



STANDARD INTERPRETATION GUIDELINE 2018 – 24

ENVIRONMENT AND CLIMATE ADAPTATION LEVY ACT 2015 - BUDGET AMENDMENT 2018/2019

This Standard Interpretation Guideline (“SIG”) sets out Fiji Revenue and Customs Service’s (“FRCS”) policy and operational practice in relation to application of amendments made to Environment and Climate Adaptation Levy Act 2015, introduced under National Budget 2018/2019.

It is issued with the authority of the Chief Executive Officer (CEO) of FRCS who is also the Commissioner of environmental levy under the Environment and Climate Adaptation Levy Act 2015.

Legislative references in this SIG are the Environment and Climate Adaptation Levy Act 2015 (ECAL Act) and Service Turnover Tax Act 2012 (STT Act) unless otherwise stated.

This SIG is in effect from 15th August 2018 and may need to be reviewed in the event of any relevant legislative amendments.

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EXECUTIVE SUMMARY

1. In continuance with the Government’s commitment to protect Fiji’s environment and natural resources, combined with initiatives to support sectors that contribute effectively to the economic development of Fiji, legislative amendments were proposed and approved in the recently announced National Budget 2018/2019.
2. Accordingly, ECAL Act 2015 was amended in National Budget 2018/2019 vide Environment and Climate Adaptation Levy (Budget Amendment) Act 2018¹.
3. The primary purpose of amending ECAL Act 2015 was to increase Environment and Climate Adaptation Levy (ECAL) charged on plastic bags from 10 cents to 20 cents and to extend the minimum annual gross turnover threshold of \$1.25 million to all prescribed services.

¹ Act No.17 of 2018

4. The purpose of this SIG is to issue a practical guidance on CEO's interpretation on the impact and applicability of amendments made to ECAL Act 2015 in the National Budget 2018/2019.

INTRODUCTION

5. ECAL Act imposes Environment and Climate Adaptation Levy ('ECAL') on prescribed services, prescribed items, imports and income.
6. ECAL is levied on turnover of service providers engaged in provision of business listed under prescribed services, Schedule 1 of ECAL Act.
7. ECAL of 10% is applicable on VAT exclusive cost of turnover on all prescribed services. It is computed by applying the rate to the prescribed service amount. For example, if the prescribed service amount is \$100 (exclusive of Value Added Tax (VAT)), ECAL is \$10.00.
8. 'Turnover' for the purpose of this Act shall mean any sums or amounts received or receivable by or on behalf of the owner of a service in respect of any sums or amounts included in a charge for prescribed service.
9. Prior to National Budget Amendment 2018/2019, turnover threshold of \$1.25 million applied only to the services engaged in the business of bistros or coffee shops and licensed restaurants.
10. As illustrated in legislative analysis, definition of "prescribed service" now means a service listed in Schedule 1 of the Act having an annual gross turnover above \$1.25 million.
11. Further, in the National Budget Amendment 2018/2019², the levy on plastic bags has been increased from 10 cents to 20 cents to discourage use of plastic bags.

LEGISLATIVE ANALYSIS

Amendments to ECAL Act in National Budget 2018/2019

12. "Prescribed Service" under Section 2 of the Act was amended as –

"prescribed service" means a service listed in the Schedule where the annual gross turnover for the provision of such service exceeds \$1.25 million

13. Therefore, effective 1st August, 2018, "prescribed service" shall mean a service listed in Schedule 1 of the Act where the annual gross turnover of the service provider in respect of provision of that service exceeds \$1.25 million³.
14. It implies that the annual gross turnover threshold of \$1.25 million previously applicable to bistros, coffee shops and licensed restaurants is now applicable to all prescribed services. Conversely, services listed under Schedule 1 of the Act having an annual gross turnover less than \$ 1.25 million shall no longer be considered as prescribed service.

² Section 4 of Act 17 – Environment and Climate Adaptation Levy (Budget Amendment) Act 2018

³ Section 2 of Act 17 – Environment and Climate Adaptation Levy (Budget Amendment) Act 2018

15. This amendment serves as an economic incentive to a large section of business providing services listed under Schedule 1 with an annual gross turnover not exceeding \$1.25 million, as they will not be mandated to impose ECAL as long as they are within the said threshold.

16. Further, in the National Budget 2018/2019, Section 5(7) of the Act was amended as⁴ –

“(7) Subject to this Act, any accountable person registered under subsection (5) that has been registered for 12 consecutive months may notify the CEO if the annual gross turnover of the prescribed service during the period of 12 months is not more than \$1.25 million and if the CEO is satisfied that the annual gross turnover of the prescribed service during the period of 12 months is not more than \$1.25 million the CEO shall deregister the accountable person.”.

