

INCOME TAX ACT 1961

1961/9 – 16 March 1961

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1 Short title

This is the Income Tax Act 1961.

PART 1 INTERPRETATION

2 Interpretation

(1) In this Act –
“agent” means any person declared by this Act to be an agent for the purposes of income tax;

- “assessable income” means income of any kind which is not exempted from income tax otherwise than by way of a “special exemption” expressly authorised as such by this Act;
- “book and document” and “book or document” include all books, accounts, rolls, records, registers, papers and other documents;
- “business” includes any profession, trade, manufacture, or undertaking carried on for pecuniary profit;
- “charitable purpose” includes every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community;
- “company” means a Niuean company or any body corporate whether incorporated in Niue or elsewhere, but does not include a local or public authority;
- “debentures” includes debenture stock, and “debenture-holder” includes the owner of debenture stock;
- “dependant” in relation to an employee means a person in terms of section 113E;
- “dividends” in relation to any company shall be deemed to include –
- (a) All sums distributed in any manner and under any name among all or any of the shareholders of the company;
 - (b) Any credit given by the company without fully adequate consideration in money or money’s worth to any of its shareholders in respect of the amount unpaid on any shares that are not fully paid up;
 - (c) The paid up value of any share allotted by the company to any of its shareholders as such to the extent to which that value exceeds the value of the consideration in money or money’s worth (if any) paid or given by the shareholders to the company in respect of the shares allotted;
 - (d) The value of any other property of any kind whatsoever distributed by the company to any of its shareholders as such;
 - (e) All amounts received by any shareholder in respect of his shares (whether in money or money’s worth) upon the winding up of the company in excess of the amount paid up on his shares;
 - (f) Where any property of the company is sold or otherwise disposed of to a shareholder without consideration or for a consideration which in the opinion of the Financial Secretary is less than its market price or its true value, the excess of the market price or its true value, the excess of the market price of that property on the day it was sold or disposed of over the price (if any) realised on the sale or disposition or, if there is no market price, the excess of the price deemed to have been realised pursuant to a determination of the Financial Secretary under section 53(2)(b) over the price (if any) realised on the sale or disposition, and it shall be ground for an objection to an assessment of income tax under Part 3 that any determination of the Collector made for the purposes of this paragraph is erroneous in fact, and subject to the taxpayer’s right of objection to the Financial Secretary’s assessment under Part 3 shall also include any moneys advanced by the company to or for the benefit of any of its shareholders irrespective of the year in which the moneys were advanced if, in the opinion of the Financial Secretary, the making of the advance was not a bona fide investment by the company, but was virtually a distribution of profits, but shall not in any case include any payment or other transaction which, in the opinion of the Financial Secretary, is or is equivalent to a return of share capital:
- Provided that where any moneys advanced by a company to or for the benefit of any shareholders and deemed by virtue of this section to constitute a

dividend are subsequently repaid to the company, the Financial Secretary may amend in such manner as may be thereby rendered necessary the assessment made in respect of income derived by that shareholder, during the income year in which the advance was made, and may at any time refund any tax found to have been paid in excess of the amount properly payable, notwithstanding anything to the contrary in section 147:

Provided also that if in any case the Financial Secretary sees fit, the expression “dividends” shall be deemed not to include any payment or other transaction to the extent to which, in the opinion of the Financial Secretary, that payment or transaction constitutes a return to shareholders of premiums paid to the company in respect of the issue of share capital by the company:

Provided also that where any company that has reduced the amount of the paid up capital of any shareholder by writing off losses incurred by the company –

- (i) Subsequently gives credit without fully adequate consideration in money or money’s worth to that shareholder in respect of the amount unpaid on any shares in the company; or
- (ii) Subsequently allots shares to that shareholder the paid up value of which shares exceeds the value of the consideration in money or money’s worth (if any) paid or given by the shareholder to the company for the shares – the expression “dividends” shall for the purposes of this Act be deemed not to include the credit so given or the paid up value of the shares so allotted, as the case may be, to the extent that the Financial Secretary thinks just and reasonable, having regard to the amount of the paid up capital lost by the shareholder and any other relevant considerations;

“employee” means a person who receives or is entitled to receive a source deduction payment;

“employer” means a person who pays or is liable to pay a source deduction payment and includes -

- (a) The manager or other principal officer in the case of an unincorporated body of persons;
- (b) Each partner in the case of a partnership;
- (c) Each person in whom the property has become vested or to whom the control of the property has passed in the case of the estate of a deceased person, a trust, a company in liquidation, or an assigned estate, or in any other case where property is vested or controlled in a fiduciary capacity;

“income derived from Niue” means income described in section 82;

“income year” means in respect of the income of any person, the year in which that income has been derived by him;

“lease” means any disposition whatever by which a leasehold estate is created;

“leasehold estate” includes any estate howsoever created, other than a freehold estate;

“local authority” means a Village Council and includes any incorporated instrument of local government in Niue whether possessing rating powers or not;

“minerals” includes all minerals, metals, coal, oil, clay, stone, gravel, sand, and precious stones;

“non-assessable income” means income described in section 40;

“non-resident agent” means an agent within the meaning of this Act who, being in Niue, has no fixed and permanent place of business or abode there;

“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;

“officer” includes any person employed by the Niue Public Service Commission acting under the authority of the Financial Secretary;

“overseas company” has the same meaning as the Companies Act 2006;

“person” includes a local or public authority;

“person chargeable with income tax” means a person who derives assessable income;

“primary employment earnings” in relation to an employee and to any pay period means

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- (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;

“public authority” means the Departments or other instruments of the Government;

“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;

“salary or wages” in relation to any person means salary, wages, or allowances (whether in cash or otherwise), including all sums received or receivable by way of overtime pay, bonus, gratuity, extra salary, commission, or remuneration of any kind in respect of and in relation to the employment of that person;

“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

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- employment earnings and not being a withholding payment and not being an extra emolument derived in the pay period from any employer;
- “shareholder” includes any member of a company, whether the capital of that company is divided into shares or not; and “share” includes any interest in the capital of a company;
- “source deduction payment” means a payment by way of salary or wages, an extra emolument or a withholding payment;
- “superannuation fund” means the Niue Government Superannuation Fund and any superannuation fund established for the benefit of the employees of any employer and approved for the time being by the Financial Secretary for the purposes of this Act;
- “tax” means income tax;
- “taxable income” means the residue of assessable income after deducting the amount of all special exemptions to which the taxpayer is entitled;
- “taxpayer” means a person chargeable with income tax, whether on his own account or as the agent or trustee of any other person, and includes the executor or administrator of a deceased taxpayer;
- “trustee” includes an executor and administrator;
- “year” means a year commencing on 1 April and ending on 31 March, both of these days being included;
- “year of assessment” means the year for which income tax is payable.

(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.

PART 2

ADMINISTRATION

3 Financial Secretary to administer Act

(1) The Financial Secretary, subject to the control of Cabinet shall be charged with the administration of the Act.

(2) Any certificate, notice, or other document bearing the written, stamped, or printed signature of the Financial Secretary relating to any matter provided for in this Act shall, until the contrary is proved, be deemed to have been duly signed by the person by whom it purports to have been signed.

(3) Judicial notice shall be taken of every such signature and of the fact that the person whose signature it purports to be holds or has held the office of Financial Secretary.

4 Officers to maintain secrecy

(1) The Financial Secretary and every other officer of the Government –

- (a) Shall maintain and aid in maintaining the secrecy of all matters relating to this Act which come to his knowledge and shall not communicate any such matters to any person except for the purpose of carrying into effect this Act or any other enactment imposing taxes or duties payable to the Government; and also
- (b) Shall before he begins to perform any official duty under this Act, take and subscribe an oath of fidelity and secrecy to maintain secrecy in conformity with this section.

(2) Without limiting the generality of subsection (1)(a), it is hereby declared that no officer of the Government shall be required to produce in any court any book or document or to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties as an officer of the Government, except when it is necessary to do so for the purpose of carrying into effect the Act or any other enactment imposing taxes or duties payable to the Government.

(3) Every person who wilfully acts in contravention of this section or in contravention of the true intent of any such oath shall be liable on conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding 2 penalty units.

PART 3

RETURNS AND ASSESSMENTS

5 Annual returns by taxpayers for purposes of income tax

(1) For the purpose of the assessment and levy of income tax every taxpayer shall in each year furnish to the Financial Secretary a return setting forth a complete statement of all the assessable income derived by him during the preceding year together with such other particulars as may be prescribed.

(2) Except as otherwise provided, every return of income under the Act shall

- (a) Be made and furnished in such of the forms prescribed for the purpose as is applicable;
- (b) Contain the information and particulars mentioned or referred to in that form;
- (c) Be verified by declaration as therein set forth;
- (d) Be accompanied by all such balance sheets, profit and loss accounts, statements, and other documents as are mentioned in the form or are otherwise required by the Financial Secretary.

(3) Any further or other return which a person is required to make or furnish to the Financial Secretary under section 11 or 13 or in pursuance of any other statutory provision shall, unless the form is prescribed by the statutory provision, be made and furnished in the form prescribed.

(4) Annual returns of income shall be made –

- (a) By all companies and all persons in business whether for the whole or part of the income year irrespective of whether a profit has been made or a loss incurred provided that this requirement shall not apply to any company or person in business whose total turnover does not exceed \$20,000;
- (b) By all other persons, whether taxpayers or not, who derive income from salary, wages, interest, rent, annuity, dividend or other sources where the total income so derived exceeds 6 penalty units per annum.

(5) (a) All returns of income and any other returns required the Act to be furnished to the Financial Secretary shall be furnished by posting or delivering the same to the Financial Secretary or other authorised officer at the office of the Financial Secretary or at such other place as the Financial Secretary may direct.

(b) Such direction may be given by the insertion of a general direction in any return form prescribed for use in any year of assessment or in such other manner as the Financial Secretary thinks fit.

(6) Wherever a person is required by this Act or the Financial Secretary to furnish a return to the Financial Secretary, it shall be the duty of that person to procure and make the required return and to take all steps necessary to ensure that the return is received at the place where or the person to whom under this Act the return is required to be furnished.

(7) (a) Every person who furnishes a return shall, in the return, state his postal address, and shall, within one month of any change in his postal address, give to the Financial Secretary at the place where he furnished his return notice in writing of the change, and of his new postal address.

(b) The posting of any notice addressed to a person at the last address given by him under this Act shall be sufficient service of notice on him for the purposes of the Act.

6 Returns to annual balance date

(1) In lieu of furnishing a return under section 5 for any year ending on 31 March of that year, any taxpayer may with the consent of the Financial Secretary elect to furnish a return for the year ending on the date of the annual balance of his accounts, and in any such case the income derived during any year ending on a date between 1 October and the next succeeding 30 September inclusive, shall for the purposes of this Act be deemed to have been derived during the year ending on 31 March falling between the same two dates.

(2) Any election made by a taxpayer for the purposes of this section shall continue in force unless and until it is altered by the taxpayer with the prior approval in writing of the Financial Secretary.

7 Consequential adjustments on change in return date

(1) In this section –

“new return date” means in the case of a taxpayer who has changed his return date, the date to which the change was made or, if he has made more than one change, means the date to which the last change was made;

“original return date” means in the case of a taxpayer who has changed his return date, the return date immediately prior to the new return date;

“return date” means the last day of the period for which a return of income is required to be made.

(2) Where, in any case a new return date has been approved by the Financial Secretary, the taxpayer shall furnish a return to the original return date and another return for the period between the original return date and the new return date.

(3) All returns of income made under subsection (2) to a date falling between 1 October and the next succeeding 30 September inclusive shall be deemed to be returns of income derived during the year ending on 31 March falling between those same two dates, and the income derived by a taxpayer during that period shall for the purposes of assessment, be added to any other income derived for the same year, and he shall be assessed and liable for income tax accordingly.

(4) Where, for the purposes of this section, a taxpayer is assessed for income tax on a return made for a period of less than a year, he shall be entitled, by way of special exemptions, only to an amount bearing to the total exemptions to which he would be entitled for a full year the same proportion as the number of days in that period bears to the number of days in a year; and where a taxpayer is assessed on a return or returns for a period of more than a year, the deduction to which he shall be entitled by way of special exemptions shall be proportionately increased.

(5) Where, for the purposes of this section, a taxpayer is assessed for income tax on returns made for a period that is less or greater than a year, the rate of tax shall be determined as for a year, and for the purposes of this subsection the taxable and non-assessable income of a taxpayer shall be deemed to have been derived at a uniform daily rate throughout the period for which the returns have been made and where that period is less than a year that daily rate shall be deemed to have continued for a year.

(6) Where a taxpayer has been assessed for income tax on a return made to any date other than 31 March in any year, the income derived by that taxpayer shall be deemed to have been assessed for tax to that other date, and not to 31 March.

(7) For the purposes of giving effect to this section and section 6, the Financial Secretary may, for any year or years of assessment, make all such assessments or additional assessments as he may deem necessary, notwithstanding anything to the contrary in this Act.

8 Returns by partners, co-trustees and joint adventurers

(1) When income is derived by two or more persons jointly as partners, co-trustees or otherwise, the following provision shall apply –

- (a) In the case of trustees, they shall make a return of that income, and shall be jointly assessable thereon and jointly and severally liable for the tax so assessed.
- (b) In the case of partners –
 - (i) they shall make a joint return of the income of the partnership, setting forth the amount of that income and the shares of the several partners therein and every such return shall be signed by all the partners;
 - (ii) each partner shall make a separate return of all income derived by him and not included in any such joint return;
 - (iii) there shall be no joint assessment but each partner shall be separately assessed and liable for the tax payable on his total income, including his share of the income of any partnership in which he is a partner.
- (c) In any case other than that of co-trustees or partners, each person by whom income is so derived shall include in his return the amount of his share in the joint income and shall be assessed and liable accordingly.

(2) Where a husband and wife are carrying on business together or deriving income jointly without any formal partnership agreement, the whole of the income derived from the business or jointly shall, for the purposes of assessment, be deemed to have been equally split between the husband and wife and subsection (1)(b) shall in all respects apply as if there is a bona fide partnership agreement.

9 Returns by executors or administrators

(1) The executor or administrator of a deceased taxpayer shall, in respect of all income derived by that taxpayer in his life-time, make the same returns as the taxpayer ought to have made or would have been bound to make if he had remained alive, and the Financial Secretary may require the executor or administrator to make such further returns relative to that income as the Financial Secretary thinks necessary and may assess the executor or administrator for income tax on that income in the same manner in which the taxpayer might have been assessed had he remained alive.

(2) The tax so assessed shall be deemed to be a liability incurred by the deceased taxpayer in his lifetime, and the executor or administrator of the taxpayer shall be liable for the same accordingly.

10 Special returns and special assessments

(1) This section applies to the following persons –

- (a) An agent;
- (b) A non-resident trader;
- (c) A person who is believed by the Financial Secretary to be about to leave Niue or to be about to discontinue the carrying on of business in Niue;

- (d) A person who has ceased to carry on business in Niue or to derive assessable income;
- (e) The executors or administrators of a deceased taxpayer in respect of income derived by him in his lifetime;
- (f) A person who has become bankrupt, or a company which is in course of being wound up.

(2) The Financial Secretary may at any time during the income year or in any subsequent year, require any person to whom this section applies to make a return of income derived from any specified transaction or transactions or during any specific period, and may assess him for income tax on the income so returned, or when default is made in making such a return, or the Financial Secretary is dissatisfied therewith, then on such sum as the Financial Secretary thinks reasonable, and shall give notice of the assessment to the person so assessed.

(3) Any person so assessed shall have the same right of objection as if he had been assessed in the ordinary course.

(4) Tax so assessed shall be payable on demand, which may be made in and by the notice of assessment, or at any later date, and the tax shall be recoverable in the same manner as income tax assessed in the ordinary course.

(5) No assessment made under this section shall in any manner preclude a subsequent assessment of the same person in the ordinary course in respect of the whole of the income derived by him during the income year with respect to which the assessment under this section was made, but in such case the tax paid under the earlier assessment shall be credited in the subsequent assessment.

11 Other annual returns

In addition to the foregoing returns every person, whether a taxpayer or not, shall make to the Financial Secretary such annual returns as may be prescribed for the purposes of this Act.

12 Dates by which returns to be furnished

(1) The above-mentioned returns shall be made in each year on or before a date or dates of which the Financial Secretary gives public notice.

(2) Such notice shall be given by publishing the same in the *Gazette* or any newspaper published in Niue or in such other manner as the Financial Secretary may think necessary and sufficient.

13 Financial Secretary may require other returns

In addition to the returns above-mentioned, every person, whether a taxpayer or not, shall as and when required by the Financial Secretary make such further or other returns as the Financial Secretary requires for the purposes of this Act.

14 Presumption as to authority

A return purporting to be made by or on behalf of any person shall for all purposes be deemed to have been made by that person or by his authority, as the case may be, unless the contrary is proved.

