

BILL NO. 8 OF 2021

A BILL

FOR AN ACT TO AMEND THE CUSTOMS ACT 1986

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

- 1.—(1) This Act may be cited as the Customs (Budget Amendment) Act 2021.
- (2) This Act comes into force on 17 July 2021.
- (3) In this Act, the Customs Act 1986 is referred to as the “Principal Act”.

Section 2 amended

2. Section 2 of the Principal Act is amended by—
 - (a) in the definition of “authorised economic operator”, deleting “section 92A” and substituting “section 92B”;
 - (b) in the definition of “duty” after “includes”, inserting “ the Environment Climate Adaptation Levy charged under Division 2 of Part 3 of the Environment and Climate Adaptation Levy Act 2015 and”; and

(c) after the definition of “foreign port”, inserting the following new definitions—

““freight forwarder” means a business engaged in forwarding cargo, licensed under section 148A;

“gold card tax payer” means a person approved as a gold card tax payer by Fiji Revenue and Customs Service.”.

Section 11A amended

3. Section 11A of the Principal Act is amended by—

(a) in subsection (2), deleting “2 days” and substituting “48 hours”;

(b) in subsection (3) after “master”, inserting “, freight forwarder”; and

(c) in subsection (5) after “commanding officer”, inserting “, freight forwarder”.

Section 18 amended

4. Section 18 of the Principal Act is amended after “master” wherever it appears by inserting “, freight forwarder”.

Section 19 amended

5. Section 19(1) of the Principal Act is amended after “The master” inserting “, freight forwarder”.

Section 20 amended

6. Section 20(3) of the Principal Act is amended after “the owner” by inserting “, freight forwarder”.

Section 92 amended

7. Section 92 of the Principal Act is amended after subsection (15) by inserting the following new subsections—

“(16) The Comptroller may, subject to such conditions, as he or she may impose to ensure compliance with this Act for the protection of revenue, approve any company running a fully compliant bonded warehouse operation to defer the payment of any duty due under this section.

(17) Where a company has received approval under subsection (16), the due date for the payment of duty on imports due shall be the third working day after the end of the duty accounting period during which it would otherwise have become payable.

(18) For the purposes of subsection (17), the expression “duty accounting period” in relation to any approved company means a period of one month from the first day of the month to the last day of the same month, in which goods may be imported, exported, transferred or entered into home consumption.

(19) Where any such duty on imports is not paid by the approved company by the due date pursuant to subsection (17), the Comptroller may, at his or her discretion, suspend or withdraw his or her approval or may vary the conditions under which the approval was given.

(20) The Comptroller may approve a gold card taxpayer as a person to whom subsection (12) may be applied for the purposes of allowing a deferral in the payment of import VAT under this section.”.

Section 92A amended

8. The Principal Act is amended by—

- (a) renumbering section 92A as section 92B; and
- (b) after section 92, inserting the following new section—

“Liability for duty payable by a company or shareholder in financial difficulties
92A.—(1) In this section—

“arrangement” means any contract, agreement, plan or understanding whether expressed or implied and whether or not enforceable in legal proceedings;

“associate” in relation to a person, means any other person who acts or is likely to act in accordance with the wishes of the first mentioned person as a result of any connection between the persons or common ownership or control, and the first mentioned person is an associate of the second mentioned person; and

“controlling shareholder” in relation to a company, means a person with a controlling interest in the company.

(2) If a company that becomes insolvent or is liquidated owes an amount of duty, charge, penalty, or fee due and payable under the customs laws, each person who was a director of the company at the time it became insolvent or was liquidated is personally liable for such amount.

(3) If an arrangement has been entered into with the intention or effect of rendering a company unable to satisfy a current or a future duty, charge, penalty, or fee due and payable under the customs laws, every person who was a director or controlling shareholder of the company at the time the arrangement was entered into is jointly and severally liable for the duty, charge, penalty, or fee due and payable by the company.

