BUSINESS TAX

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TABLE OF AMENDMENTS

The Business Tax Act 2016 No 31 was certified on 9 June 2016 and commenced on 10 June 2016 (s 2(1) and GN No 432/2016; Gaz 103/2016). The Act applies from 1 July 2016 (s 2(2)) except Sch 3 cl 3 which applies from 1 October 2014 (s 2(4)), and s 35 which is yet to receive notice in the Gazette (2(3)).

Amending Legislation	Certified	Date of Commencement
Business Tax (Amendment) Act 2016 No 43	8 September 2016	8 September 2016
Business Tax (Amendment) No 2 Act 2016 No 49	4 November 2016	4 November 2016
Business Tax (Rates of Tax) Regulations 2017 SL 17	3 August 2017	Sch cl 1(d) and cl 2: 1 July 2017; Sch remainder: 1 July 2016
Business Tax (Rates of Tax) (Amendment) Regulations 2017 SL 31	5 December 2017	5 December 2017
Business Tax (Amendment) Act 2017 No 34	21 December 2017	21 December 2017
Business Tax (Rates of Tax) (Amendment) Regulations 2018 SL 15	25 June 2018	1 July 2018
Business Tax (Amendment) Act 2020 No 27	23 October 2020	1 January 2021
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021
Business Tax (Amendment of Schedule 1) Regulations 2024 SL 22	28 June 2024	1 July 2024
Constitution (Amendment) (No 2) Act 2026 No 21	12 May 2026	s 5: 12 May 2026

[The next page is 120,601]

An Act to provide for the taxation of business income, and for related purposes.
Enacted by the Parliament of Naoero as follows:
[cl am Act 21 of 2026 s 5, opn 12 May 2026]

PART 1 — PRELIMINARY MATTERS

1 Short title

This Act may be cited as the *Business Tax Act 2016*.

2 Commencement and application

(1) This Act commences on the date that notice of the Act is published in the Gazette.

(2) Subject to subsections (3) and (4), this Act applies from 1 July 2016.

(3) Section 35 applies from the date specified by the Secretary in a notice in the Gazette.

(4) Clause 3 of Schedule 3 applies from 1 October 2014.

3 Definitions

In this Act:

'acquisition', in relation to a business asset, has the meaning in Section 27;

'amount' includes an amount-in-kind;

'assessable foreign income', in relation to a resident person, means foreign income included in the gross revenue of the resident person;
[def insrt Act 27 of 2020 s 4, opn 1 Jan 2021]

'associate' has the meaning in Section 4;

'business' means any activity, whether continuous or short term, conducted for the purposes of economic gain, other than an employment, and includes any trade, manufacture, profession, or other commercial activity;

'business asset' means an asset, whether revenue or capital in nature, used in the conduct of a business wholly or partly to derive gross revenue, including inventory, a depreciable asset, a business intangible, or goodwill;

'business intangible' means:

(a) a copyright, patent, design or model, plan, secret formula or process, trademark, or other like property or right that has a limited useful life and is used wholly or partly to derive gross revenue;

(b) a customer list, distribution channel, or unique name, symbol or picture, or other marketing intangible that has a limited useful life and is used wholly or partly to derive gross revenue;

(c) contractual rights (including arising as a result of a prepayment of expenses) with a benefit for a limited period, but which exceeds one year, used wholly or partly to derive gross revenue;

(d) an expenditure used wholly or partly to derive gross revenue that provides an advantage or benefit for a period of more than one year, other than expenditure incurred to acquire any tangible personal or real property; or

(e) preliminary expenditure;

'business profits tax' means business profits tax imposed under Section 11;

'business profits tax threshold' means the monetary amount specified in Schedule 2;

'company' means:
(a) a corporation incorporated under the *Corporations Act 1972*;
(b) a foreign corporation within the meaning of the *Corporations Act 1972*; or
(c) a statutory corporation created under the written laws of the Republic or the law of a foreign country;

'consideration', in relation to a business asset, has the meaning in Section 31;

'cost', in relation to a business asset, has the meaning in Section 29;

'depreciable asset' means any tangible personal property or structural improvement to real property that:
(a) has an ascertainable useful life exceeding one year;
(b) is likely to lose value as a result of normal wear and tear, or obsolescence; and
(c) is used wholly or partly to derive gross revenue;

'derived' means:
(a) for the business profits tax:
  (i) for a person accounting for tax on a accruals basis, the arising of the right to receive; or
  (ii) for a person accounting for tax on a cash basis, received; or
(b) for any other tax imposed under this Act, received;

'disposal', in relation to a business asset, has the meaning in Section 28;

'distribution' means:
(a) a dividend paid by a company to a shareholder;
(b) an allocation of profits by a partnership to a partner, including drawings;
(c) an entitlement to income of a beneficiary of a trust; or
(d) a distribution of profits by any other body of persons to a member of the body;

'employee' has the meaning in the *Employment and Services Tax Act 2014*;

'employer' has the meaning in the *Employment and Services Tax Act 2014*;

'employment' has the meaning in the *Employment and Services Tax Act 2014*;

'employment income' has the meaning in the *Employment and Services Tax Act 2014*;

'exempt income' has the meaning in Section 18;

'fair market value' has the meaning in Section 5;

'foreign income' means an amount that is not derived from sources in Naoero;
[def insrt Act 27 of 2020 s 4, opn 1 Jan 2021; am Act 21 of 2026 s 5, opn 12 May 2026]

'gross revenue' has the meaning in Section 17;

'instalment period', in relation to a person for a tax year, means the period of 3 months ending on the last day of the third, sixth, ninth, or twelfth months of the year;

'insurance premium' includes a premium relating to reinsurance and any other

amount payable in respect of the offshore placement of insurance, but does not include a premium payable under a life policy;

'interest' includes:
(a) an amount, whether described as interest, discount, premium, or otherwise, whether periodical or a lump sum, as consideration for the use of money or being given time to pay; or
(b) an amount, however described, that is functionally equivalent to an amount referred to in paragraph (a);

'international agreement" means:
(a) an agreement between the Government of Naoero and a foreign government for the prevention of double taxation; or
(b) an agreement between the Government of Naoero and a foreign government or an international organisation for the provision of financial, technical, humanitarian, or administrative assistance to the Government;

[def am Act 21 of 2026 s 5, opn 12 May 2026]

'International Financial Reporting Standards' means the most recent International Financial Reporting Standards issued by the International Accounting Standards Board or any successor entity taking over the role of issuing International Financial Reporting Standards;

'international organisation' means an organisation, the members of which are sovereign powers or governments of sovereign powers;

'international transportation business tax' means international transportation business tax imposed under Section 14;

'inventory' includes:
(a) anything produced, manufactured, purchased, or otherwise acquired for manufacture, sale, or exchange;
(b) any raw materials or consumables used in a production or manufacturing process; or
(c) livestock, other than animals used as beasts of burden or working beasts;

'net book value', in relation to a business asset, has the meaning in Section 30;

'non-resident individual' means an individual who is not a resident individual;

'non-resident person' means a person who is not a resident person;

'non-resident tax' means non-resident tax imposed under Section 13;

'person' means:
(a) an individual;
(b) a partnership, trust, company, or other body of persons;
(c) the Government of Naoero, a local authority in the Republic, a foreign government, or a political subdivision of a foreign government; or
(d) an international organisation;

[def am Act 21 of 2026 s 5, opn 12 May 2026]

'preliminary expenditure' means expenditure incurred before the commencement of a business if the income to be derived by the business will be wholly and exclusively included in gross revenue, other than expenditure incurred to acquire tangible personal or real property;

'quarter' means the period of 3 months ending on 30 September, 31 December, 31 March and 30 June;

'received', in relation to a person, includes:
(a) applied on behalf of the person either at the instruction of the person or under any law;
(b) reinvested, accumulated, or capitalised for the benefit of the person;
(c) credited to an account, or carried to any reserve, or a sinking or insurance fund for the benefit of the person; or
(d) made available to the person;

'relative', in relation to an individual, means:
(a) an ancestor, a descendant of any of the grandparents, or an adopted child, of the individual;
(b) an ancestor, a descendant of any of the grandparents, or an adopted child of a spouse of the individual; or
(c) a spouse of the individual or of any person specified in paragraph (a) or (b);

'resident company' means a company referred to in paragraph (b) of the definition of 'resident person';

'resident individual' has the meaning in Section 8;

'resident person' means:
(a) a resident individual;
(b) a partnership, trust, company, or other body of persons that is incorporated, formed, settled, or otherwise established or created in the Republic; or
(c) the Government of Naoero or any local authority in the Republic;

[def am Act 21 of 2026 s 5, opn 12 May 2026]

'royalty' means an amount, however described, whether periodical or a lump sum, as consideration for:
(a) the use of, or right to use a patent, invention, design or model, secret formula or process, trademark, or other like property or right;
(b) the use of, or right to use a copyright of a literary, artistic, or scientific work, including films or video tapes for use in connection with television or tapes in connection with radio broadcasting;
(c) the receipt of, or right to receive, visual images or sounds, or both, transmitted by satellite, cable, optic fibre, or similar technology in connection with television, radio, or internet broadcasting;
(d) the use of or right to use industrial, commercial, or scientific equipment;
(e) the supply of any scientific, technical, industrial, or commercial knowledge, information, experience, or skill;
(f) the supply of assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of property, a right, or a supply referred to in paragraphs (a) to (e); and
(g) the right to take minerals or a living or non-living resource from land or sea, and includes an amount calculated in whole or part by reference to the quantity or value of minerals or a living or non-living resource taken from land or sea;

'Secretary' means the Secretary for Finance;

'services tax' means services tax imposed under the *Employment and Services Tax Act 2014*;

'shareholder', in relation to a company, includes any person with an ownership interest in the company;

'small business tax' means small business tax imposed under Section 12;

'structural improvement' in relation to real property, includes a building, road, driveway, car park, pipeline, bridge, tunnel, airport runway, canal, dock, wharf, retaining wall, fence, power lines, water or sewerage pipes, drainage, landscaping, or dam;

'tax' means tax imposed under this Act and includes an instalment of tax payable under this Act;

'tax year' means the period of 12 months ending on 30 June and, in the case of a company, is the period of 12 months ending on the date of the annual balance of its accounts, referred to as the "substituted tax year";

'taxable income' has the meaning in Section 16; and

'use', in relation to a depreciable asset or business intangible, includes available for use and held.

4 Associate

(1) Subject to subsection (2), 2 persons are associates if the relationship between the 2 persons is such that one person may reasonably be expected to act in accordance with directions, requests, suggestions, or wishes of the other person, or both persons may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of a third person.

(2) The two persons are not associates solely by reason of the fact that one person is an employee or client of the other, or both persons are employees or clients of a third person.

(3) For the avoidance of doubt, an individual and a relative of the individual are associates, except when the Secretary is satisfied that neither person may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of the other.

5 Fair market value

(1) Subject to Section 34, the fair market value of an asset, service, or benefit at a particular time is the ordinary open market value of the asset, service, or benefit at that time.

(2) Where it is not possible to determine the fair market value of an asset, service, or benefit at a particular time under subsection (1), the fair market value is the consideration a similar asset, service, or benefit would ordinarily fetch in the open market at that time, adjusted to take account of the differences between the similar asset, service, or benefit and the actual asset, service, or benefit.

