This is an unofficial consolidation of the Business Tax Act up to 1 January 2021. The official version of the Act, and amending Acts and Regulations can be found on the Ronlaw database.

REPUBLIC OF NAURU

Business Tax Act

As in force from 1 January 2021

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REPUBLIC OF NAURU

Business Tax Act

Act No. 31 of 2016

An Act to provide for the taxation of business income, and for related purposes

Certified on 9th June 2016

Enacted by the Parliament of Nauru as follows:

PART I – PRELIMINARY MATTERS

1 Short title

This Act may be cited as the *Business Tax Act 2016*.

2 Commencement and application

(1) This Act commences on the date that notice of the Act is published in the Gazette.

(2) Subject to subsections (3) and (4), this Act applies from 1 July 2016.

(3) Section 35 applies from the date specified by the Secretary in a notice in the Gazette.

(4) Clause 3 of Schedule 3 applies from 1 October 2014.

3 Definitions

In this Act:

'acquisition', in relation to a business asset, has the meaning in 27;

'amount' includes an amount-in-kind;

'assessable foreign income', in relation to a resident person, means foreign income included in the gross revenue of the resident person;

'associate' has the meaning in section 4;

'business' means any activity, whether continuous or short term, conducted for the purposes of economic gain, other than an employment, and includes any trade, manufacture, profession, or other commercial activity;

'business asset' means an asset, whether revenue or capital in nature, used in the conduct of a business wholly or partly to derive gross revenue, including inventory, a depreciable asset, a business intangible, or goodwill;

'business intangible' means:

(a) a copyright, patent, design or model, plan, secret formula or process, trademark, or other like property or right that has a limited useful life and is used wholly or partly to derive gross revenue;

(b) a customer list, distribution channel, or unique name, symbol or picture, or other marketing intangible that has a limited useful life and is used wholly or partly to derive gross revenue;

(c) contractual rights (including arising as a result of a prepayment of expenses) with a benefit for a limited period, but which exceeds one year, used wholly or partly to derive gross revenue;

(d) an expenditure used wholly or partly to derive gross revenue that provides an advantage or benefit for a period of more than one year, other than expenditure incurred to acquire any tangible personal or real property; or

(e) preliminary expenditure;

'business profits tax' means business profits tax imposed under section 11;

'business profits tax threshold' means the monetary amount specified in the Second Schedule;

'company' means:

(a) a corporation incorporated under the Corporations Act 1972;

(b) a foreign corporation within the meaning of the Corporations Act 1972;

(c) a statutory corporation created under Nauru law or the law of a foreign country;

'consideration', in relation to a business asset, has the meaning in section 31;

'cost', in relation to a business asset, has the meaning in section 29;

'depreciable asset' means any tangible personal property or structural improvement to real property that:

(a) has an ascertainable useful life exceeding one year;

(b) is likely to lose value as a result of normal wear and tear, or obsolescence; and

(c) is used wholly or partly to derive gross revenue;

'derived' means:

(a) for the business profits tax:

(i) for a person accounting for tax on a accruals basis, the arising of the right to receive; or

(ii) for a person accounting for tax on a cash basis, received; or

(b) for any other tax imposed under this Act, received;

'disposal', in relation to a business asset, has the meaning in section 28;

'distribution' means:

(a) a dividend paid by a company to a shareholder;

(b) an allocation of profits by a partnership to a partner (including drawings);

(c) an entitlement to income of a beneficiary of a trust; or

(d) a distribution of profits by any other body of persons to a member of the body;

'employee' has the meaning in the Employment and Services Tax Act;

'employer' has the meaning in the Employment and Services Tax Act;

'employment' has the meaning in the Employment and Services Tax Act;

'employment income' has the meaning in the Employment and Services Tax Act;

'exempt income' has the meaning in section 18;

'fair market value' has the meaning in section 5;

'foreign income' means an amount that is not derived from sources in Nauru;

'gross revenue' has the meaning in section 17;

'instalment period', in relation to a person for a tax year, means the period of three months ending on the last day of the third, sixth, ninth, or twelfth months of the year;

'insurance premium' includes a premium relating to reinsurance and any other amount payable in respect of the offshore placement of insurance, but does not include a premium payable under a life policy;

'interest' includes:

(a) an amount, whether described as interest, discount, premium, or otherwise, whether periodical or a lump sum, as consideration for the use of money or being given time to pay; or

(b) an amount, however described, that is functionally equivalent to an amount referred to in paragraph (a);

'international agreement" means:

(a) an agreement between the Government of Nauru and a foreign government for the prevention of double taxation; or

(b) an agreement between the Government of Nauru and a foreign government or an international organisation for the provision of financial, technical, humanitarian, or administrative assistance to the Government;

'International Financial Reporting Standards' means the most recent International Financial Reporting Standards issued by the International Accounting Standards Board or any successor entity taking over the role of issuing International Financial Reporting Standards;

'international organisation' means an organisation, the members of which are sovereign powers or governments of sovereign powers;

'international transportation business tax' means international transportation business tax imposed under section 14;

'inventory' includes:

(a) anything produced, manufactured, purchased, or otherwise acquired for manufacture, sale, or exchange;

(b) any raw materials or consumables used in a production or manufacturing process; or

(c) livestock (other than animals used as beasts of burden or working beasts);

'net book value', in relation to a business asset, has the meaning in section 30;

'non-resident individual' means an individual who is not a resident individual;

'non-resident person' means a person who is not a resident person;

'non-resident tax' means non-resident tax imposed under section 13;

'person' means:

(a) an individual;

(b) a partnership, trust, company, or other body of persons;

(c) the Government of Nauru, a local authority in Nauru, a foreign government, or a political subdivision of a foreign government; or

(d) an international organisation;

'preliminary expenditure' means expenditure incurred before the commencement of a business if the income to be derived by the business will be wholly and exclusively included in gross revenue, other than expenditure incurred to acquire tangible personal or real property;

'quarter' means the period of three months ending on 30 September, 31 December, 31 March and 30 June;

'received', in relation to a person, includes:

(a) applied on behalf of the person either at the instruction of the person or under any law;

(b) reinvested, accumulated, or capitalised for the benefit of the person;

(c) credited to an account, or carried to any reserve, or a sinking or insurance fund for the benefit of the person; or

(d) made available to the person;

'relative', in relation to an individual, means:

(a) an ancestor, a descendant of any of the grandparents, or an adopted child, of the individual;

(b) an ancestor, a descendant of any of the grandparents, or an adopted child of a spouse of the individual; or

(c) a spouse of the individual or of any person specified in paragraph (a) or (b);

'resident company' means a company referred to in paragraph (b) of the definition of "resident person";

'resident individual' has the meaning in section 8;

'resident person' means:

(a) a resident individual;

(b) a partnership, trust, company, or other body of persons that is incorporated, formed, settled, or otherwise established or created in Nauru; or

(c) the Government of Nauru or any local authority in Nauru;

'royalty' means an amount, however described, whether periodical or a lump sum, as consideration for:

(a) the use of, or right to use a patent, invention, design or model, secret formula or process, trademark, or other like property or right;

(b) the use of, or right to use a copyright of a literary, artistic, or scientific work (including films or video tapes for use in connection with television or tapes in connection with radio broadcasting);

(c) the receipt of, or right to receive, visual images or sounds, or both, transmitted by satellite, cable, optic fibre, or similar technology in connection with television, radio, or internet broadcasting;

(d) the use of or right to use industrial, commercial, or scientific equipment;

(e) the supply of any scientific, technical, industrial, or commercial knowledge, information, experience, or skill;

(f) the supply of assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of property, a right, or a supply referred to in paragraphs (a) - (e);

(g) the right to take minerals or a living or non-living resource from land or sea, and includes an amount calculated in whole or part by reference to the quantity or value of minerals or a living or non-living resource taken from land or sea;

'Secretary' means the Secretary responsible for revenue;

'services tax' means services tax imposed under the Employment and Services Tax Act;

'shareholder', in relation to a company, includes any person with an ownership interest in the company.

'small business tax' means small business tax imposed under section 12;

'structural improvement' in relation to real property, includes a building, road, driveway, car park, pipeline, bridge, tunnel, airport runway, canal, dock, wharf, retaining wall, fence, power lines, water or sewerage pipes, drainage, landscaping, or dam;

'tax' means tax imposed under this Act and includes an instalment of tax payable under this Act;

'tax year' means the period of twelve months ending on 30 June and, in the case of a company, is the period of twelve months ending on the date of the annual balance of its accounts (referred to as the "substituted tax year");

'taxable income' has the meaning in section 16; and

'use', in relation to a depreciable asset or business intangible, includes available for use and held.

History: Section 3 amended by the Business Tax (Amendment) Act 2020 (Act No. 27 of 2020) by inserting the definitions of "assessable foreign income" and "foreign income".