15 Financial Secretary to make assessments

(1) From the returns made as aforesaid and from any other information in his possession the Financial Secretary shall in and for every year and from time to time and at any time as may be necessary, make assessments in respect of every taxpayer, setting forth the amount upon which tax is payable and the amount of the tax.

(2) Every such assessment shall be made in such form and manner as the Financial Secretary thinks fit, and shall be signed by him.

16 Rates of income tax

(1) The Financial Secretary shall in any year of assessment assess the income tax of any taxpayer at the rates as set out in Schedule 1.

(2) If in any year of assessment the rates of tax as set out in Schedule 1 are varied by the passing of an amending Act, every assessment of income tax made in respect of that year before the passing of any such amending Act may be amended and reassessed on the basis of the new rates.

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.

18 Assessment where default in furnishing returns

If any person makes default in furnishing any return, or if the Financial Secretary is not satisfied with the return made by any person, or if the Financial Secretary has reason to suppose that any person although he has not made a return is a taxpayer, he may make an assessment of the amount on which in his judgment tax ought to be liable to pay the tax so assessed, save in so far as he establishes on objection that the assessment is excessive or that he is not chargeable with tax.

19 Amendment of assessments

(1) The Financial Secretary may make all such alterations in or additions to an assessment as he thinks necessary in order to ensure the correctness of it, notwithstanding that tax already assessed may have been paid.

(2) If any such alteration or addition has the effect of imposing any fresh liability or increasing any existing liability, notice of it shall be given by the Financial Secretary to the taxpayer affected, who shall, unless the alteration or addition was made with his consent, be entitled to object to it under the provisions as to objections hereinafter contained.

20 Limitation of time for amendment of assessment

When any person has made returns and has been assessed for income tax for any year, it shall not be lawful for the Financial Secretary to alter the assessment so as to increase the amount of it after the expiration of 4 years from the end of the year in which the assessment was made or (in any case where in the opinion of the Financial Secretary the returns so made

are fraudulent or wilfully misleading or omit all mention of income which is of a particular nature or was derived from a particular source, and in respect of which a return is required to be made) after the expiration of 10 years from the end of the year in which the assessment was made.

21 Validity of assessment not affected by failure to comply with Act

The validity of an assessment shall not be affected by reason that any of the provisions of this Act have not been complied with.

22 Except in proceedings on objection assessments deemed correct

Except in proceedings on objection to an assessment under the provisions hereinafter contained, no assessment made by the Financial Secretary shall be disputed in any Court or in any proceedings either on the ground that the person so assessed is not a taxpayer or on any other ground, and except as aforesaid, every such assessment and all the particulars thereof shall be conclusively deemed and taken to be correct, and the liability of the person so assessed shall be determined accordingly.

23 Evidence of returns and assessments

The production of any documents under the hand of the Financial Secretary purporting to be a copy of extract from any return or assessment shall in all Courts and in all proceedings be sufficient evidence of the original, and the production of the original shall not be necessary, and all Courts shall in all proceedings take judicial notice of the signature of the Financial Secretary either to the original or to any such copy or extract.

24 Notice of assessment to taxpayer

(1) As soon as conveniently may be after an assessment is made the Financial Secretary shall cause notice of the assessment to be given to the taxpayer.

(2) The omission to give any such notice shall not invalidate the assessment or in any manner affect its operation.

25 [Repealed]

PART 4

OBJECTIONS AND ASSESSMENTS

26 How objections originated

(1) Any person who has been assessed for income tax may object to that assessment by delivering or posting to the Financial Secretary a written notice of objection stating shortly the grounds of his objection so that it reaches the Financial Secretary within the time specified in that behalf in the notice of assessment, not being less than 6 weeks after the date on which that notice of assessment is given.

(2) [Repealed by 2004/270]

(3) No notice of objection given after the time so specified shall be of any force or effect unless the Financial Secretary in his discretion accepts the same and gives notice to the objector accordingly.

27 Financial Secretary may amend assessment

The Financial Secretary shall consider all such objections and may alter the assessment pursuant to it; but if an objection is not allowed by the Financial Secretary, the objector may, within 6 months after the date on which notice of the disallowance is given to him by or on behalf of the Financial Secretary, by notice in writing to the Financial Secretary require that the objection be heard and determined by the Court before a Judge, and in that event the

objection shall be heard and determined in the Court; and the Court shall for the purpose of hearing and determining the objection, whatever the amount involved, have all the powers vested in it in its ordinary civil jurisdiction as if in an action between the objecting taxpayer and the Financial Secretary.

28 Hearing of objections by High Court

The procedure for the institution, hearing and determination of such proceedings in the High Court shall be in accordance with the ordinary practice of that Court.

29 Burden of proof on objector

On the hearing and determination of all objections to assessments of income tax the burden of proof shall be on the objector, and the Court may receive such evidence as it thinks fit, whether receivable in accordance with law in other proceedings or not.

30 Costs

On the determination of any objection the Court may award such costs as it deems just either against the Financial Secretary or against the objector.

31 Court may confirm, cancel or alter the assessment

On the determination of any such objection the Court may either confirm or cancel the assessment, or increase or reduce the amount, and the assessment shall be altered by the Financial Secretary, if necessary, so as to conform to that determination.

32 Appeals to Court of Appeal

The determination of the High Court on any such objection shall be subject to appeal to the Court of Appeal on any question of law but shall be final and conclusive on any question of fact unless the High Court is satisfied that the amount of tax bona fide in dispute between the objector and the Financial Secretary exceeds \$1000 in which case the Financial Secretary or the objector may appeal to the Court of Appeal on any question of fact.

33 Appeals from assessments

(1) In this Act “appeal” means a proceeding in the High Court for the determination of an objection made under the Act to an assessment of income tax, and the term “appellant” means the person by whom any such objection has been made.

(2) The parties to the appeal shall be the appellant and the Financial Secretary as respondent.

(3) (a) For the purpose of every appeal the Financial Secretary shall state and sign a case setting forth the facts as alleged by him, the nature of the assessment made by him, the ground of objection thereto, and the question for the determination of the Court.

(b) The case, so stated and signed, shall be filed by the Financial Secretary in the High Court, and the filing of the case shall be deemed to be the institution of the appeal.

(c) A copy of the case so filed shall be sent by the Financial Secretary to the appellant, either through the post office or otherwise.

(4) Within fourteen days after the filing of the case by the Financial Secretary or within such further time as the Financial Secretary may allow the appellant may, if he thinks fit file an answer to the case. The answer shall set forth the facts as alleged by the appellant and the grounds of his appeal.

(5) The case as stated and filed by the Financial Secretary shall not be conclusive as to the matters set forth in it, either against the appellant or the Financial

Secretary, except so far as agreed to in writing by or on behalf of the Financial Secretary and the appellant.

(6) After the filing of the case by the Financial Secretary, the Registrar of the Court shall on the application of the Financial Secretary or of the appellant, appoint a time and place for the hearing of the appeal, that time not being earlier (except with the consent of the Financial Secretary and the appellant) than 21 days after the date of the filing of the case.

(7) Reasonable notice by post or otherwise of the time and place so appointed shall be given by the person on whose application the appointment has been made to the other party to the appeal.

(8) At the time and place so appointed, a Judge of the High Court or in the absence of a Judge the Registrar of the Court may adjourn the hearing to any other time or place, and so on from time to time.

(9) If either party fails to appear at the hearing, the Court shall in its or his discretion either adjourn the hearing or determine the appeal in the same manner as if both parties were present.

(10) The procedure at the hearing of the appeal shall be the same, with all necessary modifications, as if the appeal were an action which the appellant is the plaintiff and the Financial Secretary is the defendant.

34 Obligation to pay tax not suspended by objection or appeal

The obligation to pay and the right to receive and recover any tax shall not be suspended by any objection, or appeal, but if the objector succeeds the amount (if any) of the tax received by the Financial Secretary in excess of the amount which, according to the decision on the hearing of the objection, or appeal, was properly payable shall forthwith be repaid to him by the Financial Secretary.

35 Determination of objection not to affect other income

The determination of an objection under any of the foregoing provisions shall relate solely to the income which is the subject of the assessment objected to and shall not affect the right of the Financial Secretary to assess any other income of the objector, or to amend the assessment objected to in any manner rendered necessary by the assessment of such other income.

36 [Repealed]

PART 5 INCOME TAX

37 Meaning of “absentee”

(1) “Absentee” in this part means a person who has not been a resident during any part of the income year.

(2) A taxpayer shall not be deemed to be an absentee within the meaning of this Part if the Financial Secretary is satisfied that the absence of the taxpayer from Niue during the income year has been for the sake of his or her health, or of the health of the husband or wife, as the case may be, or of any child of the taxpayer.

(3) No person who is absent from Niue in the service in any capacity of the Government nor the wife of any such person if she is absent from Niue with him, shall by reason of such absence be deemed to be an absentee within the meaning of this Part.

38 Income tax imposed

(1) Subject to this Act, there shall be levied and paid for the use of the Crown for the year commencing on 1 April in each year, a tax herein referred to as income tax.

(2) Subject to this Act income tax shall be payable by every person on all income derived by him during the year for which the tax is payable.

(3) The year in which income is so derived is in this Act referred to as the income year, and the year for which income tax is payable is in this Act referred to as the year of assessment.

39 Rates fixed

Income tax shall be assessed and levied on the taxable income of every taxpayer at such rate or rates as are set out in Schedule 1.

40 Where non-assessable income to be taken into account

(1) Where in any income year any taxpayer has derived assessable income and has also derived any non-assessable income from a source referred to in subsection (2), then, notwithstanding anything to the contrary in this Act, the rate of tax payable on this taxable income shall be computed as if the non-assessable income derived by him as aforesaid were assessable income.

(2) The non-assessable income referred to in subsection (1) includes –

- (a) (i) Income derived from securities issued by the Government subject to the condition that the income derived therefrom shall be exempt from income tax;
- (ii) Such income when payable out of Niue to an absentee shall not be so included;
- (b) Income derived from debentures issued by companies on terms providing for the payment of income tax by such companies as proved by section 150, and income derived from debentures to which sections 75 and 76 apply;
- (c) Dividends or other profits derived from shares or other rights of membership in companies save that such dividends or other profits when derived by an absentee from sources out of Niue shall not be so included.

41 Personal rebate

In the assessment of every taxpayer, other than an absentee, company, public authority, or unincorporated body, there shall be allowed as a rebate of income tax for that income year the sum of \$156.

Special Exemptions

41A Low income rebate

(1) This section applies to a person with assessable income of less than \$20,000 for an income year, other than an absentee or a company.

(2) The person is entitled to a rebate on the income tax payable by them, or that would otherwise be payable by them. The rate of the rebate is set out in Schedule 3.

(3) –

(4) Subsection (3) applies only to a person who is a full-time employee other than a self-employed person.

(5) For the purposes of this section, a full-time employee for an income year is a person who –

- (a) for a week, is employed for 20 hours or more; and

- (b) is employed for at least 40 weeks during the income year; and
- (c) receives income from a work activity for which they derive a source deduction payment or, in a case of incapacity for work, an amount of compensation in its place.

42- 44 [Repealed]

45 Rebate for support of dependent relatives

(1) In the assessment of every taxpayer, (other than an absentee) who contributes towards the support of any relative during any income year there shall, subject to this section, be allowed as a rebate of income tax for that income year in respect of each such dependant relative, the sum of \$26.

(2) (a) Where a person is a dependant relative for the purposes of this section only one rebate shall be allowed in respect of that person notwithstanding that more than one taxpayer may have contributed towards the support of that relative.

(b) In the case of two or more taxpayers claiming a rebate in respect of the same dependant relative the Financial Secretary shall allow the rebate for the taxpayer who in his opinion has made the greatest financial contribution to the support of that dependant relative.

(3) No rebate shall be allowed under this section in respect of any relative if the Financial Secretary is satisfied that the relative has sufficient income or capital for his own support and that the contributions towards his support were not necessary.

(4) For the purpose of this section “relative” means –

(a) A child, step-child, or adopted child who at any time during the income year is under the age of eighteen years, or who, being over the age of eighteen years, is suffering from any permanent mental or physical infirmity and is thereby permanently incapacitated from earning his or her own living or is attending full-time a university or educational institution recognized by the Financial Secretary; and

(b) Any other person proved to the satisfaction of the Financial Secretary to be a relation of the taxpayer by blood, marriage, or adoption (not being the wife or husband of the taxpayer); including a former wife of a taxpayer; and including also any child, not being a child, step-child or adopted child of the taxpayer who is supported by the taxpayer as a foster child and who otherwise satisfies the requirements of paragraph (a): Provided that:

(i) where the wife of a taxpayer is not living with him she shall be deemed to be a relative of the taxpayer for the purposes of this section;

(ii) a rebate under this section in respect of the wife of a taxpayer shall be allowable only where the amount of it exceeds the amount of the rebate to which the taxpayer is entitled in respect of his wife under section 42 and shall be allowable in substitution for the last-mentioned rebate;

(iii) for the purpose of this section the wife of a taxpayer shall be deemed to be living with him unless the Financial Secretary is satisfied that she is in fact separated and living separate and apart from him, whether pursuant to a decree, order, or judgment of any Court, or pursuant to an agreement for separation, or by reason of the desertion of one of the parties by the other of them, or otherwise.

46 [Repealed]

47 Special exemption for life insurance premiums and superannuation fund contributions

(1) Every taxpayer, (other than an absentee,) who has effected an insurance on his own life for his own benefit or for the benefit of his wife or his children shall be entitled to a deduction by way of special exemption from his assessable income of the amount of premium paid in the income year in respect of that insurance.

(2) [Repealed]

(3) The deductions by way of special exemption provided for in this section shall not in any case exceed in the aggregate the sum of \$800.

(4) Notwithstanding subsection (1) a special exemption shall not be allowed under that subsection in respect of the premiums paid on any pure endowment policy, that is to say, a policy of life insurance which does not provide for the payment of a specified capital sum on the death of the assured.

47A Special exemption for primary produce income

(1) Subject to subsection (2), the first \$5,000 income earned by a taxpayer during the income year that derives from the production of primary produce, or from the making of plaited baskets, trays, table-mats, grass skirts or any other plaited ware or handwork shall be exempt from taxation.

(2) Cabinet may issue instructions as to the nature of receipts that shall be required to be produced in order to qualify for the exemption give under subsection (1).

47B Rebate for church donations

(1) In the assessment of every taxpayer (other than an absentee) who during the income year makes cash donations to any Church situated in Niue and which in the opinion of the Financial Secretary is a recognized religious organization there shall be allowed as a rebate of income tax for that income year an amount equal to 20 cents for every complete dollar up to a maximum of \$100 donated to any such church or religious organization.

(2) For the purpose of this section all donations must be in cash and evidenced by a receipt.

48 Apportionment of special exemptions and rebates

(1) Every person arriving in or departing from Niue during any income year, shall be entitled to a deduction by way of special exemption from his assessable income, or to a rebate of income tax in his assessment for that income year, of –

(a) An amount equal to the same proportion of every deduction by way of special exemption or rebate to which he would have been entitled under sections 45, 47A and 47B, as the proportion that the number of days during which the income is deemed to have been earned bears to the numbers of days in the income year; and

(b) Such allowance under sections 46 and 47 as the Financial Secretary may consider appropriate.

(2) (a) For the purposes of this section an “absentee” shall be considered to be entitled to the same special exemptions under sections 45, 47, 47A and 47B as if he were a taxpayer other than an absentee.

(b) Nothing in this subsection shall entitle an “absentee” to the special exemptions or rebates provided under sections 45, 47, 47A and 47B in circumstances other than as provided in this section.

