

BILL NO. 41 OF 2017

A BILL

FOR AN ACT TO AMEND THE TAX ADMINISTRATION ACT 2009

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

1.—(1) This Act may be cited as the Tax Administration (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 48 amended

2. Section 48 of the Tax Administration Act 2009 is amended by—

(a) deleting subsection (2);

(b) after subsection (3), inserting the following new subsections—

“(3A) Subject to subsections (3B) and (3C), the powers conferred upon the Service to issue penalties under this Subdivision shall be in addition to any power conferred upon the Service to institute prosecution under this Act in respect of the same act or omission.

(3B) The powers of the Service to issue penalties and also to institute prosecution shall only be exercisable—

- (a) if the person derives a gross turnover equal to or exceeding \$1.5 million in a tax year; and
- (b) if the person operates a business that is a member of a prescribed group of businesses.

(3C) The Minister may by notice in the Gazette—

- (a) amend the gross turnover specified in subsection (3B)(a); and
 - (b) prescribe a group of businesses for which the Service may issue a penalty and also institute prosecution.”; and
- (c) deleting subsection (8) and substituting the following—
- “(8) For the avoidance of doubt, subsection (3) does not apply to persons prosecuted by the Service under subsections (3A) and (3B).”.

September 2017

TAX ADMINISTRATION (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 Tax Administration (Amendment) (No. 2) Bill 2017 (**‘Bill’**) seeks to amend the Tax Administration Act 2009 (**‘Act’**).
- 1.2 The Act contains enforcement provisions for all tax laws. Tax laws as defined under section 2 of the Act refers to the Value Added Tax Act 1991, Income Tax Act 2015, Service Turnover Tax Act 2012, Gambling Turnover Tax Act 1991, Environment and Climate Adaptation Levy Act 2015, Superyacht Charter Act 2010 and the Airport Departure Tax Act 1986.
- 1.3 With the threat of increasing tax scams and tax evasion cases around the world and in Fiji, it has become prudent to allow the regulatory authority for taxation within government to be able to issue administrative penalties as well as institute prosecution against a tax payer where they breach the provisions of a tax law or become non-compliant with any of their obligations under a tax law. These are the practices in New Zealand, Australia and South Africa.
- 1.4 It would be advantageous to adopt this approach in Fiji in order to deter future non-compliance and tax infringements. Therefore, the Bill proposes to amend section 48 of the Act to allow the Fiji Revenue and Customs Service (**‘Service’**) to issue an administrative penalty and also at their discretion institute prosecution against a tax payer who is in breach of or is non-compliant with any of the provisions of any tax law.

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.

4

- 2.2 Clause 2 of the Bill amends section 48 of the Act in order to allow the Service to issue an administrative penalty and institute prosecution against a person who is in breach or is non-compliant with any of the provisions under any tax law.
- 2.3 In order to ensure that the Service is only able to both penalise and prosecute larger businesses and not ordinary people or small businesses, a threshold of \$1.5 million and a requirement that those businesses to be penalised and prosecuted are of a type prescribed by the Minister have been included in the provisions proposed under the Bill.
- 2.4 Additionally, in accordance with the newly inserted section 48(3C) 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 issue a penalty and also institute prosecution.

3.0 MINISTERIAL RESPONSIBILITY

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

A. SAYED-KHAIYUM
Attorney-General