

TAX ADMINISTRATION (BUDGET AMENDMENT) ACT 2018
(ACT NO. 13 OF 2018)

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ACT NO. 13 OF 2018

I assent.

J. K. KONROTE
President

[13 July 2018]

AN ACT**TO AMEND THE TAX ADMINISTRATION ACT 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 2018.

(2) This Act comes into force on 1 August 2018.

(3) In this Act, the Tax Administration Act 2009 is referred to as the “Principal Act”.

Section 2 amended

2. Section 2(1) of the Principal Act is amended by—

- (a) deleting the definition of “data storage device”;
- (b) in the definition of “objection decision”, deleting “16(5)” and substituting “16(6)”;
- (c) in the definition of “reviewable decision”—
 - (i) in paragraph (a), deleting “or”;
 - (ii) in paragraph (b) after “;”, inserting “or”; and

(iii) after paragraph (b), inserting the following new paragraph—

“(c) a decision made by the CEO under section 12 on an application for an amendment to a self-assessment;”;

(d) in the definition of “self-assessment”, deleting “(a)”; and

(e) in the definition of “tax decision” in paragraph (a) after “assessment”, inserting “, other than a self-assessment”.

Section 3 amended

3. Section 3 of the Principal Act is amended by—

(a) in subsection (5), deleting “any return” and substituting “any tax return”; and

(b) after subsection (5), inserting the following new subsection—

“(6) If a taxpayer has filed a self-assessment return, subsection (5) applies for the purposes of making an amended assessment in relation to the return.”.

Section 8 amended

4. The Principal Act is amended by deleting section 8 and substituting the following—

“Self-assessments

8.—(1) A self-assessment taxpayer who has filed a self-assessment return in the approved form for a tax period is treated, for all purposes of this Act, as having made an assessment of the amount of tax payable (including a nil amount) for the tax period to which the return relates being that amount as set out in the return.

(2) If a self-assessment taxpayer has filed an income tax return in the approved form for a tax year and the taxpayer has a net loss for the year under section 30 of the Income Tax Act 2015, the taxpayer is treated, for all purposes of this Act, as having made an assessment of the amount of the net loss for the tax year being that amount as set out in the return.

(3) If a registered person has filed a tax return in the approved form for a taxable period and the person has an excess amount for the period as referred to in section 39(8) of the Value Added Tax Act 1991, the person is treated, for all purposes of this Act, as having made an assessment of the excess amount for the period being that amount as set out in the return.

(4) A tax return in the approved form completed and filed electronically by a taxpayer is a self-assessment return despite either or both of the following applying—

(a) the form includes pre-filled information provided by the CEO;

(b) the calculation of the tax payable or any other amount is made electronically as information is inserted into the form.”.

*Section 9 amended***5.** Section 9 of the Principal Act is amended by—*(a)* deleting subsection (1) and substituting the following—

“(1) If a taxpayer has failed to file a tax return for a tax period on or before the due date, the CEO may, at any time, make an assessment (including penalty if applicable) of, as the case may be—

- (a)* the tax (including a nil amount) payable by the taxpayer for the period;
- (b)* the net loss of the taxpayer for the tax year under section 30 of the Income Tax Act 2015; or
- (c)* the excess amount for the taxable period under section 39(8) of the Value Added Tax Act 1991.”; and

(b) after subsection (4), inserting the following new subsections—

“(5) Nothing in this section relieves a taxpayer from the requirement to file the tax return for the tax period to which a notice of assessment served on the taxpayer under this section relates.

(6) A tax return filed by a taxpayer for a tax period after a notice of assessment has been served on the taxpayer for the period under this section is not a self-assessment return.”.

*Section 10 amended***6.** Section 10 of the Principal Act is amended after subsection (4) by inserting the following new subsections—

“(5) Nothing in this section relieves a taxpayer from the requirement to file the tax return for the tax period to which a notice of assessment served on the taxpayer under this section relates.

(6) A tax return filed by a taxpayer for a tax period after a notice of assessment has been served on the taxpayer for the period under this section is not a self-assessment return.”.