The Business Tax (Amendment) Act 2020 (Act No. 27 of 2020) came into force on 1 January 2020.

4 Associate

(1) Subject to subsection (2), two persons are associates if the relationship between the two persons is such that one person may reasonably be expected to act in accordance with directions, requests, suggestions, or wishes of the other person, or both persons may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of a third person.

(2) Two persons are not associates solely by reason of the fact that one person is an employee or client of the other, or both persons are employees or clients of a third person.

(3) For the avoidance of doubt, an individual and a relative of the individual are associates, except when the Secretary is satisfied that neither person may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of the other.

5 Fair Market Value

(1) Subject to section 34, the fair market value of an asset, service, or benefit at a particular time is the ordinary open market value of the asset, service, or benefit at that time.

(2) If it is not possible to determine the fair market value of an asset, service, or benefit at a particular time under subsection (1), the fair market value is the consideration a similar asset, service, or benefit would ordinarily fetch in the open market at that time, adjusted to take account of the differences between the similar asset, service, or benefit and the actual asset, service, or benefit.

(3) For the purposes of subsection (2), an asset, service, or benefit is similar to another asset, service, or benefit, as the case may be, if it is the same as, or closely resembles, the other asset, service, or benefit in character, quality, quantity, functionality, materials, risk, and reputation.

(4) If the fair market value of an asset, service, or benefit cannot be determined under subsections (1) and (2), the fair market value shall be the amount determined by the Secretary provided it is consistent with generally accepted principles of valuation.

6 Non-profit organisation

(1) A non-profit organisation is an organisation that satisfies the following conditions:

(a) the organisation is established solely to provide relief to those suffering from poverty or distress, or for the advancement of education, amateur sport, or religion;

(b) no part of the income or other funds, or assets, of the organisation are used, or are available for use for the private benefit of a proprietor or member of the organisation;

(c) the Secretary has certified, by notice in writing, that the organisation is a non-profit organisation.

(2) An organisation may apply to the Secretary, in the approved form, for certification that the organisation is a non-profit organisation.

(3) If an organisation that has made an application under subsection (2) satisfies the conditions in subsection (1)(a) and (b), the Secretary must grant the application.

(4) The certification of an organisation as a non-profit organisation takes effect from the date specified in the notice of certification and remains in force until withdrawn by the Secretary by notice in writing to the organisation.

(5) An organisation certified as a non-profit organisation must immediately notify the Secretary, in writing, if the organisation no longer satisfies the conditions in subsection (1)(a) and (b).

7 Permanent establishment

(1) Subject to this section, a permanent establishment is a place of business through which the business of a person is wholly or partly conducted.

(2) The following are treated as a permanent establishment:

(a) place of management, branch, office, factory, warehouse, or workshop, but not an office that has representation of the person's business as its sole activity;

(b) a mine site, oil or gas well, quarry, or other place of exploration for, or exploitation of, natural resources, including a boat or ship that provides a base for the exploration or exploitation of natural resources;

(c) the furnishing of services, including consultancy services, by a person, including through employees or other personnel engaged by the person for such purpose, but only if activities of that nature continue for the same or a connected project of the person or an associate for a period or periods aggregating more than ninety days in any twelve-month period.

(3) Subject to subsection (4), a building site, construction, assembly or installation project, or supervisory activities connected with such site or project is a permanent establishment only if the site, project, or activities continue for more than ninety days.

(4) When a person operates a building site, or conducts a project or activity referred to subsection (3), any connected activities conducted by an associate will be added to the period of time during which the first-mentioned person has operated the building site or conducted the activities for the purpose of determining whether the ninety-day period is exceeded.

(5) Despite subsections (1) and (2), when a person (referred to as the "agent") acts on behalf of another person (referred to as the "principal"), the agent shall be a permanent establishment of the principal if the agent:

(i) regularly negotiates contracts on behalf of the principal, whether the contracts are concluded in the name of the principal or the agent; or

(ii) maintains a stock of goods from which the agent regularly delivers goods on behalf of the principal.

8 Resident individual

(1) Subject to subsection (2), an individual is a resident individual if:

(a) the individual is a citizen of Nauru, except when the individual has a permanent home outside Nauru;

(b) the individual resides in Nauru as a resettled refugee or an asylum seeker within the meaning in the Refugee Convention Act 2012; or

(c) the individual is married to an individual who is a resident individual under paragraph (a).

(2) Despite subsection (1), a citizen of Nauru who is an employee of the Government of Nauru posted abroad is a resident individual.

History: Subsection (1)(b) amended by the Business Tax (Amendment) No. 2 Act 2016 (Act No. 49 of 2016). Subsection (1)(b) formerly read:

"(b) the individual resides in Nauru as a resettled refugee:".

Subsection (1)(c) inserted by the Business Tax (Amendment) No. 2 Act 2016 (Act No. 49 of 2016).

The Business Tax (Amendment) No. 2 Act 2016 (Act No. 49 of 2016) came into force on 4 November 2016.

9 Source of income

(1) An amount derived by a resident person in conducting a business is derived from sources in Nauru except to the extent that it is attributable to a business conducted by the person through a permanent establishment outside Nauru.

(2) An amount derived by a non-resident person in conducting a business is derived from sources in Nauru to the extent that it is attributable:

(a) to a business conducted by the person through a permanent establishment in Nauru;

(b) to sales in Nauru of goods or merchandise of the same or similar kind as those sold by the person through a permanent establishment in Nauru; or

(c) to any other business activity conducted in Nauru of the same or similar kind as that conducted by the person through a permanent establishment in Nauru.

(3) Despite subsections (1) and (2), the following amounts are derived from sources in Nauru:

(a) rental income from the lease of real property in Nauru;

(b) a gain arising on the disposal of real property in Nauru, or an interest in a resident company, resident partnership, or resident trust;

(c) a gain arising on the disposal of an interest in a company, partnership, or trust, if, at any time during the 365 days preceding the disposal of the interest, the value of the interest is derived, directly or indirectly through one or more interposed entities, solely or principally from real property in Nauru;

(d) interest, technical fee, management fee, or a royalty when it is:

(i) paid by a resident person, other than as an expenditure of a business conducted by the person through a permanent establishment outside Nauru; or

(ii) paid by a non-resident person as an expenditure of a business conducted by the person through a permanent establishment in Nauru;

(e) an insurance premium for the insurance of a risk in Nauru; or

(f) a distribution paid by a resident company, resident partnership, or resident trust.

(4) In this section, ***'real property'*** includes:

(a) an exploration, prospecting, development, or similar right relating to real property; or

(b) information relating to a right referred to in paragraph (a).

History: Section 9(3)(b) amended by the Business Tax (Amendment) Act 2020 (Act No. 27 of 2020). Section 9(3)(b) formerly read:

(b) a gain arising on the disposal of real property in Nauru;

Section 9(3)(c) amended by the Business Tax (Amendment) Act 2020 (Act No. 27 of 2020). Section 9(3)(c) formerly read:

(c) a gain arising on the disposal of an interest in a company, partnership, or trust, if the value of the interest is derived, directly or indirectly through one or more interposed entities, solely or principally from real property in Nauru;

Section 9(3)(d) amended by the Business Tax Amendment Act 2020 (Act No. 27 of 2020). Section 9(3)(d) formerly read:

(d) interest or a royalty when it is:

(i) paid by a resident person, other than as an expenditure of

a business conducted by the person through a permanent establishment outside Nauru; or

(ii) *paid by a non-resident person as an expenditure of a business conducted by the person through a permanent establishment in Nauru; or*

Section 9(3)(e) amended by the Business Tax Amendment Act 2020 (Act No. 27 of 2020). Section 9(3)(e) formerly read:

(e) an insurance premium for the insurance of a risk in Nauru.

Section 9(3)(f) inserted by the Business Tax Amendment Act 2020 (Act No. 27 of 2020).

The Business Tax (Amendment) Act 2020 (Act No. 27 of 2020) came into force on 1 January 2021.

10 Act binds the Republic

This Act binds the Republic.

PART 2 – IMPOSITION OF TAX

11 Imposition of business profits tax

(1) Subject to this Act, a tax to be known as "business profits tax" is imposed for each tax year at the rate or rates specified in Schedule 1 on a person conducting business that has taxable income for the year.

(2) The business profits tax imposed under subsection (1) on a person for a tax year is computed by applying the business profits tax rate or rates specified in Schedule 1 to the taxable income of the person for the year.

(2A) A tax credit allowed to a person for a tax year is offset against the person's business profits tax liability calculated under subsection (2) for the year.

(2B) Where a person is allowed more than one tax credit for a tax year, the tax credits are applied in the following order:

(a) the foreign tax credit allowed to the person under section 25A for the year; then

(b) the tax credit allowed to the person under section 41 for the year.

(3) This section does not apply to the following:

(a) a non-resident individual subject to small business tax;

(b) a non-resident person conducting a fishing business in Nauru under an agreement with the Nauru Fisheries and Marine Resources Authority.

