



FIJI REVENUE AND CUSTOMS SERVICE

VALUE ADDED TAX ACT 1991

Revised up to 1st August 2023

DISCLAIMER

The Value Added Tax Act 1991 [Revised to 1st August 2023] is produced for FRCS internal purpose only and is not intended to be reproduced or transmitted in any form or by any means other than this purpose. The Fiji Revenue & Customs Service expressly disclaims liability to any person in respect of anything done in reliance of the contents of this Act.

Value Added Tax Act 1991 (No 48 of 1991)¹, commenced on 1 July 1992, as amended by:

Amending Legislation	Date of Commencement
Value Added Tax Decree 1991 (Amendment) (No 1) Act 1992 (No 28 of 1992)	1 July 1992
Value Added Tax (Amendment) (No 1) Act 1993 (No 1 of 1993)	1 January 1993
Value Added Tax (Amendment) Act 1995 (No 16 of 1995)	1 January 1995
Value Added Tax (Amendment) (No 2) Act 1995 (No 29 of 1995)	1 January 1996
Fiji Revenue and Customs Authority Act 1998 (No 9 of 1998)	1 January 1999
Value Added Tax (Essential Items Amendment) Act 1999 (No 28 of 1999)	1 January 2000
Value Added Tax (Essential Food Items Amendment) Decree 2001 (No 5 of 2001)	1 January 2001
Value Added Tax Decree (Amendment) Act 2001 (No 1 of 2001)	1 January 2001
Value Added Tax Decree (Amendment) Act 2002 (No 11 of 2002)	1 July 2002
Value Added Tax Decree (Budget Amendment) Act 2002 (No 34 of 2002)	1 January 2003
Value Added Tax Decree (Budget Amendment) Act 2004 (No 3 of 2004)	1 January 2004
Value Added Tax (Budget Amendment) Act 2005 (No 4 of 2005)	s 4: 1 January 2005
Value Added Tax Decree (Budget Amendment) (No 2) Act 2005 (No 27 of 2005)	1 January 2006
Value Added Tax Decree (Diplomatic Missions- Amendment) Act 2006 (No 14 of 2006)	1 October 2006

¹ This was promulgated as Decree 45 of 1991 and rectified by the Corrigenda published on 6 December 1991. In accordance with section 3 of the Interpretation Act 1967 the word "Decree" used with reference to any such "Decree" in the title or provisions of any written law or in any document or legal proceeding may be replaced with the word "Act".

Value Added Tax Decree (Budget Amendment) Promulgation 2007 (No 18 of 2007)	ss 1, 2: 1 January 2007; s 3: 1 May 2007
Value Added Tax Decree (Budget Amendment) Promulgation 2007 (No 46 of 2007)	1 January 2008
Value Added Tax Act (Amendment) (No 1) Promulgation 2008 (No 16 of 2008)	1 June 2008
Value Added Tax Act (Budget Amendment) Promulgation 2008 (No 31 of 2008)	1 January 2009
Tax Administration Decree 2009 (No 50 of 2009)	Pt 2 Div 9: 27 November 2009; remainder: 1 January 2010
Value Added Tax (Amendment) (No 1) Promulgation 2009 (No 11 of 2009) ²	1 March 2009
Value Added Tax (Budget Amendment) Promulgation 2009 (No 12 of 2009) ³	1 January 2009
Value Added Tax (Budget Amendment) Act 2010 (No 6 of 2010)	1 January 2010
Value Added Tax (Budget Amendment) Act 2010 (No 13 of 2010)	1 February 2010
Fijian Affairs (Amendment) Decree 2010 (No 31 of 2010)	2 July 2010
Value Added Tax (Amendment) Decree 2010 (No 42 of 2010)	1 August 2010
Value Added Tax Decree (Amendment) (No 2) Act 2010 (No 65 of 2010)	1 January 2011
Value Added Tax (Budget Amendment) Decree 2010 (No 66 of 2010) ⁴	1 January 2011
Value Added Tax (Amendment) Decree 2011 (No 6 of 2011)	1 January 2011
Native Lands (Amendment) Decree 2011 (No 7 of 2011)	1 March 2011
Fiji Islands Revenue and Customs Authority (Amendment) (No 2) Decree 2011 (No 18 of 2011)	1 March 2011
Value Added Tax (Amendment) (No 2) Decree 2011 (No 44 of 2011)	1 September 2011
Value Added Tax (Amendment) Decree 2012 (No 10 of 2010)	1 January 2012
Value Added Tax (Amendment) (No 2) Act 2012 (No 11 of 2012)	1 August 2010
Value Added Tax (Amendment) (No 4) Decree 2012 (No 37 of 2012)	15 March 2012
Value Added Tax (Amendment) (No 3) Decree 2012 (No 44 of 2012)	Pt 1: 1 September 2011; Pt 2: 1 January 2012
Value Added Tax (Amendment) (No 5) Decree 2012 (No 60 of 2012)	20 June 2012
Value Added Tax (Amendment) (No 6) Decree 2012 (No 81 of 2012)	1 January 2013
Value Added Tax (Amendment) Decree 2013 (No 15 of 2013)	10 May 2013

² This was rectified by the Corrigendum published on 27 March 2009.

³ This was rectified by the Corrigendum published on 27 March 2009.

⁴ This was rectified by the Corrigendum published on 12 January 2011.

Value Added Tax (Amendment) Decree 2014 (No 6 of 2014)	28 January 2011
Value Added Tax (Budget Amendment) Act 2014 (No 10 of 2014)	1 January 2015
Value Added Tax (Budget Amendment) Act 2015 (No 22 of 2015) ⁵	1 January 2016
Value Added Tax (Budget Amendment) Act 2016 (No 22 of 2016) ⁶	1 August 2016
Revised Edition of the Laws (Consequential Amendments) Act 2016 (No 31 of 2016)	1 December 2016
Value Added Tax (Amendment) Act 2017 (No 4 of 2017)	1 August 2016
Value Added Tax (Budget Amendment) Act 2017 (No 33 of 2017)	1 August 2017
Fiji Revenue and Customs Authority (Budget Amendment) Act 2017 (No 38 of 2017)	1 August 2017
Accident Compensation Act 2017 (No 40 of 2017)	ss 1-17, 30, 32, 34-36: 15 August 2017; remainder: 1 January 2018
Commerce Commission (Budget Amendment) Act 2017 (No 41 of 2017)	1 August 2017
Value Added Tax (Budget Amendment) Act 2018 (No 15 of 2018)	1 August 2018
Value Added Tax (Budget Amendment) Act 2019 (No 10 of 2019)	1 August 2019
Value Added Tax (COVID-19 Response) (Amendment) Act 2020 (No 4 of 2020)	1 April 2020
Value Added Tax (Budget Amendment) Act 2020 (No 15 of 2020)	1 August 2020.
Stamp Duties (Repeal) Act 2020 {No 16 of 2020) Consequential Amendments	1 August 2020
Fijian Competition and Consumer Commission (Budget Amendment) Act 2020 (Act 29 of 2020) Consequential Amendments	1 August 2020
Value Added Tax (Budget Amendment) Act 2020 (No 15 of 2021)	1 August 2021
Value Added Tax (Revised Budget Amendment) Act 2022 (No 8 of 2022)	1 April 2022
Value Added Tax (Amendment) (No. 2) Act 2022 (No 23 of 2022)	1 April 2022
Value Added Tax (Budget Amendment) (No. 3) Act 2022 (No 30 of 2022)	1 August 2022
Value Added Tax (Budget Amendment) (No. 06) Act 2023 (No 06 of 2023)	1 August 2023

⁵ This was rectified by the Rectification of Errors Order 2015 (LN 106 of 2015).

⁶ This was rectified by the Rectification of Errors Order 2017 (LN 20 of 2017).

TABLE OF CONTENTS

PART 1 PRELIMINARY

- [\[Section 1\] Short title and commencement](#)
- [\[Section 2\] Interpretation](#)
- [\[Section 3\] Meaning of the term “supply”](#)
- [\[Section 4\] Meaning of the term “taxable activity”](#)
- [\[Section 5\] Act to bind State](#)

PART 2 ADMINISTRATION

- [\[Section 6\] Administration of the tax](#)
- [\[Section 6A\] Giving of notices \(Repealed\)](#)
- [\[Section 7\] Official secrecy \(Repealed\)](#)
- [\[Section 8\] Disclosure of information](#)
- [\[Section 9\] Extension of time \(Repealed\)](#)
- [\[Section 10\] Audit \(Repealed\)](#)
- [\[Section 11\] Demand for additional information \(Repealed\)](#)
- [\[Section 12\] Chief Executive Officer to have power to inspect books and documents \(Repealed\)](#)
- [\[Section 13\] Power to take samples](#)

PART 3 IMPOSITION OF TAX ON IMPORTS

- [\[Section 14\] Imposition of tax on imports](#)

PART 4 IMPOSITION OF TAX ON SUPPLY

- [\[Section 15\] Imposition of tax on supply](#)
- [\[Section 16\] Place of supply](#)
- [\[Section 17\] Place where supplier or recipient of services belongs](#)
- [\[Section 18\] Time of supply](#)
- [\[Section 19\] Value of supply of goods and services](#)
- [\[Section 20\] Second-hand goods](#)
- [\[Section 21\] Reverse charge on supplies received from abroad](#)

PART 4A IMPOSITION OF TAX ON PRESCRIBED SERVICES

- [\[Section 21A\] Imposition of tax](#)

PART 5 REGISTRATION

- [\[Section 22\] Persons making taxable supplies to be registered](#)
- [\[Section 23\] Cancellation of registration](#)
- [\[Section 24\] Registered person to notify of change of status \(Repealed\)](#)
- [\[Section 25\] Liabilities not affected by ceasing to be registered person](#)

PART 6 SPECIAL CASES

- [\[Section 26\] Unincorporated bodies](#)
- [\[Section 27\] Branch or division](#)

[\[Section 27A\] Branches or divisions containing residential accommodation \[Repealed\]](#)
[\[Section 28\] Personal representative, liquidator, receiver etc](#)
[\[Section 29\] Liability of agent of non-resident principal for returns and tax](#)
[\[Section 30\] Agents and auctioneers](#)
[\[Section 31\] Liability of new companies for tax payable by former companies with substantially the same shareholders or under the same control](#)
[\[Section 31A\] Liability for Section payable by companies left with insufficient funds](#)
[\[Section 31AA\] Liability of directors of private companies](#)
[\[Section 31B\] Directors of a company may be personally sued](#)

PART 7 RETURNS AND PAYMENT OF TAX

[\[Section 32\] Taxable periods](#)
[\[Section 33\] Returns](#)
[\[Section 34\] Special returns](#)
[\[Section 35\] Other returns](#)
[\[Section 36\] Accounting basis](#)
[\[Section 37\] Particulars to be furnished and prepared where change in accounting basis](#)
[\[Section 38\] Tax payable or refund, where change in accounting basis](#)
[\[Section 39\] Calculation of tax payable](#)
[\[Section 40\] Payment of tax](#)
[\[Section 41\] Tax invoices](#)
[\[Section 42\] Credit and debit notes](#)
[\[Section 43\] Bad debts](#)

PART 8 ASSESSMENT OF TAX

[\[Section 44\] Assessment of tax](#)
[\[Section 45\] Validity of the assessment \(Repealed\)](#)
[\[Section 46\] Assessment deemed correct except in proceedings on objection \(Repealed\)](#)
[\[Section 47\] Evidence of returns and assessment \(Repealed\)](#)
[\[Section 48\] Limitation of time for issue of an assessment or amendment of assessment \(Repealed\)](#)

PART 9 OBJECTION AND APPEALS

[\[Section 49\] Objection to determination to treat non-profit body](#)
[\[Section 50\] Objection to assessment \(Repealed\)](#)
[\[Section 51\] Establishment of Value Added Tax Tribunal \(Repealed\)](#)
[\[Section 52\] Registrar of the Tribunal \(Repealed\)](#)
[\[Section 53\] Rules of the Tribunal \(Repealed\)](#)
[\[Section 54\] Tribunal sittings \(Repealed\)](#)
[\[Section 55\] Tribunal to decide and notify appellant and Commissioner \(Repealed\)](#)
[\[Section 56\] Proceeding ex parte \(Repealed\)](#)
[\[Section 57\] Costs \(Repealed\)](#)
[\[Section 58\] Appeal to High Court \(Repealed\)](#)
[\[Section 59\] No assessment to be set aside for technical reasons \(Repealed\)](#)

PART 10 RECOVERY OF TAX

- [\[Section 60\] Additional tax to be payable if default made in payment of tax \(Repealed\)](#)
- [\[Section 61\] Recovery of tax](#)
- [\[Section 62\] Unpaid tax to constitute charge on registered person's property \(Repealed\)](#)
- [\[Section 63\] Deduction of tax from payment due to defaulters \(Repealed\)](#)
- [\[Section 63A\] Distraint for unpaid tax \(Repealed\)](#)
- [\[Section 64\] Application of section 77 of Income Tax Act relating to recovery procedures \(Repealed\)](#)
- [\[Section 64A\] Application of the Income Tax Act \(Repealed\)](#)

PART 11 REFUNDS AND RELIEF FROM TAX

- [\[Section 65\] Refund of excess tax](#)
- [\[Section 66\] Tax paid in excess may be set off against additional tax where assessment re-opened](#)
- [\[Section 67\] Interest on late refunds](#)
- [\[Section 68\] Power of Commissioner in respect of small amounts \(Repealed\)](#)
- [\[Section 69\] Refund of overpaid deposit on temporary imports](#)
- [\[Section 70\] Dwelling house](#)
- [\[Section 70A\] Section refund for construction of premises for diplomatic mission](#)
- [\[Section 70B\] Tourist Section Refund Scheme](#)
- [\[Section 70C\] Section refund for film production company](#)

PART 12 OFFENCES AND PENALTIES

- [\[Section 71\] Offences](#)
- [\[Section 72\] Penalty for specified offences](#)
- [\[Section 72A\] Prices to reflect Section decrease \(Repealed\)](#)
- [\[Section 73\] Penalty for aiding, abetting etc \(Repealed\)](#)
- [\[Section 74\] General penalty](#)
- [\[Section 75\] Officers and employees of registered persons](#)
- [\[Section 76\] Penalty in case of evasion \(Repealed\)](#)
- [\[Section 76A\] Penalty for understatements or overclaims in returns \(Repealed\)](#)
- [\[Section 77\] Jurisdiction of Resident Magistrates \(Repealed\)](#)
- [\[Section 78\] Proceedings to be taken summarily \(Repealed\)](#)

PART 13 MISCELLANEOUS

- [\[Section 79\] Keeping of records](#)
- [\[Section 80\] Contracts for avoidance of tax](#)
- [\[Section 81\] Liability to pay past tax](#)
- [\[Section 82\] Price to be displayed](#)
- [\[Section 83\] Fijian currency](#)
- [\[Section 84\] Regulations](#)

PART 14 TRANSITIONAL PROVISIONS

- [\[Section 85\] Registration of persons liable to be registered on 1 July 1992](#)

[\[Section 85A\] Registration of insurance companies liable to be registered on 1 August 2010](#)

[\[Section 86\] Deduction for customs and excise duty](#)

[\[Section 87\] Supplies prior to 1 July 1992](#)

[\[Section 88\] Effect of imposition of tax](#)

PART 15 AMENDMENTS AND REPEALS

[\[Section 89\] Amendments and repeals](#)

SCHEDULES

[SCHEDULE 1 - Exempt Supplies](#)

[SCHEDULE 2 - Zero-Rated Supplies](#)

[SCHEDULE 2A – Prescribed Services at 15% VAT](#)

[SCHEDULE 3 - Forms](#)

[SCHEDULE 4 - Tourist Vat Refund Scheme](#)

SUBSIDIARY LEGISLATION

[Value Added Tax Regulations 1991](#)

[Value Added Tax Tribunal Rules 1994](#)

PART 1 PRELIMINARY

(Sections 1–5)

[Section 1] Short title and commencement

- (1) This Act may be cited as the Value Added Tax Act 1991.
- (2) The Act shall come into force on 1 July 1992.

[Section 2] Interpretation

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

additional tax	means the additional tax payable under section 60 of this Act;
agent	includes every person who in Fiji, for or on behalf of any person out of Fiji, holds or has the control, receipt or disposal of any money belonging to such person and every person declared by the Chief Executive Officer to be an agent under this Act;
agriculture	without limiting the meaning of the term, includes coconut planting, dairy farming, fruit growing, sugar cane growing, all forms of animal husbandry, poultry keeping, grazing, market gardening, horticulture and epiculture; but does not include silviculture;
arms-length transaction	means a transaction where the following conditions do not apply: the recipient is a body of persons over whom that supplier has control or the supplier is a body of persons over which the recipient has control or both the recipient and the supplier are bodies of persons and some other person has control over both of them. For the purposes of this definition "control" means, in the case of a body corporate, the power of a person to secure, by means of the holding of shares or the possession of voting power in or in relation to, that or any other body corporate or by virtue of any powers conferred by the Articles of Association or other documents regulating that or any other body corporate, that the affairs of the first mentioned body corporate, that the affairs of the first mentioned body corporate are conducted in accordance with the wishes of that person, and, in the case of a partnership assets or income;
chief assessors	[def rep Decree 28 of 1992 s 3, effective 1 July 1992] <i>Legislative History:</i> <i>Decree 28 of 1992 – prior to 1st July 1991 – definition of chief assessors read as –</i> <i>Chief Assessors means Chief Assessors as approved by the Public Service Commission under this Act</i>
Chief Executive Officer	means a person appointed under section 27 of the Fiji Revenue and Customs Service Act 1998;

[def insrt Act 31 of 2016 s 223, effective 1 December 2016; am Act 38 of 2017 s 7, effective 1 August 2017]

Legislative History:

Act 38 of 2017 – prior to 1st August 2017 – definition of Chief Executive Officer read as –

“Chief Executive Officer” means a person appointed under section 27 of the Fiji Revenue and Customs Authority Act 1998

Act 31 of 2016 – prior to 1st December 2016 – definition of Chief Executive Officer read as –

Chief Executive Officer of Inland Revenue appointed under the Income Tax Act 1974

Commissioner

[def rep Act 31 of 2016 s 223, effective 1 December 2016]

Legislative History:

Act 31 of 2016 – prior to 1st December 2016 – definition of Chief Executive Officer was referred to as Commissioner

company means a company as defined in the Companies Act 2015 or a body corporate formed under any statute or charter and includes every unit trust;

[def am Act 31 of 2016 s 223, effective 1 December 2016]

Legislative History:

Act 31 of 2016 – prior to 1st December 2016 – definition of company read as –

means a company as defined in the Companies Act, Cap. 274 or a body corporate formed under any statute or charter, and includes every unit trust

Comptroller means the Comptroller of Customs and Excise appointed under the Customs Act 1986;

consideration in relation to the supply of goods and services to any person, includes any payment made or any act or forbearance, whether or not voluntary, in respect of, in response to or for the inducement of, the supply of any goods and services, whether by that person or by any other person; but does not include any payment made by any person as an unconditional gift to any non-profit body;

consideration in money includes consideration expressed as an amount of money;

Constitution means the Constitution of the Republic of Fiji;

[def insrt Decree 28 of 1992 s 3, effective 1 July 1992; am Promulgation 31 of 2008 s 2, effective 10 January 2009; Act 31 of 2016 s 223, effective 1 December 2016]

Legislative History:

Act 31 of 2016 – prior to 1st December 2016 – definition of Constitution read as –

"Constitution" means the Constitution of the Sovereign Democratic Republic of Fiji made on under the Constitution Amendment Act 1997

Promulgation 31 of 2008 – prior to 1st January 2009 – definition of Constitution read as –

"Constitution" means the Constitution of the Sovereign Democratic Republic of Fiji made on 25th day of July, 1990

Decree 28 of 1992 – from 1st July 1991 – definition of Constitution was inserted -

document includes any electronic data, computer programmes, computer tapes and computer discs;

due date in relation to the payment of tax by any registered person, means the last day for the payment determined in section 38(1), 40 or 44(4) of this Act, as the case may be, in respect of that registered person;

exempt supply means a supply described in Schedule 1 to this Act;

Fiji includes the air space, the internal waters, the archipelagic waters and the territorial seas of Fiji, as defined in the Marine Spaces Act 1977;

goods means all kinds of personal and real property; but does not include choses in action or money;

grant	means any Standard Expenditure Group 6 or Standard Expenditure Group 10 payment other than a payment which is an income transfer payment, a loan, an advance or an equity injection;
hire	in relation to goods, includes a letting on any terms, including a lease;
independent of each other	in relation to a supplier and a recipient, means the supply is an arms-length transaction;
input tax	in relation to a registered person, means—

- a) tax charged under section 15 of this Act on the supply of goods and services made to that person:
- b) tax levied under section 14 of this Act on goods imported under the Customs Act 1986 by that person: being in any case goods and services acquired or imported for the principal purpose of carrying on that person's taxable activity;

[def am Act 16 of 1995 s 3, effective 1 January 1995]

Legislative History:

Act 16 of 1995 – prior to 1 January 1995 – definition of input tax read as –

"Input tax", in relation to a registered person, means -

(a) tax charged under Section 15 of this Decree on the supply of goods and services made to that person:

(b) tax levied under Section 14 of this Decree on goods imported under the Customs Act 1986 by that person;

input tax schedule means the Form 5 under Schedule 3 as prescribed or as approved by the Chief Executive Officer;

[def insrt Promulgation 31 of 2008 s 2, effective 1 January 2009]

Legislative History:

Promulgation 31 of 2008 – from 1 January 2009 – definition of input tax schedule inserted

insurance means insurance or guarantee against loss, damage, injury or risk of any kind whatsoever, whether pursuant to any contract or any enactment; and includes reinsurance and 'contract of insurance' includes a policy of insurance or reinsurance, insurance cover and a renewal of a contract of insurance, provided that nothing in this definition shall apply to any insurance specified in paragraph (1)(b) of Schedule 1 to this Act;

[def subst Decree 11 of 2012 s 2, effective 1 August 2010]

Legislative History:

Decree 11 of 2012 – prior to 1st August 2010 – definition of insurance read as –

"insurance" means insurance or guarantee against loss, damage, injury or risk of any kind whatever, whether pursuant to any contract or any enactment; and includes reinsurance; and "contract of insurance" includes a policy of insurance or reinsurance, insurance cover and a renewal of a contract of insurance

Decree 42 of 2010 – from 1st August 2010 – definition of insurance inserted

local authority includes any municipality established under the Local Government Act 1972, any provincial council established under the iTaukei Affairs Act 1944 and any council established under the Banaban Settlement Act 1970 or the Rotuma Act 1927;

[def am Decree 31 of 2010 s 4, effective 2 July 2010]

Legislative History:

Decree 31 of 2010 – prior to 2nd July 2010 – definition of local authority read as –

"Local authority" includes any municipality established under the Local Government Act, Cap. 125, any provincial council established under the Fijian Affairs Act, Cap. 120, and any council established under the Banaban Settlement Act, Cap. 123 or the Rotuma Act, Cap. 122;

Minister means the Minister responsible for finance;

money includes the currencies of Fiji and any other country, postal and money orders, promissory notes and bills of exchange but does not include collectors piece, investment article or item of numismatic interest;

[def am Act 1 of 1993 s 3, effective 1 January 1993]

Legislative History:

Act 1 of 1993 – prior to 1st January 1993 – definition of money read as –

"Money" includes the currencies of Fiji and any other country, postal and money orders, promissory notes and bills of exchange;

nominee in relation to any person means any other person who may be required to exercise his or her voting power in relation to any company in accordance with the direction of that person or who holds shares or debentures directly or indirectly on behalf of that person; and includes any relative of that person;

[def insrt Decree 28 of 1992 s 19, effective 1 July 1992]

Legislative History:

Decree 28 of 1992 –from 1st July 1992 – definition of nominee inserted

non-profit body means any society, association or organisation, whether incorporated or not—

- a) being any recognised religious organisation; or
- b) which is carried on other than for the purposes of profit or gain to any proprietor, member or shareholder; and
- c) which is, by the terms of its memorandum, articles of association, rules or other document constituting or governing the activities of that society, association or organisation, prohibited from making any distribution whether by way of money, property or otherwise howsoever, to any such proprietor, member or shareholder;

[def am Decree 28 of 1992 s 3, effective 1 July 1992]

Legislative History:

Decree 28 of 1992 –prior to 1st July 1992 – definition of non-profit body read as –

"Non-profit body" means any society, association, organisation, whether incorporated or not, -

(a) which is carried on other than for the purposes of profit or gain to any proprietor, member, or shareholder; and

(b) which is, by the terms of its memorandum, articles of association, rules, or other document constituting or governing the activities of that society, association, or organisation, prohibited from making any distribution whether by way of money, property, or otherwise howsoever, to any such proprietor, member, or shareholder;

open market value in relation to a supply of goods and services, means the consideration in money that would be expected to be payable for that supply, being a supply at that date in Fiji, between a supplier and a recipient independent of each other;

output tax in relation to a registered person, means the tax charged pursuant to section 15 of this Act in respect of the supply of goods and services made by that person;

persons includes a company, an association or body of persons, corporate or unincorporate, a local authority and a public authority;

[def am Decree 28 of 1992 s 3, effective 1 July 1992]

Legislative History:

Decree 28 of 1992 –prior to 1st July 1992 – definition of persons read as –

*"Person" includes a company, an association or body of **person**, corporate or unincorporate, a local authority and a public authority;*

produce	means the produce, in a raw and unprocessed state, from the activity of agriculture and includes any fruits, vegetables and root crops of the forest, fish and other aquatic produce;
produce supplier	means a person who, in the course or furtherance of all taxable activities carried on by that person, supplies produce and the supply of that produce constitutes at least 90% of that person's total value of supplies and the balance of the goods and services supplied by that person is produced but not in a raw and unprocessed state, provided that any such person shall not cease to be a produce supplier as a consequence of— a) any cessation of or any substantial and permanent reduction in the size or scale of, any taxable activity carried on by that person; or b) the replacement of any plant or other capital assets used in any taxable activity carried on by that person;
public authority	means all instruments of the Government of the Republic of Fiji, whether departments, ministries, agencies or other instruments;
rates	has the same meaning as in the Local Government Act 1972 and includes any amount imposed by a provincial council or any council established under the Banaban Settlement Act 1970 or the Rotuma Act 1927;
raw and unprocessed state	in relation to produce, means not yet cooked, smoked or baked; not yet processed by any mechanical or chemical means or otherwise other than through basic separation, cutting of parts, packaging or freezing (not being the process of freezing through blast, quick or snap freezing); unmanufactured; undiluted; crude; unmilled; unpowdered; unpounded;
registered person	means any person who is registered or is liable to be registered under section 22 of this Act and includes a person, for the purposes of Parts 7, 8, 9, 10 and 11 of this Act, who is not otherwise required to register under this Act, but was required to charge tax, has charged tax or has represented to charge tax on a supply of goods and services in terms of section 34 or 44 of this Act;
resident	means resident as defined in section 6 of the Income Tax Act 2015; [def am Act 31 of 2016 s 223, effective 1 December 2016]
<i>Legislative History:</i> Act 31 of 2016 – prior to 1 December 2016 – definition of resident read as – "Resident" means resident as defined in Section 2 of the Income Tax Act 1974;	
services	means anything which is not goods or money; [def am Act 28 of 1992 s 3, effective 1 July 1992]
<i>Legislative History:</i> Act 28 of 1991 – prior to 1 st July 1992 – definition of services read as – "Service" means anything which is not a good or money;	
State	means the Government of the Republic of Fiji;
tax	means value added tax charged or levied under this Act;

tax fraction means the fraction calculated in accordance with the following formula—

$$\frac{a}{100 + a}$$

Where “a” is rate of tax specified in section 15 of this Act;

[def am Act 3 of 2004 s 2, effective 1 January 2004]

Legislative History:

Act 3 of 2004 – prior to 1st January 2004 – definition of tax fraction read as –

"Tax fraction" means the fraction calculated in accordance with the following formula:

$$\frac{a}{100 + a}$$

where -

a is rate of tax specified in Section 15 of this Decree expressed as a whole number;

tax invoice means a document issued pursuant to section 41 of this Act;

tax payable means an amount calculated in accordance with section 38 or 39 of this Act; and includes—

- a) any amount referred to in section 34 or 44 of this Act;
- b) any amount of additional tax; and
- c) any amount of tax refundable pursuant to section 38(4) or 39(8) of this Act;

taxable period in relation to a registered person, means a taxable period determined under section 32 of this Act;

taxable supply means any supply of goods and services which is charged with tax pursuant to section 15 of this Act;

taxpayer identification number in relation to a registered person, means a number allocated to that registered person upon registration for the purposes of this Act;

Tribunal means the Value Added Tax Tribunal established under this Act;

trustee includes an executor and administrator; and also includes the Fiji Public Trustee Corporation Limited;

[def am Act 31 of 2016 s 223, effective 1 December 2016]

Legislative History:

Act 31 of 2016 – prior to 1st December 2016 – definition of trustee read as –

"Trustee" includes an executor and administrator; and also includes the Public Trustee;

unconditional gift means a payment voluntarily made to any non-profit body for the carrying on or carrying out of the purposes of that non-profit body and in respect of which no identifiable direct valuable benefit arises or may arise in the form of a supply of goods and services to the person making that payment whether that payment is enforceable or not, or any other person where that person and that other person are not independent of each other; but does not include any payment made by the State or a public authority; and

zero-rated supply means a supply described in Schedule 2 to this Act.

(2) For the purposes of this Act, a reference to goods and services includes a reference to goods or services.

[Section 3] Meaning of the term “supply”

(1) For the purposes of this Act, the term “supply” includes all forms of supply and without limiting the generality of the term has the same meaning as in section 2 of the Sale of Goods Act 1979.

(2) Where goods and services acquired or produced by a registered person in the course or furtherance of making taxable supplies by that person are appropriated to use other than for the purposes of making those taxable supplies, the appropriation of those goods and services shall be deemed to be a supply made in the course or furtherance of that person's taxable activity.

(3) Where goods and services acquired or produced by a registered person in the course or furtherance of a taxable activity carried on by that registered person are, under a power exercisable by another person, sold in satisfaction of a debt owed by that registered person in or towards the satisfaction of that debt owed by that registered person, those goods and services shall be deemed to be supplied by that registered person in the course of that taxable activity.

[subs (3) am Decree 28 of 1992 s 4, effective 1 July 1992]

Legislative History:

Decree 28 of 1992 – prior to 1st July 1992 – Section 3(3) read as –

*(3) Where goods and services acquired or produced by a registered person in the course or furtherance of a taxable activity carried on by that registered person are, under a power exercisable by another person, sold in satisfaction of a debt owed by that registered person in or towards the satisfaction of that debt owed by that registered person, **those goods shall** be deemed to be supplied by that registered person in the course of that taxable activity.*

(4) Where a person ceases to be a registered person, any goods and services then forming part of the assets of a taxable activity carried on by that registered person shall be deemed to be supplied by that registered person in the course of that taxable activity immediately before that person ceases to be a registered person, unless the taxable activity is carried on by another person who, pursuant to section 28, is deemed to be a registered person.

(5) For the purpose of this Act, every public authority shall be deemed to supply goods and services to the State where any payment other than a payment under Standard Expenditure Group 1 or Standard Expenditure Group 2 is made by the State to or on behalf of the public authority.

[subs (5) am Promulgation 46 of 2007 s 2, effective 1 January 2008]

Legislative History:

Promulgation 46 of 2007 – prior to 1st January 2008 – Section 3(5) read as –

(5) For the purpose of this Decree, every public authority shall be deemed to supply goods and services to the State where any payment is made by the State to or on behalf of the public authority.

(6) For the purposes of this Act, where any payment in the nature of a grant is made by the State to or on behalf of any person in the course or furtherance of any taxable activity, which involves or will involve the making of taxable supplies, carried on by that person, that payment shall be deemed to be consideration for a supply of goods and services by that person in the course or furtherance of that taxable activity.

(7) For the purposes of this Act, every local authority is deemed to supply goods and services to any person where any amount of rates is payable by that person to that local authority.

(8) Subject to this section, except for subsection (8A), if a registered person receives a payment under a contract of insurance, whether or not the person is a party to the contract of insurance, the payment is, to the extent that it relates to a loss incurred in the course or furtherance of the registered person's taxable activity, deemed to be consideration received for a supply of services performed by the registered person—

- a) on the day the registered person receives the payment; and
- b) in the course or furtherance of the registered person's taxable activity,

provided that this subsection shall not apply in respect of any payment received as compensation—

- i. under the Accident Compensation Act 2017 pursuant to a contract of insurance where the supply of that contract of insurance was—
 - A. exempted;
 - B. zero rated; or
 - C. in respect of an entitlement for loss of earnings within the meaning of the Workmen's Compensation Act 1964 or accidental personal injury or damages;
- ii. pursuant to a contract of parametric insurance

[subs (8) am Decree 42 of 2010 s 3, effective 1 August 2010; am Decree 11 of 2012 s 3, effective 1 August 2010; Act 40 of 2017 s 37, effective 1 January 2018, amended by Act 15 of 2021, s2, effective 1 August 2021]

Legislative History:

Act 15 of 2021 – prior to 1st August 2021 – Section 3(8) read as-

(8). Subject to this section, except for subsection (8A), if a registered person receives a payment under a contract of insurance, whether or not the person is a party to the contract of insurance, the payment is, to the extent that it relates to a loss incurred in the course or furtherance of the registered person's taxable activity, deemed to be consideration received for a supply of services performed by the registered person -

(a) on the day the registered person receives the payment; and

(b) in the course or furtherance of the registered person's taxable activity,

provided that this subsection shall not apply in respect of any payment received as compensation under the Accident Compensation Act 2017 pursuant to a contract of insurance where the supply of that contract of insurance was –

(i) exempted;

(ii) zero rated; or

(iii) in respect of an entitlement for loss of earnings within the meaning of the Workmen's Compensation Act (Cap. 94) or accidental personal injury or damages

Act 40 of 2017 – prior to 1 January 2018 – Section 3(8) read as-

(8). Subject to this section, except for subsection (8A), if a registered person receives a payment under a contract of insurance, whether or not the person is a party to the contract of insurance, the payment is, to the extent that it relates to a loss incurred in the course or furtherance of the registered person's taxable activity, deemed to be consideration received for a supply of services performed by the registered person -

(a) on the day the registered person receives the payment; and

(b) in the course or furtherance of the registered person's taxable activity,

provided that this subsection shall not apply in respect of any payment received pursuant to a contract of insurance where the supply of that contract of insurance was –

(i) exempted;

(ii) zero rated; or

(iii) in respect of an entitlement for loss of earnings within the meaning of the Workmen's Compensation Act (Cap. 94) or the Motor Vehicle (Third Party Insurance) Act (Cap. 177) or accidental personal injury or damages

Decree 11 of 2012 – prior to 1 August 2012 - Section 3(8) read as-

(8). Subject to this section, except for subsection (8A), if a registered person receives a payment under a contract of insurance, whether or not the person is a party to the contract of insurance, the payment is, to the extent that it relates to a loss incurred in the course or furtherance of the registered person's taxable activity, deemed to be consideration received for a supply of goods and services performed by the registered person -

(a) on the day the registered person receives the payment; and

(b) in the course or furtherance of the registered person's taxable activity,

Provided this subsection shall not apply in respect of any indemnity payment received pursuant to a contract of insurance where that payment is in respect of an entitlement for a loss of earnings within the meaning of the Workmen's Compensation Act (Cap.94), the Motor Vehicle (Third Party Insurance Act) (Cap. 177), or for accidental personal injury or damages.

Decree 42 of 2010 – prior to 1 August 2010 - Section 3(8) read as-

(8) Where under a contract of insurance, a registered person receives an amount by way of an indemnity payment relating to a loss incurred in respect of goods and services in the course or furtherance of making taxable supplies, that person shall, for the purposes of the application of this Decree to that person but not to the person by whom the payment is made, be deemed to have made a supply of goods and services to which the payment relates in the course or furtherance of the taxable activity, at the time when the payment is received, and the amount of the payment shall be deemed to be the consideration for that supply.

(8A) For the purposes of this section, where, in relation to a claim made under a contract of insurance an insurer recovers an amount, other than aggravated or exemplary damages, as a result of the exercise of rights acquired by subrogation under the contract of insurance and that amount exceeds the amount paid out by the insurer to the insured person in relation to the claim, then the insurer is deemed to have performed a supply of services in the course of its taxable activity and the consideration for the deemed supply is the amount of the excess and the supply of services is deemed to be performed on the day the insurer receives the amount and if there is more than one such payment, on each such day.

Legislative History:

Decree 11 of 2012(s3) – prior to 1st August 2012 – Section 3(8A) read as –

(8A) For the purposes of this section, where an insurer recovers an amount (other than aggravated or exemplary damages) as a result of the exercise of rights acquired by subrogation under a contract of insurance, the amount recovered is deemed to be consideration received for the supply of goods and services performed in the course of that insurer's taxable activity, and a supply of goods and services is deemed to be performed on the day of the insurer's receipt of the amount.

Decree 42 of 2010 – from 1st August 2010 – Section 3(8A) inserted

(8B) Notwithstanding anything in subsections (8) and (8A), where an insurer receives an amount under a contract of reinsurance, that amount is not deemed to be consideration received for a supply of services performed by the insurer.

Legislative History:

Decree 11 of 2012(s3) – from 1st August 2012 – Section 3(8B) inserted

(9) Any contract that is a layby sale to which Part 4 of the Sale of Goods Act 1979, applies shall not constitute a supply of goods and services unless the goods to which the contract relates are delivered to the buyer and the property therein is transferred to the buyer, provided that a supply of services shall, in respect of any such contract, be deemed to take place where—

- a) a layby sale is cancelled pursuant to Part 4 of the Sale of Goods Act 1979; and
- b) the seller either—
 - i. retains any amount paid to the seller to recoup that seller's selling costs in respect of the layby sale; or
 - ii. recovers any amount (including or in addition to, the amount referred to in subparagraph (i)) from the buyer—

pursuant to section 68 of the Sale of Goods Act 1979.

(10) Where and to the extent that any registered person, in the course or furtherance of making taxable supplies, has or is treated to have provided an employee benefit for income tax or fringe benefit tax purposes, to any other person, the provision of that employee benefit shall be deemed to be a supply of goods and services made by that registered person in the course of a taxable activity carried on by that registered person, provided that this subsection shall not apply to any employee benefit to the extent that it has arisen by virtue of any supply of goods and services that is an exempt supply or a zero-rated supply.

[subs (10) am Decree 44 of 2012 s 3, effective 1 January 2012]

Legislative History:

Decree 44 of 2012(s3) – from 1st August 2012 – Section 3(10) read as –

(10) Where and to the extent that any registered person, in the course or furtherance of making taxable supplies, has or is treated to have provided an employee benefit for income tax purposes, to any other person, the provision of that employee benefit shall be deemed to be a supply of goods and services made by that registered person in the course of a taxable activity carried on by that registered person:

Provided that this subsection shall not apply to any employee benefit to the extent that it has arisen by virtue of any supply of goods and services that is an exempt supply or a zero-rated supply.

