Tax Administration Act 2025

No. 379

Contents

A Act to harmonise, modernise, and simplify the procedural and administrative rules applicable to the tax laws.

The Assembly enacts as follows—

1 Title

This Act is the Tax Administration Act 2025.

2 Commencement

(1) This Act comes into force on the day after the date on which this Act becomes law in accordance with Article 34 of the Constitution.

(2) This Act applies on and from 1 July 2026.

Part 1
Preliminary matters

3 Interpretation

Definitions and other interpretation provisions that apply to this Act are set out in Schedule 1.

4 Application of Act to agency taxes, secondary liabilities, and tax recovery costs

(1) A reference in Part 9 and sections 15 and 82 to—

(a) **tax** includes an agency tax; and

(b) **unpaid tax** includes an amount of an agency tax that is not paid on or before the due date; and

(c) **taxpayer** includes a person liable for an agency tax; and

(d) **tax law** includes the law under which an agency tax is imposed.

(2) If there is a conflict between subsection (1) and the law under which an agency tax is imposed, subsection (1) prevails.

(3) A reference in Parts 7, 8, 9, and 10 and sections 15 and 82 to—

(a) **tax** includes a secondary liability and tax recovery costs; and

(b) **unpaid tax** includes an amount specified in paragraph (a) that is not paid by the due date; and

(c) **taxpayer** includes a person liable for an amount specified in paragraph (a).

5 Act binds the Government

This Act binds the Government.

Part 2
Administration of Tax Laws

6 Financial Secretary to administer tax laws.

(1) The Financial Secretary is charged with responsibility for the administration of the tax laws.

(2) Any certificate, notice, or other document bearing the written, stamped, electronic, or printed signature of the Financial Secretary relating to any matter provided for under a tax law is treated as having been signed by the Financial Secretary unless the contrary is proved.

(3) Judicial notice must be taken of the following—

(a) the signature of the Financial Secretary; and

(b) the fact that the individual whose signature it purports to be holds, or has held, the office of Financial Secretary.

(4) No action by the Financial Secretary for the recovery of unpaid tax, and no proceedings on an objection to a tax decision is suspended or terminated by reason of any vacancy in the office of the Financial Secretary or treated as defectively constituted by reason of any change in the holder of the office of Financial Secretary, and every action or proceeding continues in the ordinary course as if the Financial Secretary and his or her successors in office were a corporation sole. [This is a section heading

(5) In collecting taxes imposed under the tax laws, and despite anything in the tax laws, it is the duty of the Financial Secretary to collect over time the highest net revenue that is practicable within the law having regard to —

(a) the resources available to the Financial Secretary; and

(b) the importance of promoting compliance, especially voluntary compliance, by all persons with the tax laws; and

(c) the compliance costs incurred by taxpayers

7 Tax officers.

(1) All tax officers must be appointed according to the Public Service Regulations 2004 or any successor Regulations.

(2) Before a tax officer performs any official duty under the tax laws, the tax officer must take and subscribe an oath of fidelity as prescribed.

(3) A tax officer must notify the Financial Secretary in writing if the exercises of a power, or performance of a duty or function, under a tax law by the tax officer —

(a) relates to a person in respect of which the tax officer has or had a personal, family, business, professional, employment, or financial relationship; or

(b) otherwise involves a conflict of interest.

(4) A tax officer must not—

(a) For remuneration prepare a tax return on behalf of a taxpayer; or

(b) For remuneration provide tax advice to a taxpayer other than as required in the ordinary course of the tax officer's employment; or

(c) act as a tax accountant or tax consultant other than where the tax officer is acting in an honorary capacity; or

(d) accept employment from any person preparing tax returns or giving tax advice.

8 Delegation

(1) Subject to subsections (2) and (3), the Financial Secretary may, by notice in writing, delegate to a tax officer any duties, powers, or functions conferred or imposed on the Financial Secretary under a tax law, other than this power of delegation.

(2) Subject to subsection (3), a delegation by the Financial Secretary—

(a) may be made subject such restrictions and conditions as the Financial Secretary thinks fit; and

(b) may be made to a particular person or to a specified class of persons; and

(c) may be made generally or in relation to a particular matter.

(3) The powers of the Financial Secretary under sections 51, 52, 55, 56, 62, 64, and 101 must be specifically delegated to a tax officer and cannot form part of a general delegation of powers under subsection (1).

(4) Subject to any restrictions and conditions imposed by the Financial Secretary, the person to whom a duty, power, or function is delegated may perform or exercise the duty, power , or function in the same manner, subject to the same restrictions, and with the same effect as if it had been conferred or imposed on the person directly by the relevant tax law.

(5) A person purporting to act as a delegate is presumed to be a delegate acting within the terms of the person's delegation in the absence of evidence to the contrary.

(6) A delegation made under this section is revocable at will by notice in writing by the Financial Secretary.

(7) A delegation made under this section does not prevent the Financial Secretary from performing or exercising a delegated duty, power, or function.

(8) In all proceedings in a Court on a reviewable decision, an action for the recovery of unpaid tax, or a review of decisions made under section 51, 52, 55, 56, 62, 63, or 66, the Financial Secretary may appear by an officer

of the Public Service and the written authority of the Financial Secretary stating that the person appearing is a public officer and that the officer appears for the Financial Secretary is sufficient evidence of the facts stated and of the public officer's authority.

9 Secrecy of Tax information

(1) A tax officer must keep secret all sensitive tax information that is, or has been, in the officer's possession or knowledge in connection with the performance of duties under any tax law.

(2) Nothing in subsection (1) prevents a tax officer from disclosing sensitive tax information to—

(a) another tax officer for the purposes of carrying out official duties; or

(b) a Customs officer for the purposes of carrying out any duty, power, or function under the Customs legislation; or

(c) a Court to the extent necessary for any proceedings under a tax law; or

(d) a specified Government official in accordance with a Memorandum of Understanding entered into between the Treasury and the Office of the official, including a Memorandum of Understanding providing for information sharing entered into in accordance with the Regulations; or

(e) the competent authority of the government of a foreign country with which Niue has entered into an agreement providing for the exchange of information but only to the extent permitted under that agreement; or

(f) any person with the written consent of the person to whom the document or information relates.

(3) Despite subsection (2), the Financial Secretary may determine that particular sensitive tax information is not to be disclosed if the disclosure is reasonably likely to adversely affect the integrity of the tax system or prejudice the operation of a tax law.

(4) A tax officer is permitted to disclose a document or information under subsection (2)—

(a) to a specified Government official, only to the extent permitted under the Memorandum of Understanding between the Department and the Office of the Official; or

(b) in any other case, only to the minimum extent necessary to achieve the object for which the disclosure is permitted.

(5) Despite subsection (2) and subject to subsection (6), any documents or information obtained by the Niue competent authority from the competent authority of a country with which Niue has entered into a tax treaty or mutual administrative assistance agreement may be disclosed only to the extent permitted under the treaty or agreement.

(6) Subsection (5) applies only to the extent that the documents or information have not been obtained by the Niue competent authority or the Financial Secretary from the taxpayer or from other sources.

(7) Subject to subsection (8), subsection (1) applies to a person receiving sensitive tax information under subsection (2) as if the person where a tax officer.

(8) A person to whom subsection (7) applies may disclose sensitive tax information received to another person only with the written approval of the Financial Secretary or as permitted under a Memorandum of Understanding referred to in subsection (2)(d).

(9) In this section,—

sensitive tax information—

(a) means information that relates to the tax affairs of an individual or entity—

(i) that identifies, or is reasonably capable of being used to identify, the individual or entity, directly or indirectly; or

(ii) that may reasonably be regarded as private, commercially sensitive, or otherwise confidential; or

(iii) the release of which may result in loss, harm, or prejudice to the individual or entity; and

(b) does not include aggregate or statistical data that may contain information about an individual or entity to the extent that the information does not satisfy paragraph (a)

specified Government official means—

(a) the Head of the Statistics Department;

(b) the Auditor General;

(c) the Solicitor General;

(d) the Head of the Niue Financial Intelligence Unit; or

(e) any other Government official treated as a specified Government official under the Regulations or a Memorandum of Understanding referred to in subsection (2)(d)

tax officer includes—

(a) a person employed or engaged by the NTO in any capacity; and

(b) a former Financial Secretary, or former tax officer, employee, or contractor of the NTO; and

(c) a police officer or other officer of the Niue Public Service when performing duties under this Act; and

(d) a person appointed at any time as a Tax Review Commissioner.

Part 3
Taxpayers

Taxpayer identification numbers

10 Application for a taxpayer identification number

(1) Subject to subsection (2), a person who has commenced an activity that may result in the person being liable for tax under a tax law must apply to the Financial Secretary for a taxpayer identification number (referred to as a **TIN**), unless the person has already been issued with a TIN.

(2) The Regulations may specify classes of persons who are not required to apply for a TIN.

(3) A person who is not required to apply for a TIN under subsection (1) but who requires a TIN for a purpose specified in the Regulations may apply, or their representative may apply, to the Financial Secretary for a TIN.

(4) An application for a TIN must be—

(a) lodged in the approved form; and

(b) accompanied by evidence of identity as may be prescribed in the Regulations; and

(c) lodged within 21 days after commencing the activity referred to in subsection (1).

(5) In this section, **activity** includes an employment, business, the making of an investment, and any undertaking that may result in the derivation of income.

11 Issue of a TIN

(1) The Financial Secretary must issue a TIN to an applicant under section 10 if satisfied that the applicant is required to apply for a TIN and the applicant's identity has been established.

(2) The Financial Secretary must refuse an application under section 10 if—

(a) the Financial Secretary is not satisfied as to the applicant's true identity; or

(b) the applicant has already been issued with a TIN that is still in force.

(3) If the Financial Secretary decides not to issue a TIN to an applicant, the Financial Secretary must serve the applicant with written notice of the decision within 14 days after the applicant lodged the TIN application.

(4) The Financial Secretary may, on his or her own motion, issue a TIN to a person required to apply for a TIN under section 10 but who has failed to do so within the time permitted under section 10(4)(c).

(5) The Financial Secretary issues a TIN to a person by serving the person with written notice of the TIN.

(6) A TIN is issued for the purposes of all tax laws and a person can have only one TIN at any time.

12 Notification of changes

(1) A taxpayer must notify the Financial Secretary, in writing, of a change in any of the following within 14 days after the change occurred—

(a) the taxpayer's name, physical or postal address, telephone contact details, constitution, or principal activity or activities; or

(b) the address from which, or name under which, any business is carried on by the taxpayer, including the taxpayer's internet address or social media account; or

(c) for a taxpayer that is an entity, the beneficial owner or owners of the entity; or

(d) the details of a taxpayer's account with a bank or other financial institution; or

(e) the taxpayer's electronic mail address used for communication with the Financial Secretary; or

(f) the representative of the taxpayer; or

(g) any other details as the Financial Secretary may require as specified in a public ruling.

(2) The notification of changes,—

(a) under subsection (1) by a taxpayer, is treated as satisfying any obligation to notify the same changes in relation to a registration of the taxpayer for the purposes of a particular tax under another tax law; and

(b) in relation to a registration of the taxpayer for the purposes of a particular tax under another tax law, is treated as satisfying any obligation to notify the same changes under subsection (1).

(3) In this section, **beneficial owner**, in relation to an entity, means an individual who has—

(a) an underlying ownership interest of 20 percent or more in the entity either alone or together with an associate or associates; or

(b) the power, either alone or together with an associate or associates, to make decisions about the entity's finances or operations, including as a result of, or by means of, any trusts, agreements, arrangements, understandings, or practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights, and includes exercising control over the entity through having capacity to make decisions concerning the financial or operating policies of the entity.

13 Use of a TIN

(1) A taxpayer must state their TIN—

(a) on any tax return, notice, or other document lodged or used for the purposes of a tax law; and

(b) in any correspondence with the Niue Tax Office; and

(c) as otherwise required under a tax law.

(2) A TIN is personal to the taxpayer to whom it has been issued and, subject to subsection (3), must not be used by another person.

(3) The TIN of a taxpayer may be used by the representative of the taxpayer if—

(a) the taxpayer has given written permission to the representative to use the TIN; and

(b) the representative uses the TIN only in respect of the tax affairs of the taxpayer and only to the extent provided for in the written permission referred to in paragraph (a).

14 Cancellation of a TIN

(1) The Financial Secretary must cancel a person's TIN, by notice in writing, if—

(a) the person is an individual who has died; or

(b) the person is an entity that has been liquidated or has otherwise ceased to exist; or

(c) the person is an individual who is leaving Niue permanently unless the individual continues, or is reasonably likely to continue, to require the TIN under section 10(1); or

(d) the TIN has been issued to the person under an identity that is not the person's true identity; or

(e) the person has been previously issued with a different TIN that is still in force.

(2) The representative of a person referred to in subsection (1)(a) or (b) must notify the Financial Secretary, in writing, when the administration of the

estate of the deceased individual is complete, or the entity has been liquidated or ceased to exist.

(3) An individual referred to in subsection (1)(c) must notify the Financial Secretary, in writing, that he or she is leaving Niue permanently at least 7 days before the date of departure.

(4) The Financial Secretary may, at any time, by notice in writing, cancel the TIN issued to a person and issue the person with a new TIN.

(5) The cancellation of a person's TIN under this section does not affect any obligation of the person arising under a tax law before cancellation of the TIN.

Taxpayer's representative

15 Obligations of representatives

(1) Every representative of a taxpayer is responsible for performing any duties or obligations imposed by a tax law on the taxpayer, including the furnishing of tax returns and payment of tax.

(2) If a taxpayer has 2 or more representatives, each representative is jointly and severally liable to perform any duty or obligation referred to in subsection (1) that is required to be performed by the representative of the taxpayer, but the duty or obligation may be discharged by any of them.

(3) Any act done by a representative of a taxpayer on behalf of the taxpayer in accordance with subsection (1) is treated as having been done by the taxpayer.

(4) A representative may retain out of any moneys belonging, or payable, to the taxpayer an amount that is sufficient to pay the tax liability of the taxpayer that he or she represents.

(5) Subject to section 16, any tax that, by virtue of subsection (1), is payable by a representative of a taxpayer is recoverable from the representative only to the extent of any assets or funds of the taxpayer that are in the possession or under the control of the representative.

(6) Nothing in this section releases any taxpayer from performing any duties or obligations imposed on the taxpayer under a tax law that the taxpayer's representative has failed to perform.

(7) If an individual is a representative of more than one taxpayer, the obligations under this section apply separately in respect of each taxpayer.

(8) For the purposes of the tax laws, a person who has ceased to be a director of a company, partner in a partnership, trustee of a trust, or member of an unincorporated body of persons does not cease to be a representative of the company, partnership, trust, or body until the day after the day that the change has been notified, in writing, to the Financial Secretary.

16 Personal liability of representative

(1) Subject to subsection (2), every representative is personally liable for the payment of any tax due by the representative in that capacity if, while the amount remains unpaid, the representative—

(a) alienates, charges, or disposes of any moneys received or accrued in respect of which the tax is payable; or

(b) disposes of or parts with any funds or assets belonging to the taxpayer that are in the possession of the representative or which come to the representative after the tax is payable if the tax could legally have been paid from or out of the funds or the proceeds from the sale of the assets.

