

# BILL NO. 25 OF 2015

## A BILL

FOR AN ACT TO AMEND THE TAX ADMINISTRATION DECREE 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 (Budget Amendment) Act 2015.

(2) This Act shall come into force on 1 January 2016, except for section 8 which shall come into force on 6 November 2015.

(3) In this Act, the Tax Administration Decree 2009 shall be referred to as the “Decree”.

*Section 2 amended*

**2.** Section 2 of the Decree is amended by inserting the following new definition—

“Tax Compliance Certificate” means a certificate of compliance issued by the Chief Executive Officer to a person as proof that the person is compliant with the lodgement of tax returns and payment of taxes in accordance with the relevant tax laws;”

*Section 31 amended*

3. Section 31 of the Decree is amended in subsection (1) by inserting the following new paragraph after paragraph (b)—

“(c) a person whose tax liability has been written off as bad debts and the Chief Executive Officer has reasonable grounds to reinstate the bad debts,”

*Section 33 amended*

4. Section 33 of the Decree is amended in subsection (2) by deleting “\$5” and substituting “\$10”.

*New section inserted*

5. The Decree is amended by inserting the following new section after section 33—

*“Re-raising of debt*

33A.—(1) Notwithstanding section 34 of the Financial Management Act 2004, the Chief Executive Officer may reinstate a bad debt that has been written off.

(2) The Chief Executive Officer may re-instate such bad debts in subsection (1), if the—

- (a) Chief Executive Officer is satisfied that the debt is economically viable to recover; or
- (b) taxpayer is financially capable of repaying the debt in full or installments over an agreed period of time.

(3) The Chief Executive Officer may reinstate the tax liability at any time for a taxpayer who knowingly absconds to avoid the payment of the reinstated bad debt.”

*Section 38 amended*

6. Section 38 of the Decree is amended in subsection (7) by—

(a) deleting paragraph (a) and substituting the following—

“(a) any statutory body;”

(b) deleting paragraph (c) and substituting the following—

“(c) any municipal council, including any rural local authority;”

(c) deleting “.” and substituting “;” in paragraph (d);

(d) inserting the following new paragraphs after paragraph (d)—

“(e) Registrar of Titles;

(f) Fiji Public Trustee Corporation;

(g) any licensing or registration agency;

(h) any government agency; and

(i) professional bodies.”

*New sections inserted*

7. The Decree is amended by inserting the following new sections after section 46—

*“False or Misleading Statement Penalty*

46A.—(1) This section applies to a person who makes a false or misleading statement as specified in section 46(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) when the statement or omission was made knowingly or recklessly, 75% of the overstatement; or
- (b) in any other case, 20% of the overstatement.

(3) No false or misleading statement penalty applies in the circumstances specified in section 46(5).

(4) Section 46(6) applies in determining whether a person has made a statement to a tax officer.

*Penalty in case of VAT evasion*

46B.—(1) Any registered person under the Value Added Tax Decree 1991 who—

- (a) 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;
- (b) evades, or does any act with intent to evade, the payment of any amount of tax payable (the amount referred to as “deficient tax”);
- (c) causes, or does any act with intent to cause, the refund to that person by the Chief Executive Officer of an amount in excess of the amount properly so refundable to that person; or
- (d) defaults in the performance of any duty imposed upon that person by the Value Added Tax Decree 1991 or regulations made under the Value Added Tax Decree 1991 with intent to—
  - (i) evade the payment of any deficient tax; or
  - (ii) cause the refund to that person by the Chief Executive Officer of an amount in excess of the amount properly so refundable to that person,

is liable for a penalty equal to 300% of the deficient tax.

(2) No false or misleading statement penalty applies in the circumstances specified in section 46(5).

(3) Section 46(6) applies in determining whether a person has made a statement to a tax officer.”

*New sections inserted*

8. The Decree is amended by inserting the following new sections after section 48A—

*“Waiver of tax during amnesty period for local assets*

- 48B.—(1) For the purpose of this section, unless the context otherwise requires—

“amnesty” means the waiver of any tax payable in respect of any local asset, including any interest accrued from, or any penalty or fine imposed, in respect of such tax for any tax period provided that the tax period is prior to 1 July 2017;

“amnesty period” means the period commencing on and from 1 January 2016 to 30 September 2016;

“applicant” means a qualifying person who applies under subsection (3);

“local asset” means any asset within Fiji or income derived from the asset within Fiji, that is declared during the amnesty period; and

“qualifying person” means a person who is a tax resident and Fiji citizen, required to declare their local asset under any tax law.

(2) Any qualifying person may, within the amnesty period, apply for amnesty under subsection (3).

(3) An application for amnesty shall be made in writing to the Chief Executive Officer and such application shall include a declaration of any local asset and other information as the Chief Executive Officer may require.

(4) Notwithstanding any other provision in this Decree, upon receipt of an application under subsections (2) and (3) and if the Chief Executive Officer is satisfied that the applicant is a qualifying person, the Chief Executive Officer shall grant amnesty to the applicant.

(5) Pursuant to subsection (4), the Chief Executive Officer shall, as the case requires, remit in whole any tax payable by the qualifying person in respect of the local asset, including any interest accrued from, or any penalty or fine payable, in respect of such tax for any tax period provided that the tax period is prior to 1 January 2017.

