

1965

Aid to Revenue

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Aid to Revenue Tax Ordinance 1965, No.25

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AID TO REVENUE TAX ORDINANCE 1965
1965, No.25

An Ordinance to consolidate the Niue Aid to Revenue Ordinance 1956 and the Niue Aid to Elderly People Ordinance 1958 and to provide for a general Aid to Revenue Tax on the basis of a more equitable distribution of the taxpayers' obligations (16 February 1965).

1. Short Title and Commencement - (1) This Ordinance may be cited as the Niue Island Aid to Revenue Tax Ordinance 1965.

(2) Except as provided in section 46 of this Ordinance this Ordinance shall come into force on the first day of April 1965.

2. Arrangement of Ordinance - This Ordinance is arranged as follows:

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| Part I | - Preliminary. (Sections 1 to 5.) |
| Part II | - Aid to Revenue Tax. (Sections 6 to 14.) |
| Part III | - Business Records, Returns, and Inquiries. (Sections 15 to 19.) |
| Part IV | - Tax Deductions. (Sections 20 to 31.) |
| Part V | - Assessments and Objections. (Sections 32 to 44.) |
| Part VI | - Miscellaneous Provisions. (Sections 42 to 49.) |

[This section has been revised. References to introductory notes have now been included in the Analysis.]

3. Interpretation - (1) In this Ordinance, unless the context otherwise requires - -

"Agricultural worker" means any person (not being a person employed in the Niue Public Service) who is employed on any land to assist in the growing, cultivating, or harvesting of fruit, plants, seeds, or any other agricultural or horticultural produce for commercial purposes:

"Allowances" see "Emoluments":

"Company" means any body corporate wherever incorporated:

"Emoluments" means and includes salaries, wages, and allowances as specified in paragraph (b) of section 51 ("Items Included in Assessable Income") and in all provisos to that paragraph, of the Income Tax Ordinance, but does not include out-of-pocket expenses reimbursed:

"Employee" means a person who derives emoluments from employment in any capacity except as an agricultural worker and "Employer" means any person or company who employs an employee:

"Executive Committee" means the Executive Committee of Niue established by [section 9 of the Niue Act 1966]:

"High Court" means the [High Court of Niue]:

"Income" means the income specified in section 9 of this Ordinance:

"Income Tax Ordinance" means the Niue Income Tax Ordinance 1961, No.9:

"Net Income" means the income which remains when all deductions allowed in the Income Tax Ordinance 1961, except the "Special Exemptions" provided in Sections 41 to 47 thereof, are made for the purposes of that Ordinance:

"Notice" means a notice in writing given by causing the same to be delivered to any person or company, or to be left at his usual or last known place of abode or business in Niue or elsewhere, or to be sent by post addressed to such usual or last known place of abode or business, or if there are several such places of business, then to any of them:

"Person" means a person specified in paragraph (b) of subsection (1) of section 8 of this Ordinance whether any such person derives income as an employee or as a self-employed person, and, in the case of a self-employed person, whether any such person derives income as a member of any unincorporated body of persons or jointly with any other person or persons or on his own account:

"Prescribed" means prescribed from time to time by the Treasurer:

"Primary Producer" does not include any agricultural worker:

"Public Notice" in relation to any act, matter, or thing required to be publicly notified, means the making of the act, matter, or thing generally known in Niue by any practicable or customary means, whether in addition to publication in the [Niue Island Gazette] or not:

"Resident Commissioner" means the Resident Commissioner of Niue:

"Salaries" see "Emoluments":

"Self-employed person" means a person who derives income other than income derived by an employee from his employment:

"Tax" or "The Tax" means the Aid to Revenue Tax imposed by section 6 of this Ordinance and "to tax" has a corresponding meaning:

"Taxpayer" means the companies and person specified in section 8 of this Ordinance:

"Tax year" means a year commencing on the first day of April and ending on the thirty-first day of March, both of these days being included:

"Treasurer" means the Treasurer of Niue and includes any officer of the Niue Public Service who executes the office of Treasurer during any vacancy in that Office or during the absence or incapacity of the holder thereof or who is duly authorised by the holder of that office to perform on his behalf or in his stead any functions or duties arising in or from the administration of any part of this Ordinance:

"Wages" see "Emoluments":

"Year of assessment" means the tax year for which the tax is payable:

(2) Subject to the provisions of subsection (1) of this section, expressions defined in the [Niue Act 1966] have the meanings so defined.

