

# BILL NO. 4 OF 2017

## A BILL

FOR AN ACT TO AMEND THE VALUE ADDED TAX ACT 1991

ENACTED by the Parliament of the Republic of Fiji—

*Short title and commencement*

**1.**—(1) This Act may be cited as the Value Added Tax (Amendment) Act 2017.

(2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

(3) In this Act, the Value Added Tax Act 1991 is referred to as the “Principal Act”.

*Section 14 amended*

**2.** Section 14(4A)(a) of the Principal Act is amended by—

(a) deleting “201” and substituting “201A”;

(b) deleting “, 226 (a person to whom medals and decorations are awarded), 227 (an owner or temporary owner of trophies),” and substituting “and”;  
and

(c) deleting “and 229 (an institution or organisation approved by the Minister responsible for finance)”.

*Section 22 amended***3.** Section 22 of the Principal Act is amended by—

(a) inserting the following new subsections after subsection (4)—

“(4A) Notwithstanding subsection (1), a person engaged in the supply of residential accommodation which is expected to exceed a gross annual turnover of \$100,000, may, in the prescribed form, make an application to the Chief Executive Officer to be registered in accordance with subsection (1).

(4B) Upon receipt of an application under subsection (4A), the Chief Executive Officer may approve the application for registration in accordance with subsection (5) where it appears to the Chief Executive Officer that there are reasonable grounds to believe that the total value of the supply of residential accommodation will exceed a gross turnover of \$100,000 within 12 months following the registration.”; and

(b) in subsection (5)(a), deleting “subsection (3) or (4)” and substituting “this section”.

*Section 23 amended***4.** Section 23 of the Principal Act is amended by inserting the following new subsections after subsection (8)—

“(9) The Chief Executive Officer may cancel a person’s registration under subsection (5) if the Chief Executive Officer is satisfied that the total value of the taxable supply of residential accommodation by the registered person has not exceeded a gross turnover of \$100,000 in the preceding 12 months.

(10) Prior to cancellation under subsection (9), a registered person whose total value of taxable supply of residential accommodation has not exceeded a gross turnover of \$100,000 in the preceding 12 months may write to the Chief Executive Officer requesting for an additional period of up to 24 months to meet the \$100,000 gross turnover threshold.

(11) Upon receipt of a written request made under subsection (10), the Chief Executive Officer may, at his or her discretion, extend the turnover period requirement in subsection (1).

(12) Where a person’s registration is cancelled in accordance with subsection (9), any input tax credit or VAT refund which had been claimed by the person for any expense including the construction of the residential accommodation from the date of registration to the date of the cancellation of registration, may be recovered by the Chief Executive Officer and section 3(4) of the Act shall apply.”

*New section 27A inserted*

5. The Principal Act is amended by inserting the following new section after section 27—

*“Branches or divisions containing residential accommodation*

27A.—(1) Where a registered person carries on a taxable activity in branches or divisions, and a branch or division of that taxable activity is the supply of residential accommodation in which the gross turnover does not exceed \$100,000, that registered person may apply in writing to the Chief Executive Officer for that branch or division to be treated as a separate entity for the purpose of this Act.

(2) The Chief Executive Officer may, upon receiving an application made pursuant to subsection (1), treat that branch or division separately to maintain an independent system of accounting, and any taxable activity carried on by the registered person who is a supplier of residential accommodation, shall not be included as part of other divisions or branches which are below the taxable threshold under section 22.”

*Section 39 amended*

6. Section 39 of the Principal Act is amended by inserting the following new subsection after subsection (9)—

“(10) Notwithstanding anything in this section, a registered person under section 22(4B) and (5) who makes payment for any expenses including the construction of the residential property for rental shall be allowed a deduction from the date of registration.”

## VALUE ADDED TAX (AMENDMENT) BILL 2017

### EXPLANATORY NOTE

*(This note is not part of the Bill and is intended only to indicate its general effect)*

