



# EXCISE ACT 1986

*Revised up to 1<sup>st</sup> August 2023*

## DISCLAIMER

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## Table of Amendments

Excise Act 1986 (No 13 of 1986) commenced on 1 November 1986, as amended by:

| <b>Amending Legislation</b>                                 | <b>Date of Commencement</b> |
|-------------------------------------------------------------|-----------------------------|
| Excise (Amendment) Act 1986 (No 27 of 1986)                 | 16 December 1986            |
| Excise (Amendment) Decree 1987 (No 4 of 1987)               | 18 December 1987            |
| Excise (Amendment) Decree 1989 (No 19 of 1989)              | 8 August 1989               |
| Excise (Amendment) (No 2) Decree 1989 (No 33 of 1989)       | 1 December 1989             |
| Excise (Amendment) Decree 1990 (No 36 of 1990)              | 1 December 1990             |
| Excise (Amendment) Decree 1991 (No 50 of 1991) <sup>1</sup> | 26 November 1991            |
| Excise (Amendment) Decree 1992 (No 34 of 1992)              | 1 July 1992                 |
| Excise (Amendment) Act 1994 (No 3 of 1994)                  | 6 May 1994                  |
| Excise (Amendment) (No 2) Act 1994 (No 27 of 1994)          | 23 December 1994            |
| Excise (Amendment) Act 1996 (No 22 of 1996)                 | 25 October 1996             |
| Excise (Amendment) (No 2) Act 1996 (No 29 of 1996)          | 27 December 1996            |
| Excise (Amendment) Act 1997 (No 24 of 1997)                 | 24 December 1997            |
| Fiji Revenue and Customs Authority Act 1998 (No 9 of 1998)  | 1 January 1999              |
| Excise (Budget Amendments) Act 1999 (No 34 of 1999)         | 5 November 1999             |
| Excise Act (Amendment) Decree 2000 (No 34 of 2000)          | 22 November 2000            |
| Excise (Amendment) Act 2001 (No 8 of 2001)                  | 9 November 2001             |
| Excise (Budget Amendment) Act 2002 (No 33 of 2002)          | 8 November 2002             |

<sup>1</sup> This was rectified by the Corrigenda published on 6 December 1991.

|                                                                                 |                                                          |
|---------------------------------------------------------------------------------|----------------------------------------------------------|
| Excise (Budget Amendment) Act 2003 (No 22 of 2003)                              | ss 2 and 3: 1 January 2004;<br>remainder 7 November 2003 |
| Excise (Budget Amendment) Act 2004 (No 20 of 2004)                              | 5 November 2004                                          |
| Excise (Budget Amendment) Act 2005 (No 25 of 2005)                              | 4 November 2005                                          |
| Excise (Budget Amendment) (No 2) Act 2005 (No 26 of 2005)                       | 1 January 2006                                           |
| Excise Act (Amendment) Promulgation 2007 (No 5 of 2007)                         | 3 November 2006                                          |
| Excise Act (Amendment) (No 2) Promulgation 2007 (No 9 of 2007)                  | 2 March 2007                                             |
| Excise Act (Amendment) Promulgation 2007 (No 15 of 2007)                        | 1 July 2007                                              |
| Excise Act (Budget Amendment) Promulgation 2007 (No 42 of 2007)                 | 23 November 2007                                         |
| Excise Act (Amendment) (No 1) Promulgation 2008 (No 17 of 2008) <sup>2</sup>    | 1 July 2008                                              |
| Excise Act (Amendment) (No 2) Promulgation 2008 (No 20 of 2008)                 | 1 July 2008                                              |
| Excise (Budget Amendment) Decree 2010 (No 7 of 2010)                            | 1 January 2010                                           |
| Excise (Budget Amendment) Decree 2011 (No 12 of 2011)                           | 26 November 2010                                         |
| Excise (Budget Amendment) Decree 2012 (No 5 of 2012)                            | 25 November 2011                                         |
| Excise (Budget Amendment) (No 2) Decree 2012 (No 68 of 2012)                    | 22 November 2012                                         |
| Excise (Amendment) Decree 2013 (No 35 of 2013)                                  | 8 November 2013                                          |
| Excise (Budget Amendment) Act 2014 (No 7 of 2014)                               | 21 November 2014                                         |
| Excise (Budget Amendment) Act 2015 (No 25 of 2015)                              | 6 November 2015                                          |
| Public Service (Amendment) Act 2016 (No 2 of 2016)                              | 16 February 2016                                         |
| Excise (Budget Amendment) Act 2016 (No 26 of 2016)                              | 23 June 2016                                             |
| Revised Edition of the Laws (Consequential Amendments) Act 2016 (No 31 of 2016) | 1 December 2016                                          |
| Excise (Budget Amendment) Act 2017 (No 34 of 2017)                              | 30 June 2017                                             |
| Excise (Budget Amendment) Act 2018 (No 19 of 2018)                              | 29 June 2018                                             |
| Excise (Budget Amendment) Act 2019 (No 13 of 2019)                              | 1 August 2019                                            |
| Excise (Amendment) (No 2) Act 2019 (No 28 of 2019)                              |                                                          |
| Excise (Budget Amendment) Act 2020 (No 22 of 2020)                              | 18 July 2020                                             |
| Excise (Budget Amendment Act 2022)(No 33 of 2022)                               | 1 August 2022                                            |
| Excise (Budget Amendment Act 2023 (No 09 of 2023)                               | 30 June 2023                                             |

<sup>2</sup> This was rectified by the Corrigendum published on 11 July 2008.

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[Excise \(Industrial Rebates\) Regulations 1986](#)

## PART 1 PRELIMINARY

### (Sections 1 - 2)

#### [Section 1] Short title and commencement

- (1) This Act may be cited as the Excise Act 1986.
- (2) The Act shall come into force on a date to be notified by the Minister in the Gazette.

#### [Section 2] Interpretation

- (1) In this Act, unless the context otherwise requires—

**carriage within Fiji** in relation to excise, means the transfer by air, land or sea of excisable goods under Customs control from one port to another port or to another customs area within Fiji;

[def insrt Promulgation 15 of 2007 s 2, effective 1 July 2007]

**Comptroller** means the Comptroller of Customs and Excise as provided by the Customs Act 1986;

[def am Act 9 of 1998 s 55 and Sch 2, effective 1 January 1999]

**distillery** means an excise factory in which spirits are produced;

**downtown duty free shop** means a downtown duty free shop as defined in the Customs Act 1986;

[def insrt Act 26 of 2016 s2, effective 23 June 2016]

**drawback** means a refund of all or a part of excise duty paid in respect of goods;

**excisable goods** means goods liable to excise duty;

**excise duty** means the duty leviable under this Act;

**excise factory** means premises specified in a licence issued under section 6(1)(b);

**excise warehouse** means a place specified in a licence issued under section 17(1);

**export warehouse** means a place appointed by the Comptroller for the deposit, keeping and security of imported and Fiji manufactured goods for sale to a relevant traveller leaving Fiji from an approved airport or seaport. Export warehouses may be called duty free shops or downtown duty free shops;

[def insrt Act 22 of 1996 s 3, effective 25 October 1996 ; am Act 26 of 2016 s 2, effective 23 June 2016]

**manufacture** means to—

- a) make or produce excisable goods;
- b) carry out an intermediate or uncompleted process in the making or production of excisable goods; or
- c) modify, blend or vary excisable goods;

**manufacturer** means a person who holds a licence issued under section 6(1)(a);

**Minister** means the minister responsible for finance

[def insrt Act 33 of 2022 s 2, effective 1 August 2022]

**officer** means a person appointed, employed or authorised to carry out or to assist in carrying out the administration of this Act;

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**owner**

in respect of excisable goods, materials, aircraft, ship, vehicle, plant, land or other thing, includes a person (other than an officer acting

in his or her official capacity) being or holding himself or herself out to be the owner, manufacturer, agent or the person in possession of, or beneficially interested in, or having control of, or power of disposition over, those goods, materials, aircraft, ship, vehicle, plant or other thing;

|                         |                                                                                                                                                                                                   |
|-------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>package</b>          | includes every means by which goods may be cased, covered, carried, contained, enclosed or packed;                                                                                                |
| <b>proper officer</b>   | in respect of a matter, means the officer authorised by the Comptroller to carry out the provisions of this Act in respect of that matter;                                                        |
| <b>Service</b>          | means the Fiji Revenue and Customs Service established under section 3 of the Fiji Revenue and Customs Service Act 1998;<br><small>[def insrt Act 19 of 2018 s 2, effective 29 June 2018]</small> |
| <b>spirits</b>          | includes alcohol, brandy, rum, gin and every other spirituous liquor;                                                                                                                             |
| <b>still</b>            | means an apparatus for or capable of distilling spirits; and                                                                                                                                      |
| <b>warehouse keeper</b> | means a person who holds a licence issued under section 17(1).                                                                                                                                    |

(2) Any term used in this Act but defined in another customs law carries the same meaning given to it under that customs law, unless expressly defined for the purpose of this Act.

[subs (2) insrt Promulgation 15 of 2007 s 2, effective 1 July 2007]

## **PART 2 ADMINISTRATION**

### **(Sections 3-5)**

#### **[Section 3] Functions of Comptroller and officers**

(1) The Comptroller is responsible for the administration of this Act subject to any directions given to him or her by the Minister under subsection (2).

(2) The Minister may give the Comptroller general or special directions on the administration of this Act, not inconsistent with this Act.

(3) An officer shall perform his or her duties and shall follow procedures in accordance with the Comptroller's instructions.

(4) The Comptroller may authorise an officer—

- a) to exercise a power conferred; or
- b) to perform a duty imposed,

by this Act on the Comptroller.

(5) An officer employed on a duty or service relating to this Act by the order or with the concurrence of the Comptroller is deemed to be the proper officer for that duty or service.

(6) An act required by this Act to be done by or with a specified officer, if done by or with a person appointed by the Comptroller to act for that specified officer, is deemed to be done by or with the specified officer.

#### **[Section 4] Authority to be produced by person acting for another person**

(1) Subject to subsection (3), if a person makes an application to an officer to transact business in accordance with this Act on behalf of another person, that officer may require the person so applying to produce a written authority from the person on whose behalf the application is made, and if that authority is not produced the officer may refuse to transact the business.

(2) Where this Act requires that a document should be signed by a particular person and it is signed by a person authorised on behalf of that person in accordance with subsection (1) that document is deemed to have been correctly signed.

(3) The Comptroller may refuse to allow an application under subsection (1).

**[Section 5] Authority to be produced by officer**

If an officer is acting against a person under this Act and is not in uniform, he or she shall, on being asked to do so by that person—

- a) declare his or her office; and
- b) produce to that person such document establishing his or her identity as the Comptroller directs to be carried by that officer.

## **PART 3 MANUFACTURE OF EXCISABLE GOODS**

### **(Sections 6-11)**

#### **[Section 6] Licence to manufacture excisable goods**

(1) Subject to this Act, a person shall not manufacture excisable goods except—

- a) under and in accordance with a licence issued by the Comptroller; and
- b) at the place of manufacture specified in that licence.

(2) A licence under subsection (1) shall be issued on payment of the prescribed fee and shall expire on 31 December next following its issue.

(3) A licence issued under subsection (1) may be issued subject to conditions which shall be specified in the licence.

(4) The Comptroller may refuse to issue a licence under subsection (1).

(5) The holder of a licence issued under subsection (1) may apply to the Comptroller for a transfer of that licence to other premises and the Comptroller, on payment of the prescribed fee, may grant that transfer by endorsement on the licence.

(6) A licence, upon being endorsed under subsection (5)—

- a) authorises manufacture of the excisable goods on the substituted premises; and
- b) no longer authorises manufacture of those goods on the premises originally specified in the licence.

(7) A licence issued under subsection (1) does not authorise the person to whom it is granted to manufacture excisable goods except in the premises specified in the licence.

(8) Premises shall not—

- a) be specified in a licence issued under subsection (1); or
- b) substituted in a licence in accordance with subsection (5),

unless those premises are adjoining and held together for the same purpose.

(9) The Minister may, by order, exempt a class of persons from complying with subsection (1), subject to any conditions he or she considers appropriate.

(10) The Comptroller may require a person before being granted a licence under subsection (1) to give such security as the Comptroller thinks appropriate to ensure that that person complies with this Act and generally to protect the revenue.

(11) Pending the giving of any security required under subsection (10) the Comptroller shall refuse to issue a licence under subsection (1).

(12) Notwithstanding subsection (2), the Comptroller may amend the conditions of a licence issued under subsection (1) or suspend, cancel or refuse to renew such a licence.

(13) Where the Comptroller—

- a) refuses to issue a licence under subsection (1);
- b) amends the conditions of such a licence; or
- c) suspends, cancels or refuses to renew such a licence,

he or she shall forthwith give notice of that fact to the applicant, licensee or past licensee, as the case may be.

(14) Where the Comptroller takes any action referred to in subsection (13), the person given notice of that action in accordance with that subsection may, within 28 days of the receipt by him or her of that notice, appeal to the Minister against that action and the Minister's decision in respect of the appeal shall have effect as if it were the decision of the Comptroller.

(15) If a licence is amended, cancelled or suspended, in accordance with subsection (12) the licensee is not entitled to a refund of the licence fee paid by him or her.

(16) When a licence issued under subsection (1) is cancelled or suspended or expires the licensee shall—

- a) forthwith cease to manufacture the goods specified in the licence;
- b) forthwith pay any outstanding duty payable on the excisable goods manufactured under the licence; and
- c) not dispose of any materials in the premises specified in the licence except in accordance with any conditions imposed by the Comptroller.

## **[Section 7] Transfer of licence**

(1) Subject to subsection (2) and section 9(1), the Comptroller may transfer a licence issued under section 6(1) to another person.

(2) The Comptroller shall not transfer a licence under subsection (1) to another person unless he or she receives an application for the transfer signed by the holder of the licence and the person to whom it is proposed to transfer the licence.

(3) Subject to section 9(1), on the death of a person who holds a licence issued under section 6(1), the licence may be transferred, by endorsement by the Comptroller, to—

- a) that person's personal representative;
- b) the person beneficially entitled to the deceased's business;
- c) the Fiji Public Trustee Corporation Limited; or
- d) the appointee of the Fiji Public Trustee Corporation Limited,

as the case may be.

[subs (3) am Act 31 of 2016 s 68, effective 1 December 2016]

(4) The holder of a licence granted under section 6(1) may apply to transfer his or her factory to another place.

(5) If the Comptroller approves an application under subsection (3), he or she shall, on surrender to him or her of the existing licence and on payment of any prescribed fee—

- a) endorse the licence accordingly; or
- b) issue a fresh licence,

as he or she considers appropriate.

#### **[Section 8] Penalty for manufacture without a licence etc**

(1) A person is guilty of an offence if he or she manufactures or starts to manufacture excisable goods in contravention of this Act, or of any licence issued to him or her under section 6(1), and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both.

[subs (1) am Decree 7 of 2010 s 2, effective 1 January 2010; Act 34 of 2017 s 2, effective 30 June 2017]

(2) Goods in respect of which an offence under subsection (1) was committed and all machinery, utensils and materials in the manufacturer's possession, which, in the opinion of the Comptroller, are capable of being used in the manufacture of excisable goods, are liable to be forfeited.

### **[Section 9] Disqualification from obtaining a licence (excise factory)**

(1) Subject to subsection (2), a licence shall not be granted to a person under section 6(1) and such a licence shall not be transferred to a person under section 7(1) or (3) if the person seeking the grant of the licence or the proposed transferee—

- a) has been convicted of an offence under this Act;
- b) is under 21 years old; or
- c) is a person who has had a licence issued under this Act cancelled.

(2) A licence may be granted or transferred to a person to whom subsection (1)(a) or (c) applies with the Minister's consent.

### **[Section 10] Description of proposed excise factory to be delivered to Comptroller**

(1) A manufacturer shall—

- a) before commencing to manufacture excisable goods; and
- b) on request by the Comptroller at any subsequent time,

deliver to the Comptroller, in a form and manner approved by the Comptroller, a written description and plans of the manufacturer's excise factory and of every machine, apparatus, utensil or vessel contained in that excise factory as the Comptroller may require.

(2) A manufacturer shall not use any new, or substantially alter, a machine, apparatus, utensil or vessel in his or her excise factory without giving the Comptroller at least 2 weeks' written notice of his or her intention to do so.

(3) A manufacturer is guilty of an offence if he or she fails to comply with subsection (1) or (2) and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both.

[subs (3) am Decree 7 of 2010 s 3, effective 1 January 2010; Act 34 of 2017 s 3, effective 30 June 2017]

### **[Section 11] Comptroller may station officer in excise factory**

(1) The Comptroller may station an officer in an excise factory—

- a) to watch the process of manufacture in the excise factory; and
- b) to enforce compliance with this Act.

(2) If requested to do so by the Comptroller, a manufacturer shall provide office accommodation to the Comptroller's satisfaction at or adjacent to the manufacturer's excise factory for an officer referred to in subsection (1).

(3) A manufacturer is guilty of an offence if he or she fails to comply with a request made to him or her in accordance with subsection (2) and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both.

[subs (3) am Decree 7 of 2010 s 4, effective 1 January 2010; Act 34 of 2017 s 4, effective 30 June 2017]

## **PART 4 SPECIAL PROVISIONS RELATING TO THE MANUFACTURE OF SPIRITS**

### **(Sections 12-14)**

#### **[Section 12] Exemptions**

This Act does not apply to the distillation or denaturation of spirits—

- a) by a registered medical practitioner; or
- b) by a registered pharmacist,

where the Comptroller is satisfied that the spirit is to be for medical or scientific purposes.

#### **[Section 13] Provisions relating to denaturing of spirits**

(1) Spirits shall not be denatured for sale as denatured spirits—

- a) except in accordance with a prescribed formula; or
- b) unless they are either methylated or specially denatured spirits.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both.

[subs (2) am Decree 7 of 2010 s 5, effective 1 January 2010; Act 34 of 2017 s 5, effective 30 June 2017]

(3) Goods in respect of which an offence under subsection (2) was committed are liable to be forfeited.

#### **[Section 14] Strength of spirits**

(1) A manufacturer shall not manufacture spirits except to a strength within prescribed limits.

(2) A manufacturer who contravenes subsection (1) is guilty of an offence and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both.

[subs (2) am Decree 7 of 2010 s 6, effective 1 January 2010; Act 34 of 2017 s 6, effective 30 June 2017]

(3) Goods in respect of which an offence under subsection (2) was committed are liable to be forfeited.

## **PART 5 STORAGE AND REMOVAL OF EXCISABLE GOODS**

### **(Sections 15-22)**

#### **[Section 15] Storage and possession of excisable goods**

(1) A person shall not, without lawful authority, store or keep or have in his or her possession or under his or her control excisable goods in respect of which duty and tax (including Value Added Tax) has not been properly paid, except—

- a) in an excise factory;
- b) in an excise or export warehouse;
- c) in such other place as may be specially authorised by the Comptroller.

[subs (1) subst Act 22 of 1996 s 4, effective 25 October 1996]

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both.

[subs (2) am Decree 7 of 2010 s 7, effective 1 January 2010; Act 34 of 2017 s 7, effective 30 June 2017]

(3) Goods in respect of which an offence under subsection (2) was committed are liable to be forfeited.

#### **[Section 15A] Standards for export and excise warehouses**

Prior to issuing a licence for an export or excise warehouse under this Act, the Comptroller shall, in addition to ensuring that all other requirements under this Act have been fulfilled, ensure that the warehouse is compliant with and has been certified in accordance with—

- a) Occupational Health and Safety standards; and
- b) proper fire and safety standards by the National Fire Authority.

[s 15A insrt Act 25 of 2015 s 2, effective 6 November 2015]

#### **[Section 16] Places deemed excise warehouses**

(1) A licence issued under section 6(1) to manufacture excisable goods, authorises the holder of that licence to store those goods within the premises specified in the licence and, to that extent, those premises shall be deemed to be an excise warehouse.

(2) Regulations made under section 86 in respect of the control of excise warehouses shall apply to places deemed to be excise warehouses under subsection (1) to such extent as the Comptroller directs.

## **[Section 17] Excise warehouse licence**

(1) The Comptroller may, on payment of any prescribed fee, issue to a person, a licence to warehouse excisable goods on which excise duty has not been paid in a place specified in the licence.

(2) A licence issued under subsection (1) expires on 31 December next following its issue.

(3) A licence issued under subsection (1) may be issued subject to conditions which shall be specified in the licence.

(4) The Comptroller may refuse to issue a licence under subsection (1).

(5) The Comptroller may require a warehouse keeper to enter into a bond for the security of the excise duty on goods that may at any time be warehoused in his or her excise warehouse.

(6) Notwithstanding subsection (2), the Comptroller may at any time cancel a licence issued to a warehouse keeper by giving to that keeper written notice of the cancellation, and that notice, if addressed to the warehouse keeper at his or her excise warehouse, is notice of the cancellation to all persons interested in excisable goods in that excise warehouse or any other contents of the excise warehouse.

(7) The Comptroller may suspend, or refuse to renew a licence issued under subsection (1).

(8) Where the Comptroller refuses to grant a licence under subsection (1) or suspends, or refuses to renew such licence he or she shall forthwith give notice of that fact to the applicant, licensee or past licensee, as the case may be.

(9) Where the Comptroller takes any action referred to in subsection (7), the person given notice of that action under subsection (8) may, within 28 days of the receipt by him or her of that notice, appeal to the Minister against that action and the Minister's decision in respect of the appeal shall have effect as if it were the decision of the Comptroller.

(10) If, within 3 months from the date on which—

- a) notice is given under subsection (6); or
- b) a licence issued under subsection (1) is not renewed,

excisable goods in the excise warehouse have not been—

- c) removed to another excise warehouse;
- d) returned to the excise factory of their manufacturer;

- e) shipped as stores;
- f) exported; or
- g) delivered for use within Fiji in the manner provided by law, the warehouse keeper shall forthwith pay to the Comptroller the excise duty payable in respect of those goods.

(11) The holder of a licence issued under subsection (1) may apply to the Comptroller—

- a) to transfer that licence to another person; or
- b) to transfer his or her excise warehouse to any other place.

(12) An application under subsection (11)(a) shall be made by the holder of the licence and the person to whom it is proposed to transfer the licence.

(13) Where the Comptroller grants an application under subsection (11)(b), he or she shall, on surrender to him or her of the existing licence and on payment of any prescribed fee—

- a) make the necessary endorsement on the licence; or
- b) issue a fresh licence,

as he or she considers appropriate.

(14) Subject to subsection (15), a licence shall not be granted under subsection (1) and such a licence shall not be transferred to a person on an application made under subsection (11)(a) if the person seeking the grant of the licence or the proposed transferee—

- a) has been convicted of an offence under this Act;
- b) is under 21 years old; or
- c) is a person who has had a licence issued under this Act cancelled.

(15) A licence may be granted or transferred to a person to whom section 14(a) or (c) applies with the Minister's consent.

### **[Section 18] Removal to and from excise warehouses**

(1) Subject to subsection (3), goods warehoused under this Act may—

- a) without payment of excise duty, be removed to another excise warehouse or export warehouse; or
- b) be returned to the excise factory of the manufacturer of those goods,

subject to the same regulations and provisions as govern the removal of excisable goods from an excise factory to an excise or export warehouse.

[subs (1) subst Act 22 of 1996 s 5, effective 25 October 1996]

(2) Subject to subsection (3), excisable goods may be removed without the payment of excise duty from one excise factory to another excise factory subject to the same regulations and provisions as govern the removal of excisable goods from an excise factory to an excise warehouse or export warehouse.