(11) (Repealed but subsection (12) renumbered as (11) from 1st July 1992)

Legislative History:

Decree 28 of 1992(s4) – from 1st July 1992 – Section 3(11) read as –

(11) Where a person carries on a taxable activity which involves -

(a) the supply by a person of any unprocessed produce in the course or furtherance of a taxable activity involving agriculture or the supply by a person of any unprocessed fish or other aquatic animal and plant in the course or furtherance of a taxable activity, where that supply is not a zero-rated supply in terms of the Second Schedule to this Decree; and

(b) an activity which involves the processing of that produce, fish or other aquatic animals and plant of the activity referred to in paragraph (a) of this subsection,

the transfer of that produce, fish or other aquatic animals and plants from the activity referred to in paragraph (a) of this subsection to the activity referred to in paragraph (b) of this subsection, shall for the purposes of this Decree, be deemed to be a supply of goods and services as if these activities referred to in paragraph (a) and (b) of this subsection were carried on by separate persons.

(11) The disposition of a taxable activity as a going concern shall be deemed to be a supply of goods made in the course or furtherance of the taxable activity.

Legislative History:

Decree 28 of 1992(s4) – from 1st July 1991 – Section 3(12) remembered as Section 3(11)

(12) For the purposes of this Act, where a supply is charged with tax in part under section 15(1) and in part under section 15(2), each such part shall be deemed to be a separate supply.

Legislative History:

Decree 28 of 1992(s4) – from 1st July 1991 – Section 3(13) remembered as Section 3(12)

(13) Notwithstanding sections 18 and 19, any deposit held as security for the performance of an obligation is deemed to be consideration for the supply when—

- a) the deposit is forfeited due to non-performance of the obligation; or
- b) the deposit is applied as consideration for the supply,

and the tax charged on that supply shall be attributable to the tax period in which the deposit is forfeited or applied.

Legislative History:

Decree 6 of 2010(s) – from 1st January 2010 – Section 3(13) inserted

[Section 4] Meaning of the term “taxable activity”

(1) For the purposes of this Act, the term “taxable activity” means—

- a) any activity which is carried on continuously or regularly by any person, whether or not for pecuniary profit and involves or is intended to involve, in whole or in part, the supply of goods and services to another person for a consideration; and includes any such activity carried on in the form of a business, services, trade, manufacture, profession, vocation, association or club; and
- b) without limiting the generality of paragraph (a), the activities of any local authority or public authority.

(2) Anything done in the commencement or termination of a taxable activity shall be deemed to be carried out in the course or furtherance of that taxable activity.

(3) Notwithstanding anything in subsections (1) and (2), for the purposes of this Act the term “taxable activity” shall not include, in relation to any person—

- a) any activity carried on essentially as a private recreational pursuit or hobby; or
- b) any employment in terms of section 2 of the Income Tax Act 2015; or
- c) any activity carried on by a non-profit body, other than an activity, which in the opinion of the Chief Executive Officer is in competition to the disadvantage of any taxable activity carried on by any other person.

Legislative History:

Act 31 of 2016(s223) – prior to 1st December 2016 – Section 4(3) read as –

(3) Notwithstanding anything in subsections (1) and (2) of this Section, for the purposes of this Decree the term “taxable activity” shall not include, in relation to any person, -

(a) any activity carried on essentially as a private recreational pursuit or hobby; or

(b) any employment in terms of Section 79 of the Income Tax Act 1974; or

(c) any activity carried on by a non-profit body, other than an activity, which in the opinion of the Commissioner is in competition to the disadvantage of any taxable activity carried on by any other person.

[Section 5] Act to bind State

This Act shall bind the State.

PART 2 ADMINISTRATION

(Sections 6–13)

[Section 6] Administration of the tax

(1) (Repealed)

Legislative History:

Decree 50 of 2009(s117 and Schedule 4) – prior to 1 January 2010 – Section 6 (1) read as –

(1) The Commissioner shall have the administration of this Decree and the control and management of the collection of the taxation charged thereby and of all matters incidental thereto and the officers and the persons employed in the Department.

(2) (Repealed)

Legislative History:

Decree 50 of 2009(s117 and Schedule 4) – prior to 1 January 2010 – Section 6 (2) read as –

(2) The Public Service Commission shall appoint such officers, including an officer to be called the Deputy Commissioner of Inland Revenue and officers to be called Chief Assessors and Principal Assessors of Inland Revenue, to be officers under the control of the Commissioner as the Minister may consider necessary for the purposes of the administration of this Decree.

(3) Notwithstanding anything in this section, in respect of all imported goods into Fiji, the collection of this tax shall be under the control and management of the Comptroller.

[subs (5) renum as (3) Act 9 of 1998 Sch 2, effective 1 January 1999]

Legislative History:

Act 9 of 1998 – Section 6(5) renumbered as Section 6(3) - prior to 1st January 1999 – Section 6(3) read as –

(3) Where, under this Decree, any power is conferred on, or any duty is imposed on, the Commissioner, then, subject to any express direction by the Commissioner to the contrary, such power may be exercised by, or such duty may be performed by the Deputy Commissioner or Chief Assessors or Principal Assessors:

Provided that the powers conferred by Section 76 shall be exercised only by the Commissioner or the Deputy Commissioner or the Chief Assessors.

(4) (Repealed)

Legislative History:

Decree 50 of 2009(s117 and Schedule 4) – prior to 1 January 2010 – Section 6 (4) read as –

(4) The Commissioner may, notwithstanding the provisions of subsection (3), authorise any officer in the service of the Inland Revenue Department to exercise any of the powers conferred upon him by this Decree other than the powers conferred by Section 76 of this Decree.

(5) (Repealed)

Legislative History:

Act 9 of 1998 – Section 6(5) renumbered as Section 6(3) - prior to 1st January 1999 – Section 6(5) read as –

(5) Notwithstanding anything in this Section, in respect of all imported goods into Fiji, the collection of this tax shall be under the control and management of the Comptroller.

(6) (Repealed)

Legislative History:

Decree 50 of 2009(s117 and Schedule 4) – prior to 1 January 2010 – Section 6 (6) read as –

(6) All money and securities for money collected or received for or on account of the tax, except deposits and securities required under the Customs Act 1986, shall be paid into the Fiji Government Consolidated Fund.

[Section 6A] Giving of notices (Repealed)

Legislative History:

Decree 50 of 2008 (s117 and Schedule 4) – prior to 1 January 2010 – Section 6A read as –

6A. (1) Any notice required by this Decree to be given by the Commissioner to any person may be:

- (i) given to him personally; or*
- (ii) sent to him by post addressed to him at his usual or last known place of abode or business; or*
- (iii) given personally to any other person authorised to act on behalf of that person; or*
- (iv) sent to that other person by post addressed to him at his usual or last known place of abode or business.*

(2) Any notice sent by post to any person, or to any other person authorised to act on behalf of that person shall be deemed to have been received by that person or, as the case may be, that other person when in the normal course of post it would have been delivered.

Decree 28 of 1992 – from 1 July 1992 – Section 6A inserted

[Section 7] Official secrecy (Repealed)

Legislative History:

Decree 50 of 2008 (s117 and Schedule 4) – prior to 1 January 2010 – Section 7 read as –

(1) Every officer required by the Commissioner to perform any special duty in the Inland Revenue Department or having any official duty in or being employed in the administration of this Decree shall regard and deal with all documents, returns, assessments and information relating to the affairs of any person as secret and confidential and shall take an oath in the form set out in Form 1 in the Third Schedule to this Decree before performing any duty under this Decree and such oath may be administered by a magistrate.

(2) Every officer employed in carrying out the provisions of this Decree who -

- (a) directly or indirectly asks for, or takes, in connection with any of his duties, any payment or reward whatsoever, whether pecuniary or otherwise, or any promise or security for any such payment or a payment or reward, not being a payment or reward which he is lawfully entitled to receive; or*
- (b) enters into or acquiesces in any agreement to do, abstains from doing, permits, conceals, or connives at, any act or thing whereby the tax revenue is or may be defrauded, or which is contrary to the provisions of this Decree or to the proper execution of his duty thereunder; or*
- (c) in contravention of the provisions of subsection (1) or of the terms of his declaration of secrecy, and without lawful excuse, reveals to any person any document or information which has come into his possession or to his knowledge in the course of his official duties, or permits any other person to have access to any document in the possession or custody of the Commissioner in his official capacity,*

shall be guilty of an offence against this Decree and shall be liable, on conviction, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(3) No officer or person appointed under, or employed in carrying out the provisions of this Decree shall be required to produce in any court any return, document or assessment, or to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties under this Decree, except as may be necessary for the purpose of carrying into effect the provisions of this Decree, or in order to institute a prosecution, or in the course of a prosecution, for any offence committed in relation to tax.

(4) Notwithstanding anything contained in this Section, the Commissioner shall permit the Minister to have such access to any information, records or documents as may be necessary for the purposes of this Decree and the Minister shall himself, in relation to such information records or documents, become subject to the provisions of this Section.

(5) The Auditor-General, exercising the powers and performing the duties imposed upon him by the provisions of Section 10 of this Decree, shall be deemed to be an officer employed in carrying out the provisions of this Decree for the purposes of this Section.

(6) Nothing in this section shall prohibit the Commissioner or any person authorised by him from communicating information of the Tax Agents' Board constituted under Part VIIA of the Income Tax Act 1974.

[Section 8] Disclosure of information

(1) Nothing shall prohibit the Chief Executive Officer from disclosing the registration status of any person.

Legislative History:

Act 15 of 2021(s3) – from 1 August 2021 – Section 8(1) inserted as –

(1) Nothing shall prohibit the Chief Executive Officer from disclosing the registration status of any person.

Decree 50 of 2008 (s117 and Schedule 4) – prior to 1 January 2010 – Section 8(1) read as –

(1) No obligation as to secrecy or other restriction upon the disclosure of information imposed by any enactment or otherwise shall prevent either-
(a) the Commissioner or any officer authorised in that behalf; and
(b) the Comptroller or any officer of Customs authorised in that behalf, -
from disclosing to each other information obtained for revenue-gathering purposes and which is required to be disclosed by the officers authorised by this subsection for the same purpose to give effect to the provisions of this Decree.

(2) (Repealed)

Legislative History:

Decree 50 of 2008 (s117 and Schedule 4) – prior to 1 January 2010 – Section 8(2) read as –

(2) Information obtained pursuant to subsection (1) of this Section shall not be disclosed except -
(a) to the officers authorised under that subsection; or
(b) for the purpose of any proceedings connected with a matter in relation to which those officers so authorised perform their duties.

(3) (Repealed)

Legislative History:

Decree 50 of 2008 (s117 and Schedule 4) – prior to 1 January 2010 – Section 8(3) read as –

(3) Notwithstanding anything in Section 7 of this Decree, officers will maintain secrecy except for the purpose of carrying into effect the provisions of this Decree or the Income Tax Act, 1974.

Decree 28 of 1992 – from 1 July 1992 – Section 8(3) inserted

(4) (Repealed)

Legislative History:

Decree 50 of 2008 (s117 and Schedule 4) – prior to 1 January 2010 – Section 8(4) read as –

(4) Nothing in Section 7 of this Decree shall be deemed to prohibit the Commissioner from divulging or communicating any matter or thing or producing in any Court any letter, accounts, invoices, statements, books or documents or records that the Commissioner considers desirable for the purposes of any investigation into any suspected offences or prosecution under the Crimes Act where the investigation or prosecution is in relation to any tax imposed or payable or any refund made or claimed under this Decree, and any such matter or thing shall be deemed to be divulged or communicated and any such letters, accounts, invoices, statements, books or documents or records shall be deemed to be produced for the purpose of carrying this Decree into effect.

Decree 28 of 1992 – from 1 July 1992 – Section 8(4) inserted

(5) (Repealed)

Legislative History:

Decree 50 of 2008 (s117 and Schedule 4) – prior to 1 January 2010 – Section 8(4) read as –

(5) Nothing shall prohibit the Commissioner from disclosing the registration status of any person.

Decree 28 of 1992 – from 1 July 1992 – Section 8(4) inserted

(6) Notwithstanding anything in section 7 and without limiting the generality of subsections (3) to (5) where—

- a) any registered person has failed to lodge a return as required by section 33; and**
- b) the Chief Executive Officer has attempted to notify that registered person of such failure; and**
- c) the failure continues for 6 months or more after the last day by which the said return was required by this Act to be furnished,**

the Chief Executive Officer may, by notice in the Gazette or any daily newspaper published and circulated in Fiji, publish the name and address of that person and give notice of his or her failure to furnish the required return.

Legislative History:

Act 16 of 1995(s5) – from 1 January 1995 – Section 6(6) inserted

[Section 9] Extension of time (Repealed)

Legislative History:

Decree 50 of 2008 (s117 and Schedule 4) – prior to 1 January 2010 – Section 9 read as –

(1) Where anything required by or under this Decree to be done at or within a fixed time cannot be or is not done, the Commissioner may, at any time extend such time for doing the same, whether the time at or within which the same ought to have been done has or has not expired.

(2) Anything done at, or as the case may be, within the time prescribed by the Commissioner shall be valid as if it had been done, or, as the case may be, within the time fixed by or under this Decree.

[Section 10] Audit (Repealed)

Legislative History:

Decree 50 of 2008 (s117 and Schedule 4) – prior to 1 January 2010 – Section 10 read as –

(1) The accounts of the receipt of revenue under this Decree shall be examined by the Auditor-General in order to ascertain that adequate regulations and procedure have been framed to secure an effective check on the assessment, collection and proper allocation of revenue, and the Auditor-General shall satisfy himself that any such regulations and procedure are being duly carried out.

(2) The Auditor-General shall make such examinations as he thinks fit with respect to the sums brought to account in respect of such revenue aforesaid.

[Section 11] Demand for additional information (Repealed)

Legislative History:

Decree 50 of 2008 (s117 and Schedule 4) – prior to 1 January 2010 – Section 11 read as –

11.-(1) Every person (including any officer employed in or in connection with any Department of the Government or by any public authority, and any other public officer) shall, when required by the Commissioner furnish in writing any information and produce for inspection any books and documents which the Commissioner considers necessary or relevant for any purpose relating to the administration or enforcement of any provisions of the Income Tax Act 1974 or this Decree or for any purpose relating to the administration or enforcement of any matter arising from or connected with any other function lawfully conferred on the Commissioner.

(2) Without limiting the foregoing provisions of this Section, it is hereby declared that the information in writing which may be required under this Section shall include list of shareholders of companies, with the amount of capital contributed by and dividends paid to each shareholder, copies of balance sheets and of profit and loss accounts and other accounts and statements of assets and liabilities.

(3) The Commissioner may, if he considers it reasonable to do so, remove and retain any books or documents under this Section for so long as it is necessary for a full and complete inspection of such books and documents.

(4) Any person producing any books or documents which are retained by the Commissioner pursuant to subsection (3) of this Section, shall, at all reasonable times and subject to such reasonable conditions as may be determined by the Commissioner, be entitled to inspect the retained books or documents and to obtain copies thereof at his own expense.

(5) The Commissioner may require that any written information or particulars furnished under this Section shall be verified by statutory declaration or otherwise.

(6) The Commissioner may, without fee or reward, make extracts from or copies of any books or documents produced for inspection in accordance with the provisions of this Section.

(7) The Commissioner may stipulate the date, time and place that the information is to be delivered.

(8) The Commissioner may at any time request information, books and documents in terms of this Section.

(9) If any person required to furnish in writing any information or to produce any books or documents under this Section refuses or fails to furnish any such information as aforesaid as and when required by the Commissioner, or refuses or fails to produce any books or documents as aforesaid as and when required by the Commissioner, that person commits an offence against this Section.

Decree 28 of 1992 (s8) prior to 1 July 1992 – Section 11 read as -

(1) If the Commissioner, in order to enable him to make an assessment or for any other purpose, desires any information or additional information or a return from any person who has not made a return or a complete return, he may, by registered letter or by personal service of a notice in writing, demand from such person such information, additional information or return, which such person shall deliver to the Commissioner such information, additional information or return within the period of time determined by the Commissioner in such registered letter or notice. For the purpose of any proceedings taken under this Decree, the facts necessary to establish compliance on the part of the Commissioner with the provisions of this section as well as default thereunder shall be sufficiently proved in any Court of law by the affidavit of the Commissioner or any other responsible officer of the Inland Revenue Department. Such affidavit shall have attached thereto as an exhibit a copy or duplicate of the said letter or notice.

(2) The Commissioner may require and demand the production or the production on oath by any person or his agent or officer of any letters, accounts, invoices, statements, books or documents or records held by such person, agent, or officer for the purpose of determining the tax payable by any person and the same shall be produced within the time determined by such demand.

[Section 12] Chief Executive Officer to have power to inspect books and documents (Repealed)

Legislative History:

Decree 50 of 2008 (s117 and Schedule 4) – prior to 1 January 2010 – Section 12 read as –

12.-(1) Notwithstanding anything in any other Act, Decree, laws or rules the Commissioner or any other officer of the department authorised by him in that behalf shall at all reasonable times be entitled to enter upon or into any land, buildings and places for the purpose of inspecting any books, documents, goods, property, process or matter the Commissioner considers relevant for the purpose of collecting any tax under this Decree for the purpose of carrying out any function lawfully conferred on the Commissioner, or considers likely to provide any information otherwise required for the purpose of any Acts, Decrees, laws administered by the Commissioner or any of those functions and may without fee or reward, make extracts from or copies of any such books or documents.

(2) The Commissioner or any authorised officer may for any purpose under this Section require the owner or manager of any property or business which is being investigated, or any other person employed, or previously employed, in connection with the property or business, to give him all reasonable assistance in the investigation and to answer all proper questions either orally or, if the Commissioner or office so requires, in writing, or by statutory declaration, and for that purpose may require the owner or manager or, in the case of a company, any officer to attend at the premises with him.

Decree 28 of 1992 (s8) prior to 1 July 1992 – Section 12 read as -

(1) The Commissioner or any officer authorised by him in writing upon the production of his written authority shall at all reasonable times be entitled to enter upon any lands, buildings, or places for the purposes of inspecting all books and documents, whether in the custody or under control of a public officer or a body corporate or any other person whatsoever, if the Commissioner or the officer considers such inspection is likely to assist in the ascertainment of the tax payable under this Decree by any person or in the collection or recovery of tax and may inspect any such books or documents and may without fee or reward make extracts or copies of any such books or documents.

(2) The Commissioner or any officer authorised by him may, for the purposes of any inspection under this subsection, require the production of any book or document by any person in whose custody or control such book or document may be and may require any such person to give reasonable assistance in the inspection and to answer all proper questions relating thereto.

[Section 13] Power to take samples

(1) The Chief Executive Officer or any officer authorised by him or her in writing upon the production of his or her written authority, if it appears necessary for the protection of the revenue against mistake or fraud, may at any time take, from the possession of any person who supplies goods, such samples as the Chief Executive Officer or the officer may require with the view to determining how the goods or the materials of which the goods are made ought to be or to have been treated for the purposes of tax.

(2) Any sample taken under this section from the goods in a person's possession shall be returned to him or her within a reasonable time and in good condition.

PART 3 IMPOSITION OF TAX ON IMPORTS

(Section 14)

[Section 14] Imposition of tax on imports

(1) Subject to subsection (5), a tax shall be levied, collected and paid in accordance with the provisions of this section at the rate of 15% on the importation of goods into Fiji (but not including a zero rated supply under Schedule 2), being goods that are imported or removed from a bonded or customs warehouse, for home consumption on or after 1 July 1992 under the Customs Act 1986 and the Customs Tariff Act 1986 by reference to the value of the goods determined under subsection (2).

Legislative History:

Act 06 of 2023 (s2) –from 1 August 2023 - Section 14(1) was amended in subsection (1), deleting “9%” and substituting “15%”

Act 23 of 2022 (s2) –from 1 April 2022 - Section 14(1) was amended in subsection (1), deleting “an exempt supply” and substituting “a zero-rated supply”

Act 8 of 2022 (s2) – prior to 1st April 2022 – Section 14(1) read as -

(1) Subject to subsection (5), a tax shall be levied, collected and paid in accordance with the provisions of this section at the rate of 9% on the importation of goods into Fiji, being goods that are imported or removed from a bonded or customs warehouse, for home consumption on or after 1 July 1992 under the Customs Act 1986 and the Customs Tariff Act 1986 by reference to the value of the goods determined under subsection (2).

Act 22 of 2015 (s2) – prior to 1st January 2016 – Section 14(1) read as –

(1) **Subject to subsection (5)**, a tax shall be levied, collected and paid in accordance with the provisions of this Section at the rate of **fifteen percent** on the importation of goods into Fiji, being goods that are imported or removed from a bonded or customs warehouse, for home consumption on or after the 1st day of July 1992 under the Customs Act 1986 and the Customs Tariff Act 1986 by reference to the value of the goods determined under subsection (2) of this Section.

Decree 66 of 2010 (s2) – prior to 1st January 2011 - Section 14(1) read as –

(1) **Subject to subsection (5)**, a tax shall be levied, collected and paid in accordance with the provisions of this Section at the rate of **twelve and a half percent** on the importation of goods into Fiji, being goods that are imported or removed from a bonded or customs warehouse, for home consumption on or after the 1st day of July 1992 under the Customs Act 1986 and the Customs Tariff Act 1986 by reference to the value of the goods determined under subsection (2) of this Section.

Decree 34 of 2002 (s2) – prior to 1st January 2003 – Section 14(1) read as –

(1) **Subject to subsection (5)**, a tax shall be levied, collected and paid in accordance with the provisions of this Section at the rate of ten percent on the importation of goods into Fiji, being goods that are imported or removed from a bonded or customs warehouse, for home consumption on or after the 1st day of July 1992 under the Customs Act 1986 and the Customs Tariff Act 1986 by reference to the value of the goods determined under subsection (2) of this Section.

Act 11 of 2002 (s2) - prior to 1st January 2002 – Section 14(1) read as –

(1) Notwithstanding anything in this Decree, a tax shall be levied, collected and paid in accordance with the provisions of this Section at the rate of ten percent on the importation of goods into Fiji, being goods that are imported or removed from a bonded or customs warehouse, for home consumption on or after the 1st day of July 1992 under the Customs Act 1986 and the Customs Tariff Act 1986 by reference to the value of the goods determined under subsection (2) of this Section,

Provided that, and for avoidance of doubt, in the case of any person subject to the Tax Free Zones Decree 1991 all goods imported for or on behalf of that person shall be liable in terms of this Section upon importation of those goods into Fiji.

Decree 28 of 1992 (s9) - prior to 1st July 1992 – Section 14(1) read as –

(1) Notwithstanding anything in this Decree, a tax shall be levied, collected and paid in accordance with the provisions of this Section at the rate of ten percent on the importation of goods into Fiji, being goods that are imported or removed from a bonded or customs warehouse, for home consumption on or after the 1st day of July 1992 under the Customs Act 1986 and the Customs Tariff Act 1986 by reference to the value of the goods determined under subsection (2) of this Section.

(1A) Any tax levied in accordance with subsection (1) for any goods that are imported or removed from a bonded or customs warehouse, for home consumption by a registered person in the Western Division from Sigatoka to Ba, including those areas that were declared as Natural Disaster areas under the Natural Disaster Management Act 1998 or such other areas that the Chief Executive Officer deems to be affected by the flood during the months of March to May in 2012, shall be collected and paid on 31 July 2012.

Legislative History:

Decree 37 of 2012 – from 15th March 2012 – Section 14(1A) inserted

(1B)

Legislative History:

[Subs(18) rep Act 6 of 2023 s2, effective 1 August 2023]

(2) For the purposes of subsection (1), the value of goods imported into Fiji shall be the sum of the amount of—

- a) the value of the goods determined in accordance with Part 1 of Schedule 1 of the Customs Tariff Act 1986 (whether or not duty is payable under that Act); and
- b) any duties (including import excise duty), taxes (other than tax levied or charged under this Act) and other charges that are charged, paid or payable on goods upon the importation or removal from a bonded or customs warehouse for home consumption in Fiji,
- c) For the purpose of this section, the calculation of the value for value added tax (VFX) on import shall be the sum of the amount of—
 - i. value for duty of the goods; and
 - ii. fiscal duty and import excise duty.

Legislative History:

Decree 27 of 2005 (s2) – prior to 1st January 2006 – Section 14(2) read as –

(2) For the purposes of subsection (1) of this Section, the value of goods imported into Fiji shall be the sum of the amount of -

(a) the value of the goods determined in accordance with Part I of the First Schedule of the Customs Tariff Act 1986 (whether or not duty is payable under that Act); and

(b) any duties, taxes (other than tax levied or charged under this Decree) and other charges that are charged, paid or payable on goods upon the importation or removal from a bonded or customs warehouse for home consumption in Fiji.

(3) Subject to this Part, tax levied under subsection (1) shall be collected and paid as if it were duty leviable under the Customs Act 1986 and as if all goods imported into or removed from bonded or customs warehouse for home consumption in Fiji were liable to duty.

(4) The following provisions of the Customs Act 1986 and Customs Tariff Act 1986 shall apply to the collection, payment and enforcement of the tax levied under subsection (1)—

- a) section 2, Parts 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, (except sections 96 and 98 to 101), Part 17, Part 18, Part 19, Part 20, Part 21, Part 22, Part 23 and Part 24 of the Customs Act 1986; and

- b) section 96 of the Customs Act 1986, provided that this paragraph shall not apply to any registered person in respect of goods imported for the purpose of carrying on that person's taxable activity; and

- c) section 2, Parts 2, 3 (except sections 10, 11, 11A and 14) and 4 of the Customs Tariff Act 1986; and
- d) section 14 of the Customs Tariff Act 1986, provided that this paragraph shall apply only in respect of goods that are imported by the same person as the person who exported them from Fiji if, at the time of their export from Fiji those goods were not —
 - i. a supply of goods charged with tax at the rate of 0% pursuant to section 15(2); or
 - ii. a supply of goods, made before 1 July 1992, that would have been charged with tax at the rate of 0% pursuant to section 15(2) if the supply of those goods had taken place on 1 July 1992.

Legislative History:

Act No. 27 of 2005 – from 1st January 2006 – Section 14(4)(e) deleted and renumbered as Section 14(4A)

Decree 5 of 2001 – prior to 1st January 2001 – Section 14(4)(f) was inserted through Act 28 of 1999 but deleted through Decree 5 of 2001 with same effective date—

(f) the tariff items with the heading numbers 04.02 (powdered milk), 09.02 (tea), 10.01 (wheat), 10.06 (rice), 11.01 (flour and sharps from wheat), 15.01 to 15.03 and 15.06 to 15.17 (edible fats and oils; crude and refined oils) and 16.04 (prepared or preserved canned fish) in Part 2 of Schedule 2 to the Customs Tariff Act 1986.

Act 28 of 1999 – prior to 1 January 2000 – Section 14(4)(a), (c) and (e) were amended through Decree 28 of 1992 to read as follows –

(a) Section 2, Part II, Part III, Part IV, Part V, Part VI, Part VII, Part VIII, Part IX, Part X, Part XI, Part XII, Part XIII, Part XIV, Part XV, Part XVI, (except Sections 96 and 98 to 101), Part XVII, Part XVIII, Part XIX, Part XX, Part XXI, Part XXII, Part XXIII and Part XXIV of the Customs Act 1986; and

*(c) Section 2, Part II, Part III (except Sections 10, 11, **11A** and 14), and Part IV of the Customs Tariff Act 1986; and*

*(e) Concession Code Numbers: **102(i) (family planning goods imported by non-profit bodies)** (family planning goods), 108 (trade samples), 110 (goods imported for disabled persons), 126 (money), 201 (the President and his family), 203 (diplomatic missions), 204 (an international organisation to which the provision of Section 2 of the Diplomatic Privileges and Immunities Act apply), 205 (members of a State, organisation or an agency), 206 (consulates), 207 (consular officers), 215 (charitable and religious organisations), 216 (the owner of trustees of goods of a deceased Fiji resident), 218 and 219 (passengers disembarking in Fiji), 220 (Fiji residents), 222 (a hospital or medical institution), 223 (a university, school or other educational institution), 226 (a person to whom medals and decorations are awarded), 227 (an owner or temporal owner of trophies), 228 (tourists) and 229 (an institution or organisation approved by the Minister of Finance) in Parts II and III of the Second Schedule to the Customs Tariff Act 1986.*

Act 1 of 1993 – prior to 1st January 1993 – Section 14(4)(e) read as

*(e) Concession Code Numbers: 102 (family planning goods), 108 (trade samples), 110 (goods imported for disabled persons), **126 (money)**, 201 (the President and his family), 203 (diplomatic missions), 204 (an international organisation to which the provision of Section 2 of the Diplomatic Privileges and Immunities Act apply), 205 (members of a State, organisation or an agency), 206 (consulates), 207 (consular officers), 215 (charitable and religious organisations), 216 (the owner of trustees of goods of a deceased Fiji resident), 218 and 219 (passengers disembarking in Fiji), 220 (Fiji residents), 222 (a hospital or medical institution), 223 (a university, school or other educational institution), 226 (a person to whom medals and decorations are awarded), 227 (an owner or temporal owner of trophies), 228 (tourists) and 229 (an institution or organisation approved by the Minister of Finance) in Parts II and III of the Second Schedule to the Customs Tariff Act 1986.*

Decree 28 of 1992 – prior to 1st July 1992 – Section 14(4) read as the following under Decree 45 of 1991 –

(4) The following provisions of the Customs Act 1986 and Customs Tariff Act 1985 shall apply to the collection, payment and enforcement of the tax levied under subsection (1) of this Section:

*(a) Section 2, Part II, Part III, Part IV, Part V, Part VI, Part VII, (except **Section 33**) Part VIII, Part IX, Part X, Part XI, Part XII, Part XIII, Part XIV, Part XV, Part XVI, (except Sections **95**, 96 and 98 to 101), Part XVII, Part XVIII, Part XIX, Part XX, Part XXI, Part XXII, Part XXIII and Part XXIV of the Customs Act 1986; and*

(b) Section 96 of the Customs Act 1986:

Provided that this paragraph shall not apply to any registered person in respect of goods imported for the purpose of carrying on that person's taxable activity; and

(c) Section 2, Part II, Part III (except Sections 10, 11 and 14), and Part IV of the Customs Tariff Act 1986; and

(d) Section 14 of the Customs Tariff Act 1986:

Provided that this paragraph shall apply only in respect of goods that are imported by the same person as the person who exported them from Fiji if, at the time of their export from Fiji those goods were not -

(i) a supply of goods charged with tax at the rate of zero percent pursuant to subsection (2) of Section 15 of this Decree; or

(ii) a supply of goods, made before the 1st day of July 1992, that would have been charged with tax at the rate of zero percent pursuant to subsection (2) of Section 15 of this Decree if the supply of those goods had taken place on the 1st day of July, 1992; and
(e) Concession Code Numbers: 102 (family planning goods), 108 (trade samples), 110 (goods imported for disabled persons), 201 (the President and his family), 203 (diplomatic missions), 204 (an international organisation to which the provision of Section 2 of the Diplomatic Privileges and Immunities Act apply), 205 (members of a State, organisation or an agency), 206 (consulates), 207 (consular officers), 215 (charitable and religious organisations), 216 (the owner of trustees of goods of a deceased Fiji resident), 218 and 219 (passengers disembarking in Fiji), 220 (Fiji residents), 222 (a hospital or medical institution), 223 (a university, school or other educational institution), 226 (a person to whom medals and decorations are awarded), 227 (an owner or temporal owner of trophies), 228 (tourists) and 229 (an institution or organisation approved by the Minister of Finance) in Parts II and III of the Second Schedule to the Customs Tariff Act 1986.

(4A) Notwithstanding subsection (4), the following shall not be subject to tax levied under subsection (1)—

- a) Concession Code Numbers: 108 (trade samples), 110 (goods imported for disabled persons), 111 (Artificial parts of a body, corrective glasses, invalid carriages, etc), 126 (money), 141 (hybrid and electric charging vessels), 201A (the President and his or her family), 203 (diplomatic missions), 204 (an international organisation to which the provisions of section 2 of the Diplomatic Privileges and Immunities Act 1971 apply), 205 (members of a State organisation or an agency), 206 (consulates), 207 (consular officers), 212 (a private individual), 215 (charitable and religious organisations), 216 (the owner or trustees of goods of a deceased Fijian resident), 218 and 219 (passengers disembarking in Fiji), 220 (Fijian residents), 222 (a hospital or medical institution), 223(a) (university, school or other educational institution) and 228 (tourists), 298 (Concession for medical emergencies - companies, entities and individuals), 218A (crew allowance) and 219A (passenger's unaccompanied luggage) in Parts 2 and 3 of Schedule 2 to the Customs Tariff Act 1986;
- b) [Repealed]
- c) Electoral Equipment including Biometric Voter Registration Systems (BVRS) and accessories;
- d) electric vehicles which are imported under customs tariff codes
8701.24.10, 8701.24.90, 8702.40.11, 8702.40.12, 8702.40.19, 8702.40.21, 8702.40.22, 8702.40.29, 8703.80.10, 8703.80.11, 8703.80.14, 8703.80.15, 8703.80.18, 8703.80.19, 8703.80.22, 8703.80.23, 8703.80.26, 8703.80.29, 8704.60.00, 8711.60.00

Legislative History:

Act 30 of 2022 – from 1st August 2022 – Section 14(4A) (d) inserted

Legislative History:

Act 15 of 2021 – from 1st August 2021 – Section 14(4A) (a) was amended by inserting “218A (crew allowance) and 219A (passenger's unaccompanied luggage)” after “(tourists)” to read as current legislation (above)

Act 4 of 2020 – from 1st April 2020 – Section 14(4A) (a) was amended by deleting “and 228 (tourists)” and substituting “, 228 (tourists) and 298 (Concession for medical emergencies - companies, entities and individuals) which led the section to read as:

(a) Concession Code Numbers: 102(i) (family planning goods imported by non-profit bodies) (family planning goods), 108 (trade samples), 110 (goods imported for disabled persons), 111 (Artificial parts of a body, corrective glasses, invalid carriages, etc.), 126 (money), 141 (hybrid and electric charging vessels), 201A (the President and his family), 203 (diplomatic missions), 204 (an international organisation to which the provision of Section 2 of the Diplomatic Privileges and Immunities Act apply), 205 (members of a State, organisation or an agency), 206 (consulates), 207 (consular officers), 215 (charitable and religious organisations), 216 (the owner of trustees of goods of a deceased Fiji resident), 218 and 219 (passengers disembarking in Fiji), 220 (Fiji residents), 222 (a hospital or medical institution), 223 (a university, school or other educational

institution), **228 (tourists) and 298 (Concession for medical emergencies - companies, entities and individuals)** in Parts II and III of the Second Schedule to the Customs Tariff Act 1986.

Act 10 of 2019 – from 1st August 2019 – Section 14(4A) (a) was amended by inserting “141 (hybrid and electric charging vessels)” after “(money),”

Act 4 of 2017 – from 1st August 2016 – Section 14(4A) (a) was amended to read as:

(a) Concession Code Numbers: 102(i) (family planning goods imported by non-profit bodies) (family planning goods), 108 (trade samples), 110 (goods imported for disabled persons), 111 (Artificial parts of a body, corrective glasses, invalid carriages, etc.), 126 (money), **201A** (the President and his family), 203 (diplomatic missions), 204 (an international organisation to which the provision of Section 2 of the Diplomatic Privileges and Immunities Act apply), 205 (members of a State, organisation or an agency), 206 (consulates), 207 (consular officers), 215 (charitable and religious organisations), 216 (the owner of trustees of goods of a deceased Fiji resident), 218 and 219 (passengers disembarking in Fiji), 220 (Fiji residents), 222 (a hospital or medical institution), 223 (a university, school or other educational institution) and 228 (tourists) in Parts II and III of the Second Schedule to the Customs Tariff Act 1986.

Act 22 of 2015 – from 1st January 2016 – Section 14(4A) (b) was repealed and Section 14(4A) (a) read as:

(a) Concession Code Numbers: 102(i) (family planning goods imported by non-profit bodies) (family planning goods), 108 (trade samples), 110 (goods imported for disabled persons), **111 (Artificial parts of a body, corrective glasses, invalid carriages, etc.)**, 126 (money), 201 (the President and his family), 203 (diplomatic missions), 204 (an international organisation to which the provision of Section 2 of the Diplomatic Privileges and Immunities Act apply), 205 (members of a State, organisation or an agency), 206 (consulates), 207 (consular officers), 215 (charitable and religious organisations), 216 (the owner of trustees of goods of a deceased Fiji resident), 218 and 219 (passengers disembarking in Fiji), 220 (Fiji residents), 222 (a hospital or medical institution), 223 (a university, school or other educational institution), 226 (a person to whom medals and decorations are awarded), 227 (an owner or temporal owner of trophies), 228 (tourists) and 229 (an institution or organisation approved by the Minister of Finance) in Parts II and III of the Second Schedule to the Customs Tariff Act 1986.

Decree 60 of 2012 – from 20th June 2012, Section 14(4A) (c) inserted as:

(c) Electoral Equipment including Biometric Voter Registration Systems (BVRs) and accessories

Decree 66 of 2010 – from 1st January 2011 – Section 14(4A) (b) read as-

(b) the following tariff items under the heading numbers 04.02 (powdered milk), 09.02 (tea), 10.01(wheat), 10.06(rice), 11.01 (flour and sharps from wheat), 15.07 to 15.17 (edible fats and oils; crude and refined oils), 16.04 (prepared or preserved canned fish), and 27.10 (kerosene), as are listed in Part 1 of Schedule 2 to the Customs Tariff Act 1986 **and including items falling under tariff heading of 03.02(fish, fresh or chilled excluding fish fillets and other fish meat of 03.04), 03.03 (fish frozen excluding fish fillets and other fish meat of 03.04), as are listed in Part III of Schedule 2 to the Customs Tariff Act 1986.**

Act No. 27 of 2005 – from 1st January 2006 – Section 14(4)(e) deleted and renumbered as Section 14(4A) which read as;

4A) Notwithstanding subsection (4), the following shall not be subject to tax levied under subsection (1) –

(a) Concession Code Numbers: 102(i) (family planning goods imported by non-profit bodies) (family planning goods), 108 (trade samples), 110 (goods imported for disabled persons), 126 (money), 201 (the President and his family), 203 (diplomatic missions), 204 (an international organisation to which the provision of Section 2 of the Diplomatic Privileges and Immunities Act apply), 205 (members of a State, organisation or an agency), 206 (consulates), 207 (consular officers), 215 (charitable and religious organisations), 216 (the owner of trustees of goods of a deceased Fiji resident), 218 and 219 (passengers disembarking in Fiji), 220 (Fiji residents), 222 (a hospital or medical institution), 223 (a university, school or other educational institution), 226 (a person to whom medals and decorations are awarded), 227 (an owner or temporal owner of trophies), 228 (tourists) and 229 (an institution or organisation approved by the Minister of Finance) in Parts II and III of the Second Schedule to the Customs Tariff Act 1986.

