

TAX ADMINISTRATION ACT (No. 50 of 2009)

Revised to 31 February 2017

UPDATED BY: -

Legal Section



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TAX ADMINISTRATION ACT 2009

**AN ACT TO REVISE AND HARMONISE THE RULES RELATING TO THE
ADMINISTRATION OF THE TAX LAWS OF THE FIJI AND TO ENSURE THE
EFFICIENT COLLECTION OF TAXES**

PART 1 - PRELIMINARY

Short Title and Commencement

- 1.— (1) This Act may be cited as the Tax Administration Act 2009.
- (2) Subject to subsection (3), this Act comes into force on 1 January 2010.
- (3) Division 9 of Part 2 comes into force on the date appointed by the Minister, by notice in the Gazette.

Interpretation

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

“approved form” means the approved form specified in section 68;

History

Repealed Act No. 32 of 2015, s141 commencement 1st January 2016 previously read -

“authorised officer” means as defined under the Income Tax Act;

Repealed Act No. 31 of 2016, s209 commencement 1st December 2016 previously read –

“Authority” means the Fiji Islands Revenue and Customs Authority established by section 3 of the Fiji Islands Revenue and Customs Authority Act.

“capital gains tax” means the capital gains tax imposed under the Income Tax Act 2015;

History

Definition “capital gains tax” inserted Act 32 of 2015, s141 commencement 1st

January 2016; Definition of “Capital Gains Tax Decree” repealed Act 32 of 2015, s141 commencement 1st January 2016

“CEO” means the Chief Executive Officer appointed under section 27 of the Fiji Revenue and Customs Service Act 1998;

History

Definition of “CEO” inserted Decree 18 of 2011. s 4, commencement 1st March 2011

“Collection agent” means any person defined under section 24 (1)

“controlling interest” means a direct or indirect controlling interest by way of shareholding, and includes control of a company by a director or other person, in accordance with whose directions, instructions or wishes the company or its directors

are accustomed, or under an obligation, whether formal or informal to act;

History

Definition “controlling interest” substituted Act 32 of 2015, s 141 commencement 1st January 2016.

“Customs and excise legislation” means the Customs Act 1986, Customs Tariff Act 1986; the Excise Act 1986, and the Tax Free Zone Act 1991, and includes any regulations or other subsidiary legislation made under those laws;

“data storage device” includes electronic data storage device;

“Environment and Climate Adaptation Levy” means the Environment and Climate Adaptation Levy payable under the Environment and Climate Adaptation Levy 2015 and the

Superyacht Charter Act 2010.

History

Definition “Fiji Revenue and Customs Authority Act” repealed Act 31 of 2016, s209 commencement 1st December 2016.

“file” means make, furnish, lodge, provide, send, or deliver;

“financial institution” means an institution involved in the business or activity of -

- (a) banking under the Banking Act 1995 and includes any person who carries on the business of accepting deposits and other repayable funds from the public;
- (b) lending, consumer credit, mortgage credit, credit of any other nature, factoring (with or without recourse) and financing of commercial transactions;
- (c) financial leasing;
- (d) exchanging cash or the value of money;
- (e) issuing financial guarantees and commitments;
- (f) investing, administering, managing or keeping safe custody of, funds or money on behalf of other persons;
- (g) trading in money market instruments (such as cheques, bills, certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate and index instruments, commodity futures trading and transferable securities; and
- (h) individual and collective portfolio management and advice.

History

Definition “financial institution” inserted Decree 55 of 2010, s2 commencement 15 August 2010.

“fringe benefit tax” means the fringe benefit tax imposed under the Income Tax Act 2015;

History

Definition “fringe benefit tax” inserted Decree 7 of 2012, s24 s2 commencement 1st January 2012; Decree 9 of 2012 s2 commencement 1st January 2012, Act 32 of 2015 s141 commencement 1st January 2016.

Definition “Fringe Benefit Tax Decree” repealed Act 32 of 2015, s141 commencement 1st January 2016.

Definition “Gambling Turnover Tax Act” repealed Act 31 of 2016, s209 commencement 1st December 2016.

“GTT” means gambling turnover tax imposed under the Gambling Turnover Tax Act 1991;

History

Definition “Hotel Turnover Tax Act” repealed Decree 9 of 2012, s2 commencement 1st January 2012

Definition “HTT” repealed Decree 9 of 2012, s2 commencement 1st January 2012.

“income tax” means income tax imposed under the Income Tax Act 2015;

History

Definition “Income Tax Act” repealed Act 31 of 2016, s209 commencement 1st December

2016.

“Judicial Services Commission” means the Judicial Service Commission continued under the Constitution of the Republic of Fiji;

History

Definition “Judicial Services Commission” Act 31 of 2016, s209 commencement 1st December 2016.

Definition “Land Sales Act 1974” repealed Decree 23 of 2011, s21 commencement 1st May 2011.

“Minister” means the Minister responsible for Finance;

“minor” means action that is insignificant, negligible or inconsequential;

“objection decision” means the decision referred to in section 16(5);

“Permanent Secretary” means the permanent secretary responsible for finance;

History

Definition “Permanent Secretary” inserted Act 31 of 2016, s209 commencement 1st December 2016

“person” means an individual, company, partnership, body of persons, trust, estate, government, political subdivision of a government, statutory bodies or public international organisation;

“property” means real and personal property and includes an intangible asset, share, security, equity or other financial asset;

History

Definition “property” inserted Decree 29 of 2013, s2 commencement 1st November 2013

“registered person” means a person who is a registered person for the purposes of the Value Added Tax Act 1991;

“representative” means representative defined in section 41(1);

“resident” means resident company, resident individual, resident partnership or resident trust as defined in the Income Tax Act 2015;

History

Definition “resident” Act 31 of 2016 , s209 commencement 1st December 2016

“reviewable decision” means –

(a) an objection decision; or

(b) a decision relating to the registration or cancellation of the registration of a tax agent;

“self-assessment” means an assessment treated as having been made under section 8(a);

“self-assessment return” means a tax return listed in Part B of Schedule 3;

“self-assessment taxpayer” means a person required to file a self- assessment return;

History

Definition “Service Turnover Tax Act” repealed Act 31 of 2016 , s209 commencement 1st December 2016

share” includes an ownership interest in a company and a unit in a unit trust;

History

Definition “share” inserted Decree 29 of 2013, s2 commencement 1st November 2013

“STT” means service turnover tax imposed under the Service Turnover Tax Act 2012;

History

Definition “STT” inserted Decree 9 of 2012 , s2 commencement 1st January 2012

“tax” means an amount payable under a tax law;

“tax agent” means a person registered as a tax agent under section 113;

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“Tax Agents’ Board” or “Board” means the Tax Agents’ Board established under section 110;

History

Definition “Tax Agent’s Board” Act 31 of 2016, s209 commencement 1st December 2016.

“tax assessment” means an assessment or determination listed in the Schedule 1;

“tax compliance certificate” means a certificate of compliance issued by the CEO to a person as proof that the person is compliant with the lodgement of tax returns and payment of taxes in accordance with the relevant tax laws;

“Tax Court” or “Court” means the Tax Court established under section 90;

History

Definition “tax compliance certificate” inserted Act 18 of 2015, s2 commencement 1st January 2016.

Definition “Tax Court” or “Court”, Act 31 of 2016, s209 commencement 1st December 2016.

“tax decision” means -

- (a) a tax assessment; or
- (b) in relation to a tax law, a decision on any matter left to the discretion, judgement, direction, opinion, approval, consent, satisfaction, or determination of the CEO, other than such decision made in relation to the making of a tax assessment;

“Tax identification Number (TIN)” means a unique computer generated number issued to a person by the Fiji Islands Revenue and Customs Service;

History

Definition “Tax Identification Number” definition inserted, Decree 55 of 2010 s2 commencement 15th

August 2010, Decree 18 of 2011, s4 commencement 1st March 2011.

“tax law” means a law listed in the Schedule 2;

“tax officer” means the CEO and any officer the Fiji Revenue and Customs Service appointed under the Fiji Revenue and Customs Service Act 1998 to perform duties under a tax law;

History

Definition “tax officer” , Decree 18 of 2011, s4 commencement 1st March 2011, Act 31 of 2016,s209 commencement 1st December 2016.

“tax period”, means -

(a) in the case of the income tax -

(i) for the purposes of withholding tax, the period to which the withholding relates; or

(ii) for the purposes of provisional tax or advance payments of tax, the period to which the

provisional tax or advance payments relates; or

(iii) for any other purposes, tax year;

(b) in the case of VAT, the taxable period; or

(c) in any other case, the period for which the tax is reported;

History

Definition “tax period”, Act 32 of 2015, s141 18 of 2011, s4 commencement 1st January 2016.

“tax return” means a return, statement, or other document listed in Part A of the Schedule 3;

“Tax Tribunal” or “Tribunal” means the Tax Tribunal established under section 75;

History

Definition “Tax Tribunal”, Act 31 of 2016, s209 commencement 1st December 2016.

“taxpayer” means -

(a) in the case of the income tax -

(i) a person liable for income tax on chargeable income for a tax year;

(ii) a person who has chargeable income for a tax year but who has no income tax liability in respect of the chargeable income;

(iii) a person who has zero chargeable income or a loss for a tax year;

(iv) person liable for withholding tax;

(b) in the case of VAT, a registered person or any other person liable for VAT; or

(c) in the case of any other tax, a person liable for the tax,

and includes any other person that the CEO believes to be liable to pay tax imposed by any tax law;

History

Definition “taxpayer”, Act 32 of 2015, s141 commencement 1st January 2016.

Definition “Value Added Tax Act” repealed, Act 31 of 2016, s209 commencement 1st December 2016.

“VAT” means value added tax imposed under the Value Added Tax Act 1991; and

“withholding tax” means -

(a) the tax imposed under section 10 of the Income Tax Act 2015; or

(b) an amount required to be deducted by the payer under Subdivision 4 of Division 2 of Part 9 of the Income Tax Act 2015;

History

Paragraph (c) repealed, Act 32 of 2015, s141 commencement 1st January 2016. Previously read –

“(c) provisional tax imposed under the regulation (Collection of Provisional Tax) pursuant to section 107 of the Income Tax Act or any other tax withheld specified in the Income Tax Act.”

(2) When this Act applies in respect of a tax law, any term not defined in this Act has the meaning that it has for the purposes of the tax law.

PART 2 - HARMONISED ADMINISTRATIVE RULES

Division 1 - Tax Returns

Filing of Tax Returns

3. — (1) A taxpayer required to file a tax return under a tax law must, in addition to any requirements under the tax law, file the return in the approved form and in the manner required by the CEO.

(2) If a taxpayer has failed to file a tax return as required under a tax law, the CEO may, by notice in writing, require the taxpayer to file the return by the date set out in the notice.

(3) The CEO may, by notice in writing, require a taxpayer who has filed a tax return (other than a self-assessment return) under a tax law to file by the date set out in the notice -

- (a) a further or fuller tax return; or
- (b) any further information relating to the return as specified in the notice.

(4) A notice issued under this section does not change the original due date for filing a tax return.

(5) The CEO is not bound by any return or information provided by or on behalf of a taxpayer and, notwithstanding such return or information, the CEO can determine a taxpayer's liability based on any sources of information available to the CEO.

Tax Agent's Declaration

4. — (1) A tax agent who prepares or assists in the preparation of a taxpayer's tax return, or a document accompanying a return, must provide the taxpayer with a declaration, in the approved form -

- (a) stating the sources available to the tax agent for the preparation of the return or the accompanying document; and
- (b) to the best of the tax agent's knowledge, the return, or the accompanying document correctly reflects the data and transactions to which it relates.

(2) A declaration provided to a taxpayer under subsection (1) must be included with the return.

(3) A tax agent that refuses to provide a declaration referred to in subsection (1)

must provide the taxpayer with a statement in writing of the reasons for such refusal and the taxpayer must include that statement with the return.

(4) If a tax return filed by a taxpayer carrying on a business does not include the declaration referred to in subsection (1), the taxpayer must include with the tax return a declaration in the approved form setting out such information as to the sources available for the preparation of the return as is required by the form.

Extension of Time to File a Tax Return

5.— (1) A taxpayer required to file a tax return under a tax law may apply in writing to the CEO before the due date for an extension of time to file the return.

(2) The CEO may, upon satisfaction that there is reasonable cause, grant an application under subsection (1) and must serve notice of the decision on the applicant.

(3) An extension of time granted under this section does not change the date for payment of tax due as specified in the tax law under which the return has been made.

CEO May Require Taxpayer to File a Tax Return

6. If, during a tax period -

- (a) a taxpayer has died;
- (b) a taxpayer has been declared bankrupt, or has gone into winding up or liquidation;
- (c) the CEO has reason to believe that a taxpayer is about to leave Fiji and is unlikely to return; or
- (d) a taxpayer has ceased, or the CEO has reason to believe that a taxpayer will cease, carrying on any trade, business, profession, vocation, or employment in Fiji,

the CEO may, by notice in writing and at any time during the tax period, require the taxpayer or the taxpayer's representative, as the case may be, to file a tax return for the tax period by the date specified in the notice being a date that may be before the date that the return for the tax period would otherwise be due.

Tax Return Duly Made

7. A tax return purporting to be filed by or on behalf of a taxpayer is treated as having been filed by the taxpayer or with the taxpayer's authority unless the contrary is proved.

DIVISION 2 - TAX DECISIONS

Self-assessments

8. For the purposes of this Act -

- (a) a self-assessment taxpayer who has filed a self-assessment return is treated as having made an assessment of the amount of tax payable for the tax period to which the return relates being that amount as set out in the return; and
- (b) a self-assessment return filed by a self-assessment taxpayer is treated as a notice of the assessment served by the CEO on the taxpayer on the date that the return was filed.

Default Assessments

9. — (1) If a taxpayer has failed to file a tax return as required under a tax law or has filed a false or incomplete return (other than a self-assessment return), the CEO may make an assessment of the tax payable (including penalty if applicable) by the taxpayer.

(2) The CEO must serve a taxpayer assessed under subsection (1) with notice, in writing, of the assessment.

(3) The service of notice of an assessment under this section does not extend the time for payment of the tax due under the assessment as determined under the tax law imposing the tax.

(4) This section does not apply for the purposes of any tax that cannot be the subject of an assessment.

Advance Assessments

10. —(1) If, in any tax period, one of the circumstances specified in section 6 occurs, the CEO may make an assessment of the tax payable for the period and the tax is payable on the date set out in the notice of assessment served on the taxpayer.

(2) An assessment made under subsection (1) -

- (a) can be made before the date on which the taxpayer's return for the period is due; and
- (b) must be made in accordance with the law in force at the date the

assessment was made.

(3) An assessment made under subsection (1) can be amended under section 11 so that the taxpayer is assessed in respect of the whole of the tax period to which the subsection (1) assessment relates.

(4) This section does not apply for the purposes of any tax that cannot be the subject of an assessment.

Amendment of Tax Assessments

11. — (1) Subject to this section, the CEO may amend a tax assessment

by making such alterations or additions to the assessment as the CEO considers necessary to ensure that a taxpayer is liable for the correct amount of tax payable in respect of the tax period to which the assessment relates.

(2) The amendment of a tax assessment under subsection (1) may be made -

- (a) in the case of fraud, wilful neglect, or serious omission by or on behalf of the taxpayer, at any time; or
- (b) in any other case, within 6 years of the date the CEO served the notice of assessment on the taxpayer.

(3) As soon as practicable after making an amended assessment under this section, the CEO must serve the taxpayer with notice of the amended assessment.

(4) Subject to subsection 2(b) if a notice of assessment (referred to as the “original assessment”) has been amended under subsection (1), the CEO may further amend the original assessment or an amended assessment within 6 years or as the CEO deems fit after serving the notice of the original or amended assessment on the taxpayer.

(5) An amended assessment is treated in all respects as a tax assessment for the purposes of this Decree (other than subsection (1) or (2)) and the tax law under which the original assessment has been made.

(6) The making of an amended assessment does not preclude the liability for penalty from arising from the date that tax was due under the original assessment.

(7) For the purpose of this section –

- (i) “fraud” in relation to a taxpayer or anyone acting on behalf of a taxpayer, means an act of making a false statement to the CEO;

(ii) “wilful neglect” means the deliberate act by a taxpayer or anyone acting on behalf of a taxpayer to minimise tax payable; and

(iii) “serious omission” means an omission of any amount of tax as determined by the CEO.

History

Inserted by Decree 83 of 2012, s2 commencement 1st January 2013.

Amendment of Tax Return

12. — (1) A tax return may be amended by the taxpayer at any time within 6 years of the tax period to which the return relates, with the alterations clearly identified on the return to ensure that the taxpayer has correctly filled out such return for the tax period to which it relates and the CEO may accept or decline such amended return.

(2) If the CEO accepts the amended return, the CEO must issue an amended notice of assessment (or notice of assessment if no assessment had been issued) in respect of the amended tax return.

(3) If the CEO declines the amended tax return, the CEO must advise the taxpayer in writing within 60 consecutive days.

(4) An amended tax return is treated in all respects as a tax return for the purposes of this Act and the tax law under which the original tax return was lodged.

Defect Not to Affect the Validity of Tax Decisions

13. The validity of a tax decision, a notice of a tax decision, or any other document purporting to be made or executed under a tax law -

- (a) is not affected by reasons that any of the provisions of the law under which it has been made have not been complied with;
- (b) cannot be quashed or deemed to be void or voidable for want of form; or
- (c) is not affected by reason of any minor mistake, defect, or omission therein,

if it is, in substance and effect, in conformity with the law under which it has been made, issued, or executed and the person assessed, or intended to be assessed or affected by the decision or document, is designated in it according to common understanding.

Finality of Tax Decisions

14. — (1) Except in proceedings under Division 3 of this Part, a tax decision and all material particulars must be deemed to be conclusive and correct, and any liability of the person being assessed or notified of a tax decision will be determined accordingly.

