TAX ADMINISTRATION (BUDGET AMENDMENT) BILL 2018
(BILL NO. 11 OF 2018)

CLAUSES

BILL NO. 11 OF 2018

A BILL

FOR 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"; and

(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"; 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".

Office of the Attorney-General
Suvavou House
Suva

June 2018

TAX ADMINISTRATION (BUDGET AMENDMENT) BILL 2018

EXPLANATORY NOTE

(This note is not part of the Bill and is intended only to indicate its general effect)

1.0 BACKGROUND

1.1 The Tax Administration (Budget Amendment) Bill 2018 (**'Bill'**) seeks to amend the Tax Administration Act 2009 (**'Act'**) to address certain policy changes introduced by the 2018-2019 Budget.

2.0 CLAUSES

2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the amending legislation will come into force on 1 August 2018.

2.2 Clause 2 of the Bill amends section 2 of the Act, which provides for definitions of terms used in the Act. The definition of "data storage device" is deleted as this will be dealt with in the amendments made to section 35 of the Act. The definition of "objection decision" is amended to correct the reference to section 16(6). The definition of "reviewable decision" is amended by inserting a new paragraph *(c)*, which treats a decision made by the Chief Executive Officer of the Fiji Revenue and Customs Service (**'CEO'**) under section 12 of the Act on an application for an amendment to a self-assessment as a reviewable decision. This decision is treated as a reviewable decision because it is regarded as the equivalent of an objection decision. The definition of "self-assessment" is also amended by changing the cross-reference to "section 8". This is consequent upon the insertion of a new section 8. The definition of "tax decision" is also amended to clarify that the reference to "tax assessment" in paragraph *(a)* does not include a self-assessment. This is because a self-assessment is made by the taxpayer and, therefore, is not a decision of the CEO. A taxpayer who wishes to amend a self-assessment must apply to the CEO under the new section 12 for the CEO to make an amended assessment in relation to the self-assessment.

2.3 Clause 3 of the Bill amends section 3 of the Act, which provides for general rules in relation to tax returns. Section 3(5) of the Act is amended to clarify that the

reference in subsection (5) to a "return" is a reference to a "tax return", which is the defined term in section 2 of the Act. Clause 3 of the Bill also inserts a new subsection (6) to better align subsection (5) with self-assessment. The new subsection (6) applies when the tax return filed is a self-assessment return. In this case, subsection (6) makes clear that subsection (5) applies for the purposes of making an amended assessment in relation to the return. This recognises the fact that a self-assessment return properly filed by a self-assessment taxpayer is an assessment of the taxpayer's liability.

2.4 Clause 4 of the Bill deletes section 8 of the Act (which provides for self-assessment of tax liabilities) and substitutes a new section 8 on the same subject matter. The new section 8 more clearly provides for the application of self-assessment when an income taxpayer has a net loss for a tax year and a VAT registered person has an excess input tax credit for a taxable period. In effect, the new section 8(1) re-enacts the current section 8*(a)* of the Act. The current section 8*(b)* of the Act has not been included in the new section 8(1). The current section 8*(b)* of the Act provides that a self-assessment return filed by a self-assessment taxpayer is treated as a notice of assessment served by the CEO on the taxpayer on the date the return was filed. This is mainly relevant to section 11 of the Act, which provides for the amendment of assessments. In the ordinary case, the time limit for amending an assessment is 6 years commencing on the date that the CEO served notice of the assessment on the taxpayer. Thus, the effect of section 8*(b)* of the Act is that the self-assessment return filed by a self-assessment taxpayer is treated as a notice of the self-assessed liability served on the taxpayer by the CEO on the date that the return was filed. This deeming is confusing given that the self-assessment return is itself the assessment. For this reason, section 8*(b)* of the Act has been deleted and section 11 of the Act is also amended to expressly apply to self-assessments.

2.5 The new section 8(1) provides that 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 the Act, as having made an assessment of the amount of tax payable for the tax period to which the return relates being that amount as set out in the return. It is expressly provided that a self-assessed amount includes a nil amount of tax payable. This occurs, for example, if an income taxpayer has a zero amount of chargeable income for a tax year or the output tax of a VAT registered person for a taxable period exactly equals the registered person's input tax for the taxable period.