[subs (2) subst Act 22 of 1996 s 5, effective 25 October 1996]

(3) Goods shall not be removed or returned under subsection (1) or (2) except with the Comptroller's written consent.

(4) A person is guilty of an offence if he or she removes or returns excisable goods contrary to subsection (1) and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both.

[subs (4) am Decree 7 of 2010 s 8, effective 1 January 2010; Act 34 of 2017 s 8, effective 30 June 2017]

#### **[Section 18A] Expiry of goods deposited in an excise warehouse**

(1) The Comptroller must, in issuing a licence under section 17 or permitting the deposit of excisable goods in an excise factory, excise warehouse or export warehouse or such other places as may be specifically authorised by the Comptroller, ascertain the expiry of those goods and determine the date by which payment of any excise duty, fee or other charge for those goods must be made.

(2) For the purposes of subsection (1), the Comptroller may require a warehouse keeper to, within a time specified by the Comptroller, ensure that the excisable goods are cleared before the expiration of those goods and notify the owners of the goods to make payment for those goods within a time specified by the Comptroller.

(3) Where a person fails to clear and make payment for goods in an excise factory, excise warehouse or export warehouse or such other places as may be specifically authorised by the Comptroller within the time specified under subsection (2), the goods may, with the prior written permission of the Comptroller, be destroyed or disposed of in such manner as the Comptroller may direct.

(4) Any goods which have been destroyed or disposed of in accordance with subsection (3) must not be considered for the purposes of assessing a refund, claim or remission under Part 6.

(5) A person is guilty of an offence if the person fails to clear and make payment for the goods in an excise factory, excise warehouse or export warehouse or such other places as may be specifically authorised by the Comptroller within the time specified under subsection (2) and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both.

### **[Section 19] Alteration of excisable goods**

(1) A person shall not alter excisable goods stored in—

- a) an excise factory;
- b) an excise warehouse; or
- c) an export warehouse,

except in accordance with regulations made under section 86.

[subs (1) subst Act 22 of 1996 s 6, effective 25 October 1996]

(2) A person is guilty of an offence if he or she contravenes subsection (1) and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both.

[subs (2) am Decree 7 of 2010 s 9, effective 1 January 2010; Act 34 of 2017 s 9, effective 30 June 2017]

(3) Goods in respect of which an offence under subsection (2) was committed are liable to be forfeited.

### **[Section 20] Packing of warehoused goods**

(1) A person shall not pack, sort or carry out similar operations with respect to excisable goods stored in an excise or export warehouse except in accordance with regulations made under section 86.

[subs (1) subst Act 22 of 1996 s 7, effective 25 October 1996]

(2) A person is guilty of an offence if he or she contravenes subsection (1) and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both.

[subs (2) am Decree 7 of 2010 s 10, effective 1 January 2010; Act 34 of 2017 s 10, effective 30 June 2017]

(3) Goods in respect of which an offence under subsection (2) was committed are liable to be forfeited.

### **[Section 21] Samples for owner**

(1) The owner of excisable goods in—

- a) an excise factory;
- b) an excise warehouse; or
- c) an export warehouse,

may take samples of those goods in a manner and subject to such conditions as the Comptroller may specify.

[subs (1) subst Act 22 of 1996 s 8, effective 25 October 1996]

(2) A person is guilty of an offence if he or she contravenes subsection (1) and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both.

[subs (2) am Decree 7 of 2010 s 11, effective 1 January 2010; Act 34 of 2017 s 11, effective 30 June 2017]

(3) Goods in respect of which an offence under subsection (2) was committed are liable to be forfeited.

## **[Section 22] Delivery of excisable goods**

(1) A person shall not deliver excisable goods from an excise factory, excise warehouse or an export warehouse—

- a) (a)unless the delivery is recorded in the prescribed manner; and
- b) (b)except in accordance with regulations made under section 86.

[subs (1) subst Act 22 of 1996 s 9, effective 25 October 1996]

(2) A manufacturer or warehouse keeper is guilty of an offence if he or she contravenes subsection (1) and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both.

[subs (2) am Decree 7 of 2010 s 12, effective 1 January 2010; Act 34 of 2017 s 12, effective 30 June 2017]

(3) Goods in respect of which an offence under subsection (2) was committed are liable to be forfeited.

## **PART 5A TRANSFER OF EXCISE UNDER BOND GOODS BETWEEN EXCISE FACTORIES, EXCISE WAREHOUSES AND PORTS WITHIN FIJI**

### **(Sections 22A-22C)**

#### **[Section 22A] Transfer of excisable goods**

(1) The Comptroller—

- a) may, subject to such conditions and restrictions as he or she sees fit to impose, permit excisable goods to be transferred between excise factories or excise warehouses and ports in Fiji; and
- b) shall ensure that such goods are transferred before due entry of the goods has been made to another aircraft, vehicle or ship as transfer to a bonded warehouse, a customs warehouse, an excise warehouse, an export warehouse, aircraft's or ship's stores, or a consol freight station,

for export of such goods from an airport or seaport.

(2) Excisable goods which have been transferred under this section shall not be unloaded before due entry of such goods has been made except if such goods are unloaded for deposit in a customs area and duly deposited in such area.

(3) The master of an aircraft or a ship or the agent of such aircraft or ship that—

- a) deals with excisable goods contrary to a condition or restriction imposed under subsection (1); or
- b) unloads excisable goods contrary to subsection (2),

commits an offence.

#### **[Section 22B] Failure to produce excisable goods transferred within Fiji**

(1) Excisable goods required to be transferred under section 22A are deemed to have been removed for use within Fiji, if the owner, the operator or agent of an aircraft, vehicle or ship to which excisable goods are transferred to under that section, fails to produce such goods to the proper officer at—

- a) a bonded warehouse;
- b) customs warehouse;
- c) excise warehouse;
- d) bonded export warehouse;
- e) aircraft's or ship's stores;

f) consol freight station,

for export from any airport or seaport to which such goods have been consigned.

(2) Subsection (1) is without prejudice to any other remedy arising out of breach of this Act or any other written law in respect of such goods.

[subs (2) am Act 31 of 2016 s 68, effective 1 December 2016]

(3) For the purposes of subsections (1) and (2), the owner, operator or agent of aircraft, vehicle or ship shall, if so required by the proper officer, within one year from the expected date of arrival of the aircraft, vehicle or ship at such airport, seaport or export freight station, pay on demand any excise duty chargeable on the goods.

(4) Section 23 applies for the purpose of determining any excise duty payable under subsection (1).

(5) The owner, operator or agent of an aircraft, ship or vehicle that fails to produce excisable goods authorised to be transferred under section 22A for export pursuant to subsection (1) commits an offence.

#### **[Section 22C] Penalties**

(1) A person who is convicted of an offence under section 22A(3) or 22B(5) is liable—

- a) to a fine not exceeding 3 times the total excise duty component at subsisting rates for home consumption on such goods or \$200,000, whichever is the greater, or to imprisonment for a term not exceeding 12 years, or both; and
- b) to an order that such goods are to be forfeited to the State.

(2) A person who is convicted under section 22A(3) or 22B(5) shall not carry out any further excise transactions until the fine imposed on such person is paid in full.

## **PART 6 LEVYING OF EXCISE DUTIES**

### **(Sections 23-40)**

#### **[Section 23] Imposition and variation of excise duty**

(1) Subject to this Act, there is imposed and levied and shall be collected and paid on goods manufactured in Fiji of a description set out in Schedule 1, an excise duty at the appropriate rate specified in Part 1 of Schedule 2.

(2) Notwithstanding subsection (1), the goods specified in Part 2 of Schedule 2 are exempt from excise duties.

(3) Where a Bill for an Act of Parliament contains a provision which—

- a) alters any of the excise duties specified in Part 1 of Schedule 2; or
- b) imposes excise duty on goods not previously subject to that duty,

the Comptroller shall, with effect from—

- c) the date of publication of the Bill; or
- d) if a later date is specified in the Bill, that later date, collect excise duties in accordance with the terms of that Bill.

(4) If a Bill referred to in subsection (3) is not passed by Parliament within 6 months of its introduction or is passed with amendment, any excise duty collected in excess of that authorised by this Act or this Act as amended by that amending Act, as the case may be, shall be repaid to—

- a) the manufacturer; or
- b) other person,

who paid the duty, as the case may be.

#### **[Section 24] Regulations in respect of the valuation of excisable goods**

The method of valuing excisable goods for the purposes of this Act shall be prescribed.

#### **[Section 25] Assessment of excise duty**

(1) The proper officer may value, weigh, measure or otherwise examine excisable goods for the purpose of ascertaining the amount of excise duty leviable on them.

(2) When a valuation of excisable goods has been made by the proper officer, that valuation shall be presumed to be correct unless the contrary is proved.

(3) Necessary operations relating to the weighing, measuring and examination of excisable goods under subsection (1) shall be performed by or at the expenses of the owner of those goods.

**[Section 25A] Power to amend assessments of excise duty made by manufacturers**

(1) If the Comptroller is satisfied, as a result of an assessment carried out under section 25 or for any other reason, that an assessment of excise duty payable or refundable made by a manufacturer contravenes the customs laws or is for any other reason incorrect, the Comptroller may amend the assessment and demand for and recover any short-paid excise duty.

(2) Notice in writing must be given to the manufacturer of—

(a) an amended assessment made under subsection (1); and

(b) the basis for the amended assessment and where applicable, the relevant provision of any written law.

(3) Subsection (1) applies whether or not the goods have been released from the control of the Service and whether or not any excise duty assessed has been paid.

(4) The amendment of an assessment of excise duty under subsection (1) may be made—

(a) notwithstanding paragraphs (b) and (c), in the case of fraud, willful neglect, or serious omission by or on behalf of the manufacturer at any time;

(b) for an assessment of excise duty, in the case of a company with a gross turnover of less than \$1.25 million, within 3 years of the date the Comptroller served notice of the assessment of excise duty on that person; or

(c) in any other case, for any assessment of excise duty, within 6 years of the date the Comptroller served notice of the assessment of excise duty on that person.”.

[s25A insrt Act 33 of 2022 s4, effective 1 August 2022]

**[Section 26] Excise duty in general**

(1) Subject to subsection (2), excise duty on excisable goods becomes due and is chargeable at the rate in force when those goods—

a) are removed for consumption in Fiji from an excise factory or an excise warehouse; or

b) are used in an excise factory or an excise warehouse, otherwise than as materials in the production of excisable goods,

and that excise duty, subject to any exemption, rebate, remission or drawback of that duty which may be granted in accordance with this Act, shall be paid by the owner of those goods at the time the excise duty becomes due.

(2) The Comptroller may, if an owner of excisable goods gives such security by bond or otherwise, as the Comptroller requires, defer the payment of excise duty, and in that case all excise duties which would have become due within a duty accounting period shall be paid to the Comptroller within 3 working days or such longer period, as the Comptroller may approve, of the

last day of such duty accounting period or other prescribed period.

[subs (2) subst Act 22 of 2003 s 2, effective 1 January 2004]

(3) For the purposes of subsection (2), the expression “duty accounting period” in relation to manufacturers of excisable products means a period of one week from Monday to Sunday in which goods may be manufactured, exported, transferred or entered into home consumption.

[subs (3) insrt Act 22 of 2003 s 2, effective 1 January 2004]

#### **[Section 27] Excise duty to be paid at rate in force on delivery**

Excisable goods made or deposited in an excise factory or an excise warehouse without payment of excise duty, are, upon—

- a) being delivered from that excise factory or excise warehouse for consumption in Fiji; or
- b) being used in that excise factory or excise warehouse,

subject to the rate of excise duty in force at the time those goods are delivered or used.

#### **[Section 28] Returns to be submitted by manufacturer**

(1) A manufacturer shall, within 3 working days or such longer period as the Comptroller may approve of the close of an accounting duty period or other prescribed period, deliver to the Comptroller, in a form approved by the Comptroller, a duly signed account of—

- a) all materials in or received into the manufacturer's excise factory;
- b) all excisable materials manufactured in, delivered to, used in that factory, or, removed to or from that excise factory, to or from another excise factory or to or from an excise warehouse, lost in that excise factory by evaporation, leakage or otherwise disposed of; and
- c) pay all excise duties, on an approved form, which became due from that excise manufacturer during that week or other prescribed period.

[subs (1) subst Act 22 of 2003 s 3, effective 1 January 2004]

(2) A manufacturer that contravenes subsection (1) commits an offence and is liable on a conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both.

[subs (2) subst Act 22 of 2003 s 3, effective 1 January 2004 ; am Decree 7 of 2010 s 13, effective 1 January 2010; Act 34 of 2017 s 13, effective 30 June 2017]

### **[Section 29] Remission of excise duty payable on goods exported or shipped as stores**

(1) Subject to subsection (2), on application by the owner of excisable goods to the Comptroller and subject to any conditions he or she may impose, excise duty is not payable on those goods if they are—

- a) shipped as stores for consumption outside Fiji on an aircraft or ship proceeding to a place outside Fiji; or
- b) exported by the owner of those goods.

(2) Goods shall not be deemed to have been shipped as stores or exported unless they are shipped as stores or exported in accordance with the customs laws within 7 days or such further period as the proper officer, by written notice, allows, of the date of delivery of those goods from an excise factory or an excise warehouse.

### **[Section 30] Minister may remit or refund excise duty in certain cases**

(1) The Minister may, after receiving a recommendation to do so from the Comptroller and subject to such conditions as the Minister considers necessary, remit or refund the whole or part of any excise duty payable or paid by a person in respect of excisable goods if the Minister is satisfied that—

- a) the goods were or are being used for a purpose that will benefit the country;
- b) the supply of those goods from an excise factory or an excise warehouse is or was of an exceptional nature;
- c) the imposition of excise duty would involve serious hardship.

(2) A person is guilty of an offence if he or she fails to comply with a condition imposed on him or her under subsection (1) and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both.

[subs (2) am Decree 7 of 2010 s 14, effective 1 January 2010; Act 34 of 2017 s 14, effective 30 June 2017]

### **[Section 31] Refunds — general**

(1) Where—

- a) any excise duty, fee or other charge has been levied and paid and repayment of that excise duty, fee or other charge, or any portion of it is claimed on the ground that it was levied or paid through inadvertence or from any other error; and
- b) the Comptroller is satisfied that the claim is correct,

the excess excise duty, fee or charge shall be refunded and any sum to be so refunded is a charge on the Consolidated Fund.

(2) A repayment referred to in subsection (1) shall not be made by the Comptroller where the claim in respect of the refund is made more than one year after the date of the payment.

(2A) Subsections (2) and (4) do not apply to a mission, international organisation or international body that is exempt from any excise duty, fee or other charge in accordance with any written law.

[subs (2A) insrt Act 13 of 2019 s 3, effective 1 August 2019]

(3) If a refund is erroneously made under subsection (1) the Comptroller may, within one year of the date of the refund, demand repayment of that refund and may recover the amount of the refund as a debt due to the Government in a court of competent jurisdiction.

(4) A claim for a refund under this Act is not admissible if the person making the claim has failed to—

- a) file returns in accordance with section 28 or provide any document or information required under this Act; or
- b) make the claim within one year of the payment unless the refund is attributable to an error made by the Service.

[subs (4) insrt Act 13 of 2019 s 3, effective 1 August 2019]

### **[Section 31A] Applicant for refund to have a bank account**

(1) The Comptroller shall require that any applicant for refund of any duty, charge or fee must have a bank account in a commercial trading bank in Fiji.

(2) The Comptroller shall refrain from refunding any duty, charge or fee directly to claimants.

(3) The Comptroller must only pay a refund of overpaid excise duty, fee or other charge to a person under this Act to the person's bank account held at a commercial trading bank.

[subs (3) insrt Act 13 of 2019 s 4, effective 1 August 2019]

[s 31A insrt Decree 7 of 2010 s 15, effective 1 January 2010]

**[Section 31B] Excise refunds may be set off against excise duty, fee or other charge payable**

If the Comptroller is required to pay a refund of overpaid excise duty, fee or other charge to a person under this Act, the Comptroller must—

- a) first apply the amount of the refund against any excise duty, fee or other charge owing by the person under this Act and then refund the balance; and
- b) notify the person, or the person's agent or representative, of the decision in paragraph (a) in writing.

[s 31B insrt Act 13 of 2019 s 5, effective 1 August 2019]

**[Section 32] Remission**

(1) Subject to this Act, the Comptroller may remit excise duty payable in respect of excisable goods if he or she is satisfied—

- a) that the goods were by natural causes or unavoidable accident, lost, damaged or destroyed while they were under excise control; or
- b) that the goods have, with the prior permission of the Comptroller, been destroyed under the supervision of the Comptroller while the goods were still under excise control.

(2) A remission of excise duty under subsection (1) shall not be granted unless the person claiming the remission presents to the Comptroller a claim within one year of the date when the excise duty would otherwise have become due.

**[Section 33] No remission, rebate or refund after removal from excise control**

Where excisable goods have been removed from excise control, a remission, rebate or refund of excise duty shall not be allowed in respect of those goods on account of—

- a) damage or deterioration; or
- b) any claim that the weight, measure, volume or value, as determined by the proper officer for the purpose of ascertaining the excise duty on the goods, is incorrect,

unless written notice of the damage, deterioration or claim was given at or before the time of the removal of the goods from excise control.

**[Section 34] Minister may prescribe granting of drawback**

The Minister may from time to time prescribe on which goods a drawback of the whole or any part of excise duties paid may be granted and the conditions under which that drawback shall be allowed.

**[Section 35] Power to allow drawback on locally manufactured goods**

(1) This section applies to goods or articles manufactured in Fiji and exported.

(2) Subject to any prescribed conditions, a drawback of excise duty equal to the excise duty paid may be allowed on the quantity of any excisable goods which has been used in the manufacture of goods to which this section applies.

**[Section 36] Excisable goods liable to excise duty on re-importation**

(1) Where—

- a) an exemption, remission, rebate, refund or drawback of excise duty has been granted in respect of goods which have been—
  - i. exported; or
  - ii. shipped for use as stores for an aircraft or ship; and
- b) those goods are subsequently brought back into Fiji,

those goods shall be deemed to have become excisable goods at the time when they were brought back into Fiji.

(2) Duty on goods referred to in subsection (1) shall—

- a) be charged at the rate in force; and
- b) subject to section 26(1), be paid,

when the goods are brought back into Fiji.

**[Section 37] Excise duty to apply proportionately**

Where excise duty is imposed or exemption, remission, rebate, refund or drawback is allowed on excisable goods according to a specified weight, measure, number or quantity, then that duty or exemption, remission, rebate, refund or drawback is deemed to apply in the same proportion to a greater or lesser weight, measure, number or quantity, as the case may be, unless specific provision is made by this Act to the contrary.

**[Section 38] Recovery of excise duty**

(1) The correct amount of excise duty, charge or fee due and payable under this Act may be demanded by the Comptroller within one year of the date when that duty, charge or fee should

have been paid and shall constitute a debt payable to the Government from the owner of the goods, and may be sued for in a court of competent jurisdiction in the name of the Comptroller.

(2) Excisable goods belonging to a manufacturer, owner or warehouse keeper, while stored in an excise factory or an excise warehouse or otherwise under excise control, shall be subject to a lien for any debt referred to in subsection (1) and due from that manufacturer, owner or warehouse keeper, and may be detained until that debt is paid.

(3) The owner, directors, partners and shareholders shall be held personally responsible for payment of correct amount of any duty, charge or fee due and payable under this Act.

[subs (3) insrt Decree 7 of 2010 s 16, effective 1 January 2010]

(4) The Comptroller may execute section 143C of the Customs Act 1986.

[subs (4) insrt Decree 7 of 2010 s 16, effective 1 January 2010]

(5) Excise duty recoverable under this section in respect of goods shall have priority over all claims of whatsoever nature upon those goods.

[subs (5) renum Decree 7 of 2010 s 16, effective 1 January 2010]

#### Sections 38A, 38B and 38C inserted

The Principal Act is amended after section 38 by inserting the following new sections—

“Dealing with goods subject to lien

38A.—(1) The Comptroller may detain any goods subject to a lien under section 38(2) and recover the debt payable, within a period as the Comptroller may consider reasonable having regard to the condition of the goods.

(2) If the Comptroller is unable to recover the debt due for any goods subject to a lien within the time specified in subsection (2), the Comptroller may determine the manner in which the goods are to be disposed.

38B.—(1) In this section, “payer” means a person who—

(a) owes money to a manufacturer;

(b) holds money, for or on account of, a manufacturer;

(c) holds money, for a joint account of, a manufacturer, with a spouse or another party;

(d) holds money on account of some other person for payment to a manufacturer or has authority from some other person to pay money to a manufacturer; or

(e) holds money that is deposited to the credit of a manufacturer and includes money held in a joint bank account in the name of the manufacturer and one or more other person, provided the source of income is determined to be the income of the manufacturer.

(2) This section applies if a manufacturer is liable to pay excise duty and the—

(a) excise duty has not been paid by the manufacturer by the due date for payment; or

(b) Comptroller has reasonable grounds to believe that the manufacturer will not pay the assessed excise duty by the due date for payment.

(3) If this section applies, the Comptroller may, by notice in writing, require a payer in respect of the manufacturer to pay the amount specified in the notice to the Comptroller, being an amount that does not

exceed the amount of excise duty that has not been paid or the amount that the Comptroller believes will not be paid by the due date.

(4) The notice in subsection (3) remains effective for a period of 12 months from the date of its issue.

(5) A payer must pay the amount specified in a notice under subsection (3) by the date specified in the notice, being a date that is not before the date that the amount owed by the manufacturer becomes due to the manufacturer or held on the manufacturer's behalf.

(6) If a notice served under subsection (3) requires a payer to deduct amounts from a pension, salary, wages or other remuneration payable at fixed intervals to the manufacturer, the amount required to be deducted by the payer from each payment must not exceed 20% of the amount of each payment of pension, salary, wages or other remuneration.

(7) Subject to subsection (6), if a notice served under subsection (3) requires a payer who holds monies in accordance with subsection (1)(c), the payer must deduct the payment of excise duty specified in the notice, from the income of the manufacturer liable to pay excise duty owed.

(8) If a payer served with a notice under subsection (3) is unable to comply with the notice, the person must notify the Comptroller, in writing within 14 consecutive days after receipt of the notice, setting out the reasons for the manufacturer's inability to comply.

(9) If a notice is served on the Comptroller under subsection (8), the Comptroller may, by notice in writing—

(a) accept the notification and cancel or amend the notice issued under subsection (3); or

(b) reject the notification.

(10) A payer or the payer's representative is precluded from appealing the decision of the Comptroller under subsection (9).

(11) The Comptroller, must, by notice in writing to the payer, revoke or amend a notice served under subsection (3) if the manufacturer has paid the whole or part of the excise duty due or has made an arrangement satisfactory to the Comptroller for payment of excise duty.

(12) A copy of a notice served on a payer under this section must be served on the manufacturer.

(13) An amount deducted from the payment by a payer pursuant to a notice served on a payer under this section is held by the payer in trust for the State.

(14) A payer making a payment under this section is treated as acting under the authority of the manufacturer and of any other persons concerned and is hereby indemnified in respect of the payment.

(15) A payer who, without reasonable cause, fails to comply with a notice under this section is personally liable for the amount specified in the notice

#### Failure to comply with garnishee order

38C.—(1) A person who, without reasonable cause fails to comply with a garnishee order served on him or her under section 38B, commits an offence and is liable on conviction to a fine not exceeding \$25,000 or imprisonment for a term not exceeding 10 years or both.

