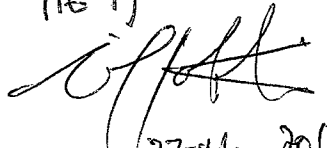


(167)  
  
27 May 2015.

# FINANCIAL ADMINISTRATION AND AUDIT (AMENDMENT) BILL, 2015

## Arrangement of Sections

---

### Section

|    |  |   |
|----|--|---|
| 1. | Short title and commencement.....                        | 2 |
| 2. | Amendment to section 2 of principal Act.....             | 2 |
| 3. | Insertion of new section 8A into principal Act.....      | 2 |
| 4. | Insertion of new Part IIB into principal Act.....        | 3 |
| 5. | Amendment of section 27 of the principal Act. ....       | 5 |
| 6. | Insertion of new section 43A into the principal Act..... | 5 |
| 7. | Insertion of new Schedule into the principal Act.....    | 5 |



## **FINANCIAL ADMINISTRATION AND AUDIT (AMENDMENT) BILL, 2015**

### **A BILL FOR AN ACT TO AMEND THE FINANCIAL ADMINISTRATION AND AUDIT ACT**

#### **1. Short title and commencement.**

- (1) This Act which amends the Financial Administration and Audit Act (*No. 26 of 2010*) may be cited as the Financial Administration and Audit (Amendment) Act, 2015.
- (2) This Act shall come into force on such date as the Minister may appoint by notice published in the *Gazette*.

#### **2. Amendment to section 2 of principal Act.**

Section 2 of the principal Act is amended by inserting in the appropriate alphabetical order the following new definition —

“**tax legislation**” includes any enactment relating to the raising of revenue, but does not include the Value Added Tax Act, 2014 (*No. 32 of 2014*).”.

#### **3. Insertion of new section 8A into principal Act.**

The principal Act is amended by inserting immediately after section 8 the following new section —

##### **“8A. Priority of tax payments.**

- (1) Where interest, a penalty or fine is payable by any person in respect of a tax payable by him, the Financial Secretary shall apply any payment made by that person in the following order of priority—
  - (a) the penalty;

- (b) where payment exceeds the amount of the penalty; the fine;
  - (c) where payment exceeds the amount of the penalty and the fine; the interest;
  - (d) where payment exceeds the amount of the penalty, fine and interest; the tax.
- (2) The Financial Secretary shall lodge payments made in satisfaction of taxes imposed by the enactments set out in Part A of the *Schedule* in the priority in which the enactments are there set out.
- (3) The Minister may amend the *Schedule* by Order.”.

**4. Insertion of new Part IIB into principal Act.**

The principal Act is amended by inserting immediately after section 19H in Part IIA the following new Part —

**“PART IIB – TAX COMPLIANCE CERTIFICATE**

**19I. Requirement for Tax Compliance Certificate.**

- (1) A Tax Compliance Certificate is required for the purpose of —
- (a) submitting a tender for the award of a contract with the Government or a public body;
  - (b) collecting payment for services rendered under a contract awarded by the Government or a public body where the value of the contract is \$10,000 or more;
  - (c) receiving a concession in accordance with the provisions of any legislation conveying a concession;
  - (d) registering the ownership of or changing the ownership in any registerable good on which the tax is required to be paid.
- (2) Notwithstanding subsection (1), the Minister may permit the award of a contract to a person who does not possess a Tax Compliance Certificate where it is in the public interest to do so.
- (3) In this section, “**registerable good**” has the same meaning as defined in section 2 of the Value Added Tax Act, 2014 (*No. 32 of 2014*).

**19J. Issuance of Tax Compliance Certificate.**

- (1) A Tax Compliance Certificate shall be issued by the Financial Secretary to an applicant where the applicant has satisfied the Financial Secretary that he has fulfilled the relevant obligations to pay monies due to the Government under the enactments specified in Part B of the *Schedule*.
- (2) A person shall make an application to the Financial Secretary for a Tax Compliance Certificate in the form prescribed.
- (3) A Tax Compliance Certificate issued in accordance with this Act shall be valid for —
  - (a) six months, where the value of any contract in respect of which it is issued is less than \$10,000.00; or
  - (b) one month, where the value of the contract is \$10,000.00 or more.