[Niue Act, 1966, being the corresponding enactment in force at the date of this reprint, has been substituted for the Cook Islands Amendment Act 1963. The other words in square brackets have been substituted to correspond with the terms used in that Act.]

4. Application of Ordinance to year of assessment - This Ordinance shall apply to the year of assessment commencing on the first day of April 1965 and to every subsequent year of assessment.

5. Treasurer to administer Ordinance - The Treasurer shall be charged with the administration of this Ordinance under the general direction and control of the Resident Commissioner.

PART II - AID TO REVENUE TAX

6. Aid to Revenue Tax imposed - Subject to the provisions of this Ordinance, there shall be levied and paid for the use of the Government of Niue for every year of assessment a tax to be known as Aid to Revenue Tax.

7. Rate of Tax - Subject to the provisions of this Ordinance, the tax shall be assessed at the rate of one penny (1d) in every complete three shillings and four pence (3 sh. and 4d) or part thereof of the income on which Aid to Revenue tax is payable.

8. Who is liable to pay the tax? - (1) Except as otherwise provided in this Ordinance and always subject to the provisions thereof, the tax shall be payable by -

- (a) Every Company;
- (b) Every person who is sixteen years of age or over on the date of the coming into force of this Ordinance, or, if he attains the age of sixteen years after that date, on and from the date of his sixteenth birthday.

(2) Where a person becomes a taxpayer for part of any year of assessment only, as aforesaid, the provisions of this Ordinance shall apply to that part of the year of assessment with every necessary modification and subject to due apportionment.

9. Income on which the tax is levied - (1) Except as otherwise provided in this Ordinance and always subject to the provisions thereof, the tax shall be payable on every class of income derived by the taxpayer during the year of assessment.

(2) If any question arises as to whether any company or any person, by reason of domicile or residence or by reason of the place in or from which income is derived, is or is not liable to be taxed, that question shall be decided by reference to the corresponding provisions of the Income Tax Ordinance relating to any such question in respect of income tax.

10. Niue Coconut Industry Board exempted - The Niue Coconut Industry Board shall not be liable to taxation under this Ordinance nor subject to any provisions thereof.

11. Agricultural workers, home weavers, and primary producers exempted - (1) The income derived by any person from his employment as an agricultural worker shall not be liable to taxation under this Ordinance and any such person shall not be subject to any provisions thereof in respect of that income.

(2) The income derived by any person making plaited baskets, trays, tablemats, hats, grass skirts, or any other plaited ware or handiwork, from the sale of same, shall not be liable to taxation under this Ordinance and any such person shall not be subject to any provisions thereof in respect of that income.

(3) The income derived by any primary producer shall be exempt from tax under this Ordinance.

12. Taxpayers under Income Tax Ordinance exempted - The income for which pursuant to subsection (4) of section 33 of this Ordinance the taxpayer is assessed for income tax in respect of the same year of assessment shall, on assessment under the Income Tax Ordinance, be exempt from the tax and cease to be subject to any provisions of this Ordinance.
13. Classes of income exempt from the tax - The following classes of income shall be exempt from the tax -
- (a) The income derived from interest on Post Office Savings Bank accounts and on any other investment of savings;
 - (b) The income derived by any person from pensions, allowances, or any other benefit under the War Pensions Act 1954;
 - (c) The income derived by a woman by way of alimony or maintenance and all other classes of income exempt from taxation by the provisions of section 49 ("Income Wholly Exempt From Taxation") of the Income Tax Ordinance;
 - (d) Donations and bequests received by any church or organisation controlled by any church for the purpose of promoting religion or charity.
14. Liability of agents, trustees, administrators and executors - Agents, trustees, administrators and executors shall have the same duties, obligations, and liabilities under this Ordinance in respect of tax as they have under the Income Tax Ordinance in respect of income tax.

