



Business Licence Reform

Modernisation, Economic Substance, and Record Keeping Requirements

26 August 2020

Part of Holistic set of Reforms

The Government is progressively implementing improvements to our revenue system to make it more effective and efficient.

Business Licence Fee reform is part of this process

The Minister of Finance and Economic Management has established a Revenue Taskforce to examine revenue options.

It is expected that the proposed Business Licence Act reforms will be one of a number of measures initiated by the Government to improve the effectiveness of Vanuatu's revenue system.

What will change?

Three Key Changes

1. Modernise Business Licence Act

The current Business License Act [CAP. 249] is over 14 years and needs reform and modernisation.

New rules will streamline its operation, improve administration and ensure it is fully aligned with the Tax Administration Act.

2. Economic Substance

The new Business Licence Act will include the requirement that entities (companies partnerships foundations etc) must have adequate substance in Vanuatu or pay higher business licence fees than other businesses.

3. Record Keeping Rules

The Tax Administration Record Keeping Rules will ensure that records are kept in accordance with international best practice, including legal and beneficial ownership records.

Overview of Proposed Changes

Modernisation of the Business Licence Act

Repeals old law and introduces new rules

Business Licence Fee paid by business owner on total business revenue (premises and categories basically removed)

The new Act supports the new substance rules

DCIR will administer all Business Licences – Provinces are being consulted

Overview of Proposed Changes

Economic Substance

Vanuatu is currently on the European Union's "black list" for non cooperative jurisdictions – these reforms are intended to get Vanuatu removed from the list.

Will apply to all entities (companies partnerships foundations etc).

The new rules will broadly require all entities in Vanuatu to have a real business in Vanuatu.

Two sets of rules – strict for OECD and EU "relevant activities" such as banking, and more relaxed rules for other business activity.

Economic Substance rules are an international standard (OECD and EU) that is intended to prevent entities using zero or near zero tax jurisdictions to avoid tax.

Overview of Proposed Changes

Record Keeping Rules

Currently, section 8 of the Tax Administration Act requires businesses to keep and retain records of their business activities.

Business owners will need to keep records of their legal and beneficial ownership.

Will help meet OECD standards, improve compliance and help business owners to manage their business.

When will the new rules start?

New Business Licence Rules and Substance

- New rules apply from 1 January 2022.
- [Report](#) must be filed for 2021 year
- Some minor changes may be made to current Business Licence Act
- Substance Requirements will commence from 1 January 2022.

Residence and Non Profit Body rules

- On commencement of new Act (December 2020) Record Keeping

Record Keeping

- These rules are in place now, minor changes will be made over time to make more efficient.



Modernisation

Business Licence Act modernisation

NOT Income Tax

The modernised Business Licence Fee is NOT income tax.

- Business licence fee is to be calculated on total business revenue of the person carrying on business – no longer based on business premises.
- Business licence fee will be based on the annual turnover (business revenue) of the person carrying on business and is generally capped at a maximum payment.
- Special rules apply to entities that do not have adequate substance in Vanuatu (discussed below)

Why modernise the Business Licence Act?

Overcomes current shortfalls with Business Licence

Avoids having to set up a new system to meet substance requirements

Addresses Legislation challenges:

- No clear definitions of business revenue
- No assessment or appeal procedures
- No alignment with economic activity of legal owner of business
- Legislation not fully implemented and internally contradictory

Improves Administration and Compliance

- Consolidates administration under DCIR - DCIR can better administrate the Business Licence
- Improve compliance

Modernisation of Business Licence Act

- All businesses will be subject to business licence fee unless specifically exempted.
- Provinces to receive funds/government grants
- Includes international companies – will be treated like any other business for Business Licence Act purposes.
- Supports OECD and EU requirements – All businesses MUST keep records (including beneficial ownership when law is amended).
- No more business categories – however, Annual Return can have statistics on business activity and premises for VIPA, paying provinces etc.