History: Section 11(2A) and (2B) inserted by the Business Tax (Amendment) Act 2020 (Act No. 27 of 2020)

Business Tax (Amendment) Act 2020 (Act No. 27 of 2020) came into force on 1 January 2021.

12 Imposition of small business tax

(1) Subject to this Act, a tax to be known as "small business tax" is imposed for each quarter on a non-resident individual conducting business who satisfies the following conditions:

(a) the individual conducts the business solely in Nauru;

(b) the individual was not subject to the business profits tax for the previous tax year;

(c) the total gross revenue of the individual for the previous tax year did not exceed the business profits tax threshold specified in Schedule 2.

(2) The small business tax imposed under subsection (1) on a non-resident individual for a quarter is computed by applying the rate specified in Schedule 1 to the total gross revenue derived by the individual for the quarter.

(3) In determining the total gross revenue of a non-resident individual for a tax year for the purposes of subsection (1)(c), the Secretary may have regard to the total gross revenue of an associate or associates of the Individual for the year.

(4) A non-resident individual subject to small business tax may apply, in the approved form, to the Secretary for section 11 to apply to the individual instead of this section.

(5) The Secretary may approve an application under subsection (4) if satisfied that the non-resident individual will keep proper records as required for the purposes of the business profits tax.

(6) An approval under subsection (5) applies from the commencement of the first tax year of the non-resident individual after the approval is granted and remains in force indefinitely or until the Secretary permits the individual to be subject to this section under subsection (9).

(7) Subject to subsection (8), a non-resident individual who:

(a) was subject to business profits tax for a tax year; and

(b) the total gross revenue of the individual for the year did not exceed the business profits tax threshold,

may apply, in writing, to the Secretary for permission for the individual to be subject to the small business tax.

(8) A non-resident individual who has been granted permission under subsection (5) for section 11 to apply to the individual cannot make an application under subsection (7) within three years of the date of service of the notice granting the individual permission for section 11 to apply.

(9) The Secretary may approve an application under subsection (7) if satisfied that there is reasonable cause to do so and the approval applies from the date specified in the notice of approval.

(10) An approval under subsection (5) or (9) may be subject to such conditions as the Secretary may specify by notice in writing to the applicant.

13 Imposition of non-resident tax

(1) Subject to this Act, a tax to be known as "non-resident tax" is imposed at the rate specified in Schedule 1 on a non-resident person who has derived interest, a royalty, or insurance premium from sources in Nauru.

(2) The non-resident tax payable by a non-resident person under subsection (1) is computed by applying the rate of tax specified in Schedule 1 to the gross amount of the interest, a royalty, or insurance premium derived by the person.

(3) Subsection (1) does not apply to:

(a) an amount that is exempt income;

(b) interest, a royalty, or insurance premium that is attributable to a business conducted by the non-resident person through a permanent establishment in Nauru and, in that case, the amount is taxable under section 11; or

(c) an amount subject to services tax.

(4) The tax payable under subsection (1) is discharged if the tax has been paid to the Secretary in accordance with section 44.

14 Imposition of international transportation business tax

(1) Subject to this Act, a tax to be known as "international transportation business tax" is imposed at the rate specified in Schedule 1 on the gross amount derived by a non-resident person for the carriage of passengers, livestock, mail, merchandise, or goods embarked or loaded in Nauru and destined for a place outside Nauru.

(2) This section does not apply to the following:

(a) an amount that is exempt income;

(b) an amount derived in respect of the following:

(c) a passenger who is in Nauru as a result of being in transit between two places outside Nauru;

(d) the transhipment of livestock, mail, merchandise, or goods.

(3) The tax payable under this section is discharged if the tax has been paid in accordance with section 42 or 43, as the case may be.

15 General provisions relating to taxes imposed under this Act

The following applies to tax imposed under sections 12, 13, and 14:

(a) the tax is a final tax on the income in respect of which it is imposed;

(b) in computing the taxable amount, no deduction is allowed for any expenditure or loss incurred by the person in deriving the income.

PART 3 – BUSINESS PROFITS TAX

Division 1 – Taxable Income

16 Taxable income

The taxable income of a person for a tax year is the gross revenue of the person for year reduced by the total amount of deductions allowed to the person for the year.

Division 2 – Gross Revenue and Allowable Deductions

17 Gross revenue

(1) Subject to subsections (2) and (2A), the gross revenue of a person for a tax period is the sum of the following amounts derived by the person during the period:

(a) the gross receipts from the conduct of a business, including the gross proceeds from the disposal of inventory, the gross fees as compensation for providing personal services (other than employment income), interest, rent, royalties, or other proceeds of a business however designated;

(b) a gain on disposal of a business asset, other than inventory dealt with under paragraph (a);

(c) the amount of an expenditure, loss, or bad debt previously allowed as a deduction that has been reimbursed or recovered by the person.

(2) The gross revenue of a person does not include the following amounts:

(a) a distribution by a resident company, resident partnership, or resident trust;

(b) exempt income;

(c) an amount subject to tax under section 13 or 14;

(d) an amount subject to services tax.

(2A) For the purposes of subsection (1):

(a) the gross revenue of a resident person includes amounts derived from all sources both in and outside Nauru; and

(b) the gross revenue of a non-resident person includes only amounts derived from sources in Nauru.

(3) For the purposes of subsection (1)(b), a gain on disposal of a business asset is the amount by which the consideration for the disposal of the asset exceeds the net book value of the asset at the time of disposal.

(4) In this section, ***'tax period'*** means:

(a) for business profits tax, the tax year;

(b) for small business tax, the quarter; or

(c) for instalments of tax, the instalment period.

History: Section 17(1) amended by the Business Tax (Amendment) Act 2020 (Act No. 27 of 2020). Section 17(1) formerly read:

(1) Subject to subsection (2), the gross revenue of a person for a tax period is the sum of the following amounts derived by the person during the period from sources in Nauru:

(a) the gross receipts from the conduct of a business, including the gross proceeds from the disposal of inventory, the gross fees as compensation for providing personal services (other than employment income), interest, rent, royalties, or other proceeds of a business however designated;

(b) a gain on disposal of a business asset, other than inventory dealt with under paragraph (a);

(c) the amount of an expenditure, loss, or bad debt previously allowed as a deduction that has been reimbursed or recovered by the person.

Section 17(2)(a) amended by the Business Tax (Amendment) Act 2020 (Act No. 27 of 2020). Section 17(1) formerly read:

(a) a distribution by a company, partnership, or trust;

Section 17(2A) inserted by the Business Tax (Amendment) Act 2020 (Act No. 27 of 2020).

The Business Tax (Amendment) Act 2020 (Act No. 27 of 2020) came into force on 1 January 2020.

18 Exempt income

(1) The following amounts are exempt income:

(a) an amount exempt from tax to the extent provided for under an international agreement;

(b) an amount exempt from tax to the extent provided for under the Consular Privileges and Immunities Act 1976, the Diplomatic Privileges and Immunities Act 1976, or the Special Missions Privileges and Immunities Act 1976;

(c) an amount derived by a non-profit organisation other than income from a business conducted by the organisation that is not directly related to the core function of the organisation;

(d) an amount exempt from tax to the extent provided for under a provision (referred to as an "exemption provision") in an agreement, other than an international agreement, entered into by the Government when the following conditions are satisfied:

(i) the agreement is for the provision of financial, technical, humanitarian, or administrative assistance to the Government;

(ii) the Cabinet has concurred, in writing, with the exemption provision; and

(iii) the name of the person benefitting from the exemption provision is included in a notice published in the Gazette within thirty days after the date of Cabinet's written concurrence with the exemption provision;

(e) interest paid by a resident company to a non-resident person in respect of debentures issued by the resident company if the following conditions are satisfied:

(i) the company issued the debentures outside Nauru;

(ii) the debentures were issued with a view to public subscription or other wide distribution;

(iii) the company issued the debentures for the purpose of raising funds for use by the company in a business carried on in Nauru;

(iv) the interest is paid outside Nauru;

(f) an amount derived by a non-resident person from the operation of a ship or aircraft in international traffic if the Secretary is satisfied that an equivalent exemption is provided to a resident person by the country in which the non-resident resides.

(2) A provision in another law providing that an amount is exempt from tax does not have legal effect unless also provided for in this Act.

History: Section 18(1)(d)(iii) amended by the Business Tax (Amendment) No. 2 Act 2016 (Act No. 49 of 2016). Section 18(1)(d) formerly read:

"(iii) the name of the person benefitting from the exemption provision is included in a notice published in the Gazette within thirty days after the agreement comes into effect;".

The Business Tax (Amendment) No. 2 Act 2016 (Act No. 49 of 2016) came into force on 4 November 2016.