(3) For the purposes of subsection (2), an asset, service, or benefit is similar to another asset, service, or benefit, as the case may be, if it is the same as, or closely resembles, the other asset, service, or benefit in character, quality, quantity, functionality, materials, risk, and reputation.

(4) Where the fair market value of an asset, service, or benefit cannot be determined under subsections (1) and (2), the fair market value shall be the amount determined by the Secretary provided it is consistent with generally accepted principles of valuation.

6 Non-profit organisation

(1) A non-profit organisation is an organisation that satisfies the following conditions:

(a) the organisation is established solely to provide relief to those suffering from poverty or distress, or for the advancement of education, amateur sport, or religion;

(b) no part of the income or other funds, or assets, of the organisation are used, or are available for use for the private benefit of a proprietor or member of the organisation; and

(c) the Secretary has certified, by notice in writing, that the organisation is a non-profit organisation.

(2) An organisation may apply to the Secretary, in the approved form, for certification that the organisation is a non-profit organisation.

(3) Where an organisation that has made an application under subsection (2) satisfies the conditions in subsection (1)(a) and (b), the Secretary shall grant the application.

(4) The certification of an organisation as a non-profit organisation takes effect from the date specified in the notice of certification and remains in force until withdrawn by the Secretary by notice in writing to the organisation.

(5) An organisation certified as a non-profit organisation shall immediately notify the Secretary, in writing, if the organisation no longer satisfies the conditions in subsection (1)(a) and (b).

7 Permanent establishment

(1) Subject to this Section, a permanent establishment is a place of business through which the business of a person is wholly or partly conducted.

(2) The following are treated as a permanent establishment:

(a) a place of management, branch, office, factory, warehouse, or workshop, but not an office that has representation of the person's business as its sole activity;

(b) a mine site, oil or gas well, quarry, or other place of exploration for, or exploitation of, natural resources, including a boat or ship that provides a base for the exploration or exploitation of natural resources; and

(c) the furnishing of services, including consultancy services, by a person, including through employees or other personnel engaged by the person for such purpose, but only if activities of that nature continue for the same or a connected project of the person or an associate for a period or periods aggregating more than 90 days in any 12-month period.

(3) Subject to subsection (4), a building site, construction, assembly or installation project, or supervisory activities connected with such site or project is a permanent establishment only if the site, project, or activities continue for more than 90 days.

(4) When a person operates a building site, or conducts a project or activity referred to subsection (3), any connected activities conducted by an associate will be added to the period of time during which the first-mentioned person has operated the building site or conducted the activities for the purpose of determining whether the 90-day period is exceeded.

(5) Despite subsections (1) and (2), when a person (referred to as the "agent")

acts on behalf of another person (referred to as the "principal"), the agent shall be a permanent establishment of the principal if the agent:

(a) regularly negotiates contracts on behalf of the principal, whether the contracts are concluded in the name of the principal or the agent; or

(b) maintains a stock of goods from which the agent regularly delivers goods on behalf of the principal.

8 Resident individual

(1) Subject to subsection (2), an individual is a resident individual if:

(a) the individual is a citizen of Naoero, except when the individual has a permanent home outside the Republic;

(b) the individual resides in the Republic as a resettled refugee or an asylum seeker within the meaning in the *Refugee Convention Act 2012*; or

(c) the individual is married to an individual who is a resident individual under paragraph (a).

[subs (1) am Act 49 of 2016 s 4, opn 4 Nov 2016; Act 21 of 2026 s 5, opn 12 May 2026]

(2) Despite subsection (1), a citizen of Naoero who is an employee of the Government of Naoero posted abroad is a resident individual.

[subs (2) am Act 21 of 2026 s 5, opn 12 May 2026]

9 Source of income

(1) An amount derived by a resident person in conducting a business is derived from sources in the Republic except to the extent that it is attributable to a business conducted by the person through a permanent establishment outside the Republic.

(2) An amount derived by a non-resident person in conducting a business is derived from sources in Naoero to the extent that it is attributable:

(a) to a business conducted by the person through a permanent establishment in the Republic;

(b) to sales in the Republic of goods or merchandise of the same or similar kind as those sold by the person through a permanent establishment in the Republic; or

(c) to any other business activity conducted in the Republic of the same or similar kind as that conducted by the person through a permanent establishment in the Republic.

[subs (2) am Act 21 of 2026 s 5, opn 12 May 2026]

(3) Despite subsections (1) and (2), the following amounts are derived from sources in the Republic:

(a) rental income from the lease of real property in the Republic;

(b) a gain arising on the disposal of real property in the Republic or an interest in a resident company, resident partnership, or resident trust;

(c) a gain arising on the disposal of an interest in a company, partnership, or trust, if at any time during the 365 days preceding the disposal of the interest, the value of the interest is derived, directly or indirectly through one or more interposed entities, solely or principally from real property in the Republic;

(d) interest technical fee, management fee, or a royalty when it is:

(i) paid by a resident person, other than as an expenditure of a business conducted by the person through a permanent establishment outside the Republic; or

(ii) paid by a non-resident person as an expenditure of a business conducted by the person through a permanent establishment in the Republic;

(e) an insurance premium for the insurance of a risk in the Republic; and

(f) a distribution paid by a resident company, resident partnership or resident trust.

[subs (3) am Act 27 of 2020 s 5, opn 1 Jan 2021]

(4) In this Section,

'real property' includes:

(a) an exploration, prospecting, development, or similar right relating to real property; or

(b) information relating to a right referred to in paragraph (a).

10 Act binds the Republic

This Act binds the Republic.

[The next page is 120,801]

11 Imposition of business profits tax

(1) Subject to this Act, a tax to be known as "business profits tax" is imposed for each tax year at the rate or rates specified in Schedule 1 on a person conducting business that has taxable income for the year.

(2) The business profits tax imposed under subsection (1) on a person for a tax year is computed by applying the business profits tax rate or rates specified in Schedule 1 to the taxable income of the person for the year.

(2A) A tax credit allowed to a person for a tax year is offset against the person's business profits tax liability calculated under subsection (2) for the year.

[subs (2A) insrt Act 27 of 2020 s 6, opn 1 Jan 2021]

(2B) Where a person is allowed more than one tax credit for a tax year, the tax credits are applied in the following order:

(a) the foreign tax credit allowed to the person under Section 25A for the year; then

(b) the tax credit allowed to the person under Section 41 for the year.

[subs (2B) insrt Act 27 of 2020 s 6, opn 1 Jan 2021]

(3) This Section does not apply to the following:

(a) a non-resident individual subject to small business tax; or

(b) a non-resident person conducting a fishing business in the Republic under an agreement with the Naoero Fisheries and Marine Resources Authority.

[subs (3) am Act 21 of 2026 s 5, opn 12 May 2026]

12 Imposition of small business tax

(1) Subject to this Act, a tax to be known as "small business tax" is imposed for each quarter on a non-resident individual conducting business who satisfies the following conditions:

(a) the individual conducts the business solely in the Republic;

(b) the individual was not subject to the business profits tax for the previous tax year; and

(c) the total gross revenue of the individual for the previous tax year did not exceed the business profits tax threshold specified in Schedule 2.

(2) The small business tax imposed under subsection (1) on a non-resident individual for a quarter is computed by applying the rate specified in Schedule 1 to the total gross revenue derived by the individual for the quarter.

(3) In determining the total gross revenue of a non-resident individual for a tax year for the purposes of subsection (1)(c), the Secretary may have regard to the total gross revenue of an associate or associates of the individual for the year.

(4) A non-resident individual subject to small business tax may apply, in the approved form, to the Secretary for Section 11 to apply to the individual instead of this Section.

(5) The Secretary may approve an application under subsection (4), if satisfied that the non-resident individual will keep proper records as required for the purposes of the business profits tax.

(6) An approval under subsection (5) applies from the commencement of the first tax year of the non-resident individual after the approval is granted and remains in force indefinitely or until the Secretary permits the individual to be subject to this Section under subsection (9).

(7) Subject to subsection (8), a non-resident individual who:
(a) was subject to business profits tax for a tax year; and
(b) the total gross revenue of the individual for the year did not exceed the business profits tax threshold, may apply, in writing, to the Secretary for permission for the individual to be subject to the small business tax.

(8) A non-resident individual who has been granted permission under subsection (5) for Section 11 to apply to the individual, cannot make an application under subsection (7) within 3 years of the date of service of the notice granting the individual permission for Section 11 to apply.

(9) The Secretary may approve an application under subsection (7) if satisfied that there is reasonable cause to do so and the approval applies from the date specified in the notice of approval.

(10) An approval under subsection (5) or (9) may be subject to such conditions as the Secretary may specify by notice in writing to the applicant.

13 Imposition of non-resident tax

(1) Subject to this Act, a tax to be known as "non-resident tax" is imposed at the rate specified in Schedule 1 on a non-resident person who has derived interest, a royalty, or insurance premium from sources in Naoero.

[subs (1) am Act 21 of 2026 s 5, opn 12 May 2026]

(2) The non-resident tax payable by a non-resident person under subsection (1), is computed by applying the rate of tax specified in Schedule 1 to the gross amount of the interest, a royalty, or insurance premium derived by the person.

(3) Subsection (1) does not apply to:
(a) an amount that is exempt income;
(b) interest, a royalty, or insurance premium that is attributable to a business conducted by the non-resident person through a permanent establishment in the Republic and, in that case, the amount is taxable under Section 11; or
(c) an amount subject to services tax.

(4) The tax payable under subsection (1), is discharged if the tax has been paid to the Secretary in accordance with Section 44.

14 Imposition of international transportation business tax

(1) Subject to this Act, a tax to be known as "international transportation business tax" is imposed at the rate specified in Schedule 1 on the gross amount derived by a non-resident person for the carriage of passengers, livestock, mail, merchandise, or goods embarked or loaded in the Republic and destined for a place outside the Republic.

(2) This Section does not apply to the following:

(a) an amount that is exempt income; or
(b) an amount derived in respect of the following:
(i) a passenger who is in the Republic as a result of being in transit between 2 places outside the Republic; or
(ii) the transhipment of livestock, mail, merchandise, or goods.

(3) The tax payable under this Section is discharged if the tax has been paid in accordance with Section 42 or 43, as the case may be.

15 General provisions relating to taxes imposed under this Act

The following applies to tax imposed under Sections 12, 13, and 14:
(a) the tax is a final tax on the income in respect of which it is imposed; and
(b) in computing the taxable amount, no deduction is allowed for any expenditure or loss incurred by the person in deriving the income.

[The next page is 121,001]

PART 3 — BUSINESS PROFITS TAX

DIVISION 1 — TAXABLE INCOME

16 Taxable income

The taxable income of a person for a tax year is the gross revenue of the person for year reduced by the total amount of deductions allowed to the person for the year.

DIVISION 2 — GROSS REVENUE AND ALLOWABLE DEDUCTIONS

17 Gross revenue

(1) Subject to subsection (2A), the gross revenue of a person for a tax period is the sum of the following amounts derived by the person during the period from sources in the Republic:

(a) the gross receipts from the conduct of a business, including the gross proceeds from the disposal of inventory, the gross fees as compensation for providing personal services other than employment income, interest, rent, royalties, or other proceeds of a business however designated;

(b) a gain on disposal of a business asset, other than inventory dealt with under paragraph (a); and

(c) the amount of an expenditure, loss, or bad debt previously allowed as a deduction that has been reimbursed or recovered by the person.

