

SECOND READING SPEECH

GOODS AND SERVICES TAX (2015 BUDGET)(AMENDMENT) BILL 2014

MR SPEAKER,

THE BILL PROPOSES:

1. TO EXPANDTHE EXISTING DIRECTOR PENALTY REGIME, WHICH CURRENTLY ONLY APPLIES TO UNPAID SALARY AND WAGES TAX AMOUNTS, TO INCLUDE UNPAID AMOUNTS DUE UNDER THE *GOODS AND SERVICES TAX ACT 2003*.

MR SPEAKER, I COMMEND THE BILL.

EXPLANATORY MEMORANDUM

Goods and Services Tax (2015 Budget)(Amendment) Bill 2014

The Bill proposes:

Clause 1 & 2

To expand the existing director penalty regime, which currently only applies to unpaid salary and wages tax amounts, to include unpaid amounts due under the *Goods and Services Tax Act 2003*

The amendment will 'level the playing field' in terms of sole traders, partners and company directors who use collected GST to fund the business or private activities rather than remitting the amounts as required. A sole trader, who applies GST to pay other creditors instead of remitting the amount collected to the IRC, will be required to pay the GST out of their own funds – along with any late payment penalties. Implementation of the proposal will encourage directors to ensure that their company fulfils its obligations to remit amounts payable under the *Goods and Services Tax Act 2003*.



No: of 2014

Goods and Services Tax (2015 Budget)(Amendment) Bill 2014.

ARRANGEMENT OF CLAUSES.

1. Penalties (Amendment of Part XIV).
2. New Division XIV.2

"Division 2. - Director's Liability for the Collection of Goods and Services Tax.

- 106A. OBJECT.**
- 106B. NON-APPLICATION.**
- 106C. INTERPRETATION."**
- 106D. DIRECTOR'S LIABILITY FOR COMPANY'S NON-REMITTANCE OF GOODS AND SERVICES TAX TO THE COMMISSIONER GENERAL.**
- 106E. COMMISSIONER GENERAL MUST GIVE 30 DAYS' NOTICE BEFORE RECOVERING PENALTY.**
- 106F. HOW NOTICE MAY BE GIVEN.**
- 106G. REMISSION OF PENALTY WHERE SECTION 106D, IS COMPLIED WITH BEFORE THE NOTICE PERIOD ENDS.**
- 106H. AGREEMENT TO PAY GOODS AND SERVICES TAX.**
- 106I. NON-REMISSION IN CERTAIN CASES."**



A BILL

for

AN ACT

entitled

Goods and Services Tax (2015 Budget)(Amendment) Bill 2014.

Being an Act to amend the *Goods and Services Tax Act 2003*,

MADE by the National Parliament and deemed to come into operation on 1 January 2015.

1. PENALTIES (AMENDMENT OF PART XIV).

Part XIV of the Principal Act is amended by inserting before Section 95 the following heading:

“Division 1. – Offences and Additional Tax.”

2. NEW DIVISION XIV.2.

The Principal Act is amended by inserting, after Section 106, the following new Division:

“Division 2. – Director’s Liability for the Collection of Goods and Services Tax.

106A. OBJECT.

The object of this division is to ensure that a company meets its obligations under the goods and services tax provisions of this Act by imposing a penalty against directors who do not make the company comply.

106B. NON-APPLICATION.

This division does not apply to the following:

- (a) a director of a company who is a director by virtue of his official position in government service; or
- (b) a director of a company who is appointed by the National Executive Council.

Goods and Services Tax (2015 Budget)(Amendment)

106C. INTERPRETATION.

In this Division unless the contrary intention appears -

“company” means a company as defined in Section 2(1) of the ***Companies Act 1997*** and refers to those companies who are required to pay an amount of goods and services tax to the Commissioner General under this Act;

“company's liability” means the amount of goods and services tax that is due and payable and that remains unpaid after the due date;

“company register” means the register kept by the registrar of Companies pursuant to the ***Companies Act 1997***;

“director” means a director as defined in Section 107 of the ***Companies Act 1997***;

“due date” means the due date within which goods and services tax is required to be paid to the Commissioner General as stipulated under this Act;

“goods and services tax” includes any interest or additional tax or penalty payable in relation to an amount of goods and services tax;

“relevant time” means the period from when the goods and services tax is required to be charged or withheld as stipulated under the Act, to the due date.

106D. DIRECTOR'S LIABILITY FOR COMPANY'S NON-REMITTANCE OF GOODS AND SERVICES TAX TO THE COMMISSIONER GENERAL.

