

**REPUBLIC OF NAURU**

**AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION BILL 2016**

**EXPLANATORY MEMORANDUM**

The *Automatic Exchange of Financial Account Information Bill* is a Bill for the *Automatic Exchange of Financial Account Information Act 2016*.

**EXPLANATION OF CLAUSES**

**Clause 1** provides that, once enacted, the short title of the Bill will be the *Automatic Exchange of Financial Account Information Act 2016*.

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

**Clause 3** contains a list of specific terms and phrases that have been defined for the purpose of the Act. This is the definitions clause and its purpose is to give special meaning to words that are used in the Act or to define words that are used only in the Act.

**Clause 4** states that the Agreement has the force of law in Nauru. The Agreement in this instance is defined in Clause 3 and means:

- (a) the Convention on Mutual Administrative Assistance in Tax Matters, which provides for the exchange of information on an automatic basis as described in the Standard, signed by the Government of Nauru on 3 June 2016, as amended from time to time, or
- (b) any other agreement or arrangement between the Government of Nauru and the government of another territory which makes provisions corresponding, or substantially similar, to that made by the agreement referred to in paragraph (a).

**Clause 5** provides a clarification for this Act and other Acts in terms of any conflicts or inconsistencies arising between this Act and any other law. In the event that there are inconsistencies then the provisions of this Act and the Agreement prevail to the extent of the inconsistency.

**Clause 6** places a duty on all reporting financial institutions to collect and report information related to certain financial accounts in accordance with regulations that are made under the Act.

**Clause 7** provides the functions and powers of the Secretary. As defined in Clause 3, the Secretary is the Secretary for the Department of Finance. The Secretary is subject to the general directions of the Minister for Finance and must generally administer and enforce compliance with the provisions of the Agreement, the Act and any regulations made under the Act.

There are also powers vested in the Secretary in accordance with the Revenue Administration Act 2014. The powers and duties of the Secretary may be delegated in writing to a designated or authorised officer. A particular power vested in the Secretary as well as any designated officer is the power to request information from and the power to enter any premises or place of business of a reporting financial institution in order to determine whether that included information is correct or complete and not included information was correctly not included. The Secretary may also examine the procedures put in place by the reporting financial institution for the purpose of ensuring compliance with obligations under this Act and the regulations.

**Clause 8** relates to the issue of confidentiality. This clause allows a reporting financial institution to disclose confidential information to the Secretary if required to include such information in an information return. Provisions in the Banking Act 1975 and other law relating to confidentiality would not apply in this regard.

Any person receiving the information must keep it confidential unless the person discloses the information for the purpose of the administration and enforcement of the Agreement, the Act or the regulations. It is an offence for a person receiving any confidential information under an information return to disclose that information and any person doing so commits an offence and is liable on conviction for a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years.

**Clause 9** sets out the penalties. The penalties address offences related to:

- 1.) a person failing to comply with a duty or obligation imposed under the Act or regulations is liable to a penalty of \$100 for each such failure;
- 2.) a person making a false statement or omission in respect of any information required to be included on an information return is liable to \$1000 for each such failure unless the information related to another person and every reasonable effort was made to obtain that information;
- 3.) a reporting financial institution failing to file an information return in the manner required is liable to \$1000 for each such failure;
- 4.) a person failing to comply with requirements of the Secretary or designated or authorised officer is liable to a penalty of \$1000 for each such failure.

**Clause 10** provides an exception to a liability to penalty. A person may not be liable for a penalty under Clause 9 if the person satisfies the Secretary or authorised officers that he or she had a reasonable excuse for that failure. This clause sets out what would not be accepted as a reasonable excuse and they are:

(1) that there is an insufficiency of funds to do something; or

(2) that a person relied upon another person to do something.

Subclause (3) provides that if a person does have a reasonable excuse for failing to comply but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

**Clause 11** deals with assessment of penalties which is to be done by the Secretary. This is only done if it is established under Clause 9 that a person is liable to a penalty. Once that is established, the Secretary must assess the penalty and notify the person of the assessment. An assessment must be done within a period of 12 months beginning from the date on which the person became liable to the penalty or if there was an inaccuracy then the date the inaccuracy first came to the attention of the Secretary.

**Clause 12** provides a right to appeal or object to penalties assessed under Clause 9. Such appeals or objections are governed by the Revenue Administration Act 2014, specifically Part 8.

**Clause 13** deals with the enforcement of penalties under this Act. All penalties must be paid to the Department of Finance within 30 days following:

- (a) the date on which notification under clause 9 is provided in respect of the penalty; or
- (b) the date on which an appeal against a penalty assessment pursuant to clause 7 is finally determined or withdrawn.

If there is any unpaid amount remaining after the due date then an interest rate of 15% per annum will be charged on the remaining amount.

**Clause 14** deals with anti-avoidance and provides if a person enters into any arrangements or engages in a practice, the main purpose or one of the main purposes, of which can reasonably be considered to be to avoid an obligation imposed under this Act or regulations, the person is subject to the obligation as if the person had not entered into the arrangement or engaged in the practice.

**Clause 15** provides the power to make regulations. The Minister may make regulations:

- (a) requiring a reporting financial institution to file an information return on certain financial accounts held, managed or administered by that reporting financial institution;
- (b) determining the date by which an information return must be filed with the Secretary;
- (c) prescribing the manner in which an information return is to be filed;

- (d) specifying the information to be reported in an information return in relation to certain financial accounts and, where different information is to be reported for different years, specifying the information to be reported for each of those years;
- (e) requiring reporting financial institutions to identify certain financial accounts;
- (f) specifying the records and documents that must be examined or the procedures to obtain records and documents by the reporting financial institution to enable the institution to identify certain financial accounts;
- (g) specifying the records and documents used to identify certain financial accounts that must be retained by the reporting financial institution;
- (h) setting out the conditions under which a reporting financial institution may appoint a third party as its agent to carry out the duties and obligations imposed on it by the regulations;
- (i) in relation to any of the matters specified in the preceding paragraphs, determining the manner of keeping records and setting the period for the retention of records so kept;
- (j) enabling the authorisation of designated or authorised officers requiring the production of books, records or other documents and the provision of information in relation to financial accounts within such time as may be specified in the regulations, and
- (k) generally to carry out the purposes and provisions of the Agreement or this Act.