19 Deductions

(1) Subject to this Act, the total amount of deductions allowed to a person for

a tax year is the sum of the following amounts:

(a) expenditures or losses to the extent incurred by the person during the year in deriving amounts included in gross revenue;

(b) the cost of inventory disposed of by the person during the year as determined under international financial reporting standards;

(c) the total amount by which the depreciable assets and business intangibles of the person have declined in value during the year from use in deriving amounts included in gross revenue as determined under section 21;

(d) a loss on disposal of a business asset by the person during the year, other than inventory dealt with under subsection (1)(b);

(e) any other amount allowed as a deduction to the person under this Act.

(2) For the purposes of subsection (1)(d), a loss on disposal of a business asset is the amount by which the net book value of the asset at the time of disposal exceeds consideration for the disposal.

(3) The Regulations may provide rules for the deduction of expenditures relating to mining operations.

20 Non-deductible expenditures or losses

(1) Except as provided for in this Act, no deduction is allowed for the following:

(a) an expenditure or loss to the extent to which it is of a domestic or private nature;

(b) a distribution, an amount of capital withdrawn, or a sum employed as capital;

(c) an expenditure or loss of a capital nature except as allowed under section 19(1)(c) or (d);

(d) an amount that a person has transferred, in its financial accounts, to a reserve or provision for expenditures or losses not yet incurred but expected to be incurred in a future tax year;

(e) an expenditure or loss to the extent recovered or recoverable under a policy of insurance or a contract of indemnity, guarantee, or surety;

(f) business profits tax, and any penalty or interest payable in respect of a business profits tax liability;

(g) a fine or penalty imposed for violation of any law or regulation;

(h) interest payable to an associate other than interest included in the gross revenue of the associate or subject to non-resident tax;

(i) a service fee, royalty, or insurance premium paid or payable to a non-resident associate except when the service fee, royalty, or insurance premium is:

(i) included in the gross revenue of the associate; or

(ii) subject to non-resident tax or services tax; and

(j) a contribution made to a retirement or savings fund, including a contribution made by an employer for the benefit of an employee, except when the contribution has been subject to the employment tax.

(2) If a person is allowed a deduction for a payment from which the person is required to withhold tax under a withholding tax provision, the deduction is not allowed until the tax year in which the withholding tax has been paid to the Secretary.

(3) In this section:

'service fee' has the meaning in the Employment and Services Tax Act; and

'withholding tax provision' *means:*

(a) section 44; or

(b) section 17 or 18 of the Employment and Services Tax Act.

21 Depreciation of depreciable assets and business intangibles

(1) Subject to this section, a person is allowed a deduction for a tax year for the amount by which the person's depreciable assets and business intangibles have declined in value during the year through use in deriving amounts included in gross revenue.

(2) The amount of the decline in value of a depreciable asset or business intangible of a person for a tax year is computed in accordance with international financial reporting standards.

(3) If a person uses a depreciable asset or business intangible in a tax year partly to derive gross revenue and partly for another use, the amount allowed as a deduction under subsection (1) is the proportion of the amount computed under subsection (2) that relates to the derivation of gross revenue.

(4) If a depreciable asset or business intangible is not used for use by a person in deriving gross revenue for the whole of the tax year, the amount allowed as a deduction under subsection (1) is the amount computed in accordance with subsections (2) and (3) reduced by the proportion of the year that the asset was not so used or held.

(5) If a depreciable asset or business intangible that has been used by a person partly in deriving gross revenue and partly for another use is disposed of during a tax year, the amount of the gain or loss on disposal to which section 17(1)(b) or 19(1)(d) applies is the fair proportional part of the gain

or loss that relates to the derivation of gross revenue.

22 Bad debts

(1) A person is allowed a deduction for a tax year for a bad debt if the following conditions are satisfied:

(a) the amount of the debt:

(i) has been included in the gross revenue of the person; or

(ii) is money lent by the person in the normal course of carrying on a business of money lending;

(b) the debt or part of the debt is written off in the person's financial accounts for the tax year; and

(c) there are reasonable grounds for believing that the debt is irrecoverable.

(2) The amount of the deduction allowed to a person under this section for a tax year must not exceed the amount of the debt written off in the person's financial accounts for that year.

23 Net loss carry forward

(1) If the total amount of deductions allowed to a person for a tax year (other than a deduction allowed under this section) exceeds the gross revenue of the person for the year, the amount of the excess is the person's net loss for the year.

(2) If a person has a net loss for a tax year, the amount of the net loss can be carried forward to the next following tax year and allowed as a deduction in computing the person's taxable income for that following year.

(3) If a net loss is not wholly deducted under subsection (2), the amount not deducted can be carried forward by the person to the next following tax year and applied as specified in subsection (2) in that year, and so on until the net loss is fully deducted, but a net loss cannot be carried forward for more than three tax years after the end of year in which the net loss was incurred.

(4) If a person has a net loss carried forward under this section for more than one tax year, the net loss of the earliest year is deducted first.

(5) If there is a change in more than 50% of the underlying ownership of an entity, any net loss for a tax year before the change is not allowed as a deduction in a tax year after the change unless the following conditions are satisfied:

(a) the entity carried on the same business after the change that it carried on before the change until the earlier of either the net loss has been fully deducted or the period for carrying the net loss forward under this section has expired;

(b) the entity does not, until the earlier of when either the net loss has been fully deducted or the period for carrying the net loss forward under this section has expired, engage in any new business or investment if the principal purpose of the entity or the shareholders, members, partners, or beneficiaries of the entity is to utilise the net loss so as to reduce the business profits tax payable on the amounts derived from the new business or investment.

(6) In this section:

'entity' means a company, partnership, trust, or other body of persons; and

'underlying ownership', in relation to an entity, means an ownership interest in the entity held, directly or indirectly through an interposed entity or entities, by an individual or by a person not ultimately owned by individuals.

Division 3 – Tax Accounting

24 Method of tax accounting

(1) Subject to this Act, the taxable income of a person for a tax year is to be computed in accordance with the International Financial Reporting Standards.

(2) A person accounting on a cash basis derives an amount of gross revenue when received and incurs expenditure when paid.

(3) A person accounting on an accruals basis derives an amount of gross revenue when the right to receive the amount arises and incurs expenditure when the obligation to pay the expenditure arises.

(4) If the tax year (referred to as the "previous tax year") of a company changes, the period from the end of the last full previous tax year to the commencement of the new tax year is treated, for the purposes of the Act, as a separate tax year.

(5) The Regulations may provide rules for the calculation of the taxable income of insurance companies, including a deduction for the unexpired risks reserve of such companies.

25 Change in tax accounting method

(1) A person may apply to the Secretary, in writing, for a change in the person's method of accounting and the Secretary may, by notice in writing, approve the application but only if satisfied that the change is necessary to properly compute the taxable income of the person.

(2) If a person's method of accounting changes, the person must make adjustments in the tax year of change to items of income, deduction, or credit, or to any other items affected by the change so that no item is omitted and no item is taken into account more than once.

Division 3A – Foreign Tax Relief and Foreign Losses

25A Foreign tax credit

(1) A resident person is allowed a credit, referred to as the "foreign tax credit",

for foreign income tax paid by the person in respect of the assessable foreign income of the person for a tax year.

(2) The amount of the foreign tax credit allowed to a person for a tax year is limited to the business profits tax payable in respect of the assessable foreign income derived by the person for the year calculated by applying the average rate of business profits tax applicable to the resident person for the year against the net foreign income of the resident person for the year.

(3) There is no:

(a) deduction for;

(b) carry forward; or

(c) refund of,

any excess foreign tax credit for a tax year.

(4) A resident person is allowed a foreign tax credit under this section for foreign income tax only where:

(a) the resident person has paid the foreign income tax within 2 years after the end of the tax year in which the foreign income was derived by the resident person or within such further time as the Secretary allows; and

(b) the resident person has a receipt and any additional documentary evidence as required by the Secretary that is provided by the foreign tax authority evidencing the payment of the foreign income tax.

(5) In this Section and Section 25B:

'***average rate of business profits tax***', in relation to a resident person for a tax year, means the business profits tax payable by the resident person for the year, before the allowance of any tax credit under this Act, as a percentage of the taxable income of the resident person for the year;

'***foreign income tax***' means any tax on income or gains, including withholding tax, imposed by the government of a foreign country or territory, or a political subdivision of a government of a foreign country or territory, but does not include penalty, additional or penal tax, or interest payable in respect of such tax; and

'***net foreign income***', in relation to a resident person for a tax year, means the total assessable foreign income of the resident person for the year reduced by the total of the following deductions allowed to the resident person under this Act for the year:

(a) the deductions that relate exclusively to the derivation of the assessable foreign income of the resident person; and

(b) the deductions that are reasonably apportioned to the derivation of the assessable foreign income of the resident person.

25B Foreign losses

(1) Deductible expenses incurred in deriving assessable foreign income are deductible only against that income.

