

BILL NO. 50 OF 2016

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 2016.
- (2) This Act comes into force on 23 June 2016.
- (3) In this Act, the Customs Act 1986 is referred to as the “Principal Act”.

Section 2 amended

2. Section 2 of the Principal Act is amended by inserting the following new definitions—

““authorised officer”, for the purpose of downtown duty free shops, means an officer identified by the licensee of a downtown duty free shop and approved by the Comptroller to remove goods from a customs area;

“downtown duty free shop” means a place licensed as a downtown duty free shop by the Comptroller under section 63K;”

Section 8 amended

3. Section 8(2) of the Principal Act is amended by—

- (a) in paragraph (n), deleting “.” and substituting “;”; and
- (b) inserting the following new paragraph after paragraph (n)—

“(o) all goods being transferred from a bonded or excise warehouse to a downtown duty free shop.”

Section 24 amended

4. Section 24 of the Principal Act is amended by inserting the following new subsection after subsection (2)—

“(2A) A person who is an authorised officer shall deliver the goods entered under subsections (1) and (2) or cause such goods to be delivered from a customs area or bonded warehouse to a downtown duty free shop.”

New Part 9B inserted

5. The Principal Act is amended by inserting the following new part after Part 9A—

“Part 9B—Provisions relating to downtown duty free shops

Licensing of downtown duty free shop

63K. The Comptroller may, where he or she deems it necessary or desirable to do so and upon payment of the prescribed fee, issue a licence to any person qualified to operate a downtown duty free shop.

Comptroller may impose conditions on downtown duty free shop

63L. The Comptroller may, at any time, impose conditions that in the Comptroller’s opinion is necessary for the protection of revenue or for the purpose of ensuring compliance with the Act, and may at any time revoke, suspend or vary a condition so imposed.

Goods must be sold for exports

63M. All goods which are not subject to duty and are to be sold at a downtown duty free shop, shall be sold at duty free prices to a relevant traveller for exportation from Fiji.

Comptroller to have access to goods in downtown duty free shop

63N. A downtown duty free shop owner shall, where a proper officer requests, provide free access to the downtown duty free shop or any premises attached to it, and allow the proper officer to open and inspect any package or container of goods.

Regulations

63O. The Minister may make regulations prescribing matters that are required to be prescribed or are necessary or convenient to be prescribed for the regulation of downtown duty free shops, including but not limited to—

- (a) licensing terms or conditions issued by the Comptroller;
- (b) procedures or guidelines;

- (c) offences for failure to comply with any term or condition issued by the Comptroller or any requirement in the regulations;
- (d) penalties for offences committed under any regulations prescribed under this section, with fines not exceeding \$200,000 or imprisonment for terms not exceeding 10 years, or both.”

Section 95 amended

6. Section 95 of the Principal Act is amended by inserting the following new subsections after subsection (5)—

“(6) Any duty, charge, penalty or fee payable by an importer or exporter under this Act is a charge upon the real or personal property of the importer or exporter and shall be dealt with in accordance with section 28 of the Tax Administration Decree 2009, as the case may be.

(7) The Comptroller may determine the manner in which the property under subsection (6) is to be disposed.”

Section 95A1 amended

7. Section 95A(1) of the Act is amended by deleting paragraphs (i) and (ii) and substituting “within a period as the Comptroller may consider reasonable having regard to the condition of the goods”.

Section 98 amended

8. Section 98 of the Act is amended by deleting “\$20” and substituting “\$50”.

Insertion of new section 137F

9. The Principal Act is amended by inserting the following new section after section 137E—

“Duty protection

137F.—(1) Where a producer, manufacturer or supplier is granted any duty protection under this Act, the producer, manufacturer or supplier shall not increase the price of goods unless prior approval of the permanent secretary responsible for finance and the Authority obtained.

(2) Any person who fails to comply with subsection (1) shall be liable upon conviction to a fine not exceeding \$100,000 or imprisonment for a term not exceeding 10 years, or to both”.

Insertion of new Part 19A

10. The Principal Act is amended by inserting a new part after Part 19—

“Part 19A—Customs Rulings

Application for customs ruling

154A.—(1) A person may make an application in respect of particular goods specified in the application, to the Comptroller for a Customs ruling in respect of any one or more of the following matters—

- (a) the Tariff Classification of those goods under the Schedule of Customs Tariff Act 1986;

- (b) the excise classification of those goods under the Schedule of the Excise Act 1986;
- (c) the rules of origin of those goods under the Schedule to the Customs Tariff Act 1986;
- (d) the valuation of those goods under the Schedule to the Customs Tariff Act 1986; and
- (e) in the case of an application made under section 15A(3), make a Customs ruling in respect of the particular matter specified in the application.