(2) For the purposes of this section, in the case of a self-assessment, or any other tax assessment the production of the original self-assessment return or a document under the hand of the CEO purporting to be a certified copy of such return is conclusive evidence of the contents of the return.

(3) The Tax Tribunal and Courts must, in all proceedings, take judicial notice of the signature of the CEO in either the original or certified copy of a notice of assessment.

Rectification of Mistakes

15. If the CEO is satisfied that an order made or document issued by the CEO under a tax law contains a mistake which is apparent from the record and that the mistake does not involve a dispute as to the interpretation of the law or facts of the case, the CEO may, for the purposes of rectifying the mistake, amend the order or document any time before the expiry of 6 years from the date of making or issuing the order or document.

DIVISION 3 - OBJECTIONS AND APPEALS

Objection to Tax Decision

16.— (1) A person dissatisfied with a tax decision may lodge an objection to the decision with the CEO -

- (a) in the case of a tax decision that is a tax assessment, within 60 consecutive days of service of the notice of the decision; or
- (b) in any other case, within 30 consecutive days of service of notice of the decision.

(2) If the tax decision to which an objection relates is an amended assessment, a taxpayer's right to object to the amended assessment is limited to the alterations and additions made in it.

(3) An objection must be lodged in the approved form stating fully and in detail the grounds upon which the person objecting relies to support the objection and the approved form shall be signed by the taxpayer and tax agent.

History

Deleted subsection (3) and replaced in Decree 69 of 2010, s2 commencement 1st January 2011.

Previously read “(3) An objection must be lodged in the approved form stating fully and in detail the grounds upon which the person objecting relies to support the objection.

(4) A person may apply, in writing, to the CEO for an extension of time to lodge an objection and the CEO may, if satisfied there is reasonable cause, grant an application under this section and must serve notice of the decision on the applicant.

(5) The CEO may by notice require the taxpayer to provide additional information relevant to the objection

(6) Subject to subsection (7), the CEO must consider the objection and either allow the objection in whole or part, or disallow it, and the CEO's decision is referred to as an objection decision.

(7) The CEO must serve notice of the objection decision on the person objecting no later than 90 consecutive days after lodgement of the objection or, where additional information has been sought in accordance with subsection (5), 90 consecutive days after receipt of such additional information.

(8) If no objection to a tax decision is lodged within the time for objecting under subsection (1) or, when such time is extended by the CEO, within the extended time, the tax decision is treated as valid and binding upon the taxpayer subject to any defect, error, or omission that may have been made in the tax decision or in any proceeding relating to the tax decision required by a tax law.

Review of Objection Decision by the Tax Tribunal

17. — (1) A person dissatisfied with an objection decision may make an application to the Tax Tribunal in accordance with section 82 for review of the decision.

(2) The Tax Tribunal may, in reviewing an objection decision, exercise all the powers and discretions of the CEO under the tax law under which the tax decision to which the objection decision was made.

(3) If an application for review relates to a tax assessment, the Tax Tribunal may make an order to -

(a) affirm, reduce, increase, or otherwise vary the assessment to which the objection decision relates;

(b) remit the assessment to the CEO for reconsideration in

accordance with the directions of the Tribunal; or

(c) refer a question of law to the Tax Court for its opinion in accordance with section 87; or

(d) transfer proceedings to the Tax Court as specified in section 88.

(4) If an application for review relates to a tax decision other than a tax assessment, the Tax Tribunal may make an order to -

(a) affirm, vary, or set aside the decision;

(b) refer a question of law to the Tax Court for its opinion in accordance with section 87; or

(c) transfer proceedings to the Tax Court as specified in section 88.

Appeal to Tax Court

18. — (1) A party to a proceeding before the Tax Tribunal who is dissatisfied with the decision of the Tribunal in relation to a tax decision may file a notice of appeal to the Tribunal's decision to the Registrar of the Court in accordance with section 107.

(2) Except with leave of the Tax Court to amend the grounds of appeal by alteration or addition contained in the notice of appeal, the taxpayer is limited to the grounds of appeal filed under subsection (1).

(3) The Tax Court must hear and determine the appeal and may make such order as it thinks appropriate by reason of its decision, including an order

affirming or setting aside the decision of the Tax Tribunal or an order referring the case to the Tax Tribunal or CEO for reconsideration.

Test Case Procedure

19.— (1) If the CEO considers that the determination of an objection, whether on a question of law or on both a question of fact and a question of law, is likely to be determinative of all or a substantial number of the issues involved in one or more other objections lodged or likely to be lodged, the CEO may designate the objection as a test case (referred to as a "test case objection").

(2) The CEO may state a test case objection in the approved form for the opinion of the Tax Court without the need for the consent of the person objecting or leave of the Court, and the objection is stayed until the test case objection is decided by the Tax Court or the stay is withdrawn under subsection (5).

(3) The CEO must serve written notice on the person objecting to the decision to treat the objection as a test case objection or to stay the objection.

(4) The CEO may, in relation to any objection, at any time after it has been lodged and before it has been determined by the Tax Tribunal, notify the person objecting, in writing, that the objection will be stayed by reason of the taking of a test case objection under subsection (2) on a similar objection if the CEO considers that the test case objection is likely to be determinative of all or a substantial number of the issues in the objection proposed to be stayed.

(5) If an objection has been stayed under this section, the CEO may withdraw the stay by notice in writing to the objector and the Tax Court.

(6) A written notification under subsection (3) or (4) has the effect of staying the objection referred to in the notice until the determination of the test case objection or the stay is withdrawn under subsection (5).

(7) For the purposes of this Act -

- (a) for so long as an objection is stayed under this section, any time limits or periods specified in this Act or under the tax law to which the objection relates in relation to proceedings on the objection do not apply; and
- (b) when a stay lapses under subsection (6), any time limits or periods referred to in paragraph (a) are treated as if they were extended by the period of the stay.

Implementation of decision

20. — (1) The CEO must, within 45 consecutive days after -

- (a) a final decision of the Tax Tribunal; or
- (b) being notified of a decision of the Tax Court, or any other court of competent jurisdiction,

take such action, including amending a tax assessment, as is necessary to give effect to the decision.

(2) The decision of the Tax Tribunal is final on the later of -

- (a) the expiration of the 30 day period specified in section 107 for appealing the decision to the Tax Court; or

- (b) the expiration of any extension of time allowed by the Court to file a notice of appeal if the application for the extension was filed before the end of the period specified in paragraph (a), if no notice of appeal is lodged with the Registrar of the Court within that time.

(3) The time limit in section 11 for amending a tax assessment does not apply to an amendment to give effect to a decision of the Tax Tribunal or Tax Court.

General provisions relating to objections and appeals

21.— (1) In any proceeding under this Division -

- (a) in the case of a tax assessment, the burden is on the taxpayer to prove that the assessment is excessive; or
- (b) in the case of a tax decision (other than a tax assessment), the burden is on the person objecting to the decision to prove that the decision should not have been made or should have been made differently.

(2) In an application for review by the Tax Tribunal or appeal to the Tax Court in relation to an objection decision, the person objecting is limited to the grounds stated in the objection to which the objection decision relates unless the Tribunal or Court grants the person leave to add new grounds.

(3) Subject to subsection (4), the tax due under a tax assessment is payable notwithstanding that an objection, application for review by the Tax Tribunal, or notice of appeal to the Tax Court has been lodged by the taxpayer in respect of the assessment.

(4) The CEO may, upon application in writing by a taxpayer, agree to stay recovery of the tax in dispute under a tax assessment.

(5) All proceedings of the Tax Tribunal or Tax Court under this Division must be held in camera if requested by either party to the proceeding.

DIVISION 4 - COLLECTION, RECOVERY AND REPAYMENT OF TAX

Tax is a debt due to the State

22.— (1) A taxpayer must pay tax in the prescribed manner.

(2) Tax payable by a person is recoverable as a debt due to the State.

(3) An amount of -

- (a) gambling turnover tax collected by an accountable person under the Gambling Turnover Tax Act 1991;
- (b) VAT collected by a registered person under the Value Added Tax Act 1991 (net of any input tax credit allowed);
- (c) withholding tax collected by a person under the Income Tax Act 2015;
- (d) STT collected by an accountable person under the Service Turnover Tax Act 2012;
- (e) Environment and Climate Adaptation Levy; or
- (f) Airport Departure Tax

Amended s3(d) by deleting “hotel turnover tax” and substituted “service turnover tax” and deleting “Hotel Turnover Tax Act” and substituted “Service Turnover Tax Act”, Decree 9 of 2012 commencement 1st January 2012; Act 27 of 2017, s3, commencement 1 August 2017

is held in trust for the State and is not subject to any attachment in respect of any debt or other liability of the person in the event of the liquidation or bankruptcy of the person, or of any assignment for the benefit of the person's creditors, or in any event, and the said amounts do not form part of the estate of the person in liquidation or bankruptcy or part of any such assignment, but are to be paid in full to the CEO before any distribution of property is made.

Collection of tax by suit

23. — (1) Notwithstanding anything contained in the State Proceedings Act 1951, any unpaid tax may be sued for and recovered in any court of competent jurisdiction by the CEO suing in his or her official capacity.

(2) In any suit under subsection (1), the production of a certificate signed by the CEO stating the name and address of the taxpayer and the amount of tax due is sufficient evidence that the amount of tax is due by the taxpayer and sufficient authority for the Court to give judgment with full costs of suit against the taxpayer.

(3) A suit under subsection (1) for recovery of unpaid tax must be brought within 6 years from -

- (a) in the case of tax payable under a self-assessment, the date that the self-assessment return was filed;
- (b) in the case of tax payable under an amended assessment, the date of service of notice of the amended assessment; or
- (c) any other case, the date that the tax was payable.

(4) Without prejudice to the powers of any other court of competent jurisdiction, any proceeding for the recovery of tax may be heard and determined, by a competent court.

No double collection of tax

24. — (1) In this section -

“collection agent” means -

- (a) a person liable to pay withholding tax; or
- (b) a liquidator liable for tax under section 26;
- (c) a person who has been served with a garnishee order under section 27;
- (d) a representative of a taxpayer under Section 41; or
- (e) a person liable for the tax payable by a company under section 42; and

Definition amended Act No. 32 of 2015, s141 commencement 1st January 2015.

Deleting “under section 8(4), 8A(6), 9(5), 9A(12), 10(5), 10A(3), 107(a)(2) or Part XI of the Income Tax Act” in subsection (1)(a);

“primary taxpayer” means the person liable for any tax that may be collected by the CEO from a collection agent.

(2) If there is both a primary taxpayer and a collection agent in respect of the same tax liability (referred to as the “primary tax liability”) and any penalty in respect of the liability -

- (a) any amount recovered from the primary taxpayer is credited against the liability of the collection agent; and

- (b) any amount recovered from the collection agent is credited against the liability of the primary taxpayer,

but the CEO cannot recover more than the amount of the primary tax liability and penalty in respect of the primary tax liability.

Extension of time to pay tax

25.— (1) A taxpayer may apply, in writing, to the CEO for an extension of time to pay tax due under a tax law.

(2) If an application has been made under this section, the CEO may, having regard to the circumstances of the case -

- (a) grant the taxpayer an extension of time for payment of the tax due; or
- (b) require the taxpayer to pay the tax due in such instalments as the CEO may determine,

and the CEO must serve the taxpayer with written notice of the decision.

(3) If a taxpayer permitted to pay tax by instalments defaults in the payment of an instalment, the whole balance of the tax outstanding, at the time of default, is immediately payable.

Liquidators, trustees and executors

26.— (1) In this section,

“liquidator” means -

- (a) a liquidator of a company being wound up;
- (b) a receiver for debenture holders who has taken possession of any assets of a company;
- (c) a trustee in bankruptcy;
- (d) a mortgagee in possession;
- (e) a person deregistering a company;
- (f) an executor of a deceased estate; or

- (g) any other person holding a similar office or acting in a similar capacity; and

“taxpayer”, in relation to a liquidator, means the person whose assets are in the possession or control of the liquidator including, if the liquidator is an executor, the estate of the deceased person.

- (2) A liquidator must, within 14 consecutive days after becoming a Liquidator or assuming the control of assets in the capacity as liquidator, give written notice thereof to the CEO.

- (3) The CEO must notify the liquidator, in writing, of the amount of any tax that is or will become payable by the taxpayer and such notice must be served on the liquidator within 1 month of the CEO being served with a notice under subsection (2).

- (4) Subject to subsection (5), a liquidator -

- (a) must not, without leave of the CEO, dispose of any asset of the taxpayer until a notice has been served on the liquidator under subsection (3) or the 1month notification period specified in subsection (3) has passed and no notice has been served by the CEO on the liquidator;
- (b) must set aside, out of the assets available for the payment of tax due by the taxpayer, assets to the value of the amount notified under subsection (3), or the whole of the assets if their value is less than the amount notified; and
- (c) is, to the extent of the value of the assets required to be set aside, liable for the tax due by the taxpayer.

- (5) Nothing in subsection (4) prevents a liquidator from paying -

- (a) any debt that has priority over the tax referred to in Subsection (3); or
- (b) the expenses properly incurred by the liquidator in the capacity as such, including the liquidator’s remuneration, in priority to the amount notified under subsection (3).

- (6) If two or more persons are liquidators in respect of a taxpayer, the obligations and liabilities under this section apply jointly and severally to them but may be discharged by any of them.

Garnishee order

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

- (a) owes money to a taxpayer;
- (b) holds money, for or on account of, a taxpayer;
- (c) holds money on account of some other person for payment to a taxpayer;
- (d) has authority from some other person to pay money to a taxpayer;
- (e) holds money that is deposited to the credit of a taxpayer, including money held in a joint bank account in the name of the taxpayer and one or more persons, provided that the source of income is determined to be the income of the taxpayer; or
- (f) holds money that is deposited by the taxpayer but credited to the bank account of another person, provided the source of income is determined to be the income of the taxpayer.
- (g) administers money in the taxpayer's bank overdraft facility account, provided that the defaulting taxpayers available bank balance is below the bank overdraft limit allowed to the taxpayer by the payer.

Amended by Decree No 9 of 2012, s4 by inserting paragraphs (e) and (f) commencement 1st January 2012.

Amended Decree 83 of 2012, s3 by inserting paragraphs (g) commencement 1st January 2013.

(2) This section applies if a taxpayer is liable to pay tax and -

- (a) the tax has not been paid by the taxpayer by the due date for payment; or
 - (b) the CEO has reasonable grounds to believe that the taxpayer will not pay the assessed tax by the due date for payment.
- (3)
- (a) If this section applies, the CEO may, by notice in writing, require a payer in respect of the taxpayer to pay the amount specified in the notice to the CEO, being an amount that does not exceed the amount of tax that has not been paid or the amount that the CEO believes will not be paid by the due date.
 - (b) the notice in subsection (3) (a) shall remain effective for a period of 12 months from the date of its issue.

(4) A payer must pay the amount specified in a notice under subsection (3) by the date specified in the notice, being a date that is not before the date that the amount

owed to the taxpayer becomes due to the taxpayer or held on the taxpayer's behalf.

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

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

(7) If a notice is served on the CEO under subsection (6), the CEO may, by notice in writing -

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

(8) A payer or the payer's representative is precluded from appealing the decision of the CEO under subsection (7).

(9) The CEO must, by notice in writing to the payer, revoke or amend a notice served under subsection (3) if the taxpayer has paid the whole or part of the tax due or has made an arrangement satisfactory to the CEO for payment of the tax.

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

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

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

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

Tax a charge on property

28.— (1) Tax payable by a taxpayer is a lien and charge upon the property, real or personal, of the taxpayer.

(2) The CEO may lodge for registration any charge or place a caveat on the property subject to the charge by depositing with the relevant Registry a

certificate under the hand of the CEO setting forth the description of the property charged and the amount of tax payable and the relevant Registry must, without fee, register the certificate as if it were a registrable instrument under law.

Amended Decree 29 of 2013 by deleting “real” and “Registrar of Titles” and substituted “the relevant Registry”, s3 commencement 1st November 2013.

(3) A charge created under this section shall -

(a) be subject to any mortgage, charge or encumbrance registered on the property prior to the registration of the charge.

(b) have priority over any mortgage, charge or encumbrance created after the registration of the charge.

(c) rank equally with any charge created under another Act or any other law.

Amended Act 31 of 2016, s209 commencement 1st December 2016.

(4) Registration of a certificate under subsection (3) is treated as actual notice to all persons of the existence and amount of the charge and, subject to subsection (2), the charge has operation and priority accordingly in relation to the property

(5) A charge created by this section that is registered operates to secure all amounts owing by the taxpayer under any prior unregistered charge created by this section.

(6) If a registered charge has been satisfied, the CEO must deposit with the relevant Registry a release of the charge, and the Registrar must, without payment of any fee, register the release as if it were a registrable instrument under law.

(7) If unpaid tax is, by virtue of subsection (1), a charge on the real property of the taxpayer, the CEO may apply by petition to the High Court for the enforcement of the charge and the Court may order -

(a) the sale of the property or any part of the property; or

(b) the appointment of a receiver of the rents, profits, or income from the property,

and, subject to subsection (2), that the proceeds of sale or the rents, profits, or income must be used to pay the tax due and any costs of the CEO in enforcing the charge.

(8) If any property has been sold under petition referred to in subsection (7), the High Court may, on application of the purchaser, make an order vesting the property in the purchaser.

(9) A vesting order under subsection (8) has 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 is subject to stamp duty accordingly.

(10) If an amount of unpaid tax is, by virtue of subsection (1), a charge on the personal property of the taxpayer, the CEO may, subject to subsection (2), sell or concur with another person in the selling of the property, or part thereof, whether by public auction or private contract.

(11) The proceeds of disposal under subsection (7) (a) or (10), or the rents, profits, or income referred to in subsection (7) (b) must be applied by the CEO as follows -

- (a) first towards the costs of selling or renting the property;
- (b) then towards payment of any tax due by the taxpayer; and
- (c) the remainder of the proceeds, if any, must be paid to the taxpayer.