2.6 The new section 8(1) applies only to a self-assessment taxpayer filing a self-assessment return in the approved form. "Self-assessment taxpayer" is defined in section 2 to mean a taxpayer required to file a self-assessment return. The

following are specified as self-assessment returns (see definition of "self-assessment return" in section 2 of the Act and Part B of Schedule 3 to the Act):

(i) a VAT return required to be filed under section 33, 34 or 35 of the Value Added Tax Act 1991 (**'Valued Added Tax Act'**);

(ii) an income tax return required to be filed under section 104(1) or (2) of the Income Tax Act 2015 (**'Income Tax Act'**);

(iii) a presumptive income tax return required to be filed under section 104(3) of the Income Tax Act;

(iv) a return required to be filed by the captain or chief commanding officer of a ship under section 109 of the Income Tax Act;

(v) a Capital Gains Tax return required to be filed under section 126 of the Income Tax Act;

(vi) a Fringe Benefits Tax return required to be filed under section 131 of the Income Tax Act; and

(vii) a telecommunications levy return required to be filed under section 135(1) of the Income Tax Act.

2.7 A taxpayer's tax return is treated as a self-assessment under the new section 8(1) only if the return is filed in the approved form (see definition of "approved form" in sections 2 and 68 of the Act).

2.8 The effect of the new section 8(1), for example, in relation to income tax is that, if a taxpayer has filed an income tax return in the approved form as required under section 104(1) of the Income Tax Act for a tax year, the taxpayer is treated as having made a self-assessment of the income tax payable by the person for the year. The amount of the self-assessed liability is the amount of income tax payable for the tax year as set out in the return.

2.9 The new section 8(2) applies when a self-assessment taxpayer liable for income tax has filed an income tax return under section 104(1) of the Income Tax Act (i.e. a self-assessment return as listed in Part B of Schedule 3 to the Act) in the approved form for a tax year and the taxpayer has a net loss for the year. In this case, the taxpayer is treated, for all purposes of the Act, as having made an assessment of the amount of the net loss for the year being that amount as set out in the return. This is the amount of the net loss for the purposes of the loss carry forward rule in section 30 of the Income Tax Act.

2.10 The new section 8(3) applies if a VAT registered person has filed a return under section 33 of the Value Added Tax Act (i.e. a "self-assessment return" under Part B of Schedule 3 to the Act) in the approved form for a taxable period and the registered person has an excess amount for the period as referred to in section

39(8) of the Value Added Tax Act. In broad terms, a VAT registered person will have an excess amount under section 39(8) of the Value Added Tax Act for a taxable period if the person's input tax for the period exceeds the person's output tax for the period. In this case, the VAT registered person is treated, for all purposes of the Act, as having made an assessment of the excess amount for the taxable period being that amount as set out in the return. This is the amount to be refunded to the VAT registered person in accordance with section 65 of the Value Added Tax Act.

2.11 The effect of the new section 8(1), (2) and (3) is that a properly filed self-assessment return is treated as a self-assessment. If the CEO is not satisfied with a self-assessment return (i.e. a taxpayer's self-assessment), the CEO must proceed to amend the taxpayer's self-assessment under section 11 of the Act.

2.12 The new section 8(4) applies when a taxpayer prepares and files a self-assessment return electronically. Provided the return is filed in the approved form, section 8(4) makes it clear that the return is still a self-assessment return even though:

(i) the return may include pre-filled information provided by the CEO; or

(ii) the calculation of the tax payable occurs automatically as information is inserted by the taxpayer into the form.

2.13 The effect of the new section 8(4) is that, if a taxpayer prepares and files a tax return electronically in the circumstances specified in the provision, the return is still a self-assessment return and, therefore, section 8(1), (2) and (3) apply to the return. In other words, section 8(4) counters any argument that the return is not a self-assessment return because of any electronic input in preparing the return provided by the CEO. A return filed electronically must be filed in the approved form (see definition in sections 2 and 68 of the Act).

2.14 Importantly, the approved form (whether hard copy or electronic) for a self-assessment return will require that the amount of tax payable, net loss or excess amount for the tax period to which the form relates is included on the form. This is central to self-assessment, namely that the return form that a taxpayer files includes the amount of tax payable (or net loss or excess amount) as determined by the taxpayer.