(b) the following tariff items under the heading numbers 04.02 (powdered milk), 09.02 (tea), 10.01(wheat), 10.06(rice), 11.01 (flour and sharps from wheat), 15.07 to 15.17 (edible fats and oils; crude and refined oils), 16.04 (prepared or preserved canned fish), and 27.10 (kerosene), as are listed in Part 1 of Schedule 2 to the Customs Tariff Act 1986.

(5) Notwithstanding any other provision of this Act, no tax shall be levied under this Part in respect of importation of goods which are subject to the Tax Free Zones Act 1991 or the duty suspension scheme.

Legislative History:

Act 11 of 2002 (s2) – from 1st July 2002 – Section 14(5) is renumbered as current Section 14(6) and current Section 14(5) inserted

(5A) No tax shall be levied under this Part for the importation of any—

- a) aircraft used for commercial air transport operations; and
- b) ship for coasting-trade under the Maritime Transport Act 2013.

Legislative History:

Act 10 of 2019 – from 1st August 2019 – Section 14(5A) was amended to read as current provision (above)

Decree 44 of 2012 (s2) – from 1st September 2011 – Section 14(5A) was inserted as:

(5A) No tax shall be levied under this Part for the importation of any aircraft used for commercial air transport operation, provided however that prior written approval by the Minister shall be obtained for the exemption.

(5B) For the purpose of subsection (5A), “commercial air transport operation” is defined in the Air Navigation Regulations 1981.

Legislative History:

Decree 44 of 2012 (s2) – from 1st September 2011 – Section 14(5B) inserted as current legislation

(6) For the purposes of this section the term “goods” has the same meaning as defined in the Customs Act 1986.

Legislative History:

Act 11 of 2002 (s2) – from 1st July 2002 – Section 14(5) is renumbered as current Section 14(6)

PART 4 IMPOSITION OF TAX ON SUPPLY

(Sections 15–21)

[Section 15] Imposition of tax on supply

(1) Subject to the provisions of this Act, the tax shall be charged in accordance with the provisions of this Act at the rate of 15% on the supply (but not including an exempt supply) in Fiji of goods and services on or after 1 July 1992, by a registered person in the course or furtherance of a taxable activity carried on by that person, by reference to the value of that supply.

Legislative History:

Act 06 of 2023) – from 1 August 2023 – Section 15(1) was amended by deleting " nine " and substituting " fifteen " to read as current provision (above)

Act 22 of 2015 (s3) – from 1 January 2016 – Section 15(1) was amended by deleting "fifteen" and substituting "nine" to read as current provision (above)

Act 22 of 2015 (s3) – from 1 January 2016 – Section 15(1) was amended by deleting "fifteen" and substituting "nine" to read as current provision (above)

Act 22 of 2015 (s3) – from 1 January 2016 – Section 15(1) was amended by deleting "fifteen" and substituting "nine" to read as current provision

(1A)

Legislative History:

[Subs (1A) rep Act 6 of 2023 (s3) , effective from 1 August 2023]

(2) Where, but for this subsection, a supply of goods and services would be charged with tax under subsection (1), any such supply shall be charged at the rate of 0% where that supply is a zero-rated supply.

[Section 16] Place of supply

(1) For the purposes of section 15, the following provisions of this section shall apply for determining, for the purposes of the charge of tax, whether goods and services are supplied in Fiji.

(2) In relation to a supply of goods which does not involve their removal from or to Fiji, those goods shall be deemed to be supplied in Fiji if those goods are in Fiji and otherwise shall be deemed to be supplied outside Fiji.

(3) In relation to a supply of goods which involves their removal—

- a) from Fiji, those goods shall be deemed to be supplied in Fiji;
- b) to Fiji, those goods shall be deemed to be supplied outside Fiji.

(4) Subject to this section, a supply of services shall be deemed to be—

- a) in Fiji if the supplier belongs in Fiji; or
- b) in another country, if that supplier belongs in that other country.

[Section 17] Place where supplier or recipient of services belongs

(1) Subsection (2) shall apply for determining, in relation to any supply of services, whether the supplier belongs in one country or another and subsections (3) and (4) shall apply for

determining, in relation to a supply of services, whether the recipient belongs in one country or another.

(2) The supplier of services shall be deemed to belong in a country if the supplier—

- a) has there a taxable activity establishment or some other fixed establishment and no such establishment elsewhere; or
- b) has no such establishment there or elsewhere but the supplier's usual place of residence is there; or
- c) has such establishments both in that country and elsewhere and the establishment of the supplier which is most directly concerned with the supply is there.

(3) If the supply of services is made to an individual and received by that person otherwise than for the purposes of any taxable activity carried on by that person, that person shall be deemed to belong in whatever country that person has his or her usual place of residence, provided that this subsection shall not apply to any individual who is present in Fiji at the time the services are supplied, other than when the goods in respect of which the supply is being made are situated outside Fiji.

Legislative History:

Decree 28 of 1992 – from 1st July 1992 - (same effective date) the proviso was added in Section 17(3)

Decree 45 of 1991 – from 1st July 1992 – Section 17(3) read as:

*(3) If the supply of services is made to an individual and received by that person otherwise than for the purposes of any taxable activity carried on by that person, that person shall be deemed to belong in whatever country that person has **their** usual place of residence.*

(4) Where subsection (3) does not apply, the person to whom the supply of services is made shall be deemed as belonging in a country if—

- a) either of the conditions mentioned in subsection (2)(a) and (b) is satisfied; or
- b) that person has such establishments as are mentioned in subsection (2) both in that country and elsewhere and the establishment of that person at which or for the purposes of which, the services are most directly used or to be used in that country.

(5) For the purposes of this section—

- a) a person carrying on a taxable activity through a branch or agency in any country shall be deemed to have a taxable activity establishment there; and
- b) the expression “usual place of residence”, in relation to a body corporate, means the place where it is legally constituted.

[Section 18] Time of supply

(1) Subject to this Act, a supply of goods and services shall be deemed to take place at the time—

- a) a tax invoice is issued by the supplier or the recipient; or
- b) any payment is received by the supplier; or
- c) the delivery of the goods and services takes place,

whichever is the earlier.

(2) Notwithstanding anything in subsection (1), a supply of goods and services shall be deemed to take place—

- a) where the supply is for a consideration in money received by the supplier by means of any machine, meter or other device operated by a coin or token, at the time any such coin or token is taken from that machine, meter or other device by or on behalf of the supplier;
- b) where that supply is a supply to which section 3(9) refers, at the time at which the property in the goods is transferred to the buyer, provided that in any case in which a supply of services is deemed to take place pursuant to the proviso to, section 3(9), that supply of services shall be deemed to take place at the time that the layby sale is cancelled pursuant to Part 4 of the Sale of Goods Act 1979;
- c) where goods are supplied under an agreement for hire or services are supplied under any agreement or enactment which provides for periodic payments, those goods or services shall be deemed to be successively supplied for successive parts of the period of the agreement or enactment and each of the successive supplies shall be deemed to take place when a payment becomes due or is received, whichever is the earlier;
- d) where and to the extent that goods and services are supplied progressively or periodically pursuant to any agreement or enactment which provides for the consideration for that supply to be paid in instalments or periodically and in relation to the progressive or periodic supply of those goods and services, those goods and services shall be deemed to be successively supplied and each such successive supply shall be deemed to take place whenever any payment in respect of that supply becomes due, is received or a tax invoice relating only to that payment is issued, whichever is the earlier;
- e) where and to the extent that goods and services supplied directly in the construction, major reconstruction, manufacture or extension of a building, engineering work or land development are supplied pursuant to any agreement or enactment which provides for the consideration for that supply to become due and payable in instalments or periodically in relation to the progressive nature of that construction, manufacture or extension, engineering work or land development, those goods and services shall be deemed to be successively supplied and each successive supply shall be deemed to take place whenever any payment in respect of that supply becomes due, is received or any tax invoice relating to that payment is issued, whichever is the earlier;

- f) where goods are supplied under an agreement, other than an agreement for hire and the goods or part of them are appropriated under that agreement by the recipient in circumstances where the whole of the consideration is not determined at the time those goods are appropriated, that supply shall be deemed to take place when and to the extent that any payment under the agreement is due or is received or a tax invoice relating to the supply is issued by the supplier or the recipient, whichever is the earlier;
- g) the supply of goods and services which is deemed to be made by a registered person pursuant to section 3(10) shall be deemed to take place at the time that that registered person is liable to deduct income tax from the value of the employee benefit in terms of the Income Tax Act 2015.

Legislative History:

Act 15 of 2018 – prior to 1 August 2018 – Section 18(2)(e) read as:

*(e) where and to the extent that goods and services supplied directly in the construction, major reconstruction, manufacture or extension of a building or **engineering work** are supplied pursuant to any agreement or enactment which provides for the consideration for that supply to become due and payable in instalments or periodically in relation to the progressive nature of that construction, manufacture or **extension**, those goods and services shall be deemed to be successively supplied, and each successive supply shall be deemed to take place whenever any payment in respect of that supply becomes due, is received or any tax invoice relating to that payment is issued, whichever is the earlier:*

Act 31 of 2016 – from 1 December 2016 – Section 18(2)(g) was amended by deleting "Income Tax Cap. 201" and substituting "Income Tax 2015"

Decree 28 of 1992 (s11) – from 1 July 1992 – Section 18(2)(d) was amended by inserting "and services" after "goods"

(3) For the purposes of subsection (2), the term “agreement for hire” means an agreement for the bailment of goods for hire and includes a lease of goods and a rental agreement but excludes an agreement under which the property in goods passes to the bailee or which expressly contemplates that the property in the goods will pass to the bailee.

[Section 19] Value of supply of goods and services

(1) For the purposes of this Act the following provisions of this section shall apply for determining the value of supply of goods and services.

(2) Subject to this section and section 20, the value of a supply of goods and services shall be such amount as, with the addition of the tax charged, is equal to the aggregate of—

- a) to the extent that the consideration for the supply is consideration in money, the amount of the money;
- b) to the extent that the consideration for the supply is not consideration in money, the open market value of that consideration.

(3) Subject to subsections (4) and (6), where—

- a) a supply is made by a person for no consideration or for a consideration in money that is less than the open market value of that supply; and
- b) the supplier and recipient are not independent of each other,

the consideration in money for the supply shall be deemed to be the open market value of that supply.

(4) Subsection (3) shall not apply to any supply made by a registered person where the recipient acquired that supply wholly for the purposes of making taxable supplies and is entitled under section 39(2) to make a deduction in respect of that supply.

(5) Notwithstanding anything in subsection (2), where any supply of goods and services is made pursuant to—

- a) a hire purchase agreement (being a conditional sale agreement whereby the property in the goods will pass to the bailee); or
- b) a financial lease (being an agreement to lease whereby the lessee is expressly required or has the option to purchase the goods subject to the lease at a guarantee residual value or nil),

the consideration in money for the supply shall be deemed to be the cash price of those goods and services.

cash price in relation to goods and services supplied means—

- a) the lowest price at which a person could have purchased those goods and services from the supplier thereof on the basis of payment in full at the time of supply; or
- b) if there is no such price, the open market value of those goods and services at the time of supply.

<i>Legislative History: Decree 28 of 1992 (s12) – from 1st July 1992 – definition of cash price inserted</i>

(6) Where goods and services are deemed to be supplied by a person under section 3(2) and (4), the consideration in money for that supply shall be deemed to be the lesser of—

- a) the cost of those goods and services to the supplier, including any tax charged in respect of the supply of those goods and services to that supplier;
- b) the open market value of that supply.

(7) Notwithstanding anything in this section, where goods and services are or are deemed to be supplied to the State by any public authority pursuant to section 3(5), the consideration in money for any such supply shall be an amount equal to any amount from time to time paid by the State to or on behalf of that public authority for that supply.

(8) Notwithstanding anything in this section, where goods and services are or deemed to be supplied to any person by any local authority pursuant to section 3(7), the consideration in money for any such supply shall be an amount equal to any amount from time to time paid or payable by or on behalf of that person for that supply.

(9) Where a supply of services is deemed to be made under the proviso to section 3(9), the consideration in money for that supply shall be deemed to be an amount equal to the amount referred to in paragraph (b) of that proviso as being retained or recoverable.

(10) Where a right to receive goods and services for a monetary value stated on any token, stamp (not being a postage stamp) or voucher is granted for a consideration in money, that supply shall be disregarded for the purposes of this Act, except to the extent (if any) that consideration exceeds that monetary value.

(11) Where a registered person supplies goods and services by way of a gift or as a trade sample for no consideration in the course or furtherance of taxable activity, the consideration in money for that supply shall be deemed to be the open market value of that supply, provided that this provision shall not apply where—

- a) the good or service gifted did not cost the supplier more than \$10 and does not form part of a series or succession of gifts made to the same recipient from time to time;
- b) the good or service is a trade sample supplied to an actual or potential customer of the taxable activity, in a form not ordinarily available for supply to the public.

(12) Where goods and services are deemed to be supplied by a registered person under section 3(10), the consideration in money for the supply shall be deemed to be an amount equal to the value of the employee benefit determined by the Chief Executive Officer for income tax purposes.

(13) Where a taxable supply is not the only matter to which a consideration relates, the supply shall be deemed to be for such part of the consideration as is properly attributable to it.

(14) Subject to the foregoing provisions of this section where any supply is made for no consideration, the value of that supply shall be nil.

[Section 20] Second-hand goods

(1) Where a registered person, who is a dealer in second-hand goods, has purchased second-hand goods of whatever kind from a non-registered person, the consideration in money for the supply of those goods by that registered person shall be an amount equal to the gross margin by allowing the purchase price as a deduction from the sale price of those goods at the time of the sale of those goods, provided that the Chief Executive Officer may determine the gross margin

to be applied to specified goods or classes of goods; being goods that are supplied in the normal course of that person's taxable activity for a consideration less than \$500.

Legislative History:

Decree 28 of 1992 (s13) – from 1st July 1992 – proviso added:

“provided that the Chief Executive Officer may determine the gross margin to be applied to specified goods or classes of goods; being goods that are supplied in the normal course of that person's taxable activity for a consideration less than \$500.”

(2) Where the supplier and recipient are not independent of each other, the purchase price for the second-hand goods shall, for the purpose of subsection (1), be deemed to be the lesser of the purchase price or the open market value of that supply of second-hand goods.

(3) The registered person, shall in respect of second-hand goods purchased from a non-registered person maintain sufficient records to enable the following particulars to be ascertained—

- a) the name and address of the supplier;
- b) the date upon which the second-hand goods were supplied;
- c) a description of the goods supplied;
- d) the quantity or volume of the goods supplied; and
- e) the consideration for the supply.

(4) Subsections (1) and (3) shall apply only to dealers in “second-hand goods”.

Legislative History:

Decree 28 of 1992 (s13) – from 1st July 1992 – Section 20(4) added

(5) For the purposes of this section—

- a) the term “second-hand goods” shall not include—
 - i. land;
 - ii. improvements to any land, including buildings constructed thereon;
 - iii. produce;
- b) the term “dealer in second-hand goods” shall include a person continuously or regularly making purchase and sale of second-hand goods, without making significant alterations to their structure or content and shall not include bottle collectors.

Legislative History:

Decree 28 of 1992 (s13) – from 1st July 1992 – Section 20(5) added

[Section 21] Reverse charge on supplies received from abroad

(1) For the purposes of this section “relevant service” means services of any of the descriptions specified in paragraph (14) of Schedule 2, not being services within any of the descriptions specified in paragraph (1) of Schedule 1.

(2) Where relevant services are—

- a) supplied by a person who belongs in a country other than Fiji; and

b) received by a person (hereafter in this subsection referred to as a recipient) who belongs in Fiji for the purposes of any taxable activity carried on by that person, then all the consequences shall follow under this Act as if the recipient had supplied the services in Fiji in the course or furtherance of that recipient's taxable activity.

Legislative History:

Act 15 of 2020 (s2) – prior to 1 August 2020 – Section 21(2) read as:

*(2) **Subject to subsection (3) of this Section**, where relevant services are -*

(a) supplied by a person who belongs in a country other than Fiji; and

(b) received by a person (hereafter in this subsection referred to as a recipient) who belongs in Fiji for the purposes of any taxable activity carried on by that person;

then all the consequences shall follow under this Decree (and particularly so much as charges tax on supply and entitles a registered person to a deduction for input tax) as if the recipient had supplied the services in Fiji in the course or furtherance of that recipient's taxable activity.

(3) (Repealed)

Legislative History:

Act 15 of 2020 (s2) – prior to 1 August 2020 – Section 21(3) read as:

(3) The provisions of this Decree relating to the deduction of input tax shall apply in respect of supplies, which are treated as made by a registered person under subsection (2) of this Section, although those supplies themselves shall not be treated as being taxable supplies made by that person for the purposes of determining the input tax deductible under subsection (2) of Section 39 of this Decree.

(4) For the purposes of this Act, where subsection (2) treats a supply of relevant services as being made by a person in the course or furtherance of that person's taxable activity, the value of that supply must be for whatever consideration was paid or payable for the relevant services

Legislative History:

Act 15 of 2020 (s2) – 1 August 2020 – Section 21(4) was amended by deleting the subsection and replacing with current provision (above)

Decree 28 of 1992 (s14) – from 1 July 1992 – Section 21(4) amended by deleting the word "or" in the second line and substituting the word "of" in its place.

Decree 45 of 1991 - Section 21(4) read as:

(4) For the purposes of this Decree, where subsection (2) of this Section, treats a supply or relevant services as being made by a person in the course or furtherance of that person's taxable activity -

(a) the value of that supply shall be for whatever consideration was paid or payable for the relevant services; and

(b) the supply shall take place when the relevant services are paid for, or if the consideration is not in money, the last day of the taxable period in which the services are performed.

(5) Where a person carried on a taxable activity through an establishment of the person in Fiji and through another establishment outside Fiji, any supply of relevant services by the establishment outside Fiji to the establishment in Fiji shall be treated as a supply to which subsection (2) applies, as if that supply between the 2 establishments were between 2 separate persons who are independent of each other.

(6) Notwithstanding anything in subsection (4), where subsection (5) applies, the value of the supply shall be deemed to be the open market value of the relevant services.

Legislative History:

Act 15 of 2020 (s2) – prior to 1 August 2020 – Section 21(6) read as:

(6) Notwithstanding anything in subsection (4)(a), where subsection (5) applies, the value of the supply shall be deemed to be the open market value of the relevant services.

(7)

Legislative History:

Act 30 of 2022 (s2) – from 1 August 2022 – Section 21(7) deleted

Act 15 of 2020 (s2) – from 1 August 2020 – Section 21(7) inserted as:

Notwithstanding subsections (1) to (6), this section does not apply to a registered person

PART 4A

(Repealed)

Legislative History:

Act 06 of 2023 (s21A) – from 1 August 2023 – Part 4A deleted”

Act 23 of 2022 (s3) – from 1 April 2022 – Heading inserted as “Imposition of tax”

Act 8 of 2022 (s4) – from 1 April 2022 – Part 4A inserted

PART 5 REGISTRATION

(Sections 22–25)

[Section 22] Persons making taxable supplies to be registered

(1) Subject to this Act, every person (other than a produce supplier) who, on or after 1 July 1992, carries on any taxable activity and is not registered, becomes liable to be registered—

- a) in the case of any person who solely supplies goods—
 - i. at the end of any month where the total value of supplies (not being exempt supplies) made in Fiji in that month and the 11 months immediately preceding that month in the course of carrying on all taxable activities has exceeded \$100,000 in gross turnover or such other amount as the Minister may from time to time, by Legal Notice declare, provided that a person does not become liable to be registered by virtue of this subparagraph where the Chief Executive Officer is satisfied that the value of all those supplies in the 12 month period beginning on the day after the last day of the period referred to in the said subparagraph will not exceed that amount;
 - ii. at the commencement of any month where there are reasonable grounds for believing that the total value of the supplies (not being exempt supplies) to be made in Fiji in that month and the 11 months immediately following that month will exceed the amount specified in subparagraph (i);
- b) in the case of any other person—
 - i. at the end of any month where the total value of supplies (not being exempt supplies) made in Fiji in that month and the 11 months immediately preceding that month in the course of carrying on all taxable activities has exceeded \$100,000 in gross turnover or such other amount as the Minister may from time to time, by Legal Notice declare, provided that a person does not become liable to be registered by virtue of this subparagraph where the Chief Executive Officer is satisfied that the value of all those supplies in the 12 month period beginning on the day after the last day of the period referred to in the said subparagraph will not exceed that amount;
 - ii. at the commencement of any month where there are reasonable grounds for believing that the total value of the supplies (not being exempt supplies) to be made in Fiji in that month and the 11 months immediately following that month will exceed the amount specified in subparagraph (i).

Legislative History:

Decree 10 of 2012 (s2) – from 1 January 2012 – Section 21(1) was amended by deleting "fifty thousand dollars" and substituting "one hundred thousand dollars" wherever it appears to read as current provision (above)

Decree 6 of 2010 (s3) – from 1 January 2010 – Section 22(1) was amended as:

(a) in subsection (1)(a)(i) by deleting "thirty thousand dollars" after the word "exceeded" and substituting "fifty thousand dollars".

(b) in subsection (1)(b)(i) by deleting "fifteen thousand dollars" after the word "exceeded" and substituting "fifty thousand dollars".

Act 29 of 1995 (s3) – from 1 January 1996 – Section 22(1) was amended as:

(a) in subsection "(1)(a)(i)" by deleting the words "twenty thousand" in the sixth line and substituting the words "thirty thousand";

(b) in subsection "(1)(b)(i)" by deleting the words "ten thousand" in the sixth line and substituting the words "fifteen thousand"

Decree 45 of 1991 – from 1st July 1992 – Section 22(1) read as:

(1) Subject to this Decree, every person (other than a produce supplier) who, on or after the 1st day of July 1992, carries on any taxable activity and is not registered, becomes liable to be registered -

(a) in the case of any person who solely supplies goods -

(i) at the end of any month where the total value of supplies (not being exempt supplies) made in Fiji in that month and the eleven months immediately preceding that month in the course of carrying on all taxable activities has exceeded **twenty thousand** dollars in gross turnover or such other amount as the minister may from time to time, by Legal Notice declare:

Provided that a person does not become liable to be registered by virtue of this paragraph where the Commissioner is satisfied that the value of all those supplies in the twelve-month period beginning on the day after the last day of the period referred to in the said paragraph will not exceed that amount:

(ii) at the commencement of any month where there are reasonable grounds for believing that the total value of the supplies (not being exempt supplies) to be made in Fiji in that month and the eleven months immediately following that month will exceed the amount specified in subparagraph (i) of this paragraph:

(b) in the case of any other person -

(i) at the end of any month where the total value of supplies (not being exempt supplies) made in Fiji in that month and the eleven months immediately preceding that month in the course of

carrying on all taxable activities has exceeded **ten thousand** dollars in gross turnover or such other amount as the Minister may from time to time, by Legal Notice declare:

Provided that a person does not become liable to be registered by virtue of this paragraph where the Commissioner is satisfied that the value of all those supplies in the twelve-month period beginning on the day after the last day of the period referred to in the said paragraph will not exceed that amount:

(ii) at the commencement of any month where there are reasonable grounds for believing that the total value of the supplies (not being exempt supplies) to be made in Fiji in that month and the eleven months immediately following that month will exceed the amount specified in subparagraph (i) of this paragraph.

(2) For the purposes of subsection (1), the total value of a registered person's taxable supplies shall be deemed not to have exceeded any amount specified in or under that subsection where that total value exceeds any such amount solely as a consequence of—

- a) any cessation of or any substantial and permanent reduction in the size or scale of, any taxable activity carried on by that person; or
- b) the replacement of any plant or other capital asset used in any taxable activity carried on by that person.

(3) Every person who, by virtue of subsection (1), becomes liable to be registered shall apply to the Chief Executive Officer on the prescribed registration form, as may be approved by the Chief Executive Officer, within 21 days of becoming so liable.

(4) Notwithstanding subsections (1) and (3), every person who satisfies the Chief Executive Officer that on or after 1 July 1992—

- a) that person is carrying on a taxable activity that involves the making of other than exempt supplies; or
- b) that person intends to carry on any taxable activity, which will involve the making of other than exempt supplies, from a specific date,

may apply to the Chief Executive Officer on the prescribed registration form for registration.

(4A) (Repealed)

Legislative History:

Act 4 of 2017 – from 1st August 2016 – Section 22(4A) inserted and read as-

“(4A) Notwithstanding subsection (1), a person engaged in the supply of residential accommodation which is expected to exceed a gross annual turnover of \$100,000, may, in the prescribed form, make an application to the Chief Executive Officer to be registered in accordance with subsection (1).

Act 15 of 2020 – from 1st August 2020 – Section 22(4A) deleted

(4B) (Repealed)

Legislative History:

Act 4 of 2017 – from 1st August 2016 – Section 22(4B) inserted and read as-

(4B) Upon receipt of an application under subsection (4A), the Chief Executive Officer may approve the application for registration in accordance with subsection (5) where it appears to the Chief Executive Officer that there are reasonable grounds to believe that the total value of the supply of residential accommodation will exceed a gross turnover of \$100,000 within 12 months following the registration

Act 15 of 2020 – from 1st August 2020 – Section 22(4A) deleted

(5) Where any person—

- a) applies to be registered pursuant to this section and the Chief Executive Officer is satisfied that that person is eligible to be registered under this Act, that person shall be a registered person for the purposes of this Act with effect from such date as the Chief Executive Officer may determine; or
- b) has not made an application for registration pursuant to subsection (3) and the Chief Executive Officer is satisfied that that person is liable, to be registered under this Act, that person shall be a registered person for the purposes of this Act with effect from the date on which that person first became liable to be registered under this Act,

provided that the Chief Executive Officer may, having regard to the circumstances of the case, determine that person to be a registered person from such later date as the Chief Executive Officer considers equitable.

Legislative History:

Act 4 of 2017 (s3) – prior to 1st August 2016 – Section 22(5)(a) read as-

*a) applies to be registered pursuant to **subsection (3) or (4)** and the Chief Executive Officer is satisfied that that person is eligible to be registered under this Act, that person shall be a registered person for the purposes of this Act with effect from such date as the Chief Executive Officer may determine*

(6) The provisions of this Act relating to the determination of the value of any supply of goods and services shall apply for the purposes of this section, with the modification that no regard shall be made to any tax charged in respect of any such supply.

(7) An application for registration under this Act purporting to be made by or on behalf of any person shall for all purposes be deemed to have been made by that person or by that person's authority, as the case may be, unless the contrary is proved.

[Section 23] Cancellation of registration

(1) Subject to this Act, every registered person who carries on any taxable activity shall cease to be liable to be registered where at any time, if that person has been registered for the whole of the 12 months then ending, the Chief Executive Officer is satisfied that the value of that person's taxable supplies in the period of 12 months then beginning will not be more than the amounts specified in section 22(1)(a) or (b) for the purposes of that said section, provided that where a registered person is a produce supplier he or she may apply for cancellation of registration at any time after having been registered for a period of 12 months.

Legislative History:

Decree 28 of 1992 (s15) – from 1st July 1992 – the proviso was added:

Provided that where a registered person is a produce supplier he may apply for cancellation of registration at any time after having been registered for a period of twelve months.

(2) Every person who, by virtue of subsection (1), ceases to be liable to be registered may request the Chief Executive Officer in writing to cancel that registration and if the Chief Executive Officer is at any time satisfied, as mentioned in subsection (1), the Chief Executive Officer shall cancel that person's registration with effect from the last day of the taxable period during which the Chief Executive Officer was so satisfied or from such other date as may be determined by the Chief Executive Officer and shall notify that person of the date on which the cancellation of registration takes effect.

(3) Every registered person who ceases to carry on all taxable activities that involve the making of taxable supplies shall notify the Chief Executive Officer of that fact within 7 days of the date of cessation and the Chief Executive Officer shall cancel the registration of any such person with effect from the last day of the taxable period during which all such taxable activities ceased or such other date as may be determined by the Chief Executive Officer, provided that the Chief Executive Officer shall not at any time cancel the registration of any such registered person if there are reasonable grounds for believing that the registered person will carry on any taxable activity that will involve the making of taxable supplies at any time within 12 months from that date of cessation.

(4) Any notification by a registered person pursuant to subsection (3) shall be made in writing to the Chief Executive Officer and shall state the date upon which that person ceased to carry on all such taxable activities and whether or not that person intends to carry on any such taxable activity within 12 months from that date.

(5) Where the Chief Executive Officer is satisfied that a registered person is not carrying on any taxable activities that involve the making of taxable supplies the Chief Executive Officer may cancel that person's registration with effect from the last day of the taxable period during which the Chief Executive Officer was so satisfied or from such other date as may be determined by the Chief Executive Officer and shall notify that person of the date on which the cancellation of registration takes effect.

(6) Any date determined by the Chief Executive Officer for the cancellation of registration under subsection (5) may be retrospective to a date not earlier than—

- a) the last day of the taxable period during which all such taxable activities carried on by that person ceased; or
- b) the date on which the person was registered under this Act, if the Chief Executive Officer is satisfied that the person did not, from that date, carry on any taxable activity involving the making of taxable supplies.

(7) Notwithstanding anything in subsection (1) where a registered person is—

- a) a produce supplier; or
- b) a non-profit body which in the opinion of the Chief Executive Officer is not carrying on a taxable activity in competition with another registered person; or
- c) any other person who has registered in error,

he or she may apply for cancellation of registration at any time.

Legislative History:

Act 16 of 1995 (s7) – from 1 January 1995 – Section 23(7) was amended by deleting the expressions words and figures ", but not later than 30 June, 1993." in subsection "(7)" and substituting a full stop after the word "time".

Act 1 of 1993 (s5) – from 1 January 1993 – Section 23(7) inserted –

(7) Notwithstanding anything in subsection (1) where a registered person is -

(a) a produce supplier; or

(b) a non-profit body which in the opinion of the Commissioner is not carrying on a taxable activity in competition with another registered person; or

(c) any other person who has registered in error,

he may apply for cancellation of registration at any time, but not later than 30 June, 1993

(8) Notwithstanding anything in section 3(4), where a person ceases to be registered under subsection (7), any input tax credit which has not been claimed by the registered person in respect of any goods or services then forming part of the assets of any taxable activity carried on by that registered person shall not be deemed to be in the course of that taxable activity for the purposes of ceasing to be a registered person.

Legislative History:

Act 1 of 1993 (s5) – from 1 January 1993 – Section 23(8) inserted

(9) Notwithstanding section 3(4), where a person ceases to be registered in relation to the supply of residential accommodation, any input tax credit or VAT refund claimed by the person from the date of the person's registration to the date of cancellation of the person's registration, is not recoverable by the Chief Executive Officer

Legislative History:

Act 15 of 2020 – from 1 August 2020 – Section 23(9) deleted and replaced with current provision (above)

Act 4 of 2017 (s4) – from 1 August 2016 – Section 23(9) inserted as:

(9) The Chief Executive Officer may cancel a person's registration under subsection (5) if the Chief Executive Officer is satisfied that the total value of the taxable supply of residential accommodation by the registered person has not exceeded a gross turnover of \$100,000 in the preceding 12 months.

(10) (Repealed)

Legislative History:

Act 15 of 2020 – from 1 August 2020 – Section 23(10) repealed

Act 4 of 2017 (s4) – from 1 August 2016 – Section 23(10) inserted as:

(10) Prior to cancellation under subsection (9), a registered person whose total value of taxable supply of residential accommodation has not exceeded a gross turnover of \$100,000 in the preceding 12 months may write to the Chief Executive Officer requesting for an additional period of up to 24 months to meet the \$100,000 gross turnover threshold.

(11) (Repealed)

Legislative History:

Act 15 of 2020 – from 1 August 2020 – Section 23(11) repealed

Act 4 of 2017 (s4) – from 1 August 2016 – Section 23(11) inserted as:

(11) Upon receipt of a written request made under subsection (10), the Chief Executive Officer may, at his or her discretion, extend the turnover period requirement in subsection (1).

(12) (Repealed)

Legislative History:

Act 15 of 2020 – from 1 August 2020 – Section 23(12) repealed

Act 4 of 2017 (s4) – from 1 August 2016 – Section 23(12) inserted as:

(12) Where a person's registration is cancelled in accordance with subsection (9), any input tax credit or VAT refund which had been claimed by the person for any expense including the construction of the residential accommodation from the date of registration to the date of the cancellation of registration, may be recovered by the Chief Executive Officer and section 3(4) of the Act shall apply.

[Section 24] Registered person to notify of change of status (Repealed)

Legislative History:

Act 15 of 2018 – from 1 August 2018 – Section 24 deleted

Decree 45 of 1991 – from 1 July 1992 – Section 24 read as:

Subject to this Decree, every registered person shall within twenty-one days notify the Commissioner in writing of -

- (a) any changes in the name, address, constitution or nature of the principal taxable activity or activities of that registered person;*
- (b) any change of address for which, or the name in which, any taxable activity is carried on by that registered person;*
- (c) any change whereby that registered person ceases to satisfy the conditions of subsection (3) of Section 32 of this Decree;*
- (d) any change whereby that registered person ceases to satisfy the conditions of subsection (2) of Section 36 of this Decree;*

Provided that this Section shall not apply to the notification of any changes in the ownership of a company.

[Section 25] Liabilities not affected by ceasing to be registered person

The obligations and liabilities under this Act of any person in respect of anything done or omitted to be done, by that person while that person is a registered person shall not be affected by the fact that that person ceases to be a registered person or by the fact that, being a registered person, the Chief Executive Officer cancels that person's registration.

PART 6 SPECIAL CASES

(Sections 26–31B)

[Section 26] Unincorporated bodies

(1) For the purpose of this section—

body means an unincorporated body of persons; and includes—

- a) a partnership;
- b) a joint venture;
- c) the trustees of a trust;

members means a partner, a joint venturer, a trustee or a member of any body; and

partnership has the same meaning as in the Partnership Act 1910.

(2) Where a body that carries on any taxable activity is registered pursuant to this Act—

- a) the members of that body shall not themselves be registered or liable to be registered under this Act in relation to the carrying on of that taxable activity; and
- b) any supply of goods and services made in the course of carrying on that taxable activity shall be deemed for the purposes of this Act to be supplied by that body and shall be deemed not to be made by any member of that body; and
- c) any supply of goods and services to or acquisition of goods and services by, any member of that body acting in the capacity as a member of that body and in the course of carrying on that taxable activity, not being a supply to which paragraph (b) applies, shall be deemed for the purposes of this Act to be supplied to or acquired by that body and shall be deemed not to be supplied to or acquired by that member; and
- d) that registration shall be in the name of the body or where that body is the trustees of a trust, in the name of the trust; and
- e) subject to subsection (3), any change of members of that body shall have no effect for the purposes of this Act.

Legislative History:

Decree 28 of 1992 (s16) – prior to 1 July 1992 – Section 26(2)(c) read as:

*(c) any supply of goods and services to, or acquisition of **goods** by, any member of that body acting in the capacity as a member of that body and in the course of carrying on that taxable activity, not being a supply to which paragraph (b) of this subsection applies, shall be deemed for the purposes of this Decree to be **supplies** to or acquired by that body, and shall be deemed not to be supplied to or acquired by that member; and*

(3) Notwithstanding anything in this section, every member is liable jointly and severally with any other members for all tax payable by the body while that member remains a member of that body, and, where that member is an individual, after that member's death, that member's estate shall be severally liable in due course of administration for such tax payable as far as it remains unpaid, provided that where any such body is a partnership, joint venture or the trustees of a

trust, a member shall not cease to be a member for the purposes of this section until the date on which any change of membership of that body is notified in writing to the Chief Executive Officer.

(4) For the purpose of this Act, any notice served in accordance with this Act which is addressed to a body by the name in which it is registered pursuant to this Act, shall be deemed to be served on that body and on all members of that body.

(5) Subject to subsection (6), where anything is required to be done pursuant to this Act by or on behalf of any body, it shall be the joint and several liability of all the members to do any such thing, provided that any such thing done by one member shall be sufficient compliance with any such requirement.

(6) Notwithstanding anything in this section, but subject to subsection (3), where anything is required to be done pursuant to this Act by or on behalf of any body, not being a partnership, joint venture or trustees of a trust, the affairs of which are managed by its members or a committee or committees of its members, it shall be the joint and several responsibility of—

- a) every member holding office as president, chairperson, treasurer, secretary or any similar office; or
- b) in default of any such member, every member holding office as a member of a committee,

provided that if it is done by any official or committee member, referred to in paragraph (a) or (b), that shall be sufficient compliance with any such requirement.

[Section 27] Branch or division

(1) Where a taxable activity is carried on by any registered person in branches or divisions and any branch or division solely supplies produce, that registered person may apply in writing to the Chief Executive Officer for that branch or division to be treated as a separate person for the purposes of this Act.

Legislative History:

Decree 28 of 1992 (s17) – prior to 1 July 1992 (same effective date) - under Decree 45 of 1991 – Section 27 read as:

(1) Where a taxable activity is carried on by any registered person in branches or divisions and those branches and divisions are a produce supplier, that registered person may apply in writing to the Commissioner for any such branch or division to be treated as a separate person for the purposes of this Decree.

(2) The Chief Executive Officer may, upon application made pursuant to subsection (1) treat any branch or division as a separate person if each branch or division maintains an independent system of accounting, solely supplies produce in a raw and unprocessed state and can be separately identified by reference to being a produce supplier or the location of the branch or division and where any such branch or division is so separately treated, any taxable activity carried on by that branch or division shall, to that extent, be deemed not to be carried on by the registered person first mentioned in subsection (1).

[Section 27A] Branches or divisions containing residential accommodation [Repealed]

Legislative History:

Act 15 of 2020 (s5) – from 1 August 2020 – Section 27A repealed

Act 4 of 2017 (s5) – from 1 August 2016 – Section 27A inserted as:

27A.— (1) Where a registered person carries on a taxable activity in branches or divisions, and a branch or division of that taxable activity is the supply of residential accommodation in which the gross turnover does not exceed \$100,000, that registered person may apply in writing to the Chief Executive Officer for that branch or division to be treated as a separate entity for the purpose of this Act.

(2) The Chief Executive Officer may, upon receiving an application made pursuant to subsection (1), treat that branch or division separately to maintain an independent system of accounting, and any taxable activity carried on by the registered person who is a supplier of residential accommodation, shall not be included as part of other divisions or branches which are below the taxable threshold under section 22.

[Section 28] Personal representative, liquidator, receiver etc

(1) Where a registered person dies or goes into liquidation or receivership or becomes bankrupt or incapacitated, the Chief Executive Officer shall, from the date on which that person died or went into liquidation or receivership or became bankrupt or incapacitated, until such time as some other person is registered in respect of the taxable supplies made or intended to be made by that registered person in the course or furtherance of that person's taxable activity or until such time as the incapacity ceases, as the case may be, deem any person carrying on that taxable activity to be a registered person.

(2) Where a mortgagee is in possession of any land or other property previously mortgaged by the mortgagor, being a registered person, the Chief Executive Officer shall, from the date on which the mortgagee took possession of that land or other property, until such time as the mortgagee ceases to be in possession of that land or other property, deem the mortgagee, in any case where and to the extent that the mortgagee carries on any taxable activity of the mortgagor, to be a registered person.