(12) If the proceeds of disposal are less than the sum of the costs of the sale and the tax payable, the CEO may proceed under this Division to recover the shortfall.

Collection of tax by distress and sale

29. — (1) The CEO, or a tax officer authorised in writing by the CEO for the purposes of this section, may issue an order, in writing, for the recovery of tax that has

not been paid by the due date by distress and sale of the personal property of the taxpayer.

(2) An order under subsection (1) must specify -

- (a) the taxpayer against whose property the proceedings are authorised;
- (b) the property against which the proceedings are to be executed and the location of that property; and
- (c) the tax liability to which the proceedings relate.

(3) The CEO or authorised tax officer may, at any time, enter any premises described in an order issued under subsection (1) for the purposes of executing distress and may require a police officer to be present while distress is being executed.

(4) Any property distrained under this section must be -

- (a) identified by the attaching of a notice stating “PROPERTY IMPOUNDED FOR NOT COMPLYING WITH TAX OBLIGATIONS BY ORDER OF THE CHIEF EXECUTIVE OFFICER OF THE FIJI REVENUE AND CUSTOMS SERVICE UNDER SECTION 29 OF THE TAX ADMINISTRATION ACT”; and
- (b) kept at the premises where the distress is executed or at any other place that the CEO or authorised tax officer may consider appropriate, at the cost of the taxpayer.

Amended Decree 18 of 2011 substituted (4), s4 commencement 1 st March 2011

(5) If the taxpayer does not pay the tax liability described in the order, together with the costs of the distress -

- (a) in the case of perishable goods, within a period that the CEO or authorised tax officer considers reasonable having regard to the condition of the goods; or
- (b) in any other case, within 10 consecutive days after the distress is executed,

the property distrained may be sold by public auction or in such other manner as the CEO or authorised tax officer may direct.

(6) The proceeds of disposal under subsection (5) must be applied by the CEO or authorised tax officer as follows -

- (a) first towards the cost of taking, keeping, and selling the property distrained;
- (b) then towards payment of any tax due by the taxpayer; and
- (c) the remainder of the proceeds, if any, must be paid to the taxpayer.

(7) If the proceeds of disposal are less than the sum of the costs of the distress and the tax payable, the CEO or authorised tax officer may proceed under this Division to recover the shortfall.

(8) A person subject to an order under subsection (1) may enter into an agreement referred to as a “possession agreement” with the CEO or authorised tax officer under which, in consideration of the property distrained upon being allowed to

remain in the custody of the taxpayer and delaying of the sale of the property, the taxpayer -

- (a) acknowledges that the property specified in the agreement is under distraint and held in possession for payment of the tax specified in the agreement; and
- (b) undertakes that, except with the consent of the CEO or an authorised tax officer, in writing, for the purposes of this section and subject to such conditions as the CEO or authorised tax officer may impose, the taxpayer will not remove or allow the removal of the property specified in the agreement from the premises specified in the agreement.

(9) If a taxpayer has entered into a possession agreement under subsection (8), subsections (4) to (7) do not apply unless the taxpayer is in breach of the agreement.

Seizure of goods

30.— (1) The CEO or a tax officer authorised by the CEO in writing for the purposes of this section may seize any goods in respect of which the CEO or authorised tax officer has reasonable grounds to believe that VAT that is, payable in respect of the supply or import of those goods has not been, or will not be, paid.

(2) Any goods seized under this section must be stored in a place approved by the CEO or authorised tax officer for the storage of seized goods.

(3) If goods have been seized under subsection (1), the CEO or authorised tax officer must, as soon as is practicable after the seizure, serve on the owner of the goods or the person who had custody or control of the goods immediately before the seizure, a notice in writing -

- (a) identifying the goods;
- (b) stating that the goods have been seized under this section and the reason for seizure; and
- (c) setting out the terms of subsections (6), (7), and (8).

(4) The CEO or authorised tax officer is not required to serve a notice under subsection (3) if, after making reasonable enquiries, the CEO or authorised tax officer does not have sufficient information to identify the person on whom the notice should be served.

(5) If subsection (4) applies, the CEO or authorised tax officer may serve a notice under subsection (3) on any person claiming the goods, provided the person has given the CEO or authorised tax officer sufficient information to enable the notice to be served.

(6) The CEO or authorised tax officer may authorise any goods seized under subsection (1) to be delivered to the person on whom a notice under subsection (3) has been served if that person has paid, or makes an arrangement satisfactory to the CEO or authorised tax officer for payment of, the VAT that is payable, in respect of the supply or import of the goods.

(7) Except if subsection (6) applies, the CEO or authorised tax officer must detain the goods seized under subsection (1) -

- (a) in the case of perishable goods, for such period as the CEO or authorised tax officer considers reasonable having regard to the condition of the goods;
or
- (b) in any other case, for the greater of -
 - (i) 10 consecutive days after seizure of the goods; or
 - (ii) 10 consecutive days after the date for payment of the VAT in respect of the supply.

(8) If the detention period in subsection (7) has expired, the CEO or authorised tax officer may sell the goods by public auction or, in the case of perishable goods, may sell the goods in such manner as the CEO or authorised tax officer determines, and apply the proceeds of sale as follows -

- (a) first towards the cost of taking, keeping, and selling the goods seized; and
- (b) then towards payment of any VAT that is payable in respect of the supply or import of the goods; and
- (c) then towards payment of any other tax due by the person whose goods have been seized; and
- (d) then the remainder of the proceeds, if any, must be paid to the person whose goods have been seized.

(9) If the proceeds of disposal are less than the sum of the cost of taking,

keeping, and selling the goods seized and the VAT due, the CEO or authorised tax officer may proceed under this Division to recover the shortfall.

Departure prohibition order

31. — (1) Where:

- (a) a person is subject to a tax liability; and
- (b) the CEO believes on reasonable grounds that it is desirable to do so for the purposes of ensuring that the person does not depart from Fiji for a foreign country without -
 - (i) wholly discharging the tax liability; or
 - (ii) making arrangement satisfactory to the CEO for the tax liability to be wholly discharged;
- (c) a person whose tax liability has been written off as bad debts and the Chief Executive Officer has reasonable grounds to reinstate the bad debts,

the CEO may, by order in accordance with the prescribed form co-signed by a board member of the Fiji Revenue and Customs Service, prohibit the taxpayer departing from Fiji for a foreign country.

Amended Decree 38 of 2012, s2 commencement 1st January 2012; Act 18 of 2015, s3 by inserting paragraph (c) commencement 1st January 2016; Act 31 of 2016, s209 commencement 1st December 2016.

(2) The CEO must state the following on the departure prohibition order:

- (a) the name and address of the taxpayer;
- (b) the amount of tax that is or will become payable.

(3) A departure prohibition order has effect throughout Fiji, including aboard any vessel or aircraft within the territory of Fiji.

(4) A copy of a departure prohibition order issued in respect of a taxpayer must, as soon as practicable, be served on the taxpayer, and upon the Commissioner of Police and the Director of Immigration.

(5) If a departure prohibition order is issued in respect of a taxpayer, the Commissioner of Police and the Director of Immigration must exercise the powers that they lawfully possess, or cause an officer under their direction to exercise such powers, so far as is necessary to prevent the taxpayer from

departing Fiji, including the removal and retention of the taxpayer's passport, identity card, visa, or other travel document authorising the taxpayer to leave Fiji.

(6) A taxpayer the subject of a departure prohibition order must be refused customs or immigration clearance.

(7) A departure prohibition order remains in force until revoked by the CEO or upon the expiration of three years from the date the of the Order being issued, whichever is the earlier.

(8) The CEO must revoke a departure prohibition order co-signed by a board member of the Fiji Revenue and Customs Service if -

- (a) the taxpayer makes payment in full of the tax payable or that will become payable by the taxpayer; or
- (b) the taxpayer makes an arrangement satisfactory to the CEO for payment of the tax that is or will become payable by the taxpayer.

Amended Decree 38 of 2012, s2 commencement 1st January 2012; Act 31 of 2016, s 209 commencement 1st December 2016.

(9) As soon as practicable after making a decision to revoke a departure prohibition order, the CEO must serve notice of revocation on the taxpayer and on any person on whom a copy of the departure prohibition order was served.

(10) No proceedings, criminal or civil, may be instituted or maintained against the State, the CEO, a tax officer authorised to act under this section, or a Customs, Immigration, Police, or other officer for anything lawfully done under this section.

Temporary closure of business

32. — (1) If a taxpayer fails -

- (a) to file a return required to be filed under section 33 of the Value Added Tax Act 1991, section 5(1) (b) of the Gambling Turnover Tax Act 1991, or section 4(1) (b) of the Service Turnover Tax Act 2012, or the Superyacht Charter Act 2010, or the Airport Departure Tax Act 1986; section 131 of the Income Tax Act 2015;
- (b) to pay VAT, gambling turnover tax, STT, Environment and Climate Adaptation Levy, Airport Departure Tax, fringe benefit tax or tax withheld from salary or wages,

on or before the due date, provided, no satisfactory arrangement are made, the CEO or a tax officer authorised by the CEO in writing for the purposes of this section may notify the taxpayer in writing of the intention to close down the whole or part of the taxpayer's business unless the taxpayer delivers the return or pays the tax due, as the case may be, within a period of 7 consecutive days of the date of the notice.

Amended Decree No. 9 of 2012, s5 in subsection (1) (a) by deleting "Hotel Turnover Tax Act" and substituting "Service Turnover Tax Act"; (b) in subsection (1) (a) by inserting "or section 19 of the Fringe Benefit Tax Decree" after "or"; (c) in subsection (1) (b) "hotel turnover tax" and substituting "Service Turnover Tax"; and (d) in subsection (1) (b) by inserting ", Fringe Benefit Tax" after "Service Turnover Tax", commencement 1st January 2012.

Amended by Act No.31 of 2016, s209 commencement 1st December 2016; Act 27 of 2017, s4, commencement 1 August 2017.

(2) If a taxpayer fails to comply with a notice issued under subsection (1), the CEO or authorised tax officer may issue an order to close down the whole or part of the taxpayer's business for a period not exceeding 14 consecutive days.

(3) The CEO or authorised tax officer may, at any time, enter any premises described in an order issued under subsection (2) for the purposes of executing the order and may require a police officer to be present while the order is being executed.

(4) The CEO or authorised tax officer must seal the premises of the business or the part of the business closed under an order issued under subsection (2) and must affix to the premises, in a conspicuous place, a notice in the following words "CLOSED TEMPORARILY FOR NOT COMPLYING WITH TAX OBLIGATIONS BY ORDER OF THE CHIEF EXECUTIVE OFFICER OF FIJI REVENUE & CUSTOMS SERVICE UNDER SECTION 32 OF THE TAX ADMINISTRATION ACT 2009.

Amended Decree No. 18 of 2011, s4 commencement 1st March 2011

(5) If -

- (a) the return is delivered; or
- (b) tax due is paid or an arrangement satisfactory to the CEO for payment is made,

within the period of closure, the CEO or authorised tax officer must, as soon as practicable, cancel the order referred to in subsection (2), and arrange for removal of the seal and the notice referred to in subsection (4)

Refunds

33. — (1) If the CEO is required to pay a refund of overpaid tax to a taxpayer under a tax law, the CEO must -

- (a) first apply the amount of the refund against any tax owing by the taxpayer under any tax law; and then
- (b) refund the balance (if any) to the taxpayer,
- (c) notify the taxpayer, or his Tax Agent or representative, of his decision in writing.

(2) Notwithstanding anything in any other tax law, the CEO may refrain from collecting or refunding tax if the amount of tax to be collected or refunded does not exceed \$10.

Amended Act 18 of 2015, s4 by deleting "\$5" and substituting "\$10" commencement 1st January 2016.

(3) - (i) The CEO must pay a refund of overpaid tax to a taxpayer under a tax law to the taxpayer's bank account in a commercial trading bank in Fiji;

(ii) The CEO shall not pay any refund of overpaid tax to a taxpayer under a tax law by postal mail.

Amended Decree 4 of 2010, s3 by inserting subsection (3) commencement 1st January 2010.

(4) The CEO must issue a notice of assessment to the taxpayer.

Amended Decree 4 of 2010, s3 by renumbering s3 as s4, commencement 1st January 2010.

Re-raising of debt

33A. – (1) Notwithstanding section 34 of the Financial Management Act 2004, the CEO may reinstate a bad debt that has been written off.

(2) The CEO may reinstate such bad debts in subsection (1), if the –

- (a) CEO is satisfied that the debt is economically viable to recover; or
- (b) taxpayer is financially capable of repaying the debt in full or instalments over an agree period of time.

(3) The CEO may reinstate the tax liability at any time for a taxpayer who knowingly absconds to avoid the payment of the reinstated bad debt.

Act 18 of 2015, inserting section 33A, s5 commencement 1st January 2016.

DIVISION 5 - RECORD KEEPING AND INFORMATION COLLECTION

Accounts and records

34.— (1) Every taxpayer must, for the purposes of a tax law -

- (a) maintain in Fiji in English such accounts, documents, and records (including in electronic format) as may be required under the tax law; and
- (b) subject to subsection (2), retain such accounts, documents, for a period of not less than 7 years after the end of the tax period to which they relate.

(2) A taxpayer may dispense with accounts, documents, and records -

- (a) in the case of a company that has gone into liquidation and is finally dissolved or a person (other than a company) that has ceased carrying on a business, on the expiration of 3 months from the date on which the person having custody of the accounts, documents, and records of the company or business informs the CEO by registered letter that the person proposes to dispense with such accounts, documents, and records and the CEO does not issue any directives with respect to their preservation; or
- (b) in any other case, if, before the end of the 7 year period referred to in subsection (1)(b), the taxpayer makes an application in writing to the CEO requesting the approval of the CEO to dispense with such accounts, documents, and records and the CEO agrees to the taxpayer's request by notice in writing to the taxpayer.

Power to enter and search

35.— (1) For the purposes of administering any tax law with respect to a taxpayer, the CEO or a tax officer authorised by the CEO, in writing, for the purposes of this section -

- (a) has the right, at all times and with or without notice, to full and free access to any premises, place, property, accounts, documents, records, or data storage device;
- (b) may make an extract or copy of any accounts, documents, records, or information stored on a data storage device to which access is obtained under paragraph (a);
- (c) may seize any accounts, documents, or records that, in the opinion of the CEO or authorised tax officer, afford evidence that may be material in determining the tax liability of a taxpayer;

- (d) may retain any accounts, documents, or records seized under paragraph (c) for as long as they may be required for determining a taxpayer's tax liability or for any proceeding under a tax law;
- (e) may, if a hard or electronic copy of information stored on a data storage device is not provided, seize and retain the device for as long as is necessary to copy the information required; and
- (f) may, so far as is reasonably necessary for the purposes in the preceding paragraphs, break open any door, window or container and force and remove any other impediment or obstruction, provided that entry shall not be made at night except in the company of a police officer.

(2) A tax officer is not entitled to exercise any power under subsection (1) by the owner or lawful occupier, the officer is unable to produce the CEO's written authorisation permitting the officer to exercise powers under subsection (1).

(3) The CEO or authorised tax officer may require a police officer to be present for the purposes of exercising powers under this section.

(3A) Without prejudice to any other power under any tax law, where the CEO or authorised tax officer declares on oath before a Magistrate that he or she has reasonable grounds to exercise the powers under subsection (1), the Magistrate may by warrant under his or her hand, authorise the CEO or authorised tax officer to exercise the powers under subsection (1) with such force as may be necessary, by day or by night.

(4) The owner or lawful occupier of the premises or place to which an exercise of power under subsection (1) relates must provide all reasonable facilities and assistance to the CEO or authorised tax officer.

(5) A person whose accounts, documents, or records have been seized under subsection (1) may examine them and make copies, at the person's expense, during office hours.

(6) A person whose data storage device has been seized under subsection (1) may have access to the device during office hours on such terms and conditions as the CEO or authorised tax officer may specify.

(7) The CEO or authorised tax officer must sign for all accounts, documents, records, or data storage devices removed and retained under this section and, subject to subsection (1)(e), return them to the owner within 14 consecutive days of the conclusion of the investigation to which they relate and all related proceedings.

(8) This section has effect notwithstanding -

- (a) Any law relating to privilege or the public interest with respect to access to premises or places, or the production of any property, accounts, documents, or records (including in electronic format); or
- (b) any contractual duty of confidentiality.

Administrative summons

36.— (1) For the purposes of administering any tax law, the CEO may by notice in writing, require any person -

- (a) to furnish such information as the CEO may require;
- (b) to attend and give evidence concerning that person's or any other person's tax affairs; or
- (c) to produce all accounts, documents, and records (including in electronic format) in the person's custody or under the person's control relating to that person's or any other person's tax affairs.
- (d) Subject to subparagraphs (a) to (c), such person may have access to legal advice and representation.

Amended Act 21 of 2016, s2 inserted subsection (1) "the CEO". Commencement 1 st August 2016.

(2) If a notice served under subsection (1) requires the production of accounts, documents, or records (including in electronic format), it is sufficient if such accounts, documents, or records are described in the notice with reasonable certainty.

(3) - (i) A notice issued under this section must be served either -

- (a) personally upon the person to whom it is directed;
- (b) left at the person's last known usual place of business or abode; or
- (c) sent to the person by registered postal address.

(ii) The certificate of service signed by the person serving the notice is conclusive evidence of the facts stated therein.

History

Amended by the Tax Administration (Budget Amendment) Decree No.69 of 2010.WEF 1st January 2011.

s36(3) deleted "(3) A notice issued under this section must be served personally upon the person to whom it is directed or left at the person's last known usual place of business or abode and the certificate of service signed by the person serving the notice is conclusive evidence of the facts stated therein."