(2) A person who notifies the Comptroller in writing under section 38B(8) is considered to be in compliance with the garnishee order served on the person under section 38B(3) until the Comptroller serves the person with a notice under section 38B(9) amending the order served under section 38B(3) or rejecting the person's notice under section 38B(9)."

[s 38c inserted Act 33 of 2022 s5 effective 1 August 2022]

### [Section 39] Comptroller may distrain for excise duty

(1) Where excise duty remains unpaid after the time within which it is payable, the Comptroller may authorise the levying of a distress—

- a) upon the goods, chattels and effects of the owner of the goods in respect of which the excise duty remains unpaid; and
- b) upon all machinery, plant, tools, ships, aircraft, vehicles, animals, goods and effects used within Fiji in the manufacture, sale or distribution of excisable goods found in premises or on lands in the use or possession of that owner or of a person on his or her behalf or in trust for him or her.

(2) The authority to distrain under subsection (1) shall be in the form specified in Schedule 3 and that authority is a warrant and authority to levy by distress the amount of excise duties due.

(3) For the purpose of levying distress under subsection (1) a person expressly authorised by writing signed by the Comptroller may execute a warrant of distress and if necessary break open a building or place in the day time for the purpose of levying the distress and may call to his or her assistance a police officer.

(4) A police officer shall, when required to do so under subsection (3), aid and assist in the execution of a warrant of distress and in levying the distress.

(5) The distress taken under subsection (1) may, at the cost of the owner, be kept for 14 days and at the end of that time, if the amount due in respect of excise duty and the cost and charges of and incident to the distress are not paid, may be sold.

(6) Where goods are sold under subsection (5), the proceeds of the sale shall be applied, in the following order, in discharge of—

- a) any excise duty;
- b) the expenses of sale reasonably incurred; and
- c) any rent and charges due to the Government in respect of the goods.

(7) If, after the proceeds of sale have been applied in accordance with subsection (6), there is a balance, that balance shall be payable to the person who was the owner of the goods immediately prior to the sale if he or she makes application for that balance within 6 months of the date of the sale or such further period as the Comptroller allows.

(8) The powers of distress conferred by this section permit the person to whom authority to distrain is given to distrain upon all goods, chattels and effects belonging to the owner wherever they may be found including premises not in the owner's occupation or use.

#### **[Section 40] Disputes as to excise duty payable**

If a dispute arises as to the proper rate or amount of excise duty or drawback payable or allowable on goods, the owner of those goods shall deposit with the Comptroller the excise duty demanded of him or her, or receive from the Comptroller the drawback allowed by him or her, as the case may be, and the amount so paid or received shall be deemed to be the proper excise duty or drawback unless the High Court, upon application to it by the owner of the goods within 3 months after that deposit or receipt, otherwise decides.

## PART 7 POWERS OF OFFICERS

### (Sections 41-51)

#### [Section 41] Access to excise factories or excise warehouses

(1) The proper officer shall for the purposes of this Act at all reasonable times have access to an excise factory or an excise warehouse.

(2) Where the proper officer enters upon premises in accordance with subsection (1) he or she may—

- a) require the licensee to produce, either forthwith or at a time to be fixed by the officer, the licence issued to the manufacturer or warehouse keeper and any book, document or thing **including electronic data**, which relate to excisable goods or materials;
- b) examine a book, document or thing **including electronic data** referred to in paragraph (a) and take copies of it;
- c) seize and detain a book, document or thing **including electronic data** referred to in paragraph (a), if, in his or her opinion, it may afford evidence of the commission of any offence under this Act;
- d) require the manufacturer or warehouse keeper or a person employed by him or her to answer questions relating to a book, document or thing **including electronic data** referred to in paragraph (a), or to an entry in such a book or document, or relating to excisable goods or materials;
- e) require a container, envelope or other receptacle, in the premises to be opened;
- f) at the risk and expense of the manufacturer or warehouse keeper, open and examine a package, or excisable goods or materials, in the premises;
- g) take and retain reasonable samples of excisable goods or materials necessary for the performance of his or her duties; and
- h) lock up, seal, mark or otherwise secure—
  - i. a building, room, place, receptacle or item of plant, in an excise factory; and
  - ii. excisable goods or materials in an excise factory.

**[subs (2) am Decree 7 of 2010 s 41, effective 1 January 2010; Act 9 of 2023 s 41, effective 30 June 2023]**

(3) Where the proper officer, acting in accordance with this section, is unable to obtain free access to premises referred to in subsection (1), or to a receptacle contained in those premises, he or she may, at any time, enter those premises, and open the receptacle, in such manner, if necessary by force, as he or she thinks necessary.

(4) Where, an excise factory or an excise warehouse is entered in accordance with this section and excisable goods, materials or plant are found in relation to which an offence under this Act has been committed, those excisable goods, materials and plant, are liable to be forfeited.

(5) Section 111(1A) of the Customs Act 1986 applies for the purposes of electronic data.

[subs (5) am Decree 7 of 2010 s 41, effective 1 January 2010; Act 9 of 2023 s 41, effective 30 June 2023]

**[Section 42] Officer may examine stock of vendor**

(1) An officer may, during daylight hours, enter premises used by a person selling or offering for sale excisable goods and may take an account of the excisable goods in the custody or

possession of that person, and may take, at any time, samples of those goods, after paying the usual price for them.

(2) A person who sells or offers for sale excisable goods on his or her premises is guilty of an offence if he or she does not, with a sufficient number of his or her servants, aid and assist to the utmost of his or her power an officer referred to in subsection (1) in measuring and taking an account of excisable goods in or upon those premises, and is liable upon conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both.

[subs (2) am Decree 7 of 2010 s 17, effective 1 January 2010; Act 34 of 2017 s 15, effective 30 June 2017]

#### **[Section 43] Magistrate may issue search warrant**

(1) Without prejudice to any other power under this or any other written law, where an officer declares on oath before a Magistrate, that there is reasonable cause for him or her to believe that in a dwelling house, shop or other building or place, or on board an aircraft or ship, there are concealed or deposited goods—

- a) liable to be forfeited under this Act; or
- b) in respect of which an offence under this Act has been committed, the Magistrate may issue a warrant authorising an officer named in the warrant, at any time, and with or without assistance to enter the dwelling house, shop or other building, place, aircraft or ship and there to search for and seize any goods suspected of being liable to be forfeited under this Act or as to which an offence under this Act is suspected to have been committed, as the case may be, and any books or documents which may reasonably be believed to have a bearing on the matter.

(2) An officer to whom a search warrant has been granted under subsection (1) may, if it is necessary so to do—

- a) break open any outer or inner door of the dwelling house, shop or building, place, aircraft or ship referred to in the warrant and enter every part of the dwelling house, shop or building, place, aircraft or ship, if necessary forcibly;
- b) remove by force any obstruction to the entry to search, seizure and removal as he or she is empowered to effect; and
- c) detain a person found in the dwelling house, shop or building, place, aircraft or ship referred to in the warrant until the search has been completed.

#### **[Section 44] Powers of entry, detention and seizure without search warrant**

When an officer observes an act being committed which is an offence under this Act, that officer may enter a building or place where that offence is being committed, using whatever force may be necessary to secure entry, and may—

- a) detain any person found to be in the building or place who may be reasonably suspected of being involved in the commission of the offence;
- b) seize any goods which may be the subject of the offence; and
- c) seize any documents relating to the goods which are the subject of the offence.

**[Section 45] Power to stop vehicle, boat etc suspected of conveying excisable goods etc**

(1) A proper officer, if he or she has reasonable grounds to believe that a vehicle, boat or other means of conveyance, is conveying excisable goods contrary to this Act, may stop and search the vehicles, boat or other means of conveyance.

(2) For the purposes of a search under subsection (1), the proper officer may require any goods in the vehicle, boat or other means of conveyance, to be unloaded at the expense of the owner of the vehicle, boat or other means of conveyance.

(3) A proper officer who is unable to obtain free access to a place or container in the course of search under this section may, if necessary, use force.

(4) Where, on the search of a vehicle, boat or other means of conveyance under this section, goods are found in relation to which an offence under this Act has been committed, those goods shall be liable to be forfeited.

(5) A person in charge of a vehicle, boat or other means of conveyance is guilty of an offence if he or she refuses to stop or to permit the vehicle to be searched in accordance with this section, and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both.

[subs (5) am Decree 7 of 2010 s 18, effective 1 January 2010; Act 34 of 2017 s 16, effective 30 June 2017]

**[Section 46] Power to take samples**

(1) Subject to subsection (3), the proper officer may at any time, if his or her duties so require, take samples of goods to ascertain—

- a) whether they are goods of a description liable to excise duty; or
- b) the excise duty payable on the goods,

or for such other purposes as he or she may deem necessary.

(2) Samples taken under subsection (1) may be disposed of in such manner as the officer who took the sample may direct.

(3) Payment shall be made for a sample taken under subsection (1), and the proper officer shall give a receipt for the sample.

**[Section 47] Power to require certificate of audit**

(1) The Comptroller may require a manufacturer to submit to him or her annually, or at any other time specified by the Comptroller, a certificate of audit by an accountant approved by the Comptroller.

(2) A certificate of audit submitted under subsection (1) shall certify the correctness of all the books and records required by or under this Act to be kept by the manufacturer.

(3) A manufacturer is guilty of an offence if, without reasonable excuse, he or she fails to submit a certificate of audit in accordance with subsection (1) and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both.

[subs (3) am Decree 7 of 2010 s 19, effective 1 January 2010; Act 34 of 2017 s 17, effective 30 June 2017]

**[Section 48] Power to detain and search persons**

(1) Subject to subsections (2) and (3), the proper officer may, if he or she has reasonable grounds to suspect that a person has in his or her possession, whether upon his or her person or in his or her baggage, excisable goods contrary to this Act, detain and search that person.

(2) The proper officer may, for the purpose of a detention and search under subsection (1), use reasonable force, if necessary.

(3) A female shall not be searched in accordance with subsection (1) except by a female.

(4) A person who is to be searched under subsection (1) may require to be taken, as soon as reasonably possible, before an officer of no lesser rank than that of supervisor, who shall consider the grounds for suspicion and direct whether or not the search is to take place.

(5) Where, on the search of a person under subsection (1), excisable goods are found in his or her possession contrary to this Act, whether upon his or her person or in his or her baggage, those goods are liable to be forfeited.

**[Section 49] Power to arrest**

(1) The proper officer may, if he or she has reasonable grounds to believe that a person is committing, or has committed an offence under this Act, arrest that person.

(2) The proper officer may, for the purpose of effecting an arrest under subsection (1), use all reasonable force.

(3) A person arrested under subsection (1) shall, as soon as reasonably possible, be taken before a Magistrate or to a police station, to be dealt with in accordance with applicable law.

**[Section 50] Power to patrol freely**

(1) The officer in charge of an aircraft, ship or vehicle employed in the enforcement of this Act—

- a) may take the aircraft, ship or vehicle to any place in Fiji; and
- b) keep the aircraft, ship or vehicle at any place in Fiji for such time as he or she deems necessary,

and that officer shall not be liable to prosecution or action at law for so doing.

(2) Subject to subsection (3), an officer engaged in the enforcement of this Act may for that purpose patrol upon and pass freely over and enter any place, and that officer shall not be liable to prosecution or action at law for so doing.

(3) This section does not authorise entry into a dwelling house or other building.

**[Section 51] Assistance to be afforded to officers**

(1) A manufacturer or warehouse keeper shall, when requested to do so by an officer, provide safe and convenient ladders of a length sufficient to enable the officer to ascend to and examine a vessel or utensil in the manufacturer's or warehouse keeper's excise factory or excise warehouse, or to gauge or ascertain the contents or capacity of any such vessel or utensil.

(2) A manufacturer or warehouse keeper is guilty of an offence if he or she fails to comply with a request made to him or her under subsection (1) and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both.

[subs (2) am Decree 7 of 2010 s 20, effective 1 January 2010; Act 34 of 2017 s 18, effective 30 June 2017]

## **PART 8 GENERAL OFFENCES AND PENALTIES**

### **(Sections 52-64)**

#### **[Section 52] Making incorrect statements and falsifying documents**

A person is guilty of an offence if he or she—

- a) wilfully makes, orally or in writing, or signs a statement, certificate or other document required for the purposes of this Act, which is untrue or incorrect in any particular;
- b) wilfully makes, orally or in writing, or signs a statement or document, for consideration of an officer on an application presented to him or her, which is untrue or incorrect in any particular;
- c) wilfully counterfeits or falsifies, or uses, when counterfeited or falsified, a document which is or may be required under this Act or a document used in a transaction of any business or matter relating to the administration of this Act;
- d) fraudulently alters a document or counterfeits the seal, signature, initials or other mark of, or used by, an officer for the verification of a document or for the security of goods or any other purpose in the conduct of business relating to the administration of this Act; or
- e) knowingly obtains a remission, rebate or refund, of excise duty which he or she is not entitled to obtain,

and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both.

[a Act 34 of 2017 s 52, effective 1 August 2010; Act 33 of 2022 s 52 effective 01 August 2022]

#### **[Section 53] Penalty for refusing to answer questions etc**

A person is guilty of an offence if he or she refuses—

- a) to answer a question lawfully put to him or her under this Act; or
- b) to give information, which it is in his or her power to give, in response to a question lawfully put to him or her under this Act,

and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both.

[s 53 am Decree 7 of 2010 s 22, effective 1 January 2010; Act 34 of 2017 s 20, effective 30 June 2017]

#### **[Section 54] Evasion of excise duty and for illegal manufacture of excisable goods**

A person is guilty of an offence if, with intent to evade payment of excise duty—

- a) contrary to this Act, he or she receives into or has in his or her possession, custody or control, excisable goods or goods manufactured in contravention of this Act;

- b) he or she assists or is otherwise concerned in the illegal removal or withdrawal of excisable goods from the place of manufacture of the excisable goods or from a place in which excisable goods may have been deposited;
- c) he or she buys, receives, harbours, keeps, conceals or permits, causes or procures to be bought, received, harboured, kept or concealed excisable goods which have been illegally removed under paragraph (b);
- d) he or she is in any way concerned in conveying, removing, depositing or dealing with excisable goods with intent to defraud the Government of excise duties on those goods or to evade any provision of this Act;
- e) he or she is in any way concerned in manufacturing excisable goods, in contravention of this Act; or
- f) except by authority, he or she opens, breaks, alters or in any way interferes with, a lock, seal, mark or other fastening, placed by a proper officer in accordance with section 41(2)(h), on a building, room, place, receptacle, item of plant, excisable goods or materials,

and is liable on conviction to a fine not exceeding \$25,000 or 3 times the value of the excisable goods or materials, whichever is greater or to imprisonment for a term not exceeding 10 years, or to all penalties.

[a Act 34 of 2017 s 54, effective 1 August 2010; Act 33 of 2022 s 54 effective 01 August 2022]

#### **[Section 55] Excess or deficiency in stocks of excisable goods**

(1) If, when an account is taken by the proper officer and a balance is struck of the excisable goods in the stock of a manufacturer or warehouse keeper, excisable goods in excess of what should be in stock, are found, unless the manufacturer or warehouse keeper explains the reasons for such excess to the Comptroller's satisfaction, that manufacturer or warehouse keeper is guilty of an offence and liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both and the excess of those excisable goods is liable to be forfeited.

(2) Subject to subsection (3), if, when an account is taken and a balance is struck in accordance with subsection (1), a deficiency in the excisable goods which should be in stock is found which cannot be accounted for to the Comptroller's satisfaction, the manufacturer or warehouse keeper is guilty of an offence and liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both, and the excise duty on the deficient excisable goods is then due and shall, notwithstanding any other provision of this Act, be forthwith paid.

(3) The Comptroller may, where a deficiency in excisable goods is found under subsection (2), make such allowance for losses in manufacture or in transit as he or she may consider reasonable.

**[Section 56] Persons not to keep stills etc**

(1) Subject to this Act and to subsection (4), a person, other than the holder of a licence issued under section 6(1) shall not knowingly keep or have in his or her possession—

- a) a still, utensil or other apparatus for distilling, denaturing, fermenting or manufacturing spirits; or
- b) a machinery for manufacturing any other excisable goods.

(2) The owner or occupier of land or premises upon which—

- a) a still, utensil or other apparatus for distilling, denaturing, fermenting or manufacturing spirits; or
- b) machinery for the manufacture of excisable goods,

is found, shall each be deemed, until the contrary is proved, knowingly to have kept or had in his or her possession the still, utensil or machinery, as the case may be.

(3) A person is guilty of an offence if he or she contravenes subsection (1), and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both, and the—

- a) still, utensils or other apparatus for distilling, denaturing, fermenting or manufacturing spirits; or
- b) machinery for the manufacture of excisable goods,

is liable to be forfeited.

(4) Subsections (1) and (2) do not apply where the goods to be distilled, denatured, fermented or manufactured are exempted from excise duty by virtue of paragraph (4) of Part 2 of Schedule 2.

**[Section 57] Obstruction of officers etc**

A person is guilty of an offence if he or she—

- a) obstructs, hinders, molests or assaults or uses threatening language to, or attempts to intimidate or endeavours to bribe a person duly engaged in the performance of a duty or the exercise of a power imposed or conferred on him or her by this Act or a person acting in that person's aid;
- b) does anything which impedes or is intended to impede the carrying out of a search for anything liable to be forfeited under this Act or the detention, forfeiture or removal of any such thing;

- c) rescues, damages or destroys anything liable to be forfeited, under this Act, or does anything intended to prevent the procuring or giving of evidence as to whether or not anything is so liable to be forfeited; or
- d) prevents the arrest of a person by a person duly engaged in the performance of a duty or the exercise of a power imposed or conferred on him or her by this Act or a person acting in that person's aid, or rescues a person so arrested,

and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both.

#### **[Section 58] Abuse of authority**

An officer or other person employed in the administration of this Act is guilty of an offence if he or she—

- a) accepts or agrees to accept a bribe, gratuity, recompense or reward for the neglect or non-performance of his or her duty;
- b) conspires or connives with another person to do an act or thing whereby the excise revenue is or may be defrauded, or which is contrary to this Act or the proper execution of his or her duty;
- c) makes an agreement to deliver up or not to seize an aircraft or ship or other means of conveyance or goods liable to seizure;
- d) knowingly demands from another person an amount in excess of the authorised excise duty;
- e) withholds for his or her own use or otherwise, the whole or any portion of the amount of any excise duty collected by him or her;
- f) renders a false return, whether orally or in writing, of the amount of excise duty collected or received by him or her;
- g) defrauds another person, embezzles money or otherwise abuses his or her position; or
- h) not being authorised under this Act to do so, collects or attempts to collect excise duty,

and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both.

[a Act 34 of 2017 s 58, effective 1 August 2010; Act 33 of 2022 s 58 effective 01 August 2022]

#### **[Section 59] Unlawful assumption of character of an officer**

A person is guilty of an offence if, not being an officer, he or she assumes the name, designation or character of an officer, for the purpose of—

- a) obtaining admission to a building or other place or to an aircraft or ship;
- b) doing or procuring to be done an act which he or she would not be entitled to do or procure to be done of his or her own authority; or

- c) for any other unlawful purpose,

and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both.

[s 59 am Decree 7 of 2010 s 29, effective 1 January 2010; Act 34 of 2017 s 26, effective 30 June 2017]

**[Section 60] Forfeiture of aircraft, ships etc used in connection with goods liable to forfeiture**

(1) Without prejudice to any other provision of this Act, where goods or things are liable to be forfeited under this Act—

- a) an aircraft, ship, vehicle, living creature, container (including an article or passenger's baggage) or anything whatsoever which has been used for the carriage, handling, deposit or concealment of the goods or things so liable to be forfeited either at a time when it was so liable or for the purposes of the commission of the offence for which it later became so liable; and
- b) any other thing mixed, packed or found with the goods or things so liable,

is also liable to be forfeited.

(2) Where an aircraft, ship, vehicle or living creature is liable to be forfeited under this Act, whether by virtue of subsection (1) or otherwise, all tackle, apparel or furniture of the aircraft, ship, vehicle or living creature is also liable to be forfeited.

**[Section 61] Ships etc constructed for concealing excisable goods**

An aircraft or ship which is found—

- a) to be engaged in;
- b) to have been engaged in; or
- c) to be about to depart on,

a flight or voyage while constructed, adapted, altered or fitted in any manner for the purpose of concealing excisable goods is liable to be forfeited.

**[Section 62] Ships jettisoning cargo**

(1) If any part of the cargo of a ship is—

- a) thrown overboard;
- b) staved; or
- c) destroyed,

to prevent seizure after the ship has been summoned to bring to by a ship employed in the enforcement of this Act, the ship from which that cargo was thrown overboard, staved or destroyed is liable to be forfeited.

(2) For the purpose of subsection (1) and section 63, a ship is deemed to have been properly summoned to bring to if the ship making the summons did so by means of an international signal code or other recognised means and while flying the customs flag specified in the Customs Act 1986.

### **[Section 63] Special provision as to forfeiture of aircraft and of large ships**

(1) Notwithstanding any other provision of this Act—

- a) an aircraft; or
- b) a ship having a registered tonnage of 250 tons or more,

is not liable to be forfeited under or by virtue of this Act unless the offence in respect of, or in connection with which, the forfeiture is claimed—

- c) was substantially the object of the flight or voyage in connection with which the offence was committed; or
- d) in the case of a ship, was committed while the ship was under chase of a ship employed in the enforcement of this Act after failing to bring to when properly summoned to do so.

(2) The exemption from forfeiture of an aircraft or ship provided by subsection (1) does not affect any liability for forfeiture of goods carried in that aircraft or ship.

### **[Section 63A] Applicant for refund to have a bank account**

(1) The Comptroller shall require that any applicant for refund of any duty, charge or fee must have a bank account in a commercial trading bank in Fiji.

(2) The Comptroller shall refrain from refunding any duty, charge or fee directly to claimants.

[subs (2) am Decree 7 of 2010 s 30, effective 1 January 2010]

### **[Section 64] Various penalties associated with owners of aircraft and ships**

(1) The owner of an aircraft or ship is guilty of an offence if—

- a) he or she knowingly allows his or her aircraft or ship to be used in the unlawful exportation or conveyance of excisable goods;
- b) goods on his or her aircraft or ship are thrown overboard, staved or destroyed to prevent seizure under this Act;
- c) his or her aircraft or ship is found within a port—

- i. having on board or attached to it; or
- ii. conveying or having conveyed,

goods in a manner such as to be in contravention of this Act where a responsible officer of the aircraft or ship is implicated either actually or by neglect,

and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both.

[subs (1) am Decree 7 of 2010 s 31, effective 1 January 2010; Act 34 of 2017 s 27, effective 30 June 2017]

(2) An aircraft or ship referred to in subsection (1) may be detained until any penalty imposed in respect of an offence specified in that subsection has been paid or until security is given for the payment of the penalty.

(3) For the purpose of subsection (1)(c), responsible officers include—

- a) in the case of a ship, the master, mates and engineers of the ship and, where it is carrying passengers, the purser or chief steward; and
- b) in the case of an aircraft, the commander, a pilot, a navigator, the chief engineer and the chief steward,

and the expression “neglect” includes cases where goods, not owned by any of the crew, are discovered in a place in which they could not reasonably have been put if the responsible officer or officers having supervision of that place had exercised care at the time of the loading of the aircraft or ship, or of the coming on board the aircraft or ship of the crew, or subsequently.