17. According to amended section 5(7), the CEO may deregister an accountable person if the following requirements are met to the satisfaction of CEO:

- a. the accountable person is registered with FRCS for at least 12 consecutive months; and
- b. the accountable person notifies the CEO that his gross annual turnover for the last 12 months, that is from the date of making the application for deregistration, is less than \$1.25 million.

18. An accountable person cannot apply for deregistration in anticipation of gross annual turnover to fall below \$1.25 million in the next 12 months. The business of “prescribed services” must complete a 12-months cycle of less than \$1.25 million before the accountable person applies for de-registration.

19. This amendment has the effect of shifting the onus of facilitating the ‘deregistration of an accountable person’ on the accountable person if the prescribed service no longer meets \$1.25 million threshold.

20. As a result of amendment to the definition of “prescribed service” a number of service providers may fall out of the definition of “prescribed services” if their annual gross turnover is below \$1.25 million. As such these service providers can notify the CEO and apply for deregistration under section 5(7) after satisfying the requirements stated in Para 15.

Plastic Bags

21. In the National Budget 2018/2019, Section 6(2) of ECAL Act was also amended as⁵ –

“Pursuant to subsection (1), the Environment and Climate Adaptation Levy charged on plastic bags is \$0.20c per plastic bag.”

⁴ Section 3(b) of Act 17 – Environment and Climate Adaptation Levy (Budget Amendment) Act 2018

⁵ Section 4 of Act 17 – Environment and Climate Adaptation Levy (Budget Amendment) Act 2018

22. The objective of amending Section 6(2) of the Act is to protect the environment and climate from the dire consequences of excessive plastic production and consumption.

Deregistration in transitional period

23. Notwithstanding anything contained in Para 16 to 18, the CEO may consider deregistration of an accountable person even though the accountable person has been registered for less than 12 months if he/she provides satisfactory evidence to the CEO that his/her gross annual turnover shall be below \$1.25 million for the period of 12 months ending on 31st July, 2019.
24. Deregistration of an accountable person stated in Para 23 is a transitional mechanism available effective 1st August 2018 to consider deregistration of only those accountable persons who provide services listed under Schedule 1 of the Act, however, their gross annual turnover may not exceed \$1.25 million as at 31st July 2019.

PROCEDURE

25. An accountable person providing prescribed services is liable to register as soon as his or her annual gross turnover exceeds \$1.25 million.
26. If the accountable person's annual gross turnover has exceeded but he/she has not registered under ECAL Act, he/she shall be liable for the purposes of this Act and all liabilities and responsibilities of the Act shall apply accordingly.
27. A person who is registered under STT Act having an annual gross turnover exceeding \$1.25 million shall be deemed to be registered under ECAL Act.
28. Also if, an accountable person in the course of carrying out the prescribed services, has reasonable grounds to believe that his or her annual gross turnover will exceed \$1.25 million, such person shall register for ECAL purposes.
29. Where multiple businesses are run by an entity under a single TIN (Taxpayer Identification Number), and one of the businesses is "prescribed services", turnover of \$1.25 million stated under this Act shall be applicable in respect of that "prescribed services" only and all obligations of an accountable person stated under this Act shall be in respect of that "prescribed services" only.
30. If an accountable person, in the course of carrying out the prescribed services, has reasonable grounds to believe that his or her annual gross turnover will exceed \$1.25 million, such person must apply for ECAL registration.
31. A person who becomes liable to register must complete a ECAL registration form. For new businesses, a person should first obtain a Tax Identification Number and thereafter register for ECAL as soon as his/her annual gross turnover exceeds \$ 1.25 million. The registration form is available on our website (www.frccs.org.fj) and Customer Service Centres Fiji wide.
32. Annual gross turnover is a fluctuating aspect. Accountable persons are required to monitor their turnover in order to ensure that they are compliant with Para 22 above.

33. An accountable person shall be subject to severe penalties if he/she charges ECAL to its customers prior to registration with FRCS.
34. An accountable person must clearly and separately show ECAL on a tax invoice issued in respect of the prices or fees for the prescribed service.
35. An accountable person (manager, owner etc.) is responsible for timely lodgment of returns and payments.
36. The due date for lodgment of ECAL returns is also the due date for payment of levy. The accountable person must submit a return together with the tax payment by the end of the month following the month in which the levy was collected. Example: ECAL return, together with the ECAL amount levied and collected for March 2018, must be lodged with FRCS by 30th April 2018.
37. ECAL return is a return separate from the VAT and STT return. An ECAL return must be lodged together with the payment on or before the due dates for lodgment/payment at any of our offices Fiji wide.
38. If there is no ECAL to report for a period, a return indicating that there was no turnover for that particular period must be submitted.
39. Appropriate records must be maintained by an accountable person to support the basis of tax computation. Penalties apply for non-maintenance of necessary records and documents.
40. Accountable person must display its certificate of registration in a prominent place within its business premises.
41. For further information and clarification in regard to this SIG, please email us at tipu@frcs.org.fj

