



STANDARD INTERPRETATION GUIDELINE 2018-31

TAX ADMINISTRATION ACT – 2018/2019 BUDGET AMENDMENTS

This Standard Interpretation Guideline (SIG) sets out Fiji Revenue and Customs Service's (FRCS) policy and operational practice in relation to the 2018/2019 budget amendments for the Tax Administration Act 2009 ("TAA").

It is issued with the authority of the Chief Executive Officer (CEO) of FRCS.

All legislative references in this SIG are to the Tax Administration Act and its relevant Regulations (unless otherwise states)

This SIG is in effect from 20 September 2018 and may need to be reviewed in the event of any relevant legislative amendments.

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EXECUTIVE SUMMARY

1. The 2018/2019 National Budget has brought about legislative amendments to the Tax Administration Act 2009.
2. The jurisdiction of the tax tribunal has been increased in relation to tax disputes from \$50,000 to \$500,000.
3. It is now mandatory for every Fijian citizen or resident, whether liable or not liable for tax, to apply for a Taxpayer Identification Number in accordance with section 38 of the Act.
4. The procedural rules for Self-Assessment have been strengthened in anticipation of the New Tax Information System [NTIS]
5. The 2018/2019 budget has also introduced infringement notices to ensure compliance of tax laws in an effective and efficient manner.
6. A number of additional offences and penalties have been introduced to address non-compliant taxpayers and tax agents.

INTRODUCTION

7. This SIG is aimed at providing the CEO's interpretation and application of the legislative amendments which relate to the Tax Administration Act 2009, that arose from the 2018/2019 budget amendments.

LEGISLATIVE ANALYSIS

Jurisdiction of Tax Tribunal

8. The Tax Tribunal is established under section 75 of the Tax Administration Act 2009. The Tax Tribunal is subordinate to the Tax Court and has jurisdiction to review a reviewable decision under the Act and it can exercise any other function or jurisdiction conferred to the Tribunal under the Act or any other written law.
9. Prior to the 2018/2019 budget amendments, the Tribunal had powers to adjudicate on matters within its jurisdiction relating to disputes up to \$50,000, and matters where the disputed amount exceeds \$50,000 provided both parties consent to the Tribunal's jurisdiction.
10. The limit was aligned to the jurisdiction of the Magistrates Court which has jurisdiction in civil matters not exceeding \$50,000¹ unless both parties consent to hear matters exceeding \$50,000².
11. Due to the growth of the Fijian economy, the \$50,000 limit to the Tax Tribunal is becoming more and more irrelevant. The trend towards transactions with ever increasing sums has subsequently led to tax disputes which deal with larger sums. The effect of which is most matters that are listed

¹ Historically the limit was \$2,000 (Magistrates Courts Act [Cap 14]. This had over time increased to \$50,000

² Magistrates Courts Act (Amendment) Promulgation 2007 (Promulgation NO. 34 OF 2007)

before the Tax Tribunal are transferred to the Tax Court³ simply because the disputed sum exceeds \$50,000.

12. This meant that the Tax Tribunal became irrelevant for most tax disputes and the Tax Court became overwhelmed with most of the tax dispute matters and in addition adjudicates other civil matters. This puts a strain on the resources of the Tax Court which in-turn meant delayed resolution of matters.
13. To address this issue, the jurisdiction of the Tax Tribunal has been increased from \$50,000 to \$500,000. This means that the Tribunal now has powers to adjudicate on matters within its jurisdiction relating to disputes up to \$500,000, and matters where the disputed amount exceeds \$500,000 provided both parties consent to the Tribunal's jurisdiction⁴.

Registration of Taxpayer Identification Number [TIN]

14. A Taxpayer Identification Number [TIN] is a unique identifier applicable for the purposes of the tax laws under the responsibility of the CEO.
15. The 2018/2019 National budget has amended all references of Tax Identification Number [TIN] to Taxpayer Identification Number [TIN]. This amendment has been made to correctly denote the subject the TIN is relating to, that is, the TIN identifies the taxpayer and not a particular tax type.
16. The 2018/2019 National budget has also introduced section 37A in the Tax Administration Act 2009. Section 37A makes it mandatory for every Fijian citizen or resident, whether liable or not liable for tax, to apply for a Taxpayer Identification Number in accordance with section 38 of the Act.
17. This means that every Fijian citizen or resident (according to section 6 of the Income Tax Act 2015⁵) must register for a taxpayer identification number with FRCS, even though he or she may not be liable to any tax.
18. The CEO has recognized that it may be impractical when it comes to registration of new-born citizens or residents. In appreciation of the same, the CEO has allowed a 12-month grace period where new-born citizens or residents must be registered for a TIN under section 38 of the Act.
19. Similarly, for nonresidents who become residents, the CEO has allowed one-month period for registration from the time they attain the residency status. This also applies to family members who attain residency status as well.
20. In order to align this new requirement to other provisions of the Act, section 38(1A) has been removed from TAA. Section 38(1A) allowed a person who intended to open a bank account for the purpose of a Micro finance project to be exempt from providing a Taxpayer Identification Number to the Bank.

