



REPUBLIC OF NAURU

**MINISTRY OF FINANCE
Nauru Revenue Office**

Public Ruling No. 3

RECORD KEEPING

What this ruling is about

1. Section 14 of the *Revenue Administration Act 2014* (RAA) requires every person to maintain in English, any document (including in electronic format) as may be required under a tax law.
2. For the purposes of this ruling is to outline the records that are to be kept under the *Business Tax Act 2016* (BTA) and *Employment and Services Tax Act 2014* (ESTA) are to be discussed.
3. A person includes but is not limited to, a company, trust, partnership or individual.
4. A person must keep the records in such a manner as to enable the person's tax liability under the tax law to be readily ascertained.
5. Generally, a person must maintain the records for 5 years after the end of the reporting period to which they relate unless a shorter period is specified in the relevant tax law.
6. Records will need to be maintained for a longer period if the following applies:
 - (a) Section 14 (2)(b) of the RAA provides that if a proceeding commenced before the end of the 5 year period, the person must retain the document until all proceedings have been completed. For example, if a court case, has commenced before the end of the 5 year period the records will need to be maintained until the end of the proceeding of the court case.

(b) Section 21 (6) of the RAA provides that if an amended assessment has been made, records must be maintained for one year after the Secretary has issued the amended assessment even if this means the record retention period extends beyond 5 years

(c) For the purpose of section 23 of the BTA, if a carry forward loss is to be applied against future income the records substantiating the loss will need to be maintained for 5 years after the reporting period that the loss has been utilised.

Records to be kept

6. The Revenue Administration Act refers to the BTA and to the ESTA for the type of records to be kept for those subject to business profits tax, small business tax and employment and services taxes.
7. Subject to the records required to be kept and maintained, this Ruling explains the general application of section 14 of the RAA to a person carrying on a business and the principles associated with the retention of paper and electronic records created from business transactions, including those carried out through the internet.
8. The Ruling sets out our views on what are sufficient records to maintain all accounts, documents, and records as may be prescribed under any taxation law.

Business Tax Act 2016 ('BTA')

9. Section 38 (1) of the BTA specifies that a person must keep such accounts, documents, and records as enable the computation of any tax payable by the person under this Act.

Small Business Tax

10. Section 38 of the BTA specifies that an individual subject to small business tax must keep the following records:

- (a) a cash book recording daily sales, including credit sales; and
- (b) if the person employs employees, a salary and wages register.

Business Tax Regulations 2016

11. Regulation 6 (3) state that the records required to be kept by a person includes all source and underlying documents relating to transactions entered into by the person, including, invoices, purchase orders, delivery dockets, receipts contracts, and Customs documentation.
12. Regulation 6(1) states that a person who has a net loss for a tax year must keep such accounts, documents, and records as are necessary to evidence the amount of the net loss.

13. Regulation 6(2) states that a resident person who has offshore operations must keep accounts, documents, and records relating to those offshore operations

Employment and Services Tax Act 2014 ('ESTA')

14. Section 24 of the ESTA requires the following withholding tax records to be kept:

(a) an employer must keep records of the following:

(i) the gross amount of employment income paid to each employee for each pay period;

(ii) the amount of tax withheld from each payment of employment income.

(b) a payer must keep records of the following:

(i) the services fees paid to non-resident persons;

(ii) the amount of tax withheld from each payment of a services fee.

Definitions

15. In this Ruling:

'accounts, documents and records' means: all accounts, documents and records including those accounts, documents and records kept in electronic form on a computer or on other electronic storage media.

'business turnover' means: the gross revenue (including the gross proceeds from the disposal of an asset used in a business) received by a taxpayer in the year, without deductions of expenditures

'cashbook' means: the recording of daily sales (including credit sales). It includes a record of all receipts by cash, cheque, automatic payment, barter and EFTPOS machine.

'electronically' means: held or processed by means of a computer.

'electronic commerce' means: 'the delivery of information, products, services or payments via telephone lines, computer networks or by any other electronic means'.

'maintain' means make and keep. So, where a record is created in the normal course of engaging in transactions, the person carrying on the business must keep that record. In addition, where no record is created in the normal course of activities we consider that the person must make a record of the transactions (which could be a summary of transactions) and then keep it.

'inventory records' means: records of trading stock inventory (stocktake) that is done at the end of each tax period. The records should include:

- (a) a list describing each article of stock on hand and its value;
- (b) who did the stocktake;
- (c) how and when it was done, and
- (d) who valued the stock and the basis of the valuation.

'records of expenditure' means: a record of all payments made by a business including personal expenditure. It is usually done by keeping a cash payments book that reflects the amounts of money that has been paid out of a business for goods and services.

