

BILL NO. 17 OF 2016

A BILL

FOR AN ACT TO EXEMPT TAXES AND PROVIDE EFFICIENT ENTRY ASSISTANCE FOR DIPLOMATIC MISSIONS, INTERNATIONAL ORGANISATIONS AND INTERNATIONAL BODIES AND FOR OTHER RELATED MATTERS

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

1.—(1) This Act may be cited as the Diplomatic Missions and International Organisations Act 2016.

(2) This Act comes into force on the date or dates appointed by the Prime Minister by notice published in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires—

“Authority” means the Fiji Revenue and Customs Authority established under section 3 of the Fiji Revenue and Customs Authority Act 1998;

2 *Diplomatic Missions and International Organisations— of 2016*

“exemption” means an exemption under section 8 of the Immigration Act 2003 from the requirement to obtain a permit to—

- (a) enter, reside or work in Fiji, for an individual employed or engaged by an organisation; and
- (b) enter and reside in Fiji, for a member of the family of an individual employed or engaged by an organisation;

“Government” means the Government of the Republic of Fiji or the Republic of Fiji;

“international body” means an international body established or provided for under a particular treaty or convention which the Government is a party to and has ratified;

“international organisation” means—

- (a) an organisation declared under section 6 of the Diplomatic Privileges and Immunities Act (Cap. 8); and
- (b) a person prescribed by regulations;

“member of the family” includes an individual listed by a State, international organisation or international body in a statutory declaration made pursuant to section 5;

“members of a mission” means the head of the mission and the members of the staff of the mission as provided for under the Vienna Convention on Diplomatic Relations of 1961;

“Minister for Immigration” means the Minister responsible for immigration;

“mission” means the diplomatic mission of a State;

“organisation” means—

- (a) a mission;
- (b) an international organisation; and
- (c) an international body;

“Prime Minister” means the head of the Government of the Republic of Fiji; and

“State” means a foreign State or country.

Exemption for an organisation from taxes

3.—(1) Notwithstanding any written law, subject to subsection (2) the following may be exempt from any tax, tariff, fee, levy or duty imposed by the Authority—

- (a) a mission, to the extent specified under the Diplomatic Privileges and Immunities Act (Cap. 8);

- (b) an international organisation, to the extent specified in an agreement approved by Cabinet between the international organisation and the Government; and
 - (c) an international body, to the extent specified under the treaty or convention to which the Government is a party to and has ratified.
- (2) The Prime Minister must, in accordance with the relevant conventions, treaties or agreements, by written notice to the Authority, issue a list of—
- (a) the organisations which are eligible for an exemption under subsection (1); and
 - (b) the specific types of tax, tariff, fees, levies or duties imposed by the Authority that the relevant organisations are exempt from.

Right to enter and reside in Fiji

4.—(1) Notwithstanding any written law, for the purposes of entering and residing in Fiji, individuals employed or engaged by an organisation and members of the family of that individual, may be granted an exemption.

(2) An exemption issued to an individual or a member of the family of an individual under this section, will only be valid for the duration of the engagement or employment of that individual by an organisation.

Application for an exemption

5.—(1) An application for an exemption for the purposes of section 4 must be made to the Prime Minister in a statutory declaration by—

- (a) the State, for an individual who is a member of a mission and the members of the individual's family;
 - (b) the relevant international organisation, for an individual employed or engaged by an international organisation and the members of the individual's family; or
 - (c) the international body, for an individual employed or engaged by an international body and the members of the individual's family.
- (2) A statutory declaration made under subsection (1) must—
- (a) be made in the form prescribed by regulations;
 - (b) be made for each individual employed or engaged by an organisation;
 - (c) include the names and details of the members of the family, for each individual employed or engaged by that organisation; and
 - (d) include other documentary information required by the Prime Minister to determine the application.

(3) A statutory declaration made under this section may be submitted to the Prime Minister by electronic means.

(4) The State, international organisation or international body which has submitted a statutory declaration under subsection (2), must submit a new statutory declaration whenever the name, status or details of an individual listed in a previously submitted statutory declaration changes.

Processing of application for an exemption

6.—(1) The Prime Minister may, upon receiving a statutory declaration made in accordance with section 5—

- (a) forward the statutory declaration to the Minister for Immigration, if the Prime Minister is satisfied that the requirements in this Act have been complied with; or
- (b) decline the issuance of an exemption and inform the organisation accordingly, if the Prime Minister is not satisfied that the requirements under section 5(2) have been complied with.

(2) The Prime Minister when forwarding a statutory declaration to the Minister for Immigration in accordance with subsection (1)(a), must include the following details—

- (a) the period within which the exemption must be issued;
- (b) any terms and conditions to be attached to the exemption; and
- (c) any further information necessary for the proper facilitation of the exemption.

Issuance of an exemption

7. The Minister for Immigration, following receipt of a statutory declaration under section 6(2), must immediately issue an exemption under section 8 of the Immigration Act 2003.

Revocation of an exemption

8.—(1) Upon the issuance of an exemption under section 8 of the Immigration Act 2003, where the Prime Minister has reason to believe that a statutory declaration contains information that is either out-dated or false, the Prime Minister must immediately authorise an inquiry into the matter.

(2) The Prime Minister may, following an inquiry under subsection (1)—

- (a) direct the Minister for Immigration to revoke the relevant exemption; or
- (b) inform the relevant State, international organisation or international body to update their statutory declaration accordingly.