(3) Any person carrying on such taxable activity as aforesaid shall, within 21 days of commencing to do so, inform the Chief Executive Officer in writing of that fact and of the date of the death or of the liquidation or receivership or bankruptcy or mortgagee taking possession of any land or other property previously mortgaged by the mortgagor or of the nature of the incapacity and the date on which it began.

[Section 29] Liability of agent of non-resident principal for returns and tax

(1) For the purposes of this section, the term “non-resident” means—

- a) any person, not being a company, who is for the time being out of Fiji;
- b) any company, not being a company incorporated in Fiji, unless it has a fixed or permanent establishment in Fiji relating to the carrying on of any taxable activity in Fiji in its own name;

- c) any company, not being a company incorporated in Fiji, which is declared by the Chief Executive Officer to be a non-resident for the purposes of this Act by notice given to that company or to its agent or attorney in Fiji, so long as that declaration remains unrevoked.

Legislative History:

Decree 28 of 1992 (s18) – from 1 July 1992 – Section 29(1)(b) read as:

(b) any company, not being a company incorporated in Fiji, unless it has a fixed or permanent place in Fiji relating to the carrying on of any taxable activity in Fiji in its own name;

(2) Every person who in Fiji carries on any taxable activity for and on behalf of a principal who is a non-resident shall, for the purposes of this Act, be the agent of that principal in respect of that taxable activity so carried on in Fiji by means of that agent and the agent shall make returns and be liable for the tax charged or levied under this Act.

(3) The Chief Executive Officer shall have the power to declare any person a non-resident or an agent of a non-resident for the purposes of this section.

Legislative History:

Act 16 of 1995 (s8) – prior to 1 January 1995 – Section 29(3) read as:

(3) The Commissioner shall have the power to declare any person a non-resident for the purpose of this Section.

[Section 30] Agents and auctioneers

(1) Subject to this section, where an agent makes a supply of goods and services for and on behalf of any other person who is the principal of that agent, that supply shall be deemed to be made by that principal and not by that agent.

(2) Subject to this section, where any registered person makes a taxable supply of goods and services to an agent who is acting on behalf of another person who is the principal for the purposes of that supply, that supply shall be deemed to be made to that principal and not to that agent.

(2A) Where goods or services are supplied through an agent who acts in his or her own name the Chief Executive Officer may, if he or she thinks fit, treat the supply both as a supply to the agent and as a supply by the agent.

Legislative History:

Act 16 of 1995 (s9) – from 1 January 1995 – Section 29(2A) inserted.

(3) For the purposes of subsection (4), the expression “auctioneer” means a registered person carrying on a taxable activity which comprises or includes the supply by auction of goods as an auctioneer or agent for or on behalf of another person (hereafter in this section referred to as a principal).

(4) Notwithstanding anything in the foregoing provisions of this section, where the principal and the auctioneer agree to have a supply by auction of any goods, not being a taxable supply,

treated as if that supply had been made by that auctioneer and not by that principal, that supply shall be charged with tax as if it were made by that auctioneer in the course or furtherance of that auctioneer's taxable activity and that auctioneer may—

- a) recover the amount of tax charged on that supply from that principal as a debt together with the costs of recovery in any court of competent jurisdiction; or
- b) retain or deduct the same out of any money in that auctioneer's hands belonging or payable to that principal.

(5) Notwithstanding anything in subsection (2), where any registered person makes a taxable supply (not being a supply to which section 15(2) applies) of goods and services to an agent, being a registered person, who is acting for or on behalf of another person who is the principal for the purposes of that supply, and—

- a) that principal is not resident in Fiji and is not a registered person; and
- b) that supply is directly in connection with either the exportation or the arranging thereof, of goods from Fiji to any country or place outside Fiji or the importation or the arranging thereof, of goods to Fiji from any country or place outside Fiji, including, in either case, the transportation of those goods within Fiji as part of that exportation or, as the case may be importation,

this Act shall, where that agent and that principal agree, have effect as if that supply were made to that agent and not to that principal.

[Section 31] Liability of new companies for tax payable by former companies with substantially the same shareholders or under the same control

(1) For the purpose of this section—

company means any company incorporated in Fiji;

new company means a company carrying on a taxable, activity in Fiji and consisting substantially of the same shareholders as an original company or being under the control of the same persons as an original company;

nominee, in relation to any person means any other person who may be required to exercise his or her voting power in relation to any company in accordance with the direction of that person or who hold shares or debentures directly or indirectly on behalf of that person; and includes any relative of that person;

<i>Legislative History: Decree 28 of 1992 (s19) – from 1 July 1992 – definition of “nominee” inserted</i>

original company means a company which having at any time carried on a taxable activity in Fiji, after the commencement of this Act, has ceased to carry on a taxable activity in Fiji and includes any such company that has been wound up; and

person includes a company and a local or public authority.

Legislative History:

Decree 28 of 1992 (s19) – from 1 July 1992 – definition of “person” inserted

(2) Where an original company has been wound up, its shareholders and directors, as on the commencement of its winding up, shall respectively be deemed to be the shareholders and the persons having the control of the company for the purpose of this section.

(3) Where an original company was, when it ceased to carry on a taxable activity in Fiji, liable under this Act for any tax or was liable to be assessed for any such tax and that tax has not been paid, the new company shall, for the purpose of this Act, be deemed to be the agent of the original company and shall be liable for all tax payable by the original company.

(4)

a) For the purpose of this section a company shall be deemed to be under the control of the persons—

- i. by whom more than 50% of the shares or more than 50% of the nominal capital or more than 50% of the paid up capital or more than 50% of the voting power is held; or
- ii. who have by any other means whatsoever control of the company; or
- iii. who, by reason of the shareholding at the end of any income year, would be entitled to more than 50% of the profits for that year if those profits were distributed by way of dividend at the end of that year.

b) Where a nominee of any person holds any shares, nominal capital, paid-up capital or voting power in a company or has by any other means whatsoever any power of control in a company or is entitled to a share of profits distributed by a company, then for the purposes of this section those shares or that capital or that voting power or that power of control or that title to profits, as the case may be, shall be deemed to be held by that person and in every such case that person and his or her nominee or that person and all his or her nominees shall be deemed to be one person.

c) For the purposes of this section, 2 companies shall be deemed to consist substantially of the same shareholders if not less than 50% of the paid-up capital of each of them is held by shareholders in the other or if not less than 50% in nominal value of the allotted shares in each of them is held by shareholders in the other. Shares in one company held by another company shall for this purpose be deemed to be held by the shareholders in the last mentioned company.

Legislative History:

Decree 28 of 1992 (s19) – from 1 July 1992 – Section 31(4) inserted

[Section 31A] Liability for VAT payable by companies left with insufficient funds

(1) This section applies where—

- a) any arrangement has been entered into in relation to a company;
- b) an effect of that arrangement is that the company is unable to satisfy under this Act a liability for VAT of the company, whether the VAT liability exists at the time of entry into the arrangement or arises subsequently; and
- c) it can reasonably be concluded that—
 - i. a director of the company at the time of entry into the arrangement who had made all reasonable inquiries into the affairs of the company would have anticipated at that time that the VAT liability would be, or would likely to be, required to be satisfied by the company under this Act; and
 - ii. a purpose of the arrangement was to have the effect specified in paragraph (b).

(2) Where an arrangement to which this section applies has been entered into, all persons who were directors of the company at the time the arrangement was entered into are, subject to subsection (4), jointly and severally liable for the VAT liability, as agent of the company.

(3) Where an arrangement to which this section applies has been entered into any person who was a controlling shareholder at the time the arrangement was entered into, being a person controlling the company in any way whatsoever, is liable as agent of the company for its unsatisfied VAT liability.

(4) A director is not liable under this section for any VAT liability of the company where the Chief Executive Officer is satisfied that the director derived no benefit from the arrangement and either—

- a) the director has, at the first reasonable opportunity after becoming aware of the arrangement, or of those aspects of the arrangement that render it subject to this section—
 - i. formally recorded with the company the director's dissent in relation to the arrangement; and
 - ii. notified the Chief Executive Officer in writing of the arrangement and of director's dissent from that arrangement; or
- b) the director satisfies the Chief Executive Officer that—
 - i. the director was not at the material time or times involved in the executive management of the company; and
 - ii. the director had no knowledge of the arrangement, or of those aspects of the arrangement that render it subject to the application of this section.

Legislative History:

Promulgation 46 of 2007 (s4) – from 1 January 2008 – Section 31A inserted

[Section 31AA] Liability of directors of private companies

A director of a private company is answerable for anything done by that company under this Act and in case of default of the company, is liable to the same penalties and to account for the VAT debts of that company, provided that a director is not liable under this section for any tax liability of the company where the Chief Executive Officer is satisfied that the director was not at the material time or times involved in the executive management of the company.

Legislative History:

Promulgation 31 of 2008 (s3) – from 1 January 2009 – Section 31AA inserted

[Section 31B] Directors of a company may be personally sued

Where a company that becomes insolvent or liquidated owes VAT and all associated penalties, each person who is a director of the company is liable to pay to the Chief Executive Officer such VAT owed and all the associated penalties.

Legislative History:

Promulgation 46 of 2007 (s4) – from 1 January 2008 – Section 31B inserted

PART 7 RETURNS AND PAYMENT OF TAX

(Sections 32–43)

[Section 32] Taxable periods

(1) Each registered person shall be placed by the Chief Executive Officer in one of the following categories for the purposes of determining that person's taxable periods for the purposes of this Act—

- a) Category A, with taxable periods of one month ending on the last day of each month in each year;
- b) Category B, with taxable periods of 3 months ending on the last day of any month in any year, as may be determined by the Chief Executive Officer;
- c) Category C, with taxable period of 12 months ending on the last day of any month in any year, for produce suppliers primarily engaged in the supply of sugarcane as may be determined by the Chief Executive Officer;
- d) Category D, with taxable periods of 12 months ending on the last day of any month in any year, for small and medium enterprises with an annual gross turnover of \$300,000 and below.

Legislative History:

Decree 44 of 2012 (s4) – from 1 January 2012 – Section 32(1)(d) inserted

Decree 10 of 2012 (s3) – prior to 1 January 2012- Section 32(1)(b) read as:

(b) Category B, with taxable periods of three months ending on the last day of any month in any year, as may be determined by the Commissioner.

Act 1 of 1993 (s6) – from 1 January 1993 – Section 32(1)(c) inserted

(2) Every registered person who is not placed in Category B or C or D pursuant to subsection (3), shall be placed by the Chief Executive Officer in Category A.

Legislative History:

Decree 44 of 2012 (s4) – from 1 January 2012 – Section 32(2) was amended by adding “or D” after C

Act 1 of 1993 (s6) – from to 1 January 1993 – Section 32(2) was amended to read as:

(2) Every registered person who is not placed in Category B or C pursuant to subsection (3) of this Section, shall be placed by the Commissioner in Category A.

Decree 45 of 1991 from 1st July 1992 – Section 32(2) read as:

(2) Every registered person who is not placed in Category B pursuant to subsection (3) of this Section, shall be placed by the Commissioner in Category A.

(3) The Chief Executive Officer may, on written application by a registered person, place that person in Category B or C or D if the total value of that person's taxable supplies—

- a) has not, in the 12 months ending with the last day of any month, exceeded \$300,000 or such other amount as the Minister may from time to time, by Legal Notice declare; or

- b) is not likely to exceed that amount in the period of 12 months beginning on the first day of any month.

[subs (3) am Act 28 of 1992 s 6, effective 1 July 1992; Decree 10 of 2012 s 3, effective 1 January 2012; Decree 44 of 2012 s 4, effective 1 January 2012]

Legislative History:

Decree 44 of 2012 (s4) – from 1 January 2012- Section 32(3) amended to read as current provision (above)

Decree 10 of 2012 (s3) – from 1 January 2012 –Section 32(3)(a) amended by deleting "one hundred thousand dollars" and substituting "three hundred thousand dollars"

Act 1 of 1993 (s6) – from to 1 January 1993 – Section 32(3) was amended to read as:

(3) The Commissioner may, on written application by a registered person, place that person in Category B or C if the total value of that person's taxable supplies –

Decree 45 of 1991 from 1st July 1992 – Section 32(3) read as:

(3) The Commissioner may, on written application by a registered person, place that person in Category B if the total value of that person's taxable supplies –

(a) has not, in the twelve months ending with the last day of any month, exceeded one hundred thousand dollars or such other amount as the Minister may, from time to time, by Legal Notice declare; or

(b) is not likely to exceed that amount in the period of twelve months beginning on the first day of any month.

(4) For the purposes of subsection (3), the total value of a registered person's taxable supplies shall be deemed not to have exceeded any amount specified in or under that subsection where that total value exceeds any such amount solely as a consequence of—

- a) any cessation of or any substantial and permanent reduction in the size or scale of, any taxable activity carried on by that registered person; or
- b) the replacement of any plant or other capital asset used in any taxable activity carried on by that registered person.

(5) The Chief Executive Officer may from time to time direct that a registered person change from category A to category B or C or D or, as the case may be, category B or C or D to category A—

- a) on written application by the registered person; or
- b) following the notification by the registered person under section 24(c) of a change in status; or
- c) where the Chief Executive Officer is otherwise satisfied that the registered person has ceased to satisfy the conditions of subsection (3),

provided that a registered person may only make a written application to the Chief Executive Officer to change the category that determines the registered person's taxable periods after the expiry of 12 months from the date on which the last written application was made.

Legislative History:

Decree 44 of 2012 (s4) – from 1 January 2012 – Section 32(5) was amended to read as current provision

Act 1 of 1993 (s6) – from to 1 January 1993 – Section 32(5) was amended to read as:

(5) The Commissioner may from time to time direct that a registered person change from category A to category B or C or, as the case may be, category B or C to category A –

Decree 45 of 1991 from 1st July 1992 – Section 32(5) read as:

(5) The Commissioner may from time to time direct that a registered person change from category A to category B or, as the case may be, category B to category A –

(a) on written application by the registered person; or

(b) following the notification by the registered person under paragraph (c) of Section 24 of this Decree of a change in status; or

(c) Where the Commissioner is otherwise satisfied that the registered person has ceased to satisfy the conditions of subsection (3) of this Section: Provided that a registered person may only make a written application to the Commissioner to change the category that determines the registered person's taxable periods after the expiry of twelve months from the date on which the last written application was made.

(6) Where the Chief Executive Officer directs that a registered person change from one category to the other, the person shall be deemed to have been placed in the new category with effect from the day following the end of the taxable period during which the direction was made by the Chief Executive Officer.

(7) Notwithstanding anything in this section, the Chief Executive Officer may, upon written application by a registered person, determine a day in substitution for the last day referred to in subsection (1)(a), (b) and (c), not being a day more than 7 days earlier or 7 days later than that last day, but any such determination shall be disregarded for the purposes of section 33(1).

Legislative History:

Act 1 of 1993 (s6) – from to 1 January 1993 – Section 32(7) was amended to read as current provision (above)

Decree 45 of 1991 – from 1 July 1992: Section 32(7) read as:

(7) Notwithstanding anything in this Section, the Commissioner may, upon written application by a registered person, determine a day in substitution for the last day referred to in paragraphs (a) and (b) of subsection (1) of this Section, not being a day more than seven days earlier or seven days later than that last day, but any such determination shall be disregarded for the purposes of subsection (1) of Section 33 of this Decree.

[Section 33] Returns

(1) Every registered person shall, on or before the last day of the month following the last day of every taxable period, without notice or demand furnish to the Chief Executive Officer a tax return with the accompanying Input tax schedule, in such prescribed form as may be approved by the Chief Executive Officer.

Legislative History:

Promulgation 31 of 2008 (s4) - from 1 January 2009 – Section 33(1) was amended by inserting the words "with the accompanying Input tax schedule" after the word "return"

Decree 45 of 1991 – from 1 July 1992 – Section 33(1) read as:

(1) Every registered person shall, on or before the last day of the month following the last day of every taxable period, without notice or demand furnish to the Commissioner a tax return, in such prescribed form as may be approved by the Commissioner.

(1A) Every registered person in the Western Division from Sigatoka to Ba, including those areas that were declared as Natural Disaster areas under the Natural Disaster Management Act 1998 or such other areas that the Chief Executive Officer deems to be affected by the flood during the months of March to May in 2012 shall on 31 July, 2012, without notice or demand furnish to the Chief Executive Officer a tax return for the months of March to May in 2012 for every taxable

period, in the prescribed form with the accompanying input tax schedule except where the taxpayer is on self-assessment, the input tax schedule shall not be required.

Legislative History:

Decree 37 of 2012 (s3) – from 15 March 2012 – Section 33(1A) inserted

(2) Any registered person who ceases to be registered shall, not later than one month after so ceasing, furnish to the Chief Executive Officer a final tax return, in such form as may be approved by the Chief Executive Officer, in respect of that part of the last taxable period during which that registered person was registered.

[Section 34] Special returns

Where goods are deemed to be supplied by a person pursuant to section 3(3), the person selling the goods, whether or not that person is a registered person, shall, on or before the last day of the month following the month within which the sale was made—

- a) furnish to the Chief Executive Officer in the prescribed form a return showing—
 - i. that person's name and address and, if registered, taxpayer identification number;
 - ii. the name, address and taxpayer identification number of the person whose goods were sold;
 - iii. the date of the sale;
 - iv. the description and quantity of the goods sold;
 - v. the amount for which they were sold and the amount of tax charged on that supply; and
 - vi. such other particulars as may be prescribed;
- b) pay to the Chief Executive Officer the amount of tax charged on that supply; and
- c) send to the person whose goods were sold a copy of the return referred to in paragraph (a),

and the person selling the goods and the person whose goods were sold shall exclude from any return, other than a return required pursuant to this section, which either or both may be required to furnish under this Act, the tax charged on that supply of goods.

[Section 35] Other returns

In addition to the returns specified in sections 33 and 34 Act, the Chief Executive Officer may require any person, whether a registered person or not, to furnish (whether on that person's own behalf or as an agent or trustee) to the Chief Executive Officer such further or other returns in the prescribed form as and when the Chief Executive Officer requires for the purpose of this Act.

[Section 36] Accounting basis

(1) Subject to this section, every registered person shall account for tax payable on an invoice basis for the purposes of section 39.

(2) The Chief Executive Officer may, on application in writing by a registered person, direct that the registered person account for the tax payable on a payments basis for the purposes of section 39 if—

- a) that registered person is a public authority, local authority or a non-profit body; or
- b) in respect of that registered person—
 - i. at the end of any month, the total value of the person's taxable supplies in the period of 12 months then ending has not exceeded \$100,000 or such other amount as the Minister may from time to time, by Legal Notice declare; or
 - ii. in the 12 months beginning on the first day of any month, the total value of that person's taxable supplies is not likely to exceed the amount specified in subparagraph (i).

(3) Where the Chief Executive Officer has, pursuant to subsection (2), directed that a registered person account for tax payable on a payments basis, and—

- a) that registered person has ceased to satisfy the conditions of subsection (2) under which any such direction may be given, and—
 - i. that registered person has notified the Chief Executive Officer under section 24(d) of a change in status; or
 - ii. the Chief Executive Officer is otherwise satisfied that the registered person has ceased to satisfy the conditions of subsection (2); or
- b) that registered person has made an application in writing to the Chief Executive Officer to account for tax payable on an invoice basis,

the Chief Executive Officer shall direct that that registered person account for the tax payable on an invoice basis.

(4) Where the Chief Executive Officer gives a direction in respect of a registered person's accounting basis under subsection (2) or (3), the registered person shall account for the tax payable on the accounting basis directed by the Chief Executive Officer with effect from—

- a) the commencement of the taxable period immediately following the taxable period during which the direction is given by the Chief Executive Officer, in any case to which paragraph (b) does not apply; or
- b) the person's registration under this Act, where the direction is given by the Chief Executive Officer before the end of the first taxable period of the person that follows that registration.

(5) For the purposes of subsection (3), the total value of a registered person's taxable supplies shall be deemed not to have exceeded any amount specified in or under subsection (2) where the total value exceeds any such amount solely as a consequence of—

- a) any cessation of or any substantial and permanent reduction in the size or scale of, any taxable activity carried on by that registered person; or
- b) the replacement of any plant or other capital asset used in any taxable activity carried on by that registered person.

[Section 37] Particulars to be furnished and prepared where change in accounting basis

- (1) Where the Chief Executive Officer directs a change in a registered person's accounting basis under section 36, the registered person shall furnish to the Chief Executive Officer particulars in the prescribed form calculating the tax payable in respect of the change in the basis of accounting.
- (2) The particulars required to be furnished under subsection (1) shall be furnished to the Chief Executive Officer not later than the last day for furnishing a return pursuant to section 33(1) for the taxable period preceding that in which the direction of the Chief Executive Officer takes effect.
- (3) Where the Chief Executive Officer directs a change in a registered person's accounting basis under section 36, the registered person shall prepare—
 - a) a list of creditors of the registered person in relation to that person's taxable activity, showing the amounts due by that person as at the last day of the taxable period preceding that in which the direction takes effect; and
 - b) a list of debtors of the registered person in relation to that person's taxable activity, showing the amount due to that person as at the last day of the taxable activity in which the direction takes effect.

[Section 38] Tax payable or refund, where change in accounting basis

- (1) Every registered person whose accounting basis is changed pursuant to section 36 shall, not later than the last day allowed under section 37(2) for furnishing particulars in respect of the change, pay to the Chief Executive Officer the tax payable (if any) as determined pursuant to this section.
- (2) Where a registered person changes from an invoice basis to a payments basis of accounting, the tax payable under subsection (1) shall be an amount determined in accordance with the following formula—

$$(a - b) - (c - d)$$

where—

- a** is an amount equal to the aggregate amount of the input tax deducted pursuant to section 39 in relation to any taxable period up to and including the taxable period preceding that in which the direction changing the person's accounting basis takes effect; and
- b** is an amount equal to the aggregate amount of input tax that would have been deducted pursuant to section 39 if the person had, for those taxable periods been accounting for tax payable on a payments basis; and
- c** is an amount equal to the aggregate amount of the output tax accounted for pursuant to section 39 in those taxable periods; and
- d** is an amount equal to the aggregate amount of output tax that would have been accounted for pursuant to section 39 if the person had, for those taxable periods, been accounting for tax payable on a payments basis.

(3) Where a registered person changes from a payments basis to an invoice basis of accounting, the tax payable under subsection (1) shall be an amount determined in accordance with the following formula—

$$(a - b) - (c - d)$$

where—

- a** is an amount equal to the aggregate amount of output tax that would have been accounted for pursuant to section 39 if the person had, in relation to any taxable period up to and including the taxable period preceding that in which the direction changing the person's accounting basis takes effect, been accounting for tax payable on an invoice basis;
- b** is an amount equal to the aggregate amount of the output tax accounted for pursuant to section 39 in those taxable periods; and
- c** is an amount equal to the aggregate amount of input tax that would have been deducted pursuant to section 39 if the person had, for those taxable periods been accounting for tax payable on an invoice basis; and
- d** is an amount equal to the aggregate amount of the input tax accounted for pursuant to section 39 of this Decree in those taxable periods.

(4) Subject to this Act, if, in relation to any particulars required to be furnished by section 37, the amount determined in accordance with subsection (2) or (3) is a negative amount, the amount of the negative amount shall be refunded to the registered person by the Chief Executive Officer pursuant to section 65.

(5) For the purposes of this Act, any previous adjustment made to input tax or output tax, as the case may be, when a registered person changed—

- a) from an invoice basis to a payments basis; or
- b) from a payments basis to an invoice basis shall be deemed to have been deducted or accounted for, as the case may be, pursuant to section 39.

[Section 39] Calculation of tax payable

(1) In respect of each taxable period every registered person shall calculate the amount of tax payable by that registered person in accordance with the provisions of this section.

(2) Subject to this section, in calculating the amount of tax payable in respect of each taxable period, there shall be deducted from the amount of output tax of a registered person attributable to the taxable period—

- a) where all the supplies made or to be made by the registered person are or will be taxable supplies, the total amount of the input tax;
- b) where some, but not all, the supplies made or to be made by the registered person are or will be taxable supplies—
 - i. all the input tax for the taxable period that is in respect of goods and services supplied to or imported by that registered person wholly for the purposes of making, whether or not during that taxable period, taxable supplies;
 - ii. none of the input tax for the taxable period that is in respect of goods and services supplied to or imported by that registered person wholly for the purposes of making, whether or not during that taxable period, supplies which are not taxable supplies;
 - iii. such proportion of the input tax for the taxable period that is not in respect of supplies referred to in subparagraphs (i) and (ii) as the value of the registered person's taxable supplies during that taxable period or, such longer period that the Chief Executive Officer considers equitable, represents as a proportion of the registered person's total supplies during that taxable period or, such longer period as allowed by the Chief Executive Officer,

provided that the Chief Executive Officer may at his or her discretion, allow or require a registered person, to adopt any other suitable basis to determine the proportion of input tax to be deducted;
- c) where a credit note or, as the case may be, a debit note has been issued in that taxable period pursuant to section 42(2) and that registered person is—
 - i. the supplier, in relation to a credit note, the amount of the tax credit;
 - ii. the recipient, in relation to a debit note, the amount of the tax debit, provided that this subparagraph shall only apply to the extent that the recipient was entitled to

an input tax deduction in respect of the original supply to which the debit note refers;

d) any amount calculated in accordance with section 43.

Legislative History:

Act 16 of 1995(s10) – from 1 January 1995 – Section 39(2)(b) was amended by inserting in the first line of the proviso the words "or require" immediately after the word "allow." to read as current provision

Decree 28 of 1992 – from 1 July 1992 – Section 39(2)(b) was amended by adding the proviso:

"Provided that the Commissioner may at his discretion, allow a registered person, to adopt any other suitable basis to determine the proportion of input tax to be deducted."

(3) For the purposes of subsection (2), the amount of output tax in relation to a supply made by a registered person attributable to a taxable period is—

- a) the total of tax charged on all taxable supplies made or deemed to be made during that taxable period; and
- b) where a credit note or, as the case may be, a debit note has been issued in that period pursuant to section 42(2) and that registered person is—
 - i. the supplier, in relation to a debit note, the amount of the tax debit:
 - ii. the recipient, in relation to a credit note, the amount of the tax credit, provided that this subparagraph shall only apply to the extent that the recipient has claimed an input tax deduction in respect of the original supply to which that credit note relates.

(4) Notwithstanding anything in subsections (2) and (3), where a registered person is required to account for tax payable on a payments basis pursuant to section 36 the amount of input tax or, as the case may be, output tax attributable to the taxable period shall be—

- a) in respect of a supply of goods and services which is deemed to take place pursuant to section 18(1) or (2)(c), (d), (e) or (f);
- b) in respect of a credit note or a debit note to which subsection (2)(d) or, as the case may be, subsection (3)(b) applies,

the amount of any payment made or, as the case may be, received in respect of that supply or, as the case may be, in respect of that credit or debit note during that taxable period, provided that this subsection shall not apply in respect of any supply of goods and services—

- c) in terms of a hire purchase agreement (being a conditional sale agreement whereby the property in the goods will pass to the bailee);
- d) in terms of a financial lease (being an agreement to lease whereby the lessee is expressly required or has the option to purchase the goods subject to the lease at a guaranteed residual value or nil); or
- e) between persons who are not independent of each other.

Legislative History:

Decree 28 of 1992 – from 1 July 1992 – Section 39(4) was amended by adding open and close brackets to the figures "2" and "3" respectively in the first line to subsection (4), and by adding the words "of this Decree" after the figures "36" in the fourth line to subsection (4)

(5) Notwithstanding anything in this Act, no deduction of input tax shall be made in respect of a supply, unless—

- a) a tax invoice or credit note or debit note, in relation to that supply, has been issued in accordance with sections 41 and 42 and is held and retained in accordance with section 79 by the registered person making that deduction at the time that any return in respect of that supply is furnished; or
- b) a tax invoice is not required to be issued pursuant to any regulation made under this Act.

Legislative History:

Decree 28 of 1992 – from 1 July 1992 – Section 39(5) was amended by deleting the word "No" in the first line of subsection (5) and substituting the following word - "Notwithstanding anything in this Decree, no".

(6) Where a registered person is entitled, pursuant to the provisions of this section, to deduct input tax in respect of any taxable period from the amount of output tax attributable to that taxable period, the registered person may deduct that amount from the amount attributable to any later taxable period to the extent that it has not previously been deducted from the output tax of that registered person, provided that no input claim shall be allowed under this subsection after the expiration of the period of 3 years after the end of the taxable period.

Legislative History:

Promulgation 31 of 2008 (s5) – from 1 January 2009 – the provision was added:

"Provided that no input claim shall be allowed under this subsection after the expiration of the period three years after the end of the taxable period."

(7) For the purposes of subsection (2)(b), where, in relation to a taxable period, the value of supplies made by a registered person that are not taxable supplies is not more than—

- a) 5% of the value of all supplies made by that person during that taxable period; or
- b) the amount of \$4,000,

whichever is the lesser, any input tax, other than input tax to which subsection (2)(b)(ii) applies, shall be deemed to have been incurred wholly for the purposes of making taxable supplies.

(8) If, in relation to any taxable period and any registered person, the total amount that may be deducted under subsection (2) and section 86 exceeds that aggregate amount of output tax of that registered person attributable to that taxable period, the amount of excess may, subject to this Act, be refunded to that registered person by the Chief Executive Officer pursuant to section 65.

(9) Notwithstanding anything in this section, a registered person who makes a payment to which subsection (8) or section 3(8A) applies shall not be allowed a deduction for the value added tax payable under those subsections.

Legislative History:

Decree 11 of 2012(s4) – from 1 January 2012 – Section 39(9) was deleted and inserted to read as current provision.

Decree 42 of 2010 – from 1st August 2010 – Section 39(9) inserted as:

(9) No deduction shall be allowed for any VAT charged -

(a) on any payment made during the taxable period by a registered person, to indemnify another person pursuant to any contract of insurance, which shall apply only where the supply of that contract of insurance is a taxable supply; or

(b) where the supply of that contract of insurance would have been a taxable supply if the time of performance of that supply is on or after the 1st of August, 2010.

(10) Notwithstanding anything in this section, a registered person under section 22(5) who makes payment for any expenses shall be allowed a deduction from the date of registration.

Legislative History:

Act 4 of 2017 – from 1st August 2016 – Section 39(10) inserted

[Section 40] Payment of tax

(1) Every registered person, for each taxable period, shall not later than the last day allowed under this Act for furnishing a return for that taxable period, pay to the Chief Executive Officer the tax payable for that period as calculated pursuant to section 39.

(2) Notwithstanding subsection (1), where a later due date has been fixed pursuant to section 44, the tax payable shall be paid to the Chief Executive Officer on or before that later due date.

(3) Subject to Parts 8 and 9, the amount set forth as tax payable on any tax return furnished by a registered person shall be conclusively deemed and taken to be correct for the purposes of this Act.

(4) A return purporting to be made by or on behalf of any person shall for all purposes be deemed to have been made by that person or by that person's authority, as the case may be, unless the contrary is proved.

(5) For the purposes of section 33(1A), every registered person in the Western Division from Sigatoka to Ba, including those areas that were declared as Natural Disaster areas under the Natural Disaster Management Act 1998 or such other areas that the Chief Executive Officer deems to be affected by the flood during the months of March to May in 2012 shall pay to the Chief Executive Officer, not later than 31 July 2012, the tax payable for the months of March to May in 2012 calculated pursuant to section 39.

Legislative History:

Decree 37 of 2012 (s4) – from 15th March 2012 – Section 40(5) inserted

[Section 41] Tax invoices

Except as otherwise provided by regulation, a supplier, being a registered person, making a taxable supply to a recipient, shall issue a tax invoice containing such particulars as specified by regulation at the time that the supply takes place, provided that—

- a) it shall not be lawful to issue more than one tax invoice for each taxable supply;
- b) if a registered person claims to have lost the original tax invoice, the supplier or the recipient, as the case may be, may provide a copy clearly marked “copy only”.

[Section 42] Credit and debit notes

(1) This section shall apply where a registered person has issued a tax invoice in respect of a taxable supply and—

- a) that supply has been cancelled; or
- b) the previously agreed consideration for the supply has been altered whether due to an offer of discount (not being a discount for prompt payment which is clearly stated on the face of the tax invoice) or otherwise; or
- c) the goods and services or part of the goods and services supplied have been returned to the supplier.

(2) Where this section applies, the supplier shall issue to the recipient a credit note or, as the case may be, a debit note containing such particulars as specified by regulation, to adjust the amount shown on the tax invoice as being in respect of tax to the amount, if any, that would have been so shown if—

- a) the cancellation or alteration referred to in subsection (1)(a) or (b) had taken place before the tax invoice was issued;
- b) the goods and services returned had not been supplied,

provided that—

- a) it shall not be lawful to issue more than one credit note or debit note for the amount of the difference;
- b) if any registered person claims to have lost the original credit note or debit note, the supplier or the recipient, as the case may be, may provide a copy clearly marked “copy only”.

Legislative History:

Decree 28 of 1992 (s22) – from 1 July 1992 – Section 42(2) was amended by deleting all the words after “one” and substituting the words “credit note or debit note for the amount of the difference.”

[Section 43] Bad debts

(1) Where—

- a) a registered person has made a taxable supply for consideration in money; and
- b) that registered person has furnished a return in relation to the taxable period during which the supply was made and has properly accounted for tax on that supply as required under this Act; and
- c) the registered person has written off as a bad debt the whole or part of the consideration not paid to him or her; and
- d) the registered person has taken all reasonable steps to recover the bad debt; and
- e) the registered person satisfies the Chief Executive Officer that there is no reasonable or probable expectation that the bad debt will ever be recovered,

then the Chief Executive Officer may allow the registered person to make a deduction under section 39(2) of that portion of the amount of tax chargeable in relation to that supply as the amount written off as a bad debt bears to the total consideration for the supply, provided that where goods and services are supplied under—

- i. a hire purchase agreement (being a conditional sale agreement whereby the property in the goods will pass to the bailee); or
- ii. a financial lease (being an agreement to lease whereby the lessee is expressly required or has the option to purchase the goods subject to the lease at a guaranteed residual value or nil),

the registered person shall only make a deduction under this Act of the tax fraction of that portion of the amount written off as a bad debt as the cash price bears to the total amount payable under the hire purchase agreement or, as the case may be, the financial lease.

(2) Where any amount in respect of which a deduction has been made in accordance with subsection (1) is at any time wholly or partly recovered by the registered person, that portion of the amount of the deduction allowable under subsection (1) as the amount of the bad debt recovered bears to the bad debt written off shall be deemed to be the tax charged in relation to a taxable supply made during the taxable period in which the bad debt is wholly or partly recovered.

PART 8 ASSESSMENT OF TAX

(Sections 44–48)

[Section 44] Assessment of tax

(1) Where—

- a) [Repealed]
- b) [Repealed]
- c) [Repealed]
- d) the Chief Executive Officer has reason to believe that any person, although that person is not required to make a return, is liable to pay tax; or
- e) any person, not being a registered person, supplies goods and services and represents that tax is chargeable on that supply,

the Chief Executive Officer shall make an assessment of the amount which, in his or her opinion, is the tax payable pursuant to this Act and that registered person shall be liable to pay the tax so assessed.

Legislative History:

Decree 50 of 2009 – from 1 January 2010 (s117 and Schedule 4) – Section 44(1) (a), (b) and (c) has been repealed

Decree 45 of 1991 – from 1 July 1992 – Section 44(1) read as:

(1) Where -

- (a) a registered person liable to pay tax fails to furnish any return; or
 - (b) a registered person is not satisfied with any return furnished by him in respect of any tax paid and within twelve months of furnishing the return, request the Commissioner in writing to make any alteration or addition to that return, or
 - (c) the Commissioner is not satisfied with the return made by any registered person; or
 - (d) the Commissioner has reason to believe that any person, although that person is not required to make a return, is liable to pay tax; or
 - (e) any person, not being a registered person, supplies goods and services and represents that tax is chargeable on that supply, -
- the Commissioner shall make an assessment of the amount which in his opinion, is the tax payable pursuant to this Decree and that registered person shall be liable to pay the tax so assessed.

(2) For the purpose of ensuring that a person does not pay tax more than once in relation to a taxable supply, a registered person shall—

- a) only charge and pay the CEO the tax that is payable for the taxable supply provided by the registered person; and
- b) not charge tax for a taxable supply where tax has been charged by another registered person with respect to that taxable supply.

Legislative History:

Act 33 of 2017 (s2), from 1 August 2017 – current Section 44(2) inserted

Decree 50 of 2009 – from 1 January 2010 (s117 and Schedule 4) – Section 44(2) has been repealed

Decree 45 of 1991 – from 1 July 1992 – Section 44(1) read as:

(2) Subject to Section 48 of this Decree, the Commissioner may from time to time and at any time make all such alterations in or addition to an assessment made under this Section as he thinks necessary to ensure the correctness thereof, notwithstanding that tax or further tax may have been paid.

(3) The Chief Executive Officer shall cause notice of the assessment to be sent to the person liable to pay the tax.

Legislative History:

Decree 50 of 2009 – from 1 January 2010 (s117 and Schedule 4) – Section 44(3) has been amended by deleting the words “or amended assessment” after the word “assessment”; by deleting the word “registered” before the word “person”; and by deleting the words “or further tax” after the word “tax”

Decree 45 of 1991 – from 1 July 1992 – Section 44(3) read as:

(3) The Commissioner shall cause notice of the assessment or amended assessment to be sent to the registered person liable to pay the tax or further tax.

(4) (Repealed)

Legislative History:

Decree 50 of 2009 – from 1 January 2010 (s117 and Schedule 4) – Section 44(4) has been repealed

Decree 45 of 1991 – from 1 July 1992 – Section 44(4) read as:

(4) In any case where an assessment is not made until after the due date of the tax payable or is increased after the due date, and the Commissioner is satisfied that the registered person has not been guilty of wilful neglect or default in making due and complete returns for the purposes of that tax, the Commissioner shall fix a new date, being one month after the date of the assessment, for the payment of the tax payable or of the increase in the tax payable, as the case may be, and the date so fixed shall be deemed to be the due date of the tax or increase for the purposes of this decree.

(5) (Repealed)

Legislative History:

Decree 50 of 2009 – from 1 January 2010 (s117 and Schedule 4) – Section 44(5) has been repealed

Decree 45 of 1991 – from 1 July 1992 – Section 44(5) read as:

(5) The omission to send any such notice under subsection (3) of this Section shall not invalidate the assessment or in any manner affect the operation thereof.

(6) For the purposes of this section the Chief Executive Officer may, in the assessment of one taxable period, raise or include assessment of any other taxable period.

Legislative History:

Decree 50 of 2009 – from 1 January 2010 (s117 and Schedule 4) – Section 44(6) has been amended by deleting the words “sections 44, 45, 46 or any other section relating to assessment of tax” and substituting “this section”.

Act 3 of 2004 – from 1 January 2004 – Section 44(6) inserted as:

(6) For the purposes of section 44, 45, 46 or any other section relating to assessment of tax, the Commissioner may, in the assessment of one taxable period, raise or include assessment of any other taxable period.