2.15 A self-assessment is included as a taxation assessment under the definition of "taxation assessment" in section 2 of the Act and Schedule 1 to the Act. Thus, unless the context requires otherwise (see, for example, paragraph *(a)* of the definition of "taxation decision" in section 2 of the Act), every reference in the Act to a "taxation assessment" includes a self-assessment. In particular, section 11 of the Act, which provides for the amendment of taxation assessments by the CEO, applies to self-assessments.

2.16 Clause 5 of the Bill amends section 9 of the Act, which empowers the CEO to make, and serve notice of, an assessment of the tax payable when a taxpayer has failed to file a tax return by the due date. The assessment is referred to as a default assessment. The current section 9(1) of the Act applies also when a taxpayer has filed a false or incomplete return except when the return filed is a self-assessment return. This aspect of the current section 9 of the Act has not been included in the new section 9(1) as it is considered unnecessary. Firstly, most tax returns are now self-assessment returns, and secondly, even if the return is not a self-assessment return, the CEO can raise an assessment when a return has been filed regardless of whether it is false or incomplete.

2.17 Clause 5 of the Bill also replaces section 9(1) of the Act. This ensures that section 9(1) aligns with the terms of the new section 8 of the Act inserted by clause 4 of the Bill. The new section 9(1) empowers the CEO to make a default assessment for a tax period when a taxpayer has failed to file a tax return for the period on or before the due date. The nature of a default assessment depends on the taxpayer's circumstances. The new section 9(1)*(a)* provides that the CEO can make a default assessment of the amount of tax payable by a taxpayer for the tax period to which the assessment relates. It is expressly provided that the assessed amount may be a nil amount of tax payable. This occurs, for example, if an income taxpayer has a zero amount of chargeable income for a tax year or the output tax of a VAT registered person for a taxable period exactly equals the registered person's input tax for the taxable period. The new section 9(1) *(b)* provides that the CEO can make a default assessment of the amount of the net loss of a taxpayer for a tax year under section 30 of the Income Tax Act. A net loss is an excess of deductions over gross income that is carried forward under section 30 of the Income Tax Act. In this case, the default assessment is an assessment of the amount of the net loss carried forward under section 30 of the Income Tax Act. The new section 9(1)*(c)* provides that the CEO can make a default assessment of an excess amount of a VAT registered person for a taxable period as referred to in section 39(8) of the Value Added Tax Act. In broad terms, a VAT registered person will have an excess amount under section 39(8) of the Value Added Tax Act for a taxable period if the person's input tax for the period exceeds the person's output tax for the period. In this case, the default assessment is an assessment of the excess amount for the purposes of making a refund of the amount to the VAT registered person in accordance with section 65 of the Value Added Tax Act.

2.18 Clause 5 of the Bill also inserts new subsections (5) and (6) in section 9 of the Act. The new subsection (5) provides that a taxpayer is still required to file a tax return for a tax period even though the taxpayer has been served with notice of a default assessment for the period. Importantly, the new subsection (6) makes clear that a tax return filed by a taxpayer for a tax period after a notice

of a default assessment has been served on the taxpayer for the period is not a self-assessment return. This is because the CEO has already determined the taxpayer's liability for the relevant tax period through the making of the default assessment. The return, however, can be used by the CEO to make an amended assessment under section 11 of the Act to ensure that a taxpayer is liable for the correct amount of tax, net loss or excess amount for the tax period.

2.19 Clause 6 of the Bill amends section 10 of the Act, which empowers the CEO to make an assessment of a taxpayer's tax liability in the circumstances specified in section 10 of the Act. The assessment can be made in advance of the due date for filing the taxpayer's return for the period and, therefore, is referred to as an "advance assessment". Clause 6 of the Bill inserts new section 10(5) and (6). The new section 10(5) provides that a taxpayer is still required to file a tax return for a tax period even though the taxpayer has been served with notice of an amended assessment for the period. This is particularly important as the period covered by an advance assessment is likely to be less than the whole of the tax period to which it relates. Importantly, the new section 10(6) makes clear that a tax return filed by a taxpayer for a tax period after a notice of an advance assessment has been served on the taxpayer for the period is not a self-assessment. This is because the CEO has already determined the taxpayer's liability for the tax period through the making of the advance assessment. The return, however, can be used by the CEO to make an amended assessment under section 11 of the Act (as contemplated by subsection (3) to ensure that a taxpayer is liable for the correct amount of tax for the tax period).