(2) The Comptroller shall make a Customs ruling under subsection (1) within such time or times as may be prescribed after receipt of—

- (a) in the case of an application under section 154A(1)—
 - (i) a properly completed application in respect of particular goods; and
 - (ii) the goods or a sample of the goods unless the Comptroller has agreed not to require receipt of the goods;
- (b) all information that the Comptroller considers relevant to a proper consideration of the application; and
- (c) payment of the prescribed fee by the Comptroller.

(3) A Customs ruling may be made subject to such conditions as the Comptroller thinks fit.

(4) The Comptroller may decline to make a Customs ruling if, in the Comptroller opinion, he or she has insufficient information to do so.

Notice of Customs ruling

154B. The Comptroller shall promptly give notice in writing to the applicant of—

- (a) a Customs ruling, together with the reasons for the ruling, and the conditions (if any) to which it is subject; or
- (b) a decision to decline to make a Customs ruling, together with the reasons for that decision.

Effect of Customs ruling

154C.—(1) Subject to section 154D, a Customs ruling in respect of particular goods is conclusive evidence for the purposes of this Act, that the goods—

- (a) have a particular tariff classification under the Schedule to the Customs Tariff Act 1986;
- (b) have a particular excise classification under the Schedule to the Excise Act 1986;

- (c) are or are not, as the case may be in accordance with applicable regulations made under this Act, the produce or manufacture of a particular or group of countries, for the purposes of the Customs Tariff Act 1986;
- (d) are or are not, as the case may be, subject to a specified duty concession under the Schedule of the Customs Tariff Act 1986; or
- (e) under the Schedule to the Customs Tariff Act 1986 of rules of origin or valuation.

(2) Subject to section 154B, a Customs ruling in respect of a particular matter in which a ruling has been given under section 154A(1)(b) is conclusive evidence for the purposes of this Act and, where applicable the Customs Tariff Act 1986 or Excise Act 1986 in which the ruling was made in relation to that matter.

Confirmation of basis of Customs ruling

154D. At any time after a Customs ruling is made, the Comptroller may by notice in writing, require the applicant to satisfy the Comptroller in such manner and within 20 working days or such longer period as the Comptroller considers appropriate that—

- (a) the facts or information on which the Customs ruling was made remain correct; and
- (b) any conditions on which the Customs ruling was made have been complied with.

Amendment of Customs ruling

154E.—(1) The Comptroller may from time to time amend a Customs ruling to correct any error contained in the ruling.

(2) The Comptroller shall, promptly after making the amendment, give notice in writing to the applicant of the amended Customs ruling and, subject to subsection (3), the ruling as amended shall be applied to the applicant as from the date on which notice of the amendment was given to the applicant.

(3) Notwithstanding subsection (2), if the amendment to the ruling has the effect of increasing any duty liability in respect of any goods—

- (a) where the goods are imported within 3 months of the date notice of the amendment is given, pursuant to a binding contract entered into before that date;
- (b) where the goods have left the place of manufacture or warehouse in the country from which they are being exported for direct shipment to Fiji at the date notice of the amendment of the ruling is given; or
- (c) where the goods are imported on or before the date notice of the amendment is given but have not been entered for home consumption,

then the ruling as given prior to amendment under this section shall be applied to those goods.

(4) Notwithstanding subsection (2), if the amendment to the ruling has the effect of decreasing any duty liability in respect of any goods, then the provisions of section 92 shall apply as if the higher duty had been paid in error.

Cessation of Customs ruling

154F.—(1) A Customs ruling ceases to have effect on the earliest to occur of the following dates—

- (a) the date on which any information on which the Customs ruling was made ceases to be correct in all material respects;
- (b) the date of a material change in any of the information or facts on which the Customs ruling was made;
- (c) the date of a material change in the Customs Tariff Act 1986, if that date occurs prior to importation or manufacture of the relevant goods, as the case may be;
- (d) the date on which any of the conditions to which the Customs ruling was made subject cease to be met or complied with;
- (e) the date of a failure to satisfy the requirements of the Comptroller under section 154C; or
- (f) the date of expiry of 3 years from the date that notice of the Customs ruling under section 154D, is given to the applicant.