PART III - BUSINESS RECORDS, RETURNS, AND INQUIRIES

15. Keeping of business records - Every taxpayer other than an employee shall keep business records as provided in section 144 of the Income Tax Ordinance and all the provisions of that section in respect of income tax shall apply for the purposes of this Ordinance in respect of the tax.
16. Annual Returns - (1) Every self-employed person with the exception of those specifically exempted by section 11 hereof shall in the tax year following the year of assessment furnish to the Treasurer a return setting forth a complete statement of income or net income together with any other particulars which may be prescribed:
 Provided that in computing the total income within the meaning of this section, interest on savings and all other classes of income exempt from the tax by section 13 of this Ordinance shall be ignored and shall not be required to be included in the annual return.
- (2) The annual return shall be in the prescribed form and shall be furnished on or before the date or dates prescribed for any tax year and of any such date appropriate public notice shall be given.
17. Other Returns - In addition to the annual return every person and every company, whether liable to be taxed or not, shall, as and when required by the Treasurer, make in

the prescribed form and within the required time such further or other returns as the Treasurer may require.

18. Certain sections of Income Tax Ordinance to apply - The following provisions of the Income Tax Ordinance shall apply with all necessary modifications, namely -

Section 139 - Treasurer to have power to inspect books and documents:

Section 140 - Information to be furnished:

Section 141 - Inquiry before a Judge or Commissioner of the High Court:

Section 142 - Inquiry by Treasurer:

Provided that the foregoing provisions of the Income Tax Ordinance shall also apply to any books, documents, and other records which employers may be required to keep, and to any information which employers may be required to furnish for the purposes of tax deductions under Part IV of this Ordinance.

19. Offences under Part III - Every person and every company commits an offence against this Ordinance and shall be liable on conviction to a fine not exceeding one hundred pounds (£100) who -

- (a) Refuses or fails to furnish any return or information as and when required by or pursuant to the provisions of this Ordinance; or
- (b) Wilfully or negligently makes any false return or statement or any material omission in any information or application, or in any other way misleads or attempts to mislead the Treasurer, in relation to any matter or thing affecting his own or any other person's liability under this Ordinance; or
- (c) Refuses or fails without lawful justification to attend duly and give evidence at any inquiry by the Treasurer under section 18 of this Ordinance, or to answer truly and fully any question put to him by the Treasurer or to produce any book, paper, or document required of him under this Part of this Ordinance; or
- (d) Being an employee makes a false statement concerning his age to any employer or to the Treasurer.

PART IV - TAX DEDUCTIONS

20. Application of this Part of this Ordinance - (1) This Part of this Ordinance shall apply to any emoluments derived by an employee from employment on and after the date of the coming into force of this Ordinance and paid to such employee after that date, and to any emoluments paid to an employee in any subsequent year of assessment.

(2) For the purposes of this section any amount of emoluments shall be deemed to be paid to the employee whenever such amount is actually paid to or on behalf of the employee entitled thereto or in any way credited to or applied on account of that employee and "payment" shall have a corresponding meaning.

21. Employer to make tax deductions - For the purpose of enabling the collection of the tax from employees by instalments during the year of assessment, the employer or other person by whom any payment of emoluments is made shall, at the time of making the payment, deduct therefrom the appropriate amount of the tax as provided in this Ordinance.

22. Crown bound by Section 21 of this Ordinance - The provisions of section 21 ("Employer to make tax deductions") of this Ordinance shall bind the Crown.

23. Permanent Records - Every employer shall keep books or other permanent records, as prescribed, and enter therein currently the names and addresses of all employees employed by him from time to time with an indication of the total duration of the employment of each employee and of the amount of emoluments payable to each employee for stated pay periods.

24. Pay Sheets and returns of payments - (1) The employer shall keep pay sheets in respect of all employees employed by him showing the gross amount paid from time to time to the employee, the amount of the tax deducted therefrom, and the receipt of the employee for the amount received.

