payable in 5 equal instalments in accordance with the following provisions, namely:

- (a) By payment of the first instalment on the 31st day of October 1977;
- (b) By payment of the second instalment on the 31st day of October 1978;
- (c) By payment of the third instalment on the 31st day of October 1979;
- (d) By payment of the fourth instalment on the 31st day of October 1980;
- (e) By payment of the fifth instalment on the 31st day of October 1981.

(2) In case where the amount of income tax payable by any company in respect of income derived in the income year that commenced on the 1st day of January 1976 has not been ascertained at the date any instalment of that tax is due and payable under subsection (1), the amount of that instalment shall be an amount equal to one-fifth of the income tax assessed to that taxpayer in respect of income derived in the income year immediately preceding that first mentioned income year, and that amount shall be due and payable notwithstanding that no assessment has been made of the income tax payable by that taxpayer in respect of income derived in that first mentioned income year or that no notice of the amount so payable has been given:

Provided that if no income tax is payable by taxpayer in respect of the income derived in the income year imme-

section (3), and subsequent to that payment the taxpayer furnishes the required return, any underpayment of provisional tax which has occurred shall be due and payable to the Commissioner on the same day as the return is furnished."

5. **Transitional provisions for payment of income tax by companies**--The principal Act is amended by inserting after section 74 the following new section:--

"74A. **Transitional provisions for payment of income tax by companies**—(1) Subject to the section, income tax payable by any company on income derived in the income year that commenced on the 1st day of January 1976 shall be due and payable in 5 equal instalments in accordance with the following provisions, namely:

- (a) By payment of the first instalment on the 31st day of October 1977;
- (b) By payment of the second instalment on the 31st day of October 1978;
- (c) By payment of the third instalment on the 31st day of October 1979;
- (d) By payment of the fourth instalment on the 31st day of October 1980;
- (e) By payment of the fifth instalment on the 31st day of October 1981.

(2) In case where the amount of income tax payable by any company in respect of income derived in the income year that commenced on the 1st day of January 1976 has not been ascertained at the date any instalment of that tax is due and payable under subsection (1), the amount of that instalment shall be an amount equal to one-fifth of the income tax assessed to that taxpayer in respect of income derived in the income year immediately preceding that first mentioned income year, and that amount shall be due and payable notwithstanding that no assessment has been made of the income tax payable by that taxpayer in respect of income derived in that first mentioned income year or that no notice of the amount so payable has been given:

Provided that if no income tax is payable by taxpayer in respect of the income derived in the income year immediately preceding that first mentioned income year, or the

income tax has not been assessed to the taxpayer in respect of the income derived in the income year immediately preceding that first mentioned income year, the taxpayer shall subject to adjustment by the Commissioner, estimate the amount of that instalment of tax and that amount so estimated or adjusted shall be due payable accordingly.

(3) In any case where subsection (2) has applied to determine the amount of any instalment of income tax payable by any company and subsequently the amount of income tax payable by the company in respect of income derived by the company in the income year that commenced on the 1st day of January 1976 is ascertained by the Commissioner and notice thereof is given to the taxpayer, any underpayment of any instalment which has occurred shall be due and payable on such date as the Commissioner in his discretion determines, not being a date earlier than the date of that notice.

(4) Notwithstanding anything in subsection (1), where any company to which this section applies—

- (a) Is believed by the Commissioner to be about to discontinue the carrying on of business in Western Samoa; or
- (b) Has ceased to carry on business in Western Samoa or to derive income; or
- (c) Is in the course of being wound up (whether by order of the Supreme Court or voluntarily or subject to the supervision of that Court),—

the Commissioner may give notice or amended notice to that company specifying such earlier date or dates as the Commissioner shall in his discretion determine on which the income tax (being income tax which has been assessed but has not become due and payable as at the date of that notice or, as the case may be, amended notice) payable by that company on income derived in the income year that commenced on the 1st day of January 1976 shall be due and payable.

(5) This section shall not apply to any company which does not have fixed establishment in Western Samoa and which is not deemed to be resident in Western Samoa within the meaning of Part II of the Income Tax Act 1974."

6. Due date for payment of tax—Section 77 of the principal Act is consequentially amended by repealing subsection (1) and substituting the following subsection:—

"(1) Except where otherwise expressly provided in this Act income tax shall be due and payable by any taxpayer on the date on which his annual return of income is required to be furnished under section 22."

7. Additional tax for default in making tax deduction or in paying any amount due to the Commissioner—The principal Act is amended by inserting after section 80 the following new section:—

"80A. Additional tax for default in making tax deduction or in paying any amount due to the Commissioner—(1) Where —

(a) Any employer or other person by whom any source deduction payment is made fails wholly or in part to make a tax deduction therefrom in accordance with his obligations under Part V; or

(b) Any person who has made a tax deduction fails wholly or in part within the prescribed time and in the prescribed manner to pay the amount of the tax deduction to the Commissioner; or

(c) Any person who is liable to pay any amount to the Commissioner under Part V fails to pay the amount on the due date for payment thereof,—

that employer or other person shall, unless the Commissioner is satisfied that he has not been guilty of wilful neglect or default, be liable, without conviction, in addition to any other penalty to which he may be liable, to a penalty equal to 10 per cent of the amount in respect of which default has been made,

(2) For the purposes of paragraph (b) of subsection (1) a tax deduction shall be deemed to have been made if and when payment is made of the net amount of any source deduction payment.

(3) A penalty imposed under this section shall for all purposes be deemed to be of the same nature as the amount or part thereof in respect of which it is imposed, and shall be recoverable accordingly.

“(1) Except where otherwise expressly provided in this Act income tax shall be due and payable by any taxpayer on the date on which his annual return of income is required to be furnished under section 22.”

7. Additional tax for default in making tax deduction or in paying any amount due to the Commissioner—The principal Act is amended by inserting after section 80 the following new section:—

“80A. Additional tax for default in making tax deduction or in paying any amount due to the Commissioner—(1)
Where —

- (a) Any employer or other person by whom any source deduction payment is made fails wholly or in part to make a tax deduction therefrom in accordance with his obligations under Part V; or
- (b) Any person who has made a tax deduction fails wholly or in part within the prescribed time and in the prescribed manner to pay the amount of the tax deduction to the Commissioner; or
- (c) Any person who is liable to pay any amount to the Commissioner under Part V fails to pay the amount on the due date for payment thereof.—

that employer or other person shall, unless the Commissioner is satisfied that he has not been guilty of wilful neglect or default, be liable, without conviction, in addition to any other penalty to which he may be liable, to a penalty equal to 10 per cent of the amount in respect of which default has been made.

(2) For the purposes of paragraph (b) of subsection (1) a tax deduction shall be deemed to have been made if and when payment is made of the net amount of any source deduction payment.

(3) A penalty imposed under this section shall for all purposes be deemed to be of the same nature as the amount or part thereof in respect of which it is imposed, and shall be recoverable accordingly.

(4) The provisions of this Act shall apply with respect to the amount of every penalty imposed under this section as if it were additional tax under section 80 and as if the person liable to the penalty were the taxpayer.”