2.20 Clause 7 of the Bill amends section 11 of the Act, which provides for the amendment of tax assessments. Clause 7 of the Bill replaces subsection (1). Paragraph *(a)* ensures that subsection (1) aligns with the terms of the new section 8 of the Act inserted by clause 4 of the Bill.

2.21 The new section 11(1) provides that the CEO may amend a tax assessment (referred to as the "original assessment"). The original assessment may be any tax assessment listed in Schedule 1 to the Act. There is a separate process under section 11(4) of the Act for amending an amended assessment. The CEO amends an original assessment by making such alterations or additions to the original assessment as are necessary so as to ensure that:

(i) if the original assessment relates to a net loss of a taxpayer for a tax year under the Income Tax Act, the taxpayer is assessed in respect of the correct amount of the net loss (paragraph *(a)*);

(ii) if the original assessment relates to an excess amount under section 39(8) of the Value Added Tax Act of a VAT registered person for a taxable period, the VAT registered person is assessed in respect of the correct amount of the excess amount for the period (paragraph *(b)*);

(iii) for any other original assessment, the taxpayer is liable for the correct amount of tax payable (including a nil amount) in respect of the tax period to which the original assessment relates (paragraph *(c)*).

2.22 The power to make an amended assessment relates to both a self-assessment and an assessment raised by the CEO (such as a default or advance assessment). In the case of a self-assessment, a self-assessment return filed by a self-assessment taxpayer is a self-assessment of the taxpayer's tax liability, or the amount of a net loss under the Income Tax Act or excess amount under section 39(8) of the Value Added Tax Act, as the case may be, being the relevant amount as set out in the return. Any assessment raised by the CEO in relation to a self-assessment return properly filed by a taxpayer is, in fact, an amended assessment (i.e. an assessment amending the taxpayer's self-assessment).

2.23 The new section 11(1) is expressed to be subject to the rest of the section. Importantly, in amending an original assessment, the CEO must comply with the time limits in subsection (2).

2.24 Clause 7 also replaces section 11(2)*(b)*. The amendment ensures that the new section 11(2) aligns with the terms of new section 8 of the Act inserted by section 3 of the Bill. The current section 8*(b)* of the Act has not been included in the new section 8. Instead, the new section 11(2)*(b)* expressly provides for self-assessments. The new section 11(2)*(b)* sets out the time limit on the amendment of tax assessments except in cases of fraud, wilful neglect or serious omission covered by section 11(2)*(a)*. The time limit for amending a tax assessment under new section 11(2)*(b)* is 6 years. In the case of a self-assessment, the 6-year period begins to run from the date the taxpayer filed the self-assessment return (new section 11(2)*(b)*(i)). For any other tax assessment (mainly a default or advance assessment), the 6-year period begins to run from the date that the CEO served the taxpayer with notice of the tax assessment (new section 11(2)*(b)*(ii)).

2.25 Clause 8 of the Bill replaces section 12 of the Act to provide for applications for amendments to self-assessments. The current section 12 of the Act permits a taxpayer to file an amended tax return and permits the CEO to make an amended assessment of the taxpayer's tax liability based on the amended return. This has been redrafted to better align with the new self-assessment provisions in the Bill. The new section 12 sets out a procedure under which a taxpayer can apply to the CEO for the CEO to make an amended assessment in relation to a self-assessment made by the taxpayer. The new section 12(1) provides that a taxpayer can apply to the CEO for an amendment to be made to the taxpayer's self-assessment. While a self-assessment return is treated as a self-assessment, the taxpayer cannot self-amend a self-assessment. Rather, only the CEO can amend a self-assessment.

2.26 The new section 12(2)*(a)* provides that an application for the making of an amendment to a self-assessment must state the amendments that the taxpayer believes are required to be made to correct the self-assessment and the reasons for those amendments. The new section 12(2)*(b)* provides that a taxpayer must lodge an application under the new section 12(1) within 2 years from the date that the self-assessment return was filed. If a taxpayer has made an application under section 12(1) for an amendment to be made to a self-assessment, section 12(3) provides that the CEO may make a decision to either:

(i) amend the self-assessment; or

(ii) refuse the application.

