



REPUBLIC OF NAURU

AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION ACT 2016

No. 53 of 2016

An Act to make provision for implementing the obligations of Nauru arising under an agreement for the implementation of the standard of automatic exchange of financial account information in tax matters

Certified: 4th November 2016

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Enacted by the Parliament of Nauru as follows:

1 Short title

This Act may be cited as the *Automatic Exchange of Financial Account Information Act 2016*.

2 Commencement

This Act commences upon certification by the Speaker.

3 Definitions

(1) In this Act:

'Agreement' means:

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

'authorised officer', in relation to the exercise of a particular power under this Act, means a tax officer specifically authorised in writing, by the Secretary to exercise the power;

'Department' means the Department of Finance;

'designated officer' means, with respect to any function, the officer of the Department designated to carry out that function;

'financial account' has the meaning given that expression by section VIII of the Standard;

'information return' means a report setting out certain information as specified by regulations which a reporting financial institution is required to file with the Secretary;

'Jurisdiction Financial Institution' means:

- (a) any Financial Institution that is resident in Nauru, but excludes any branch of that Financial Institution that is located outside of Nauru; and
- (b) any branch of a Financial Institution that is not resident in Nauru, if that branch is located in Nauru.

'Minister' means the Minister responsible for Finance;

'regulations' means regulations made under this Act;

'Secretary' means the Secretary for the Department of Finance;

'Standard' means the Common Reporting Standard including the Commentaries as approved by the Council of the Organisation for Economic Co-operation and Development on 15 July 2014, which contains reporting and due diligence procedures for the exchange of information on an automatic basis, as amended from time to time and for the purposes of this Act, the Standard is to be read as the definition "reporting financial institution" in subparagraph A (1) of Section VIII of the Standard;

'reporting financial institution' means any Nauru Financial Institution that is not a non-reporting financial institution.

(2) Any word or expression which has a meaning given to it by the Standard will, where it is used in this Act or the regulations and unless the contrary intention appears, have the same meaning in this Act or those regulations as it has in the Standard.

4 Agreement – force of law

The Agreement as approved and has the force of law in Nauru.

5 Inconsistent laws

In the event of any inconsistency between the provisions of this Act or the Agreement and the provisions of any other law, the provisions of this Act and the Agreement prevail to the extent of the inconsistency.

6 Information returns by financial institutions

Every reporting financial institution must collect and report certain information in respect of certain financial accounts as specified by regulations.

7 Functions and powers of Secretary

(1) The Secretary, subject to the general directions of the Minister, may generally administer and enforce compliance with the provisions of the Agreement, this Act and any regulations.

(2) The Secretary may exercise all powers vested in him under the *Revenue Administration Act 2014* to administer and enforce compliance with the provisions of the Agreement, this Act and any regulations.

- (3) The Secretary may delegate, in writing, to any designated or authorised officer any power or duty conferred on the Secretary by this Act.
- (4) The Secretary or any designated officer may request information from and at all reasonable times, enter any premises or place of business of a reporting financial institution for the purposes of:
 - (a) determining whether information:
 - (i) included in an information return made under the regulations by the reporting financial institution is correct and complete; or
 - (ii) not included in an information return was correctly not included; or
 - (b) examining the procedures put in place by the reporting financial institution for the purposes of ensuring compliance with that institution's obligations under this Act and the regulations.

8 Confidentiality

- (1) The *Banking Act 1975* or any other law relating to confidentiality does not apply to the disclosure of information by a reporting financial institution to the Secretary that is required to be included in an information return filed under this Act or the regulations.
- (2) Any person who currently has an official duty or who formerly had an official duty in the administration or enforcement of this Act or the regulations, must keep confidential any information received from a reporting financial institution under this Act or the regulations.
- (3) Despite subsection (2), information may be disclosed as may be necessary for the purpose of the administration or enforcement of the Agreement, this Act or the regulations.
- (4) A person who discloses or divulges any information or produces any document relating to the information received from a reporting financial institution under this Act or the regulations in contravention of subsection (2) commits an offence and is liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years.

9 Penalties

- (1) A person who, without reasonable excuse, fails to comply with a duty or obligation imposed by this Act or the regulations is liable to a penalty of \$100 for each such failure, and the product obtained when \$100 is multiplied by the number of days, not exceeding \$10,000, during which the failure continues.

- (2) A reporting financial institution that fails to file an information return as and when required under this Act or the regulations is liable to a penalty of \$1,000 for each such failure.
- (3) A person who makes a false statement or omission in respect of any information required to be included on an information return, under this Act or the regulations is liable to a penalty of \$1,000 unless in the case of information required in respect of another person, a reasonable effort was made by the person to obtain the information from the other person.
- (4) A reporting financial institution that fails to file an information return in the manner required under this Act or the regulations is liable to a penalty of \$1,000 for each such failure.
- (5) A person who fails to comply with the requirements of section 7(4) is liable to a penalty of \$1,000 for each such failure.

10 Liabilities to penalties

- (1) Liability to a penalty under section 9 does not arise if the person satisfies the Secretary or authorised officers that there is a reasonable excuse for the failure.
- (2) For the purposes of this Act neither of the following is a reasonable excuse:
 - (a) that there is an insufficiency of funds to do something; or
 - (b) that a person relies upon another person to do something.
- (3) If a person had a reasonable excuse for a failure but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

11 Assessment of penalties

- (1) If a person becomes liable to a penalty under section 9, the Secretary must:
 - (a) assess the penalty; and
 - (b) notify the person of the assessment.
- (2) An assessment of a penalty under section 9, must be made within a period of 12 months beginning from the date on which:
 - (a) the person became liable to the penalty; or
 - (b) the inaccuracy first came to the attention of the Secretary.

12 Application of Revenue Administration Act to appeals and objections

- (1) A person may appeal or object to an assessment under this Act.
- (2) The provisions of Part 8 of the *Revenue Administration Act 2014* apply in relation to appeals and objections to an assessment under this Act.

13 Enforcement of penalties

- (1) A penalty under this Act must be paid to the Department of Finance within 30 days following:
 - (a) the date on which notification under section 11 is provided in respect of the penalty; or
 - (b) the date on which an appeal or objection against a penalty assessment is finally determined or withdrawn.
- (2) If any amount in respect of a penalty is not paid by the due date described in subsection (1), interest on the amount owing shall be charged computed for the period during which that amount is outstanding.
- (3) The rate of interest charged under subsection (2) is 15% per annum.

14 Anti-avoidance

If a person enters into any arrangements or engages in a practice, the main purpose or one of the main purposes, of which can reasonably be considered to be to avoid an obligation imposed under this Act or regulations, the person is subject to the obligation as if the person had not entered into the arrangement or engaged in the practice.

15 Regulations

The Minister may make any regulations that are necessary for giving effect to any of the provisions of the Agreement or this Act, including:

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

is to be reported for different years, specifying the information to be reported for each of those years;

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