#### **1.0 BACKGROUND**

- 1.1 The Valued Added Tax (Amendment) Bill 2017 (**'Bill'**) seeks to amend the Valued Added Tax Act 1991 (**'Act'**).
- 1.2 The amendments proposed in the Bill address two issues. The first is the update of the concession codes under section 14(4A) with the new concession codes in the Customs Tariff Act 1986 and the second is the introduction of new provisions to allow Fijians engaged in the supply or construction of residential accommodation accumulating a gross turnover of less than \$100,000 to be able to register and claim for Valued Added Tax (**'VAT'**) refunds.
- 1.3 In accordance with Fiji's obligations as a member of the World Customs Organization, Schedule 2 to the Customs Tariff Act 1986 was amended to provide a revised list of tariff items and concession codes commonly known as the Harmonised System of Nomenclature (**'HS'**), which contains the different types of tax concession, tariffs and duty or tax levied by the Fiji Revenue and Customs Authority on every taxable activity and item in Fiji.
- 1.4 Section 14(4A) of the Act sets out a list of activities and items for which VAT is not charged. The list in section 14(4A) includes corresponding concession codes for those items or activities from the Customs Tariff Act 1986.
- 1.5 The Bill seeks to amend section 14(4A) of the Act in order to align some of the out-dated concession codes in the Act with the newly revised concession codes in the HS contained in Schedule 2 to the Customs Tariff Act 1986.
- 1.6 The amendments in the Bill both update the concession codes and remove some concession codes in the Act which are no longer listed in the HS provided in Schedule 2 to the Customs Tariff Act 1986 following its revision.

- 1.7 Section 22 of the Act allows for the registration of persons involved in a taxable activity in Fiji for which VAT is charged, and ultimately allows such registered persons to claim a VAT refund for expenses incurred in relation to that taxable activity.
- 1.8 A person is registered under section 22 based on the following criteria—
- (a) the person is involved in a taxable activity which exceeds \$100,000 in a 12-month period; and
  - (b) the taxable activity is not exempt from VAT.
- 1.9 However, given that a person involved in the supply of residential accommodation earning a gross turnover of less than \$100,000 is unable to be registered under section 22, such persons are unable to claim VAT refunds.
- 1.10 The supply of residential accommodation is a thriving and expanding business in Fiji, with many Fijians building large apartment complexes or hiring out homes or apartments.
- 1.11 The newly introduced provisions under the Bill will allow all Fijians who are engaged in the construction of residential accommodation or incurring expenses related to the provision of residential accommodation to be able to claim VAT refunds where it is reasonably expected that they will achieve a gross turnover exceeding \$100,000 by the end of a 12-month period.
- 1.12 Furthermore, amendments or provisions relating to the cancellation of registration and the ring-fencing of the taxable supply of residential accommodation are also proposed in the Bill to address any consequential issues that may arise from the above amendments.

## **2.0 CLAUSES**

- 2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the amending legislation will come into force on a date or dates appointed by the Minister.
- 2.2 Clause 2 of the Bill amends section 14(4A)(a) of the Act to align the concession codes in this section with the new concession codes in Schedule 2 to the Customs Tariff Act 1986.
- 2.3 Clause 3 of the Bill amends section 22 of the Act to insert new subsections (4A) and (4B) to introduce provisions to allow the registration of persons who are engaged in the supply of residential accommodation where there are reasonable grounds to believe that the total value of the gross turnover of the supply of residential accommodation may exceed \$100,000 in the 12 months following the registration.

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- 2.4 Clauses 4, 5 and 6 of the Bill amend the Act to introduce new provisions which will allow the ring-fencing of the taxable supply of residential accommodation registered under section 22(4A) and (4B).
- 2.5 Clause 4 of the Bill amends section 23 of the Act to allow the cancellation of registration of persons who do not exceed the \$100,000 gross turnover threshold 12 months from the date of registration.
- 2.6 Clause 4 also includes provisions to allow the Chief Executive Officer to recover any VAT refunds already claimed by the registered person if the Chief Executive Officer is satisfied that the registered person does not meet the gross turnover threshold 12 months from the date of registration.
- 2.7 Additionally, clause 4 allows a registered person to apply to the Chief Executive Officer to extend the 12-month period, during which the gross turnover threshold of more than \$100,000 must be achieved, up to 24 months if the registered person is unable to exceed the gross turnover threshold within the initial 12 months.
- 2.8 Under clause 5 of the Bill, where a person carries on various taxable activities but one of the branches or divisions of that taxable activity is the supply of residential accommodation in which the gross turnover does not exceed \$100,000, the registered person can apply to the Chief Executive Officer to treat such supply of residential accommodation separately from the other branches or divisions of taxable activity and account for VAT separately for the supply of residential accommodation.
- 2.9 Clause 6 of the Bill amends section 39 of the Act and contains provisions in relation to the claiming of input tax or VAT refunds by registered persons.
- 2.10 Clause 6 also allows a registered person to claim for any expenses including the construction costs of the residential accommodation which is expected to earn an annual gross turnover exceeding \$100,000.

### **3.0 MINISTERIAL RESPONSIBILITY**

- 3.1 The Act comes under the responsibility of the Minister responsible for finance.

A. SAYED-KHAIYUM  
Attorney-General