[subs (1) am Act 27 of 2020 s 7, opn 1 Jan 2021]

(2) The gross revenue of a person does not include the following amounts:

(a) a distribution by a resident company, partnership, or trust;

(b) exempt income;

(c) an amount subject to tax under Section 13 or 14; or

(d) an amount subject to services tax.

[subs (2) am Act 27 of 2020 s 7, opn 1 Jan 2021]

(2A) For the purposes of subsection (1):

(a) the gross revenue of a resident person includes amounts derived from all sources both in and outside Naoero; and

(b) the gross revenue of a non-resident person includes only amounts derived from sources in Naoero.

[subs (2A) insrt Act 27 of 2020 s 7, opn 1 Jan 2021; am Act 21 of 2026 s 5, opn 12 May 2026]

(3) For the purposes of subsection (1)(b), a gain on disposal of a business asset is the amount by which the consideration for the disposal of the asset exceeds the net book value of the asset at the time of disposal.

(4) In this Section,

'tax period' means:

(a) for business profits tax, the tax year;

(b) for small business tax, the quarter; or

(c) for instalments of tax, the instalment period.

18 Exempt income

(1) The following amounts are exempt income:

(a) an amount exempt from tax to the extent provided for under an international agreement;

(b) an amount exempt from tax to the extent provided for under the *Consular Privileges and Immunities Act 1976*, the *Diplomatic Privileges and Immunities Act 1976* or the *Special Missions Privileges and Immunities Act 1976*;

(c) an amount derived by a non-profit organisation other than income from a business conducted by the organisation that is not directly related to the core function of the organisation;

(d) an amount exempt from tax to the extent provided for under a provision (referred to as an "exemption provision") in an agreement, other than an international agreement, entered into by the Government when the following conditions are satisfied:

(i) the agreement is for the provision of financial, technical, humanitarian, or administrative assistance to the Government;

(ii) the Cabinet has concurred, in writing, with the exemption provision; and

(iii) the name of the person benefitting from the exemption provision is included in a notice published in the Gazette within 30 days after the date of Cabinet's written concurrence with the exemption provision;

(e) interest paid by a resident company to a non-resident person in respect of debentures issued by the resident company if the following conditions are satisfied:

(i) the company issued the debentures outside the Republic;

(ii) the debentures were issued with a view to public subscription or other wide distribution;

(iii) the company issued the debentures for the purpose of raising funds for use by the company in a business carried on in the Republic; and

(iv) the interest is paid outside the Republic; and

(f) an amount derived by a non-resident person from the operation of a ship or aircraft in international traffic if the Secretary is satisfied that an equivalent exemption is provided to a resident person by the country in which the non-resident resides.

[subs (1) am Act 49 of 2016 s 5, opn 4 Nov 2016]

(2) A provision in another written law providing that an amount is exempt from tax does not have legal effect unless also provided for in this Act.

19 Deductions

(1) Subject to this Act, the total amount of deductions allowed to a person for a tax year is the sum of the following amounts:

(a) expenditures or losses to the extent incurred by the person during the year in deriving amounts included in gross revenue;

(b) the cost of inventory disposed of by the person during the year as determined under international financial reporting standards;

(c) the total amount by which the depreciable assets and business intangibles of the person have declined in value during the year from use in deriving amounts included in gross revenue as determined under Section 21;
(d) a loss on disposal of a business asset by the person during the year, other than inventory dealt with under subsection (1)(b); and
(e) any other amount allowed as a deduction to the person under this Act.

(2) For the purposes of subsection (1)(d), a loss on disposal of a business asset is the amount by which the net book value of the asset at the time of disposal exceeds consideration for the disposal.

(3) The Regulations may provide rules for the deduction of expenditures relating to mining operations.

20 Non-deductible expenditures and losses

(1) Except as provided for in this Act, no deduction is allowed for the following:
(a) an expenditure or loss to the extent to which it is of a domestic or private nature;
(b) a distribution, an amount of capital withdrawn, or a sum employed as capital;
(c) an expenditure or loss of a capital nature except as allowed under Section 19(1)(c) or (d);
(d) an amount that a person has transferred, in its financial accounts, to a reserve or provision for expenditures or losses not yet incurred but expected to be incurred in a future tax year;
(e) an expenditure or loss to the extent recovered or recoverable under a policy of insurance or a contract of indemnity, guarantee, or surety;
(f) business profits tax and any penalty or interest payable in respect of a business profits tax liability;
(g) a fine or penalty imposed for violation of any law or regulation;
(h) interest payable to an associate other than interest included in the gross revenue of the associate or subject to non-resident tax;
(i) a service fee, royalty, or insurance premium paid or payable to a non-resident associate except when the service fee, royalty or insurance premium is:
(i) included in the gross revenue of the associate; or
(ii) subject to non-resident tax or services tax; and
(j) a contribution made to a retirement or savings fund, including a contribution made by an employer for the benefit of an employee, except when the contribution has been subject to the employment tax.

(2) Where a person is allowed a deduction for a payment from which the person is required to withhold tax under a withholding tax provision, the deduction is not allowed until the tax year in which the withholding tax has been paid to the Secretary.

(3) In this Section:

'service fee' has the meaning in the *Employment and Services Tax Act 2014*; and

'withholding tax provision' means:
(a) Section 44; or

(b) Section 17 or 18 of the *Employment and Services Tax Act 2014*.

21 Depreciation of depreciable assets and business intangibles

(1) Subject to this Section, a person is allowed a deduction for a tax year for the amount by which the person's depreciable assets and business intangibles have declined in value during the year through use in deriving amounts included in gross revenue.

(2) The amount of the decline in value of a depreciable asset or business intangible of a person for a tax year is computed in accordance with international financial reporting standards.

(3) Where a person uses a depreciable asset or business intangible in a tax year partly to derive gross revenue and partly for another use, the amount allowed as a deduction under subsection (1) is the proportion of the amount computed under subsection (2) that relates to the derivation of gross revenue.

(4) Where a depreciable asset or business intangible is not used for use by a person in deriving gross revenue for the whole of the tax year, the amount allowed as a deduction under subsection (1), is the amount computed in accordance with subsections (2) and (3) reduced by the proportion of the year that the asset was not so used or held.

(5) Where a depreciable asset or business intangible that has been used by a person partly in deriving gross revenue and partly for another use is disposed of during a tax year, the amount of the gain or loss on disposal to which Section 17(1)(b) or 19(1)(d) applies is the fair proportional part of the gain or loss that relates to the derivation of gross revenue.

22 Bad debts

(1) A person is allowed a deduction for a tax year for a bad debt if the following conditions are satisfied:

(a) the amount of the debt:

(i) has been included in the gross revenue of the person; or

(ii) is money lent by the person in the normal course of carrying on a business of money lending;

(b) the debt or part of the debt is written off in the person's financial accounts for the tax year; and

(c) there are reasonable grounds for believing that the debt is irrecoverable.

(2) The amount of the deduction allowed to a person under this Section for a tax year shall not exceed the amount of the debt written off in the person's financial accounts for that year.

23 Net loss carry forward

(1) Where the total amount of deductions allowed to a person for a tax year, other than a deduction allowed under this Section, exceeds the gross revenue of the person for the year, the amount of the excess is the person's net loss for the year.

(2) Where a person has a net loss for a tax year, the amount of the net loss can be carried forward to the next following tax year and allowed as a deduction in computing the person's taxable income for that following year.

(3) Where a net loss is not wholly deducted under subsection (2), the amount not deducted can be carried forward by the person to the next following tax year and applied as specified in subsection (2) in that year, and so on until the net loss is fully deducted, but a net loss cannot be carried forward for more than 3 tax years after the end of year in which the net loss was incurred.

(4) Where a person has a net loss carried forward under this Section for more than 1 tax year, the net loss of the earliest year is deducted first.

(5) Where there is a change in more than 50% of the underlying ownership of an entity, any net loss for a tax year before the change is not allowed as a deduction in a tax year after the change unless the following conditions are satisfied:

(a) the entity carried on the same business after the change that it carried on before the change until the earlier of either the net loss has been fully deducted or the period for carrying the net loss forward under this Section has expired; and

(b) the entity does not, until the earlier of when either the net loss has been fully deducted or the period for carrying the net loss forward under this Section has expired, engage in any new business or investment if the principal purpose of the entity or the shareholders, members, partners, or beneficiaries of the entity is to utilise the net loss so as to reduce the business profits tax payable on the amounts derived from the new business or investment.

(6) In this Section:

'entity' means a company, partnership, trust, or other body of persons; and

'underlying ownership', in relation to an entity, means an ownership interest in the entity held, directly or indirectly through an interposed entity or entities, by an individual or by a person not ultimately owned by individuals.

DIVISION 3 — TAX ACCOUNTING

24 Method of tax accounting

(1) Subject to this Act, the taxable income of a person for a tax year is to be computed in accordance with the International Financial Reporting Standards.

(2) A person accounting on a cash basis derives an amount of gross revenue when received and incurs expenditure when paid.

(3) A person accounting on an accruals basis derives an amount of gross revenue when the right to receive the amount arises and incurs expenditure when the obligation to pay the expenditure arises.

(4) Where the tax year (referred to as the "previous tax year") of a company changes, the period from the end of the last full previous tax year to the commencement of the new tax year is treated, for the purposes of this Act, as a separate tax year.

(5) The regulations may provide rules for the calculation of the taxable income of insurance companies, including a deduction for the unexpired risks reserve of such companies.

25 Change in tax accounting method

(1) A person may apply to the Secretary, in writing, for a change in the person's method of accounting and the Secretary may, by notice in writing, approve the application but only if satisfied that the change is necessary to properly compute the taxable income of the person.

(2) Where a person's method of accounting changes, the person shall make adjustments in the tax year of change to items of income, deduction, or credit, or to any other items affected by the change so that no item is omitted and no item is taken into account more than once.

DIVISION 3A — FOREIGN TAX RELIEF AND FOREIGN LOSSES

[Div 3A insrt Act 27 of 2020, s 8, opn 1 Jan 2021]

25A Foreign Tax Credit

(1) A resident person is allowed a credit, referred to as the "foreign tax credit", for foreign income tax paid by the person in respect of the assessable foreign income of the person for a tax year.

(2) The amount of the foreign tax credit allowed to a person for a tax year is limited to the business profits tax payable in respect of the assessable foreign income derived by the person for the year calculated by applying the average rate of business profits tax applicable to the resident person for the year against the net foreign income of the resident person for the year.

(3) There is no:
(a) deduction for;
(b) carry forward; or
(c) refund of,
any excess foreign tax credit for a tax year.

(4) A resident person is allowed a foreign tax credit under this Section for foreign income tax only where:
(a) the resident person has paid the foreign income tax within 2 years after the end of the tax year in which the foreign income was derived by the resident person or within such further time as the Secretary allows; and
(b) the resident person has a receipt and any additional documentary evidence as required by the Secretary that is provided by the foreign tax authority evidencing the payment of the foreign income tax.