(3) Where an exemption is revoked in accordance with this section, the revocation takes effect immediately or at a later time approved by the Prime Minister in consultation with the Minister for Immigration.

(4) Where the revocation of an exemption is in force, the relevant individual and the members of the family of that individual will be treated as individuals whose presence in Fiji is unlawful.

Consequential amendment

9. The Immigration Act 2003 is amended in section 8 by inserting the following new subsection after subsection (2)—

“(2A) Notwithstanding the provisions of this Act, for the purposes of subsection (2) in relation to subsection (1)(d) and (e), a “member of the family” has the same meaning as defined under the Diplomatic Missions and International Organisations Act 2016.”

Act to prevail

10. This Act has effect notwithstanding any provision of any other written law, and accordingly to the extent that there is any inconsistency between this Act and any other written law, this Act prevails.

Regulations

11. The Prime Minister may make regulations prescribing matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**DIPLOMATIC MISSIONS AND INTERNATIONAL
ORGANISATIONS 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 Diplomatic Missions and International Organisations Bill 2016 (**‘Bill’**) stems from the need to have a separate law in Fiji that will deal with all international organisations, diplomatic missions and other international bodies in an expeditious and efficient manner, a law that will give these organisations confidence in coming to Fiji and setting up their missions, offices and headquarters here.
- 1.2 This law is envisaged to address the above mentioned issue, by showing the States of diplomatic missions, international organisations and other international bodies intending to be based in Fiji, that the Fijian Government recognises and will uphold their privileges and immunities, including those of their employees and members of the family of their employees.
- 1.3 Such a law will create clear rules and remove ambiguity for international organisations, diplomatic missions and other international bodies in Fiji, thereby attracting more of these organisations or missions to Fiji to create an international hub.
- 1.4 Additionally, in line with Fiji’s obligations under various conventions, treaties and agreements with international organisations such as the United Nations, the International Labour Organisation and the World Health Organisation, the Fijian Government is required to provide assistance with entry requirements into Fiji and certain tax immunities to diplomatic missions, international organisations and other international bodies and the members and employees of such organisations or missions.
- 1.5 Fiji’s obligations to provide entry assistance and tax immunities are different depending on the terms of the convention for a diplomatic mission or the relevant agreement with an international organisation or other international body.

- 1.6 Therefore, this Bill clarifies that in relation to tax immunities and entry entitlements for members of diplomatic missions, international organisations and other international bodies, their employees or their family members, the entry entitlements, especially the immunities from taxation, are only available to the extent provided for in the relevant convention or agreement applicable to that organisation or mission.

2.0 CLAUSES

- 2.1 Clause 1 of the Bill provides for the short title and commencement provision.
- 2.2 Clause 2 of the Bill provides for the interpretation of the terms used in the Bill and states that the Minister responsible for this Act will be the Prime Minister.
- 2.3 Clause 3 of the Bill provides that the following may be exempt from any tax, tariff, fee, levy or duty imposed by the Fiji Revenue and Customs Authority to the extent specified herein—
- (a) a mission, to the extent specified under the Diplomatic Privileges and Immunities Act (Cap. 8);
 - (b) an international organisation, to the extent specified in an agreement approved by Cabinet between the international organisation and the Government; and
 - (c) an international body, to the extent specified under the treaty or convention to which the Government is a party to and has ratified.
- 2.4 Clause 4 of the Bill provides for the right of an individual employed or engaged by a diplomatic mission, international organisation or international body, and members of the family of that individual to enter, reside or work in Fiji without a visa or a permit.
- 2.5 Clause 5 of the Bill makes provision for a foreign State, international organisation or international body to make an application to the Prime Minister by way of a statutory declaration, for an exemption to allow the relevant individual and the members of that individual's family to enter, reside or work in Fiji. An exemption in this regard must be issued under section 8 of the Immigration Act 2003.
- 2.6 Additionally, clause 5 also states that a State, international organisation or international body which had submitted a statutory declaration previously, must submit a new statutory declaration, whenever the name, status and details of an individual listed in the statutory declaration submitted earlier changes.
- 2.7 Clause 6 of the Bill states that a statutory declaration made in accordance with clause 5, must be forwarded by the Prime Minister to the Minister responsible for immigration (**‘Minister for Immigration’**) and be accompanied by details on how the exemption is to be issued, or any other relevant information.

- 2.8 Clause 7 of the Bill makes provision for the issuance of an exemption to the relevant individuals and their family members. Additionally, under this provision a statutory declaration submitted for the purposes of acquiring an exemption to enter, reside or work in Fiji, must be processed expeditiously by the Minister for Immigration.
- 2.9 Clause 8 of the Bill makes provision for the revocation of an exemption issued under section 8 of the Immigration Act 2003, where the Prime Minister has reason to believe that a statutory declaration contains information that is either out-dated or false.
- 2.10 Clause 9 of the Bill makes a consequential amendment to section 8 of the Immigration Act 2003 to provide for the entry of family members in accordance with this Act.
- 2.11 Clauses 10 and 11 of the Bill empowers the Prime Minister to make regulations and states that where there is any inconsistency between this law and any other written law, this law will prevail.

3.0 MINISTERIAL RESPONSIBILITY

- 3.1 The Act comes under the responsibility of the Prime Minister.

A. SAYED-KHAIYUM
Attorney-General