[Section 45] Validity of the assessment (Repealed)

Legislative History:

Decree 50 of 2009 – from 1 January 2010 (s117 and Schedule 4) – Section 45 has been repealed

Decree 45 of 1991 – from 1 July 1992 – Section 45 read as:

The validity of an assessment shall not be affected by reason that any of the provisions of this Decree have not been complied with.

[Section 46] Assessment deemed correct except in proceedings on objection (Repealed)

Legislative History:

Decree 50 of 2009 – from 1 January 2010 (s117 and Schedule 4) – Section 46 has been repealed

Decree 45 of 1991 – from 1 July 1992 – Section 46 read as:

Except in proceedings on objection to an assessment under Section 50 of this Decree, no assessment made by the Commissioner shall be disputed in any Court or in any proceedings, either on grounds that the person so assessed is not a registered person or any other ground; and except as aforesaid, every such assessment and all the particulars thereof shall be conclusively deemed and taken to be correct and the liability of the person so assessed shall be determined accordingly.

[Section 47] Evidence of returns and assessment (Repealed)

Legislative History:

Decree 50 of 2009 – from 1 January 2010 (s117 and Schedule 4) – Section 47 has been repealed

Decree 45 of 1991 – from 1 July 1992 – Section 47 read as:

The production of any document by the Commissioner purporting to be a copy of an extract from any return or assessment shall in all Courts and the Tribunal and all proceedings be sufficient evidence of the original and the production of the original shall not be necessary and all Courts and the Tribunal shall in all proceedings take judicial notice of the signature of the Commissioner either to the original or to any such copy or extract.

[Section 48] Limitation of time for issue of an assessment or amendment of assessment (Repealed)

Legislative History:

Decree 50 of 2009 – from 1 January 2010 (s117 and Schedule 4) – Section 48 has been repealed

Decree 45 of 1991 – from 1 July 1992 – Section 48 read as:

(1) Where any registered person has made a return in respect of any taxable period or has been assessed for tax or further tax in respect of that period, it shall not be lawful for the Commissioner to issue an assessment or reopen an assessment after the expiration of six years from the end of taxable period in respect of which the return was furnished or when the assessment was made.

(2) Notwithstanding anything in subsection (1) of this Section where any registered person has failed to make a return as required by this Decree or in the opinion of the Commissioner has knowingly and fraudulently failed to make a full and true disclosure to the Commissioner of any material facts necessary to determine the true amount of tax payable, the Commissioner may at any time:

- (a) Where an assessment has not been issued, make an assessment; or
- (b) Where an assessment has been issued, amend the assessment so as to amend or alter the assessment thereof.

PART 9 OBJECTION AND APPEALS

(Sections 49–59)

[Section 49] Objection to determination to treat non-profit body

(1) Where the Chief Executive Officer has in his or her opinion, pursuant to section 4(3)(c), determined that any person (being a non-profit body) is carrying on a taxable activity or, as the case may be, is not carrying on a taxable activity and that person is dissatisfied with that determination, that person may object to that determination as if that determination were an assessment.

(2) The Chief Executive Officer shall give notice of any determination pursuant to section 4(3)(c) to the person affected thereby.

(3) For the purposes of this section, sections 50 and 55 to 59 shall, in relation to any objection under this section, apply with any necessary modifications in the same manner and to the same extent that they would apply if the said objection were an objection made under section 50.

[Section 50] Objection to assessment (Repealed)

Legislative History:

Decree 50 of 2009 – from 1 January 2010 (s117 and Schedule 4) – Section 50 has been repealed

Decree 45 of 1991 – from 1 July 1992 – Section 50 read as:

(1) Any registered person dissatisfied with an assessment may, personally or by his agent, within twenty eight days of the date upon which the notice of assessment has been served upon him or his agent or, where such notice has been posted, the date of posting, lodge with the Commissioner an objection in writing to the assessment in the form set out in Form 2 in the Third Schedule to this Decree stating fully and in detail the grounds on which he objects:

Provided that, where the assessment is an amended assessment, the person so assessed shall have no further right of objection except to the extent to which, by reason of the amendment, a fresh liability in respect of any particular is imposed on him or an existing liability in respect of any particular is increased.

(2) The Commissioner may, in his discretion, extend the time for giving notice of objection under subsection (1) of this Section.

(3) On receipt of the notice of objection referred to in subsection (1) of this Section, the Commissioner may require the registered person so assessed to furnish such particulars as the Commissioner may deem necessary with respect to the supplies made and received by that person and to produce all books or other documents in that person's custody or under that person's control relating to such supplies, and may summon any person who, the Commissioner thinks, is able to give evidence respecting the assessment to attend before him and may examine such person (except the clerk, agent, servant or other person confidentially employed in the affairs of that person) on oath or otherwise.

(4) The Commissioner shall consider the objection and shall either allow or disallow it wholly or in part.

(5) The Commissioner shall give written notice of his allowance or disallowance of the objection to the registered person objecting and shall state in such notice the time, not being less than twenty eight days, within which such person may exercise the right of appeal given to him in subsection (7) of this Section. Any notice required to be given under this subsection shall be sent by registered post and the period within which an appeal may be lodged shall commence upon the date of posting of the notice.

(6) Where, before the expiration of the time specified in a notice given under subsection (5) of this Section, the registered person to whom the notice is given makes application in writing to the Commissioner for an extension of that time, the Commissioner may in his discretion, extend that time for such period as he thinks fit, and shall, as soon as practicable, give notice in writing to the applicant of his decision, and, where the

time is so extended, a reference in this Decree to the time specified in a notice given under subsection (5) of this Section shall be deemed to include a reference to that time as so extended.

(7) Any person objecting to the decision of the Commissioner under subsection (4) of this Section may, within the time determined under subsection (5) of this Section, appeal to the Tribunal and such appeal shall be heard and determined as hereinafter provided. Save with the leave of the Tribunal, no person may appeal to the Tribunal upon any ground other than a ground stated in the objection to the Commissioner.

(8) The obligation to pay and the right to receive and recover any tax chargeable under this Decree (including any interest, costs and penalties) shall not unless the Commissioner so directs, be suspended by any objection or appeal or pending the decision of the Tribunal under Section 55 of this Decree but, if any assessment is altered on objection or appeal or in conformity with any such decision, a due adjustment shall be made, amounts paid in excess being refunded and amounts short paid being recoverable.

(9) Where no objection is made within the time for objecting set out in subsection (1) of this Section or where that time is extended by the Commissioner, within the time so extended, the assessment shall stand and shall be valid and binding upon the registered person, notwithstanding any defect, error or omission that may have been made therein or in any proceeding required by this Decree or any regulation thereunder.

[Section 51] Establishment of Value Added Tax Tribunal (Repealed)

Legislative History:

Decree 50 of 2009 – from 1 January 2010 (s117 and Schedule 4) – Section 51 has been repealed

Decree 45 of 1991 – from 1 July 1992 – Section 51 read as:

(1) There shall be established a Tribunal to be called the Value Added Tax Tribunal.

(2) The Tribunal shall be appointed by the Judicial and Legal Services Commission established under Section 123 of the 1990 Constitution of the Republic of Fiji and shall hear and determine appeals made under Section 50 of this Decree.

(3) The Tribunal shall be a person of legal knowledge and experience for the purpose of hearing and determining appeals made under this Decree.

(4) The Tribunal shall have powers and authority similar to those vested in the judge of the High Court under Sections 111 and 112 of the Constitution as if the appeal under this Decree were an action between the registered person and the Commissioner.

(5) Section 124 of the 1990 Constitution of the Republic of Fiji shall apply to the Tribunal as if the office of the Tribunal is specified in Schedule 2 of the Constitution.

[Section 52] Registrar of the Tribunal (Repealed)

Legislative History:

Decree 50 of 2009 – from 1 January 2010 (s117 and Schedule 4) – Section 52 has been repealed

Decree 45 of 1991 – from 1 July 1992 – Section 52 read as:

(1) There shall be a Registrar of the Tribunal who shall be primarily responsible to ensure that sittings and other administrative duties necessary for the efficient and effective work of the Tribunal is maintained.

(2) The Registrar shall be appointed by the Commissioner in consultation with the Chief Justice.

[Section 53] Rules of the Tribunal (Repealed)

Legislative History:

Decree 50 of 2009 – from 1 January 2010 (s117 and Schedule 4) – Section 53 has been repealed

Decree 45 of 1991 – from 1 July 1992 – Section 53 read as:

The Chief Justice shall have the power, to make rules of the Tribunal generally for regulating any matters relating to the practice and procedure of the said Tribunal and the fees to be charged and the costs of proceedings therein. Such rules shall be regarded as forming part of this Section.

[Section 54] Tribunal sittings (Repealed)

Legislative History:

Decree 50 of 2009 – from 1 January 2010 (s117 and Schedule 4) – Section 54 has been repealed

Decree 45 of 1991 – from 1 July 1992 – Section 54 read as:

The Tribunal shall fix the date and place of hearing of appeals and shall notify the parties accordingly:

Provided that the hearing of the appeal by the Tribunal shall not commence until after the expiration of not less than twenty eight days from such notification as aforesaid.

[Section 55] Tribunal to decide and notify appellant and Commissioner (Repealed)

Legislative History:

Decree 50 of 2009 – from 1 January 2010 (s117 and Schedule 4) – Section 55 has been repealed

Decree 45 of 1991 – from 1 July 1992 – Section 55 read as:

(1) The Tribunal, after hearing any evidence adduced and upon such other inquiry as it considers advisable, shall determine the matter and confirm or amend the assessment accordingly.

(2) The Tribunal shall have power to increase the assessment in any case before it.

(3) The Tribunal shall send a copy of its decision by registered mail to the Commissioner and to the appellant or its agent of officer.

[Section 56] Proceeding ex parte (Repealed)

Legislative History:

Decree 50 of 2009 – from 1 January 2010 (s117 and Schedule 4) – Section 56 has been repealed

Decree 45 of 1991 – from 1 July 1992 – Section 56 read as:

If the appellant fails to appear either in person or by agent, the Tribunal may proceed ex-parte or may defer the hearing.

[Section 57] Costs (Repealed)

Legislative History:

Decree 50 of 2009 – from 1 January 2010 (s117 and Schedule 4) – Section 57 has been repealed

Decree 45 of 1991 – from 1 July 1992 – Section 57 read as:

In any case where the appeal is unsuccessful, the Tribunal may direct that the appellant shall pay the costs or part of the costs of such appeal, and if such appeal is successful, the Tribunal may direct that the costs or any part thereof be paid by the State.

[Section 58] Appeal to High Court (Repealed)

Legislative History:

Decree 50 of 2009 – from 1 January 2010 (s117 and Schedule 4) – Section 58 has been repealed

Decree 45 of 1991 – from 1 July 1992 – Section 58 read as:

If the appellant is dissatisfied with the decision of the Tribunal, he may, within twenty eight days after the date of such decision, give a written notice to the Commissioner in the form set out in Form 3 in the Third Schedule to this Decree that he desires to appeal from the decision. If an appellant gives such notice or if the Commissioner is dissatisfied with the decision, the Commissioner shall refer the matter to the High Court for hearing and determination. Such reference may be made in the form set out in Form 4 in the Third Schedule to this Decree and the Commissioner shall notify the other party to the appeal by registered letter that he has made such reference. On any such reference, the High Court shall hear

and consider such matter upon the papers and evidence referred and upon any further evidence which the appellant or the Commissioner produces under the direction of the said Court.

[Section 59] No assessment to be set aside for technical reasons (Repealed)

Legislative History:

Decree 50 of 2009 – from 1 January 2010 (s117 and Schedule 4) – Section 59 has been repealed

Decree 45 of 1991 – from 1 July 1992 – Section 59 read as:

(1) No assessment shall be set aside by a Court of law upon the ground that there has been an error or omission in connection with any proceedings required to be taken under this Decree or any regulation thereunder, but such Court, in any case that may come before it, may determine the true and proper amount of the tax to be paid under this Decree.

(2) On the hearing and determination of all objections to assessments under this Decree, the onus of proof shall be on the registered person objecting to the assessment.

(3) All proceedings of the courts (including the Tribunal) shall be held in camera if requested by the registered person.

PART 10 RECOVERY OF TAX

(Sections 60–64A)

[Section 60] Additional tax to be payable if default made in payment of tax (Repealed)

Legislative History:

Decree 50 of 2009 – from 1 January 2010 (s117 and Schedule 4) – Section 60 has been repealed

Decree 45 of 1991 – from 1 July 1992 – Section 60 read as:

Subject to this Section, additional tax shall be, and be deemed to be added to any tax remaining unpaid, and be payable accordingly, as follows:

- (a) on the amount of any tax remaining unpaid at the expiry of the due date, additional tax of ten percent;
- (b) on the amount of so much, if any, of the tax, (being the tax referred to in paragraph (a) of this subsection and the additional tax added thereto in accordance with the provisions of paragraph (a) of this subsection) as remains unpaid at the expiry of the day on which there expires the period of one month immediately following the due date referred to in paragraph (a) of this subsection, additional tax of two and a half percent;
- (c) On the amount of so much, if any, of the tax (being the tax referred to in paragraph (a) of this subsection, the additional tax added thereto in accordance with the provisions of paragraphs (a) and (b) of this subsection, and the additional tax, if any, theretofore added thereto in accordance with the provisions of this paragraph) as remains unpaid at the expiry of any of the periods of one month that, consecutively, succeed the period of one month referred to in paragraph (b) of this subsection, additional tax of two and a half percent.

[Section 61] Recovery of tax

(1) (Repealed)

Legislative History:

Decree 50 of 2009 – from 1 January 2010 (s117 and Schedule 4) – Section 61(1) has been repealed

Decree 45 of 1991 – from 1 July 1992 – Section 61(1) read as:

- (1) Tax payable by any person shall be recoverable as a debt due to the State.

(2) Where a registered person has not paid the amount of the tax payable or any part thereof in the manner required by Part 7, the amount of tax for the time being unpaid to the Chief Executive Officer shall, in the application of the assets of the registered person, rank as follows—

- a) where the person is an individual, upon his or her bankruptcy or upon his or her making an assignment for the benefit of his or her creditors, the amount of the tax payable shall rank without limitation on amount, in priority to all other claims;
- b) where the person is a company, upon the liquidation of the company or upon the appointment of a receiver on behalf of the holder of any debentures given by the company secured by a charge over any property of the company or upon possession being taken on behalf of that debenture holder of that property, the amount of tax payable shall rank in priority over the claims of holders of debentures under any floating charge created by the company and be paid accordingly out of any property comprised in or subject to that charge;
- c) where a person is a body as defined in section 26, the amount of any tax payable shall rank ahead of any claims of holders of debentures under any floating charge created by the person and be paid accordingly out of any property comprised in or subject to that charge.

- (3) Trustees in bankruptcy, assignees, administrators, executors, liquidators and receivers appointed and other like persons before distributing any assets under their control shall obtain a certificate from the Chief Executive Officer certifying that their requirements relating to tax, interest and penalties properly chargeable against the person, property, business or estate, as the case may be, have been satisfied. Distribution without such certificate shall render such persons personally liable for the tax and interest and penalties.
- (4) For the purpose of this section, a floating charge shall include a charge that conferred a floating security at the times of its creation but has since become a fixed or specific charge.
- (5) This section shall apply notwithstanding anything in any other Act.

[Section 62] Unpaid tax to constitute charge on registered person's property (Repealed)

Legislative History:

Decree 50 of 2009 – from 1 January 2010 (s117 and Schedule 4) – Section 62 has been repealed

Decree 16 of 1995 – from 1 January 1995 – Section 62(7) was amended by renumbering existing subsection "(7)" as subsection "(7)(a)" and adding a new paragraph (b) as follows-

"(b) if any amount constitutes by virtue of this section a charge on any personal property, the Commissioner may sell or concur with any other person in selling the said property, or any part thereof, whether by public auction or private contract, to recover the amount so charged and the expenses of the sale, and no purchaser shall be bound to see or inquire into the propriety or regularity of any such sale."

Decree 16 of 1995 – from 1 January 1995 – Section 62(10) was inserted as:

(10) Any registered person who knowingly sells, leases, or otherwise disposes of any real or personal property which is subject to a charge registered under this section commits an offence against this section.

Decree 45 of 1991 – from 1 July 1992 – Section 62 read as:

(1) Where a registered person fails wholly or in part to pay any tax payable in accordance with his obligations under this Decree, an amount equal to the total for the time being unpaid to the Commissioner in respect of that tax including any additional tax, penalties or penal tax and in respect of any judgment obtained thereof including any costs, fees or expenses included in the judgment or otherwise payable by the registered person to the Commissioner in respect thereof shall be a charge on all the real and personal property of the registered person.

(2) Every charge created by this Section shall be subject to all mortgages, charges, or encumbrances existing at the time of the creation of the charge, but, subject to this Section, shall have priority over all other mortgages, charges, or encumbrances. Notwithstanding anything in any other Act or Decree, if any property subject to the charge created by this Section is also subject to a charge created by that other Act or Decree, the charges shall rank equally with each other unless by virtue of that Act or Decree the charge created thereby would be deferred to the charge created by this Section.

(3) The Commissioner may register any charge or place a caveat on the property, created by this Section, under the Registration Act, to which the property is subject, by depositing with the Registrar of Titles a certificate under the hand of the Commissioner setting forth the description of the property charged and the amount payable; and in every such case the Registrar of Titles shall, without payment of any fee, register the certificate as if it were an instrument registrable under the Registration Act.

(4) Upon the registration of any such certificate under the Registration Act, it shall be deemed to be actual notice to all persons of the existence and amount of the charge and the charge shall have operation and priority accordingly in relation to the property that is subject to the charge and to the Registration Act:

Provided that in so far as any mortgage that is registered in respect of that property before the registration of the charge secures any money that is advanced after written notice of the charge, or of the registration of the charge, has been given to the mortgagee or to any solicitor for the time being acting, for the mortgagee in respect of the mortgage, the charge shall have priority over the mortgage.

(5) Where any registered charge has been satisfied, the Commissioner shall deposit with the Registrar of Title a release of the charge, and the Registrar of Titles shall, without payment of any fee, register the release as if it were an instrument registrable under the Registration Act.

(6) Any charge created by this Section which is registered against any property shall operate to secure any amount secured by any prior unregistered charge and unpaid at the time of the registration of the charge, to the extent that the registered charge shall operate to secure the total of all amounts for the time being owing by the registered person under all charges created by this Section.

(7) If any amount constitutes by virtue of this Section a charge on any property, the High Court may make such order as it thinks fit, either for the sale of that property or any part thereof, or for the appointment of a receiver of the rents, profits or income thereof, and for the payment of the amount of the charge and the costs of the Commissioner out of the proceeds of the sale or out of the rents, profits, or income.

(8) Where any property has been sold under any such order the High Court may, on the application of the purchaser make an order vesting the property in the purchaser.

(9) Every such vesting order shall have the same effect as if all persons entitled to the property had been free from all disability and had duly executed all proper conveyances, transfers, and assignments of the property for such estate or interest as is specified in the order, and the order shall be subject to stamp duty accordingly.

[Section 63] Deduction of tax from payment due to defaulters (Repealed)

Legislative History:

Decree 50 of 2009 – from 1 January 2010 (s117 and Schedule 4) – Section 63 has been repealed

Decree 16 of 1995 – from 1 January 1995 – Section 63 in subsection "(1)" by inserting immediately after the word "thereon" in the seventh line the words ", on deposit or" and by inserting immediately after the words, "that money" in the twelfth line the words "and whether or not the account into which the money is deposited is overdrawn."

Decree 45 of 1991 – from 1 July 1992 – Section 63 read as:

(1) For the purposes of this Section -

"Amount payable", in relation to a person and to any registered person means any amount that is payable by the person (whether on that person's own account, or as an agent, or as a trustee, or otherwise howsoever) to the registered person and includes, where that person is a bank, money including any interest thereon deposited to the credit of that registered person with that bank, whether on current account or so as to bear interest for a fixed term or without limitation of time, and whether or not the registered person has made any application to withdraw or uplift, that money;

"Bank" means any bank that is a bank within the meaning of the Banking Act.

(2) Where any registered person has made default in the payment to the Commissioner of any tax or any part thereof payable by the registered person, the Commissioner may from time to time by notice in writing require any person to -

(a) deduct or extract from any amount payable or any amount to become payable by that person to the registered person such sum as is specified in the notice; and

(b) pay to the Commissioner, within such time as is specified in the notice, every sum to be deducted extracted, to the credit of an account maintained by the Commissioner in relation to that tax.

(3) Any notice under this Section may be at any time revoked by the Commissioner by a subsequent notice to the person to whom the original notice was sent, and shall be so revoked at the request of the registered person at any time when the Commissioner is satisfied that all tax then payable by the registered person have been paid.

(4) A copy of every notice sent under this Section in respect of a registered person and of the revocation of any such notice shall be sent to the registered person by the Commissioner.

(5) Whenever, pursuant to a notice under this Section, any deduction or extraction is made from any amount payable to any registered person, the registered person shall be entitled to receive from the debtor a statement in writing of the fact of the deduction or extraction and of the purpose for which it was made.

(6) Any person making any deduction, extraction, or payment pursuant to a notice under this Section shall be deemed to have been acting under the authority of the registered person to whom the notice relates and of all other persons concerned and is hereby indemnified in respect of such deduction, extraction, or payment.

(7) The sum deducted or extracted from any amount pursuant to a notice under this Section shall be deemed to be held in trust for the State, and, without prejudice to any other remedies against the debtor or any other person, shall be recoverable in the same manner in all respects as if it were tax payable by the debtor.

(8) Any person receiving such notice of deduction as aforesaid who is unable to comply therewith on account of the fact that the monies in question do not come into his possession within the period specified in such notice shall notify the Commissioner within fourteen days of the expiration of such period, acquainting him with the facts.

(9) Where, in relation to any notice under this Section during any period, that period being, -

(a) where a notice under subsection (2) of this Section requires any person, being a bank, to deduct or extract no more than one sum, the period that commences on the day on which the notice to the person is given and expires with the day on which the deduction or extraction is required to be made in compliance with the notice:

(b) where a notice under subsection (2) of this Section requires any person, being a bank, to deduct or extract more than one sum, by way of instalments, -

(i) in relation to the sum first required to be deducted or extracted in compliance with the notice, the period that commences on the day on which the notice to the person is given and expires with the day on which the deduction or extraction is so required to be made:

(ii) in relation to each succeeding sum required to be deducted or extracted in compliance with the notice, the period that commences on the day immediately following the day on which the previous deduction or extraction (being the deduction or extraction that, in relation that succeeding sum, was the deduction or extraction last required to be made therefor was required to be made in compliance with notice and expires with the day on which the succeeding sum is so required to be deducted or extracted, -

any amount is, or becomes, an amount payable in relation to the registered person, that amount or, as the case may be, the aggregate of all such amounts shall, until expiry of that period and to the extent of an amount is equal to the amount of the sum that, in compliance with the notice, is required to be deducted or extracted be deemed to be an amount held in trust for the State and, without prejudice to any other remedies against debtor or any person, shall, if the deduction or extraction required to be made therefrom pursuant to notice is not so made, be recoverable in the same manner in all respects as if it were tax payable by the debtor.

[Section 63A] Distraint for unpaid tax (Repealed)

Legislative History:

Decree 50 of 2009 – from 1 January 2010 (s117 and Schedule 4) – Section 63A has been repealed

Decree 16 of 1995 – from 1 January 1995 – Section 63A was inserted as:

The Commissioner may levy distress on the goods, other than real property, and chattels of any registered person who refuses or fails to pay any tax payable by him or any other amount recoverable from him under this Decree and for the disposal of any such goods or chattels by sale or otherwise to recover the amount of the tax payable by the registered person and any other amount recoverable from him including the costs and expenses of the disposal.

[Section 64] Application of section 77 of Income Tax Act relating to recovery procedures (Repealed)

Legislative History:

Decree 50 of 2009 – from 1 January 2010 (s117 and Schedule 4) – Section 64 has been repealed

Decree 45 of 1991 – from 1 July 1992 – Section 64 read as:

Section 77 of the Income Tax Act, as far as it is applicable and with any necessary modifications, shall apply for the purposes of this Decree, as if every reference in that provision to tax were a reference to tax under this Decree.

[Section 64A] Application of the Income Tax Act (Repealed)

Legislative History:

Decree 50 of 2009 – from 1 January 2010 (s117 and Schedule 4) – Section 64A has been repealed

Act 4 of 2005 – from 1 January 2005 – Section 64A inserted as:

64A. Sections 77A and 96A of the Income Tax Act apply to this Decree.

PART 11 REFUNDS AND RELIEF FROM TAX

(Sections 65–70C)

[Section 65] Refund of excess tax

(1) Subject to this section, in any case where the Chief Executive Officer is satisfied that tax has been paid by a registered person in excess of the amount properly calculated in accordance with this Act in respect of any taxable period, he or she shall refund the amount paid in excess, provided that no refund shall be made under this subsection after the expiration of the period of 3 years immediately after the end of the taxable period, unless written application for the refund is made by or on behalf of the registered person before the expiration of the period.

Legislative History:
Decree 28 of 1992(s31) – from 1 July 1992 – Section 65(1) was amended by deleting the words "payable for" on the fourth line of subsection (1) and substitute "calculated in accordance with this Decree in respect of"

(2) Subject to this section, where the Chief Executive Officer is required to refund any amount to any registered person pursuant to section 38(4) or 39(8), the Chief Executive Officer shall refund to that registered person the amount required to be refunded pursuant to section 38(4) or 39(8) not later than—

- a) the end of the month following the month in which the return of that registered person was received by the Chief Executive Officer; or
- b) the end of the month following the month in which the return was due to be furnished by that registered person pursuant to section 33(1),

whichever is the later.

(3) Notwithstanding the provision of subsection (2), where any registered persons claim deductions under section 86, making them eligible for a refund under section 39(8), the Chief Executive Officer shall in respect of trading stock acquired on or after 1 July 1991 and held on the 1 July 1992 cause that refund to be paid no later than 6 months from the date the return was received by the Chief Executive Officer and the provisions of section 67 shall not apply unless the Chief Executive Officer has failed to refund that amount within 6 months as provided under this subsection.

Legislative History:
Decree 28 of 1992(s31) – from 1 July 1992 – Section 65(3) was amended by:
deleting all the words and figures beginning with the word "where" in the second line in subsection (3) and ending with and including the word "Decree" on the fourth line and substituting the following words "where any registered persons claim deductions under Section 86 of this Decree, making them eligible for a refund under subsection (8) of Section 39 of this Decree;
deleting the words "the amount" in line six of subsection (3) and substituting "that refund"; and
deleting the word "any" in the tenth line of subsection (3) and substituting "that";
Decree 45 of 1994 – from 1 July 1992 – Section 65(3) read as:

(3) Notwithstanding the provision of subsection (2) of this Section, where the Commissioner is required to refund any amount to any registered person under Section 86 of this Decree, the Commissioner shall in respect of trading stock acquired on or after the first day of July, 1991 and held on the first day of July, 1992 cause the amount to be paid no later than six months from the date the return was received by the Commissioner and the provisions of Section 67 of this Decree shall not apply unless the Commissioner has failed to refund any amount within six months as provided under this subsection.

(4) (Repealed)

Legislative History:

Decree 50 of 2009 – from 1 January 2010 (s117 and Schedule 4) – Section 65(4) has been repealed

Decree 45 of 1991 – from 1 July 1992 – Section 65(4) read as:

(4) Where any registered person has, -

(a) in respect of a taxable period, failed to pay the Commissioner, in whole or in part, any tax payable before the due date for the payment of such tax (in this subsection referred to as unpaid tax); or

(b) in respect of any obligations imposed under the Income Tax Act, or the Gambling Turnover Tax Decree 1991, failed to pay to the Commissioner, in whole or in part, any amount (in this subsection referred to as unpaid tax), -

the Commissioner may set off, against that unpaid tax, any amount or any part of any amount otherwise refundable to that registered person under subsection (1) of his Section or subsection (4) of Section 38 or subsection (8) of Section 39 or any amount of interest payable under Section 67 of this Decree, and treat any amount so set off as a payment received from that registered person.

(4A) Subsection (4) applies to the owner of a hotel in respect of hotel turnover tax imposed under the Hotel Turnover Tax Act 2006.

Legislative History:

Promulgation 18 of 2017(s2) – from 1 January 2007 – Section 65(4A) inserted

(5) Where any registered person, in respect of a taxable period, has failed to submit returns for any taxable period as required by this Act, the Chief Executive Officer may withhold payment of any amount refundable in accordance with subsection (1) or section 38(4) or 39(8) or any amount of interest payable under section 67, until the registered person has complied with that requirement and paid the amount of tax payable.

(6) Notwithstanding anything in subsection (2), where the Chief Executive Officer is required to refund any amount to a registered person pursuant to section 38(4) or 39(8) or any interest payable under section 67 and the Chief Executive Officer is of the opinion that the amount should not be refunded, the Chief Executive Officer may withhold that amount and set off that amount against any future tax payable by that registered person in respect of any subsequent taxable period or otherwise set off that amount in terms of subsection (4)(b) and treat any amount so set off as a payment received from that registered person.

Legislative History:

Decree 28 of 1992(s31) – from 1 July 1992 – Section 65(6) was amended by inserting the words, figures and expression "subsection (4) of" between the words "to" and "Section" in line three of subsection (6).

(7)

Legislative History:

Act 3 of 2004 – from 1 January 2004 – Section 65(7) has been repealed

Decree 45 of 1991 – from 1 July 1992 – Section 65(7) read as:

(7) Where, in relation to the return furnished by any registered person, subsection (4), or subsection (5), or subsection (6) of this Section applies, the Commissioner shall give notice in writing to the registered person accordingly within the period specified in subsection (2) of this Section.

(8) Notwithstanding anything in this section no refund shall be payable where the registered person, his or her agent, his or her representative or any person associated with the registered person has not complied with any request for any information, documents or co-operation by the Chief Executive Officer.

Legislative History:

Decree 28 of 1992(s31) – from 1 July 1992 – Section 65(8) inserted

(9) Notwithstanding anything in this Act, no refund shall be transferred or assigned amongst registered persons.

Legislative History:

Promulgation 12 of 2009 (s2) - from 1 January 2009 – Section 65(9) inserted

[Section 66] Tax paid in excess may be set off against additional tax where assessment re-opened

In any case where, upon the investigation by the Chief Executive Officer of the liability of a registered person for tax over a group of taxable periods—

- a) the Chief Executive Officer assesses the registered person with tax for any taxable period in respect of which no assessment has been made previously or alters an assessment for any taxable period so as to increase the amount thereof; and
- b) the Chief Executive Officer is satisfied that in respect of any taxable period or taxable periods within that group of taxable periods, tax has been paid in excess of the amount properly payable,

he or she may, in his or her discretion and to the extent that in his or her opinion is equitable, allow any amount so paid in excess to be deducted from or set off against any tax payable for any taxable period or taxable periods, notwithstanding that the time limited for the making of a refund of any tax so paid in excess may have expired.

[Section 67] Interest on late refunds

(1) Where the Chief Executive Officer is required by section 65(2) to refund any amount to a registered person and the Chief Executive Officer does not refund that amount within the period specified in that subsection, there shall, subject to the provisions of section 65, be paid by the Chief Executive Officer to the registered person interest on so much, if any, of the amount as is required to be refunded by the Chief Executive Officer to the registered person in accordance with section 38(4) or 39(8).

(2) Interest payable in accordance with this section shall be payable, in relation to any amount required to be refunded or set off by the Chief Executive Officer by the provisions of section 65, that, in the said period, is an amount applied to or standing to, the credit of the account of the

registered person with the Chief Executive Officer and shall be calculated in accordance with the following formula—

$$\frac{X \times Y}{365} \times Z$$

where—

X is the number of days in the period—

- a) in relation to any case where section 65(5) applies—
 - i. that commences on the day following the end of the month following the month in which the registered person complied with the requirement to furnish outstanding returns; and
 - ii. ends on the day on which the amount required to be refunded by the Chief Executive Officer by the provisions of section 65 is refunded or is set off by the Chief Executive Officer in accordance with this Act;
- b) in relation to any case where section 65(6) applies—
 - i. that commences on, whichever of the following days is the latest, the day following the end of the month following the month in which the return was due to be furnished or was furnished or the day following the day on which a notice was given by the Chief Executive Officer pursuant to section 65(7); and
 - ii. ends on the day on which the amount to be refunded by the Chief Executive Officer by the provisions of section 65 is set off by the Chief Executive Officer in accordance with subsection (6) of that section;
- c) in relation to any other case—
 - i. that commences on the day following the end of the month following the month in which the return was due to be furnished or was furnished (whichever is the later); and
 - ii. ends on, whichever of the following days is the earlier, the day on which the amount required to be refunded by the Chief Executive Officer by the provisions of section 65 is refunded by the Chief Executive Officer in accordance with this Act or the day on which a notice is given by the Chief Executive Officer pursuant to section 65(7); and

Y is the lesser of the amount required to be refunded or the amount still to be set off pursuant to section 65(6); and

Z is the rate of interest per annum, which is the fair market interest rate as determined by the Reserve Bank of Fiji or such other rate as the Minister may from time to time, by Legal Notice declare.

Legislative History:
Act 22 of 2016(s2) – from 1 August 2016 – Section 67 was amended by deleting "twelve and a half per cent" and substituting "the fair market interest rate as determined by the Reserve Bank of Fiji".

(3) Where the Chief Executive Officer is satisfied that the amount of any interest paid to the registered person under this section is in excess of the proper amount, the Chief Executive Officer may recover the amount of the excess in the same manner, with any necessary modifications, as if it were tax payable by the registered person.

(4) Notwithstanding anything in this section no amount shall be payable in terms of this section where the registered person, his or her agent, his or her representative or any person associated with a registered person has not complied with any request for any information, documents or co-operation by the Chief Executive Officer.

Legislative History:
Decree 28 of 1992(s32) – from 1 July 1992 – Section 67(4) inserted

[Section 68] Power of Commissioner in respect of small amounts (Repealed)

Legislative History:
Decree 50 of 2009 – from 1 January 2010 (s117 and Schedule 4) – Section 65(4) has been repealed

Decree 45 of 1991 – from 1 July 1992 – Section 68 read as:
Notwithstanding anything in this Decree, the Commissioner may, in his discretion, refrain from either issuing a notice of assessment or collecting or refunding tax in any case where, as the case may be, the amount of tax in calculated in accordance with this Decree does not exceed five dollars.

[Section 69] Refund of overpaid deposit on temporary imports

Notwithstanding the provisions of section 14, any sum of deposit which may have been paid in excess of the correct amount at the time of importation of goods may be refunded by the Comptroller pursuant to section 33 of the Customs Act 1986.

[Section 70] Dwelling house

(1) Where—

- a) a new dwelling house; or
- b) land acquired for the purpose of building a new dwelling house, is a taxable supply to an eligible person by a registered person in the course or furtherance of a taxable activity carried on by that registered person,

the Chief Executive Officer upon application by the eligible person shall refund an amount of tax paid in respect of that supply calculated in accordance with subsection (4).

(2) Any claim under subsection (1) by an eligible person can only be made once.

(3) The Chief Executive Officer shall prescribe a form for applications made under subsection (1) and such applications must be supported by tax invoices or other evidence as the Chief Executive Officer deems necessary.

(4) For the purpose of subsection (1), the amount of refund of the tax paid in respect of the supply shall be lesser of—

- i. an amount equal to the tax fraction of \$120,000 or such other amount as the Minister may declare in the Gazette; or
- ii. an amount equal to the tax fraction of the consideration in money for the supply.

(5) The Chief Executive Officer shall not refund any tax paid on any land under subsection (1)(b), until a new dwelling house is built on that land.

(6) Any eligible person may apply to the Chief Executive Officer for a refund of tax paid for goods and services purchased for the purpose of this section, provided the eligible person has—

- a) acquired the goods and services necessary to build a new dwelling house; or
- b) either constructed or arranged for construction of a new dwelling house,

and the Chief Executive Officer is satisfied that those goods and services have been used in the construction of that new dwelling house.

(7) The Chief Executive Officer shall not be required to refund any tax to an eligible person unless, within 3 years after the time of supply of the new dwelling house or land on which a new dwelling house will be built for the eligible person, the eligible person has applied to the Chief Executive Officer for the refund of tax in the prescribed form.

(8) If an eligible person who is entitled to a refund under subsection (4), has an amount owing to the Chief Executive Officer by that person in respect of any tax, penalty, interest or costs under this Act or any other tax under the Tax Administration Act 2009, the Chief Executive Officer shall deduct that refund to pay for such other liability and the remaining excess be refunded to the eligible person.

(9) For the purpose of this section—

dwelling house, in relation to an eligible person, means a building constructed solely as a first residential property of that eligible person and includes any land or appurtenances belonging to the dwelling house or usually enjoyed with it;

eligible person means any natural person who is a citizen of Fiji and includes a non-profitable body approved by the Chief Executive Officer engaged in the provision of residential accommodation to the underprivileged; and

new means not having been either used by any person acquired or held by any person for use of that person or an existing dwelling house that passes from the possession of a registered person to an eligible person.

Legislative History:

Act 33 of 2017 (s3) – from 1 August 2017 – definition of dwelling home was deleted and replaced with current definition

Act 10 of 2014 (s2) – 1 January 2015 – Section 70(9) was amended in the definition of "dwelling house" by deleting the word "residence" and substituting "first residential property".

(10) Notwithstanding this section, where a new dwelling house commenced building prior to 1 January 2012 and the completion certificate is issued after the commencement of this Act, any application under this section by an eligible person, the Chief Executive Officer shall consider only tax invoices issued on or after 1 January 2012 for the purposes of subsection (4).

(11)

- a) Any person who is an approving officer for the processing of a completion certificate, who permits or conceals any act to connive or collude, directly or indirectly with any eligible person for any payment or reward whatsoever, commits an offence and is liable to a fine not exceeding \$50,000 or 10 years imprisonment or both.
- b) Any tax officer who commits an offence under paragraph (a), shall be subject to section 57 under the Tax Administration Act 2009.

Legislative History:

Act 33 of 2017 (s3) – from 1 August 2017 - Section 70(11) (a) was amended by deleting "12 months" and substituting "10 years"

Legislative History:

Decree 10 of 2012 (s4) – from 1 January 2012 – Section 70 was deleted and replaced with current provision.

Promulgation 46 of 2007 – from 1 January 2008 – Section 70(2) was repealed

Act 4 of 2004 – from 1 January 2004 – Section 70(2)(ga) was inserted after Section 70(2)(g) which read as:

"(ga)If, in respect of an eligible person to whom a refund is due in accordance with paragraph (c), there is an amount owing to the Commissioner by that person in respect of any tax, penalty or interest of costs under this Decree, the Income Tax Act or the Gambling Turnover Tax Decree 1991 for that year or any other year of assessment, the refund shall first be applied towards the tax liability, penalty or interest of costs and only then shall any balance of the refund due be paid to the taxpayer;"

Act 16 of 1995 – from 1st January 1995 – Section 70(1) was deleted and replaced with:

(1) The Commissioner may in his discretion mitigate or remit in whole or in part any additional tax or penal tax or penalty which may be assessed under this Decree.