APPENDIX ONE:

Prescribed Services - Schedule 1 of Environment and Climate Adaptation Levy Act 2015

Category	Prescribed service per ECAL Schedule 1	Types of services for which providers must register for ECAL purposes
Hotels	1. Provision of accommodation, refreshments and any other services by a licensed hotel	<p>The definition of hotel given in the Hotels & Guest Houses Act applies for ECAL purposes. Hotels are licensed businesses that receive guests or travellers for a fee and include:</p> <ul style="list-style-type: none"> • a boarding house, lodging house, guesthouse or caravan. ☐ any part of a building, vessel, premises, structure, caravan or house on wheels, or • any place used by a hotel for overnight accommodation such as tents, camp sites. It does not include accommodation in public institutions and those owned by registered charitable trusts/religious bodies and other similar educational/vocational institutions.
Vessels	2. Any services provided in a vessel that is wholly or principally engaged in the carriage of tourists within Fiji	This applies to vessels that are used to provide transport services to tourists including day and overnight tours, transfer services and other similar

Bars & Nightclubs	3. Provision of meals or beverages, and any other services in a licensed bar. For the purpose of this paragraph, "bar" includes any club.	This applies to all types of licensed bars. It includes the services provided in establishments operated by an unincorporated body of persons (such as a club or some charities).
	4. "Provision of services such as music, dancing or other entertainment including other services in a licensed nightclub.	This covers any type of service including entertainment provided in licensed nightclubs.
Inbound tour services	5. "Provision of inbound tour services"	All services provided by such operators attract STT/ECAL. The STT/ECAL charged by the inbound operators will also apply on the commission that they earn.
Events management operations	6. "Live entertainment provided wholly or substantially by the personal participation of artists at the place of performance or exhibition of products, where a fee is charged"	Live entertainment includes the following <ul style="list-style-type: none"> • Showcase • Fashion exhibition • Trade Exhibitions • Overseas artist
Recreational activity	7. Provision of services for recreational activity for gain.	Recreational activity, includes the following: <ul style="list-style-type: none"> • Entertainment centre e.g. Arts Village Deuba • Massage parlour • Spa • Exotic nature parks e.g. Kula Bird Park • Skydiving • Parasailing • Jet skis, etc.
	8. Provision of services relating to any exhibition of films to the public or to a section of the public which includes the production of any music, speech or other sound whatsoever in connection with the projection of a film, where the exhibitor is licensed under the Cinematographic Films Act (Cap.271) and a charge is made for admission to the premises which the exhibition is held, including any other	This covers all types of services provided by cinema operators within and outside the cinema premises.

	services provided by cinema operators.	
Rental/Hire car operators	9. Provision of services relating to hire or rent of motor vehicle by a person that operates a business of hired or rental cars and chartered transport services to tourists by an omnibus or a mini bus operator, licensed by the Land Transport Act 1998	This applies to the transportation services provided by rental car operators. With effect from 01/01/2015 it also applies to hire car operators (example, vehicles with 'LH' license plates). It does not apply to the hire of taxis. From 1 August 2016, omnibus and mini bus operators that provide charter services for the carriage of tourist will be required to register for STT / ECAL and include these taxes in their hire charges.
Water, air sightseeing and other activities	12. "Provision of charter flight services provided by an aircraft or helicopter registered with the Civil Aviation Authority of Fiji except for medical and natural disaster relief evacuation services"	This applies to domestic charter flight services provided in an aircraft or helicopter registered with the Civil Aviation Authority of Fiji. The tax does not apply on international charter services or medical, natural disaster and relief evacuation charter services.
	13. "Provision of all water sports including under water activities and river safaris"	This applies to any provider of water sports and river safari activities.
Home stay operators	14. "Provision of accommodation in a private residence or property that accommodates tourists, international students or overseas visitors who are paying guests..."	This applies to providers of accommodation in a private residence or property that accommodates tourists, international students or overseas visitors who are paying It excludes accommodation in various public educational institutions listed in the STT/ECAL Schedules and similar institutions approved by the CEO.

APPENDIX TWO: LEGISLATION

Environment and Climate Adaptation Levy Act, 2015

Section 2

“prescribed service” means a service listed in the Schedule where the annual gross turnover for the provision of such service exceeds \$1.25 million;”.

Section 5(7)

“(7) Subject to this Act, any accountable person registered under subsection (6) that has been registered for 12 consecutive months may notify the CEO if the annual gross turnover of the prescribed service during the period of 12 months is not more than \$1.25 million and if the CEO is satisfied that the annual gross turnover of the prescribed service during the period of 12 months is not more than \$1.25 million the CEO shall deregister the accountable person.”

Section 6(2)

Pursuant to subsection (1), the Environment and Climate Adaptation Levy charged on plastic bags is \$0.20c per plastic bag.