

REPUBLIC OF NAURU

REVENUE ADMINISTRATION ACT, 2014

DETAILED TECHNICAL NOTES

These technical notes provide a detailed explanation of the Revenue Administration Act, 2014 (the “Act”). The Act provides harmonised procedural rules applicable to the administration of the taxes covered by the Act. Initially, the Act will apply for the purposes of the employment and non-resident taxes, and the collection of those taxes by withholding. The Act is designed so that it will apply to any new taxes that may be imposed after the Act is enacted, such as the net profits tax and small business presumptive tax.

There follows a section-by-section explanation of the Act.

1. Short title

This section provides that the Act may be cited as the Revenue Administration, 2014.

2. Commencement

This section provides that the Act comes into operation on 1 October 2014. This coincides with the commencement of the employment and non-resident taxes under the *Employment and Services Tax Act 2014*.

3. Definitions

This section provides definitions of commonly used terms in the Act. It also provides cross-references to sections where substantive concepts are explained (for example, the definition of “approved form” cross refers to section 51, which sets out the requirements for a form to be filed or lodged in the “approved form”).

The definitions in the section apply unless the context requires otherwise. The ordinary rule of statutory interpretation is that a term is used in the Act in the way that it is defined in this section. A different meaning is only to be applied if this is clearly required by the context. If a different meaning is applied, it is only for the purposes of the particular section to which it relates. For example, sections 8(4) and 79(4) include an expanded definition of “tax officer” applicable for the purposes of those sections.

Subsection (3) provides that any undefined term used in the Act for the purposes of a particular tax law has the meaning that it has for the purposes of that law. For example, if the Act is applying for the purposes of the *Employment and Services Tax Act 2014*, any undefined term in the Act has the meaning that it has for the purposes of the *Employment and Services Tax Act 2014* (whether that be a legislative definition, or as determined under case law or practice). If there is no meaning of the term for the purposes of the tax law in respect of which the Act is applying, the term has its ordinary meaning.

The main definitions in subsection (1) are discussed below; the other definitions are self-explanatory.

Agency tax

This term is relevant to section 4, which provides that a reference to “tax” in Division 3 of Part 7 of the Act includes an agency tax.

“Agency tax” is defined as a tax, duty, fee, charge or other sum listed in the First Schedule.

An agency tax is a tax, duty, fee, charge or other sum that the Secretary has responsibility to collect on behalf of a Government department or authority. The Secretary does not have responsibility for the administration of agency taxes just the collection. As the Secretary does not have responsibility for the administration of agency taxes, the law imposing an agency tax is not a tax law.

The effect of section 4 is that an agency tax is treated as a “tax” for the purposes of Division 3 of Part 7 of the Act. Further, any agency tax that is not paid by the due date is treated as “unpaid tax” for the purposes of Division 3 of Part 7 of the Act. This means that any unpaid agency tax can be recovered under the Act in the same way that unpaid tax is recovered. Consequently, the legal and administrative infrastructure for the collection and recovery of taxes applies also for the collection and recovery of agency taxes.

Appealable decision

This term is relevant to section 42 (which provides that a person dissatisfied with an appealable decision” can appeal the decision to the Supreme Court on a point of law).

“Appealable decision” is defined to mean an objection decision (see section 40(7)) and a decision of the Minister made under section 41.

The Act divides decisions into three categories: tax decisions, reviewable decisions and appealable decisions. This is broadly consistent with review and appeal of administrative decisions in other recent Nauru legislation.

In broad terms, a “tax decision” is a decision of the Secretary relating to the determination of a liability for tax. A person dissatisfied with a tax decision must lodge an objection to the decision with the Secretary under section 40. The Secretary’s decision on an objection is referred to as an “objection decision”.

A “reviewable decision” is a decision of the Secretary that can be referred to the Minister for administrative review. In broad terms, a reviewable decision is a decision of the Secretary that does not relate to the determination of a liability for tax. An example of a reviewable decision is a decision of the Secretary in relation to an application for an extension of time to pay tax.

An appealable decision is a decision of the Secretary on an objection (i.e. an objection decision) and a decision of the Minister on a review of a reviewable decision.

Assessed tax

This term is relevant to sections 19 and 20 (which provides that a default assessment or advanced tax may be made only in relation to an assessed tax).

“Assessed tax” means a tax that is collected by assessment under the tax law imposing the tax. There are two ways in which tax can be collected: (i) by assessment; or (ii) by letter of demand.

Tax is collected by assessment when the amount has to be determined either by the taxpayer through the making of a self-assessment or by the Secretary through the serving a notice of assessment. At the time of enactment, there are two assessed taxes: (i) an amount of employment tax or non-resident tax assessed as a result of the operation of the general anti-avoidance provision in section 25 of the *Employment and Services Tax Act 2014*; and (ii) an assessment of penalty under section 67(3) of the Act.

When a tax liability arises by operation of the law, the tax can be collected by the Secretary serving a letter of demand for the tax on the taxpayer. An example is withholding tax imposed under sections 16 and 17 of the *Employment and Services Tax Act 2014*

Associate

This term is relevant to the section 3 definition of “controlling member” (the determination of whether a person is a controlling member of a company takes account of membership interests of the person and of associates of the person in the company) and section 33 (which provides for transferred tax liability between a person and an associate of the person).

“Associate” is defined to have the same meaning as under the *Employment and Services Tax Act 2014*. “Associate” is defined in section 5 of the *Employment and Services Tax Act 2014*. The basic rule is set out in section 5(1) of the *Employment and Services Tax Act 2014*, which provides that two persons are associates when the relationship that exists between them is such that one person may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of the other, or both persons may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of a third person. Whether a person may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of another is determined objectively having regard to all the facts and circumstances.

The reference to both persons being reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of a third person would cover, for example, “sister” companies that are under common control.

Section 5(2) of the *Employment and Services Tax Act 2014* states an exception, namely that two persons are not associates solely by reason of an employment or client relationship. In the absence of section 5(2) of the *Employment and Services Tax*

Act 2014, section 5(1) of the *Employment and Services Tax Act 2014* may treat an employer and employee as associates as the employee would ordinarily be expected to act in accordance with the directions, requests, suggestions, or wishes of his or her employer. Similarly, in the absence of section 5(2) of the *Employment and Services Tax Act 2014*, section 5(1) of the *Employment and Services Tax Act 2014* may treat, for example, a lawyer and their client as associates as the lawyer would ordinarily be expected to act in accordance with the directions of its client.

The exception in section 5(2) of the *Employment and Services Tax Act 2014* applies only when the employment or client relationship is the sole reason why one person may act in accordance with the directions, requests, suggestions, or wishes of the other. If there is another reason why this may occur (e.g. the employee and employer are relatives), the two persons may still be associates.

Section 5(3) of the *Employment and Services Tax Act 2014* makes it clear that an individual and a relative of the individual are associates. For this purposes, “relative” is defined in section 3 of the *Employment and Services Tax Act 2014*. There is an exception if the Secretary is satisfied that neither person is reasonably expected to act in accordance with the directions, requests, suggestions, or wishes of the other, such as when an individual and a relative are estranged.

The following are examples of persons who would ordinarily be regarded as associates: husband and wife, siblings, parent and child, partners in a partnership, beneficiary and trustee, and controlling shareholders and the company they control.

Authorised officer

This term is relevant to section 39 (which provides for the collection of unpaid tax by distress proceedings), section 34 (which provides for the temporary closure of business premises as a means of enforcing a tax liability), and section 45 (which provides for an access power).

“Authorised officer” is defined by reference to the exercise of a particular power under the Act, namely to initiate distress proceedings (section 39), to initiate proceedings for the temporary closure of business premises (section 34) or to access premises for the purposes of a tax investigation (section 45). These are powers that can be exercised only by an authorised officer.

An authorised officer is an officer who has been specifically authorised, in writing, by the Secretary to exercise a particular power. Thus, for these powers, a general authorisation to exercise powers for the purpose of a tax law is not sufficient authority to exercise the power. An officer can exercise the power only if specifically authorised by the Secretary to do so.

Controlling member

This term is relevant to section 33 (a controlling member may be liable for the tax payable by a company when an arrangement has been entered into to render the company unable to pay tax) and section 35 (a departure prohibition order may be

issued to a controlling member of a company in relation to an outstanding debt of the company).

“Controlling member” is defined in relation to a company. “Controlling member” is defined to mean a member of the company who has a direct or indirect beneficial interest in 50% or more of the voting, dividend, or return of capital rights attached to membership interests in the company. In computing the 50% threshold, the membership interests of associates are aggregated. “Associate” is defined in section 3 to have the same meaning as under the *Employment and Services Tax Act 2014*. The reference is to a “member” of, and “membership interest” in, a company rather than a “shareholder” or “shares” in case the company does not have a shareholding, such as a company limited by guarantee. However, the main example of a “member” is a shareholder and the main example of a “membership interest” is shares.

Document

This term is relevant to many sections in the Act including, in particular, section 14 (which provides for record-keeping obligations in relation to taxes), section 44(1)(c) (which empowers the Secretary to issue an administrative summons to a person requiring the person to, among other things, produce documents relating to the person’s or another person’s tax affairs), section 45 (which provides the Secretary with a statutory right of access to, among other things, any documents), section 50 (which requires that documents must be in the official language of the tax laws), section 51 (which specifies the approved form for documents), section 52 (which provides for the manner of filing documents), sections 54 (which provides for electronic documents), section 55 (which provides for the due date for submitting documents), section 60 (which imposes a penalty on a person who fails to keep, retain or maintain documents as required under a tax law), section 61 (which imposes a penalty on a person who fails to submit a document by the due date), section 63 (which imposes a penalty on a person who has made a false or misleading statement in, inter alia, a document submitted or provided under a tax law), and section 69 (which provides for an offence if a person fails to keep, retain or maintain documents as required under a tax law).

The term “document” is used in the Act as a generic term intended to cover all forms of records and documentation relevant to the operation of the tax laws.

“Document” is defined inclusively so will otherwise have its ordinary meaning, namely a written, printed or electronic item that provides information or evidence, or that serves as an official record.

The definition has two express inclusions. Paragraph (a) includes a book of account, record, paper, register, bank statement, receipt, invoice, voucher, contract or agreement, or Customs declaration.

Paragraph (b) includes any information or data stored on an electronic data storage device. The reference to “electronic data storage device” is intended to be interpreted broadly and includes all mediums for the electronic storage of information, such as computers, mobile phones, digital cameras, mp3 players, iPods, iPads and Blackberrys.

International organisation

This term is relevant to the section 3 definitions of “person” (which includes an “international organisation”) and “tax representative” (which specifies the tax representative of an international organisation for the purposes of compliance with the Act).

“International organisation” is defined to mean an organisation the members of which are sovereign powers or the Governments of sovereign powers. Examples of an international organisation are the Asian Development Bank or the United Nations and its Specialised Agencies, such as the World Bank.

An international organisation may be liable for withholding tax under the *Employment and Services Tax Act 2014*. As such, an international organisation will be a “person” liable for “tax” and, therefore, will be a “taxpayer” for the purposes of the Act.

Member and membership interest

These terms are relevant to the section 3 definition of “controlling interest”.

“Member” and “membership interest” are defined by reference to a “company”. “Member” is defined to mean a shareholder and any other person with a membership interest in a company. “Membership interest” is defined to mean a share or other ownership interest in a company. The reference in the Act is to a “member” of, and “membership interest” in, a company rather than a “shareholder” or “shares” in case the company does not have shareholding, such as a company limited by guarantee. However, the main example of a “member” is a shareholder and the main example of a “membership interest” is shares.

Objection decision

This term is relevant to the section 3 definitions of “appealable decision” (which includes an objection decision) and “reviewable decision” (which excludes an objection decision).

An “objection decision” is a decision made by the Secretary on an objection to a tax decision lodged with the Secretary. Section 41(7) provides that, when a notice of objection has been validly lodged within time, the Secretary is obliged consider the objection and make a decision to allow the objection in whole or part, or disallow it. The Secretary’s decision is referred to as an “objection decision”.

An objection decision is treated as an appealable decision and, therefore, a person dissatisfied with an objection decision can appeal the decision to the Supreme Court under section 43, but only on a question of law. An objection decision is excluded from the definition of “reviewable decision” as objection decisions are appealed to the Supreme Court and not the Minister.

There are two appeal paths under the Act. Which applies, depends on the nature of the decision. In broad terms, a tax decision is a decision by the Secretary relating to an

amount of tax due, such as an assessment. Consistent with international norms, a person dissatisfied with a tax decision must first lodge an objection to the decision with the Secretary. As explained above, the Secretary's decision on an objection is referred to as an "objection decision" and is appealed to the Supreme Court. In broad terms, a reviewable decision is any other decision of the Secretary (i.e. any decision that is not a tax decision). The person dissatisfied with a reviewable decision must first apply to the Minister for administrative review of the decision. The decision of the Minister is then appealed to the Supreme Court. Appeals to the Supreme Court are limited to questions of law.

Person

This term is relevant to many sections in the Act. In particular, the definition is relevant to the section 3 definition of "taxpayer". Only a "person" can be a taxpayer for the purposes of the Act.

"Person" is defined to mean an individual, company, partnership, trust, body of persons, government, political subdivision of a government, or international organisation. The definition is broad and includes some entities (such as a partnership, trust and body of persons) that are not separate legal persons.

Paragraph (a) includes an individual. An individual is a natural person.

Paragraph (b) includes a partnership, trust, company and other bodies of persons. These terms are not separately defined in the Act and, therefore, have their normal meaning. A partnership is the relation that exists when two or more persons carry on business for joint profit. A trust is any relationship that is recognised under the laws of equity as a trust. The main category of trust is a trust created by a settlement, but the definition would also include a constructive or resulting trust. A company is an incorporated body of persons. The reference to company will also include a statutory corporation (i.e. a company created by statute). The reference to "other bodies of persons" is a reference to an unincorporated association or body of persons (such as a members club or society).

Paragraph (c) includes the Government of Nauru, a local authority in Nauru, a foreign government, or a political subdivision of a foreign government, such as a state or provincial government of a foreign country.

Paragraph (d) includes an international organisation, which is separately defined in section 3 to mean an organisation the members of which are sovereign powers or the Governments of sovereign powers. Examples include the Asian Development Bank and the United Nations and its specialised agencies (such as the World Bank).

The definition of "person" is broad and includes entities that may not otherwise be a legal person under general law (such as a partnership or a body of persons). The definition of "person" is broad because the word is used in many different contexts in the Act. However, while "person" is defined broadly, it will take its meaning from the context. For example, "taxpayer" is defined in section 3 to include a person liable for tax under a tax law. In this context, the term "person" will include only those persons liable for tax under a tax law, although, it is noted that this includes persons liable for

withholding tax. In particular, the term “person” is used in in Division 3 of Part 7 (which provides for the recovery of unpaid tax) for which a broad definition is required.

Importantly, the broad definition ensures that any obligation imposed under the Act in relation to an entity that is a person applies to the entity collectively. Once the obligation is imposed on the entity, section 12 provides that the individual or individuals constituting the “tax representative” of the entity must comply with the obligation on behalf of the entity.

Reporting period

This term is relevant to a number of provisions in the Act dealing with taxes imposed under a tax law.

“Reporting period” is defined by reference to a “tax”. In broad terms, the reporting period for a tax is the period for which the tax is reported to the Secretary. For employment tax, non-resident tax and withholding tax, the reporting period is the calendar month.

Reviewable decision

This term is relevant to section 42 (which provides that a person dissatisfied with a reviewable decision can apply to the Minister for a review of the decision).

“Reviewable decision” is defined to mean a decision made under a tax law other than (i) a tax decision; (ii) a decision made by the Secretary in the course of making a tax decision; or (iii) an objection decision. An example of a reviewable decisions is a decision made by the Secretary under section 15 on an application for an extension of time to file a tax return.

In broad terms, a tax decision is a decision by the Secretary relating to an amount of tax due, such as an assessment. A tax decision is excluded from the definition of “reviewable decision” as tax decisions are subject to the objection procedure in section 41 rather than being appealed to the Minister.

A decision made in the course of making a tax decision is excluded because the decision is effectively treated as part of the tax decision and, therefore, is challenged through the process of challenging the tax decision (i.e. through the lodging of an objection to the tax decision).

An objection decision is excluded from the definition of “reviewable” as objection decisions are appealed to the Supreme Court under section 43.

Secondary liability

This term is relevant to the section 3 definition of “tax decision” (which includes a determination of a secondary liability), section 4(2) (which provides that Division 3 of Part 7 (recovery of unpaid tax provisions) applies to a secondary liability), and section 28(7) (which provides for late payment interest on unpaid secondary liabilities).

In broad terms, a secondary liability is a tax liability of a taxpayer that another person becomes personally liable to pay under the Act. The following are secondary liabilities:

- (1) The amount that a tax representative of a taxpayer is personally liable for under section 12(4). A tax representative is personally liable for the payment of any tax due by a taxpayer if the tax representative disposes of, or parts with, any funds belonging to the taxpayer that are in the possession or under the control of the tax representative when the tax due could legally have been paid from or out of those moneys or funds.
- (2) The amount of tax owing by a taxpayer that an appointed person is personally liable for under section 13(3)(c). This is the amount that the secretary has notified the appointed person under section 13(2) as owing by the taxpayer.
- (3) The amount that a payer is personally liable for under section 32(11). A payer who, without reasonable cause, fails to comply with a garnishee notice under section 32 is personally liable for the amount specified in the notice.
- (4) The amount that a transferor is personally liable for under section 33(1). Section 33 applies when a taxpayer (referred to as the “transferor”) has a tax liability in relation to a business carried on by the taxpayer and the taxpayer has transferred all or some of the assets of the business to an associate (referred to as the “transferee”). In this situation, the transferee is personally liable for the tax liability (referred to as the “transferred liability”) of the transferor.
- (5) The amount that a director or controlling member of a company is personally liable for under section 33(1). When an arrangement or understanding has been entered into with the intention or effect of rendering a company unable to satisfy a current or future tax liability under a tax law, every person who was a director or controlling member of the company when the arrangement was entered into is jointly and severally liable for the tax liability of the company.

Thus, secondary liabilities relate to taxes that the taxpayer has the “primary” liability to pay, but, through the recovery provisions in the Act, another person also has a liability to pay the amount (hence the reference to “secondary” liability).

Self-assessment, self-assessment return and self-assessment taxpayer

These terms are primarily relevant to Part 6 of the Act, which provides rules relating to tax assessments, including self-assessments.

A self-assessed tax is one in relation to which the taxpayer determines their own tax liability rather than the Secretary determining the liability. For self-assessed taxes, the taxpayer’s tax return is treated as the assessment and the taxpayer is obliged to pay the amount of tax stated in the return with the filing of the return (i.e. their self-assessment).

“Self-assessment” is defined to mean an assessment treated as having been made by a self-assessment taxpayer under section 18. A self-assessment taxpayer who has submitted a self-assessment return is treated under section 18(1) as having made an assessment of the tax payable for the reporting period covered by the return being the amount of tax as set out in the return. This is treated as a self-assessment.

The deeming in section 18(1) applies to a self-assessment taxpayer who has submitted a self-assessment return. “Self-assessment taxpayer” is defined to mean a taxpayer who is required to file a self-assessment return. Consequently, “self-assessment return” is the central definition in relation to self-assessments. “Self-assessment return” is defined to mean a tax return specified as a self-assessment return under the tax law requiring the filing of the return. At the time of enactment, no tax returns are designated as self-assessment returns, but it is anticipated that, under phase 2 of the tax reform project, a net profit tax return and a small business tax return will be treated as self-assessment returns.

Tax

This term is relevant to many sections in the Act that refer to “tax”. As the Act applies in respect of taxes, this term is central to the operation of the Act.

“Tax” is defined to mean a tax or penalty imposed under a tax law. This covers employment tax and non-resident tax imposed under the *Employment and Services Tax Act 2014*, and penalty imposed under Division 2 of Part 12. The definition expressly includes withholding tax, which is defined in section 3 to mean tax that a person is required to withhold under a tax law. At the time of enactment, the following are withholding tax: (i) an amount of employment tax required to be withheld by an employer under section 16 of the *Employment and Services Tax Act 2014*; and (ii) an amount of non-resident tax required to be withheld by a payer under section 17 of the *Employment and Services Tax Act 2014*.

While customs duty is not treated as a tax generally for the purposes of the Act, section 4(1)(a) treats customs duty as a tax for certain specific purposes under the Act, namely Division 3 of Part 7 (recovery of unpaid customs duty), Part 9 (investigations) and sections 63 (administrative penalty for the late payment of customs duty) and 73 (prosecution of an offence for the late payment of customs duty).

Late payment interest is not treated as a “tax” for the purposes of the Act, but section 28(5) provides that late payment tax is treated as tax payable by a taxpayer for the purposes of Part 7. This means that the Secretary can recover late payment interest under the Act in the same way that tax can be recovered. In particular, the Secretary can use the measures in Division 3 of Part 7 to collect unpaid late payment interest.

There are a number of other amounts that are payable to the Secretary under the Act, namely secondary liabilities and the costs of distress proceedings under section 30 and seizure proceedings under section 31. While these amounts are not treated as a “tax” generally for the purposes of the Act, section 4(2)(a) treats the amounts as tax for the purposes of Division 3 of Part 7 of the Act (recovery of unpaid tax).

Tax assessment

This term is relevant to section 21 (which provides for the amendment of tax assessments), section 40 (which limits a taxpayer's right to challenge a tax assessment to the section 41 objection procedure), section 41 (which provides for the making of objections to, inter alia, tax assessments), section 57 (which provides for the validity of tax assessments) and section 58 (which provides for the rectification of mistakes in, among other things, a notice of a tax assessment).

“Tax assessment” is defined to mean a self-assessment, default assessment, advance assessment, amended assessment, or an assessment of penalty. “Self-assessment”, “default assessment”, “advance assessment” and “amended assessment” are separately defined in section 3. The making of these assessments is provided for in Part 6 of the Act. An assessment of penalty is made under section 67(3).

The definition also includes any other assessment made under a tax law. This covers assessments made under the Act (which is included as a tax law), and assessments provided for under the other tax laws. An example is an assessment made under section 27(3) of the *Employment and Services Tax Act 2014* to give effect to a determination or adjustment made by the Secretary in relation to a tax avoidance scheme.

Tax decision

This term is relevant to the section 3 definition of “reviewable decision” (which excludes a tax decision and a decision made in the course of making a tax decision), section 40 (which provides that tax decisions can be challenged only under the objection and appeal procedure in Part 8), section 41 (which provides for the lodging of objections to tax decisions) and section 44 (which provides that the burden of proving that a tax decision is incorrect is on the person objecting to the decision).