2.27 The new section 12(4) provides that, if the CEO accepts an application under section 12(1), the CEO must amend the self-assessment in accordance with section 11(1) of the Act. The CEO is obliged to serve the taxpayer with notice of the amended assessment in accordance with section 11(3) of the Act.

2.28 The new section 12(5) obliges the CEO to serve the taxpayer with written notice of a decision to refuse an application for an amendment to a self-assessment. The decision of the CEO to refuse an application is the equivalent of an objection decision and, therefore, the decision is a "reviewable decision" under the new paragraph *(c)* of the definition in section 2 of the Act. A taxpayer dissatisfied with the decision can apply to the Tax Tribunal under section 82(1) of the Act for review of the decision.

2.29 Clause 9 of the Bill amends section 14 of the Act, which provides for the finality of tax decisions.

2.30 Clause 9 of the Bill replaces section 14(2) of the Act. As there is a reference to both self-assessments and other tax assessments, section 14(2) of the Act purports to specify the documents that provide conclusive evidence of both self-assessments and tax assessments made by the CEO. However, the terms of the current subsection are effective only for self-assessments. The new section 14(2) applies separately to self-assessments and tax assessments made by the CEO, paragraph *(a)* applies to self-assessments. It provides that the production of the original self-assessment return or a certified copy of the return is conclusive evidence of the contents of the return. In other words, it is conclusive evidence of the correctness of the amount and particulars of the self-assessment. The effect of this paragraph is that the taxpayer cannot challenge the contents of a self-assessment return except in objection and appeal proceedings under Division 3 of Part 2 of the Act.

2.31 The new section 14(2)*(b)* applies to tax assessments made by the CEO. It provides that the production of the original notice of a tax assessment or a certified copy of such notice is conclusive evidence of the making of the tax assessment and

that the amount and particulars stated in the assessment are correct. The effect of this is that the taxpayer cannot challenge a notice of assessment except in objection and appeal proceedings under Division 3 of Part 2 of the Act.

2.32 Clause 10 of the Bill amends section 35 of the Act, which provides the CEO with an access power. Section 35 of the Act has been amended to ensure that the CEO has access to records kept in an electronic data storage facility (such as cloud storage). The definition of "data storage device" is intended to be interpreted broadly to include all means of electronic storage of information.

2.33 Clause 11 of the Bill inserts a new section 37A to compulsorily require every Fijian citizen or resident, whether liable or not liable for tax, to apply for a Taxpayer Identification Number (**'TIN'**).

2.34 Clause 12 of the Bill amends section 38 of the Act to correct a grammatical and cross-referencing error, as well as to align section 38 of the Act to the compulsory requirement to apply for a TIN under the amendments in clause 11 of the Bill.

2.35 Clause 13 of the Bill inserts a new section 38A to require a taxpayer that conducts a business to update its details when there are changes to those details.

2.36 Clause 14 of the Bill amends section 39 of the Act to align the provision with the amendments in clause 11 of the Bill.

2.37 Clause 15 of the Bill amends section 46 of the Act, which provides for the imposition of a penalty if a taxpayer has made a false or misleading statement that has resulted in a tax shortfall. The penalty is referred to below as a "tax shortfall penalty".

2.38 Clause 15 of the Bill inserts a new section 46(5A), which relates to the reasonably arguable defence to the imposition of a tax shortfall penalty. Section 46(5)*(b)* of the Act provides that no tax shortfall penalty is imposed if the tax shortfall arose as a result of a self-assessment taxpayer taking a reasonably arguable position on the application of a tax law to the taxpayer's circumstances in filing a self-assessment return. As self-assessment requires taxpayers (rather than the CEO) to apply the tax law to determine their tax liability, it is important for the integrity of the self-assessment system that a taxpayer that has taken a reasonably arguable (but ultimately wrong) position on an issue of uncertainty in the application of a tax law in making their self-assessment is not penalised.

2.39 The new section 46(5A) sets out an exception to the defence in section 46(5)*(b)* of the Act when a taxpayer acts contrary to a ruling. The new section 46(5A) states that a position taken by a taxpayer in making a self-assessment is not a reasonably arguable position for the purposes of section 46(5)*(b)* of the Act if the position is contrary to a public ruling in force under section 62 of the Act

or a private ruling issued to the taxpayer under section 66 of the Act at the time the return was made. This applies only if the opinion of the CEO stated in a public or private ruling is found to be incorrect.

