

ACT NO. 13 OF 2021

I assent.

J. K. KONROTE

President

[30 July 2021]

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