(2) Subsection (1) does not apply,—

(a) subject to section 42, to the payment of any debt of a taxpayer that has a priority, in law or equity, over the tax liability of the taxpayer; or

(b) if, at the time the funds were paid or asset disposed of, the representative had no knowledge, and could not reasonably be expected to know, of the taxpayer's tax liability.

Part 4
Records

17 Record-keeping

(1) For the purposes of a tax law, a taxpayer must maintain any records as may be required under the tax law and the records must be maintained—

(a) in the English or Niuean language; and

(b) in a manner so as to enable the taxpayer's tax liability under the tax law to be readily ascertained; and

(c) in New Zealand dollars unless the taxpayer is permitted, under a tax law, to maintain records in a foreign currency; and

(d) subject to subsection (2), for 7 years after the end of the tax period to which they relate.

(2) If, at the end of the period referred to in subsection (1)(d), a taxpayer has records that are necessary for a tax audit by the Financial Secretary or a proceeding before a Court commenced before the end of the period specified in subsection (1)(d), the taxpayer must retain the records until the audit and all Court proceedings have been completed.

(3) If an entity is liquidated or otherwise ceases to exist, the directors, partners, trustees, and controlling members of the entity must ensure that the records of the entity are retained for the period specified in subsections (1)(d) and (2) unless the Financial Secretary notifies the directors, partners, trust, and controlling members of the entity that retention of the records is not required.

(4) If the records of a taxpayer are not in the English or Niuean language, the Financial Secretary may, by notice in writing, require the taxpayer to provide, at the taxpayer's expense, a translation into English or Niuean by a translator approved by the Financial Secretary by the date specified in the notice.

(5) To avoid doubt, a reference in a tax law to records of a taxpayer includes all source and underlying documents relating to transactions entered into by the taxpayer, including, invoices, purchase orders, delivery dockets, receipts, contracts, and Customs documentation.

18 Location of records

(1) A taxpayer may keep records outside Niue .

(2) The Financial Secretary may, by notice in writing, require a taxpayer keeping records outside Niue to make the records available for inspection by the Financial Secretary in Niue, at the taxpayer's expense, by the date specified in the notice.

(3) The Financial Secretary may, by notice in writing, require a taxpayer who fails to comply with subsection (2) to retain records in Niue.

19 Required use of electronic fiscal devices

(1) The Regulations may provide for the following—

(a) the obligatory use by taxpayers or classes of taxpayers of electronic fiscal devices; and

(b) the conditions for the use of electronic fiscal devices, including the real-time transmission of sales data to NTO; and

(c) the information required to be included on a receipt produced by an electronic fiscal device.

(2) In this section, **electronic fiscal device** means an electronic point of sale device into which a taxpayer enters data relating to the supply of goods or services by the taxpayer and out of which an invoice and receipt for the supply is issued.

Part 5
Tax Returns

20 Furnishing of tax returns

(1) A taxpayer required to furnish a tax return for a tax period under a tax law must furnish the return in the approved form and in the prescribed manner.

(2) If a taxpayer has failed to furnish a tax return for a tax period by the due date, the Financial Secretary may, by notice in writing, require the taxpayer to furnish the return by the date specified in the notice.

(3) If the Financial Secretary is not satisfied with a tax return furnished by a taxpayer, the Financial Secretary may, by notice in writing, require the taxpayer or the taxpayer's representative to furnish by the due date set out in the notice,—

(a) for a self-assessment return, any further information as specified in the notice; or

(b) for any other tax return, any further information as specified in the notice, or a further or more detailed return.

(4) A notice served on a taxpayer under subsection (2) or (3) does not change the date for payment of any tax due (referred to as the **original due date**) for the tax period to which the tax return relates, as specified under the tax law under which the return is required to be furnished, and late

payment interest and late payment penalty remain payable from the original due date.

(5) The Financial Secretary is not bound by a tax return or information provided by, or on behalf of, a taxpayer and the Financial Secretary may determine the taxpayer's tax liability based on any available information.

(6) The Regulations may provide for the signing and certification of tax returns by taxpayers and a taxpayer's representative.

21 Advance returns

(1) This section applies if, during a tax period,—

(a) a taxpayer has died, gone into liquidation, or otherwise ceased to exist; or

(b) a taxpayer has become bankrupt; or

(c) a taxpayer is about to leave Niue permanently; or

(d) a taxpayer is otherwise about to cease carrying on business in Niue; or

(e) the Financial Secretary has reason to believe that a taxpayer will not file a tax return for the period by the due date.

(2) If this section applies in relation to taxpayer for a tax period, the Financial Secretary may, by notice in writing and at any time during the tax period, require the taxpayer or the taxpayer's representative—

(a) to furnish a tax return for the tax period by the date specified in the notice, being a date that may be before the date that the return for the tax period would otherwise be due; and

(b) pay any tax due under the tax return by the due date for furnishing the return under paragraph (a).

(3) If a taxpayer is subject to more than one tax, a notice under subsection (2) may apply to each tax.

(4) A taxpayer who has furnished an advance return under this section is still required to furnish a tax return for the whole of the tax period to which the advance return relates unless the Financial Secretary has notified the taxpayer, in writing, that such return is not required to be furnished.

(5) A tax return furnished by a taxpayer for the whole of a tax period as required under subsection (4) is not a self-assessment return but rather provides the Financial Secretary with information for the making of an amended assessment referred to in subsection (6).

(6) The Financial Secretary may amend an advance return furnished under this section in accordance with section 27 so that the taxpayer is assessed in respect of the whole of the tax period to which the advance return relates.

22 Extension of time to furnish tax return

(1) A taxpayer may apply, in writing, to the Financial Secretary for an extension of time to furnish a tax return under a tax law.

(2) An application under subsection (1) must be lodged before the due date for furnishing the tax return.

(3) If a taxpayer has made an application for an extension of time in accordance with subsections (1) and (2), the Financial Secretary may, where good cause is shown by the taxpayer, extend the period within which the taxpayer is to furnish the tax return to which the application relates.

(4) Except in exceptional circumstances, an extension of time granted by the Financial Secretary under this section must not exceed 28 days.

(5) The Financial Secretary must serve an applicant under subsection (1) with notice, in writing, of the decision on the application.

(6) For the purposes of section 46, an extension of time granted under subsection (3) does not change the date for payment of any tax due (referred to as the **original due date**) under the return and late payment interest remains payable from the original due date.

(7) The Financial Secretary may, on his or her own motion, grant taxpayers generally, or a class of taxpayers, an extension of time to furnish a tax return and the extended due date applies for all purposes of the Act, including the payment of tax.

23 Presumption as to authority

A tax return purporting to be furnished or signed by or on behalf of any person under a tax law is treated as having been furnished by that person or with the person's authority unless the contrary is proved.

Part 6
Tax assessments

24 Self-assessments

(1) Subject to subsection (4), a self-assessment taxpayer who has furnished a self-assessment return for a tax period is treated, for all purposes of this Act, as having made an assessment of the amount of tax payable (including a nil amount) by the taxpayer for the tax period to which the return relates, being that amount as set out in the return.

(2) Subject to subsection (4), if a self-assessment taxpayer who has furnished an income tax return for a year has a loss for the year, the taxpayer is treated, for all purposes of this Act, as having made an assessment of the amount of the loss being that amount as set out in the return.

(3) Subject to subsection (4), if a taxable person who has furnished an NCT return for an NCT period has an excess input tax credit for the period, the person is treated, for all purposes of this Act, as having made an assessment of the excess input tax credit for the period, being that amount as set out in the return.

(4) A self-assessment return is treated as a self-assessment only if the return is furnished in the approved form.

(5) A tax return completed in the approved form with any required attachments uploaded and furnished electronically by a taxpayer is treated as a self-assessment return despite either or both of the following applying—

(a) the form includes pre-filled information provided by the Financial Secretary;

(b) the tax payable by the taxpayer is calculated electronically as information is inserted into the form.

25 Default assessments

(1) If a taxpayer has failed to furnish a tax return for a tax period by the due date, the Financial Secretary may, at any time and based on the evidence available and to the best of his or her judgement, make an assessment (referred to as a **default assessment**) of,—

(a) for a loss of the taxpayer for a year, the amount of the loss for the year; or

(b) for an excess input tax credit of the taxpayer for an NCT period under the Niue Consumption Tax Act, the amount of the excess credit for the period; or

(c) in any other case, the amount of the tax (including a nil amount) payable by the taxpayer for the period.

(2) The Financial Secretary must serve a taxpayer assessed under subsection (1) with notice, in writing, of a default assessment specifying the matters required by the Regulations.

(3) The service of a notice of a default assessment under this section does not change the due date (referred to as the **original due date**) for payment of the tax payable under the assessment as determined under the tax law imposing the tax, and late payment interest and late payment penalty remain payable based on the original due date.

(4) Nothing in this section relieves a taxpayer from being required to furnish the tax return to which the default assessment served under this section relates.

(5) A tax return furnished by a taxpayer for a tax period after a notice of a default assessment has been served on the taxpayer for the period is not a self-assessment return but rather provides the Financial Secretary with information necessary for the making of an amended assessment under section 27.

26 Advance assessments

(1) Subject to subsection (2), the Financial Secretary may, based on the evidence available and to the best of his or her judgement, make an assessment (referred to as an **advance assessment**) of the tax payable by a taxpayer in the circumstances specified in section 21 for a tax period.

(2) Subsection (1) applies only if the taxpayer has not furnished a tax return for the tax period.

(3) An advance assessment—

(a) may be made before the date on which the taxpayer's tax return for the period is due; and

(b) must be made in accordance with the law in force at the date the advance assessment was made.

(4) The Financial Secretary must serve a taxpayer assessed under subsection (1) with notice, in writing, of the advance assessment specifying the due date for payment and any other matters required by the Regulations.

(5) An advance assessment may be amended under section 27 so that the taxpayer is assessed in respect of the whole of the tax period to which the advance assessment relates.

(6) A taxpayer served with notice of an advance assessment under this section must furnish the tax return for the whole of the tax period to which advance assessment relates unless the Financial Secretary advises the taxpayer or the taxpayer's representative, by notice in writing, that such a return is not required to be furnished.

(7) A tax return furnished by a taxpayer for a tax period after an advance assessment has been served on the taxpayer for the period is not a self-assessment return but rather provides the Financial Secretary with information necessary for the making of an amended assessment under section 27.

27 Amended assessments

(1) Subject to this section, the Financial Secretary may amend a tax assessment (referred to in this section as the **original assessment**) of a taxpayer for a tax period by making any alterations or additions, based on the evidence available and to the best of his or her judgement, to the original assessment to ensure that,—

(a) for a loss of the taxpayer for a year, the taxpayer is assessed for the correct amount of the loss for the year; or

(b) for an excess input tax credit of the taxpayer for an NCT period under the Niue Consumption Tax Act, the taxpayer is assessed for the correct amount of the excess credit for the period; or

(c) in any other case, the taxpayer is assessed for the correct amount of tax payable (including a nil amount) for the tax period to which the original assessment relates.

(2) Subject to subsections (3) and (4), the Financial Secretary may amend a tax assessment under subsection (1),—

(a) in the case of fraud or wilful neglect by, or on behalf of, the taxpayer, at any time; or

(b) in any other case, within 5 years of,—

(i) for a self-assessment, the date that the self-assessment taxpayer furnished the self-assessment return to which the self-assessment relates; or

(ii) for any other assessment, the date the Financial Secretary served notice of the assessment on the taxpayer.

(3) Subject to subsection (4), if the Financial Secretary has served a notice of an amended assessment made under subsection (1) on a taxpayer, the Financial Secretary may further amend the original assessment to which the amended assessment relates within the later of—

(a) the relevant period specified in subsection (2)(b); and

(b) 1 year after the Financial Secretary served notice of the amended assessment on the taxpayer.

(4) If subsection (3)(b) applies, the Financial Secretary is limited to amending the alterations or additions made in the amended assessment to the original assessment.

(5) The Financial Secretary must serve a taxpayer with notice, in writing, of an amended assessment made under subsection (1) or (3) specifying the matters required by the Regulations.

(6) The service of a notice of an amended assessment under this section does not change the due date (referred to as the **original due date**) for payment of the tax payable under the assessment as determined under the tax law imposing the tax, and late payment interest and late payment penalty remain payable based on the original due date.

28 Application for amendment to self-assessment

(1) A taxpayer who has furnished a self-assessment return treated as a self-assessment under section 24 may apply to the Financial Secretary for an amendment to be made to the self-assessment.

(2) An application under subsection (1) must—

(a) be in writing; and

(b) state the amendments that the taxpayer believes are required to correct the self-assessment and the reasons for the amendments; and

(c) be lodged with the Financial Secretary within the period specified in section 27(2)(b)(i).

(3) If an application has been made under subsection (1), the Financial Secretary must make a decision either to amend the self-assessment or refuse the application.

(4) If the Financial Secretary makes a decision to amend the self-assessment,—

(a) the amended assessment must be made in accordance with section 27(1); and

(b) notice of the amended assessment must be served on the taxpayer in accordance with section 27(5).

(5) If the Financial Secretary makes a decision to refuse an application under subsection (1), the Financial Secretary must serve the taxpayer with written notice of the decision.

(6) A taxpayer may elect, by notice in writing, to treat the Financial Secretary as having decided to refuse an application under subsection (1) if the Financial Secretary has not made a decision on the application within 60 days after the application was lodged with the Financial Secretary.

(7) If a taxpayer has lodged a notice of election under subsection (6), the period under section 33 for lodging an application for review of the deemed decision under subsection (6) commences on the date that the taxpayer lodged the notice of election with the Financial Secretary.

Part 7
Decisions of Financial Secretary

29 Statement of reasons for decision

(1) If the Financial Secretary refuses an application made by a person under a tax law, the notice of refusal must include a statement of the Financial Secretary's findings on the material facts relevant to, and reasons for, the refusal.

(2) If the Financial Secretary has failed to provide a person with a statement of findings and reasons as required under subsection (1), the person may, by notice in writing to the Financial Secretary within 7 days after being served with the notice of refusal, request the Financial Secretary to provide a statement of findings and reasons.

(3) If a person has filed a notice of request with the Financial Secretary in accordance with subsection (2), the period for challenging the decision to which the request relates does not commence until the date that the Financial Secretary serves the person with the statement of findings and reasons.

30 Finality of tax and reviewable decisions

(1) Tax and reviewable decisions are final and conclusive and can be disputed only in proceedings under Part 8.

(2) Except in proceedings under Part 8,—

(a) the production of a notice of a tax assessment or a document under the hand of the Financial Secretary purporting to be a copy of a notice of a tax assessment is conclusive evidence of the due making of the assessment and that the amount and particulars of the assessment are correct; and

(b) for a self-assessment, the production of the original self-assessment return or a document under the hand of the Financial Secretary purporting to be a copy of the return is conclusive evidence of the contents of the return.