Proposed changes

Some specific changes

- Accounting rules to be inserted
- Formal exemptions included – these are currently assumed.
- Businesses that export goods will pay business licence fee
- Fees – Streamlined calculation – most businesses will pay business licence fee
- Rules for non-profits are being tightened.
- Annual return plus 4 instalments – covers all business activity.

Commencement

- Comes into full effect from 1 January 2022 – however, a substance report to be filed for year ended 31 December 2021 by all entities ([see below](#))

Quarterly Instalments and Annual Return

- Businesses will base their business licence fee on the previous year business revenue or an estimate of current year if the business did not operate in the prior year.
- 4 quarterly instalments are payable with a final return to provide a final payment (or refund/credit) if applicable
- Instalments may be estimated
- A business with less than 12,000 vatu (or other amount to be decided) in business revenue for the prior year must pay the business licence fee in one instalment and any business may pay in advance if they wish.

Non Profits

Non Profit Body Definition and Registration

- Amendments are proposed to ensure that tax benefits are only given to entities that are truly operated on a non profit basis.
- This requires non profit bodies to meet minimum standards and have no ability to make profit for private members.
- Need to Register with DCIR.
- New non profits must register immediately, existing non profits have until 2022 to register with Director.

Rate of Business Licence Fee

- **Possible rates:**
- 2% of business revenue for entities that do not meet substance requirements
- Keep current fee (formerly turnover tax) on commercial banks

For other business activity

- Business licence fee calculated on business revenue and subject to a maximum payment
- Flat rate based on business revenue
- Flat rate based on business revenue less salary and wages paid to staff
- amount of payment or low rate with no cap

Example Rate of Business Licence Fee

The Rate of Business Licence Fee is based on business revenue derived and, in the case of entities, if the substance requirements are satisfied.

Consultation issue:

Should the rate be increased and allow a deduction for VNPF wages paid?

Rate is subject to discussion

Table 1 – Calculation of Business licence Fee

Business licence fee payable is the sum of all business licence fees payable for all business revenue derived by a person as set out in this Table.

Revenue type	Business licence fee payable (Vatu)
Business revenue attributable to commercial banking activities	<p>A. Business revenue that fails substance requirements</p> <p>2% of business revenue that fails the substance requirements.</p> <p>B: Business revenue that satisfies the substance requirements The lesser of</p> <p>5% of business revenue attributable to activity that satisfies the substance requirements, less interest expenses and exchange differences incurred; or</p> <p>2% of business revenue attributable to activity that satisfies the substance requirements (without reduction by interest expenses and exchange differences incurred).</p> <p>exchange difference is the difference resulting from translating a given number of units of one currency into another currency at difference exchange rates.</p>
	2% of business revenue that fails the substance requirements.
Business revenue attributable to any other activity that fails to meet the substance requirements in section 25	2% of business revenue that fails the substance requirements.
All other business revenue derived by a person carrying on business in Vanuatu	10,000 for business revenue of less than 4 million; .035% x business revenue of less than 500 million; 1.75 million plus .001 x business revenue of 500 million or more, but subject to a maximum of 10 million.

NOTES to Table 1

- (1) The total business licence fee is the fee payable by a person in respect of all categories of business revenue derived by the person in a financial year.
- (2) Commercial bank includes combined trading and savings bank activities, accepting deposits of money, lending of money and in particular, accepting deposits of money withdrawable

Some Changes!

Example Rate of Business Licence Fee

The Rate of Business Licence Fee is based on business revenue derived and, in the case of entities, if the substance requirements are satisfied.

Consultation issue:
Should the rate be increased and allow a deduction for VNPF wages paid?

Rate is subject to discussion

Allow micro businesses to have business licence

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Business revenue attributable to commercial banking activities	A. Business revenue that fails substance requirements 2% of business revenue that fails the substance requirements.
	B: Business revenue that satisfies the substance requirements The lesser of 5% of business revenue attributable to activity that satisfies the substance requirements, less interest expenses and exchange differences incurred; or 2% of business revenue attributable to activity that satisfies the substance requirements (without reduction by interest expenses and exchange differences incurred).
	exchange difference is the difference resulting from translating a given number of units of one currency into another currency at difference exchange rates.
Business revenue attributable to any other activity that fails to meet the substance requirements in section 25	2% of business revenue that fails the substance requirements.
All other business revenue derived by a person carrying on business in Vanuatu	1,000 for business revenue to 1 million; or 10,000 for business revenue of more than 1 million to 4 million 10,000 plus .35% x business revenue of more than 4 million to 17 million; or 1.75 million plus .01 x business revenue of more than 500 million, subject to a maximum of 10 million.

