



REPUBLIC OF NAURU

## Employment and Services Tax Bill

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Bill No. 14 of 2014

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**A Bill for an Act to provide for the taxation of employment income and certain payments to non-residents, and for related purposes**

*Certified on [ ] 2014*

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SCHEDULE

REPUBLIC OF NAURU

**Employment and Services Tax Act**

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Act No. [ ] of 2014

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**An Act to provide for the taxation of employment income and certain payments to non-residents, and for related purposes**

*Certified on [ ] 2014*

Enacted by the Parliament of Nauru as follows:

**PART 1 - PRELIMINARY MATTERS**

**1 Short title**

This Act may be cited as the *Employment and Services Tax Act 2014*.

**2 Commencement and application**

- (1) This Act commences on the date that notice of the Act is published in the Gazette.
- (2) This Act applies to employment income and services fees paid on or after the 1 October 2014.

**3 Definitions**

In this Act:

*'approved form'* has the meaning in the Revenue Administration Act;

*'associate'* has the meaning in section 4;

*'employee'* means an individual engaged in employment;

*'employer'* means a person who engages or remunerates an employee;

*'employment'* includes:

- (a) a directorship or other office in the management of a company or a body of persons;

- (b) a position entitling the holder to a fixed or ascertainable remuneration; or
- (c) the holding or acting in any public office;

***‘employment income’*** has the meaning in section 5;

***‘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 organisation’*** means an organisation, the members of which are sovereign powers or governments of sovereign powers;

***‘knowhow’*** means any scientific, technical, commercial, management, or industrial information, techniques, knowledge, experience, or skill;

***‘management fee’*** means an amount as consideration for the rendering of any managerial service, but does not include employment income;

***‘non-profit organisation’*** has the meaning in section 6;

***‘non-resident individual’*** has the meaning in section 7;

***‘non-resident person’*** means a person who is not a resident person;

***‘pay period’***, in relation to an employee, means:

- (a) if the employee is paid monthly, a calendar month;
- (b) if the employee is paid fortnightly, a fortnight;
- (c) if the employee is paid weekly; a week; or
- (d) if the employee is paid on any other basis, the period specified in the notice served on the employee under section 17(3);

***‘payer’*** means a person liable to withhold tax under section 18;

***‘permanent establishment’*** means a fixed place of business through which the business of a person is wholly or partly carried on, and includes the following:

- (a) an office, factory, warehouse, or workshop, but does not include 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 extraction of, natural resources, including a boat or ship that provides a base for the exploration or extraction of natural resources;
- (c) a building site, construction, assembly or installation project, or supervisory activities connected with such site or project, but only if the site, project, or activities continue for more than ninety days;
- (d) the furnishing of services by a person, including consultancy services, 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 for a period or periods aggregating more than ninety days in any twelve-month period;
- (e) a person, other than an agent of independent status, acting on behalf of another person (referred to as the "principal"), when the first-mentioned person:
  - (i) has and habitually exercises an authority to conclude contracts on behalf of the principal; or
  - (ii) habitually maintains a stock of goods from which the person regularly delivers goods on behalf of the principal;

***'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;

***'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) credited to an account, or carried to a reserve, for the benefit of the person; or
- (c) 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 individual'** has the meaning in section 7;

**'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;

**'Secretary'** means the Secretary responsible for revenue;

**'services fee'** has the meaning in section 8;

**'spouse'**, in relation to an individual, means an individual who is legally married to the first-mentioned individual, and includes an individual who lives with the first-mentioned individual on a genuine domestic basis as a couple;

**'tax'** means tax imposed under this Act;

**'third party arranger'** means a third party under an arrangement with the employer or an associate of the employer; and

**'withholding tax'** means tax withheld or required to be withheld under section 17 or 18.

#### 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 Employment income**

- (1) Subject to subsection (2), employment income means:
  - (a) salary, wages, an allowance, leave pay, payment in lieu of leave, overtime pay, bonus, commission, fee, gratuity, a salary or wage supplement, or other similar amount received by an employee in respect of employment;
  - (b) an amount received by an employee on termination of employment, whether paid voluntarily, under an agreement, or as a result of legal proceedings, including any compensation for redundancy or loss of employment, or a golden handshake payment.
- (2) Employment income does not include an allowance that the Secretary regards as reasonably likely to be expended by an employee in the performance of the employee's duties of employment.
- (3) An amount is received by an employee in respect of employment regardless of whether it is paid by:
  - (a) the employer of the employee;
  - (b) an associate of the employer of the employee;
  - (c) a third party arranger; or
  - (d) a past or prospective employer of the employee.
- (4) An amount is received by an employee even though it is paid to an associate of the employee by the employer of the employee, an associate of the employer, or a third party arranger.