Decree 45 of 1992 – from 1 July 1992 – Section 70 read as:

Relief from Tax

(1) The Commissioner, may in his discretion mitigate or remit any additional tax (other than additional tax imposed under paragraph (a) of subsection (1) of Section 60 of this Decree), penal tax, or penalty which may be assessed or imposed under this Decree.

(2) (a) Where -

(i) A new dwelling house; or

(ii) Land acquired for the purpose of having a new dwelling house erected on it, -

is supplied by way of sale, being a supply to which subsection (1) of Section 15 of this Decree applies to an eligible person by a registered person in the course or furtherance of a taxable activity carried on by that registered person, the Commissioner shall, subject to this subsection, upon

application by the eligible person, refund to the eligible person an amount of tax paid in respect of that supply calculated in accordance with paragraph (c) of this subsection.

(b) Every application made under paragraph (a) of this subsection by an eligible person shall be in such prescribed form as may be approved by the Commissioner and be supported by such tax invoices or other evidence as the Commissioner considers necessary.

(c) For the purposes of paragraph (a) of this subsection, the amount of the refund of the tax paid in respect of the supply shall be the lesser of -

(i) An amount equal to the tax fraction of \$30,000 (or such other amount as the Minister may time to time, by Legal Notice declare);

(ii) An amount equal to the tax fraction of the consideration paid in money for the supply.

(d) The Commissioner shall not be required to refund tax paid on any land to which subparagraph (ii) of paragraph (a) of this subsection refers until any new dwelling house has been erected on that land.

(e) where an eligible person -

(i) Acquires goods and services necessary to construct a new dwelling house; and

(ii) has either constructed or arranged for the construction of that new dwelling house; and

(iii) the Commissioner is satisfied that those goods and services have been used in the construction of that new dwelling house, -
that eligible person shall be eligible to make application to the Commissioner for a refund of the tax paid on those goods and services pursuant to the provisions of this subsection.

(f) Where an eligible person has authorised, in such prescribed form as may be approved by the Commissioner, that another person be paid any refund payable under this subsection, the Commissioner shall refund that amount refundable to that authorised person.

(g) The Commissioner shall not be required to refund any tax under this subsection to an eligible person unless, within 5 years after the time of supply of the new dwelling house or land on which a new dwelling house will be erected to the eligible person, the eligible person has applied to the Commissioner for the refund of tax in the prescribed form and manner.

(h) For the purposes of this subsection -

"Dwelling house", in relation to an eligible person, means a building constructed solely as a residence for the exclusive occupation, as a principal place of abode of that eligible person's household; and includes any land, improvements, or appurtenances belonging to the dwelling house or usually enjoyed with it, but excludes any portion on which a taxable activity is carried out.

"Eligible person" means any natural person who is a citizen of Fiji; and includes a non-profit body, approved by the Commissioner engaged in the provision of residential accommodation to the underprivileged.

"New" means not having been either used by any person, or acquired or held by any person for use of that person, or an existing dwelling house which passes from the possession of a registered person to an eligible person.

[Section 70A] VAT refund for construction of premises for diplomatic mission

(1) Notwithstanding anything contained in this Act, a Diplomatic Mission (as defined in the Vienna Convention on diplomatic relations) is entitled for value added tax refund in respect of the initial costs of newly constructed premises of its Mission in Fiji.

(2) The entitlement under subsection (1) does not extend—

- a) to any other premises except for premises to be used for the professional diplomatic purposes of the Diplomatic Mission;
- b) costs of extensions to, improvements, enlargements or repairs of any existing premises to be used for its mission; or
- c) any extension to, improvements of or enlargements of premises to which the entitlement was provided under subsection (1).

Legislative History:

Act 14 of 2006 (s2) – from 1 October 2006 – Section 70A inserted

[Section 70B] Tourist VAT Refund Scheme

(1) If—

- a) a tourist purchases goods, the supply of which is a taxable supply;
- b) the purchase is of a kind specified in Schedule 4; and
- c) the tourist leaves Fiji and exports the goods from Fiji as accompanied baggage, in the circumstances specified in Schedule 4;

the Chief Executive Officer must pay to the tourist an amount equal to the amount of VAT paid on the taxable supply as specified in Schedule 4.

(2) The amount is re-payable within the period and in the manner specified in Schedule 4.

Legislative History: Act 13 of 2010 (s2) – from 1 February 2010 – Section 70B inserted

[Section 70C] VAT refund for film production company

Notwithstanding anything in this Act, a film production company issued with a certificate under the Income Tax (Film-making and Audio-visual Incentives) Regulations 2016 is entitled to a value added tax refund in respect of its qualifying expenditure under the Income Tax (Film-making and Audio-visual Incentives) Regulations 2016.

Legislative History: Act 31 of 2016(s223) – from 1 December 2016 – Section 70C inserted
--

PART 12 OFFENCES AND PENALTIES

(Sections 71–78)

[Section 71] Offences

Every person commits an offence against this Act who—

- a) fails to—
 - i. apply for registration as required pursuant to section 22 or 85;
 - ii. respond, within one month of the issue by the Chief Executive Officer, to an application form for registration under this Act issued to the person as part of the initial registration process provided for by section 85;

Legislative History:

Decree 28 of 1992 (s34) – from 1 July 1992 – Section 71(a)(ii) was amended by inserting immediately after the word "process" on the fifth line of paragraph (a)(ii) the words and figures "provided for by Section 85 of this Decree"

- b) fails to notify the Chief Executive Officer of any of the matters required pursuant to section 24;
- c) refuses or fails to furnish any return or information or additional information as and when required or fails to comply with any demands made under this Act or any regulations made under this Act;
- d)
 - i. does any act or makes default in the performance of any duty imposed on him or her under this Act with intent to evade the payment of tax or the performance of any such duty under this Act;
 - ii. makes any false return or any false statement or any false declaration or gives any false information, knowing it to be false or being reckless as to whether it was false or intentionally misleads or attempts to mislead the Chief Executive Officer or any other officer of the Fiji Revenue and Customs Service in relation to any matter under this Act;

Legislative History:

Act 16 of 1995 (s16) – from 1st January 1995 – Section 70(d) was renumbered as Section 70(d)(ii) and Section 70(d)(i) was inserted

- e) knowingly falsifies any records required to be kept under this Act;
- f) knowingly issues any tax invoices showing any amount charged as tax where:
 - i. no amount of tax is charged in respect of any supply to which such tax invoice applies;
 - ii. the amount shown as being charged as tax is in excess of the amount properly so charged under this Act; or
 - iii. the supply in respect of the tax charged will not take place;
- g) knowingly represents to any person, in writing or otherwise howsoever, that any amount is charged as tax where either—
 - i. no amount of tax is charged in respect of any supply to which any such representation refers; or

- ii. the amount represented as being charged as tax is not the amount properly so charged under the Act; or
- h) receives, acquires possession of or deals with any goods or accepts the supply of any services, where that person knows or has reason to believe that the tax on the supply of the goods or the services has been or will be evaded;
- i) [Repealed]

Legislative History:

Decree 50 of 2009 (s117 and Sch4) – from 1 January 2010 = Section 71(i) was repealed

Decree 45 of 1992 – from 1 July 1992 - Section 71(i) read as:

(i) obstructs any officer of the Inland Revenue Department acting in the discharge of that officer's duties or the exercise of that officer's powers under this Decree; or

- j) [Repealed]

Legislative History:

Decree 50 of 2009 (s117 and Sch4) – from 1 January 2010 = Section 71(j) was repealed

Decree 45 of 1992 – from 1 July 1992 - Section 71(j) read as:

(j) fails to keep or properly maintain records of any taxable activity carried on by that person sufficient to satisfy the requirements of Section 79 of this Decree; or

- k) knowingly issues any tax invoice required under this Act which is in any material aspect erroneous or incomplete or knowingly makes any statement or declaration in relation to any matter under this Act which is erroneous or incomplete in any material aspect; or
- l) knowingly contravenes the provisions of sections 41 and 42;

Legislative History:

Decree 28 of 1992 (s34) – from 1 July 1992 – Section 71(l) was amended by deleting the figures "38" and "39" and substituting "41" and "42" respectively

- m) being a registered person, fails to issue a tax invoice as required under this Act;
- n) knowingly fails to make any deduction or extraction required by a notice under section 63;
- o) fails, after making any deduction or extraction required by a notice under section 63, to pay the sum deducted or extracted to the Chief Executive Officer within the time specified in the notice;
- p) permits the payment to or on behalf of any person, other than the Chief Executive Officer, of any amount that under section 63, is deemed to be held in trust for the State.
- q) [Repealed]

Legislative History:

Decree 50 of 2009 (s117 and Sch4) – from 1 January 2010 = Section 71(q) was repealed

Decree 45 of 1992 – from 1 July 1992 - Section 71(q) read as:

(q) aids, abets, incites or conspires with any other person to commit any offence against this Decree or against any regulation made under this Decree.

[Section 72] Penalty for specified offences

(1) Every person who commits an offence against section 71(1)(b) shall—

- a) on the first occasion on which the person is convicted of any such offence or more than one such offence, be liable, in respect of that offence or, as the case may be, each of those

offences, to a fine not exceeding \$5,000 or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment;

Legislative History:

Act 33 of 2017(s4) – from 1 August 2017 – Section 72(1)(a) was amended by deleting "\$500" and substituting "\$5,000"; and deleting "3 months" and substituting "10 years"

- b) on the second occasion on which the person is convicted of any such offence or more than one such offence, be liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding \$15,000 or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment;

Legislative History:

Act 33 of 2017(s4) – from 1 August 2017 – Section 72(1)(b) was amended by deleting "\$1000" and substituting "\$15,000"; and deleting "6 months" and substituting "10 years"

- c) on every occasion other than those referred to in paragraphs (a) and (b), on which the person is convicted of any such offence or more than one such offence, be liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding \$25,000 or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment.

Legislative History:

Act 33 of 2017(s4) – from 1 August 2017 - Section 72(1)(c) was amended by deleting "\$1,500" and substituting "\$25,000"; and deleting "one year" and substituting "10 years"

(2) Every person who commits an offence against section 71(c) or (m) shall—

- a) on the first occasion on which the person is convicted of any such offence or more than one such offence, be liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding \$5,000 or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment, for each month of default;

Legislative History:

Act 33 of 2017(s4) – from 1 August 2017 – Section 72(2)(a) was amended by deleting "\$500" and substituting "\$5,000"; and deleting "3 months" and substituting "10 years"

- b) on the second occasion on which the person is convicted of any such offence or more than one such offence, be liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding \$15,000 or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment, for each month of default;

Legislative History:

Act 33 of 2017(s4) – from 1 August 2017 – Section 72(2)(b) was amended by deleting "\$1000" and substituting "\$15,000"; and deleting "6 months" and substituting "10 years"

- c) on every occasion other than those referred to in paragraphs (a) and (b), on which the person is convicted of any such offence or more than one such offence, be liable, in respect of that offence or, each of those offences, to a fine not exceeding \$25,000 or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment, for each month of default.

Legislative History:

Act 33 of 2017(s4) – from 1 August 2017 - Section 72(2)(c) was amended by deleting "\$1,500" and substituting "\$25,000"; and deleting "one year" and substituting "10 years"

Legislative History:

Act 16 of 1995 (s18) – from 1 January 1995 – Section 72(2) was amended by deleting the letter, words, and marks "paragraph (a) or" in the first and second lines; and by inserting the words "a period not exceeding" in the sixth line between the words "for" and "three months"

Decree 45 of 1991 – from 1 July 1992 – Section 72(2) read as:

(2) Every person who commits an offence against **paragraph (a) or** paragraph (c) or paragraph (m) of Section 71 of this Decree shall;

(a) on the first occasion on which the person is convicted of any such offence or more than one such offence, be liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding five hundred dollars, or to imprisonment for three months, or to both such fine and imprisonment, for each month of default.

(b) on the second occasion on which the person is convicted of any such offence or more than one such offence, be liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding one thousand dollars, or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment, for each month of default.

(c) on every occasion other than those referred to in paragraphs (a) and (b) of this subsection, on which the person is convicted of any such offence or more than one such offence, be liable, in respect of that offence or, each of those offences, to a fine not exceeding one thousand five hundred dollars, or to imprisonment for a period not exceeding one year, or to both such fine and imprisonment, for each month of default.

(3) Every person who commits an offence against section 71(a) shall be liable to a fine not exceeding \$10,000.

Legislative History:

Act 33 of 2017(s4) – from 1 August 2017 – Section 72(3) was deleted and replaced with current provision (above)

Act 16 of 1995 (s18) – from 1 January 1995 – Section 72(2) inserted as:

(3) Every person who commits an offence against paragraph (a) of Section 71 of this Decree shall on conviction be liable:

(a) where the delay does not exceed six months to a fine not exceeding 50% of the tax payable.

(b) where the delay exceeds six months to a fine not exceeding the tax payable.

(3A) Pursuant to subsection (3) the Chief Executive Officer shall issue a notice to the person requiring that person to register and pay the appropriate fine within 6 months from the date of issuance of the notice.

Legislative History:

Act 33 of 2017(s4) – from 1 August 2017 – Section 72(3A) was inserted

(3B) Every person who fails to register and pay the fine within the time specified under subsection (3A) shall be liable upon conviction to a fine not exceeding \$50,000 or to imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment.

Legislative History:

Act 33 of 2017(s4) – from 1 August 2017 – Section 72(3B) was inserted

(4) Every person who commits an offence against section 71(d), (e), (f), (g), (h) or (k) shall—
a) on the first occasion on which the person is convicted of such offence or, more than one such offence, be liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding \$10,000 or 3 times the tax involved where this is greater or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment;

Legislative History:

Act 33 of 2017(s4) – from 1 August 2017 – Section 72(4)(a) was amended by deleting "\$1,500" and substituting "\$10,000"; and deleting "one year" and substituting "10 years"

b) on every occasion other than that referred to in paragraph (a) on which the person is convicted of any such offence or more than one such offence, be liable, in respect of that offence or as the case may be, each of those offences, to a fine not exceeding \$20,000 or

3 times the tax involved where this is greater or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment.

Legislative History:

Act 33 of 2017(s4) – from 1 August 2017 – Section 72(4)(b) was amended by deleting "\$3,000" and substituting "\$20,000"; and deleting "2 years" and substituting "10 years"

Legislative History:

Act 16 of 1995 (s18) – from 1 January 1995 – Section 72(4) was inserted

[Section 72A] Prices to reflect VAT decrease (Repealed)

Legislative History:

Act 29 of 2020 – from 1 August 2020 – Section 72A was repealed

Act 22 of 2015 (s5) – from 1 January 2016 – Section 72A was inserted as:

Prices to reflect VAT decrease

72A.—(1) If the percentage of VAT decreases, a registered person must sell goods and services at a price which reflects the actual percentage VAT decrease.

(2) The onus of proving that the price at which the goods or services are sold by the registered person reflects the actual percentage VAT decrease shall be on the registered person.

(3) A registered person who fails to comply with subsection (1) shall be liable to a fine not exceeding \$50,000 which must be payable by that registered person within 21 days of notification by the Chief Executive Officer.

(4) A registered person who fails to pay the fine as prescribed in subsection (3) within the time period prescribed in subsection (3), shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years.

(5) The Minister may make regulations prescribing fines for the purpose of subsection (3).

[Section 73] Penalty for aiding, abetting etc (Repealed)

Legislative History:

Decree 50 of 2009 (s117 and Sch4) – from 1 January 2010 – Section 73) was repealed

Decree 45 of 1992 – from 1 July 1992 - Section 73 read as:

Every person who commits an offence against paragraph (q) of Section 71 of this Decree shall be liable to a fine not exceeding three thousand dollars, or to an imprisonment for a period not exceeding two years, or to both such fine and imprisonment.

[Section 74] General penalty

Every person who commits an offence against this Act for which no other penalty is prescribed shall—

- a) on the first occasion on which the person is convicted of such offence or, more than one such offence, be liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding \$1,500 or to imprisonment for a period not exceeding one year or to both such fine and imprisonment;
- b) on every occasion other than that referred to in paragraph (a), on which the person is convicted of any such offence or more than one such offence, be liable, in respect of that offence or as the case may be, each of those offences, to a fine not exceeding \$3,000 or

to imprisonment for a period not exceeding 2 years or to both such fine and imprisonment.

[Section 75] Officers and employees of registered persons

(1) For the purposes of this section, unless the context otherwise requires, “officer”, in relation to a registered person, includes—

- a) a director or secretary or other statutory officer of the registered person;
- b) a receiver or a manager of any property of the registered person or a person having powers or responsibilities, similar to those of such a receiver or manager, in relation to the registered person;
- c) a liquidator of the registered person.

(2) Every person commits an offence against this Act who, being an officer or an employee of a registered person, is by reason of that office or, as the case may be, that employment, responsible (whether pursuant to any statute or rules of law or any instructions of the registered person or for any other reason) for furnishing to the Chief Executive Officer any information or any statement or any return pursuant to this Act or pursuant to any notice, order or requirement issued, made or notified pursuant to this Act and who fails to furnish that information or that statement or that return, as the case may be, to the Chief Executive Officer within the time specified for the furnishing thereof.

[Section 76] Penalty in case of evasion (Repealed)

Legislative History:

Decree 50 of 2009 (s117 and Sch4) – from 1 January 2010 = Section 76 was repealed

Decree 45 of 1992 – from 1 July 1992 - Section 76 read as:

(1) Where -

(a) any registered person

(i) evades; or

(ii) attempts to evade; or

(iii) does any act with intent to evade;

(iv) makes default in the performance of imposed upon that person by this Decree or regulations made under this Decree with intent to evade,

(b) any registered person -

(i) causes; or

(ii) attempts to or does any act

(iii) does not act with intent to cause; or

(iv) makes default in the performance of any duty imposed upon that person by this Decree or regulations made under this Decree with intent to cause,

the refund to that person by the Commissioner of any amount (which amount is hereinafter also referred to as the deficient tax), pursuant to subsection (8) of Section 39 of this Decree, in excess of the amount properly so refundable to that person;

that person shall be chargeable, by way of penalty for that offence, with additional tax hereafter called penal tax not exceeding an amount equal to treble the amount of the deficient tax.

(2) For the purposes of this Section, penalty tax shall be deemed to be tax of the same nature as the deficient tax to which it relates, and shall be deemed to be payable in and for the same taxable period as deficient tax.

(3) Penal tax shall be assessed by the Commissioner in the same manner, so far as may be, as the deficient tax to which it relates, but separately therefrom.

(4) It shall be lawful for the Commissioner to make an assessment of penalty tax at any time.

[Section 76A] Penalty for understatements or overclaims in returns (Repealed)

Legislative History:

Decree 50 of 2009 (s117 and Sch4) – from 1 January 2010 = Section 76A was repealed

Decree 16 of 1995 – from 1 January 1995 – Section 76A was inserted as:

76A (1) In any case where:

(a) a return under Part VII of this Decree is furnished which understates output tax or overstates input tax; or
(b) an assessment under Section 44 of this Decree is made which understates a person's liability to pay tax and within 30 days from the date of the said assessment that person has not taken all such steps as are reasonable to draw the understatement to the attention of the Commissioner, that person shall subject to subsection (2) of this section and Section 70(1) of this Decree be liable to a penalty not exceeding the full amount of the deficient tax.

(2) Where, by reason of conduct falling within subsection (1) above:

(a) a person is convicted of an offence under this Decree; or
(b) a person is assessed to a penalty under Section 76 of this Decree;
that conduct shall not also give rise to liability to a penalty under this Section.

(3) Any penalty under this section shall be assessed by the Commissioner in the same manner, as far as may be, as the deficient tax to which it relates, but separately therefrom.

[Section 77] Jurisdiction of Resident Magistrates (Repealed)

Legislative History:

Decree 50 of 2009 (s117 and Sch4) – from 1 January 2010 = Section 77 was repealed

Decree 16 of 1995 – from 1 January 1995 – Section 77 was repealed and replaced with:

Jurisdiction of Resident Magistrates

77. (1) Where any resident magistrate hears and determines any prosecution for any offence under this Decree, then, notwithstanding anything contained in any other Act or Decree, he shall have jurisdiction to impose any fine or any sentence of imprisonment which may be imposed under this Decree on any person convicted of the offence.

(2) Without prejudice to the powers of any other court of competent jurisdiction, any proceedings for the recovery of any tax payable or any penal tax or penalty under this Decree may be heard and determined, without limit of amount, by a resident magistrate.

Decree 45 of 1992 – from 1 July 1992 - Section 77 read as:

Any person who fails to furnish a return required to be furnished by him under Part VII of this Decree shall be liable to a penalty not exceeding ten percent of the amount of tax payable.

[Section 78] Proceedings to be taken summarily (Repealed)

Legislative History:

Decree 50 of 2009 (s117 and Sch4) – from 1 January 2010 = Section 78 was repealed

Decree 45 of 1992 – from 1 July 1992 - Section 78 read as:

All proceedings for offences against this Decree shall be taken by way of summary prosecution before a Court of competent jurisdiction upon the information of the Commissioner.

PART 13 MISCELLANEOUS

(Sections 79–84)

[Section 79] Keeping of records

(1) Every registered person who supplies in Fiji goods and services shall keep in Fiji sufficient records in the English language to enable ready ascertainment by the Chief Executive Officer or any officer authorised by him or her, of that person's liability to tax and shall retain in Fiji all such records for a period of at least 7 years after the end of the taxable period to which they relate, provided that the requirement for the preservation of any records may be dispensed with—

- a) if the Chief Executive Officer gives written notice that preservation is not required;
- b) in the case of a company which has been wound-up and finally dissolved.

(2) Without limiting the generality of subsection (3), the records required to be kept and retained, pursuant to subsection (1), shall contain a record of all goods and services supplied by or to that registered person showing the goods and services and the suppliers or their agents, in sufficient detail to enable the goods and services, the suppliers or the agents to be readily identified by the Chief Executive Officer and all invoices, tax invoices, credit notes and debit notes relating thereto.

(3) For the purpose of this section, the term “records” includes books of account (whether contained in manual, mechanical, electronic format or microfilm) recording receipts or payments or income or expenditure and also includes vouchers, bank statements, invoices, tax invoices, credit notes, debit notes, receipts and such other documents as are necessary to verify the entries in any such books of account.

[Section 80] Contracts for avoidance of tax

(1) Notwithstanding anything in any law, every contract, agreement, transaction or arrangement made or entered into orally or in writing, shall, so far as it has or purports to have the purpose or effect of in any way, directly or indirectly—

- a) altering the incidence of the tax;
- b) relieving any person from liability to pay the tax or make any return; or
- c) defeating, evading or avoiding any liability imposed on any person by this Act; or
- d) preventing the operation of this Act in any respect, be absolutely void, as against the Chief Executive Officer or in regard to any proceeding under this Act.

Legislative History:

Decree 28 of 1992 (s35) – from 1 July 1992 – Section 80(1) was amended by deleting the word "Every" in the first line of subsection (1) and substituting the following "Notwithstanding anything in any law, every", and substituting the full stop for the comma after "Decree" in nineteenth line of subsection (1) and deleting all the words thereafter to the end of subsection (1)

(2) The Chief Executive Officer may, for the purposes of this section, deem—

- a) any person not being, apart from this subsection, a registered person who is a party to or has participated in any way in any contract, agreement or arrangement, to be a registered person;
- b) any supply of goods and services, whether or not a taxable supply, that is affected by or is part of any contract, agreement or arrangement, to be both made to and made by any registered person;
- c) any supply of goods and services to occur in any taxable period that but for any contract, agreement or arrangement affected by this section, would have been the taxable period in which the supply was made;
- d) any supply of goods and services to have been made or consideration for such supply to be given, at open market value.

(3) Where—

- a) any person (in this subsection hereafter referred to as the original person) enters into any arrangement on or after 3 May 1991 whereby any taxable activity formerly carried on by the original person is carried on, in whole or in part, by any other person or other persons; and
- b) the original person and the other person or other persons are not independent of each other,

for the purposes of section 22, 32 or 36, the value of the supplies made in the course of carrying on all taxable activities in any period of 12 months commencing on the first day of any month by the original person and by the other person or, as the case may be, by the other persons shall, so far as the value relates to those supplies arising from the taxable activity formerly carried on by the original person, each be deemed to be equal to the aggregate of the value of the taxable supplies made by all of them for that period, provided that the Chief Executive Officer may, having regard to the circumstances of the case and if the Chief Executive Officer thinks it equitable to do so, determine in any particular case that this subsection shall not apply to all or any of the original persons and that other person or, as the case may be, those other persons.

Legislative History:
Decree 28 of 1992 (s35) – from 1 July 1992 – Section 80(2) was amended by deleting the words and expression "of subsection (1)" in the first line immediately after paragraph (b) of subsection (3)

[Section 81] Liability to pay past tax

Except as otherwise expressly provided in any enactment, the repeal or amendment of any provision of this Act shall not affect any liability or right of any person that existed under the provision immediately before its repeal or amendment and in particular—

- a) any liability to tax or to any fine or penalty, of any person pursuant to the repealed or amended provision and the right of the State to any revenue, tax, fee, fine or penalty pursuant to the repeal or amendment provision, shall not be affected by the repeal or amendment; and
- b) all acts and proceedings for the assessment or recovery of any revenue, tax, fine or penalty assessed or assessable or paid or payable pursuant to the repealed or amended provision and all proceedings in respect of offences committed or alleged to be committed in respect of the repealed or amended provision, may be instituted or continued as if the provision had not been repealed or amended.

[Section 82] Price to be displayed

(1) For the purposes of this Act, the price of all goods and services supplied at the retail level in Fiji shall be displayed as inclusive of tax (if any) chargeable on that supply.

(2) After 1 July 1993, it shall be unlawful for a registered person to display the tax component of the price of goods and services supplied at the retail level as a separate item.

(3) Notwithstanding anything in the foregoing provisions of this section, where any tourism publicity material is or will be utilised overseas to advertise the supply of any goods and services by any registered person, the price of those goods and services advertised may be displayed as exclusive of tax (if any) chargeable on that supply, provided that any tourism publicity material on which an exclusive of tax price is displayed must clearly state that the price displayed is subject to the tax.

(4) The Fijian Competition and Consumer Commission, established under section 7 of the Fijian Competition and Consumer Commission Act 2010, shall be responsible for the administration of this section and section 41 as if it were a function of the Commission specified under section 15 of the Fijian Competition and Consumer Commission Act 2010.

Legislative History:

Act 41 of 2017(s25) – from 1 August 2017 – Section 82(4) references to "Fiji Commerce Commission" and "Commerce Commission" was replaced with "Fijian Competition and Consumer Commission"

Act 31 of 2016 (s223) – from 1 December 2016 –Section 82(4) was amended by deleting "Price and Incomes Board" and substituting "Commerce Commission"; deleting "Section 3 of the Counter Inflation Act 1973" and substituting "section 7 of the Commerce Commission Act 2010"; deleting "Board" and substituting "Commission;" and deleting "Section 7 of the Counter Inflation Act 1973" and substituting "section 15 of the Commerce Commission Act 2010"

Act 16 of 1995 (s21) – from 1 January 1995 - Section 82(4) was amended by inserting immediately after the word "Section" in line 3 the words and figures "and Section 41 of this Decree"

Decree 45 of 1991 – from 1 July 1992 – Section 82(4) read as:

(4) The Prices and Incomes Board, established under Section 3 of the Counter-Inflation Act, shall be responsible for the administration of this Section as if it were a function of the Board specified under Section 7 of Counter-Inflation Act.

[Section 83] Fijian currency

For the purposes of this Act, all amounts of money shall be expressed in Fijian currency and in any case where and to the extent that any such amount is consideration in money for a supply, that amount shall be expressed in terms of Fijian currency as at the time of that supply.

[Section 84] Regulations

(1) The Minister may from time to time, make regulations, not inconsistent with this Act, for all or any of the following purposes—

- a) prescribing the duties and functions of officers and other persons appointed or employed under this Act;
- b) prescribing the form or returns to be made, the particulars to be set forth therein, the persons by whom and the time when or within which such returns are to be made and the forms of the assessments, notices and other documents referred to in this Act or necessary in order to give effect thereto;
- c) providing, where there is no provision in this Act or no sufficient provision in respect of any matter or thing necessary to give effect to this Act, in whatever manner and form the deficiency shall be supplied;
- d) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof; and
- e) providing for making, in any case or class of case, special arrangements to facilitate the deduction, collection or payments of tax and for making rules to govern the operation of such arrangements.

(2) Any regulations made under the provisions of subsection (1) may prescribe in respect of any contravention of or failure to comply with any provisions thereof, on conviction, the like penalties as are provided under Part 12.

PART 14 TRANSITIONAL PROVISIONS

(Sections 85–88)

[Section 85] Registration of persons liable to be registered on 1 July 1992

(1) Notwithstanding anything in section 22, every person who, on or before the last day of February 1992, knows or could with reasonable diligence have known, that that person will be liable to be registered with effect on or from 1 July 1992 pursuant to section 22, shall, to enable the Chief Executive Officer to effect registration of any such person with effect from 1 July 1992, apply for registration in the approved form, before 1 March 1992, to the Chief Executive Officer to be registered and the Chief Executive Officer may register that person in the manner prescribed by section 22.

Legislative History:

Decree 28 of 1992 (s36) – from 1 July 1992 – Section 85(1) is amended by deleting the words "on or after the commencement of this Decree and" in the second and third lines

Decree 45 of 1991 – from 1 July 1992 – Section 85(1) read as:

(1) Notwithstanding anything in Section 22 of this Decree, every person who, on or after the commencement of this Decree and on or before the last day of February 1992, knows, or could with reasonable diligence have known, that, that person will be liable to be registered with effect on or from the 1st day of July 1992 pursuant to Section 22 of this Decree, shall, to enable the Commissioner to effect registration of any such person with effect from the 1st July 1992, apply for registration in the approved form, before the 1st day March 1992, to the Commissioner to be registered, and Commissioner may register that person in the manner prescribed by Section 22 of this Decree.

(2) Every other person who is liable to be registered under this Act on or after 1 July 1992, shall apply for registration pursuant to section 22.

(3) Notwithstanding anything in section 1(2), this section shall come into force on 1 February 1992.

Legislative History:

Decree 28 of 1992 (s36) – from 1 July 1992 – Section 85(3) was inserted

[Section 85A] Registration of insurance companies liable to be registered on 1 August 2010

(1) Any person who supplies insurance services, including licensed insurance agents as defined in section 2 or brokers, unless already registered, shall where the person is liable to be registered under provisions of section 22, be deemed to be registered with effect from the commencement of this Act.

(2) Notwithstanding the provisions of section 18(1), only new or renewed insurance policies issued on or after the commencement of this Act shall be taxable pursuant to this Act.

(3) Notwithstanding any provisions of this Act, a registered person shall be entitled to claim input tax credit for expenses incurred and paid or invoiced from 1 June 2010 to 31 July 2010, where such expenditure was utilised for the provision of taxable insurance supplies on or after the commencement of this Act.

Legislative History:

Decree 11 of 2012(s5) – 1 August 2010 – Section 85A was amended by deleting and replacing Sections 85A (1) and (2) and inserting Section 85(3) as per current provision

Decree 42 of 2010 (s5) – from 1 August 2010 – Section 85A inserted as:

85A. - (1) Any person who supplies insurance services including licensed insurance brokers or agents under the Insurance Act 1998, for the purpose of section 3(8) and (8A) of the Decree shall be registered in accordance with section 22 commencing on the 1st of August, 2010.

(2) Subject to section 18(1), any new or renewed policy should this be "made" receipt depends on delivery received by a registered person pursuant to any contract of insurance issued on or after the 1st of August 2010, shall be taxable pursuant to this Decree."

[Section 86] Deduction for customs and excise duty

(1) For the purposes of this section—

capital asset means any goods forming part of the capital assets of a taxable activity;

customs duty means customs duty imposed by the Customs Tariff Act 1986 prior to 1 July 1992;

excise duty means excise duty imposed by the Excise Act 1986 prior to 1 July 1992; and

trading stock has the same meaning as in the Income Tax Act 2015 but does not include—

- a) any capital asset; or
- b) any goods held on hire or for hire; or
- c) any second-hand goods, not being goods in respect of which that registered person has paid either customs duty or excise duty and those goods have not been supplied and subsequently acquired by that person;
- d) beer, cigarettes, manufactured tobacco, spirits or stout subject to excise duty at specific rate;
- e) any goods being consumables and spare parts of the taxable activity;
- f) any goods that have been written off as being obsolete for income tax purposes.

Legislative History:

Act 31 of 2016(s223) – from 1 December 2016 – Section 86(1) was amended by deleting "Income Tax Act" and substituting "Income Tax Act 2015"

(2) Notwithstanding anything in section 39(2), in calculating the amount of the tax payable by a registered person in one taxable period ending on or before 30 September 1992, there may be deducted an amount equal to the customs duty and excise duty credit calculated in accordance with subsections (3), (4), (5) or any combination thereof as appropriate.

Legislative History:

Decree 28 of 1992 (s37) – from 1 July 1992 – Section 86(2)) was amended deleting the words, figures and expressions in the last line of subsection (2) and substituting - "Subsections (3), (4), (5) or any combination thereof as appropriate.

(3) For the purposes of subsection (2), where a registered person held, at the close of the 30 June 1992, goods which are trading stock of a taxable activity carried on by that registered person and the Chief Executive Officer is satisfied that—

- a) those goods were acquired on or after 1 July 1991; and
- b) customs duty or excise duty has been paid by that registered person in respect of those goods,

the amount of the customs duty and excise duty credit that may be deducted pursuant to subsection (2) shall be the amount of the customs duty or excise duty paid.

[subs (3) am Decree 28 of 1992 s 37, effective 1 July 1992]

Legislative History:

Decree 28 of 1992 (s37) – from 1 July 1992 – Section 86(3) was amended by deleting the words "those goods were" in the fifth line of subsection (3); inserting the words "those goods were" at the beginning of paragraph (a) of subsection (3); deleting the word "where at the beginning of paragraph (b) of subsection (3); and adding the word "registered" before the word "person" in paragraph (b) of subsection (3).

Decree 45 of 1991 – from 1 July 1992 – Section 86(3) read as:

(3) For the purposes of subsection (2) of this Section, where a registered person held, at the close of the 30th day of June 1992, goods which are trading stock of a taxable activity carried on by that registered person and the Commissioner is satisfied that those goods were -

(a) acquired on or after the 1st day of July 1991; and

(b) where customs duty or excise duty has been paid by that person in respect of those goods,

the amount of the customs duty and excise duty credit that may be deducted pursuant to subsection (2) of this Section shall be the amount of the customs duty or excise duty paid.

(4) For the purpose of subsection (2), where a registered person held, at the close of 30 June 1992, goods which are trading stock of a taxable activity carried on by that registered person and the Chief Executive Officer is satisfied that—

- i. those goods were acquired on or after 1 July 1991; and
- ii. that person has records to show the amount of customs or excise duty paid by another person in respect of those goods,

the amount of the customs duty and excise duty credit that may be deducted pursuant to subsection (2) shall be the amount of the customs duty or excise duty paid.

Legislative History:

Decree 28 of 1992 (s37) – from 1 July 1992 – Section 85(4) was inserted

(5) For the purposes of subsection (2), where a registered person held, at the close of 30 June 1992, goods which are trading stock of a taxable activity carried on by that registered person and the Chief Executive Officer is satisfied that—

- a) those goods were acquired on or after 1 July 1991; and
- b) customs duty or excise duty has been paid in respect of those goods on the importation or entry for home consumption of those goods—

the amount of the customs duty and excise duty that may be deducted pursuant to subsection (2) shall be the lesser of;

- c) the amount of customs duty or excise duty that would have been correctly payable, if the registered person had imported or entered for home consumption those goods at a cost,

- inclusive of customs duty and excise duty at a rate of 10%, equal to the total consideration paid by the registered person in respect of the purchase of those goods; or
- d) the amount of \$1,000.

Legislative History:

Decree 28 of 1992 (s36) – from 1 July 1992 – Section 85(5) was amended by renumbering Section 85(4) under Decree 45 of 1991 as Section 85(5) which was further amended by deleting the figures "1991" on the third line and substituting "1992"; deleting the words "those goods were" in the fifth line; inserting the words "those goods were at the beginning of paragraph (a); and deleting the word "where" at the beginning of paragraph (b)

Decree 45 of 1991 – from 1 July 1992 - Section 85(5) (which was initially Section 85(4) read as:

(4) For the purposes of subsection (2) of this Section, where a registered person held, at the close of the 30th day of June 1991, goods which are trading stock of a taxable activity carried on by that registered person and the Commissioner is satisfied that those goods were -

(a) acquired on or after the 1st day of July 1991; and

(b) where customs duty or excise duty has been paid in respect of those goods on the importation or entry for home consumption of those goods the amount of the customs duty and excise duty that may be deducted pursuant to subsection (2) of this Section shall be the lesser of, -

(c) the amount of customs duty or excise duty that would have been correctly payable, if the registered person had imported or entered for home consumption those goods at a cost, inclusive of customs duty and excise duty at a rate of ten percent, equal to the total consideration paid by the registered person in respect of the purchase of those goods; or

(d) the amount of one thousand dollars.

(6) Subsections (3), (4) and (5) shall only apply in respect of goods which are trading stock, that when supplied on or after 1 July 1992, will be a taxable supply.

Legislative History:

Decree 28 of 1992 (s36) – from 1 July 1992 – Section 85(6) was inserted by renumbering Section 85(5) under Decree 45 of 1991 as Section 85(6) and was further amended by deleting "Subsections (3) and (4)" on the first line and substituting "Subsections (3), (4) and (5)"

[Section 87] Supplies prior to 1 July 1992

(1) For the purposes of this section, except as otherwise provided in the Regulations, the expression "time of performance" means—

a) in relation to supply of goods—

- i. where the goods are to be removed, the time of removal;
- ii. where the goods are not to be removed, the time when they are made available to the recipient;
- iii. where the goods (being sent or taken on approval, sale or return or similar terms) are removed before it is known whether a supply will take place, the time when it becomes certain that the supply has taken place; or

b) in relation to a supply of services, the time when the services are performed.

Legislative History:

Decree 28 of 1992 (s38) – from 1 July 1992 – Section 87(3) was amended by inserting the words "except as otherwise provided in the Regulations," after the comma in the first line of subsection (1)

(2) Notwithstanding anything in this Act, for the purposes of subsection (1), goods supplied under an agreement for hire as defined in section 18(3) shall be deemed to be a supply of services.

(3) Subject to subsection (4) and notwithstanding anything in section 18 where and to the extent that, the time of performance of any supply of goods and services—

- a) is before 1 July 1992 and that supply would, but for this section, be deemed by section 18 to take place on or after 1 July 1992 and the value of that supply is ascertainable, that time of performance shall, for the purposes of this Act, be the time when the supply of those goods and services is deemed to take place;
- b) is on or after 1 July 1992 and that supply would, but for this section, be deemed by section 18 to take place before 1 July 1992—
 - i. that time of performance shall, for the purposes of section 15, be the time when the supply of those goods and services is deemed to take place; and
 - ii. the time when the supply of those goods and services is made shall, for the purposes of section 39, be deemed to be 1 July 1992.