(4) The CEO may require that the information or evidence referred to in subsection (1) is -

- (a) given on oath, verbally or in writing, and, for that purpose, the CEO may administer the oath, or verified by statutory declaration or otherwise; or
- (b) furnished or given within such reasonable time as specified by the CEO.

Amended Act 21 of 2016, s2 by deleting subsection 4(b) and substituting with a new paragraph (b), commencement 1st August 2016.

(5) This section has effect notwithstanding -

- (a) any law relating to privilege or the public interest with respect to the giving of information or the production of any property, accounts, documents, or records (including in electronic format); or
- (b) any contractual duty of confidentiality.

(6) The Regulations may prescribe scales of expenses to be allowed to persons required to attend and give evidence under this section.

Audit and investigation of taxpayer's tax affairs

37.— (1) The CEO may select any taxpayer for an audit and investigation of the taxpayer's tax affairs for the purpose of a tax law having regard to -

- (a) the taxpayer's history of compliance or non-compliance with the tax law or any other tax law;
- (b) the tax status of the taxpayer;
- (c) the class of business conducted by the taxpayer; or
- (d) any other matter that the CEO considers relevant to ensuring the collection of tax due.

(2) The fact that a taxpayer has been audited and investigated in relation to a tax period does not preclude the taxpayer from being audited and investigated again in relation to the next and following tax periods if there are reasonable grounds for the audits and investigations, particularly having regard to the matters referred to in subsection (1).

(3) An audit and investigation of a taxpayer's tax affairs may be conducted for the purposes of more than one tax law.

(4) In this section, “tax law” includes the laws listed in Schedule 1 of the Fiji Revenue and Customs Service Act 1998.

Amended Decree 18 of 2011, s4 commencement 1st March 2011.

DIVISION 6 - TAXPAYER IDENTIFICATION NUMBERS

Issue of Taxpayer Identification Numbers

38.— (1) The CEO may, for the purposes of identification and crosschecking, require every person liable or not liable for tax to apply for a Taxpayer Identification Number including the following person(s) –

- (a) a person prior to renewing or applying for a licence or permit of any descriptions from Land Transport Authority
- (b) a person who intends to register a used or new vehicle of any description with Land Transport Authority;
- (c) a person applying for a new business licence or renew of their business licence with the local municipalities;
- (d) incorporated Trust Board and Non-Government Organisations (NGO's) and Religious Bodies registered with the Registrar of Titles;
- (e) a person registering a company, partners in partnership businesses whether jointly or severely registered with the Registrar of Companies;
- (f) a person authorised to open and operating a third party's bank account together with the Taxpayer Identification Number of the third party;
- (g) every person opening or operating a bank account of any description with any financial institution , from within or outside of Fiji;
- (h) special bodies exempted from paying tax under our tax law; and
- (i) any person who is a new or existing employee.

Amended Decree 55 of 2010, s3 commencement 15 th August 2010, Act 31 of 2016, s209 commencement 1 st December 2016.

(1A) Any person who intends to open a bank account for the purpose of a Micro finance project shall not be required to provide a Tax Identification Number to the Bank.

For the purpose of subsection (1A), "Micro finance" means the provision of a broad range of financial services such as deposits, loans, payments services, money transfers, and insurance to the poor and low income households and individuals and to micro and small enterprises that has a turnover or total assets not exceeding \$5000.

Amended Decree 69 of 2010, s4 commencement 1 st January 2011.
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(2) An application for a Taxpayer Identification Number must be -

- (a) in the approved form;
- (b) accompanied by documentary evidence of the person's identity as prescribed; and
- (c) lodged in the prescribed manner.

(3) If the CEO is satisfied that the applicant's identity has been established, the CEO must issue a Taxpayer Identification Number to the applicant by written notice.

(4) The CEO must refuse an application under this section -

- (a) if the CEO is not satisfied as to the applicant's true identity;
- (b) if the applicant has already been issued with a Taxpayer Identification Number that is still in force; or
- (c) for any other reason the CEO deems fit.

(5) The CEO must serve the applicant with written notice of the decision to refuse an application under this section within 14 consecutive days after making the decision.

(6) The CEO may, without an application being made, issue a Taxpayer Identification Number to any person liable for tax.

(7) Without derogating from subsections (1) to (6), the following institutions must ensure that every person listed in subsection (1) (a) to (g) whichever is applicable has a Taxpayer Identification Number issued by the Fiji Revenue and Customs Service -

- (a) any statutory body;
- (b) the Registrar of Companies;
- (c) any municipal council, including any rural local authority;
- (d) Financial Institutions;
- (e) Registrar of Titles;
- (f) Fiji Public Trustee Corporation Limited;
- (g) any licensing or registration agency;
- (h) any Government agency; and
- (i) professional bodies

Amended by Decree 55 of 2010, s3 commencement 15th August 2010, Decree 18 of 2011, s4 commencement 1st March 2011, Act 18 of 2015, s6 commencement 1st January 2016.

(8) All taxpayers whose TINs are not provided to Fiji Islands Revenue and Customs Service by persons mentioned in subsection (7) must apply in person to the Fiji

Revenue and Customs Service for a Tax Identification Number by 31st March 2011.

Amended by Decree 55 of 2010, s3 commencement 15th August 2010, Decree 69 of 2010, s4 commencement 1st January 2011, Decree 18 of 2011, s4 commencement 1st March 2011.

(9) The Fiji Revenue and Customs Service must observe confidentiality when collecting information from any person for the purpose of registration of the Taxpayer identification Number.

Amended by Decree 55 of 2010, s3 commencement 15th August 2010, Act 31 of 2016, s209 commencement 1st December 2016.

(10) The person supplying the Taxpayer Identification Number is not held to be in breach of confidentiality in respect of person whose Taxpayer Identification Number is being supplied to the Fiji Revenue and Customs Service by reason of any actions taken under this Act.

Amended by Decree 55 of 2010, s3 commencement 15th August 2010, Decree 18 of 2011, s4 commencement 1st March 2011, Act 18 of 2015, s6 commencement 1st January 2016.

(11) The Minister may by order amend the list of persons or institutions mentioned in subsection (1) or (7) or list of financial institutions in Schedule 5.

Amended by Decree 55 of 2010, s3 commencement 15th August 2010.

Cancellation of Taxpayer Identification Number

39.— (1) A person who ceases to be a taxpayer may apply to the CEO, in the approved form, for cancellation of the person's Taxpayer Identification Number within 30 consecutive days of the date on which the person ceased to be a taxpayer.

(2) The CEO must, by notice in writing, cancel a Taxpayer Identification Number

- (a) if satisfied that the person has ceased to be a taxpayer;
- (b) if satisfied that a Taxpayer Identification Number has been issued to the person under an identity that is not the person's true identity;
- (c) if satisfied that the person had been previously issued with a Taxpayer Identification Number that is still in force; or
- (d) for any other reason the CEO deems fit.

(3) The CEO may, at any time, by notice in writing, cancel the Taxpayer Identification Number issued to a person and issue the person with a new Taxpayer Identification Number.

(4) The CEO must re-activate a taxpayer's Taxpayer Identification Number that has become inactive or cancelled under this section if the taxpayer had not discharged all the taxpayer's tax liabilities at the time that the Taxpayer Identification Number was cancelled or became inactive.

Quotation of Taxpayer Identification Number

40.— The CEO may require a taxpayer to state the taxpayer's Tax Identification Number in any tax return, notice, or other document used for the purposes of any tax law.

DIVISION 7 - REPRESENTATIVES

Liabilities and obligations of representatives

41.— (1) In this section “representative” means -

- (a) in the case of an individual under a legal disability, the guardian curator, tutor, or other legal representative who receives or is entitled to receive income on behalf, or for the benefit of the individual;
- (b) in the case of a company, the chief executive officer, managing director, company secretary, treasurer, or a resident director of, or a person with a controlling interest in, the company;
- (c) in the case of a partnership, a resident partner in the partnership;
- (d) in the case of a trust, a trustee of the trust;
- (e) in the case of an association or body of persons other than a partnership or company, an individual responsible for accounting for the receipt or payment of monies or funds on behalf of the association or body;
- (f) in the case of the Government or a local authority in Fiji, an individual responsible for accounting for the receipt or payment of monies or funds on behalf of the Government or local authority;
- (g) in the case of a foreign government, political subdivision of a Foreign Government, or public international organisation, an individual responsible for accounting for the receipt or payment of monies or funds in Fiji on behalf of the Government, political subdivision of the Government, or organisation;
- (h) in the case of a non-resident person, a person controlling the person’s affairs in Fiji, including a manager of any business of such person in Fiji;
- (i) in the case of a person to whom section 26 applies, the person treated by that section as the liquidator in relation to the person; or
- (j) in the case of any person (including a person referred to in paragraphs (a) to (i)), an agent or representative of the person as provided for under a tax law or specified by the CEO, by notice in writing, to the person.

Amended by Act 32 of 2015,s141 commencement 1 st January 2016.

(2) Every representative of a taxpayer is responsible for performing any duties or obligations imposed by a tax law on that taxpayer, including the payment of tax.

(3) A representative making a payment of tax on behalf of a taxpayer is treated as acting under the authority of the taxpayer and is hereby indemnified in respect of the payment.

(4) Subject to subsection (5), any tax that, by virtue of subsection (2), is payable by a representative of a taxpayer is recoverable from the representative only to the extent of any assets of the taxpayer that are in the possession or under the control of the representative.

(5) Every representative is personally liable for the payment of any tax due by the representative in that capacity if, while the amount remains unpaid, the representative -

- (a) alienates, charges, or disposes of any monies received or accrued in respect of which the tax is payable; or
- (b) disposes of or parts with any monies or funds belonging to the taxpayer that are in the possession of the representative after the tax is payable, if such tax could legally have been paid from or out of such monies or funds.

(6) Nothing in subsection (5) prevents a representative paying an amount on behalf of a taxpayer that has priority over the tax payable by the taxpayer.

(7) If there are 2 or more representatives of a taxpayer, the duties or obligations referred to in this section apply jointly and severally to the representatives but may be discharged by any of them.

(8) Nothing in this section relieves a taxpayer from performing any duties or obligations imposed on the taxpayer under a tax law that the representative of the taxpayer has failed to perform.

(9) A representative is not to be held personally responsible under subsection (5) if he or she has no knowledge of, or was not aware of the existence of the tax due.

Liability for tax payable by a company or shareholder in financial difficulties

42. — (1) In this Section -

“arrangement” means any contract, agreement, plan, or understanding whether expressed or implied and whether or not enforceable in legal proceedings;

“associate”, in relation to a person, means any other person who acts or is likely to act in accordance with the wishes of the first-mentioned person as a

result of any connection between the persons or common ownership or control, and the first-mentioned person is an associate of the second-mentioned person; and

“controlling shareholder”, in relation to a company, means a person with a controlling interest in the company;

(2) If a company that becomes insolvent or is liquidated owes an amount of VAT, GTT, STT or withholding tax or any other such tax withheld for which it is liable to account each person who was a director of the company at the time it became insolvent or was liquidated is personally liable for such amount.

Amended by Decree 9 of 2012, s6 commencement 1st January 2012.

(3) If an arrangement has been entered into with the intention or effect of rendering a company unable to satisfy a current or future tax liability under a tax law, every person who was a director or controlling shareholder of the company at the time the arrangement was entered into is jointly and severally liable for the tax liability of the company (including any penalty, in respect of the liability).

(4) A director of a company is not liable under subsection (3) for the tax liability of the company if the CEO is satisfied that the director derived no financial or other benefit from the arrangement and -

- (a) the director has on becoming aware of the arrangement, formally recorded with the company his or her dissent and notified the CEO, in writing, of the arrangement; or
- (b) the director satisfies the CEO that, at the time the arrangement was entered into -
 - (i) the director was not involved in the executive management of the company; and
 - (ii) the director had no knowledge of, and could not reasonably have been expected to know of the arrangement.

(5) If the shareholder of a company, in the case of a company owned by one shareholder only, becomes bankrupt, the company in which he or she is the shareholder of, becomes liable for any amount of tax that is owed by the shareholder.

Amended by Decree 83 of 2012, s2 commencement 1st January 2013

(6) If a company changes its shareholder structure, the CEO satisfied that the reason for the change in shareholder structure is to avoid tax liability in subsection (5), the company shall remain liable for any amount of tax that is owed by the shareholder under subsection (5).

Amended by Decree 83 of 2012, s2 commencement 1st January 2013, Decree 83 of 2012, s4

commencement 1st January 2013.

DIVISION 8- ADMINISTRATIVE PENALTIES AND OFFENCES

Subdivision I - Administrative Penalties

Penalty for failure to file a tax return or lodge other document

43. — (1) A person who fails to file a tax return or lodge any other document as required under a tax law is liable -

- (a) in the case of a failure to file a tax return under which tax is payable, for a penalty of 20% of the amount of tax payable under the return;
- (b) subject to paragraph (a), failure to file a tax return by the due date for which tax is payable, a penalty of 5% of the amount of tax payable for each month of default; or
- (c) in any other case, for a penalty of \$1 for each day of default.

Amended by Decree 69 of 2010, s5 commencement 1st January 2011, Decree 9 of 2012, s7 commencement 1st January 2012. deleting "tax outstanding" and substituting "tax payable".

(2) For the purposes of subsection (1) (b), a person ceases to be in default at the time the document is received by the CEO.

Penalty for failure to pay tax by the due date

44.— (1) In this section, "tax" does not include penalty.

(2) A taxpayer who fails to pay tax by the due date or, if the CEO has extended the due date under section 25, the extended due date, is liable for a penalty of 25% of the amount of unpaid tax.

(3) A taxpayer who fails to comply with subsection (2), shall pay a penalty of 5% of the amount of unpaid tax for each month of default.

Amended by Decree 9 of 2012, s8 commencement 1st January 2012.

(4) Any penalty paid by a taxpayer under this section must be refunded to the taxpayer to the extent that the tax to which the penalty relates is found not to have been payable.

Amended by Decree 9 of 2012, s8 commencement 1st January 2012 by renumbering subsection (3) as subsection (4).

Penalty for failure to maintain proper records

45. A taxpayer who fails to keep, retain, or maintain accounts, documents, or records as required under a tax law is liable -

- (a) if the failure is knowingly or recklessly made, for a penalty equal to 75% of the amount of tax payable by the taxpayer for the tax period to which the failure relates; or
- (b) in any other case, for a penalty equal to 20% of the amount of tax payable by the taxpayer for the tax period to which the failure relates.

Penalty for making false or misleading statement

46.— (1) This section applies to a person -

- (a) who makes a statement to a tax officer that is false or misleading in a material particular or omits from a statement made to a tax officer any matter or thing without which the statement is false or misleading in a material particular; and
- (b) the tax liability of the person or of another person computed on the basis of the statement is less than it would have been if the statement had not been false or misleading (the difference being referred to as the “tax shortfall”).

(2) Subject to subsection (3), a person to whom this section applies is liable -

- (a) if the statement or omission was made knowingly or recklessly, for a penalty equal to 75% of the tax shortfall; or
- (b) in any other case, for a penalty equal to 20% of the tax shortfall.

(3) The amount of penalty imposed under subsection (2) on a person is increased by -

- (a) 10 percentage points if this is the second application of this section to the person; or
- (b) 25 percentage points if this is the third or a subsequent application of this section to the person.

(4) The amount of penalty imposed under subsection (2) on a

person is reduced by 10 percentage points if the person voluntarily discloses the statement to which the section applies prior to the earlier of -

- (a) discovery by the CEO of the tax shortfall; or
- (b) the commencement of an audit of the tax affairs of the person to whom the statement relates.

(5) No penalty is payable under subsection (2) if -

- (a) the person who made the statement did not know and could not reasonably be expected to know that the statement was false or misleading in a material particular; or
- (b) the tax shortfall arose as a result of a self-assessment taxpayer taking a reasonably arguable position on the application of a tax law to the taxpayer's circumstances in filing a self-assessment return.

(6) For the purposes of this section, a statement made to a tax officer includes a statement made, in writing or orally -

- (a) in any application, certificate, declaration, notification, tax return, objection, or other document furnished or lodged under a tax law;
- (b) in any information required to be furnished under a tax law;
- (c) in any document furnished to a tax officer;
- (d) in answer to a question asked of a person by a tax officer; or
- (e) to another person with the knowledge or reasonable expectation that the statement would be passed on to a tax officer.

False or misleading statement penalty

46A. – (1) This section applies to a person who makes a false or misleading statement as specified in section 46(1)(a) but which does not result in a tax shortfall.

(2) Subjection to subsection (3), a person to whom this section applies is liable for false or misleading statement penalty equal to –

- (a) when the statement or omission was made knowingly or recklessly, 75% of

the overstatement; or

(b) in any other case, 20% of the overstatement.

(3) No false or misleading statement penalty applies in the circumstances specified in section 46(5).

(4) Section 46(6) applies in determining whether a person has made a statement not a tax officer.

Insert Act 18 of 2015,s7 commencement 1 st January 2016.

Penalty in case of VAT evasion

46B. – (1) Any registered person under the Value Added Tax Act 1991 who –

(a) makes a statement to a tax officer that is false or misleading in a material particular or omits from a statement made to a tax officer any matter or thing without which the statement is false or misleading in a material particular;

(b) evades, or does any act with intent to evade, the payment of any amount of tax payable (the amount referred to as “deficient tax”);

(c) causes, or does any act with intent to cause, the refund to that person by the CEO of an amount in excess of the amount properly so refundable to that person; or

(d) defaults in the performance of any duty imposed upon that person by the Value Added Tax Act 1991 or regulations made under the Value Added Tax Act 1991 with intent to –

(i) evade the payment of any deficient tax; or

(ii) cause the refund to that person by the CEO of an amount in excess of the amount in excess of the amount properly so refundable to that person,

is liable for a penalty equal to 300% of the deficient tax.

(2) No false or misleading statement penalty applies in the circumstance specified in section 46(5).

(3) Section 46(6) applies in determining whether a person has made a statement to a tax officer.