*Section 11 amended***7.** Section 11 of the Principal Act is amended by—*(a)* deleting subsection (1) and substituting the following—

“(1) Subject to this section, the CEO may amend a tax assessment of a taxpayer for a tax period by making such alterations or additions to the assessment as the CEO considers necessary to ensure that—

- (a)* for a net loss for a tax year under section 30 of the Income Tax Act 2015, the taxpayer is assessed in respect of the correct amount of the net loss for the tax year;

- (b) for an excess amount for a taxable period under section 39(8) of the Value Added Tax Act 1991, the taxpayer is assessed in respect of the correct amount of the excess amount for the taxable period; or
 - (c) in any other case, the taxpayer is assessed in respect of the correct amount of tax payable (including a nil amount) for the tax period.”; and
- (b) deleting subsection (2)(b) and substituting the following—
- “(b) in any other case, within 6 years of—
- (i) for a self-assessment, the date that the self-assessment taxpayer filed the self-assessment return to which the self-assessment relates; or
 - (ii) for any other tax assessment, the date the CEO served notice of the tax assessment on the taxpayer.”.

Section 12 amended

8. The Principal Act is amended by deleting section 12 and substituting the following—

“Application for an amendment to a self-assessment

12.—(1) A taxpayer who has filed a self-assessment return may apply to the CEO for an amendment to be made to the self-assessment constituted by the return.

(2) An application under subsection (1) must—

- (a) state the amendments that the taxpayer believes are required to correct the self-assessment and the reasons for the amendments; and
- (b) be lodged with the CEO within 2 years of the date that the self-assessment taxpayer filed the self-assessment return to which the self-assessment relates.

(3) If an application has been made under subsection (1), the CEO may make a decision to amend the self-assessment or disallow the application.

(4) If the CEO makes a decision to amend the self-assessment, the CEO must—

- (a) make the amended assessment in accordance with section 11(1); and
- (b) serve the taxpayer with notice of the amended assessment in accordance with section 11(3).

(5) If the CEO makes a decision to disallow an application under subsection (1), the CEO must serve the taxpayer with written notice of the decision stating the reason for the refusal.”.

Section 14 amended

9. The Principal Act is amended by deleting section 14(2) and substituting the following—

“(2) For the purposes of this section—

- (a) for a self-assessment, the production of the original self-assessment return or document under the hand of the CEO purporting to be a certified copy of the return is conclusive evidence of the contents of the return; or
- (b) for any other tax assessment, the production of a notice of assessment or document under the hand of the CEO purporting to be a certified copy of the notice of assessment is conclusive evidence of the due making of the assessment and that the amount and particulars of the assessment are correct.”.

Section 35 amended

10. Section 35 of the Principal Act is amended by—

(a) in subsection (1)—

- (i) in paragraph (a), deleting “data storage device” and substituting “electronic data storage facility”; and
- (ii) in paragraph (b), deleting “on a data storage device” and substituting “on or in an electronic data storage facility”;

(b) in subsection (2), deleting “by the owner or lawful occupier,” and substituting “if”;

(c) in subsection (4), deleting “.” and substituting the following—

“, including—

- (a) providing access to data stored on, or in, an electronic data storage facility, including the entering of a password or other basis of authentication for access to the facility; and
- (b) providing access to decryption information necessary to decrypt data to which access is sought under this section.”; and

(d) after subsection (8), inserting the following new subsection—

“(9) In this section—

“data storage device” means a computer, mobile electronic device, portable information storage media, or any other electronic device for the storage of data; and

“electronic data storage facility” means a data storage device or any other facility, including an electronic facility, for the electronic storage of data.”.

Section 37A inserted

11. The Principal Act is amended after section 37 by inserting the following new section—

“Mandatory requirement for Taxpayer Identification Number

37A. Every Fijian citizen or resident must, whether liable or not liable for tax, apply for a Taxpayer Identification Number in accordance with section 38.”.

Section 38 amended

12. Section 38 of the Principal Act is amended by—

- (a) in subsection (1)(f), deleting “operating” and substituting “operate”;
- (b) deleting subsection (1A); and
- (c) in subsection (7), deleting “(g)” and substituting “(i)”.