(4) Subject to subsection (5) and notwithstanding anything in subsection (3), where and to the extent that any supply of goods is the construction, major reconstruction, manufacture or extension of a building or an engineering work by the supplier and the goods—

- a) are sold pursuant to any written contract entered into before 1 July 1992; and
- b) are made available to the recipient on or after 1 July 1992,

the value of all work and materials permanently incorporated in or affixed on the site of the building or engineering work pursuant to that contract shall be determined as at the close of 30 June 1992, and—

- c) to the extent that the aggregate of the consideration in money for all supplies in respect of the sale of those goods which, pursuant to section 18(1) or section 18(2)(e), took place before 1 July 1992, exceeds that value, the amount of that excess shall be deemed to be consideration in money for a taxable supply by that supplier on 1 July 1992 and charged with tax pursuant to section 15;
- d) to the extent that the value exceeds the aggregate of the consideration in money for all supplies in respect of the sale of those goods which, pursuant to section 18(1) or section 18(2)(e), took place before 1 July 1992, the consideration in money for the first supply in respect of the sale of those goods which, pursuant to section 18(1) or section 18(2)(e), takes place on or after 1 July 1992 shall be deemed to be reduced by the amount of that excess,

provided that any part of the amount of that excess remaining, in any case where the consideration is reduced to nil as a result of the application of this paragraph, shall be carried forward and the consideration for any subsequent supply shall be deemed to be reduced to that extent and so on.

(5) The provisions of subsection (4) shall only apply to the extent that that value has been determined on or before 1 September 1992 in a manner acceptable to the Chief Executive Officer by an independent qualified valuer or surveyor registered in Fiji or by any other competent valuer that the Chief Executive Officer may, in his or her discretion approve.

Legislative History:

Decree 28 of 1992 (s38) – from 1 July 1992 – Section 87(5) was amended by erasing the full stop at the end of subsection (5) and adding the following "or by any other competent valuer that the Commissioner may, in his discretion approve."

[Section 88] Effect of imposition of tax

(1) For the purposes of this section the expression "alteration in the law" means the coming into force of the provision of this Act.

(2) Where—

- a) a supplier has at any time entered into any agreement or contract for the supply of goods and services with a recipient; and
- b) the alteration in the law renders that supply liable to be charged or chargeable with tax, the supplier may, unless the alteration in the law has been taken into account or express provision for the exclusion of the alteration in the law is contained in the agreement or contract, add to the agreed price in the said agreement or contract the amount of that tax,

provided that this subsection shall not apply where that agreement or contract is entered into on or after 1 July 1992.

Legislative History:

Decree 28 of 1992 (s39) – from 1 July 1992 – Section 88(2) was amended by deleting the word "October" and substituting the word "July"

(3) Where the alteration in the law renders any fee, charge or other amount, prescribed by or determined pursuant to, any Act, Decree or regulation in respect of any supply of goods and services liable to be charged or chargeable with tax, the said fee, charge or other amount so prescribed or determined shall, unless provision to the contrary is contained in that Act, Decree or regulation, be deemed to be increased or decreased by that amount of tax charged or chargeable.

Legislative History:

Act 22 of 2015 (s6) – from 1 January 2016 – Section 88(3) was amended by inserting "or decreased" after "increased".

(4) Where any Act, Decree or regulation prescribes or determines either a maximum or minimum amount in respect of any supply of goods and services, that maximum amount or, as the case may be, minimum amount shall, for the purposes of any such Act, Decree or regulation, be deemed to be increased or decreased by the amount of the tax charged or chargeable.

Legislative History:

(5) Subsections (3) and (4) shall not apply to any fee, charge or other amount prescribed or determined which is required to be paid by any public authority to any other person by virtue of that Act, Decree or regulation.

(6) Where any supply is or becomes charged with tax pursuant to this Act, the amount of any increase in consideration in respect of that supply attributable to the tax charged on that supply shall be recoverable by the supplier from the recipient of the taxable supply.

(7) Where there is an increase or decrease in the percentage of VAT under this Act, such increase in the percentage of VAT shall apply in respect of any VAT inclusive fee, charge or other amount prescribed under any other written law.

Legislative History:

Act 22 of 2015 (s6) – from 1 January 2016 – Section 88(7) was inserted

PART 15 AMENDMENTS AND REPEALS

(Section 89)

[Section 89] Amendments and repeals

For the purpose of this Act, any existing Acts, laws, rules, regulations or other related legal instructions currently enforced or to be enforced in the State which directly contravene provisions of this Act, may for all intents and purpose and for clarity, as far as those provisions are concerned, in respect of payment of tax in Fiji, become null and void and this Act shall supersede every other Act, law, rule, regulation or other legal instruction, instrument or document.

SCHEDULES

SCHEDULE 1

(Section 2) - Exempt Supplies

The supplies of goods and services listed in this Schedule shall be exempt from tax—

- 1) The supply of financial services, where that supply is not a zero-rated supply in terms of Schedule 2 consisting of—
 - a) banking services such as the issue, transfer or receipt of or any dealing with, money, any security for money or any note or order for the payment of money and the operation of any current, deposit or savings account;
 - b) a supply, including a transfer, assignment or surrender, of a contract of insurance, to the extent that the insurance is—
 - i. life insurance;
 - ii. medical insurance;
 - iii. indemnity payments of insurance against loss of earnings, being earnings within the meaning of the Workmen's Compensation Act 1964;
 - iv. indemnity payments of insurance against accidental personal injury or damages;
 - v. compensation paid under the Accident Compensation Act 2017; or
 - vi. parametric insurance,

provided any premiums paid for any contract of insurance in relation to subparagraphs (iii) and (iv) shall not be exempted under this Schedule and is a supply under section 15;

 - c) the issue, transfer or receipt of or dealing with, any stocks, shares, debentures and other securities; including the underwriting or sub-underwriting of such securities;
 - d) the making of any advance or the granting of credit;
 - e) the granting of or any dealing in, credit guarantees or other security for money and the management of credit guarantees by the person who granted the credit;
 - f) the provision or transfer of ownership, of an interest in a superannuation scheme or the management of a superannuation scheme; and
 - g) agreeing to do or arranging any of the services specified in the above subparagraphs, other than advising thereon.

Legislative History:

Act 15 of 2021 – from 1 August 2021 – paragraph 1(b)(vi) inserted as current provision

Act 40 of 2017 – from 1 January 2018 – Paragraph 1(b)(iii) was amended by deleting “or the Motor Vehicle (Third Party Insurance) Act 1948; or” and by inserting paragraph 1(b)(v) as current provision

Decree 11 of 2012 – from 1 August 2010- Paragraph 1(b) was deleted and replaced with:

(b) a supply, including a transfer, assignment, or surrender, of a contract of insurance, to the extent that the insurance is -

(i) life insurance;

(ii) medical insurance;

(iii) indemnity payments of insurance against loss of earnings, being earnings within the meaning of the Workmen's Compensation Act (Cap. 94) or the Motor Vehicle (Third Party Insurance) Act (Cap.177); or

(iv) indemnity payments of insurance against accidental personal injury or damages, provided any premiums paid for any contract of insurance in relation to subparagraphs (iii) and (iv) shall not be exempted under this schedule and is a supply under section 15

Decree 42 of 2010 – from 1 August 2010 – Paragraph 1(b) was amended by deleting “(b) insurance services including reinsurance” and substituting “(b) the provision, or transfer of ownership of life insurance or a medical insurance contract or set out clearly the provision of re-insurance in respect of any such contracts and those for loss of earnings, (being earnings within the meaning of the Workmen’s Compensation Act (Cap.94) or accidental personal injury or damages).”

1A) The amount of levy order under National Fire Services Act 1994 in relation to contract of insurance.

Legislative History:

Act 16 of 2020 (s26) – from 1 August 2020 – paragraph 1A was amended by deleting “Any stamp duties assessed under the Stamp Duties Act 1920 and the” and substituting “The”

Decree 11 of 2012 – from 1 August 2010- Paragraph 1A was inserted as:

(1A) Any stamp duties assessed under the Stamp Duties Act (Cap.205) and the amount of levy order under National Fire Services Act 1994 in relation to contract of insurance.

2) The supply of accommodation in a residential dwelling by way of hire provided it is used predominantly as a place or residence abode.

Legislative History:

Act 15 of 2020 – from 1 August 2020 – Paragraph 2 was amended by deleting “excluding residential dwelling as specified in paragraph 2A” to read as current provision (above)

Act 22 of 2016 – from 1 August 2016 – Paragraph 2 was amended by deleting “residential apartments which provide hotel like accommodation and facilities” and substituting “residential dwelling as specified in paragraph (2A)”

Act 22 of 2015 – from 1 January 2016 - Paragraph 2 was amended by inserting “excluding residential apartments which provide hotel-like accommodation and facilities” after “abode”

Decree 6 of 2010 – from 1 January 2016 – Paragraph 2 was amended by inserting “provided it is used predominantly as a place or residence or abode.” after the word hire

Decree 45 of 1991 – from 1 July 1992 – Paragraph 2 read as:

2A) (Repealed)

Legislative History:

Act 6 of 2023 – from 1 August 2023 – Paragraph 2A was deleted.

Act 15 of 2020 – from 1 August 2020 – Paragraph 2A was repealed

Act 15 of 2018 – from 1 August 2018 – Paragraph 2A (1) by deleting “registered”.

Act 22 of 2016 – from 1 August 2016 – Paragraph 2A was inserted as:

(2A). — (1) The supply of accommodation in a residential dwelling by way of hire or rent as a place of residence by a registered person who has an annual gross turnover from such hire or rent that is more than the amount specified in section 22.

(2) For the purpose of paragraph (2A) (1)—

- 3) The supply of leasehold land by way of rental (not being a grant or sale of the lease of that land) to the extent that the land is used for the principal purposes of accommodation in a dwelling erected on that land.

Legislative History:

Decree 28 of 1992 – from 1 July 1992 – Paragraph 3 was inserted

- 4) The supply of leasehold lands by the iTaukei Land Trust Board for and on behalf of the iTaukei owners under the iTaukei Land Trust Act 1940 but only in relation to the portion of rent monies, royalties etc that are to be distributed to iTaukei owners from time to time, provided that the exemption shall not apply to the statutory deductions (for example, 25% for rents received or collected) due to the iTaukei Land Trust Board under the iTaukei Land Trust Act 1940.

Legislative History:

Decree 28 of 1992 – from 1 July 1992 – Paragraph 4 was inserted

- 5) The supply and provision of the right to partake in any gambling.

Legislative History:

Decree 28 of 1992 – from 1 July 1992 – Paragraph 5 was inserted by renumbering paragraph 3 under Decree 45 of 1991 as Paragraph 5

- 6) The supply by any non-profit body of donated goods and services.

Legislative History:

Decree 28 of 1992 – from 1 July 1992 – Paragraph 5 was inserted by renumbering paragraph 4 under Decree 45 of 1991 as Paragraph 6

- 7) (1) The supply by a registered person of goods and services used wholly by the registered person for the purposes of making exempt supplies including goods and services which can only be used for making exempt supplies for which no deduction for input tax was claimed on the acquisition, production, maintenance and upgrading of those goods and services.

(2) Notwithstanding subparagraph (1), the supply by a registered person of goods used wholly by the registered person including goods which can only be used for making supplies under paragraph 2 qualifies as an exempt supply regardless of whether deduction for input tax was claimed on the acquisition, production, maintenance and upgrading of the goods.

Legislative History:

Act 30 of 2022 – from 1 August 2022- paragraph 7 amended which previously read as:

The supply by a registered person of goods and services used wholly by the registered person for the purposes of making exempt supplies and for which no deduction for input tax was claimed on the acquisition or production of those goods and services.

Decree 28 of 1992 – from 1 July 1992 – Paragraph 5 was inserted by renumbering paragraph 5 under Decree 45 of 1991 as Paragraph 7

- 8) The supply of education by an educational institution, where that supply is not a zero-rated supply in terms of Schedule 2.

Legislative History:

Decree 28 of 1992 – from 1 July 1992 – Paragraph 5 was inserted by renumbering paragraph 6 under Decree 45 of 1991 as Paragraph 8

- 9) The supply of any goods and services incidental to the provision of education by an educational institution to which paragraph 8 applies, where that supply is not a zero-rated supply in terms of Schedule 2.

Legislative History:
Decree 28 of 1992 – from 1 July 1992 – Paragraph 5 was inserted by renumbering paragraph 7 under Decree 45 of 1991 as Paragraph 9

9A) (Repealed)

Legislative History:
Legislative History:
Act 22 of 2016 – from 1 August 2016 – Paragraph 9A was inserted as:
"9A. The supply of employment services to Government whereby payment is of salary and wages from Standard Expenditure Group 6 under Government grant"

Decree 44 of 2012 – from 1 January 2012 – Paragraph 9A was repealed

Decree 44 of 2011 – from 1 September 2011 – Paragraph 9A was inserted as:
9A (1) Any aircraft used for commercial air transport services provided however that prior written approval by the Minister for Finance must be obtained for the exemption.

(2) For the purpose of this paragraph "commercial air transport services" is defined in the Air Navigation (Amendment) Regulations 2009.

- 10) The supply of employment services to Government whereby payment is of salary and wages from Standard Expenditure Group 6 under Government grant.

Legislative History:
Decree 28 of 1992 – from 1 July 1992 – Paragraph 5 was inserted by renumbering paragraph 8 under Decree 45 of 1991 as Paragraph 10

For the purposes of this Schedule the terms—

donated goods and services means goods and services that are gifted to a non-profit body and are intended for use in carrying on or carrying out of the purposes of that non-profit body;

dwelling means any building, premises, structure or other place or any part thereof, used predominantly as a place of residence or abode of any individual, together with any appurtenances belonging thereto and enjoyed with it; but does not include a commercial dwelling;

educational institution means any pre-school registered by the Ministry of Education, primary school, secondary school, Fiji national university, Montfort Boys Town, Pacific Regional Seminary, Pacific Theological College and the University of the South Pacific or any other similar educational institute as approved by the Chief Executive Officer; but does not include any educational institution which is carried on for the purposes of commercial profit or gain to any proprietor, member or shareholder;

Legislative History:
Act 1 of 1993 -from 1 January 1993 – definition of education institution amended by inserting immediately after the word "Pacific" in line 8 the following - "or any other similar educational institute as approved by the Commissioner"

gambling includes any game of chance for money or events of great risks for the chance of winning something or making a profit, lotteries, bets placed on a race or other events; and

life insurance contract means a contract lawfully entered into to the extent that it places a sum or sums at risk upon the contingency of the termination or continuance of human life, marriage, civil union or de facto relationship or the birth of a child.

Legislative History:

Decree 11 of 2012 – from 1 August 2010 – definition of life insurance contract was deleted and replaced with current provision.

Decree 42 of 2010 – from 1 August 2010 – definition of life insurance contract inserted as: "life insurance contract" means a contract lawfully entered into which places a sum or sums at risk upon the contingency of the termination or continuance of human life or civil union;"

SCHEDULE 2

(Section 2) - Zero-Rated Supplies

A claim for zero-rated supply of goods or services is only allowed under this Schedule provided the Chief Executive Officer is satisfied that the export earnings have been remitted to Fiji, with respect to the following supplies—

Legislative History:

Act 22 of 2016 – from 1 August 2016 – the prerequisite to qualify for zero rating added as per above

- 1) The supply of goods where the supplier has entered the goods for export, pursuant to the Customs Act 1986 and those goods have been exported by the supplier.
- 2) The supply of goods where the goods have been deemed to be entered for export pursuant to the Customs Act 1986 and those goods have been exported by the supplier.
- 3) The supply of goods where the supplier has satisfied the Chief Executive Officer that the goods have been exported by the supplier to a place outside Fiji.
- 4) The supply of goods where the supplier will enter the goods for export pursuant to the Customs Act 1986, in the course of or as a condition of, making that supply, provided that in any case where such goods are not exported within 28 days of the time of supply, the supply shall, subject to paragraph (1) of this Schedule, be charged with tax pursuant to section 15(1).
- 5) The supply of goods which are not situated in Fiji at the time of supply.
- 6) The supply of goods where those goods are supplied in the course of repairing, renovating, modifying or treating any goods which are a temporary import or ships or aircraft in transit in terms of the Customs Act 1986 and those goods supplied—

- a) are wrought into, affixed to, attached to or otherwise form part of the temporary import or ships or aircrafts in transit; or
- b) being consumable goods, become unusable or worthless as a direct result of being used in that repair, renovation, modification or treatment process.

Legislative History:

Act 1 of 1993 – from 1 January 1993 – paragraph 6 was amended by inserting immediately after the word "import" in line 3 the words "or ships or aircrafts in transit"

Act 1 of 1993 – from 1 January 1993 – paragraph 6(a) was amended by erasing the semi-colon at the end of sub-paragraph (a) and inserting the words and expression "or ships or aircrafts in transit; or"

- 7) The supply of goods where those goods have been supplied pursuant to Part 12 of the Customs Act 1986, for use as stores for consumption outside Fiji on an aircraft or ship proceeding to a place outside Fiji.
- 8) The supply of a taxable activity as a going concern or part of a taxable activity as a going concern where that part is capable of separate operation to a registered person.
- 9) The supply of services directly in connection with goods situated outside Fiji.
- 10) The supply of transport services relating to the international carriage of passengers and goods—
 - a) from a place outside Fiji to another place outside Fiji;
 - b) from a place in Fiji to a place outside Fiji;
 - c) from a place outside Fiji to a place in Fiji; or
 - d) from a place in Fiji to another place in Fiji to the extent that the transport is by aircraft and constitutes “international carriage” for the purposes of the Civil Aviation Act 1976.
- 11) The supply of services comprising the insurance or the making of the arrangement of the insurance or the making of the arrangement of the transport of passengers or goods to which any provision of paragraph 10 of this Schedule applies.
- 12) The supply of services directly in connection with any goods which are a temporary import or ships or aircrafts in transit in terms of the Customs Act 1986.

Legislative History:

Act 1 of 1993 – from 1 January 1993 – paragraph 12 was amended by inserting the words "import" and "in" in line 2 the words "or ships or aircrafts in transit"

- 13) The supply of services which are physically performed outside Fiji.

14) (1) The supply of the following services to a person who belongs in a country, other than Fiji—

- a) the filing, prosecution, granting, maintenance, transfer, assignment, licensing or enforcement of intellectual property rights, including patents, designs, trade marks, copyright, know-how, confidential information, trade secrets or similar rights;
- b) advertising services;
- c) services of consultants, engineers, consultancy bureaux, lawyers, accountants and other similar services, data processing and provision of information;
- d) the acceptance of any obligation to refrain from pursuing or exercising in whole or in part, any taxable activity or such rights as referred to in subparagraph (a) above;
- e) the provision of staff;
- f) financial services described in paragraph (1) of Schedule 1; and
- g) live broadcasts of films made or filming carried out in Fiji;
- h) services of Information Communication Technology business as defined in paragraph 3 of Part 9 in the Schedule to the Income Tax (Exempt Income) Regulations 2016;
- i) insurance services including reinsurance services or agreeing to do or arranging any such insurance or reinsurance services.

(2) For the purpose of this paragraph, supply of services will be zero-rated where and to the extent that these services are supplied for and to a person who is not resident in Fiji and who is outside Fiji at the time the services are performed for use and benefit outside Fiji and the supply is directly connected with goods or real property situated outside Fiji or with the rights that are for use outside Fiji.

Legislative History: Act 31 of 2016 – from 1 December 2016 - Paragraph 14(1)(h) was amended by deleting "section 17(63) of the Income Tax Act Cap 201" and substituting "paragraph 3 of Part 9 in the Schedule to the Income Tax (Exempt Income) Regulations 2016". Decree 11 of 2012 – from 1 August 2010 - Paragraph 14(1) was amended by inserting paragraph 14(1)(i) Promulgation 11 of 2009 – from 1 March 2009 – Paragraph 14(1) was amended by inserting paragraph 14(1)(h) as: "(h) services of an Information Communication Technology as defined in section 17(63) of the Income Tax Act, Cap 201." Promulgation 12 of 2009 – from 1 January 2009 – Paragraph 14(1) was amended by inserting paragraph 14(1)(g) Promulgation 31 of 2008 – from 1 January 2009 – paragraph 14 was renumbered as paragraph 14(1) and paragraph 14(2) inserted as above
--

15) (1) The supply to a person in that person's taxable activity capacity (and not in that person's private capacity) who in that capacity belongs in a country other than Fiji of services comprising of—

- a) the handling or storage of goods at or their transportation to or from a place at which they are to be exported or have been imported or the handling or storage of such goods in connection with such transport; or

- b) ancillary transport activities in relation to any ship or aircraft in a port or airport; or
- c) the making of the arrangements for the supply of any of the services referred to in this paragraph and paragraph 7 of this Schedule.

(2) For the purposes of this paragraph, “ancillary transport activities” includes loading, unloading, handling, landing, berthing and stevedoring.

Legislative History:

Decree 28 of 1999 – from 1 January 2000 – paragraph 15 was renumbered as paragraph 15(1) and paragraph 15(2) inserted as above

16) The supply of sugar cane.

17) The supply of any prescription medicine or prescription drugs.

Legislative History:

Act 06 of 2023 – from 1 August 2023 – paragraph 17 was inserted

Act 22 of 2015 – from 1 January 2016 – paragraph 17 was repealed

Act 29 of 1995 – from 1 January 1996 – Paragraph 17 was inserted by remembering paragraph 18 as paragraph 17 which read as:

18. The supply of any medicines and drugs dispensed on the prescription of a medical practitioner or a registered dentist.

Act 29 of 1995 – from 1 January 1996 – Paragraph 17 was repealed

18) The supply of goods, being goods supplied by a registered person to an inbound passenger in the international disembarkation concourse of the airport.

Legislative History:

Act 29 of 1995 – from 1 January 1996 – Paragraph 18 was amended by remembering paragraph 19 as paragraph 18 which reads as current paragraph (above)

19) The supply of fertiliser solely for the planting of cane under the FSC Advancement Scheme as approved by the Chief Executive Officer.

Legislative History:

Act 29 of 1995 – from 1 January 1996 – Paragraph 19 was amended by remembering paragraph 20 as paragraph 19 which reads as current paragraph (above)

Act 1 of 1993 – from 1 January 1993 – paragraph 20 was inserted (and later renumbered to paragraph 19) under Act 29 of 1995

20) Supplies of goods cleared ex-bond or imported direct for or on behalf of approved persons or bodies under section 14(4)(e), provided the liability to import tax shall be collected and paid at the time of disposal in accordance with the provisions of the Customs Tariff Act 1986.

Legislative History:

Act 29 of 1995 – from 1 January 1996 – Paragraph 20 was amended by remembering paragraph 21 as paragraph 20 which reads as the above paragraph as inserted by Act 1 of 1993

Act 1 of 1993 – from 1 January 1993 – paragraph 21 was inserted as:

21. Supplies of goods cleared ex-bond or imported direct for or on behalf of approved persons or bodies under paragraph (e) of subsection (4) of Section 14 of this Decree, provided the liability to import tax shall be collected and paid at the time of disposal in accordance with the provisions of the Customs Tariff Act.

21) The handling of international inbound telecommunication services (except where charges are accounted for by the recipient) and all mails and parcels on which postage or freight has been accounted for and for which an income is received for services provided.

Legislative History:

Act 29 of 1995 – from 1 January 1996 – Paragraph 21 was amended by remembering paragraph 22 as paragraph 21 which reads as the above paragraph as inserted by Act 1 of 1993

Act 1 of 1993 – from 1 January 1993 – paragraph 22 was inserted

22) [Repealed]

Legislative History:

Act 1 of 2001 - from 1 January 2001 – paragraph 22 was repealed

Act 28 of 1999 – from 1 January 2000 – paragraph 22 was repealed and replaced with:
22.-(1) The supply of essential food items.

(2) For the purpose of this paragraph, "essential food item" means-

- (a) tinned fish;
- (b) flour and sharp;
- (c) powered milk;
- (d) edible oil;
- (e) rice;
- (f) tea.

Act 29 of 1995 – from 1 January 1996 – Paragraph 22 was amended by remembering paragraph 23 as paragraph 22

Act 1 of 1993 – from 1 January 1993 – Paragraph 23 (and later renumbered to paragraph 22 under Act 29 of 1995) read as:

For the purposes of this Schedule the terms:

"Ancillary transport activities" includes loading, unloading, handling, landing, berthing and stevedoring;

"Bus" means any heavy public service vehicle licensed to carry thirteen or more passengers within the meaning of the Traffic Act;

"Public passenger transportation", in relation to a bus means stage carriage within the meaning of the Traffic Act.

23) The supply by the State of Water and Sewerage Services.

Legislative History:

Act 28 of 1999 – from 1 January 2000 – paragraph 23 was inserted as current provision

Act 1 of 1993 – from 1 January 1993 – Paragraph 23 was amended by renumbering paragraph 20 (as under Decree 45 of 1991) as paragraph 23; Paragraph 20 read as:

20. For the purposes of this Schedule the terms:

"Ancillary transport activities" includes loading, unloading, handling, landing, berthing and stevedoring;

"Bus" means any heavy public service vehicle licensed to carry thirteen or more passengers within the meaning of the Traffic Act;

"Public passenger transportation", in relation to a bus means stage carriage within the meaning of the Traffic Act.

24) [Repealed]

Legislative History:

Act 22 of 2015 – from 1 January 2016 – paragraph 24 was repealed

Decree 6 of 2010 – from 1 January 2010 – paragraph 24(g) was repealed

Promulgation 16 of 2008 – from 1 June 2008 – paragraph 24(g) inserted as:

(g) locally produced eggs

Act 27 of 2005 – from 1 January 2006 – paragraph 24 inserted as:

24. The supply of kerosene and the following basic food items -

- (a) tinned fish;
- (b) flour and sharps;
- (c) powdered milk;
- (d) edible oil;
- (e) rice;
- (f) tea.

25) [Repealed]

Legislative History:

Act 22 of 2015 – from 1 January 2016 – paragraph 25 was repealed

Promulgation 18 of 2007 – from 1 May 2007 – Paragraph 25 was inserted as:

25. The supply of electricity to residential consumers (including any surcharge or other service charge normally billed to such consumers) up to the value of first \$30 per monthly invoice in respect of each such supply."

26) (1) The supply of the following specific educational items—

- a) erasers;
- b) text books;
- c) exercise books;
- d) pencils;
- e) sharpeners;
- f) rulers;
- g) ball point pens/highlighters;
- h) felt tip and markers;
- i) slates, pencils, pastels, crayons and other writing or drawing chalks;
- j) modelling paste; and
- k) slates and boards.

(2) Provided the zero rating of such supply specified in paragraph 26(1) shall only be allowed from 4 January 2011 to 28 February 2011.

Legislative History:

Decree 65 of 2010 – from 1 January 2011 – Paragraph 26 was inserted

27) The supply of transport services relating to the carriage of passengers and goods from a place in Fiji to another place in Fiji by an omnibus licensed as a public service vehicle and constitutes “carriage” for the purpose of the Land Transport Act 1998.

For the purposes of this paragraph the terms—

omnibus has the meaning given in section 2 of the Land Transport Act 1998; and

passenger means, any person other than a driver carried in or on a vehicle within the meaning of the Land Transport Act 1998.

Legislative History:

Act 15 of 2021 – from 1 August 2021 – definition of omnibus amended to read as current provision

Decree 6 of 2011 – from 1 January 2011 – paragraph 27 inserted as:

27. - The supply of transport services relating to the carriage of passengers and goods from a place in Fiji to another place in Fiji by an omnibus licensed as a public service vehicle and constitutes "carriage" for the purpose of the Land Transport Act.

For the purposes of this paragraph the terms -

"Omnibus" means any motor vehicle equipped for the conveyance of not less than 12 persons excluding the driver within the meaning of the Land Transport Act;

"passenger" means, any person other than a driver carried in or on a vehicle within the meaning of the Land Transport Act."

28) Any payment by any donor agency in the nature of a grant or donation received by the Government, with the approval of the Minister responsible for finance in consultation with the CEO and deemed as consideration for a supply of goods and services.

Legislative History:

Decree 81 of 2012 – from 1 January 2013 – paragraph 28 was inserted

29) Any payment made by the Government, from monies received in accordance with paragraph (28), directly to any contractor with the approval of the Minister responsible for Finance in consultation with the CEO.

Legislative History:

Decree 81 of 2012 – from 1 January 2013 – paragraph 29 was inserted

30) The supply of fish to Pacific Fishing Company Limited.

Legislative History:

Act 33 of 2017 – from 1 August 2017 – paragraph 30 inserted as current provision (above)

Act 22 of 2015 – from 1 January 2016 – paragraph 20 was repealed

Decree 6 of 2014 – from 28th January 2011 – paragraph 30 was inserted as:

"30. Any direct supply of fish which is fresh, chilled or frozen, excluding fish fillets and other fish meats, by a locally registered fishing company to a local fish processor."

31. The supply of the following items with the corresponding customs tariff codes—

- a) canned fish;
- b) cooking gas;
- c) cooking oil;
- d) baby milk;
- e) powdered milk;
- f) liquid milk;
- g) dhal;
- h) flour;

- i) garlic;
- j) kerosene;
- k) potato;
- l) onion;
- m) tea;
- n) salt;
- o) sanitary pads;
- p) soap;
- q) soap powder;
- r) sugar;
- s) toilet paper;
- t) toothpaste; and
- u) rice.

0401.40.10, 0401.50.10, 0402.21.90, 0402.29.20, 0402.29.90, 0701.90.00, 0713.10.90, 0713.31.00, 0713.32.00, 0713.33.00, 0713.34.00, 0713.35.00, 0713.39.00, 0713.40.00, 0713.50.00, 0713.60.00, 0713.90.00, 0902.30.00, 0902.40.00, 1006.30.00, 1006.40.00, 1101.00.90, 1507.90.00, 1508.90.00, 1509.30.00, 1509.40.00, 1509.90.00, 1510.90.00, 1511.90.00, 1512.29.00, 1513.29.00, 1514.91.00, 1514.99.00, 1515.29.00, 1515.30.00, 1515.50.10, 1515.50.90, 1515.60.00, 1515.90.10, 1515.90.90, 3402.31.00, 3402.39.00, 3402.41.00, 3402.42.00, 3402.49.00, 3402.50.00, 3402.90.00, 0401.10.10, 0402.10.10, 0713.10.10, 2501.00.00, 1101.00.10, 0701.10.00, 0703.10.00, 0902.10.00, 1006.10.00, 1507.10.00, 1508.10.00, 1510.10.00, 1511.10.00, 3306.10.00, 4818.10.00, 1512.11.00, 1513.11.00, 1514.11.00, 1515.11.00, 1604.11.00, 3401.11.00, 1604.12.00, 1604.13.00, 1701.13.00, 2711.13.00, 1604.14.00, 1701.14.00, 1604.15.00, 1604.16.00, 1604.17.00, 1604.18.00, 1512.19.00, 1513.19.00, 1514.19.00, 1515.19.00, 1604.19.00, 3401.19.00, 0703.20.00, 0713.20.00, 0902.20.00, 1006.20.00, 1509.20.00, 1604.20.00, 0401.20.10, 2710.20.21, 1512.21.00, 1513.21.00, 1515.21.00, 0402.21.20, 2710.12.21, 9619.00.10.

Legislative History:

Act 23 of 2022 – from 1 April 2022 – paragraph 31 was amended after customs tariff code “2710.12.21” by inserting “, 9619.00.10.”

Act 8 of 2022 – from 1 April 2022 – paragraph 31 was inserted

SCHEDULE 2A (Repealed)

Legislative History

:

Act 6 of 2023 – from 1 August 2023 – Schedule 2A was deleted

Act 8 of 2022 – from 1 April 2022 – Schedule 2A was inserted

SCHEDULE 3 FORMS

FORM 1 - OATH OF SECRECY (Section 7)

I make oath and swear that I shall regard and deal with all documents, returns, assessments and information relating to the taxable activity of any person which may come into my possession or to my knowledge in the course of any official duty, as secret, and that I shall not reveal any such document or information to any person or permit any person to have access to any such document, return or assessment, save in the circumstances in which I am permitted to do so under this Act.

Sworn before me this day of 20 ..

.....
Magistrate

FORM 2 - OBJECTION TO ASSESSMENT VALUE ADDED TAX ACT 1991 (Section 50)

Name of taxpayer:

Tax Identification Number:

To the Chief Executive Officer of the Fiji Revenue and Customs Service—

I hereby give notice that I object to the amount for which I am assessed, for the following reasons—

[Here fully and in detail describe reasons]

(or I am not liable to taxation under the above Act for the following reasons—

[Here shortly describe reasons]

Dated this day of .. 20 ..

. Signature

FORM 3 - NOTICE OF APPEAL TO HIGH COURT
VALUE ADDED TAX ACT 1991
(Section 58)

Name of taxpayer:

Tax Identification Number:

To the Chief Executive Officer of the Fiji Revenue and Customs Service:

I hereby give notice that I am dissatisfied with the decision given by the Value Added Tax Tribunal in this matter for the following reasons—

[Here shortly describe reasons]

and that I desire to appeal to the High Court of Fiji.

Dated this day of .. 20 ..

.Signature

FORM 4 - REFERENCE OF APPEAL TO HIGH COURT
VALUE ADDED TAX ACT 1991
(Section 58)

In the matter of assessment of

By virtue of the powers vested in me in this behalf under this Act, I hereby refer the appeal of (or my appeal) against the decision of the Value Added Tax Tribunal to the High Court of Fiji for adjudication thereon.

Dated this day of 20 ..

To the Chief Registrar of the High Court of Fiji.

Chief Executive Officer of the Fiji Revenue and Customs Service.

**FORM 5 –
SCHEDULE OF INPUT TAX CREDITS CLAIMED IN THE VAT RETURN FOR TAXABLE PERIOD
ENDING:**

Name:

TIN:

Date	Supplier	TIN	Tax Invoice #	AMOUNT	VAT CLAIMED
TOTAL VAT INPUT TAX CREDIT CLAIMED					

NOTE:

PLEASE ENSURE ALL TAX INVOICES ARE RETAINED IN ACCORDANCE WITH SECTIONS 39(5) AND 79 OF THE VAT ACT 1991. IN THE ABSENCE OF RECORDS, INPUT TAX CREDITS WILL BE DISALLOWED. AN ADJUSTMENT IS REQUIRED TO BE MADE FOR PERSONAL ELEMENT IN GOODS AND SERVICES ACQUIRED.
THIS SCHEDULE IS TO BE ATTACHED TO THE VAT RETURN

Legislative History:
Promulgation 31 of 2008 - from 1 January 2009 – Form 5 inserted

FORM 6 - TOURIST VAT REFUND SCHEME LICENCE (Repealed)

Legislative History:
Decree 15 of 2013 – from 10 March 2013 – Form 6 repealed

Decree 13 of 2010 – from 1 February 2010 – Form 6 inserted as below:

Fiji Islands Revenue & Customs Authority

TOURIST VAT REFUND SCHEME LICENCE
(Section 70B of Value Added Tax Decree, 1991)

PURSUANT to Section 70B of the Value Added Tax Decree, 1991 ("Decree"), I hereby grant a Tourist VAT Refund Scheme operating licence to:

TAX IDENTIFICATION NUMBER (TIN):

- (a) The licensee is not entitled to the rights conferred by Section 70B of the Decree before issue date.
- (b) The licensee is only entitled to the right conferred by Section 70B of the Decree for so long as it complies with the terms of that section.
- (c) The licence is valid from the issue date and shall expire on the 2nd day of February, 2011.

The issue date of this licence is the 1st day of February 2010.

FORM 7 - TOURIST'S APPLICATION FOR VALUE ADDED TAX (VAT) REFUND (Repealed)

Legislative History:

Decree 15 of 2013 – from 10 March 2013 – Form 7 repealed

Decree 66 of 2010 – from 1 January 2011 – Form 7 deleted and replaced with form below:

**REVENUE &
CUSTOMS**

REPUBLIC OF FIJI

**Value Added Tax Decree 1991
[Section 70B]**

Form 7

TOURIST'S APPLICATION FOR VALUE ADDED TAX (VAT) REFUND					SERIAL NO:
PART A (to be completed by retailers)					IMPORTANT Information for Tourists
Receipt/Invoice Number	Date	Description of Good	Qty	Price (Inl. Vat)	
					NO GOODS, NO REFUND You MUST meet the conditions of the Tourist VAT Refund Scheme to be entitled for refund. You MUST complete all required information under Part B of this form at the time of purchase. You MUST take the goods out of Nadi International Airport or Suva Wharf within 2 months from the date of purchase. PART B (to be completed by tourist retailer purchaser)
FOR OFFICIAL USE ONLY					TOURIST'S PARTICULARS & DECLARATION
Total Payment (incl Vat				Name (as in passport): _____	
Net VAT refundable				Passport No: _____	
				Date of Birth: _____	
RETAILER'S DECLARATION					Arrival Date: _____
Retailers Stamp					Departure Date: _____
I declare that the customer has purchased the goods listed and is entitled to claim for a refund.					Residential Address: _____
Signature					I declare that:
Date					(a) I meet all the conditions of the Tourist VAT Refund Scheme;
					(b) The information on this application is true and correct;
					(c) I will allow FIRCA to inspect any goods.
					Signature

	Date
PART C (for official use only)	
FIRCA remarks	FIRCA Endorsement

TOURIST VAT REFUND SCHEME CONDITIONS

Goods to which VAT refund applies

1. - (1) The refund applies to goods, the supply of which is a taxable supply, except any of the following goods -

- (a) goods that have been partly consumed at the time at which the tourist leaves Fiji;
- (b) goods exported for business or commercial purposes; and
- (c) goods that will be exported by freight as unaccompanied baggage.

Eligibility for tourist VAT refund

2. - (1) Subject to sub-section (2) a tourist is eligible to receive a refund of the tax on the goods from the financial institution under the scheme if he is -

- (a) a resident of a country other than Fiji;
- (b) a holder of a foreign passport;
- (c) 13 years of age or above at the date of purchase of the goods; and
- (d) if employed, is employed in a country other than Fiji. Tourists that are unemployed or retirees are eligible subject to subparagraphs (a) to (c).
- (e) The tourist shall fulfill all the conditions stipulated in (a)-(d) above

(2) The holder of a student's permit shall only be eligible to receive a refund under paragraph (a) if he purchases the goods less than 4 months before the expiry of the student permit.