(3) If the Financial Secretary serves a notice of a tax assessment on a taxpayer electronically, the reference in subsection (2)(a) to a copy of the notice of assessment includes a document certified by the Financial Secretary identifying the assessment and specifying the details of the electronic transmission of the assessment.

(4) If a taxpayer has furnished a self-assessment return electronically, the reference in subsection (2)(b) to a copy of the return includes a document certified by the Financial Secretary identifying the return and specifying the details of the electronic transmission of the return.

Part 8
Objections and Appeals

31 Notice of objection to tax decision

(1) A taxpayer dissatisfied with a tax decision may lodge a notice of objection to the decision with the Financial Secretary within 28 days after the date of service of the notice of the tax decision.

(2) A taxpayer's right to object to an amended assessment is limited to the alterations or additions made in the amended assessment to the original assessment.

(3) A notice of objection is validly lodged only if it states precisely—

(a) the grounds of the taxpayer's objection to the tax decision; and

(b) the amendments that the taxpayer believes are required to correct the tax decision; and

(c) the reasons for making those amendments.

(4) If the Financial Secretary decides that a notice of objection has not been validly lodged by a taxpayer, the Financial Secretary must notify the taxpayer, in writing, of the following—

(a) the decision that the notice of objection has not been validly lodged and the reasons for the decision; and

(b) that the taxpayer's objection lapses unless the taxpayer lodges a valid notice of objection within the time specified by the Financial Secretary.

(5) The Financial Secretary must serve written notice on a taxpayer if a notice of objection has lapsed in accordance with subsection (4)(b).

(6) A taxpayer may apply, in writing, to the Financial Secretary for an extension of time to lodge a notice of objection to a tax decision.

(7) The Financial Secretary may grant an application under subsection (6) if satisfied that—

(a) owing to absence from Niue, sickness, or other reasonable cause, the taxpayer was prevented from lodging a notice of objection to the tax decision within the time specified under subsection (1); and

(b) there was no unreasonable delay by the taxpayer in making the application for an extension of time to lodge the notice of objection.

(8) The Financial Secretary must serve an applicant under subsection (6) with notice, in writing, of the decision on the application.

32 Making an objection decision

(1) The Financial Secretary must consider a notice of objection that is validly lodged under section 31 and make a decision to allow the objection in whole or in part, or to disallow the objection.

(2) The Financial Secretary must serve notice, in writing, of the objection decision on the taxpayer and take all steps necessary to give effect to the decision, including the making of an amended assessment.

(3) A notice of an objection decision must include a statement of the Financial Secretary's findings on the material facts relevant to, and the reasons for, the decision.

(4) If the Financial Secretary has failed to provide a taxpayer with a statement of findings and reasons as required under subsection (3), the taxpayer may, by notice in writing to the Financial Secretary within 7 days after being served with the notice of the objection decision, request the Financial Secretary to provide a statement of findings and reasons.

(5) If a taxpayer has lodged a notice of request with the Financial Secretary under subsection (4),—

(a) the Financial Secretary must provide the taxpayer with a statement of findings and reasons within 7 days after the person lodged the notice of request; and

(b) the time for lodging an application for review of the objection decision under section 33 does not commence until the date that the Financial Secretary serves the person with notice of the statement of findings and reasons.

(6) A taxpayer may elect, by notice in writing to the Financial Secretary, to treat the Financial Secretary as having made a decision to disallow a notice of objection validly lodged by the taxpayer if the Financial Secretary fails to serve the taxpayer with a notice of an objection decision under subsection (1) within 6 months from the date that the notice of objection was lodged.

(7) If a taxpayer has lodged a notice of election under subsection (6), the period under section 33 for lodging an application for review of the deemed objection decision commences on the date that the taxpayer lodged the notice of election with the Financial Secretary.

33 Review of reviewable decision by Tax Review Commissioner

(1) A taxpayer dissatisfied with a reviewable decision may apply to the Financial Secretary for review of the decision by a Tax Review Commissioner.

(2) An application for review under subsection (1) must—

(a) be in the approved form; and

(b) set out the taxpayer's reasons for the review of the reviewable decision; and

(c) be lodged by the taxpayer within 42 days after service of the notice of the reviewable decision or within any further time as the Financial Secretary may allow.

(3) The Financial Secretary must, within 28 days after an application is lodged in accordance with subsections (1) and (2), appoint a Tax Review Commissioner under section 34 to review the application.

(4) The Tax Review Commissioner may, in reviewing a reviewable decision, exercise all the powers and discretions of the Financial Secretary under the tax law under which the original decision was made.

(5) The Tax Review Commissioner must make a decision,—

(a) for a reviewable decision concerning a tax assessment,—

(i) to affirm, reduce, or otherwise modify the tax assessment; or

(ii) to remit the tax assessment to the Financial Secretary for reconsideration in accordance with the directions of the Tax Review Commissioner; or

(b) for any other reviewable decision, to affirm, vary, or set aside the decision.

(6) The Tax Review Commissioner must serve a copy of its decision on the taxpayer and the Financial Secretary as soon as practicable after making the decision.

(7) The written decision of the Tax Review Commissioner must include the Commissioner's reasons for the decision and findings on material questions of fact, and it must reference the evidence or other material on which those findings were based.

34 Appointment of Tax Review Commissioner

(1) The Financial Secretary may, from time to time and for such period as is necessary, appoint an individual who satisfies subsection (2), and is not excluded by subsection (3), to act as a Tax Review Commissioner to review a reviewable decision on application by a taxpayer.

(2) A Tax Review Commissioner must be an individual with significant tax knowledge and experience.

(3) The following individuals must not be appointed as a Tax Review Commissioner—

(a) a currently serving tax officer or an individual who has ceased to be a tax officer for less than two years; or

(b) an individual who has been convicted of an offence under a tax law, or has been liable for a penalty under section 80(1)(a), 83(2)(a), 84(2)(a), or 85, or for an equivalent penalty or penal tax under another tax law; or

(c) an individual who is an undischarged bankrupt.

(4) An individual must not accept appointment as a Tax Review Commissioner for a review application if he or she has a conflict of interest in any relation to the application to which the appointment relates.

(5) A Tax Review Commissioner is not liable for any action or other proceeding for damages for, or in respect of, any act done by the Commissioner in good faith in the exercise or performance of his or her duties of office.

35 Appeal to High Court

(1) If a taxpayer or the Financial Secretary is dissatisfied with a decision of the Tax Review Commissioner, the taxpayer or Financial Secretary, as the case may be, may lodge a notice of appeal against the decision with the High Court within 42 days after being served with notice of the decision or within any further time as the High Court may allow.

(2) A proceeding in the High Court on an appeal under this section is to be conducted in accordance with the normal practice of the Court.

36 Appeal to Court of Appeal

(1) Subject to subsection (2), a party to a proceeding before the High Court under section 35 who is dissatisfied with the decision of the High Court may appeal the decision to the Court of Appeal within 42 days after being served with notice of the decision of the High Court or within such further time as the Court of Appeal may allow.

(2) An appeal under subsection (1) may be made only—

(a) on a question of law; or

(b) with leave of the Court of Appeal, on a question of fact involving an amount of tax in dispute in excess of the amount prescribed in the Regulations.

(3) A proceeding in the Court of Appeal on an appeal under this section is to be conducted in accordance with the normal practice of the Court.

37 Decision of Court

(1) In an appeal to a Court under section 35 or 36, the Court must make a decision,—

(a) for a notice of appeal concerning a tax assessment,—

(i) to affirm, reduce, or otherwise modify the tax assessment; or

(ii) to remit the tax assessment to the Financial Secretary for reconsideration in accordance with the directions of the Court; or

(b) for a notice of appeal concerning any other reviewable decision, to affirm, vary, or set aside the decision.

(2) The High Court or Court of Appeal may award costs as it determines either against the Financial Secretary or the taxpayer.

38 General provisions relating to objections and appeals

(1) In a proceeding under this Part, the burden is on the taxpayer to prove that a tax or reviewable decision is incorrect.

(2) Despite any law, in an appeal to the High Court or Court of Appeal, the Court may receive any evidence as it thinks fit.

(3) In an application for review by a Tax Review Commissioner, or an appeal to the High Court or Court of Appeal, in relation to an objection decision, the taxpayer is limited to the grounds stated in the notice of objection to which the objection decision relates unless the Tax Review Commissioner of Court grants the taxpayer leave to add new grounds.

(4) If a notice of objection to, application for review of, or notice of appeal against, a tax assessment has been lodged by a taxpayer, the tax payable under the tax assessment by the taxpayer remains due and payable, and may be recovered by the Financial Secretary, despite the objection, review, or appeal.

Part 9
Collection and Recovery of Tax

39 Tax as a debt due to the Government

(1) Tax that is due and payable by a taxpayer under a tax law is a debt due to the Government and is payable to the Financial Secretary.

(2) Tax and other amounts due under a tax law are to be paid in accordance with the Regulations.

(3) The Financial Secretary may charge a person a service fee where the payment of an amount under a tax law by the person is made to the Niue Tax Office by a credit or debit card, telegraphic transfer, or any other method in relation to which a fee is payable by the Niue Tax Office in respect of the payment.

(4) If a taxpayer fails to pay tax by the due date, the taxpayer is liable for any costs incurred by the Financial Secretary in taking action to recover the unpaid tax.

(5) If the Financial Secretary has reasonable grounds to believe that a taxpayer may leave Niue before the due date for payment of tax, the tax is due on the date specified by the Financial Secretary by notice in writing to the taxpayer.

(6) In any action in a Court for the recovery of unpaid tax owing by a taxpayer, if the taxpayer is absent from Niue or cannot after reasonable inquiry be found, service of the summons may with the leave of a Judge be effected by posting a duplicate or sealed copy thereof in a letter addressed to the taxpayer at the taxpayer's present or last known place of business or residence, whether in Niue or elsewhere.

40 Recovery of secondary liabilities and tax recovery costs

(1) The Financial Secretary may serve a person liable for a secondary liability or tax recovery costs with a notice of an assessment of the amount of the liability payable by the person and the due date for payment.

(2) A notice of assessment served on a person under subsection (1) must specify the matters required by the Regulations.

(3) A person who has paid an amount of a secondary liability out of his or her own funds in relation to a primary tax liability of a taxpayer may—

(a) recover the amount paid from the taxpayer as a debt in court; or

(b) deduct the amount paid from any moneys the person owes to, or holds for, the taxpayer.

(4) The service of a notice of assessment under subsection (1) on a person liable for a secondary liability does not preclude the Financial Secretary from recovering the primary tax to which the secondary liability relates from the taxpayer with the primary liability for the tax, but the Financial Secretary cannot recover more than the primary tax due.

(5) An amount of a secondary liability paid by a person is credited against the primary tax liability of the taxpayer to which the secondary liability relates, and an amount of primary tax paid by a taxpayer is credited against any assessed secondary liability for the primary tax.

41 Extension of time to pay tax

(1) A taxpayer may apply, in writing, to the Financial Secretary for an extension of time to pay any tax due.

(2) An application under subsection (1) must be made by the original date on which the tax was due for payment or by any later date as the Financial Secretary may allow.

(3) Where a taxpayer has made an application in accordance with subsections (1) and (2), the Financial Secretary may, having regard to the circumstances of the case,—

(a) grant the taxpayer an extension of time for payment of the tax due; or

(b) require the taxpayer to pay any tax due in instalments as the Financial Secretary may determine; or

(c) refuse the application.

(4) The Financial Secretary must serve the taxpayer with a written notice of the decision under subsection (3).

(5) If a taxpayer permitted to pay tax by instalments under subsection (3)(b) defaults in the payment of any instalment, the whole balance of the tax outstanding, at the time of the default, becomes immediately payable unless the Financial Secretary enters into another instalment payment arrangement with the taxpayer.

(6) A taxpayer granted an extension of time to pay tax or permission to pay tax due by instalments is still liable for late payment interest arising from the original date that the tax was due for payment.

(7) The Financial Secretary may, on his or her own motion, grant taxpayers generally, or a class of taxpayers, an extension of time to pay tax and the extended due date applies for all purposes of the Act.

42 Priority of tax

(1) This section applies to the following amounts—

(a) withholding tax; and

(b) NCT; and

(c) departure tax; and

(d) an amount that a payer is required to pay under a section 48 notice.

(2) A person owing, holding, receiving, or withholding an amount to which this section applies—

(a) holds the amount in trust for the Government; and

(b) the amount is not to be subject to attachment in respect of any debt or liability of the person.

(3) In the event of the death, liquidation, or bankruptcy of a person owing, holding, receiving, or withholding an amount to which this section applies, the amount—

(a) does not form part of the deceased estate of the person, or the person's estate in liquidation or bankruptcy; and

(b) must be paid to the Financial Secretary before any distribution of property is made.

(4) Despite any other enactment, withholding tax—

(a) is a first charge on the payment from which the tax is withheld; and

(b) is withheld before any other deduction that a person may be required to make from the payment under an order of any court or any law.

43 Indemnity

(1) This section applies to—

(a) a withholding agent who has deducted tax from a source deduction payment and paid the deducted tax to the Financial Secretary; and

(b) a representative who has paid tax to the Financial Secretary on behalf of the taxpayer that they represent pursuant to section 15(1); and

(c) a person who has paid an amount to the Financial Secretary pursuant to a section 48 notice; and

(d) an appointed person who has paid an amount to the Financial Secretary pursuant to section 50.

(2) A person to whom this section applies is indemnified against any claim for payment of the amount that the person has paid to the Financial Secretary.

44 Security

(1) The Financial Secretary may, for the purposes of securing payment of any tax that is or may become due by a taxpayer under a tax law, require the taxpayer to provide security in such amount and on such conditions as the Financial Secretary determines.

(2) The Financial Secretary may require security to be provided by a bond, deposit, unconditional guarantee, or in any other form as the Financial Secretary determines.

(3) If the Financial Secretary requires security to be given by way of a cash deposit, the Financial Secretary must hold the deposit in a separate trust

account until the deposit is either applied against the taxpayer's tax liability or returned to the taxpayer.

(4) If the Financial Secretary requires a taxpayer to provide security, the Financial Secretary must serve the taxpayer with a notice, in writing, setting out the following—

(a) the reasons why the taxpayer is being required to provide security; and

(b) the amount of the security required to be provided; and

(c) the manner in which the security is to be provided; and

(d) the due date for providing the security.

(5) If a taxpayer fails to comply with a notice under subsection (4), the Financial Secretary may recover the amount of the security under this Part on the basis that the unpaid security is treated as unpaid tax.

45 Order of payment

(1) If a taxpayer is liable for a penalty and late payment interest in relation to a tax liability and the taxpayer makes a payment that is less than the total amount of the tax liability, penalty, and interest due, the amount paid is applied in the following order—

(a) first in payment of the tax liability; and

(b) then in payment of late payment interest; and

(c) then the balance remaining (if any) is applied in payment of the penalty liability.

(2) If a taxpayer has more than one tax liability at the time a payment is made, the payment is applied against the tax liabilities in the order in which the liabilities arose.

Late payment interest

46 Imposition of late payment interest

(1) Subject to subsection (8), a taxpayer who fails to pay tax by the due date for payment is liable for late payment interest at the prescribed rate on the unpaid tax calculated for the period commencing from the date the tax became due and ending on the date the tax is paid.

