

REPUBLIC OF NAURU

BUSINESS TAX (AMENDMENT) NO. 2 BILL 2016

EXPLANATORY MEMORANDUM

The *Business Tax (Amendment) No. 2 Bill 2016* is a Bill for the *Business Tax (Amendment) No. 2 Act 2016*.

EXPLANATION OF CLAUSES

Clause 1 provides that, once enacted, the short title of the Bill will be the *Business Tax (Amendment) No. 2 Act 2016*.

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

Clause 3 is the enabling provisions for the amendment of the *Business Tax Act 2016*.

Clause 4 amends section 8 of the Act which defines 'resident individual' for the purposes of the Act.

Section 8 is amended in two respects. First, section 8(1)(b) is amended to apply also to an individual who resides in Nauru as an asylum seeker within the meaning in the *Refugee Convention Act 2012*. "Asylum seeker" has the meaning in section 3 of the *Refugee Convention Act 2012*, namely a person who applies to be recognised as a refugee under section 5 of that Act or a person treated as an asylum seeker under Regulations to that Act.

Second, the new section 8(1)(c) of the Act provides that an individual is a resident individual if the individual is married to an individual who is a resident individual under section 8(1)(a) of the Act. An individual is a "resident individual" under section 8(1)(a) of the Act if the individual is a citizen of Nauru, except when the individual has a permanent home outside Nauru.

"Married" is not defined in the Act and, therefore, has the meaning in the *Interpretation Act*. By virtue of the definitions of "marriage" and "spouse" in section 74(1) and (2) of the *Interpretation Act*:

- (1) Two people are married if they are validly married under the *Births, Deaths and Marriages Act 1957* or a corresponding foreign law.
- (2) Two people are treated as married if they are in a *de facto* relationship. Section 74(5) of the *Interpretation Act* sets out two conditions for a relationship between 2 persons to be a *de facto* relationship: (i) the persons live with each other as a couple; and (ii) they are not married or related to each other by family. Section 74(6) of the *Interpretation Act* sets out the factors to be taken into account in determining whether 2 persons live together as a couple. Section 76(7) of the *Interpretation Act* defines when two persons are related by family.

Clause 5 amends section 18 of the Act which specifies amounts of income that are exempt income. Section 18(1)(d) of the Act provides that an amount is exempt income to the extent that it is exempt from tax under an exemption provision in an agreement entered into by the Government when the following conditions are satisfied:

- (1) The agreement is not an “international agreement” as defined in section 3. This means that the other party to the agreement is not a foreign government or international organisation.
- (2) The agreement is for the provision of financial, technical, humanitarian, or administrative assistance to the Government of Nauru. As the agreement to which section 18(1)(d) of the Act applies is not an international agreement, the other party to the agreement may be a private party. The agreement must be for the provision of financial, technical, humanitarian, or administrative assistance to the Government of Nauru. Exemptions in other agreements (such as a normal commercial agreement for the supply of goods to the Government) have no legal effect (i.e. the Act will override the exemption).
- (3) The Cabinet has concurred, in writing, with the exemption provision. Because of the impact of exemptions on the budgetary situation of the Government, it is important that Cabinet agrees to the exemption. An exemption provision for which Cabinet has not provided written concurrence with has no legal effect.
- (4) The name of the person benefitting from the exemption provision must be included in a notice published in the Gazette within 30 days after the agreement comes into effect. This ensures that there is transparency in the granting of exemptions.

Section 18(1)(d) of the Act is amended to start the 30-day time limit for publication in the Gazette from the date of Cabinet’s written concurrence with the exemption rather than from the date that the agreement came into effect. This change is necessitated by practical reasons as Cabinet may not always be able to provide approval within 30 days of the agreement coming into effect.

Clause 6 amends section 38 of the Act which specifies the record-keeping obligations applicable to taxpayers under the Act.

The section amends section 38(2), which sets out the record-keeping obligations for the small business tax (“SBT”). Section 38(2) is amended by deleting “person” and substituting “non-resident individual”. This is a technical correction to ensure consistency with section 12 of the Act, which imposes SBT on non-resident individuals who satisfy the conditions in section 12(1) of the Act.

Clause 7 amends section 39 of the Act which specifies the requirements for the filing of business profits tax (“BPT”) and SBT returns.

Subsection (1) inserts a new section 39(1A) of the Act, which provides that a person who has a net loss for a tax year is treated as a person liable for BPT for the year. This means that the person who has a net loss for a tax year is obliged to file a BPT return under section 39(1) of the Act for the tax year.

Subsection (2) amends section 39(2) of the Act to make clear that the exception from filing a BPT return applies when the taxable income of the resident individual for a tax year does not exceed the tax-free amount specified in paragraph (1)(a) of Schedule 1.

Subsection (3) amends section 39(3) of the Act to change the due date for filing a SBT return. An SBT return for a quarter must be filed within 15 days after the end of the quarter. The effect of section 40(2) of the Act is that this is also the due date for payment of the SBT due for the quarter. This aligns with the due date for withholding tax under section 44(2) of the Act.

Clause 8 amends section 41 of the Act which provides for the payment of instalments of BPT.

Subsection (1) amends section 41(1) of the Act to oblige a taxpayer to file an instalment tax return with the payment of the instalment of tax. An instalment tax return is a “tax return” for the purposes of the Revenue Administration Act 2014.

Subsection (2) amends section 41(2) of the Act consequent upon the insertion of a new section 41(3A) of the Act. Section 41(2) of the Act provides that the amount of each instalment of BPT for a tax year is $\frac{1}{4}$ of the BPT liability of the previous tax year. Section 41(2) of the Act is amended so as to be subject to new section 41(3C).

Subsection (3) inserts new section 41(3A) – (3C) of the Act, which sets out a procedure for a taxpayer to vary the amount of each instalment payable for a tax year. Section 41(3A) provides that a taxpayer who has reasonable grounds to believe that their BPT liability for the current tax year will be lower than for the previous tax year may apply to the Secretary, in writing, for a variation in the amount of their BPT instalments for the year. The application must be in the form approved by the Secretary for variation of instalment applications. A taxpayer may make an application under section 41(3A), for example, if they had taxable income for the previous tax year but reasonably believe that they will have a net loss for the current tax year.

Section 41(3B) provides that an application under subsection (3A) must include an estimate of the person’s business profits tax liability for the current year.

Section 41(3C) provides that, if the Secretary grants an application under subsection (3A), the amount of each instalment is based on the person’s estimated business profits tax liability for the current year. Section 66A of the Revenue Administration Act imposes a penalty when a taxpayer under-estimates their BPT liability by more than 20%. The amount of the penalty is 10% of the shortfall in instalments resulting from the under-estimation.