(2) The entries required under this section shall be made at the time of making each payment and bear date accordingly.

(3) The employer shall furnish the Treasurer with returns of payments made by him to the employee under subsection (1) of this section at such intervals as the Treasurer may prescribe for all or any class or classes of employers and shall attach copies of all relevant pay sheets to any such return.

(4) All pay sheets and returns required by the provisions of this section shall be in the prescribed form and supplies of printed forms shall be sold to the employer by the Treasury Department on application at cost price.

25. Recovery of tax not deducted - Where an employer fails to make any tax deduction in accordance with his obligations under this Part of this Ordinance, the amount in respect of which default has been made shall constitute a debt payable to the Government by the employer and the employee jointly and severally and may be recovered by the Treasurer wholly from the employer or from the employee or partly from the employer and partly from the employee. If any amount so recoverable is recovered from the employer, the employer may recover the amount paid from the employee.

26. Payment of deducted tax to Treasurer - Every employer who deducts tax from any emoluments shall not later than the twentieth day of the month next after the month in which he has made any such tax deduction or at any other time the Treasurer may require, pay to the Treasurer the total amount of the tax deducted.
27. Penal Tax - (1) Where an employer fails to make any tax deduction in accordance with his obligations under this Part of this Ordinance or fails to pay to the Treasurer any tax so deducted, the Treasurer may charge the employer by way of penalty, in addition to any penalty imposed by the High Court, with a further amount of tax (hereinafter referred to as penal tax) not exceeding an amount equal to treble the amount in respect of which default has been made.
- (2) Where the Treasurer charges any employer with penal tax under this section he shall cause notice of the charge to be given to the employer.
- (3) Any notice so given shall be in the prescribed form and shall state the date on or before which the penal tax shall be paid.
- (4) The provisions of subsection (3) of section 36 of this Ordinance relating to the contents of the notice of assessment in respect of objections shall apply to the notice under this section.
28. Recovery of tax deducted but not paid to Treasurer, and recovery of penal tax - Where an employer fails to pay to the Treasurer any tax deducted by the employer or where an employer has been charged by the Treasurer with any penal tax, the amount in respect of which default has been made or the amount of the penal tax, as the case may be, shall constitute a debt payable by the employer to the Government and shall be recoverable by the Treasurer from the employer accordingly.
29. Mode of tax deductions by Government Departments - Tax deductions from emoluments paid by any Government Department to any person employed in the Niue Public Service or from any statutory remuneration or allowance so paid pursuant to any enactment for the time being in force in Niue, shall be made and transferred to the Public Revenues of Niue in manner from time to time determined by the Resident Commissioner.
30. Agreements not to Make Tax Deductions to be Void - Where a tax deduction is required to be made under the provisions of this Part of this Ordinance, any agreement not to make the tax deduction in accordance with those provisions shall be void.
31. Offences under Part IV - Every person and every company commits an offence against this Ordinance and shall be liable on conviction to a fine not exceeding one hundred pounds (£100) who -

- (a) Being an employer or other person by whom emoluments are paid to an employee, fails wholly or in part to make a tax deduction therefrom as and when required under this Part of this Ordinance; or
- (b) Unless the [Niue Act 1966] provides a more severe penalty in respect of the same offence, knowingly applies or permits to be applied any tax deducted from emoluments wholly or in part for any purpose other than the payment of that tax to the Treasurer.

[The Niue Act 1966, being the corresponding enactment in force at the date of this reprint has been substituted for the Cook Islands Act 1915.]

