

REPUBLIC OF NAURU

REVENUE ADMINISTRATION (AMENDMENT) NO. 3 BILL 2016

EXPLANATORY MEMORANDUM

The *Revenue Administration (Amendment) No. 3 Bill 2016* is a Bill for the *Revenue Administration (Amendment) No. 3 Act 2016*. It amends the Revenue Administration Act 2014. The amendments are consequent upon the inclusion of the *Telecommunications Service Tax Act 2009* as a tax law for the purposes of the Revenue Administration Act 2014. The amendments also make some technical changes to the Revenue Administration Act 2014.

EXPLANATION OF CLAUSES

Clause 1 provides that, once enacted, the short title of the Bill will be the *Revenue Administration (Amendment) No. 3 Act 2016*.

Clause 2 sets out when the Bill's provisions will commence.

Clause 3 is the enabling provisions for the amendment of the *Revenue Administration Act 2014*.

Clause 4 amends section 3 of the Act as follows:

"Revenue Office" is now defined to mean the Nauru Revenue Office established within the Ministry of Finance. This amendment is consequent upon the separation of the Customs Office from the Revenue Office.

The definition of "self-assessment return" is amended to include a monthly summary of telecommunications service tax ("TST") payable that a service provider is required to file under section 6(2) of the *Telecommunication Service Tax Act 2009*. This is consequent upon the inclusion of the *Telecommunications Service Tax Act 2009* as a tax law for the purposes of the Act. The inclusion of the monthly summary as a self-assessment return means that, in particular, Part 6 of the Act applies in relation to the summary.

The definition of "tax decision" is amended to make clear that a self-assessment is not a tax decision. This is because a self-assessment is made by the taxpayer and, therefore, is not a decision of the Secretary.

A new definition of "tax return" is given that also includes a monthly summary of TST payable that a service provider is required to file under section 6(2) of the *Telecommunications Service Tax Act 2009*. This is consequent upon the inclusion of the *Telecommunications Service Tax Act 2009* as a tax law for the purposes of the Act. The inclusion of the monthly summary as a tax return means that, in particular, Part 5 of the Act applies in relation to the summary.

Clause 5 amends section 9 of the Act which provides for the issue of taxpayer identification numbers ("TIN").

The section omits the existing subsection (1) and substitutes a new subsection. The new subsection (1) requires the following persons to apply for a TIN:

- (1) Every resident person within the meaning in paragraph (b) of the definition of '**resident person**' in section 3 of the Business Tax Act 2016. Consequently, a partnership, trust, company, or other body of persons that is incorporated, formed, settled, or otherwise established or created in Nauru is required to apply for a TIN. This is the main change from the existing definition, which limited the requirement to apply for a TIN to persons liable for tax under a tax law. The change has been made for two reasons. First, to facilitate business licence applications by resident entities as the entity must include its

TIN on the application form. This means that entity must have a TIN in advance of carrying on business. Second, it will allow the NRO to better monitor the activities of resident entities that have only offshore operations.

- (2) Any other person liable for tax under a tax law. The reference to “other person” includes a resident individual and non-residents. Thus, for example, an individual or non-resident who becomes liable for business profits tax (“BPT”) or to pay withholding tax is liable to apply for a TIN.

Clause 6 amends section 28 of the Act which imposes late payment interest on the late payment of tax. The amendment is consequent upon the inclusion of the *Telecommunications Service Tax Act 2009* as a tax law for the purposes of the Act.

Section 28(1) of the Act imposes late payment interest on a person who fails to pay tax on or before the due date. “Tax” is defined in section 3 to mean a tax imposed under a tax law. The inclusion of the *Telecommunications Service Tax Act* as a “tax law” for the purposes of the Act means that the TST is a “tax” for the purposes of the Revenue Administration Act. Consequently, a service provider who fails to pay TST by the due date is liable for or late payment interest. The rate of interest under section 28(1) of the Revenue Administration Act is 5% per annum on the unpaid tax for the period commencing on the date the tax was due and ending on the date the tax was paid. This differs from section 10 of the *Telecommunications Service Tax Act*, which imposes late payment interest at a reasonable commercial rate.