## **PART 8A INFRINGEMENT NOTICES**

### **(Sections 64A-64C)**

#### **[Section 64A] Interpretation of this Part**

In this Part, unless the context otherwise requires—

**fixed penalty** means a penalty specified in, and payable on receipt of, an infringement notice;

**infringement notice** means a notice prescribed by regulations and issued by a proper officer under section 64B; and

**prescribed offence** means an offence committed under this Act for which a fixed penalty is payable as prescribed by regulations.

#### **[Section 64B] Infringement notices**

(1) Subject to this Part, where a proper officer has reason to believe that a person has committed a prescribed offence, the proper officer may institute proceedings in respect of the alleged commission of the offence by issuing upon that person an infringement notice.

(2) An infringement notice issued under subsection (1) must—

- a) name the person to whom the infringement notice is issued;
- b) specify the particulars of the offence;
- c) specify the fixed penalty that the person named on the infringement notice is required to pay; and
- d) specify any other information prescribed by regulations.

(3) A fixed penalty payable under this Act or any regulations made under this Act is a debt due to the State that—

- a) is to be collected by the Service in the manner and form prescribed by regulations;
- b) following the collection of the fixed penalty under paragraph (a), is to be paid by the Service into the Consolidated Fund; and
- c) ceases to be due—
  - i. at the time the fixed penalty is paid; or
  - ii. on acquittal or conviction of the prescribed offence or on the determination of the proceedings by the court or tribunal in which the proceedings were instituted.

**[Section 64C] Regulations for issuance of infringement notices**

The Minister may make regulations prescribing matters that are required to be prescribed or are necessary or convenient to be prescribed for the issuance of infringement notices under this Part, including—

- a) the offences for which infringement notices may be issued;
- b) the fixed penalties for prescribed offences;
- c) the manner, form and time frames for which infringement notices are to be issued;
- d) the actions a person may undertake on receipt of an infringement notice; and
- e) the penalties that a person to whom an infringement notice has been issued may be liable to.

## **PART 9 LEGAL PROCEEDINGS**

### **(Sections 65-71)**

#### **[Section 65] Limitation of proceedings (Repealed)**

[s 65 rep Act 34 of 2017 s 28, effective 30 June 2017]

#### **[Section 66] Power of Comptroller to compound offence by agreement**

(1) Subject to subsection (2) and to any prescribed procedure being followed, the Comptroller may, if he or she is satisfied that a person has committed an offence under this Act in respect of which—

- a) a pecuniary penalty is provided for; and
- b) goods are liable to be forfeited,

compound that offence and order that person to pay such sum of money, not exceeding the maximum amount of the pecuniary penalty to which he or she would have been liable if he or she had been prosecuted and convicted for the offence, as the Comptroller may think fit, and the Comptroller may order goods liable to be forfeited in connection with the offence to be condemned.

(2) The Comptroller shall not exercise his or her powers under subsection (1) unless the person he or she considers guilty of the offence admits in writing that he or she has committed the offence and requests the Comptroller to deal with the offence under subsection (1).

(3) Where the Comptroller makes any order under subsection (1)—

- a) the order shall be put into writing and shall have attached to it the request referred to in subsection (2);
- b) the order shall specify the offence which the person committed and the penalty imposed by the Comptroller;
- c) a copy of the order shall be given to the person admitting the offence if he or she so requests;
- d) the person admitting the offence is not liable to further proceedings or prosecution in respect of the offence and, if he or she is in custody, he or she shall be discharged;
- e) the order shall be final and is not subject to appeal; and
- f) if the sum of money ordered to be paid by the Comptroller or any part of it is not paid, the Comptroller may send a copy of the order to a court of competent jurisdiction which shall make an order for the enforcement of the order in the same manner as if the penalty had been imposed by that court.

**[Section 67] Protection of officers etc in relation to seizure and detention of goods etc**

(1) Where, in proceedings for the condemnation of goods seized as liable to be forfeited under this Act, judgment is given for the claimant, the court before which the proceedings were heard may, if it sees fit, certify that there were reasonable grounds for the seizure of the goods.

(2) Where proceedings, whether civil or criminal, are brought against—

- a) the Comptroller; or
- b) a person authorised under this Act to seize or detain goods liable to be forfeited,

on account of—

- c) the seizure or detention of goods, an aircraft or ship; or
- d) any act done by an officer in the execution or intended execution of his or her duty under this Act,

and judgment is given for the plaintiff or prosecutor, then if either—

- e) a certificate relating to the seizure has been granted under subsection (1); or
- f) the court is satisfied and so declares that there were reasonable grounds or probable cause for such seizure or act,

the plaintiff or prosecutor is not entitled to recover damages or costs and the defendant or person who effected the seizure or performed the act is not liable to any punishment and is immune from all proceedings, whether civil or criminal, on account of that seizure or act.

(3) Subsection (2) does not affect the right of a person to—

- a) the return of the goods seized or detained; or
- b) compensation in respect of any damage to or loss in value of the goods or in respect of the destruction of the goods.

(4) A certificate referred to in subsection (1) may be proved by the production of—

- a) the original certificate; or
- b) a certified copy of the certificate purporting to be signed by an officer of the court which granted it.

**[Section 68] Monies to be paid to Consolidated Fund**

Money received by the Comptroller under this Act shall be paid into the Consolidated Fund.

**[Section 69] Onus of proof on defendant in certain cases**

Where in proceedings under this Act brought by the Director of Public Prosecutions, the Attorney-General, the Comptroller or an officer a question arises—

- a) as to the place of manufacture, production or origin of goods;
- b) as to the description or nature of goods; or
- c) as to whether goods have been lawfully received into or delivered from an excise factory or an excise warehouse,

the burden of proof in relation to that matter lies on the defendant in the proceedings.

**[Section 70] Proof of certain documents etc**

(1) If in a court a book or document in the official custody of the Comptroller or an officer is required to be used as evidence as to the transactions to which it refers, copies of that book or document or extracts from it certified by the Comptroller or the proper officer as correct are admissible for that purpose, without production of the original.

(2) In proceedings under this Act a certificate signed or purporting to be signed by—

- a) a Government analyst; or
- b) a person appointed by the Comptroller for the purpose of making an analysis,

is evidence of the matter stated in that certificate unless the contrary is proved.

**[Section 71] Provisions relating to the furnishing of information by manufacturers and official secrecy**

(1) In addition to complying with the requirements of section 81(1) and (2), a manufacturer shall, if required to do so by the Comptroller or an officer—

- a) produce for inspection by the Comptroller or that officer such invoices and other books or documents in his or her possession relating to excisable goods manufactured by that manufacturer during the 12 months preceding the request as the Comptroller or that officer may require;
- b) answer such questions as may be put to him or her by the Comptroller or the officer regarding the description, manufacture, quantity, weight, volume, selling price, consignee, destination, cost of production and manufacturer's profits, and any other matter relating to such goods which the Comptroller or the officer may reasonably think necessary for the purpose of enforcing this Act; or
- c) produce such evidence as the Comptroller or the officer may reasonably consider necessary in support of any information furnished to him or her under paragraph (a) or (b).

(2) A manufacturer is guilty of an offence if he or she—

- a) neglects or refuses to comply with a requirement made of him or her under subsection (1); or
- b) untruthfully or evasively answers a question put to him or her in accordance with subsection (1),

and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both.

[subs (2) am Decree 7 of 2010 s 32, effective 1 January 2010; Act 34 of 2017 s 29, effective 30 June 2017]

(3) Notwithstanding any other provisions of this Act, the powers conferred by subsection (1), in so far as they relate to questions regarding the cost of production and manufacturer's profits in respect of excisable goods, shall not be exercised by any officer other than—

- a) the Comptroller; or
- b) a customs officer of or above the rank of Senior Collector of Customs authorised to act under subsection (1) by the Comptroller.

(4) A person is guilty of an offence if, being in possession of information given or evidence produced by a manufacturer under subsection (1) which relates to the cost of production or manufacturer's profits in respect of excisable goods, he or she communicates that information or evidence to a person—

- a) who is not a person to whom he or she is authorised by the Comptroller to communicate it; or
- b) otherwise than for the purpose of this Act,

and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both.

[subs (4) am Decree 7 of 2010 s 32, effective 1 January 2010; Act 34 of 2017 s 29, effective 30 June 2017]

(5) A person shall not be prosecuted for an offence under subsection (4) without the Director of Public Prosecutions' written consent.

(6) A person employed in enforcing this Act shall not be required—

- a) to produce in a court a document; or
- b) to divulge or communicate to a court information,

relating to the cost of production or to the manufacturer's profit in respect of excisable goods, except as may be necessary for the purpose of carrying into effect this Act, or—

- c) in order to institute a prosecution or other legal proceedings; or
- d) in the course of a prosecution or other legal proceedings, under this Act.

(7) Notwithstanding any other provision of this section, the Comptroller shall permit—

- a) the Director of Public Prosecutions and the Auditor-General; or
- b) an officer duly authorised in that behalf by the Director of Public Prosecutions or the Auditor-General,

to have such access to records or documents as may be necessary for the performance of his or her official duties and in that case the Director of Public Prosecutions or the Auditor-General or the authorised officer shall for the purposes of this section be deemed to be a person employed in enforcing this Act.

## **PART 10 SEIZURES AND FORFEITURES**

### **(Sections 72-79)**

#### **[Section 72] Provisions as to detention, seizure and forfeiture**

An officer, police officer or a person authorised to do so by the Comptroller, may, at any time, seize or detain goods—

- a) liable to be forfeited under this Act; or
- b) which that officer, police officer or other person has reasonable grounds to believe are liable to be forfeited under this Act.

#### **[Section 72A] Placing goods under Customs seal**

(1) A Customs Officer or other person authorised under section 72—

- a) may place under seal, any goods that have been detained; and
- b) shall keep such goods—
  - i. on board an aircraft, ship or vehicle under customs control;
  - ii. at any customs area; or
  - iii. at any other place authorised in writing by the Comptroller.

(2) Detained goods, which have been placed under seal on board an aircraft, ship, vehicle or place under this Act, shall remain under seal until the aircraft or ship has departed from Fiji on an outward voyage.

(3) A person who, without the consent of the Comptroller, breaks or interferes with the seal placed on goods pursuant to subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both, and in addition to such, any such goods are liable to be forfeited to the State.

[subs (3) am Act 34 of 2017 s 30, effective 30 June 2017]

[s 72A insrt Promulgation 15 of 2007 s 5, effective 1 July 2007]

#### **[Section 73] Notice of seizure to be given**

(1) When goods have been seized as being liable to be forfeited under this Act, then, unless the goods were seized—

- a) in the presence of their owner; or
- b) in the case of an aircraft or ship, in the presence of the master of the aircraft or ship,

the Comptroller shall serve written notice of the seizure and the reasons for the seizure on the owner of the goods, or, in the case of an aircraft or ship, on the master of the aircraft or ship.

(2) When goods have been seized in the presence of a person coming within the definition of owner for the purposes of this Act, it is not necessary for the Comptroller to give notice of the seizure to that person or to any other person coming within that definition, and a notice given to a person coming within the definition of owner is deemed to be notice to any other persons also coming within that definition.

(3) If in respect of goods seized under this Act no person coming within the definition of owner of those goods is known to the Comptroller, it is not necessary for the Comptroller to give notice of the seizure to any person.

(4) Where the owner of perishable goods or living creatures seized under this Act is not known to the Comptroller, those goods may, at any time after that seizure, be sold in the prescribed manner by the Comptroller, either by public auction or private treaty, and the proceeds of the sale shall be retained by the Comptroller and dealt with as if they were the goods seized.

#### **[Section 74] Notice of claim**

(1) Where goods liable to be forfeited under this Act have been seized—

- a) the owner of those goods; or
- b) in the case of an aircraft or ship, the master of the aircraft or ship,

may claim the goods within 3 months of the date of the seizure or of the date of any written notice of seizure served on him or her, as the case may be, by written notice to the Comptroller.

(2) If a claim is not made within the period of 3 months referred to in subsection (1), the goods, the subject of the seizure, are deemed to have been condemned.

#### **[Section 75] Procedure after notice of claim**

(1) Where a notice of claim has been given to the Comptroller in accordance with section 74(1), the Comptroller may, within 2 months from the date of receipt of the claim—

- a) by written notice to the claimant, require the claimant to institute proceedings for the recovery of the goods within 2 months of the date of the notice; or
- b) himself or herself institute proceedings for the condemnation of the goods.

(2) If the Comptroller fails, within the period of 2 months referred to in subsection (1), to—

- a) require the claimant to institute proceedings; or

- b) himself or herself to institute proceedings,

in accordance with subsection (1), the goods, the subject of the notice of claim, shall be released to the claimant.

(3) Where the Comptroller has, in accordance with subsection (1), required a claimant to institute proceedings within the period of 2 months referred to in subsection (1)(a) and that claimant has failed to do so, then, on the expiration of that period the goods, the subject of the notice of claim, shall be deemed to have been condemned.

#### **[Section 76] Custody of seized goods**

(1) Subject to subsection (2), goods which have been seized under this Act shall be delivered into the custody of the Comptroller, and after they have been condemned by a competent court shall be forfeited to the Government and may be sold or otherwise disposed of by the Comptroller in the prescribed manner.

(2) The Minister may direct that, in lieu of being sold, goods referred to in subsection (1) shall be reserved for the civil service.

[subs (2) am Act 2 of 2016 s 20 , effective 16 February 2016]

#### **[Section 77] Serving of notice of seizure**

A notice of seizure served under section 73(1) is deemed to have been duly served on the person concerned—

- a) if delivered to that person personally; or
- b) if addressed to that person and left or forwarded by registered post to him or her at his or her usual or last known place of abode or business or, in the case of a body corporate, at its registered or principal office.

#### **[Section 78] Bail may be given for goods seized**

(1) Where goods have been seized under this Act, the Comptroller may order the delivery of those goods on security by bond being given for double the value of the goods.

(2) A bond referred to in subsection (1) shall—

- a) have 2 sureties approved by the Comptroller; and
- b) be delivered to and kept in the custody of the Comptroller.

(3) Where goods referred to in subsection (1) are condemned only the value of those goods shall be paid to the Comptroller who shall then cancel the bond.

**[Section 79] Security to abide by decree of competent court**

(1) Where, in proceedings instituted by the Comptroller, the court delivers a judgment ordering the return of goods to the owner or claimant of those goods, the execution of the judgment shall not be stayed pending the appeal if the party to whom the goods are ordered to be returned furnishes security to the court's satisfaction for—

- a) the restitution of the goods; or
- b) the payment of the full value of the goods,

in case the judgment is reversed by the appellate court.

(2) The full value of the goods for the purposes of subsection (1) shall be ascertained—

- a) by agreement between the parties; or
- b) if the parties cannot agree, by appraisal under the authority of the court.

## **PART 11 MISCELLANEOUS**

### **(Sections 80-88)**

#### **[Section 80] Limitations on methods of manufacture and storage and instruments to be kept**

(1) There may be prescribed—

- a) standards and methods of—
  - i. manufacturing; and
  - ii. marking and storing,

excisable goods; and

- b) implements and materials used in the manufacture of excisable goods.

(2) A manufacturer or warehouse keeper shall—

- a) keep in his or her excise factory or excise warehouse such reasonable and necessary—
  - i. apparatus and instruments for measuring, weighing and testing excisable goods;
  - ii. materials for excisable goods; and
  - iii. packages, vats and utensils,

as the Comptroller may require; and

- b) permit an officer to use the things referred to in paragraph (a)(i) for the purpose of measuring, weighing or taking account of—
  - i. excisable goods;
  - ii. materials for excisable goods; and
  - iii. packages, vats and utensils,

in the manufacturer's or warehouse keeper's excise factory or excise warehouse.

(3) A manufacturer or warehouse keeper is guilty of an offence if he or she—

- a) fails to comply with subsection (1);
- b) uses or allows to be used, false or insufficient apparatus or instruments in respect of excisable goods or materials for excisable goods; or
- c) practises or allows to be practised any art, device or contrivance by which an officer may be hindered or prevented from taking a just and true measure or account of excisable goods, materials used for excisable goods or a package, vat or utensil in respect of excisable goods,

and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both.

[subs (3) am Decree 7 of 2010 s 33, effective 1 January 2010; Act 34 of 2017 s 31, effective 30 June 2017]

(4) Any false apparatus and instruments used in connection with an offence under subsection (3) are liable to be forfeited.

**[Section 81] Books to be kept by manufacturer or warehouse keeper**

(1) A manufacturer or warehouse keeper shall—

- a) keep at his or her excise factory or excise warehouse, in a form and manner approved by the Comptroller, such books, documents and forms relating to the manufacture, storing and delivery of excisable goods as the Comptroller may direct;
- b) make the entries required by the Comptroller at the times specified by him or her in the books, documents and forms referred to in paragraph (a).

(2) An entry under subsection (1)(b) shall be made legibly in ink and shall not be altered.

(3) An entry referred to in subsection (1)(b) may be cancelled by drawing a single line in ink through the incorrect entry, so as to allow the entry to remain legible, and a correcting entry may be made immediately above the entry so cancelled or in any other place approved by the Comptroller.

(4) The books, documents and forms referred to in subsection (1)(a) shall be available at all reasonable times for inspection by an officer and the manufacturer or warehouse keeper shall allow an officer to take an abstract from any such book, document or form at any reasonable time.

(5) A manufacturer or warehouse keeper is guilty of an offence if he or she—

- a) fails to keep the books, documents or forms referred to in subsection (1)(a), or fails to produce them when required to do so;
- b) fails to make in the books, documents or forms referred to in subsection (1)(a), legibly, in ink at the specified times and in the required manner, an entry required to be made in them; or
- c) fraudulently or in a manner contrary to the requirements of this Act makes an entry, obliteration, alteration or erasure in a book, document or form referred to in subsection (1)(a),

and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both.

## **[Section 82] Service of notices**

A notice or document required by this Act to be served on a person may be served on that person—

- a) personally;
- b) by sending the notice or document to that person by registered post at his or her usual or last place of abode, and in the latter case shall be deemed to have been served on him or her at the time at which it would have been delivered to him or her in the ordinary course of the post and;
- c) by electronic means.

[a Act 34 of 2017 s 82, effective 1 August 2010; Act 33 of 2022 s 58 effective 01 August 2022]

## **[Section 83] Comptroller may pay rewards**

(1) Subject to subsection (2), the Comptroller may—

- a) on the condemnation of goods;
- b) on the apprehension of a person; or
- c) on the recovery of a duty or a penalty payable under this Act,

direct that a reward be paid to a person or officer through whose information or means the seizure of the goods was made, the offender apprehended or the duty or penalty recovered.

(2) The Comptroller shall not, without the Minister's approval, direct that a reward exceeding \$200 be paid to an officer.

## **[Section 84] All bonds and securities entered into to be valid**

(1) A bond or other security entered into by a person for the performance of a condition, order or matter relative to excise duty or incidental to excise duty is valid in law and upon breach of a condition of the bond or other security may be sued and proceeded upon.

(2) A bond relating to excise duty or for the performance of a condition or matter incident to excise duty shall be taken to or for the use of the Government.

(3) A bond referred to in subsection (2) may, after the expiration of—

- a) 3 years from the date of the bond; or
- b) if any period is specified in the bond for the performance of the conditions of that bond, that specified period,

be cancelled by or by the order of the Comptroller.

(4) A bond or security referred to in subsection (1) need not be—

- a) sealed; or
- b) signed or delivered in the presence of a witness.

**[Section 85] Surety to be deemed a principal debtor**

(1) Without prejudice to any rights a surety under a bond required by this Act has, against the person for whom he or she is surety, a surety is, under such a bond executed by him or her, deemed a principal debtor and not merely surety and, accordingly, is not discharged nor is his or her liability affected by—

- a) any giving of time for payment;
- b) any omission to enforce the bond; or
- c) any other act or omission or means whereby the liability of the surety would not have been discharged if he or she had been a principal debtor.

(2) When a person bound under a bond required by this Act—

- a) pays the whole of the sum for which he or she is bound but the bond is not totally discharged;
- b) pays a part of the sum for which he or she is bound; or
- c) being a surety—
  - i. dies;
  - ii. departs from Fiji without leaving sufficient property in Fiji to satisfy the whole amount for which he or she is bound; or
  - iii. for any other reason is, in the opinion of the Comptroller, unable or likely to be unable to satisfy the bond if called upon,

the Comptroller may, if he or she thinks fit, require a new bond to be executed.

**[Section 86] Power to make regulations**

(1) The Minister may make regulations not inconsistent with this Act, prescribing matters—

- a) required or permitted by this Act to be prescribed; or
- b) necessary or convenient to be prescribed for carrying out or giving effect to this Act,

and in particular providing for—

- c) the powers and duties to be exercised and performed by officers of the Excise;
- d) the conduct of all matters relating to the collection of excise duties;

- e) the charging of rent, fees and other charges and the amounts of those rents, fees and other charges;
- f) the procedures to be used in respect of the rebate, suspension or refund of the whole or a part of the excise duty payable or paid in respect of excisable goods and for the withdrawal, wholly or in part, of such rebate, suspension or refund;
- g) the forms or the provision of forms to be used under and for purposes connected with this Act, including the form of certificates and other documents to be used in relation to excisable goods intended to be used as materials in the manufacture of goods in Fiji;
- h) the days and times during which an excise office, excise warehouse or export warehouse may be open for business;
- i) the deposit, storage, custody and removal of goods in and from excise factories, excise warehouses and export warehouses and the management and control of those excise factories, excise warehouses and export warehouses;
- j) the erection, inspection, supervision, management and control of excise factories and excise warehouses and the fittings, implements, machinery and apparatus maintained in those premises, including such scales and weights, lights, ladders and other equipment, as may be necessary in order to enable the proper officer to take account of, or check by weight, gauge or measure, all excisable goods or materials in those premises;
- k) the hours during which—
  - i. manufacture may or may not take place in excise factories; and
  - ii. goods may or may not be removed from excise factories, excise warehouses or export warehouses;
- l) what accommodation and equipment the holder of a licence issued under section 6(1) shall provide either free of cost or at a rental to be approved by the Comptroller for officers;
- m) the manner of blending, compounding, varying and bottling spirits in an excise factory or an excise warehouse, the fees to be paid for bottling spirits and the control to be exercised in the movement of spirits to and from an excise factory or an excise warehouse;
- n) the books to be kept by the holders of licences issued under this Act, the entries to be made in those books and the returns to be furnished by those licence holders;
- o) the issue and transfer of licences issued under this Act;
- p) the working days and hours of general attendance of officers and the rates of overtime fees to be paid when officers are required to work beyond the ordinary hours prescribed and the conditions under which that overtime shall be permitted;
- q) the manner in which containers and packages of excisable goods shall be marked;
- r) the manner in which spirits shall be denatured;
- s) the manner of manufacture of excisable goods to secure the collection of excise duty on those goods;

- t) the manner of receipt, storage, warehousing, removal and delivery of excisable goods prior to the payment of excise duty on them and the manner in respect of which any excise duty may be remitted; and
- u) the manner of operations in excise warehouses and export warehouses.

[subs (1) am Act 22 of 1996 s 10, effective 25 October 1996]

(2) Regulations made under this section may provide—

- a) that a breach of a regulation is an offence punishable on conviction by a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both;
- b) that goods used in connection with an offence under the Regulations shall be liable to be forfeited; and
- c) that forms, certificates and other documents to be used for the purposes of this Act may be such as may be approved by the Comptroller.