Insert by Act 18 of 2015, s7 commencement 1 st January 2016.

Penalty for breach of possession agreement

47. A taxpayer who, without reasonable excuse, is in breach of an undertaking contained in a possession agreement under section 28 is liable for a penalty equal to 50% of the unpaid tax specified in the agreement.

General provisions relating to penalty

48.— (1) A liability for penalty is calculated separately with respect to each section in this Subdivision.

(2) A person cannot be liable for penalty if the person has been convicted of an offence for the same act or omission.

(3) If a penalty has been paid under this subdivision and the CEO institutes a prosecution under Subdivision 2 of this Part in respect of the same act or omission, the CEO must refund the amount of the penalty paid, and no penalty is payable unless the prosecution is withdrawn.

(4) A person is liable for penalty only if the CEO -

- (a) makes an assessment of penalty imposed under this Subdivision; and
- (b) serves notice of the assessment on the person subject to the penalty stating the amount of penalty payable and the due date for payment.

(5) Subsection (4) applies also to penalty imposed under a tax law (other than this Act).

(6) A person liable to pay a penalty may apply in writing to the CEO for remission of the penalty payable and such application must include the reasons for the remission.

(7) The CEO may, upon application under subsection (6) or on the CEO's own motion, remit, in whole or in part, any penalty payable by a person other than that imposed under section 46.

(8) Nothing in this subdivision precludes the imposition of penalty under a tax law (other than this Act), although the same act or omission cannot be subject to -

- (a) the imposition of penalty under more than one provision; or
- (b) both the imposition of penalty and prosecution for an offence.

Waiver of tax during amnesty period

48A.— (1) For the purpose of this section, unless the context otherwise requires—

“amnesty” means the waiver of any tax payable in respect of any foreign asset, including any interest accrued from, or any penalty or fine imposed, in respect of such tax for any tax period provided that the tax period is prior to 1 January 2018;

“amnesty period” means the period commencing on and from 1 January 2018 to 31 December 2017;

“applicant” means a qualifying person who applies under subsection (3);

“foreign asset” means any asset outside of Fiji or income derived from the asset outside of Fiji, that is declared during the amnesty period; and

“qualifying person” means a person who is a tax resident and Fiji citizen, required to declare their foreign asset under any tax law.

(2) Any qualifying person may, within the amnesty period, apply for amnesty under subsection (3).

(3) An application for amnesty shall be made in writing to the CEO and such application shall include a declaration of any foreign asset and other information as the CEO may require.

(4) Notwithstanding any other provision in this Act, upon receipt of an application under subsections (2) and (3) and if the CEO is satisfied that the applicant is a qualifying person, the CEO shall grant amnesty to the applicant.

(5) Pursuant to subsection (4), the CEO shall, as the case requires, remit in whole any tax payable by the qualifying person in respect of the foreign asset, including any interest accrued from, or any penalty or fine payable, in respect of such tax for any tax period provided that the tax period is prior to 1 January 2016.

(6) If an applicant is not granted amnesty under subsection (4), the CEO shall, as soon as practicable, provide written reasons to the applicant for the refusal.

Insert Act 12 of 2015, s2 commencement 4 th September 2015, Act 27 of 2017, s6, commencement 1 August 2017.
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Waiver of tax during amnesty period for local assets

48B. – (1) For the purpose of this section, unless the context otherwise requires –

“amnesty” means the waiver of any tax payable in respect of any local asset, including any interest accrued from, or any penalty or fine imposed, in respect of such tax for any tax period provided that the tax period is prior to 1 July 2017;

Definition amended Act 31 of 2016, s209 commencement 1st December 2016.

“amnesty period” means the period commencing on and from 1 January 2016 to 30 September 2016;

“applicant” means a qualifying person who applies under subsection (3);

“local asset” means any asset within Fiji or income derived from the asset within Fiji, that is declared during the amnesty period; and

“qualifying person” means a person who is a tax resident and Fiji citizen, required to declare their local asset under any tax law.

Amended by Act 31 of 2016, s209 commencement 1st December 2016.

(2) Any qualifying person, may within the amnesty period, apply for amnesty under subsection (3).

(3) An application for amnesty shall be made in writing to the CEO and such application shall include a declaration of any local asset and other information as the CEO may require.

(4) Notwithstanding any other provision in this Act, upon receipt of an application under subsections (2) and (3) and if the CEO is satisfied that the applicant is a qualifying person, the CEO shall grant amnesty to the applicant.

(5) Pursuant to subsection (4), the CEO shall, as the case requires, remit in whole any tax payable by the qualifying person in respect of the local asset, including any interest accrued from, or any penalty or fine payable, in respect of such tax for any tax period provided that the tax period is prior to 1 January 2017.

(6) If the applicant is not granted amnesty under subsection (4), the CEO shall, as soon as practicable, provide written reasons to the applicant for the refusal.

Insert Act 18 of 2015, s8 commencement 1st November 2015.

Waiver of penalty for failure to file a tax return or payment of tax

48C. – (1) Notwithstanding any other provision in this Decree, any qualifying person who has failed to file a tax return and pay chargeable tax under any tax law for any taxable period prior to 1 July 2017 or who has filed a tax return but wishes to make an amendment to the tax return so filed in order to pay the correct chargeable taxes shall be deemed to have obtained amnesty, if the qualifying person on whom the penalty is imposed files a tax return and pays such tax within the amnesty period.

(2) For the purpose of this section, unless the context otherwise requires –

“amnesty” means the waiver of any penalty payable in respect of any failure to file a tax return and pay any chargeable tax required under tax

law for any taxable period prior to 1 July 2017;

“amnesty period” means the period commencing on and from 30 June 2017 to 31 December 2017;

“qualifying person” means a person -
who is a tax resident and Fiji citizen;
who is required to file a tax return under any tax law; and
whose annual gross turnover is less than \$1.5 million

Insert by Act 18 of 2015, s8 commencement 6 th November 2015, Act 27 of 2017, s7, commencement 1 August 2017.
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Subdivision 2 - Taxation Offences

Offence for failure to file a tax return

49.— (1) A taxpayer who, without reasonable excuse, fails -

- (a) to file a tax return by the due date, or within such further time as the CEO may allow under section 5; or
- (b) to comply with section 3(3),

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

Amended Decree No. 9 of 2012, s9 commencement 1st January 2012, Decree No. 38 of 2012, s3 commencement 1st January 2012, Act 27 of 2017, s8, commencement 1 August 2017.

(2) For the purposes of subsection (1), a failure to comply with a notice served under section 3(2) does not constitute an offence separate from the offence constituted by the failure to furnish the tax return to which the section 3(2) notice relates.

Offence for failure to comply with obligations under this Act

50. — (1) A person who -

- (a) without reasonable cause fails to -
 - (i) comply with section 26;
 - (ii) comply with a garnishee order served on the person under section 27;
 - (iii) comply with section 32;
 - (iv) provide facilities and assistance as required by section 35(4);
 - (v) comply with a notice under section 36; or
 - (vi) comply with section 73(8);
- (b) knowingly sells, leases, or otherwise disposes of any real or personal property that is the subject of a charge under section 28;

- (c) contravenes a departure prohibition order issued under section 31,

commits an offence and is liable for a fine not exceeding \$25,000 or

to imprisonment for a term not exceeding 10 years or to both a fine and imprisonment.

Amended by Decree No. 9 of 2012, s10 commencement 1st January 2012, Decree 38 of 2012, s4 commencement 1st January 2012; Act 27 of 2017, s9, commencement 1 August 2017.

- (2) A person who notifies the CEO in writing under section 27(7) is considered to be in compliance with garnishee order served on the person under section 27(3) until the CEO serves the person with a notice under section 27(8) amending the order served under section 27(3) or rejecting the person's notice under section 27(7).

Offence for failure to maintain proper records

51. A taxpayer who knowingly or recklessly fails to keep, retain, and maintain accounts, documents, or records as required under a tax law commits an offence and is liable to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years or to both a fine and imprisonment.

Amended Decree 9 of 2012, s 11 commencement 1st January 2012, Decree 38 of 2012, s5 commencement 1st January 2012; Act 27 of 2017, s10, commencement 1 August 2017.

Offence for improper use of taxpayer identification number

52.— (1) A person who uses a false Taxpayer Identification Number on any tax return or document prescribed or used for the purposes of a tax law commits an offence and is liable to a fine not exceeding \$25000 or to imprisonment for a term not exceeding 10 years or to both a fine and imprisonment.

Amended Decree 9 of 2012, s12 commencement 1st January 2012, Decree 38 of 2012, s6 commencement 1st January 2012, Act 27 of 2017, s11, commencement 1 August 2017,

(2) A person who uses the Taxpayer Identification Number of another person is treated as having used a false Taxpayer Identification Number, unless the Taxpayer Identification Number has been used with the permission of that other person on a document relating to the tax affairs of that other person.

(3) A person who fails to apply for cancellation of the person's Taxpayer Identification Number as required under section 39 commits an offence and is liable to a fine not exceeding \$25,000 or to imprisonment for a term not

exceeding 10 years or to both a fine and imprisonment.

Amended Decree 9 of 2012, s12 commencement 1 st January 2012, Decree 38 of 2012, s6 commencement 1 st January 2012; Act 27 of 2017, s11, commencement 1 August 2017.
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(4) A person who fraudulently obtains a Taxpayer Identification Number using false or forged documents commits an offence and is liable to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years or to both a fine and imprisonment.

Amended Decree 9 of 2012, s12 commencement 1 st January 2012, Decree 38 of 2012, s6 commencement 1 st January 2012; Act 27 of 2017, s11, commencement 1 August 2017.
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Offence for making false or misleading statement

53.— (1) A person who knowingly or recklessly -

- (a) makes a statement to a tax officer that is false or misleading in a material particular; or
- (b) omits from a statement made to a tax officer any matter or thing without which the statement is false or misleading in a material particular,

commits an offence and is liable to a fine not exceeding \$25,000 or Imprisonment for a term not exceeding 10 years or both a fine and Imprisonment

Amended Decree 9 of 2012, s13 commencement 1 st January 2012, Decree 38 of 2012, s7 commencement 1 st January 2012; Act 27 of 2017, s12, commencement 1 August 2017.
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(2) Section 46(6) applies in determining whether a person has made a statement to a tax officer.

Offence for obstruction of tax officer

54. A person who obstructs a tax officer in the performance of duties under a tax law commits an offence and is liable to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 24 months or to both a fine and imprisonment.

Amended Decree 9 of 2012, s14 commencement 1 st January 2012, Decree 38 of 2012, s8 commencement 1 st January 2012.

Offence for aiding or abetting a taxation offence

55. A person who aids, abets, assists, incites, or induces another person to commit an offence under a tax law (referred to as the “principal offence”) commits an offence and is liable for the same sanction as imposed for the principal offence.

Offence for rescuing seized goods

56. A person who -

- (a) rescues any goods that are the subject of an order under section 29 or have been seized under section 30 or
- (b) before, at, or after any seizure of goods under section 29 or 30, staves, breaks or destroys any goods, or documents relating to any goods, to prevent -
 - (i) the seizure or the securing of the goods; or
 - (ii) the proof of an offence,

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

Amended Decree 9 of 2012, s15 commencement 1 st January 2012, Decree 38 of 2012, s9 commencement 1 st January 2012; Act 27 of 2017, s14, commencement 1 August 2017.
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Offences by tax officers

57.— (1) In this section, “tax officer” means any person employed or engaged by the Service in any capacity, and includes a former officer or employee of the Service.

Amended Act 31 of 2012, s209 commencement 1 st December 2016

(2) A tax officer who directly or indirectly asks for, or takes in connection with any of the officer’s duties, any payment or reward whatsoever, whether pecuniary or otherwise, or promise or security for any such payment or reward, not being a payment or reward that the officer was lawfully entitled to receive, commits an offence and is liable to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years or to both a fine and imprisonment.

Amended Decree 9 of 2012, s16 commencement 1 st January 2012, Decree 38 of 2012, s10 commencement 1 st January 2012; Act 27 of 2017, s15, commencement 1 August 2017.

(3) A tax officer who enters into or acquiesces in any agreement to -

- (a) do any act or thing;
- (b) abstain from doing any act or thing;
- (c) permit or connive in the doing of any act or thing; or
- (d) conceals any act or thing,

whereby the Government is or may be defrauded of revenue, or that is contrary to the provisions of a tax law or to the proper execution of the officer's duty commits an offence and is liable to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years or to both a fine and imprisonment.

Amended Decree 9 of 2012, s16 commencement 1st January 2012, Decree 38 of 2012, s10 commencement 1st January 2012; Act 27 of 2017, s15, commencement 1 August 2017.

(4) A person who directly or indirectly offers or gives to a tax officer any payment or reward whatsoever, whether pecuniary or otherwise, or any promise or security for any payment or reward, not being a payment or reward that the officer was lawfully entitled to receive, commits an offence and is liable to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years or to both a fine and imprisonment.

Amended Decree 9 of 2012, s16 commencement 1st January 2012, Decree 38 of 2012, s10 commencement 1st January 2012; Act 27 of 2017, s15, commencement 1 August 2017.

(5) A person who proposes or enters into any agreement with a tax officer in order to induce the officer to -

- (a) do any act or thing;
- (b) abstain from doing any act or thing;
- (c) permit or connive in the doing of any act or thing; or
- (d) conceals any act or thing,

whereby the Government is or may be defrauded of revenue, or that is contrary to the provisions of a tax law or to the proper execution of the officer's duty commits an offence and is liable to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years or to both a fine and imprisonment.

Amended Decree 9 of 2012, s16 commencement 1st January 2012, Decree 38 of 2012, s10 commencement 1st January 2012; Act 27 of 2017, s15, commencement 1 August 2017.

Offences by companies

58.— (1) If an offence under a tax law is committed by a company, the offence is treated as having been committed by every person who, at the time the offence was committed, was -

- (a) the chief executive officer, authorised officer, managing director, a director, company secretary, treasurer, or other similar officer of the company; or

- (b) acting or purporting to act in that capacity.
- (2) Subsection (1) does not apply to a person if -
 - (a) the offence was committed without the person's consent or knowledge; and
 - (b) the person, having regard to the nature of the person's functions and all the circumstances, has exercised reasonable diligence to prevent the commission of the offence.

Offence for failure to display tax

- 58A.— (1) A taxpayer must ensure that the price of all goods and services supplied at the retail level for its customers is displayed as inclusive of all applicable taxes.
- (2) A taxpayer who fails to display any chargeable tax is required under a tax law commits an offence and is liable for a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years or to both a fine and imprisonment.

Amended Act 27 of 2017, s16, commencement 1 August 2017.
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Power of CEO to compound offences

59. — (1) If a person (referred to as the “offender”) has committed an offence against a tax law, other than an offence under section 57, the CEO

may, at any time prior to the commencement of the hearing by a court of a charge in relation thereto, compound the offence and order, by notice in writing, the offender to pay such sum of money, not exceeding the amount of the fine to which the offender would have been liable if convicted of the offence, as the CEO may think fit.

(2) The CEO may compound an offence under this section only if the offender, in writing, admits committing the offence and requests the CEO to deal with the offence under this section.

(3) If the CEO compounds an offence under this section, the CEO's order under subsection (1) -

- (a) must specify the name of the offender, the offence committed, the sum of money ordered to be paid, and the date or

dates on which payment is to be made;

- (b) must have a copy of the written admission referred to in subsection (2) attached;
- (c) must be served on the offender;
- (d) is final and is not to be subject to appeal;
- (e) may be enforced in the same manner as a decree of a court for payment of the amount stated in the order; and
- (f) on production to any court, is treated as proof of the conviction of the offender for the offence specified.

(4) If the CEO compounds an offence under this section, the offender is not liable for prosecution or penalty in respect of same act or omission the subject of the compounded offence.

General provisions relating to offences

60. — (1) The prosecution of an offence under a tax law may be instituted at any time after the commission of the offence.

Amended Act 27 of 2017, s17, commencement 1 August 2017.
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(2) A resident magistrate who hears and determines any prosecution for an offence under a tax law has, notwithstanding anything contained in any tax law, jurisdiction to impose a fine or sentence of imprisonment that may be imposed under the relevant tax law on any person convicted of the offence.

(3) All proceedings for offences under a tax law are to be taken by way of summary prosecution before a court of competent jurisdiction upon the information of the CEO.

DIVISION 9 - RULINGS

Subdivision I - Public Rulings

Binding public rulings

61. — (1) The CEO may make a public ruling in accordance with section 62 setting out the CEO's interpretation on the application of a tax law.

(2) A public ruling made in accordance with section 62 is binding on the CEO until withdrawn.

(3) A public ruling is not binding on a taxpayer.

Making a public ruling

62. — (1) The CEO makes a public ruling by publishing a notice of the ruling in the Gazette.

(2) A public ruling must state that it is a public ruling and have a number and subject heading by which it can be identified.

(3) A public ruling applies from the date specified in the ruling and if no date is specified, from the date of publication in the Gazette.

(4) The making of a public ruling is not a tax decision for the purposes of this Decree.

Withdrawal of a public ruling

63. — (1) The CEO may withdraw a public ruling, in whole or part, by publishing notice of the withdrawal in the Gazette.

(2) If legislation is passed, or the CEO makes a public ruling, that is inconsistent with an existing public ruling, the existing ruling is treated as withdrawn to the extent of the inconsistency.

(3) The withdrawal of a public ruling, in whole or part, has effect -

- (a) if subsection (1) applies, from the date specified in the notice of withdrawal and if no date is specified, from the date notice of the withdrawal is published in the Gazette; or
- (b) if subsection (2) applies, from the date of application of the inconsistent legislation or public ruling.

(4) A public ruling that has been withdrawn in whole or in part -

- (a) continues to apply to a transaction commenced before the public ruling was withdrawn; and
- (b) does not apply to a transaction commenced after the ruling was withdrawn to the extent that the ruling is withdrawn.