The following are a “tax decision” for the purposes of the Act: (i) a tax assessment (separately defined in section 3); (ii) a determination made under section 13(2) of the amount of tax payable that that will become payable by a taxpayer, being a liability that an appointed person must pay; (iii) a determination of the amount of a secondary liability (defined in section 3 to mean an amount that a person is personally liable for under section 12(4), 13(3)(c), 32(11), 33(1) or 34(1)); (iv) a decision on an application by a self-assessment taxpayer under section 21(2) for an amendment to be made by the Secretary to a self-assessment; (v) the determination of the amount of the costs payable by a person in relation to distress proceedings under section 30 or seizure proceedings under section 31; (vi) a decision by the Secretary under section 37 on an application for a refund; and (vii) a decision by the Secretary under section 38 requiring the repayment of a refund.

The Secretary is empowered under section 4(2) to serve a notice on a person liable for a secondary liability, or the costs of distress or seizure proceedings setting out the amount payable and the due date for payment. As the determination of the secondary liability, or the costs of distress or seizure proceedings, is treated as a tax decision, a person who want to challenge a liability notice under section 4(2) must first lodge an objection to the determination of the liability under section 41.

In broad terms, a tax decision is a decision of the Secretary relating to the determination of the amount of tax payable by a person, including a decision relating to an application for a refund of tax.

Tax law

This term is relevant to many sections in the Act that refer to “tax law”. As the Act applies to a tax imposed under a tax law, this term is central to the operation of the Act. In broad terms, a tax law imposes a tax that the Secretary has responsibility to administer.

“Tax law” is defined to mean a listed in Schedule 2. At the time of enactment, the following laws tax laws for the purposes of the Act:

- * *Revenue Administration Act 2014*
- * *Employment and Services Tax Act 2014*
- * Regulations or other subsidiary legislation (such as rules and orders) made under any of the above Acts

While the Customs Act is not listed as a tax law in Schedule 2, section 4(1)(c) provides that a reference in Division 3 of part 7, Part 9, and sections 63 and 64 to “tax law” includes the Customs Act.

Section 84(2)(b) provides that the Schedules to the Act can be amended by regulations. Thus, the listing of laws treated as “tax laws” in a Schedule is intended to facilitate the easy addition of new laws as tax laws.

Tax officer

This term is relevant to a number of provisions in the Act that refer to a “tax officer”.

“Tax officer” is defined to mean the Secretary responsible for revenue, the Deputy Secretary for Revenue and a tax officer appointed by the Secretary under section 6(3).

The definition applies unless the context requires otherwise. In this regard, sections 8(5) and 80(4) provide for an extended definition of “tax officer” for the purposes of those sections.

Tax representative

This term is relevant to section 12 (which provides for the duties and obligations of the tax representative of a taxpayer), section 16 (a section 16 notice to file a return can be served on the tax representative of a taxpayer) and section 54 (the service of notices by the Secretary).

“Tax representative” is defined by reference to a person. The tax representative of a person is an individual who is responsible for accounting for the receipt or payment of monies or funds in Nauru on behalf of the person.

The definition expressly includes the following as tax representatives of a person:

- (1) Each partner in a partnership is a tax representative of the partnership.
- (2) Each trustee of a trust is a tax representative of the trust.
- (3) Each director of a company is a tax representative of the company.
- (4) The appointed person in relation to a taxpayer to whom section 13 applies is a tax representative of the taxpayer.
- (5) An individual that the Secretary has, by notice in writing, declared to be a tax representative of a person for the purposes of the tax laws. The notice must be served on the individual declared to be the tax representative.

If more than one individual is a tax representative of a person, then section 12(2) provides that each tax representative is jointly and severally liable to meet the duties and obligations of the person but may be discharged by any of them.

Tax return

This term is primarily relevant to Part V (which provides rules relating to the filing of tax returns), section 62 (which provide for an administrative penalty for the late filing of a tax return) and section 72 (which provides for an offence for the late filing of a tax return).

“Tax return” is defined to mean a return required to be filed under a tax law. This covers every document designated as a “return” under a tax law. The return may be a return of tax payable or an information return. At the time of enactment, the following are tax returns:

- (1) A withholding tax return required to be filed by an employer or payer under section 20 of the *Employment and Services Tax Act 2014*
- (2) A return required to be filed under section 16 of the Act.

The definition expressly includes an annual withholding tax summary required to be filed by an employer or payer under section 24 of the *Employment and Services Tax Act 2014*. This is an annual information return that an employer or payer is required to file.

Taxpayer

This term is relevant to a number of sections in the Act that apply to a taxpayer.

“Taxpayer” is defined to mean a person liable for tax under a tax law. “Person”, “tax” and “tax law” are separately defined in section 3. The definition of “tax” largely governs who is a taxpayer for the purposes of the Act (i.e. anyone liable for tax is a taxpayer). This covers the following persons:

- (1) An employee liable for employment tax under section 10 of the *Employment and Services Tax Act 2014*
- (2) A non-resident person liable for non-resident tax under section 11 of the *Employment and Services Tax Act 2014*
- (3) An employer or payer liable for withholding tax under section 16 or 17 of the *Employment and Services Tax Act 2014*
- (4) A person liable for penalty under Division 2 of Part 12 of the Act.

While a person liable for customs duty is not a taxpayer generally for the purposes of the Act, section 4(1)(c) provides that a reference in Division 3 of part 7, Part 9, and sections 63 and 64 to “taxpayer” includes a person liable for customs duty.

Similarly, section 4(2)(b) treats a person liable for a secondary liability or the costs of distress proceedings under section 30 and seizure proceedings under section 31 as a taxpayer for the purposes of Division 3 of Part 7 of the Act (recovery of unpaid tax).

Unpaid tax

This term is primarily relevant to Division 3 of Part 7 of the Act, which provides for the recovery of unpaid tax.

“Unpaid tax” is defined to mean any tax that has not been paid by the due date or, if the Secretary has extended the due date under section 23, the extended due date. Only an outstanding debt for tax can be unpaid tax. The following amounts if not paid by the due date are unpaid tax: employment tax, non-resident tax, withholding tax and penalty.

Section 3(2) provides that unpaid tax includes any late payment interest payable in respect of an amount of unpaid tax. This is reinforced by section 3(2), which provides that the reference to tax payable in the definition of “unpaid tax” includes any late payment interest payable in respect of the unpaid tax.

Section 4(1)(b) treats unpaid customs duty as unpaid tax for the purposes of Division 3 of Part 7 of the Act (recovery of unpaid tax).

Similarly, section 4(2)(b) treats an unpaid amount of a secondary liability or the costs of distress proceedings under section 30 and seizure proceedings under section 31 as unpaid tax for the purposes of Division 3 of Part 7 of the Act (recovery of unpaid tax).

Withholding tax

This term is relevant to the section 3 definition of “tax” (which includes withholding tax), and section 24 (priority rule for unpaid withholding tax), section 28(7) (which provides that the person liable for withholding tax is personally liable for late payment interest payable in respect of the late payment of withholding tax), and

section 35 (which provides for the temporary closure of the business premises of a person who regularly fails to pay withholding tax by the due date).

“Withholding tax” is defined to mean tax that a person is required to withhold from a payment under a tax law. At the time of enactment, the following are withholding tax: (i) employment tax that an employer is required to withhold from employment income under section 16 of the *Employment and Services Tax Act 2014*; and (ii) non-resident tax that a payer is required to withhold from a services fee paid to a non-resident under section 17 of the *Employment and Services Tax Act 2014*

4. Application of Act to Customs Duty, Agency Taxes and Secondary Liabilities

This section provides for the application of certain provisions in the Act to amounts other than taxes. It applies to customs duty, agency taxes, secondary liabilities and the costs of distress and seizure proceedings. None of these amounts are within the definition of “tax” in section 3.

Subsection (1) applies to customs duties, which are imposed under section 120 of the Customs Act. The Customs Act is not listed as a tax law in Schedule 2 for the purposes of the Act and, therefore, customs duty is not a “tax” as defined in section 3. However, subsection (1) provides that the following provisions in the Act apply to customs duty:

- (1) Part 7, which provides for the collection and recovery of tax. This means, among other things, that: customs duty is a debt due to the Republic and payable to the Secretary (section 22); a person liable for customs duty can apply to the Secretary for an extension of time to pay customs duty (section 23); interest is payable on the late payment of customs duty (section 28); and the measures in Division 3 of Part 7 apply for the recovery of unpaid customs duty.
- (2) Part 9, which provides for investigations powers in relation to taxes.
- (3) Section 63, which imposes late payment penalty in respect of the late payment of tax.
- (4) Section 73, which provides the prosecution of an offence in respect of the late payment of tax.

Paragraph (a) provides that a reference in the provisions mentioned above to “tax” includes also a reference to customs duty. This means that: (i) late payment interest is payable in respect of the late payment of customs duty; (ii) the Secretary can use the measures in Division 3 of Part 7 to collect unpaid customs duty; (iii) the Secretary can use the investigations powers in Part 9 for the purposes of customs duty; (iv) late payment penalty applies to customs duty; and (v) alternatively, a person may be prosecuted for an offence for the late payment of customs duty.

Paragraphs (b)-(d) provide for mechanical provisions to give effect to the treatment of customs duty as a tax under the above provisions. Paragraph (b) provides that a

reference in the above provisions, particularly Division 3 of Part 7, to “unpaid tax” includes a reference to customs duty that has not been paid by the due date as determined under the Customs legislation. Paragraph (c) provides that a reference in the above provisions to “taxpayer” includes a person liable for customs duty. Paragraph (d) provides that a reference in the above provisions to “tax law” includes the Customs Act.

Subsection (2) applies to a person liable for: (i) a secondary liability; (ii) the costs of distress proceedings under section 30; or (iii) the costs of seizure proceedings under section 31. “Secondary liability” is defined in section 3. In broad terms, a secondary liability is a tax liability of a taxpayer that another person becomes personally liable to pay under the Act (see sections 12(4), 13(3)(c), 32(11), 33(1) and 34(1)). Subsection (2) provides that the Secretary may serve the person with notice of the amount of the liability payable by the person and due date for payment. The determination of a liability for these amounts is treated as “tax decision” as defined in section 3 and can be challenged only by first lodging an objection to the determination under section 41.

Subsection (3) applies to agency taxes, secondary liabilities and the costs of distress and seizure proceedings. Schedule 1 lists amounts that are treated as “agency taxes” for the purposes of the Act. In broad terms, these are taxes and other charges that the Revenue Office has responsibility to collect on behalf of another Government agency. The Revenue Office does not have responsibility for the administration of the tax or charge.

“Second liability” is defined in section 3. In broad terms, a secondary liability is a tax liability of a taxpayer that another person becomes personally liable to pay under the Act.

Subsection (3) applies also to the costs of distress proceedings (see section 30(7)(a)) and seizure proceedings (see section 31(9)(a)).

Paragraph (a) provides that a reference to “tax” in Part 7 includes an amount that is an agency tax, a secondary liability, the costs of distress and the costs of seizure. This means, for example that: (i) such an amount is a debt due to the Republic and payable to the Secretary (section 22); a person liable for the amount can apply to the Secretary for an extension of time to pay the amount (section 23); (iii) interest is payable on the late payment of the amount (section 28); and (iv) the Secretary can use the measures in Division 3 of Part 7 to collect unpaid agency taxes, secondary liabilities and the costs of distress or seizure proceedings.

Paragraphs (b) and (c) provide for mechanical provisions to give effect to the treatment of the amounts specified in paragraph (a) as a tax for the purposes of Part 7. Paragraph (b) provides that a reference in Part 7 to “unpaid tax” includes a reference to an agency tax, a secondary liability, or the costs of distress or seizure that are not paid by the due date. Paragraph (c) provides that a reference in Part 7 to “taxpayer” includes a person liable for an amount specified in paragraph (a).

Subsection (4) provides that an amount of a secondary liability paid by a person is credited against the tax liability to which the secondary liability relates. For example,

if a tax representative is personally liable under section 12(4) for the tax payable by a taxpayer, the amount payable by the tax representative is credited against the tax liability of the taxpayer.

5. Act binds the Republic

This section provides that the Act binds the Government of Nauru. This means, for example, that a Government department is obliged to comply with a garnishee notice served under section 32.

6. Functions and powers of Secretary, Deputy Secretary, and tax officers

This section sets out the functions and powers of the Secretary, Deputy Secretary and tax officers.

Subsection (1) provides that the Secretary responsible for revenue has responsibility for the administration of the tax laws. A tax law is a law listed in Schedule 2. At the time of enactment, the *Employment and Services Tax Act 2014* and the *Revenue Administration Act 2014* were listed as tax laws. Thus, The Secretary responsible for revenue has responsibility for the administration of these tax laws.

Subsection (2) provides that the Deputy Secretary for Revenue is the head of the Nauru Customs and Revenue Office.

Subsection (3) provides that the Secretary is empowered to appoint such tax officers as may be necessary for the purposes of administering the tax laws.

Subsection (4) requires all tax officers to carry an official Nauru Customs and Revenue Office identification card when conducting official business.

7. Delegation

This section empowers the Secretary to delegate the Secretary's duties, powers and functions to a tax officer.

Subsection (1) specifies the power of delegation. The Secretary may authorise a tax officer in relation to a tax law to perform any of the duties, powers or functions of the Secretary under the tax law. The delegation must be made by notice in writing. The only exception is the Secretary's power of delegation under subsection (1). Consequently, a person to whom a duty, power or function has been delegated cannot delegate the duty, power or function to another tax officer. Thus, the Secretary is the only person who can exercise the power of delegation.

Subsection (2) provides that a delegation under subsection (1) is revocable by the Secretary at will by notice in writing.

Subsection (3) provides that a delegation under subsection (1) does not prevent the exercise or performance of a duty, power or function by the Secretary.

8. Secrecy

This section provides for the secrecy of tax information.

Subsection (1) obliges a tax officer to keep secret all information and documents received by the officer in the performance of his or her duties as a tax officer. Subsection (5) provides for an expanded definition of “tax officer” applicable for the purposes of the section. It includes not only the Secretary, Deputy Secretary and those formerly appointed as tax officers under section 6(3), but also any person employed or engaged by the Revenue office. The reference to persons “engaged” is intended as a reference to persons engaged as independent contractors rather than employees. Thus, all employees (including in an administrative rather than operational capacity) and contractors are treated as tax officers for the purposes of the section. The definition also includes former tax officers and employees of the Revenue Office. Thus, the secrecy obligation applies to all persons who have access to tax information.

A person who contravenes subsection (1) commits an offence under section 80(2).

Subsection (2) permits the following disclosures without breaching the secrecy obligation in subsection (1):

- (1) A tax officer may disclose tax information to another tax officer for the purposes of carrying out any duty under a tax law.
- (2) A tax officer may disclose tax information to a Customs officer for the purposes of carrying out any duty under the Customs Act.
- (3) A tax officer may disclose tax information to a court for the purposes of any proceedings under a tax law.
- (4) A tax officer may disclose tax information to the Director of the Bureau of Statistics, or any person authorised by the Director, but only when such disclosure is necessary for the performance of official duties by the Director or authorised person.
- (5) A tax officer may disclose tax information to the [Auditor-General], or any person authorised by the [Auditor-General], but only when such disclosure is necessary for the performance of official duties by the [Auditor-General] or authorised person.
- (6) A tax officer may disclose tax information to the competent authority of the government of a foreign country with which Nauru has entered into an agreement providing for the exchange of information but only to the extent the disclosure is permitted under the agreement. The disclosure may be made under an exchange of information article in a tax treaty, a tax information exchange agreement, or an agreement for mutual administrative assistance. The disclosure may be made only when permitted by the relevant treaty or agreement.
- (7) A tax officer may disclose tax information to any other person if the person to whom the disclosure relates has waived secrecy by notice in writing.

Subsection (3) makes it clear that a disclosure permitted under subsection (2) may be made only to the minimum extent necessary to achieve the objective of the permitted disclosure.

Subsection (4) provides that the secrecy obligation in subsection (1) applies to any person receiving a permitted disclosure made under subsection (2). In other words, the person receiving the disclosure must keep the documents or information received secret as required under subsection (1). Failure to do so is an offence under section 80(2).

9. Taxpayer Identification Number

This section provides for the issuing of Taxpayer Identification Numbers (“TIN”).

Subsection (1) provides that a person who becomes liable for tax under a tax law must apply for a TIN unless the person has already been issued with a TIN. “Person”, “tax” and “tax law” are defined in section 3. At the time of enactment, a person liable for employment tax, non-resident tax or withholding tax is required to apply for a TIN. However, there is no obligation to apply for a TIN if the person has already been issued with a TIN. Thus, the obligation under subsection (1) arises in relation to the first time that a person first becomes liable for tax.

Subsection (2) specifies the mechanics of TIN applications under subsection (1). The application must be in the form approved by the Secretary for TIN applications (see section 52) and must be accompanied by documentary evidence of the person’s identity as prescribed in the regulations. The application must be made within seven days of the person becoming liable to apply for a TIN. A person who fails to apply for a TIN as required under subsection (1) commits an offence under section 69(3)(a). Further, a person who obtains a TIN using false or forged documents commits an offence under section 69(4).

Subsection (3) obliges the Secretary to issue a TIN to a person if satisfied of the person’s identity. Subsection (4) provides that a TIN is issued to a person when the Secretary serves the person with written notice of the TIN.

Subsection (5) provides that the Secretary must refuse an application for TIN in two cases, namely:

- (1) The Secretary is not satisfied of the applicant’s identity.
- (2) The applicant has already been issued with a TIN that is still in force.

Subsection (5) obliges the Secretary to serve notice in writing on an applicant of a decision to refuse the application. Section 39 requires the Secretary to provide the applicant with a statement of reasons for the refusal. A decision to refuse an application for a TIN is a reviewable decision as defined in section 3. The applicant can apply to the Minister under section 42 for review of the decision.

12. Use of a TIN

This section provides for the use of a TIN.

Subsection (1) specifies the uses of a TIN. A person must state the person's TIN on any tax return, notice, or other document filed, lodged, or used for the purposes of a tax law, or as otherwise required under a tax law.

Subsection (2) provides that a TIN is personal to the person to whom it has been issued and cannot be used by another person.

Section 69(1) provides that a person who uses a false TIN on a tax return or document used for the purposes of a tax law commits an offence. Section 69(2) deems a person to have used a false TIN if the person uses the TIN of another person.

13. Cancellation of a TIN

This section provides for the cancellation of a TIN.

Subsection (1) obliges a person to notify the Secretary when the person ceases to be liable for tax under the tax laws. The notification obligation applies only when a person ceases to be liable for tax under all the tax laws. Subsection (2) requires the notification to be provided in the form approved by the Secretary for such notifications and to be lodged within seven days of ceasing to be liable for tax under the tax laws.

Section 69(3)(b) provides that a person who fails to notify the Secretary as required under subsection (1) commits an offence.

Subsection (3) specifies three circumstances when the Secretary must cancel the TIN of a person:

- (1) The person ceases to be liable for tax under the tax laws (subsection (3)(a)). There is an exception when the cessation is only temporary, such when business operations are suspended permanently shut down. Cancellation under subsection (3)(a) may be as a result of a notification under subsection (1) or on the Secretary's own motion.
- (2) The person has been issued with a TIN under an identity that is not the person's true identity.
- (3) The person had been previously issued with a TIN that is still in force. It is important that a person has only one TIN.

A TIN is cancelled under subsection (3) when the Secretary serves the person with written notice of cancellation of the TIN.

A decision by the Secretary to cancel a TIN is a reviewable decision as defined in section 3. A person dissatisfied with the decision can apply to the Minister under section 42 for review of the decision.

Subsection (4) empowers the Secretary to cancel a TIN that has been issued to a person and issue the person with a new TIN. This may occur, for example, if the Secretary adopts a new system of TINs.

12. Liabilities and obligations of tax representatives

This section sets out the obligations and responsibilities of a tax representative of a taxpayer. “Tax representative” is defined in section 3.

Subsection (1) obliges a tax representative of a taxpayer to perform any duties or obligations imposed by a tax law on the taxpayer. This expressly includes the filing of tax returns and payment of tax. It would also include the submission of notices and other documents under a tax law. The definition of “tax” in section 3 includes penalty and, therefore, a tax representative is liable also for any penalty liability of the taxpayer. While definition of “tax” does not include late payment interest, section 3(2) provides that a reference to “tax” in the section includes any late payment interest payable in respect of a tax liability. Thus, a tax representative of a taxpayer is liable to pay the tax owing by the taxpayer plus any late payment interest payable in respect of the tax liability.

Section 27 provides that a tax representative making a payment of tax on behalf of a taxpayer is indemnified in respect of the payment. Thus, provided the tax representative has properly paid the tax liability of the taxpayer, the taxpayer cannot seek to recover the tax paid from the tax representative.

When two or more persons are tax representatives of a taxpayer, subsection (2) provides that the duties and obligations imposed on a tax representative under the section are imposed on them collectively but may be discharged by any one of them. Subsection (7) makes it clear that the taxpayer remains liable to perform any duties and obligations that are not performed by the taxpayer’s tax representative.

Subsection (3) limits a tax representative's liability for tax due on behalf of a taxpayer. If a taxpayer fails to pay tax due, the Secretary can recover the amount due from the tax representative only to the extent that the representative holds or controls income or assets of the taxpayer. For example, a tax representative of a company is liable for the tax liability of the company only to the extent of the assets of the company.

The limitation on a tax representative’s liability in subsection (3) is subject to subsection (4), which provides that a tax representative is personally liable for the payment of tax (and, by virtue of section 3(2), late payment interest payable in respect the tax liability)) due on behalf of the taxpayer if the representative disposes of or parts with any money of the taxpayer that could have been legally used to pay the tax. The effect of subsection (4) is to create a secondary liability in the tax representative for monies that the representative deals with that could have been used to pay the tax (and interest) owing by the taxpayer. Thus, the taxpayer has the primary liability to pay the tax owing by the taxpayer and, as a result, of subsection (4), the taxpayer’s tax representative has a secondary liability in relation to the tax owing by the taxpayer.

The personal liability of the tax representative for the tax payable by a taxpayer under subsection (4) is included as a “secondary liability” under the definition in section 3. Section 4(2) provides that the Secretary may serve the tax representative with notice of the amount of the personal liability payable by the tax representative and due date for payment. While the secondary liability is not a tax liability (it is just a statutory debt owing by the tax representative to the Secretary), section 4(3) provides that the amount is treated as “tax” for the purposes of Division 3 of Part 7 of the Act. This means that that the Secretary can use the measures specified in Division 3 of Part 7 to recover the amount owing by the tax representative under subsection (4).

Subsection (4) is expressed to be subject to subsection (5). In effect, subsection (5)(a) permits a tax representative of a taxpayer to pay any liabilities of the taxpayer that have a legal priority over the tax payable by the taxpayer. Under subsection (5)(b), a tax representative is not personally liable if, at the time the tax representative parted with monies of the taxpayer, the tax representative had no knowledge, and could not reasonably be expected to know, of the taxpayer’s tax liability.

Subsection (6) provides that any tax owing by a taxpayer that is paid by the taxpayer’s tax representative as a result of the operation of subsection (4) is credited against the liability of the taxpayer.

13. Duties of Appointed Person

This section sets out the obligations of a person appointed as an administrator, executor, trustee-in-bankruptcy, receiver or liquidator in respect of a taxpayer, including a deceased taxpayer.

