

BILL NO. 22 OF 2021

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 2021.

(2) This Act comes into force on 1 August 2021.

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

Section 11 amended

2. Section 11 of the Principal Act is amended by—

(a) deleting subsection (2) and substituting the following—

“(2) The amendment of a tax assessment under subsection (1) may be made—

(a) notwithstanding paragraphs (b) and (c), in the case of fraud, wilful neglect, or serious omission by or on behalf of the taxpayer, at any time;

- (b) in the case of a company with a gross turnover of less than \$1.25 million, within 3 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; or
- (c) 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.”; and
- (b) deleting subsection (4) and substituting the following—

“(4) Subject to subsection (2)(b) and (c), if a notice of assessment (referred to as the “original assessment”) has been amended under subsection (1), the CEO may further amend the original assessment or an amended assessment—

 - (a) in the case of fraud, wilful neglect, or serious omission by or on behalf of the taxpayer, as the CEO deems fit after serving the notice of the original or amended assessment on the taxpayer;
 - (b) in the case of a company with a gross turnover of less than \$1.25 million, within 3 years after serving the notice of the original or amended assessment on the taxpayer; or
 - (c) in any other case, within 6 years after serving the notice of the original or amended assessment on the taxpayer.”.

Section 33 amended

3. Section 33 of the Principal Act is amended by—

- (a) in subsection (1), deleting paragraph (a) and substituting the following—

“(a) first apply the amount of the refund against any tax or duty owing by the taxpayer under any tax, customs or excise law; and then”; and
- (b) after subsection (6), inserting the following new subsection—

“(7) If a non-resident person derived a fee for the provision of a professional service and paid Non-resident Withholding Tax to the Fiji Revenue and Customs Service in respect of the provision of the professional service contrary to an international tax treaty to which Fiji is a party, the non-resident person may make a claim to the CEO for a refund of the Non-resident Withholding Tax and the CEO is required to facilitate and pay the refund in accordance with the Mutual Agreement Procedure under the international tax treaty to which Fiji is a party.”.

Section 46B inserted

4. The Principal Act is amended after section 46A by inserting the following new section—

“Penalty for dishonoured cheques

46B. A taxpayer who has presented or submitted a dishonoured cheque is liable to a penalty of \$500.”.

Section 48E inserted

5. The Principal Act is amended after section 48D by inserting the following new section—

“Waiver of penalty for failure to pay tax by the due date

48E. Notwithstanding any other provision in this Act, any penalty payable in respect of any failure by a taxpayer to pay tax as required under any tax law by the due date is deemed to have been waived if the taxpayer on whom the penalty is imposed—

- (a) makes payment arrangements with the CEO within 3 months after 1 August 2021; and
- (b) pays the tax prior to 30 June 2022.”.

Section 86 amended

6. Section 86 of the Principal Act is amended after “Tribunal” wherever it appears by inserting “or Tax Court”.

July 2021

TAX ADMINISTRATION (BUDGET AMENDMENT) BILL 2021

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 2021 (**'Bill'**) seeks to amend the Tax Administration Act 2009 (**'Act'**).

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 2021.

2.2 Clause 2 of the Bill amends section 11 of the Act to provide that the Fiji Revenue and Customs Service (**'FRCS'**) may only amend an assessment within 3 years for companies with a gross turnover of less than \$1.25 million.

2.3 Clause 3 of the Bill amends section 33(1) of the Act so that payment of a refund of overpaid tax to a taxpayer under a tax law is first applied against any tax or duty owing by the taxpayer under any tax, customs or excise law. Clause 3 of the Bill also amends section 33 to clarify that refunds of any Non-resident Withholding Tax on fees for professional services would be made to non-residents who have paid the Non-resident Withholding Tax contrary to an international tax treaty to which Fiji is a party (**'Tax Treaty'**). This will be facilitated in accordance with the Mutual Procedure Agreement under the Tax Treaty.

2.4 Clause 4 of the Bill amends the Act to insert a new section 46B to impose a penalty of \$500 on a taxpayer who has presented or submitted a dishonoured cheque.

2.5 Clause 5 of the Bill amends the Act to insert a new section 48E to provide for the waiver of penalty for failure to pay tax by the due date.

2.6 Clause 6 of the Bill amends section 86 of the Act to allow the Tax Court to remit the matter to the Chief Executive Officer of FRCS to reconsider his or her decision.

3.0 MINISTERIAL RESPONSIBILITY

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

A. SAYED-KHAIYUM
Attorney-General