[subs (2) am Decree 7 of 2010 s 35, effective 1 January 2010; Act 34 of 2017 s 33, effective 30 June 2017]

(3) Regulations made under this section may provide for the Comptroller to exercise a discretion in respect of any matter or for the requirement of his or her approval in respect of any matter.

### **[Section 87] Exemptions**

(1) The Minister may, subject to such conditions as he or she thinks fit, exempt a manufacturer from a provision to this Act and any such exemptions may be given retrospective effect.

(2) A manufacturer who fails to comply with a condition imposed under subsection (1) is guilty of an offence and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both and the goods in respect of which the offence is committed are liable to be forfeited.

[subs (2) am Decree 7 of 2010 s 36, effective 1 January 2010; Act 34 of 2017 s 34, effective 30 June 2017]

### **[Section 88] Repeal and saving**

(1) The Excise Act is repealed.

(2) Without prejudice to section 18 of the Interpretation Act 1967, notwithstanding the repeal of the Excise Act by subsection (1) and unless the contrary intention appears in this Act—

- a) all persons, things and circumstances appointed or created by or under the Excise Act or existing or continuing under that Act immediately before the commencement of this Act shall, under and subject to this Act, continue to have the same status, operation and effect as they respectively would have had as if the Excise Act had not been repealed; and
- b) in particular and without affecting the generality of paragraph (a), the repeal of the Excise Act shall not affect licences, permits, bonds, securities, appointments, orders, rules and

regulations issued, executed, given or made under or by virtue of that Act and in force immediately before the commencement of this Act and those licences, permits, bonds, securities, appointments, orders, rules and regulations shall remain in force as if every such licence, permit, bond, security, appointment, order, rule or regulation were issued, executed, given or made under and by virtue of this Act until replaced or revoked by a licence, permit, bond, security, appointment, order, rule or regulation made under or by virtue of this Act.

# SCHEDULES

## SCHEDULE 1

### (Section 23(1)) - Goods Subject to Excise Duty

[Sch 1 subst Decree 34 of 1992 s 2, effective 1 July 1992 ; am Act 22 of 2003 s 4, effective 7 November 2003 ; Act 26 of 2005 s 2, effective 1 January 2006 ; Promulgation 9 of 2007 s 2, effective 2 March 2007 ; Promulgation 17 of 2008 s 2, effective 1 July 2008 ; Promulgation 20 of 2008 s 2, effective 1 July 2008 ; Decree 7 of 2010 s 37, effective 1 January 2010 ; Decree 35 of 2013 s 2, effective 8 November 2013; amended by Act 22 of 2012, effective 18 July 2020 ; [Act 9 of 2023, effective 1 January, 2024](#)]

## NOTES

In this Schedule—

(a)“manufactured tobacco” includes tobacco processed or prepared by any means, but does not include the growing or curing of tobacco into twist and the processing and preparation of tobacco for the manufacture of cigarettes, cheroots or cigars.

| <i>Column 1<br/>Item</i> | <i>Column 2<br/>Goods</i>                                                    | <i>Column 3<br/>Description</i>                                                                                                                                     |
|--------------------------|------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1                        | Cigarettes                                                                   | Rolls of finely cut tobacco enclosed in thin paper for smoking.                                                                                                     |
| 2                        | Manufactured tobacco                                                         | Leaves of any plant of the solanaceous genus <i>Nicotiana</i> prepared or processed for smoking, chewing or as snuff.                                               |
| 3                        | Ale beer, stout, porter and other fermented liquors and cider and perry      | Alcoholic beverages obtained by fermenting a liquor prepared from malt and alcoholic beverages obtained by fermenting the juice of apples or pears.                 |
| 4                        | Spirits                                                                      | Alcohol and other liquid obtained from distillation of liquors or obtained from any other process.                                                                  |
| 5                        | Alcoholic beverages                                                          | Ready to drink (RTDs) mixtures of any alcoholic strength by volume of 11.49% vol or less.                                                                           |
| 6                        | Wine whether or not fermented and whether or not charged with carbon dioxide | Wine obtained from grapes or any other produce whether or not fermented, with or without alcohol added and have an alcoholic strength by volume exceeding 0.5% vol. |
| 7                        | Carbonated soft drinks and sweetened beverages                               | Carbonated soft drinks not containing alcohol and sweetened beverages with added sugar or artificial sweetener but not including sweetened or flavoured milk        |

|    |                                                                                                 |                                                                                                                                                 |
|----|-------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|
| 8  | Sweet biscuits, waffles and wafers                                                              | Sweet biscuits, waffles and wafers are commonly eaten as snack food and are in general made from flour or from starch and sweetened with sugar. |
| 9  | Ice cream and other edible ice, whether or not containing cocoa, including frozen confectionary | Ice cream and frozen confectionery mainly consisting of water, colorants, flavours and sweetening, and are obtained by freezing.                |
| 10 | Snack food                                                                                      | Snack food are prepared food obtained by roasting, frying, baking, swelling and the like.                                                       |
| 11 | Sugar confectioneries (ex-cluding traditional Indian sweets)                                    | Sugar confectionaries are food items rich in sugar and carbohydrates.                                                                           |

## SCHEDULE 2

### (Section 23(1)) - EXCISE DUTIES TARIFF

[Sch 2 subst Decree 34 of 1992 ss 3 and 4, effective 1 July 1992 ; am Act 3 of 1994 s 3, effective 6 May 1994 ; Act 27 of 1994 s 3, effective 23 December 1994 ; Act 29 of 1996 s 3, effective 27 December 1996 ; Act 24 of 1997 s 3, effective 24 December 1997 ; Act 34 of 1999 s 2, effective 5 November 1999 ; Decree 34 of 2000 s 2, effective 22 November 2000 ; Act 8 of 2001 s 2, effective 9 November 2001 ; Act 33 of 2002 s 2, effective 8 November 2002 ; Act 22 of 2003 s 5, effective 7 November 2003 ; Act 20 of 2004 s 2, effective 5 November 2004 ; Act 25 of 2005 s 2, effective 4 November 2005 ; Act 26 of 2005 s 3, effective 1 January 2006 ; Promulgation 5 of 2007 s 2, effective 3 November 2006 ; Promulgation 42 of 2007 s 2, effective 23 November 2007 ; Promulgation 17 of 2008 s 3, effective 1 July 2008 ; Promulgation 20 of 2008 s 3, effective 1 July 2008 ; Decree 7 of 2010 s 38, effective 1 January 2010 ; Decree 12 of 2011 s 2, effective 26 November 2010 ; Decree 5 of 2012 s 2, effective 25 November 2011 ; Decree 68 of 2012 s 2, effective 22 November 2012 ; Decree 35 of 2013 s 3, effective 8 November 2013 ; Act 7 of 2014 s 2, effective 21 November 2014 ; Act 25 of 2015 s 3, effective 6 November 2015 ; Act 26 of 2016 s 3, effective 23 June 2016; Act 34 of 2017 s 35, effective 30 June 2017; Act 19 of 2018 s 4, effective 29 June 2018; **Act 9 of 2023, effective 14 July, 2023**]

## PART 1

### NOTES

1. For the purpose of this Schedule, any reference to alcohol strength is to be taken to be that shown on test by a Gay Lussac's hydrometer **or an approved apparatus** at a temperature of 15° centigrade.
2. For the purposes of item numbers 1.01, 1.02 and 1.03 where the weight of 1,000 cigarettes exceeds 1,135 grams, then in every case, duty shall be charged as if 1,135 grams by weight of such cigarettes contain 1,000 cigarettes.

| <i>Column 1</i> | <i>Column 2</i>                                                                 | <i>Column 3</i>                                                                                                                                                                                                                                             |
|-----------------|---------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Item</i>     | <i>Excisable Goods</i>                                                          | <i>Rate of Excise Duty</i>                                                                                                                                                                                                                                  |
| 1.00            | Cigarettes-                                                                     |                                                                                                                                                                                                                                                             |
| 1.01            | containing tobacco grown outside Fiji but not containing tobacco grown in Fiji- | <b>\$3.64</b> on every 10 cigarettes                                                                                                                                                                                                                        |
| 1.02            | containing tobacco grown in Fiji but not containing tobacco grown outside Fiji- | <b>\$2.43</b> on every 10 cigarettes                                                                                                                                                                                                                        |
| 1.03            | containing tobacco grown outside Fiji and tobacco grown in Fiji-                | A duty on every 10 cigarettes of such proportion of \$3.47 as the amount of tobacco grown outside Fiji contained in such 10 cigarettes bears to the entire content of the cigarettes together with the amount of such proportion of \$2.31 as the amount of |

|      |                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                 |
|------|-------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|      |                                                                                                                                                 | tobacco grown in Fiji contained in such 10 cigarettes bears to the entire tobacco content of the cigarettes                                                                                                                                                                                                                                                                                     |
| 2.00 | Manufactured tobacco-                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                 |
| 2.01 | containing tobacco grown outside Fiji but not containing tobacco grown in Fiji-                                                                 | \$210.47 on every kilogram of tobacco                                                                                                                                                                                                                                                                                                                                                           |
| 2.02 | containing tobacco grown in Fiji but not containing tobacco grown outside Fiji-                                                                 | \$123.6 on every kilogram of tobacco                                                                                                                                                                                                                                                                                                                                                            |
| 2.03 | containing tobacco grown outside Fiji and tobacco grown in Fiji-                                                                                | A duty on every kilogram of tobacco of such proportion of \$200.45 as the amount of tobacco grown outside Fiji contained in such kilogram of tobacco bears to the entire tobacco content of the tobacco together with the amount of such proportion of \$117.76 as the amount of tobacco grown in Fiji contained in such kilogram of tobacco bears to the entire tobacco content of the tobacco |
| 3.01 | Ale, beer, stout, porter and other fermented liquors and cider and perry of an alcoholic strength of 3.00% by volume or less                    | \$1.81 per litre                                                                                                                                                                                                                                                                                                                                                                                |
| 3.02 | Ale, beer, stout, porter and other fermented liquors and cider and perry of an alcoholic strength of 3.01% by volume or more                    | \$2.10 per litre                                                                                                                                                                                                                                                                                                                                                                                |
| 4.00 | Spirits-                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                 |
| 4.01 | ethyl alcohol or neutral spirits, undenatured, of a strength not less than 80° Gay Lussac—                                                      | \$138.78 per litre of alcohol                                                                                                                                                                                                                                                                                                                                                                   |
| 4.02 | denatured spirits of any strength-                                                                                                              | \$0.21 per litre                                                                                                                                                                                                                                                                                                                                                                                |
| 4.03 | spirits (other than spirits specified in item nos 4.01 and 4.02) of a strength exceeding 11.49° Gay Lussac but not exceeding 57.12° Gay Lussac- | \$39.63 per litre                                                                                                                                                                                                                                                                                                                                                                               |

4.04 spirits (other than spirits specified in item nos 4.01 and 4.02) of a strength exceeding 57.12° Gay Lussac- \$69.39 per litre of alcohol

4.05 Ready to drink mixtures of any alcohol and non alcoholic beverages of an alcoholic strength by volume of 11.49% vol or less \$1.29 per litre

5.00 Wine:

5.01 Sparkling wine \$3.19 per litre

5.02 Still wine \$2.79 per litre

5.03 Other fermented beverages, sparkling \$3.19 per litre

5.04 Other fermented beverages, still \$2.79 per litre

6.00 Carbonated soft drinks \$0.40 per litre

7.00 Sweetened beverages with added sugar or artificial sweetener but does not include sweetened or flavoured milk \$0.40 per litre

8.00 Sweet biscuits, waffles and wafers \$0.40 per kilogram

9.00 Ice cream and other edible ice, whether or not containing cocoa, including frozen confectionary \$0.40 per litre

10.00 Snack food \$0.40 per kilogram

11.00 Sugar confectioneries (excluding traditional Indian sweets) \$0.40 per kilogram

**PART 2**  
**GOODS EXEMPTED FROM EXCISE DUTIES**  
**(Section 23(2))**

1. Beer, spirits and tobacco goods purchased from an excise factory or an excise warehouse by or on behalf of the President of the Republic of Fiji and Commander-in-Chief of the Republic of Fiji Military Forces for his or her personal use or for the use of his or her family forming part of his or her household.
2. Beer, spirits and tobacco goods purchased from an excise factory or an excise warehouse, by or on behalf of:
  - a. the diplomatic missions of a State, international organisations, consular posts headed by career consular officers to which the Minister has for the time being accorded privileges and immunities under the Diplomatic Privileges and Immunities Act 1971 or the Consular Privileges and Immunities Act 1972;
  - b. the diplomatic agents of the Mission, representatives and holders of high offices, persons employed on missions on behalf of international organisations, career consular officers and members of their family forming part of their households to

whom the Minister has for the time being accorded privileges and immunities under the Diplomatic Privileges and Immunities Act 1971 or the Consular Privileges and Immunities Act 1972.

3. Subject to such conditions as the Comptroller may from time to time impose, beer, spirits and tobacco goods purchased by an approved concessionaire solely for the purpose of selling the same by retail within the customs area of an airport approved by the Comptroller to bona fide passengers about to depart by air from Fiji or to bona fide passengers immediately after final disembarkation in Fiji at an approved airport.
4. Goods (except spirits) made by an individual in his or her home for his or her own or his or her family's use or consumption and which are not for sale or exchange for money or money's worth.

**SCHEDULE 3**  
**(Section 39(2)) - Form of Warrant of Distress**

TO:

I, Comptroller of Customs and Excise, by virtue of the powers vested in me by section 39 of the Excise Act 1986 do by this Warrant authorise you to collect and recover the sum of      due for excise duty from, manufacturer, having his or her excise factory at      , and for the recovery of that sum I further authorise that you, with the aid (if necessary) of your assistant and calling to your assistance any police officer, which assistance they are by this Warrant required to give, do forthwith levy by distress the said sum together with the costs and charges of and incident to the taking and keeping of such distress, on the goods, chattels and other distrainable things of the said manufacturer wherever the same may be found and on all machinery, plant, tools, ships, aircraft, vehicles, animals, goods and effects used within Fiji in the manufacture, sale or distribution of excisable goods which you may find in any premises or on any lands in the use or possession of the said manufacturer or of any person on his or her behalf or in trust for him or her.

And for the purpose of levying such distress you are by this warrant authorised, if necessary, with such assistance as aforesaid to break open any building or place in the daytime.

Given under my hand at this day of 20 .

Comptroller of Customs and Excise.

## EXCISE (DIPLOMATIC MISSIONS AND INTERNATIONAL ORGANISATIONS) (REFUND) REGULATIONS 2019

### Table of Amendments

Excise (Diplomatic Missions and International Organisations) (Refund) Regulations 2019 (LN 48 of 2019) commenced on 31 July 2019, as amended by:

| Amending Legislation | Date of Commencement |
|----------------------|----------------------|
|                      |                      |

### **[Regulation 1] Short title and commencement**

(1) These Regulations may be cited as the Excise (Diplomatic Missions and International Organisations) (Refund) Regulations 2019.

(2) These Regulations come into force on the date of publication in the Gazette.

### **[Regulation 2] Interpretation**

In these Regulations, unless the context otherwise requires—

**Act** means the Diplomatic Missions and International Organisations Act 2016;

**exemption period** means the period during which a mission, international organisation or international body is exempt from any excise duty;

**international body** has the meaning given in section 2 of the Act;

**international organization** has the meaning given in section 2 of the Act; and

**mission** has the meaning given in section 2 of the Act.’

### **[Regulation 3] Application for refund**

(1) Any mission, international organisation or international body that is exempt from any excise duty in accordance with section 3 of the Act may apply to the Comptroller for a refund of the payment of the excise duty if the mission, international organisation or international body had paid for the excise duty during the exemption period.

(2) An application for a refund must—

- a) be made in the form approved by the CEO;
- b) specify the date of customs entry to which the application relates;
- c) be accompanied by a refund schedule as prescribed in the Schedule;
- d) be supported by an invoice indicating the amount of excise duty paid by the mission, international organisation or international body; and
- e) be accompanied by any other document or information as required by the CEO.

(3) The mission, international organisation or international body which made an application for a refund may, at any time, amend the application with the amendments clearly identified.

(4) The CEO may reject an application for a refund if the application fails to comply with this regulation.

## SCHEDULE

### (Regulation 3(2)(c)) - Diplomatic Missions and International Organisations Refund Schedule

Name: .....

TIN: .....

Date of customs entry: .....

Customs entry number: .....

| Date                             | Supplier | TIN | Invoice<br>Number | Amount | Excise Duty |
|----------------------------------|----------|-----|-------------------|--------|-------------|
|                                  |          |     |                   |        |             |
|                                  |          |     |                   |        |             |
|                                  |          |     |                   |        |             |
|                                  |          |     |                   |        |             |
|                                  |          |     |                   |        |             |
|                                  |          |     |                   |        |             |
|                                  |          |     |                   |        |             |
| Total excise duty refund claimed |          |     |                   | \$     |             |

## EXCISE REGULATIONS 1986

### Table of Amendments

Excise Regulations 1986 (LN 112 of 1986) commenced on 31 October 1986, as amended by:

| Amending Legislation                                                                    | Date of Commencement |
|-----------------------------------------------------------------------------------------|----------------------|
| Excise (Amendment) Regulations 1988 (LN 112 of 1988)                                    | 1 January 1989       |
| Excise (Amendment) Regulations 1991 (LN 66 of 1991)                                     | 1 January 1992       |
| Excise (Amendment) Regulations 1992 (LN 65 of 1992)                                     | 1 July 1992          |
| Excise (Amendment) Regulations 2004 (LN 106 of 2004)                                    | 1 January 2005       |
| Excise (Amendment) Regulations 2007 (LN 61 of 2007)                                     | 1 July 2007          |
| Excise (Budget Amendment) Regulations 2010 (LN 6 of 2010)                               | 1 January 2010       |
| Excise (Amendment) Regulations 2012 (LN 5 of 2012)                                      | 1 January 2012       |
| Excise (Amendment) Regulations 2016 (LN 69 of 2016)                                     | 1 August 2016        |
| Revised Edition of the Laws (Consequential Amendments) Regulations 2016 (LN 99 of 2016) | 1 December 2016      |

## **PART 1 PRELIMINARY**

### **(Regulations 1, 2)**

#### **[Regulation 1] Short title**

These Regulations may be cited as the Excise Regulations 1986.

#### **[Regulation 2] Interpretation**

In these Regulations, unless the context otherwise requires—

**beer** includes ale, stout, porter, all other fermented liquors made from malt and cider and perry;

**cask** includes a barrel, drum and any other similar container approved by the Comptroller;

**compounding** means the manufacture of spirituous liquor, other than perfumery, culinary essences or medicinal or toilet preparations, by the imparting of a flavour to or the mixing of a material or ingredient with spirits by a method of which the process of distillation is a part;

**distiller** means a manufacturer who manufactures spirits in an excise factory;

**normal manufacturing hours**, in relation to an excise factory, means the hours during which that excise factory is normally open for the purpose of manufacture;

**normal working hours**, in relation to an excise factory, means the hours during which that excise factory is normally open for the purpose of packaging or delivering excisable goods and, in relation to an excise warehouse, means the hours during which that excise warehouse is normally open for the purpose of receiving or delivering excisable goods;

**obscuration** means the difference, caused by matter in solution, between the actual strength of spirits and the apparent strength as indicated by a hydrometer;

**wash** means the liquor obtained from wort after fermentation has begun and before the liquor has been distilled;

**worm** means a pipe, condenser or other equipment used or capable of being used for the condensation of the vapour of spirits; and

**wort** means the liquor obtained from the mashing of material or the dilution of material before fermentation has begun.

## **PART 2 APPLICATIONS FOR LICENCES — GENERAL PROVISIONS**

### **(Regulations 3)**

#### **[Regulation 3] Application to be made by principal official of firm etc**

An application by a body corporate or by an unincorporated body for the issue, renewal or transfer of a licence under the Act shall be made by—

- (a) a proprietor, partner or a director of that body, as the case may; or
- (b) a person authorised to accept service of notices or other documents on behalf of that body.

## **PART 3 APPLICATIONS FOR EXCISE FACTORY LICENCES**

### **(Regulations 4–7)**

#### **[Regulation 4] Application for excise factory licence**

An application for the issue of a licence under section 6(1)(a) of the Act shall be submitted in writing to the proper officer and shall, in addition to giving the name and address of the applicant, specify, in respect of the proposed excise factory—

- a) its exact locality and, if ascertainable, its address;
- b) any sign or mark by which it will be distinguished;
- c) the nature of the goods to be produced in it, its proposed output and whether those goods are for local consumption or for export or both;
- d) its proposed normal working hours and normal manufacturing hours; and
- e) its proposed process of manufacture.

#### **[Regulation 5] Furnishing and submission of plans for excise factory**

(1) The Comptroller may require a person applying for the issue of a licence in accordance with regulation 4 to submit with his or her application proposals, including any plans and drawings which may be necessary, showing the layout, construction plant and equipment of the proposed excise factory.

(2) A plan submitted under subregulation (1) shall show the limits of the area and buildings or parts of buildings which would constitute the proposed excise factory.

#### **[Regulation 6] Approved plans (excise factory)**

(1) When the Comptroller has approved a plan submitted to him or her under regulation 5(1), he or she shall sign a copy of the plan to indicate that he or she has approved the proposals it contains.

(2) Notwithstanding subregulation (1), the Comptroller may at any time require an alteration to be made to a plan submitted to him or her under regulation 5(1) where he or she considers the alteration to be necessary.

(3) When carrying out work shown on a plan approved by the Comptroller a person shall not deviate from that plan except with the Comptroller's written approval.

(4) Where a person fails to comply with subregulation (3) the Comptroller may order the applicant for the licence to demolish any work constructed contrary to the approved plan within a period specified by the Comptroller.

(5) A person is guilty of an offence if he or she fails to comply with an order given to him or her under subregulation (4) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (5) am LN 6 of 2010 reg 2, effective 1 January 2010]

(6) A copy of each plan approved by the Comptroller under subregulation (1) shall be prominently displayed in the excise factory after the licence in respect of the excise factory has been issued.

(7) A manufacturer is guilty of an offence if he or she fails to comply with subregulation (6) and is liable on conviction to a penalty not exceeding \$10,000.

[subreg (7) am LN 6 of 2010 reg 2, effective 1 January 2010]

(8) A manufacturer shall not alter or add to his or her excise factory except in accordance with plans approved by the Comptroller.

(9) Where a manufacturer fails to comply with subregulation (8) the Comptroller may order the manufacturer to reinstate the excise factory to its previous condition or to demolish any addition, as the case may be, within a time specified by the Comptroller.

(10) A manufacturer is guilty of an offence if he or she fails to comply with an order given to him or her under subregulation (8) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (10) am LN 6 of 2010 reg 2, effective 1 January 2010]

## **[Regulation 7] Issue of excise factory licence**

(1) Where the Comptroller—

- a) has approved the plans for premises to be used as an excise factory and
- b) is satisfied with any security furnished by the applicant in accordance with section 6(10) of the Act,

he or she shall, upon the payment of the fee prescribed by subregulation (3), issue a licence to, the applicant under section 6(1)(a) of the Act.

(2) The licence fee for the renewal of a licence issued under section 6(1)(a) of the Act is \$3,000 and is payable on 31 December in each year.