(4) A director of a company is not liable under subsection (3) for the duty, charge, penalty, or fee due and payable under any customs laws by the company if the Comptroller is satisfied that the director derived no financial or other benefit from the arrangement and—

- (a) the director has on becoming aware of the arrangement, formally recorded with the company his or her dissent and notified the Comptroller, in writing, of the arrangement; or

- (b) the director satisfies the Comptroller that, at the time the arrangement was entered into—
 - (i) the director was not involved in the executive management of the company; and
 - (ii) the director had no knowledge of, and could not reasonably have been expected to know of the arrangement.

(5) If the shareholder of a company, in the case of a company owned by one shareholder only, becomes bankrupt, the company in which he or she is the shareholder becomes liable for any amount of tax that is owed by the shareholder.

(6) If a company changes its shareholder structure, and the Comptroller is satisfied that the reason for the change in shareholder structure is to avoid the liability in subsection (5), the company shall remain liable for any duty, charge, penalty, or fee due and payable that is owed by the shareholder under subsection (5).”.

Section 96 amended

9. Section 96 of the Principal Act is amended by—

- (a) after subsection (4B), inserting the following new subsection—

“(4C) A claim for refund which has been rejected in accordance with subsection (4B) may be amended and re-lodged with the Comptroller within 30 days of being notified of a decision under subsection (4B).”; and

- (b) deleting subsection (6) and substituting the following—

“(6) Notwithstanding anything in any other tax or customs law, the Comptroller may refrain from—

- (a) collecting the duty or tax, if the amount of the duty or tax to be collected does not exceed \$10; or
- (b) refunding the duty or tax, if the amount of the duty or tax to be refunded does not exceed \$50.”.

Section 96A amended

10. Section 96A (1)(a) of the Principal Act is amended after “any duty,” by inserting “tax,”.

Section 101A amended

11. Section 101A of the Principal Act is amended after subsection (3) by inserting the following new subsections—

“(4) The amendment of an assessment of duty 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 importer, exporter or licensee, at any time;

- (b) for an assessment of duty, in the case of a company with a gross turnover of less than \$1.25 million, within 3 years of the date the Comptroller served notice of the assessment of duty on that person; or
- (c) in any other case, for any assessment of duty, within 6 years of the date the Comptroller served notice of the assessment of duty on that person.

(5) Subject to subsection (4)(b) and (c), if a notice of assessment of duty (referred to as the “original assessment”) has been amended under subsection (1), the Comptroller 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 importer, exporter or licensee, as the Comptroller deems fit after serving the notice of the original or amended assessment on the importer, exporter or licensee;
- (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 that person; or
- (c) in any other case, within 6 years after serving the notice of the original or amended assessment on the importer, exporter or licensee.”.

Section 114A amended

12. Section 114A of the Principal Act is amended after subsection (4) by inserting the following new subsection—

“(5) Any person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both.”.

Section 137G inserted

13. The Principal Act is amended after section 137F by inserting the following new section—

“Penalty for dishonoured cheques

137G. A person who has presented or submitted a dishonoured cheque for the purposes of settling any duty, charge, penalty, or fee due and payable under any customs laws is liable to a penalty of \$500.”.

Section 148A inserted

14. The Principal Act is amended after section 148 by inserting the following new section—

“Licensing of freight forwarders

148A.—(1) The Comptroller may, on application, licence such other persons as he or she thinks fit as freight forwarders for the purposes of forwarding of cargo onboard an aircraft or ship.

(2) Sections 144(2) and (3), 145, 146, 147 and 148(3) apply, with necessary modifications, to this section.

(3) The Comptroller may issue a code of conduct for freight forwarders under this section for the purposes of regulating the manner in which freight forwarders conduct business for cargo on any aircraft or ship.”.