Excluded Businesses

Consultation Issue:

- Should the threshold for exemption be higher? Say, 2 million?
- Should the VAT threshold increase from 4 million to, say, 7 million?
- Should non profits carry on any business activity?

SCHEDULE 2

(Section 4)

EXEMPTION FROM REQUIREMENT TO HAVE A BUSINESS LICENCE

- (1) Subject to this Act, a person or class of persons listed in this schedule is exempt from the requirement to have a business licence, pay business license fee for a financial year if they meet any of the following conditions:
 - (a) An individual whose business revenue for the financial year is less than VT1,000,000.
 - (b) A person where the only business revenue derived by that person is exempt from taxation under the International Financial Organisations Act [CAP 134], the Diplomatic Privileges and Immunities Act [CAP 143] or an international agreement.
 - (c) A non-profit body that:
 - (i) does not carry on any relevant activities; and
 - (ii) does not carry on any business activity that is not directly related to the core function of the non-profit body.
- (2) A person that is exempt under Item 1 ceases to be exempt under immediately they cease to satisfy the requirements of this Schedule.

Excluded Business Revenue

Business Revenue is not included in working out the business licence fee in certain circumstances.

E.g., business revenue derived by a business providing assistance under an international agreement or specifically exempted.

EXCLUDED BUSINESS REVENUE

The following revenue is not to be included in the calculation of business revenue for the purposes of this Act

Note: The obligation to register, lodge and pay business licence fee remains in place where other business revenue is derived and the person is not exempted from being required to register for a business licence in accordance with Schedule 2.

Diplomatic privileges and immunity

- (1) The revenue of an individual to the extent provided for under the International Financial Organisations Act [CAP 134], the Diplomatic Privileges and Immunities Act [CAP 143] or an international agreement.
- (2) Revenue derived by a person to the extent provided for under a provision (referred to as an “exemption provision”) in an agreement, other than an international agreement, entered into by the Government when all of the following conditions are satisfied:
 - (a) the person satisfies the substance requirements in section 25;
 - (b) the agreement is for the provision of financial, technical, humanitarian, or administrative assistance to the Government;
 - (c) the Council of Ministers has concurred, in writing, with the exemption provision;
 - (d) the exemption must be specified in a notice published in the Gazette within 30 days of Council of Ministers approval of the exemption. Failure to publish the notice within 30 days does not invalidate the exemption.
 - (e) an exemption will cease to be effective if the exemption is not published in the Gazette within 6 months of the Council of Ministers approval of the exemption.

Excluded Business Revenue

Consultation Issue:

It is recommended that exports of transformed goods be included and subject to business licence fees.

All businesses should contribute to Vanuatu society – Paragraph 7(g) of the Vanuatu Constitution.

Exports are Zero Rated – no revenue from VAT.

Social Policy, Economic Development and Government and technical assistance

- (1) Business revenue derived by a non-profit body, other than business revenue that is not directly related to the core function of the body.
- ~~(2) Business revenue derived from the sale of transformed goods that are exported from Vanuatu.~~
- (3) Business revenue of a non-profit body from the operation of a micro finance or micro credit scheme that is registered with the Vanuatu Financial Services Commission as a charitable organisation.
- (4) Business revenue that is subject to taxation under the Rent Taxation Act [CAP 196]
- (5) Business revenue derived by an individual from passive investment in property

For the purposes of item 2:

~~transformed goods~~ means goods that have been subject to substantial transformation prior to export;

~~Transformation~~ means creating a new and different good that is distinct from the raw materials used to create it

Instalments and Annual Business Licence Return

Instalments

- A person carrying on business (unless exempt) must pay instalments of business licence fee for a financial year for the quarter ending March, June, September, and December of the year on the fifteenth day following the end of each quarter.

