

BILL NO. 40 OF 2017

A BILL

FOR AN ACT TO AMEND THE FIJI REVENUE AND CUSTOMS SERVICE ACT
1998

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

1.—(1) This Act may be cited as the Fiji Revenue and Customs Service (Amendment) (No. 2) Act 2017.

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

Section 52B inserted

2. The Fiji Revenue and Customs Service Act 1998 is amended after section 52A by inserting the following new section—

“Publication of information on tax and duty evaders and defaulters

52B.—(1) Notwithstanding section 52, where an investigation or audit has been carried out by the Service with regard to tax or duty evasion or default of payment of tax or duty by a person, the Service may publish and make publically available information regarding the person, if the person derives a gross turnover equal to

2 *Fiji Revenue and Customs Service (Amendment) (No. 2)— of 2017*

or exceeding \$1.5 million in a tax year, operates a business that is a member of a prescribed group of businesses and—

- (a) has made an error in the submission of any document or information required by the Service for tax returns or any document or information required for customs purposes; or
- (b) has failed to comply with any tax or customs obligation under any law specified in Schedule 1.

(2) Where a tax or customs agent has made an error in the submission of any document or information required by the Service for a tax return or any document or information required for customs purposes, the Service may publish and make publically available information regarding that tax or customs agent.

(3) The publication of information referred to in subsection (1) or (2) may specify—

- (a) the name, area of residence and registered office of the person or tax or customs agent;
- (b) the particulars of the sum of the tax or duty lawfully owed;
- (c) the penalties applicable to the act of default or tax or duty evasion in those circumstances; or
- (d) any other information that the Chief Executive Officer thinks fit.

(4) A person whose information has been published and made publically available in accordance with this section may submit a written notification to the Service if it has come to the person's attention that the information published and made publically available by the Service contains an error.

(5) The Service must as soon as practicable publish and make publically available the information mentioned in subsection (4) in order to correct the information.

(6) The Minister may by notice in the Gazette—

- (a) amend the gross turnover specified in subsection (1);
- (b) prescribe a group of businesses for which the Service may publish or make publically available information in accordance with this section.”.

September 2017

FIJI REVENUE AND CUSTOMS SERVICE (AMENDMENT) (NO. 2) BILL 2017

EXPLANATORY NOTE

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

1.0 BACKGROUND

- 1.1 The Fiji Revenue and Customs Service (Amendment) (No. 2) Bill 2017 (**‘Bill’**) seeks to amend the Fiji Revenue and Customs Service Act 1998 (**‘Act’**).
- 1.2 It is estimated that Fiji’s economy grew by 2.0% in 2016 and is forecasted to grow by 3.6% in 2017. Furthermore, the Fijian economy has recorded 8 years of consecutive economic growth. This is the longest period of sustained economic growth since independence.
- 1.3 With a sound and growing macro-economic condition, it is anticipated that the improved economic performance will culminate into higher tax collections.
- 1.4 However, a 2010 Report by the World Bank titled ‘Shadow Economies all over the World: New Estimates for 162 Countries from 1999 to 2007’ on the shadow economy or black economy, has shown that about one-third of Fiji’s gross domestic product i.e. almost \$3 billion, is derived from the black economy.
- 1.5 This exorbitant amount of money circulating in the country is not being taxed by the Fiji Revenue and Customs Service (**‘Service’**). Many tax payers involved in the black economy are tax evaders who continuously, systematically and dishonestly exploit Fiji’s taxation system in order to put more money into their own pockets.
- 1.6 In many cases, once detected by the Service, many of these tax evaders continue to avoid paying tax even though they have been reminded several times to do so. Therefore, the Service must undergo the arduous process of individually prosecuting these tax evaders which will take a lot of time, while daily, the tax debt from evasion continues to grow.
- 1.7 In light of the above, it has become necessary to include the “Name and Shame” provisions in the Act to allow the Service to make the names of these tax

evaders publically available in order to bring them into compliance with their tax obligations.

- 1.8 “Name and Shame” as it suggests is a concept used by tax authorities to expose people or companies that violate tax laws. Tax authorities do this to expose crime that might have been covered up or to shed light on behaviour that the public might object to. “Name and Shame” provisions have been adopted in countries such as Australia, the United Kingdom and South Africa.
- 1.9 Basically, the idea is to expose these entities to the public in order to shame them into compliance and in turn deter and discourage others from engaging in similar activities. Naming and shaming can destroy a company’s reputation and influence the decisions of customers, suppliers, financiers and other stakeholders doing business with the company.
- 1.10 In a similar manner, through this Bill, the Fijian Government introduces the “Name and Shame” legislative provisions to publically identify and publish the names of persons or companies who intentionally avoid paying the right taxes due.

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 the Act by inserting a new section 52B which allows the Service, following an investigation or audit, to publish and make publically available any information regarding a person, if the person derives a gross turnover equal to or exceeding \$1.5 million in a tax year, operates a business that is a member of a group of businesses prescribed by the Minister by notice in the Gazette and—
- (a) has made an error in the submission of any document or information required by the Service for tax returns or any document or information required for customs purposes; or
 - (b) has failed to comply with any tax or customs obligation under any law specified in Schedule 1 to the Act.
- 2.3 Additionally, where a tax or customs agent has made an error in the submission of any document or information required by the Service for tax returns or any document or information required for customs purposes, the Service may publish and make publically available information regarding that tax or customs agent.
- 2.4 Furthermore, in accordance with the newly inserted section 52B(6) under clause 2 of the Bill, the Minister may by notice in the Gazette—
- (a) amend the \$1.5 million gross turnover threshold; and

- (b) prescribe a group of businesses for which the Service may publish or make publically available information in accordance with the proposed clause.

3.0 MINISTERIAL RESPONSIBILITY

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

A. SAYED-KHAIYUM
Attorney-General