Section 38A inserted

13. The Principal Act is amended after section 38 by inserting the following new section—

“Taxpayer to notify of change of status

38A. Subject to the provisions of this Act, every taxpayer that conducts a business must notify the CEO in writing of—

- (a) any change in the name, address, constitution or nature of the principal taxable activity or activities of the taxpayer;
- (b) any change of address from which, or the name in which, any taxable activity is carried on by the taxpayer;
- (c) any change in controlling interest; or
- (d) any other change or information required in the approved form,

within 21 days from the date of the change.”.

Section 39 amended

14. Section 39 of the Principal Act is amended by—

- (a) in subsection (1)—
 - (i) deleting “who ceases to be a taxpayer”; and
 - (ii) deleting “within 30 consecutive days of the date on which the person ceased to be a taxpayer”; and
- (b) deleting subsection (2)(a).

Section 46 amended

15. Section 46 of the Principal Act is amended after subsection (5) by inserting the following new subsection—

“(5A) A position taken by a taxpayer in making a self-assessment that is contrary to a public ruling in force under section 62 or a private ruling issued to the taxpayer under section 66 is not regarded as a reasonably arguable position for the purposes of subsection (5)(b) unless the ruling is held to be incorrect.”.

*Section 49 amended***16.** Section 49 of the Principal Act is amended by—

- (a) in the heading, deleting “for failure to file” and substituting “in relation to”;
- (b) in subsection (1)(a) after “return”, inserting “in the approved form”; and
- (c) after subsection (2), inserting the following new subsection—
 - “(3) A taxpayer who, without reasonable excuse—
 - (a) makes any declaration in any tax return which is false or misleading in any material particular; or
 - (b) omits from any tax return or declaration, any matter or thing required to be made in the tax return,commits an offence and is liable to a fine not exceeding \$250,000.”.

*Section 50 amended***17.** Section 50(1)(a) of the Principal Act is amended by—

- (a) in subparagraph (v), deleting “or”;
- (b) renumbering subparagraph (vi) as subparagraph (ix);
- (c) after subparagraph (v), inserting the following new subparagraphs—
 - “(vi) comply with section 37A;
 - (vii) comply with section 38 or a requirement of the CEO under section 38;
 - (viii) comply with section 38A; or”;
- (d) in subparagraph (ix), deleting “,” and substituting “;”.

*Section 53 amended***18.** Section 53(1) of the Principal Act is amended by deleting paragraphs (a) and (b) and inserting the following new paragraphs—

- “(a) prepares, passes, presents or causes to be prepared, passed or presented as genuine any document required to be produced under any tax law which is not in fact a genuine document or which is false or misleading in any material particular;
- (b) makes any entry in any document required to be produced under any tax law which is false or misleading in any material particular;
- (c) makes in any oral declaration to a tax officer or in any document produced to a tax officer any statement which is false or misleading in any material particular or produces or delivers to a tax officer any declaration or document containing any such statement; or

- (d) 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.”.

Sections 58B and 58C inserted

19. The Principal Act is amended after section 58A by inserting the following new sections—

“Offence for charging tax where no tax payable

58B. If a person knowingly represents to any person, in writing or otherwise, including in an invoice, that any amount is charged as tax where either—

- (a) no amount of tax is charged under the relevant tax law to which any such representation refers; or
- (b) the amount represented as being charged as tax is not in accordance with the relevant tax law,

the person commits an offence and is liable to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years or to both a fine and imprisonment.

Offence for failure to charge tax

58C. If a person fails to charge a tax in accordance with a relevant tax law or charges an amount of tax which is not in accordance with the relevant tax law the person commits an offence and is liable to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years or to both a fine and imprisonment.”.

Subdivision 3 of Division 8 of Part 2 inserted

20. The Principal Act is amended after section 60 by inserting the following new Subdivision—

“Subdivision 3—Infringement notices

Interpretation of this Subdivision

60A. In this Subdivision, unless the context otherwise requires—

“fixed penalty” means a penalty specified in, and payable on receipt of, an infringement notice;

“infringement notice” means a notice prescribed by regulations and issued by a tax officer under section 60B; and

“prescribed offence” means an offence under any tax law for which a fixed penalty is payable as prescribed by regulations.