The section applies to an administrator, executor, trustee-in-bankruptcy, receiver or liquidator appointed to manage, administer, liquidate or wind up the affairs of a taxpayer, including a deceased taxpayer. The terms “administrator”, “executor”, “trustee-in-bankruptcy”, “receiver” or “liquidator” are not defined in the Act and, therefore, have their normal legal meaning. The administrator, executor, trustee-in-bankruptcy, receiver or liquidator is referred to as the “appointed person” for the purposes of the Act.

The purpose of this section is to give the appointed person advance notice of the amount of the tax due or that will become due by the person whose assets are in the possession or under the control of the appointed person. The appointed person is then obliged to set aside out of the proceeds of sale of those assets an amount that is sufficient to pay the tax liability. This section applies in relation to all amounts treated as “tax” for the purposes of the Act. The definition of “tax” in section 3 includes penalty and, therefore, an appointed person is liable for any penalty liability of the taxpayer. While the definition of “tax” does not include late payment interest, section 3(2) provides that a reference to “tax” in the section includes any late payment interest payable in respect of a tax liability.

Subsection (1) obliges an appointed person to notify the Secretary that they have been appointed to manage, administer, liquidate or wind up the affairs of a taxpayer, including a deceased taxpayer. The notice must be given to the Secretary within 15

days of the appointment. A person who fails to provide a notice as required under subsection (1) commits an offence under section 75(1)(a).

Having received a notice under subsection (1), the Secretary is obliged under subsection (2) to notify the appointed person of the amount of any tax (including late payment interest) payable or that will become payable by the taxpayer. The Secretary must serve this notice on the appointed person within two months after receiving the notice under subsection (1). The Secretary's determination of the amount of tax payable, or that will become payable, by a taxpayer is a "tax decision" as defined in section 3. The taxpayer or appointed person can challenge the determination only by lodging an objection to the determination under section 41.

Subsection (3)(a) precludes an appointed person from disposing of any asset prior to receiving a notification under subsection (2). This is subject to two exceptions. First, the prohibition does not apply if the two-month period in subsection (2) has passed and the Secretary has not served the appointed person with notice under that subsection. This is intended to prevent any undue delay in the administration of the assets that are in the possession of the appointed person. Secondly, the prohibition does not apply if the Secretary gives permission for the disposal. Failure to comply with subsection (3)(a) is an offence under section 75(1)(a).

Subsection (3)(b) obliges the appointed person to set aside out of the proceeds of sale of any asset the amount specified in the notice served under subsection (2) or such lesser amount as subsequently agreed with the Secretary. The amount set aside is intended to meet the tax liability of the taxpayer and the appointed person must use the amount set aside for this purpose as and when the liability becomes due. This is subject to three qualifications. First, subsection (5)(a) provides that the appointed person can pay any debt that has a legal priority over the tax notified to the appointed person under subsection (2). Secondly, subsection (5)(b) provides that the appointed person may pay the normal expenses incurred in the person's capacity as an appointed person (including the appointed person's remuneration) in priority to the tax liability. Thirdly, if the proceeds of sale are less than the amount to be set aside, the amount to be set aside out of the sale is limited to the proceeds (subsection (4)).

Subsection (3)(c) provides that the appointed person is personally liable for the taxpayer's tax liability to the extent of the amount that the appointed person is required to set aside from the disposal of an asset. The effect of subsection (3)(c) is to create a secondary liability in the appointed person for the tax payable by the taxpayer. Thus, the taxpayer has the primary liability to pay the tax owing by the taxpayer and, as a result, of subsection (3)(c), the appointed person has a secondary liability in relation to the tax owing by the taxpayer.

The personal liability of the appointed person for the tax payable by a taxpayer under subsection (3)(c) is included as a "secondary liability" under the definition in section 3. Section 4(2) provides that the Secretary may serve an appointed person with notice of the amount of the personal liability payable by the appointed person and due date for payment. While the secondary liability is not a tax liability (it is just a statutory debt owing by the appointed person to the Secretary), section 4(3) provides that the amount is treated as "tax" for the purposes of Division 3 of Part 7 of the Act. This

means that that the Secretary can use the measures specified in Division 3 of Part 7 to recover the amount owing by the appointed person under subsection (3)(c).

In addition to being personally liable under subsection (3)(c) for the tax notified under subsection (2), an appointed person who fails to set aside the tax as required under subsection (3)(b) out of the proceeds of sale commits an offence under section 75(1)(a).

Subsection (6) provides that, if two or more persons are appointed persons in respect of a taxpayer, the obligations and liabilities under the section are imposed on the appointed persons jointly but may be discharged by any of them.

14 Record-keeping

The documents that must be kept for the purposes of a particular tax are specified in the tax law imposing the tax as these will differ depending on the tax (see section 23 of the *Employment and Services Tax Act 2014*). This section provides for uniform rules in relation documents required to be kept by a person under a tax law. “Document” is defined broadly in section 3.

Subsection (1) applies to a person required to maintain documents under a tax law. Subsection (1) applies to a “person” rather than a “taxpayer” as the record-keeping obligation under a tax law may apply to a person who is not a taxpayer in relation to the documents, such as documents required in relation to the filing of an information return under a tax law. The following general rules relating to the maintenance of documents apply:

- (1) A person required to maintain documents under a tax law must maintain the documents in the English language (subsection (1)(a)). Documents may be kept either in hard copy or electronically. Documents kept in a language other than English do not satisfy the record-keeping obligation in subsection (1)(a) and the person keeping the documents may be liable for a penalty under section 61 or guilty of an offence under section 70. In addition, subsection (3) provides for a procedure under which the Secretary can require documents kept in a language other than English to be translated into English. The Secretary must approve the translator and the translation is made at the cost of the person keeping the documents.
- (2) A person required to maintain documents under a tax law must maintain the documents in such a manner as to enable the person’s tax liability under the tax law to be readily ascertained (subsection (1)(b)). For example, the documents cannot be kept in a “code” that makes it difficult or impossible for the Secretary to interpret the documents so as to ascertain the person’s tax liability.
- (3) A person required to maintain documents under a tax law must retain the documents for five years from the end of the reporting period to which the documents relate or for such shorter period as specified in the tax law (subsection (1)(c)). “Reporting period” is defined in section 3. For example, if the documents are required for the purposes of withholding tax under the

Employment and Services Tax Act 2014, they must be retained for five years after the end of the calendar month to which they relate.

There are two qualifications on the application of subsection (1)(c). First, subsection (2)(a) extends the record-keeping period beyond five years when the document relates to an amended assessment that may be the subject of a further amended assessment outside the 5-year period (i.e. section 21(6)(b) applies). Secondly, subsection (2)(b) extends the record-keeping period beyond five years when the document is relevant to proceedings commenced before the end of the five-year period. In this case, the documents must be retained until all proceedings (including appeals) have been completed.

The maintenance of proper records is vital for the effective administration of the tax laws, particularly in providing an audit trail for checking self-assessed tax liabilities. Consequently, substantial penalties are imposed on a taxpayer who fails to comply with the record-keeping obligations under this section. Such a taxpayer may be liable for a penalty under section 61 or guilty of an offence under section 70. Further, a person who fails to maintain proper records but wishes to challenge an assessment may not be able to satisfy the burden of proving that the assessment is incorrect as required by section 44(1).

15. Extension of Time to File Tax Return

This section empowers the Secretary to grant a person an extension of time to file a tax return. This section applies to all documents treated as tax returns for the purposes of the Act (see section 3 definition of “tax return”).

The obligation to file a tax return is specified in the tax law imposing the tax to which the return relates. This is because the rules requiring the filing of returns (particularly in relation to the due date for filing) differ depending on the tax. Thus, the due date for filing a tax return is set out in the tax law requiring the return. For example, section 20 of the *Employment and Services Tax Act 2014* provides that an employer or payer must file a withholding tax return for a calendar month by the fifteenth day after the end of the month.

Subsection (1) provides that a person may apply to the Secretary, in writing, for an extension of time to file a tax return. The section applies to a “person” rather than a “taxpayer” as the tax return may be an information return and, therefore, the person filing the return may not be a taxpayer in relation to the return. Subsection (2) requires that an application for an extension of time must be made prior to the due date for filing of the return.

Subsection (3) provides that the Secretary may grant an application under subsection (1) if satisfied that the applicant is unable to file a tax return by the due date for any reasonable cause. Whether a taxpayer has a reasonable cause will depend on all the facts and circumstances. The Secretary may consider that a taxpayer has a reasonable cause for being unable to file a tax return by the due date if the taxpayer is absent from Nauru, or suffers from illness or some other misadventure (such as loss of records due to accident or natural cause). Importantly, the decision as to whether to grant an extension of time is a matter that is at the discretion of the Secretary. For

example, a taxpayer's absence from Nauru is unlikely to be a reasonable cause when the taxpayer had sufficient notice of the travel and failed to make adequate arrangements for the filing of the return while absent. If the Secretary grants the application, the period of the extension is a matter for the Secretary to determine having regard to all the circumstances.

The Secretary is obliged to serve an applicant under subsection (1) with notice of the decision on an application. Section 39 obliges the Secretary to provide the applicant with a statement of reasons for the decision. The decision of the Secretary on an application for an extension of time to file a tax return is a reviewable decision as defined in section 3. A person who is dissatisfied with the decision can apply to the Minister for review of the decision under section 42.

The granting of an extension of time to file a tax return protects the taxpayer from the imposition of late filing penalty under section 62 or the prosecution of an offence under section 72. However, subsection (4) makes it clear that an extension does not alter the date for payment of any tax due under the return. Thus, tax remains payable as from the original due date and late payment interest under section 28 runs from that date.

16. Secretary May Require Taxpayer to Submit a Tax Return

This section empowers the Secretary to require a taxpayer to file a tax return in advance of the normal due date for the return in cases when there may be a risk that the return will not be filed if it were necessary to wait until the normal due date for filing the return.

Subsection (1) provides that the power can be exercised in the following cases:

- (1) The taxpayer has died during a reporting period. In this case, the taxpayer's tax representative would be required to submit the tax return. By virtue of paragraph (d) of the section 3 definition of "tax representative", the tax representative of a deceased taxpayer is the appointed person in relation to the deceased (see section 13).
- (2) The taxpayer has been declared bankrupt or has gone into winding up or liquidation, or otherwise ceased to exist during a reporting period. Again, by virtue of paragraph (d) of the section 3 definition of "tax representative", the tax representative of a deceased taxpayer is the appointed person in relation to the deceased (see section 13). In the case of an individual declared bankrupt, the trustee-in-bankruptcy is the appointed person in relation to the bankrupt and, therefore, the tax representative of the bankrupt. In the case of a company that has gone into winding up or liquidation, the liquidator or receiver is the appointed person in relation to the company and, therefore, the tax representative of the company.
- (3) The Secretary has reason to believe that a taxpayer is about to leave Nauru permanently during a reporting period. This allows the Secretary to require the taxpayer to file a tax return for the part of the reporting period occurring before the taxpayer leaves Nauru.

- (4) The taxpayer has ceased to carry on any business in Nauru during a reporting period or the Secretary has reason to believe that a taxpayer will cease to carry on any business during the period.

In any of these situations, subsection (2) empowers the Secretary, at any time during the reporting period and by notice in writing, to require the taxpayer or the taxpayer's tax representative to file a tax return for the period and pay tax due under the return. The due date for filing the return must be specified in the notice. It is expressly provided that the due date may be a date before the normal due date for the return. The due date specified by the Secretary will depend on the urgency of the case. For example, in the case specified in subsection (1)(c), the Secretary could require the return to be filed immediately.

A return required under this section is a tax return for the purposes of the Act (see section 3 definition of "tax return"). This means that the taxpayer or taxpayer's tax representative may apply for an extension of time to file the return under section 15. Further, a taxpayer or taxpayer's representative is liable for penalty under section 62 or guilty of an offence under section 72 if the taxpayer or tax representative fails to file the return by the due date in the notice requiring the return.

As an alternative to serving a notice under this section, the Secretary may issue an advance assessment under section 20. It would be expected that the Secretary would proceed straight to serving a notice of an advance assessment when there is a need to act quickly to create a tax liability.

17. Tax Return Duly Filed

This section provides for a presumptive rule in relation to the filing of tax returns (as defined in section 3).

A tax return purporting to be filed by, or on behalf of, a taxpayer is treated as having been filed by the taxpayer unless the taxpayer proves to the contrary. This means that, if a taxpayer wants to challenge the filing of a return, the burden is on the taxpayer to prove, on the balance of probabilities, that the taxpayer did not file or sign the return, or authorise the filing of the return by another person. This may be relevant, for example, if a tax return is made by a taxpayer's tax representative and there is a false statement in the return.

18. Self-assessment

This section provides for the self-assessment of tax liabilities by taxpayers. Under a self-assessment, the taxpayer's tax return is treated as a self-assessment of the taxpayer's tax liability and the taxpayer pays tax due with the filing of the return. A taxpayer's tax return is treated as a self-assessment under the Act only when the return is in the approved form, i.e. the form approved by the Secretary for the particular type of return being submitted (see section 52).

Subsection (1) provides that a self-assessment taxpayer who has filed a self-assessment return in the approved form for a reporting period is treated, for all

purposes of the Act, as having made an assessment of the amount of tax payable for the reporting period to which the return relates being that amount as set out in the return. It is expressly provided that a self-assessed amount includes a nil amount of tax payable.

Subsection (1) applies only to a self-assessment taxpayer filing a self-assessment return. “Self-assessment taxpayer” is defined in section 3 to mean a taxpayer required to file a self-assessment return. While “tax return” is defined broadly in section 3, only those tax returns designated as a self-assessment return under the tax law requiring the filing of the return is a self-assessment returns. At the time of enactment, there are no tax returns that are self-assessment returns. The section is included in anticipation that subsequent taxes enacted by Nauru, particularly in relation to taxation of profits, will be self-assessed taxes.

The effect of subsection (1) is that a properly submitted self-assessment return is treated as a self-assessment. If the Secretary is not satisfied with a self-assessment return (i.e. a taxpayer’s self-assessment), the Secretary must proceed to amend the taxpayer’s self-assessment under section 18.

Subsection (2) expressly provides that returns prepared and submitted electronically are self-assessment returns provided the return is submitted in the form approved by the Secretary. Importantly, the approved form will require that the amount of tax payable (if any) for the reporting period to which the form relates is to be included on the form. This is central to self-assessment, namely that the form that a taxpayer files includes the amount of tax payable.

Provided a form that is prepared and filed electronically is in the approved form, subsection (2) makes it clear that the return is a self-assessment return even though: (i) the return may include pre-filled information provided by the Secretary; or (ii) the computation of the tax payable occurs automatically as information is inserted into the form. The effect of subsection (2) is that, if a taxpayer prepares and files a tax return electronically, the return is a self-assessment return and, therefore, subsection (1) applies to the return.

A self-assessment is included as a tax assessment under the definition of “tax assessment” in section 3. Thus, unless the context requires otherwise, every reference in the Act to a “tax assessment” includes a self-assessment.

19. Default Assessment

This section empowers the Secretary to raise an assessment when a taxpayer has failed to file a tax return by the due date. The assessment is referred to as a “default assessment”.

Subsection (1) empowers the Secretary to make a default assessment of the tax payable by a taxpayer for a reporting period when the taxpayer has failed to file a tax return for the period by the due date for filing the return for the period.

Subsection (1) applies to any person who is a “taxpayer” as defined in section 3 and to a document treated as a “tax return” as defined in section 3. However, subsection

(4) provides that a default assessment can be made only for an “assessed tax” (i.e. a tax that is collected by assessment under the tax law imposing the tax (section 3 definition of “assessed tax”)).

The Secretary must determine the amount of the tax payable under a default assessment based on the available evidence and to the best of the Secretary’s judgement taking account of all the circumstances. Thus, provided the Secretary has relied upon the available evidence and has exercised best judgement in making the default assessment, the assessment will be valid even if the amount of tax payable under the default assessment is subsequently found to be wrong. However, if the Secretary simply “plucks a figure out of the air” as the amount of tax payable without making a judgement based on the evidence available and the taxpayer’s particular circumstances, the assessment will not be a valid assessment.

Subsection (2) obliges the Secretary to serve notice of a default assessment on the taxpayer assessed. The rules applicable to the service of notices in sections 54 and 55 apply for this purpose. A default assessment must specify the following:

- (1) The amount of tax assessed (subsection (2)(a)).
- (2) The amount of penalty (if any) assessed in respect of the tax assessed (subsection (2)(b)). The failure to file a tax return by the due date may result in two penalties – a late filing penalty and a late payment penalty.
- (3) The amount (if any) of late payment interest payable in respect of the tax assessed (subsection (2)(c)). Late payment interest is not an assessed liability but rather is a debt collected by claim. The notice of liability for late payment interest is a claim for the interest. Thus, the notice of the assessment of the tax and penalty payable can include also a demand for late payment interest
- (4) The reporting period covered by the default assessment (subsection (2)(d)).
- (5) The due date for payment of the tax, penalty and late payment interest being a date that is not less than thirty days from the date of service of the notice of the default assessment (subsection (2)(e)). Subsection (3) makes it clear that this does not change the original due date for payment of the tax. Thus, late payment penalty and late payment interest are computed based on the original due date for payment the tax assessed. The purpose of subsection (2)(e) is to ensure that the taxpayer is given a reasonable time to raise the funds necessary to pay the tax, penalty and interest due. In other words, the Secretary cannot immediately seek to recover the amount owing under a default assessment, but must wait for thirty days.
- (6) The manner of objecting to the default assessment (subsection (2)(f)). A default assessment is a “tax decision” within the definition in section 3. A taxpayer dissatisfied with a default assessment can challenge the assessment only by first lodging an objection to the assessment under section 41.

As stated above, subsection (3) makes it clear that the service of a notice of a default assessment does not extend the time for payment of the tax due under the default

assessment as determined under the tax law imposing the tax. This is particularly relevant for self-assessed taxes. The effect of subsection (3) is that a default assessment does not alter the due date for payment of the assessed tax as determined under the tax law imposing the tax, and late payment interest under 28 and late payment penalty under section 63 are imposed from the original due date for the return.

Subsection (5) states a time limit on the making of a default assessment. The Secretary must make a default assessment within five years of the last day of the reporting period to which the assessment relates. There is an exception to this under subsection (6) when the need to make a default assessment is due to fraud or wilful neglect. In this case, a default assessment can be made at any time. The time limits in subsections (5) and (6) parallel the time limits for amending assessments under section 21(4).

Subsection (7) makes it clear that a taxpayer is still required to file a tax return for a reporting period even though the taxpayer has been served with a default assessment for the period. However, subsection (8) provides that a tax return filed by a taxpayer for a reporting period after a default assessment has been served on the taxpayer for the period is not a self-assessment return. This is because the Secretary has already determined the taxpayer's liability through the making of the default assessment. The return, however, can be used by the Secretary to make an amended assessment under section 21 to ensure that a taxpayer is liable for the correct amount tax for the reporting period.

A default assessment is included as a tax assessment under the definition of "tax assessment" in section 3. Thus, unless the context otherwise requires, every reference in the Act to a "tax assessment" includes a default assessment.

30. Advance Assessment

This section empowers the Secretary to make an assessment of the tax payable by a taxpayer for a reporting period in the circumstances specified in section 16. As the assessment is made before the due date for filing the return for the reporting period, it is referred to as an "advance assessment".

The advance assessment procedure is an alternative to issuing a notice under section 16 requiring the taxpayer or their tax representative to file an advance return. The facts relevant to the assessment of a taxpayer's tax liability are peculiarly in the knowledge of the taxpayer so that, ordinarily, requiring the taxpayer to file an advance return disclosing that information would be the preferred option. However, it may be that the urgency of the case is such that the Secretary will need to move straight to assessment and that is what this section permits.

Subsection (1) provides that the Secretary may make an assessment of tax payable by a taxpayer for a reporting period in the circumstances specified in section 16. Thus, the advance assessment procedure can be used if any of the following events occurs during a reporting period: (i) a taxpayer has died; (ii) a taxpayer has been declared bankrupt, gone into liquidation, or otherwise ceased to exist; (iii) a taxpayer is about to leave Nauru permanently; or (iv) a taxpayer has ceased to carry on business in

Nauru or the Secretary has reason to believe that a taxpayer will cease to carry on business in Nauru. Subsection (6) provides that the Secretary can make an advance assessment only in relation to an assessed tax (i.e. a tax that is collected by assessment under the tax law imposing the tax (section 3 definition of “assessed tax”))

Subsection (2) makes it clear that the Secretary can make an advance assessment only when the taxpayer has not filed the tax return for the relevant reporting period. The main situation when this will be relevant is when the Secretary has served a taxpayer with a notice under section 16, but the taxpayer has not complied with the notice. If a tax return has been submitted for the reporting period, the return is treated as a self-assessment under section 18. In this case, if the Secretary is not satisfied with the tax return, the Secretary must amend the taxpayer’s self-assessment in accordance with section 21.

Subsection (1) requires that the Secretary must make an advance assessment based on the available evidence and to the best of his or her judgement. Thus, provided the Secretary has exercised best judgement in making the advance assessment, the assessment will be valid even if the amount of tax payable under the advance assessment is subsequently found to be wrong. However, if the Secretary simply “plucks a figure out of the air” as the amount of tax payable without making a judgement based on the information available and the taxpayer’s particular circumstances, the assessment will not be a valid assessment.

Subsection (3)(a) provides that an advance assessment may be made before the date that the taxpayer’s tax return for the reporting period that the assessment relates to is due. Consequently, the effect of an advance assessment can be to advance the timing of the due date for payment of tax for the reporting period to which it relates. This is consistent with the circumstances in which an advance assessment may be made. Subsection (3)(b) provides that an advance assessment must be based on the law applicable at the date of the assessment. The reference to law includes all aspects of the law, particularly the tax rates. Subsection (3)(b) is necessary because the assessment is being made before the end of the reporting period and the relevant law may change during a reporting period.

Subsection (4) obliges the Secretary to serve notice of an advance assessment on the taxpayer assessed. The rules applicable to the service of notices in sections 69 and 70 apply for this purpose. An advance assessment must specify the following:

- (1) The amount of tax assessed (subsection (4)(a)).
- (2) The amount of penalty (if any) assessed in respect of the tax assessed (subsection (2)(b)). As an advance assessment is being made for a reporting period before the end of the period, penalty is likely to be limited to late filing penalty but only when a notice has been issued under section 16 with which the taxpayer has not complied.
- (3) The reporting period covered by the advance assessment (subsection (4)(c)).
- (4) The due date for payment of the tax and penalty (subsection (4)(d)). Because the nature of the situations covered by an advance assessment (such as a

taxpayer who is about to leave Nauru permanently), there is no limitation on the setting of the due date. In an urgent case, the notice could state that the tax is due immediately.

- (5) The manner of objecting to the advance assessment (subsection (4)(e)). An advance assessment is a “tax decision” within the definition in section 3. A taxpayer dissatisfied with an advance assessment can challenge the assessment only by first lodging an objection to the assessment under section 41.