(2) Where a resident person has a foreign loss for a tax year, the amount of the loss is carried forward to the next following tax year and allowed as a deduction in that year against the resident person's assessable foreign income for that year.

(3) Where a resident person is not able to wholly deduct a foreign loss under subsection (2), the excess is carried forward to the next following tax year and applied as specified in subsection (2) in that year, and so on until the loss is fully deducted, but a resident person cannot carry a foreign loss forward for more than three tax years after the end of tax year in which the loss was incurred.

(4) If a resident person has a net loss carried forward under this section for more than one tax year, the net loss of the earliest tax year is deducted first.

(5) In this Section, '***foreign loss***', in relation to a resident person for a tax year, means the amount by which the deductible expenses incurred by the resident person during the year in deriving assessable foreign income exceeds the amount of that income for the year.

History: Division 3A of Part 3 inserted by the Business Tax (Amendment) Act 2020 (Act No. 27 of 2020).

The Business Tax (Amendment) Act 2020 (Act No. 27 of 2020) came into force on 1 January 2020.

Division 4 – Business Assets

26 Jointly owned business assets

(1) For the purposes of this Act, if a business asset is jointly owned by two or more persons (other than in partnership), any income, revenue, expenditures, or losses relating to the asset is apportioned among the owners according to their respective interests in the asset.

(2) If the interests of the owners of a jointly owned business asset cannot be ascertained, the owners of the asset are treated as having an equal interest in the asset.

27 Acquisition of a business asset

(1) A person acquires a business asset at the time legal title to the asset passes to the person.

(2) For a business asset that is a right or option, a person acquires the right or option at the time that the right or option is granted to the person.

28 Disposal of a business asset

(1) A person disposes of a business asset at the time that the person has sold, exchanged, or otherwise transferred legal title to the asset, including when

the asset is cancelled, redeemed, relinquished, destroyed, lost, expired, or surrendered.

(2) If a person creates a business asset in another person being an asset that did not previously exist, the first-mentioned person is treated as having made a disposal of the asset to the second-mentioned person at the time the asset is created.

(3) If a business asset is transmitted by succession or under a will, the deceased is treated as having disposed of the asset at the time the asset is transmitted.

(4) A disposal includes the disposal of a part of a business asset.

(5) The vesting of a business asset of a person (referred to as the "owner") in a liquidator, trustee-in-bankruptcy, or receiver is not treated as a disposal of the asset for the purposes of this Act, and acts done in relation to the asset by the liquidator, trustee-in-bankruptcy, or receiver are treated as done by the owner.

29 Cost of a business asset

(1) Subject to this section, the cost of a business asset of a person, other than a business intangible, is the sum of the following amounts:

(a) the total consideration given by the person for the asset, including the fair market value of any consideration in kind determined at the time the asset is acquired and, if the asset is constructed, produced, or developed, the cost of construction, production, or development;

(b) any incidental expenditure incurred by the person in acquiring or disposing of the asset;

(c) any expenditure incurred by the person to install, alter, renew, reconstruct, or improve the asset.

(2) Subject to this section, the cost of a business intangible is:

(a) in relation to a business intangible referred to in paragraph (a), (b), or (c) of the definition of "business intangible" in section 3, the total expenditure incurred by the person in acquiring, creating, improving, and renewing the intangible, and any incidental expenditure incurred in acquiring or disposing of the intangible; or

(b) in relation to a business intangible referred to in paragraph (d) or (e) of the definition of "business intangible" in section 3, the amount of the expenditure.

(3) The cost of a business asset does not include any amount allowed as a deduction under section 19(1)(a).

(4) The cost of a business asset of a person includes any amount given for the grant of an option to the person to acquire the asset.

(5) The cost of a structural improvement to real property does not include the cost of the land on which the structural improvement is located.

(6) The cost of a business asset of a person is not reduced by an impairment write down in relation to the asset made in the financial accounts of the person.

(7) If a person disposes of a part of a business asset, the cost of the asset is apportioned between the part of the asset retained and the part disposed of in accordance with their respective fair market values determined at the time the person acquired the asset.

(8) The cost of a business asset of a person does not include the amount of any grant, subsidy, rebate, commission, or other assistance received or receivable by a person in respect of the acquisition of the asset, except to the extent to which the amount is included in the gross revenue of the person.

(9) The reference to "other assistance" in subsection (8) does not include a loan repayable with or without interest.

(10) If the acquisition of a business asset by a person is:

(a) the derivation of an amount included in the gross revenue of the person, the cost of the asset is the amount so included plus any amount paid by the person for the asset; or

(b) the derivation of exempt income of the person, the cost of the asset is the exempt amount plus any amount paid by the person for the asset.

(11) In this section, "impairment write down", in relation to a business asset of a person, means the write down of the value of the asset in the financial accounts of the person because the fair market value of the asset is less than the cost of the asset.

30 Net book value of a business asset

(1) Subject to subsection (2), the net book value of a business asset of a person is the cost of the asset reduced by depreciation deductions (if any) allowed in respect of the asset or that would have been allowed but for section 21(3).

(2) If section 29(7) applies to a business asset, the net book value of:

(a) the part of the asset disposed of is the cost apportioned to that part of the asset under section 29(7) reduced by depreciation deductions (if any) allowed, or that would have been allowed but for section 21(3), that relate to the cost apportioned to that part of the asset; and

(b) the part of the asset retained is the cost apportioned to that part of the asset under section 29(7) reduced by depreciation deductions (if any) allowed, or that would have been allowed but for section 21(3), that relate to the cost apportioned to that part of the asset.

31 Consideration for the disposal of a business asset

(1) The consideration for the disposal of a business asset by a person is the

total amount received or receivable by the person for the asset, including the fair market value of any consideration-in-kind determined at the time of disposal.

(2) The consideration for the disposal of a business asset by a person includes the consideration for the grant of an option in relation to the asset, but only if the person has not been subject to tax in respect of any gain made on the grant of the option.

(3) If a business asset has been lost or destroyed by a person, the consideration for the asset includes any compensation, indemnity, or damages received or receivable by the person as a result of the loss or destruction, including amounts received or receivable:

(a) under an insurance policy, indemnity, or other agreement;

(b) under a settlement; or

(c) as a consequence of a judicial decision.

(4) If two or more assets are disposed of by a person in a single transaction and the consideration for each asset is not specified, the total consideration is apportioned among the assets disposed of in proportion to their respective fair market values determined at the time of the disposal.

(5) If a person is unable to provide documentary evidence of the consideration for the disposal of a business asset by the person, the consideration for the disposal is the fair market value for the asset at the time of disposal.

32 Deferral of recognition of gain or loss

(1) For the purposes of this Act and subject to subsection (2), no gain or loss is taken to arise on the disposal of a business asset:

(a) between spouses as part of a divorce settlement or under an agreement to live apart;

(b) by reason of the transmission of the asset on the death of a person to an executor or beneficiary;

(c) by reason of the loss or destruction, or compulsory acquisition of the asset (referred to as the “replaced asset”) if the consideration for the disposal is reinvested by the recipient in an asset of a like kind (referred to as a “replacement asset”) within one year of the disposal or within such further period as the Secretary allows; or

(d) if the asset is a depreciable asset (referred to as the “replaced asset”) and the person acquires a depreciable asset of a like kind to be wholly used to derive amounts included in gross revenue (referred to as the “replacement asset”) within six months after the disposal or within such further period as the Secretary allows.

(2) Subsection (1)(a) or (b) applies only if the person acquiring the asset will be subject to tax under the Act on a subsequent disposal of the asset.

(3) If subsection (1)(a) or (b) applies, the person acquiring the business asset

is treated as acquiring the asset for an amount equal to the net book value of the asset for the person disposing of the asset at the time of the disposal.

(4) If subsection (1)(c) or (d) applies and the cost of the replacement asset exceeds the consideration for the replaced asset, the cost of the replacement asset is the net book value of the replaced asset at the time of disposal increased by the amount of the excess.

(5) If subsection (1)(c) or (d) applies and the consideration received for the replaced asset exceeds the consideration given for the replacement asset, the cost of the replacement asset is the net book value of the replaced asset at the time of disposal reduced by the amount of the excess but not below zero.

(6) Any part of the excess referred to subsection (5) that is not used to reduce the net book value of the asset is included in the gross revenue of the person.

33 Registration of Transferred Assets

A person required by law to register or approve the transfer of an asset must not register or approve the transfer unless satisfied that any tax payable under the Act in respect of the transfer has been or will be paid, or that the gain arising from the transfer is not subject to tax under the Act.

PART 4 – ANTI-AVOIDANCE

34 Transfer Pricing

(1) The Secretary shall, in respect of any transaction, domestic or cross-border, that is not an arm's length transaction, distribute, apportion, or allocate revenue, gains, deductions, losses, or tax credits between the parties to the transaction as is necessary to reflect the revenue, gains, deductions, losses, or tax credits that would have been realised in an arm's length transaction.

