

# BILL NO. 28 OF 2022

## 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) (No. 2) Act 2022.

(2) This Act comes into force on 1 August 2022 except for section 3(a) which comes into effect on 1 January 2023.

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

*Section 9 amended*

**2.** Section 9(1) of the Principal Act is amended after “due date” by inserting “or the CEO is not satisfied with the return filed by the taxpayer”.

*Section 33 amended*

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

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

“(5A) If a refund remains uncollected for a period of 5 or more years from the date the refund becomes due, the CEO may forfeit the amount payable by paying the sum into the Consolidated Fund.”; and

(b) after subsection (7), inserting the following new subsection—

“(8) Notwithstanding anything in this section, an application for a refund made by a resident who has paid Non-resident Withholding Tax in relation to professional services 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 is not admissible if the person making the claim makes the claim after 31 December 2022.”.

*Section 112 amended*

4. Section 112(2) of the Principal Act is amended by deleting “Auditor-General” and substituting “chairperson”.

*Sections 115A and 115B inserted*

5. The Principal Act is amended after section 115 by inserting the following new sections—

*“Investigation of complaint by the Fiji Revenue and Customs Service*

15A.—(1) A person may lodge a complaint against a tax agent with the Board.

(2) The Board may forward the complaint to the Fiji Revenue and Customs Service for investigation.

(3) During the course of investigation, the Board must provide the tax agent investigated an opportunity to respond to the complaint made against him or her.

(4) Upon completion of an investigation, the Fiji Revenue and Customs Service must provide a report of the investigation to the Board in order for the Board to make a decision on the matter.”.

*Power of Tax Agents’ Board to compound offences*

115B.—(1) Subject to subsection (2), if a tax agent has committed an offence under this Part, the Board may, at any time prior to the commencement of a hearing by a court of a charge in relation thereto, compound the offence and order, by notice in writing, the tax agent to pay such sum of money as the Board may determine, not exceeding the amount of fine to which the tax agent would have been liable if convicted of the offence.

(2) The Board may compound an offence under this section where the tax agent admits to committing the offence in writing and requests the Board to deal with the offence under this section.

(3) If the Board compounds an offence under this section, an order of the Board under subsection (1)—

(a) must specify the name of the offender, the offence committed, the sum of money ordered to be paid, and the date or dates on which payment is to be made by;

(b) must have a copy of the written admission referred to in subsection (2) attached;

- (c) must be served on the offender;
- (d) is final and is not subject to appeal;
- (e) may be enforced in the same manner as a decree of a court for payment of the amount stated in the order; and
- (f) on production to any court, is treated as proof of conviction of the tax agent for an offence under this Part.

(4) If the Board compounds an offence under this section, the tax agent is not liable for prosecution or penalty in respect of the same act or omission that is the subject of the compounded offence.”

*Schedule 2 amended*

- 6.** Schedule 2 to the Principal Act is amended by deleting (1)(g).

July 2022

## **TAX ADMINISTRATION (BUDGET AMENDMENT) (NO. 2) BILL 2022**

### **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) (No. 2) Bill 2022 (**‘Bill’**) seeks to amend the Tax Administration Act 2009 (**‘Act’**) to address the budgetary changes in the 2022 - 2023 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 2022 except for clause 3(a) which comes into effect on 1 January 2023.
- 2.2 Clause 2 of the Bill amends section 9 of the Act to allow the CEO of the Fiji Revenue and Customs Service (**‘FRCS’**) to make an assessment where the CEO is not satisfied with the return filed by a taxpayer.
- 2.3 Clause 3 of the Bill amends section 33 of the Act to allow forfeiture of uncollected refunds that have remained uncollected for 5 or more years from the date the refunds are due, by paying the uncollected amounts into the Consolidated Fund. Clause 3 of the Bill also sets a time limit of 31 December 2022 within which a claim for refund of Non-resident Withholding Tax paid for professional fees by a resident person where the tax was collected contrary to the provision of any Double Tax Agreement, may be made.
- 2.4 Clause 4 of the Bill amends section 112 of the Act by removing the specific reference to the Auditor-General and substituting a general reference to the chairperson of the Board.
- 2.5 Clause 5 of the Bill inserts sections 115A and 115B to empower the Board to refer any complaint made about tax agents to FRCS to investigate before making a decision on the matter. Clause 5 of the Bill also outlines powers of the Board to issue an order to compound an offence where an offence has been committed under Part 4 of the Act.

2.6 Clause 6 of the Bill amends Schedule 2 to the Act by removing reference to the Superyacht Charter Act 2010 as a tax law.

**3.0 MINISTERIAL RESPONSIBILITY**

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

A. SAYED-KHAIYUM  
Attorney-General