Generally, an advance assessment will be for a period that is less than the whole reporting period to which it relates. Subsection (5) provides that an amended assessment can be raised under section 21 in relation to an advance assessment so that the taxpayer is assessed for the whole of the reporting period. An amended assessment must be made within the time limits specified in section 21 (see below).

Subsection (7) provides that nothing in the section relieves a taxpayer from being required to submit the tax return for the reporting period to which the advance assessment relates. This is particularly important as the period covered by an advance assessment is likely to be less than the whole of the reporting period to which it relates. However, subsection (8) provides that a tax return filed by a taxpayer for a reporting period after an advance assessment has been served on the taxpayer for the period is not a self-assessment. The return, however, can be used by the Secretary to make an amended assessment under section 21 to ensure that a taxpayer is liable for the correct amount tax for the reporting period.

21. Amendment of Assessments

This section provides for the making of amendments to assessments.

Subsection (1) provides that the Secretary may amend an assessment (referred to as the “original assessment”). The original assessment may be a self-assessment, default assessment, or advance assessment, an assessment of penalty, or any other assessment made under a tax law (such as under section 27 of the *Employment and Non-resident Taxes Act*). There is a separate process for amending an amended assessment (see below). The Secretary amends an original assessment by making such alterations or additions to the original assessment so as to ensure that the taxpayer is liable for the correct amount of tax payable in respect of the reporting period to which the original assessment relates.

The Secretary must determine the amount of tax payable under an amended assessment based on the available evidence and to the best of the Secretary’s judgement taking account of all the circumstances. Thus, provided the Secretary has exercised best judgement in making the amended assessment, the assessment will be valid even if the amount of tax payable under the amended assessment is subsequently found to be wrong. However, if the Secretary simply “plucks a figure out of the air” as the amount of tax payable without making a judgement based on the information available and the taxpayer’s particular circumstances, the assessment will not be a valid assessment.

The power to make an amended assessment relates to both a self-assessment and an assessment raised by the Secretary (such as a default assessment or advance assessment). A self-assessment return submitted by a self-assessment taxpayer is a self-assessment of the taxpayer's tax liability, being the amount of tax as set out in the tax return (section 18(1)). As explained above, any assessment raised by the Secretary in relation to a self-assessment return is, in fact, an amended assessment (i.e. an assessment amending the taxpayer's self assessment).

Subsection (1) is expressed to be subject to the rest of the section. Importantly, in amending an assessment, the Secretary must comply with the time limits in subsection (4) (see below).

A taxpayer can apply to the Secretary under subsection (2) for the Secretary to amend the taxpayer's self-assessment. An application for an amended assessment must be made within the time specified in subsection (4)(b)(i), i.e. within five years from the date that the self-assessment return was filed. While a self-assessment return is treated as a self-assessment, the taxpayer cannot self-amend a self-assessment. Rather, only the Secretary can amend a self-assessment. The Secretary amends the self-assessment under subsection (1).

If a taxpayer has made an application under subsection (2) for an amendment to be made to a self-assessment, subsection (3) provides that the Secretary may either: (i) amend the self-assessment; or (ii) refuse the application. The Secretary must serve the taxpayer with notice of the decision on the application for an amendment to a self-assessment within thirty days of receipt of the application. Section 39 obliges the Secretary to provide reasons for a decision to refuse an application under subsection (2). The decision of the Secretary on an application under subsection (2) is a "tax decision" as defined in section 3. A taxpayer dissatisfied with the decision can challenge the decision only by lodging an objection to the decision under section 41.

Subsection (4) provides for the time limits on the making of amended assessments. The Secretary may amend an assessment under subsection (1) at any time in the case of fraud or wilful neglect by or behalf of the taxpayer (subsection (4)(a)). The terms "fraud" and "wilful neglect" are intended to have their general law meanings. The fraud or wilful neglect may be committed by the taxpayer or by a person acting on the taxpayer's behalf (such as the taxpayer's accountant or other adviser).

The time limit for amending assessments in all other cases is five years (subsection (4)(b)). In the case of a self-assessment, the five-year period begins to run from the date the taxpayer filed the self-assessment return (subsection (4)(b)(i)). Subsection (5) makes it clear that subsection (4)(b)(i) does not prevent the Secretary from amending a self-assessment on application by a taxpayer under subsection (2) provided the application was filed within the time specified in subsection (3). This reflects the fact that a taxpayer who has made an application under subsection (2) has no control over the time that the Secretary may take to make a decision on the application. Subsection (5) prevents the Secretary from relying on subsection (4)(b)(i) to argue that the Secretary is not bound to make the amendment requested under subsection (2) once the time specified in subsection (4)(b)(i) has passed. Thus, the effect of subsection (5) is that, in the case of an application under subsection (2), the Secretary can make an

amended assessment outside the time specified in subsection (4)(b)(i) provided that the application is made within that time.

In the case of any other assessment (mainly a default or advance assessment), the five-year period begins to run from the date that the Secretary served the person with notice of the assessment (subsection (4)(b)(ii)).

Subsection (6) empowers the Secretary to further amend an original assessment. A further amended assessment can be made within the later of: (i) five years from the date the original self-assessment return was filed or notice of the original assessment was served on the taxpayer, as the case may be; or (ii) one year after the Secretary served notice of the amended assessment on the taxpayer. For example, if a notice of an amended assessment to a default assessment is served on a taxpayer two years from the date of service of the notice of the default assessment, the Secretary can further amend the default assessment within three years from service of notice of the default assessment. This ensures that the Secretary has the full five-year amendment period in relation to the default assessment. However, if the notice of the amended assessment is served on the taxpayer four and a half years after service of the default assessment, the Secretary can further amend the assessment within one year of serving notice of the first amended assessment. This applies even in the case of fraud or wilful neglect. While there is an unlimited period for making an initial amended assessment in the case of fraud or wilful neglect, once that power has been exercised there is only limited power to make a further amended assessment. This ensures that there is finality in the assessment process.

Subsection (6) is structured so that the Secretary does not amend an amended assessment, rather an amended assessment is made only in relation to an original assessment. However, the Secretary can make multiple amended assessments in relation to an original assessment provided the amended assessments are made within the time limit specified in subsection (6).

Subsection (7) provides a limit on the ability to make further amended assessments to an original assessment. It applies only when the period for making the further amended assessment is determined under subsection (6)(b), i.e. the later period under subsection (6) is 12 months after the taxpayer was served with notice of the amended assessment. In this case, the Secretary can only make amendments to the alterations or additions to the original assessment made in the first amended assessment, but cannot amend any other part of the original assessment. This ensures that the five-year time limit on making amended assessments is strictly observed.

Subsection (8) obliges the Secretary to serve notice of an amended assessment on the taxpayer assessed. The rules applicable to the service of notices in sections 54 and 55 apply for this purpose. An amended assessment must specify the following:

- (1) The amount of tax assessed (subsection (8)(a)).
- (2) The amount of penalty (if any) assessed in respect of any additional tax payable under the amended assessment (subsection (8)(b)). The main penalty likely to be assessed in relation to an amended tax assessment is late payment

penalty. However, depending on the circumstances, other penalties may apply such as a tax shortfall penalty.

- (3) The amount (if any) of late payment interest payable in respect of the amount assessed (subsection (8)(c)). Late payment interest is not an assessed liability but rather is collected by claim. The notice of assessment may include a claim for late payment interest.
- (4) The reporting period covered by the amended assessment (subsection (8)(d)).
- (5) The due date for payment of the tax, penalty and late payment interest being a date that is not less than thirty days from the date of service of the notice of the amended assessment (subsection (8)(e)). Subsection (9) makes it clear that this does not change the original due date for payment of the tax. The purpose of subsection (8)(e) is to ensure that the taxpayer is given a reasonable time to raise the funds necessary to pay the tax, penalty and interest due. In other words, the Secretary cannot immediately seek to recover the amount owing under an amended assessment, but must wait for thirty days.
- (6) The manner of objecting to the amended assessment (subsection (8)(f)). An amended assessment is a “tax decision” within the definition in section 3. A taxpayer dissatisfied with an amended assessment can challenge the assessment only by first lodging an objection to the assessment under section 41.

22. Tax is a Debt Due to the Republic

This section provides for the creation of a debt in relation to tax imposed under a tax law.

The liability for tax and the due date for payment are set out in the relevant tax law imposing the tax. For example, section 21 of the *Employment and Services Tax Act 2014* provides that the withholding tax payable by an employer or payer for a calendar month is due by the fifteenth day of the following month.

Subsection (1) provides the tax payable by a person under a tax law is a debt due to the Republic of Nauru. A person liable for tax must pay the tax to the Secretary..

Subsection (2) relates to electronic payments of tax. A person who is obliged pay tax electronically under a tax law, or by the Secretary under section 55(2), must make the payment electronically unless the Secretary has authorised the person to pay by another method. Section 66 applies to a person who fails to comply with subsection (2). If the person is unable to provide adequate reasons for the failure, section 82 provides that the person is liable for a penalty of \$1,000 for the failure.

23. Extension of Time to Pay Tax

This section empowers the Secretary to grant an extension of time for the payment of tax due.

Subsection (1) provides that a taxpayer may apply, in writing, to the Secretary for an extension of time to pay tax due under a tax law.

Subsection (2) provides that, when an application for an extension of time to pay tax due has been made, the Secretary may grant the extension or require the taxpayer to pay the tax due in instalments. In making a decision on the application, the Secretary will have regard to all the circumstances of the taxpayer's case, including the financial position of the taxpayer. If the Secretary believes that an extension of time is not justified, the application should be refused. Subsection (3) requires the Secretary to serve the taxpayer with written notice of the decision. If the Secretary refuses the application, section 39 requires the notice to include a statement of reasons. The Secretary's decision on an application for an extension of time is a "reviewable decision" as defined in section 3. A taxpayer dissatisfied with the decision can apply to the Minister for review of the decision under section 42.

Subsection (4) provides that, if the Secretary requires a taxpayer to pay tax due by instalments, the failure to pay an instalment by the due date renders the taxpayer immediately liable to pay the whole balance outstanding.

The grant of an extension of time or an agreement to pay tax by instalments protects the taxpayer from the imposition of late payment penalty under section 63. Subsection (5) makes it clear that the taxpayer is still liable for late payment interest from the original due date for payment.

24. Priority of Tax

This section provides a legislative priority to the Government for withholding tax and amounts payable under a garnishee order. These are treated as "trust" taxes.

Subsection (1) provides that the section applies to the following amounts:

- (1) Withholding tax. This defined in section 3 to mean amounts that a person is required to withhold from a payment made by the person under a tax law. At the time of enactment, the following amounts are treated as withholding tax:
 - (i) an amount that an employer withholds from employment income paid by the employer; and
 - (ii) an amount that a payer withholds from a services fee paid by the payer.
- (2) An amount that a payer owes to, or holds on behalf of, a taxpayer that is the subject of a garnishee notice section 32(2).

As these amounts are held in trust for the Government, they do not form part of the assets of the person collecting the amounts.

Subsection (2) provides that an amount that a person owes, holds, receives or withholds an amount specified in subsection (1) holds the amount in trust for the Government. In the event of the liquidation or bankruptcy of a person, the amount does not form part of the person's estate in liquidation or bankruptcy and must be paid to the Secretary before any distribution of property is made.

Subsection (3) provides for the following additional rules in relation to withholding tax:

- (1) Withholding tax is not subject to attachment in respect of any debt or liability of the person withholding the tax.
- (2) Withholding tax is a first charge on the payment or amount from which the tax is withheld.
- (3) Withholding tax is withheld prior to any other deduction that the person may be required to make from the payment or amount under an order of any court or other law.

25. Order of Payment

This section provides for the order of payment when a person owes penalty and late payment interest in respect of a tax liability.

Subsection (1) applies when a taxpayer owes tax, and penalty and late payment interest in respect of a tax liability, and the payment made by the taxpayer is less than the total amount due. In this case, the payment must be applied in the following order:

- (1) The amount paid is applied first against the tax liability (i.e. it is applied first against the primary liability).
- (2) Any excess is then applied against any penalty liability. While the main penalty liability will be late payment penalty, there may be other penalty liabilities related to unpaid tax, such as late filing penalty, tax shortfall penalty, or a penalty for failure to keep proper records.
- (3) The balance remaining (if any) is applied against any liability for late payment interest.

The order of application reflects the fact that late payment interest and penalty are not compounding liabilities. If they were compounding liabilities, then the order of application would need to be reversed so late payment interest and penalty were paid before the primary tax liability.

Subsection (2) provides that, if a taxpayer has more than one tax liability outstanding at the time a payment is made, the amount paid is applied in the order that the liabilities arose (i.e. the amount is applied against the earliest liability). If there is penalty and interest payable in respect of that liability, subsection (1) applies in relation to that liability.

26. Security for Payment of Tax

This section provides for the giving of security in relation to tax liabilities.

This section empowers the Secretary to require a person to give security for any tax liability, including a liability to arise in the future. An example of when the Secretary

may have good reason to require security is if a person establishes or carries on business in Nauru for a short time only. In this case, the business may cease before the completion of the reporting period to which the tax relates. In other words, the activity may commence and cease before the obligation to file a tax return for a reporting period arises. Another example of when the Secretary may have good reason to require security is if a taxpayer has a poor compliance history.

The Secretary can require security for payment of any amount treated as tax (including withholding tax) for the purposes of the Act (see the section 3 definition of “tax”).

The form and amount of the security is at the discretion of the Secretary. The security may be a bond, cash deposit or in some other form. The amount of the security is likely to be determined by reference to the amount of tax likely to be payable by the person.

27. Indemnity

This section provides a person paying tax on behalf of a taxpayer with a statutory indemnity for the payment.

Subsection (1) provides that the section applies to the following persons:

- (1) A person who has withheld tax from a payment under a tax law and remitted the tax to the Secretary.
- (2) A tax representative of a taxpayer who has paid tax owing by the taxpayer pursuant to section 12(1). “Tax representative” is defined in section 3. Section 12(1) obliges the tax representative of a taxpayer to pay the tax owing by the taxpayer.
- (3) A person who has paid an amount to the secretary pursuant to a garnishee notice served of the person under 32. In broad terms, a garnishee notice is served on a person who owes money to, or holds money on account of, a taxpayer who has an unpaid tax liability.

Subsection (2) provides that a person to whom the section applies is indemnified against any claim for payment of the amount paid to the Secretary.

In the case of withholding tax, the indemnity applies only when the tax has been both: (i) withheld; and (ii) remitted to the Secretary. There is no indemnity in relation to tax withheld but not remitted to the Secretary. In effect, the section treats a person withholding tax as if they had provided the gross amount including tax to the recipient so the recipient can have no right to recover from the person paying an amount from which tax was withheld the amount that was withheld as tax.

28. Late Payment Interest

This section provides for the imposition of interest (referred to as “late payment interest”) on the late payment of tax.

Subsection (1) imposes late payment interest on a person who fails to pay tax by the due date for payment. Late payment interest is computed for the period commencing on the due date for payment and ending on the date that the payment is made. Section 23(5) makes it clear that interest runs from the original due date for payment even when an extension of time is granted. The effect of an extension of time is to protect the taxpayer from a liability for late payment penalty (i.e. a culpability penalty) but not interest.

Late payment interest is payable in respect of the late payment of any amount that is treated as a tax for the purposes of the Act, including withholding tax. Thus, an employer or payer who fails to pay withholding tax by the due date as specified in section 21(1) of the *Employment and Services Tax Act 2014* is liable for late payment interest. As a penalty is “tax” as defined in section 3, late payment interest is payable in respect of the late payment of penalty. The due date for payment of a penalty will be specified in the notice of assessment of the penalty (see section 67(3)) and this will be the date that late payment interest runs from if the penalty is not paid by the due date.

The rate of late payment interest is [5% per annum] for the period that the tax liability remains unpaid. The interest rate is based on market interest rates but with a premium embedded to avoid taxpayers using the Government as a “bank”.

Subsection (2) provides for a refund of late payment interest to the extent that the primary tax liability in respect of which the interest has been paid is subsequently found not to have been payable.

Subsection (3) makes it clear that late payment interest is in addition to any late payment penalty (section 63) or criminal sanction (section 73) imposed in respect of the late payment of tax. Late payment interest is based on market interest rates and is compensating the Government for being without the funds represented by the unpaid tax, while a penalty or criminal sanction for late payment is punishing the taxpayer for the wrongdoing in making the late payment of tax.

Subsection (4) provides that late payment interest is computed as simple interest (i.e. there is no compounding). As late payment interest is computed by reference to a per annum interest rate, subsection (4) provides that late payment interest accrues on a daily basis. Subsection (5) provides that the late payment interest payable by a person for a day is a debt due to the Republic and is payable to the Secretary at the end of the day.

Subsection (6) provides that the Secretary may serve a person liable for late payment interest with a notice of the amount of interest payable by the person. Subsection (7) provides that a notice under subsection (6) may be included in any other notice issued by the Secretary to the person liable for late payment interest. For example, a notice of demand for late payment interest payable by a person may be included with a notice of a default assessment served on the person under section 19. Further, subsection (7) provides that a notice of the late payment interest payable by a person is prima facie evidence of the matters stated in the notice. Thus, the burden is on the person liable to prove that the claim for late payment interest is incorrect.

Subsection (8) provides that late payment interest payable by a person is treated as tax payable by a taxpayer for the purposes of Division 3 of Part 7. This means that the Secretary can rely on the collection and recovery provisions in Division 3 of Part 7 of the Act to collect any late payment interest due.

Subsection (9) applies when the Secretary notifies a person in writing of the person's outstanding tax liability under a tax law and the person pays the balance notified in full (including late payment interest payable up to the date of the notification) within the time specified in the notification. In this case, it is provided that late payment interest does not accrue for the period between the date of notification and the date of payment. As late payment interest accrues on a daily basis, the amount of late payment interest payable can be determined with certainty only up to the date of the notice. Thus, further late payment interest could accrue after a notice for payment is served on a taxpayer even if the tax is paid within the time specified under the notice. Thus, subsection (9) is a rule convenience to avoid small amounts of late payment interest remaining as an outstanding debt after the relevant tax is paid.

Subsection (10) applies when the late payment interest is imposed in respect of the late payment of withholding tax or secondary liability. "Withholding tax" defined in section 3 and, at the time of enactment, the following are withholding tax: (i) tax that an employer is required to withhold under section 16 of the *Employment and Services Tax Act 2014* from a payment of employment income; and (ii) tax that a payer is required to withhold under section 17 of the *Employment and Services Tax Act 2014* from a services fee paid to a non-resident person. "Secondary liability" is defined in section 3. In broad terms, a secondary liability is a tax liability of a taxpayer that another person is personally liable to pay. The due date for payment of a secondary liability is set out in the notice of the liability served under section 4(2). Subsection (10) provides that late payment interest payable by a person in respect of the late payment of withholding tax a secondary liability is a personal liability of the person. The person cannot recover it from the employee or payee, or, in the case of a secondary liability, the taxpayer liable for the primary liability. This is because the late payment is due to the culpability of the employer, payer or person liable for the secondary liability, and not the employee, payee or taxpayer with the primary liability, as the case may be.

29. Recovery of Unpaid Tax by Suit

This section provides for the recovery of unpaid tax by suit.

Subsection (1) provides that the Secretary may sue on behalf of the Government in any Court of competent jurisdiction for the recovery of unpaid tax. "Unpaid tax" is defined in section 3 to mean any tax that has not been paid by the due date or extended due date (if the Secretary has granted an extension of time to pay tax under section 23). It applies also to an amount treated as "tax" for the purposes of Division 3 of Part 7 of the Act under section 4(1) (customs duty) or section 4(3) (agency tax, a secondary liability and the costs of distress or seizure proceedings).

The due date for payment of customs duty is specified under the Customs legislation and the due date for payment of an agency tax is specified in the law providing for the

payment of the agency tax. The due date for payment of a secondary liability, or the costs of distress or seizure proceedings, is specified in the notice of liability served under section 4(2).

Subsection (2) provides a judgment debt procedure for the collection of unpaid tax. In debt collection proceedings, the production by the Secretary of a certificate setting out the name and address of the debtor and the amount of tax owing is conclusive evidence that the amount of tax stated on the certificate is due by the debtor. This subsection, in combination with section 40, makes it clear that a taxpayer cannot challenge a tax liability in debt recovery proceedings. The only basis on which a tax liability can be challenged is under the objection and appeal procedure in Part 8 of the Act.

30. Distress Proceedings

This section provides the Secretary with a statutory right to recover unpaid tax by distress proceedings against the personal property of a taxpayer.

The statutory right to recover unpaid tax by distress proceedings is set out in subsection (1). Importantly, the Secretary need not obtain a court order to initiate distress proceedings. The Secretary need only comply with subsections (1) and (2) to issue an order (“distress order”) in writing specifying: (i) the taxpayer; (ii) the tax liability; (iii) the property against which distress is to be executed; and (iv) the location of the property.

The power can be exercised only by the Secretary, in person, or by a tax officer specifically authorised to exercise the power under the section (“authorised officer”). Because of the serious nature of the power given to the Secretary under the section, an officer can exercise powers under this section only if specifically authorised to do so (see definition of “authorised officer” in section 3).

Subsection (3) gives the Secretary or authorised officer a statutory right of entry for the purposes of securing the property that is subject to the distress order. The Secretary or authorised officer may enter the premises specified in the order at any time. However a police officer must be present when the execution of a distress order requires entry to residential premises.

Subsection (5) provides for the identification and storage of the property distrained. The property distrained is to be identified by the attachment of a notice to the property stating –

**“PROPERTY IMPOUNDED FOR NOT COMPLYING WITH TAX
OBLIGATIONS BY ORDER OF THE SECRETARY UNDER
SECTION 30 OF THE REVENUE ADMINISTRATION ACT”.**

The property distrained can be kept at the premises at which the distress order was executed or such other location as the Secretary or authorised officer determines. The cost of storing the property is to be borne by the taxpayer. The costs of storing the property distrained form part of the costs of distress that may be recovered from the taxpayer by the Secretary or authorised officer (subsection (8)).

Subsection (6) provides that, if the taxpayer does not pay the tax liability specified in the distress order (plus the costs of distress) within the specified time, the property distrained by may be sold by the Secretary or authorised officer. In the case of perishable goods, the taxpayer must pay the tax liability within the period that the Secretary or authorised officer notifies the taxpayer in writing as reasonable having regard to the condition of the goods. “Perishable goods” are goods subject to decay or spoilage if not used or consumed within a short period, such as foodstuffs. In the case of other personal property, the taxpayer must pay the tax liability within ten days after the property has been secured in accordance with subsection (5)(a). If the tax liability is not paid within the relevant time, the Secretary or authorised officer may sell the property distrained by public auction or private treaty.