General Exemptions

49 Incomes wholly exempt from taxation

- (1) The following incomes shall be exempt from taxation –
- (a) The income, other than income received in trust, of a local authority, or of any public authority;
 - (b) Income derived from sinking funds in respect of any public debt or of the debt of any local authority;
 - (c) Income derived by any person from any pension or allowance granted by any Government in respect of any war or in respect of any disability or disablement attributable to or aggravated by service in any naval, military, air, or police force;
 - (d) Dividends and other profits derived from shares or other rights of membership in companies other than companies which are exempt from income tax;
 - (e) Income derived by women in the form of payments in the nature of alimony or maintenance made to her by her husband or former husband out of income belonging to him;
 - (f) Income derived by the trustees of a superannuation fund;
 - (g) Income (not being income of the kind referred to in paragraph (h)) derived by trustees in trust for charitable purposes, or derived by any society or institution established exclusively for such purposes and not carried on for private pecuniary profit;
 - (h) Income derived directly or indirectly from any business carried on by or on behalf of or for the benefit of trustees in trust for charitable purposes within Niue, or derived directly or indirectly from any business carried on by or on behalf of or for the benefit of any society or institution established exclusively for such purposes and not carried on for private pecuniary profits:
Provided that if the aforesaid purposes are not limited to Niue the Financial Secretary may apportion the income in such manner as he deems just and reasonable between such purposes within Niue and the like purposes out of Niue, and may allow to the trustees, society or institution a partial exemption accordingly;
 - (i) Income derived by any society or association, whether incorporated or not, which is, in the opinion of the Financial Secretary, established substantially or primarily for the purpose of promoting any amateur game or sport if that game or sport is conducted for the recreation or entertainment of the general public, and if no part of the income or other fund of the society or association is used or available to be used for the private pecuniary profit of any proprietor, member or shareholder of it;
 - (j) Income derived by any society or association whether incorporated or not, which is, in the opinion of the Financial Secretary, established substantially or primarily for the purpose of advertising, beautifying or developing the island of Niue or any village or district therein so as to attract trade, tourists, visitors, or population, or to create, increase, expand or develop amenities for the general public, if no part of the income or other funds of the society or association is used or is or may become available to be used for any other purpose, not being a charitable purpose;
 - (k) Income derived by any person from any maintenance or allowance provided for or paid to him in respect of his attendance at an educational institution in terms of a scholarship or bursary;
 - (l) Income derived by any person, in respect of any period of incapacity for work, from any sick pay or other allowance paid to him from any sick, accident or

death benefit fund to which he was a contributor at the date of commencement of that period of incapacity;

- (m) Income derived by any trustee in trust for any sickness, accident, or death benefit fund, not being income derived directly or indirectly from any business carried on by or on behalf of or for the benefit of that trustee;
- (n) Income expressly exempted from income tax by any other Act to the extent of the exemption so provided;
- (o) Moneys received by a wife from her husband or a husband from his wife;
- (p) –
- (q) Income and profits derived by any cooperative society registered under the Cooperative Societies Regulations 1953;
- (r) Income derived from any bonds or securities issued exempt from tax by the Government or by any local or public authority: Provided that the approval of the Government has been obtained for the issue of the bonds or other securities to be issued exempt from tax;
- (s) Income of the South Pacific Commission and the income in so far as it is derived from the funds of the South Pacific Commission of persons employed by the Commission;
- (t) Income of the United Nations or of any specialised agency of the United Nations and the income in so far as it is derived from the funds of the United Nations or any such agency of persons employed by the United Nations or any such agency;
- (u) Income declared by Cabinet by regulation to be exempt from taxation because of its liability to taxation in another country;
- (v) Income derived by any person from any pension or benefit granted to him under the Pensions and Benefits Act 1991;
- (w) Income derived by the Niue Bank;
- (x) Income derived from a periodic payment by way of superannuation, pension, retiring allowance or annuity in respect of or in relation to past employment of that person or any person of whom that person is or has been the wife, or husband, or a child or dependent.

(2) For the purposes of this section “sickness, accident, or death benefit fund” means any fund established for the benefit of the employees of any employer or of the members of any incorporated society or for the benefit of the widows and dependants of any deceased employees of any employer, or of any deceased members of any incorporated society, and approved for the time being by the Financial Secretary.

Assessable Income and Deductions

50 Exemptions in respect of industries contributing to economic development

(1) Where any new industry or enterprise is established in Niue or where any industry or enterprise already existing in Niue is materially expanded, and where Cabinet is satisfied that such establishment or expansion as the case may be will contribute substantially to the economic development of Niue, Cabinet may grant to the enterprise, or to the person or persons contributing to the establishment or expansion of that industry or enterprise such concessions in respect of taxation on the income derived whether directly or indirectly from that industry or enterprise as may be specified by Cabinet.

(2) Concessions granted by Cabinet under the authority of this section may take the form of exemption of all or part of the income from taxation, reduction in the rates of taxation on all or part of the income, extension of the period during which losses may be carried forward, allowance of special deductions from assessable income, or

may be in such other form as Cabinet considers desirable and appropriate to the particular application.

(3) A grant made under this section shall specify the period (not exceeding 5 years) during which any concession is to apply, and the period as specified may be extended by Cabinet.

(4) Any grant made under this section may be made upon or subject to such conditions as Cabinet thinks fit and may at any time be revoked by Cabinet if the taxpayer fails to comply with any such conditions.

51 Items included in assessable income

Without in any way limiting the meaning of the term, the assessable income of any person shall for the purposes of this Act be deemed to include, save so far as express provision is made in this Act to the contrary, all income derived from the following sources –

- (a) All profits or gains derived from any business (including any increase in the value of stock in hand at the time of the transfer or sale of the business, or on the reconstruction of a company);
- (b) All salaries, wages, or allowances (whether in cash or otherwise), including all sums received or receivable by way of bonus, gratuity, extra salary, or emolument of any kind, in respect of or in relation to the employment or service of the taxpayer:

Provided that where any bonus, gratuity, or retiring allowance (not being moneys paid to any director of a company pursuant to its articles of association) is paid in a lump sum in respect of the employment or service of the taxpayer on the occasion of his retirement from such employment or service only 5 per cent of that lump sum shall be deemed to be income; and

Provided also that, without limiting the meaning of “allowance” as used in this paragraph the said term shall be deemed to include (in the case of a taxpayer who in any income year has been provided in respect of any office or position held by him with board or lodging, or the use of a house or quarters, or has been paid an allowance in lieu of being so provided with board or lodging or with the use of a house or quarters the value of such benefits, such value to be determined in case of dispute by the Financial Secretary, subject to the Financial Secretary’s assessment under Part 4:

Provided also that the Financial Secretary may determine whether and to what extent any allowance in respect of or in relation to the employment or service of any person constitutes a reimbursement or expenditure exclusively incurred by him in the production of his assessable income, and the allowance shall to the extent so determined be exempt from income tax, and in such case the determination of the Financial Secretary shall be final and conclusive, save that the taxpayer may have a right of appeal under section 36 (2);

- (c) All profits or gains derived from the sale or other disposition of any real or personal property or any interest therein, if the business of the taxpayer comprises dealing in such property, or if the property was acquired for the purpose of selling or otherwise disposing of it, and all profits or gains derived from the carrying on or carrying out of any undertaking or scheme entered into or devised for the purpose of making a profit;
- (d) All rents, fines, premiums, or other revenues (including payments for or in respect of the goodwill of any business, or the benefit of any statutory licence or privilege) derived by the owner of land from any lease, licence, or easement affecting the land or from the grant of any right of taking the profits of it;

- (e) All royalties or other like payments dependent upon production from or the use of any real or personal property, whether or not they are instalments of the purchase price of any property;
- (f) All interests, dividends, annuities and pensions:
Provided that where any securities have been acquired by purchase or otherwise during the income year, the Financial Secretary may, where he considers it equitable so to do, apportion between the transferor and the transferee any interest due or accruing due at the date of the transfer and not them paid;
- (g) Income derived from any other source whatsoever.

52 Income from use or occupation of land

(1) Without limiting section 51(c) the assessable income of any person shall, for the purposes of this Act, be deemed to include –

- (a) All profits or gains derived from the use or occupation of any land;
- (b) All profits or gains derived in any income year from the extraction, removal, or sale of any minerals, or timber whether by the owner of the land from which they are obtained or by any other person, reduced by an amount equal to the cost of those minerals or of that timber.

(2) For the purposes of subsection 1(b) “timber” shall be deemed to include standing timber, and “sale” shall be deemed to include any dispositions by way of a licence or easement, or the grant of any right of taking any profits or produce from land.

53 Income credited in account or otherwise dealt with

For the purposes of this Act every person shall be deemed to have derived income although it has not been actually paid to or received by him, or already become due or receivable, but has been credited in account, or re-invested, or accumulated, or capitalised, or carried to any reserve, sinking or insurance fund, or otherwise dealt with in his interest or in his behalf.

54 Deductions for repair, maintenance and depreciation

(1) (a) In calculating the assessable income derived by any person from any source no deduction shall be made in respect of any of the following sums or matters – the repair of premises, or the repair, alteration, or supply of implements, utensils, or machinery used in the production of income, beyond the amount expended in any year for those purposes.

(b) Where depreciation of such premises, implements, utensils or machinery, whether caused by fair wear and tear or by the fact of such premises, implements, utensils, or machinery becoming obsolete or useless, cannot be made good by repair, the Financial Secretary may allow such deductions as he thinks just up to but not exceeding the rates of depreciation as set out in Schedule 2 except that in the year in which any implements, utensils, or machinery are disposed of or discarded, the Financial Secretary may allow such further deductions as he thinks just.

(c) Where the Financial Secretary has for any year of assessment allowed a deduction in respect of the depreciation of any premises, implements, utensils, or machinery, and the taxpayer at any time afterwards sells such premises, implements, utensils, or machinery at a price in excess of the amount to which the value of those assets has been reduced by such allowance, the Financial Secretary may make a revised assessment for that or any subsequent year without allowing such deduction or without allowing such portion of it as he

thinks fit, and may recover the additional amount of income tax accordingly. For the purpose of giving effect to this proviso the Financial Secretary may at any time alter any assessment, notwithstanding anything to the contrary in section 20.

- (d) Where the Financial Secretary is satisfied that any repairs or alterations of any plant, premises or machinery do not increase the capital value of the plant, premises or machinery, or that the repairs or alterations increase that value by an amount less than the cost of the repairs or alterations, he may allow such deductions as he thinks just.

(2) For the purposes of subsection (1)(c) –

- (a) Where any asset has been sold together with other assets of a business, the part of the consideration attributable to that asset shall be determined by the Financial Secretary, and the part of the consideration so determined shall be deemed to be the price at which that asset was sold by the vendor and purchased by the purchaser;
- (b) Where any property is sold, distributed or otherwise disposed of without consideration or for a consideration which, in the opinion of the Financial Secretary, is less than the market price for the true value of the property on the day it was sold, distributed or otherwise disposed of, that property shall be deemed to have been sold at and to have realised such market price or, if there is no market price, shall be deemed to have been sold at and to have realised such price as the Financial Secretary determines.

(3) It shall be ground for an objection to an assessment of income tax under Part 4 that any determination of the Financial Secretary made for the purpose of subsection (2) is erroneous in fact.

(4) Without limiting the discretion of the Financial Secretary under subsection (1), it is hereby declared that he has power to refuse in whole or in part to allow any deduction under that subsection in any case where he is not satisfied that complete and satisfactory accounts have been kept by or on behalf of the taxpayer and that sufficient depreciation has been provided for in the taxpayer's accounts.

(5) Sections 58, 61, 62 and 66(3) shall have effect notwithstanding anything to the contrary in this section and sections 56 and 57.

55 Deductions in respect of buildings on Niuean leaseholds

(1) The Financial Secretary, in calculating the assessable income derived by any taxpayer during any income year, may allow such deductions as he thinks fit in respect of any sum expended by the taxpayer –

- (a) In acquiring or erecting any building on any Niuean freehold land which the taxpayer holds on lease; or
- (b) In purchasing the unexpired period of any lease of Niuean freehold land.

(2) (a) In ascertaining the amount that may be deducted under this section in respect of any income year, the amount expended by the taxpayer in respect of the acquisition or erection of the building or in respect of the purchase of the lease shall be apportioned by the Financial Secretary over the unexpired period of the lease (including any period in respect of which a right of renewal exists) calculated from the date of the acquisition or erection or purchase as the case may be and the amount deducted in respect of any income year shall not in any case exceed the amount apportioned to that year.

(b) [Repealed]

(c) Where the unexpired portion of a lease is sold to any company over which the vendor has control as defined by section 75 or to any partnership over which

the vendor has control the amount of the annual deductions shall be limited to the amount by which the vendor would have been entitled had the sale not taken place.

(3) Where the Financial Secretary has, for any year of assessment, allowed a deduction under this section and the taxpayer at any time afterwards sells the unexpired period of the lease, the Financial Secretary may make a revised assessment in respect of that year of assessment without allowing that deduction or without allowing such portion of it as he thinks fit, and may recover the additional amount of income tax accordingly.

(4) For the purpose of giving effect to subsection (3) the Financial Secretary may at any time alter any assessment, notwithstanding section 20.

(5) For the purposes of this section, where the unexpired period of the lease has been sold together with other assets of a business the consideration attributable to the sale of the lease and of any buildings erected on the demised land shall be determined by the Financial Secretary, and the part of the consideration so determined shall be deemed to be the price at which the lease and buildings were sold by the vendor and purchased by the purchaser.

(6) A taxpayer to whom this section applies may elect whether he will claim a deduction hereunder or will claim a deduction for depreciation under section 54, but any deduction made under this section shall be in substitution for any deduction for depreciation which may be allowable under section 54.

56 Other deductions not permitted from assessable income

In calculating the assessable income derived by any person from any source, no deduction except as expressly provided in this Act shall be made in respect of any of the following sums or matters –

- (a) Investments, expenditure, loss, or withdrawal of capital; money used or intended to be used as capital; money used in the improvement of premises occupied; interest which might have been made on such capital or money if laid out at interest;
- (b) Bad debts, except debts which are proved to the satisfaction of the Financial Secretary to be in fact bad and to have been actually written off as bad debts by the tax payer in the income year:
Provided that all amounts at any time received on account of any such bad debt shall be credited as income in the year in which they are received, and shall be subject to tax accordingly:
Provided further that if in the opinion of the Financial Secretary the amount of debts written off as bad in any income year is excessive, he may, notwithstanding section 20, reopen the assessments made in any previous years in which he considers that the debts had in fact become bad;
- (c) Any expenditure or loss recoverable under any insurance or contract of indemnity;
- (d) Payments of any kind made by a husband to his wife or by a wife to her husband;
- (e) Rent of any dwelling house or domestic offices, save that, so far as such dwelling house or offices are used in the production of the assessable income, the Financial Secretary may allow a deduction of such proportion of the rent as he may think just and reasonable;
- (f) Income tax;
- (g) Interest, except so far as the Financial Secretary is satisfied that it is payable on capital employed in the production of the assessable income.

57 Deduction of expenditure or loss from income

(1) (a) In calculating the assessable income of any person deriving such income from one source only, any expenditure or loss exclusively incurred in the production of the assessable income for any income year may except as expressly provided in this Act be deducted from the total income derived for that Act.

(b) In calculating the assessable income of any person deriving such income from two or more sources, any expenditure or loss exclusively incurred in the production of assessable income for any income year may except as expressly provided in this Act be deducted from the total income derived by the taxpayer for that year from all such sources as aforesaid.

(2) In calculating the non-assessable income of any person any expenditure or loss exclusively incurred in the production of the non-assessable income for any income year may be deducted from such income derived for that year. Any such expenditure or loss deductible under this subsection shall be determined in the same manner as if the non-assessable income was assessable.

(3) Except as expressly provided in this Act no deduction shall be made in respect of any expenditure or loss of any kind for the purpose of calculating the assessable income of any taxpayer.

58 Losses incurred may be set off against future profits

(1) For the purpose of this section any loss incurred by a taxpayer shall be ascertained under this Act for the calculation of assessable income.

(2) (a) Any taxpayer who satisfies the Financial Secretary that he has in any year incurred a loss shall be entitled to claim that such loss be carried forward, and, so far as may be, deducted from or set off against his income for the 6 years succeeding the year in which the loss was incurred.

(b) 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 country relating to income tax.

(c) Any relief under this section shall be given so far as possible from the first succeeding assessment, and so far as it cannot then be given, shall be given from the next succeeding assessment, and so on.

(d) In no case shall a loss of assessable income be set off against non-assessable income nor shall a loss of non-assessable income be set off against assessable income.

(e) (i) Where, if a profit has been made from the transaction in which the loss was incurred, the amount of the profit would have been assessable or non-assessable income as the case may be, no relief shall be given under this section in respect of that loss.

(ii) Where, if a profit had been made as aforesaid, the amount of the profit would have been assessable or non-assessable income, the amount of the loss carried forward to any year shall be deducted from or set off against the taxpayer's assessable or non-assessable income, as the case may be, for that year so far as that income extends.

(3) (a) Notwithstanding subsections (1) and (2) if in any year of assessment any taxpayer, being a company, claims to carry forward any loss made by it in any former income year, the claim shall not be allowed unless the Financial Secretary is satisfied that the shareholders of the company on the balance date of the company for the year to which the loss claimed is to be carried forward were substantially the same as the shareholders of the company on the balance date of the company for the year in which the loss was incurred.

- (b) For the purposes of this subsection the shareholders of a company at any date shall not be deemed to be substantially the same as the shareholders on any other date unless, on both such dates, not less than two-thirds in nominal value of the allotted shares in such company were held by or on behalf of the same persons.
- (c) For the purposes of this subsection shares in a company held by or on behalf of another company shall be deemed to be held by the shareholders of such last-mentioned company and shares held by or on behalf of the trustee of the estate of a deceased shareholder, or by or on behalf of the persons entitled to those shares as beneficiaries under the will or intestacy of a deceased shareholder, shall be deemed to be held by that deceased shareholder.

59 Amounts remitted to be taken into account in computing income

(1) Where the amount of any expenditure or loss incurred by a taxpayer has been taken into account in calculating his assessable income for any income year, and subsequently the liability of the taxpayer in respect of that amount is remitted in whole or in part, the assessable income derived by the taxpayer during that year shall be deemed to be increased by the amount so remitted, and the taxpayer shall be assessable and liable for income tax accordingly.