(2) If a party to a transaction to which subsection (1) applies is located in, and subject to tax in, Nauru and another party to the transaction is located outside Nauru, any distribution, apportionment, or allocation of revenue, gains, deductions, losses, or tax credits must be made in accordance with the Regulations.

(3) The allocation of revenue and deductions to a permanent establishment in Nauru of a non-resident person or to a permanent establishment of a resident person outside the Nauru must be made in accordance with the Regulations.

(4) In this section, ***'arm's length transaction'*** means a transaction between independent persons who are dealing at arm's length with each other when the outcome of the dealing results in arm's length consideration being paid and received.

35 Thin Capitalisation

(1) Subject to subsection (2), if a foreign-controlled resident company, other than a financial institution, has an average debt to average equity ratio in

excess of 2 to 1 for a tax year, a deduction is disallowed for the interest paid by the company during that year calculated according to the following formula:

$$\mathbf{A \times {}^{B}/_{C}}$$

where:

A is the company's total amount of deductible interest for the year;

B is the company's excess debt for the year; and

C is the company's average debt for the year.

(2) If the average debt to average equity ratio of a foreign-controlled resident company exceeds 2 to 1 for a tax year, subsection (1) does not apply if the amount of the average debt of the company for the year does not exceed the arm's length debt amount.

(3) This section applies to a non-resident company with a permanent establishment in Nauru on the basis of the following:

(a) the permanent establishment is treated as a foreign-controlled resident company; and

(b) the average debt to average equity ratio of the permanent establishment is computed by reference to:

(i) the debt obligations of the non-resident company attributable to the permanent establishment; and

(ii) the equity of the non-resident company attributable to the operations of the company conducted through the permanent establishment.

(4) In this section:

'arm's length debt amount', in relation to a foreign-controlled resident company, means the amount of debt that a financial institution that is not an associate of the company would be prepared to lend to the company having regard to all the circumstances of the company;

'average debt', in relation to a foreign-controlled resident company for a tax year, is the amount calculated according to the following formula:

$$\mathbf{{}^{A}/_{12}}$$

where:

A is the sum of the amount of debt of the company at the end of each calendar month in the tax year;

'average equity', in relation to a foreign-controlled resident company for a tax year, is the amount calculated according to the following formula:

where:

A is the sum of the amount of equity of the company at the end of each calendar month in the tax year;

'debt', in relation to a foreign-controlled resident company, means the greatest amount, at any time during a tax year, of the debt obligations of the company on which interest is payable as determined according to International Financial Reporting Standards;

'debt obligation' means an obligation to make a repayment of money to another person, including obligations arising under promissory notes, bills of exchange, and bonds, but not including:

(a) accounts payable; or

(b) an obligation to make a repayment of money in respect of which no interest is payable;

'***equity'***, in relation to a foreign-controlled resident company, means the greatest amount, at any time during a tax year, of the equity of the company as determined according to International Financial Reporting Standards and includes a debt obligation on which no interest is payable;

'excess debt', in relation to a foreign controlled resident company for a tax year, means the amount by which the company's average debt for the year exceeds the maximum average debt allowed for the year according to the 2 to 1 ratio; and

'foreign-controlled resident company' means a resident company in which more than fifty per cent of the shares or other ownership interest in the company is held by a non-resident person either alone or together with an associate or associates.

36 Tax avoidance schemes

(1) This section applies when the Secretary is satisfied that:

(a) a scheme has been entered into or carried out;

(b) a person has obtained a tax benefit in connection with the scheme; and

(c) having regard to the substance of the scheme, it would be concluded that a person, or one of the persons, who entered into or carried out the scheme did so for the sole or dominant purpose of enabling the person referred to in paragraph (b) to obtain a tax benefit.

(2) Despite anything in this Act, when this section applies, the Secretary may determine the tax liability of the person who obtained the tax benefit as if the scheme had not been entered into or carried out and can make compensating adjustments to the tax

liability of any other person affected by the scheme.

(3) If a determination or adjustment is made under this section, the Secretary must issue an assessment giving effect to the determination or adjustment.

(4) An assessment under subsection (3) must be served within 5 years from the last day of the tax year to which the determination or adjustment relates.

(5) In this section:

'scheme' includes a course of action and an agreement, arrangement, promise, plan, proposal, or undertaking, whether express or implied and whether or not enforceable;

'tax benefit' means:

(a) a reduction in a liability to pay tax;

(b) a postponement of a liability to pay tax;

(c) any other advantage arising because of a delay in payment of tax; or

(d) anything that causes:

(i) an amount of gross revenue to be exempt income or otherwise not subject to tax; or

(ii) an amount that would otherwise be subject to tax not to be taxed.

PART 5 – PROCEDURE

37 Application of Revenue Administration Act

The Revenue Administration Act applies for the purposes of the administration of this Act but subject to this Part.

38 Records

(1) Subject to this section, a person must keep such accounts, documents, and records as enable the computation of any tax payable by the person under this Act.

(2) 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.

(3) The Secretary may disallow a claim by a person for:

(a) a deduction for an expenditure or loss; or

(b) the inclusion of an amount of expenditure in the cost of a business asset, if the person is unable to produce documentary evidence relating to the circumstances giving rise to the claim for the deduction or the inclusion of the amount in the cost of a business asset.

(4) The Regulations may specify the documents that must be maintained by a person for the purposes of this Act.

History: Section 38(2) amended by the Business Tax (Amendment) No. 2 Act 2016 (Act No. 49 of 2016). Section 38(2) formerly read:

"(2) An person 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."

The Business Tax (Amendment) No. 2 Act 2016 (Act No. 49 of 2016) came into force on 4 November 2016.

39 Tax returns

(1) Subject to subsection (2), a person liable for business profits tax must file a business profits tax return for each tax year within three months after the end of the year.

(1A) A person who has a net loss for a tax year is treated as a person liable for business profits tax for the year.

(1B) The Secretary may require a person to file a busines profits tax return for a tax year notwithstanding that no business profits tax may be payable by the person for the year.

(2) If no business profits tax is payable by a resident individual for a tax year because the taxable income of the resident individual for the year does not exceed the tax-free amount specified in paragraph (1)(a) of Schedule 1, the individual is not required to file a business profits tax return for the year unless requested to do so by the Secretary.

(3) A person liable for small business tax must file a small business tax return for each tax quarter within fifteen days after the end of the quarter.

(4) A business profits tax return or small business tax return must be in the approved form and filed in the manner specified in the Revenue Administration Act.

(5) A business profits tax return and a small business tax return are self-assessment returns for the purposes of the Revenue Administration Act.

History: Section 39(1A) inserted by the Business Tax (Amendment) No. 2 Act 2016 (Act No. 49 of 2016).

Section 39(1B) inserted by the Business Tax (Amendment) Act 2020 (Act No. 27 of 2020).

Section 39(2) amended by the Business Tax (Amendment) No. 2 Act 2016 (Act No. 49 of 2016). Section 39(2) formerly read:

> *"(2) If no business profits tax is payable by a resident individual for a tax year, the individual is not required to file a business profits tax return for the year unless requested to do so by the Secretary."*

Section 39(3) amended by the Business Tax (Amendment) No. 2 Act 2016 (Act No. 49 of 2016). Section 39(2) formerly read:

> *"(3) A person liable for small business tax must file a small business tax return for each tax quarter within one month after the end of the quarter."*

The Business Tax (Amendment) No. 2 Act 2016 (Act No. 49 of 2016) came into force on 4 November 2016.

The Business Tax (Amendment) Act 2020 (Act No. 27 of 2020) came into force on 1 January 2020.

40 Payment of tax

(1) The business profits tax payable by a person for a tax year is due on the date that the business profits tax return for that year is due.

(2) The small business tax payable by a person for a quarter is due on the date that the small business tax return for the quarter is due.

(3) The non-resident tax payable by a person under section 13 is due on the date specified in section 44(2).

(4) The international transportation business tax payable by a non-resident person under section 14 is due on the date specified in section 42 or 43, as the case may be.

41 Instalments of business profits tax

(1) A person liable for business profits tax for a tax year is liable to file an instalment return and pay instalments of tax for the year by the fifteenth day of the month following the end of the third, sixth, ninth, and twelfth months of the year.

(2) Subject to subsections (3) and (3D), the amount of each instalment is one-quarter of the amount of business profits tax payable by the person for the previous tax year.

(3) Subject to subsection (4), if a person did not conduct business in the previous tax year, the amount of each instalment under subsection (2) is 0.5% of the person's gross revenue for each instalment period.

(3A) In respect of the person referred to in subsection (3), if the Secretary has reasonable grounds for believing that the business profits tax payable for the current tax year will be less or more than that payable as determined in accordance with subsection (3), he or she may, based on such evidence as may be available and to the best of his or her judgement, vary the amount of each instalment payable by a person for the current year.