Subdivision 2 - Private Rulings

Binding private rulings

64. — (1) Subject to section 65, the CEO must, upon application in writing by a taxpayer, issue to the taxpayer a private ruling setting out the CEO's position regarding the application of a tax law to a transaction entered into, or

proposed to be entered into, by the taxpayer.

(2) An application for a private ruling must be accompanied by nonrefundable prescribed fee.

(3) If the taxpayer has made a full and true disclosure of all aspects of the transaction relevant to the making of a private ruling and the transaction has proceeded in all material respects as described in the taxpayer's application for the ruling, the ruling is binding on the CEO in relation to the taxpayer.

(4) A private ruling is not binding on the taxpayer to whom it is issued.

(5) If a private ruling is inconsistent with an existing public ruling, the private ruling has priority to the extent of the inconsistency.

Refusing an application for a private ruling

65. — (1) The CEO must refuse to consider an application for a private ruling if the application is not accompanied by the prescribed fee.

(2) The CEO may refuse an application for a private ruling if -

- (a) the CEO has already decided the matter that is the subject of the application in a tax assessment;
- (b) the CEO is of the opinion that an existing public ruling adequately covers the matter that is the subject of the application;
- (c) the application relates to a matter that is the subject of a tax audit or an objection;
- (d) the application is frivolous or vexatious;
- (e) the arrangement to which the application relates has not been carried out and there are reasonable grounds to believe that it will not be carried out;
- (f) the applicant has not provided the CEO with sufficient information to make a private ruling; or
- (g) in the opinion of the CEO, it would be unreasonable to comply with the application having regard to the resources needed to comply and any other matters the CEO considers relevant.

(3) The CEO must serve the applicant with a written notice within 30 consecutive days after the decision to refuse to make a private ruling.

Making a private ruling

66. — (1) The CEO makes a private ruling by serving written notice of the ruling on the applicant.

(2) The CEO may make a private ruling on the basis of assumptions about a future event or other matter as considered appropriate.

(3) A private ruling must set out the matter ruled on, identifying -

- (a) the taxpayer;
- (b) the tax law relevant to the ruling;
- (c) the tax period to which the ruling applies;
- (d) the arrangement to which the ruling relates; and
- (e) any assumptions on which the ruling is based.

(4) A private ruling is made at the time the applicant is served with notice of the ruling and remains in force for the period specified in the ruling.

(5) The making of a private ruling is not a tax decision for the purposes of this Decree.

Withdrawal of a private ruling

67. — (1) The CEO may, for reasonable cause, withdraw a private ruling, in whole or part, by written notice served on the applicant.

(2) If legislation is passed, or the CEO publishes a public ruling, that is inconsistent with a private ruling, the private ruling is treated as withdrawn to the extent of the inconsistency.

(3) The withdrawal of a private ruling, in whole or part, has effect -

- (a) if subsection (1) applies, from the date specified in the notice of withdrawal; or
- (b) if subsection (2) applies, from the date of application of the inconsistent legislation or public ruling.

(4) A private ruling that has been withdrawn -

- (a) continues to apply to a transaction commenced before the ruling was withdrawn; and

- (b) does not apply to a transaction commenced after the ruling was withdrawn to the extent that the ruling is withdrawn.

Division 10 - Forms and Notices

Approved form

68.—(1) A tax return, notice, or other document required to be filed under a tax law (other than Part 3 or 4 of this Act) is in the approved form if -

- (a) it is in the form approved in writing by the CEO for that type of tax return, notice, or document; and
- (b) it contains the information (including any attached documents required) and is signed as required by the form.

(2) A form required to be filed under Part 3 of this Act is in the approved form if -

- (a) it is in the form approved by the President of the Tax Tribunal; and
- (b) it contains the information (including any attached documents required) and is signed as required by the form.

(3) A form required to be filed under Part 4 of this Act is in the approved form if -

- (a) it is in the form approved by the Tax Agents' Board; and
- (b) it contains the information (including any attached documents required) and is signed as required by the form.

Forms and notices; authentication of documents; compliance with tax law

69.— (1) Subject to the Regulations to this Act, a form, notice, tax return, statement, table, or other document approved or published by the CEO for the purposes of any tax law may be in such form as the CEO determines for the efficient administration of the tax laws and its publication in the Gazette is not required.

(2) The CEO must make the documents referred to in subsection (1) available to the public at the offices of the Service and at such other locations, or by mail or such other means, as the CEO may determine.

Amended Act 31 of 2016,s209 commencement 1 st December 2016.

(3) A notice or other document issued, served or given by the CEO under a tax law is sufficiently authenticated if the name or title of the CEO or authorised tax officer, is printed, stamped, or written on the document.

(4) For the purposes of a proceeding under a tax law, the facts necessary to establish compliance by the CEO with the tax law and default by a person under the tax law are sufficiently proved in the Tax Tribunal or any Court by an affidavit of the CEO or authorised tax officer and the burden of proof will rest on the taxpayer to rebut the contents of the affidavit deposed to by the CEO.

(5) An affidavit referred to in subsection (4) must have attached to it a copy of any notice to which the affidavit relates.

Manner of lodging documents

70. Subject to this Decree and except as otherwise provided in a tax law, an application, notice or other document to be lodged with the CEO under a tax law must be delivered by personal delivery, registered or normal post to an office of the Fiji Revenue and Customs Authority.

Amended Act 31 of 2016, s209 commencement 1st December 2016.

Free postage

71. All information, correspondence, and payments of tax made under a tax law must be carried and delivered by the Post Fiji Limited free of postal or other charges if the postal packet containing the information, correspondence, or payment is addressed to the CEO or the Fiji Revenue and Customs Authority.

Amended Act 31 of 2016, s209 commencement 1st December 2016.

Service of Notices

72.— (1) In this section, “person” includes the person’s representative.

(2) A taxpayer must state in each tax return filed by the taxpayer an address in Fiji for service of notices and such address applies for the purposes of all tax laws.

(3) Subject to this Act and except as otherwise provided in a tax law, a notice or other document required to be served by the CEO on a person for the purposes of a tax law is treated as properly served on the person-

(a) if served personally on the person;

(b) if an address for service is provided as specified in subsection

(2), left at, or sent by registered or normal post to, the address for service stated in the most recently filed tax return of the taxpayer including an address for service; or

- (c) if no address for service is provided in a tax return, left at, or sent by registered or normal post to, the person's usual or last known address in Fiji.

(4) If a notice or other document is served by normal post, service is, in the absence of proof to the contrary, deemed to have been effected at the time at which the notice or other document would be delivered in the ordinary course of post, and in proving such service it is sufficient to prove that the envelope containing the notice or other document was properly addressed and was posted.

(5) If the person to whom a notice or other document has been sent by registered post is informed of the fact that there is a registered letter awaiting the person at a Post Office, and the person refuses or fails to take delivery of the letter, and the letter consists of the notice or other document; service of the notice or other document is deemed to have been effected and the burden of proof will rest on the person to rebut that service of the notice or other document deemed to have been effected was not.

(6) The validity of service of a notice under a tax law cannot be challenged after the notice has been wholly or partly complied with.

Electronic returns and notices

73. — (1) The CEO may establish and operate a procedure (referred to as the “electronic notice system”) for electronic filing of tax returns or other documents to the CEO and electronic service of notices and other documents by the CEO and, for this purpose, the CEO may provide written conditions for-

- (a) the registration of taxpayers to participate in the electronic notice system (referred to as “registered users”);
- (b) the issuing and cancellation of authentication codes to registered users;
- (c) the tax returns and other documents that may be transmitted through the electronic notice system, including the form and manner in which they are to be transmitted;
- (d) the correction of errors in or amendments to electronic returns or other documents;

- (e) the use of the electronic notice system, including the procedure applicable if there is a breakdown or interruption in the system;
- (f) the use in any electronic transmission of symbols, codes, abbreviations, or other notations to represent any particulars or information required under a tax law; and
- (g) any other matters for the better provision of the electronic notice system.

(2) A registered user may, in accordance with the conditions set by the CEO under subsection (1), file a tax return or other document to the computer account of the CEO.

(3) The CEO may, in accordance with the conditions set by the CEO under subsection (1), serve a notice or other document to the computer account of a registered user.

(4) If a tax return or other document of a registered user has been transmitted to the computer account of the CEO using the authentication code assigned to the registered user -

- (a) either with or without the authority of the registered user; and
- (b) before the registered user has applied to the CEO for cancellation of the authentication code,

the return or other document is, for the purposes of the tax law under which it has been filed, presumed to be filed by the registered user unless the registered user proves to the contrary.

(5) For the purposes of a tax law, an electronic tax return, notice or other document, or a copy thereof, must not be ruled inadmissible in evidence merely on the basis that it was filed or served without the filing or delivery of any equivalent document or counterpart in paper form.

(6) If an electronic tax return, notice or other document is admissible under subsection (5), it is presumed that, until the contrary is proved, the contents of the electronic return, notice or other document have been accurately transmitted.

(7) Section 14 also applies to -

- (a) an electronic tax assessment served by the CEO on the basis that the reference in section 14(2) to a copy of a notice of a tax assessment includes a certificate under the hand of the CEO

identifying the tax assessment stating the authentication code of the registered user and the device involved in the production and transmission of the electronic tax assessment; and

- (b) an electronic tax return furnished by a registered user on the basis that the reference in section 14(2) to a copy of a tax return includes a certificate under the hand of the CEO identifying the tax return stating the authentication code of the registered user and the device (if known) involved in the production and transmission of the electronic tax return.

(8) A person furnishing an electronic tax return or other document on behalf of another person must not divulge or disclose the contents of the return or document or a copy thereof, without the prior written consent of the CEO.

Due date for documents and tax payments

74. If the due date for -

- (a) filing a tax return, application, notice or other document;
- (b) the payment of tax; or
- (c) taking any other action under a tax law,

is a Saturday, Sunday or public holiday, the due date is the last working day before the due date.

Amended Decree 69 of 2010, s6 commencement 1 st January 2011.
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DIVISION 11 – TAX COMPLIANCE CERTIFICATE

Insert Act 18 of 2015, s11 commencement 1 st January 2016.

Tax Compliance Certificate

74A. Any resident person who –

- (a) submits an Expression of Interest or tender to supply goods and services for any Government or public sector business contract; or
- (b) applies for any registration, permit or licence from any Government ministry or entity, must submit a Tax Compliance Certificate issued by the CEO, attached to his or her documents, unless exempted by the Minister in writing.

Application

74B. A person may apply to the CEO for a Tax Compliance Certificate in the approved

form and the application must be accompanied by any other information required.

Issuance of tax compliance certificate

74C. – (1) The CEO shall issue a Tax Compliance Certificate to a person, if the CEO is satisfied that the person has fulfilled relevant obligations to lodge outstanding tax returns and pay tax due to the State.

(2) A Tax Compliance Certificate is proof of tax compliance for the requirements of any tax law specified in the Schedule 2 and is valid for one year from the date of issue.

Refusal

74D. A person may be refused a Tax Compliance Certificate, if –

(a) a return required under a relevant law specified in the Schedule 2; or

(b) any tax liability under any tax law, is outstanding.

Revocation

74E. The CEO may revoke a Tax Compliance Certificate issued under this Act, if an applicant at the time of making the application, knowingly furnished particulars that are found to be either materially incomplete or false.

PART 3 - TAX TRIBUNAL

Division 1

Establishment of tax tribunal

75.— (1) This section establishes the Tax Tribunal.

(2) The Tribunal is a subordinate Court to the Tax Court.

(3) The Tribunal has the jurisdiction, powers and functions conferred on it by this Act or any other written law.

Appointment of Members of the Tribunal

76.— (1) The person appointed as the Tax Tribunal shall be a legal practitioner with not less than 7 years post- admission practice or legal experience.

(2) The Judicial Services Commission or the President of the Republic of Fiji in the absence of the Judicial Services Commission shall appoint a person to the Tribunal.

Term of office

77. — (1) The Tribunal is appointed for a term not exceeding 3 years.

(2) The Tribunal is eligible for reappointment.

Vocation and resignation

78.— (1) The Judicial Service Commission may remove the Tribunal for bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Commission.

(2) In the case of alleged misconduct, the Judicial Service Commission may, appoint a committee consisting of a legal practitioner qualified for appointment as a judge and 2 lay members to conduct the hearing of the misconduct and make recommendations to the Commission.

(3) The Tribunal may, by notice in writing addressed to the Judicial Services Commission, resign from office.

Remuneration

79. — (1) The Tribunal member is entitled to remuneration and other allowances determined by the Judicial Services Commission.

Protection of tribunal

80.— (1) The Tribunal, in the performance of the Tribunal's duties under this Act, has the same protection as is given under section 65 of the Magistrates Courts Act (Cap. 14) to judicial officers.

(2) For the avoidance of doubt as to the privileges and immunities of the Tribunal, parties, representatives, and witnesses in the proceedings of the Tribunal, it is deemed that the proceedings are judicial proceedings.

Jurisdiction of Tribunal

81. — (1) The Tribunal has jurisdiction—

(a) to review a reviewable decision under this Act; and

(b) exercise any other function or jurisdiction conferred to the Tribunal under this Act or any other written law.

(2) The Tribunal has power—

(a) to adjudicate on matters within its jurisdiction relating to disputes up to \$50,000; and

(b) to determine claims where the amount in dispute exceeds \$50,000 if both parties consent to the Tribunal's Jurisdiction.

(c) to determine any decision relating to the registration or cancellation of registration of a tax agent.

Application for review of reviewable decision

82.— (1) A person dissatisfied with a reviewable decision may apply to the Tax Tribunal for review of the decision.

(2) An application under subsection (1) must -

(a) be in the approved form;

(b) include a statement of the reasons for the application;

(c) be lodged with the Tax Tribunal within 30 consecutive days

after the applicant has been served with notice of the reviewable decision; and

(d) be accompanied by the prescribed fee.

(3) The Tax Tribunal may, on an application in writing, extend the time for making an application to the Tribunal for a review of a reviewable decision.

(4) An applicant to the Tax Tribunal must serve a copy of the application on the CEO or the Tax Agents' Board, as the case may be, within 5 consecutive days of lodging the application with the Tribunal.

(5) The Tax Tribunal may, in reviewing a reviewable decision, exercise all the powers and discretions of the original decision-maker under the tax law under which the original decision was made.

CEO required to lodge documents with the Tax Tribunal

83. — (1) The CEO must, within 28 consecutive days of being served with a copy of an application to the Tax Tribunal or within such further time as the Tax Tribunal may allow, lodge with the Tribunal 2 copies of -

- (a) the notice of the tax decision to which the application relates;
- (b) a statement setting out the reasons for the decision if these are not set out in the notice referred to in paragraph (a); and
- (c) any other document relevant to the Tax Tribunal's review of the decision.

(2) If the Tax Tribunal is not satisfied with a statement lodged under subsection (1) (b), the Tax Tribunal may, by written notice, require the CEO to lodge, within the time specified in the notice, a further statement.

(3) If the Tax Tribunal is of the opinion that other documents may be relevant to the Tax Tribunal's review of a reviewable decision, the Tax Tribunal may, by written notice, require the CEO to lodge with the Tax Tribunal, within the time specified in the notice, the documents specified in the notice.

(4) The CEO must give the applicant a copy of any statement or document lodged with the Tax Tribunal under this section.

Procedures

84. — (1) The procedure of the Tribunal is subject to this Act.

(2) In all proceedings, the Tribunal must act fairly.

- (3) Sittings of the Tribunal may be held at times and places fixed by the Tribunal.
- (4) Sittings of the Tribunal may be adjourned from time to time and from place to place by Tribunal, whether at a sitting or at a time before the time fixed for the sitting.
- (5) The Tribunal must keep and maintain a record of all sittings of the Tribunal.
- (6) The applicant may not withdraw a matter before the Tribunal without the written consent of the other parties or prior leave of the Tribunal.

Agreement between the parties to a proceeding before the Tax Tribunal

85.— (1) This section applies if, at any stage in a proceeding before the Tax Tribunal, the parties agree in writing as to the terms of a decision of the Tax Tribunal in the proceeding or in a part of the proceeding or a matter arising out of a proceeding.

(2) If subsection (1) applies and the agreement reached is as to the terms of a decision of the Tax Tribunal in the proceeding, the Tax Tribunal may make a decision in accordance with those terms.

(3) If subsection (1) applies and the agreement reached relates to a part of a proceeding or a matter arising out of a proceeding, the Tax Tribunal may, in its decision in the proceeding, give effect to the terms of the agreement.

Tax Tribunal may remit the matter to the CEO

86. — (1) At any stage in a proceeding for review of a reviewable decision, the Tax Tribunal may remit the decision to the CEO for reconsideration and the CEO may -

- (a) affirm the decision;
- (b) vary the decision; or
- (c) set aside the decision and make a new decision.

(2) If the CEO affirms, varies or sets aside a decision under subsection (1), the decision as affirmed, varied or set-aside is a reviewable decision and the applicant may either proceed with or withdraw the application.

Referral of question of law

87.— (1) The Tribunal may, in proceedings before it, refer a question of law to the Tax Court for its opinion and may for that purpose defer deciding upon and adjourn the proceedings subject to receiving that opinion.

(2) A reference under subsection (1) must be made in the prescribed manner.

(3) If the Tax Court makes a determination on the question of law, the Court may refer the matter to the Tribunal for a decision in accordance with the determination.

Transfer of proceedings to Tax Court

88.— (1) A party to the proceedings may apply to the Tribunal to have the proceedings transferred to the Tax Court for the hearing and determination of the matter.

(2) The Tribunal may order the transfer of the proceedings to the Tax Court if the Tribunal is of the opinion that—

(a) an important question of law is likely to arise; or

(b) the case is of such a nature and of such urgency that it is in the public interest that it be transferred to the Tax Court.

(3) If the Tribunal declines to transfer proceedings to the Tax Court, the party concerned may seek special leave of the Court for an order that the proceedings be transferred to the Court and the Court must apply the criteria that govern the Tax Tribunal's decision under subsection (2).