(1) On or before the due date for payment of tax under this Act, the persons who are directors of a company from time to time shall cause the company to do at least one of the following:

- (a) comply with its obligations in relation to goods and services tax charges required to be made and amounts withheld in relation to goods and services tax; or
- (b) enter into an agreement in writing with the Commissioner General to pay the amount of tax outstanding within such time and for such sums as specified in the agreement; or
- (c) apply for liquidation pursuant to Section 291 (2)(c) of the ***Companies Act 1997*** to liquidate the company.

(2) If subsection (1) is not complied with, each person who is a director of the company during the relevant time, is liable, subject to Section 106E, to pay to the Commissioner General, as penalty, an amount equal to the company's goods and services tax liability.

(3) If after the due date, a person becomes a director of the company when subsection (1) has not been complied with yet and at the end of 30 days after the person becomes a director, subsection (1) has still not been complied with, that person is liable to pay to the Commissioner General, as penalty, an amount equal to the company's goods and services tax liability.

Goods and Services Tax (2015 Budget)(Amendment)

(4) Where a director pays the penalty imposed under this section, the liability against the company is discharged.

(5) Where a company has two or more directors, each director is jointly and severally liable for the company's tax debt.

(6) It is a defence against this section if it is proved that –

- (a) because of illness or for some other good reason, the person did not take part in the management of the company at any time when he was a director or during the relevant time; or
- (b) the person took all reasonable steps available to ensure that the directors complied with Subsection (1).

(7) In determining what is 'reasonable' under subsection (6)(b), regard shall be had to –

- (a) the period of time the person was a director; and
- (b) the person's involvement in the management of the company; and
- (c) all other relevant circumstances.

(8) An amount payable to the Commissioner General under this section is a debt to the State and payable by the director and that amount may be sued for and recovered against the director at any time in a court of competent jurisdiction by proceedings in the name of the Commissioner General.

(9) Nothing in this section prevents a director paying an amount under Subsection (2) from recovering such amounts from the company or other directors of the company.

106E. COMMISSIONER GENERAL TO GIVE 30 DAYS' NOTICE BEFORE RECOVERING PENALTY.

The Commissioner General is not entitled to recover from a director a penalty payable under Section 106D until after the expiration of 30 days after the Commissioner General gives to the director a notice that -

- (a) establishes the director's liability to pay the penalty under Section 106D; and
- (b) sets out the details of the company's liability; and
- (c) states that the penalty will be remitted if, at the end of 30 days after the notice is given -
 - (i) the liability has been discharged; or
 - (ii) an agreement relating to the liability is in force under Section 106H; or
 - (iii) the company is being wound up.

Goods and Services Tax (2015 Budget)(Amendment)

106F. HOW NOTICE MAY BE GIVEN.

If it appears from the company register that a person is or has been, within the last 14 days, a director of the company, the Commissioner General may give the person a notice under Section 106E by leaving it at or sending it by post to an address that appears from such documents to be the person's place of residence or business.

106G. REMISSION OF PENALTY WHERE SECTION 106D IS COMPLIED WITH BEFORE THE NOTICE PERIOD ENDS

Subject to Section 106I, where a penalty is payable by a director under Section 106D and one or all of the acts referred to in Section 106D(1) is complied with –

- (a) at a time when the Commissioner General has not yet given the person a notice under Section 106E; or
- (b) within 30 days after the Commissioner General gives the person such a notice,

the penalty will be remitted by the Commissioner General.

106H. AGREEMENT TO PAY GOODS AND SERVICES TAX.

(1) The Commissioner General shall not seek to recover a penalty against a company director under Section 106D(2) if an agreement has been entered with the company for the payment of goods and services tax and the company has not breached the agreement.

(2) Where a company makes an agreement with the Commissioner General under Section 106D(1)(b), the persons who are directors of the company from time to time must cause the company to comply with the agreement.

(3) Where the company contravenes the agreement by failing to pay a specified amount on or before the specified day, in addition to the directors referred to in Section 106D(2), each person who was a director of the company at any time during the period beginning on the day when the agreement was made and ending on the day of the contravention is liable to the Commissioner General, by way of penalty, an amount equal to the balance payable under the agreement.

(4) An amount referred to in Subsection (3) is a debt to the State and payable by the director and that amount may be sued for and recovered against the director at any time in a court of competent jurisdiction by proceedings in the name of the Commissioner General.

106I. NON-REMISSION IN CERTAIN CASES.

Where Section 106D(1)(c) is complied with, a penalty payable by a director under Section 106D shall not be remitted under Section 106G where it is established that the company did not comply with its obligations to furnish a return under this Act within 90 days of the due date for complying.”