Ruling

Maintain accounts documents and records

16. Section 14 of the RAA imposes a primary obligation on all taxpayers to maintain in Nauru such accounts, documents and records as may be prescribed under any tax law. The intention is clear that the accounts, documents and records to be maintained include any documents which are relevant for the purpose of determining the taxpayer's liability under any tax law, and any documents that contain particulars of any elections, estimates, etc., made by the person under any tax law. We consider that a record will have been maintained if it can explain transactions engaged in by a person by containing information which will enable Nauru Revenue Office (NRO) officers to understand the essential features of the transactions.
17. The content of the information needed in an account, document or record will depend on the circumstances of each case. Our view, generally, is that the minimum information required for NRO officers to understand the essential features of transactions which relate to the person's income and expenditure is the date, amount and character (e.g., sale, purchase, wages, rental, etc.) of the transactions. In some circumstances, an NRO officer also will need other information about the essential features of transactions, e.g., the purpose of transactions and the relationships between parties to transactions, to understand the relevance of the transactions to the person's income and expenditure.
19. In the case of a corporation the accounts, documents and records required to be maintained are those in accordance with international accounting standards and consistent with paragraphs 9, 10 and 11 above. In addition the records kept must also satisfy any requirements of the Corporation Act 1972.

19. The accounts, documents and records must record every transaction that relates to the person's income and expenditure.

Maintain

20. So, where a record is created in the normal course of engaging in transactions, the person carrying on the business must retain that record. In addition, where no record is created in the normal course of activities, we consider that the person must make a record of the transactions (which could be a summary of transactions as described) and then keep the record of the transactions.

21. Where an Act or Regulation requires a person to maintain a record, we consider that this would normally require the person to make a contemporaneous record of the transactions, that is, a record of the transactions as they occur or, if that is not possible, as soon as practical after the transactions have occurred. What is practicable will depend on the facts of the case, including the nature of the transactions.

22. There may also be cases where a person who has made a contemporaneous record may not wish to retain the document in its original form. This may be the case where a person must retain large numbers of documents and wishes to retain them in a more convenient form, e.g., microfilm, microfiche or CD ROM. We accept this, provided that the substitute contains the same information about the essential features of the transactions as we would obtain from the contemporaneous records.

23. We consider that these alternative methods of record retention contain the same information about the essential features of the relevant transactions where the conversion process, including the scanning of documents onto CD ROM, produces a true and clear reproduction of the original document. The person must provide appropriate facilities for the preservation of the records for the statutory period (refer paragraph 4 above).

Manner of keeping records

24. Section 14(3) of RAA provides that where any book, record or computer stored information is not in English, the Secretary may, by notice in writing, require the person keeping the document to provide, at the person's expense, a translation into English by a translator approved by the Secretary, by the date specified in the notice.

25. When a person carrying on a business chooses to process and keep records in electronic form, the records must be in a form that the NRO can access and understand in order to ascertain the person's taxation liability after translation into English. For record keeping purposes, electronic records are subject to the same record keeping requirements as paper records.

26. Further, where accounts, documents and records are kept on electronic media the taxpayer must provide sufficient steps to ensure the sanctity and safekeeping of such documents. For example: having backup and recovery procedures that are sufficient to guarantee the availability of electronic records for the required record retention period.
27. To ensure that the electronic records associated with a computer system are being maintained in accordance with the requirements of the RAA, a person should have an understanding of their computer system. System documents should be retained to explain the basic aspects of the system so NRO officers can ascertain that the system is doing what it is claimed to do.
28. Where systems have changed over time, records should be kept to allow the original data to be reconstructed to satisfy section 14 of the RAA.
29. Any data held under an old system should be capable of conversion to a form that is readily readable and retrievable by NRO officers.
30. For record keeping purposes, business transactions carried out using either Electronic Data Interchange (EDI) specific systems or the internet are no different from other forms of business transactions. We consider Section 14 of the RAA requires the person to keep records that explain all internet or EDI transactions that are relevant for any purpose of taxation laws. Accordingly, the minimum information that must be recorded is the date, amount and character of the transaction.