(2) A Customs ruling shall not come into effect if—

- (a) information on which it was made is incorrect in all material respects; or
- (b) a material change has occurred in any information or facts which it was made.

Appeal from decision of Comptroller

154G. An applicant who is dissatisfied with a Customs ruling, or a decision to decline to make a Customs ruling, or a decision to amend a Customs ruling, under this Part may within 28 working days after the date on which notice of the ruling or decision is given, appeal to a Court of Review against that ruling or decision.

No liability where Customs ruling relied on

154H.—(1) Where an applicant has relied on a Customs ruling in relation to specific goods or a specific matter, and, as a result—

- (a) the applicant has not paid the amount of duty that, but for this section, is payable on the goods;
- (b) the applicant would, but for this section, be liable to the imposition of a penalty under section 137; or

(c) goods, but for this section, would be liable to seizure under this Act, the amount of the duty otherwise payable is not recoverable as a debt due to the State and no penalty shall be imposed under section 137 and the goods shall not be liable to seizure under this Act, as the case may be.

(2) Subsection (1) applies only in relation to a matter on which the Customs ruling was given and where the Customs ruling has not ceased under section 154F of this Act, and in accordance with any amendment to a Customs ruling that the applicant has received notice under section 154D.”

Section 159 amended

11. Section 159 of the Principal Act is amended by deleting “and after they have been condemned by a competent court shall be forfeited to the government”.

CUSTOMS (BUDGET AMENDMENT) BILL 2016

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 Customs (Budget Amendment) Bill 2016 (**'Bill'**) seeks to amend the Customs Act 1986 (**'Act'**).

2.0 CLAUSES

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

2.2 Clause 2 of the Bill amends section 2 of the Act, by inserting new definitions of "authorised officer" and "downtown duty free shop".

2.3 Clause 3 of the Bill amends section 8 of the Act, by adding a new paragraph (o) to include goods transferred from a bonded or excise warehouse to a downtown duty free shop as goods subject to customs control.

2.4 Clause 4 of the Bill amends section 24 of the Act by adding a new subsection after subsection (2) to state that goods can only be removed by an authorised person from the customs area or bonded warehouse to a downtown duty free shop.

2.5 Clause 5 of the Bill amends the Act by inserting a new part after Part 9A, with provisions relating to the regulation of downtown duty free shops.

2.6 Clause 6 of the Bill amends section 95 of the Act to specify that any duty, charge, penalty or fee payable is a charge upon real or personal property of an importer or exporter. It further provides that the Comptroller may determine the manner in which such property may be disposed.

2.7 Clause 7 of the Bill amends section 95A of the Act by removing the one and three year limits for detaining perishable and non-perishable goods respectively, and gives the Comptroller the power to determine the period for detaining such goods, subject to the condition of the goods.

- 2.8 Clause 8 of the Bill amends section 98 of the Act in relation to claims for draw back by deleting the maximum claim for drawback amount of \$20 and substituting with \$50.
- 2.9 Clause 9 of the Bill is amended by inserting a new section that requires the prior approval of the permanent secretary responsible for finance and the Authority before any increase to the price of a good can be made for a producer, manufacture or supplier granted duty protection.
- 2.10 Clause 10 of the Bill amends the Act by inserting a new part after Part 19 relating to Customs rulings, to align to the requirements of the World Custom Organisation and World Trade Organisation to provide advance tarrif rulings, rules of origin of goods and valuation in order to facilitate global trade. The new part includes provisions on the following:
- (a) allows for a person to apply to the Comptroller for a Customs Rulings on tariff or excise classification under the respective Customs Tariff Act 1986 or Excise Act 1986;
 - (b) the Comptroller to give written notification to the applicant of the Customs ruling or if the Comptroller declines issuing a ruling together with the reasons;
 - (c) binding effect of the Customs ruling on the Comptroller;
 - (d) confirmation of Customs rulings;
 - (e) allows the amendment of a Customs ruling due to any error contained in the Customs ruling; and
 - (f) allows an applicant to appeal a ruling of the Comptroller within the prescribed time if the applicant is dissatisfied with the decision of the Comptroller.
- 2.11 Clause 11 of the Bill amends section 159 of the Act by allowing the Comptroller to dispose of assets which have been seized.

3.0 MINISTERIAL RESPONSIBILTY

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