(5) In this Section and Section 25B:

'average rate of business profits tax', in relation to a resident person for a tax year, means the business profits tax payable by the resident person for the year, before the allowance of any tax credit under this Act, as a percentage of the taxable income of the resident person for the year;

'foreign income tax' means any tax on income or gains, including withholding tax, imposed by the government of a foreign country or territory, or a political subdivision of a government of a foreign country or territory, but does not include penalty, additional or penal tax, or interest payable in respect of such tax; and

'net foreign income', in relation to a resident person for a tax year, means the total assessable foreign income of the resident person for the year reduced by the total of the following deductions allowed to the resident person under this Act for the year:

(a) the deductions that relate exclusively to the derivation of the assessable foreign income of the resident person; and
(b) the deductions that are reasonably apportioned to the derivation of the assessable foreign income of the resident person.

25B Foreign losses

(1) Deductible expenses incurred in deriving assessable foreign income are deductible only against that income.

(2) Where a resident person has a foreign loss for a tax year, the amount of the loss is carried forward to the next following tax year and allowed as a deduction in that year against the resident person's assessable foreign income for that year.

(3) Where a resident person is not able to wholly deduct a foreign loss under subsection (2), the excess is carried forward to the next following tax year and applied as specified in subsection (2) in that year, and so on until the loss is fully deducted, but a resident person cannot carry a foreign loss forward for more than three tax years after the end of tax year in which the loss was incurred.

(4) If a resident person has a net loss carried forward under this Section for more than one tax year, the net loss of the earliest tax year is deducted first.

(5) In this Section,

'foreign loss' in relation to a resident person for a tax year, means the amount by which the deductible expenses incurred by the resident person during the year in deriving assessable foreign income exceeds the amount of that income for the year.

DIVISION 4 — BUSINESS ASSETS

26 Jointly owned business assets

(1) For the purposes of this Act, if a business asset is jointly owned by 2 or more persons, other than in partnership, any income, revenue, expenditures, or losses relating to the asset is apportioned among the owners according to their respective interests in the asset.

(2) Where the interests of the owners of a jointly owned business asset cannot be ascertained, the owners of the asset are treated as having an equal interest in the asset.

27 Acquisition of a business asset

(1) A person acquires a business asset at the time legal title to the asset passes to the person.

(2) For a business asset that is a right or option, a person acquires the right or option at the time that the right or option is granted to the person.

28 Disposal of a business asset

(1) A person disposes of a business asset at the time that the person has sold, exchanged, or otherwise transferred legal title to the asset, including when the asset is cancelled, redeemed, relinquished, destroyed, lost, expired or surrendered.

(2) Where a person creates a business asset in another person being an asset that did not previously exist, the first-mentioned person is treated as having made a disposal of the asset to the second-mentioned person at the time the asset is created.

(3) Where a business asset is transmitted by succession or under a will, the deceased is treated as having disposed of the asset at the time the asset is transmitted.

(4) A disposal includes the disposal of a part of a business asset.

(5) The vesting of a business asset of a person (referred to as the "owner") in a liquidator, trustee-in-bankruptcy or receiver is not treated as a disposal of the asset for the purposes of this Act, and acts done in relation to the asset by the liquidator, trustee-in-bankruptcy, or receiver are treated as done by the owner.

29 Cost of a business asset

(1) Subject to this Section, the cost of a business asset of a person, other than a business intangible, is the sum of the following amounts:
  (a) the total consideration given by the person for the asset, including the fair market value of any consideration in kind determined at the time the asset is acquired and, if the asset is constructed, produced or developed, the cost of construction, production or development;
  (b) any incidental expenditure incurred by the person in acquiring or disposing of the asset; and
  (c) any expenditure incurred by the person to install, alter, renew, reconstruct or improve the asset.

(2) Subject to this Section, the cost of a business intangible is:
  (a) in relation to a business intangible referred to in Section 3(a), (b) or (c) of the definition of "business intangible", the total expenditure incurred by the person in acquiring, creating, improving, and renewing the intangible, and any incidental expenditure incurred in acquiring or disposing of the intangible; or
  (b) in relation to a business intangible referred to in Section 3(d) or (e) of the definition of "business intangible", the amount of the expenditure.

(3) The cost of a business asset does not include any amount allowed as a deduction under Section 19(1)(a).

(4) The cost of a business asset of a person includes any amount given for the grant of an option to the person to acquire the asset.

(5) The cost of a structural improvement to real property does not include the cost of the land on which the structural improvement is located.

(6) The cost of a business asset of a person is not reduced by an impairment write down in relation to the asset made in the financial accounts of the person.

(7) Where a person disposes of a part of a business asset, the cost of the asset is apportioned between the part of the asset retained and the part disposed of in accordance with their respective fair market values determined at the time the person acquired the asset.

(8) The cost of a business asset of a person does not include the amount of any grant, subsidy, rebate, commission or other assistance received or

receivable by a person in respect of the acquisition of the asset, except to the extent to which the amount is included in the gross revenue of the person.

(9) The reference to "other assistance" in subsection (8), does not include a loan repayable with or without interest.

(10) Where the acquisition of a business asset by a person is:
(a) the derivation of an amount included in the gross revenue of the person, the cost of the asset is the amount so included plus any amount paid by the person for the asset; or
(b) the derivation of exempt income of the person, the cost of the asset is the exempt amount plus any amount paid by the person for the asset.

(11) In this Section, "***impairment write down***", in relation to a business asset of a person, means the write down of the value of the asset in the financial accounts of the person because the fair market value of the asset is less than the cost of the asset.

30 Net book value of a business asset

(1) Subject to subsection (2), the net book value of a business asset of a person is the cost of the asset reduced by depreciation deductions, if any, allowed in respect of the asset or that would have been allowed but for Section 21(3).

(2) If Section 29(7) applies to a business asset, the net book value of:
(a) the part of the asset disposed of is the cost apportioned to that part of the asset under Section 29(7) reduced by depreciation deductions, if any, allowed, or that would have been allowed but for Section 21(3), that relate to the cost apportioned to that part of the asset; and
(b) the part of the asset retained is the cost apportioned to that part of the asset under Section 29(7) reduced by depreciation deductions, if any, allowed, or that would have been allowed but for Section 21(3), that relate to the cost apportioned to that part of the asset.

31 Consideration for the disposal of a business asset

(1) The consideration for the disposal of a business asset by a person is the total amount received or receivable by the person for the asset, including the fair market value of any consideration-in-kind determined at the time of disposal.

(2) The consideration for the disposal of a business asset by a person includes the consideration for the grant of an option in relation to the asset, but only if the person has not been subject to tax in respect of any gain made on the grant of the option.

(3) Where a business asset has been lost or destroyed by a person, the consideration for the asset includes any compensation, indemnity or damages received or receivable by the person as a result of the loss or destruction, including amounts received or receivable:
(a) under an insurance policy, indemnity, or other agreement;
(b) under a settlement; or
(c) as a consequence of a judicial decision.

(4) Where 2 or more assets are disposed of by a person in a single transaction and the consideration for each asset is not specified, the total consideration

is apportioned among the assets disposed of in proportion to their respective fair market values determined at the time of the disposal.

(5) Where a person is unable to provide documentary evidence of the consideration for the disposal of a business asset by the person, the consideration for the disposal is the fair market value for the asset at the time of disposal.

32 Deferral of recognition of gain or loss

(1) For the purposes of this Act and subject to subsection (2), no gain or loss is taken to arise on the disposal of a business asset:
   (a) between spouses as part of a divorce settlement or under an agreement to live apart;
   (b) by reason of the transmission of the asset on the death of a person to an executor or beneficiary;
   (c) by reason of the loss or destruction, or compulsory acquisition of the asset (referred to as the "replaced asset"), if the consideration for the disposal is reinvested by the recipient in an asset of a like kind (referred to as a "replacement asset") within one year of the disposal or within such further period as the Secretary allows; or
   (d) if the asset is a depreciable asset (referred to as the "replaced asset") and the person acquires a depreciable asset of a like kind to be wholly used to derive amounts included in gross revenue (referred to as the "replacement asset") within 6 months after the disposal or within such further period as the Secretary allows.

(2) Subsection (1)(a) or (b) applies only if the person acquiring the asset will be subject to tax under this Act on a subsequent disposal of the asset.

(3) Where subsection (1)(a) or (b) applies, the person acquiring the business asset is treated as acquiring the asset for an amount equal to the net book value of the asset for the person disposing of the asset at the time of the disposal.

(4) Where subsection (1)(c) or (d) applies and the cost of the replacement asset exceeds the consideration for the replaced asset, the cost of the replacement asset is the net book value of the replaced asset at the time of disposal increased by the amount of the excess.

(5) Where subsection (1)(c) or (d) applies and the consideration received for the replaced asset exceeds the consideration given for the replacement asset, the cost of the replacement asset is the net book value of the replaced asset at the time of disposal reduced by the amount of the excess but not below zero.

(6) Any part of the excess referred to subsection (5) that is not used to reduce the net book value of the asset, is included in the gross revenue of the person.

33 Registration of transferred assets

A person required by law to register or approve the transfer of an asset shall not register or approve the transfer unless satisfied that any tax payable under this

Act in respect of the transfer has been or will be paid, or that the gain arising from the transfer is not subject to tax under this Act.

[The next page is 121,201]

34 Transfer pricing

(1) The Secretary shall, in respect of any transaction, domestic or cross-border, that is not an arm's length transaction, distribute, apportion or allocate revenue, gains, deductions, losses, or tax credits between the parties to the transaction as is necessary to reflect the revenue, gains, deductions, losses, or tax credits that would have been realised in an arm's length transaction.

(2) Where a party to a transaction to which subsection (1) applies is located in, and subject to tax in, the Republic and another party to the transaction is located outside the Republic, any distribution, apportionment or allocation of revenue, gains, deductions, losses, or tax credits shall be made in accordance with the Regulations.

(3) The allocation of revenue and deductions to a permanent establishment in the Republic of a non-resident person or to a permanent establishment of a resident person outside the Republic shall be made in accordance with the Regulations.

(4) In this Section,

"arm's length transaction" means a transaction between independent persons who are dealing at arm's length with each other when the outcome of the dealing results in arm's length consideration being paid and received.

35 Thin capitalisation

(1) Subject to subsection (2), if a foreign-controlled resident company, other than a financial institution, has an average debt to average equity ratio in excess of 2 to 1 for a tax year, a deduction is disallowed for the interest paid by the company during that year calculated according to the following formula:

$$A \times B/C$$

where:

A is the company's total amount of deductible interest for the year;
B is the company's excess debt for the year; and
C is the company's average debt for the year.

(2) Where the average debt to average equity ratio of a foreign-controlled resident company exceeds 2 to 1 for a tax year, subsection (1) does not apply if the amount of the average debt of the company for the year does not exceed the arm's length debt amount.

(3) This Section applies to a non-resident company with a permanent establishment in the Republic on the basis of the following:

(a) the permanent establishment is treated as a foreign-controlled resident company; and

(b) the average debt to average equity ratio of the permanent establishment is computed by reference to:

(i) the debt obligations of the non-resident company attributable to the permanent establishment; and

(ii) the equity of the non-resident company attributable to the operations of the company conducted through the permanent establishment.