Storage of paper records in electronic form

31. A business using either a manual or a computerised accounting system may want to store and keep paper records in electronic form. Where paper records are produced or received in the course of carrying on business, the NRO accepts the imaging of those records onto an electronic storage medium (including microfilming) provided that the electronic copies are a true and clear reproduction of the original paper records and they have been copied completely and accurately
32. The electronic copy must be readily accessible and capable of being retrieved on legible hard copy (printouts) or supplied in electronic form (on electronic media and unencrypted in a form able to be read by NRO officers) if required. Source paper documents or other non-electronic records from which the complete information is transferred and stored in electronic form may be destroyed after transfer to the electronic form.
33. Where paper records are imaged and stored electronically the requirements of Section 14 of RAA are satisfied if they are:
 - (a) not altered or manipulated once stored;

- (b) retained for the statutory period; and
- (c) capable of being retrieved and read at all times by NRO officers

Storage of electronic records in electronic form

- 34. Internal controls must be adequate to ensure that all business transactions executed electronically, including those executed through the Internet, are completely and accurately captured.
- 35. Persons should be able to demonstrate that their electronic records systems are secure from both unauthorised access and data alterations. This usually involves developing and documenting a security program that establishes:
 - (a) controls to ensure that only authorised personnel have access to electronic records;
 - (b) provide for backup and recovery of records;
 - (c) ensure that personnel are trained to safeguard sensitive or classified electronic records;
 - (d) minimise the risk of unauthorised alteration, addition or erasure.
- 36. The charts and codes of accounts, the accounting instruction manuals, and the system and programme documentation which describes the accounting system used must be retained and produced if required, to an NRO officer.

Encryption

- 37. The electronic copy must be readily accessible and capable of being retrieved and produced as legible hard copy (printouts) or supplied in electronic form (on electronic media and unencrypted in a form able to be read by NRO officers) if required.
- 38. Those who engage in the electronic transfer of invoices, credit notes or debit notes must retain electronic records that in combination with any other records, e.g. the underlying contracts, price lists, price changes, product code descriptions, have an adequate level of detail to meet the requirements of the RAA. For example, if a hard copy invoice is requested, the printout must contain all information as required under the relevant tax law.

Internet

- 39. Persons who do business via the Internet are required to keep business records of all internet transactions for tax purposes.

E-mails

- 40. Some e-mails may be classified as business records required to be kept for tax purposes. Where e-mails are business records, it is suggested that the origin, destination and time of

electronic communications be retained and accessible so as to be usable for subsequent references.

NRO Access to records

41. Under Section 45(1)(c) of the RAA the Secretary may, for the purposes of administering any tax law, by notice in writing, require any person to produce all documents in the person's custody or under the person's control relating to the person's or any other person's tax affairs.
42. Section 46 of the RAA (below) has effect despite any law relating to privilege (including legal professional privilege) or the public interest with respect to access to premises or places, or the production of any property, documents, or computer-stored information; or any contractual duty of confidentiality.
43. Under Section 46 of the RAA, for the purposes of administering any tax law, the Secretary or an authorised officer has the right of full and free access to all buildings, places and documents, including electronically stored records required for the purposes of the Act. The provision enables an authorised officer to access and copy records held on an electronic storage medium and to require assistance in decrypting information to access data sought under this section.
44. In addition, the NRO may retain any document seized for as long as the document may be required for determining a taxpayer's tax liability or for any proceeding under a tax law; and may, if a hard copy or copy on a data storage media of information stored on a data storage device is not provided, seize and retain the device for as long as is necessary to copy the information required.

Administrative Penalties

Penalty for failure to keep documents

45. If there are no source records, under section 38(3) of the RAA of the discretionary power to the Secretary to disallow a claim by a person for a deduction for expenditure or loss or the inclusion of an amount of expenditure in the cost of the business asset.
46. Failure by a taxpayer to keep, retain or maintain any document required under the tax law is liable to an administrative penalty which can be:
 - (a) if the failure is deliberate or reckless, up to 75% of the tax payable under the tax law for the reporting period to which the failure relates;
 - (b) in any other case, if there are no reasonable excuse, 20% of the amount of tax payable by the person under the tax law for the reporting period to which the failure relates;

If there is no tax payable the penalty is equal to AUD\$100.

47. The exception to paragraph 46 is if a taxpayer fails to keep, retain, or maintain documents as required under Regulation 11 of the *Business Tax (Transfer Pricing) Regulations*, they can be liable for a penalty not exceeding \$100,000.

Tax Offences

48. As an alternative to applying an administrative penalty the NRO may consider if a tax offence has occurred.
49. Under Section 70(a) of the RAA a person commits an offence when the person, without reasonable excuse, fails to keep, retain, or maintain a document for a reporting period as required under a tax law.
50. A person convicted of an offence under Section 70(a) of the RAA is liable under section 82 RAA for fine not exceeding AUD\$5,000 or to imprisonment for a term not exceeding 2 years, or to both a fine and imprisonment.

Taxpayer protection

51. Under Section 47 of the *Revenue Administration Act 2014*, the Secretary for Finance has made this ruling in accordance with Section 48 of that Act. This ruling is binding on the Secretary for Finance until it is withdrawn. It is not binding on a taxpayer

Date of effect:

52. 1 July 2018

Martin Hunt

Secretary for Finance