

# REVENUE ADMINISTRATION (AMENDMENT) BILL 2016

## EXPLANATORY MEMORANDUM

This explanatory memorandum provides an explanation of the Revenue Administration (Amendment) Bill 2016 (referred to as the “Amending Act”), which amends the Revenue Administration Act 2014 (referred to as the “RAA”) to provide the entering into and implementation of administrative assistance agreements.

**Clause 1** is the short title of the Bill and states that once passed the Act may be cited as the Revenue Administration (Amendment) Act 2016.

**Clause 2** is the commencement provision of the Bill and provides that the Act commences upon certification by the Speaker.

**Clause 3** is the amending provision of the Bill. This Clause allows the amendment of the Revenue Administration Act 2014.

**Clause 4** inserts a new section 46A which provides for entering into, and implementation of, administrative assistance agreements by the Government.

Section 46A (1) empowers the Minister, on behalf of the Government, to enter into, amend (through a protocol), or terminate an administrative assistance agreement with a foreign government or governments. The reference to “a foreign government or governments” means that an administrative assistance agreement may be bilateral or multilateral. “Administrative assistance agreement” is defined in subsection (4) to mean a tax information exchange agreement (“TIEA”) or other international agreement for mutual administrative assistance in relation to taxation matters. “International agreement” is defined in subsection (4) to mean an agreement between the Government of Nauru and a foreign government or governments. Again, this makes clear that an administrative assistance agreement may be bilateral or multilateral.

A TIEA is an international agreement providing for the exchange of information between the competent authorities of the governments that have signed the agreement. Mutual administrative assistance in relation to taxation matters means taxation administrative assistance provided between countries through the exchange of information, or reciprocal assistance in the collection of tax or service of process, or any other form of assistance relating to procedural matters in taxation. An example of a mutual administrative assistance agreement is the Multinational Convention on Mutual Administrative Assistance in Taxation Matters.

Subsection (2) provides that, if there is any conflict between the terms of an administrative assistance agreement that has force of law under subsection (1) and a tax law (including the RAA), the administrative assistance agreement prevails.

Subsection (3) obliges the Secretary to use the powers available under the RAA or any other law to meet Nauru's obligations under a tax treaty or administrative assistance agreement having legal effect in Nauru. "Tax treaty" is defined in subsection (4) to mean an international agreement relating to the avoidance of double taxation and the prevention of fiscal evasion.

The obligations specified in subsection (3) are: (i) the exchange of information; (ii) reciprocal assistance in the recovery of unpaid tax; or (iii) reciprocal assistance in the service of process. The Secretary must use the powers available under the RAA or any other law. The reference to another law includes a tax law or any other relevant law, such as a law dealing with the service of process.

Subsection (3) provides for the following mechanical rules to give effect to the obligation in the subsection:

- (1) A reference in the RAA or other law to "tax" includes a foreign tax to which the exchange of information or reciprocal assistance relates.
- (2) A reference in the RAA or other law to "unpaid tax" includes an amount of foreign tax to which the exchange of information or reciprocal assistance relates that has not been paid by the due date. This is particularly relevant to the application of the recovery of unpaid tax provisions in Division 3 of Part 7 of the RAA.
- (3) A reference in the RAA or other law to "taxpayer" includes a person liable for an amount of foreign tax to which the exchange of information or reciprocal assistance relates.
- (4) A reference in the RAA or other law to "tax law" includes the law under which the foreign tax to which the exchange of information or reciprocal assistance relates is imposed.