(4) In this Section:

'arm's length debt amount', in relation to a foreign-controlled resident company, means the amount of debt that a financial institution that is not an associate of the company would be prepared to lend to the company having regard to all the circumstances of the company;

'average debt', in relation to a foreign-controlled resident company for a tax year, is the amount calculated according to the following formula:

$$A/12$$

where:

A is the sum of the amount of debt of the company at the end of each calendar month in the tax year;

'average equity', in relation to a foreign-controlled resident company for a tax year, is the amount calculated according to the following formula:

$$A/12$$

where:

A is the sum of the amount of equity of the company at the end of each calendar month in the tax year;

'debt', in relation to a foreign-controlled resident company, means the greatest amount, at any time during a tax year, of the debt obligations of the company on which interest is payable as determined according to International Financial Reporting Standards;

'debt obligation' means an obligation to make a repayment of money to another person, including obligations arising under promissory notes, bills of exchange, and bonds, but not including:

(a) accounts payable; or

(b) an obligation to make a repayment of money in respect of which no interest is payable;

'equity', in relation to a foreign-controlled resident company, means the greatest amount, at any time during a tax year, of the equity of the company as determined according to International Financial Reporting Standards and includes a debt obligation on which no interest is payable;

'excess debt', in relation to a foreign controlled resident company for a tax

year, means the amount by which the company's average debt for the year exceeds the maximum average debt allowed for the year according to the 2 to 1 ratio; and

'foreign-controlled resident company' means a resident company in which more than fifty per cent of the shares or other ownership interest in the company is held by a non-resident person either alone or together with an associate or associates.

36 Tax avoidance schemes

(1) This Section applies when the Secretary is satisfied that:
  (a) a scheme has been entered into or carried out;
  (b) a person has obtained a tax benefit in connection with the scheme; and
  (c) having regard to the substance of the scheme, it would be concluded that a person, or one of the persons, who entered into or carried out the scheme did so for the sole or dominant purpose of enabling the person referred to in paragraph (b) to obtain a tax benefit.

(2) Despite anything in this Act, when this Section applies, the Secretary may determine the tax liability of the person who obtained the tax benefit as if the scheme had not been entered into or carried out and can make compensating adjustments to the tax liability of any other person affected by the scheme.

(3) Where a determination or adjustment is made under this Section, the Secretary shall issue an assessment giving effect to the determination or adjustment.

(4) An assessment under subsection (3), shall be served within 5 years from the last day of the tax year to which the determination or adjustment relates.

(5) In this Section:

'scheme' includes a course of action and an agreement, arrangement, promise, plan, proposal, or undertaking, whether express or implied and whether or not enforceable; and

'tax benefit' means:
  (a) a reduction in a liability to pay tax;
  (b) a postponement of a liability to pay tax;
  (c) any other advantage arising because of a delay in payment of tax; or
  (d) anything that causes:
    (i) an amount of gross revenue to be exempt income or otherwise not subject to tax; or
    (ii) an amount that would otherwise be subject to tax not to be taxed.

[The next page is 121,401]

37 Application of the Revenue Administration Act

The *Revenue Administration Act 2014* applies for the purposes of the administration of this Act but subject to this Part.

38 Records

(1) Subject to this Section, a person shall keep such accounts, documents, and records as enable the computation of any tax payable by the person under this Act.

(2) A person subject to small business tax shall keep the following records:
(a) a cash book recording daily sales, including credit sales; and
(b) if the individual employs employees, a salary and wages register.

[subs (2) am Act 49 of 2016 s 6, opn 4 Nov 2016]

(3) The Secretary may disallow a claim by a person for:
(a) a deduction for an expenditure or loss; or
(b) the inclusion of an amount of expenditure in the cost of a business asset,

if the person is unable to produce documentary evidence relating to the circumstances giving rise to the claim for the deduction or the inclusion of the amount in the cost of a business asset.

(4) The Regulations may specify the documents that shall be maintained by a person for the purposes of this Act.

39 Tax returns

(1) Subject to subsection (2), a person liable for business profits tax shall file a business profits tax return for each tax year within 3 months after the end of the year.

(1A) A person who has a net loss for a tax year is treated as a person liable for business profits tax for the year.

[subs (1A) insrt Act 49 of 2016 s 7, opn 4 Nov 2016]

(1B) The Secretary may require a person to file a business profits tax return for a tax year notwithstanding that no business profits tax may be payable by the person for the year.

[subs (1B) insrt Act 27 of 2020 s 9, opn 1 Jan 2021]

(2) Where no business profits tax is payable by a resident individual for a tax year because the taxable income of the resident individual for the year does not exceed the tax-free amount specified in paragraph (1)(a) of Schedule 1, the individual is not required to file a business profits tax return for the year unless requested to do so by the Secretary.

[subs (2) am Act 49 of 2016 s 7, opn 4 Nov 2016]

(3) A person liable for small business tax shall file a small business tax return for each tax quarter within 15 days after the end of the quarter.

[subs (3) am Act 49 of 2016 s 7, opn 4 Nov 2016]

(4) A business profits tax return or small business tax return shall be in the approved form and filed in the manner specified in the *Revenue Administration Act 2014*.

(5) A business profits tax return and a small business tax return are self-assessment returns for the purposes of the *Revenue Administration Act 2014*.

40 Payment of tax

(1) The business profits tax payable by a person for a tax year is due on the date that the business profits tax return for that year is due.

(2) The small business tax payable by a person for a quarter is due on the date that the small business tax return for the quarter is due.

(3) The non-resident tax payable by a person under Section 13 is due on the date specified in Section 44(2).

(4) The international transportation business tax payable by a non-resident person under Section 14 is due on the date specified in Section 42 or 43, as the case may be.

41 Instalments of business profit tax

(1) A person liable for business profits tax for a tax year is liable to file an instalment return and pay instalments of tax for the year by the fifteenth day of the month following the end of the third, sixth, ninth, and twelfth months of the year.

(2) Subject to subsections (3) and (3D), the amount of each instalment is one-quarter of the amount of business profits tax payable by the person for the previous tax year.

(3) Subject to subsection (4), if a person did not conduct business in the previous tax year, the amount of each instalment under subsection (2) is 0.5% of the person's gross revenue for each instalment period.

(3A) In respect of the person referred to in subsection (3), if the Secretary has reasonable grounds for believing that the business profits tax payable for the current tax year will be less or more than that payable as determined in accordance with subsection (3), he or she may, based on such evidence as may be available and to the best of his or her judgement, vary the amount of each instalment payable by a person for the current year.

(3B) If a person has reasonable grounds for believing that the business profits tax payable by a person for the current tax year will be less than that payable for the previous tax year, the person may apply to the Secretary, in the approved form, for a variation in the amount of each instalment payable by the person for the current tax year.

(3C) An application under subsection (3B) shall include an estimate of the person's business profits tax liability for the current year.

(3D) If the Secretary grants an application under subsection (3B), the amount of each instalment is based on the person's estimated business profits tax liability for the current year.

(3E) If the Secretary has reasonable grounds for believing that the business profits tax payable by a person for the current tax year will be less or more than that payable for the previous tax year, he or she may, based on such evidence as may be available and to the best of his or her judgement, vary the amount of each instalment payable by a person for the current year.

(4) If the person referred to in subsection (3) is a resident individual, no instalments of business profits tax are payable for the tax year if the

Secretary is satisfied that the taxable income of the person for the year is reasonably expected to be below the tax-free threshold for the business profits tax specified in Schedule 1.

(5) Each instalment of tax paid by a person for a tax year is credited against the business profits tax liability of the person for the year.

(6) If the total amount of instalments of a person credited under subsection (5) for a tax year exceeds the business profits tax liability of the person for the year, the excess is applied in accordance with Section 37(4) of the *Revenue Administration Act 2014*.

[s 41 subst Act 27 of 2020 s 10, opn 1 Jan 2021]

42 Collection of international transportation business tax from non-resident ship owners or charterers

(1) Subject to subsections (2) and (4), before the grant of a clearance for a ship owned or chartered by a non-resident person for departure from the Republic, the captain or chief commanding officer of the ship, or the shipping agent in the Republic for the non-resident person, shall:

(a) file with the Secretary a return showing the gross amount derived from the carriage of passengers, livestock, mail, merchandise, or goods embarked or loaded in the Republic in respect of the ship and the international transportation business tax payable in relation to that amount; and

(b) pay the non-resident international transportation business tax due in respect of the ship with the return.

(2) Subsection (1) does not apply if Section 18(1)(f) applies in relation to the ship, but the captain or chief commanding officer of the ship, or the shipping agent in the Republic for the non-resident owner or charterer shall:

(a) notify the Secretary, in writing, that the gross amount derived is exempt income; and

(b) provide such evidence as the Secretary may require of the equivalent exemption available in the country of residence of the non-resident owner or charterer.

(3) The return required under subsection (1)(a):

(a) shall be in the approved form;

(b) filed in the manner specified in the *Revenue Administration Act 2014*; and

(c) is a self-assessment return for the purposes of the *Revenue Administration Act 2014*.

(4) The Secretary may, by notice in writing, allow the return referred to in subsection (1)(a) to be filed and international transportation business tax paid within 30 days after departure of the ship from Naoero provided the non-resident owner or charterer of the ship has made satisfactory arrangements for payment of any tax due in respect of the ship.

[subs (4) am Act 21 of 2026 s 5, opn 12 May 2026]

(5) If the Secretary gives written notice to a public officer referred to in Section 23(7) of the *Ports and Navigation Act 2019* that an amount of international transportation business tax is due in respect of a ship, the public officer shall not grant clearance for the ship to depart the Republic until the tax due has been paid or has been secured to the satisfaction of the Secretary.

(6) This Section does not relieve the non-resident owner or charterer of the ship from liability to pay any international transportation business tax due that is not paid by the captain or chief commanding officer of the ship, or the owner or charterer's shipping agent in the Republic.

(7) The captain, chief commanding officer, or shipping agent in the Republic to whom subsection (1) applies is treated as the tax representative of the non-resident owner or charterer of the ship for the purposes of the *Revenue Administration Act 2014*.

43 Collection of international transportation business tax from non-resident aircraft owners or charterers

(1) Subject to subsections (2) and (3), before the grant of a clearance for an aircraft owned or chartered by a non-resident person for departure from the Republic, the pilot of the aircraft or the agent in the Republic for the non-resident person shall:
   (a) file with the Secretary a return showing the gross amount derived from the carriage of passengers, livestock, mail, merchandise, or goods embarked or loaded in the Republic in respect of the aircraft and the international transportation business tax payable in relation to that amount; and
   (b) pay the non-resident international transportation business tax due in respect of the aircraft with the return.

(2) Subsection (1) does not apply if Section 18(1)(f) applies in relation to the aircraft, but the pilot of the aircraft or the agent in the Republic for the non-resident owner or charterer shall:
   (a) notify the Secretary, in writing, that the gross amount derived is exempt income; and
   (b) provide such evidence as the Secretary may require of the equivalent exemption available in the country of residence of the non-resident owner or charterer.

(3) On application in writing by the non-resident owner or charterer of an aircraft, the Secretary may allow the owner or charterer to file returns and pay international transportation business tax quarterly with the return and tax for a quarter due by the last day of the month following the end of the quarter.

(4) A return required under this Section:
   (a) shall be in the approved form;
   (b) filed in the manner specified in the *Revenue Administration Act 2014*; and
   (c) is a self-assessment return for the purposes of the *Revenue Administration Act 2014*.

(5) If the Secretary gives the Civil Aviation Authority of the Republic written notice that an amount international transportation business tax is due in respect of an aircraft, the Authority shall not grant clearance for the aircraft to depart the Republic until the tax has been paid or has been secured to the satisfaction of the Secretary.

