



NATIONAL PARLIAMENT OF SOLOMON ISLANDS

BILLS AND LEGISLATION COMMITTEE

REPORT

ON

THE INCOME TAX (AMENDMENT) BILL 2007

National Parliament Paper No. 24 of 2007

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1. **TERMS OF REFERENCE**

To examine and report to Parliament the Committee's observations and recommendations on:-

"The Income Tax (Amendment) Bill 2007"

2. **FUNCTIONS**

According to Section 71 of the Standing Orders, the Bills and Legislation Committee's functions in addition to the provisions in Standing Orders 50 and 55, shall be to:-

- (a) examine such matters as may be referred to it by Parliament or the Government;
- (b) review all draft legislation prepared for introduction into Parliament;
- (c) examine all subsidiary legislation made under any Act so as to ensure compliance with the Acts under which they are made;
- (d) monitor all motions adopted by Parliament which require legislative action;
- (e) review current or proposed legislative measures to the extent it deems necessary;
- (f) examine such other matters in relation to legislation that, in the opinion of the Committee require examination; and
- (g) make a written report to each Meeting of Parliament containing the observations and recommendations arising from the Committee's deliberations.

3. **MEMBERSHIP**

The Membership of the Bills & Legislation Committee comprises the following four members:

Hon. Edward J. Huniehu, MP	-	Chairman
Hon. Peter Boyers, MP	-	Member
Hon. Seth Gukuna, MP	-	“
Hon. Laurie Chan, MP	-	“

4. **PURPOSE OF THE INCOME TAX (AMENDMENT) BILL 2007**

The two main objectives of the Bill are to:

- i) Amend the operational date of effect of section 36B of the Income Tax Act (as introduced by the Income Tax (Amendment) Act 2005 (Act No. 8 of 2005) from 1st January 2006 to 1st January 2007, and;
- ii) Provide indemnity to those taxpayers who have not complied with the obligations imposed under section 36B during the period 1st January 2006 to 31st December 2006.

Section 36B of the Act applies to a payment of interest made to a resident person or a permanent establishment in Solomon Islands of a non-resident. Under this provision, tax is required to be deducted at the rate of 10%. The section does not apply to interest income –

- (a) that is exempt from tax
- (b) paid to a financial institution; or
- (c) interest income paid by a resident individual who is not carrying on a business

Under section 16 of the Income Tax Act (Cap. 123) all payments of interest up to \$5000 in a year are exempt from income tax. This means that the

measure only applies to a small number of taxpayers who earn more than \$5000 in interest in a year.

Subsection (3) of section one of the Income Tax (Amendment) Act 2005 (Act No. 8 of 2005) provides that the Act shall apply to payments referred to in a tax deduction provision made on or after 1st January 2006.

At the time Act came into force a number of administrative difficulties relating to section 36B meant that the application of that section from the commencement date of 1st January 2006 was not practical. The measure applies to a small number of taxpayers, but requires significant changes to the banks' computer systems. Therefore, the Solomon Islands Commercial Bankers Association requested additional time to ensure that the banking sector establish appropriate systems to meet their obligations. The Government agreed to defer the implementation of section 36B to 1st January 2007 and issued a Press Release to this effect on 11th July 2006.

5. OBSERVATIONS

The Bills and Legislation Committee met on Thursday 15 February 2007 to examine and make its observations and recommendations on "**The Income Tax (Amendment) Bill 2007**".

The Committee appreciates the need for the proposed amendments to allow more time for the commercial banks to put in place appropriate systems to enable them to meet their obligations. However, the Committee noted the following issues in relation to the Bill.

Timing of the Bill and Retrospective Legislation

The Committee noted the timing of this Bill and expressed concern on the way it was brought to Parliament. As stated the Bill seeks to amend the "Income Tax (Amendment) Act 2005 (Act No. 8 of 2005)". As such, the Committee's investigation identified the following sequence of events

relating to the implementation of that Act which are relevant to the consideration of this Bill:

- **29th November 2005** – Income Tax (Amendment) Bill 2005 passed by the National Parliament of Solomon Islands.
- **16th of December 2005** – Bill assented to by His Excellency Governor-General of Solomon Islands.
- **1st January 2006** – The Act commenced according to section 1(2) of the Act and according to section 20 (2) of the Interpretations and General Provisions Act (Cap.85).
- **11th July 2006** – The Government agreed to defer implementation of section 36B of the Act to 1st January 2007 and issued a press release to this effect.
- **2nd – 13th October 2007** – Second Meeting of Parliament – Relevant amending legislation reflecting the commitment made in the press release not presented.
- **25th January 2007** – The Income Tax (Amendment) Act 2005 (No. 8 of 2005) Notice of Commencement published in the Gazette as [Legal Notice 34].
- **February 2007** – The Bill to defer implementation of section 36B to 1st January 2007.

