

BILL NO. 30 OF 2015

A BILL

FOR AN ACT TO AMEND THE CUSTOMS ACT 1986

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

- 1.—(1) This Act may be cited as the Customs (Budget Amendment) Act 2015.
- (2) This Act shall come into force on 6 November 2015.
- (3) In this Act, the Customs Act 1986 shall be referred to as the “Principal Act”.

Section 2 amended

2. Section 2 of the Principal Act is amended by—
 - (a) deleting the definitions of “dispute”, “duty suspension scheme” and “Exporters Club”; and
 - (b) inserting the following new definition after the definition of “customs enclosed area”—

“Customs dog” means a dog that is being used or intended to be used by Customs;”

Section 8 amended

3. Section 8 of the Principal Act is amended in subsection (2) by deleting paragraph (h).

Part 7B deleted

4. The Principal Act is amended by deleting Part 7B.

Section 24 amended

5. Section 24 of the Principal Act is amended in subsection (4) by deleting “or other goods entered under the duty suspension scheme”.

Section 37 amended

6. Section 37 of the Principal Act is amended in subsection (2)—

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

(b) adding the following paragraphs after paragraph (d)—

“(e) the warehouse shall be certified by the Occupational Health and Safety standards; and

(f) the warehouse shall be certified by the National Fire Authority for proper safety standards.”

Section 67 amended

7. Section 67 of the Principal Act is amended in subsection (1) by deleting paragraph (i).

Section 92 amended

8. The Principal Act is amended—

(a) in subsection (6) by deleting “or under Part 7B of this Act;”; and

(b) by inserting the following subsections after subsection (9A)—

“(10) The owner of the goods may make advance payments of duty to a prepayment facility provided by Customs.

(11) The Comptroller may deduct the duty from the prepayment facility upon importation of the goods.

(12) The Comptroller may, subject to such terms and conditions as he or she may impose, approve any person or class of persons as persons who may defer the payment of duty due and, for that purpose, may determine a duty accounting period, and may suspend or withdraw that approval, or vary any term or condition under which the approval is given or vary the duty accounting period.

(13) Where the Comptroller makes any decision under subsection (12), the persons or class of persons affected shall be advised of the decision by notice in writing.

(14) Where any duty the payment of which has been deferred in accordance with subsection (12) remains unpaid by the due date for payment, there shall be imposed—

- (a) additional duty of 5% of the amount of duty unpaid by the due date;
- (b) additional duty of 2% of the amount of duty, including additional duty, unpaid at the end of the period of 1 month after the due date; and
- (c) additional duty of 2% of the amount of duty, including additional duty, unpaid at the end of each succeeding period of 1 month.

(15) Notwithstanding subsection (15), the Comptroller may, in his or her discretion, remit or refund the whole or any part of any additional duty imposed under subsection (15).

(16) Where, for any reason the amount of duty in respect of which additional duty has been imposed under subsection (15) is amended, the additional duty shall, where necessary, be adjusted accordingly.

(17) A person liable for the payment of duty and who is dissatisfied with a decision of the Comptroller under subsection (15) may, within 20 working days after the date on which notice of the decision was given, appeal to a Court of Review against that decision.”

Section 95 amended

9. Section 95 of the Principal Act is amended in subsection (2) by deleting “until that debt is paid” and substituting “in the manner specified in section 95A1”.

Insertion of section 95A1

10. The Principal Act is amended by inserting the following section after section 95A—

“Dealing with goods subject to lien

95A1.—(1) For any good subject to a lien under section 95(2), the Comptroller may detain the goods and recover the debt,—

- (i) within 1 year, for perishable goods; and
- (ii) within 3 years, for any other goods.

(2) If the Comptroller is unable to recover the debt due within the specified time stated in subsection (2), for any goods subject to a lien, the Comptroller may determine the manner in which the goods are to be disposed.”

Section 96 amended

11. Section 96 of the Principal Act is amended by inserting the following subsection after subsection (5)—

“(6) Notwithstanding anything in any other tax law, the Comptroller may refrain from collecting or refunding tax if the amount of tax to be collected or refunded does not exceed \$10.”

Insertion of section 101B

12. The Principal Act is amended by inserting the following section after section 101A—

“Extension of time to pay tax

“101B.—(1) Any importer, exporter or licensee may apply, in writing to the Comptroller for an extension of time to pay duty after an audit and investigation under a Customs law.

(2) If an application has been made under this section, the Comptroller may, having regard to the circumstances of the case—

(a) grant the importer, exporter or licensee an extension of time payment of the duty payable; or

(b) require the importer, exporter or licensee to pay the duty payable in such installments as the Comptroller may determine,

and the Comptroller must serve the taxpayer with written notice of the decision.”

Section 109 amended

13. Section 109 of the Principal Act is amended by adding the following subsection after subsection (1)—

“(1A) Any proper officer who conducts a search under this section, may use a Customs dog, where necessary or reasonably required.”

Section 114 amended

14. Section 114 of the Principal Act is amended by adding the following subsection after subsection (2)—

“(3) Any examination specified in subsections (1) and (2), may be facilitated by a Customs dog.”

Insertion of section 122A

15. The Principal Act is amended by inserting the following section after section 122—

“Use of Customs dog by Customs officer

122A.—(1) In exercising any power of boarding, entry or search conferred under this Act, a proper officer may use a Customs dog to assist in searches.