## **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 or religion;
  - (b) no part of the income or other funds of the organisation is used, or is available for use for the profit 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 can 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), the Secretary must issue a certificate of exemption to the organisation.
  - (4) An organisation issued with a certificate of exemption must immediately notify the Secretary, in writing, if the organisation no longer satisfies the conditions for exemption in subsection (1).
  - (5) A certificate of exemption issued under subsection (3) remains in force until withdrawn by the Secretary by notice in writing to the organisation.

## **7 Resident and non-resident individuals**

- (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; or
  - (b) the individual resides in Nauru as a resettled refugee.
- (2) Despite subsection (1), a citizen of Nauru who is an employee of the Government of Nauru posted abroad is a resident individual.
- (3) An individual who is not a resident individual is a non-resident individual.

## **8 Services fee**

- (1) Subject to subsection (2), services fee means a fee as consideration for the provision of independent services and, without limiting the generality of the foregoing, includes any of the following:
  - (a) a fee for the provision of professional services;



- (b) a fee for the provision of building or construction services, including a fee for supervisory activities related to such services;
  - (c) an amount as consideration for the provision of knowhow;
  - (d) a management fee.
- (2) Services fee does not include employment income.

## **9 Source of income**

- (1) Employment income or a services fee is received from sources in Nauru when:
- (a) it is received in respect of employment or services exercised or performed in Nauru, wherever paid; or
  - (b) when the employment income or services fee is paid by, or on behalf, of a resident person or a permanent establishment in Nauru of a non-resident person.
- (2) For the purposes of subsection (1)(a), employment income paid in respect of any period of leave taken by an employee outside Nauru that is related to employment exercised by the employee in Nauru is treated as received in respect of employment exercised in Nauru.

## **10 Act binds the Republic**

This Act binds the Republic.

## **PART 2 – IMPOSITION OF TAX**

## **11 Imposition of employment tax**

- (1) Subject to this Act, a tax to be known as “employment tax” is imposed for each pay period at the rate or rates specified in the Schedule on an employee who has received employment income from sources in Nauru for the period.
- (2) Subsection (1) does not apply to employment income that is exempt income.
- (3) The employment tax imposed under subsection (1) on an employee for a pay period is computed by applying the employment tax rate or rates applicable to the employee specified in the Schedule to the gross amount of employment income of the employee for the period.

- (4) The employment tax payable by an employee for a pay period is discharged when the employer has correctly withheld tax under section 17 from the payment of the employment income for the period.

## **12 Imposition of services tax**

- (1) Subject to this Act, a tax to be known as “services tax” is imposed at the rate specified in the Schedule on a non-resident person who has received a services fee from sources in Nauru.
- (2) Subsection (1) does not apply to:
- (a) a services fee that is exempt income; or
  - (b) a services fee that is effectively connected to a permanent establishment of a non-resident in Nauru.
- (3) The tax payable under subsection (1) is computed by applying the services tax rate specified in the Schedule to the gross amount of the services fee.
- (4) The services tax payable by a non-resident person is discharged when the payer has correctly withheld tax under section 18 from the payment of the services fee.

## **13 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 received by a non-profit organisation;
  - (d) an amount exempt from tax to the extent provided for under a provision (referred to as an “exemption provision”) in an 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 agreement comes into effect.
- (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.

#### **14 General provisions relating to taxes imposed under this Act**

The following applies to tax imposed under sections 11 and 12:

- (a) the tax is a final tax on the income or fee 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 earning the income or fee.

### **PART 3 – REGISTRATION**

#### **15 Registration of employers and payers**

- (1) A person who becomes an employer must apply to the Secretary for registration as an employer within seven days of becoming an employer or within such further time as the Secretary may allow.
- (2) A person who becomes a payer must apply to the Secretary for registration as a payer within fourteen days of becoming a payer or within such further time as the Secretary may allow.
- (3) The Secretary must register an applicant for registration under this section if satisfied that the applicant is, or will be, an employer or payer.
- (4) A person must apply to the Secretary for cancellation of the person's registration within fourteen days of ceasing to be an employer or payer.
- (5) The Secretary must cancel the registration of a person who ceases to be an employer or payer, except when the cessation is only temporary.
- (6) An application for registration or for cancellation of registration under this section must be:
  - (a) made in the approved form; and

- (b) lodged with the Secretary in the manner specified in the Revenue Administration Act 2014.

#### **PART 4 - COLLECTION OF TAX**

##### **16 Application of Revenue Administration Act**

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

##### **17 Withholding of tax from employment income**

- (1) An employer paying employment income to an employee that is subject to tax under section 11 must withhold tax from the gross amount of employment income paid to the employee at the employee tax rate or rates applicable to the employee as specified in the Schedule.
- (2) An employer must notify the Secretary, in writing, in relation to an employee that is a resident individual if the employer pays employment income to the employee that is subject to tax under section 11 on a basis other than monthly, fortnightly, or weekly.
- (3) If an employer has notified the Secretary under subsection (2), the Secretary must advise the employer, by notice in writing, of the amount of tax to be withheld by the employer from the employment income paid to the employee and the employer must withhold tax accordingly.
- (4) The Secretary may prepare tax tables to assist employers with the withholding of tax under this section.
- (5) The obligation of an employer to withhold tax under this section:
  - (a) is not reduced or extinguished because the employer has a right, or is otherwise obliged, to withhold any other amount from a payment of employment income; and
  - (b) applies despite any law that provides that the employment income of an employee is not to be reduced or subject to attachment.

