

BILL NO. 33 OF 2022

A BILL

FOR AN ACT TO AMEND THE EXCISE ACT 1986

ENACTED by the Parliament of the Republic of Fiji—

PART 1—PRELIMINARY

Short title and commencement

- 1.—(1) This Act may be cited as the Excise (Budget Amendment) Act 2022.
- (2) This Act comes into force on 1 August 2022.
- (3) In this Act, the Excise Act 1986 is referred to as the “Principal Act”.

Section 2 amended

2. Section 2 of the Principal Act is amended after the definition of “manufacturer” by inserting the following new definition—

““Minister” means the Minister responsible for finance;”.

Section 2A inserted

3. The Principal Act is amended after section 2 by inserting the following new section—

“Act to be read as one

2A. This Act must be read as one with the Customs Act 1986.”.

Section 25A inserted

4. The Principal Act is amended after section 25 by inserting the following new section—

“Power to amend assessments of excise duty made by manufacturers

25A.—(1) If the Comptroller is satisfied, as a result of an assessment carried out under section 25 or for any other reason, that an assessment of excise duty payable or refundable made by a manufacturer contravenes the customs laws or is for any other reason incorrect, the Comptroller may amend the assessment and demand for and recover any short-paid excise duty.

(2) Notice in writing must be given to the manufacturer of—

- (a) an amended assessment made under subsection (1); and
- (b) the basis for the amended assessment and where applicable, the relevant provision of any written law.

(3) Subsection (1) applies whether or not the goods have been released from the control of the Service and whether or not any excise duty assessed has been paid.

(4) The amendment of an assessment of excise 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 manufacturer at any time;
- (b) for an assessment of excise 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 excise duty on that person; or
- (c) in any other case, for any assessment of excise duty, within 6 years of the date the Comptroller served notice of the assessment of excise duty on that person.”.

Sections 38A, 38B and 38C inserted

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

“Dealing with goods subject to lien

38A.—(1) The Comptroller may detain any goods subject to a lien under section 38(2) and recover the debt payable, within a period as the Comptroller may consider reasonable having regard to the condition of the goods.

(2) If the Comptroller is unable to recover the debt due for any goods subject to a lien within the time specified in subsection (2), the Comptroller may determine the manner in which the goods are to be disposed.

Garnishee order

38B.—(1) In this section, “payer” means a person who—

- (a) owes money to a manufacturer;
- (b) holds money, for or on account of, a manufacturer;
- (c) holds money, for a joint account of, a manufacturer, with a spouse or another party;
- (d) holds money on account of some other person for payment to a manufacturer or has authority from some other person to pay money to a manufacturer; or
- (e) holds money that is deposited to the credit of a manufacturer and includes money held in a joint bank account in the name of the manufacturer and one or more other person, provided the source of income is determined to be the income of the manufacturer.

(2) This section applies if a manufacturer is liable to pay excise duty and the—

- (a) excise duty has not been paid by the manufacturer by the due date for payment; or
- (b) Comptroller has reasonable grounds to believe that the manufacturer will not pay the assessed excise duty by the due date for payment.

(3) If this section applies, the Comptroller may, by notice in writing, require a payer in respect of the manufacturer to pay the amount specified in the notice to the Comptroller, being an amount that does not exceed the amount of excise duty that has not been paid or the amount that the Comptroller believes will not be paid by the due date.

(4) The notice in subsection (3) remains effective for a period of 12 months from the date of its issue.

(5) A payer must pay the amount specified in a notice under subsection (3) by the date specified in the notice, being a date that is not before the date that the amount owed by the manufacturer becomes due to the manufacturer or held on the manufacturer’s behalf.

(6) If a notice served under subsection (3) requires a payer to deduct amounts from a pension, salary, wages or other remuneration payable at fixed intervals to the manufacturer, the amount required to be deducted by the payer from each payment must not exceed 20% of the amount of each payment of pension, salary, wages or other remuneration.