(2) Nothing in this section applies to search carried out on any premises except pursuant to a warrant.”

Section 123 amended

16. Section 123 of the Principal Act is amended—

- (a) by deleting “(e)” and substituting “(g)”;
- (b) in paragraph (d) by deleting “or” after “;”;
- (c) by inserting the following new paragraphs after paragraph (d)—
 - “(e) intentionally interferes with a customs dog used or intended for use, by Customs;
 - (f) does any act with the intention of impairing the effectiveness of a customs dog used, or intended for use, by Customs; or”.

Insertion of section 123A

17. The Principal Act is amended by adding the following section after section 123—

“Killing or injuring customs dog

123A.—(1) Any person who intentionally kills, maims, wounds or otherwise injures a customs dog without lawful authority or reasonable excuse commits an offence.

(2) Every person who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 2 years, or to a fine not exceeding \$15,000, or to both.”

Insertion of section 137E

18. The Principal Act is amended by inserting the following section after section 137D—

“Price of goods to reflect duty decrease

137E.—(1) If the percentage of duty decreases, all persons in the supply chain to the ultimate consumer must reflect the actual percentage duty decrease in the sale price of the goods.

(2) The onus of proving that the price at which the goods are sold reflects the actual percentage duty decrease shall be on the person selling the goods at any stage of the supply chain.

(3) A person who fails to comply with subsection (1) shall be liable to a fine not exceeding \$50,000 which must be payable by that person within 21 days of notification by the Chief Executive Officer.

(4) A person who fails to pay the fine as prescribed in subsection (3) within the time period prescribed in subsection (3), shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years.

(5) The Minister may make regulations prescribing fines for the purpose of subsection (3).”

Section 184 deleted

19. The Principal Act is amended by deleting section 184.

Repeal

20. The Customs (Duty Suspension Scheme) Regulations 2002 are repealed.

CUSTOMS (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 This Bill seeks to amend the Customs Act 1986 (**‘Principal Act’**) and includes changes the Minister for Finance announced in the 2016 Budget announcement, to the Principal Act, which shall come into force on 6 November 2015.

2.0 CLAUSES

- 2.1 Clause 1 provides for the short title and commencement provision.
- 2.2 Clause 2 amends section 2 of the Principal Act by deleting the definitions of “dispute”, “duty suspension scheme” and “Exports Club” and inserting the definition of “Customs dog”.
- 2.3 Clause 3 amends section 8(2) of the Principal Act by deleting paragraph (h) which makes reference to “duty suspension scheme”.
- 2.4 Clause 4 amends the Principal Act by deleting Part 7B.
- 2.5 Clause 5 amends the Principal Act in section 24(4) by deleting associated reference to “duty suspension scheme”.
- 2.6 Clause 6 amends section 37 of the Principal Act by including the requirements of compliance with Occupational Health and Safety standards and National Fire Authority of Fiji standards, for the purposes of licensing a bonded warehouse.
- 2.7 Clause 7 amends section 67(1) of the Principal Act by deleting paragraph (i) which makes reference to “Duty Suspension Scheme”.
- 2.8 Clause 8 amends section 92 of the Principal Act to allow for a prepayment facility as a form of advance payment of duty. Clause 8 further amends section 92 of the Principal Act to allow for deferred payments, subject to terms and conditions as imposed by the Comptroller.

- 2.9 Clause 9 amends section 95 of the Principal Act by making reference to the new section 95A1 in relation to the manner in which a good under section 95 may be detained.
- 2.10 Clause 10 amends the Principal Act by adding a new section 95A1 to ensure that for goods which are subject to lien, the owner of the goods within a specified period pays the duty in full.
- 2.11 Clause 11 amends section 96 of the Principal Act to provide for when a Comptroller may refrain from refunding or collecting any duty of \$10 or less.
- 2.12 Clause 12 adds a new section 101B to the Principal Act to allow for an extension of time for the owner of the goods to make payments for any duty liability arising out of an audit or investigation.
- 2.13 Clause 13 amends section 109 of the Principal Act to allow proper officers to use a Customs dog to assist in search during detention of persons or packages.
- 2.14 Clause 14 amends section 114 of the Principal Act to allow a Customs officer to use a Customs dog to assist in examination of goods.
- 2.15 Clause 15 adds a new section 122A to the Principal Act to give power to a Customs officer to use a Customs dog in boarding, search, examination or entry as determined under the Principal Act.
- 2.16 Clause 16 amends section 123 of the Principal Act to make it an offence for anyone who interferes or intentionally impairs a Customs dog from carrying out or assisting in, any search under this Act.
- 2.17 Clause 17 adds a new section 123A to the Principal Act by making it an offence for anyone who kills or injures a Customs dog without lawful authority or reasonable excuse.
- 2.18 Clause 18 amends the Principal Act by inserting a new section 137E which makes it an offence for any person who fails to sell goods at prices with chargeable tax reflective of a decrease in the percentage of duty or concessionary rate existing at the time of clearance from Customs control.
- 2.19 Clause 19 amends the Principal Act by deleting section 184.
- 2.20 Clause 20 amends the Principal Act by repealing the Customs (Duty Suspension Scheme) Regulations 2002.
- 3.0 MINISTERIAL RESPONSIBILITY**
- 3.1 The Principal Act comes under the responsibility of the Minister responsible for Finance.

A. SAYED-KHAIYUM
Attorney-General