(2) Late payment interest payable under this section is simple interest calculated on a daily basis with the amount of interest payable for each day in the period specified in subsection (1) calculated according to the following formula—

$$(A \times i)/365$$

where—

A is the amount of unpaid tax at the end of the day; and

i is the prescribed interest rate.

(3) Any late payment interest paid by a taxpayer under subsection (1) is applied in accordance with section 58(5) to the extent that the principal amount to which the interest relates is subsequently found not to have been payable.

(4) Late payment interest payable in respect of withholding tax or a secondary liability is borne personally by the person liable for the withholding tax or secondary liability and is not recoverable from any other person.

(5) The Financial Secretary may serve a taxpayer liable for late payment interest with notice of the amount of the late payment interest payable by the taxpayer and the due date for payment.

(6) A notice of the amount of late payment interest payable by a taxpayer may be included in any other notice, including a notice of a tax assessment, served by the Financial Secretary on the taxpayer.

(7) Subsection (8) applies if—

(a) the Financial Secretary notifies a taxpayer in writing of the taxpayer's outstanding tax liability under a tax law (including in a tax assessment); and

(b) the taxpayer pays the balance notified in full within the time specified in the notification (including late payment interest payable up to the date of the notification).

(8) If the conditions in subsection (7) are satisfied, late payment interest does not accrue for the period between the date of notification and the date of payment.

(9) Late payment interest payable under this section is in addition to any late payment penalty imposed under section 82.

(10) In this section, **tax** does not include late payment interest.

Recovery of unpaid tax

47 Judgment debt procedure for recovery of unpaid tax

(1) Any unpaid tax owing by a taxpayer is recoverable by the Financial Secretary on behalf of the Government by suit in the name of the Financial Secretary in the High Court.

(2) The Financial Secretary may recover unpaid tax owing by a taxpayer by filing with the registrar of the High Court a statement certified by the Financial Secretary setting out—

(a) the name and address of the taxpayer liable for the unpaid tax; and

(b) the amount of the unpaid tax payable by the taxpayer.

(3) A certified copy of the relevant document referred to in section 30(2) must be attached to the statement under subsection (2) as evidence of the taxpayer's unpaid tax liability.

(4) A statement filed in accordance with subsection (2) is to be treated for all purposes as a civil judgment lawfully given in the High Court in favour of the Financial Secretary for the amount of the unpaid tax stated in the statement.

48 Recovery of unpaid tax from third parties

(1) This section applies if—

(a) a taxpayer has a liability for unpaid tax; or

(b) the Financial Secretary has reasonable grounds to believe that a taxpayer will not pay tax by the due date.

(2) If this section applies in relation to a taxpayer, the Financial Secretary may serve a notice, in writing, on a payer in relation to the taxpayer requiring the payer to pay the amount specified in the notice to the Financial Secretary on or before the date stated in the notice.

(3) A notice under subsection (2) must not—

(a) specify an amount in excess of the amount of unpaid tax owing by the taxpayer or the amount the Financial Secretary has reasonable grounds to believe will not be paid by the taxpayer by the due date; or

(b) specify a due date for payment to the Financial Secretary that is before the date that the amount owed by the payer to the taxpayer becomes due to the taxpayer or held by the payer on the taxpayer's behalf.

(4) The amount that a notice under subsection (2) requires to be deducted from each payment of salary, wages, or a pension by the payer to the taxpayer must be not exceed the lesser of—

(a) 5% of unpaid tax or of the amount of tax that the Financial Secretary has reasonable grounds to believe will not be paid by the due date; and

(b) 20% of the amount of each salary, wages, or pension payment (after the payment of income tax).

(5) The Financial Secretary must, by notice in writing to a payer, revoke or amend a notice served on the payer under subsection (2) if the taxpayer has paid the whole or part of the amount of tax specified in the notice or has made an arrangement satisfactory to the Financial Secretary for payment of the tax.

(6) The Financial Secretary must serve the taxpayer with a copy of a notice served on a payer of the taxpayer under subsection (2) or (5) unless it is not possible to serve a copy of the notice on the taxpayer.

(7) A payer must notify a taxpayer of any payments made by the payer to the Financial Secretary pursuant to a notice served on the payer under this section in relation to the taxpayer.

(8) A payer who, without reasonable cause, fails to comply with a notice served on the payer under this section is personally liable for any part of the amount specified in the notice that is unpaid and any late payment interest payable in respect of the unpaid amount in accordance with section 46(4).

(9) The Financial Secretary must credit an amount paid by a payer under this section in relation to a taxpayer against the tax liability of the taxpayer.

(10) In this section, **payer**, in relation to a taxpayer, means a person who—

(a) owes or may subsequently owe money to the taxpayer; or

(b) holds or may subsequently hold money for, or on account of, the taxpayer; or

(c) holds or may subsequently hold money on account of some other person for payment to the taxpayer; or

(d) has authority from some other person to pay money to the taxpayer.

49 Inability to comply with section 48 notice

(1) A person who claims to be unable to comply with a notice served on the person under section 48 must notify the Financial Secretary, in writing within 7 days after being served with the notice, setting out the reasons for the person's inability to comply with the notice.

(2) A person who has notified the Financial Secretary under subsection (1) must not deal with any moneys to which the section 48 notice relates before being served with a notice of decision under subsection (3) or the period referred to in subsection (3) has expired without a notice of decision being served on the person.

(3) The Financial Secretary must, within 14 days after being notified by a person under subsection (1), by notice in writing to the person—

(a) accept the notification and cancel or amend the section 48 notice; or

(b) reject the notification.

50 Appointed persons

(1) In this section, an **appointed person** is—

(a) an administrator, executor, receiver, trustee-in-bankruptcy, or liquidator appointed to manage, administer, liquidate, or wind up the affairs of a taxpayer, including a deceased taxpayer; or

(b) a mortgagee that has taken possession of mortgaged property in Niue belonging to a taxpayer.

(2) An appointed person must notify the Financial Secretary, in writing, of—

(a) the appointment referred to in subsection (1)(a) within 14 days after the date of the appointment; or

(b) the taking possession of the property referred to in subsection (1)(b) within 14 days after the date of taking possession of the property.

(3) The Financial Secretary must notify the appointed person, in writing, of the amount of any tax that is or will become payable by the taxpayer whose assets are in the possession, or under the control, of the appointed person, and the notice must be served on the appointed person within 28 days after the Financial Secretary received the notice under subsection (2).

(4) An appointed person must not, without leave of the Financial Secretary, part with any money or asset held in the capacity as an appointed person until both the following conditions are satisfied—

(a) the appointed person has furnished all outstanding tax returns of the taxpayer, including an advance return if required by the Financial Secretary under section 21;

(b) the appointed person has been served with a notice under subsection (3) or the 28-day period has expired without the notice being served on the appointed person.

(5) Subject to subsections (6) and (7), an appointed person—

(a) must set aside, out of the proceeds of sale of any assets of the taxpayer, the amount specified by the Financial Secretary in a notice served on the appointed person under subsection (3), or any other amount as is subsequently specified in a notice of a tax assessment served on the appointed person by the Financial Secretary; and

(b) is personally liable for the amount required to be set aside and any late payment interest payable in respect of the unpaid amount.

(6) Subject to subsection (7), if the proceeds of sale of any property of a taxpayer are less than the amount notified by the Financial Secretary under this section, the appointed person must set aside the entire proceeds of sale to meet the amount notified by the Financial Secretary under this section.

(7) Subject to section 42, nothing in subsections (5) and (6) prevent an appointed person from paying the following in priority to the amount notified under subsection (3)—

(a) a debt incurred before service of the notice under subsection (3) on the appointed person that has priority, in law or equity, over the tax referred to in the notice served under subsection (3); and

(b) the expenses properly incurred by the appointed person in the capacity as such, including the person's remuneration for acting as an appointed person.

(8) If two or more persons are appointed persons in respect of a taxpayer, those persons are jointly and severally liable for the obligations and liabilities arising under this section.

(9) For the purposes of this section and the definition of **representative** in Schedule 1, a person ceases to be an appointed person in relation to a taxpayer,—

(a) for a mortgagee-in-possession, on the date that the person ceases to have control over the mortgaged property; or

(b) for any other appointed person, on the date that the person ceases to hold the position of an appointed person.

(10) In this section, **taxpayer** includes a deceased taxpayer.

51 Seizure and forfeiture of goods

(1) The Financial Secretary may enter any premises or place and seize any goods in respect of which the Financial Secretary has reasonable grounds to believe that the NCT that is, or will become, payable in respect of a supply or import of the goods has not been, or will not be, paid.

(2) Goods seized under subsection (1) must be stored in a place approved by the Financial Secretary for the storage of seized goods.

(3) Immediately after the seizure of the goods, the Financial Secretary must obtain a written statement from the owner of the goods, or the person who had custody or control of the goods immediately before the seizure, stating the quantity and quality of the goods seized.

(4) If goods have been seized under subsection (1), the Financial Secretary must, within 7 days after the seizure, serve on the owner of the goods or the person who had custody or control of the goods immediately before the seizure, a notice in writing—

(a) identifying the goods; and

(b) stating that the goods have been seized under this section and the reason for seizure; and

(c) setting out the terms for release of the goods; and

(d) stating that the goods are forfeited to the Government if not claimed within the detention period specified in the notice.

(5) For the purposes of subsection (4)(d), the detention period is,—

(a) for perishable goods, the period the Financial Secretary considers reasonable having regard to the condition of the goods; or

(b) for any other goods, a period of not less than 21 days after the seizure of the goods.

(6) The Financial Secretary is not required to serve a notice under subsection (4) if, after making reasonable enquiries, the Financial Secretary does not have sufficient information to identify the person on whom the notice should be served.

(7) If subsection (6) applies, the Financial Secretary may serve a notice under subsection (4) on a person claiming the goods, provided that person has given sufficient information to enable the notice to be served.

(8) A person on whom a notice under subsection (4) has been served claims goods that have been seized under subsection (1) by paying, or making an arrangement to the satisfaction of the Financial Secretary for payment of—

(a) the NCT payable or that may become payable in respect of the supply or import of the goods; and

(b) any tax recovery costs incurred by the Financial Secretary in relation to the seizure of the goods.

(9) The Financial Secretary may authorise the delivery of goods seized under subsection (1) to a person who has claimed the goods in accordance with subsection (8).

(10) Seized goods in respect of which a notice was not able to be served under subsection (4) or that have not been claimed within the detention period specified in a notice under subsection (4) are forfeited to the Government at the end of the detention period and the Financial Secretary may sell

the goods by public auction or in any other manner as the Financial Secretary may determine.

(11) Where goods are sold under subsection (10), the Financial Secretary must apply the proceeds of sale in the following order—

(a) first towards the cost of taking, keeping, and selling the forfeited goods as determined by the Financial Secretary; and

(b) then in payment of the NCT, penalty, and late payment interest that is, or will become, payable in respect of the supply or import of the goods; and

(c) the remainder of the proceeds, if any, are retained by the Financial Secretary on behalf of the Government.

(12) Nothing in this section precludes the Financial Secretary from proceeding under this Part to recover any balance owed if the proceeds of disposal are not sufficient to meet the amounts referred to in subsection (11)(a) and (b).

(13) The Financial Secretary may request a police officer or other officer of the Niue public service to—

(a) be present while the seizure of goods is being executed under this section; and

(b) provide any assistance as required by the Financial Secretary in relation to the seizure of the goods.

(14) The powers in this section can be exercised only by the Financial Secretary or an authorised tax officer.

(15) The Financial Secretary, an authorised tax officer, a police officer, or other officer of the Niue public service is not liable for any damage resulting from an exercise of power under this section provided the Financial Secretary, authorised tax officer, police officer, or other officer of the Niue public service has acted in accordance with the terms of this section and in good faith, and has used reasonable force.

52 Temporary closure of business premises for non-compliance with tax laws

(1) This section applies if—

(a) an NCT-registered person fails to furnish an NCT return or pay NCT by the due date, or a withholding agent fails to pay withholding tax by the due date; and

(b) the person has regularly failed to furnish NCT returns, or pay NCT or withholding tax, as the case may be, by the due date.

(2) If this section applies, the Financial Secretary may serve the person with a notice of the intention to close down a part or the whole of the person's business premises unless the person furnishes the NCT return, or pays the NCT or withholding tax owing, as the case may be, within 7 days after the notice was served.

(3) If a person fails to comply with a notice under subsection (2), the Financial Secretary may issue a written notice (referred to as a **closure notice**) to close down a part or the whole of the business premises of the person for a period not exceeding 14 days.

(4) The Financial Secretary may, at any time, enter any premises described in a closure notice for the purposes of executing the notice and may request a police officer to be present while the notice is being executed.

(5) If a closure notice has been issued under subsection (3), the Financial Secretary—

(a) must seal the business premises and affix in a conspicuous place on the front of the business premises closed down a notice specifying the matters required by the Regulations; and

(b) may make the closure public in any manner that the Financial Secretary considers appropriate.

(6) If the outstanding tax return is furnished, or the NCT or withholding tax owing is paid, as the case may be, within the period of closure, the Financial Secretary must immediately arrange for removal of the notice referred to in subsection (5) and allow for the re-opening of the premises.

(7) The powers in this section can be exercised only by the Financial Secretary or an authorised tax officer.

(8) The Financial Secretary, an authorised tax officer, or police officer is not liable for any damage resulting from an exercise of power under this section provided the Financial Secretary, authorised tax officer, or police officer acted in accordance with the terms of this section and in good faith, and has used reasonable force.

53 Transferred tax liabilities

(1) Subsection (2) applies if all the following conditions are satisfied—

(a) a taxpayer (referred to as the **transferor**) has a tax liability or will have a future tax liability in relation to a business carried on by the transferor; and

(b) the transferor has transferred all or some of the assets of the business to an associate (referred to as the **transferee**); and

(c) the transfer was entered into with the purpose, or purposes that include the purpose, or the effect, of rendering the transferor unable to satisfy the tax liability.

(2) If the conditions in subsection (1) are satisfied, the transferee is personally liable for the unpaid tax liability (referred to as the **transferred liability**) of the transferor in relation to the business but only to the extent of the value of the transferred assets.

(3) Subsection (4) applies if all the following conditions are satisfied—

(a) a company (referred to as the **original company**) has ceased to carry on business in Niue, including a company that has been liquidated or wound up; and

(b) the original company has an unpaid tax liability, including a tax liability that may arise after the original company has ceased to carry on business; and

(c) the same persons that held a 50% or more underlying ownership interest in the original company hold a 50% or more underlying ownership interest in another company (referred to as the **successor company**) that carries on the same or similar business to that carried on by the original company.

(4) If the conditions in subsection (3) are satisfied, the successor company is liable for the unpaid tax liability of the original company.

(5) Subsection (2) does not preclude the Financial Secretary from recovering the whole or part of the transferred tax liability from the transferor and subsection (4) does not preclude the Financial Secretary from recovering the whole or part of the unpaid tax liability from the original company or an appointed person in relation to the original company.