Section 157 amended

15. Section 157 of the Principal Act is amended by deleting “3 months” wherever it appears and substituting “14 days”.

Section 158 amended

16. Section 158 of the Principal Act is amended by deleting “2 months” wherever it appears and substituting “14 days”.

Section 188 amended

17. Section 188 of the Principal Act is amended by deleting “personally upon such person or may be served” and substituting “through any electronic means approved by the Service or personally upon such person”.

July 2021

CUSTOMS (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 Customs (Budget Amendment) Bill 2021 (**‘Bill’**) seeks to amend the Customs Act 1986 (**‘Act’**).

2.0 FEATURES OF THE BILL

- 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 17 July 2021.
- 2.2 Clause 2 of the Bill amends section 2 of the Act by modifying the definition of “authorised economic operator” and “duty” and inserting new definitions for the terms “freight forwarder” and “gold card tax payer”.
- 2.3 Clause 3 of the Bill amends section 11A(2) of the Act to remove the 2 days requirement and substitutes “48 hours” in relation to the notification to be given to customs officers by a master or agent of a ship regarding its arrival, passengers and cargo. In accordance with international best practices a sea cargo report must be lodged not less than 48 hours before the vessel’s estimated time of arrival at a port. Our neighbouring countries are also using the 48 hours timeline for the registration of a manifest. This gives ample time for the screening and targeting of the manifest for inspection and container x-ray.
- 2.4 Additionally, clauses 3, 4, 5 and 6 of the Bill amend the Act allow for the inclusion of the freight forwarders as part of the provisions in relation to customs shipping and aircraft agents in order to properly regulate them alongside these agents.
- 2.5 Clause 7 of the Bill amends section 92 of the Act to allow deferral of duty payment for compliant bonded warehouse operators and deferral of import Value Added Tax on gold card taxpayers.
- 2.6 Clause 8 of the Bill amends section 92A of the Act to include a new provision 92B to make directors personally liable for duty for companies that are in financial difficulties in line with the Tax Administration Act 2009.

- 2.7 Clause 9 of the Bill amends section 96 of the Act for the insertion of the provision for re-lodgment of the claims for refund within 30 days of being notified of the decision. This will ensure the timely and efficient processing of re-lodgment of claims.
- 2.8 Clause 10 of the Bill amends section 96A of the Act for the offsetting of overpaid duty under any customs law to be first applied against any tax or excise law owing by the taxpayer.
- 2.9 Clause 11 of the Bill amends section 101A of the Act to include the timeline for amendment of assessment for duty as a result of audit or investigation.
- 2.10 Clause 12 of the Bill amends section 114A of the Act to include an offence provision for importers that do not maintain proper records as required under this section.
- 2.11 Clause 13 of the Bill inserts section 137G to the Act where a penalty of \$500 will be imposed on persons that make payment of duty on cheques that are dishonored.
- 2.12 Clause 14 of the Bill inserts section 148A to the Act for the licensing of freight forwarders. This allows Fiji Revenue and Customs Service (**‘FRCS’**) to regulate the operations of freight forwarders similar to that of customs agents, shipping agents and airline agents.
- 2.13 Clause 15 of the Bill amends section 157 of the Act by reducing the period for notice of claim from within 3 months to 14 days. In this provision, where a notice of seizure on goods was issued to importers, an opportunity is given to make a claim for the goods to be returned within 3 months. The reduced period will minimise the loss of useful life of the good and the process to claim the goods will also be expedited.
- 2.14 Clause 16 of the Bill amends section 158 of the Act by reducing the period for procedure after notice of claim from 2 months to 14 days. This reduces the time taken for processing of claims by FRCS and minimises the loss of useful life for seized goods.
- 2.15 Clause 17 of the Bill amends section 188 of the Act to include provisions for the service of documents by electronic means. As part of business modernisation and automation of processes, this allows FRCS to serve documents by electronic means to importers including foreign nationals.

3.0 MINISTERIAL RESPONSIBILITY

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

A. SAYED-KHAIYUM
Attorney-General