(2) Where the amount of any expenditure or loss incurred by a taxpayer has been taken into account in calculating for the purposes of section 58 the amount of any loss incurred by him in any income year, and subsequently the liability of the taxpayer in respect of that amount has been remitted in whole or in part, the amount of the loss that may be carried forward under section 58 shall be deemed to be reduced by the amount so remitted.

(3) For the purposes of this section a liability in respect of any expenditure or loss shall be deemed to have been remitted to the extent to which the taxpayer has been discharged from that liability without fully adequate consideration in money or money's worth.

(4) For the purposes of giving effect to this section, the Financial Secretary may at any time alter any assessment, notwithstanding section 20.

60 Apportionment of income received in anticipation

(1) When income is derived by any person in any year by way of fines, premiums, or payment for goodwill on the grant of a lease, or in any other like manner by way of anticipation, the Financial Secretary may at the request of that person during the next succeeding year, apportion that income between the income year and any number of subsequent years not exceeding 5, and the part so apportioned to each of those years shall be deemed to have been derived in that year, and shall be assessable for income tax accordingly.

(2) Any such apportionment may be at any time cancelled by the Financial Secretary, and thereupon the income so apportioned or the part of it on which income tax has not yet been paid shall become assessable for income tax as if derived during the year preceding that in which the apportionment was so cancelled.

61 Expenditure incurred in borrowing money or obtaining lease

The Financial Secretary may, in calculating the assessable income of any taxpayer, allow such deduction as he thinks fit in respect of expenditure incurred by the taxpayer during the income year for the preparation, stamping, and registration of any lease of property used in the production of his assessable income, or of any renewal of such lease, or in borrowing of money employed by the taxpayer as capital in the production of assessable income.

62 Deduction in respect of premium paid on account of leased machinery

(1) The Financial Secretary may, in calculating the assessable income of any taxpayer, allow such deduction as he thinks fit in respect of any premium, fine, or foregift, or any consideration in the nature of a premium, fine, or foregift, paid by the taxpayer in respect of the lease of any machinery used by him in the production of income, or in respect of the renewal of any such lease, or in respect of the assignment of transfer of any such lease.

(2) In ascertaining the amount that may be deducted in any year under this section the total amount paid by the taxpayer as aforesaid shall be apportioned by the Financial Secretary over the period of the lease unexpired at the date of payment, and the amount deducted for any year shall not in any case exceed the amount apportioned to that year.

63 Income derived from disposal of trading stock

(1) Where any trading stock is sold together with other assets of a business the part of the consideration attributable to the trading stock shall, for the purposes of this Act, be determined by the Financial Secretary, and the part of the consideration so determined shall be deemed to be the price paid for the trading stock by the purchaser.

(2) For the purpose of this section any trading stock which has been disposed of otherwise than by sale shall be deemed to have been sold, and any trading stock so disposed of and any trading stock which has been sold for a consideration other than cash shall be deemed to have realised the market price of the day on which it was so disposed of or sold, but, where there is no market price, trading stock shall be deemed to have realised such price as the Financial Secretary determines.

(3) For the purposes of this section "trading stock" includes anything produced or manufactured and anything acquired or purchased for purposes of manufacture, sale or exchange; and also includes any other real or personal property sold or disposed of by the taxpayer where the business of the taxpayer comprises dealing in such property or the property was acquired by him for the purpose of sale or other disposal; and also includes livestock.

(4) It shall be grounds for objection to an assessment of income tax under Part 4 that any determination of the Financial Secretary made for the purpose of this section is erroneous in fact.

64 Valuation of trading stock, including livestock

(1) For the purposes of this Act "trading stock" includes anything produced or manufactured, and anything acquired or purchased for purpose of manufacture, sale or exchange and also includes livestock but does not include land.

(2) Where any taxpayer owns or carries on any business the value of his trading stock at the beginning and at the end of every income year shall be taken into account in ascertaining whether or not he has derived assessable income during that year.

(3) (a) The value of the trading stock of any taxpayer to be taken into account at the beginning of any income year shall be its value as at the end of the last preceding income year.

(b) Where the taxpayer's business is commenced and his trading stock is acquired during the income year the value of the trading stock as at the beginning of the income year shall be deemed to be an amount equal to its cost price.

(4) The value of the trading stock of any taxpayer to be taken into account, at the end of any income year shall be, at the option of the taxpayer, its cost price, its market selling value, or the price at which it can be replaced.

(5) Where the value of the trading stock of any taxpayer at the beginning of any income year exceeds the value of his trading stock at the end of that year the amount of the excess shall be allowed as a deduction in computing the assessable income of the taxpayer for that year.

(6) Where the value of the trading stock of any taxpayer at the beginning of any income year exceeds the value of his trading stock at the end of that year the amount of the excess shall be allowed as a deduction in computing the assessable income of the taxpayer for that year.

(7) Where in any income year the whole or any part of the assets of a business owned or carried on by any taxpayer is sold or otherwise disposed of (whether by way of exchange, or gift, or distribution in terms of a will, or on an intestacy, or otherwise howsoever, and whether or not in the ordinary course of the business of the taxpayer or for the purpose of putting an end to that business or any part of it), and the assets sold or otherwise disposed of consist of or include any trading stock the consideration received or receivable for the trading stock or (if any case where section 62 or 64 applies) the price which under that section the trading stock is deemed to have realised shall be taken into account in computing the taxpayer's assessable income for that year or for any subsequent income year, be deemed to have purchased it at the amount of that consideration or price.

(8) Subject to sections 62 and 64, the price specified in any contract of sale or arrangement as the price at which any trading stock is sold or otherwise disposed of as aforesaid shall be deemed for the purposes of this section to be the consideration received or receivable for the trading stock.

(9) Notwithstanding subsections (1) to (8) the value of trading stock on hand at the beginning of the first income year to which the provisions of this Act are applicable shall be deemed to be an amount equal to its cost price.

65 Sale of trading stock for inadequate consideration

(1) Where any trading stock is sold or otherwise disposed of without consideration in money or money's worth or for a consideration that is less than each of –

- (i) the cost price of the trading stock; and
- (ii) the market price on the day of the sale or other disposition or where there is no market price, such price as the Financial Secretary determines (referred to below as “the market price”),

the following provisions shall apply, namely –

- (a) The trading stock shall be deemed for the purposes of this Act to have been sold at and to have realised the cost price or the market price, whichever is the lower;
- (b) The price which under this section the trading stock is deemed to have realised shall be taken into account in calculating the assessable income of the person selling or otherwise disposing of the trading stock;
- (c) The person acquiring the trading stock shall, for the purpose of calculating his assessable income, be deemed to have purchased the trading stock at the price which under this section the trading stock is deemed to have realised.

(2) It shall be grounds for objection to an assessment of income tax that any determination of the Financial Secretary made for the purposes of this section is erroneous in fact.

(3) For the purposes of this section “trading stock” includes anything produced or manufactured, and anything acquired or purchased for purposes of manufacture, sale or exchange, and also includes livestock and also includes any other

real or personal property where the business of the person by whom it is sold or disposed or comprises dealing in such property or the property was acquired by him for the purpose of sale or other disposal.

66 Assessment and deduction of patent rights and expenses, and trade mark renewals

(1) For the purposes of this section “patent rights” means the right to do or authorise the doing of anything which would, but for that right, be an infringement of a patent.

(2) Where any taxpayer sells any patent rights, any sum received by him or owing to him in respect of the sale or such part thereof as the Financial Secretary considers just and reasonable shall be deemed to be assessable income and shall be assessed for income tax in such manner as the Financial Secretary determines.

(3) The Financial Secretary, in calculating the assessable income derived by any taxpayer during any income year, may allow such deduction as he thinks fit in respect of any sum expended by the taxpayer on the purchase of any patent rights or any expenditure incurred by him in the grant, maintenance or extension of a patent or in the renewal of any registration of any trade mark or trade name used by him in the production of his assessable income for that year.

67 Deduction for scientific research

In calculating the assessable income derived by any taxpayer during any income year, the Financial Secretary may allow such deduction as he thinks fit in respect of any expenditure incurred by the taxpayer during that year in connection with scientific research directly relating to the trade or business carried on by the taxpayer, except so far as the expenditure relates to an asset in respect of which a deduction for depreciation is allowable under section 54(1).

68 Deduction of testamentary annuities charged on property

(1) (a) Notwithstanding anything to the contrary contained elsewhere in this Act, where property has been devised or bequeathed by will subject to the payment of an annuity or has been made subject to the payment of an annuity by a deed of family arrangement, and that property or any property substituted therefor has been transferred to a beneficiary and is charged with payment of the annuity or any part thereof, the amount paid in any income year on account of that annuity by the owner of that property or substituted property shall be allowed as a deduction in calculating the income derived by the owner from that property or substituted property in that income year so far as that income extends.

(b) No deduction shall be allowed under this section where the owner for the time being of the property or substituted property (not being a beneficiary) is a person who has acquired the same by purchase subject to the condition that he assumes the liability for the whole or any part of the annuity charged thereon.

(c) To the extent that an annuity payable by the owner of the property or substituted property under a deed of family arrangement represents, in the opinion of the Financial Secretary, consideration for the purchase of the property or substituted property by the owner, the annuity shall not be allowed as a deduction under this section.

(2) In this section “beneficiary”, in relation to any property, means a person to whom that property has been devised or bequeathed by will, or a person who is entitled, pursuant to a provision in a will, to purchase, subject to payment of an annuity, that property, being property that forms part of the estate of the testator; and includes a person who is entitled to the property pursuant to a deed of family arrangement.

69 Contributions to employees' superannuation fund

(1) (a) In calculating the taxable income of any employer the Financial Secretary may allow a deduction of any amount set aside or paid by the employer as or to a fund to provide individual personal benefits, pensions, or retiring allowances to employees of that employer.

(b) A deduction shall not be allowed under this section unless the Financial Secretary is satisfied that the fund has been established or the payment made in such a manner that the rights of the employees to receive the benefits, pensions or retiring allowances have been fully secured.

(2) The Financial Secretary shall have a discretion as to whether or not a deduction should be allowed under subsection (1) of the whole or any part of any amount set aside or paid as mentioned in that subsection.

70 Financial Secretary may make arrangements, for first three income years

It is hereby declared that subject to this Act the Financial Secretary may in respect of the first income years of any person to whom this Act becomes applicable, make such arrangements, compromises, or calculations as he sees fit, in the assessment of income derived by that person during those years, and may make such assessments of income tax as he sees fit to give effect to such arrangements, compromises or calculations.

Provisions relating to Companies and Associations

71 Profits of mutual associations in respect of transactions with members

(1) Where an association enters into transactions with its members, or with its members and others, any profit or surplus arising from those transactions which would be included in the profits or gains of the association if the transactions were not of a mutual character shall be deemed to be profits or gains arising from those transactions and to be assessable income of the association except that, in computing the assessable income of the association the Financial Secretary shall allow as expenses any sums which –

(a) Represent a discount, rebate, dividend, or bonus granted or paid by the association to members or other persons in respect of amounts paid or payable by or to them on account of their transactions with the association, being transactions which are taken into account in computing the assessable income; and

(b) Are calculated by reference to the said amounts or to the magnitude of the said transactions and not by reference to any share or interest in the capital of the association.

(2) Where any discount, rebate, dividend, or bonus is granted or paid to any person by an association, it shall form part of the assessable income of that person if the transaction from which it arises is of such a nature that any payment in respect of it by that person to the association would be allowed as a deduction in computing the assessable income of that person.

(3) For the purpose of this section, a discount, rebate, dividend or bonus shall be deemed to have been granted to or paid to a person when it has been credited in account or otherwise dealt with in his interest or on his behalf.

(4) In this section “association” includes any body or association of persons, whether incorporated or not, other than those mentioned in section 49(1)(q).

72 Overseas insurance companies other than life insurance companies

(1) For the purpose of this Act the assessable income of an overseas insurance company shall include the amount of gross premiums derived by the company in respect of business (other than life assurance business) transacted in Niue.

(2) Income tax on the assessable income of an overseas insurance company determined in accordance with subsection (1), shall be assessed at the rate as set out in Schedule 1.

(3) “Overseas insurance company” for the purposes of this section means a company mainly carrying on the business of insurance or guarantee against loss, damage or risk of any kind whatever whose main place of business is situated outside Niue.

73 Companies with substantially the same shareholders or under the same control

(1) If the Financial Secretary is satisfied with respect to two or more companies consisting substantially of the same shareholders or under control of the same persons, that the separate constitution or the separate continuance of those companies is not exclusively for the purpose of more effectively carrying out their objects but is wholly or partly for the purpose of reducing their taxation, the Financial Secretary may, for the purposes of income tax, treat those companies as if they were a single company, and in any such case those companies shall be jointly assessed and jointly and severally liable with such right of contribution or indemnity between themselves as is just.

(2) Section 75(2) and (3) shall be deemed to be also applicable to this section.

74 Liability of new companies for tax payable by former companies with substantially the same shareholders or under the same control

(1) In this section –
“company” means a Niue company or an overseas company within the meaning of this Act;

“new company” means a company carrying on business in Niue and consisting substantially of the same shareholders as an original company or being under the control of the same persons as an original company;

“original company” means a company which having at any time carried on business in Niue has, ceased to carry on business in Niue, and includes any such company that has been wound up.

(2) For the purposes of this section, a new company shall be deemed to consist substantially of the same shareholders as an original company if not less than one half of the paid up capital of the new company is held by or on behalf of shareholders in the original company. Shares in one company held by or on behalf of another company shall for the purposes of this subsection be deemed to be held by the shareholders in the last mentioned company.

(3) Where an original company within the meaning of this section has been wound up its shareholders and directors, as on the commencement of its winding up, shall respectively be deemed to be the shareholders and the persons having the control of the company for the purposes of this section.

(4) Where an original company as hereinbefore defined was, when it ceased to carry on business in Niue liable under this Act for any income tax or was liable to be assessed for any such tax, and such tax has not been paid, the new company shall, for the purposes of this Act, be deemed to be the agent of the original company and shall be liable for all tax payable by the original company. It shall also be liable for all tax for

which the original company would have been liable if it had continued to carry on business in Niue.

75 Defining when a company is under the control of any persons

(1) For the purposes of this Act except where otherwise expressly provided a company shall be deemed to be under the control of the person –

- (a) By whom more than one half of the shares, or more than one half of the nominal capital, or more than one half of the paid up capital, or more than one half of the voting power is held, or;
- (b) Who have by any other means whatsoever control of the company; or
- (c) Who by reason of the shareholding at the end of any income year would be entitled to more than one half of the profits for that year if those profits were distributed by way of dividend at the end of that year.

(2) For the purposes of this Act, two companies shall be deemed to consist substantially of the same shareholders if not less than one half of the paid up capital of each of them is held by shareholders in the other or if not less than one half in nominal value of the allotted shares in each of them is held by shareholders in the other. Shares in one company held by another company shall for this purpose be deemed to be held by the shareholders in the last mentioned company.

(3) Where a nominee of any person holds any shares, nominal capital, paid up capital, or voting power in a company, or has by any other means whatsoever any power of control in a company, or is entitled to a share of profits distributed by a company, then for the purposes of this section those shares or that capital or that voting power or that power of control or that title to profits, as the case may be, shall be deemed to be held by that person, and in every such case that person and his nominee or that person and all his nominees shall be deemed to be one person.

(4) In this section –

“nominee”, in relation to any person, means any other person who may be required to exercise his voting power in relation to any company in accordance with the direction of that person, or who holds shares or debentures directly or indirectly on behalf of that person; and includes the husband or wife of that person and any relatives of that person by blood, marriage, or adoption;
“person” includes a company and a local or public authority.

76 Floating rate of interest on debentures

(1) Where in any debenture issued by a company the rate of interest payable is not specifically determined, but is determinable from time to time by reference to the dividend payable by the company or otherwise howsoever, the interest paid on the debenture shall be considered part of the assessable income of the company and not of the debenture holder.

(2) Section 100 shall not apply with respect to any such debenture or to the interest paid or payable thereunder.

77 Interest on debentures issued in substitution for shares

(1) For the purposes of this section –

- (a) “The amount of the debenture” means, in respect of any debenture, the principal sum expressed to be secured by or owing under that debenture;
- (b) “Shareholder” includes, in respect of any company, a person by whom or on whose behalf shares in the company have at any time been held.

(2) Where a company has issued debentures to its shareholders or to any class of its shareholders, and the amount of the debenture or debentures issued to each

shareholder of the company or of that class has been determined by reference to the number or to the nominal value or to the paid up value of, or by reference otherwise howsoever to the shares in that company or in any other company (whether or not that other company is being or has been wound up) that were held by or on behalf of the shareholder at the time the debentures were issued or at any earlier time, the interest paid by the company on the debentures so issued shall be computed as part of the assessable income of the company and not of the debenture holder.