(6) In this section, **unpaid tax liability**, in relation to the original company, includes a tax liability that will arise after the original company has ceased to carry on business.

54 Liability for tax payable by an entity left with insufficient assets

(1) This section applies if a scheme has been entered into with the purpose, or purposes that include the purpose, or the effect, of rendering an entity unable to satisfy a current or future tax liability under a tax law.

(2) Subject to subsection (3), if this section applies, every person who was a director or controlling member of the entity when the scheme was entered into is jointly and severally liable for the tax liability of the entity.

(3) A director of an entity is not liable under this section for the tax liability of the entity if the director can establish that they have received no direct or indirect financial or other benefit from the scheme and—

(a) the director has, on becoming aware of the scheme, formally recorded with the entity his or her dissent and notified the Financial Secretary, in writing, of the scheme; or

(b) both the following conditions are satisfied—

(i) the director was not involved in the executive management of the entity; and

(ii) the director did not know, and could not reasonably be expected to have known at any time, of the scheme.

(4) Subject to section 27(2) and (3), to give effect to this section after an entity has been liquidated or otherwise ceased to exist, the Financial Secretary may make or amend a tax assessment of the tax liability of the entity as if the entity had not been liquidated or ceased to exist and serve notice of the assessment on any person to whom subsection (2) applies.

(5) Subsection (2) does not preclude the Financial Secretary from recovering the whole or a part of the unpaid tax liability from the entity or an appointed person in relation to the entity.

(6) Nothing in section 15 limits the liability of a director under this section.

(7) In this section, **scheme** means—

(a) any contract, agreement, arrangement, plan, or understanding, whether express or implied and whether or not enforceable in legal proceedings; or

(b) any course of action, including a unilateral action.

55 Stop notice issued by Financial Secretary

(1) This section applies if the Financial Secretary has reasonable grounds to believe that an individual may leave Niue when—

(a) tax that is or will become payable by the individual is unpaid; or

(b) tax that is or will become payable by an entity in respect of which the individual is a controlling member is unpaid.

(2) If this section applies, the Financial Secretary may issue a stop notice to any of the following—

(a) the Chief Immigration Officer requesting that the individual named in the notice be prevented from departing Niue unless the individual produces a departure certificate permitting the departure;

(b) the owner or charterer of a ship or aircraft, or the agent in Niue of the owner or charterer of a ship or aircraft, prohibiting the owner, charterer, or agent from issuing a ticket to the individual named in the notice or prohibiting the individual from boarding a ship or aircraft unless the individual produces a departure certificate covering the departure.

(3) An individual named in a stop notice is prohibited from departing Niue whether permanently or otherwise.

(4) The Financial Secretary must serve a copy of a stop notice on the individual named in the notice, but the non-receipt of a copy of the notice does not invalidate the notice.

(5) If a stop notice has been issued, immigration officers must take all measures as may be necessary to enforce the notice, including seizing and retaining the individual's passport, certificate of identification, or any other document authorising the individual to leave Niue.

(6) If the tax referred to in subsection (1) is paid or a satisfactory arrangement for payment of the tax is made, the Financial Secretary must issue the individual named in the stop notice with a departure certificate.

(7) The production of a certificate issued under subsection (6) to—

(a) an immigration officer is sufficient authority for the officer to allow the individual to leave Niue subject to other immigration requirements being satisfied; or

(b) the owner or charterer of a ship or aircraft, or the agent in Niue of the owner or charterer of a ship or aircraft, is sufficient authority to issue the individual with a ticket or allow the individual to board the ship or aircraft.

(8) No proceedings, criminal or civil, may be instituted or maintained against the Government or any person for anything lawfully done under this section.

(9) The powers in this section can be exercised only by the Financial Secretary or an authorised tax officer.

(10) In this section,—

agent includes a ticketing agent

Chief Immigration Officer means the Chief Immigration Officer appointed under the Immigration Act 2011

immigration officer means an immigration officer appointed under the Immigration Act 2011.

56 Preservation of bank accounts

(1) Where the Financial Secretary has reasonable grounds to believe that a taxpayer has taken, or will take, steps to frustrate the recovery of unpaid tax of, or tax that will become payable by, the taxpayer, the Financial Secretary may serve a preservation notice on a financial institution to freeze the accounts of the taxpayer held with the institution for a period not exceeding 7 days.

(2) A preservation notice served on a financial institution must specify the name and last known address of the taxpayer to which the notice applies.

(3) The period of the freeze under a preservation notice can be extended beyond 7 days only by order of the High Court if the Court is satisfied of the matters specified in subsection (1), and the period of the extension is such period as the Court determines.

(4) A financial institution that, without reasonable excuse, fails to comply with a preservation notice served on the financial institution is liable for the tax liability of the taxpayer to the extent of the taxpayer's accounts

held with the financial institution at the time that the notice was served on the financial institution.

(5) The powers in this section can be exercised only by the Financial Secretary or an authorised tax officer.

Part 10
Refunds and Remission of Tax

57 Automatic offset of refundable tax credits

(1) If the refundable tax credits allowed to a taxpayer for a tax period exceed the taxpayer's tax liability to which the credits relate for the period, the Financial Secretary must offset the excess in the following order—

(a) first, in payment of any unpaid tax of the taxpayer under the tax law to which the credits relate; and

(b) then in payment of any unpaid tax of the taxpayer under any other tax law; and

(c) subject to subsections (2), (3), and (4), then refund the remainder, if any, to the taxpayer,—

(i) for a refundable tax credit referred to in subsection (5)(a), within 28 days after payment of the amount under section 48 that gave rise to the excess; or

(ii) for a refundable tax credit referred to in subsection (5)(b) or (c), within 28 days after the taxpayer has furnished the tax return to which the refund relates.

(2) With the written agreement of the taxpayer, an amount referred to in subsection (1)(c) may be carried forward for the payment of any future tax liability of the taxpayer under any tax law or offset against another liability of the taxpayer owed to the Government.

(3) If, at the time that an amount is to be refunded to a taxpayer under subsection (1)(c), the taxpayer has failed to furnish a tax return under any tax law for a tax period, the Financial Secretary may withhold payment of the refund until the taxpayer has furnished all outstanding tax returns.

(4) The Financial Secretary is not required to refund an amount that is less than $5.

(5) In this section, **refundable tax credit** means,—

(a) for this Act, the credit allowed under section 48; and

(b) for the Income Tax Act, the credit for withholding tax under sections 113G and 113R of that Act; and

(c) for the Niue Consumption Tax Act, the input tax credit allowed under section 21 of that Act.

58 Refund of overpaid tax

(1) If a taxpayer believes that they have overpaid tax under a tax law, the taxpayer may apply, in writing, to the Financial Secretary for a refund of the overpaid tax.

(2) This section applies only if a refund of overpaid tax does not require the Financial Secretary to make an amended assessment.

(3) An application for a refund under subsection (1) must be—

(a) lodged in the approved form; and

(b) accompanied by documentary evidence of the overpayment of tax; and

(c) lodged within 2 years after the date on which the tax was paid.

(4) The Financial Secretary must serve the taxpayer with notice, in writing, of the decision on the application for a refund within 60 days after the application was lodged with the Financial Secretary.

(5) If a taxpayer has made an application for a refund in accordance with this section and the Financial Secretary is satisfied that the taxpayer is entitled to a refund of overpaid tax under a tax law, the Financial Secretary must offset the amount of the refund in the following order—

(a) first, in payment of any unpaid tax of the taxpayer under the tax law to which the refund relates; and

(b) then in payment of any unpaid tax of the taxpayer under any other tax law; and

(c) subject to subsections (6), (7), and (8), then refund the remainder, if any, to the taxpayer within 28 days after the taxpayer was served with the notice under subsection (4).

(6) With the written agreement of the taxpayer an amount referred to in subsection (5)(c) may be carried forward for the payment of any future tax liability of the taxpayer under any tax law or offset against another liability of the taxpayer owed to the Government.

(7) If, at the time that an amount is to be refunded to a taxpayer under subsection (5)(c), the taxpayer has failed to furnish a tax return under any tax law for a tax period, the Financial Secretary may withhold payment of the refund until the taxpayer has furnished all outstanding tax returns.

(8) The Financial Secretary is not required to refund an amount that is less than $5.

(9) This section does not apply when section 57 applies.

59 Recovery of erroneously paid refund

(1) If the Financial Secretary has erroneously paid a refund to a taxpayer under a tax law, the taxpayer is liable to repay the amount of the erroneous refund by the date specified in a notice of demand served on the taxpayer by the Financial Secretary.

(2) If a refund has been erroneously paid due to an error made by the taxpayer in claiming the refund, the taxpayer is liable to pay late payment interest calculated for the period commencing on the date that the refund was erroneously paid and ending on the date that the refund was repaid.

(3) An amount owing by a taxpayer under a notice of demand served on the taxpayer under subsection (1) that is not paid by the due date is treated as unpaid tax for the purposes of Part 9, and sections 15 and 82.

60 Release of income tax liability in case of hardship

(1) Subject to subsection (2), the Financial Secretary, in consultation with the Senior Accountant appointed under the Public Revenues Act, may release a taxpayer or the representative of a deceased taxpayer, in whole or part, from the payment of any income tax liability owing by the taxpayer or the representative of a deceased taxpayer if satisfied that—

(a) the payment of the full amount of income tax owing by the taxpayer will cause serious hardship to the taxpayer; or

(b) owing to the death of the taxpayer, the payment of the full amount of income tax owing by the deceased taxpayer will cause serious hardship to the dependants of the deceased taxpayer.

(2) If the amount of an income tax liability to which subsection (1) applies exceeds the amount prescribed in the Regulations, the income tax liability can be released only by decision of Cabinet and provided Cabinet is satisfied of the matters specified in subsection (1)(a) or (b).

(3) If a decision of the Financial Secretary or Cabinet under this section to release a taxpayer or the representative of a deceased taxpayer from the payment of an income tax liability was based on fraudulent or misleading information, the released income tax liability is reinstated and is treated as if it were not released.

(4) The Senior Accountant must maintain a record of the amount of each income tax liability released under this section together with the reasons for the release.

(5) The decision of the Financial Secretary or Cabinet under this section is final and cannot be challenged in any Court.

(6) In this section, " Senior Accountant" means the most senior accounting officer, from time to time, appointed under the Public Revenues Act".

Part 11
Information Collections and investigations

61 Confirmation of tax information

(1) The Financial Secretary may serve a notice on a person requiring the person to confirm the correctness of any information received by the Financial Secretary from third parties as specified in the notice by the date specified in the notice.

(2) A person who is served with a notice under subsection (1) may, by notice in writing to the Financial Secretary,—

(a) confirm the correctness of the information in whole or part; or

(b) correct or clarify the information; or

(c) deny the correctness of the information in full.

(3) The response of a person under subsection (2) to a notice served under subsection (1) is treated for all purposes under the tax laws as information provided by the person to the Financial Secretary.

(4) If a person served with a notice under subsection (1) fails to respond to the notice within the time specified in the notice or within any further time as the Financial Secretary may allow, the information specified in the notice is treated for all purposes of the tax laws as information provided by the person to the Financial Secretary.

(5) If subsection (4) applies, the person may correct the information within 1 year from the date of the notice and the corrected information is treated for all purposes under the tax laws as information provided by the person to the Financial Secretary.

62 Power to enter and search

(1) Despite anything to the contrary in any other law and for purposes of the administration of any tax law, the Financial Secretary—

(a) has, at any time and without notice, full and free access to any premises, place, property, records, or electronic information storage facility; and

(b) may make an extract, or a paper or electronic copy, of any records, including on a data storage device, to which access is sought under paragraph (a); and

(c) may seize any paper records and retain the records for as long as is required for determining any taxpayer's tax liability or for any proceeding under this Act; and

(d) may, if a paper or electronic copy of relevant information on a data storage device is not provided or the Financial Secretary has reason to believe that not all information on a device has been provided, seize and retain the device for as long as is necessary to copy the information required.

(2) A tax officer is not entitled to enter or remain on any premises or place if, upon request by the owner or lawful occupier, the officer is unable to produce the Financial Secretary's written authorisation permitting the officer to exercise powers under subsection (1).

(3) The Financial Secretary may request a police officer or any other officer of the Niue Public Service to—

(a) be present for the purposes of exercising powers under this section; and

(b) provide any assistance as required by the Financial Secretary.

(4) The owner or lawful occupier of the premises or place to which an exercise of power under subsection (1) relates must provide all reasonable facilities and assistance to the Financial Secretary, including—

(a) answering questions, orally or in writing, relating to the investigation to which the exercise of power relates; and

(b) providing access to records stored on a data storage device or in an electronic information storage facility, including the entering of a password or other basis of authentication for access to the device or facility; and

(c) providing access to decryption information necessary to decrypt data to which access is sought under this section.

(5) A person whose records have, or data storage device has, been seized under subsection (1) may examine the records or device and make copies of the records, at the person's expense, during office hours.

(6) The Financial Secretary must sign for all records or data storage devices removed and retained under this section and must,—

(a) for paper records, return the records to the owner within 14 days after the conclusion of the investigation and any related proceedings; or

(b) for a data storage device, return the device to the owner within 14 days after the data on the device has been copied in accordance with subsection (1)(d).

(7) The Financial Secretary, or a tax officer, police officer, or officer of the Niue Public Service is not liable for any damage resulting from an exercise of power under this section provided the Financial Secretary, tax officer, police officer, or officer of the Niue Public Service has acted in accordance with the terms of this section and in good faith, and has used reasonable force.

(8) This section has effect despite—

(a) any law relating to privilege or the public interest with respect to access to premises or places, or the production of any property or records; or

(b) any fiduciary, contractual, or other duty of confidentiality.

(9) The powers in this section can be exercised only by the Financial Secretary or an authorised tax officer.

63 Administrative summons

(1) For the purposes of administering any tax law, the Financial Secretary may, by notice in writing, require any person—

(a) to furnish, within the time specified in the notice, any information that may be required by the notice concerning the tax affairs of that person or any other person; or

(b) to attend, at the time and place designated in the notice, and give evidence concerning the tax affairs of that person or any other person; or

(c) to produce, within the time and at the place specified in the notice, any records or data storage devices in the person's custody or under the person's control concerning the tax affairs of that person or any other person.

(2) If a notice served under subsection (1) requires the production of records or a data storage device, it is sufficient if the records or device are described in the notice with reasonable certainty.

(3) The Financial Secretary may require that any records under subsection (1)(c) are produced in electronic form unless the Financial Secretary is satisfied that the person does not have capacity to provide documents electronically.

(4) A notice issued under subsection (1) must be served personally upon the person to whom it is directed or left at the person's last known usual place of business or residence, and the certificate of service signed by the person serving the notice is conclusive evidence of the facts stated therein.

(5) The Financial Secretary may require the information or evidence provided on examination under subsection (1) to be—

(a) given on oath or affirmation and, for that purpose, the Financial Secretary or an authorised tax officer may administer the oath or affirmation; or

(b) verified by statutory declaration or other means.

(6) This section has effect despite—

(a) any law relating to privilege or the public interest with respect to the giving of information, or the production of any property or records; or

(b) any fiduciary, contractual, or other duty of confidentiality.