Infringement notices

60B.—(1) Subject to this Subdivision, where a tax officer has reason to believe that a person has committed a prescribed offence, the tax officer may institute proceedings in respect of the alleged commission of the offence by issuing upon that person an infringement notice.

- (2) An infringement notice issued under subsection (1) must—
- (a) name the person to whom the infringement notice is issued;
 - (b) specify the particulars of the offence;
 - (c) specify the fixed penalty that the person named on the infringement notice is required to pay; and
 - (d) specify any other information prescribed by regulations.
- (3) A fixed penalty payable under this Act or any regulations made under this Act is a debt due to the State that—
- (a) is to be collected by the Fiji Revenue and Customs Service in the manner and form prescribed by regulations;
 - (b) following the collection of the fixed penalty under paragraph (a), is to be paid by the Fiji Revenue and Customs Service into the Consolidated Fund; and
 - (c) ceases to be due—
 - (i) at the time the fixed penalty is paid; or
 - (ii) on acquittal or conviction of the prescribed offence or on the determination of the proceedings by the court or tribunal in which the proceedings were instituted.

Regulations for issuance of infringement notices

60C. The Minister may make regulations prescribing matters that are required to be prescribed or are necessary or convenient to be prescribed for the issuance of infringement notices under this Subdivision, including—

- (a) the offences for which infringement notices may be issued;
- (b) the fixed penalties for prescribed offences;
- (c) the manner, form and time frames for which infringement notices are to be issued;
- (d) the actions a person may undertake on receipt of an infringement notice; and
- (e) the penalties that a person to whom an infringement notice has been issued may be liable to.”.

Section 66 amended

21. Section 66(3) of the Principal Act is amended after “must” by inserting “state that it is a private ruling and have a number and subject heading by which it can be identified”.

Section 73 amended

22. Section 73(7) of the Principal Act is amended by—

- (a) in paragraph (a) after “(2)”, inserting “(b)”; and

(b) in paragraph (b)—

- (i) deleting “tax return” wherever it appears and substituting “self-assessment return”; and
- (ii) after “(2)”, inserting “(a)”.

Section 81 amended

23. Section 81(2) of the Principal Act is amended by deleting “\$50,000” wherever it appears and substituting “\$500,000”.

Section 116A inserted

24. The Principal Act is amended after section 116 by inserting the following new section—

“Offences by a tax agent

116A. A tax agent who—

- (a) prepares, passes, presents or causes to be prepared, passed or presented as genuine any document required to be produced under any tax law which is not in fact a genuine document or which is false or misleading in any material particular;
- (b) makes any entry in any document required to be produced under any tax law which is false or misleading in any material particular;
- (c) makes in any oral declaration to a tax officer or in any document produced to a tax officer any statement which is false or misleading in any material particular or produces or delivers to a tax officer any declaration or document containing any such statement; or
- (d) 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,

commits an offence and is liable to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 10 years or to both a fine and imprisonment.”.

Schedule 1 amended

25. Schedule 1 to the Principal Act is amended in paragraph 1 by—

- (a) in subparagraph (a) after “tax,”, inserting “including a self-assessment under section 8, and”;
- (b) in subparagraph (h), deleting “and”;
- (c) in subparagraph (j), deleting “and”;
- (d) in subparagraph (k), deleting “.” and substituting “; and”;

- (e) after subparagraph (k), inserting the following new paragraph—
- “(l) an assessment of telecommunications levy, including a self-assessment under section 8.”.

Schedule 3 amended

26. Schedule 3 to the Principal Act is amended by—

- (a) in Part A—
- (i) in paragraph 1(a), deleting “108” and substituting “109”; and
- (ii) after paragraph 6, inserting the following new paragraph—
- “6A. A return required under section 135 of the Income Tax Act 2015.”; and
- (b) in Part B in paragraph 2, deleting “108” and substituting “109”.

All references to “Tax Identification Number” amended

27. The Principal Act is amended by deleting “Tax Identification Number” wherever it appears and substituting “Taxpayer Identification Number”.

Passed by the Parliament of the Republic of Fiji this 12th day of July 2018.