(3) The provisions of section 76 and of any other enactment shall apply with respect to all debentures to which subsection (2) applies and to the interest payable thereunder, in the same manner as if those debentures and that interest were debentures and interest of the kinds referred to in section 76.

78 Payment of excessive remuneration or share of profits to relatives in certain cases

(1) Where –

- (a) Any taxpayer carries on any business or undertaking and employs or engages any relatives of a director or shareholder of the company to perform services in connection with that business or undertaking; or
- (b) Any taxpayer carries on business in partnership with any person, whether or not any other person is a member of the partnership, and –
 - (i) any relative of the taxpayer is employed or engaged by the partnership to perform services in connection with the business; or
 - (ii) where one of the partners is a company, any relative of a director or shareholder of the company is employed or engaged by the partnership to perform services in connection with the business; or
- (c) Any taxpayer carries on business in partnership with any relative or with any company a director or shareholder of which is a relative of the taxpayer or, being a company, carries on business in partnership with any relative of a director or shareholder of the company whether or not any other person is a member of the partnership –

and the Financial Secretary is of the opinion that the remuneration, salary, share of profits or other income payable to or for the benefit of that relative or company under the contract of employment or engagement or the terms of the partnership exceeds such an amount as is reasonable having regard to the nature and extent of the services rendered, the value of the contributions made by the respective partners by way of services or capital or otherwise, and any other relevant matters, the Financial Secretary may for the purposes of this Act allocate the total profits or income of the business or undertaking before deduction of any amount payable to that relative or company between the parties to the contract or the partners or any of them in such shares and proportions as he considers reasonable and the amounts so allocated shall be deemed to be income derived by the person to whom those amounts are so allocated and by no other person.

(2) Where any sum paid or credited by a company, being or purporting to be remuneration for services rendered by any person who is a relative of a director or shareholder of the company, is allocated to that company under subsection (1), the amount so allocated to the company shall be deemed to be a dividend paid by the company to that person and received by him as a shareholder of the company.

(3) For the purposes of this section “relative” means a husband or wife, or a relative by blood within the fourth degree of relationship (whether legitimate or illegitimate), or a relative by marriage or adoption, and includes a trustee for a relative.

(4) Notwithstanding section 35(1) it shall be grounds for objection under Part 4 to an assessment of income tax that any determination of the Financial Secretary

made for the purposes of this section is erroneous and the Court hearing the objection, shall have power to review the determination of the Financial Secretary, and shall for that purpose have all the powers and functions of the Financial Secretary in making that determination, and the decision of the Court shall except for the purposes of objection thereto take effect as if it were the determination of the Financial Secretary; but nothing in this subsection shall restrict the right of the Financial Secretary or the objector to appeal against the decision of the Court under Part 4.

(5) [Spent]

(6) This section shall not apply to a bona fide contract of employment or to a bona fide contract of partnership. For the purposes of this section a contract of employment or a contract of partnership shall be deemed to be bona fide if it complies with the following conditions –

- (a) The contract is in writing or by deed signed by all the parties hereto;
- (b) No partner and no person employed or engaged under the contract was under the age of 21 years at the date on which the contract was signed;
- (c) The contract is binding on the parties to it for a term of not less than 3 years and is not capable of being terminated by any party thereto before the expiry of that term;
- (d) Each party to the contract has a real and effective control of the remuneration, salary, share of profits, or other income to which he is entitled under the contract;
- (e) The remuneration, salary, share of profits, or other income payable to a relative, or to a company, a director or shareholder of which is a relative, is not of such an amount that the transaction would constitute in whole or in part a gift for gift duties purposes if the Estate and Gift Duties Act 1968 (NZ) were in force in Niue.

79 Excessive remuneration by company to shareholder or director

Where any sum paid or credited by a company, being or purporting to be remuneration for services rendered by any person who is a shareholder or director of the company, exceeds such amount as in the opinion of the Financial Secretary is reasonable, the amount of the excess shall not be an allowable deduction in computing the assessable income of the company, and shall for the purposes of this Act be deemed to be a dividend paid by the company to that person and received by him as a shareholder of the company.

Country of Derivation of Income

80 Liability for assessment of income derived from Niue and abroad

(1) Subject to this Act all income derived by any person who is resident in Niue at the time when he derives that income shall be assessable for income tax whether it is derived from Niue or from elsewhere.

(2) Subject to this Act, all income derived from Niue shall be assessable for income tax, whether the person deriving that income is resident in Niue or elsewhere.

(3) Subject to this Act, income which is neither derived from Niue nor derived by a person then resident in Niue shall not be assessable for income tax.

81 [Repealed]

82 Classes of income deemed to be derived from Niue

Subject to section 83, the following classes of income shall be deemed to be derived from Niue –

- (a) Income derived from any business carried on in Niue;

- (b) All salaries, wages, allowances and emoluments of any kind earned in Niue in the service of any employer or principal, whether resident in Niue or elsewhere;
- (c) Income derived by any person as the owner of land in Niue;
- (d) Income derived by any person from money lent or used in Niue (whether on security or otherwise)
- (e) Income derived from shares in or membership of a Niue company, or from debentures issued by a Niue company or by a local or public authority;
- (f) Income derived from debentures or other securities issued by the Administration, or from any contract made with that Administration;
- (g) [Repealed];
- (h) Income derived from the sale or other disposition of any property, corporeal or incorporeal, situated in Niue;
- (i) Income derived by a beneficiary under any trust, so far as the income of the trust fund is derived from Niue;
- (j) Income derived from contracts made or wholly or partly performed in Niue;
- (k) Income derived from the carriage by sea or by air of merchandise, mails, or passengers shipped or embarked in Niue;
- (l) Income derived directly or indirectly from any other source in Niue.

83 Apportionment where income derived partly in Niue and partly elsewhere

Whenever by reason of the manufacture, production or purchase of goods in one country and their sale in another, or by reason of successive steps of production or manufacture in different countries, or by reason of the making of contracts in one country and their performance in another, or for any other reason whatever the source of any income is not exclusively in Niue, that income shall be apportioned between its source in Niue and its source elsewhere, or attributed to one of such sources to the exclusion of the other in such manner as the Financial Secretary thinks just and reasonable, having regard to the nature and relative importance of the sources of that income; and the income so far as so apportioned or attributed to a source in Niue shall be deemed to be derived from Niue and shall be assessable for income tax accordingly.

84 Relief from double taxation

(1) Income derived by a person resident in Niue but not derived from Niue shall be exempt from income tax if and so far as the Financial Secretary is satisfied that it is derived from some other country or territory and that it is chargeable with income tax in that country or territory.

(2) In determining the country or territory from which income is derived the Financial Secretary shall apply the same rules, with the necessary modifications, as are applicable in determining whether income is derived from Niue.

(3) In this section “income tax” means in respect of any country or territory other than Niue, any tax which in the opinion of the Financial Secretary is substantially of the same nature as income tax under this Act.

85 Tax agreements with other countries and territories

- (1) A tax agreement may be negotiated for the following purposes—
- (a) to facilitate the exchange of information;
 - (b) to provide relief from double taxation;
 - (c) to provide relief from tax;

- (d) to tax the income derived from any source in Niue by persons who are not resident in Niue;
 - (e) to determine the income to be attributed to persons who are not resident in Niue and their agencies, branches, or establishments in Niue;
 - (f) to determine the income to be attributed to persons resident in Niue who have special relationships with persons who are not resident in Niue;
 - (g) to prevent fiscal evasion;
 - (h) to assist in recovering unpaid tax.
- (2) A tax agreement comes into force—
 - (a) on the date specified in regulations made by Cabinet; and
 - (b) only if those regulations contain a copy of the agreement.
 - (3) A tax agreement that comes into force in accordance with subsection (2)—
 - (a) has effect despite anything in this Act or any other Act in relation to—
 - (i) income tax;
 - (ii) any other tax;
 - (iii) the exchange of information that relates to a tax;
 - (iv) any obligation as to privacy or secrecy; and
 - (b) may be amended or revoked.
 - (4) In this section, tax agreement means an agreement that—
 - (a) is negotiated for one or more of the purposes set out in subsection (1); and
 - (b) is agreed between Cabinet and the government of any country or territory outside Niue.

Income derived by a Trustee

86 Special provisions with respect to trustees

With respect to income derived by a trustee the following provisions shall apply –

- (a) If and so far as the income of the trustee is also income derived by a beneficiary entitled in possession to the receipt of it under the trust, the trustee shall in respect of it be deemed to be the agent of that beneficiary, and shall be assessable and liable for income tax thereon accordingly, and all the provisions of this Act as to agents shall, so far as applicable, apply accordingly. Where any income is derived by a beneficiary as aforesaid subject to a condition, obligation, or trust requiring him to maintain or support any other person (whether out of the income so derived or otherwise) and that beneficiary would, apart from that condition, obligation or trust, be entitled to a special exemption in respect of the maintenance and support provided by him for that other person, that beneficiary shall be assessed for income tax and shall be entitled to the same special exemptions as if he were beneficially entitled to the income free from any such condition, obligation, or trust;
- (b) If and so far as the income of the trustee is not also income derived by any beneficiary as aforesaid, the trustee shall be assessable and liable for income tax on that income in the same manner as if he was beneficially entitled to it, save that the rate of tax shall be computed by reference to that income alone, and that the trustee shall not be entitled to any deduction by way of special exemption, and that no tax shall be payable if the assessable income does not exceed \$100, and that the amount of tax payable in any case shall, where

necessary, be reduced so as not to exceed the amount by which the assessable income exceeds \$100:

Provided that in any case where a trustee is required or is empowered at his discretion to pay or apply income derived by him to or for the benefit of specified beneficiaries or to or for the benefit of some one or more of a number of specified beneficiaries, or of a specified class of beneficiaries, a beneficiary in whose favour the trustee so pays or applies income shall be deemed to be entitled in possession to the receipt of the amount paid to him or applied for his benefit by the trustee under the trust:

Provided also that where the income of the trustee is also income derived by any beneficiary who is an infant but whose interest in that income is vested, the beneficiary shall for the purposes of this section be deemed to be entitled in possession to the receipt of that income under the trust;

- (c) The trustee shall in every case make a return of the whole incomes derived by him as trustee, and each such return shall be separate and distinct from any return of income derived by him under any other trust or in his own right;
- (d) Nothing in this section shall be so construed as to exempt a beneficiary from any income tax which would be payable by him had he derived the income to which he is entitled under the trust directly instead of through a trustee;
- (e) Where any company or corporation is a trustee any income assessable to the trustee under paragraph (b) shall be assessable at the rate applicable to a trustee other than a company or a corporation.

87 Income received by trustee after death of deceased person

It is hereby declared that any amount received in any income year by the trustee of the estate of a deceased person shall be deemed to be assessable or (as the case may require) non-assessable income derived by the trustee in that year if it does not represent assessable or non-assessable income derived by the deceased person during his lifetime but would have been included in his assessable or non-assessable income if he had been alive when it was received.

88 Deduction from estate income of irrecoverable book debts of deceased taxpayer

Where the amount of any debt owing to a deceased taxpayer at the date of his death has been included in the assessable income of the taxpayer or of the trustee of his estate for any income year, and the debt or any part of it is proved to the satisfaction of the Financial Secretary to be irrevocable and to have been actually written off by the trustee as a bad debt, the amount so written off shall be deemed to be a loss incurred by the trustee in the income year in which the amount was written off, and shall be allowable as a deduction first against any income derived by the trustee in that income year which is assessable to the trustee as income not derived by a beneficiary entitled in possession to the receipt of it under the trust during that year, and then, as to any balance, against any income derived in that year by or in trust for a beneficiary who has a vested interest in the capital of the estate to the extent that the loss is chargeable against the capital of that beneficiary; and any balance not allowed as a deduction in that year shall, so far as it extends, be allowable as a deduction in the same manner successively during the six succeeding years.

PART 6

AGENTS AND NON-RESIDENTS

Introduction

89 “Absentee” defined

In this Part “absentee” means –

- (a) Any person (other than a company) who is for the time being out of Niue;

- (b) Any overseas company unless it has a fixed and permanent place of business in Niue at which it carries on business in its own name;
- (c) Any overseas company which is declared by the Financial Secretary to be an absentee for the purposes of this Act by notice given to that company or to its agent or attorney in Niue, so long as that declaration remains unrevoked.

90 Rate and amount of tax payable by agent

Except where otherwise expressly provided by this Act, the rate of tax for which an agent shall be so assessed and liable shall be determined by reference to the total taxable income of the principal, but it shall be charged and payable only on the income in respect of which the agency exists, and in the same proportion which that income bears to the total taxable income of the principal.

91 Liability of principal not affected

(1) Nothing in this Act relating to an agent shall be so construed as to release the principal from liability to make returns and to be assessed and chargeable with tax.

(2) No assessment of the agent shall preclude an assessment of the principal for the same tax, nor shall an assessment of the principal preclude an assessment of the agent for the same tax, and the principal and agent shall be jointly and severally liable for all tax for which the agent is liable.

(3) When two or more persons are liable to be assessed as agents in respect of the same tax, they shall be jointly and severally liable for it.

92 Agents may recover tax from principal

When an agent pays any tax he may recover the amount so paid from his principal, or may deduct the amount from any moneys in his hands belonging or payable to his principal.

93 Agent may retain from moneys of principal amount required for tax

An agent may during the year preceding the year of assessment, or at any later time, retain out of any moneys belonging or payable to his principal such sums as may reasonably be deemed sufficient to pay the tax for which the agent is or may become liable.

94 Assessment deemed authority for payment of tax by agent

An assessment made by the Financial Secretary shall, as between an agent and his principal, be a sufficient authority for the payment by the agent of the tax so assessed and the agent shall be entitled as against his principal to reimbursement accordingly.

95 Agents to be personally liable for payment of tax

(1) Every agent shall be personally liable for the tax on income in respect of which he is an agent.

(2) When the Financial Secretary is satisfied that an agent has no moneys of his principal with which he can pay the tax, and that he has not paid away any such moneys after notice of assessment of the tax, or that immediate enforcement of payment by the agent would be a cause of hardship, the Financial Secretary may allow the agent such further period for the payment, not exceeding 6 months after the date of the notice of assessment, as he thinks necessary and the additional tax imposed by section 115 on taxpayers in default shall not accrue until the expiry of the periods so allowed.

96 Agents to make returns and be assessed as principal

(1) Every agent shall make returns of the income in respect of which he is an agent, and shall be assessed thereon in the same manner as if he was the principal,

save that he shall be entitled to no special exemption other than such exemption (if any) as his principal may be entitled to.

(2) Every person liable to furnish a return as agent for any person shall furnish a separate return for each person for whom he is agent, in addition to his own individual return.

97 Relation of principal and agent arising in effect

When the Financial Secretary is satisfied that any person carrying on business in Niue (herein called the agent) is so far under the control of any other person carrying on business in Niue or elsewhere (herein called the principal) that the relation between them is in effect that of agent and principal, he may treat the first mentioned business as that of the principal, and as being carried on by the agent on his behalf, and may require returns to be made, and may make assessments accordingly, and the principal and agent shall be liable for income tax accordingly.

Special Cases of Agency

98 Liability of mortgagee in possession

For the purposes of this Act, a mortgagee in possession of any land or other property shall be deemed to be the agent of the mortgagor in respect of any income derived by that mortgagee from that land or other property on behalf of or for the benefit of the mortgagor, and the mortgagee shall make returns and be assessable and liable for tax on that income accordingly, and all the provisions of this Act as to agents shall, as far as they are applicable, apply accordingly.

99 Guardian of person under disability to be his agent

Every person who, as guardian, committee, or otherwise has the receipt, control or disposition of any income derived by a person under any legal disability shall for the purposes of this Act be the agent of that person in respect of that income, and shall make returns and be assessable and liable for income tax accordingly.

100 Local and public authorities and companies deemed agent of debenture holders

(1) Save as otherwise provided in section 75 and section 101, every company and local and public authority which has issued debentures, whether charged on the property of the company where appropriate or not, shall for the purposes of this Act be the agent of all debenture-holders, whether absentees or not, in respect of all income derived by them from those debentures, and shall make returns and be assessable and liable for income tax on that income accordingly.

(2) No deduction by way of special exemption or otherwise shall be allowed to the company or local or public authority as such agent, or to any debenture holders, in respect of the income so derived from debentures.

(3) Income so derived by holders of debentures issued by a company or a local or public authority shall be assessable and chargeable with income tax in conjunction with income derived by the debenture-holders from other sources, if any, and at the rate appropriate to the total income so derived.

(4) Nothing in this section shall be so construed as to render liable to income tax any income that is exempt from taxation by virtue of section 49.

101 Modification in respect of income from company debentures, or local or public authority debentures

(1) The duty to act as the agents of debenture holders imposed on companies or local or public authorities by section 100 shall not apply with respect to debentures issued to any person resident in Niue if the company or local or public authority that

has issued such debentures has supplied to the Financial Secretary, before it has been assessed in any year for income tax in respect of the income derived from those debentures, a certified list specifying the numbers of the debentures or other particulars sufficient to identify them, the names, addresses, and descriptions of the persons to whom the debentures have been issued, the interest derived or derivable therefrom, and such other particulars as may be prescribed.