(7) The Regulations may prescribe scales of expenses to be allowed to persons required to attend and give evidence under this section.

64 Audit of a taxpayer's tax affairs

(1) The Financial Secretary may use the powers conferred on the Financial Secretary under this Act to undertake an audit of a taxpayer's tax affairs.

(2) The Financial Secretary may select any taxpayer for an audit of the taxpayer's tax affairs for the purpose of a tax law having regard to—

(a) the taxpayer's history of compliance or non-compliance with the tax laws; or

(b) the amount of tax payable by the taxpayer under a tax law; or

(c) the class of business conducted by the taxpayer; or

(d) any other matter that the Financial Secretary considers relevant to ensuring the collection of tax due.

(3) The fact that a person has been audited in relation to a tax period does not preclude the person from being audited again in the next and following tax periods if there are reasonable grounds for the audits having regard to the matters referred to in subsection (2).

(4) An audit may be conducted for the purposes of more than one tax law.

(5) The powers in this section can be exercised only by the Financial Secretary or an authorised tax officer.

(6) In this section, **tax law** includes the Customs legislation.

65 Implementation of mutual administrative assistance agreements

(1) If a tax treaty or mutual administrative assistance agreement having legal effect in Niue provides for exchange of information, or reciprocal assistance in the recovery of tax or service of process, the Financial Secretary must use the powers available under this Act or any other law

to meet Niue's obligations under the treaty or agreement on the basis that a reference in this Act or other law to—

(a) **tax** includes a foreign tax to which the exchange of information or reciprocal assistance relates; and

(b) **unpaid tax** includes an amount of foreign tax specified in paragraph (a) that has not been paid by the due date; and

(c) **taxpayer** includes a person liable for an amount of foreign tax specified in paragraph (a); and

(d) **tax law** includes the law under which foreign tax specified in paragraph (a) is imposed.

(2) If the individual holding the office of the Niue competent authority under a tax treaty or mutual administrative assistance agreement, or his or her delegate, is not the Financial Secretary or another tax officer, the person has all the powers of the Financial Secretary under this Act for the purposes of meeting the individual's obligations under the treaty or agreement.

Part 12
Tax clearance certificates

66 Tax clearance certificate

(1) A person is required to produce a tax clearance certificate to the relevant authority in the circumstances prescribed in the Regulations.

(2) A person to whom subsection (1) applies must apply, in the approved form, to the Financial Secretary for the issue of a tax clearance certificate.

(3) Subject to subsection (4), the Financial Secretary must issue a tax clearance certificate to an applicant under subsection (2) if satisfied that—

(a) the applicant has—

(i) no outstanding tax liabilities or the applicant was not a taxpayer for the previous year or years; or

(ii) entered into an arrangement satisfactory to the Financial Secretary for the payment of any outstanding tax liability; and

(b) the applicant is substantially compliant with their obligations under the tax laws.

(4) The Financial Secretary must issue the applicant with a tax clearance certificate or a notice refusing to issue a tax clearance certificate, as the case may be, within 14 days after the application was lodged with the Financial Secretary.

(5) Subject to subsection (6), a tax clearance certificate issued by the Financial Secretary is valid for a period of 12 months from the date of issue.

(6) The Financial Secretary must cancel a tax clearance certificate issued to a person if, after issue of the certificate and before expiry under subsection (5), the person—

(a) no longer satisfies subsection (3); or

(b) has misused the tax clearance certificate.

(7) In this section, "relevant authority", in relation to the production of a tax clearance certificate, means the relevant authority stated in the Regulations.

Part 13
Public Rulings

67 Binding public rulings

(1) The Financial Secretary may make a public ruling setting out the Financial Secretary's interpretation on the application of a tax law.

(2) A public ruling is made in accordance with section 68 and is binding on the Financial Secretary until withdrawn.

(3) A public ruling is not binding on a taxpayer.

(4) A public ruling sets out the Financial Secretary's opinion on the application of a tax law in the circumstances specified in the ruling and is not to be treated as a decision of the Financial Secretary for the purposes of this Act or any other law.

(5) No guidelines, publication, or other advice (oral or in writing) provided by The Niue Tax Office is binding on the Financial Secretary except a public ruling binding under this section.

68 Making a public ruling

(1) The Financial Secretary makes a public ruling by publishing a notice of the ruling on the Government of Niue website.

(2) A public ruling must state that it is a public ruling and have a number and subject heading by which it can be identified.

(3) Subject to subsection (4), a public ruling applies on and from the date specified in the ruling or, if no date is specified, on and from the date of publication.

(4) A public ruling must not apply before the date of publication unless it is for the benefit of taxpayers.

69 Withdrawal of a public ruling

(1) The Financial Secretary may withdraw a public ruling, in whole or part, by publishing notice of the withdrawal on the Government of Niue website.

(2) A public ruling (referred to as the **existing ruling**) is treated as withdrawn to the extent that the existing ruling is inconsistent with—

(a) any legislation that is passed after publication of the existing ruling; or

(b) another public ruling published after publication of the existing ruling; or

(c) a later decision of a Court is handed down that is inconsistent with the existing ruling.

(3) The withdrawal of a public ruling, in whole or part, has effect on and from,—

(a) if subsection (1) applies, the date specified in the notice of withdrawal or, if no date is specified, the date that the notice of withdrawal of the ruling is published; or

(b) if subsection (2)(a) or (b) applies, the date of application of the inconsistent legislation or public ruling; or

(c) if subsection (2)(c) applies, the date that the decision of the Court was handed down.

(4) Despite subsection (3)(a), a public ruling must not be withdrawn under subsection (1) before the date of publication of the notice of withdrawal unless the withdrawal of the ruling is for the benefit of taxpayers.

(5) A public ruling that has been withdrawn, in whole or part,—

(a) continues to apply to a transaction commenced before the public ruling was withdrawn; and

(b) does not apply to a transaction commenced after the public ruling was withdrawn to the extent that the ruling is withdrawn.

Part 14
Forms and Notices

70 Official languages of the tax laws

(1) Vagahau Niue and English are the official languages of the tax laws and any communication or document that is not in an official language will not be accepted by the Financial Secretary.

(2) The Financial Secretary must notify a person, in writing, that a communication or document has not been accepted in accordance with subsection (1).

71 Forms and notices; authentication of documents

(1) A form, notice, tax return, statement, table, or any other document required for the purposes of a tax law may be in the form the Financial Secretary determines for the efficient administration of the tax laws.

(2) The Financial Secretary must make the approved forms and other documents referred to in subsection (1) available to the public at the office of the Niue Tax Office and at any other locations, or by mail or any other means (including making them available for downloading from the Government of Niue website), as the Financial Secretary may determine.

(3) A notice or other document issued, served, or given by the Financial Secretary under a tax law is sufficiently authenticated if the name or title of the Financial Secretary, or authorised tax officer, is printed, stamped, or written on the document (including written in electronic format).

72 Manner of furnishing documents

A tax return, application, notice, or other document to be furnished with the Financial Secretary under a tax law must be delivered personally or by registered post to the office of the Niue Tax Office, or furnished by any other means as prescribed.

73 Furnishing documents in the approved form

(1) A document lodged or furnished by a taxpayer is lodged or furnished in the approved form if the document—

(a) is in the form approved by the Financial Secretary for the particular type of document; and

(b) contains the information (including any attachments) as required by the form or the Financial Secretary; and

(c) is signed as required by the form.

(2) Subject to subsection (3), the Financial Secretary must immediately notify a taxpayer, in writing, if a document lodged or furnished by the taxpayer does not satisfy subsection (1).

(3) Subject to section 70 the Financial Secretary may decide to accept a document that is not lodged or furnished in the approved form if the document has been lodged or furnished in a form that contains substantially the information required by the approved form for the document.

74 Due date for lodging documents or paying tax

(1) If the due date under a tax law for—

(a) lodging or furnishing a tax return, application, notice, statement, or other document; or

(b) the payment of tax; or

(c) taking any other action under the tax law,

falls on a Saturday, Sunday, or public holiday in Niue, the due date is the next following business day.

(2) Subject to subsection (3), a person may apply, in writing, to the Financial Secretary for an extension of time to lodge or furnish a document or information required under a tax law.

(3) Subsection (2) applies only in relation to a document or information for which there is no specific provision for an application for an extension

of time under this Act or the tax law requiring the lodging or furnishing of the document or information.

(4) The Financial Secretary may, upon satisfaction that there is reasonable cause, grant an application under subsection (2) and must serve notice of the decision on the applicant.

75 Service of notices

(1) Subject to this Act, a notice or other document required to be served by the Financial Secretary on a person for the purposes of a tax law is treated as properly served on the person if—

(a) served personally on the person or the person's representative; or

(b) left at the person's usual or last known place of residence or business address in Niue as stated in any communication by the person with the Financial Secretary; or

(c) sent by registered post to the person's most recent address for service of notices as stated in any communication by the person with the Financial Secretary or, if no address for service has been provided by the person to the Financial Secretary, to the person's last known address; or

(d) communicated to the person by any other means as prescribed.

(2) The validity of service of any notice or other document under this Act cannot be challenged after the notice or document has been wholly or partly complied with.

76 Electronic communications

The Regulations may provide for the following to be done electronically—

(a) the lodging of an application for a TIN; and

(b) the furnishing of a tax return or other document; and

(c) the payment of tax; and

(d) the payment of a refund of tax; and

(e) the service of any document by the Financial Secretary; and

(f) the doing of any other act or thing that is required or permitted to be done under a tax law.

77 Defect does not affect validity

(1) If a notice of a tax or reviewable decision or any other document purporting to be made, issued, or executed under any tax law by the Financial Secretary is, in substance and effect, in conformity with the tax law under which it purports to be made, issued, or executed and the person assessed, or intended to be assessed or affected by the decision or document, is designated in it according to common understanding, the validity of the notice is not to be—

(a) quashed or deemed to be void or voidable for want of form; or

(b) affected by reason of any mistake, defect, or omission therein.

(2) The validity of a tax or reviewable decision is not affected by reason that any of the provisions of a tax law have not been complied with.

78 Rectification of mistakes

If a notice of a tax or reviewable decision or other document served by the Financial Secretary under a tax law contains a mistake that is apparent from the record and the mistake does not involve a dispute as to the interpretation of the law or facts of the case, the Financial Secretary may, for the purposes of rectifying the mistake, correct the notice or other document any time before the expiry of 2 years from the date of service of the notice or other document.

Part 15
Administrative penalties and tax offences

79 Penalties relating to TINs

(1) A person who, without reasonable cause, fails to apply for a TIN as required under this Act is liable for a penalty equal to 0.5 penalty units for each month or part of a month for the period—

(a) commencing from the month immediately following the month in which the person was first required to apply for a TIN; and

(b) ending on the earlier of the month immediately preceding—

(i) the month the person lodges an application for a TIN; or

(ii) the month the Financial Secretary issues the person with a TIN on the Financial Secretary's own motion.

(2) A person is liable for a penalty equal to 1 penalty unit if the person—

(a) fails to notify a change in circumstances as required under section 12(1); or

(b) contravenes section 13(1).

(3) Except when section 13(3) applies, a person is liable for a penalty equal to 3 penalty units if the person —

(a) provides their TIN for use by another person; or

(b) uses the TIN of another person.

(4) A person who fails to comply with section 14(2) or(3) is liable for a penalty equal to 1 penalty unit.

80 Penalty for failing to maintain proper records

(1) Subject to subsection (2), a taxpayer who, without reasonable cause, fails to maintain records as required under a tax law is liable,—

(a) for a failure that was deliberate or reckless, for a penalty equal to 75% of the amount of tax payable by the taxpayer under the tax law for the tax period to which the failure relates; or

(b) in any other case, for a penalty equal to 20% of the amount of tax payable by the taxpayer under the tax law for the tax period to which the failure relates.

(2) If no tax is payable by a taxpayer for the tax period to which the failure referred to in subsection (1) relates, the penalty is,—

(a) for a company, 10 penalty units; or

(b) for any other person, 5 penalty units.

(3) A taxpayer who fails to comply with a notice served on the taxpayer under section 17(4) is liable for a penalty equal to 10 penalty units.

(4) In addition to the imposition of a penalty under subsection (3), the taxpayer cannot use the untranslated records as evidence in challenging a tax assessment to which the records relate.

(5) A taxpayer who fails to comply with a notice served on the taxpayer under section 18(2) is liable for a penalty equal to 100 penalty units.

81 Late lodgement penalty

(1) A person is liable for a late lodgement penalty if the person fails to lodge or furnish—

(a) a tax return or other document required under a tax law by the due date, or within such further time as the Financial Secretary may allow under section 22 or 74; or

(b) any information required by the Financial Secretary under section 20(3) by the due date, or within such further time as the Financial Secretary may allow under section 74.

(2) The amount of the late lodgement penalty payable for a contravention of subsection (1) is,—

(a) for a company, 10 penalty units; or

(b) for any other person, 5 penalty units.

(3) A certificate in writing signed by the Financial Secretary certifying that a tax return or other document, or information, has not been lodged or furnished by a person as required is, in absence of evidence to the contrary, sufficient evidence of the person's failure to lodge or furnish the return or other document, or information.

82 Late payment penalty

(1) Subject to subsection (2), a taxpayer who fails to pay any tax by the due date, or within such further time as the Financial Secretary may allow under section 41, is liable for a late payment penalty equal to the greater of—

(a) 0.1 penalty units for each day or part of a day that the tax remains unpaid; and

(b) 10% of the unpaid tax.

(2) The amount of a late payment penalty imposed under subsection (1) must not exceed the amount of tax payable.

(3) A late payment penalty paid by a taxpayer under this section is to be applied in accordance with section 58(5) to the extent that the tax to which the penalty relates is found not to have been payable.

(4) A late payment penalty imposed under this section is in addition to late payment interest payable under section 46.

(5) A late payment penalty payable in respect of a secondary liability is borne personally by the person liable for the secondary liability and is not recoverable from the taxpayer to whom the liability relates.

(6) Section 87, and not this section, applies to the late payment of withholding tax.

(7) In this section, **tax** does not include penalty or late payment interest.

83 Tax shortfall penalty

(1) This section applies to a person if—

(a) the person makes a statement to a tax officer that is false or misleading in a material particular or omits from a statement made to a tax officer any matter or thing without which the statement is false or misleading in a material particular; and

(b) the person's tax liability, as calculated on the basis of the statement, is less than it would have been if the statement had not been false or misleading (the difference being referred to as the **tax shortfall**).

(2) Subject to subsections (3) and (4), a person to whom this section applies is liable,—

(a) if the statement or omission was made deliberately or recklessly, for a tax shortfall penalty equal to 75% of the tax shortfall; or

(b) in any other case, for a tax shortfall penalty equal to 20% of the tax shortfall.

(3) The percentage rate of a tax shortfall penalty imposed under subsection (2) on a person is increased by—

(a) 10 percentage points if this is the second application of this section to the person; or

(b) 25 percentage points if this is the third or a subsequent application of this section to the person.