(6) When subsection (1) applies, this Section does not relieve the non-resident owner or charterer of the aircraft from liability to pay any international

transportation business tax due that is not paid by the pilot of the aircraft or the owner or charterer's agent in the Republic.

(7) The pilot or agent in the Republic to whom subsection (1) applies is treated as the tax representative of the non-resident owner or charterer of the aircraft for the purposes of the *Revenue Administration Act 2014*.

44 Withholding tax

(1) A resident person or a permanent establishment in the Republic of a non-resident person making a payment of interest, a royalty or insurance premium that is subject to non-resident tax shall withhold tax from the gross amount paid at the non-resident tax rate specified in Schedule 1.

(2) A person required to withhold tax under subsection (1), shall file a withholding tax return and pay the withheld tax to the Secretary within 15 days after the end of the month in which the income was paid.

(3) A person who fails to withhold tax as required under this Section or who, having withheld tax, fails to pay the tax to the Secretary as required under subsection (2) is personally liable to pay the amount of withholding tax to the Secretary.

(4) A person who is personally liable for withholding tax under subsection (3) as a result of failing to withhold the tax is entitled to recover the tax from the recipient of the payment.

(5) Where a person fails to withhold tax as required under this Section, the Secretary may recover the tax from the recipient of the payment of the interest, royalty or insurance premium.

(6) Despite the recovery of any tax under subsection (5), the person who failed to withhold the tax continues to be liable for the following:
(a) any legal action in relation to the failure, including prosecution for an offence under the *Revenue Administration Act 2014*; and
(b) the imposition of penalty in respect of the failure.

(7) A person required to withhold tax under this Section, shall:
(a) keep records of the gross amount of interest, royalties, or insurance premiums paid to non-resident persons and the amount of tax withheld from each payment; and
(b) within 15 days after the end of the tax year or within such further period as the Secretary may allow by notice in writing, file with the Secretary an annual withholding tax summary in the approved form.

(8) Income subject to withholding tax under subsection (1) is treated as having been paid to a non-resident person if, any of the following applies:
(a) the income is actually paid to the person;
(b) the income is applied on behalf of the person either at the instruction of the person or under any written law;
(c) the income is reinvested, accumulated, or capitalised for the benefit of the person; or
(d) the income is credited to an account for the benefit of the person.

(9) In this Section,

'tax year' means the period of 12 month ending on June 30.

[The next page is 121,601]

45 Currency translation

(1) An amount taken into account under this Act shall be expressed in Australian dollars.

(2) Where an amount is in a currency other than Australian dollars, the amount shall be translated to Australian dollars at the Reserve Bank of Australia exchange rate applying between the foreign currency and Australian dollars on the date the amount is taken into account for the purposes of this Act.

46 Regulations

(1) The Cabinet may make regulations under this Act, including for the amendment of the Schedules and in relation to transitional matters.

(2) Where regulations made under this Section are of a transitional nature and are made within 6 months after the commencement date, the Regulations may provide that they take effect from the application date.

(3) In this Section, ***"commencement date"*** and ***"application date"*** have the meanings in Section 48.

47 Consequential amendments to Employment and Services Tax Act

Schedule 3 amends the *Employment and Services Tax Act 2014*.

48 Transitional provisions

(1) An amount is exempt from tax to the extent provided for under a provision in an agreement entered into by the Government during the period 24 months prior to the commencement date of this Act.

[subs (1) subst Act 43 of 2016 s 4, opn 8 Sep 2016]

(2) Where the tax year of a company commences on a date other than the application date, the period from the application date to the start of the company's first full tax year under the Act is treated as a separate tax year (referred to as the "transitional tax year").

(3) Subject to Section 41(4), the amount of an instalment of business profits tax payable by a person under Section 41 for an instalment period during the tax year 1 July 2016 to 30 June 2017 is 0.5% of person's gross revenue for the instalment period.

(4) Where first tax year of a company under this Act is a transitional tax year, the amount of an instalment of business profits tax payable by the company under Section 41 for an instalment period during the transitional tax year and the company's first full tax year under this Act is 0.5% of the person's gross revenue for the instalment period.

(5) A person who will be liable for business profits tax or small business tax and who does not have a taxpayer identification number at the commencement date of this Act shall apply for a taxpayer identification number as required by the Secretary as set out in a notice published in the Gazette.

(6) If a resident person that acquired a depreciable asset or business intangible for use in conducting a business through a foreign permanent establishment before 1 January 2021 uses the asset or intangible to derive assessable foreign income on or after 1 January 2021, the person shall depreciate the asset or intangible on the assumption that Section 21 applied from the acquisition date of the asset or intangible.

[subs (6) subst Act 27 of 2020 s 11, opn 1 Jan 2021]

(7) If a depreciable asset or business intangible referred to in subsection (6) is disposed of after 1 January 2021, Sections 17(1)(b) and 19(1)(d) apply to the proportional part of any gain or loss on disposal that relates to the use of the asset or intangible to derive assessable foreign income on or after 1 January 2021.

[subs (7) insrt Act 27 of 2020 s 11, opn 1 Jan 2021]

(8) Subject to subsection (9), if a person acquired a business asset (other than a depreciable asset or business intangible) for use in conducting a business through a foreign permanent establishment before 1 January 2021, the cost of the asset is the fair market value of the asset on 1 January 2021.

[subs (8) insrt Act 27 of 2020 s 11, opn 1 Jan 2021]

(9) Subsection (8) does not apply to an asset the disposal of which can give rise to income or a gain derived from sources in Naoero.

[subs (9) insrt Act 27 of 2020 s 11, opn 1 Jan 2021; am Act 21 of 2026 s 5, opn 12 May 2026]

[The next page is 121,801]

SCHEDULE 1

[Sections 11, 12, 13 and 14]

RATES OF TAX

[Sch 1 subst SL 15 of 2018 reg 4, opn 1 July 2018; am SL 22 of 2024 regs 4–11, opn 1 July 2024; Act 21 of 2026 s 5, opn 12 May 2026]

(1) The rate of business profits tax:

(a) for a resident individual, is:

Taxable Income	Rate
$0 – $250,000	0%
Above $250,000	20%

(b) for a partnership, is:

With solely Naoero resident partners	20% on taxable income remaining after deducting $250,000 in respect of each Naoero resident partner
Any other partnership conducting business in Naoero in connection with the Regional Processing Centre	30%
Any other partnership	20%

(c) for a trust is:

With solely Naoero resident beneficiaries	20% on taxable income remaining after deducting $250,000 in respect of each Naoero resident beneficiary
Any other trust conducting business in Naoero in connection with the Regional Processing Centre	30%
Any other trust	20%

(d) for a company:

Category	Rate
Category A: Resident company with annual gross revenue $0 - $15,000,000	20%
Category B: Resident company with annual gross revenue above $15,000,000	25%
Category C: Resident company controlled by a non-resident person associate	25%
Category D: Resident company controlled by a non-resident person associate conducting business in Naoero in connection with the Regional Processing Centre	30%
Category E: Non-resident company conducting business in Naoero through a Permanent Establishment	25%
Category F: Category F: Non-resident company conducting business in Naoero through a Permanent Establishment in connection with the Regional Processing Centre	30%

(e) for any other non-resident person conducting business in Naoero in connection with the Regional Processing centre, is 30%.

(f) for any other person, is 20%.

(2) The rate of small business tax is 3.5%.

(3) The rate of non-resident tax is:

For any resident company controlled by a non-resident person associate conducting business in Naoero in connection with the Regional Processing Centre	30%
For any non-resident company conducting business in Naoero through a Permanent Establishment in connection with the Regional Processing Centre	30%
For any other non-resident person conducting business in Naoero in connection with the Regional Processing Centre	30%
For any other person	20%

(4) The rate of international transportation business tax is 0%.

(5) The term ***'Regional Processing Centre'*** has the same meaning given under the *Asylum Seekers Regional processing Centre) Act 2012* and *Naoero (RPC) Corporation Act 2017*.

[The next page is 122,001]

SCHEDULE 2

[Section 12]

BUSINESS PROFITS TAX THRESHOLD

The business profits tax threshold is $250,000.

[The next page is 122,201]

SCHEDULE 3

[Section 47]

AMENDMENT OF EMPLOYMENT AND SERVICES TAX ACT 2014

[Sch 3 am Act 21 of 2026 s 5, opn 12 May 2026]

[1] **Amendment of Section 3**

1.1 **Omit the definition of 'permanent establishment' and substitute the following definition:**

'permanent establishment' has the meaning in the *Business Tax Act 2016*;

[2] **Amendment to Section 6**

2.1 **Omit subsections (1) to (5) and substitute the following:**

'Non-profit organisation' has the meaning in Section 6 of the *Business Tax Act 2016*.

[3] **Amendment to Section 9**

Omit current subsection (1)(b) and substitute the following:

(b) when the employment income or services fee is paid by, or on behalf, of:

(i) a resident person, other than when the employment income or services fee is an outgoing of a permanent establishment of the resident person outside Naoero; or

(ii) a permanent establishment in Naoero of a non-resident person.

[The next page is 129,001]

Business Tax Regulations 2016

TABLE OF PROVISIONS

Regulation	*Title*
1	Citation
2	Commencement
3	Definitions
4	Reserve for unexpired risks of general insurance companies
5	Taxable income from life insurance business
6	Record keeping

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Business Tax Regulations 2016

TABLE OF AMENDMENTS

The Business Tax Regulations 2016 SL 26 were notified on 4 November 2016 and commenced on 1 July 2016 (reg 2).

Amending Legislation	Notified	Date of Commencement
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021

[The next page is 129,401]

The Cabinet makes the following Regulations under Section 46 of the *Business Tax Act 2016*:

1 Citation

These Regulations may be cited as the *Business Tax Regulations 2016*.

2 Commencement

These Regulations commence on 1 July 2016.

3 Definitions

(1) In these Regulations:

'Act' means the *Business Tax Act 2016*;

'life insurance' means the issuing of life policies;

'general insurance' means all insurance other than life insurance; and

'life policy' means a contract of insurance issued to a resident or non-resident individual in the Republic that provides for the payment of money on the death of a person or on the happening of a contingency dependent on the termination or continuance of human life.

(2) A term used in these Regulations has the same meaning as in the Act unless the context requires otherwise.

4 Reserve for unexpired risks of general insurance companies

(1) Subject to subregulations (2) and (3), a company conducting a general insurance business is allowed a deduction for a tax year for the balance of its reserve for unexpired risks as at the end of the year provided the amount of the reserve has been calculated in accordance with International Financial Reporting Standards.

(2) Subregulation (1) applies to a non-resident company only when the company is conducting an insurance business in the Republic through a permanent establishment.

(3) The deduction allowed under subregulation (1) is limited to the balance of the company's reserve that relates to unexpired risks in the Republic.

(4) The gross revenue of an insurance company conducting the business of general insurance for a tax year includes the amount of the company's reserve for unexpired risks deducted in the previous tax year under subregulation (1).