Given the chronology of events outlined above, the Committee is concerned that the current Bill (The Income Tax (Amendment) 2007 Bill) was not presented to Parliament for its consideration earlier than January 2007. The Committee is of the view that the last Parliament meeting in October 2006 was the most appropriate time to bring this Bill to Parliament. This would have prevented the consideration of legislation that is retrospective or back-ward looking which should strictly be discouraged. The Committee suggests that proper planning be exercised by those responsible for implementing the Government legislative agenda to avoid this issue in the future.

Administrative Law and Procedures

Section 20 and 21 of the Interpretations and General Provisions Act (Cap. 85) states that:

20. - (1) Every Act made after this Act shall be published in the Gazette.

(2) A provision of any Act, made after this Act, comes into operation on the date of the publication of the Act in the Gazette or, if it is provided that the Act (including the provisions) or the provision is to come into operation on some other date, on that other date.

(3) Any provision of an Act, made after this Act, which makes provision with respect to the coming into operation of all or any of the other provisions of the Act, comes into operation on the date of the publication of the Act in the Gazette.

(4) When a provision of an Act comes into operation on a particular day, it is in operation as from the beginning of that day.

21. A copy of an Act printed by the Government Printer which includes a date purporting to be the date on which the Act, or any provision of the Act, came or will come into operation is evidence that the Act or provision came, or will come into operation on that date.

The following issues were identified by the Committee in relation to the above provisions:

- The Committee notes that the Income Tax (Amendment) Act 2005 (No. 8 of 2005) was assented to on 16 December 2005, however from the evidence provided to the Committee it appears that the Act was not published in the Gazette according to the requirements of the *Interpretations and General Provisions Act* outlined above. The Committee is very concerned that certain administrative functions have been overlooked or neglected. While it has been put to the Committee that not publishing the Act as required by law was a minor administrative oversight, the Committee is not sympathetic to such a view, particularly in relation to an act so important to the people of the Solomon Islands. The publication of Acts in the Government Gazettes is an important administrative procedure whereby the public is made aware of, and has access to, the laws which apply to them and the date from which they apply. A

government, and its public service which is responsible for implementing and administering the law, has both a legal responsibility and a moral obligation to its citizens to ensure that they are properly informed of its legislative actions. The administrative arm of Government by its very nature has a responsibility to ensure that laws are valid and not subject to unnecessary legal challenge which may be embarrassing and costly to the government of the day.

Further to this point, the Committee notes that while the commencement of the Income Tax (Amendment) Act 2005 (No. 8 of 2005) is provided for in section 2 of the Act, many other Acts of Parliament commence upon their publication in the Gazette (*Section 20(2) of Interpretations and General Provisions Act*). The Committee raises this issue for the attention of Members to stress again the importance of complying with administrative procedures to ensure the validity of Acts.

- The Committee also draws attention to Legal Notice 34 of 2007 (attached) that was published in the gazette on 25 January 2007. It would appear that this notice was unnecessary and erroneous as it states that the Minister is exercising his powers under section 1 (2) to appoint the day of commencement for the Act, when this section contains no such powers or requirement for the Minister to do so. The Committee is of the view that this action was probably taken in the mistaken belief that it would correct a previous administrative error.

The Committee also understands that the issue at hand is of a broader scope and has taken the initiative to prepare a separate report for the information of Members on the laws and procedures relating to Subordinate Legislation.

6. **RECOMMENDATIONS**

1. The Committee has reviewed the Bill and has **recommended that the Income Tax (Amendment) Bill 2007 be presented and debated in Parliament, and that the issues raised be noted by the House.**
2. The Committee strongly recommends that the Attorney-General's Office and the Office of the Prime Minister ensure that these administrative procedures are properly managed in the future so as to avoid any unfortunate situation which requires further 'Validation Acts' (such as the Validation Act that was passed by Parliament in 2005) to come before Parliament.

Hon. Edward J. Huniehu

Chairman

Bills & Legislation Committee

15 February 2007