(2) Where any such list is supplied the person named in it as the holder of any debentures shall be personally responsible for the making of returns, and shall be assessable and liable for income tax (though not to the exclusion of any other person) in respect of the income derived from those debentures at the rate fixed in respect thereof, unless and until he satisfies the Financial Secretary, before he has been assessed for income tax in any year, that he has transferred or assigned the debentures, and has given notice to the Financial Secretary in the prescribed form of the name, address, and description of the transferee or assignee.

(3) Every person being the transferee or assignee of any debenture shall in like manner remain personally liable in respect of it (though not to the exclusion of any other person) unless and until he has given notice to the Financial Secretary in the prescribed form of the transfer or assignment of the same.

(4) Any tax paid by the former holder of any debentures in respect of the income derived from it by a subsequent holder shall be deemed to be paid on behalf of that subsequent holder so far as it does not exceed the tax to which the subsequent holder might himself have been liable in respect of such debentures, and may be recovered by the former holder from such subsequent holder accordingly.

102 Recovery of income tax payable in respect of alimony or maintenance

(1) This section applies with respect to any income tax that may hereafter become payable in respect of income received by or on behalf of any person as alimony or maintenance, pursuant to the order of any Court or pursuant to any deed or agreement.

(2) In any case to which this section applies, the person bound by any such order, deed, or agreement to pay any moneys as alimony or as maintenance as aforesaid, shall for the purpose of the payment of the income tax thereon, be deemed to be the agent of the person to whom or on whose behalf such moneys have been paid or are payable, and all the provisions of this Act as to the liability of agents shall apply with respect to him accordingly.

(3) It shall be no defence in any proceedings against an agent for the recovery of any income tax to which this section relates that any amount in respect of income tax has been paid by him to the person entitled to receive any moneys as alimony or maintenance.

Agents of Absentees and Non-residents

103 Liability of agent of absentee principal for returns and tax

Every person who in Niue carries on any business for and on behalf of a principal who is an absentee shall for the purposes of this Act be the agent of that principal in respect of all income derived by the principal through the business so carried on in Niue by means of that agent, and the agent shall make returns and be assessable and liable for income tax on that income accordingly, whether the incomes to the hands of the agent or not.

104 Partner of absentee deemed agent

Every person who in Niue carries on business in partnership with an absentee shall for the purposes of this Act be the agent of that absentee in respect of his share of the income of the business, and shall make returns and be assessable and liable for income tax accordingly.

105 Master of ship or captain of aircraft deemed agent of absentee owner

(1) When an absentee, by means of any ship or aircraft owned by him or under charter to him, carries on the business of the carriage of merchandise, mails or passengers the master of that ship, or the captain of that aircraft, as the case may be, shall (though not to the exclusion of any other agent) be the agent of that absentee for the purposes of this Act in respect of all assessable income so derived by that absentee, and shall be assessable and liable for income tax accordingly.

(2) Pending the payment of any tax assessed against such an absentee or against any person who is his agent for the purposes of this Act, the Financial Secretary shall withhold the clearance of the ship or aircraft in respect of which the tax is payable.

106 Tenant, mortgagor or other debtor, to be agent of absentee landlord, mortgagee or other creditor

(1) Any tenant, mortgagor or other person who transmits from Niue to any landlord, mortgagee or other creditor, being an absentee, any rent, interest, or other moneys being income derived by that absentee from Niue, shall for the purposes of this Act be the agent of that absentee in respect of all moneys so transmitted by him at any time, and he shall in respect of all such moneys make returns and be assessable and liable for income tax accordingly.

(2) For the purposes of this section any moneys paid by or on account of a person resident in Niue from a fund situated out of Niue shall be deemed to be moneys transmitted by that person from Niue.

107 Person having disposal of income deemed agent

Every person who in Niue has the receipt, control or disposal of any income derived by a principal who is an absentee shall for the purposes of this Act be the agent of the principal in respect of that income, and shall make returns and be assessable and liable for income tax on that income accordingly.

108 Company to be agent of absentee shareholders

A Niue company which is exempt from income tax shall be the agent of all shareholders or members who are absentees, and the company shall make returns and be assessable accordingly on all dividends and other profits paid or credited by the company to such shareholders or members at any time while they are absentees.

109 Banking company to be agent of absentee depositors

Every banking company, and every other company, local or public authority, or other person, who in the course of business receives or holds money by way of deposit and allows interest thereon shall for the purposes of this Act be the agent of all depositors who are absentees, and shall make returns and be assessable and liable for income tax accordingly on any interest which is paid or credited to a depositor while he is an absentee if that interest exceeds \$400 in any year.

110 Premiums on insurance effected with persons not carrying on business in Niue

(1) Where any person in Niue enters into a contract of insurance or guarantee against loss, damage, or risk of any kind whatever (not being a contract of

life insurance) with any person or overseas company not carrying on business in Niue, such last mentioned person or such company shall be liable to income tax at the rate as set out in Schedule 1 as being applicable to insurance companies on the amount of premium paid or payable by the first mentioned person in respect of such contract.

(2) Where the amount of premium paid or payable in respect of any such contract is not disclosed, the amount shall be deemed to be the same amount as would be chargeable in respect of a similar contract of insurance or guarantee effected with a company carrying on business in Niue.

(3) Every person who enters into a contract of insurance or guarantee as aforesaid shall for the purposes of this Act be deemed to be the agent of the person or overseas company with whom such contract is made, and shall make returns and be assessable and liable for income tax accordingly.

(4) Every person who exports any goods from Niue shall notify the Financial Secretary if such goods are insured, and, if so, the name and description of the person or company with whom such goods are insured, and the amount of the premium payable in respect of it.

111 Liability as agent of employer of non-resident taxpayer and employer's agent

(1) The employer or the agent of the employer of every non-resident taxpayer shall, for the purposes of this Act, be the agent of such non-resident taxpayer in respect of the salary, wages, or other emoluments received by him, and shall make returns and be assessable and liable for income tax thereon accordingly.

(2) Where any such non-resident taxpayer has made default in the payment of any income tax payable by him in respect of his salary, wages, or other emoluments as aforesaid, the amount of such tax shall, on application by the Financial Secretary, be deducted by the employer or his agent from any salary, wages, or other emoluments thereafter to be paid, and shall be paid to the Financial Secretary on behalf of the taxpayer.

(3) Where any non-resident taxpayer is in receipt of any pension or annuity payable out of any superannuation fund established in Niue, any income tax that may hereafter become payable by such non-resident taxpayer in respect of such pension or annuity shall, on application by the Financial Secretary, be deducted from any instalment or instalments of such pension or annuity thereafter to be paid, and shall be paid to the Financial Secretary on behalf of the taxpayer.

(4) For the purposes of this section "non-resident taxpayer" means any person who, being liable for income tax in respect of salary, wages, or other employment derived from Niue, or in respect of any annuity or pension derived from Niue has no fixed and permanent residence or place of abode in Niue.

112 Non-resident trader to be agent of employees in Niue

(1) Every non-resident trader shall for the purposes of this Act be the agent of all persons in his employment in Niue in respect of the salary, wages or other emoluments received by them, and shall make returns and be assessable and liable for income tax thereon accordingly.

(2) The agent in Niue of a non-resident trader shall, for the purposes of this section, be under the same obligations as his principal.

113 Agents in Niue of principals resident or carrying on business abroad

When any person in Niue, on behalf of a principal resident or carrying on business out of Niue, is instrumental in procuring the purchase from that principal of goods or merchandise which are in Niue or are to be imported into Niue in pursuance or in consequence of such

purchase, whether the contract or purchase is made in Niue or elsewhere, the principal shall in respect of the sale by him of such goods or merchandise be deemed to be carrying on business in Niue through the agency of that person; and the income derived from such business shall be deemed to be derived from Niue, in the same manner and to the same extent as if the contract had been made in Niue, and shall be assessable for income tax accordingly and the agent shall make returns and pay tax accordingly.

PART 6A

TAX DEDUCTIONS BY EMPLOYERS

113A Application of this Part

- (1) This Part shall apply notwithstanding anything in any other Part.
- (2) This Part shall apply to salary or wages for any period on or after 1 April 1984 and to other source deduction payments which are paid or would normally be paid on or after that date, notwithstanding that any such other source deduction payment may as to the whole or any part thereof be for a period before that date.
- (3) If any question is raised as to whether or not a source deduction payment is as to the whole or any part of it subject to this Part, it shall be determined by the Financial Secretary whose decision shall be final.
- (4) The amount of income tax for which an employee is liable in respect of the income earned by him in any income year shall be assessed under Part 5.

113B Tax deductions to be made by employers

For the purpose of enabling the collection of income tax from employees by instalments, where an employee receives a source deduction payment from an employer, the employer or other person by whom the payment is made shall, at the time of making the payment, make a tax deduction therefrom under this Part.

113C Amount of tax deductions

- (1) (a) The Financial Secretary shall issue tables based on the tax rates specified in this Act detailing the tax deductions that shall be made from every payment of salary and wages according to the amount of the payment the length of the pay period and the tax code of the employee; and every employer shall make tax deductions from every payment of salary or wages accordingly.
 - (b) No tax deduction need be made from any source deduction payment made to any employee in respect of his employment as a private domestic worker.
 - (c) If a tax deduction is not made by the employer in any such case section 113J shall apply to the employee.
- (2) Where the source deduction payment is being made in respect of an employee who has not made a declaration for the purposes of the tax code the basic tax deduction shall be the appropriate amount that would be deducted if the tax code of the employee were 'S'.

113D Tax codes

For the purpose of this Part the tax code of any employee in relation to any source deduction payment shall be such one of the following codes as applies to the employee namely

- “no declaration”, signifying an employee who has not delivered to the employer a tax code declaration;
- “s”, signifying an employee who has no dependants;

“s+()”, signifies an employee who has a dependant relative or dependant relatives where the number in brackets signifies the number of dependant relatives;
“SEC”, signifies an employee who undertakes secondary employment in addition to primary employment.

113E Dependants

(1) This section shall apply for the purpose of determining the tax code applicable to an employee.

(2) The spouse of the employee shall be deemed to be a dependant of the employee for the purposes of the tax code based on a tax code declaration which includes the spouse as a dependant if –

- (a) The marriage has subsisted at any time during the year in which the employee delivers the tax code declaration to the employer or to the Financial Secretary, and the spouse has been supported by the employee at any time during that year; and
- (b) The spouse has not in the year in which the tax code declaration is delivered derived income in excess of \$624; and
- (c) When the tax code declaration is delivered the employee anticipates that the income as aforesaid already derived and to be derived by the spouse in that year will not exceed in the aggregate \$624.

(3) A spouse who under subsection (2) is a dependant of an employee for the purposes of any tax code shall cease to be such a dependant if and when, before the tax code ceases to apply to the employee, the employee knows or anticipates, or should have known or anticipated, that the income as aforesaid derived and to be derived by the spouse in the year aforesaid has exceeded or will exceed \$724.

(4) A housekeeper shall be deemed to be a dependant of the employee for the purposes of the tax code based on a tax code declaration which includes the housekeeper as a dependant if, when the employee delivers the declaration to the employer or to the Financial Secretary, the employee anticipates that the aggregate amount of the payments to be made, during the year in which the tax code declaration is delivered, in respect of the services of a housekeeper or housekeepers will be not more than \$300.

(5) A housekeeper who under subsection (4) is a dependant of an employee for the purposes of any tax code shall cease to be a dependant if and when, before the tax code ceases to apply to the employee, the employee knows or anticipates or should have anticipated that the aggregate amount of the payments as aforesaid to be made during the year aforesaid will be more than \$300.

(6) A dependant relative as defined by section 45 shall be deemed to be a dependant of the employee for the purposes of the tax code based on a tax code declaration which includes the dependant relative as a dependant if, when the employee delivers the declaration to the employer or to the Financial Secretary, the employee anticipates that the dependant relative will qualify within the terms of section 45 as a dependant relative.

(7) A dependant relative who under subsection (6) is a dependant of an employee for the purposes of any tax code shall cease to be a dependant if and when before the tax code ceases to apply to the employee, the employee knows or anticipates or should have anticipated that the dependant relative does not qualify as a dependant relative within the terms of section 45.

(8) Except as provided in this section, no person shall be deemed to be a dependant of an employee.

113F Tax code declaration

(1) Every employee shall at the commencement of his employment complete a tax code declaration on the form prescribed by the Financial Secretary and deliver the completed tax code declaration to his employer. The tax code as determined by the particulars on that declaration shall be applied by the employer to that employee for the purposes of this Part.

(2) Where the circumstances of the employee change such that the employee ceases to be entitled to use the tax code based on his tax code declaration or the employee is entitled to use another tax code he shall within 7 days of such change in circumstances deliver to his employer another tax code declaration in a form authorised by the Financial Secretary. The tax code as determined by the particulars on the new declaration shall apply thereafter to the employee unless the tax declaration is again changed by the employee under this section.

(3) Notwithstanding subsections (1) and (2) the Financial Secretary may in such circumstances and to the extent that he thinks fit reduce or increase the amount of any tax deduction required to be made from the source deduction payment of any employee or class or classes of employees and the employer or the employers of such an employee or employees shall make deductions accordingly.

113G Tax deductions to be credited to individual

(1) Every employee who is required to furnish or who furnishes to the Financial Secretary a return of any assessable income derived by him in any income year shall except where the Financial Secretary otherwise directs, forward to the Financial Secretary with the return all tax deduction certificates delivered to the employee in respect of tax deductions made in the income year from source deduction payments made to the employee.

(2) The Financial Secretary shall apply the total amount of the tax deductions shown on the certificates forwarded under subsection (1) in payment successively of –

- (a) The income tax (if any) payable by the employee in respect of his income for the income year;
- (b) The income tax (if any) due by the employee and unpaid in respect of previous income years;

and shall refund to the employee an amount equal to the amount of the tax deductions not so credited.

(3) If the Financial Secretary has reason to believe that any tax deduction certificate received by him under this section is incorrect no action under subsection (2) shall be taken by the Financial Secretary until he is satisfied that the certificate is correct.

(4) The employer and the employee shall be liable jointly for any error in the amount shown in the tax deduction certificate which results in the crediting of, or refund of income tax in excess of the amount that the employer had actually deducted from a source deduction payment to which the certificate relates, and the amount of the excess shall be payable by 31 January in the succeeding income year.

113H Contribution to superannuation funds

(1) Where an employee is a contributor to a superannuation fund, the amount of the salary or wages paid to the employee for a pay period shall, for the purpose of calculating the amount of the tax deduction be deemed to be the residue of the payment of salary and wages after subtracting therefrom the amount of the regular current contributions made by the employee to the superannuation fund for that period.

(2) The maximum amount subtracted as provided for in this section shall not exceed \$30.76 in any fortnightly pay period with a corresponding limitation for other periods.

113I Tax deduction from amounts credited to or applied for employees

Where a source deduction payment, though not actually paid, is credited to or applied on account of any employee entitled to it, the amount so credited or applied shall, for the purposes of this Part be deemed to be paid when it is so credited or applied and a tax deduction in respect of it shall be made accordingly.

113J Employee to pay deductions to Financial Secretary

Where for any reason a tax deduction is not made or is not made in full at the time of the making of any source deduction payment or payments, the employee shall –

- (a) Not later than the 20th day of the month next after the month in which payment of the source deduction payment or payments were made, furnish to the Financial Secretary a return in the prescribed form of the source deduction payment or payments; and
- (b) Unless the employee is exempted from liability to pay the same or is not liable to pay the same, pay to the Financial Secretary an amount equal to the total of the tax deductions that should have been made and were not made, and that amount shall be due and payable to the Financial Secretary on the 20th day of the month next after the month in which payment of the source deduction payment or payments was made.

113K Records to be kept by employer

(1) Every employer who makes a source deduction payment to any employee shall keep a proper record in respect of the employee showing the amount of the source deduction payment before making any tax deduction, and the amount of the source deduction (if any) made from it, and shall enter these amounts in the record at the time of making the source deduction payment.

(2) Every employer shall take all reasonable precautions for the safe custody of all records that he is required to keep under this section, and of all pay sheets, receipts for source deduction payments, tax deduction certificates, tax code declarations, and tax code certificates, and shall retain all such records, pay sheets, receipts, tax code declarations, and tax code certificates for not less than 7 years after the making of the payments to which they relate except and to the extent that he is required by this Act to deliver to the Financial Secretary the signed tax deduction certificates tax code declarations, and tax code certificates.

(3) This section shall not require retention of any records, pay sheets, receipts, tax code declarations, or tax code certificates in respect of which the Financial Secretary has notified the employer that retention is not required.