**19K. Revocation of Tax Compliance Certificate.**

The Financial Secretary may revoke a Tax Compliance Certificate issued under section 19J, upon finding that at the time of making the application, the applicant knowingly furnished particulars that are found to be —

- (a) materially incomplete;
- (b) false; or
- (c) likely or calculated to deceive.

**19L. Report.**

- (1) Every public body shall produce to the Financial Secretary on or before the 30<sup>th</sup> day of March in every year a report of the persons to whom it has awarded contracts.
- (2) Notwithstanding subsection (1), where a public body is required to produce an annual report under section 34, the report required under subsection (1) may form a part of that annual report.

**19M. Offence.**

Any person who —

- (a) in relation to an application for a Tax Compliance Certificate, knowingly furnishes particulars that are found to be materially incomplete, false or likely or calculated to deceive;
- (b) forges or is in possession of a forged Tax Compliance Certificate,

commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding two years.

**19N. Interpretation.**

For the purposes of this Part, a “**Tax Compliance Certificate**” means a document issued to a person as proof that payments of tax liabilities and wage-related statutory deductions are current.”.

**5. Amendment of section 27 of the principal Act.**

Section 27 of the principal Act is amended in subsection (1) —

- (a) by deleting in paragraph (a)(iii) the word “and”;
- (b) by inserting after paragraph (a)(iii) the following new subparagraph

—  
“(iv) has knowingly conducted business with an entity without a Tax Compliance Certificate in breach of the provisions of Part IIB of this Act; and”.

**6. Insertion of new section 43A into the principal Act.**

The principal Act is amended by inserting immediately after section 43 of the following new section —

**“43A. Collection of taxes.**

Where the Financial Secretary has engaged the services of any person to collect sums due and owing to the Government by any person liable to pay the tax, the fee charged by that person for services shall become a debt due to the person who is liable to pay the tax.”.

**7. Insertion of new Schedule into the principal Act.**

The principal Act is amended by the insertion immediately after section 48 of the following Schedule —

**“SCHEDULE**

**PART A**

(section 8A)

**Priority List of Tax Enactments**

1. Business Licence Act (*No. 25 of 2010*)
2. Valued Added Tax Act, 2014 (*No. 32 of 2014*)
3. Stamp Act (*Ch. 370*)
4. Customs Management Act (*Ch. 293*)

5. Real Property Tax Act (*Ch. 375*)

**PART B**  
(section 19J)

Business Licence Act (*No. 25 of 2010*)  
Customs Management Act (*Ch. 293*)  
Immigration (Fees) Regulations (*Ch. 91*)  
National Insurance Act (*Ch. 350*)  
Real Property Tax Act (*Ch. 375*)  
Road Traffic Act (*Ch. 220*)  
Valued Added Tax Act 2014 (*No. 32 of 2014*).”

**OBJECTS AND REASONS**

Clause 1 sets out the short title and commencement.

Clause 2 of the Bill seeks to provide for a definition of “tax legislation”.

Clause 3 of the Bill seeks to provide for the priority of tax payments.

Clause 4 of the Bill seeks to provide for a new Part IIB to provide for a Tax Compliance Certificate and for the issuance and revocation of same and any offences related thereto.

Clause 5 of the Bill seeks to amend section 27 of the principal Act to provide for a new subparagraph (iv) to allow the Financial Secretary to make a surcharge against any person if it appears to the Financial Secretary upon report by the Treasurer that a person or entity has knowingly conducted business with an entity without a Tax Compliance Certificate in breach of the provisions of Part IIB of the Act.

Clause 6 of the Bill seeks to provide for a new section 43A so that where the Financial Secretary has engaged the services of any person to collect sums due and owing to the Government by any person liable to pay the tax, the fee charged by the person for services shall become a debt due to the person liable to pay the tax.

Clause 7 of the Bill seeks to provide for the insertion of a new *Schedule* to provide for the priority list of tax payments.