5 Taxable income from life insurance business

(1) The taxable income of an insurance company from the conduct of the business of life insurance for a tax year is calculated according to the following formula:

$$(A + B + C + D) - (E + F + G + H)$$

where:

A is the life insurance premiums derived by the company during year from the issuing of life policies, but not including premiums returned to policy holders during the year;

B is investment income derived by the company during the year from the investment of premiums referred to in **'A'**;

C is the amount of any previously deducted reserves for life policies cancelled during the year;

D is any other income derived by the company during the year relating to life insurance business conducted in the Republic;

E is underwriting expenses incurred by the company during the year in relation to the issuing of life policies, including commissions paid, reinsurance premiums, risk analysis costs, Government charges on the policy, and operating expenses;

F is the additions to life policy reserves, including the initial reserve on new life policies issued during the year;

G is the amount of claim payments made under life policies in excess of the sum of reserved amounts and income earned on the reserved amounts in relation to life policies paid out during the year; and

H is any other deductible expenditure incurred by the company during the year in relation to life insurance business conducted in the Republic.

(2) Where a company conducts the business of life insurance and some other business including the business of general insurance, the taxable income of the company from the conduct of the life insurance business is calculated separately from the taxable income from the other business of the company.

6 Record keeping

(1) A person who has a net loss for a tax year shall keep such accounts, documents and records as are necessary to evidence the amount of the net loss.

(2) A resident person who has offshore operations shall keep accounts, documents and records relating to those offshore operations.

(3) For the avoidance of doubt, a reference in the Act and this Regulation to accounts, documents, and records required to be kept by a person includes all source and underlying documents relating to transactions entered into by the person, including invoices, purchase orders, delivery dockets, receipts, contracts and Customs documentation.

[The next page is 134,001]

Business Tax (Transfer Pricing) Regulations 2016

TABLE OF PROVISIONS

Regulation	*Title*
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1	Citation
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7	Application of Regulations
	PART 2 — APPLICATION OF THE ARM'S LENGTH PRINCIPLE
8	Transactions to be consistent with the arm's length principle
9	Services
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	PART 3 — DOCUMENTATION
11	Documentation
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13	Corresponding adjustments
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Business Tax (Transfer Pricing) Regulations 2016

TABLE OF AMENDMENTS

The Business Tax (Transfer Pricing) Regulations 2016 SL 27 was notified on 4 November 2016 and commenced on 1 July 2016 (GN No 896 of 2016; Gaz 204 of 2016).

Amending Legislation	Notified	Date of Commencement
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021

[The next page is 134,401]

The Cabinet makes the following Regulations under Section 46 of the *Business Tax Act 2016* for the purposes of Section 34 of the *Business Tax Act 2016*:

PART 1 — PRELIMINARY

1 Citation

These Regulations may be cited as the *Business Tax (Transfer Pricing) Regulations 2016*.

2 Commencement

(1) Subject to subregulation (2), these Regulations commence on 1 July 2016.

(2) The Minister may specify a later date than that specified in subregulation (2) for Regulation 11 to come into force.

3 Definitions

(1) In these Regulations:

'Act' means the *Business Tax Act 2016*;

'arm's length principle', in relation to a controlled transaction, means that the result of the transaction is consistent with the result that would have been realised in a transaction between independent persons dealing with each other under the same or similar conditions;

'comparability factors' means the factors specified in Regulation 3;

'comparable uncontrolled price method' means the transfer pricing method under which the price charged in a controlled transaction is compared with the price charged in a comparable uncontrolled transaction;

'comparable uncontrolled transaction', in relation to the application of a transfer pricing method to a controlled transaction, means an uncontrolled transaction that, after taking account of the comparability factors, satisfies the following:

(a) the differences, if any, between the 2 transactions or the between the persons undertaking the transactions do not materially affect the financial indicator applicable under the method; or

(b) if the differences referred to in paragraph (a) do materially affect the financial indicator applicable under the method, reasonably accurate adjustments can be made to eliminate the effects of such differences;

'controlled transaction' means a transaction between associates;

'cost plus method' means the transfer pricing method under which the mark up on the costs directly and indirectly incurred in the supply of property or services in a controlled transaction is compared with the mark up on those costs directly or indirectly incurred in the supply of property or services in a comparable uncontrolled transaction;

'financial indicator' means:

(a) in relation to the comparable uncontrolled price method, the price;

(b) in relation to the cost plus method, the mark up on costs;

(c) in relation to the resale price method, the resale margin;
(d) in relation to the transaction net margin method, the net profit margin; or
(e) in relation to the transactional profit split method, the division of profit and loss;

'person' includes a "PE person" and "headquarters person" as defined in Regulation 4;

'resale price method' means the transfer pricing method under which the resale margin that a purchaser of property in a controlled transaction earns from reselling the property in an uncontrolled transaction is compared with the resale margin that is earned in a comparable uncontrolled purchase and resale transaction;

'transaction' means:
(a) a purchase and sale of goods;
(b) a purchase, sale, lease, or use of tangible property;
(c) a purchase, sale, licence, or use of intangible property;
(d) a provision of services;
(e) a provision of finance or other financial arrangement;
(f) a dealing between a permanent establishment of a person and another part of the person; or
(g) any other dealing;

'transactional net margin method' means the transfer pricing method under which the net profit margin relative to the appropriate base, such as costs, sales or assets that a person achieves in a controlled transaction is compared with the net profit margin relative to the same basis achieved in a comparable uncontrolled transaction;

'transactional profit split method' is the transfer pricing method under which the division of profit and loss that a person achieves through participation in a controlled transaction is compared with the division of profit and loss that would be achieved when participating in a comparable uncontrolled transaction;

'transfer pricing method' means:
(a) the comparable uncontrolled price method;
(b) the resale price method;
(c) the cost plus method;
(d) the transaction net margin method; or
(e) the transactional profit split method; and

'uncontrolled transaction' means a transaction that is not a controlled transaction.

(2) Without limiting the generality of the definition of ***'associate'*** in the Act, in addition, 2 persons are associates when:
(a) 1 person participates, directly or indirectly, in the management, control, or capital of the other person; or
(b) the same person participates, directly or indirectly, in the management, control or capital of both persons.

(3) For the purposes of subregulation (2), a person participates, directly or indirectly, in the management, control, or capital of another person when:

(a) the first-mentioned person either alone or together with an associate or associates under another application of subregulation (2) controls either directly or through 1 or more interposed persons:
(i) 50% or more of the voting power in the second-mentioned person;
(ii) 50% or more of the right to dividends or income entitlements payable by the second-mentioned person; or
(iii) 50% or more of the right to capital in the second-mentioned person; or
(b) the first-mentioned person has the practical ability to control the business decisions of the second-mentioned person.

(4) A term used in these Regulations has the same meaning as in the Act unless the context requires otherwise.

4 Comparability factors

In determining whether 2 or more transactions are comparable, the following factors are considered to the extent that they are economically relevant to the facts and circumstances of the transactions:
(a) the characteristics of the property or services transferred or supplied;
(b) the functions undertaken, assets used, and risks assumed by the parties to the transactions;
(c) the contractual terms of the transactions;
(d) the economic or market conditions in which the transactions take place; and
(e) the business strategies pursued by the parties to the transaction.

5 Permanent establishments

(1) Subject to subregulation (2), for the purposes of these Regulations:
(a) a permanent establishment is deemed to be a separate and distinct person (referred to as the "PE person") from the person in respect of whom it is a permanent establishment (referred to as the "headquarters person");
(b) the PE person and headquarters person are deemed to be associates; and
(c) a PE person and a headquarters person are located where their activities are located.

(2) The Secretary may choose not to apply this Regulation if the foreign country in which the headquarters person is located does not apply the same rule as that expressed in subregulation (1).

6 Relevance of OECD material to interpretation of these Regulations

(1) Subject to subregulation (2), these Regulations are to be applied in a manner consistent with:
(a) the arm's length principle in Article 9 of the OECD Model Tax Convention on Income and Capital; and
(b) the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, as approved by the Council of the Organisation for Economic Cooperation and Development, as supplemented and updated from time to time.

(2) Where there is any inconsistency between these Regulations and the OECD documents referred to in subregulation (1), these Regulations prevail.

7 Application of Regulations

(1) Subject to subregulation (2), these Regulations apply to a controlled transaction between:

(a) a resident person and a non-resident person;

(b) two or more resident persons; or

(c) a permanent establishment of a non-resident person in the Republic and a non-resident person outside the Republic.

(2) These Regulations do not apply to a controlled transaction that takes place wholly in the Republic.

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PART 2 — APPLICATION OF THE ARM'S LENGTH PRINCIPLE

8 Transactions to be consistent with the arm's length principle

(1) The application of this Regulation is subject to Regulations 8 and 9.

(2) When a taxpayer has entered into a controlled transaction or a series of controlled transactions to which these Regulations apply, the taxpayer shall determine the amount of gross revenue derived, and expenditures incurred, in relation to the transaction or transactions in a manner that is consistent with the arm's length principle.

(3) The amount of gross revenue derived, and expenditures incurred, by a taxpayer from a controlled transaction or transactions shall be consistent with the arm's length principle if the conditions of the transaction or transactions do not differ from those that would have applied in a comparable uncontrolled transaction.

(4) Where the amount of gross revenue derived, or expenditures incurred, by a taxpayer from a controlled transaction or transactions are not consistent with the arm's length principle, the Secretary may make such adjustments as necessary to ensure consistency with the arm's length principle.

(5) The determination of whether the amount of gross revenue derived, and expenditures incurred, by a taxpayer from a controlled transaction or transactions are consistent with the arm's length principle shall be made by using the most appropriate transfer pricing method or a combination of methods having regard to the following:

(a) the respective strengths and weaknesses of the transfer pricing methods having regard to the circumstances of the case;

(b) the appropriateness of a transfer pricing method taking account of the nature of the controlled transaction determined, in particular, through an analysis of the functions undertaken, assets used, and risks assumed by each person that is a party to the controlled transaction;

(c) the availability of reliable information needed to apply the transfer pricing methods; and

(d) the degree of comparability between controlled and uncontrolled transactions, including the reliability of adjustments, if any, that may be required to eliminate any differences.

(6) Where, having regard to subregulation (5), a taxpayer has used an appropriate transfer pricing method, the Secretary's determination as to whether the amounts of gross revenue and expenditures arising from the transaction or transactions are consistent with the arm's length principle shall be based on the transfer pricing method used by the taxpayer.

(7) A taxpayer may apply a transfer pricing method other those listed in the definition of "transfer pricing method" in Regulation 3 to a controlled transaction if the taxpayer can establish that:

(a) none of the listed methods can reasonably be applied to determine whether the controlled transaction is consistent with the arm's length principle; and

(b) the method used gives rise to a result that is consistent with that between independent persons engaging in comparable uncontrolled transactions in comparable circumstances.

9 Services

(1) Subject to subregulation (2), in determining whether a service fee charged by a taxpayer in a controlled transaction is consistent with the arm's length principle, the Secretary shall have regard to the following:
(a) whether the services have actually been provided;
(b) whether the services provide, or will provide, the recipient with economic or commercial value that will enhance its commercial position;
(c) whether an independent person in comparable circumstances would be willing to pay for the services, or would be willing to perform the services for itself in-house; and
(d) whether the fee corresponds to the fee that would have been agreed between independent persons for comparable services in comparable circumstances.

(2) A service fee paid or payable by a company to an associated company is not consistent with the arm's length principle when the fee is for any of the following costs incurred or activities undertaken by the associated company:
(a) costs or activities relating to the juridical structure of the associated company, such as shareholder meetings, the issuing of shares, or the costs of the associated company's board of directors;
(b) costs or activities relating to the reporting requirements of the associated company, including the preparation of consolidated financial reports; or
(c) costs or activities relating to the raising of funds by the associated company, except to the extent that the first-mentioned company benefits from the funds.