Section 28 of the Act is further amended by inserting a new subsection (10), which provides that the rate of interest imposed under section 10 of the *Telecommunications Service Tax Act* in respect of a default in payment of TST tax applies in priority to the rate of late payment interest imposed under section 28.

Clause 7 amends section 37 of the Act which provides for the refund of overpaid tax.

Section 37(4) of the Act, which applies when the Secretary has granted an application for a refund made by a taxpayer under section 37(1). Section 37(4) of the Act provides for the treatment of the amount of the refund. After the refund is applied against any tax owing by the taxpayer, section 37(4)(c) of the Act requires that any balance is to be refunded to the taxpayer.

Section 37(4)(c) of the Act is omitted and replaced by a new section 37(4)(c). The new section firstly, puts a time limit on the making of the refund by the Secretary. The refund must be made within 45 days of the taxpayer being served with notice under section 37(3) of the Act of the decision to grant the refund. Secondly, the application of section 37(4)(c) of the Act is made subject to the new section 37(5) of the Act.

The new section 37(5) provides that an amount referred to in section 37(4)(c) of the Act may be carried forward for the payment of any future tax liability of the taxpayer under any tax law, but only with the written agreement of the taxpayer.

The new section 37(5) of the Act provides taxpayers with a mechanism for avoiding the cash flow problems that can arise when a taxpayer is due a refund that has not yet been paid and, in the meantime, a new tax liability arises.

Clause 8 amends section 46 of the Act which provides the Secretary with a right of access to premises and records. The amendment is consequent upon the inclusion of the *Telecommunications Service Tax Act* as a tax law for the purposes of the Act.

Section 46(1) of the Act provides that the access power in the section can be exercised only by the Secretary or a tax officer specifically authorised to exercise the power (referred to as an “authorised officer”). It is intended that, under section 46 of the Act, a tax officer will be

authorised generally to exercise the powers in the section, rather than being authorised for each specific exercise of the power. This differs from section 6(4) of the *Telecommunications Service Tax Act*, which requires a tax officer to be specifically authorised for each exercise of power in that section to access the records of a service provider.

Section 46 of the Act is amended by inserting a new subsection (8), which provides that section 6(4) of the *Telecommunications Service Tax Act* applies for the purposes of the exercise of power by a tax officer under section 46. Consequently, the Secretary must issue a tax officer with a written and signed authorisation for each specific exercise of power under section 46 of the Act for the purposes of the *Telecommunications Service Act*. Further, the tax officer must produce the written authorisation upon request by the service provider. Failure to do so removes the tax officers' statutory right of access under section 46 of the Revenue Administration Act.

Clause 9 amends section 59 of the Act which sets out general rules relating to administrative penalties and offences. The amendment is consequent upon the inclusion of the *Telecommunications Service Tax Act* as a tax law for the purposes of the Revenue Administration Act.

The new subsection (8) provides that the offences and penalties in Part IV of the *Telecommunications Service Tax Act* apply in priority to any equivalent offence and penalty provisions under Part 12 of the Act.

Part IV of the *Telecommunications Service Tax Act* provides for the following offences:

- (1) A service provider commits an offence under section 11 of the *Telecommunications Service Tax Act* if the service provider knowingly evades TST. The penalty is \$100,000.
- (2) A service provider commits an offence under section 12 of the *Telecommunications Service Tax Act* if the service provider falsifies or conceals records. The penalty is \$50,000.
- (3) A service provider commits an offence under section 13 of the *Telecommunications Service Tax Act* if the service provider fails, without lawful excuse, to pay TST as required under section 4 of the *Telecommunications Service Tax Act*. The penalty is \$50,000.
- (4) A service provider commits an offence under section 14 of the *Telecommunications Service Tax Act* if the service provider fails to keep records in accordance with the requirements of section 6 of the *Telecommunications Service Tax Act*. The penalty is \$10,000.
- (5) A service provider commits an offence under section 15 of the *Telecommunications Service Tax Act* if the service provider fails to submit a monthly statement as required under section 6 of the *Telecommunications Service Tax Act*. The penalty is \$10,000.

