



## Tax Administration (Budget Amendment) Bill 2017

Bill No. 20 of 2017

### Introduction

The **Taxation Administration (Budget Amendment) Bill 2017** ('Bill') seeks to amend the *Tax Administration Act 2009* ('the Act') and the *Gambling Turnover Tax Act 1991*.

### Objectives, scope and intent of the Bill

The objective of the Bill is to amend the principal Act effect certain policy changes introduced by the 2017-2018 Budget by:

- inserting references to the Environment and Climate Adaptation Levy, the *Superyacht Charter Act 2010* and the *Airport Departure Tax Act 1986*;
- introducing powers for tax officers to enter and search for the purposes of administering tax law;
- extending the amnesty period on foreign assets and tax returns prior to November 2015;
- increasing penalties for various offences;

The Bill also amends the *Gambling Turnover Tax Act 1991* to increase the penalty for accountable person who fail to apply for registration under the Act.

### Summary of provisions

**Clause 1** provides for the short title and commencement. If passed by Parliament, the amending legislation will come into force on 1 August 2017.

**Clause 2** will insert a definition of 'Environment and Climate Adaptation Levy' into section 2 of the Act. It will mean 'the Environment and Climate Adaptation Levy payable under the Environment and Climate Adaptation Levy Act 2015 and the *Superyacht Charter Act 2010*'.

**Clause 3** amends section 22(3) of the principal Act as follows (deletion are struck out, amendments are in bold):

*Tax is a debt due to the State*

[..] 22(3) An amount of-

[..] (c) withholding tax collected by a person under the *Income Tax Act 2015*; ~~or~~

(d) ~~service turnover tax~~ **STT** collected by an accountable person under the Service Turnover Tax Act 2012

**(e) Environment and Climate Adaptation Levy; or**

**(f) Airport Departure Tax,**

**Clause 4** amends section 32(1) of the principal Act as follows:

*Temporary closure of business*

32(1) If a taxpayer fails-

(a) To file a return required to be filed under Section 33 of the Value Added Tax Act 1991, section 5(1)(b) of the Gambling Turnover Tax Act 1991, of section



4(1)(b) of the Service Turnover Tax Act 2012, **or the Environment and Climate Adaptation Levy Act 2015, or the Superyacht Charter Act 2010, or the Airport Departure Tax Act 1986**, or section 131 of the Income Tax Act 2015

- (b) To pay VAT, gambling turnover tax, ~~service turnover tax~~ **STT, Environment and Climate Adaptation Levy, Airport Departure Tax**, fringe benefit tax or tax withheld from salary or wages

**Clause 5** amends section 35 of the principal Act **to allow for search warrants to effect the powers under that section**, as follows:

*Power to enter and search*

35(1) For the purposes of administering any tax law with respect to a taxpayers, the CEO of tax officer authorised by the SEO, in writing, for the purposes of this section-

[..] (d) may retain any accounts, documents, or records seized under paragraph (c) for as long as they may be required for determining a taxpayer's tax liability or for any proceeding under a tax law; ~~and~~

(e) may, if a hard or electronic copy of information stored on a data storage device is not provided, seize and retain the device for as long as is necessary to copy the information required; **and**

**(f) may, so far as is reasonably necessary for the purposes in the preceding paragraphs, break open any door, window or container and force and remove any other impediment or obstruction, provided that entry shall not be made at night except in the company of a police officer.**

**(3A) Without prejudice to any other power under any tax law, where the CEO or authorised tax officer declares on oath before a Magistrate that he or she has reasonable grounds to exercise the powers under subsection (1), the Magistrate may by warrant under his or her hand, authorise the CEO or authorised tax officer to exercise the powers under subsection (1) with such force as may be necessary, by day or by night.**

**Clause 6** amends section 48(A) of the principal Act to extend the amnesty period to 31 December 2017.

In 2015, all Fijians who had assets outside Fiji or income derived from such assets ('**foreign assets**') and have not declared their foreign assets or income with the Fiji Revenue and Customs Authority ('**FRCA**') were given an initial amnesty period from 1 January 2015 to 15 October 2015 upon which they could declare their foreign assets without any tax liability, penalty or ne on the foreign assets. The amendment extends the amnesty period to 31 December 2017 to allow an additional grace period for Fijians to continue to come forward to correctly declare their foreign assets to FRCA.

The section is amended as follows:

*Waiver of tax during amnesty period*

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

amnesty means the waiver of any tax payable in respect of any foreign asset, including any interest accrued from, or any penalty or fine imposed, in respect of such tax for any period provided that the tax period is prior to ~~1 January 2016~~ **1 January 2018**;

amnesty period means the period commencing on and from 1 January 2015 to ~~15 October 2015~~ **31 December 2017**;



**Clause 7** amends section 48C to extend the amnesty period to 31 December 2017.

In 2015, all Fijians who failed to file a tax return and pay chargeable taxes under any tax law prior to 1 November 2015 obtained an amnesty if they filed their tax returns and paid their taxes during the amnesty period from 6 November 2015 to 31 December 2015. The amendment extends the amnesty period to 31 December 2017 to allow an additional grace period for Fijians to come forward, register, file their tax returns and pay their taxes, provided that their annual gross turnover does not exceed \$1.5 million. The amendment also applies to those who have filed their tax returns but wish to make amendments to their tax returns in order to pay their taxes.