10 Intangibles

In determining whether the consideration for a licence, sale, or other transfer of intangible property by a taxpayer in a controlled transaction is consistent with the arm's length principle, the Secretary shall have regard to the following:
(a) the value and usefulness of the intangible property to the business of the transferee;
(b) the price for which an independent person in similar circumstances of the transferor would be willing to transfer the property;
(c) the expected benefits to the transferee of the property;
(d) any geographical limitation on the use of the property by the transferee;
(e) whether the transferee's use of the property is exclusive or non-exclusive; and
(f) whether the transferee has the right to participate in the further development of the property by the transferor.

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PART 3 — DOCUMENTATION

11 Documentation

(1) A taxpayer shall have in place contemporaneous transfer pricing documentation as specified in Schedule 1 that verifies that the conditions in the taxpayer's controlled transactions for a tax year are consistent with the arm's length principle.

(2) The transfer pricing documentation of a taxpayer for a tax year is considered to be contemporaneous when it is prepared prior to the due date for filing the taxpayer's business profits tax return for the year.

(3) A taxpayer shall, upon written request by the Secretary, provide the taxpayer's transfer pricing documentation to the Secretary within 30 days of service of notice of the request or within such further time as the Secretary may allow.

(4) The record-keeping obligations of a taxpayer specified in this Regulation are in addition to any record-keeping obligation applicable to the taxpayer under the Act or the *Revenue Administration Act 2014*.

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PART 4 — ADVANCED PRICING AGREEMENTS

12 Advance pricing agreements

(1) A taxpayer may request that the Secretary enter into an advance pricing agreement to establish an appropriate set of criteria for determining whether the taxpayer has complied with the arm's length principle for specified future controlled transactions undertaken by the taxpayer over a fixed period of time.

(2) A request under subregulation (1) shall be accompanied by:

(a) a description of the taxpayer's activities, controlled transactions, and the proposed scope and duration of the advanced pricing agreement;

(b) a proposal by the taxpayer for the determination of the transfer prices for the transactions to be covered by the advanced pricing agreement setting out:

(i) the comparability factors;

(ii) the selection of the most appropriate transfer pricing method for the circumstances of the controlled transactions; and

(iii) the critical assumptions as to future events under which the determination is proposed;

(c) the identification of any other country or countries that the taxpayer wishes to participate in the advanced pricing agreement; and

(d) any other information that the Secretary may require as specified in a public ruling on transfer pricing.

(3) The Secretary shall consider a request by a taxpayer under subregulation (1) and, after taking account of the matters specified in the request and the expected benefits from an advance pricing agreement in the circumstances of the case, the Secretary may decide to enter into an advance pricing agreement or to reject the request.

(4) Where the Secretary agrees to enter into an advance pricing agreement with a taxpayer, the Secretary may accept the taxpayer's proposal under subregulation (2)(b), reject it, or modify it with the taxpayer's consent.

(5) The Secretary may enter into an advance pricing agreement with the taxpayer either alone or together with the competent authority of the country or countries identified under subregulation (2)(c).

(6) Where the Secretary approves a proposal under subregulation (2)(b) or modifies it with the taxpayer's consent, the Secretary shall enter into an advance pricing agreement that will provide confirmation to the taxpayer that no transfer pricing adjustment will be made under Regulation 7(4) to a controlled transaction covered by the agreement provided the transaction is consistent with the terms of the agreement.

(7) An advance pricing agreement entered into under subregulation (6) applies to the controlled transactions specified in the agreement that are entered into on or after the date of the agreement and the agreement shall specify the tax years for which the agreement applies.

(8) The Secretary may cancel an advanced pricing agreement with a taxpayer by notice in writing, if the following applies:

(a) the taxpayer has failed to materially comply with a fundamental term of the agreement;
(b) there has been a material breach of one or more of the critical assumptions underlying the agreement;
(c) there is a change in the tax law that is materially relevant to the agreement; or
(d) the agreement was entered into based on a misrepresentation, mistake, or omission by the taxpayer.

(9) Cancellation of an advance pricing agreement under subregulation (8) takes effect:
(a) for a misrepresentation, mistake, or omission wilfully or negligently made, from the date the agreement was entered into;
(b) for a material breach of the critical assumptions underlying the agreement, from the date that the material breach occurred; or
(c) for any other case, from the date specified by the Secretary in the notice of cancellation not being a date before the date of service of the notice of cancellation.

(10) The Secretary shall treat as confidential any trade secrets or other commercially sensitive information or documentation provided to the Secretary in the course of negotiating an advance pricing agreement.

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PART 5 — CORRESPONDING ADJUSTMENTS

13 Corresponding adjustments

(1) This Regulation applies when:

(a) an adjustment is made by a competent authority of a country with which the Republic has a double tax treaty (referred to as the "foreign country") to the taxation of a transaction or transactions of a taxpayer subject to tax in the Republic; and

(b) the adjustment results in taxation in the foreign country of amounts of gross revenue or profits that are also taxable in the Republic.

(2) When this Regulation applies, the Secretary shall, upon request by the taxpayer in the approved form, determine whether the adjustment is consistent with the arm's length principle and, if the Secretary determines that it is consistent, the Secretary shall make a corresponding adjustment to the amount of tax charged in the Republic on amounts of gross revenue or profits so as to avoid double taxation.

(3) The Secretary shall provide an applicant under subregulation (2) with notice, in writing, of the decision on the application.

(4) A request under subregulation (2) shall be made by the taxpayer within the applicable time period for making such a request for the case to be resolved by way of mutual agreement procedure under the applicable double tax agreement.

[The next page is 135,401]

SCHEDULE

[Regulation 11]

TRANSFER PRICING DOCUMENTATION

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A taxpayer shall maintain the following transfer pricing documentation:

(1) An overview of the taxpayer's business operations and organisational structure.

(2) A description of the organisational structure of the multinational group of which the taxpayer is a member (including details of all group members, their legal form, and their shareholding percentages) and the group's operational structure (including a general description of the role that each of the group members carries out with respect to the group's activities, as relevant to the taxpayer's controlled transactions).

(3) A description of the taxpayer's controlled transactions, including analysis of the comparability factors specified in Regulation 4.

(4) An explanation of the reason for the transfer pricing method or methods used.

(5) Comparability analysis, including:

  (a) a description of the process undertaken to identify comparable uncontrolled transactions;

  (b) an explanation of the basis for the rejection of any potential internal comparable uncontrolled transactions, if applicable;

  (c) a description of the comparable uncontrolled transactions;

  (d) an analysis of comparability of the controlled transaction or transactions and the comparable uncontrolled transactions; and

  (e) details and explanation of any comparability adjustments made.

(6) Details of any industry analysis, economic analysis, budgets, or projections relied on.

(7) Details of any advance pricing agreements or similar arrangements in other countries that are applicable to the controlled transactions.

(8) A conclusion as to consistency of the conditions of the controlled transactions with the arm's length principle, including details of any adjustment made to ensure consistency.

(9) Any other information that may have a material impact on the determination of the taxpayer's compliance with the arm's length principle with respect to the controlled transactions.

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Public Ruling No 1/2017 SL No 19 — Schedule of Depreciation Rates

TABLE OF AMENDMENTS

Public Ruling No 1 of 2017 SL 19 was notified on 3 August 2017 and commenced on 1 July 2016.

Amending Legislation	Notification	Date of Commencement

[The next page is 138,201]

Schedule of Depreciation Rates

This ruling has been issued to give guidance to a taxpayer in determining the appropriate depreciation rates to be used for depreciable assets for the purposes of Section 21 of the *Business Tax Act 2016* . This ruling does not apply to business intangibles.

The depreciation rates are as follows:

Asset Category 1.

Motor vehicles; buses and minibuses with a seating capacity of less than 30 passengers; goods vehicles with a load capacity of less than 7 tonnes; computers and data handling equipment; and construction equipment and earthmoving equipment

Diminishing value method 40%

Straight-line method 25%

Asset Category 2.

Buses with a seating capacity of 30 or more passengers; goods vehicles designed to carry or pull loads of more than 7 or more tonnes; specialised trucks; tractors; trailers and trailer mounted containers; and plant and machinery used in manufacturing, mining, or farming operations

Diminishing value method 30%

Straight-line method 20%

Asset Category 3.

Vessels, barges, tugs, and similar water transportation equipment; aircraft; specialised public utility plant, equipment, and machinery; office furniture, fixtures, and equipment; and any depreciable asset not included in another category

Diminishing value method 20%

Straight-line method 12.5%

Asset Category 4.

Buildings and Structural Improvements

Straight-line method 5%

Taxpayers who use these rates will not need to justify the rate used.

Taxpayer protection

Under Section 47 of the *Revenue Administration Act 2014* , the Secretary for Finance has made this ruling in accordance with Section 48 of that Act.

This ruling is binding on the Secretary for Finance until it is withdrawn. It is not binding on a taxpayer.

Date of Effect

1st July 2016

Issued under the Business Tax Act 2016.

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Notice of Exemption from Tax for Global Mission Support Services under the Business Tax Act 2016

TABLE OF AMENDMENTS

Notice of Exemption from Tax for Global Mission Support Services under the Business Tax Act 2016 SL 48 was notified and commenced on 3 September 2025 (GN No 1024/2025; Gaz 391/2025).

Amending Legislation	Notification	Date of Commencement

[The next page is 140,201]

Notice of Exemption from Tax for Global Mission Support Services under the Business Tax Act 2016

Notice is hereby given that in accordance with Section 18(1)(d) of the *Business Tax Act 2016* , the income of Global Mission Support Services (GMSS DMCC) has been exempted and such exemption has received the concurrence of the Cabinet as confirmed in the Cabinet resolution dated Thursday, 19 th June 2025.

Dated this 2 nd day of September 2025

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SECRETARY FOR FINANCE

[The next page is 140,701]

Notice of Exemption from Tax for Downer EDI Engineering Power Pty Ltd and Downer New Zealand Ltd and its Sub-Contractors for the Purposes of the Naoero Airport Upgrade and Road Rehabilitation Project under the Business Tax Act 2016

TABLE OF AMENDMENTS

Notice of Exemption from Tax for Downer EDI Engineering Power Pty Ltd and Downer New Zealand Ltd and its Sub-Contractors for the Purposes of the Naoero Airport Upgrade and Road Rehabilitation Project under the Business Tax Act 2016 SL 32 was notified and commenced on 24 August 2026 (GN No 849/2026; Gaz 294/2026).

Amending Legislation	Notification	Date of Commencement

[The next page is 140,901]

Notice of Exemption from Tax for Downer EDI Engineering Power Pty Ltd and Downer New Zealand Ltd and its Sub-Contractors for the Purposes of the Naoero Airport Upgrade and Road Rehabilitation Project under the Business Tax Act 2016

(Section 18(1)(a))

Notice is hereby given that in accordance with Section 18(1)(a) of the *Business Tax Act 2016* , the income of Downer EDI Engineering Power Pty Ltd and Downer New Zealand Ltd and its Sub-contractors has been exempted and such exemption has received the concurrence of the Cabinet as confirmed in the Cabinet resolution dated Tuesday, 21 st January, 2025.

Dated this 24 th day of August, 2026

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DAMON ADEANG
ACTING SECRETARY FOR FINANCE

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