Annual business licence return

A person required to hold a business licence for a financial year must file a business licence return for the financial year with the Director on or before 15 March following the end of the financial year.

A business licence return must be filed in the approved form.

The return will include information necessary to determine if a business satisfies the new substance rules.

Different returns will be developed (as required) to minimise cost of compliance for business. It is expected that filing of returns and payment will be made electronically with DCIR.

Instalments and Annual Business Licence Return

Example

- In the year ended 31 December 2021 Alpha Limited derived business revenue of 15,000,000 vatu.
- Alpha Limited would be liable to pay 4 instalments to cover expected business licence fee for the 2022 year
- Tax payable (based on 2021 business revenue) is: 525,000 or 131,250 per quarter.

Instalments

March quarter (pay 15 April)

September Quarter (pay 15 October)

June quarter (pay 15 July)

December Quarter (pay 15 January)

Annual Return

Before 15 April 2023, Alpha Limited will file an annual return showing total business revenue actually earned and pay business licence fee based on the actual amount owing less total instalments paid.

Note:

Businesses may vary their instalments or pay in advance if they wish.

Business licence fee is calculated using schedule 1. (Rate is subject to consultation)

Structure of new Act

PART 1 - PRELIMINARY

- Sets out purpose of the Act, and key interpretation issues

PART 2 – REQUIREMENT TO HAVE A BUSINESS LICENCE

- Sets out requirement to have a business licence and explains licence rules.

PART 3 BUSINESS LICENCE FEE

- Sets out obligation to pay business licence fee

PART 4 - ACCOUNTING FOR BUSINESS LICENCE FEE

- Sets out accounting rules, cash and accrual, treatment of bad debts and imposes the need to have arm's length transactions

PART 5 – ADMINISTRATION OF THE ACT: This covers administration and record keeping

PART 6 - APPLICATION OF BUSINESS LICENCE FEE TO PARTICULAR INDUSTRIES AND ACTIVITIES

- This part allows for special requirements to obtain a business licence – currently only applies to security businesses.

PART 7 – REQUIREMENT TO HAVE SUBSTANTIAL ECONOMIC PRESENCE (SUBSTANCE REQUIREMENTS)

- This Part contains details rules on how the substance rules will work

PART 8 - GENERAL PROCEDURAL RULES: This covers annual returns and instalments and payment of business licence fees.

PART 9 – MISCELLANEOUS: This covers repeal of the current law, power to regulate and transitional issues.

SCHEDULES - set out categories of business licence, calculation of fees and rules for what is included in business revenue and lodgment exemptions

Economic Substance

International Requirements – Need to introduce Economic Substance Requirements to meet EU and OECD requirements:

- OECD BEPS Action Item 5 – [Resumption of Substantial Activities Requirements](#); and
- EU Code of Conduct (Business Taxation) – [Substantial Economic Presence Requirements](#).

To meet these requirements Vanuatu will need to:

- Implement substance rules on all companies, and entity partnerships in Vanuatu

This will require:

- Annual report that gathers necessary information to determine substance rules are met.
- Annual reporting to EU jurisdictions
- De-registration of companies that do not meet the substance requirements. Vanuatu is proposing to impose 2% business licence fee as alternative. (this may be changed to de-registration)

EU/OECD Economic Substance requirements

Vanuatu is on the EU blacklist for harmful tax practices and we are trying to get off it!

To do this we must meet OECD standards for Exchange of Tax Information, have substance rules that meet OECD/EU standards and properly administer our tax and other laws requiring record keeping, identification of beneficial ownership for both EOI purposes and AML/CTF.

We are still on the black list with the EU for AML/CTF (but expect to be off this soon)

RPU is working with the DG, Ministers and diplomats to negotiate appropriate legislation and policy outcomes with the OECD and EU.

