

REPUBLIC OF VANUATU
BILL FOR THE
TAX ADMINISTRATION (AMENDMENT)
ACT NO. OF 2020

Explanatory Note

This Bill amends the Tax Administration Act No. 37 of 2018 (“the Act”) to provide for changes necessary in order to meet the European Union (EU) Code of Conduct Group (Business Taxation) and Organisation of Economic Cooperation and Development (OECD) standards. These amendments will help to ensure that Vanuatu can be removed from the EU List of Non-Cooperative Tax Jurisdictions.

The amendments include the following:

Non-profit bodies

This Bill provides for a new definition of “non-profit body” to ensure that tax concessions are only provided to entities that do not and can never pass profits on to their members. The new rule will require non-profit bodies to register with the Director of Customs and Inland Revenue. Existing non-profit entities registered before this Act commences will be treated as non-profit bodies until December 2022. This will give these entities time to make changes to their rules if needed and to register with the Director.

Definitions needed to meet EU and OECD standards

This Bill also provides for new definitions of the terms “resident person”, “non-resident person” and “beneficial owner”, in order to meet EU and OECD standards as to how these terms should be defined. As the Act applies to all tax related laws in Vanuatu, these definitions will also be applicable to all tax related laws. Residence for tax purposes is required for administration of the Tax Administration Act and Regulations dealing with automatic exchange of information as well as for VAT purposes.

Business records – ownership and beneficial ownership

This Bill requires persons carrying on business to keep up to date records necessary to identify the owner of the business, or if an entity (such as a company), the beneficial owners of the entity.

The Act currently provides for rules on how books and accounts are to be kept and retained by businesses. The Bill extends these rules to apply to records kept of beneficial owners and will

ensure a consistent requirement to keep beneficial owner records is in place and those records are accessible for the purposes for exchange of tax information.

Penalties

Lastly, the Act is amended to set the maximum penalties that may be applied, relating to mutual administrative assistance agreement, under the Regulations.

Minister of Finance and Economic Management



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An Act to amend the Tax Administration Act No. 37 of 2018.

Be it enacted by the President and Parliament as follows-

1 Amendment

The Tax Administration Act No. 37 of 2018 is amended as set out in the Schedule.

2 Commencement

This Act commences on the day on which it is published in the Gazette.

SCHEDULE

AMENDMENTS OF TAX ADMINISTRATION ACT NO. 37 OF 2018

1 Section 2 (Definition of “tax”)

After “penalty,” insert “fee, charge,”

2 Section 2

Insert in their correct alphabetical positions:

“**non-profit body** has the meaning given in section 2A;

non resident person means a person who is not a resident person;

resident person has the meaning given in section 2B;”

3 After section 2

Insert

“2A Non-profit body

- (1) A non-profit body is an entity that satisfies the following conditions:
 - (a) the entity is established and operates solely for one or more of the following purposes:
 - (i) to provide relief to those suffering from poverty, distress, or the effects of a natural disaster; or
 - (ii) for the advancement of education or amateur sport; or
 - (iii) for the advancement of religion; or
 - (iv) for the purpose of the protection or enhancement of the natural environment, including the dissemination of information, or the conduct of research concerning the natural environment; or
 - (v) for the promotion of local culture, including literature, art or music; or
 - (vi) to provide support to local communities; or

- (vii) to provide social benefits; or
 - (viii) for any other purposes as may be prescribed; and
 - (b) no part of the revenue or other funds, or assets, of the entity are used, or are available for use for the private benefit of a member of the entity.
- (2) An entity may apply to the Director, in the approved form, for approval as a non-profit body.
 - (3) If an entity that has made an application under subsection (2) satisfies the conditions in paragraphs (1)(a) and (b), the Director must grant the application and provide a notice of approval to the applicant.
 - (4) The approval of an entity as a non-profit body takes effect from the date specified in the notice of approval under subsection (3) and remains in force until the date that the entity ceases to satisfy the conditions in paragraphs (1)(a) and (b) or such later date as set out by the Director by notice in writing to the entity.
 - (5) An entity approved as a non-profit body must immediately notify the Director, in writing, if the entity no longer satisfies the conditions in paragraphs (1)(a) and (b).
 - (6) An entity registered on or before the commencement of this Act under the Charitable Associations (Incorporation) Act [CAP 140] is taken to be a non-profit body until 31 December 2022.
 - (7) An entity to which subsection (6) applies must apply to the Director to be approved as a non-profit body on or before 31 December 2022.