2.40 Clause 16 of the Bill amends section 49 of the Act to ensure that taxpayers lodge their returns in the approved form and that taxpayers who file tax returns declare all their assets.

2.41 Clause 17 of the Bill amends section 50(1) of the Act to align the provision with other amendments made to the Act.

2.42 Clause 18 of the Bill amends section 53 of the Act to extend the list of offences to include fraudulent conduct.

2.43 Clause 19 of the Bill inserts new sections 58B and 58C to create offences for charging tax where no tax is payable and for failure to charge tax.

2.44 Clause 20 of the Bill inserts a new Subdivision 3 into Division 8 of Part 2 of the Act to provide for the issuance of infringement notices and the payment of fixed penalties for certain offences prescribed by regulations.

2.45 Clause 21 of the Bill amends section 66 of the Act, which provides for the making of private rulings by the CEO. Clause 21 of the Bill amends section 66(3) of the Act, which provides for the contents of a private ruling. It is made clear that a private ruling must state that it is a private ruling and have a number and subject heading for identification. As a private ruling is binding on the CEO, it is important that any communication by the CEO that is intended as a private ruling is clearly stated to be such a ruling. This is also consistent with section 62(2) of the Act applicable to public rulings where it is provided that a public ruling must have a number and subject heading for identification purposes.

2.46 Clause 22 of the Bill amends section 73 of the Act, which provides for the electronic tax system. Clause 22 of the Bill amends section 73(7) of the Act, which applies to a tax assessment served by the CEO on a taxpayer electronically and to a tax return filed by a taxpayer electronically. The amendments are consequent upon the amendments made to section 14 of the Act. Paragraph *(a)* changes the cross-reference in section 73(7)*(a)* to "section 14(2)*(b)*". Paragraph *(b)*(i) deletes the references in section 73(7)*(b)* to "tax return" and substitutes references to "self-assessment return". This is because section 14(2)*(a)* of the Act applies to self-assessment returns. Paragraph *(b)*(ii) changes the cross-reference in section 73(7)*(b)* to "section 14(2)*(a)*".

2.47 Clause 23 of the Bill amends section 81(2) of the Act to increase the jurisdiction of the Tax Tribunal from up to $50,000 to up to $500,000.

2.48 Clause 24 of the Bill inserts a new section 116A to provide for offences by tax agents.

2.49 Clause 25 of the Bill amends Schedule 1 to the Act, which lists out tax assessments for the purposes of the Act. Schedule 1 is relevant to the section 2 definition of "tax assessment", which provides that "tax assessment" means an assessment or determination listed in Schedule 1. Paragraph *(a)* amends paragraph 1*(a)* of Schedule 1 to clarify that a self-assessment of income tax is a tax assessment. The effect of paragraphs *(b)*, *(c)* and *(d)* is to insert a new paragraph (l), which provides that an assessment of telecommunications levy, including a self-assessment under section 8, is a tax assessment. This is a technical correction consequent upon the enactment of the Income Tax Act.

2.50 Clause 26 of the Bill amends Schedule 3 to the Act, which lists out tax returns and self-assessment returns for the purposes of the Act. Schedule 3 is relevant to:

(i) the section 2 definition of "tax return", which provides that "tax return" means a return, statement, or other document listed in Part A of Schedule 3; and

(ii) the section 2 definition of "self-assessment return", which provides that "self-assessment return" means a tax return listed in Part B of Schedule 3.

2.51 Clause 26 of the Bill makes some technical corrections to Schedule 3 to the Act consequent upon the enactment of the Income Tax Act. Paragraph *(a)* makes two technical corrections in Part A of the Schedule. First, the cross-reference in paragraph 1*(a)* is changed from section 108 to section 109. Second, a new paragraph 6A is inserted, which includes a return required under section 135 of the Income Tax Act as a tax return. This covers the telecommunications levy return required to be filed under section 135(1) of the Income Tax Act. Paragraph *(b)* changes the cross-reference in paragraph 2 from section 108 to section 109 of the Income Tax Act.

2.52 Clause 27 of the Bill amends all references to "Tax Identification Number" and changes the references to "Taxpayer Identification Number".

3.0 MINISTERIAL RESPONSIBILITY

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

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