[subreg (2) am LN 66 of 1991 reg 2, effective 1 January 1992 ; LN 106 of 2004 reg 2, effective 1 January 2005 ; LN 5 of 2012 reg 2, effective 1 January 2012 ; LN 69 of 2016 reg 2, effective 1 August 2016]

(3) The fee payable on the issue of a licence under section 6(1)(a) of the Act is—

- a) where the licence is issued during January, February or March in any year, \$511.10;
- b) where the licence is issued during April, May or June in any year, \$383.35;
- c) where the licence is issued during July, August or September in any year, \$255.55; and

d) where the licence is issued during October, November or December in any year, \$127.80, and is payable on the issue of the licence.

[subreg (3) am LN 66 of 1991 reg 2, effective 1 January 1992 ; LN 106 of 2004 reg 2, effective 1 January 2005 ; LN 5 of 2012 reg 2, effective 1 January 2012]

(4) When the renewal fee for a licence issued under section 6(1)(a) of the Act has not been paid by 7 January after it became due the Comptroller may order the manufacturer not to manufacture excisable goods at his or her excise factory until the fee has been paid.

(5) A manufacturer is guilty of an offence if he or she fails to comply with an order given to him or her under subregulation (4) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (5) am LN 6 of 2010 reg 3, effective 1 January 2010]

## **PART 4 REQUIREMENTS AS TO PREMISES, PLANT AND EQUIPMENT**

### **(Regulations 8–10)**

#### **[Regulation 8] Marking of excise factory**

(1) A manufacturer shall mark and keep marked on the outside of his or her excise factory to the Comptroller's satisfaction the words "Excise Factory" followed by the official number of the excise factory allotted to it by the Comptroller.

(2) A manufacturer is guilty of an offence if he or she fails to comply with subregulation (1) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (2) am LN 6 of 2010 reg 4, effective 1 January 2010]

(3) A person shall not obliterate, alter or obstruct a mark made in accordance with subregulation (1).

(4) A person is guilty of an offence if he or she fails to comply with subregulation (3) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (4) am LN 6 of 2010 reg 4, effective 1 January 2010]

#### **[Regulation 9] Securing of excise factory**

(1) A manufacturer shall keep every part of his or her excise factory secured in a manner and with a fastening approved by the Comptroller.

(2) The Comptroller may, where he or she is not satisfied with the security of an excise factory, direct the owner of the excise factory—

- a) to install additional security measures; or
- b) to alter the excise factory to provide additional security, within a time specified by the Comptroller.

(3) A manufacturer is guilty of an offence if he or she fails to comply with subregulation (1) or (2) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (3) am LN 6 of 2010 reg 5, effective 1 January 2010]

#### **[Regulation 10] Storage areas in excise factory**

(1) If required to do so by the Comptroller a manufacturer shall provide in his or her excise factory—

- a) one or more secure store rooms or tanks in which materials used for the manufacture of excisable goods shall be stored immediately after they are received; and
- b) a secure storeroom in which all, excisable goods shall be stored immediately after manufacture.

(2) The storeroom or tanks referred to in subregulation (1) shall be secured in a manner approved by the Comptroller.

(3) A manufacturer is guilty of an offence if he or she fails to comply with subregulation (1) or (2) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (3) am LN 6 of 2010 reg 6, effective 1 January 2010]

## **PART 5 MANUFACTURE OF EXCISABLE GOODS — GENERAL PROVISIONS**

### **(Regulations 11–16)**

#### **[Regulation 11] Normal working hours and normal manufacturing hours**

- (1) A manufacturer shall not open his or her excise factory except during—
- a) the normal working hours of the excise factory as notified to the Comptroller under regulation 4(d); or
  - b) other times approved by the Comptroller.
- (2) A manufacturer is guilty of an offence if he or she contravenes subregulation (1) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (2) am LN 6 of 2010 reg 7, effective 1 January 2010]

#### **[Regulation 12] Notice of process of manufacture**

- (1) A manufacturer shall not alter the process of manufacture as notified to the Comptroller under regulation 4(e) without the Comptroller's approval.
- (2) A manufacturer is guilty of an offence if he or she contravenes subregulation (1) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (2) am LN 6 of 2010 reg 8, effective 1 January 2010]

#### **[Regulation 13] Control over movement of excisable goods**

- (1) When, under section 11 of the Act, an officer is stationed in an excise factory, he or she may issue instructions to control and restrict the movement of materials and excisable goods into, from and within the excise factory.
- (2) A manufacturer is guilty of an offence if he or she removes or causes or permits to be removed, excisable goods or materials in contravention of instructions issued by an officer under subregulation (1) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (2) am LN 6 of 2010 reg 9, effective 1 January 2010]

- (3) Goods in respect of which an offence under subregulation (2) has been committed are liable to be forfeited.

#### **[Regulation 14] Storage and disposal of waste materials**

(1) The Comptroller may issue instructions regarding the storage and disposal of waste materials arising from the manufacture of excisable goods.

(2) A manufacturer is guilty of an offence if he or she stores or causes or permits to be stored or disposes of or causes or permits to be disposed of waste materials in contravention of any instructions issued under subregulation (1) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (2) am LN 6 of 2010 reg 10, effective 1 January 2010]

#### **[Regulation 15] Marking and labelling of packages and outside packing**

(1) Subject to subregulation (2), a manufacturer shall mark or label all packages and the outside packing of any package which contains excisable goods with—

- a) the excise factory number;
- b) the words “Made in Fiji” or such other words as may be approved by the Comptroller indicating that the goods have been made in Fiji;
- c) the name of the manufacturer or excise factory; and
- d) any other particulars which the Comptroller may require.

(2) The Comptroller may vary or waive a requirement of subregulation (1) in respect of goods packed for export.

(3) A manufacturer is guilty of an offence if he or she fails to comply with subregulation (1) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (3) am LN 6 of 2010 reg 11, effective 1 January 2010]

#### **[Regulation 16] Packing and contents**

(1) A manufacturer shall pack excisable goods—

- a) in a manner in which they are ordinarily sold by retail; and
- b) in packages containing such quantities as are approved by the Comptroller.

(2) A manufacturer shall mark or label packages containing excisable goods with the total number or nett weight of the goods contained in the package.

(3) A manufacturer is guilty of an offence if he or she fails to comply with subregulation (1) or (2) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (3) am LN 6 of 2010 reg 12, effective 1 January 2010]

## **PART 6 MANUFACTURE OF SPIRITS**

### **(Regulations 17–31)**

#### **[Regulation 17] Plant**

- (1) A distiller shall erect or install a still, worm, vessel, pipe, gauge or other device to the Comptroller's satisfaction.
- (2) A still, vessel, pipe, gauge or other device referred to in subregulation (1) shall—
- a) be placed so as to be easily accessible for inspection;
  - b) be described by and bear such marking as approved by the Comptroller; and
  - c) be secured in a manner approved by the Comptroller.
- (3) A distiller is guilty of an offence if he or she fails to comply with subregulation (1) or (2) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (3) am LN 6 of 2010 reg 13, effective 1 January 2010]

#### **[Regulation 18] Fermenting backs**

- (1) A distiller shall ensure that his or her distillery has a vessel known as a fermentation back, for depositing wort for the purposes of fermenting.
- (2) A distiller shall ensure that the fermentation back referred to in subregulation (1) is secured in a manner approved by the Comptroller.
- (3) A distiller is guilty of an offence if he or she fails to comply with subregulation (1) or (2) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (3) am LN 6 of 2010 reg 14, effective 1 January 2010]

#### **[Regulation 19] Still-house**

- (1) A distiller shall ensure that his or her distillery has a room, known as the still-house, in which there is erected a still for exhausting wash.
- (2) A distiller shall ensure that the still-house and still referred to in subregulation (1) are secured in a manner approved by the Comptroller.

[subreg (2) LN 99 of 2016 reg 66, effective 1 December 2016]

- (3) A distiller is guilty of an offence if he or she fails to comply with subregulation (1) or (2) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (3) am LN 6 of 2010 reg 15, effective 1 January 2010]

### **[Regulation 20] Spirit receivers**

- (1) A distiller shall ensure that his or her distillery has a vessel known as a spirit receiver, for the reception of spirits from the still-house pending conveyance of spirits into the spirit stores.
- (2) A distiller shall ensure that the spirit receiver referred to in subregulation (1) is secured in a manner approved by the Comptroller.
- (3) A distiller is guilty of an offence if he or she fails to comply with subregulation (1) or (2) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (3) am LN 6 of 2010 reg 16, effective 1 January 2010]

### **[Regulation 21] Spirit stores**

- (1) A distiller shall ensure that his or her distillery has a secure vessel, cellar or storeroom, known as a spirit store, for—
  - a) the storing of spirits pending the spirits' removal for reducing in strength, blending, denaturing, filling into containers or for any other purpose; or
  - b) the storing of spirits in casks during the process of maturation.
- (2) A distiller shall ensure that a spirit store referred to in subregulation (1) is secured in a manner approved by the Comptroller.
- (3) A distiller is guilty of an offence if he or she fails to comply with subregulation (1) or (2) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (3) am LN 6 of 2010 reg 17, effective 1 January 2010]

### **[Regulation 22] Rooms and vessels for blending, denaturing etc**

- (1) A distiller shall ensure that a room or vessel in his or her distillery is not used—
  - a) to process spirits to reduce them in strength;
  - b) to blend or denature spirits;
  - c) to fill spirits into vessels; or
  - d) for any other purpose,unless that room or vessel has been approved for use for that purpose by the Comptroller.
- (2) A distiller shall ensure that a room or vessel referred to in subregulation (1) is secured in a manner approved by the Comptroller.
- (3) A distiller is guilty of an offence if he or she fails to comply with subregulation (1) or (2) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (3) am LN 6 of 2010 reg 18, effective 1 January 2010]

### **[Regulation 23] Dip or gauge**

(1) A distiller shall ensure that a vessel in his or her distillery used for the reception, storage or processing of spirits has a gauge or opening at which an officer may conveniently take his or her dip to determine the contents of the vessel.

(2) A distiller is guilty of an offence if he or she fails to comply with subregulation (1) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (2) am LN 6 of 2010 reg 19, effective 1 January 2010]

### **[Regulation 24] Apparatus and instruments**

(1) A distiller shall furnish, at his or her own expense, any apparatus and instruments required by the Comptroller for measuring, testing and ascertaining the quantity and alcohol content of spirits.

(2) A distiller is guilty of an offence if he or she fails to comply with subregulation (1) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (2) am LN 6 of 2010 reg 20, effective 1 January 2010]

### **[Regulation 25] Course of worts etc**

(1) A distiller shall ensure that wort, wash, low wines, feints and spirits in his or her distillery follow a course approved by the Comptroller.

(2) A distiller is guilty of an offence if he or she fails to comply with subregulation (1) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (2) am LN 6 of 2010 reg 21, effective 1 January 2010]

### **[Regulation 26] Reduction in strength, blending, packing etc of distilled spirits**

(1) A distiller shall not reduce in strength, blend, flavour, colour, sort, separate, bottle, pack or repack spirits except—

- a) with the Comptroller's written permission; and
- b) in accordance with any conditions the Comptroller imposes.

(2) A distiller is guilty of an offence if he or she fails to comply with subregulation (1) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (2) am LN 6 of 2010 reg 22, effective 1 January 2010]

### **[Regulation 27] Maturing**

(1) A distiller shall mature spirits in wood for a period and in a manner approved by the Comptroller.

(2) A distiller is guilty of an offence if he or she fails to comply with subregulation (1) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (2) am LN 6 of 2010 reg 23, effective 1 January 2010]

### **[Regulation 28] Rectifying and compounding**

(1) A distiller shall not rectify or compound spirits except—

- a) with the Comptroller's written permission; and
- b) in accordance with any conditions the Comptroller imposes.

(2) A distiller is guilty of an offence if he or she fails to comply with subregulation (1) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (2) am LN 6 of 2010 reg 24, effective 1 January 2010]

### **[Regulation 29] Strength of spirits**

(1) A distiller shall manufacture spirits of an alcoholic strength approved by the Comptroller which shall not be less than 11.49 degrees Gay Lussac.

(2) In these Regulations, the alcoholic strength of a product shall be taken—

- a) to be that shown on test by Gay Lussac's hydrometer at a temperature of 15 degrees centigrade; or
- b) by such means as may be approved by the Comptroller.

(3) If the Comptroller so directs, an account shall be taken of obscuration to determine the alcoholic strength of spirits.

(4) A distiller is guilty of an offence if he or she fails to comply with subregulation (1) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (4) am LN 6 of 2010 reg 25, effective 1 January 2010]

### **[Regulation 30] Feints**

(1) A distiller shall store feints remaining at the end of a distilling operation in a feints receiver approved for that purpose by the Comptroller.

(2) A distiller shall not deal with feints remaining at the end of a distilling operation except—

- a) by using them in another distilling operation;
- b) by delivering them from the distillery on payment of excise duty; or
- c) by destroying them in the presence and at the discretion of the proper officer.

(3) A distiller is guilty of an offence if he or she fails to comply with subregulation (1) or (2) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (3) am LN 6 of 2010 reg 26, effective 1 January 2010]

### **[Regulation 31] Denaturing**

(1) A distiller shall not denature spirits except—

- a) with the Comptroller's written permission; and
- b) in accordance with any conditions the Comptroller imposes.

(2) A distiller shall denature spirit in accordance with the standard of denaturing prescribed for the purposes of the Customs Act 1986 in relation to imported denatured spirits.

(3) A distiller is guilty of an offence if he or she fails to comply with subregulation (1) or (2) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (3) am LN 6 of 2010 reg 27, effective 1 January 2010]

## **PART 7 MANUFACTURE OF BEER**

### **(Regulations 32, 33)**

#### **[Regulation 32] Storage cellar, filling room etc**

- (1) A person shall store beer manufactured by him or her in an excise factory in a room, known as the storage cellar, until the beer is required for filling into vessels.
- (2) The person manufacturing the beer shall ensure that the pipe lines from the storage cellar referred to in subregulation (1) to the filling room is secured in a manner approved by the Comptroller.
- (3) A person is guilty of an offence if he or she fails to comply with subregulation (1) or (2) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (3) am LN 6 of 2010 reg 28, effective 1 January 2010]

#### **[Regulation 33] Strength of beer**

- (1) A person who manufactures beer in an excise factory shall manufacture that beer to an alcoholic strength of not less than 1.15 degrees Gay Lussac nor more than 11.49 degrees Gay Lussac.
- (2) A person is guilty of an offence if he or she fails to comply with subregulation (1) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (2) am LN 6 of 2010 reg 29, effective 1 January 2010]

## **PART 8 RECORDS TO BE KEPT BY MANUFACTURERS (Regulations 34–40)**

### **[Regulation 34] Material stock book**

- (1) A manufacturer shall keep a material stock book in a form approved by the Comptroller.
- (2) Each day a manufacturer shall accurately enter in the book referred to in subregulation (1) the quantities of materials received at and the quantities of materials used within his or her excise factory on that day.
- (3) A manufacturer is guilty of an offence if he or she fails to comply with subregulation (1) or (2) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (3) am LN 6 of 2010 reg 30, effective 1 January 2010]

### **[Regulation 35] Excise factory account book**

- (1) A manufacturer shall keep an excise factory account book in form approved by the Comptroller.
- (2) Each day a manufacturer shall accurately enter in the book referred to in subregulation (1)—
  - a) the quantity of excisable goods manufactured by him or her during that day;
  - b) the quantity of wasted excisable goods arising from the operation of the excise factory during that day; and
  - c) any other particulars required by the Comptroller.
- (3) A manufacturer is guilty of an offence if he or she fails to comply with subregulation (1) or (2) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (3) am LN 6 of 2010 reg 31, effective 1 January 2010]

### **[Regulation 36] Maturation account book**

- (1) A distiller shall keep in his or her distillery a maturation account book in a form approved by the Comptroller.
- (2) A distiller shall accurately enter in the book referred to in subregulation (1)—
  - a) the number of each cask used by him or her;
  - b) the quantity of spirits in each cask held by him or her;
  - c) the period of storage of each filled cask;

- d) the date of removal of each cask to the filling room; and
- e) any other particulars which the Comptroller requires.

(3) A distiller is guilty of an offence if he or she fails to comply with subregulation (1) or (2) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (3) am LN 6 of 2010 reg 32, effective 1 January 2010]

### **[Regulation 37] Delivery book**

(1) A manufacturer shall keep a delivery book in a form approved by the Comptroller.

(2) A manufacturer shall accurately enter in the delivery book referred to in subregulation (1) the quantity, brand and description of the excisable goods delivered on any day from the excise factory—

- a) for home consumption;
- b) to be warehoused;
- c) to be exported;
- d) to be delivered as stores for consumption outside Fiji on an aircraft or ship proceeding to a place outside Fiji; or
- e) to a licensed Customs area, whether within or outside and airport or port in Fiji, as carriage within Fiji of excisable goods.

[subreg (2) am LN 61 of 2007 reg 2, effective 1 July 2007]

(3) A manufacturer is guilty of an offence if he or she fails to comply with subregulation (1) or (2) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (3) am LN 6 of 2010 reg 33, effective 1 January 2010]

### **[Regulation 38] Nil entries to be made**

(1) Subject to subregulation (2) a NIL entry shall be made in the material stock book, referred to in regulation 34(1), the excise factory account book referred to in regulation 35(1) and the delivery book referred to in regulation 37(1) when no material is received or used in the excise factory or no excisable goods are made or delivered from the excise factory.

(2) Subregulation (1) does not apply in respect of a day when the excise factory is closed.

(3) A manufacturer is guilty of an offence if he or she fails to comply with subregulation (1) and is liable upon conviction to a fine not exceeding \$10,000.

[subreg (3) am LN 6 of 2010 reg 34, effective 1 January 2010]

**[Regulation 39] Only one book of each type to be kept in current use**

(1) This regulation applies to—

- a) a material stock book referred to in regulation 34(1);
- b) an excise factory account book referred to in regulation 35(1);
- c) a maturation account book referred to in regulation 36(1); and
- d) a delivery book referred to in regulation 37(1).

(2) Where a person is required to keep a book to which this regulation applies he or she shall—

- a) not keep more than one such book in respect of each type of excisable goods;
- b) make the required entries in that book each day on which the excise factory is open before the hour at which the excise factory closes; and
- c) balance the book at the close of business on the last day of each month.

(3) A manufacturer is guilty of an offence if he or she fails to comply with subregulation (1) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (3) am LN 6 of 2010 reg 35, effective 1 January 2010]

**[Regulation 40] Return to be furnished by manufacturer**

(1) A manufacturer shall furnish to the Comptroller a return made up to—

- a) the close of business on the last day of each month during which the excise factory is at any time open; or
- b) such time as the Comptroller determines,

in a form approved by the Comptroller.

(2) A manufacturer shall send a return referred to in subregulation (1) to the Comptroller within 7 days of the date on which it is made up to or within such longer period as the Comptroller may allow, and shall send with that return any unpaid excise duty.

(3) A manufacturer is guilty of an offence if he or she fails to comply with subregulation (1) or (2) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (3) am LN 6 of 2010 reg 36, effective 1 January 2010]

**PART 9 STORAGE AND REMOVAL OF EXCISABLE GOODS — GENERAL  
PROVISIONS  
(Regulations 41, 42)**

**[Regulation 41] Delivery of excisable goods for home consumption, warehousing, export etc**

(1) A manufacturer or warehouse keeper shall not deliver excisable goods from an excise factory or excise warehouse unless the delivery is recorded on a certificate approved by the Comptroller or on a commercial delivery document in respect of the following excisable goods—

- a) for home consumption;
- b) for warehousing;
- c) for export; or
- d) for shipping as stores for consumption outside Fiji on a ship or aircraft proceeding to a place outside Fiji.

[subreg (1) subst LN 61 of 2007 reg 3, effective 1 July 2007]

(1A) Excisable goods delivered under subregulation (1)(b), (c) and (d) shall be delivered to a licensed customs area whether within or outside an airport or port in Fiji, as carriage within Fiji of such excisable goods.

[subreg (1A) insrt LN 61 of 2007 reg 3, effective 1 July 2007]

(2) A manufacturer or warehouse keeper shall specify on a certificate or commercial delivery docket issued by him or her under subregulation (1)—

- a) the quantity of goods he or she delivered;
- b) the date of delivery;
- c) the person to whom he or she delivered the goods; and
- d) such other particulars as the Comptroller requires.

(3) A manufacturer or warehouse keeper shall—

- a) keep a duplicate copy of each certificate or delivery docket issued by him or her under subregulation (1); and
- b) enter the particulars of each certificate or delivery docket issued by him or her under subregulation (1) in the delivery book kept by him or her in accordance with regulation 37(1).

(4) A manufacturer or warehouse keeper is guilty of an offence if he or she fails to comply with subregulation (1), (2) or (3) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (4) am LN 6 of 2010 reg 37, effective 1 January 2010]

(4A) A manufacturer or warehouse keeper who removes for carriage within Fiji of any excisable goods for the purposes of subregulation (1)(c) or (d) shall, in addition to the recording requirements under subregulation (1), submit a manifest in accordance with the procedures set out in Parts 14 and 14A of the Customs Act 1986 and Part 17 of the Customs Regulations 1986.

[subreg (4A) insrt LN 61 of 2007 reg 3, effective 1 July 2007]

#### **[Regulation 42] Clearance of minimum quantities**

(1) Except with the Comptroller's approval a manufacturer or warehouse keeper shall not deliver from his or her excise factory or excise warehouse excisable goods in less than the following quantities—

|                              |           |
|------------------------------|-----------|
| Beer (in bottle or can)      | 5 cartons |
| Beer (in bulk)               | 43 litres |
| Spirits (in bottle)          | 5 cases   |
| Spirits (in bulk)            | 45 litres |
| Cigarettes, snuff or tobacco | 4.5 kg    |

A manufacturer or warehouse keeper is guilty of an offence if he or she fails to comply with subregulation (1) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (1) am LN 6 of 2010 reg 38, effective 1 January 2010]

## **PART 10 EXCISE WAREHOUSES**

### **(Regulations 43–53)**

#### **[Regulation 43] Deposit of excisable goods**

(1) A manufacturer shall not deposit excisable goods on which excise duty has not been paid in premises outside his or her excise factory other than in—

- a) an excise warehouse; or
- b) a place specially authorised for that purpose by the Comptroller under section 15(1)(c) of the Act.

(2) A manufacturer is guilty of an offence if he or she fails to comply with subregulation (1) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (2) am LN 6 of 2010 reg 39, effective 1 January 2010]

#### **[Regulation 44] Warehousing of excisable goods**

(1) The Comptroller may allow a manufacturer to remove excisable goods on which excise duty has not been paid from an excise factory to an excise warehouse or from one excise warehouse to another excise warehouse.

(2) A manufacturer who removes excisable goods in accordance with subregulation (1) continues to be liable to pay the excise duty on those goods when that excise duty becomes due.

#### **[Regulation 45] Application for excise warehouse licence**

An application for the issue of a licence under section 17(1) of the Act shall be submitted in writing to the proper officer and shall, in addition to giving the name and address of the applicant, specify in respect of the proposed excise warehouse—

- a) its exact locality and, if ascertainable, its address;
- b) any sign or mark by which it will be distinguished;
- c) the nature of the goods to be warehoused, its proposed capacity and whether those goods are for local consumption or for export or both; and
- d) its proposed normal working hours.

#### **[Regulation 46] Furnishing and submission of plans for excise warehouse**

(1) The Comptroller may require a person applying for the issue of a licence in accordance with regulation 45 to submit with his or her application proposals, including any plans and drawings which may be necessary, showing the layout of the proposed excise warehouse.