Conditions for tourist VAT refund scheme

3. - (1) A tourist shall only be entitled to the refund of the tax under the scheme if he satisfies the following conditions -

- (a) the goods must have been purchased from an approved licensed person;
- (b) the goods must be purchased no earlier than 2 months before the goods are taken out of Fiji to another country;
- (c) the tourist makes and duly completes, at the time of the purchase of the goods to which the refund relates, an application for a refund of the tax on such application Form 7 as approved and prescribed by the Commissioner;
- (d) the application form for refund shall be supported by tax invoices showing the amount (including the amount of VAT) paid by the tourist for the goods;
- (e) if goods have been acquired from an approved registered person or from different approved registered person in a day or in different days, the purchase price paid by the tourist must be at least \$500 (including amount of VAT);
- (f) the goods are taken out of Fiji to another country as the tourist's hand or accompanied luggage on the same flight or cruise ship voyage on which he is travelling;
- (g) the tourist shall submit the application form for refund together with the goods and the supporting tax invoices to the proper officer of customs at the Tourist VAT Refund Counter at the Nadi International Airport or Suva Wharf only, as the case may be, for inspection and endorsement of the application form before the goods are checked in or brought into the aircraft or cruise ship as hand luggage;
- (h) the tourist shall furnish such information and documents as the proper officer of Customs may require for the purpose of ascertaining whether the tourist will depart from Fiji in accordance with sub-paragraph (1);
- (i) the tourist shall depart from Fiji within 4 hours from the time of endorsement of the application form for refund by the proper officer of Customs;
- (j) the goods shall not be taken out of the premises of the Nadi International Departure Check-in Counter or the Suva Wharf, as the case may be, after the application form has been endorsed by the proper officer of Customs; and
- (k) after the application form for refund has been endorsed, the tourist shall not part with possession of the goods or give it to any other person except to the counter staff for checking in.

Offences relating to tourist VAT refund

4. - (1) Any person who receives any goods from a tourist after the application form in respect of such goods has been submitted to the proper officer of Customs at the Tourist VAT Refund Counter at the Nadi International Airport or Suva Wharf, as the case may be, shall be guilty of an offence and is liable for a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both a fine and imprisonment.

(2) Any person who brings any goods out of the premises of the Nadi International Airport Departure Check-in Counter or the Suva Wharf, as the case may be, after the application form in respect of such goods has been submitted to the proper officer of Customs at the VAT Refund Counter at the Airport or Suva Wharf concerned, shall be guilty of an offence and is liable upon conviction for a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both a fine and imprisonment.

(3) Sub-sections (1) and (2) shall not apply to the circumstances where -

- (a) a ticketing or luggage officer or other employee, who is authorized by the Air Terminal Services Limited of Fiji or the airline or air terminal operator concerned, longshoreman authorized by Fiji Ports Corporation Limited, receives luggage for checking in or handles the luggage for the purpose of loading it into the aircraft or cruise ship or
- (b) the tourist carries the goods in his hand luggage for boarding on the departing aircraft or cruise ship.

(Extracted from the Value Added Tax Decree 1991 - Fourth Schedule (Section 70B))

CHECKLIST:

Are you eligible to apply under the Tourist VAT Refund Scheme?

(See Eligibility criteria in paragraph 2 above)

Do you have the following?

≤ Unconsumed goods for verification

≤ Passport

≤ Form 7(s) issued by the approved licensed retailer(s)

≤ Original Tax invoices for goods

Please ensure that you visit our TVRS counters at Nadi Airport/ Suva Wharf 30 minutes BEFORE your scheduled departure time."

Decree 13 of 2010 – from 1 February 2010 – Form 7 inserted as below:

REVENUE &
CUSTOMS

REPUBLIC OF FIJI

Form 7

Value Added Tax Decree 1991
[Section 70B]

TOURIST'S APPLICATION FOR VALUE ADDED TAX (VAT) REFUND					SERIAL NO: A1
					IMPORTANT Information for Tourists
PART A (to be completed by retailers)					
Receipt/Invoice Number	Date	Description of Good	Qty	Price (Inl. Vat)	NO GOODS, NO REFUND You MUST meet the conditions of the Tourist VAT Refund Scheme to be entitled for refund. You MUST complete all required information under Part B of this form at the time of purchase. You MUST take the goods out of Nadi International Airport or Suva Wharf within 2 months from the date of purchase. _____ PART B (to be completed by tourist retailer purchaser)

FOR OFFICIAL USE ONLY Total Payment (incl Vat Total VAT refundable		TOURIST'S PARTICULARS & DECLARATION Name (as in passport): _____ Passport No: _____ Date of Birth: _____ Arrival Date: _____ Departure Date: _____ Residential Address: _____ I declare that: (a) I meet all the conditions of the Tourist VAT Refund Scheme; (b) The information on this application is true and correct; (c) I will allow FIRCA to inspect any goods. Signature Date
RETAILER'S DECLARATION Retailers Stamp I declare that the customer has purchased the goods listed and is entitled to claim for a refund. Signature Date		
PART C (for official use only)		
FIRCA remarks		FIRCA Endorsement

FORM 8 - TOURIST VAT REFUND SCHEME PAYMENT (Repealed)

Legislative History: Decree 15 of 2013 – from 10 March 2013 – Form 8 repealed Decree 13 of 2010 – from 1 February 2010 – Form 8 inserted as below: REVENUE & CUSTOMS Tourist VAT Refund Scheme Value Added Tax Decree 1991 Form 8 Payment Date: _____ Serial No: _____ PAY Name in Passport: _____ Passport Number: _____ The Sum of _____ as VAT Refundable on Purchases of goods made in Fiji \$
--

FIRCA Signature

FIRCA Stamp

SCHEDULE 4

(Section 70B) - Tourist Vat Refund Scheme

Legislative History:
Decree 13 of 2010 – from 1 February 2010 – Schedule 4 inserted

- 1) Schedule 4 of the Value Added Tax (Tourist VAT Refund Scheme) 2010 is added.

Purpose

- 2) The purpose of this Schedule is to provide retailers and tourists with certainty about the way the Chief Executive Officer will apply this Schedule in making Fiji an attractive shopping destination for tourists.

Definitions of this Part

- 3) In this Schedule unless the context otherwise requires—

application form for refund means the prescribed form as approved by the Chief Executive Officer under this scheme;

Legislative History:
Decree 15 of 2013 – from 10 March 2013 – paragraph 3 amended in the definition of “application form for refund” by deleting “Form 7” and substituting “form”

approved registered person means the retailer as approved by the Chief Executive Officer to be licensed under the Tourist VAT Refund Scheme;

cruise ship means a ship on an international voyage carrying passengers participating in a group programme and accommodated on board, for the purpose of making scheduled tourist visits at one or more different ports and which during the voyage does not normally—

- a) embark or disembark any other passengers;
- b) load or discharge any cargo;

financial institutions means a financial institution licensed under the Banking Act 1995 approved by the Chief Executive Officer to operate under the Tourist VAT Refund Scheme;

goods means the goods purchased from the approved registered person in respect of which an application form for a refund under the scheme has been or is to be submitted to the proper officer of Customs;

proper officer of Customs means any officer of Customs acting in the fulfilment of his or her duties under this Act or Customs Act 1986, whether such duties are assigned to him or her specially or generally or expressly or by implication;

scheme means the Tourist VAT Refund Scheme;

student's permit means a student's permit issued by the Director of Immigration under the Immigration Act 2003; and

tourist means an individual who is eligible to receive a refund of tax under Provision 6.

Application for a licence in VAT Refund Scheme

4) (1) Any registered tax and customs compliant person may apply in writing to the Chief Executive Officer for an operating licence under the scheme.

Legislative History:
Decree 15 of 2013 – from 10 March 2013 – paragraph 4(1) amended by inserting "tax and customs compliant" after the word "registered"

(2) Such licence shall be issued in form prescribed by the Chief Executive Officer.

Legislative History:
Decree 15 of 2013 – from 10 March 2013 – paragraph 4(2) amended by deleting "Form 6 in the Third Schedule" and substituting "form prescribed by the Commissioner"

(3) An approved licensed person shall pay an annual licence fee as prescribed by the Chief Executive Officer (inclusive of VAT).

Legislative History:
Act 22 of 2016 – from 1 August 2016 – paragraph 4(3) was amended by deleting "of \$2,500" and substituting "as prescribed by the Commissioner"

(4) An approved licensed person shall abide by all the requirements as approved and prescribed by the Chief Executive Officer for efficient administration of the scheme.

Legislative History:
Decree 15 of 2013 – from 10 March 2013 – paragraph 4(4) inserted

(5) A licence approved under this paragraph shall expire on 31 December in each year.

Legislative History:
Act 22 of 2015 – from 1 January 2016– paragraph 4(5) inserted

(6) The annual licence fee payable under paragraph (3) must be paid by 7 January in any year following the year in which such licence was first granted.

Legislative History:
Act 22 of 2015 – from 1 January 2016– paragraph 4(6) inserted

(7) The Comptroller may refuse to allow any transaction to take place in respect of which the fee may be due, until such fee has been paid.

Legislative History:
Act 22 of 2015 – from 1 January 2016– paragraph 4(7) inserted

(8) Where a new licence for a VAT refund scheme is issued under this paragraph during the second, third or fourth quarter of any year, the fee payable shall be respectively three-quarters, one-half or one-quarter of the annual fee.

Legislative History:
Act 22 of 2015 – from 1 January 2016– paragraph 4(8) inserted

Goods to which VAT refund applies

5) The refund applies to goods, the supply of which is a taxable supply, except any of the following goods—

- a) goods that have been partly consumed at the time at which the tourist leaves Fiji;
- b) goods exported for business or commercial purposes; and

- c) goods that will be exported by freight as unaccompanied baggage.

Eligibility for tourist VAT refund

6) (1) Subject to subsection (2) a tourist is eligible to receive a refund of the tax on the goods from the financial institution under the scheme if he or she is—

- a) a resident of a country other than Fiji;
- b) a holder of a foreign passport;
- c) 13 years of age or above at the date of purchase of the goods; and
- d) if employed, is employed in a country other than Fiji. Tourists that are unemployed or retirees are eligible subject to subparagraphs (a) to (c).

(2) The holder of a student's permit shall only be eligible to receive a refund under subparagraph (a) if he or she purchases the goods less than 4 months before the expiry of the student permit.

Conditions for tourist VAT refund scheme

7) A tourist shall only be entitled to the refund of the tax under the scheme if he or she satisfies the following conditions—

- a) the goods must have been purchased from an approved licensed person;
- b) the goods must be purchased no earlier than 2 months before the goods are taken out of Fiji to another country;
- c) the tourist makes and duly completes, at the time of his or her purchase of the goods to which the refund relates, an application for a refund of the tax on such application form as approved and prescribed by the Chief Executive Officer;
- d) the application form for refund shall be supported by tax invoices showing the amount (including the amount of VAT) paid by the tourist for the goods;
- e) if goods have been purchased from an approved registered person or from different approved registered persons on each trip to Fiji, the total purchase price paid by the tourist must be at least \$500 (including VAT);

Legislative History:

Decree 15 of 2013 – from 10 March 2013 - Paragraph 7 (e) was removed and replaced with: current provision

Decree 66 of 2010 – from 1 January 2011 – Paragraph 7(e) was deleted and replaced with provision below:

"(e) if goods have been acquired from an approved registered person or from different approved registered persons in a day or indifferent days on each trip to Fiji, the purchase price paid by the tourist must be at least \$500 (including VAT);

Decree 13 of 2010 – from 1 February 2010 – Paragraph 7(e) read as:

(e) if goods have been acquired from an approved registered person in a day, the purchase price paid by the tourist must be at least \$500 (including amount of VAT). If 2 or more goods have been acquired from different approved registered persons in a day, the total purchase price paid by the tourist for the items must be at least \$500 (including amount of VAT);

- f) the goods are to be taken out of Fiji to another country as the tourist's hand or accompanied luggage on the same flight or cruise ship voyage on which he or she is travelling;
- g) the tourist shall submit the application form for refund together with the goods and the supporting tax invoices to the proper officer of customs at the Tourist VAT Refund Counter at the Nadi International Airport, Nausori International Airport, Lautoka Wharf or Suva Wharf, as the case may be, for inspection and endorsement of the application form before the goods are checked in or brought into the aircraft or cruise ship as hand luggage;

Legislative History:

Act 10 of 2014– from 1 January 2015 - Paragraph 7(g) was amended by inserting "Nausori International Airport, Lautoka Wharf" after "Nadi International Airport"

- h) the tourist shall furnish such information and documents as the proper officer of Customs may require for the purpose of ascertaining whether the tourist will depart from Fiji in accordance with paragraph (i);
- i) the tourist shall depart from Fiji within 4 hours from the time of endorsement of the application form for refund by the proper officer of Customs;
- j) the goods shall not be taken out of the premises of the Nadi International Airport Departure Check-in Counter or the Suva Wharf, as the case may be, after the application form has been endorsed by the proper officer of Customs; and
- k) after the application form for refund has been endorsed, the tourist shall not part with possession of the goods or give it to any other person except to the counter staff for checking in.

Payment authority and manner of payment

8) (1) If a proper officer of Customs is satisfied that—

- a) a tourist complies with paragraph 6 at the officer's request; and
- b) that the tourist is entitled to be paid an amount under section 70B;

then the proper officer must give the tourist the refund form that includes—

- i. information identifying the tourist;
- ii. the amount of refund to which the tourist is entitled;
- iii. the name and signature of the proper officer; and
- iv. customs certification stamp.

(2) The tourist must produce the refund form to the financial institution that is located at the Nadi International Airport or Suva Wharf. The financial institution shall pay the tourist the entitled amount in cash and in Fijian currency on the same trip before the tourist leaves Fiji.

Legislative History:

Decree 15 of 2013 – from 10 March 2013 - Paragraph 8 (2) was amended by inserting "on the same trip" after the word "currency"

(3) No refund shall be issued by the financial institution after the tourist has left Fiji.

Legislative History:

Decree 15 of 2013 – from 10 March 2013 - Paragraph 8 (3) was inserted

Offences relating to tourist VAT refund

9) (1) Any person who receives any goods from a tourist after the application form in respect of such goods has been submitted to the proper officer of Customs at the Tourist VAT Refund Counter at the Nadi International Airport or Suva Wharf, as the case may be, shall be guilty of an offence and is liable for a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both a fine and imprisonment.

(2) Any person who brings any goods out of the premises of the Nadi International Airport Departure Check-in Counter or the Suva Wharf, as the case may be, after the application form in respect of such goods has been submitted to the proper officer of Customs at the Tourist VAT Refund Counter at the Airport or Suva Wharf concerned, shall be guilty of an offence and is liable for a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both a fine and imprisonment.

(3) Subsections (1) and (2) shall not apply to the circumstances where—

- a) a ticketing or luggage officer or other employee, who is authorised by the Air Terminal Services Limited of Fiji or the airline or air terminal operator concerned, longshoreman authorised by Fiji Ports Corporation Limited, receives luggage for checking in or handles the luggage for the purpose of loading it into the aircraft or cruise ship; or
- b) the tourist carries the goods in his or her hand luggage for boarding on the departing aircraft or cruise ship.

(4) Any person who appears as or purports to be a registered person with a licence approved by the Chief Executive Officer under this Schedule, without having the same, commits an offence and shall be liable upon conviction to a fine of \$10,000 or to a term of imprisonment for 6 months or to both.

Legislative History:

Decree 15 of 2013 – from 10 March 2013 - Paragraph 9 (4) was inserted

(5) Any person who duplicates a receipt so as to mislead a tourist or the Chief Executive Officer, commits an offence and shall be liable upon conviction to a fine of \$10,000 or to a term of imprisonment for 6 months or to both.

Legislative History:

Decree 15 of 2013 – from 10 March 2013 - Paragraph 9 (5) was inserted

(6) A tourist who knowingly provides a false document in order to make a claim for a refund under the scheme, commits an offence and shall be liable upon conviction to a fine of \$10,000 or to a term of imprisonment for 6 months or to both.

Legislative History:

Decree 15 of 2013 – from 10 March 2013 - Paragraph 9 (6) was inserted

Revocation of licence

10) The Chief Executive Officer may revoke a licence if the registered person—

- a) has failed to comply with any of the requirements of this Act or this Schedule; or
- b) has been convicted of an offence under this Act or any other law relating to taxation, customs or excise;
- c) has failed to comply with all the requirements prescribed by the Chief Executive Officer for the efficient administration of the scheme.

Legislative History:

Decree 15 of 2013 – from 10 March 2013 - Paragraph 10(c) was inserted

SUBSIDIARY LEGISLATION

VALUE ADDED TAX REGULATIONS 1991

Table of Amendments

Value Added Tax Regulations 1991 (LN 65 of 1991) commenced on 1 July 1992, as amended by:

Amending Legislation	Date of Commencement
Value Added Tax Regulations 1991 (Amendment) (No 1) Regulations 1992 (LN 68 of 1992)	1 July 1992
Value Added Tax (Amendment) Regulations 2000 (LN 1 of 2000)	1 January 2000
Value Added Tax (Amendment) Regulations 2005 (LN 77 of 2005)	1 January 2006
Fiji Islands Revenue and Customs Authority (Amendment) (No 2) Decree 2011 (No 18 of 2011)	1 March 2011
Revised Edition of the Laws (Consequential Amendments) Regulations 2016 (LN 99 of 2016)	1 December 2016
Fiji Revenue and Customs Authority (Budget Amendment) Act 2017 (No 38 of 2017)	1 August 2017
Value Added Tax (Budget Amendment) Act 2020 (Act 15 of 2020) Consequential Amendments	1 August 2020

PART 1 PRELIMINARY

[Regulation 1] Short title

These Regulations may be cited as the Value Added Tax Regulations 1991.

[Regulation 1A] Commencement

These regulations come into force on 1 July 1992.

[reg 21 renum reg 1A LN 1 of 2000 reg 2, effective 1 January 2000]

[Regulation 2] Interpretation

In these Regulations, unless the context otherwise requires—

basic food items means the food items listed under paragraph 24 of Schedule 2 to the Act;

[def insrt LN 77 of 2005 reg 2, effective 1 January 2006]

essential food items essential food items has the meaning given to it in paragraph 22(2) of Schedule 2 to the Act; and

[def insrt LN 1 of 2000 reg 3, effective 1 January 2000]

the Act means the Value Added Tax Act 1991.

PART 2 TAX INVOICES

[Regulation 3] Tax invoice particulars

Subject to regulation 5 and 7, a tax invoice shall contain the following particulars—

- a) the words “tax invoice” in a prominent place;
- b) the name, address and taxpayer identification number of the supplier;
- c) the name and address of the recipient;
- d) an individual serialised number and the date upon which the tax invoice was issued;
- e) a description of the goods and services supplied;
- f) the quantity or volume of the goods and services supplied; and
- g) the total amount of the tax charged, the consideration, excluding tax and the consideration, inclusive of tax for that supply.

[Regulation 4] Issuing tax invoice

Where a registered person issues a tax invoice containing the particulars prescribed in regulation 3 and specifies thereon any goods and services which are subject of an exempt or zero rated supply, he or she shall distinguish on the tax invoice between the goods and services which are the subject of an exempt or zero-rated supply and state separately the gross total amount payable in respect of each.

[Regulation 5] Consideration

Notwithstanding anything in regulation 3, where the consideration in money for a supply does not exceed \$100 or such amount as the Minister may from time to time by Legal Notice declare or the supply is made by a retailer, a tax invoice shall contain the particulars in regulation 3 or the following particulars—

- a) the word “tax invoice” in a prominent place;
- b) the name and taxpayer identification number of the supplier;
- c) the date upon which the tax invoice was issued;
- d) a description of the goods and services supplied; and
- e) the consideration for the supply and a statement that it includes a charge in respect of tax.

[Regulation 6] Supplies subject to tax invoice

Where a registered person provides a tax invoice in accordance with regulation 5, the tax invoice shall include only particulars of supplies which are subject to tax and shall not contain any reference to any exempt or zero-rated supply.

[Regulation 7] Supplier discretion

Notwithstanding any other regulation, a supplier shall not unless requested by the recipient be required to provide a tax invoice if the consideration in money for a supply does not exceed \$10 or such amount as the Minister may from time to time, by Legal Notice declare.

[reg 7 am LN 68 of 1992 reg 3, effective 1 July 1992]

[Regulation 8] Recipient document

Where a recipient, being a registered person, creates a document containing the particulars specified in regulation 3 and purporting to be tax invoice in respect of a taxable supply of goods and services made to the recipient by a supplier, being a registered person, that document shall be deemed to be a tax invoice issued by the supplier under section 41(1) of the Act where—

- a) the Chief Executive Officer of the Fiji Revenue and Customs Service has granted prior approval for the issue of such documents by a recipient in relation to the taxable supplies to which the documents relate; and
- b) the supplier and the recipient agree that the supplier shall not issue a tax invoice in respect of any taxable supply to which this regulation applies; and
- c) the document is provided to the supplier and a copy is retained by the recipient; and
- d) the words “buyer created tax invoice — Fiji Revenue and Customs Service approved” are contained on that document,

provided that where a tax invoice is issued pursuant to this regulation any tax invoice issued by the supplier in respect of that taxable supply shall be deemed not to be a tax invoice for the purposes of the Act.

[reg 8 am Decree 18 of 2011 s 4, effective 1 March 2011 ; LN 99 of 2016 reg 294, effective 1 December 2016; Act 38 of 2017 s 7, effective 1 August 2017]

[Regulation 9] Approval

Where approval has been granted by the Chief Executive Officer of the Fiji Revenue and Customs Service to issue tax invoices pursuant to regulation 8, that approval may be withdrawn at any time where the Chief Executive Officer of the Fiji Revenue and Customs Service is satisfied that the conditions of that approval have not been complied with.

[reg 9 am LN 68 of 1992 reg 4, effective 1 July 1992 ; LN 99 of 2016 reg 294, effective 1 December 2016; Act 38 of 2017 s 7, effective 1 August 2017]

[Regulation 10] Suppliers invoice

Where a person receives relevant services to which section 21 of the Act applies, the relevant invoice or other documentation from the person supplying the service shall serve the same purpose as a tax invoice.

[reg 10 amended by Act 15 of 2020 sec 8; effective 1 August 2020]

PART 3 CREDIT AND DEBIT NOTES (regs 11, 12)

[Regulation 11] Credit and debit notes particulars

A credit note or, as the case may be, a debit note shall contain the following particulars—

- a) the word “credit note” or, as the case may be, “debit note” in a prominent place;
- b) the name and taxpayer identification number of the registered person;
- c) the name and address of the recipient;
- d) the date on which the credit or debit note was issued;
- e) the amount shown on the tax invoice as being in respect of tax, the adjusted amount and the amount of the credit or, as the case may be, debit, that is necessary to make the adjustment; and
- f) a brief explanation of the circumstances giving rise to the issuing of the credit or debit note.

[reg 11 am LN 68 of 1992 reg 5, effective 1 July 1992]

[Regulation 12] Recipient

Where a recipient, being a registered person, creates a document containing the particulars specified in regulation 8 and purporting to be a credit note or, as the case may be, a debit note in respect of a supply of goods and services made to the recipient by a supplier, being a registered person, that document shall be deemed to be a credit note or, as the case may be, a debit note provided by the supplier under section 42(2) of the Act where—

- a) the Chief Executive Officer of the Fiji Revenue and Customs Service has granted prior approval for the issue of such documents by a recipient in relation to the supplies to which the documents relate; and
- b) the supplier and the recipient agree that the supplier shall not issue a credit note or, as the case may be, a debit note in respect of any supply to which this regulation applies; and
- c) a copy of any such document is provided to the supplier and another copy is retained by the recipient; and
- d) the words “buyer created credit note — Fiji Revenue and Customs Service approved” or, as the case may be, “buyer created debit note — Fiji Revenue and Customs Service approved” are contained on that document,

provided that where a credit note or, as the case may be, a debit note issued pursuant to section 42(2) of the Act, any credit note or, as the case may be, debit note issued by the supplier in respect of that supply shall be deemed not to be a credit note or, as the case may be, a debit note for the purposes of the Act.

[reg 12 am LN 68 of 1992 reg 6, effective 1 July 1992 ; Decree 18 of 2011 s 4, effective 1 March 2011 ; LN 99 of 2016 reg 294, effective 1 December 2016; Act 38 of 2017 s 7, effective 1 August 2017]

PART 4 MISCELLANEOUS PROVISIONS RELATING TO TAX INVOICES AND CREDIT AND DEBIT NOTES

[Regulation 13] Taxable supply

Where a supply is a taxable supply to which section 30(1) of the Act applies, that agent, being a registered person, may, notwithstanding anything in the Act, issue a tax invoice or a credit note or a debit note in relation to that supply as if that agent had made a taxable supply and to the extent that that tax invoice or credit note or debit note relates to that supply, that principal shall not also issue, as the case may be, a tax invoice or a credit note or a debit note.

[Regulation 14] Agent

Where a taxable supply of goods and services is made to an agent in terms of section 30(2) of the Act the agent may request that that agent be issued with a tax invoice and the registered person shall issue a tax invoice or a credit note or a debit note as if the supply were made to that agent.

[Regulation 15] Keeping of records

Where a tax invoice or a credit note or a debit note in relation to a supply has been issued—

- a) by an agent pursuant to regulation 13; or
- b) to an agent pursuant to regulation 14, the agent shall maintain sufficient records to enable the name and address and registration number (if any) of the principal to be ascertained.

[reg 15 am LN 68 of 1992 reg 8, effective 1 July 1992]

PART 5 TIME OF PERFORMANCE

[Regulation 16] Supplies prior to 3 May 1991

- a) Pursuant to section 87 of the Act, the “time of performance” with respect to the following supplies, shall be deemed to take place at the time—
 - I. an invoice issued by the supplier or the recipient; or
 - II. any payment is received by the supplier; or
 - III. delivery of the goods and services takes place, whichever is the earlier.
- b) In relation to the supply of the right of admission or membership of a club, association or a like body by way of a subscription or a similar fee, if the time of performances occurred on or before 3 May 1991.
- c) In relation to the supply of any publication by way of a subscription or similar fee which involves the periodic delivery of that publication, if the time of performance occurred on or before 3 May 1991.
- d) In relation to the supply of the right to life membership of a club, association or a like body by way of a single payment as consideration for the granting or exercising of that right, if the time of performance occurred before 1 July.
- e) In relation to the supply of any goods by way of an agreement to hire (as defined in section 18(3) of the Act) which provides for a single payment as the consideration for the supply of those goods, if the time of performance occurred on or before 3 May 1991.

[reg 16 am LN 68 of 1992 reg 8, effective 1 July 1992]

PART 6 TAXABLE ACTIVITIES OF NON-PROFIT BODIES

[Regulation 17] Competing activities

For the purposes of determining whether any non-profit body is carrying on an activity in competition to the disadvantage of any taxable activity carried on by any other person, the Chief Executive Officer of the Fiji Revenue and Customs Service shall have due regard to—

- a) the nature and type of goods and services being supplied;
- b) the value of supplies, if registered under the Act, would be taxable supplies (hereafter in this Part referred to as said taxable supplies);
- c) whether the consideration received for the said taxable supplies is less than cost of making those said taxable supplies;
- d) the value of any unconditional gifts received both in kind and money; and
- e) whether the making of the said taxable supplies is being subsidised by the unconditional gifts received.

[reg 21 renum as reg 17 LN 68 of 1992 reg 9, effective 1 July 1992 ; LN 99 of 2016 reg 294, effective 1 December 2016; Act 38 of 2017 s 7, effective 1 August 2017]

[Regulation 18] Criteria for determining taxable activity

Subject to regulation (17) and without limiting the generality of section 4(1) of the Act, a non-profit body shall be carrying on a taxable activity, if carried on continuously and regularly, in respect of the supply of goods and services of the following kind—

- a) the right of admission or membership of a club, association or like body by way of a subscription or a similar fee and includes affiliation fees;
- b) the admission, for a consideration, of persons to any premises;
- c) the leasing or hiring of any real or personal property;
- d) the operation of a commercial oriented venture that involves the supply of goods and services for a consideration;
- e) the supply of advertising services by way of a fee or sponsorship; and
- f) the right to participate in any event carried on or organised by that non-profit body, for a fee or charge.

[reg 22 renum as reg 18 and am LN 68 of 1992 reg 9, effective 1 July 1992]

[Regulation 19] Taxable activities

Where the Chief Executive Officer of the Fiji Revenue and Customs Service is of the opinion that a non-profit body is carrying on one or more taxable activities, the Chief Executive Officer of the Fiji Revenue and Customs Service may, notwithstanding that section 22 of the Act provides for

the registration of all the taxable activities carried on by a person, direct that the registration shall only apply in respect of any identifiable separate activity or activities.

[reg 23 renum as reg 19 LN 68 of 1992 reg 9, effective 1 July 1992 ; LN 99 of 2016 reg 294, effective 1 December 2016; am Act 38 of 2017 s 7, effective 1 August 2017]

[Regulation 20] Chief Executive Officer's direction

Where the Chief Executive Officer of the Fiji Revenue and Customs Service makes a direction in terms of regulation 19, the Chief Executive Officer of the Fiji Revenue and Customs Service must notify the non-profit body of the activity or activities that have been registered under the Act.

[reg 24 renum as reg 20 and am LN 68 of 1992 reg 9, effective 1 July 1992 ; LN 99 of 2016 reg 294, effective 1 December 2016; Act 38 of 2017 s 7, effective 1 August 2017]

PART 7 SUPPLY OF KEROSENE AND CERTAIN BASIC FOOD ITEMS

[Regulation 20A] Records

A registered person who supplies kerosene or basic food items must maintain the following records, in accordance with section 79 of the Act, for the purpose of determining that person's liability to tax—

- a) inventory records of kerosene and basic food items held as stock at 31 December 2005;
- b) separate purchases journal or records of kerosene and basic food items;
- c) inventory records of kerosene and basic food items held as stock on hand; and—
 - i. at a date, elected by the registered person, not later than 31 December 2006; and
 - ii. 12 months after the date elected under subparagraph (i) and annually thereafter,
- d) separate sales records of kerosene and basic food items.

[Regulation 20B] Alternative method

The Chief Executive Officer of the Fiji Revenue and Customs Service may, accept, allow or require a registered person to adopt any other suitable method for determining that person's liability to tax in respect of supplies of kerosene and basic food items.

[reg 20B am LN 99 of 2016 reg 294, effective 1 December 2016; Act 38 of 2017 s 7, effective 1 August 2017]

[Regulation 20C] Insufficient records

If insufficient records are kept by a registered person in accordance with these Regulations and section 79 of the Act and if the Chief Executive Officer of the Fiji Revenue and Customs Service is not satisfied with a return made by the registered person the Chief Executive Officer of the Fiji Revenue and Customs Service may make an assessment pursuant to section 44(1) of the Act in respect of the tax payable under the Act.

[reg 20C am LN 99 of 2016 reg 294, effective 1 December 2016; Act 38 of 2017 s 7, effective 1 August 2017]

VALUE ADDED TAX TRIBUNAL RULES 1994

Table of Amendments

Value Added Tax Tribunal Rules (LN 39 of 1994) commenced on 12 April 1994, as amended by:

Amending Legislation	Date of Commencement
Revised Edition of the Laws (Consequential Amendments) Regulations 2016 (LN 99 of 2016)	1 December 2016
Fiji Revenue and Customs Authority (Budget Amendment) Act 2017 (No 38 of 2017)	1 August 2017

[Rule 1] Short title

These Rules may be cited as the Value Added Tax Tribunal Rules 1994.

[Rule 2] Interpretation

In these Rules:

Registrar means the Registrar of the Tribunal;

the Act means the Value Added Tax Act 1991; and

the Tribunal means the Value Added Tax Tribunal as for the time being constituted under section 51 of the Act.

[Rule 3] Registrar of the Tribunal

The Chief Registrar of the High Court of Fiji shall be the Registrar of the Tribunal.

[Rule 4] Office of the Tribunal

The office of the Tribunal shall be at the High Court Registry at Suva.

[Rule 5] Place of sittings

The Tribunal may sit for the hearing of an appeal or for the hearing of any interlocutory application incidental to an appeal, at any place within Fiji which the Tribunal from time to time or at any time may deem convenient for the sitting.

[Rule 6] Notice of appeal

(1) Every appeal to the Tribunal shall be brought by notice of motion (in these Rules referred to as “the notice of appeal”) in the form appearing in Schedule 1.

(2) The notice of appeal shall state clearly and concisely the grounds of the appeal. The notice shall be signed by the appellant or his or her agent or barrister and solicitor and shall state therein an address for service in Fiji to or at which notices, process and other documents and written communications relating to the appeal may be sent by registered post or left for the appellant. Service by post or delivery as aforesaid shall be deemed to be good service on the appellant.

(3) The original notice of appeal and one copy thereof shall be filed in the office of the Tribunal within the time notified to the appellant by the Chief Executive Officer under section 50(5) of the Act as the time within which the appellant may exercise the right of appeal to the Tribunal.

(4) The appellant shall cause a copy of the notice of appeal to be served upon the Chief Executive Officer of the Fiji Revenue and Customs Service at his or her office at Suva, either personally or by registered post, within the time referred to in paragraph (3).

[para (4) am LN 99 of 2016 reg 295, effective 1 December 2016; Act 38 of 2017 s 7, effective 1 August 2017]

[Rule 7] Entry of appeal and direction for hearing

(1) Upon the filing of the notice of appeal the Registrar shall cause the appeal to be entered in the books of the Tribunal and shall obtain a direction by the person for the time being appointed to hold the Tribunal as to the day, time and place to be appointed for the hearing of the appeal.

(2) Unless, on the application of the appellant, it is otherwise directed, the place of the hearing of the appeal shall be at Suva. An appellant may apply at any time to the person for the time being appointed to hold the Tribunal for a direction that the appeal be entered for hearing at any place other than at Suva or, if the appeal has been entered for hearing at Suva, to change the place of hearing. Any such application may be made by motion on not less than 4 days notice to the Chief Executive Officer of the Fiji Revenue and Customs Service.

[para (2) am LN 99 of 2016 reg 295, effective 1 December 2016; Act 38 of 2017 s 7, effective 1 August 2017]

[Rule 8] Notice of hearing of appeal

The Registrar shall give not less than 28 days' notice in writing (in these Rules referred to as "the notice of hearing") to the appellant and to the Chief Executive Officer of the Fiji Revenue and Customs Service of the day, time and place appointed for the hearing of the appeal.

[r 8 am LN 99 of 2016 reg 295, effective 1 December 2016; Act 38 of 2017 s 7, effective 1 August 2017]

[Rule 9] Service

Service of the notice of hearing on the Chief Executive Officer of the Fiji Revenue and Customs Service may be effected by sending a copy of the notice by registered post to him or her at his or her office at Suva or by leaving a copy of the notice at that office. Service on the appellant may be effected in accordance with paragraph (2) of rule 6.

[r 9 am LN 99 of 2016 reg 295, effective 1 December 2016; Act 38 of 2017 s 7, effective 1 August 2017]

[Rule 10] Amendment of notice of appeal

A notice of appeal may be amended at any time by or with the leave of the Tribunal on such terms and conditions as the Tribunal may think just.

[Rule 11] Attendance of witness under subpoena

At the request of the appellant or the Chief Executive Officer of the Fiji Revenue and Customs Service or by the direction of the Tribunal itself, a subpoena ad testificandum or ducus tecum may be issued requiring any person to attend to give evidence or to produce documents in connection with the appeal.

[r 11 am LN 99 of 2016 reg 295, effective 1 December 2016; Act 38 of 2017 s 7, effective 1 August 2017]

[Rule 12] Hearing of the appeal

(1) On the day fixed for the hearing of the appeal or on any other day to which the hearing may be adjourned, the appellant or his or her agent or barrister and solicitor, shall be heard in support of the appeal.

(2) The Tribunal shall then, if it does not dismiss the appeal at once, hear the Chief Executive Officer of the Fiji Revenue and Customs Service or his or her officer or barrister and solicitor and in such case the appellant shall have the right of reply.

[para (2) am LN 99 of 2016 reg 295, effective 1 December 2016; Act 38 of 2017 s 7, effective 1 August 2017]

(3) Subject to the provisions of the Act or to these Rules, the ordinary practice and the Rules of the High Court shall apply, with necessary modifications in relation to an appeal under these Rules.

[Rule 13] Fees of Tribunal

(1) The fees set out in Schedule 2 shall be charged and paid in respect of the matters therein specified.

(2) The fees to be charged and paid in respect of matters not specified in the said Schedule shall be the fees payable in respect of similar matters in civil proceedings in the High Court, provided that no fees shall be charged or be payable by the Chief Executive Officer of the Fiji Revenue and Customs Service in relation to any act, application or proceeding by him or her in relation to an appeal.

[para (2) am LN 99 of 2016 reg 295, effective 1 December 2016; Act 38 of 2017 s 7, effective 1 August 2017]

[Rule 14] Costs

(1) Subject to the provisions of section 57 of the Act, the costs of an incidental to an appeal shall be in the discretion of the Tribunal but, unless the Tribunal in any particular case for good reason shall think fit otherwise to order, legal practitioners' costs shall not exceed the maximum allowance prescribed by the scale of costs set out in Appendix 4 of the High Court Rules.

(2) When the Tribunal directs that the cost or any part of the costs, of an appeal be paid by the appellant or by the State, the Tribunal may specify the amount of such costs to be paid or may direct that the costs be taxed by the Registrar.

(3) The Tribunal may allow as costs of an appeal the allowances and expenses of witnesses attending the hearing of the appeal in accordance with the Rules for the time being in force in the High Court of Fiji in relation to allowances and expenses of witnesses attending at trials before the High Court and for that purpose any reference in such Rules to the Chief Registrar of the High Court, shall be deemed to be a reference to the Registrar of the Tribunal.

(4) The Tribunal may allow such other necessary costs or allowances as may seem to the Tribunal to be fair and reasonable.

SCHEDULE 1

(Rule 6(1))

[Sch am LN 99 of 2016 reg 295, effective 1 December 2016; Act 38 of 2017 s 7, effective 1 August 2017]

In the Matter of an appeal to the Value Added Tax Tribunal by the Appellant.

TAKE NOTICE that the Value Added Tax Tribunal will be moved by the above-named appellant upon such day and time at such place as may be appointed for the sitting of the Tribunal for an order that the decision of the Chief Executive Officer of the Fiji Revenue and Customs Service dated the day of 20 , disallowing the objection by the appellant to the following assessment(s):

(state particulars of assessment(s) appealed against)

be revised or set aside and the State do pay to the appellant the costs of this appeal. And further take notice that the grounds of this appeal are as follows—

(Set out clearly and concisely the grounds of appeal which, save with the leave of the Tribunal, shall be the reasons stated in the objection to the assessment).

Dated this..... day of 20 ..

Signature of appellant or his or her agent,

or barrister and solicitor

*Address for service—

To the Chief Executive Officer of the Fiji Revenue and Customs Service, Suva.

* The appellant must ensure that the address for service given is adequate to secure that notices, etc, posted to or left at that address will reach him or her without delay.

SCHEDULE 2
Rule 13
FEES - (VAT EXCLUSIVE)

[Sch am LN 99 of 2016 reg 295, effective 1 December 2016; Act 38 of 2017 s 7, effective 1 August 2017]

	\$ c
1. On filing notice of appeal and copy	45.45
2. On filing any other notice or motion and copy	9.09
3. On filing an affidavit or any other document	4.55
4. On sealing a writ of subpoena for a witness	9.09
5. On filing a Bill of Costs and obtaining an appointment to tax	13.64
6. On taxation — for every \$4 or fraction thereof allowed	0.60
7. On sealing a certificate or allocatur	9.09