Subsection (7) provides for the application of the funds raised from the sale of the property distrained. The proceeds are to be applied: (i) first to the costs of taking, storing and selling the property; (ii) then in payment of the unpaid tax liability of the taxpayer as specified in the distress order; (iii) then in payment of any other unpaid tax liability of the taxpayer; and (iv) then the remaining proceeds are to be paid to the taxpayer.

Subsection (8) provides that, if the proceeds of the distress are less than sum of the costs of the distress and the taxpayer’s unpaid tax liability, the Secretary can proceed under Division 3 of Part 7 (including the judgment debt procedure in section 29) to recover the excess. For this purpose, section 4(3) treats the unpaid amount of the costs of the distress as tax payable by a taxpayer.

The following offences apply in relation to distress proceedings:

- (1) A person commits an offence when the person rescues or attempts to rescue any property distrained (section 75(1)(c)).
- (2) A person commits an offence when the person before, at, or after any distress proceedings staves, breaks, or destroys property subject to distress proceedings (section 75(1)(d)).
- (3) A person commits an offence when the person destroys documents relating to property distrained to prevent the securing of the property or the existence of proof of an offence (section 75(1)(d)).

31. Seizure and Forfeiture of Goods

This section provides the Secretary with the power to seize and forfeit goods in respect of which customs duty has not been paid or the Secretary or authorised officer has reasonable grounds to believe will not be paid.

Subsection (1) specifies that the section applies to goods in respect of which the Secretary or an authorised officer has reasonable grounds to believe that the customs duty that is, or will become, payable in respect of the import of the goods has not been, or will not be, paid.

The powers in the section can be exercised only by the Secretary, in person, or by a tax officer (“authorised officer”) specifically authorised to exercise the powers under the section (see section 3 definition of “authorised officer”). Because of the serious nature of the power given to the Secretary under the section, a tax officer can exercise powers under the section only when specifically authorised to do so.

Subsection (2) provides that the Secretary or authorised officer may seize any goods referred to in subsection (1). Subsection (3) obliges the Secretary or authorised officer to store any seized goods in a place approved by the Secretary or authorised officer for the purposes of storing such goods.

Subsection (4) obliges the Secretary or authorised officer to notify the owner, or the person who had custody or control of the goods at the time of seizure, of the fact that the goods have been seized. The notice must be in writing and served on the relevant person as soon as practicable after the seizure of the goods having regard to the condition of the goods. The rules in sections 54 and 55 apply for the purpose of serving a notice under subsection (4). If the goods are perishable goods, it would be expected that the notice would be served immediately. The notice must:

- (1) Identify the seized goods.
- (2) State that the goods have been seized under section 31 and the reason for seizure.
- (3) Include a statement setting out: (i) the terms for the release or disposal of the goods; and (ii) that if the goods are not claimed within the detention period specified in the notice, they will be forfeited to the Secretary.

Subsection (5) specifies the detention period for seized goods. In the case of perishable goods, the Secretary or authorised officer determines the period of detention having regard to the condition of the goods. “Perishable goods” are goods subject to decay or spoilage if not used or consumed within a short period, such as foodstuffs. In any other case, the goods must be detained for the greater of: (i) ten days after the date of seizure; or (ii) ten days after the due date for payment of the customs duty in respect of the import of the goods. The latter case arises if the goods have been seized in advance of the date for payment of the customs duty on the import of the goods. The ten-day detention period aligns with the detention period in distress proceedings under section 30. The detention period is intended to allow a reasonable time for the goods to be claimed in accordance with subsection (7).

Subsection (6) provides that the Secretary or authorised officer is not required to serve a notice under subsection (4) if, after making reasonable enquiries, there is insufficient information to identify the person on whom the notice should be served. In this situation, the goods are treated as forfeited to the Secretary at the end of the detention period.

Under subsection (7), the Secretary or authorised officer may deliver the seized goods to the person on whom a subsection (4) notice in respect of the goods has been served or a person able to prove legal title to the goods when the person has paid the customs duty owing or that will become owing in respect of the import of the goods, or the

person makes an arrangement satisfactory to the Secretary or authorised officer for such payment (which could include the giving of security under section 26).

If subsection (7) does not apply either because no notice is served under subsection (4) on any person or the person on whom a notice has been served does not claim the goods within the detention period specified in subsection (5), the goods are treated as forfeited to the Secretary under subsection (8).

Subsection (9) provides that the Secretary or authorised officer may dispose of forfeited goods by public auction or private treaty. The method of disposal is the same as for property distrained under section 30. Subsection (9) provides that the proceeds of sale must be applied as follows:

- (1) First, the proceeds are applied against the cost of taking, keeping, and selling the forfeited goods.
- (2) Second, the proceeds are then applied towards payment of the customs duty that is, or will become, payable in respect of the import of the goods.
- (3) Third, the Secretary retains the balance (if any) remaining. No amount is paid to the taxpayer because the goods have been forfeited to the Secretary under subsection (6) or (8).

Subsection (11) applies if the amount recovered on disposal of the forfeited goods is less than the sum of the tax due in respect of the goods and the costs associated with the seizure and sale of the forfeited goods. In this case, the Secretary can proceed under Division 3 of Part 7 (including the judgment debt procedure in section 29) to recover the shortfall from the owner of the goods or the person who had custody or control of the goods immediately before they were seized to recover the excess. This is possible only if the identity of the owner or person who had custody or control of the goods immediately before they were seized is known. For this purpose, the shortfall is treated as if it were unpaid tax under section 4(3).

The following offences apply in relation to proceedings for the seizure and forfeiture of goods:

- (1) A person commits an offence if the person rescues or attempts to rescue any seized goods (section 75(1)(c)).
- (2) A person commits an offence if the person before, at, or after the seizure of goods staves, breaks, or destroys goods subject to seizure (section 75(1)(d)).
- (3) A person commits an offence if the person destroys documents relating to seized goods to prevent the securing of the goods or the existence of proof of an offence (section 75(1)(d)).

32. Power to Collect Tax from Person Owning Money to a Taxpayer

This section empowers the Secretary to collect unpaid tax from a third party owing money to, or holding money for, a taxpayer without proceeding to execute a judgment debt. This is achieved by issuing a garnishee order on the third party.

Subsection (1) states two conditions that must be satisfied for the section to apply:

- (1) A taxpayer must be liable to pay tax or will become liable for tax. “Taxpayer” is defined in section 3 to mean a person liable to pay tax under a tax law. The section applies in relation to all amounts treated as taxes under the Act, including penalty and withholding tax. By virtue of section 4, the section applies also to the following amounts: customs duty, an agency tax, a secondary liability, and the costs of distress or seizure proceedings. Section 4 treats these amounts as “tax” for the purposes of the section.
- (2) The taxpayer must have either failed to pay the tax by the due date or extended due date (i.e. the tax is unpaid tax) or the Secretary has reasonable grounds to believe that the taxpayer will not pay the tax by the due date. Examples of the latter are when a taxpayer has been divesting assets or has a history of defaulting on its tax liabilities.

If the conditions in subsection (1) are satisfied, subsection (2) provides that the Secretary may serve a notice (referred to as a “garnishee notice”) on any person who is treated as a “payer” for the purposes of the section in respect of the taxpayer requiring the payer to pay the amount specified in the notice to the Secretary. The amount specified in the notice is not to exceed the amount of the unpaid tax or the amount that the Secretary reasonably believes will not be paid by the due date. If a notice has been validly served under subsection (2), the Secretary obtains a statutory right to payment that cannot be defeated by any subsequent dealing with, or action taken in respect of, the moneys referred to in the notice.

A notice under subsection (2) may be served on a “payer” as defined in subsection (12). “Payer” is defined in subsection (12) by reference to a “person” as defined in section 3. The broad definition of “payer” in section 3 means, for example, that a garnishee notice may be served on a Government department, agency, Court or any other Government body or authority if the body is a payer in respect of the taxpayer. There are four categories of payers in relation to a taxpayer. First, a garnishee notice may be served on a person who owes, or may owe, money to a taxpayer. This allows the Secretary to recover tax owing by a taxpayer from the debtors of the taxpayer, including persons who may become debtors of the taxpayer in the future. For example, the Secretary could use this section to require a financial institution to pay to the Secretary an amount standing to the credit of the taxpayer in an account with the financial institution. The notice, however, must not specify a date for payment to the Secretary that is before the date the amount becomes due to the taxpayer. In the above example, if the account is a term deposit, the notice could not require the financial institution to pay the amount over to the Secretary before the deposit matures.

Secondly, a garnishee notice may be served on a person who holds, or may hold, money on behalf of a taxpayer. This would include, for example, a lawyer or accountant who holds money on trust for the taxpayer as client. Again, the notice

must not specify a date for payment to the Secretary before the date that the money is held by the person for the taxpayer.

Thirdly, a garnishee notice may be served on a person who holds, or may hold, money on account of some other person for payment to the taxpayer. This would include, for example, a bank that has issued a letter of credit to a person when the taxpayer is the payee under the letter.

Fourthly, a garnishee notice may be served on a person having the authority of some other person to pay money to the taxpayer. This is intended to prevent the section from being avoided by a person owing money to, or on behalf of, the taxpayer directing another person to pay the amount to the taxpayer and then reimbursing that other person.

If a garnishee notice requires a payer to deduct an amount from a payment of salary, wages or other similar remuneration paid on a periodic basis, subsection (3) provides that the amount of each deduction is not to exceed 20% of the payment. This establishes a ceiling on the amount that can be deducted from salary, wages and other similar remuneration to ensure that a taxpayer has a basic amount to meet living expenses.

Subsection (4) provides that a garnishee notice can apply to an account in respect of which the taxpayer is a joint owner when either: (i) all the holders of the account have tax arrears; or (ii) the taxpayer can withdraw funds from the account without the signature or authorisation of the other account holders. If the joint account is a partnership account, subsection (4) applies only when all the partners have tax arrears.

Subsection (5) obliges a payer to pay the amount specified in a garnishee notice to the Secretary by the due date set out in the notice. However, that date must not be a date before the date that the amount of money to which the notice relates is due for payment to the taxpayer or held on the taxpayer's behalf.

Subsections (6) and (7) provide a procedure for a person to challenge a garnishee notice if they are not a payer as defined, or do not, or will not, owe or hold the amount specified in the notice. The Secretary is obliged to make a decision in relation to the payer's challenge to the notice. The Secretary can accept the payer's challenge in whole or part and amend the garnishee notice accordingly, or the Secretary can reject the challenge.

The Secretary's decision on a subsection (6) notice is a reviewable decision as defined in section 3. A person dissatisfied with the decision can refer the decision to the Minister for review under section 42.

Subsection (8) obliges the Secretary to revoke or amend a garnishee notice if the taxpayer has either paid the tax in whole or part, or made a satisfactory arrangement for payment of the tax, such as an agreement to pay by instalments.

Subsection (9) obliges the Secretary to serve the taxpayer with a copy of a garnishee notice served on a payer of the taxpayer under the section. This applies to a notice served on a payer under subsection (2), (7) or (8).

Subsection (10) requires the Secretary to apply any amount paid by a payer under this section against the tax owing by the taxpayer.

Subsection (11) provides that a payer who, without reasonable excuse, fails to comply with a notice under the section is personally liable for the amount specified in the notice. The amount is treated as a “secondary liability” for the purposes of the Act (see section 3 definition). Section 4(2) provides that the Secretary can serve a payer with a notice setting out the amount that a payer is personally liable for under subsection (11). The notice is prima facie evidence of the matters stated in the notice, including the amount of the personal liability. Thus, the burden is on the payer to prove that the amount stated on the notice is incorrect.

Section 4(3) treats the amount that a payer is personally liable for under subsection (11) as “tax” for the purposes of Division 3 of the Part 7 of the Act. This means, in particular, that the Secretary can rely on the powers in Division 3 of Part 7 of the Act to recover any amount that a payer is personally liable for under subsection (11). In addition, a payer who fails to comply with a subsection (2) notice commits an offence under section 75(1)(e).

Section 24(2) provides that a payer holds an amount specified in a garnishee notice in trust for the Government. This means that the amount does not form part of the funds of the payer. Consequently, if the payer were to go bankrupt before paying the amount to the Secretary, the amount specified in the garnishee notice does not form part of the funds available to the payer’s creditors. Instead, the amount must be paid to the Government.

Section 27 provides that a payer complying with a notice under this section is treated as having acted under the authority of the taxpayer and is thereby protected from any liability to the taxpayer in respect of the payment (for example, for breach of contract).

33. Transferred Tax Liabilities

This section is intended to counter arrangements for the avoidance of tax liabilities through transferring business assets to associates thereby rendering the transferor unable to pay their tax liability.

Subsection (1) applies if the following conditions are satisfied:

- (1) A taxpayer (referred to as the “transferor”) has a tax liability in relation to a business carried on by the taxpayer. The section applies to every person treated as a “taxpayer” for the purposes of the Act, including a person liable for withholding tax. It applies only when a taxpayer has a tax liability in relation to a business carried on by the taxpayer. It does not apply to tax liabilities arising from other activities that may be undertaken by a taxpayer.
- (2) The taxpayer has transferred all or some of the assets of the business to an associate (referred to as the “transferee”). “Associate” is defined in section 3 to have the same meaning as in section 4 of the *Employment and Services Tax*

Act 2014. In particular, an individual and a relative of the individual may be associates for the purposes of the Act (section 4(3) of the *Employment and Services Tax Act 2014*). The section could apply, for example, if a father has carried on a business and then transferred the business to one of his children thereby leaving the father with no assets against which the father's tax liability in relation to the business can be recovered.

If these conditions are satisfied, subsection (1) provides that the transferee is personally liable for the tax liability of the transferor. In other words, the tax liability goes with the business and is referred to as the "transferred liability".

Section 4(2) provides that the Secretary can serve a payer with a notice setting out the amount that a transferee is personally liable for under subsection (1). The notice is prima facie evidence of the matters stated in the notice, including the amount of the personal liability. Thus, the burden is on the transferee to prove that the amount of the transferred liability stated on the notice is incorrect.

Section 4(3) provides that the amount that a transferee is liable for under subsection (1) is treated as tax payable by a taxpayer for the purposes of Division 3 of Part 7. Thus the Secretary can rely on the powers in Division 3 of Part 7 to recover the amount of the transferred liability from the transferee.

Subsection (2) makes it clear that the operation of subsection (1) does not preclude the Secretary from recovering the whole or part of the transferred liability from the transferor.

34. Liability for Tax Payable by a Company

This section provides a mechanism for the collection of tax owing by a company from the directors and controlling shareholders of a company when an arrangement has been entered into to leave the company unable to pay its tax liabilities.

Subsection (1) applies if an arrangement has been entered into with the intention or effect that a company is unable to pay a tax liability under a tax law. The tax liability may be a liability that existed at the time the arrangement was entered into or a liability that arose thereafter. "Arrangement" is defined broadly in subsection (3) to mean any contract, agreement, plan, or understanding whether express or implied and whether or not enforceable in legal proceedings.

If these conditions are satisfied, each person who was a director or controlling member of the company at the time the arrangement was entered into is jointly and severally liable for the tax (including late payment interest (section 3(2)) liability of the company. Subsection (1) applies in relation to all amounts treated as "tax" for the purposes of the Act. The definition of "tax" in section 3 includes penalty and, therefore, a director or controlling member is liable for any penalty liability of the private company. While the definition of "tax" does not include late payment interest, section 3(2) provides that a reference to "tax" liability in the section includes any late payment interest payable in respect of a tax liability.

“Controlling member” is defined in section 3 to mean a member who has a direct or indirect beneficial interest in 50% or more of the voting, dividend, or return of capital rights attached to membership interests in the company. In computing the 50% threshold, the membership interests of associates are aggregated. “Associates” is defined in section 3 have the meaning under section 4 of the *Employment and Services Tax Act 2014*. The reference is to a “member” of, and “membership interest” in, a company rather than a “shareholder” or “shares” in case the company does not have shareholding, such as a company limited by guarantee. However, the main example of a “member” is a shareholder and the main example of a “membership interest” is shares.

Subsection (1) involves a “piercing of the corporate veil” in relation to the members of a company but is justified on the basis of the arrangement to leave the company unable to pay its tax liabilities.

Subsection (2) provides for defences to the application of subsection (1) for directors. A director is not liable under the subsection (1) if the director satisfies one of two defences. A director satisfies the first defence if all the following conditions are met:

- (1) The director derived no financial or other benefit from the arrangement.
- (2) Immediately on becoming aware of the arrangement, the director recorded with the company his or her dissent from the arrangement.
- (3) Immediately on becoming aware of the arrangement, the director notified the Secretary in writing of the arrangement.

A director satisfies the second defence if all the following conditions are met:

- (1) The director derived no financial or other benefit from the arrangement.
- (2) The Secretary is satisfied that, at the time the arrangement was entered into, the director was not involved in the executive management of the company.
- (3) The Secretary is satisfied that, at the time the arrangement was entered into, the director had no knowledge of, and could not reasonably have been expected to know of the arrangement.

The effect of subsection (1) is to create a personal liability in the director or controlling member for the tax (and late payment interest in relation to the tax) owing by the company. The amount is treated as a “secondary liability” for the purposes of the Act (see section 3 definition). Section 4(2) provides that the Secretary can serve a director or controlling shareholder with a notice setting out the amount that the director or controlling shareholder is personally liable for under subsection (1). The notice is prima facie evidence of the matters stated in the notice, including the amount of the personal liability. Thus, the burden is on the director or controlling shareholder to prove that the amount stated on the notice is incorrect.

Section 4(3) treats the amount that a director or controlling shareholder is personally liable for under subsection (1) as “tax” for the purposes of Division 3 of the Part 7 of

the Act. This means, in particular, that the Secretary can rely on the powers in Division 3 of Part 7 of the Act to recover any amount that a payer is personally liable for under subsection (1).

35. Temporary Closure of Business Premises

This section provides a procedure for the temporary closure of a taxpayer's business premises when the taxpayer fails to comply with certain tax obligations.

Subsection (1) provides that the section applies when the taxpayer regularly fails to pay withholding tax by the due date. "Taxpayer" is defined in section 3 to mean a person liable for tax under a tax law. "Tax" is defined in section 3 to include withholding tax. Thus, a person liable for withholding tax is a taxpayer for the purposes of the Act. "Withholding tax" is defined in section 3 to mean tax that a person is required to withhold from a payment under a tax law. At the time of enactment, the following amounts are withholding tax: (i) an amount that an employer withholds from employment income paid by the employer; and (ii) an amount that a payer withholds from a services fee paid by the payer.

The section applies only when the failure to pay withholding tax occurs "regularly". Thus, the section does not apply to a one-off failure to pay withholding tax or even if the failure occurs a few times (unless it indicates the start of a pattern of failure). The failure to pay withholding tax must be something that occurs frequently.

The power to temporarily close down business premises can be exercised only by the Secretary, in person, or by a tax officer specifically authorised to exercise the power under the section. Because of the serious nature of the power given to the Secretary under the section, a tax officer can exercise powers under this section only if specifically authorised to do so (see section 3 definition of "authorised officer").

There are several steps involved in the exercise of the power to temporarily close a taxpayer's business premises. First, the Secretary or authorised officer must provide the taxpayer with written notice of the intention to close down the whole or a part of the taxpayer's business (subsection (2)). The notice must allow the taxpayer seven days to pay the withholding tax due.

Secondly, if the taxpayer fails to comply with a notice under subsection (2), subsection (3) provides that the Secretary or authorised officer may issue an order to close down the whole or part of the taxpayer's business premises for a period not exceeding fourteen days. Subsection (4) empowers the Secretary or authorised officer to enter the business premises for the purposes of executing the order. Entry of the premises can take place at any time (day or night).

Thirdly, subsection (5) obliges the Secretary or authorised officer to seal the premises closed under a closure of business order and affix a notice to the premises in a conspicuous place, stating that the business premises are:

**"CLOSED TEMPORARILY FOR NOT COMPLYING WITH TAX
OBLIGATIONS BY ORDER OF THE SECRETARY UNDER
SECTION 35 OF THE REVENUE ADMINISTRATION ACT".**

Finally, if the taxpayer pays the tax owing within the period of closure, subsection (6) obliges the Secretary or authorised officer to immediately remove the seal and closure notice from the premises.

A person commits an offence if the person enters premises that are the subject of a closure of business order without permission of the Secretary (section 75(1)(h)).

36. Departure Prohibition Order

This section empowers the Secretary to issue a departure prohibition order (referred to as a “DPO”) against a taxpayer to prevent the taxpayer leaving Nauru without satisfying their tax liabilities or the tax liabilities of a company that they control.

Subsection (1) provides that the section applies when the Secretary or authorised officer has reasonable grounds to believe that a person may leave Nauru without paying:

- (1) Tax that is or will become payable by the person.
- (2) Tax that is or will become payable by a company in which the person is a controlling member. “Controlling member” is defined in section 3 to mean a member of the company who has a direct or indirect beneficial interest in 50% or more of the voting, dividend, or capital rights attached to membership interests in the company. In computing the 50% threshold, the membership interests of associates are aggregated. “Associates” is defined in section 3 to have the meaning in section 4 of the *Employment and Services Tax Act 2014*.

The section applies in respect of all amounts treated as tax for the purposes of the Act (see section 3 definition), including withholding tax and penalty. By virtue of section 4, it applies also in respect of customs duty, agency taxes, secondary liabilities and the costs of distress or seizure proceedings.

If the section applies, subsection (2) empowers the Secretary or authorised officer to issue a DPO to the Principal Immigration Officer. A DPO must contain the name and address of the person to whom the order applies and the amount of tax that is unpaid or that the Secretary or authorised officer believes will not be paid by the person or the company in which the person is a controlling member.

The power to issue a DPO can be exercised only by the Secretary, in person, or by a tax officer specifically authorised to exercise the power under the section. Because of the serious nature of the power given to the Secretary under the section, a tax officer can exercise power under the section only when specifically authorised to do so (see section 3 definition of “authorised officer”).

The decision to issue a DPO is a “reviewable decision” as defined in section 3. A person dissatisfied with the decision can apply to the Minister for review of the decision.

Subsection (3) obliges the Secretary or authorised officer to serve a copy of a DPO, as soon as practicable, on the person named in the order.

Subsection (4) obliges the Principal Immigration Officer to exercise the powers that the Officer lawfully possesses to prevent the person named in the DPO from departing Nauru. This could include the confiscation and retention of the person's passport.

Subsection (6) provides that a DPO remains in force until revoked by the Secretary. Subsection (6) specifies two circumstances when the Secretary must revoke a departure prohibition:

- (1) When payment is made in full of the tax liability to which the DPO relates. The payment may relate to the tax liability of the person to whom it has been issued or to the tax liability of a company in which the person is a controlling member.
- (2) An arrangement has been entered into that is satisfactory to the Secretary for payment of the tax liability to which the DPO relates. The arrangement may relate to the tax liability of the person to whom the DPO has been issued or a company in which the person to whom the DPO has been issued is a controlling member. An arrangement may involve the giving of security under section 26.

Subsection (7) provides that, as soon as practicable after making a decision to revoke a DPO, the Secretary must serve notice of the revocation on the Principal Immigration Officer and on the person named in the DPO.