(4) An order for transfer of proceedings to the Tax Court under this section may be made subject to any conditions as the Tax Tribunal or Tax Court may impose.

(5) If an order for transfer is made under subsection (2), the Tax Court may, if it considers that the proceedings were not properly transferred, order that the Tax Tribunal adjudicate on the proceedings at the first instance.

Decision of Tax Tribunal

89.— (1) The Tax Tribunal must -

(a) in the case of a review of a tax decision, make an order as set out in section 17(3) or (4); or

- (b) in the case of a review of any other reviewable decision, make an order to affirm, vary, or set aside the decision

(2) The Tax Tribunal must -

- (a) make a written decision on an application for review as soon as practicable after the hearing has been completed; and
- (b) cause a copy of its decision to be served on each party to the proceeding within 7 consecutive days of the making of the decision.

(3) A decision referred to in subsection (2) must include the Tax Tribunal's reasons for the decision and its findings on material questions of fact and reference to the evidence or other material on which those findings were based.

(4) A decision of the Tax Tribunal comes into operation upon the giving of the decision or on such other date as may be specified by the Tribunal in the decision.

(5) Subject to subsection (6), the Tax Tribunal must provide for the publication of its decisions in such form and manner as may be adapted for public information and use, and such authorised publication is evidence of the decisions of the Tribunal in all courts of Fiji without any further proof or authentication.

(6) In publishing its decisions, the Tax Tribunal must ensure that-

- (a) the identity and affairs of the applicant and any other person concerned are concealed; and
- (b) trade secrets or other confidential information are not disclosed.

DIVISION 2—TAX COURT

Establishment and constitution of Tax Court

90. — This section establishes the Tax Court, as a Division of the High Court.

Jurisdiction of the Tax Court

91. — (1) The Tax Court has jurisdiction—

- (a) to hear and determine appeals conferred upon it under this Act or any other written law;
- (b) to hear and determine all actions;

- (c) to hear and determine questions of law referred to it by the Tribunal;
- (d) to hear and determine matters transferred to it under section 88(2);
- (e) to hear and determine applications for leave to have matters before the Tribunal transferred to it under section 88(3);
- (f) to order compliance with this Act;
- (g) to exercise other functions and powers as are conferred on it by this or any other written law.

(2) In all matters before it, the Court has full and exclusive jurisdiction to determine them in a manner and to make decisions or orders not inconsistent with this Act or any other written law.

(3) No decision or order of the Court, and no proceedings before the Court, may be held to be invalid for want of form, or be void or in any way vitiated by reason of an informality or error in form.

Appointment of experts to assist Court

92. — (1) The Court may appoint one expert member from the following list of persons listed in subsection (2) to assist the Judge of the Court in hearing and determining any matter subject to subsection (5).

(2) A person may be appointed as an expert member by Tax Court if the person satisfies any of the following:

- (a) the person is enrolled as a legal practitioner in Fiji and has significant experience in tax matters;
 - (b) the person is a member of the Fiji Institute of Accountants and has significant experience in tax matters;
 - (c) the person has previously been engaged as a tax officer with significant technical and administrative experience in tax matters; or
 - (d) the person has special knowledge, experience or skills relevant to the Tax Court.
- (3) The following persons cannot be appointed as expert members under subsection (2):

(a) a person who-

- (i) has committed an act which has given rise to an offence under the tax law or customs and excise legislation;
- (ii) has been convicted of an offence under the tax law or customs and excise legislation; or
- (iii) has been subject to an order under section 59.

(b) a person who is an undischarged bankrupt.

(4) The expert member's role is to assist the Court in any technical, administrative or accounting issue that may arise or advise during the hearing of any matter.

(5) For the avoidance of doubt the sole decision or responsibility of making the decision rests with the Judge of the Court.

(6) No expert member is liable to any action or suit for any act done or omitted to be done in the execution of the member's duties under this Part.

Power of Tax Court to order compliance

93.— (1) If a person has not observed or complied with—

- (a) a provision of this Act; or
- (b) an order, determination, direction, or requirement made or given under this Act by the Court,

the Court may, in addition to any other power it may exercise, by order require, in or in conjunction with any proceedings under this Act to which that person is a party, that person to do a specified thing, or to cease a specified activity, for the purpose of preventing further non-observance of or non-compliance with that provision, order, determination, direction, or requirement, and must specify a time within which that order is to be obeyed.

(2) The power given to the Court by subsection (1) may be exercised by the Court—

- (a) on the application of a party to the proceedings; or
- (b) of its own motion.

(3) The Court may extend the time specified under subsection (1) on the application of the person who is required to obey the order.

(4) An order made under subsection (1) may—

- (a) be subject to the terms and conditions as the Court thinks fit (including conditions as to the actions of the applicant); and
 - (b) be expressed to continue in force until a specified time or the happening of a specified event.
- (5) If the Court makes an order of the kind described in subsection (1) in any proceedings, it may then adjourn the proceedings, without imposing a penalty or fine or making a final determination in the proceedings, to enable the order of the Court to be complied with while the proceedings are adjourned.
- (6) If a person fails to comply with a compliance order made under this section, the Court may do one or more of the following things—
- (a) if the person in default is a plaintiff, order that the proceedings be stayed or dismissed as to the whole or any part of the relief claimed by the plaintiff in the proceedings;
 - (b) if the person in default is a defendant, order that the defendant's defence be struck out and that judgment be entered accordingly;
 - (c) order that the person in default pays a penalty in a sum not exceeding \$25,000, or be sentenced to imprisonment for a term not exceeding 10 years; or
 - (d) order that the property of the person in default be sequestered.

Sittings

94. — (1) Sittings of the Tax Court must be held at times and places as are from time to time fixed by a judge.
- (2) Sittings may be fixed either for a particular case or generally for a class of cases then before the Court and ready for hearing.
- (3) The Court may be adjourned from time to time and from place to place by a judge, a Master or by the Registrar of the Court, whether at a sitting or at a time before the time fixed for the sitting.

Proceedings not to abate by reason of death

95. Proceedings before the Court are not abated by reason of the death of a party to the proceedings in which case the legal personal representative of the deceased party must be substituted in the deceased party's stead.

DIVISION 3—OTHER GENERAL PROVISIONS

Registrar and staff of the Court and the Tribunal

96. The Chief Registrar may—
- (a) designate one officer as the Registrar of the Court;
 - (b) designate other officers as assistant registrars of the Court or the Tribunal; and
 - (c) provide other staff necessary for the proper administration of the Court and the Tribunal.

Seals

97. The Tribunal and the Court must each have a seal, which must be judicially noticed by any other Court or tribunal for all purposes.

Contempt

- 98.— (1) This section applies if a person—
- (a) assaults, threatens, intimidates, or wilfully insults a person, being the Tribunal member, a Judge, an officer of the Tribunal, a Registrar of the Court, any other officer of the Court, or a witness, during that person's sitting or attendance in the Tribunal or Court, or in going or returning from the Court or Tribunal;
 - (b) wilfully interrupts or obstructs the proceedings of the Tribunal or the Court or otherwise misbehaves in the Tribunal or Court; or
 - (c) wilfully and without lawful excuse disobeys an order or direction of the Tribunal or the Court in the course of the hearing of proceedings.

(2) If a person is cited for contempt in the course of a sitting of the Tribunal or the Court, the Tribunal or the Court may order a police officer, with or without the assistance of any other person to take the offender into custody and detain the offender until the end of the sitting.

(3) If the Tribunal cites a person under this section for contempt, the Tribunal must refer the matter to the Court for contempt proceedings.

(4) The Court may, upon finding a person guilty of contempt, impose a fine not exceeding \$25,000 or a term of imprisonment not exceeding 10 years or both.

Appearance of parties

99.— (1) A party to a proceeding before the Tribunal or Court may—

- (a) appear personally;
- (b) be represented by a representative whom the Tribunal or the Court is satisfied has authority to act in proceedings;
or
- (c) be represented by a legal practitioner,

and may produce before the Tribunal or the Court witnesses, documents, books, and other evidence as the party thinks fit.

(2) In any proceedings, the Tribunal or the Court may, with leave of the Tribunal or the Court, allow a person who, in the opinion of the Tribunal or the Court, is entitled to be heard, to appear or to be represented.

(3) The Tribunal or the Court may order any person to appear or to be represented before it.

Evidence

100.— (1) In proceedings brought before the Tribunal, the Tribunal may accept and admit evidence including documents signed under the hand of the CEO and any other such evidence as it thinks fit.

(2) The Tribunal is not bound by the strict rules of evidence.

(3) The Tribunal or the Court may, if it thinks fit, dispense with adducing evidence on matters on which all parties to the proceedings have agreed in writing.

(4) A person summoned under this section as a witness who refuses or neglects, without sufficient cause, to appear or to produce documents required by the summons to be produced is liable on conviction by the Court to a fine not exceeding \$2,000.

(5) No person summoned under this section as a witness is liable to a fine under subsection (4) unless there has been paid or tendered to that person at the time of the service of the summons, or at some other reasonable time before the hearing, the sum in respect of that person's expenses as is for the time being prescribed in that behalf with respect to witnesses.

Power to summons and produce documents

101. Without prejudice to subsections (1), (2) and (3) of section 23, the following provisions must apply with respect to evidence in proceedings before the Tribunal or the Court—

- (a) on the application of any of the parties, the Registrar of the Court must issue a summons to a person to appear and give evidence before or to produce documents or things to the Tribunal or the Court;
- (b) the summons must be in the prescribed form, and may require the person to produce before the Tribunal or the Court; books, papers, or other documents in that person's possession or under that person's control in any way relating to the proceedings;
- (c) all documents produced before the Tribunal or the Court, whether produced voluntarily or pursuant to a summons, may be inspected by the Tribunal or the Court, and also by the parties as the Tribunal or the Court allows, but the information obtained must not, unless the Tribunal or the Court in its discretion so directs, be made public, and the parts of the documents as, in the opinion of the Tribunal or the Court, do not relate to the matter at issue may be sealed;
- (d) subject to the discretion of the Tribunal or the Court, a person attending the Tribunal or the Court on a summons, and every other person giving evidence before the Tribunal or the Court is entitled, as against the party calling that person, to a sum for that person's expenses and loss of time according to the scale of fees prescribed for witnesses and upon application by a party, the Court may use its discretion to award enhanced costs including witnesses costs and disbursements
- (e) a person present in Court or before the Tribunal who is required to give evidence but refuses to be sworn or to give evidence is liable on conviction by the Tribunal or the Court to a fine not exceeding \$2,000;

- (f) for the purpose of obtaining evidence of witnesses, where witnesses are unable to attend Court, the Judge may allow witnesses to give evidence through other means including through a duly authorised officer, a Registrar, or a District Officer
- (g) the Tribunal or the Court may take evidence on oath, and for that purpose the judge, the Registrar, or any other person acting under the express or implied direction of the Tribunal or the Court, may administer an oath;
- (h) on an indictment for perjury it is sufficient to prove that the oath was administered under paragraph (g);
- (i) a party to the proceedings must be competent and may be compelled to give evidence as a witness; and
- (j) the Tribunal or the Court in its discretion may order that all or a part of its proceedings may be taken down in shorthand or recorded in any other manner.

Power to proceed if parties fail to attend

102. If, without good cause shown, a party to proceedings before the Tribunal or the Court fails to attend in person or by representation, the Tribunal or the Court may act as fully in the matter before it as if that party had duly attended or been represented.

Powers to join as parties, etc

103. In order to enable the Court or the Tribunal to dispose of a matter effectively, the Court or the Tribunal may, at any stage of the proceedings, on its own motion or upon application, and upon terms as it thinks fit, by order—

- (a) direct parties to be joined or struck out;
- (b) amend or waive an error or defect in the proceedings;
- (c) subject to this Act, extend the time within which anything is to be done or may be done; or
- (d) generally give directions as are deemed necessary or expedient in the circumstances.

Costs

104. The Tribunal or the Court in proceedings may order a party to pay to any other

party costs and expenses (including expenses of witnesses) as it thinks reasonable, and may apportion the costs between the parties or any of them as it thinks fit, and may at any time vary or alter the order in the manner as it thinks reasonable.

Power to prohibit publication

105. The Tribunal or the Court may, with or without conditions, order that a part of any evidence given before it or the name of a witness not be published.

Rules of the Tribunal and Tax Court

106.—(1) The Chief Justice may from time to time make rules for the purpose of regulating the practice and procedure of the Tribunal or the Court.

(2) In the absence of such rules, or where no provision is made for a particular circumstance—

- (a) the Magistrates' Courts Rules apply to the proceedings before the Tribunal; and
- (b) the High Court Rules apply to the proceedings before the Tax Court.

Appeals from Tribunal to Tax Court

107.— (1) A party to proceedings before the Tribunal who is aggrieved by a decision of the Tribunal in the proceedings may appeal as of right or by leave to the Court.

(2) An appeal to the Court must be made in the prescribed manner within 28 days from the date of the decision of the Tribunal.

(3) A notice of appeal must specify—

- (a) the grounds of appeal;
- (b) the decision or the part of the decision appealed from; and
- (c) the precise form of the order which the appellant proposes to seek from the Court.

(4) Subject to subsection (2) an appeal lies as of right to the Tax Court—

- (a) from any first instance decision of the Tribunal; or

- (b) where any ground of appeal from the Tribunal involves a question of law.
- (5) No appeal shall lie—
 - (a) from an appeal allowing an extension of time;
 - (b) from any decision of the Tribunal where it is provided by this Decree that the decision is final;
 - (c) except with leave of the Tribunal, from a decision made by consent of the parties;
 - (d) except with leave of the Tribunal, from a decision as to costs only;
 - (e) except with leave of the Tribunal or the Court—
 - (i) from any interlocutory decision; or
 - (iii) from any compliance order of the Tribunal.
- (6) For the purposes of hearing and determination of any appeal, the Court has all the power, authority and jurisdiction of the Tribunal and such other authority vested in a superior Court.
- (7) When hearing and determining an appeal the Court may—
 - (a) confirm, modify, or reverse the decision or a part of the decision of the Tribunal or set aside the decision of the Tribunal and substitute its own decision; or
 - (b) refer the matter with or without any direction to the Tribunal to reconsider, either generally or in respect of specified matters, the whole or a part of the matter to which the appeal relates.
- (8) If an appeal is referred back to the Tribunal, the Tribunal must hear and dispose of the matter without any delay.

Appeal on interlocutory order of the Court

108. A party who is dissatisfied with an interlocutory order of the Tax Court may, within 14 days, apply to that Court for leave to appeal to the Court of Appeal or if leave to appeal is refused by the Tax Court apply to the Court of Appeal for leave to appeal.

Appeals to Court of Appeal

109.— (1) An appeal from the Court shall lie to the Court of Appeal.

(2) For the purposes of an appeal to the Court of Appeal, the Court of Appeal Act applies, with necessary modifications.

(3) An appeal from the Tax Court must be filed within 42 days of the delivery of the decision or judgment.

Amended Act 21 of 2016, s3 commencement 1 st August 2016.
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(4) A notice of appeal does not operate as a stay of proceedings in respect of the decision to which the appeal relates unless the Tax Court or the Court of Appeal so orders.

PART 4 - TAX AGENTS' BOARD

Establishment of Tax Agents' Board

110. There is established a Board to be called the Tax Agents' Board to register and regulate the work of tax agents.

Appointment of Members of the Board

111. — (1) The Tax Agents' Board consists of the following members -

- (a) CEO or his or her appointed representative;
- (b) a member of the Fiji Institute of Accountants nominated by the Council of the Institute and appointed by the Minister; and
- (c) a person with accounting knowledge and experience appointed by the Minister.

Amended Act 3 of 2014, s2 commencement 1 st January 2015; Act 27 of 2017, s20, commencement 1 August 2017.

(2) The Permanent Secretary for Finance or his or her appointed representative is the chairperson of the Board.

Amended Act 3 of 2014, s2 commencement 1 st January 2015.
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(3) The following persons cannot be appointed as a member under subsection (1) (b) or (1) (c) -

- (a) a person who has been liable for a significant penalty or convicted of an offence under a tax law or has been subject to an order under section 59; or
- (b) a person who is an undischarged bankrupt.

(4) The members referred to in subsection (1)(b) and (1)(c) hold office for 3 years and are eligible for reappointment.

(5) The appointment of a member under subsection(1)(b) or (1)(c) terminates if the member -

- (a) becomes an undischarged bankrupt;
- (b) is liable for a significant penalty or convicted of an offence under a tax law or is subject to an order under section 59;
- (c) resigns by notice in writing to the Minister; or

- (d) is removed by the Minister, by notice in writing, for inability to perform the duties of office or for proven misconduct.

(6) A member of the Board must be paid such expenses as the Minister may determine.

(7) No member of the Board is liable to any action or suit for any act done or omitted to be done in the bona fide execution of the member's duties under this Part.

(8) The reference to "tax law" in subsections (3) (a) and (5) (b) includes the customs and excise legislation.

Proceedings of Board

112. — (1) at all meetings of the Board, a quorum is 2 members and all questions are decided by a majority of the members attending provided that, in the event of a tie, the chairperson has the casting vote.

(2) If the Auditor General is absent from a meeting, the member nominated by the Minister is the chairperson for that meeting.

(3) For the purposes of carrying out its powers, duties and functions under this Part, the Board has, subject to section 52 of the Fiji Revenue and Customs Service Act 1998, the same powers and authority to summon witnesses and to admit and receive evidence as are conferred upon commissioners of a Commission of Inquiry 1946 by section 9 of the Commissions of Inquiry Act and the provisions of sections 14 and 17 of that Act applies mutatis mutandis in relation to the powers and authority vested in the Board under this Part.

Amended Act 31 of 2016, s209 commencement 1st December 2016.

(4) The Board must prepare, and publish by notice in the Gazette, a Code of Conduct by which tax agents registered under this Decree must comply with.