(2) A plan submitted under subregulation (1) shall show the limits of the area and buildings or parts of buildings which would constitute the proposed excise warehouse.

#### **[Regulation 47] Approved plans (excise warehouse)**

(1) When the Comptroller has approved a plan submitted to him or her under regulation 46(1) he or she shall sign a copy of the plan to indicate that he she has approved the proposals it contains.

(2) Notwithstanding subregulation (1), the Comptroller may at anytime require an alteration to be made to a plan submitted to him or her under regulation 46(1) where he or she considers the alteration to be necessary.

(3) When carrying out work shown on a plan approved by the Comptroller a person shall not deviate from that plan except with the Comptroller's written approval.

(4) Where a person fails to comply with subregulation (3) the Comptroller may order the applicant for the licence to demolish any work constructed contrary to the approved plan within a period specified by the Comptroller.

(5) A person is guilty of an offence if he or she fails to comply with an order given to him or her under subregulation (4) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (5) am LN 6 of 2010 reg 40, effective 1 January 2010]

(6) A copy of each plan approved by the Comptroller under subregulation (1) shall be prominently displayed in the excise warehouse after the licence in respect of the excise warehouse has been issued.

(7) A warehouse keeper is guilty of an offence if he or she fails to comply with subregulation (6) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (7) am LN 6 of 2010, reg 40 effective 1 January 2010]

(8) A warehouse keeper shall not alter or add to his or her excise warehouse except in accordance with plans approved by the Comptroller.

(9) Where a warehouse keeper fails to comply with subregulation (8) the Comptroller may order the warehouse keeper to reinstate the excise warehouse to its previous condition or to demolish any addition, as the case may be, within a time specified by the Comptroller.

(10) A warehouse keeper is guilty of an offence if he or she fails to comply with an order given to him or her under subregulation (9) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (10) am LN 6 of 2010 reg 42, effective 1 January 2010]

#### **[Regulation 48] Issue of excise warehouse licence**

(1) Where the Comptroller—

- a) has approved the plans for premises to be used as an excise warehouse; and
- b) is satisfied with any security furnished by the applicant in accordance with section 17(5) of the Act,

he or she shall, upon payment of the fee prescribed in subregulation (3), issue a licence to the applicant under section 17(1) of the Act.

(2) The licence fee for the renewal of a licence issued under section 17(1) of the Act is \$3,000 and is payable on 31 December in each year.

[subreg (2) am LN 66 of 1991 reg 3, effective 1 January 1992 ; LN 106 of 2004 reg 3, effective 1 January 2005; LN 5 of 2012 reg 3, effective 1 January 2012 ; LN 69 of 2016 reg 3, effective 1 August 2016]

(3) The fee payable on the issue of a licence under section 17(1) of the Act is—

- a) where the licence is issued during January, February or March, \$511.10;
- b) where the licence is issued during April, May or June, \$383.35;
- c) where the licence is issued during July, August or September, \$255.55; and
- d) where the licence is issued during October, November or December, \$127.80.

[subreg (3) am LN 66 of 1991 reg 3, effective 1 January 1992 ; LN 106 of 2004 reg 3, effective 1 January 2005 ; LN 5 of 2012 reg 3, effective 1 January 2012]

(4) When the renewal fee for a licence issued under section 17(1) of the Act has not been paid by 7 January after it became due the Comptroller may order the warehouse keeper not to transact any business at his or her excise warehouse until the fee has been paid.

(5) A warehouse keeper is guilty of an offence if he or she fails to comply with an order given to him or her under subregulation (4) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (5) am LN 6 of 2010 reg 43, effective 1 January 2010]

#### **[Regulation 49] Security of excise warehouses**

(1) A warehouse keeper shall keep his or her excise warehouse and every part of it secured in a manner and by fastening approved by the Comptroller.

(2) A warehouse keeper shall not open his or her excise warehouse except—

- a) at times directed by the Comptroller; and
- b) in the presence of an officer appointed by the Comptroller.

(3) A warehouse keeper is guilty of an offence if he or she fails to comply with subregulation (1) or (2) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (3) am LN 6 of 2010 reg 44, effective 1 January 2010]

#### **[Regulation 50] Locks and keys for doors required to be secured**

(1) A warehouse keeper shall secure with locks approved by the Comptroller such doors of the excise warehouse as the Comptroller specifies and shall keep the keys of those locks.

(2) A warehouse keeper shall, if required so to do by the Comptroller, secure the doors referred to in subregulation (1) with further locks approved by the Comptroller and the keys of these locks shall be kept by the Comptroller.

(3) A warehouse keeper is guilty of an offence if he or she fails to comply with subregulation (1) or (2) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (3) am LN 6 of 2010 reg 45, effective 1 January 2010]

#### **[Regulation 51] Marking of excise warehouses**

(1) A warehouse keeper shall mark and keep marked on the outside of his or her excise warehouse to the Comptroller's satisfaction the words "Excise Warehouse" followed by the official number of the excise warehouse allocated to it by the Comptroller.

(2) A warehouse keeper is guilty of an offence if he or she fails to comply with subregulation (1) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (2) am LN 6 of 2010 reg 46, effective 1 January 2010]

(3) A person shall not obliterate, alter or obstruct a mark made in accordance with subregulation (1).

(4) A person is guilty of an offence if he or she fails to comply with subregulation (3) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (4) am LN 6 of 2010 reg 46, effective 1 January 2010]

### **[Regulation 52] Facilities for inspection**

- (1) A warehouse keeper shall, at his or her own expense—
- a) stack and arrange packages in his or her excise warehouse so that reasonable access to, and examination of, each package in the excise warehouse may be had or made at all times;
  - b) provide sufficient lights and scales and weights for the use of an officer;
  - c) provide all labour and materials required for the storing, examining packing, marking, weighing and stock-taking of the goods in the excise warehouse whenever the Comptroller may reasonably require.
- (2) A warehouse keeper is guilty of an offence if he or she fails to comply with subregulation (1) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (2) am LN 6 of 2010 reg 48, effective 1 January 2010]

### **[Regulation 53] Excise warehouse stock book**

- (1) A warehouse keeper shall keep a stock book, called an excise warehouse stock book, in a form approved by the Comptroller.
- (2) A warehouse keeper shall each day accurately enter in the stock book kept in accordance with subregulation (1)—
- a) the quantity of excisable goods received into or removed from the excise warehouse for home consumption or export;
  - b) the number and date of the certificate in respect of excisable goods received into or removed from the excise warehouse for home consumption or export and whether those goods were received into or removed from the excise warehouse; and
  - c) such other particulars as the Comptroller requires.
- (3) A warehouse keeper shall balance the entries in a book kept in accordance with subregulation (1) in such manner and for such periods as the Comptroller specifies.
- (4) A warehouse keeper is guilty of an offence if he or she fails to comply with subregulation (1), (2) or (3) and is liable on conviction to a fine not exceeding \$10,000.

[subreg (4) am LN 6 of 2010 reg 49, effective 1 January 2010]

## **PART 11 LEVYING AND PAYMENT OF DUTY, REMISSION AND REFUND ETC (Regulations 54–57)**

### **[Regulation 54] Dutiable contents of packages**

For excise duty purposes the content of a cask, bottle or other container shall be taken to be the full holding capacity of that cask, bottle or container.

[reg 54 subst LN 106 of 2004 reg 4, effective 1 January 2005 ]

### **[Regulation 55] Remission on exportation or shipment as stores**

A claim for a remission of excise duty due on excisable goods exported or shipped for use as stores under section 29 of the Act shall not be allowed unless—

- a) the goods are produced to the proper officer before exportation or shipment; and
- b) a copy of the export entry, certified by the proper officer that the goods have been exported or shipped for use as stores, is attached to the claim for a remission.

### **[Regulation 56] Bond for securing payment of excise duties on removal from excise factory or excise warehouse**

Where excisable goods are removed—

- a) from an excise factory to an excise warehouse; or
- b) from an excise factory or an excise warehouse,

for the purpose of exportation, the owner of those goods shall enter into such bond in respect of the excise duty which would otherwise be payable on those goods as the Comptroller requires.

### **[Regulation 57] Claims for refund of duty paid in error**

A claim for refund of duty which has been paid in error shall be made on the form provided for the purpose by the Comptroller.

## **PART 12 DRAWBACK**

### **(Regulations 58–63)**

#### **[Regulation 58] Drawback on goods used in manufacture in Fiji**

- (1) When excisable goods upon which excise duty has been paid are used in Fiji in the manufacture of goods which are subsequently exported by the manufacturer of those goods, a drawback of excise duty paid on the excisable goods so used may be granted to that manufacturer by the Comptroller.
- (2) The Comptroller shall, after consultation with the manufacturer, determine the quantity of excisable goods used for the purpose of manufacturing the goods in respect of which drawback is claimed.
- (3) The Comptroller may require a manufacturer of goods on which drawback is claimed to produce either at the manufacturer's premises or elsewhere as the Comptroller requires, books of account or other documents relating to the manufacture of the goods on which drawback is claimed.

#### **[Regulation 59] Claim for drawback**

A claim for drawback shall—

- a) be made by the manufacturer or his or her agent after the departure of the ship or aircraft carrying the goods in respect of which drawback is claimed;
- b) be on a form provided for the purpose by the Comptroller; and
- c) be submitted to the Comptroller within one month from the date of entry of the goods for shipment.

#### **[Regulation 60] When drawback is not payable**

Drawback shall not be allowed in respect of goods unless—

- a) the Comptroller is satisfied that the goods were exported for the purposes of trade, commerce or industry;
- b) the goods were produced to the proper officer for examination at the approved place for examination prior to exportation;
- c) the proper officer certifies on the export entry that the goods were exported.

### **[Regulation 61] Charges for services of an officer supervising drawback**

There shall be paid to the proper officer before goods are exported on drawback a charge of \$35.00 for each hour or for any incomplete part of an hour that any officer is employed in supervising the exportation of the goods.

[reg 61 am LN 112 of 1988 reg 2, effective 1 January 1989 ; LN 66 of 1991 reg 4, effective 1 January 1992 ; LN 106 of 2004 reg 5, effective 1 January 2005 ; LN 5 of 2012 reg 4, effective 1 January 2012 ; LN 69 of 2016 reg 4, effective 1 August 2016]

### **[Regulation 62] Certificate of landing**

The Comptroller may require a person to whom drawback is granted to produce to the Comptroller, within such period as the Comptroller may specify, a certificate issued by the competent authority at the declared port or place of discharge confirming the arrival of the goods on which drawback is claimed.

### **[Regulation 63] Drawback on excisable goods returned for reprocessing**

Subject to such conditions and restrictions as he or she sees fit to impose, the Comptroller may grant drawback of excise duty paid on goods delivered for home consumption from an excise factory which are returned within 6 months of the date on which they were delivered from the excise factory to such excise factory for re-processing on account of having become unsaleable solely and inadvertently as a result of natural causes.

## PART 13 WORKING HOURS, OVERTIME AND ATTENDANCE FEES (Regulations 64–66)

### [Regulation 64] Normal working time of officers

(1) The normal working time of officers is any time between—

- a) 8.00 am and 1.00 pm, and 2.00 pm and 4.30 pm on a Monday, Tuesday, Wednesday or Thursday; and
- b) 8.00 am and 1.00 pm, and 2.00 pm and 4.00 pm on a Friday, which is not a public holiday.

### [Regulation 65] Fees for attendance by officers

(1) In this regulation—

**normal attendance** in respect of an officer, means attendance by that officer for the purpose of carrying out a routine inspection of goods or premises in the normal course of his or her duties under the Act;

**normal overtime** means any time that is not—

- a) normal time; or
- b) special overtime;

**normal time** means the normal working time of officers specified in regulation 64;

**special attendance** in respect of an officer, means attendance by that officer which is not normal attendance; and

**special overtime** means any time on a Saturday, Sunday or public holiday.

[subreg (1) am LN 112 of 1988 reg 3, effective 1 January 1989]

(2) Subject to subregulation (3) and (4), the fee payable by a person for the attendance of an officer is to be calculated in accordance with the following table:

| <i>Type and time of attendance</i> | <i>Fee for each hour or part<br/>of an hour of attendance</i> |
|------------------------------------|---------------------------------------------------------------|
| (a) Normal attendance—             |                                                               |
| (i) normal time                    | Free                                                          |
| (ii) overtime                      | \$25                                                          |
| (iii) special overtime             | \$35                                                          |
| (b) Special attendance—            |                                                               |
| (i) normal time                    | Free                                                          |
| (ii) overtime                      | \$25                                                          |
| (iii) special overtime             | \$35                                                          |

[subreg (2) subst IN 69 of 2016 reg 5, effective 1 August 2016]

(3) The minimum fee for the attendance of an officer on a Saturday, Sunday or public holiday or after 8.00 pm or before 6.00 am on any other day is an amount equivalent to the fee payable for 3 hours attendance of an officer calculated at the rate prevailing at the start or finish of the attendance, whichever is the higher.

(4) Where, to provide attendance, an officer is required to leave his or her normal place of employment the fee payable by the person receiving that service is—

- a) any fee payable in accordance with subregulation (2) or (3) calculated for the period during which the officer is necessarily absent from his or her normal place of employment; and
- b) an amount equal to the cost incurred by the Government during that period in respect of—
  - a) travel costs of the officer; and
  - b) the allowances and out of pocket expenses paid to the officer by the Government,

necessarily incurred in carrying out that service.

#### **[Regulation 66] Application for attendance of officer**

(1) An application for the attendance of an officer shall be made—

- a) on a form provided for the purpose by the Comptroller; and
- b) before midday on a week day (other than a public holiday).

(2) The Comptroller may require a person making an application under subregulation (1) to deposit with the Comptroller, by way of security for the payment of fees, an amount equivalent to the fees payable in respect of the attendance requested, as calculated by the Comptroller.

## **PART 14 MISCELLANEOUS (Regulations 67–69)**

### **[Regulation 67] Certificate of strength or maturity of spirits**

(1) Subject to subregulation (2), a person who wishes to obtain a certificate specifying the strength or maturity of spirits shall make a written application to the Comptroller, who may issue the certificate on payment of the fee specified in regulation 68.

(2) A certificate shall not be issued under subregulation (1) in respect of spirits after the spirits' removal from excise control.

### **[Regulation 68] Fees for certificates etc**

A document referred to in column 2 of the following table may be issued by the Comptroller to a person entitled to the document on payment of the fee specified against that document in column 3.

| <i>Column 1<br/>Item</i> | <i>Column 2<br/>Document</i>                                             | <i>Column 3<br/>Fee</i> |
|--------------------------|--------------------------------------------------------------------------|-------------------------|
| 1                        | Certificate of weight for each consignment                               | \$20                    |
| 2                        | Any other certificate issued by the Comptroller                          | \$20                    |
| 3                        | Certified copy of any document (for each 100 words or part of 100 words) | \$15                    |

[reg 68 am LN 112 of 1988 reg 4, effective 1 January 1989 ; LN 66 of 1991 reg 6, effective 1 January 1992 ; LN 106 of 2004 reg 7, effective 1 January 2005 ; LN 5 of 2012 reg 6, effective 1 January 2012 ; LN 69 of 2016 ; reg 6, effective 1 August 2016]

### **[Regulation 69] Revocation**

- (1) The Excise (Overtime) Regulations are revoked.
- (2) The Excise (Beer) Regulations 1958 is revoked.
- (3) The Excise (Cigarettes) Regulations 1955 is revoked.
- (4) The Excise (Cigarettes and Tobacco) (Drawback) Regulations 1959 is revoked.
- (5) The Excise (Miscellaneous Goods) Regulations are revoked.
- (6) The Excise (Safety Matches) Regulations 1962 is revoked.
- (7) The Excise (Spirits) Regulations are revoked.

- (8) The Directions as to Drawback, in force on 6 January 1967 and published at page 1 of the subsidiary legislation to the Excise Act 1986 in the 1978 Edition of the Laws of Fiji, are revoked.
- (9) The Directions as to Drawback, published as Legal Notice 90 of 1982, are revoked.

# EXCISE (INFRINGEMENT NOTICES) REGULATIONS 2018

## Table of Amendments

Excise (Infringement Notices) Regulations 2018 (LN 49 of 2018) commenced on 1 August 2018, as amended by:

| Amending Legislation | Date of Commencement |
|----------------------|----------------------|
|----------------------|----------------------|

## **PART 1 PRELIMINARY**

### **(Regulations 1–4)**

#### **[Regulation 1] Short title and commencement**

- (1) These Regulations may be cited as the Excise (Infringement Notices) Regulations 2018.
- (2) These Regulations come into force on 1 August 2018.

#### **[Regulation 2] Interpretation**

In these Regulations, unless the context otherwise requires—

**Act** means the Excise Act 1986;

**court** means a court of competent jurisdiction;

**fixed penalty** means a penalty prescribed in column 4 of Schedule 1;

**fixed penalty offence** means an offence prescribed in columns 1 and 2 of Schedule 1;

**Infringement Notice** means the notice issued under regulation 5;

**late payment fee** means 50% of the fixed penalty a person is liable to pay; and

**Service** means the Fiji Revenue and Customs Service.

#### **[Regulation 3] Objectives**

The objectives of these Regulations are to—

- a) ensure compliance with the Act; and
- b) address breaches of the Act.

#### **[Regulation 4] Application**

These Regulations apply throughout Fiji irrespective of a person's nationality, citizenship or place of registration or incorporation.

## **PART 2 PROCEEDINGS FOR INFRINGEMENT NOTICES (Regulations 5–9)**

### **[Regulation 5] Issuance of Infringement Notice**

(1) A proper officer may issue an Infringement Notice to a person alleged to have committed a fixed penalty offence by serving the Infringement Notice—

- a) personally upon the person;
- b) through registered mail sent to the person's postal address last recorded by the Service;
- c) at the registered office of the person;
- d) upon a person who resides at the person's physical address last recorded by the Service, provided that the first mentioned person is of or over the age of 18 years; or
- e) through any electronic means as approved by the Service, including by electronic mail to a valid electronic mailing address submitted by the person to the Service and verified by the Service.

(2) In these Regulations, service of the Infringement Notice is deemed to have been effected if the Infringement Notice is—

- a) in the form prescribed in Schedule 2; and
- b) served in accordance with this regulation.

(3) The Service may notify a person to whom an Infringement Notice is issued of the person's alleged commission of a fixed penalty offence and such notification may be made by—

- a) Short Message Service (SMS) messaging to a registered mobile phone contact; or
- b) electronic mail to a valid electronic mailing address,

submitted by the person to the Service and verified by the Service.

### **[Regulation 6] Fixed penalty**

A person to whom an Infringement Notice is issued is liable to a fixed penalty and must, within 30 days from the date the Infringement Notice is issued, undertake one of the following actions—

- a) pay the fixed penalty in a single payment or by instalments; or
- b) elect to dispute the Infringement Notice in a court.

### **[Regulation 7] Failure to pay fixed penalty**

(1) If a person to whom an Infringement Notice is issued does not undertake any of the actions in regulation 6 within the prescribed period, the person is liable to pay the late payment fee in addition to the fixed penalty and where the person is—

- a) an individual, the individual shall be issued a departure prohibition order preventing the individual from leaving Fiji; or
- b) a company, all the directors of the company in Fiji shall be issued a departure prohibition order preventing the directors from leaving Fiji,

unless the person undertakes one of the following actions—

- i. pays the fixed penalty and late payment fee in a single payment or by instalments; or
- ii. elects to dispute the Infringement Notice in court.

(2) If a person to whom an Infringement Notice is issued pays the fixed penalty and late payment fee, if applicable, and also elects to dispute the Infringement Notice in a court, the person must notify the Service, on or before the payment of the fixed penalty and late payment fee, if applicable, of the person's intention to dispute the Infringement Notice.

(3) If a person to whom an Infringement Notice is issued pays the fixed penalty and late payment fee, if applicable, and also elects to dispute the Infringement Notice and the court subsequently makes a final determination in the person's favour, including the determination of any appeal in any appellate court, the Service must refund the fixed penalty and late payment fee, if applicable, to that person.

(4) If a person to whom an Infringement Notice is issued does not undertake any of the actions in regulation 6 within the prescribed period, the Service must notify the Director of Immigration immediately after the expiration of the prescribed period.

(5) Upon receipt of the notification from the Service under subregulation (4), the Director of Immigration must issue to—

- a) where the person is an individual, the individual; or
- b) where the person is a company, all the directors of the company in Fiji,

a departure prohibition order stating—

- i. the reasons for the issue of the departure prohibition order;
- ii. the fixed penalty and late payment fee that the person is required to pay; and
- iii. that the departure prohibition order may be revoked if the person undertakes any of the actions listed in subregulation (1)(i) and (ii).

(6) If a departure prohibition order is issued to a person under this regulation, the person to whom the departure prohibition order is issued may pay in full the fixed penalty and late payment fee that the person is liable to, to the Service or, if the person intends to leave Fiji, to the Department of Immigration at an international airport in Fiji.

(7) Pursuant to subregulation (6), if a person pays in full the fixed penalty and late payment fee that the person is liable to, the departure prohibition order is deemed to have been revoked and the person must not be prevented from leaving Fiji on the basis of the departure prohibition order issued under this regulation.

#### **[Regulation 8] Failure to take action within 3 months**

If a person to whom an Infringement Notice is issued does not undertake any of the actions provided in regulation 7(1)(i) and (ii) within 3 months from the date the Infringement Notice is issued, the Infringement Notice takes effect as a conviction and the Service may seek the maximum penalty for the prescribed offence from a court.

#### **[Regulation 9] Evidence of matters in certificate**

A certificate signed by a proper officer stating that the fixed penalty was or was not paid must, unless the contrary is proved, be conclusive evidence of the matters stated in the certificate.