PART V - ASSESSMENTS AND OBJECTIONS

32. Provisions of Section 33 and 34 of this Ordinance to apply notwithstanding provisions of Income Tax Ordinance - The provisions of sections 33 and 34 of this Ordinance shall apply notwithstanding anything to the contrary in the Income Tax Ordinance.
33. Tax or income tax to be assessed whichever is higher -
- (1) On receipt of returns made under this Ordinance and under the Income Tax Ordinance and also from any other information in his possession, the Treasurer shall make assessments as hereinafter provided.
- (2) The Treasurer shall ascertain whether and to which extent any taxpayer is liable to pay tax under this Ordinance or income tax under the Income Tax Ordinance.
- (3) If the tax payable under this Ordinance exceeds the amount of income tax assessable under the Income Tax Ordinance, the Treasurer shall assess the taxpayer according to the provisions of this Ordinance.
- (4) If the income tax assessable under the Income Tax Ordinance exceeds the amount of the tax payable under this Ordinance, the Treasurer shall assess the taxpayer according to the provisions of the Income Tax Ordinance.
34. Crediting tax deductions against tax or income tax - The Treasurer shall credit any amount deducted from the emoluments of an employee under Part IV of this Ordinance, against the tax or the income tax, as the case may be, assessed in respect of that employee, as aforesaid.
35. Validity of assessment of tax not affected by failure to comply with Ordinance - The validity of an assessment of the tax shall not be affected by reason that the taxpayer makes default in furnishing any return or that any other provisions of this Ordinance have not been complied with.

36. Notice of assessment of tax to self-employed person -
(1) As soon as practicable after an assessment of the tax is made the Treasurer shall cause notice of the assessment to be given to self-employed taxpayers.

(2) The notice of assessment shall be in the prescribed form and shall state the date on or before which the tax shall be paid, and any additional tax which is chargeable against the self-employed taxpayer if the tax is not so paid.

(3) The notice of assessment shall also give the self-employed taxpayer all necessary information in respect of his right to object to the assessment as provided in section 40 of this Ordinance, and state the time within which an objection may be lodged under that section.

37. Amendments of Assessments of Tax - The Treasurer may from time to time and at any time make all such alterations in or additions to an assessment of the tax as he thinks necessary in order to ensure the correctness thereof notwithstanding that tax already assessed may have been paid, and the provisions of sections 35 and 36 of this Ordinance shall, with all necessary modifications, apply to any such amendment.

38. Excess tax may on re-assessment be repaid within four years - The provisions of section 148 of the Income Tax Ordinance ("Excess Tax may be repaid within four years") shall, with all necessary modifications, apply where an assessment of Aid to Revenue Tax has been amended in favour of the taxpayer.

39. Certain sections of Income Tax Ordinance to apply - The following provisions of the Income Tax Ordinance shall apply with all necessary modifications, namely -

Section 115 - Payment of Tax:

Section 116 - If default, additional tax to be Charged:

Section 117 - Mode of recovery of unpaid tax:

Section 118 - Deduction of income tax from payment due to defaulters:

Section 119 - Procedure in High Court where defendant absent from Niue:

Section 120 - Particulars of claim or demand.

40. Objections to assessment of tax, penal tax, and additional tax - (1) Any taxpayer who has been assessed under this Ordinance in respect of the tax or has been charged with penal tax under section 27 of this Ordinance or with additional tax under section 116 of the Income Tax Ordinance as applied by section 39 of this Ordinance, may lodge an objection to the assessment or amended assessment or to any such charge, as the case may be, at the office of the Treasurer in writing or verbally either in person or through any other person stating the grounds of his objection, within the time specified in the notice of assessment or charge.

(2) The Treasurer shall consider every objection and may allow any objection which, in his opinion, is well founded, and shall transmit to the Executive Committee any objection which he does not allow.

(3) The Executive Committee, after due investigation, may confirm, alter, or rescind any assessment or charge objected to and the determination of any objection by the Executive Committee shall be final.

41. Obligation to pay tax not suspended by objection - The obligation to pay any tax assessed or charged shall not be suspended by any objection, but if the objector succeeds the amount of any tax paid in excess of the amount which, according to the decision on the objection, was properly payable, shall forthwith be refunded to the objector.

PART VI - MISCELLANEOUS PROVISIONS

42. Treasurer to keep records - The Treasurer shall establish and keep such registers and records as may be required for the administration of this Ordinance.