113L Payment of tax deductions to Financial Secretary

Every employer who makes tax deductions from source deduction payments made to employees shall –

- (a) Not later than the 20th day of the month next after the month in which he has made any such deductions, pay to the Financial Secretary the amount of the tax deductions and deliver to the Financial Secretary a monthly remittance certificate in a form authorised by the Financial Secretary and showing the total amount of all source deduction payments made by the employer to employees

- in the month before making any tax deductions, and the total amount of all tax deductions made from those payments;
- (b) Not later than 31 May in each year, deliver to each employee a tax deduction certificate signed by the employer, being a certificate in a form authorised by the Financial Secretary and showing the total amount of all source deduction payments made by the employer to the employee in the preceding year (not including payments included in a tax deduction certificate previously delivered to the employee), and the total amount of the tax deductions made from this payments together with such other information as the Financial Secretary may from time to time prescribe;
 - (c) Not later than 31 May in each year deliver to the Financial Secretary a conciliation statement signed by the employer, being a certificate in a form authorised by the Financial Secretary and showing the total amount of all tax deductions paid to the Financial Secretary by the employer in respect of source deduction payments made in the preceding year, and the total amount of all tax deductions shown in tax deduction certificates delivered to employees in respect of those source deduction payments, together with an explanation if the two totals do not agree, and, accompanied by signed copies of all those tax deduction certificates delivered to him in the preceding year, and by all notices cancelling relevant deductions given to him in that year under section 113F.

113M Tax deductions protected from creditors

The amount of every tax deduction made under this Part shall be held in trust for the Crown; and any amount so held in trust shall not be the property of the employer, and, in the event of the bankruptcy or liquidation of the employer or of an assignment for the benefit of the employer's creditors, shall remain apart, and form no part of the estate in bankruptcy, liquidation or assignment.

113N Employers who fail to make tax deductions

(1) Where an employer fails to make any tax deduction in accordance with his obligations under this Part, the amount in respect of which default has been made shall constitute a debt payable by the employer to the Financial Secretary on the 20th day of the month next after the month in which payment of the source deduction payment should have been made.

(2) The right of the Financial Secretary to recover from the employer the amount in respect of which default has been made shall be in addition to any right of the Financial Secretary to recover that amount from the employee under this Part and nothing in this Part shall be construed as preventing the Financial Secretary from taking such steps as he thinks fit to recover that amount from the employer and from the employee concurrently, or from recovering that amount wholly from the employer or from the employee or partly from the employer and partly from the employee.

(3) Where any amount, including a penalty, recoverable under this Part from the employee is in fact paid by the employer, the amount so paid may be recovered by the employer from the employee.

113O Additional tax for default in making tax deductions

- (1) Where –
- (a) Any employer or other person by whom any source deduction payment is made fails wholly or in part to make tax deduction therefrom his obligations under this Part; or

- (b) Any person who has made a tax deduction fails wholly or in part within the prescribed time and in the prescribed manner to pay the amount of the tax deduction to the Financial Secretary; or
 - (c) Any person who is liable to pay any amount to the Financial Secretary under this Part fails to pay the amount on the due date for payment of it – that employer or other person shall, unless the Financial Secretary is satisfied that he has not been guilty of wilful neglect or default, be liable, without conviction, in addition to any other penalty to which he may be liable, to a penalty equal to 10 percent of the amount in respect of which default has been made.
- (2) For the purposes of subsection (1) (b) a tax deduction shall be deemed to have been made if and when payment is made of the net amount of any source deduction payment.
- (3) A penalty imposed under this section shall for all purposes be deemed to be of the same nature as the amount or part of it in respect of which it is imposed, and shall be recoverable accordingly.
- (4) Subject to this Part, the other Parts shall apply with respect to the amount of every penalty imposed under this section as if it were additional tax under section 116 and as if the person liable to the penalty were the taxpayer.

113P Offences

- (1) Every person commits an offence against this Act who –
- (a) Being an employer or other person by whom a source deduction payment is made to an employee, fails wholly or in part to make a tax deduction therefrom under his obligations under this Part; or
 - (b) Knowingly applies or permits to be applied the amount of any tax deduction or any part of it for any purpose other than the payment of the tax deduction to the Financial Secretary;
 - (c) Makes a false or misleading tax code declaration, or gives any false information, or misleads or attempts to mislead the Financial Secretary or any other officer, or any employer or other person, in relation to any matter or thing affecting a tax deduction or a reduced deduction; or
 - (d) Delivers or maintains or attempts to deliver or maintain, in contravention of this Part, a tax code declaration or a tax code certificate in respect of more than one employment, or otherwise obtains or attempts to obtain, in contravention of this Part, the benefit of a reduced deduction in respect of more than one employment; or
 - (e) Alters any tax code certificate or special tax code certificate issued by the Financial Secretary, or falsely pretends to be the employee named in any such certificate, or has in his possession, without lawful justification or excuse, a colourable imitation of any such certificate or, in contravention of this Act, causes or attempts to cause any employer or other person to refrain from making a tax deduction, or to make a reduced deduction, by the production of any document other than a tax code certificate or a special tax code certificate issued to him by the Financial Secretary and for the time being in force; or
 - (f) Alters any tax deduction certificate, or falsely pretends to be the employee named in any such certificate, or, in contravention of this Act, obtains or attempts to obtain for his own advantage or benefit credit with respect to, or a payment of, the whole or any part of the amount of a tax deduction made from a source deduction payment received by another person.

(2) Every person who commits an offence against this section shall be liable to imprisonment for a term not exceeding 12 months or to a fine not exceeding 5 penalty units or to both.

(3) For the purposes of this section a tax deduction shall be deemed to have been made if and when payment is made of the net amount of any source deduction payment, and the amount of the tax deduction shall be deemed to have been applied for a purpose other than the payment thereof if the amount of the tax deduction is not duly paid to the Financial Secretary.

(4) No person shall be convicted of an offence under this section if he satisfies the Court that the failure to comply with the requirements of the section was due to illness, accident or other cause beyond his control.

113Q Application of other provisions to this Part

Subject to this Part, the other Parts shall apply with respect to every amount that any employer, employee or other person is liable to account for or pay to the Financial Secretary under this Part as if the amount were income tax.

113R Withholding payments

(1) The Financial Secretary may exercise discretion and withhold up to 10 percent of the total amount 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.

PART 7

PAYMENT AND RECOVERY OF TAX

114 Due date for payment of tax

(1) Income tax shall, except where expressly made payable in any other manner by this Act, be due and payable immediately a notice of assessment purporting to be signed by the Financial Secretary has been given to the taxpayer or on such later date as may be fixed by the Financial Secretary in the said notice.

(2) In any case where a notice of assessment in respect of any year has not been issued, and the delay is, in the opinion of the Financial Secretary, due to any neglect, default or omission of the taxpayer, then the Financial Secretary when issuing such notice of assessment, may fix a date which may be before the date of issue of such assessment, which shall be considered to be the date on which the tax payable under that assessment became due and payable.

115 Payment of tax

Payment of taxes and other moneys payable under this Act shall be effected at the Treasury.

115A Payments of tax

(1) There shall be payable by taxpayers who are in receipt of a sufficient level of remuneration by way of salary or wages to render them liable for income tax, such sum as the Financial Secretary by notice in writing in form numbered 1 set out in Schedule 3 may direct, a regular sum by way of deduction from salary or wage, at such time or at such intervals as the notice specifies, not exceeding twenty per cent of the

gross salary or wage, for the purpose of providing for payment of tax assessed in each tax year.

(2) The Financial Secretary may by notice in writing, in the form numbered 2 in Schedule 3 require any person to deduct from any amount payable to a taxpayer by way of salary or wage such sum as may be specified in the notice, and to pay every sum so deducted to the Financial Secretary for the credit of the taxpayer at such time or at such intervals as may be specified in the notice.

(3) This section shall bind the Crown.

(4) (a) Such sums as are paid to Treasury by employers under subsections (1) to (4) shall be credited to an account in the name of each individual taxpayer, and shall be used only for the purpose of meeting the whole or part of the tax assessed in any year in respect of that taxpayer.

(b) The individual record of a taxpayer will be available for perusal by that taxpayer on request in person during normal working hours, but may not be removed from Treasury.

(5) (a) The sums so deducted shall be deemed to be deposits within the meaning of section 12(a) Public Revenues Act 1959, but may not be withdrawn until the tax for the year has been assessed and become due and payable in terms of section 114 of this Act and will not earn interest.

(b) In the event of the amount to the credit of a taxpayer's account exceeding the amount of tax assessed and payable in terms of section 114 of this Act, a refund may be due to the taxpayer provided a surplus remains after taking into account deposits which have been lodged since 1 April in any tax year, as these deposits would be in respect of a new tax year and therefore not refundable.

(c) If a balance remains to the credit of a taxpayer's account after a final tax assessment has been paid prior to the taxpayer leaving the country, then such balance would be immediately refundable.

(6) Every person commits an offence and shall be liable on conviction to a fine not exceeding 2 penalty units who –

(a) Fails to make any deduction required by a notice under this section to be made from any amount payable by him to a taxpayer;

(b) Fails after making any such deduction to pay the sum deducted to the Financial Secretary within the time specified in that behalf in the notice.

116 If default, additional tax to be charged

(1) Subject to this section, if any tax remains unpaid at the expiration of one month after the due date of it (whether already assessed or not), or after the date of demand, as the case may be, five per cent on the amount of the tax unpaid shall be and be deemed to be added to it by way of additional tax, and shall be payable accordingly.

(2) In any case in which an assessment is increased after the due date of tax, and the Financial Secretary is satisfied that the taxpayer has not been guilty of wilful neglect or default in making due and complete returns for the purposes of that tax the Financial Secretary shall in his notice to the taxpayer of the assessment or amended assessment, or in any subsequent notice, fix a new date for the payment of the tax, or of the increase, as the case may be, and the date so fixed shall be deemed to be the due date of that tax or increase for the purposes of subsection (1).

(3) Where the taxpayer is resident beyond Niue and has no agent in Niue the Financial Secretary shall, before charging the additional tax as aforesaid, grant such further time, not exceeding 6 months after the due date of the tax, as he may deem necessary.

(4) An application for relief made in writing by or on behalf of any taxpayer who has become liable for the payment of any additional tax under subsections (1)-(3), the Financial Secretary, if having regard to the circumstances of the case thinks it equitable so to do, may, subject to this section, grant relief to the taxpayer –

- (a) By the remission of the whole or part of such additional tax; or
- (b) Where such additional tax has been paid in whole or in part, by the refund to the taxpayer of the whole or any part of such tax that has been paid, with or without the remission of any part of such additional tax that has not been paid.

(5) No amount of tax in excess of \$200 shall be remitted or refunded in any year under this section except with the approval of Cabinet.

117 Mode of recovery of unpaid tax

All unpaid tax shall be recoverable by the Financial Secretary on behalf of the Government by suit in the name of the Financial Secretary as a debt in the High Court.

118 Deduction of income tax from payment due to defaulters

(1) Where any taxpayer has made default in the payment of any income tax payable by him for any year of assessment, the Financial Secretary may by notice in writing require any person to deduct from any amount payable or to become payable by that person to the taxpayer such sum as may be specified in the notice, and to pay every sum so deducted to the Financial Secretary to the credit of the taxpayer within such time as may be specified in the notice.

(2) This section shall bind the Crown.

(3) Where any notice under this section relates to any wages or salary, the sums required to be deducted therefrom shall be computed so as not to exceed a deduction at the rate of one-twentieth per week of the tax due and payable by the taxpayer at the date of the notice, or at the rate of 20 per cent of the wages or salary, whichever rate is the less.

(4) Any notice under this section may be at any time revoked by the Financial Secretary by a subsequent notice to the person to whom the original notice was given (herein referred to as the debtor), and shall be so revoked at the request of the taxpayer at any time when the Financial Secretary is satisfied that all income tax then due and payable by the taxpayer has been paid, and that the Financial Secretary holds to the credit of the taxpayer an amount not less than the amount of the income tax (if any) to become due and payable by him during the then current year of assessment.

(5) A copy of every notice given under this section in respect of any taxpayer and of the revocation of any such notice shall be given to the taxpayer by the Financial Secretary.

(6) Whenever pursuant to a notice under this section any deduction is made from any amount payable to any taxpayer the taxpayer shall be entitled to receive from the debtor a statement in writing of the fact of the deduction and of the purpose for which it was made.

(7) The sum deducted from any amount under a notice under this section shall be deemed to be held in trust for the Crown, and, without prejudice to any other remedies against the debtor or any other person, shall be recoverable in the same manner in all respects as if it were income tax payable by the debtor.

(8) Every person commits an offence and shall be liable on conviction to a fine not exceeding 2 penalty units who –

- (a) Fails to make any deduction required by a notice under this section to be made from any amount payable by him to a taxpayer;

- (b) Fails after making any such deduction to pay the sum deducted to the Financial Secretary within the time specified in that behalf in the notice.

119 Procedure where defendant absent

In any action in the Court for the recovery of tax, if the defendant is absent from Niue or cannot after reasonable inquiry be found, service of the summons may with the leave of a Judge be affected by posting a duplicate or sealed copy thereof in a letter addressed to the defendant at his present or last known place of abode or business, whether in Niue or elsewhere.

120 Particulars of claim or demand

In an action in any court for the recovery of tax it shall be sufficient if the particulars of claim or demand state the amount sought to be recovered and the date on which same became payable, and such further particulars (if any) as the Financial Secretary thinks necessary in order fully to inform the defendant of the nature of the claim.

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.

122 Costs against Financial Secretary

In all proceedings in any court for the recovery of tax, costs may be awarded to or against the Financial Secretary in the same manner as in other cases.

123 Proceedings not affected by vacancy or change in office of Financial Secretary

No action instituted by the Financial Secretary for the recovery of tax, and no proceedings on objection to an assessment of tax, shall abate by reason of any vacancy in the office of the Financial Secretary, or shall be deemed defectively constituted by reason of any change in the holder of that office, and every such action or proceeding shall be continued in the ordinary course as if the Financial Secretary and his successors in office were a corporation sole.

124 Crown Proceedings Act not affected

Nothing in this Act shall be so construed as to limit or affect the operation of the Crown Proceedings Act 1950 and all rights and remedies conferred upon the Crown in respect of the Government by that Act and by this Act shall co-exist, and may be exercised independently of one another, and tax may be recovered accordingly.

125 Recovery of tax paid by one person on behalf of another

Every person who under this Act pays any tax for or on behalf of any other person shall be entitled to recover the same from that other person as a debt, or to retain or deduct the same out of or from any money which is or becomes payable by him to that other person; and if he has paid the same as mortgagee, then, until repaid, it shall be deemed to form part of the moneys secured by the mortgagee and shall bear interest at the same rate accordingly.

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.

PART 8

PENALTIES

127 Penalty for failure to furnish returns

(1) Every person who –

- (a) Refuses or fails to furnish any return or information as and when required by this Act or by the Financial Secretary; or
- (b) Wilfully or negligently makes any false return, or gives any false information, or misleads or attempts to mislead the Financial Secretary, in relation to any matter or thing affecting his own or any other person's liability to taxation; or
- (c) Refuses or fails without lawful justification to duly attend and give evidence when required by the Financial Secretary, or to truly and fully answer any question put to him or to produce any book or paper required of him; or
- (d) Obstructs any officer acting in the discharge of his duties or in the exercise of his powers under this Act; or
- (e) Commits any other breach of this Act for which no other penalty is expressly provided; or
- (f) Aids, abets, or incites any other person to commit any offence against this Act

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commits an offence against this Act and is liable to a fine not exceeding 2 penalty units.

(2) In any proceedings against a person for refusing or failing to furnish any return or information as and when required by the Act, or by the Financial Secretary, a certificate in writing signed by the Financial Secretary certifying that the return or information so required has not been received from that person at the place where or by the person to whom the return or information should have been furnished, shall, in the absence or proof to the contrary, be sufficient evidence that the defendant has refused or failed to furnish the return or information.

128 Fines recoverable

All fines under this Act shall be recoverable by way of prosecution in the Court and only upon the information of the Financial Secretary, or of some person authorised in writing by the Financial Secretary in that behalf; and the signature of the Financial Secretary to any warrant of authority under this section shall be judicially noted.

129 Information may be laid within ten years

Notwithstanding anything in any other Act to the contrary any information in respect of any time within 10 years after the termination of the year in which the offence was committed.

130 Penal tax in case of evasion

If any taxpayer evades, or attempts to evade, or does any act with intent to evade, or makes default in the performance of any duty imposed upon him by this Act with intent to evade, the assessment or payment of any sum which is or may become chargeable against him by way of tax (which sum is hereinafter referred to as the deficient tax) he shall be chargeable, by way of penalty for that offence, with additional tax (penal tax) not exceeding an amount equal to the amount of the deficient tax.

131 Nature of penal tax

Subject to this Part penal tax shall for all purposes be deemed to be tax of the same nature as the deficient tax, and shall be deemed to be payable in and for the same year of assessment as the deficient tax.

132 Assessment of penal tax

The penal tax shall be assessed by the Financial Secretary in the same manner, so far as may be, as the deficient tax, but separately from it.