(3B) If a person has reasonable grounds for believing that the business profits tax payable by a person for the current tax year will be less than that payable for the previous tax year, the person may apply to the Secretary, in the approved form, for a variation in the amount of each instalment payable by the person for the current tax year.

(3C) An application under subsection (3A) must include an estimate of the person's business profits tax liability for the current year.

(3D) If the Secretary grants an application under subsection (3A), the amount of each instalment is based on the person's estimated business profits tax liability for the current year.

(3E) If the Secretary has reasonable grounds for believing that the business profits tax payable by a person for the current tax year will be less or more than that payable for the previous tax year, he or she may, based on such evidence as may be available and to the best of his or her judgement, vary the amount of each instalment payable by a person for the current year.

(4) If the person referred to in subsection (3) is a resident individual, no instalments of business profits tax are payable for the tax year if the Secretary is satisfied that the taxable income of the person for the year is reasonably expected to be below the tax-free threshold for the business profits tax specified in Schedule 1.

(5) Each instalment of tax paid by a person for a tax year is credited against the business profits tax liability of the person for the year.

(6) If the total amount of instalments of a person credited under subsection (5) for a tax year exceeds the business profits tax liability of the person for the year, the excess is applied in accordance with section 37(4) of the *Revenue Administration Act*.

History: Section 41(1) amended by the Business Tax (Amendment) No. 2 Act 2016 (Act No. 49 of 2016). Section 41(1) formerly read:

(1) A person liable for business profits tax for a tax year is liable to pay instalments of tax for the year by the fifteenth day of the month following the end of the third, sixth, ninth, and twelfth months of the year.

41(2) amended by the Business Tax (Amendment) No. 2 Act 2016 (Act No. 49 of 2016). Section 41(2) formerly read:

(2) Subject to subsection (3), the amount of each instalment is one-quarter of the amount of business profits tax payable by the person for the previous tax year.

Section 41(3A), (3B), and (3C) inserted by Business Tax (Amendment) No. 2 Act 2016 (Act No. 49 of 2016).

Section 41(7) inserted by Business Tax (Amendment) Act 2017 (Act No. 34 of 2017).

Section 41 repealed and new section 41 inserted by Business Tax (Amendment) Act

2020. Section 41 formerly read:

41 Instalments of business profits tax

(1) A person liable for business profits tax for a tax year is liable to file an instalment return and pay instalments of tax for the year by the fifteenth day of the month following the end of the third, sixth, ninth, and twelfth months of the year.

(2) Subject to subsections (3) and (3C), the amount of each instalment is one-quarter of the amount of business profits tax payable by the person for the previous tax year.

(3) Subject to subsection (4), if a person did not conduct business in the previous tax year, the amount of each instalment under subsection (2) is 0.5% of the person's gross revenue for each instalment period.

(3A) If a person has reasonable grounds for believing that the business profits tax payable by a person for the current tax year will be less than that payable for the previous tax year, the person may apply to the Secretary, in the approved form, for a variation in the amount of each instalment payable by the person for the current tax year.

(3B) An application under subsection (3A) must include an estimate of the person's business profits tax liability for the current year.

(3C) If the Secretary grants an application under subsection (3A), the amount of each instalment is based on the person's estimated business profits tax liability for the current year.

(4) If the person referred to in subsection (3) is a resident individual, no instalments of business profits tax are payable for the tax year if the Secretary is satisfied that the taxable income of the person for the year is reasonably expected to be below the tax-free threshold for the business profits tax specified in Schedule 1.

(5) Each instalment of tax paid by a person for a tax year is credited against the business profits tax liability of the person for the year.

(6) If the total amount of instalments of a person credited under subsection (5) for a tax year exceeds the business profits tax liability of the person for the year, the excess is applied in accordance with section 37(4) of the Revenue Administration Act.

(7) The Secretary may, based on such evidence as may be available and to the best of his or her judgement, increase the amount of instalments payable by a person as required under subsection (2) or (3), if the instalments otherwise payable are significantly less than the estimated business

profits tax liability for the tax year.

The Business Tax (Amendment) No. 2 Act 2016 (Act No. 49 of 2016) came into force on 4 November 2016.

The Business Tax (Amendment) Act 2017 (Act No. 34 of 2017) came into force on 21 December 2017.

The Business Tax (Amendment) Act 2020 (Act No. 274 of 2020) came into force on 1 January 2020.

42 Collection of international transportation business tax from non-resident ship owners or charterers

(1) Subject to subsections (2) and (4), before the grant of a clearance for a ship owned or chartered by a non-resident person for departure from Nauru, the captain or chief commanding officer of the ship, or the shipping agent in Nauru for the non-resident person, must:

(a) file with the Secretary a return showing the gross amount derived from the carriage of passengers, livestock, mail, merchandise, or goods embarked or loaded in Nauru in respect of the ship and the international transportation business tax payable in relation to that amount; and

(b) pay the non-resident international transportation business tax due in respect of the ship with the return.

(2) Subsection (1) does not apply if section 18(1)(f) applies in relation to the ship, but the captain or chief commanding officer of the ship, or the shipping agent in Nauru for the non-resident owner or charterer must:

(a) notify the Secretary, in writing, that the gross amount derived is exempt income; and

(b) provide such evidence as the Secretary may require of the equivalent exemption available in the country of residence of the non-resident owner or charterer.

(3) The return required under subsection (1)(a):

(a) must be in the approved form;

(b) filed in the manner specified in the Revenue Administration Act; and

(c) is a self-assessment return for the purposes of the Revenue Administration Act.

(4) The Secretary may, by notice in writing, allow the return referred to in subsection (1)(a) to be filed and international transportation business tax paid within thirty (30) days after departure of the ship from Nauru provided the non-resident owner or charterer of the ship has made satisfactory arrangements for payment of any tax due in respect of the ship.

(5) If the Secretary gives written notice to a public officer referred to in section 37 of the Port Authority Act that an amount of international transportation business tax is due in respect of a ship, the public officer must not grant clearance for the ship to depart Nauru until the tax due has been paid or has been secured to the satisfaction of the Secretary.

(6) This section does not relieve the non-resident owner or charterer of the ship from liability to pay any international transportation business tax due that is not paid by the captain or chief commanding officer of the ship, or the owner or charterer's shipping agent in Nauru.

(7) The captain, chief commanding officer, or shipping agent in Nauru to whom subsection (1) applies is treated as the tax representative of the non-resident owner or charterer of the ship for the purposes of the Revenue Administration Act.

43 Collection of international transportation business tax from non-resident aircraft owners or charterers

(1) Subject to subsections (2) and (3), before the grant of a clearance for an aircraft owned or chartered by a non-resident person for departure from Nauru, the pilot of the aircraft or the agent in Nauru for the non- resident person must:

(a) file with the Secretary a return showing the gross amount derived from the carriage of passengers, livestock, mail, merchandise, or goods embarked or loaded in Nauru in respect of the aircraft and the international transportation business tax payable in relation to that amount; and

(b) pay the non-resident international transportation business tax due in respect of the aircraft with the return.

(2) Subsection (1) does not apply if section 18(1)(f) applies in relation to the aircraft, but the pilot of the aircraft or the agent in Nauru for the non-resident owner or charterer must:

(a) notify the Secretary, in writing, that the gross amount derived is exempt income; and

(b) provide such evidence as the Secretary may require of the equivalent exemption available in the country of residence of the non-resident owner or charterer.

(3) On application in writing by the non-resident owner or charterer of an aircraft, the Secretary may allow the owner or charterer to file returns and pay international transportation business tax quarterly with the return and tax for a quarter due by the last day of the month following the end of the quarter.

(4) A return required under this section:

(a) must be in the approved form;

(b) filed in the manner specified in the Revenue Administration Act; and

(c) is a self-assessment return for the purposes of the Revenue Administration Act.

(5) If the Secretary gives the Civil Aviation Authority of Nauru written notice that an amount international transportation business tax is due in respect of an aircraft, the Authority must not grant clearance for the aircraft to depart Nauru until the tax has been paid or has been secured to the satisfaction of the Secretary.

(6) When subsection (1) applies, this section does not relieve the non- resident owner or charterer of the aircraft from liability to pay any international transportation business tax due that is not paid by the pilot of the aircraft or the owner or charterer's agent inNauru.

(7) The pilot or agent in Nauru to whom subsection (1) applies is treated as the tax representative of the non-resident owner or charterer of the aircraft for the purposes of the Revenue Administration Act.

44 Withholding tax

(1) A resident person or a permanent establishment in Nauru of a non- resident person making a payment of interest, a royalty, or insurance premium that is subject to non-resident tax must withhold tax from the gross amount paid at the non-resident tax rate specified in Schedule 1.