The section is amended as follows:

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

48C (1) Notwithstanding any other provision in this Act, 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~~ **1 July 2017 or who has led a tax return but wishes to make an amendment to the tax return so led in order to pay the correct chargeable taxes** shall be deemed to have obtained amnesty, if the qualifying persons on who 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~~ **1 July 2017**;

amnesty period means the period commencing on and from ~~6 November 2015 to 31 December 2015~~ **30 June 2017 to 31 December 2017**; and

qualifying person means ~~a person who is a tax resident and Fijian citizen, required to file a tax return under any law~~ means a person—

**(a) who is a tax resident and Fijian citizen;**

**(b) who is required to file a tax return under any tax law; and**

**(c) whose annual gross turnover is less than \$1.5 million.**

**Clauses 8** amends section 49(1) to increase the **penalty for failing to file a tax return by the due date**, from ‘a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months (or both)’, to ‘a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years (or both)’.

**Clause 9** amends section 50(1) to increase the **penalty for failing to comply with obligations under the Act** from ‘a fine not exceeding \$15,000, or imprisonment for a term not exceeding 12 months (or both)’, to ‘a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years (or both)’.

**Clause 10** amends section 51 to increase the **penalty for failing to maintain proper records** from ‘a fine not exceeding \$15,000, or imprisonment for a term not exceeding 12 months (or both)’, to ‘a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years (or both)’.

**Clause 11** amends section 52 to increase the **penalty for improper use of taxpayer identification number** from ‘a fine not exceeding \$10,000, or imprisonment for a term not exceeding 12 months (or both)’, to ‘a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years (or both)’.

**Clause 12** amends section 53(1) to increase the **penalty for making a false or misleading statement**, from ‘a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 24 months (or both)’,



to 'a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years (or both)'.

**Clause 13** amends section 52 to increase the **penalty for obstruction of a tax officer**, from 'a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 24 months (or both)', to 'a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years (or both)'.

**Clause 14** amends section 56 to increase **the penalty for rescuing seized goods** from 'a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 12 months (or both)', to 'a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years (or both)'.

**Clause 15** amends section 57(2), (3), (4) and (5) to **increase the penalty for offences by tax officers** from 'a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 24 months (or both)', to 'a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years (or both)'.

**Clause 16** adds a new section after section 58 to introduce an obligation for the price of all goods and services supplied at the retail level for customers is displayed as inclusive of all applicable taxes, as follows:

***Offence for failure to display tax***

**58A (1) A taxpayer must ensure that the price of all goods and services supplied at the retail level for its customers is displayed as inclusive of all applicable taxes.**

**(2) A taxpayer who fails to display any chargeable tax as required under a tax law commits an offence and is liable for a ne not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years or to both a ne and imprisonment.**

**Clause 17** amends section 60(1) as follows:

***General provisions relating to offences***

60(1) The prosecution of an offence under a tax law may be instituted at any time ~~within 7 years~~ after the commission of the offence.

**Clause 18** amends section 93(6)(c) to increase the **penalty for failing to comply with a compliance order made by the Tax Court**, from 'a penalty in a sum not exceeding \$10,000 or to be sentenced to imprisonment for a term not exceeding 3 months', to 'a penalty in a sum not exceeding \$25,000 or to be sentenced to imprisonment for a term not exceeding 10 years'.

**Clause 19** amends section 98(4) to increase the **penalty for contempt** from 'a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 3 months (or both)', to 'a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years (or both)'.

**Clause 20** amends section 111 (which concerns the appointment of members of the Tax Agents' Board) by deleting "Permanent Secretary" wherever it appears and substituting "CEO". The chairperson of the Tax Agents' Board is changed from the Permanent Secretary for Economy or his or her representative to the Chief Executive Officer of FRCA or his or her representative for ease of administration.

**Clause 21** amends section 116 to increase the **penalty for offences relating to a tax agent's registration** from 'a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 24 months (or both)', to 'a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 10 years (or both)'.

**Clause 22** amends Schedule 2 of the principal Act (which outlines the tax laws of Fiji for the purpose of this Act) by adding:

**"(e) the Environment and Climate Adaptation Levy Act 2015" [...]**



**“(g) the Superyacht Charter Act 2010;  
(ga) the Airport Departure Tax Act 1986;”.**

**Clause 23** amends Schedule 3 (which deals with tax returns) by inserting the following new paragraphs—

**“(7) A return and payment required under the Environment and Climate Adaptation Levy Act 2015.**

**(8) A return and payment required under the Superyacht Charter Act 2010.**

**(9) A return and payment required under the Airport Departure Tax Act 1986.”**

**Clause 24** amends the section 6(5) of the *Gambling Turnover Tax Act 1991* to increase the penalty for accountable persons who fail to apply for registration from a fine of \$1,000 to a fine not exceeding \$25,000.

## Gender analysis

The Bill does not appear have any disproportionate impact on women or men.

## Sources

- Laws of Fiji (2016), *the Tax Administration Act 2009*, Volume 9. Hardcopy available at the Parliament Library.
- *Taxation Administration (Budget Amendment) Bill 2017*. Available at <http://www.parliament.gov.fj/bills/> [Accessed 4 July 2017]

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