(7) Subject to subsection (6), if a notice served under subsection (3) requires a payer who holds monies in accordance with subsection (1)(c), the payer must deduct the payment of excise duty specified in the notice, from the income of the manufacturer liable to pay excise duty owed.

(8) If a payer served with a notice under subsection (3) is unable to comply with the notice, the person must notify the Comptroller, in writing within 14 consecutive days after receipt of the notice, setting out the reasons for the manufacturer's inability to comply.

(9) If a notice is served on the Comptroller under subsection (8), the Comptroller may, by notice in writing—

(a) accept the notification and cancel or amend the notice issued under subsection (3); or

(b) reject the notification.

(10) A payer or the payer's representative is precluded from appealing the decision of the Comptroller under subsection (9).

(11) The Comptroller, must, by notice in writing to the payer, revoke or amend a notice served under subsection (3) if the manufacturer has paid the whole or part of the excise duty due or has made an arrangement satisfactory to the Comptroller for payment of excise duty.

(12) A copy of a notice served on a payer under this section must be served on the manufacturer.

(13) An amount deducted from the payment by a payer pursuant to a notice served on a payer under this section is held by the payer in trust for the State.

(14) A payer making a payment under this section is treated as acting under the authority of the manufacturer and of any other persons concerned and is hereby indemnified in respect of the payment.

(15) A payer who, without reasonable cause, fails to comply with a notice under this section is personally liable for the amount specified in the notice.

Failure to comply with garnishee order

38C.—(1) A person who, without reasonable cause fails to comply with a garnishee order served on him or her under section 38B, commits an offence and is liable on conviction to a fine not exceeding \$25,000 or imprisonment for a term not exceeding 10 years or both.

(2) A person who notifies the Comptroller in writing under section 38B(8) is considered to be in compliance with the garnishee order served on the person under section 38B(3) until the Comptroller serves the person with a notice under section 38B(9) amending the order served under section 38B(3) or rejecting the person's notice under section 38B(9)."

Section 52 amended

6. Section 52 of the Principal Act is amended in the heading by deleting "Penalty for making" and substituting "Making".

Section 53 amended

7. Section 53 of the Principal Act is amended in the heading by deleting “Penalty for refusing” and substituting “Refusing”.

Section 54 amended

8. Section 54 of the Principal Act is amended in the heading by deleting “Penalty for evasion” and substituting “Evasion”.

Section 58 amended

9. Section 58 of the Principal Act is amended in the heading by deleting “Penalty for abuse” and substituting “Abuse”.

Section 82 amended

10. Section 82 of the Principal Act is amended by—

- (a) in paragraph (a), deleting “or”;
- (b) in paragraph (b), deleting “.” and substituting “; or”; and
- (c) after paragraph (b), inserting the following new paragraph—
“(c) by electronic means.”.

July 2022

EXCISE (BUDGET AMENDMENT) 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 Excise (Budget Amendment) Bill 2022 (**‘Bill’**) seeks to amend the Excise Act 1986 (**‘Act’**) to address budgetary policy 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.

2.2 Clause 2 of the Bill amends section 2 of the Act by inserting a new definition for the term “Minister”.

2.3 Clause 3 of the Bill amends the Act by inserting a new section 2A to provide that the Act must be read as one with the Customs Act 1986.

2.4 Clause 4 of the Bill amends the Act by inserting a new section 25A to provide for the amendment of assessments of excise duty by manufacturers.

2.5 Clause 5 of the Bill amends the Act by inserting new sections 38A, 38B and 38C to provide for dealing with goods subject to lien and garnishee orders.

2.6 Clauses 6, 7, 8 and 9 of the Bill amend sections 52, 53, 54 and 58 of the Act respectively for consistency purposes.

2.7 Clause 10 of the Bill amends section 82 of the Act to provide for the service of notices by electronic means.

3.0 MINISTERIAL RESPONSIBILITY

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

A. SAYED-KHAIYUM
Attorney-General