2B Definition of resident person

- (1) For the purposes of this Act **resident person** means a resident individual, resident company, resident partnership, resident estate, the Government or a public authority.
- (2) For the purposes of subsection (1):

resident company means a company that:

- (a) is incorporated, registered, or otherwise created in Vanuatu; or

(b) is managed and controlled in Vanuatu;

resident entity means a resident company, partnership, or trust;

resident estate means the estate of an individual who was a resident individual at the time of his or her death;

resident partnership means a partnership that:

(a) is formed in Vanuatu; or

(b) is managed and controlled in Vanuatu;

resident trust means a trust that:

(a) is registered, formed, settled, or otherwise created in Vanuatu; or

(b) is managed and controlled in Vanuatu.

(3) For the purposes of subsection (2):

resident individual means an individual who:

(a) has his or her home in Vanuatu during a year; or

(b) is present in Vanuatu for a period of, or periods amounting in aggregate to, 183 days in any 12 months period commencing or ending in the calendar year; or

(c) is a citizen of Vanuatu and who is an officer or employee of the Government or a public authority.

(4) To avoid doubt, an individual who:

(i) is a resident for the current calendar year; and

(ii) was not a resident for the preceding calendar year,

is a resident in the current calendar year only for the period commencing on the day on which the individual was first present in Vanuatu.

(5) In addition to subsection (4), an individual who:

- (i) is a resident for the current calendar year; and
- (ii) is not a resident for the following calendar year,

is treated as a resident in the calendar year only for the period ending on the last day on which the individual was present in Vanuatu.”

4 After paragraph 8(2)(d)

Insert

“(da) enable the identity of the person (and if the person is an entity, the beneficial owner of that entity) to be available at any time; and”

5 Subsection 8(5)

Delete “taxpayer”, substitute “person’s”

6 After subsection 8(8)

Insert

“(8A) The Regulations may prescribe the information required to be kept and retained relating to the identification of a beneficial owner, or the tracing of beneficial ownership, of an entity.”

7 After section 8

Insert

“8A Beneficial owner

- (1) For the purpose of section 8, **beneficial owner** means a natural person who is a beneficial owner of an entity if the natural person:
 - (a) ultimately owns or controls the entity, in whole or in part, through direct or indirect ownership or control of shares or voting rights or other membership interests in that entity; or
 - (b) exercises control of the entity via other means.
- (2) In addition to subsection (1), the beneficial owner of an entity is taken to include a natural person who:
 - (a) has a membership interest of 25% or more of the entity by way of legal ownership of shares or otherwise, including ownership exercised through a chain of ownership; or

- (b) exercises control, directly or indirectly, over the legal person or legal arrangement.
- (3) In the case of a trust, a beneficial owner includes:
 - (a) a settlor, trustee, protector, beneficiary, or class of beneficiaries, of the trust; and
 - (b) any other natural person exercising ultimate effective control over the trust.
- (4) In the case a legal arrangement other than a trust, a beneficial owner means a person in equivalent or similar positions to the persons under subsection (3).
- (5) If two or more natural persons each own or control an interest in an entity, each of them is treated as owning or controlling that interest.
- (6) Beneficial ownership may be traced through any number of persons or arrangements of any description.”

8 Section 94

Delete “taxpayer”, substitute “person”

9 Subsection 95(2)

After “tax return”, insert “or other document”

10 Subsections 95(2) and (3)

Delete “taxpayer” (wherever occurring), substitute “person”

11 After subsection 109(2)

Insert

- “(3) The Regulations relating to a mutual administrative assistance agreement may prescribe penalties not exceeding VT50,000,000 or a term of imprisonment of not more than 2 years or both, for offences against the Regulations.”

12 Schedule 3 – At the end of Part 2

Add

- “3 A person in respect of an investment of the kind referred to in paragraph 5(1)(b) of the Act.”

13 Schedule 4 – Heading

Delete “section 109”, substitute “section 107”