Subsection (8) provides an indemnity against civil or criminal action to the Principal Immigration Officer, the Secretary, an officer authorised to act under the section, or a Customs, immigration, police, or other officer for anything lawfully done under the section.

A person who departs, or attempts to depart, Nauru in contravention of a DPO commits an offence (section 75(1)(h)).

37. Refund of Overpaid Tax

This section provides for refunds of overpaid tax.

Subsection (1) provides that a taxpayer may apply for a refund of overpaid tax. The application must be in the form approved by the Secretary for refunds (section 52) and be submitted within two years from the date on which the tax was paid.

Subsection (2) makes it clear that a taxpayer can apply under subsection (1) for a refund of overpaid tax only when the refund does not require the making of an amended assessment. An example of when subsection (1) applies is when a taxpayer has inadvertently overpaid an amount of tax due to a clerical error. If an amended assessment needs to be made to support the refund, then the taxpayer must rely on section 29(2) (in the case of a self-assessment), or the objection procedure in section 41 in relation to other assessments (the amended assessment being made as a result of

a successful objection to the original assessment). Subsection (2) ensures that the formal processes for amending assessments are not avoided through the refund procedure.

Subsection (3) obliges the Secretary to serve an applicant under subsection (1) with notice of the Secretary's decision on the application. If the Secretary refuses the refund application, section 39 obliges the Secretary to provide the applicant with reasons for the refusal. The Secretary's decision on a refund application is treated as a tax decision for the purposes of the Act (see the section 3 definition of "tax decision") and, therefore, the applicant can challenge the decision only by lodging an objection to the decision under section 41.

If a refund application has been made under subsection (1) and the Secretary is satisfied that a taxpayer has overpaid tax, subsection (4) requires the Secretary to apply the overpayment as follows:

- (1) First, the overpayment must be applied against any other tax owing by the taxpayer under the same tax law (subsection (3)(a)). For example, if there has been an overpayment of withholding tax payable in respect of a calendar month and there is an unpaid amount of withholding tax for another calendar month, the overpayment must be first applied against that other withholding tax liability.
- (2) Secondly, any remaining part of the excess must be applied against any tax owing under any other tax law (subsection (3)(b)).
- (3) Thirdly, any further remaining part of the overpayment must be refunded to the taxpayer (subsection (3)(c)).

38. Erroneous Refund of Tax

This section provides for the recovery by the Secretary of erroneous refunds of tax.

Subsection (1) provides that, when a person has benefited through error from a refund of tax under a tax law, the person is liable to repay the amount of the erroneously refunded tax, together with late payment interest, to the Secretary. Late payment interest is computed in accordance with section 28 from the date that the erroneous refund was made until the date that it is repaid to the Secretary. The Secretary can recover the erroneously refunded tax and interest thereon by letter of demand. The decision to claim a repayment of a refund of tax is treated as a tax decision for the purposes of the Act (see section 3 definition of "tax decision"). A person dissatisfied with a claim for a repayment of a refund can challenge the decision only by lodging an objection to the decision under section 41.

Subsection (2) provides that, if the Secretary has made a demand under subsection (1) for the repayment of erroneously refunded tax, the amount to be repaid is due on the date set out in the letter of demand. The date must not be less than thirty days from the date of service of the letter of demand.

Subsection (3) provides that the amount of the erroneous refund is treated as tax payable by a taxpayer for the purposes of Division 3 of Part 7 of the Act. This means that the Secretary can rely on the powers in Division 3 of Part 7 of the Act to recover an unpaid amount of an erroneous refund.

A person who has made an erroneous claim for a refund is likely to have made a false or misleading statement to a tax officer and, therefore, may be liable for a tax shortfall penalty under section 64 or prosecuted for an offence under section 74.

39. Statement of Reasons

This section applies to a decision by the Secretary to refuse an application made by a person under a tax law (such as an application for an extension of time under section 15 (tax returns) or 23 (payment of tax)). The section obliges the Secretary to provide the person with a statement of reasons for the refusal. This is intended to achieve greater efficiency in tax administration as it provides the applicant with the information necessary to determine whether they should challenge the decision.

40. Conclusiveness of Tax Decisions

This section provides for conclusiveness of tax decisions.

Subsection (1)(a) provides that a tax decision is final and conclusive. The decision cannot be disputed in a Court, or in any other proceedings, on any ground whatsoever. The only exception is objection and appeal proceedings under Part 8 of the Act. “Tax decision” is defined in section 3 and includes an assessment made under the Act (such as a default, advance, or amended assessment, or an assessment of penalty), or an assessment made under any other tax law (such as assessment made under the general anti-avoidance provision in section 27 of the *Employment and Services Tax Act 2014*).

Subsection (1)(b) provides that, except in proceedings under Part 8, the production of the original notice of a tax assessment or a copy of such notice under the hand of the Secretary is conclusive evidence of the making of the assessment and that the amount and particulars of the assessment are correct. Subsection (2) applies when the Secretary has served a notice of assessment electronically. In this case, a certificate under the hand of the Secretary identifying the assessment and specifying the details of the electronic transmission of the assessment is treated as a copy of the notice of assessment for the purposes of subsection (1)(b).

Subsection (1)(c) applies to self-assessments. It provides that, except in proceedings under Part 8, the production of the original self-assessment return or a copy of the return under the hand of the Secretary is conclusive evidence of the contents of the return. In other words, it is conclusive evidence of the correctness of the amount and particulars of the self-assessment. Subsection (3) applies when a taxpayer has submitted a self-assessment return electronically. In this case, a certificate under the hand of the Secretary identifying the self-assessment and specifying the details of the electronic transmission of the return is treated as a copy of the return for the purposes of subsection (1)(c).

Subsection (4) provides that the following are proceedings under Part 8:

- (1) An objection to a tax decision made by a taxpayer under section 41.
- (2) An appeal made to the Supreme Court under section 43 in relation to an objection decision.

The purpose of the section is to ensure that a tax decision can be challenged only under the objection and appeal procedure in Part 8 of the Act. This means, for example, that a taxpayer cannot challenge the correctness of a tax assessment in any debt recovery proceedings initiated by the Secretary. In other words, the objection and appeal procedure is the exclusive source of a taxpayer's right to challenge a tax decision and under that procedure strict time limits apply. This ensures that there is timely resolution of disputes relating to tax decisions.

41. Objection to Tax Decision

This section provides for the first step in the procedure for challenging tax decisions, namely the lodgement of an objection to the decision. This is a prerequisite for external review of a tax decision. Failure to lodge an objection within the time specified may preclude the taxpayer from subsequently appealing the decision to the Supreme Court.

Subsection (1) provides that a taxpayer who wishes to dispute a tax decision must first lodge an objection to the decision with the Secretary. "Tax decision" is defined in section 3. The main example of a tax decision is a tax assessment made under the Act (such as a default, advance or amended assessment) or made under another tax law (such as assessment made under the general anti-avoidance provision in section 27 of the *Employment and Services Tax Act 2014*). Other decisions made by the Secretary that are tax decisions for the purposes of the Act are:

- (1) A determination made under section 13(2) of the amount of tax that is, or will become, payable by a taxpayer, being a liability that an appointed person must pay. The amount is notified to the appointed person under section 13(2).
- (2) A determination of the amount of a secondary liability. This is an amount of a tax liability of a taxpayer that another person is personally liable for under section 12(4), 13(3)(c), 32(11), 33(1) or 34(1). The Secretary serves a personal liable for a secondary liability with notice of the liability under section 4(2).
- (3) A decision made by the Secretary under section 21(2) on an application by a self-assessment taxpayer for an amendment to a self-assessment.
- (4) A decision made by the Secretary under section 37 on an application for a refund.
- (5) A decision by the Secretary under section 38 requiring a person to repay a refund.

An objection must be in writing and lodged with the Secretary within thirty days of service of the notice of the tax decision.

Subsection (2) sets out the following conditions for an objection to be validly lodged:

- (1) The notice of objection must state: (i) the grounds of objection; (ii) the adjustments required to be made to correct the tax decision; and (iii) the reasons for the adjustments. The statement of the grounds of the objection must be sufficiently detailed so as to make the Secretary aware of the particular aspects of the tax decision that the taxpayer considers erroneous and the reasons for the taxpayer's view. A statement of vague grounds, such as, in the case of a tax assessment, that the amount of the assessment is "excessive", is not sufficient to amount to a valid objection.
- (2) In the case of an objection to a tax assessment, the taxpayer must have paid the tax due under the assessment that is not in dispute and [30%] of the disputed tax.

If the conditions in subsection (2) are not satisfied, the objection is not regarded as validly lodged. This is important because the time limit for lodging an objection under subsection (1) is strict. If an objection is not validly lodged within the time specified in subsection (1), the right to challenge the assessment will be lost unless the Secretary grants an extension of time to lodge the objection under subsection (6). For this reason, subsection (3) obliges the Secretary to immediately notify the taxpayer if the Secretary considers that an objection has not been validly lodged. This is intended to allow the taxpayer to validly re-lodge the objection before the time limit in subsection (1) expires.

Subsection (4) provides for objections to amended assessments. In such a case, the taxpayer is limited to objecting to the alterations and additions made in the amended assessment to the original assessment. This ensures that the making of an amended assessment does not refresh the taxpayer's objection period to the original assessment. The effect of subsection (4) is as follows:

- (1) The taxpayer has 30 days from the date of service of the notice of the amended assessment to object to the alterations and additions made to the original assessment by the amended assessment.
- (2) The taxpayer has 30 days from the date of service of the notice of the original assessment to object to the parts of the original assessment not affected by the amended assessment.

Subsection (5) provides that a person may apply, in writing, to the Secretary for an extension of time to lodge an objection. Subsection (6) empowers the Secretary to grant an extension of time if satisfied of the following:

- (1) The taxpayer was prevented from lodging the notice of objection within the period specified in subsection (1) due to absence from Nauru, sickness, or other reasonable cause. The Secretary may consider that a taxpayer has a reasonable cause for being unable to lodge an objection on time if the taxpayer suffers from some misadventure (such as loss of records due to an accident or natural cause).

- (2) There has been no unreasonable delay on the part of the taxpayer in lodging the notice of objection.

If the Secretary refuses an application for an extension of time to lodge an objection, section 39 obliges the Secretary to provide the applicant with a statement of reasons for the refusal.

The Secretary's decision on an extension of time application is a "reviewable decision" as defined in section 3. An applicant dissatisfied with the decision can apply to the Minister under section 42 for a review of the decision.

If an objection has been validly lodged within time, subsection (7) obliges the Secretary to consider the objection and make a decision on the objection (referred to as an "objection decision"). The Secretary may either allow the objection in whole or part, or disallow it.

Subsection (8) obliges the Secretary to serve the taxpayer with notice in writing of the objection decision. Service of the notice of the objection decision starts the time running for lodging a notice of appeal with the Supreme Court under section 43. Further, the Secretary must take all steps necessary to give effect to the objection decision, including the making of an amended assessment in relation to a tax decision that is a tax assessment (this will be necessary if the Secretary allows an objection to a tax assessment in whole or part).

Subsection (9) requires that the notice of an objection decision must include a statement of the Secretary's findings on the material facts relating to the objection and the reasons for the objection decision. This is intended to provide the taxpayer with sufficient information to determine whether to appeal the objection decision to the Supreme Court under section 43. An objection decision is an "appealable decision" as defined in section 3. A person dissatisfied with an objection decision can appeal the decision to the Supreme but only on a point of law.

Subsection (10) provides that, if an objection decision is not made within sixty days from the date that the objection was lodged, the Secretary is treated as having made a decision to disallow the objection. This allows the person objecting to appeal the tax decision to the Supreme Court without undue delay.

42. Review by Minister of Reviewable Decision

This section provides for the review of reviewable decisions by the Minister.

Subsection (1) provides that a person dissatisfied with a reviewable decision may apply to the Minister for review of the decision. "Reviewable decision" is defined in section 3 to mean any decision of the Secretary other than: (i) a tax decision; (ii) a decision made in the course of making a tax decision; or (iii) an objection decision. A tax decision is excluded from the definition of "reviewable decision" because a separate review process applies to tax decisions. A tax decision is challenged through the objection procedure in section 41. A decision made in the course of making a tax decision is excluded from the definition of "reviewable decision" because the decision

is reviewed under the objection procedure as part of reviewing the tax decision. An objection decision is a decision made by the Secretary under section 41 in relation to an objection to a tax decision. An objection decision is subject to appeal to the Supreme Court under section 43.

Subsection (2) provides that an application for review of a reviewable decision must be made in writing and set out the reasons for the decision. The application must be lodged with the Minister within thirty days of service of the notice of the reviewable decision or within such further period as the Minister may allow.

Subsection (3) provides that the Minister may exercise all the powers and discretions of the Secretary in reviewing a reviewable decision. In particular, the Minister can re-exercise any discretion that has been exercised by the Secretary. In other words, the Minister “steps into the shoes” of the Secretary.

Subsection (4) provides for the Minister’s decision. If the Minister decides that the secretary has correctly made the reviewable decision, the Minister must affirm the decision. When the Minister wholly or partly agrees with the applicant’s reasons for challenging the decision, the Minister may vary or set aside the decision.

43. Appeal to Supreme Court

This section provides for the appeal of appealable decisions to the Supreme Court.

Subsection (1) provides that a person dissatisfied with an appealable decision may appeal the decision to the Supreme Court. “Appealable decision” is defined in section 3 to mean an objection decision or a decision of the Minister on a review of a reviewable decision under section 42.

An appeal to the Supreme Court is limited to a question of law. While the distinction between questions of law and questions of fact may not always be easy to draw in particular cases, some broad principles may be stated. First, the question of what actually happened is a question of fact that can be decided only by the Secretary or Minister. For example, the question of whether an employee has actually received a particular amount from an employer is a question of fact. The Secretary (as the original decision-maker) decides this question and the decision cannot be appealed to the Supreme Court. Secondly, the interpretation of a particular section in a tax law is a question of law, and therefore, the decision of the Secretary or Minister on such a question may be appealed to the Supreme Court. Thirdly, a question of whether particular facts ascertained fall within a particular section of a tax law is regarded as a question of law. Again, the decision of the Secretary or Minister can be appealed to the Supreme Court. For example, the question of whether an amount received by an employee is employment income is a question of law, and therefore, the decision of the Secretary on this question may be appealed to the Supreme Court.

Thus, the Supreme Court reviews the legality of an appealable decision. This means that an appeal to the Supreme Court will be successful only if the Secretary or Minister, as the case may be, is found to have made an error of law that resulted in a decision different to that which would have been made if there had been no error of

law. Generally, the Supreme Court will make its decision based on the findings of fact, and the inferences drawn from those facts, by the Secretary or Minister.

Subsection (2) provides that the person appealing an appealable decision must lodge the notice of appeal with the Supreme Court within thirty days of the person being served with notice of the decision. The Supreme Court may extend the time for lodging an appeal.

Subsection (3) provides that the notice of appeal must state fully the grounds of appeal. The Supreme Court may reject a notice of appeal that fails to adequately set out the grounds of appeal.

Subsection (4) provides that the notice of appeal does not affect the operation or implementation of the appealable decision. For example, the Secretary can proceed to recover tax due under a tax assessment even though the tax assessment is the subject of an appeal. However, subsection (5) provides that the Supreme Court may make an order staying or otherwise affecting the operation or implementation of so much of the decision as the Supreme Court considers appropriate to effectively hear and decide the appeal.

Subsection (6) obliges the Supreme Court to hear the appeal and make such order as it considers appropriate by reason of its decision. If an appeal is wholly or partly allowed, the Supreme Court may either remit the matter to the Secretary (objection decision) or Minister (reviewable decision), or finally dispose of the matter itself. As the appeal to the Supreme Court is from the decision of the Secretary or Minister, it may be appropriate in some cases to remit the matter to the Secretary or Minister, as the case may be, for further consideration. For example, the Supreme Court may consider that further findings of fact are necessary before a correct decision on an objection can be made. Alternatively, the Supreme Court may make a decision that finally disposes of the matter. For example, it may order that a tax assessment is amended. This is likely to occur when the Secretary has found all the facts necessary to enable a decision to be made by the Supreme Court.

54. General Provisions Relating to Objections and Appeals

This section provides for general rules relating to objections and appeals.

Subsection (1) provides that, in any proceeding under Part 8 in relation to a tax decision, the burden of proof is on the taxpayer. The following are proceedings under Part 8 that relate to a tax decision: (i) the lodging of an objection to a tax decision under section 41; and (ii) an appeal of an objection decision to the Supreme Court under section 43. “Tax decision” is defined in section 3. The main example of a tax decision is a tax assessment.

Subsection (1) provides that, in any of these proceedings, the burden is on the taxpayer to prove that the tax decision is incorrect. Importantly, there is no obligation on the Secretary to prove that a tax decision is correct. The reason for reversing the burden of proof is that information relating to a tax decision, particularly a tax assessment, is peculiarly in the knowledge of the taxpayer to whom the decision relates. As objection and appeal proceedings are civil proceedings, the taxpayer must

prove their case on the balance of probabilities. In other words, the taxpayer must establish that it is more likely than not that the position is as they allege.

Subsection (2) provides that in an appeal to the Supreme Court in relation to an objection decision (see section 41(7)), a taxpayer is limited to the grounds set out in the objection, although the Supreme Court has discretion to grant the person leave to add new grounds. It is not intended that there be any limit on the type of grounds that may be added to support an application for an appeal to the Supreme Court. In fact, the Supreme Court may permit a taxpayer to add entirely new grounds for arguing that a tax decision is incorrect. This is the case even if the Supreme Court is required to consider matters not considered by the Secretary in making the original decision or the objection decision. This ensures that the Supreme Court focuses on issues of substance relating to the tax decision in dispute.

While the power to permit a taxpayer to add new grounds is discretionary, it is expected that the Supreme Court will generally exercise the discretion in the taxpayer's favour. Examples of cases when the Supreme Court may refuse to grant leave to add new grounds include:

- (1) When the Supreme Court believes that the taxpayer has acted in bad faith in not including the grounds in its objection.
- (2) When the adding of the new grounds will prejudice the Secretary in some way that cannot be adequately compensated for by an order of costs.
- (3) When the new grounds are clearly futile or pointless.

45. Production of Documents

This section provides the Secretary with an administrative summons power.

The power is stated broadly. The only limits on the exercise of the power are that it be exercised for the purposes of administering a tax law (defined in section 3) and the general law requirement that an administrative power be exercised in good faith. Section 4(1) provides that the reference to “tax law” in the section includes the Customs Act. Thus, the section applies also for the purposes of customs duty.

The scope of the power is set out in subsection (1). There are three ways in which the power may be used. First, the Secretary may serve a notice, in writing, on any person requiring the person to furnish the Secretary with any information required by the notice (subsection (1)(a)). The notice may be served on any person whether or not liable for tax under a tax law. The person served with the notice must furnish the information sought within the time specified in the notice.

Secondly, the Secretary may serve a notice, in writing, on any person requiring the person to attend and give evidence regarding the tax affairs of that person or any other person (subsection (1)(b)). Again, the notice may be served on any person whether or not liable for tax under a tax law.

Thirdly, the Secretary may serve a notice in writing on any person requiring the person to produce any documents in the person's custody or under the person's control as specified in the notice (subsection (1)(c)). Again, the notice may be served on any person whether or not liable for tax under a tax law. "Documents" is defined in section 3 and includes documents in electronic format. Documents are regarded as in the custody of a person if the person has physical possession of them (for example, an accountant may have actual possession of a client's accounts). Documents are under the control of a person when the person, while lacking physical possession, has the right or power to require another person to produce them.

A notice under subsection (1) must be served in accordance with subsection (2). Thus, the notice must be served personally on the person or left at the person's last known or usual place of business or abode. This section applies to the exclusion of the normal rules for service in section 54.

Subsection (3) provides that the Secretary may require that a person provides the information or evidence required on oath, either verbally or in writing. For this purpose, the Secretary is empowered to administer the oath. It is also provided that the Secretary can require that the information or evidence to be verified by statutory declaration.

It is expressly provided in subsection (4) that the section overrides any rule of law relating to privilege (for example, legal professional privilege or the privilege against self-incrimination) or to the public interest in relation to the giving of information or the production of documents (including in electronic format). It also overrides any contractual duty of confidentiality, such as a bank's duty of confidentiality in relation to customer records. As stated above, the only limits on the exercise of the power are that it be exercised for the purposes of administering a tax law and the general law requirement that an administrative power be exercised in good faith.

A person who fails to comply with a notice under this section is guilty of an offence under section 76(1).

46. Power to Enter and Search

This section provides the Secretary with a statutory right of access for the purposes of administering a tax law.

The statutory right of access provided for in the section is broadly stated. The only limits on the exercise of the power are that it be exercised for the purposes of administering a tax law (defined in section 3) and the general law requirement that an administrative power be exercised in good faith. Section 4(1) provides that the reference to "tax law" in the section includes the Customs Act. Thus, the section applies also for the purposes of customs duty.

The access power provided for in the section may be exercised by the Secretary or by a tax officer specifically authorised by the Secretary for the purposes of the section. Because of the serious nature of the power given to the Secretary under the section, a tax officer can exercise powers under this section only if specifically authorised to do so (section 3 definition of "authorised officer"). However, it is intended that a tax

officer will be authorised generally to exercise the powers in this section, rather than being authorised for each specific exercise of the right of access.

The scope of the statutory right of access is set out in subsection (1). Paragraph (a) provides that the Secretary or authorised officer must have full and free access to any premises, place, goods, property, documents, or data storage device. "Documents" is defined broadly in section 3 and includes documents in electronic format. The reference to a data storage device is intended to be interpreted broadly to include all means of electronic storage of information, such as computers, mobile phones, digital cameras, mp3 players, iPods, iPads and Blackberrys.

The reference to "premises" means both business and residential premises. However, subsection (2) provides that a police officer must be present when the Secretary seeks access to residential premises.

The access provided for in paragraph (a) must be available at all times. Ordinarily, it would be expected that the access power would be exercised during normal business hours, but there may be occasions when the power has to be exercised outside of that time, particularly if there is a concern that documents may be destroyed.

The premises, place, goods, property, documents, or data storage device do not have to belong to the taxpayer under investigation. They can belong to any person and access is available provided it is for the purposes of administering a tax law. For example, in paragraph (a) may be used to gain access to documents kept by the taxpayer's accountant or in a bank safety deposit box.

The Secretary or authorised officer is not required to give advance warning of the exercise of the right of access, although the Secretary or authorised officer may choose to do so in particular cases.

Further, it is intended that paragraph (a) authorises a "roving enquiry", i.e. when the Secretary or authorised officer merely suspects that the access may provide relevant information. In particular, it is not necessary for the Secretary or authorised officer to specify in advance the documents sought.

Paragraph (b) provides the Secretary or authorised officer with the power to make an extract from, or copy of, any documents to which access is sought under paragraph (a). This includes documents in electronic format on a data storage device. For example, the Secretary or authorised officer can make an electronic copy of documents by downloading the documents onto a USB stick.