(2) A person required to withhold tax under subsection (1) must file a withholding tax return and pay the withheld tax to the Secretary within 15 days after the end of the month in which the income was paid.

(3) A person who fails to withhold tax as required under this section or who, having withheld tax, fails to pay the tax to the Secretary as required under subsection (2) is personally liable to pay the amount of withholding tax to the Secretary.

(4) A person who is personally liable for withholding tax under subsection (3) as a result of failing to withhold the tax is entitled to recover the tax from the recipient of the payment.

(5) If a person fails to withhold tax as required under this section, the Secretary may recover the tax from the recipient of the payment of the interest, royalty, or insurance premium.

(6) Despite the recovery of any tax under subsection (5), the person who failed to withhold the tax continues to be liable for the following:

(a) any legal action in relation to the failure, including prosecution for an offence under the Revenue Administration Act;

(b) the imposition of penalty in respect of the failure.

(7) A person required to withhold tax under this section must:

(a) keep records of the gross amount of interest, royalties, or insurance premiums paid to non-resident persons and the amount of tax withheld from each payment; and

(b) within 15 days after the end of the tax year or within such further period as the Secretary may allow by notice in writing, file with the Secretary an annual withholding tax summary in the approved form.

(8) Income subject to withholding under subsection (1) is treated as having been paid to a non-resident person if any of the following applies:

(a) the income is actually paid to the person;

(b) the income is applied on behalf of the person either at the instruction of the person or under any law;

(c) the income is reinvested, accumulated, or capitalised for the benefit of the person;

(d) the income is credited to an account for the benefit of the person.

(9) In this section, ***'tax year'*** means the period of 12 month ending on June 30.

PART 6 – ADMINISTRATIVE MATTERS

45 Currency translation

(1) An amount taken into account under this Act must be expressed in Australian dollars.

(2) If an amount is in a currency other than Australian dollars, the amount must be translated to Australian dollars at the Reserve Bank of Australia exchange rate applying between the foreign currency and Australian dollars on the date the amount is taken into account for the purposes of this Act.

46 Regulations

(1) The Cabinet may make regulations under this Act, including for the amendment of the Schedules and in relation to transitional matters.

(2) If Regulations made under this section are of a transitional nature and are made within 6 months after the commencement date, the Regulations may provide that they take effect from the application date.

(3) In this section, "commencement date" and "application date" have the meanings in section 48.

47 Consequential amendments to the Employment and Services Tax Act

Schedule 3 amends the Employment and Services Tax Act.

48 Transitional provisions

(1) An amount is exempt from tax to the extent provided for under a provision in an agreement entered into by the Government during the period 24 months prior to the commencement date of this Act.

(2) If the tax year of a company commences on a date other than the application date, the period from the application date to the start of the company's first full tax year under the Act is treated as a separate tax year (referred to as the "transitional tax year").

(3) Subject to section 41(4), the amount of an instalment of business profits tax payable by a person under section 41 for an instalment period during the tax year 1 July 2016 to 30 June 2017 is 0.5% of person's gross revenue for the instalment period.

(4) If first tax year of a company under the Act is a transitional tax year, the amount of an instalment of business profits tax payable by the company under section 41 for an instalment period during the transitional tax year and the company's first full tax year under the Act is 0.5% of the person's gross revenue for the instalment period.

(5) A person who will be liable for business profits tax or small business tax and who does not have a taxpayer identification number at the commencement date of the Act must apply for a taxpayer identification number as required by the Secretary as set out in a notice published in the Gazette.

(6) In this section:

'application date' means the date specified in section 2(2); and

'commencement date' means the date specified in section 2(1).

(6) If a resident person that acquired a depreciable asset or business intangible for use in conducting a business through a foreign permanent establishment before 1 January 2021 uses the asset or intangible to derive assessable foreign income on or after 1 January 2021, the person must depreciate the asset or intangible on the assumption that section 21 applied from the acquisition date of the asset or intangible.

(7) If a depreciable asset or business intangible referred to in subsection (6) is disposed of after 1 January 2021, sections 17(1)(b) and 19(1)(d) apply to the proportional part of any gain or loss on disposal that relates to the use of the asset or intangible to derive assessable foreign income on or after 1 January 2021.

(8) Subject to subsection (9), if a person acquired a business asset (other than a depreciable asset or business intangible) for use in conducting a business through a foreign permanent establishment before 1 January 2021, the cost of the asset is the fair market value of the asset on 1 January 2021.

(9) Subsection (8) does not apply to an asset the disposal of which can give rise to income or a gain derived from sources in Nauru.

History: The Business Tax (Amendment) Act 2016 (Act No. 43 of 2016) deleted subsection (1) and substituted a new subsection (1). Subsection (1) formerly read

"(1) An amount is exempt from tax to the extent provided for under a provision in an agreement entered into by the Government prior to the commencement date."

Subsections (6), (7), (8), and (9) inserted by Business Tax (Amendment) Act 2020 (Act No. 27 of 2020).

The Business Tax (Amendment) Act 2016 (Act No. 43 of 2016) applies from 8 September 2016.

The Business Tax (Amendment) Act 2020 (Act No. 27 of 2020) applies from 1 January 2020
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SCHEDULE 1

sections 11, 12, 13 and 14

RATES OF TAX

[1] The rate of business profits tax:

(a) for a resident individual is:

Taxable Income	Rate
$0 – $250,000	0%
Above $250,000	20%

(b) for a partnership, is 20% on taxable income reduced by $250,000 in respect of each resident individual member;

(c) for a trust, is 20% on taxable income reduced by $250,000 in respect of each resident individual beneficiary;

(d) for a company:

Category	Rate
Category A: Resident company with annual gross revenue $0 - $15,000,000	20%
Category B: Resident company with annual gross revenue above $15,000,000	25%
Category C: Resident company controlled by a non-resident person associate	25%
Category D: Non-resident company conducting business in Nauru through a Permanent Establishment	25%

(e) for any other person, is 20%.

[2] The rate of small business tax is 2.5%.

[3] The rate of non-resident tax is 20%.

[4] The rate of international transportation business tax is 0%.

History: Schedule 1 replaced by the Business Tax (Rates of Tax) Regulations 2017 (SL No. 17 of 2017). Schedule 1 formerly read:

"SCHEDULE 1

sections 11, 12, 13 and 14

RATES OF TAX

[1] The rate of business profits tax:

(a) for a resident individual is:

Taxable Income for a Tax year	***Rate***
$0 – $250,000	*0%*
Above $250,000	*10%*

(b) for any other person, is 10%.

[2] The rate of small business tax is 1.5%.

[3] The rate of non-resident tax is 10%.

[4] The rate of international transportation business tax is 2%."

Schedule 1 replaced by the Business Tax (Rates of Tax) (Amendment) Regulations 2018 (SL No. 15 of 2018). Schedule 1 formerly read:

SCHEDULE 1

sections 11, 12, 13 and 14

RATES OF TAX

[1] The rate of business profits tax:

(a) for a resident individual is:

Taxable Income for a Tax year	***Rate***
$0 – $250,000	*0%*
Above $250,000	*10%*

(b) for a partnership, is 10% on taxable income reduced by $250,000 in respect of each resident individual member;

(c) for a trust, is 10% on taxable income reduced by $250,000 in respect of each resident individual beneficiary;

(d) for a company:

(i) Category A: (Annual gross revenue $0 - $15,000,000) is 10%;

(ii) Category B: (Annual gross revenue above $15,000,000) is 20%;

(e) for any other person, is 10%.

[2] The rate of small business tax is 2.5%.

[3] The rate of non-resident tax is 10%.

[4] The rate of international transportation business tax is 0%.

The amendment to clause (1)(d) and (2) in the Business Tax (Rates of Tax) Regulations 2017 (SL No. 17 of 2017) apply from 1 July 2017. The amendment to all other clauses applies from 1 July 2016.

The amendment in the Business Tax (Rates of Tax) (Amendment) Regulations 2018 (SL No. 15 of 2018) apply from 1 July 2018.

SCHEDULE 2

section 12

BUSINESS PROFITS TAX THRESHOLD

The business profits tax threshold is $250,000.

SCHEDULE 3

Section 47

AMENDMENT OF EMPLOYMENT AND SERVICE TAX ACT 2014

[1] Amendment of section 3

1.1 Omit the definition of 'permanent establishment' and substitute the following definition:

'permanent establishment' has the meaning in the Business Tax Act;

[2] Amendment to section 6

2.1 Omit subsections (1) to (5) and substitute the following:

'Non-profit organisation' has the meaning in section 6 of the Business Tax Act.

[3] Amendment to section 9

Omit current subsection (1)(b) and substitute the following:

"(b) when the employment income or services fee is paid by, or on behalf, of:

(i) a resident person, other than when the employment income or services fee is an outgoing of a permanent establishment of the resident person outside Nauru; or

(ii) a permanent establishment in Nauru of a non-resident person."