If a jurisdiction is a zero or near zero tax jurisdiction – i.e. does not have corporate income tax or equivalent the jurisdiction must:

- Must require companies (and limited partnerships) incorporated to have substance in Vanuatu.
- Other rules apply, but not directly relevant here. For example, Vanuatu cannot provide benefits such as tax exemptions to companies that do not trade in the jurisdiction unless those benefits are available generally to all companies. (Ringfencing tax benefits).

Economic Substance Requirements in Business Licence Act

Economic Substance requirements apply to all entities carrying on business in Vanuatu (other than Government controlled entities).

- **entity** has the meaning in subsection 2(1) of the Tax Administration Act (company, partnership, or trust) but does not include any entity where the entity is, at all times during the year, 100% beneficially owned by:
 1. the Government of Vanuatu; or
 2. a body, authority, or instrumentality (corporate or unincorporated) established by law or administrative Act for public or official purposes, other than a Ministerial Department or a body in which the Government has an interest; and
 3. a Municipal Council or a Provincial Government Council.

For these purposes a company means:

- (a) a body corporate, statutory corporation, foundation, limited partnership, or unincorporated association or body of persons, whether formed in Vanuatu or elsewhere; or
- (b) an entity established under foreign law that has legal characteristics fundamentally similar to that of a body corporate;

Economic Substance Rules in Business Licence Act

An entity carrying on business in Vanuatu must have substance in Vanuatu.

- Entities carrying on business in Vanuatu must meet the substance requirements in the new Business Licence Act.
- *Strict* rules will apply for company and partnerships carrying on any *relevant activities* targeted by EU and OECD standards.
- More *relaxed* rule for entities not subject to EU/OECD standards.
- Vanuatu will apply the substance rules to all entities (not just companies) and all business activities (not just relevant activities).
- Generally substance is required for all entities (other than Government controlled) resident for tax purposes in Vanuatu – special rules needed for entities operating in Vanuatu that are not resident e.g., company doing short term contract.

Economic Substance Rules in Business Licence Act - Cont.

relevant activity means any of the following activities:

- banking business; or
- distribution and service centre business; or
- finance and leasing business; or
- fund management business; or
- headquarters business; or
- operation of a holding entity; or
- insurance business; or
- IP business; or
- shipping business; or
- any other prescribed business activity

Economic Substance Rules in Business Licence Act - Cont.

**An entity carrying on relevant activity must meet requirements of Part 7.
The entity must:**

- be managed and controlled in Vanuatu;
- Have adequate staff
- Undertake core income earning activity (see definition) in Vanuatu
- Comply with special rules for Intellectual Property businesses.

Economic Substance Rules in Business Licence Act - Cont.

For all activities other than relevant activities, an entity must demonstrate that :

- The entity is managed and controlled in Vanuatu;
- In respect to activities as a whole:
 - the entity has adequate staff
 - core income earning activity (see definition) is done in Vanuatu.
- For bricks and mortar businesses, such as shops, farms, factories, service businesses, the substance requirements will be easy to demonstrate.

Economic Substance Rules in Business Licence Act - Cont.

Entities that do not have substance must:

- File a detailed annual return with the Director of Customs and Inland Revenue;
- Pay business licence fee at the top rate of 2% of business revenue they earn.

and

If the entity has legal or beneficial owner in another Jurisdiction, information about that company may be forwarded to that Jurisdiction

It is noted that the European Union standards required that the company or limited partnership must be de-registered.

Vanuatu, at this stage proposes to impose a business licence fee. Vanuatu will undertake consultations with the European Union and the OECD on this issue. It is possible further amendments may be made to provide for de-registration.

Economic Substance Rules in Business Licence Act - Cont.

Reporting

Vanuatu must report to the competent authority of any jurisdiction where an overseas owner or beneficial owner of a company or partnership resident in Vanuatu is located in that foreign jurisdiction if:

- fail substance requirements; or
- is High Risk intellectual property business.

Reporting is detailed and spontaneous.

We only report if we have an international agreement to support the exchange.