Paragraph (c) authorises the Secretary or authorised officer to seize any documents that, in the opinion of the Secretary or authorised officer, affords evidence that may be material in assessing the tax liability of a taxpayer. The power of seizure, therefore, is more specific than the paragraph (b) access power in that it may only be exercised in relation to the determination of the tax liability of a taxpayer, rather than being exercised generally for the purposes of administering a tax law.

Paragraph (d) provides that the Secretary or authorised officer may retain any document seized under paragraph (c) for so long as it is required for determining the

taxpayer's tax liability or for any proceedings under a tax law. If the investigation results in a default assessment or an amended assessment that is disputed by the taxpayer and subsequently appealed to the Supreme Court, the Secretary or authorised officer can retain the seized documents until the Supreme Court proceedings are concluded.

Paragraph (e) empowers the Secretary to seize a data storage device if a hard or electronic copy of information stored on the data storage device is not provided. The data storage device can be retained only for as long as it takes to copy the information required.

Subsection (3) provides that a tax officer must not enter or remain on any premises or place if, upon request by the owner or lawful occupier, the officer is unable to produce the Secretary's written authorisation permitting the officer to exercise powers under subsection (1). The request can be made by the owner of the premises or place or any other person lawfully occupying the premises or place, such as a tenant or employee of the owner. Thus, the failure by an officer to produce the authorisation when requested to do so removes the officer's statutory right of access. However, the officer may still be entitled to remain on the premises pursuant to some other right, for example, at the invitation of the owner or lawful occupier.

Under subsection (4), the owner or lawful occupier of the premises or place to which access under subsection (1) is sought must provide all reasonable facilities and assistance for the effective exercise of the access power. This expressly includes answering questions relating to the exercise of the access power. This would include, for example, indicating the location of accounts, opening locked storage facilities (or at least providing the key), providing access to computers, and providing adequate lighting, power, and workspace. It also expressly includes providing access to decryption information necessary to decrypt data to which access is sought under the section.

The obligation in subsection (3) falls on the owner or lawful occupier of the premises or place. The reference to lawful occupier would include, for example, a tenant or employee of the owner. A person who fails to provide all reasonable facilities and assistance as required by subsection (3) is guilty of an offence under section 76(2).

Subsection (5) entitles the owner of documents seized under subsection (1)(c) or a data storage device seized under subsection (1)(e) to have access to them during normal business hours while they are in the custody of Revenue Authority. Access is provided on such terms and conditions as the Secretary or authorised officer may specify. It is expected that access to a seized data storage device would be subject to strict supervision to avoid the owner destroying any files on the device.

Subsection (6) requires that the Secretary or authorised officer signs for all documents or data storage devices removed and retained under subsection (1).

The section is the legal basis for the conduct of field audits of taxpayers by the Revenue Office, particularly of self-assessed liabilities. For this reason, the access power is stated in broad terms. It is expressly provided in subsection (7) that the section overrides any rule of law relating to privilege (for example, legal professional

privilege or the privilege against self-incrimination) or to the public interest in relation to the access to premises or places, or the production of, or access to, property (such as a data storage device) or documents (including in electronic format). It also overrides any contractual duty of confidentiality, such as a bank's contractual duty of confidentiality in relation to customer records.

47. Binding Public Rulings

This section provides for a system of binding public rulings.

Subsection (1) provides that the Secretary may make a public ruling setting out the Secretary's interpretation on the application of a tax law. A public ruling states the Secretary's interpretation of the application of a tax law in the circumstances specified in the ruling and is intended to achieve consistency in the administration of the tax laws and provide guidance to taxpayers (particularly for the purposes of making self-assessments). A public ruling will be of general application and not specific to a particular taxpayer or taxpayers, although the circumstances of a particular taxpayer may be the initial reason for the making of the statement of practice. A public ruling is made in accordance with section 48.

Subsection (2) states that a public ruling properly made in accordance with section 48 is binding on the Secretary until withdrawn in accordance with section 49. This means, for example, that the Secretary cannot assess a taxpayer in a way that is contrary to a public ruling validly in force for the reporting period relevant to the assessment. Making public rulings binding on the Secretary provides taxpayers with certainty in making self-assessments.

As a public ruling is not law, subsection (3) provides that a public ruling is not binding on taxpayers. Taxpayers are free to prepare their returns (particularly returns that are self-assessments) as they see fit. If a taxpayer prepares a return (or self-assessment) in a way that is contrary to a public ruling, it is for the Secretary to decide whether to amend the taxpayer's self-assessment under section 21. If the Secretary assesses in accordance with a public ruling, the taxpayer may challenge the resulting assessment or amended assessment under Part 8 of the Act.

48. Making a Public Ruling

This section provides for the making of a public ruling.

Subsection (1) provides that the Secretary makes a public ruling by publishing a notice of the ruling in the Gazette.

Subsection (2) provides that a public ruling must state that it is a public ruling. It must have a number and a subject heading for the purposes of identification.

Subsection (3) provides that a public ruling has effect from the date specified in the public ruling. If no date is specified, it has effect from the date of publication in the Gazette.

A public ruling simply states the Secretary's opinion on how a tax law applies in specified circumstances. As a statement of opinion only, it has no legal effect on taxpayers (see section 47(3)) and, therefore, is not a decision of the Secretary. Subsection (4) makes this clear by providing that a public ruling is a statement of the Secretary's opinion and, as such, is not a decision of the Secretary for the purposes of the Act or any other law. Thus, a public ruling is not a tax decision, reviewable decision or an appealable decision and cannot be challenged under the objection and appeal procedure in Part 8, or on any other legal basis (such as judicial review of administrative). A taxpayer can only challenge a decision made by the Secretary based on a public ruling (such as a default or amended assessment).

49. Withdrawal of a Public Ruling

This section provides for the withdrawal of a public ruling.

Two bases of withdrawal are specified. First, subsection (1) provides that the Secretary can withdraw a public ruling by publishing a notice of withdrawal in the Gazette. In this case, subsection (3)(a) provides that the ruling is withdrawn from the later of: (i) the date specified in the notice of withdrawal; or (ii) the date that notice of withdrawal is published in the Gazette

Secondly, subsection (2) provides that a public ruling is withdrawn if legislation is passed or a later public ruling is published that is inconsistent with it. If the legislation or later ruling is only partly inconsistent with the ruling, the ruling is withdrawn but only to the extent of the inconsistency. Subsection (3)(b) provides that a ruling is treated as withdrawn, in whole or part, from the date that the legislation or later ruling applies.

Subsection (4) provides that a public ruling that is withdrawn continues to apply to a transaction that was entered into before the ruling was withdrawn. It does not apply to a transaction entered into after the ruling was withdrawn to the extent of the withdrawal.

50. Other Advice Provided by the Revenue Office

The section provides that no guidelines, publication, or other advice (oral or in writing) provided by the Revenue Office is binding on the Secretary except a public ruling binding under section 47.

51. Official Language

This section provides that any business transacted with the Revenue Office under the tax laws must be in English.

The section provides that the English language is the official language of the tax laws and the Secretary may refuse to recognise any communication or document that is not in the official language. Related to this is the requirement under section 14(1)(a) that the documents required under the tax laws must be kept in the English language. Failure to keep documents in English may give rise a penalty under section 61 or prosecution for offence under section 70.

52. Approved Form

There are many provisions in the tax laws that require documents to be in the approved form. This section sets out the requirements that must be satisfied for a document to be filed or lodged in the approved form.

The section applies when a tax return, application, notice, statement or other document is required by a tax law to be filed or lodged in the approved form.

Subsection (1) provides that a tax return, application, notice, statement or other document is in the approved form when three conditions are satisfied:

- (1) The tax return, application, notice, statement or other document is filed or lodged in the form approved by the Secretary for the particular tax return, application, notice, statement or other document. For example, section 20(2) of the *Employment and Services Tax Act 2014* requires an employer to file a withholding tax return in the form approved by the Secretary for such returns.
- (2) The tax return, application, notice, statement or other document must contain all the information required by the form, including any attached documents required. Consequently, a tax return, application, notice, statement or other document that is incomplete is not in the approved form and, therefore, not regarded as properly filed or lodged.
- (3) If required by the form, the tax return, application, notice, statement or other document must be signed. Again, a return, application, notice, statement or other document that is not signed as required by the form is not in the approved form and, therefore, not regarded as properly filed or lodged.

Subsection (2) obliges the Secretary to notify a person, in writing, if a tax return, application, notice, statement, or other document filed or lodged by the person is not in the approved form. This notification is important in cases when there is a time limit for the filing or lodging of the relevant document, such as in the case of a notice of objection to an assessment.

53. Manner of Filing Documents with the Secretary

This section provides for the filing of documents with the Secretary.

Subsection (1) applies when a person must file or lodge a tax return, application, notice, statement, or other document with the Secretary electronically. Section 55(2) provides that the Secretary may require a person to file or lodge a document electronically. Subsection (1) is not confined to taxpayers but applies to any person required to file or lodge a tax return, application, notice, statement, or other document electronically. For example, a person who is not a taxpayer may be required to file or lodge an information return electronically.

A person to whom subsection (1) applies must file or lodge the tax return, application, notice, statement, or other document electronically in accordance with section 55(2)

unless authorised by the Secretary by notice in writing to file or lodge manually under subsection (2). A document may be lodged electronically through the use of a computer or a mobile device such as a mobile phone. A person who, without reasonable cause, fails to comply with subsection (1) may be liable for a penalty under section 66.

Subsection (2) applies when electronic filing or lodgement of a document is not required. In this case, a person may file or lodge the document by personal delivery to an office of the Revenue Office or by normal post. The person filing or lodging the document must ensure that the document is filed or lodged by the due date (if relevant).

54. Service of Notices by the Secretary

This section provides for the service of notices and other documents by the Secretary for the purposes of a tax law.

Subsection (1) provides for three alternative methods for the service of notices or other documents by the Secretary. The rules in subsection (1) apply unless the Act or another tax law provides otherwise. The accepted methods of service are:

- (1) The notice or other document may be delivered personally to the person or the person's tax representative (defined in section 3) (subsection (1)(a)). Thus, for an individual, a notice is properly served when served personally on the individual. For any other person, a notice is properly served when served personally on the person's tax representative. For example, a notice is properly served on a trust if served personally on the trustee of the trust (see paragraph (b) of the section 3 definition of "tax representative").
- (2) The notice or other document is left at the address of the person's usual or last known place of business or residence in Nauru (subsection (1)(b)).
- (3) The notice or other document is sent by post to the person's usual or last known place of business or residence in Nauru (subsection (1)(c)).
- (4) The notice or other document is transmitted electronically under section 70(3).

Subsection (2) applies when a person refuses to accept delivery of a letter from the Secretary. In this case, subsection (2) provides that service is effected on the date the person refused to accept delivery of the letter. Subsection (2) also applies when a person fails to take delivery of a letter from the Secretary when informed that a letter is available for collection from the post office. In this case, subsection (2) provides that the service is effected at the time the person was notified that the letter was available for collection at the post office. Thus, subsection (2) makes it clear that a person cannot defeat the service of a notice or other document by refusing or failing to take delivery of a letter containing the notice or document.

Subsection (3) provides that a person cannot challenge the validity of service of a notice or other document once there has been full or part compliance with the notice or document.

55. Application of Electronic Tax System

This section provides for the “electronic tax system”.

Subsection (1) empowers the Secretary to authorise the following to be done electronically through a computer system or mobile electronic device (such as a mobile phone or tablet):

- (1) The lodging of an application for registration under a tax law (e.g. employer or payer registration under section 14 of the *Employment and Services Tax Act 2014* (subsection (1)(a)).
- (2) The filing or lodging of a tax return or other document under a tax law (e.g. an withholding tax return) (subsection (1)(b)).
- (3) The payment or repayment of tax under a tax law (e.g. withholding tax) (subsection (1)(c)).
- (4) The doing of any other act or thing that is required to be done under a tax law (subsection (1)(d)).

While subsection (1) authorises the Secretary to permit the things specified in that subsection to be done electronically, subsection (2) empowers the Secretary to require the things specified in subsection (1) to be done electronically. Further, subsection (4) provides that a person who files a tax return and pays tax electronically must continue to do so unless otherwise authorised by the Secretary.

Subsection (3) provides that any certificate of registration, service of a notice, issuing of any document, or other act or thing that is required to be done by the Secretary under a tax law, may be issued, served, made, or done electronically through a computer system or mobile electronic device (such as a mobile phone or tablet).

56. Due Date for Filing a Document or Payment of Tax

This section provides for the filing or lodging documents with the Secretary, the payment of tax, or the taking of any other action under a tax law.

Subsection (1) provides that when the due date is a weekend or public holiday in Nauru, the due date is the next following business day. Thus, for example, if the due date for the payment of tax is a Saturday, the tax is due on the following Monday. If the Monday is a public holiday, the tax is due on the following Tuesday.

Subsections (2) and (3) set out a procedure for persons to apply for an extension of time to file a document under a tax law. Subsection (2) provides that a person may apply, in writing, to the Secretary for an extension of time to file a document required under a tax law. It is expressly provided that subsection (2) does not apply to a document when a tax law sets out a procedure for a person to apply for an extension of time to file the document. For example, subsection (2) does not apply to the

obligation to file a tax return under a tax law as section 15 provides for an application for an extension of time to file a tax return.

Subsection (3) provides that the Secretary may, upon satisfaction that there is reasonable cause, grant an application under subsection (2) and must serve notice of the decision on the applicant. Section 39 requires that the notice of the decision must include a statement of reasons for the decision.

An extension of time granted to a person for the filing of a document protects the person against the imposition of late filing penalty under section 62 or prosecution of an offence under section 72.

The Secretary's decision on an application for an extension of time to file a document is a reviewable decision as defined in section 3. A person dissatisfied with the decision can apply to the Minister for review of the decision under section 42.

57. Defect not to Affect Validity of Tax Assessments and Other Documents

This section provides for the validity of tax assessments and other documents.

Subsection (1) applies when a notice of a tax assessment (defined in section 3) or other document made under a tax law is in substance and effect in conformity with the tax law under which it has been made and the person assessed or affected by the document is designated in the notice of the tax assessment or document according to common understanding. In this case, the following applies:

- (1) The validity of the notice of a tax assessment or document is not affected by reason of non-compliance with any provisions of the relevant tax law under which the tax assessment or notice has been made or issued (subsection (1)(a)).
- (2) The notice of a tax assessment or other document cannot be challenged for want of form (subsection (1)(b)). This means, for example, that a minor error of form does not render a notice of a tax assessment void.
- (3) The notice of a tax assessment or other document is not affected by reason of any mistake, defect, or omission therein (subsection (1)(c)).

Subsection (2) provides further rules relating to the validity of tax assessments. A tax assessment is not affected by any of the following:

- (1) A mistake in the tax assessment as to: (i) the name of the person assessed; (ii) the description of the income or other amount; or (iii) the amount of tax charged.
- (2) Any variance between the tax assessment and the served notice of assessment that is not likely to deceive or mislead the person affected by the tax assessment.

58. Rectification of Mistakes

This section empowers the Secretary to rectify mistakes in notices of tax assessments or other documents served by the Secretary under a tax law that are obvious on the face of the record, and, in relation to which, there is no dispute as to the law or facts of the case. The power must be exercised within five years from the date of service of the notice of the tax assessment or other document. This corresponds with the amendment period for assessments in section 21(4)(b).

59. General Provisions Relating to Administrative Penalties and Offences

This section sets out the basic principles applicable to the imposition of administrative penalties and prosecution of offences.

Subsection (1) provides that a person cannot be subject to both a penalty and the prosecution for an offence for the same act or omission. For example, the late filing of a tax return may be subject to a late filing penalty under section 62 and constitute an offence under section 72. The effect of subsection (1) is that the imposition of penalty and the prosecution of an offence are alternative sanctions for the same wrongdoing. Subsection (2) provides that the Secretary can decide whether to raise an assessment for a penalty or prosecute an offence.

Subsection (3) provides that, if a penalty has been imposed and paid, and the Secretary subsequently initiates a prosecution in respect of the same act or omission, the Secretary must repay the penalty paid. In this situation, no penalty is payable unless the prosecution is withdrawn. The repayment of the penalty must be made in accordance with section 37(4), which provides for the repayment by the Secretary of overpaid tax. In particular, the amount of the repayment must be applied first against any tax owing by the person under any tax law (section 37(4)(b)).

60. Penalties Relating to Registration

This section provides for administrative penalties relating to tax registration.

Subsection (1) applies when a person, without reasonable excuse, fails to apply for registration as required under a tax law. For example, subsection (1) applies to an employer or payer who fails to apply for registration as required under section 14(1) of the *Employment and Services Tax Act 2014*.

The amount of the penalty is 200% of the amount of tax payable for the period commencing on the day that the person was first required to apply for registration and ending on the earlier of: (i) the day the person files the registration application; or (ii) the person is registered on the Secretary's own motion.

Subsection (2) provides for a similar penalty in relation to the cancellation of registration. Subsection (2) applies when a person, without reasonable excuse, fails to apply for cancellation of registration as required under a tax law. For example, subsection (1) applies to an employer or payer who fails to apply for cancellation of registration as required under section 14(4) of the *Employment and Services Tax Act 2014*.

The amount of the penalty is \$1,000 for each month or part month for the period commencing from the month that the person was first required to apply for cancellation of registration and ending on the month immediately preceding the month in which the person files the application for cancellation of registration, or the Secretary cancels the person's registration on the Secretary's own motion.

The imposition of an administrative penalty under this section is an alternative to prosecution of an offence under section 68 (see section 59(1)).

61. Penalty for Failing to Keep Documents

This section imposes an administrative penalty for failing to keep documents as required under a tax law.

Subsection (1) applies when a person fails to keep, retain or maintain any document as required under a tax law. For example, a penalty may be imposed on an employer or payer who fails to keep withholding tax records as required under section 23 of the *Employment and Services Tax Act 2014*. As the Act is a "tax law" as defined in section 3, a penalty may be imposed on a person who fails to comply with the requirements under section 14 of the Act. Thus, a penalty may be imposed when a person: (i) fails to keep documents in English as required under section 14(1)(a); (ii) fails to maintain the documents so as to readily enable the person's tax liability to be determined as required under section 14(1)(b) (e.g. the documents are kept in code); or (iii) fails to keep documents for five years as required under section 14(1)(c).

The failure to keep, retain or maintain documents does not have to be the result of deliberate or reckless conduct for a penalty to be imposed, although a more serious penalty is imposed when the failure is deliberately or recklessly made. A taxpayer deliberately fails to keep proper records if the taxpayer knowingly fails to keep the relevant records. This would be the case, for example, if a taxpayer wishes to hide their true tax affairs. A taxpayer recklessly fails to keep proper records if the taxpayer acts in a way that is indifferent to the consequences of the failure. This would be the case, for example, if a taxpayer fails to maintain the records because they did not take steps to determine their record-keeping obligations.

When the failure is deliberate or reckless, subsection (1)(a) provides that the amount of the penalty is 75% of the tax payable by the taxpayer under the tax law for the reporting period for which the failure relates. For example, if an employer deliberately fails to keep records of payments of employment income made to employees for a calendar month, the penalty is 75% of the withholding tax payable by the employer for the month.

In other cases, subsection (1)(b) provides that the amount of the penalty is 25% of the tax payable by the taxpayer under the tax law for the reporting period for which the failure relates. No penalty is imposed under subsection (1)(b) if the taxpayer has a reasonable excuse for failing to keep, maintain or retain documents under a tax law. Whether a taxpayer has a reasonable excuse is objectively determined. For example, it would be expected that a taxpayer would have a reasonable excuse if the documents are accidentally destroyed by a fire or natural disaster (such as a cyclone).

The computation of the penalty is based only on the tax payable under the tax law to which the failure relates. For example, if an employer failed to keep proper documents for a calendar month for the purposes of withholding tax, the amount of penalty is based only the taxpayer's withholding tax liability for that month. However, if the failure relates to more than one tax, the penalty is imposed in relation to all taxes based on the tax liabilities for the reporting periods to which each failure relates.

Subsection (1) is expressed to be subject to subsection (2), which applies when a taxpayer does not have a tax liability for the reporting period for which documents were not kept. In this case, the penalty is \$100.

The imposition of an administrative penalty under this section is an alternative to prosecution of an offence under section 70 (see section 59(1)).

62. Late Filing Penalty

This section imposes an administrative penalty (referred to as a "late filing penalty") for failing to file a tax return or other document by the due date.

The section imposes a late filing penalty on a person who fails to file a tax return or other document by the due date as required under a tax law. The penalty applies in respect of all documents treated as a "tax return" for the purposes of the Act under the section 3 definition, including an information return such as an annual withholding tax summary required to be filed by an employer or payer under section 24 of the *Employment and Services Tax Act 2014*.

The failure to file a tax return or other document by the due date does not have to be the result of deliberate or reckless conduct for a late filing penalty to be imposed. A penalty is imposed if, as a matter of fact, the return or other document is not filed by the due date regardless of the reason for the omission. If a person is having a difficulty in filing a tax return by the due date, the person should apply to the Secretary under section 15 for an extension of time to file the return. If a person is having difficulty in filing any other document by the due date, the person should apply to the Secretary under section 56(2) for an extension of time to file the document.

The penalty is \$30 per month or part month that the tax return or other document remains unfiled. The maximum penalty is \$500 for each failure.

The imposition of a late filing penalty is an alternative to prosecution of an offence under section 73 (see section 59(1)).

63. Late Payment Penalty

This section imposes an administrative penalty (referred to as "late payment penalty") for failing to pay tax by the due date.

Subsection (1) imposes a late payment penalty on a taxpayer who fails to pay tax by the due date. If the Secretary has granted an extension of time for payment under

section 23 (including permission to pay tax in instalments), a late payment penalty is imposed only if the taxpayer fails to pay by the extended due date or dates (in the case of instalments). Thus, an extension of time under section 23 protects a taxpayer against the imposition of late payment penalty.

With one exception, the section applies to every amount treated as “tax” for the purposes of the Act under the definition in section 3. Section 4(1) provides that customs duty is treated as a tax for the purposes of the section. However, it is expressly provided in subsection (3) that, for the purposes of the section, “tax” does not penalty. This avoids the cascading of penalty (i.e. the imposition of penalty on penalty).

Late payment penalty is imposed at a flat rate equal to 15% of the amount of the unpaid tax.

The failure to pay tax by the due date does not have to be the result of deliberate or reckless conduct for a late payment penalty to be imposed. A penalty is imposed if, as a matter of fact, tax is not paid by the due date regardless of the reason for the failure. If a taxpayer is having a difficulty in paying tax by the due date, the taxpayer should apply to the Secretary for an extension of time under section 23 for the payment of the tax.

Subsection (2) provides for a refund of late payment penalty to the extent that the underlying tax in respect of which the penalty has been paid is subsequently found not to have been payable. The refund must be made in accordance with section 37(4), which provides for the refund of overpaid tax by the Secretary. In particular, the amount of the refund must be applied first against any tax owing by the taxpayer under any other tax law (section 37(4)(b)).