(4) The percentage rate of a tax shortfall penalty imposed under subsection (2) on a person is reduced by 10 percentage points if the person voluntarily discloses to the Financial Secretary the statement or omission to which the section applies before the earlier of—

(a) the Financial Secretary informing the person to whom the statement relates of the discovery of the tax shortfall; and

(b) the commencement of an audit of the tax affairs of the person to whom the statement relates.

(5) No tax shortfall penalty is payable under subsection (2)(b) if—

(a) the person who made the statement did not know and could not reasonably be expected to know that the statement was false or misleading in a material particular; or

(b) subject to subsection (6), the tax shortfall arose as a result of the person taking a reasonably arguable position on the application of a tax law to the person's circumstances in making a self-assessment return; or

(c) the failure was due to a clerical or similar error, other than a repeated clerical or similar error.

(6) A position taken by a taxpayer in making a self-assessment that is contrary to the position of the Financial Secretary as set out in a public ruling in force under section 68 is not regarded as a reasonably arguable position for the purposes of subsection (5)(b) unless the position of the Financial Secretary in the ruling is held by a Court to be incorrect.

(7) Nothing in subsection (5) prevents the imposition of late payment interest in respect of a tax shortfall if the tax is not paid by the due date for payment.

(8) A reference in this section to a statement made by a person to a tax officer is a reference to a statement made by the person in writing, orally, or in any other form to a tax officer acting in the performance of his or her duties under this Act, and includes a statement made—

(a) in an application, certificate, declaration, notification, tax return, notice of objection, or other document furnished under a tax law; or

(b) in any information required to be furnished under a tax law; or

(c) in a document provided to a tax officer otherwise than under a tax law; or

(d) in answer to a question asked of the person by a tax officer; or

(e) to another person with the knowledge or reasonable expectation that the statement would be passed on to a tax officer.

84 False or misleading statement penalty

(1) This section applies to a person who makes a statement to a tax officer that is false or misleading as specified in section 83(1)(a) but which does not result in a tax shortfall.

(2) Subject to subsection (3), a person to whom this section applies is liable for a false or misleading statement penalty equal to,—

(a) if the statement or omission was made deliberately or recklessly, 10 penalty units; or

(b) in any other case, 3 penalty units.

(3) No false or misleading statement penalty is payable under subsection (2) in the circumstances specified in section 83(5).

(4) Section 83(8) applies in determining whether a person has made a statement to a tax officer.

85 Tax avoidance and tax evasion penalties

(1) If the Financial Secretary has applied a tax avoidance provision in assessing a taxpayer, the taxpayer is liable for a tax avoidance penalty not exceeding 50 penalty units.

(2) A taxpayer is liable for a tax evasion penalty if—

(a) the taxpayer evades, attempts to evade, or does any act with the intent to evade tax; or

(b) the taxpayer defaults in the performance of any duty imposed on the taxpayer under a tax law with intent to evade tax.

(3) The amount of a tax evasion penalty payable for contravention of subsection (2) is 100% of the evaded tax.

(4) In this section, **tax avoidance provision** means—

(a) section 150 of the Income Tax Act; and

(b) section 67 of the Niue Consumption Tax Act;

86 NCT penalties

(1) A person who fails to apply for registration as required under section 7 of the Niue Consumption Tax Act is liable for a penalty equal to the higher of—

(a) double the amount of NCT payable for the period specified in subsection (2); and

(b) 10 penalty units.

(2) The period specified for the purposes of subsection (1)(a) is the period commencing on the day on which the person was first required to apply for registration and ending on the earlier of—

(a) the day the person lodges an application for registration; and

(b) the day the person is registered by the Financial Secretary on his or her own motion.

(3) An NCT-registered person is liable for a penalty equal to 5 penalty units if the person—

(a) fails to display the person's NCT registration certificate, or a copy thereof, as required by section 8(5) of the Niue Consumption Tax Act; or

(b) fails to notify the Financial Secretary of a change in circumstances as required by section 8(6) or (7) of the Niue Consumption Tax Act; or

(c) fails to apply for cancellation of registration as required by section 9 of the Niue Consumption Tax Act; or

(d) applies for cancellation of registration when still required to be registered; or

(e) fails to provide an NCT invoice, NCT credit note, or NCT debit note as required by sections 27 and 28 of the Niue Consumption Tax Act; or

(f) fails to comply with a request under section 30 of the Niue Consumption Tax Act; or

(g) issues multiple NCT invoices, NCT credit notes, or NCT debit notes in contravention of section 31 of the Niue Consumption Tax Act.

(4) A person is liable for a penalty equal to 5 penalty units if the person—

(a) issues an NCT invoice, NCT credit note, or NCT debit note otherwise than as required by the Niue Consumption Tax Act; or

(b) charges another person NCT otherwise than as required by the Niue Consumption Tax Act.

(5) An NCT-registered person whose registration is cancelled under section 9 of the Consumption Tax Act is liable for a penalty equal to 5 penalty units if the person fails to comply with section 9(9)(a) or (c) of the Niue Consumption Tax Act.

87 Income tax penalties

(1) A withholding agent is liable for a penalty if the withholding agent—

(a) fails to deduct tax from a source deduction payment made by the withholding agent; or

(b) deducts tax from a source deduction payment but fails to remit the deducted tax to the Financial Secretary by the due date.

(2) For the purposes of subsection (1)(b), tax is treated as having been deducted from a source deduction payment by a withholding agent if the withholding agent pays the net amount of the payment to the recipient of the payment.

(3) The penalty payable under subsection (1) is 0.1 penalty units for each day or part day that the withholding tax remains unpaid.

(4) The penalty imposed under subsection (3) is in addition to late payment interest payable by a withholding agent under section 46(4) in respect of any unpaid withholding tax.

(5) The penalty payable by a withholding agent in respect of any unpaid withholding tax is borne personally by the withholding agent and is not recoverable from any other person.

88 Miscellaneous penalties

(1) A person who fails to provide security as required by the Financial Secretary under section 44 is liable for a penalty equal to 3 penalty units.

(2) An appointed person who fails to comply with section 50 is liable for a penalty equal to 3 penalty units.

89 General provisions relating to administrative penalties

(1) Liability for a penalty is calculated separately with respect to each section imposing a penalty.

(2) A person is liable for a penalty only if the Financial Secretary—

(a) makes an assessment of the amount of penalty payable by a person; and

(b) serves a notice of the assessment of the penalty on the person setting out the matters required by the Regulations.

(3) An assessment of a penalty must be served on the person liable within 10 years from the end of the tax period to which the penalty relates.

(4) A person liable to pay a penalty may apply, in writing, to the Financial Secretary for remission of the penalty payable.

(5) The Financial Secretary may, upon application under subsection (4) or on his or her own motion, remit, in whole or in part, any penalty payable by a person where there are reasonable grounds for remission of the whole or part of the penalty.

Tax Offences

90 Offences relating to TINs

(1) A person who fraudulently uses a false TIN on a tax return or other document prescribed or used for the purposes of a tax law commits an offence and is liable on conviction to a fine not exceeding 10 penalty units.

(2) A person who uses the TIN of another person is treated as having used a false TIN, except when section 13(3) applies.

91 Failure to maintain proper records

A taxpayer who deliberately or recklessly fails to maintain records as required under a tax law commits an offence and is liable on conviction to a fine not exceeding 10 penalty units.

92 Failure to furnish tax return or information

(1) A taxpayer who fails to furnish a tax return by the due date, or within any further time as the Financial Secretary may allow under section 22, commits an offence and is liable on conviction to a fine not exceeding 5 penalty units.

(2) A taxpayer who fails to furnish any information required by the Financial Secretary under section 20(3) by the due date, or within any further time as the Financial Secretary may allow under section 74, commits an offence and is liable on conviction to a fine not exceeding 5 penalty units.

93 Offences relating to recovery of unpaid tax

(1) A person commits an offence if the person, without reasonable cause,—

(a) fails to comply with a notice served on the person under section 48 or fails to comply with section 49(2); or

(b) rescues or attempts to rescue property seized under section 51; or

(c) before, at, or after the execution of any seizure proceedings under section 51, staves, breaks, or destroys the property subject to the proceedings or destroys documents relating to the property to prevent—

(i) the securing of the property; or

(ii) the discovery of proof of an offence; or

(d) enters premises that are the subject of a closure notice issued under section 52 without permission of the Financial Secretary; or

(e) departs or attempts to depart Niue in contravention of a stop notice issued under section 55; or

(f) issues a ticket or allows an individual to board a ship or aircraft in contravention of a stop notice issued to the person under section 55; or

(g) fails to comply with a preservation notice served on the person under section 56.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding 10 penalty units.

94 Offences relating to investigation powers

(1) A person commits an offence if the person, without reasonable cause,—

(a) fails to provide reasonable facilities and assistance as required by section 62(4); or

(b) fails to comply with a notice under section 63.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding 10 penalty units.

95 Fraudulent records, statements, and documents

(1) A person commits an offence if the person—

(a) maintains fraudulent records; or

(b) deliberately or recklessly makes a false or misleading statement, or material omission, referred to in section 83(1)(a); or

(c) furnishes or lodges a fraudulent document with the Financial Secretary.

(2) A person commits an offence under subsection (1) regardless of whether the records, statement, or document relate to the person's tax liability or to the tax liability of another person.

(3) Section 83(8) applies in determining whether a person has made a statement referred to in section 83(1)(a).

(4) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding 20 penalty units.

96 Obstruction of tax officer

(1) A person who obstructs or deceives a tax officer in the discharge of his or her duties or exercise of his or her powers under a tax law commits an offence and is liable on conviction to a fine not exceeding 20 penalty units.

(2) In this section, **tax officer** includes—

(a) a person employed or engaged by the Departmnet of Customs, Taxation and immigration in any capacity; and

(b) a Tax Review Commissioner; and

(c) a police officer or other officer of the Niue public service when performing duties under this Act.

97 NCT offences

(1) A person commits an offence if the person—

(a) fails to apply for registration as required by section 7 of the Niue Consumption Tax Act; or

(b) fails to notify the Financial Secretary of a change in circumstances as required by section 8(6) or (7) of the Niue Consumption Tax Act; or

(c) applies for cancellation of registration when still required to be registered; or

(d) fails to apply for cancellation of registration as required by section 9 of the Niue Consumption Tax Act; or

(e) fails to comply with section 9(9)(a) or (c) of the Niue Consumption Tax Act; or

(f) charges another person NCT otherwise than in the circumstances specified in the Niue Consumption Tax Act; or

(g) issues multiple NCT invoices, NCT credit notes, or NCT debit notes in contravention of section 31 of the Niue Consumption Tax Act.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding 5 penalty units.

(3) An NCT-registered person who fails to provide an NCT tax invoice, NCT tax credit note, or NCT debit note as required under the Niue Consumption Tax Act commits an offence and is liable on conviction to a fine not exceeding 5 penalty units.

(4) A person who issues an NCT invoice, NCT credit note, or NCT debit note otherwise than as provided for under the Niue Consumption Tax

Act commits an offence and is liable on conviction to a fine not exceeding 10 penalty units.

(5) An NCT-registered person who fails to comply with a request under section 30 of the Niue Consumption Tax Act commits an offence and is liable on conviction to a fine not exceeding 5 penalty units.

98 Income tax offences

(1) A withholding agent who deducts tax from a source deduction payment but fails to remit the deducted tax to the Financial Secretary by the due date commits an offence and is liable on conviction to a fine not exceeding 10 penalty units.

(2) A person commits an offence if the person—

(a) makes a false or misleading tax code declaration, or gives a false or misleading tax code declaration, to any person that affects the amount of tax to be deducted from a source deduction payment made to the person; or

(b) delivers or maintains, or attempts to deliver or maintain, a tax code declaration or tax code certificate, in respect of one or more employment in contravention of Part 6A of the Income Tax Act; or

(c) obtains, or attempts to obtain, the benefit of a reduced tax deduction in respect of more than one employment; or

(d) alters a tax code certificate or special tax code certificate issued by the Financial Secretary; or

(e) falsely pretends to be the employee named in a tax code certificate; or

(f) has in his or her possession, without reasonable cause, a colourable imitation of a tax code certificate; or

(g) causes, or attempts to cause, an employer, or any other person, to refrain from making a tax deduction from a source deduction payment, or to make a reduced deduction from a source deduction payment, made to an employee; or

(h) alters a tax deduction certificate or falsely pretends to be the employee named on a tax deduction certificate; or

(i) obtains, or attempts to obtain, for his or her own advantage or benefit, a credit for, or payment of, the whole or a part of a tax deduction made from a source deduction payment to another person.

(3) A person who commits an offence under subsection (2) is liable on conviction to a fine not exceeding 10 penalty units.

99 Offences relating to tax officers and staff of the Treasury

(1) A tax officer commits an offence if the officer—

(a) directly or indirectly asks for, or takes, in connection with any of the officer's duties, any payment or reward, whether financial or otherwise, or promise or security for a payment or reward, not being a payment or reward that the officer was lawfully entitled to receive; or

(b) enters into or acquiesces in any arrangement under which the Government is or may be defrauded of revenue, or that is contrary to a provision of a tax law, or to the proper execution of the officer's duties; or

(c) acts or omits to act so as to give an undue advantage or favour to another person; or

(d) fails to prevent or report to the Niue Ministry of Finance, or any other relevant authority, the commission of an offence under a tax law; or

(e) contravenes section 7(3) or (4) or 9.

(2) A person commits an offence if the person—

(a) directly or indirectly offers or gives to a tax officer any payment or reward, whether financial or otherwise, or any promise or security for any payment or reward, not being a payment or reward that the officer was lawfully entitled to receive; or

(b) proposes or enters into any arrangement with a tax officer under which the Government is or may be defrauded of revenue, or that is contrary to a provision of a tax law, or to the proper execution of the officer's duties; or

(c) impersonates a tax officer; or

(d) contravenes section 9(7) or 34(4).

(3) A person who commits an offence under subsection (1) or (2) is liable on conviction to a fine not exceeding 20 penalty units.

(4) The prosecution of a tax officer for an offence under this section does not preclude any action being taken against the officer under regulation 73 of the Public Service Regulations 2004.

(5) In this section,—

payment or reward includes a payment or reward for the benefit of a tax officer or another person

tax officer includes—

(a) any person employed or engaged by the Department of Customs, Taxation and Immigration in any capacity; and

(b) a person appointed as a Tax Review Commissioner.

100 Aiding and abetting a tax offence

A person who aids, abets, assists, incites, or induces another person to commit an offence (referred to as the **principal offence**) under a tax law commits an offence and is liable upon conviction to the same sanction as the principal offender.

101 Proceedings for offences

(1) Any proceedings for offences under a tax law must be taken by way of prosecution.

(2) A prosecution for an offence may be taken upon the information of the Financial Secretary or an authorised tax officer, or the prosecution may be referred to the Crown Law Office.

(3) The signature of the Financial Secretary on a warrant of authority under this section must be judicially noted.

102 Information may be laid within 10 years

Despite anything in any other Act, any information in respect of an offence under a tax law may be laid at any time within 10 years after the end of the year in which the offence was committed.

