



# INCOME TAX AMENDMENT (No.2) ACT 2009

Act No. 302

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## AN ACT

### TO AMEND THE INCOME TAX ACT 1961

#### 1 Name

This is the Income Tax Amendment Act (No. 2) 2009.

#### 2 Interpretation

In this Act, "Act" means the Income Tax Act 1961.

#### 3 Section 2 amended

Section 2 of the Act is amended by -

(1) Numbering the existing section "(1)".

(2) Deleting the definition of "Collector".

(3) Inserting in its alphabetical place the following -

"income derived from Niue" means income described in section 82;

(4) Deleting the definition of "non-assessable income" and inserting in its place the following -

"non-assessable income" means income described in section 40;

(5) Deleting the definition of "notice" and inserting in its place the following -

"notice" means a notice in writing given to a person by delivery or left at the person's usual or last known place of abode or business in Niue or elsewhere or sent by post addressed to that person's usual or last known place of abode or business in Niue or elsewhere and where there are several such places of business to any of them;

(6) Deleting the definition of "overseas company" and inserting in its place the following -

"overseas company" has the same meaning as the Companies Act 2006;"

(7) Inserting in its alphabetical place the following -

"person chargeable with income tax" means a person who derives assessable income;

(8) Deleting the definition of "prescribed".

(9) Inserting in its alphabetical place the following -

"primary employment earnings" in relation to an employee and to any pay period means -

- (a) Earnings derived by an employee from one employer by way of source deduction payment (not being a withholding payment and not being an extra emolument) in that pay period;
- (b) Earnings derived by an employee where the employee has 2 or more employers by way of source deduction payment (not being a withholding payment and not being an extra emolument) in that pay period, which exceeds in amount the source deduction payment received from the other employer or as the case may be from each of those other employers;
- (c) Earnings derived by a full time employee (as defined in section 2(5) of the Income Tax Amendment Act 2009) by way of source deduction payment (not being a withholding payment and not being an extra emolument) in that pay period;
- (d) Earnings derived by an employee where the employee has 2 or more employers by way of source deduction payment (not being withholding payment and not being an extra emolument) in that pay period which are of equal amount as the source deduction payment received from the other employer or as the case may be from each of those other employers, the employee has the option to elect which he considers as the primary employment.

(10) Inserting in its alphabetical place the following -

“secondary employment earnings” in relation to an employee and to any pay period means any source deduction payment that is not being a payment of primary employment earnings and not being a withholding payment and not being an extra emolument derived in the pay period from any employer.

(10) Deleting the words “of a withholding payment” in the definition of “source deduction payment” and inserting in their place the following -  
“or a withholding payment”

(11) Inserting in its alphabetical place the following -  
“resident” means, subject to subsections (2) and (3) -

- (a) An individual who in a specific year -
  - (i) has his or her domicile in Niue at any time during that year;
  - (ii) is present in Niue for a period of, or periods amounting in aggregate to, 183 days in any 12 month period that commences or ends during that year; or
  - (iii) is an employee of the Government of Niue posted abroad at any time during that year;
- (b) a company which -
  - (i) is incorporated, created, or formed in Niue in a specific year; or
  - (ii) has a centre of its administrative management in Niue at any time during a specific year;
- (c) a partnership with a partner who is a resident at any time during a specific year;
- (d) a trust -
  - (i) which was settled or established in Niue in a specific year;
  - (ii) of which a trustee is a resident in Niue at any time during a specific year;

(12) Inserting the following subsections -

- (2) An individual who is a resident for a specific year “the current year”, but who was not resident for the preceding year shall be treated as a resident in the current year only for the period which commenced on the date on which the individual was first present in Niue.
- (3) A resident for the current year as defined in subsection (2) but who is not a resident for the following year shall be treated as a resident in the current year only for the period ending on the last day on which the individual was present in Niue.

#### **4 Amendments to officer designation**

- (1) Section 5 of the Act is amended -
  - (a) In subsection (2)(a), by deleting the words "by the Treasurer".
  - (b) In subsection (3), by deleting the words "by the Treasurer".
  
- (2) Section 33 of the Act is amended -
  - (a) In subsection (1), by deleting the words ", or an appeal to the Collector under this Act,"
  - (b) In subsection (3)(a), by deleting the words "or Collector as the case may be";
  - (c) In subsection (3)(b), by deleting the words "or with the Collector, as the case may be";
  - (d) In subsection (6), by inserting a comma before the words "the Registrar of the Court" and deleting the words ", or the Collector as the case may be,";
  - (e) In subsection (8), by deleting the words "or the Collector, as the case may be,";
  - (f) In subsection (9), by deleting the words "or with the Collector, as the case may be,".
  
- (3) Section 78 of the Act is amended in subsection (4) by deleting the words "the Collector or the Court, as the case may be" and inserting in their place -  
"the Court"
  
- (4) Section 105 of the Act is amended by deleting the words ", on the requisition of the Treasurer,".
  