##### **18 Withholding of tax from services fees**

A person (referred to as the “payer”) paying a services fee to a non-resident person that is subject to tax under section 12 must withhold tax from the gross amount of the services fee paid at the services tax rate as specified in the Schedule.

**19 Time of withholding**

A person required to withhold tax under this Part from an amount paid by the person must withhold the tax at the earlier of the time when:

- (a) the amount is credited by the person to the account of the recipient; or
- (b) the amount is actually paid by the person .

**20 Notification of tax withheld**

A person required to withhold tax under this Part from a payment of employment income or a services fee must notify the recipient of the payment, in writing at the time of the payment, of the amount of tax withheld from the payment.

**21 Withholding tax return**

- (1) A person required to withhold tax under this Part must file a withholding tax return with the Secretary for each month within 15 days after the end of the month.
- (2) A withholding tax return must be in the approved form and filed in the manner specified in the Revenue Administration Act.

**22 Payment of withholding tax**

- (1) A person liable for withholding tax for a calendar month must pay the tax to the Secretary within 15 days after the end of the month.
- (2) A liability for withholding tax arises by operation of the Act and is not dependent on the Secretary making an assessment of the tax due.
- (3) A person who fails to withhold tax as required under this Part or who, having withheld tax, fails to pay the tax to the Secretary as required under subsection (1) 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.

**23 Recovery of unpaid withholding tax from recipient of payment**

- (1) If a person fails to withhold tax as required under this Part, the Secretary may recover the tax from the recipient of the payment of the employment income or services fee.

- (2) Despite the recovery of any tax under subsection (1), 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.

#### **24 Withholding tax records**

- (1) An employer must keep records of the following:
  - (a) the gross amount of employment income paid to each employee for each pay period;
  - (b) the amount of tax withheld from each payment of employment income.
- (2) A payer must keep records of the following:
  - (a) the services fees paid to non-resident persons;
  - (b) the amount of tax withheld from each payment of a services fee.

#### **25 Annual withholding tax summary**

- (1) A person withholding tax under this Part must, within 15 days after the end of the tax year or within such further time as the Secretary may allow by notice in writing, file with the Secretary an annual withholding tax summary in the approved form.
- (2) In this section, “tax year” means the period of 12 months ending on June 30.

#### **26 Annual tax statement**

- (1) The Secretary, on application by an employee in the approved form, must provide the employee with an annual tax statement setting out the amount of employment income received by the employee for the period of twelve months stated in the application and the employment tax paid by the employee in respect of that income.
- (2) The Secretary, on application by a non-resident person in the approved form, must provide the person with an annual tax statement setting out the amount of services fees received by the person for the period of twelve months set out in the application and the services tax paid by the person in respect of that income.

- (3) An employer of an employee may make an application under subsection (1) on behalf of an employee and a payer may make an application under subsection (2) on behalf of a non-resident person.

## **PART 5 – MISCELLANEOUS MATTERS**

### **27 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.

### **28 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) A determination or adjustment under this section must be made within 5 years from the last day of the calendar month 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 employment income or a services fee to be exempt income or otherwise not subject to tax; or
  - (ii) an amount that would otherwise be employment income or a services fee not to be employment income or a services fee.

## **PART 6 – ADMINISTRATIVE MATTERS**

### **29 Regulations**

The Cabinet may make regulations under this Act, including for the amendment of the Schedule.

### **30 Transitional provision**

- (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.
- (2) In this section, **'commencement date'** means the date specified in section 2(2).



**SCHEDULE**

sections 11 and 12

**RATES OF TAX**

(1) The rates of employment tax applicable to a resident individual are:

(a) for a monthly pay period:

<b>Monthly Employment Income</b>	<b>Rate</b>
\$0 –\$1,700	0%
Above \$1,700	10%

(b) for a fortnightly pay period:

<b>Fortnightly Employment Income</b>	<b>Rate</b>
\$0 –\$784	0%
Above \$784	10%

(c) for a weekly pay period:

<b>Weekly Employment Income</b>	<b>Rate</b>
\$0 –\$392	0%
Above \$392	10%

(d) for an employee with a pay period other than monthly, fortnightly or weekly, the rate or rates advised by the Secretary to the employer of the employee under section 17(3).

(2) The rate of employment tax applicable to a non-resident individual is 10%.

(3) The rate of services tax is 10%.