(6) If an applicant is not granted amnesty under subsection (4), the Chief Executive Officer shall, as soon as practicable, provide written reasons to the applicant for the refusal.

*Waiver of penalty for failure to file a tax return or payment of tax*

48C.—(1) Notwithstanding any other provision in this Decree, any qualifying person who has failed to file a tax return and pay chargeable tax under any tax law for any taxable period prior to 1 November 2015 shall be deemed to have obtained amnesty, if the qualifying person on whom the penalty is imposed files a tax return and pays such tax within the amnesty period.

(2) For the purpose of this section, unless the context otherwise requires—

“amnesty” means the waiver of any penalty payable in respect of any failure to file a tax return and pay any chargeable tax required under tax law for any taxable period prior to 1 November 2015;

“amnesty period” means the period commencing on and from 6 November 2015 to 31 December 2015;

“qualifying person” means a person who is a tax resident and Fiji citizen, required to file a tax return under any tax law.”

*Section 112 amended*

9. Section 112 of the Decree is amended by inserting the following new subsection after subsection (3)—

“(4) The Board must prepare, and publish by notice in the Gazette, a Code of Conduct by which tax agents registered under this Decree must comply with.”

*Section 114 amended*

10. Section 114 of the Decree is amended in subsection (4) by—

- (a) deleting “or” after “;” in paragraph (g);
- (b) deleting “.” and substituting “; or” in paragraph (h); and
- (c) inserting the following new paragraph after paragraph (h)—
  - “(i) the tax agent has breached the Code of Conduct.”

*New Division XI in Part II*

11. The Decree is amended in Part II by inserting a new division after Division X—

*“Division XI—Tax compliance certificate*

*Tax Compliance Certificate*

74A. Any resident person who—

- (a) submits an Expression of Interest or tender to supply goods and services for any government or public sector business contract; or
- (b) applies for any registration, permit or licence from any government ministry or entity,

must submit a Tax Compliance Certificate issued by the Chief Executive Officer, attached to his or her documents, unless exempted by the Minister in writing.

*Application*

74B. A person may apply to the Chief Executive Officer for a Tax Compliance Certificate in the approved form and the application must be accompanied by any other information required.

*Issuance of Tax Compliance Certificate*

74C.—(1) The Chief Executive Officer shall issue a Tax Compliance Certificate to a person, if the Chief Executive Officer is satisfied that the person has fulfilled relevant obligations to lodge outstanding tax returns and pay tax due to the State.

(2) A Tax Compliance Certificate is proof of tax compliance for the requirements of any tax law specified in the Second Schedule and is valid for one year from the date of issue.

*Refusal*

74D. A person may be refused a Tax Compliance Certificate, if—

- (a) a return required under a relevant law specified in the Second Schedule; or
- (b) any tax liability under any tax law,

is outstanding.

*Revocation*

74E. The Chief Executive Officer may revoke a Tax Compliance Certificate issued under this Decree, if an applicant at the time of making the application, knowingly furnished particulars that are found to be either materially incomplete or false.”

## TAX ADMINISTRATION (BUDGET AMENDMENT) BILL 2015

### 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 (Budget Amendment) Bill 2015 (**'Bill'**) seeks to amend the Tax Administration Decree 2009 (**'Decree'**).

#### **2.0 CLAUSES**

2.1 Clause 1 of the Bill provides the short title and commencement date.

2.2 Clause 2 of the Bill amends section 2 of the Decree to include a definition of Tax Compliance Certificate.

2.3 Clause 3 of the Bill amends section 31 of the Decree to allow for the reinstatement of bad debts.

2.4 Clause 4 of the Bill amends section 33 of the Decree by deleting \$5 and substituting \$10.

2.5 Clause 5 of the Bill inserts a new section 33A to the Decree for the re-raising of debt to allow for the reinstatement of bad debts that have been written off, provided that the Chief Executive Officer is satisfied that the debt is economically viable to recover and that the taxpayer is financially capable of repaying the debt.

2.6 Clause 6 of the Bill amends section 38 of the Decree by increasing the number of institutions which must ensure that every person has a Tax Identification Number.

2.7 Clause 7 of the Bill amends the Decree by inserting new sections after section 46 to provide penalties to persons who make false or misleading statements that fall under non-tax shortfalls and penalties to persons registered under the Value Added Tax 1991 who evade Value Added Tax.

- 2.8 Clause 8 of the Bill amends the Decree by inserting new sections after section 48A to allow for waiver of tax during the amnesty period for local assets and waiver of penalty for failure to file a tax return and pay tax required by a tax law.
- 2.9 Clause 9 of the Bill amends section 112 of the Decree by inserting a new subsection after subsection (3) to ensure that the Board prepares and publishes by notice in the Gazette a Code of Conduct by which registered tax agents must comply with.
- 2.10 Clause 10 of the Bill amends section 114 of the Decree so that tax agents comply with a code of conduct, the failure of which results in the cancellation of their licences.
- 2.11 Clause 11 of the Bill amends Part II of the Decree by inserting a new division after Division X to make provisions for the issuance of a Tax Compliance Certificate.

### **3.0 MINISTERIAL RESPONSIBILITY**

- 3.1 The Decree comes under the responsibility of the Minister for Finance.

A. SAYED-KHAIYUM  
Attorney-General