

12 August 2020

Newsletter

Customs Act Gazette Notice August 2020 Update

Ernst & Young wishes to bring to your attention to the amendments to the Customs Act with effect from 1st August 2020.

1. Amendments to the Customs Act:

(i) Procedures on arrival.

Section 14 of the Act is amended to empower a proper officer to refuse clearance of any ship or aircraft arriving in Fiji if the master of the ship or aircraft fails to comply with the procedures in relation to arrival in Fiji. The amendment is the inclusion of Section 14(1A) which states-

"(1A) The proper officer may refuse clearance of a ship or aircraft arriving in Fiji if the master of the ship or aircraft fails to comply with subsection (1).".

(ii) Disputes concerning duty payable & Power to amend assessments of duty made by importers, exporters or licensees

Sections 94 and 101A of the Act respectively is amended to align the mechanism for the review of decisions by the Comptroller under those sections with the new process for the review of decisions by the Comptroller outlined under the newly inserted Part 22A.

(iii) Liability of owner for acts of duly licensed agent or his or her own employee

Sections 154A and 154C of the Act respectively is amended to provide clarity in relation to an application for a Customs ruling and the effect of a Customs ruling by correcting cross referencing errors.

(iv) New mechanism of review

Section 154G of the Act is deleted to align the mechanism for the review of decisions by the Comptroller in relation to customs rulings with the new process for the review of decisions by the Comptroller as outlined in Part 22A.

Part 22A of the Act is inserted to outline the new review mechanism for decisions of the Comptroller.

Essentially, the new Part 22A provides that, except for a decision of the Comptroller that may be appealed to the Minister under this Act or any other limitation prescribed under the Act, a person dissatisfied with any other decision of the Comptroller may lodge an objection to the decision with the Comptroller. The same mechanism provides that if a person is still dissatisfied with the reviewed decision of the Comptroller, the person may appeal the reviewed decision to the Court of Review or a court of competent jurisdiction, as applicable. Part 22A is as follows:

"173A.—

- (1) Except for a decision by the Comptroller that may be appealed to the Minister under this Act or any other limitation prescribed under this Act, a person dissatisfied with any other decision of the Comptroller may lodge an objection to the decision with the Comptroller within 20 working days of service of the notice of the decision.
- (2) If the decision to which an objection relates is an amended assessment under section 101A, an importer, exporter or licensee's right to object to the amended assessment is limited to the alterations and additions made in the amended assessment.
- (3) If the decision to which an objection relates is an amended Customs ruling under section 154E, a person's right to object is limited to the alterations and additions made in the amended Customs ruling.
- (4) An objection must be lodged in the approved form stating fully and in detail the grounds upon which the person objecting relies to support the objection and the approved form must be signed by the applicant.
- (5) A person may apply, in writing, to the Comptroller for an extension of time to lodge an objection and the Comptroller may, if satisfied that there is reasonable cause, grant an application under this section and must serve notice of the decision on the person.
- (6) The Comptroller may require the person to provide additional information relevant to the objection.
- (7) Subject to subsection (8), the Comptroller must consider the objection and either allow the objection in whole or part, or disallow it,

and the Comptroller's decision is referred to as an objection decision.

- (8) The Comptroller must serve notice of the objection decision on the person objecting no later than 20 working days after lodgment of the objection, or where additional information has been sought in accordance with subsection (5), 20 working days after receipt of such additional information.
- (9) If no objection to a decision is lodged with the Comptroller within the time for objecting under subsection (1) or, when such time is extended by the Comptroller, within the extended time, the decision is treated as valid and binding upon the applicant subject to any defect, error or omission that may have been made in the decision or in any proceeding relating to the decision required by customs laws

173B. A person dissatisfied with an objection decision may, within 20 working days of service of notice of the decision—

- (a) in the case of a matter in respect of which appeals may be heard by the Court of Review in accordance with section 174, appeal the decision to the Court of Review; and
- (b) in the case of any other matter, appeal the decision to a court of competent jurisdiction."

Let us know should you wish to seek clarifications on the issues highlighted.

Our advice is based on the current taxation legislation and our understanding of FRCS's current interpretation of the law. We note however that, it is our experience that the FRCS can be inconsistent in their interpretation of the tax law and we cannot guarantee that the advice will not be challenged. Nor is it possible to guarantee the outcome of such a challenge if it occurs. Should you have any contact from the FRCS in respect of this advice, we recommend that you contact us for advice on how to proceed.

It is also important that you ask us to review any advice already given if a transaction is delayed, or is to be repeated, or if an apparently similar transaction is to be undertaken. Our original advice may no longer be applicable or appropriate in such circumstances.



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