General provisions relating to administrative penalties and tax offences

103 No double sanction

(1) A person must not be subject to both the imposition of an administrative penalty and prosecution of an offence under a tax law for the same act or omission.

(2) If a person has committed an act or omission for which the person may be liable, under a tax law, to both the imposition of a penalty and the prosecution of an offence, the Financial Secretary may decide whether to serve a notice of assessment of the penalty or prosecute the offence.

104 Contravention of tax law by entity

(1) If an entity fails to comply with a provision of a tax law, each individual who, at the time of the contravention, is a director, or involved in the management, of the entity is taken to have failed to comply with the provision other than an individual who establishes that he or she—

(a) had no actual, imputed, or constructive knowledge of the failure by the entity to comply with the provision; or

(b) was not in a position to influence the conduct of the entity concerning its failure to comply with the provision or, if in a position of influence, he or she used all due diligence to prevent the failure to comply.

(2) If an entity fails to comply with a provision of a tax law, each individual referred to in subsection (1) may be proceeded against and convicted of an offence in relation to the failure whether or not the entity has been proceeded against and convicted of the offence.

(3) An entity remains liable for an offence committed by the entity whether or not proceedings are commenced against the individual or individuals referred to in subsection (1).

105 Liability of person in case of liquidation or bankruptcy

If a person is liable for a penalty or convicted of an offence under a tax law, any penalty or fine imposed on the person takes precedence over any secured or preferred claim lodged in any action for bankruptcy against, or liquidation or winding up of, the person.

Part 16
Miscellaneous Provisions

106 Crown Proceedings Act not affected

Nothing in this Act is to be construed as limiting or affecting 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 the tax laws co-exist and may be exercised independently of one another, and tax and other amounts owing to the Financial Secretary under a tax law may be recovered accordingly.

107 Regulations

(1) Cabinet may make regulations for the purposes of this Act.

(2) In particular, Cabinet may make regulations—

(a) for the use of tax clearance certificates; and

(b) for the amendment of Schedules 2 or 3; and

(c) for the registration or certification of tax agents; and

(d) providing for any other matters contemplated by this Act, necessary for its full administration, or necessary for giving it full effect.

(3) Regulations made under this section may provide for the imposition of a penalty or an offence for contravention of the regulations and prescribe an amount of penalty or fine not exceeding 10 penalty units.

(4) Regulations made under this section may contain provisions of a saving or transitional nature consequent upon the making of this Act.

(5) Transitional regulations made within 6 months after the commencement of this Act may provide that they take effect on and from the date on which the Act comes into force but only if this is to the benefit of taxpayers.

108 Transitional provisions

(1) Subject to this section, this Act applies to any act or omission occurring, or any tax assessment made, before the application date.

(2) Any appeal or prosecution commenced before the application date can be continued and disposed of as if this Act had not come into force.

(3) If the period for any application, appeal, or prosecution had expired before the application date, nothing in this Act is to be construed as enabling the application, appeal, or prosecution to be made under this Act by reason only of the fact that a longer period is specified in this Act.

(4) Any tax liability that arose before the application date may be recovered under this Act, but without prejudice to any action already taken for the recovery of the tax.

(5) A TIN issued to a person before the application date continues to apply under this Act unless the Financial Secretary provides otherwise by notice in writing to the person.

(6) Except where subsection (5) applies, a person who, on the application date, is reasonably likely to be required to apply for a TIN under section 10 must apply for the TIN within 28 days before the application date or within such further time as the Financial Secretary may allow.

(7) The Financial Secretary may, on his or her own motion, issue a TIN to a person before the application date if satisfied of the person's identity established from information from any source available to the Financial Secretary or, as an interim measure and where relevant, allow a person to use their public servant employment number as the person's TIN until a formal TIN is issued to the person.

(8) In this section, **application date** means the date specified in section 2(2).

Schedule 1
Interpretation

Definitions

In this Act, unless the context otherwise requires,—

absentee has the meaning in section 89 of the Income Tax Act

advance assessment means an advance assessment made by the Financial Secretary under section 26

agency tax means a tax, duty, fee, or charge specified in the Regulations as an agency tax

amended assessment means an amended assessment made by the Financial Secretary under section 27

appointed person, in relation to a taxpayer, means a person who is an appointed person for the taxpayer under section 50

approved form, in relation to a tax return, application, notice, statement, or other document to be furnished or lodged under a tax law, means,—

(a) if the form for the particular return, application, notice, statement, or other document is included in regulations made under a tax law, that form; or

(b) in any other case, the form specified and published on the Niue Government website or printed by the Treasury for use by the public for the particular return, application, notice, statement, or other document

associate has the meaning set out in clause 4

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

company means a body corporate, statutory corporation, or unincorporated body of persons that is incorporated, created, or formed in Niue or elsewhere, but does not include a partnership, or a local or public authority

controlling member, in relation to an entity, means a member who beneficially holds, either alone or together with an associate or associates—

(a) 50 per cent or more of the voting rights attaching to membership interests in the entity; or

(b) 50 per cent or more of the rights to dividends or distribution of profits, or income entitlements attaching to membership interests in the entity; or

(c) 50 per cent or more of the rights to capital attaching to membership interests in the entity

Customs legislation means the Customs Act 1966 and the Customs Tariff Act 1982, or any successor legislation dealing with Customs

Customs officer has the same meaning as in the Customs legislation

data storage device means a computer, mobile electronic device, portable information storage media, or any other electronic device for the storage of information

default assessment means a default assessment made by the Financial Secretary under section 25

Department of Customs, Taxation and Immigration means the Department of Customs, Taxation and Immigration within the Ministry of Finance

departure tax means departure tax imposed under the Departure Tax Act

Departure Tax Act means the Departure Tax Act 1996

Director,—

(a) in relation to an entity that is a body corporate or statutory corporation,—

  (i) means an individual appointed as a director of the body corporate or statutory corporation; and

  (ii) includes an individual acting or purporting to act in the position of a director of the body corporate or statutory corporation by whatever name called; or

(b) for any other entity, means an individual who is involved in the management of the entity

electronic information storage facility means a data storage device or any other facility, including an electronic facility, for the electronic storage of information

entity means a company, partnership, or trust

Financial Secretary means the Financial Secretary of the Treasury appointed under the Public Revenues Act 1959

income tax means income tax imposed under the Income Tax Act

Income Tax Act means the Income Tax Act 1961

international organisation means an organisation whose members are sovereign powers or governments of sovereign powers

late payment interest means interest imposed under section 46

late payment penalty means a penalty imposed under section 82

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

loss means a loss for a year under section 58 of the Income Tax Act

member, in relation to an entity, means a shareholder in a company, a partner in a partnership, a beneficiary or unit holder under a trust, or any other person with a membership interest in the entity

membership interest, in relation to an entity, means a share in a company, an interest in a partnership, an interest or unit in a trust, or any other ownership interest in the entity

mutual administrative assistance agreement means a tax agreement that—

(a) provides for any or all of the following—

  (i) the exchange of information;

  (ii) reciprocal assistance in the recovery of unpaid tax;

(iii) reciprocal assistance in the service of process; and

(b) is in force in accordance with section 85 of the Income Tax Act

NCT means the Niue consumption tax imposed under the Niue Consumption Tax Act

Niue competent authority, in relation to a tax treaty or mutual administrative assistance agreement, means the individual designated under the treaty or agreement as the competent authority for Niue or his or her delegate

Niue Consumption Tax Act means the Niue Consumption Tax Act 2009

Niue Tax Office means the Niue Tax Office within the Department of Customs, Taxation and Immigration.

objection decision means a decision made by the Financial Secretary under section 32(1) or treated as having been made under section 32(6)

partnership has the meaning in the Partnership Act

penalty means a penalty imposed under a tax law

person means an individual, entity, estate, the Government, a local or public authority, foreign government, political subdivision of a foreign government, or international organisation

public authority means the departments or other instruments of the Government

records includes—

(a) a book of account, document, paper, register, bank statement, receipt, invoice, voucher, contract or agreement, or Customs entry; or

(b) any information or data stored on, or in, an electronic information storage facility

representative, in relation to a person, means,—

(a) for an individual under a legal disability, a guardian or other legal representative of the individual who has the receipt, control, or disposition of the income of the individual; or

(b) for a partnership, a partner in the partnership; or

(c) for a trust, a trustee of the trust; or

(d) for a body corporate or statutory corporation, the chief executive officer, public officer, managing director, or any director of the body or corporation; or

(e) for an absentee, an individual in Niue controlling the person's affairs in Niue, including a manager of the person's business in Niue; or

(f) for a taxpayer to whom section 50 applies, the appointed person in relation to the taxpayer under that section; or

(g) for the Government, a public or local authority, foreign government, political subdivision of a foreign government, international organisation, or unincorporated body of persons, an individual responsible for accounting for the receipt or payment of moneys or funds in Niue on behalf of the Government, authority, foreign government, political subdivision, organisation, or body; or

(h) for any person (including a person mentioned in a previous paragraph), an individual—

(i) that the Financial Secretary has, by notice in writing to the individual, declared to be a representative of the person for the purposes of the tax laws; or

(ii) that is treated as a representative of the person under a tax law

reviewable decision means—

(a) a decision made by the Financial Secretary under section 28(3) or treated as having been made by the Financial Secretary under section 28(6); or

(b) an objection decision

secondary liability means—

(a) a liability of a person that another person is personally liable for under section 16(1), 48(8), 50(5)(b), 53(2) or (4), 54(2), or 56(4); or

(b) **a liability specified as secondary liability under another tax law**

self-assessment means a tax assessment treated as having been made by a self-assessment taxpayer under section 24

self-assessment return means a tax return listed in Schedule 2

self-assessment taxpayer means a taxpayer required to furnish a self-assessment return under a tax law

tax—

(a) means a tax imposed under a tax law; and

(b) includes late payment interest, a penalty, and withholding tax

tax agreement has the meaning in section 85(4) of the Income Tax Act

tax assessment means a self-assessment, default assessment, advance assessment, amended assessment, an assessment of a secondary liability or tax recovery costs, an assessment of penalty, or any other assessment of tax made under a tax law

tax decision means—

(a) a tax assessment, other than a self-assessment; or

(b) any other decision of the Financial Secretary made under a tax law on any matter that is left to the discretion, consent, approval, or determination of the Financial Secretary, but not including the following—

  (i) any decision of the Director forming part of the process of making, or leading up to the making of, a tax assessment, and the decision is treated as part of the tax assessment; and

  (ii) a reviewable decision; and

  (iii) a decision made under section 51, 52, 55, 56, 62, 63, or 66

tax law means a law listed in Schedule 3

tax officer means—

(a) the Financial Secretary; and

(b) an individual employed by the Niue Public Service Commission acting under the authority of the Financial Secretary as a tax officer; and

(c) a Customs officer who is performing duties under a tax law

tax period, in relation to a tax, means—

(a) the period for which the tax is reported to the Financial Secretary; or

(b) for withholding tax, the period to which the withholding relates

tax recovery costs means—

(a) the costs of recovering unpaid tax referred to in section 39(4); and

(b) the costs of action under section 51 for the seizure of goods

tax return means—

(a) a return required to be furnished under a tax law and includes any attachments and reconciliations required to be furnished with a return; or

(b) a monthly remittance certificate required to be delivered to the Financial Secretary by an employer under section 113L(a) of the Income Tax Act; or

(c) a remittance certificate required to be delivered to the Financial Secretary by a person under section 113R(5)(b); or

(d) a reconciliation statement required to be delivered to the Financial Secretary by an employer under section 113L(c) of the Income Tax Act

Tax Review Commissioner means a Tax Review Commissioner appointed under section 34

tax treaty means a tax agreement in force under section 85 of the Income Tax Act and that provides for the avoidance of double taxation and the prevention of fiscal evasion

taxpayer means an individual, company, partnership, trust, or any other person who is liable for tax and includes—

(a) a person who has a loss or a zero taxable income for a year under the Income Tax Act; or

(b) a taxable person under the Niue Consumption Tax Act; or

(c) a carrier under the Departure Tax Act

taxpayer identification number or **TIN** means a taxpayer identification number issued to a taxpayer under section 11

trust and **trustee** have the meanings in the Trusts Act

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

unpaid tax means tax that has not been paid on or before the due date or, if the Financial Secretary has extended the due date under section 41, on or before the extended due date

withholding agent means—

(a) a person required to deduct tax from a source deduction payment under Part 6A of the Income Tax Act; or

(b) an employee required to self-deduct tax from a source deduction payment under section 113J of the Income Tax Act

withholding tax means tax that a withholding agent is required to deduct from a source deduction payment under Part 6A of the Income Tax Act.

2 Status of New Zealand under Act

For the purposes of this Act, and for the avoidance of doubt,—

(a) New Zealand is a foreign country; and

(b) the government of New Zealand is a foreign government; and

(c) a provincial or local government in New Zealand is a political subdivision of a foreign government.

3 Meaning of associate

(1) Subject to sub-clause (2), two persons are **associates** for the purposes of this Act if the relationship between the persons is such that one person may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of the other person, or both persons may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of a third person.

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

(3) Without limiting the generality of sub-clause (1), two persons are associates where—

(a) one person is a spouse or relative of the other person within the ordinary meaning in Niue, except if the Financial Secretary is satisfied that neither person may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of the other; or

(b) one person participates, directly or indirectly, in the management, control, or capital of the other person; or

(c) the same person participates, directly or indirectly, in the management, control, or capital of both persons; or

(d) one person is a trust and the other person benefits under the trust through the exercise of a power of appointment or otherwise.

(4) For the purposes of sub-clause (3), a person participates, directly or indirectly, in the management, control, or capital of another person where—

(a) the first-mentioned person, either alone or together with an associate or associates under another application of sub-clause (1) or (3), controls, directly or indirectly, 50 per cent or more of the voting power, rights to dividends or income entitlements, or rights to capital in the second-mentioned person; or

(b) the first-mentioned person has the practical ability to control the business decisions of the second-mentioned person.

4 Period of days

Unless this Act provides otherwise, a reference in this Act to a period of days is a reference to a consecutive period of days.

5 Undefined terms

If this Act applies for the purposes of a tax law, any term not defined in this Act has the meaning that it has for the purposes of that tax law.

Schedule 2
Self-assessment returns

The following tax returns are self-assessment returns for the purposes of this Act—

(1) an income tax return; and

(2) an NCT return; and

(3) a departure tax return; and

(4) an advance return; and

(5) any return specified as a self-assessment return under a tax law.

Schedule 3
Tax Laws

The following are tax laws for the purposes of this Act—

(1) this Act; and

(2) the Income Tax Act 1961; and

(3) the Niue Consumption Tax Act 2009; and

(4) the Departure Tax Act 1996.

I, Hima Douglas, Speaker of the Niue Assembly, certify that the requirements of Article 34 of the Niue Constitution have been complied with.

SIGNED AND SEALED at the Assembly Chambers this 1st day of December 2025.

Speaker of the Niue Assembly

COUNTERSIGNED in the presence of the Speaker

Clerk of the Niue Assembly

This Act is administered by the Department of Finance and Planning.

This Act was passed by the Niue Assembly on the 27th day of November 2025.
