

REPUBLIC OF VANUATU

BILL FOR THE

TAX ADMINISTRATION

(AMENDMENT) ACT NO. OF 2021

Explanatory Note

This Bill amends the Tax Administration Act No. 37 of 2018 (“the Act”) to improve the operation of our tax laws as well as to make 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

The 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

The 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 on 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

The 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) and 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 of exchange of tax information. Interim rules were inserted into the Tax Administration Regulations earlier this year. The amendments to the Act will replace the Regulations which will be repealed.

Access to Records

The Bill provides that the powers of the Director to information under sections 48 and 49 of the Act are not overridden by Government confidentiality laws. This amendment removes any possible doubt that the Director has access to records held by Government departments and agencies for the purposes of administering tax laws.

Penalties

The Bill corrects minor errors in the penalty provisions and will ensure all persons required to keep records will be liable to penalties if they fail to comply. The Act is also amended to set the maximum penalties that may be applied for offences relating to mutual administrative assistance agreement, under the Regulations.

Minister of Finance and Economic Management



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BILL FOR THE TAX ADMINISTRATION (AMENDMENT) ACT NO. OF 2021

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REPUBLIC OF VANUATU

BILL FOR THE TAX ADMINISTRATION (AMENDMENT) ACT NO. OF 2021

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:

“**business** includes any of the following activities:

- (a) any industrial, commercial or professional activity conducted for profit, whether conducted continuously or short term; or
- (b) the activity of developing or renting out real property; or
- (c) the activity of investing in property; or
- (d) any activity of an entity;

investing in property means any activity undertaken to earn property revenue;

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

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

property revenue means the profits or income earned by virtue of owning property including the following:

- (a) a dividend, interest, royalty, annuity, or other amount arising from the provision, use or exploitation of property; or
- (b) gains on the disposal of any asset giving rise to property revenue under paragraph (a).

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.

SCHEDULE
AMENDMENTS OF TAX ADMINISTRATION ACT NO. 37 OF 2018

- (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.
- (8) An entity must file a return, in the prescribed form and accompanied with a prescribed fee to the Director in respect of a calendar year on or before 31 of March following that year.

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:
- (a) is a resident for the current calendar year; and
 - (b) 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:
- (a) is a resident for the current calendar year; and
 - (b) 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 Aftersubsection 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 Subsection 8(9)

Repeal the subsection.

8 After section 8

Insert

“8A Beneficial owner

- (1) For the purpose of section 8, **beneficial owner** means:
- (a) a natural person who is a beneficial owner of an entity if the natural person:
 - (i) 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
 - (ii) exercises control of the entity via other means; or
 - (b) any other person as may be prescribed by the Minister, as a beneficial owner.
- (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.”

9 Paragraphs 48(9)(b) and 49(6)(b)

Delete “.”, substitute “; or

- (c) any law that provides for confidentiality of information held by the Government or public authority.”

10 After section 90

Insert

“90A Underestimated instalments penalty

A person who:

- (a) applies to the Director under a tax law for a variation of the instalments of tax payable by the taxpayer for a tax period; and
- (b) the Director has agreed to vary the instalments of tax payable by the taxpayer for the tax period based on the taxpayer’s estimated tax liability; and
- (c) the actual tax payable by the taxpayer for the tax period exceeds the total instalments payable by the taxpayer for the tax period by more than 20% the difference being referred to as the tax shortfall,

the taxpayer is liable to pay a penalty of 10% of the tax shortfall.”

11 Section 94

Delete “taxpayer”, substitute “person”

12 Subsection 95(2)

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

13 Subsections 95(2) and (3)

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

14 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.”

15 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.”

16 Schedule 4 – Heading

Delete “section 109”, substitute “section 107”