Insert Act 18 of 2015, s9 commencement 1st January 2016.

Registration of tax agents

113. — (1) A natural person may apply to the Board for registration as a tax agent.

(2) An application for registration as a tax agent under subsection (1) must be in the approved form and accompanied by the prescribed fee.

(3) Subject to subsection (4), if an applicant under subsection (1) satisfies the Board that the applicant is a fit and proper person to prepare tax returns and transact

business under the tax laws on behalf of taxpayers, the applicant is entitled to registration as a tax agent.

(4) If an applicant under subsection (1) does not possess an academic qualification related to tax matters acceptable to the Board, the Board may request the Fiji Institute of Accountants to conduct on its behalf an examination to determine whether the applicant's knowledge of accounting and tax matters is sufficient to justify registration of the applicant as a tax agent.

(5) The Board must provide an applicant under subsection (1) with notice, in writing, of its decision on the application.

(6) An applicant dissatisfied with a decision on an application for registration as a tax agent can challenge the decision only under section 82.

(7) Registration as a tax agent is valid for a period commencing on the date of registration and ending on 31 December of the year in which registration is granted.

(8) A registered tax agent, who upon expiry of the tax agent's registration, wishes to be registered for the following year must submit an application to the Board, in the approved form and accompanied by the prescribed fee, for registration within 21 consecutive days of the date of expiry of the tax agent's registration, failing which the tax agent's registration must be cancelled.

Cancellation of registration

114. — (1) A tax agent must notify the Board, in writing, if the tax agent ceases to carry on business as a tax agent.

(2) Notification under subsection (1) must be made within 7 consecutive days of ceasing to carry on business as a tax agent.

(3) A tax agent may apply to the Board, in the approved form, for cancellation of the agent's registration if the agent no longer wishes to be registered.

(4) The Board may cancel the registration of a tax agent if -

(a) the tax agent has notified the Board under subsection (1);

(b) the Board is satisfied that an application should have been made even though no application has been made under subsection (1);

(c) the tax agent has applied for cancellation of the agent's registration under subsection (3);

(d) a tax return prepared and filed with the CEO by the tax agent is false in any material particular, unless the tax agent establishes to the satisfaction of the Board that the false statement was not wilfully or negligently made;

(e) the tax agent is liable for a significant penalty or convicted of an offence under a tax law or is subject to an order under section 59;

(f) the agent becomes an undischarged bankrupt;

(g) the tax agent has failed to maintain his or her personal tax affairs in a satisfactory state;

(h) the tax agent has, for any other reason, ceased to be a fit and proper person to remain registered;

(i) the tax agent has breached the Code of Conduct.

Amended Act 18 of 2015, s10 commencement 1 st January 2016.
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(5) The Board give notice, in writing, of a decision of the Board's intention to cancel the registration of a tax agent.

(6) A Tax Agent dissatisfied with the Board's decision of the Board's intention to cancel his or her registration can challenge such notice of intention to cancel the registration only under section 82.

(7) Subject to subsection (8), the intention to cancel under subsection (5) or the actual cancellation of the registration under subsection (4) takes effect 30 consecutive days after the tax agent has been served with notice of intention to cancel or the actual cancellation.

(8) If a tax agent served with notice of intention to cancel or where actual cancellation has been effected, and such a tax agent gives, notice to the Board of his intention to appeal either the intention to cancel or where actual cancellation of his registration has been effected, such cancellation becomes effective if affirmed by the Tax Tribunal upon appeal.

Only tax agents to accept fees and advertise as tax agents

115.— (1) No person other than a tax agent can demand or receive any fee for or in relation to -

(a) the preparation of a tax return;

(b) the preparation of an objection; or

(c) the transaction of any business on behalf of any person in respect of the person's rights or obligations under a tax law.

(2) Subsection (1) does not apply to a barrister and solicitor performing legal work in relation to a tax law.

(3) No person, other than a registered tax agent, can represent themselves as a tax agent or indicate that, for reward, the person will offer assistance to another person in respect of that other person's rights or obligations under a tax law.

Offences relating to tax agent's registration

116. A person who fails to comply with this Part commits an offence and is liable for a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 10 years or to both a fine and imprisonment.

Amended Decree 9 of 2012, s17 commencement 1 st January 2012, Decree 38 of 2012, s11 commencement 1 st January 2012, Act 21 of 2016, s4 commencement 1 st August 2016.

PART 5 - CONSEQUENTIAL AMENDMENTS

Consequential repeals and amendments

117. The following enactments are amended as specified in the Schedule 4 -

- (a) the Fiji Revenue and Customs Service Act 1998;
- (b) the Gambling Turnover Tax Act 1991;
- (c) the Hotel Turnover Tax Act;
- (d) the Income Tax Act;
- (e) the Lands Sales Act 1974; and
- (f) the Value Added Tax Act 1991.

PART 6 - FINAL PROVISIONS

Regulations

118.— (1) The Minister may make regulations -

- (a) prescribing forms, fees or other matters as required under this Act;
- (b) for the administration of the Tax Tribunal and Tax Agents' Board;
- (c) for the proper and efficient administration of this Act.

(2) Without limiting the general effect of subsection (1), regulations made under that subsection may -

- (a) contain provisions of a saving or transitional nature consequent on the making of this Act; or
- (b) prescribe penalties for the contravention of the regulations.

(3) If regulations made under this section are of a transitional nature and are made within 6 months after the commencement of this Act, the regulations may provide that they take effect from the date on which the Act comes into force.

Electronic systems

118A. (1) The Fiji Revenue and Customs Service shall implement electronic systems to obtain and monitor accurate records relating to the imposition of a tax.

(2) The Minister may make regulations prescribing matters that are required to be

prescribed or are necessary or convenient to be prescribed for the implementation of electronic systems established under subsection (1), including but not limited to –

- (a) terms or conditions issued by the Fiji Revenue and Customs Service;
- (b) procedures and guidelines for the collection and verification of data;
- (c) offences for failure to comply with any term or condition issued by the Fiji Revenue and Customs Service or any requirement relating to the electronic systems;
- (d) penalties for offences committed under any regulations prescribed under this

section, with fines not exceeding \$200,000 or imprisonment for terms not exceeding 10 years or both.

Inserted by Act 21 of 2016, s5 commencement 1 st August 2016.
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Transitional and savings

119.- (1) Subject to this section, this Act applies to any act or omission occurring, or any tax decision made, before the commencement date.

(2) Any appeal or prosecution commenced before the commencement date is continued and disposed of as if this Act had not come into force.

(3) If the period for any application, appeal or prosecution had expired before the commencement date, nothing in this Act can be construed as enabling the application, appeal or prosecution to be made under this Act by reason only of the fact that a longer period is specified in this Act.

(4) Any tax liability that arose before the commencement date may be recovered under this Act, but without prejudice to any action already taken for the recovery of the tax.

SCHEDULE 1

(Section 2)

TAX ASSESSMENTS

1. The following are tax assessments for the purposes of this Act -

- (a) an assessment of income tax, including a nil or loss notice;
- (b) the ascertainment of provisional tax or advance payments of tax under Subdivision 3 of Division 2 of Part 9 of the Income Tax Act 2015;
- (c) an assessment of VAT, including a self-assessment under section 8;
- (d) an assessment of capital gains tax, including a self-assessment under section 8;
- (e) an assessment of penalty or additional tax under a tax law;
- (f) a default assessment of tax under section 9;
- (g) an advance assessment of tax under section 10;
- (h) an assessment including a self-assessment of gambling turnover tax under section 8; and
- (i) an amendment of an assessment referred to in paragraph (a) to (g);
- (j) an assessment including a self-assessment of the STT under section 8; and
- (k) an assessment of fringe benefit tax, including a self-assessment under section 8.

2. The determination of the withholding tax payable is not a tax assessment.

Amended Decree 23 of 2011, s21 commencement 1st May 2011, Decree 7 of 2012 commencement 1st January 2012, Act 32 of 2015, s141 commencement 1st January 2016
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SCHEDULE 2

(Section 2)

TAX LAWS

- (1) The following are tax laws for the purpose of this Act -
- (a) this Act;
 - (b) the Gambling Turnover Tax Act 1991;
 - (c) the Service Turnover Tax Act 2012;
 - (d) the Income Tax Act 2015;
 - (e) the Environment and Climate Adaptation Levy Act 2015;
 - (f) the Value Added Tax Act;
 - (g) the Superyacht Charter Act 2010;
 - (ga) the Airport Departure Tax Act 1986
 - (h) any other Act, or any other written law (other than the customs and excise legislation) under which a tax or levy is imposed if responsibility for the general administration of the tax or levy is imposed on the CEO.
- (2) A reference to a tax law in paragraph (1) includes any regulations or other subsidiary legislation made under the law.

Amended Decree 23 of 2011, s21 commencement 1st May 2011, Decree 7 of 2012, s 24 commencement 1st January 2012, Decree 9 of 2012, s18 commencement 1st January 2012, Act 31 of 2016, s 209 commencement 1st December 2016.

SCHEDULE 3
(Section 2)

PART A

TAX RETURNS

The following are tax returns for the purposes of this Act -

- (1) In relation to income tax -
 - (a) a return referred to in sections 104 and 108 of the Income Tax Act 2015;
 - (b) a report referred to in section 107 of the Income Tax Act 2015; or
 - (c) an annual withholding tax summary required under section 121 of the Income Tax Act 2015;
- (2) In relation to value added tax -
 - (a) a return required to be furnished under sections 33, 34, and 35 of the Value Added Tax Act 1991; and
 - (b) particulars required to be furnished under section 37 of the Value Added Tax Act 1991.
- (3) A return required under section 4(1)(b) of the Service Turnover Tax Act 2012 and payment required under section 4(1)(a).
- (4) A return required under section 5(1)(b) of the Gambling Turnover Tax Act 1991 and payment required under section 5(1)(a).
- (5) A return required under section 126 of the Income Tax Act 2015.
- (6) A return required under section 131 of the Income Tax Act 2015.

Amended Decree 23 of 2011, s21 commencement 1st May 2011, Decree 7 of 2012, s24 commencement 1st January 2012, Decree 9 of 2012, s19 commencement 1st January 2012, Decree 37 of 2013, s 11 commencement 22nd November 2013, Act 32 of 2015, s141 commencement 1st January 2016.
- (7) A return and payment required under the Environment and Climate Adaptation Levy Act 2015.
- (8) A return and payment required under the Superyacht Charter Act 2010.
- (9) A return and payment required under the Airport Departure Tax Act 1986.

PART B

SELF-ASSESSMENT RETURNS

The following are self-assessment returns for the purposes of this Act -

(1) A return required under section 33, 34 or 35 of the Value Added Tax Act 1991.

(2) A return required under section 104,108,126, 131 or 135 of the Income Tax Act 2015.

SCHEDULE 4
(Section 117)

CONSEQUENTIAL REPEALS AND AMENDMENTS

FIJI REVENUE AND CUSTOMS SERVICE ACT

The Fiji Revenue and Customs Service Act 1998 is amended -

- (a) in section 2, by inserting the following definitions in the correct alphabetical order -

“customs and excise legislation” has the meaning in the Tax Administration Act;

“revenue law” refers to all laws listed in the Schedule 2;

“revenue officer” means an officer under a tax law, customs and excise legislation;

“Tax Agents’ Board” means the Tax Agents’ Board established under section 110 of the Tax Administration Act;

“Tax Administration Act” means the Tax Administration Act (No.50 of 2009);

” tax law” has the meaning in the Tax Administration Act;

“Tax Tribunal” means the Tax Tribunal established under section 75 of the Tax Administration Act;

- (b) by repealing subsection (2) of section 17 and replacing with

“(2) The conduct and discipline of every employee of the Fiji Revenue and Customs Service will be, in accordance with the provisions of the Conduct and Discipline Regulations 2002.”

- (c) by amending subsection (4) of section 27, by deleting the “full stop” after “subsection” and inserting at the end of the subsection the following words “and the power to compound offences in section 59 of the Tax Administration Act”;

- (d) by repealing section 52 and replacing with the following new section -

“Secrecy

52. (1) A revenue officer must take an oath in the prescribed form administered by a magistrate or a Justice of the Peace before performing any duty under any revenue law.

(2) A revenue officer must regard as secret and confidential all information and documents received in performance of duties as a revenue officer.

(3) Subject to subsection (4)(b), no revenue officer can be required to produce in the Tax Tribunal or any court any document or divulge to the Tribunal or any court any information that has come into the officer's possession or knowledge in the performance of the officer's duties under a revenue law, except as may be necessary for the purpose of carrying into effect the provisions of a revenue law or in order to bring, or assist in the course of, a prosecution for any offence in relation to tax

(4) Nothing in this section prevents a revenue officer from revealing a document or information to –

- (a) another revenue officer or the Minister, but only to the extent necessary for the purposes of carrying out any duty arising under a revenue law;
- (b) the Commissioner of Police, Director of Immigration, Governor of the Reserve Bank, Financial Intelligence Unit and Fiji Independent Commission Against Corruption but only to the extent necessary for carrying into effect the provisions of any revenue law or to institute a prosecution for an offence under any revenue law;
- (c) the Tax Agents' Board, but only to the extent necessary for the performance of the functions of the Board;
- (d) the Auditor-General or a person authorised by the Auditor-General in writing to the extent that the disclosure is necessary for the performance of the audit of the Service's accounts, provided the Auditor-General or person authorised by the Auditor-General to audit the accounts of the Service has taken an oath as required by subsection (7);
- (e) the competent authority of a government of a foreign country with which Fiji has entered into an agreement providing for the exchange of information, to the extent permitted under that agreement; or
- (f) a person with the written consent of the person to whom the documents or information relate.

- (5) If a revenue officer is permitted to disclose documents or information under subsection (4), the officer must maintain secrecy and confidentiality except to the minimum extent necessary to achieve the object for which the disclosure is permitted.
 - (6) Subsections (2) and (9) apply to a person receiving documents or information under subsection (4) as if the person were a revenue officer.
 - (7) The Auditor-General and every person authorised by the Auditor-General in writing for the purpose of the audit of the Service's accounts must take an oath in accordance with subsection (1).
 - (8) A reference to revenue officer in this section, other than in subsection (1), includes a person employed or engaged by the Service in any capacity and includes the Minister or former Minister, a director or former director of the Board, a member or former member of a committee of the Board, a person invited to a Board or committee meeting, or a former officer or employee of the Service.
 - (9) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding [12] months or to both."
- (e) in Schedule 1, by inserting the following in correct alphabetical order -

"Tax Administration Act".

GAMBLING TURNOVER TAX ACT

The Gambling Turnover Tax Act 1991 is amended -

- (a) in section 5, by repealing subsections (3), (4), and (5);
- (b) in section 6(5) by deleting "of \$1000" and substituting "not exceeding \$25,000"
- (b) in section 7, by repealing subsections (3) and (4);
- (c) by repealing sections 8, 8A, 9, 11, and 12; and
- (d) in section 10 -

- (a) in subsection (1), by deleting the words “Subject to this section, where” and substituting “Where”; and
- (b) by repealing subsection (2).

HOTEL TURNOVER TAX ACT

The Hotel Turnover Tax Act is amended -

- (a) in section 4, by deleting subsections (4) and (5);
- (b) by repealing sections 5 and 5A; and
- (c) by repealing section 7 and substituting the following section -

“Application of the Income Tax Act

Section 108 of the Income Tax Act applies for the purposes of this Act.

INCOME TAX ACT

The Income Tax Act is amended -

- (a) by repealing sections 3, 3A, 3B, 4, 5, 45, 46, 48, 49, 50A, 54A to 54K, 57, 58, 59, 59A, 62 to 71, 74, 74A, 75 to 77B, 90, 94 to 100;
- (b) in section 44, by deleting the last sentence of subsection (1);
- (c) in section 47A, by repealing subsection (2);
- (d) in section 50, by repealing subsections (1) - (5), and (7) and (8);
- (e) in section 55, by repealing subsection (2); and
- (f) in section 72, by repealing subsections (1), (3), and (4).

LAND SALES ACT

The Land Sales Act is amended by repealing section 13, 14, and 16.

VALUE ADDED TAX ACT

The Value Added Tax Act is amended -

- (a) by repealing sections 6A, 7, 9, 10, 11, 12, 45, 46, 47, 48, 50 to 60, 61(1), 62, 63, 63A, 64, 64A, 68, 73, 76, 76A, 77, and 78;
- (b) in section 6, by repealing subsections (1), (2), (3), (4), and (6);
- (c) in section 8, by repealing subsections (1), (2), (3), (4), and (5);
- (d) in section 44 -
 - (i) in subsection (1), by deleting paragraphs (a), (b) and (e);
 - (ii) by repealing subsection (2);
 - (iii) in subsection (3) -
 - (A) by deleting the words “or amended assessment” after the word “assessment”;
 - (B) by deleting the word “registered” before the word “person”; and
 - (C) by deleting the words “or further tax” after the word “tax”; and
 - (iv) by repealing subsections (4) and (5); and
 - (v) in subsection (6), by deleting the words “sections 44, 45, 46 or any other section relating to assessment of tax” and substituting “this section”;
- (e) in section 65, by repealing subsection (4);
- (f) in section 70, by repealing subsection (1); and
- (g) in section 71, by repealing paragraphs (i), (j), and (q).

Amended Decree 18 of 2011, s4 commencement 1 st March 2011.
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SCHEDULE 5

LIST OF FINANCIAL INSTITUTIONS

- (1) Bank of the South Pacific;
- (2) Westpac Banking Corporation;
- (3) Australia and New Zealand Banking Group Limited;
- (4) Bank of Baroda;
- (5) Fiji Development Bank;
- (6) Housing Authority;
- (7) Home Finance Company Limited;
- (8) Dominion Finance Limited;
- (9) Merchant Finance and Investment Company Limited;
- (10) Credit Corporation (Fiji) Limited.

Insert Decree 55 of 2010, s4 commencement 15 th August 2010.