As a result of section 28(4), late payment penalty is in addition to late payment interest imposed under section 28(1). Late payment penalty is a culpability penalty intended to punish the taxpayer for the wrongdoing associated with the late payment of tax, whereas late payment interest compensates the Government for being out of funds when tax is not paid by the due date. In other words, section 28 and this section do different things.

The imposition of a late payment penalty is an alternative to prosecution of an offence under section 73 (see section 59(1)).

64. Tax Shortfall Penalty

This section imposes an administrative penalty (referred to as “tax shortfall penalty”) in respect of false or misleading statements resulting in a shortfall in the tax payable by a taxpayer.

Subsection (1) specifies the circumstances in which the section applies. Two conditions are specified:

- (1) A person must have made a statement to a tax officer that is false or misleading in a material particular or omitted from a statement made to a tax

officer any matter or thing without which the statement is false or misleading in a material particular. "Tax officer" is defined in section 3 to mean the Secretary, Deputy Secretary for Revenue and every person appointed as a tax officer under section 6(3). Subsection (8) specifies a broad range of situations that are treated as a statement made to a tax officer, including a statement made indirectly to a tax officer. A statement can be made in writing or orally. The clearest example is a false or misleading statement made in a tax return.

A statement is false if it is contrary to the truth or the facts. This is a question of fact. A statement or omission is misleading if it is reasonably likely to mislead a person belonging to the class of persons to whom it is directed. A tax shortfall penalty is imposed only if the statement is false or misleading in a material particular.

- (2) A tax shortfall must arise for a person as a result of the false or misleading statement. A tax shortfall arises if the tax liability of a person computed on the basis of the statement is less than it would have been if the statement had not been false or misleading. The difference is the tax shortfall. A false or misleading statement that does not result in a tax shortfall may be subject to prosecution of an offence under section 74.

The section applies if the tax shortfall arises for any person and not just the person who made the statement. The penalty is imposed on the person who made the statement even if someone else benefited from the tax shortfall. For example, the section can apply to a false or misleading statement made by a taxpayer's adviser, although the defence in subsection (5)(a) may be available to the advisor.

A tax shortfall penalty is imposed under subsection (2) in respect of any false or misleading statement that gives rise to a tax shortfall, although a more serious penalty is imposed on a person who made the statement deliberately or recklessly. A person deliberately makes a false or misleading statement if the person made the statement knowing it to be untrue. A person recklessly makes a false or misleading statement if the person making the statement is indifferent to accuracy of the statement. The tax shortfall penalty when the statement or omission was deliberately or recklessly made is 75% of the tax shortfall resulting from the statement or omission. In any other case, the penalty is 20% of the tax shortfall.

Subsections (3) and (4) provide for an adjustment in the rate of penalty in two situations. First, subsection (3) provides for an increase in the rate of penalty for repeat conduct. A person subject to a tax shortfall penalty for a second time is liable for a rate of penalty that is increased by ten percentage points (not ten per cent). Thus, if a person has deliberately made a false or misleading statement and this is the second time that the person has made such a statement, the rate of penalty increases from 75% to 85%. A person subject to a tax shortfall penalty for a third or subsequent time is liable for a rate of penalty that is increased by twenty-five percentage points (not twenty-five per cent). Thus, if a person has deliberately made a false or misleading statement and this is the third time that such a statement was made by the person, the rate of penalty increases from 75% to 100%.

Secondly, subsection (4) provides that the rate of penalty is reduced by ten percentage points (not ten per cent) if the person voluntarily discloses the false or misleading statement prior to the earlier of: (i) discovery of the tax shortfall by the Secretary; or (ii) the commencement of an audit of the tax affairs of the person to whom the statement relates. This is intended to encourage persons to voluntarily disclose false or misleading statements, particularly when they have not been made deliberately or recklessly. Thus, if the taxpayer discloses a false or misleading statement that has not been deliberately or recklessly made, the rate of penalty reduces from 20% to 10%. Because the section sets out a clear tariff for the imposition of penalty based on the culpability of conduct, the Secretary does not have power to remit a tax shortfall penalty (see section 67(7)).

Subsection (5) provides for three defences to the imposition of a tax shortfall penalty. First, no penalty is payable if the person did not know (subjectively determined) and could not reasonably be expected to have known (objectively determined) that the statement or omission that they made was false or misleading (subsection (5)(a)).

Secondly, if the person is a self-assessment taxpayer, no penalty is payable if the tax shortfall arose as a result of the taxpayer taking a reasonably arguable position on the application of a tax law to the taxpayer's circumstances in making a self-assessment (subsection (5)(b)). A position taken by a taxpayer is regarded as reasonably arguable if it is as likely as not to be correct. The taxpayer's position does not have to be the "better the view", but rather at least a "50:50 bet". Importantly, the position taken by the taxpayer must relate to a contentious area of the law or a case of uncertainty in the application of the tax law to the taxpayer's circumstances. Subsection (6) states that a position taken by a taxpayer in making a self-assessment is not a reasonably arguable position for the purposes of subsection (5)(b) if the position is contrary to a public ruling. This applies only when the opinion of the Secretary in a public ruling is found to be a correct opinion on the application of the law.

Thirdly, no tax shortfall penalty is imposed if the tax shortfall arose as a result of a clerical or similar error (subsection (5)(c)). However, this does not apply when a clerical or similar error is repeatedly made. Failure to take steps to avoid repeated errors is considered negligent conduct.

Subsection (7) makes it clear that the application of subsection (5) protects only against the imposition of a penalty. A liability for late payment interest can still arise if the tax was not paid by the due date.

The imposition of penalty under this section is an alternative to prosecution of an offence under section 74 (see section 59(1)).

65. Tax Avoidance Penalty

This section imposes an administrative penalty (referred to as "tax avoidance penalty") in respect of the application of a tax avoidance provision to a taxpayer.

Subsection (1) provides that, if the Secretary has applied a tax avoidance provision in assessing a taxpayer, the taxpayer is liable for a tax avoidance penalty. The amount of the penalty is double the avoided tax. "Tax avoidance provision" is defined in

subsection (1) to mean section 25 of the *Employment and Services Tax Act 2014*. This is a general anti-avoidance provision applicable to employment tax, non-resident tax and withholding tax.

66. Penalty for Failing to Comply with Electronic Tax System

This section provides for an administrative penalty for failing to comply with the electronic tax system.

Subsection (1) applies when a taxpayer fails to file a tax return or pay tax electronically as required by the Secretary under section 55(2). When this occurs, subsection (1) obliges the Secretary to serve the taxpayer with a notice in writing seeking reasons for the failure.

Subsection (2) provides for the imposition of penalty if, within fourteen days of being served with a notice under subsection (1), the taxpayer fails to provide the Secretary with adequate reasons for the failure to file the tax return or pay tax electronically. The amount of the penalty is \$1,000.

67. General Provisions Relating to Penalty

This section provides for general matters relating to the imposition of administrative penalties.

Subsection (1) provides that the liability for a penalty is calculated separately for each section in Division 2 of Part 12 of the Act imposing a penalty.

Subsection (2) gives the Secretary discretion to decide which penalty provision applies when an act or omission can be the subject of more than one penalty under a tax law. The reference to “tax law” means that subsection (2) applies when the act or omission is subject to two or more penalty provisions: (i) in the Act; (ii) in the Act and another tax law or tax laws; or (iii) in two or more other tax laws.

Subsection (3) provides that penalty is an assessed liability. A liability for penalty arises only if the Secretary raises an assessment of penalty payable and serves notice of the assessment on the person liable. The notice must state the amount of penalty payable and the due date for payment. Subsection (4) provides that penalty is due on the date for payment specified in the notice of assessment.

An assessment of penalty is treated as a tax assessment for the purposes of the Act (section 3 definition of “tax assessment”). This means that a person assessed to a penalty can challenge the assessment only under the objection and appeal procedure in Part 8 (an assessment of penalty is a “tax decision” for the purposes of the Act). Further, penalty is treated as “tax” for the purposes of the Act (see section 3 definition of “tax”). This means, for example, that the Secretary can rely on the powers in Division 3 of Part 7 of the Act for the collection and recovery of any unpaid penalty, and that late payment interest is payable in respect of the late payment of penalty.

The effect of subsection (5) is that subsections (3) and (4) applies also to penalty imposed under another tax law.

Subsections (6) and (7) provide for remission of penalty either on application of the person subject to the penalty or on the Secretary's own motion. Subsection (6) provides that a person liable for penalty may apply, in writing, to the Secretary for remission of the penalty payable. The application for remission must include reasons supporting the remission. Subsection (7) provides that the Secretary can remit a penalty either on application by the person liable or on the Secretary's own motion. The remission of penalty requires the approval of the Minister. However, the power of remission does not apply to a tax shortfall penalty because section 64 sets out a clear tariff for the imposition of penalty based on the culpability of the person's conduct including provision for reduction in the amount of the penalty in the case of voluntary disclosures.

Subsection (8) obliges the Secretary to maintain a public record of each penalty remission together with the reasons for the remission. The Secretary must report the record of remissions to the [Auditor General] on a quarterly basis.

68. Offences Relating to Registration

This section provides for offences relating to registration.

Subsection (1) provides that a person who, without reasonable excuse, fails to apply for registration as required under a tax law commits an offence. For example, subsection (1) applies to an employer or payer who fails to apply for registration as required under section 14(1) of the *Employment and Services Tax Act 2014*.

Subsection (1) provides also that a person who, without reasonable excuse, fails to apply for cancellation of registration as required under a tax law commits an offence. For example, subsection (1) applies to an employer or payer who fails to apply for cancellation of registration as required under section 14(4) of the *Employment and Services Tax Act 2014*. Importantly, the offence applies only when a tax law obliges a registered person to apply for cancellation of registration. It does not apply when cancellation is optional.

Subsection (2) provides for an offence when a person applies for cancellation of registration under a tax law when still required to be registered.

The prosecution of an offence under this section is an alternative to the imposition of penalty under section 60 (see section 59(1)).

69. Offences Relating to TINs

This section provides for offences in relation to taxpayer identification numbers ("TINs").

Subsection (1) provides that a person commits an offence if the person uses a false TIN on a tax return or other document used for the purposes of a tax law. Subsection (2) makes it clear that a person uses a false TIN if the person uses the TIN of another person. This is the case even when the persons are related in some way, such as companies in the same group. Separate TINs are issued to taxpayers and each

taxpayer must use their own TIN. The offence in subsection (1) is a serious offence subject to the sanction specified in section 82(2).

Subsection (3)(a) provides that a person commits an offence if the person fails to apply for a TIN as required under section 9. Subsection (3)(b) provides that a person commits an offence if the person fails to apply for cancellation of the person's TIN as required under section 11.

Subsection (4) provides that a person commits an offence if the person obtains a TIN by using forged or false documents. The offence in subsection (4) is a serious offence subject to the sanction specified in section 82(2).

87. Failure to Maintain Documents

This section provides for an offence for failing to keep proper records.

Paragraph (a) provides that a person commits an offence if the person, without reasonable excuse, fails to keep, retain, and maintain a document for a reporting period as required under a tax law. It is in similar terms to section 61, which provides for the imposition of a penalty for such failure. The offence is committed if a person fails to keep a document required under a tax law (such as section 23 of the *Employment and Services Tax Act 2014* or fails to keep the document in the manner required under section 14 (e.g. the document is not retained for five years from the end of the reporting period to which it relates or the document is not kept in English).

Paragraph (b) provides that a person commits an offence if the person deliberately prepares or maintains, or authorises another person to prepare or maintain, false documents under a tax law. The offence in paragraph (b) is a serious offence subject to the sanction specified in section 82(2).

Paragraph (c) provides that a person commits an offence if the person falsifies or authorises another person to falsify any documents. The offence in paragraph (c) is a serious offence subject to the sanction specified in section 82(2).

Prosecution of an offence under subsection (1) is an alternative to the imposition of a penalty under section 61 (see section 59(1)).

72. Failure to File a Tax Return or Other Document

This section provides for an offence for failing to file a tax return or other document.

Subsection (1) provides that a person commits an offence if the person, without reasonable excuse, fails to file a tax return or other document required under a tax law by the due date. "Tax return" has the meaning in the section 3 definition. It is intended that the reference to "document" should be interpreted broadly so that it covers any statement, notice, certificate or other document that a person is required to file to the Secretary under a tax law.

The failure to file a tax return or other document by the due date does not have to be the result of deliberate or reckless conduct for an offence to be committed. An offence

is committed if, as a matter of fact, the return or other document is not filed by the due date regardless of the reason for the omission. If a person is having a difficulty in filing a tax return by the due date, the person should apply to the Secretary under section 15 for an extension of time to file the return. If a person is having difficulty in filing any other document by the due date, the person should apply to the Secretary under section 56(2) for an extension of time to file the document.

Subsection (2) provides that, if a person is convicted of an offence under subsection (1), the Court must order the person to file the tax return or other document within the time specified by the Court in the order. This is in addition to any sanction imposed by the Court for the offence. Failure to comply with a Court order under subsection (2) would constitute contempt of Court.

The prosecution of an offence is an alternative to the imposition of a late filing penalty under section 62 (see section 59(1)).

73. Failure to Pay Tax by the Due Date

This section provides for an offence for failing to pay tax by the due date. The section applies to every amount treated as a tax for the purposes of the Act (see section 3 definition). By virtue of section 4(1), the section applies also to customs duty.

The failure to pay tax by the due date does not have to be the result of deliberate or reckless conduct for an offence to be committed. An offence is committed if, as a matter of fact, tax is not paid by the due date regardless of the reason for the failure. If a taxpayer is having a difficulty in paying tax by the due date, the taxpayer should apply to the Secretary for an extension of time under section 23 for the payment of the tax.

The prosecution of an offence is an alternative to the imposition of late payment penalty under section 63 (see section 59(1)).

74. False or Misleading Statements

This section provides for an offence for deliberately or recklessly making a false or misleading statement to a tax officer.

Subsection (1)(a) provides that a person commits an offence if the person deliberately or recklessly makes a statement to an authorised officer that is false or misleading statement in a material particular. Similarly, subsection (1)(b) provides that a person commits an offence if the person deliberately or recklessly omits from a statement made to a tax officer any matter or thing without which the statement is false or misleading in a material particular.

The offences in subsection (1) are serious offences subject to the sanction specified in section 82(2).

Subsection (2) provides that section 64(8) applies to determine whether a statement has been made to a tax officer.

The section is in similar terms to section 64, although there are two important differences. First, the offence is committed only if the false or misleading statement is deliberately or recklessly made. Secondly, because of this, the offence is committed regardless of whether or not there is a tax shortfall.

The prosecution of an offence is an alternative to the imposition of a tax shortfall penalty under section 64 (see section 59(1)).

75. Offence Relating to Recovery of Tax

This section provides for offences relating to the recovery of unpaid tax.

The following offences are specified:

- (1) A person commits an offence if the person contravenes section 13. This applies to the following contraventions of section 13: (i) the failure by an appointed person to provide a notice as required under section 13(1); (ii) the disposal of an asset by an appointed person in breach of section 13(3)(a); and (iii) the failure by an appointed person to set aside the amount required under section 13(3)(b).
- (2) A person commits an offence if the person fails to provide security for the payment of tax as required by the Secretary under section 26.
- (3) A person commits an offence if the person rescues or attempts to rescue property distrained under section 30 or goods seized under section 31.
- (4) A person commits an offence if the person staves, breaks or destroys goods or documents relating to property or goods that are the subject of a distress order under section 30 or seizure under section 31 so as to prevent the securing of the property or goods for the purposes of the distress or seizure proceedings, or to prevent the finding of proof of an offence.
- (5) A person commits an offence if the person fails to comply with a garnishee notice served on the person. Section 32 empowers the Secretary to serve a garnishee notice on a person owing money to, or holding money on behalf of, a defaulting taxpayer requiring them to pay the amount specified in the notice to the Secretary (rather than to the taxpayer). A person fails to comply with a garnishee notice, for example, if the person pays the money specified in the notice to the taxpayer or as the taxpayer directs rather than to the Secretary, or if they withhold the money but fail to pay it to the Secretary by the due date specified in the notice.

Subsection (2) provides that there is no breach of a garnishee notice if the person served with the notice has notified the Secretary under section 32(6) that the person is unable to comply or fully comply with the notice. If the Secretary serves the person with a notice under section 32(7) and the person is in breach of that notice, an offence is then committed. Failure to comply with a garnishee notice is viewed as a serious offence, as recovering the tax owing

from a third party may be the only option available to the Secretary for recovery of the unpaid tax.

- (6) A person commits an offence if the person fails to pay a transferred tax liability as required under section 33.
- (7) A person commits an offence if the person enters business premises that are subject to a closure of business order under section 35 without permission of the Secretary.
- (8) A person commits an offence if the person departs or attempts to depart Nauru in contravention of a departure prohibition order issued under section 36.

In each case, no offence is committed if the person has a reasonable excuse for the failure to comply.

The offences in subsection (1) are serious offences subject to the sanction specified in section 82(2).

76. Offences Relating to Enforcement Powers

This section provides for offences in relation to the exercise by the Secretary or an authorised officer of the investigations powers in sections 45 and 46.

Subsection (1) provides for offences in relation to the exercise of the administrative summons power in section 45. Three offences are specified:

- (1) A person commits an offence if the person, without reasonable excuse, fails to provide information or produce any document as required by the Secretary under section 45(1)(a) or (c).
- (2) A person commits an offence if the person fails to appear before the Secretary as required under section 45(1)(b).
- (3) A person commits an offence if the person fails to answer any question put to the person as by the Secretary or authorised officer under section 45(1)(c).

Subsection (2) provides that the owner or lawful occupier of premises or a place (including an employee of the owner or lawful occupier) commits an offence if they fail, without reasonable excuse, to provide the Secretary or an authorised officer with all reasonable facilities and assistance as required in section 46(4).

The offences in subsection (1) are serious offences subject to the sanction specified in section 82(2).

77. Default in Obligation under Tax Law with Intent to Evade Tax

This section provides that a person commits an offence if the person deliberately with intent to evade tax makes default in any obligation imposed on the person under a tax law.

The offence in this section is a serious offence subject to the sanction specified in section 82(2).

78. Obstruction of Tax Officer

This section provides that a person commits an offence if the person hinders or obstructs a tax officer in the performance of duties under a tax law. "Tax officer" is defined in section 3 to mean the Secretary, the Deputy Secretary for Revenue and any person appointed as a tax officer under section 6(3).

The offence in this section is a serious offence subject to the sanction specified in section 82(2).

79. Aiding or Abetting a Tax Offence

This section provides an offence for aiding or abetting the commission of a tax offence.

The section provides that a person commits an offence if the person aids, abets, assists, incites or induces another person to commit an offence (referred to as the "principal offence") under a tax law. The terms "aid", "abet", "incite", and "induce" have their normal legal meaning. The sanction is the same as that imposed for the principal offence. For example, if a person induces another person to fail to keep documents in breach of section 70, the first-mentioned person commits an offence under this section and the sanction is the same as that imposed under section 70.

80. Offences by Officers and Staff of the Authority

This section provides for offences committed by tax officer.

Subsection (1) provides for the following offences:

- (1) A tax officer commits an offence if the officer makes, in any record, tax return, or other document that the officer is required to keep or make, an entry that the officer knows, or has reasonable cause to believe, to be false or is not believed to be true.
- (2) A tax officer commits an offence if the officer wilfully refuses to do anything that the officer knows, or has reasonable cause to believe, is required to be done by the officer under a tax law.
- (3) A tax officer commits an offence if the officer interferes with any other person or process under a tax law so as to defeat the provisions or requirements of the tax law.
- (4) A tax officer commits an offence if the officer fails to do anything that the officer is required to do to give effect to the provisions of a tax law.
- (5) A tax officer commits an offence if the officer, without reasonable excuse,

acts or omits to act in breach of the officer's duty under a tax law.

- (6) A tax officer commits an offence if the officer wilfully contravenes the provision of a tax law to give undue advantage or favour to another person.
- (7) A tax officer commits an offence if the officer fails to prevent or report to the Revenue Office or any other relevant authority, the commission of an offence under a tax law.

A "tax officer" commits the offences specified in subsection (1). Section 3 defines "tax officer" to mean the Secretary, the Deputy Secretary for Revenue and any person appointed as a tax officer under section 6(3). Further, subsection (4) provides that, for the purposes of the section, "tax officer" includes any person employed or engaged by the Revenue Office in any capacity whatsoever. For example, a person employed in a non-operational capacity by Revenue Office (such as an administrative assistant) is an tax officer for the purposes of the section. The reference to a person "engaged" by the Revenue Office includes a person in an independent contractual arrangement with Revenue Office (i.e. an independent contractor). Subsection (4) also includes a former officer or employee of the Revenue Office.

Subsection (2) provides that a person commits an offence if the person breaches the secrecy obligations in section 8(1) (tax officer must keep tax information secret) or (4) (person receiving tax information through a disclosure permitted under section 8(2) must keep the information received secret).

Subsection (3) provides that a person commits an offence if the person impersonates a tax officer.

The offences in this section are serious offences subject to the sanction specified in section 82(2).

81. Offences by Employees, Agents, and Companies

This section provides for the treatment of offences committed by employees, agents and companies.

Subsection (1) provides that, if a person commits an offence under a tax law in the capacity of an employee or agent, the person that employed the employee or engaged the agent is also treated as having committed the offence. This is subject to the defence in subsection (3) (see below).

Subsection (2) provides that corporate officers are treated as having committed an offence that is committed by their company. This applies to the chief executive officer, and every person who, at the time the offence was committed, was a managing director, director, company secretary, treasurer or other similar officer of the company. It also applies to any person who, at that time, was acting or purporting to act in such capacity. The effect of the section is that a person who is treated by this section to have committed the offence committed by the company may be prosecuted for the offence.

Subsection (3) provides for a defence if a person specified in subsection (1) or (2) satisfies two conditions. The first condition is that the person proves that the offence was committed without his or her consent or knowledge (subjectively determined). The second condition is that the person proves that he or she exercised all reasonable diligence to prevent commission of the offence. Whether reasonable diligence has been exercised is objectively determined having regard to the nature of the person's functions and to all the circumstances of the offence.

82. Sanctions for Offences

This section specifies the sanctions for offences committed under the Act.

The basic sanction is in subsection (1). Subsection (2) provides the sanction for more serious offences.

83. Tax to be Paid Despite Prosecution

This section makes it clear that the conviction of a person for an offence under a tax law does not relieve the person from liability for payment of tax and late payment interest due.

84. Regulations

This section empowers the Cabinet to make Regulations for the purposes of the Act. It is provided that Regulations can be made for any matter that Act specifies as being prescribed in Regulations, such as the documentary evidence of identity to support a TIN application (section 9(2)(b)). It is also provided that Regulations can be made to amend the Schedules. This will allow the Act to apply to new agency taxes by listing the tax in Schedule 1 and to new tax laws by listing the tax law in Schedule 2 without having to amend the Act.