



REPUBLIC OF NAURU

# BUSINESS TAX (AMENDMENT) ACT 2020

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No. 27 of 2020

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An Act to amend the *Business Tax Act 2016*.

Certified: 23<sup>rd</sup> October 2020

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Enacted by the Parliament of Nauru as follows:

**1 Short title**

This Act may be cited as the *Business Tax (Amendment) Act 2020*.

**2 Commencement**

This Act commences on 1 January 2021.

**3 Amendment of the Business Tax Act 2016**

The *Business Tax Act 2016* is amended by the provisions of this Act.

**4 Amendment of Section 3**

Section 3 is amended by inserting the following in alphabetical order:

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

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

**5 Amendment of Section 9**

Section 9(3) is amended:

- (a) in paragraph (b), by inserting at the end of the paragraph '*or an interest in a resident company, resident partnership, or resident trust*';
- (b) in paragraph (c), by inserting '*at any time during the 365 days preceding the disposal of the interest,*' after the word 'if';
- (c) in paragraph (d):
  - (i) by inserting '*technical fee, management fee,*' after 'interest';
  - (ii) in sub-paragraph (ii), by deleting '*or*'; and
- (d) in paragraph (e), by deleting the fullstop at the end of the paragraph and substituting '*or*';
- (e) by inserting a new paragraph (f) after paragraph (e) as follows:
  - (f) a distribution paid by a resident company, resident partnership, or resident trust.'

## **6 Amendment of Section 11**

Section 11 is amended by inserting new subsections (2A) and (2B) immediately after subsection (2) as follows:

- '(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.'

## **7 Amendment of Section 17**

Section 17 is amended:

- (a) in subsection (1) by:
  - (i) deleting 'subsection (2)' and substituting 'subsections (2) and (2A)'; and
  - (ii) by deleting the words '*from sources in Nauru*';
- (b) in subsection (2), by inserting the word '*resident*' before each of the words 'company', 'partnership', and 'trust'; and
- (c) by inserting a new subsection (2A) immediately after subsection (2) as follows:
  - '(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.'

## **8 Insert new Division 3A of Part 3**

A new Division 3A is inserted immediately after Division 3 of Part 3 as follows:

### **'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.'

## **9 Amendment of Section 39**

Section 39 is amended by inserting a new subsection (1B) immediately after subsection (1A) as follows:

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

## **10 Amendment of Section 41**

Section 41 is deleted and substituted as follows:

### **'41 Instalments of business profit 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*.

## 11 **Amendment of Section 48**

Section 48 is amended by inserting new subsections (6), (7), (8) and (9) as follows:

- (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.'