We also report on non resident companies and partnerships – but report is much less detailed

Annual Report

(1 January 2021 to 31 December 2021)

- An annual report will be required to be filed by by all entities (other than Government controlled) on or before 31 March 2022.
- This report will be required to provide all necessary detail to determine whether the substance requirements were met during that year.
- Business licence fees for 2022 will be estimated based on this information.
- Information provided in the Report may be provided to foreign Jurisdictions if the entity has foreign legal or beneficial owners.

Resident for Tax Purposes

- Residence for Tax Purposes is proposed to be amended in the TAA (with necessary changes in the VAT Act) to align with international norms.

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 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;

Resident for Tax Purposes

- The definition of a resident individual is clarified in detail.
- The new definitions are used in the Business Licence Act, Value Added Tax Act and for the purposes of exchange of tax information.

- 3) For the purposes of subsection (2), “resident individual” means an individual who:
 - (a) has his or her home in Vanuatu during the 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 who is an officer or employee of the Government or a public authority.
- (3) In addition to subsection (2):
 - (a) an individual who:
 - (i) is a resident individual for the current calendar year; and
 - (ii) was not a resident individual for the preceding calendar year,is a resident individual in the current calendar year only for the period commencing on the day on which the individual was first present in Vanuatu; and
 - (b) an individual who:
 - (i) is a resident individual for the current calendar year; and
 - (ii) who is not a resident individual for the following calendar year,is treated as a resident individual in the calendar year only for the period ending on the last day on which the individual was present in Vanuatu.”

Other Policy and Law Issues

- The new Business Licence Act and Economic Substance Rules will require other laws to be amended over the coming year as well as policies to be reviewed.
- These are to be done in consultation with business:
- Examples:
- Vanuatu Chamber of Commerce and Industry Act uses business licence categories.
- Immigration and labour policy for directors and employees of international companies coming to Vanuatu to meet Economic Substance rules.
- Interaction with other taxes fees and charges (see Non Tax Revenue Review)

Record Keeping Requirements

- Applies to all individuals and entities carrying on business. International companies, foundations, and partnerships all must keep records.
- Business is defined in Section 8 of the TAA – includes all activity of an entity.
- Must keep records set out in section 8 of the TAA
- From **later this year (depending on when Regulations are made)** will be required to keep ownership records including up to date beneficial ownership records if an entity

Record Keeping Requirements (Cont.)

The TAA and TAA Regulations include MINIMUM record keeping requirements that must be followed by all businesses (including international companies, nominee companies etc.).

Businesses may be required to keep and retain records for other Acts, such as tax invoices for the Value Added Tax Act. However, at the very least, the TAA obligations must be met.

Record keeping (Cont.)

- Records must be retained for at least 5 years, longer if there is a tax dispute.
- If the business is an entity, and it ceases to exist (for example it is de-registered as a company) the controllers of the entity must retain the records for required 5 year period.
- Penalties apply for failure to keep records or to provide records to the Director when required
- The Director will enforce record keeping obligations.

Consultation Issues

1. Should salary and wages (with anti avoidance rules) be taken into account?

E.g., slightly higher rate of business licence fee, but based on Total Business Revenue, less VNPF salary and wages paid? This may support employment

2. Is the business licence threshold of 1 million Vatu appropriate? – Increase to say 2, million Vatu?
3. Should VAT threshold be higher also? – Increase to say, 7 million vatu?
4. Should non profit bodies, be able to carry on any business and remain exempt from business licence
5. Should exports continue to be excluded from business licence fee?

Note: The Government is committed to ongoing management of this reform and will make amendments to the law over the coming year, if new issues arise that warrant it being improved.

Contact and Comments

Comments on Consultation issues and any other issue raised in this presentation should be forwarded to:

Manager, Revenue Policy Unit
Ministry of Finance and Economic Management
wrex@vanuatu.gov.vu

Visit XXXXXX/doft.gov.vu for all information relating to this and other revenue measures.

The End

Technical Issues for Discussion

- Business

Business

- Business is defined in section 8 of the Tax Administration Act

business means 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 income,

property income 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 income under paragraph (a).