## SCHEDULES

### SCHEDULE 1

#### (Regulation 2) - FIXED PENALTY OFFENCES AND FIXED PENALTIES

| Section | Fixed Penalty Offence                                                            | Maximum Penalty<br>Fine<br>Imprisonment | Fixed Penalty               |                             |                             |                            |                             |                             |                            |
|---------|----------------------------------------------------------------------------------|-----------------------------------------|-----------------------------|-----------------------------|-----------------------------|----------------------------|-----------------------------|-----------------------------|----------------------------|
|         |                                                                                  |                                         | Individuals                 |                             |                             |                            | Body Corporate              |                             |                            |
|         |                                                                                  |                                         | 1 <sup>st</sup><br>Offender | 2 <sup>nd</sup><br>Offender | 3 <sup>rd</sup><br>Offender | 4 <sup>th</sup> or<br>more | 1 <sup>st</sup><br>Offender | 2 <sup>nd</sup><br>Offender | 3 <sup>rd</sup> or<br>more |
| 8(1)    | Manufacture without license etc                                                  | \$25,000<br>10 years                    | \$1,000                     | \$5,000                     | \$10,000                    | \$25,000                   | \$10,000                    | \$15,000                    | \$25,000                   |
| 10(3)   | Failure to furnish description of proposed excise factory etc                    | \$25,000<br>10 years                    | \$1,000                     | \$5,000                     | \$10,000                    | \$25,000                   | \$10,000                    | \$15,000                    | \$25,000                   |
| 11(3)   | Failure to provide accommodation                                                 | \$25,000<br>10 years                    | \$1,000                     | \$5,000                     | \$10,000                    | \$25,000                   | \$10,000                    | \$15,000                    | \$25,000                   |
| 13(2)   | Failure to comply with provisions relating to denaturing of spirit               | \$25,000<br>10 years                    | \$1,000                     | \$5,000                     | \$10,000                    | \$25,000                   | \$10,000                    | \$15,000                    | \$25,000                   |
| 14(2)   | Manufacturing spirits to a strength exceeding prescribed limits                  | \$25,000<br>10 years                    | \$1,000                     | \$5,000                     | \$10,000                    | \$25,000                   | \$10,000                    | \$15,000                    | \$25,000                   |
| 15(2)   | Storage, possession and control of excisable goods without lawful authority      | \$25,000<br>10 years                    | \$1,000                     | \$5,000                     | \$10,000                    | \$25,000                   | \$10,000                    | \$15,000                    | \$25,000                   |
| 18(4)   | Removal or return excisable good without Comptroller's written consent           | \$25,000<br>10 years                    | \$1,000                     | \$5,000                     | \$10,000                    | \$25,000                   | \$10,000                    | \$15,000                    | \$25,000                   |
| 19(2)   | Altering excisable goods in breach of regulations made under section 86          | \$25,000<br>10 years                    | \$1,000                     | \$5,000                     | \$10,000                    | \$25,000                   | \$10,000                    | \$15,000                    | \$25,000                   |
| 20(2)   | Packing, sorting, caring out or similar operation with respect to exisable goods | \$25,000<br>10 years                    | \$1,000                     | \$5,000                     | \$10,000                    | \$25,000                   | \$10,000                    | \$15,000                    | \$25,000                   |

|        |                                                                                                                                                                                        |                                                                                                                                                                                                |         |         |          |          |          |          |          |
|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|---------|----------|----------|----------|----------|----------|
| 21(2)  | Taking samples without complying with procedures and conditions specified by the Comptroller                                                                                           | \$25,000<br>10 years                                                                                                                                                                           | \$1,000 | \$5,000 | \$10,000 | \$25,000 | \$10,000 | \$15,000 | \$25,000 |
| 22(2)  | Unauthorised delivery of excisable goods                                                                                                                                               | \$25,000<br>10 years                                                                                                                                                                           | \$1,000 | \$5,000 | \$10,000 | \$25,000 | \$10,000 | \$15,000 | \$25,000 |
| 22C(1) | Penalties for failure to comply with requirements under section 22A(3) for transferring excisable goods or failure to produce excisable goods transferred in Fiji under section 22B(5) | A fine not exceeding 3 times the total excise duty component at subsisting rates for home consumption on such goods or \$200,000, whichever is greater.<br>Not more than 12 years imprisonment | \$1,000 | \$5,000 | \$10,000 | \$25,000 | \$10,000 | \$15,000 | \$25,000 |
| 28(2)  | Manufacturers failure to submit returns etc                                                                                                                                            | \$25,000<br>10 years                                                                                                                                                                           | \$1,000 | \$5,000 | \$10,000 | \$25,000 | \$10,000 | \$15,000 | \$25,000 |
| 30(2)  | Failure to comply with conditions placed by the Minister with regard to remitting or refunding excise duty                                                                             | \$25,000<br>10 years                                                                                                                                                                           | \$1,000 | \$5,000 | \$10,000 | \$25,000 | \$10,000 | \$15,000 | \$25,000 |
| 42(2)  | Refusal to assist and aid an officer in measuring and taking an account of excisable goods in or upon a premises                                                                       | \$25,000<br>10 years                                                                                                                                                                           | \$1,000 | \$5,000 | \$10,000 | \$25,000 | \$10,000 | \$15,000 | \$25,000 |
| 45(5)  | Refusal to stop or to permit the search of a vehicle, boat or                                                                                                                          | \$25,000<br>10 years                                                                                                                                                                           | \$1,000 | \$5,000 | \$10,000 | \$25,000 | \$10,000 | \$15,000 | \$25,000 |

|       |                                                                                                              |                                                                                                    |         |         |          |          |          |          |          |
|-------|--------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|---------|---------|----------|----------|----------|----------|----------|
|       | other means of conveyance                                                                                    |                                                                                                    |         |         |          |          |          |          |          |
| 47(3) | Failure to submit a certificate of audit                                                                     | \$25,000<br>10 years                                                                               | \$1,000 | \$5,000 | \$10,000 | \$25,000 | \$10,000 | \$15,000 | \$25,000 |
| 51(2) | Failure to provide assistance                                                                                | \$25,000<br>10 years                                                                               | \$1,000 | \$5,000 | \$10,000 | \$25,000 | \$10,000 | \$15,000 | \$25,000 |
| 52    | Making incorrect statements and falsifying documents etc                                                     | \$25,000<br>10 years                                                                               | \$1,000 | \$5,000 | \$10,000 | \$25,000 | \$10,000 | \$15,000 | \$25,000 |
| 53    | Refusing to give information or answer to questions                                                          | \$25,000<br>10 years                                                                               | \$1,000 | \$5,000 | \$10,000 | \$25,000 | \$10,000 | \$15,000 | \$25,000 |
| 54    | Evasion of excise duty and illegal manufacture of excisable goods                                            | \$25,000 or 3 times the value of the exisable goods or materials, whichever is greater<br>10 years | \$1,000 | \$5,000 | \$10,000 | \$25,000 | \$10,000 | \$15,000 | \$25,000 |
| 55(1) | Excess of excisable goods which should be in stock                                                           | \$25,000<br>10 years                                                                               | \$1,000 | \$5,000 | \$10,000 | \$25,000 | \$10,000 | \$15,000 | \$25,000 |
| 55(2) | Deficiency in excisable goods which should be in stock                                                       | \$25,000<br>10 years                                                                               | \$1,000 | \$5,000 | \$10,000 | \$25,000 | \$10,000 | \$15,000 | \$25,000 |
| 56(3) | Unlawful posession of stills etc for manufacturing spirits or machinery for manufacturing of excisable goods | \$25,000<br>10 years                                                                               | \$1,000 | \$5,000 | \$10,000 | \$25,000 | \$10,000 | \$15,000 | \$25,000 |
| 57    | Obstruction of officers etc                                                                                  | \$25,000<br>10 years                                                                               | \$1,000 | \$5,000 | \$10,000 | \$25,000 | \$10,000 | \$15,000 | \$25,000 |
| 64(1) | Various penalties associated with owners of aircraft and ships                                               | \$25,000<br>10 years                                                                               | \$1,000 | \$5,000 | \$10,000 | \$25,000 | \$10,000 | \$15,000 | \$25,000 |

|        |                                                                                                                   |                      |         |         |          |          |          |          |          |
|--------|-------------------------------------------------------------------------------------------------------------------|----------------------|---------|---------|----------|----------|----------|----------|----------|
| 71(2)  | Refusal to furnish information etc                                                                                | \$25,000<br>10 years | \$1,000 | \$5,000 | \$10,000 | \$25,000 | \$10,000 | \$15,000 | \$25,000 |
| 72A(3) | Interfering with sealed goods or breaking or interfering with customs seal without the consent of the Comptroller | \$25,000<br>10 years | \$1,000 | \$5,000 | \$10,000 | \$25,000 | \$10,000 | \$15,000 | \$25,000 |
| 80(3)  | Failure to comply with standards and methods of manufacturing etc                                                 | \$25,000<br>10 years | \$1,000 | \$5,000 | \$10,000 | \$25,000 | \$10,000 | \$15,000 | \$25,000 |
| 81(5)  | Failure to maintain books etc as required by the Comptroller                                                      | \$25,000<br>10 years | \$1,000 | \$5,000 | \$10,000 | \$25,000 | \$10,000 | \$15,000 | \$25,000 |
| 87(2)  | Failure to comply with conditions of exemptions granted by the Minister                                           | \$25,000<br>10 years | \$1,000 | \$5,000 | \$10,000 | \$25,000 | \$10,000 | \$15,000 | \$25,000 |

## SCHEDULE 2

### (Regulation 5(2)(a)) - Infringement Notice

Infringement Notice Number:

|                                                                                                                                                                                                                                                                                                                                                                                   |                         |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| Details of Offender                                                                                                                                                                                                                                                                                                                                                               |                         |
| Name:                                                                                                                                                                                                                                                                                                                                                                             |                         |
| Address:                                                                                                                                                                                                                                                                                                                                                                          |                         |
| TIN:                                                                                                                                                                                                                                                                                                                                                                              |                         |
| Details of Offence                                                                                                                                                                                                                                                                                                                                                                |                         |
| Statement of Offence:                                                                                                                                                                                                                                                                                                                                                             |                         |
| Particulars of Offence:                                                                                                                                                                                                                                                                                                                                                           |                         |
| Contrary to:                                                                                                                                                                                                                                                                                                                                                                      |                         |
| <p>This offence carries a maximum penalty of [\$]. If you do not wish to contest this Infringement Notice, you are required to pay the fixed penalty of [\$1 to the Fiji Revenue and Customs Service.</p>                                                                                                                                                                         |                         |
| <p>The payment of the fixed penalty is due within 30 days from the date of issue of this Infringement Notice and is payable at any Fiji Revenue and Customs Service office. If you pay the fixed penalty, all liability in respect of the offence will be discharged and no further action will be taken against you with respect to this particular offence.</p>                 |                         |
| <p>If you wish to contest this Infringement Notice, you may elect to dispute this Infringement Notice in court within 30 days from the date of issue of this Infringement Notice.</p>                                                                                                                                                                                             |                         |
| <p>If you fail to pay the fixed penalty or dispute this Infringement Notice in court within 30 days from the date of issue of this Infringement Notice, you will be—</p> <p>(i) liable to a late payment fee equivalent to 50% of the fixed penalty, in addition to the fixed penalty; and</p> <p>(ii) issued a departure prohibition order preventing you from leaving Fiji.</p> |                         |
| <p>You may pay your fixed penalty and late payment fee in a single payment or in instalments.</p>                                                                                                                                                                                                                                                                                 |                         |
| <p>The departure prohibition order will continue until you pay your fixed penalty and late payment fee in full or elect to dispute this Infringement Notice in court.</p>                                                                                                                                                                                                         |                         |
| <p>If you do not pay your fixed penalty and late payment fee in full or elect to dispute this Infringement Notice in court within 3 months from the date this Infringement Notice is issued to you, this Infringement Notice will take effect as a conviction from the court and the Fiji Revenue and Customs Service may seek the maximum penalty from the court.</p>            |                         |
| 3. Details of Proper Officer                                                                                                                                                                                                                                                                                                                                                      |                         |
| Name:                                                                                                                                                                                                                                                                                                                                                                             | Date: [day/month /year] |
| Signature:                                                                                                                                                                                                                                                                                                                                                                        |                         |
| 4. Affidavit of Service                                                                                                                                                                                                                                                                                                                                                           |                         |

|                                                                                                                                                                                                                                |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| I, [name of Proper Officer whose signature appears in section 3], make oath and say that, on the [specify day] day of [specify month], 20 [specify year] at [specify address] I did serve upon the offender specified therein. |  |
| [signature of Proper Officer]                                                                                                                                                                                                  |  |
| Sworn by the above named Proper Officer this [specify day] day of [specify month] 20 [specify year].                                                                                                                           |  |
| Before:                                                                                                                                                                                                                        |  |
| [name and signature of Commissioner for Oaths/Justice of the Peace]                                                                                                                                                            |  |
| Commissioner for Oaths/Justice of the Peace                                                                                                                                                                                    |  |

## EXCISE (VALUATION OF EXCISABLE GOODS) REGULATIONS 1989

### Table of Amendments

Excise (Valuation of Excisable Goods) Regulations 1989 (LN 72 of 1989) commenced on 1 December 1989, as amended by:

| Amending Legislation                                                                     | Date of Commencement |
|------------------------------------------------------------------------------------------|----------------------|
| Excise (Valuation of Excisable Goods) (Budget Amendment) Regulations 2010 (LN 3 of 2010) | 1 January 2010       |

### **[Regulation 1] Short title**

These Regulations may be cited as the Excise (Valuation of Excisable Goods) Regulations 1989.

### **[Regulation 2] Interpretation**

In these Regulations—

**place of removal** means an excise factory, an excise warehouse or any such other place duly authorised by the Comptroller for the purposes of storage and removal of excisable goods in respect of which excise duty has not been properly paid.

### **[Regulation 3] Sale between manufacturer and buyer independent of each other**

(1) For the purpose of ascertaining excisable goods by reference to their value, the value of any such goods shall be taken to be the normal price which they would fetch, at the time when they are delivered from a place of removal on a sale in the open market between a manufacturer and a buyer independent of each other.

(2) The normal price referred to in subregulation (1) shall be determined on the following assumptions—

- a) that the excisable goods are delivered to the buyer at the place of removal;
- b) that the manufacturer bears all costs, charges and expenses incidental to the manufacture and delivery of goods to the buyer at the place of removal which are hence included in the normal price; and
- c) that any duty payable and any costs, charges and expenses of transportation and storage after delivery from the place of removal are excluded from the normal price.

### **[Regulation 4] Sale under open market conditions**

(1) A sale in the open market between a manufacturer and a buyer independent of each other presupposes—

- a) that the price is the sole consideration; and
- b) that the price is not influenced by any commercial, financial or other relationship, whether by contract or otherwise between the manufacturer or any person associated in business with him or her and the buyer or any person associated in business with him or her, other than relationship created by the sale of the goods in question; and

- c) that no part of the proceeds of the subsequent resale, use or disposal of the goods will accrue either directly or indirectly to the manufacturer or any person associated in business with him or her.

(2) Two or more persons shall be deemed to be associated in business with one another if, whether directly or indirectly, any of them has any interest in the business or property of the other or both have a common interest in any business or property or some third person has an interest in the business or property of both of them.

#### **[Regulation 5] When prices not regarded as “open market” prices**

(1) The price which falls within all or any of the following categories shall not be regarded as the normal price in a sale between a manufacturer and a buyer independent of each other, namely—

- a) a price on a sale which does not satisfy the provisions of regulation 3;
- b) a price which is lower than those at which identical or similar goods from the same manufacturer are freely available to a buyer in Fiji at the same commercial level; and
- c) a price which is considerably lower than those at which identical or similar goods are freely sold by other manufacturers to any buyer at the same commercial level.

(2) For the purposes of this regulation—

- a) **identical goods** means goods alike in all respects, including quality, brand, reputation etc; and
- b) **similar goods** means good which although not like the goods to be valued in all respects, nevertheless have characteristics close to those of the goods to be valued, particularly as regards kind and quality.

(3) Comparison made between prices for identical goods shall have preference over comparison between prices for similar goods.

#### **[Regulation 6] Costs, charges and expenses**

The costs, charges and expenses mentioned in regulation 3(2)(b) include—

- a) total cost of raw materials used in the manufacturing process;
- b) all cost, charges and expenses incidental to the manufacturing process including overhead and administration cost;
- c) the cost of packing including the cost of inner and outer packages; but excluding the cost of reusable containers of a permanent value;

- d) cost of sales promotions, advertising and publicity;
- e) the right to use a patented invention or registered design or a trade mark whether local or foreign; and
- f) the margin of profit normally earned on the sale of goods,

provided that prices of goods may be adjusted, where necessary to take account of discounts which are freely available.

#### **[Regulation 7] Goods supplied free of charge**

Where excisable goods are supplied without any cost or supplied ex gratia or are consumed by the manufacturer the value for duty purposes shall be taken to be the price paid for identical or similar goods and the transaction shall be treated as a normal sale for the purposes of levying excise duty as provided for in regulation 3.

#### **[Regulation 8] Assessment of value**

If the value of excisable goods cannot be determined under the foregoing rules, the proper officer shall determine the value of such goods according to the best of his or her judgement, and for this purpose he or she may have regard, among other things, to any or more of the methods provided for in these regulations.

#### **[Regulation 9] Cost of transport**

Where excisable goods are removed from a place of removal which is an excise warehouse the value for duty shall be taken not to include the cost of transportation from an excise factory to an excise warehouse.

#### **[Regulation 10] Determination of value**

The manufacturer shall furnish to the proper officer an application for determination of value for duty purpose, in an approved form and at such intervals as the Comptroller may direct, showing the price of goods with all charges and deductions for the goods chargeable with duty on the value of such goods.

**[Regulation 11] Delivery of excisable goods**

The manufacturer shall not deliver any goods chargeable with duty on the value of such goods from the place of removal unless an application for determination of value is filed with the proper officer as provided in regulation 10.

**[Regulation 12] Penalty**

A manufacturer is guilty of an offence if he or she fails to comply with any of the provisions of these regulations and is liable on conviction to a fine not exceeding \$10,000 and the goods, if any, which are the subject matter of the offence are liable to forfeiture.

[reg 12 am LN 3 of 2010 reg 2, effective 1 January 2010]

**[Regulation 13] Commencement**

These regulations shall come into force from 1 December 1989.

## EXCISE (INDUSTRIAL REBATES) REGULATIONS 1986

### Table of Amendments

Excise (Industrial Rebates) Regulations 1986 (LN 113 of 1986) commenced on 31 October 1986, as amended by:

| Amending Legislation                                                                   | Date of Commencement |
|----------------------------------------------------------------------------------------|----------------------|
| Excise (Industrial Rebates) (Amendments) Regulations 1991 (LN 92 of 1991) <sup>3</sup> | 1 January 1992       |
| Excise (Industrial Rebates) (Amendment) Regulations 2004 (LN 105 of 2004)              | 1 January 2005       |
| Excise (Industrial Rebates) (Budget Amendment) Regulations 2010 (LN 26 of 2010)        | 1 January 2010       |
| Excise (Industrial Rebates) (Amendment) Regulations 2012 (LN 3 of 2012)                | 1 January 2012       |

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<sup>3</sup> This was rectified by the Corrigenda published on 10 January 1992.

### **[Regulation 1] Short title**

These Regulations may be cited as the Excise (Industrial Rebates) Regulations 1986.

### **[Regulation 2] Interpretation**

In these Regulations—

**manufacturer**, means any person approved by the Minister as a manufacturer or producer of any goods specified by the Minister; and the expression manufacture has a corresponding meaning; and

**rebate certificate** means a certificate issued under subregulation 4(1).

### **[Regulation 3] Grant of rebate of excise duty**

(1) The Minister may, following receipt of an application made to him or her under subregulation (4), grant with or without conditions to a manufacturer a rebate of the whole or a part of the excise duty payable by him or her in respect of excisable goods removed from an excise factory or an excise warehouse and intended to be used by him or her in the manufacture of goods.

(2) The grant of a rebate of excise duty under subregulation (1) shall be in respect of a period determined by the Minister.

(3) An application for the grant of a rebate of excise duty under subregulation (1) shall—

- a) be made on a form provided for the purpose by the Minister; and
- b) be accompanied by such information and particulars as the Minister may require.

(4) An application for the grant of a rebate of excise duty under subregulation (1) shall be accompanied by the fee prescribed in subregulation (5).

(5) A fee of \$12.30 shall be payable to the Comptroller in respect of each rebate certificate issued under subregulation (1).

[subreg(5) am LN 105 of 2004 reg 2, effective 1 January 2005; LN 3 of 2012 reg 2, effective 1 January 2012]

(6) The grant of a rebate of excise duty under subregulation (1) has no effect unless the manufacturer to whom it is granted is the holder of a valid certificate issued in respect of that grant.

[reg 3 subst LN 92 of 1991 reg 3, effective 1 January 1992]

#### **[Regulation 4] Rebate certificate**

(1) Where the Minister has granted a manufacturer a rebate of excise duty under regulation 3(1), the Comptroller shall, as soon as practicable after the grant of that rebate, issue to the manufacturer a rebate certificate.

(2) A rebate certificate shall state—

- a) the name of the manufacturer;
- b) the address of the premises at which the goods are to be manufactured;
- c) the materials in respect of which the rebate has been granted and the goods in the manufacture of which those materials are intended to be used;
- d) the rate of the rebate;
- e) the period in respect of which the rebate has been granted; and
- f) any conditions subject to which the rebate was granted.

(3) Subject to regulation 5(5), a rebate certificate ceases to be valid at the end of the period specified in that certificate in accordance with subregulation (2)(e).

#### **[Regulation 5] Variation and revocation of grant of rebate**

(1) Where the Minister is satisfied—

- a) that a manufacturer to whom a rebate of excise duty has been granted under regulation 3(1) has failed to comply with—
  - i. a provision of regulation 6; or
  - ii. any condition subject to which the rebate was granted; or
- b) that it is expedient for any other reason to do so, having regard to any considerations relating to the protection of the revenue or otherwise,

he or she may revoke the grant of the rebate or vary any of the conditions subject to which it was granted.

(2) The Minister may take the action referred to in subregulation (1) irrespective of whether or not proceedings have been brought against the manufacturer in respect of any offence alleged to have been committed by him or her or under regulation 7.

(3) Where a rebate certificate is revoked or amended the manufacturer shall, if required to do so by a written notice served on him or her by the Comptroller, return that certificate to the Comptroller within the time specified in the notice.

(4) Where a rebate certificate is returned to the Comptroller in accordance with subregulation (3), he or she shall cancel it, and, if it was returned following a variation under subregulation (1)

of a condition subject to which the rebate in question was granted, he or she shall issue a new rebate certificate amended accordingly.

(5) Notwithstanding regulation 4(3), a rebate certificate ceases to have effect at the end of the period specified in any notice served in respect of that certificate under subregulation (3).

#### **[Regulation 6] Obligations of manufacturers**

(1) Unless the Comptroller otherwise directs, a manufacturer shall, when taking delivery from an excise factory or an excise warehouse of materials in respect of which he or she claims a rebate of excise duty, make a written declaration, in a form approved by the Comptroller, stating that those materials are not to be used except in the manufacture of goods of the kind specified in the relevant rebate certificate.

(2) A manufacturer shall not store or use materials referred to in subregulation (1) except—

- a) at the premises specified in the relevant rebate certificate; or
- b) at other premises approved by the Comptroller for the purpose.

(3) Except with the Comptroller's written permission and in accordance with any conditions the Comptroller imposes, a manufacturer shall not—

- a) use materials in respect of which he or she has obtained a rebate of excise duty except in the manufacture of goods of the kind specified in the relevant rebate certificate; or
- b) sell or otherwise dispose of those materials or remove them from the premises referred to in subregulation (2) before they have been used in the manufacture of goods of the kind specified in the relevant rebate certificate.

(4) A manufacturer shall, if required to do so by the Comptroller—

- a) keep at the premises referred to in subregulation (2) accurate records and accounts showing full particulars of all receipts and disposals of materials in respect of which the manufacturer has obtained a rebate of duty in a manner that will allow the materials to be readily accounted for to the satisfaction of an officer; and
- b) carry out, under an officer's supervision, at times directed by the Comptroller, any manufacturing operation involving the use of those materials.

(5) A manufacturer shall ensure that—

- a) records and accounts required to be kept by him or her under subregulation (4) shall be available for inspection by an officer at all reasonable times; and
- b) the premises referred to in subregulation (2) are open for inspection by an officer at all reasonable times.

### **[Regulation 7] Offences**

(1) A manufacturer is guilty of an offence if he or she—

- a) fails to comply with a notice served on him or her under regulation 5(3);
- b) contravenes a provision of regulation 6; or
- c) fails to comply with a condition specified in a rebate certificate,

and is liable on conviction to a fine not exceeding \$10,000.

[subreg (1) am LN 26 of 2010 reg 2, effective 1 January 2010]

(2) Goods forming the subject matter of an offence under subregulation (1) are liable to be forfeited.

### **[Regulation 8] Revocation**

The Excise (Industrial Rebates) Regulations 1981 is hereby revoked.