These offences apply in priority to the equivalent offences in Part 12 of the Revenue Administration Act.

Clause 10 amends section 61 of the Act which provides for an administrative penalty for a failure to keep proper records.

Section 61(1) of the Act has been amended so as to be subject to section 61(3). This means that the higher penalty in section 61(3) applies for a failure to maintain transfer pricing documentation.

The new section 61(3) imposes a penalty on a taxpayer who fails to keep transfer pricing documentation as required under Regulation 10 of the *Business Tax (Transfer Pricing) Regulations 2016*. The maximum penalty under new section 61(3) is \$100,000. The high level of penalty reflects the seriousness of a failure to keep transfer pricing documentation.

Clause 11 inserts a new section 66A into the Act.

The new section 66A provides for a tax instalment penalty and is consequent upon the inclusion of new section 41(3A) of the *Business Tax Act 2016* ("BTA"), which sets out a procedure for a taxpayer to vary the amount of each instalment of business profits tax (BPT) payable for a tax year.

Subsection (1) provides that section 66A of the Act applies if three conditions are satisfied:

- (1) A taxpayer has applied to the Secretary under section 41(3A) of the BTA for a variation of the amount of the instalments of BPT payable by the taxpayer for a tax year;
- (2) The Secretary has agreed to vary the amount of the instalments of BPT payable by the taxpayer for the year.
- (3) The actual BPT payable by the taxpayer for the year exceeds the total BPT instalments payable by the taxpayer for the year by more than 20% (the difference being referred to as the "tax shortfall"). This gives taxpayers a 20% margin of error when estimating a reduction in the BPT instalments payable for a tax year.

Subsection (2) provides that, if the conditions in subsection (1) are satisfied, the taxpayer is liable for a penalty equal to 10% of the amount of the tax shortfall. The penalty applies only when the amount of each BPT instalment is varied on application of the taxpayer. It does not apply when the taxpayer pays BPT instalments under section 41(2) based on the taxpayer's BPT liability for the previous tax year.

Example

X Ltd is subject to BPT. The BPT liability of X Ltd for the 2016/17 tax year was \$1,000,000. The amount of each instalment of BPT for the 2017/18 tax year is \$250,000 (applying section 41(2) of the BTA). X Ltd estimates that its BPT liability for the 2017/18 tax year will be \$800,000 and applies to the Secretary for a reduction in the amount of each instalment to \$200,000. The Secretary agrees to reduce the instalments payable by X Ltd to \$200,000. The actual BPT liability of X Ltd for the 2017/18 tax year is \$1,100,000. There is a tax shortfall of \$300,000. As the actual BPT liability of X Ltd exceeds the total BPT instalments paid by more than 20%, X Ltd is liable for an instalment tax penalty of \$30,000 (10% x \$300,000).

If the actual BPT liability of X Ltd was \$900,000, then no penalty is payable as difference between the actual BPT liability and the total instalments paid is within the 20% margin of error.

Clause 12 amends Schedule 2 of the Act which lists laws that are treated as tax laws for the purposes of the Act. Schedule 2 has been amended to include the *Telecommunications Service Tax Act 2009* as a "tax law" for the purposes of the Act.

The list of laws that are tax laws is central to defining the scope of operation of the Act. The Act applies to a "tax" and a "taxpayer". "Tax" is defined in section 3 of the Act to mean a tax imposed

under a tax law. Consequently, the inclusion of the *Telecommunications Service Tax Act* as a “tax law” means that the TST is a tax for the purposes of the Act.

Similarly, “taxpayer” is defined in section 3 of the Act to mean a person liable for tax under a tax law. Consequently, a service provider liable for TST is a taxpayer for the purposes of the Act.