43. Certain sections of Income Tax Ordinance to apply - The following provisions of the Income Tax Ordinance shall apply with all necessary modifications, namely -

Section 126 - Payment of income tax by persons leaving Niue:

Section 128 - Fines Recoverable (On the information of the Treasurer only):

Section 129 - Information may be laid within ten years:

Section 149 - In cases of serious hardship Treasurer may grant relief to taxpayer:

Section 150 - Agreement purporting to alter incidence of taxation to be void:

Section 152 - Extension of time.

44. Offences (General) - Without limiting the provisions of sections 19 and 31 of this Ordinance, every person and every company commits an offence and is liable on conviction to a fine not exceeding fifty pounds (£50) who -

- (a) Fails to comply with any order, notice, or direction given to him by the Treasurer pursuant to the provisions of this Ordinance; or
- (b) Wilfully obstructs, hinders, or resists the Treasurer or any other person in the execution of any power conferred on same by the provisions of this Ordinance; or
- (c) Acts in contravention of or fails to comply with any condition, duty, or obligation imposed on him by the provisions of this Ordinance; or
- (d) Does or omits, or causes or knowingly permits or suffers to be done or omitted, any act, matter, or thing contrary to the provisions of this Ordinance; or
- (e) Aids, abets, or incites any other person to commit any offence against this Ordinance.

45. Offences Committed by Companies - Where any offence under this Ordinance is committed by any company, every person engaged in the management of that company and responsible for the act or omission constituting the offence, shall also be guilty of an offence and information may be laid against the company or any such person or both and the High Court may convict and sentence the company or any such person or both accordingly.

46. Aid to Revenue Ordinance 1956 amended - (1) The Niue Aid to Revenue Ordinance 1956 (No.52) is hereby amended by inserting therein the following new section:

"Section 13A. Notwithstanding anything to the contrary in this Ordinance, the Aid to Revenue tax due and payable on the first day of July 1964 for the year commencing on the first day of July 1964 and ending on the thirtieth day of June 1965 is hereby remitted."

(2) This section shall be deemed to have come into force on the first day of July 1964 and any remission granted by the Resident Commissioner before the passing of this Ordinance in respect of the tax specified in this section is hereby declared to be valid.

47. Repeal and Savings - (1) On the coming into force of this Ordinance, the following Ordinances shall be repealed -

The Niue Aid to Revenue Ordinance 1956, No.52
The Niue Aid to Revenue Amendment Ordinance 1961,
No.10
The Niue Aid to Elderly People Ordinance 1958, No.58

(2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that subject to the provisions of section 46 of this Ordinance -

- (a) All orders, notices, directions, warrants, or exemptions which originated under any Ordinance hereby repealed and which are of continuing effect at the commencement of this Ordinance as if they had originated under the corresponding provisions of this Ordinance;
- (b) Any revenues, charges, taxes, fees, fines, or penalties originated under any Ordinance hereby repealed shall be liable to be collected and recovered as if they had originated under this Ordinance;
- (c) All matters, things, and proceedings which have been commenced under any Ordinance hereby repealed and which are pending or in progress at the commencement of this Ordinance, may be continued and completed under this Ordinance;
- (d) The power conferred on the Resident Commissioner by the provisions of the repealed Ordinances to exempt any person from the obligations under those Ordinances on the ground of undue hardship shall be deemed to be a power conferred on the Treasurer under section 149 of the Income Tax Ordinance, as applied by section 43 of this Ordinance, and shall be exercised accordingly.

48. Niue Aid to Elderly People Fund - On and after the coming into force of this Ordinance, the functions exercised by the Island Council of Niue in respect of the administration of the Niue Aid to Elderly People Fund under the repealed Niue Aid to Elderly People Ordinance 1958 shall be exercised by the Executive Committee and any moneys standing to the credit of that Fund shall be disposed of as the Executive Committee determines, or, where necessary, according to appropriation by the Niue Island Assembly.

49. Application of Fines - All fines received pursuant to the provisions of this Ordinance shall form part of the public revenues of Niue and shall be paid into the appropriate account thereof.