- (5) Section 121 of the Act is repealed and replaced by the following -  
"121 Public Officer appearing in legal proceedings for Financial Secretary  
In all proceedings in the Court on an objection to an assessment of tax and in any action in the Court for the recovery of tax, the Financial Secretary may appear by an officer of the Public Service, and the written authority of the Financial Secretary stating that any public officer so appearing is such an officer and that the officer appears for the Financial Secretary shall be sufficient evidence of the facts so stated and of the public officer's authority."
  
- (6) The Act is amended by deleting the word "Treasurer" wherever it appears and inserting in its place the following -  
"Financial Secretary"

#### **5 Assessment by Financial Secretary**

Section 17 of the Act is repealed and replaced by the following -

**17 Assessment by Financial Secretary**

- (1) Where, in respect of a taxpayer in a specific year, the Financial Secretary -
  - (a) is not satisfied with a return submitted by that taxpayer; or
  - (b) has reason to believe that the taxpayer has not submitted a return,the Financial Secretary may make an assessment of the amount of taxable income and the amount payable by that taxpayer including income tax, penalties and other charges for which the taxpayer is liable.
- (2) Except in the case of fraud or wilful neglect, the Financial Secretary shall not make an assessment under this section in respect of a period beyond 4 years from the year in which the assessment is made.
- (3) Every assessment made under this section shall be given by notice to the taxpayer in respect of whom the assessment was made.
- (4) Where the Financial Secretary has given notice to any taxpayer of an assessment under this section, that taxpayer shall pay the full amount within 28 days of the date of the notice of assessment.

**6 Stop notice by Financial Secretary**

Section 126 of the Act is repealed and replaced by the following -

**126 Stop notice by Financial Secretary**

- (1) Where the Financial Secretary is satisfied that a person is liable to pay income tax and arrangements are required for the payment of all income tax that is or may become payable by that person and such arrangements have not been made, the Financial Secretary may issue a stop notice in respect of that person.
- (2) Where the Financial Secretary has issued a stop notice under this section, no ticket or other authority to travel from Niue shall be issued to or in respect of that person until the stop notice has been cancelled by the Financial Secretary.
- (3) Notice shall be given to the taxpayer and to the relevant immigration authorities of every stop notice issued or cancelled under this section.
- (4) A person in respect of whom a stop notice is in force under this section who travels from Niue commits an offence and is liable on conviction to a fine not exceeding 10 penalty units.
- (5) A person who permits or authorises a person in respect of whom a stop notice is in force under this section to travel from Niue commits an offence and is liable on conviction to a fine not exceeding 10 penalty units."

**7 Section 113R amended**

Section 113R of the Act is repealed and replaced by the following -

**113R Withholding Payments**

- (1) The Financial Secretary may exercise discretion and withhold up to 10 percent of the total account to be paid to a supplier of goods or services to the Niue Government, as a contribution towards the total tax payable by the supplier in respect of his income in that income year.

- (2) The Financial Secretary may exercise discretion particularly for suppliers of goods and services that are non-compliant or in arrears of tax payable in respect of any income year."

## **8 Power to make Regulations**

Section 152 of the Act is repealed and replaced by the following -

### **"152 Regulations**

Cabinet may make such Regulations as it thinks fit for -

- (a) The purposes of this Act;
- (b) Arrangements with foreign governments for the relief of double taxation; and
- (c) Imposing, revoking, suspending, reducing, or increasing income tax on a non-resident who has received income derived from Niue."

## **9 Consequential and minor amendments**

- (1) Section 5 of the Act is amended in subsection (4)(b) by deleting the words "three hundred pounds" and inserting in their place the following -  
"6 penalty units"
- (2) Section 7 of the Act is amended in subsection (1) by deleting the semicolon and inserting a full stop in its place.
- (3) Section 26 of the Act is amended by deleting the symbol "=",
- (4) Section 37 of the Act is amended in subsection (1) by deleting the words "whose home has not been in Niue" and inserting in their place the following -  
"who has not been a resident"
- (5) Section 37 of the Act is amended in subsection (2) by inserting a full stop at the end of the subsection.
- (6) Section 49 of the Act is amended in subsection (1) by -
  - (a) deleting paragraph (p);
  - (b) deleting paragraph (u) and inserting in its place the following -  
"Income declared by Cabinet by Regulation to be exempt from taxation because of its liability to taxation in another country;"
  - (c) deleting the word "drived" in paragraph (w) and inserting in its place the following -  
"derived"
- (7) Section 55 of the Act is amended by repealing subsection (2)(b).

- (8) Section 58 of the Act is amended by deleting subsection (2)(b) and inserting in its place the following -  
 "No claim to a deduction or set-off will be allowed under this section in respect of any loss which has been allowed for or set-off under the law of any other country relating to income tax."
- (9) Section 81 of the Act is repealed.
- (10) Section 82 is amended by repealing paragraph (g).
- (11) Section 153 of the Act is repealed.
- (12) Schedule 3 of the Act is repealed and replaced by the following -

"Schedule 3  
 Low income rebate  
 (Section 41A)

Amount of assessable income of Taxpayer	Rebate
\$10,000 or less	An amount equal to the income tax that would otherwise be payable on the assessable income of the taxpayer or \$1000 whichever is the lesser amount
More than \$10,000 but less than \$20,000	\$1000 less 10 cents for each dollar of assessable income of the taxpayer in excess of \$10,000"