133 Objections to penal tax

(1) Any such assessment of penal tax shall be subject in the same manner as any other assessment of tax, to objection on the ground that the person so assessed is not chargeable with penal tax, or on the ground that the amount so assessed is excessive.

(2) All the provisions of this Act as to objections shall apply to an objection to an assessment of penal tax, save that the burden of proving the offence in respect of which penal tax is chargeable shall lie upon the Financial Secretary.

134 Recovery of penal tax

An assessment of penal tax may be made and the tax so assessed shall be recoverable at any time whether before or after the deficient tax has been assessed or become assessable or payable, or has been paid.

135 Recovery of penal tax from executors or administrators

(1) Penal tax shall be assessable against and recoverable from the executors or administrators of a deceased taxpayer, but, if so assessed, the amount of it shall be recoverable only as a debt incurred by the deceased in his lifetime.

(2) No penal tax shall be recoverable from any person other than the taxpayer himself, or his executors or administrators.

136 Amendment of assessment of penal tax

An assessment of penal tax may be amended in the same manner as any other assessment.

137 Limitation of time for assessment of penal tax

No assessment of penal tax shall be made or increased at any time after the expiration of 10 years after the year of assessment of the deficient tax.

138 Recovery of penal tax not affected by conviction of taxpayer

The assessment of recovery of penal tax in respect of any offence shall not be in any manner barred or affected by the fact that the taxpayer has been convicted under this Act of the same or any other offence; but no person who has paid the penal tax assessed against him for any offence shall be thereafter convicted of the same offence.

PART 9

GENERAL

139 Financial Secretary to have power to inspect books and documents

(1) Notwithstanding anything to the contrary in any other Act, the Financial Secretary or any officer of the Government authorised by him in that behalf shall at all times have full and free access to all books and documents, whether in the custody or under the control of a public officer or a body corporate or any other person whatsoever, for the purpose of inspecting any books and documents which the Financial Secretary or officer considers necessary or relevant for the purpose of collecting any tax or duty which the Financial Secretary is authorised to collect, or considers likely to provide any information otherwise required for any such purpose, and may, without fee or reward, make extracts from or copies of any such books or documents.

(2) The Financial Secretary or any officer of the Government authorised by him in that behalf, may for the purposes of any investigation under this section require the owner or manager of any property or business, to give him all reasonable assistance in the investigation and to answer all proper questions relating to any such investigation either orally, or, if the Financial Secretary or officer so requires, in writing, or by statutory declaration, and for that purpose may require the owner or manager or, in the case of a company, any officer of the company to attend at the premises with him.

140 Information to be furnished on request of Financial Secretary

(1) Every person (including any officer employed in or in connection with any department of the Government or by any public authority, and any other public officer) shall, if required by the Financial Secretary or by any officer of the Government authorised by him in that behalf furnish in writing any information and produce any books and documents which the Financial Secretary or officer considers necessary or relevant for any purpose relating to the administration or enforcement of this Act or any other Act administered by the Financial Secretary, and which may be in the knowledge, possession, or control of that person.

(2) Without limiting subsection (1) it is hereby declared that the information in writing which may be required under this section shall include lists of shareholders of companies, with the amount of capital contributed by and dividends paid to each shareholder, copies of balance sheets and of profit and loss accounts and other accounts and statements of assets and liabilities of any person.

(3) The Financial Secretary or any officer of the Government authorised by him in that behalf may require that any written information or particulars furnished under this section shall be verified by statutory declaration or otherwise.

141 Inquiry before a Judge or Commissioner of the High Court

(1) In any case in which the Financial Secretary deems it necessary to hold an inquiry for the purpose of obtaining any information with respect to the liability of any person for any tax or duty which the Financial Secretary is authorised to collect or any other information required for the purposes of the administration or enforcement of this Act or any other Act administered by the Financial Secretary, he may apply in

writing to a Judge or Commissioner of the High Court to hold an inquiry under this section.

(2) For the purposes of any such inquiry the Judge or Commissioner of the High Court may summon before him and examine on oath touching any matter which is relevant to the subject-matter of the inquiry, all persons whom the Financial Secretary or any other person interested requires to be so called and examined.

(3) The Judge or Commissioner of the High Court shall have all such jurisdiction and authority touching the summoning and examination of any such person as he would have in respect of a witness in a civil action within his ordinary jurisdiction and the person so summoned and examined shall, subject to this Act, have all such rights and be subject to all such liabilities as he would have and be subject to if he were such a witness as aforesaid.

(4) (a) The Financial Secretary and every person who is interested in the subject-matter of the inquiry may be represented by a barrister or solicitor, or, with the leave of the Court, by any other person, who may examine, cross-examine and re-examine under the ordinary practice, any person so summoned.

(b) Every person so summoned may be cross-examined by the Financial Secretary or by the Financial Secretary's barrister or solicitor.

(5) Every examination under this section shall take place in chambers.

(6) The statement of every person so examined shall be taken down in writing and signed by him in the presence of the Judge or Commissioner of the High Court and delivered to the Financial Secretary and shall not form part of the records of the Court.

(7) No person summoned or examined under this section shall be excused from answering any question on the ground that the answer may incriminate him or render him liable to any penalty or forfeiture.

(8) No statement made by any such person in answer to any question put to him shall in criminal proceedings be admissible in evidence against him, except upon a charge of perjury against him in respect of his testimony upon that examination.

(9) A person summoned under this section may receive such sum on account of travelling expenses and loss of time as the Judge or Commissioner of the High Court thinks reasonable and orders accordingly.

142 Inquiry by Financial Secretary

(1) The Financial Secretary may, for the purpose of obtaining any information with respect to the liability of any person for any tax or duty which the Financial Secretary is authorised to collect or any other information required for the purposes of the administration or enforcement of any Act administered by the Financial Secretary, by notice in writing, require any person to attend and give evidence before him or before any officer of the department authorised by him in that behalf and to produce all books and documents in the custody or under the control of that person which contain or which the Financial Secretary or the authorised officer considers likely to contain any such information.

(2) The Financial Secretary may require any such evidence to be given on oath and either orally or in writing.

(3) If any person required to give evidence under this section refuses or wilfully neglects to appear before the Financial Secretary or authorised officer or to take an oath as witness or if any person being sworn as a witness at any such inquiry refuses or wilfully neglects to answer any question put to him touching the subject-matter of the inquiry or to produce to the Financial Secretary or authorised officer any

such documents as aforesaid, that person shall be liable on conviction to a fine not exceeding 2 penalty units.

(4) If any person wilfully gives false evidence at any inquiry under this section he shall be guilty of perjury within the meaning of the Criminal Law Code.

(5) A person required to attend before the Financial Secretary or an authorised officer may receive such sum on account of travelling expenses and loss of time as the Financial Secretary thinks reasonable and orders accordingly.

143 Offences

(1) Every person commits an offence against sections 139 to 142 who –

- (a) Acts in contravention of, or, without lawful justification or excuse, fails to comply in any respect with any provision of those sections or any requirement imposed thereunder;
- (b) Wilfully deceives or attempts to deceive the Financial Secretary or any officer of the department in the exercise of any powers or function under those sections;
- (c) With intent to deceive makes any false or misleading statement or any material omission, in any information given to the Financial Secretary or any officer of the department for the purposes of those sections.

(2) Every person who commits an offence against any one of sections 139 to 142 for which no other penalty is prescribed shall be liable on conviction to a fine not exceeding 1 penalty unit.

144 Keeping of business records

(1) Subject to subsection (2) every person carrying on business or deriving income other than salary or wages shall keep sufficient records in the English or Niuean language to enable his assessable income and allowable deductions to be readily ascertained by the Financial Secretary or any officer authorised by him in that behalf and shall retain all such records so kept.

(2) This section shall not require the retention of any records –

- (a) In respect of which the Financial Secretary has notified the taxpayer in writing that retention is not required;
- (b) Of a company which has been wound up and finally dissolved.

(3) For the purposes of this section “records” includes books of account recording receipts or payments or income or expenditure or purchases or sales, and also includes vouchers, invoices, receipts, and such other documents as are necessary to verify the entries in any such books of account and in the case of an agent, records of all transactions carried out on behalf of his principal.

(4) Every person who fails to comply with this section commits an offence.

145 Employers to make returns as to employees

Every person shall from time to time, as required by the Financial Secretary, make a return of all persons employed by him during any year, and of all salaries, wages, allowances and other emoluments received during that year by each person so employed.

146 Return of interest paid on deposits

Every bank, local or public authority or other company or person who in the course of business holds money by way of deposit and allows interest thereon shall from time to time, as required by the Financial Secretary, make a return of all interest so allowed during the year or other period to which the requisition of the Financial Secretary relates, together with the names, addresses, and occupations of the person to whom such interest has been allowed.

147 Returns as to debentures and interest thereon

Every company or local or public authority shall as required by the Financial Secretary make a return giving such particulars as the Financial Secretary requires relative to debentures issued by that company or local or public authority the holders thereof, and the interest paid or payable on it.

148 Excess tax may be repaid within four years

(1) In any case where the Financial Secretary is satisfied that tax has been paid in excess of the amount properly payable he shall advise the person concerned of the excess payment and shall refund the amount paid in excess if written application for the refund is made by or on behalf of the taxpayer –

- (a) In any case where the assessment of the tax has not been altered, within 4 years after the end of the year in which the assessment was made;
- (b) In any case where the original assessment has been altered (whether once or more than once), within 4 years after the end of the year in which the original assessment was made.

(2) In any case where an assessment has been altered so as to increase the amount of tax payable and the Financial Secretary is satisfied that by reason of that alteration tax has been paid in excess of the amount properly payable, he shall advise the person concerned of the excess payment and shall refund the amount so paid in excess by reason of that alteration if written application for the refund is made by or on behalf of the taxpayer within 4 years after the end of the year in which the alteration was made, notwithstanding that the application may be made after the time allowed by subsection (1).

149 In cases of serious hardship Financial Secretary may grant relief to taxpayer

(1) In any case where it is shown to the satisfaction of the Financial Secretary –

- (a) That any taxpayer has suffered such loss or is in such circumstances that the exaction of the full amount of the tax has entailed or would entail serious hardship; or
- (b) That, owing to the death of any person who if he had not died would have been liable to pay tax, the dependants of that person are in such circumstances that the exaction of the full amount of the tax has entailed or would entail serious hardship –

he may, subject to this section, release the taxpayer or the executor or administrator of the deceased taxpayer (as the case may be) wholly or in part from his liability, and may make such alterations in the assessment as are necessary for that purpose, and may if the tax as previously assessed or any part of it has been already paid, refund any tax paid in excess of the amount of the assessment as altered under this section.

(2) No amount of tax in excess of under \$200 shall be remitted or refunded in any one year under this section except with the approval of Cabinet.

150 Agreements purporting to alter incidence of taxation to be void

Every contract, agreement, or arrangement shall be absolutely void in so far as directly or indirectly it has or purports to have the purpose or effect of in any way altering the incidence of income tax, or relieving any person from his liability to pay such tax.

151 Debentures issued free of income tax

(1) Nothing in section 150 shall be so construed as to render void any contract, agreement, or arrangement made or entered into by any company to the effect that the interest on any debentures issued by that company shall be free of income tax; and all such contracts, agreements and arrangements are hereby declared to be valid and effective in accordance with this section unless the company is expressly or impliedly prohibited, by its memorandum or articles of association from making or entering into any such contract, agreement or arrangement.

(2) Where any debentures issued by a company purport to be issued free of income tax the company shall be liable for the payment of the income tax payable in respect of it, and the debenture-holders shall be entitled to receive the full amount of interest payable under the debentures.

152 Regulations

Cabinet may make such regulations as it thinks fit for —

- (a) The purposes of this Act;
- (b) Bringing a tax agreement into force in accordance with section 85(2); and
- (c) Imposing, revoking, suspending, reducing, or increasing income tax on a non-resident who has received income derived from Niue; and
- (d) Giving effect to, or enabling effect to be given to, any agreement or arrangement entered into by Cabinet for and on behalf of the Government of Niue for the exchange of information that relates to tax (including the automatic exchange of that information) in relation to Niue and any other country or territory.

153 [Repealed]

SCHEDULE 1
Rates of Income Tax
(Section 39)
Part A

1 Interpretation

In this Schedule “taxable income” means income on which income tax is payable.

2 Companies

The rate of income tax payable in respect of taxable income derived by a company in Niue shall be 30 cents for every dollar of taxable income.

3 Other taxpayers

On all income not included within clause 2 the rate of income tax for every dollar of taxable income shall be the effective rate of tax ascertained by calculating tax on that income in accordance with the rates of tax specified in Part B and multiplying the tax so calculated by the number of dollars included in that income.

Niue Legislation Act 2019

PART B

On so much income as –	The rate of tax for every dollar is –
is not more than \$10,000	10 cents
is more than \$10,000 but is not more than \$20,000	20 cents
is more than \$20,000	30 cents

PART C

In the case of an employee to whom the tax code “SEC” under section 113D applies, the rate of withholding from the salary or wages or other source deduction payment of the employee arising from an employment other than the employee’s primary employment is 10 cents in every dollar.

SCHEDULE 2
RATE OF DEPRECIATION
(Section 54)

1 Buildings

Reinforced concrete throughout	1 per cent of cost price
Brick, stone or concrete walled	1½ per cent of cost price
Wooden-framed	2½ per cent of cost price
Steel framed	1 per cent of cost price
Other buildings which cannot be classified under any of the preceding headings	Such rate as may be fixed by the Financial Secretary in the particular case

2 Assets other than Buildings

Plant, machinery, vehicles, etc other than those listed hereunder	20 per cent of the diminishing value
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Containers (casks, crates, drums, cans, bottles and other containers)

Dies

Fences

Libraries in the case of professional men, but not salaried taxpayers

Loose tools

Income Tax Act

Moulds

Machine tools

Patterns

Pipelines

Printing type

Sacks

Small articles requiring frequent

Renewal (crockery, cutlery, linen, etc.)

Cost of replacements each year

The Financial Secretary may specify that the replacement costs of any other items not particularly mentioned above may be allowed as a deduction in any year.

SCHEDULE 3
Low income rebate
(Section 41A)

Category	Amount of assessable income of Taxpayer	Rebate
For a person whose primary employment earnings are not derived from employment in the Niue Public Service or a statutory body	\$20,000 a year or less	\$2,000
For every other person	\$10,000 a year or less	An amount equal to the income tax that would otherwise be payable on the assessable income of the taxpayer or \$1,000 whichever is the lesser amount
	More than \$10,000 a year but less than \$20,000 a year	\$1,000 less 10 cents for each dollar of assessable income of the taxpayer in excess of \$10,000

Niue Legislation Act 2019

SCHEDULE 4

Section 115A

Form No. 1

FORM OF NOTICE BY FINANCIAL SECRETARY TO TAXPAYER OF COMPULSORY
REGULAR

DEPOSITS TOWARDS INCOME TAX

To

of.....

Dear Sir/Madam,

In terms of section 115a (1) of the Income Tax Act 1961 you are hereby notified that commencing on.....day.....month.....year you will be required to make deductions from your fortnightly/weekly pay a sum calculated at the rate of % of your gross pay for the period, and this sum will be deposited by your employer with the Treasury to the credit of your account. NOTE: Monies deposited to your account in Treasury by your employer in accordance with this notice may not be withdrawn until the income tax for the year or part of the year has been assessed and become payable in terms of section 114 of the Income Tax Act 1961. No interest will be paid on your deposit. Should the amount standing to the credit of your account be insufficient to meet the amount of tax assessed, you will be required to make a lump sum payment of the balance owing. Should the credit in your account exceed the amount of tax assessed, a refund may be due to you provided a surplus remains after taking into account deposits which have been lodged since 1 April in any year, as these deposits are in respect of a new tax year and would not be refundable.

Yours faithfully
Financial
Secretary
Section 115A

Form No. 2

FORM OF A NOTICE BY FINANCIAL SECRETARY TO EMPLOYERS TO MAKE
DEDUCTIONS ON A REGULAR BASIS FROM AN EMPLOYERS PAY FOR INCOME TAX
PURPOSES AND TO PAY SUMS SO DEDUCTED TO TREASURY

To

of.....

Dear Sir/Madam

You are hereby given notice under section 115A(2) of the Income Tax Act 1961 to deduct from the fortnightly/weekly pay of Mr/Mrs/Miss.....of who is presently employed by you, until further notice, a sum calculated at the rate.....% of his/ her gross salary/wages and to pay this sum to the Financial Secretary, Alofi within.....days of each pay day.

Yours faithfully

NOTE: Under section 115A(6) of the Income Tax Act every person commits an offence and shall be liable on conviction to a fine not exceeding 2 penalty units who –

- (a) Fails to make any deduction required by notice under this section to be made from any amount payable by him to a taxpayer.
- (b) Fails after making any such deduction to pay the sum deducted to the Financial Secretary within the time specified in that behalf in the notice.