³ The Tax Court has unlimited jurisdiction in terms of disputed sum

⁴ Section 81 of the Tax Administration Act 2009

⁵ Refer to SIG on Residency

Therefore, it is now mandatory for a person who intends to open a bank account for the purpose of a Micro finance project to register for TIN under section 38 of the Act and provide the same to the Bank.

21. Together with the requirement for every Fijian citizen or resident to be registered for TIN, it is also mandatory for every registered taxpayer that conducts a business to notify the CEO in case of:

- a. any change in the name, address, constitution or nature of the principal taxable activity or activities of the taxpayer;
- b. any change of address from which, or the name in which, any taxable activity is carried on by the taxpayer;
- c. any change in controlling interest⁶; or
- d. any other change or information required in the approved form,

within 21 days from the date of the change⁷.

22. A business⁸ is defined as including a:

- a. trade, commerce, agriculture, manufacture, profession, or vocation, but does not include employment;
- b. a venture or concern in the nature of a trade, commerce, agriculture, or manufacture; or
- c. a profit-making undertaking or scheme not covered by paragraphs (a) or (b).

23. Therefore, any taxpayer who is engaged in the activities as described above is required to notify the CEO of any change in status within 21 days from the date of the change.

24. This requirement has been introduced to ensure that the taxpayer business records kept with FRCS are current and correct. This ensures that tax assessments are made in a comprehensive and holistic manner taking into account all relevant factors and considerations.

25. If a Fijian citizen or resident is not registered for TIN in accordance with section 38 of the Act or fails to notify the CEO of any change as per section 38A of the Act, an offence is committed which may lead to prosecution and a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years or to both a fine and imprisonment⁹.

Cancellation of Taxpayer's TIN

26. The 2018/2019 National Budget amendment has also provided some clarity on the provisions relating to the cancellation of taxpayer's TIN and to align the same to the new requirement under section 37A of the Act¹⁰. Section 39(1) has been amended to read as:

⁶ As defined in section 2 of TAA 2009

⁷ Section 38A of the Tax Administration Act 2009

⁸ Section 2 of Income Tax Act 2015

⁹ Section 50 of the Tax Administration Act 2009

¹⁰ Section 39 of the Tax Administration Act 2009

[TAA 39] Cancellation of Taxpayer Identification Number

(1) A person may apply to the CEO, in the approved form, for cancellation of the person's Taxpayer Identification Number.

27. Section 39(2) has also been amended to read as:

[TAA 39] Cancellation of Taxpayer Identification Number

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

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

28. The result of these amendments is that the CEO must cancel a TIN registration if he or she is satisfied that a TIN was issued to a person under a false identity, or when a person has already been issued with a TIN which is still operational, or for any other reason the CEO deems fit.

The further implication of the amendment is that a registered person cannot cease to be a taxpayer for the purposes of the Act. This means that a taxpayer remains liable to be registered and will be registered unless the registration is cancelled under section 39 of TAA 2009

In the event of a death of a taxpayer, the registration is cancelled under section 39(2)(c) of the Act.

Self-Assessment

29. Section 8 of the Act allows a taxpayer who has filed a self-assessment return to be 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 return¹¹.

30. The self-assessed return filed by a taxpayer is treated as a notice of the assessment served by the CEO on the taxpayer on the date that the return was filed¹².

31. Self-assessed returns require a taxpayer to consider all the facts relating to their financial affairs, interpret and apply the law to those facts, and determine the amount of tax owing with an appropriate degree of finality.

32. Notwithstanding the above, the CEO retains the power to issue amended assessments in default of the taxpayer doing so and to make assessments following an investigation into the taxpayer's affairs¹³.

33. Currently, while provisions in the law are present which allow self-assessed returns, in practice, only returns relating to VAT are self-assessed.

¹¹ Section 8(a) of the Tax Administration Act 2009 (pre-budget amendments)

¹² Section 8(b) of the Tax Administration Act 2009 (pre-budget amendments)

¹³ Section 11 of the Tax Administration Act 2009

34. However, FRCS is currently transitioning to a New Tax Information System (NTIS) from the current Fiji Tax Information System (FITS) which would require and provide the means for returns under the Income Tax Act 2015 to be self-assessed as well.
35. The NTIS would allow a taxpayer to file its return directly onto the system electronically. It is expected that NTIS would be rolled out and fully operational by the last quarter of 2019.
36. The 2018/2019 National budget amendments have introduced the necessary legislative provisions to strengthen the provisions relating to self-assessment of returns.
37. This SIG seeks to provide a brief background of the legislative amendments in relation to self-assessments only. A comprehensive and detailed SIG on Self-Assessment may be released at a later date (closer to the implementation date of NTIS) to provide clear and precise guidelines on self-assessed returns.
38. Section 8(1) of the Act reaffirms the principle of self-assessed returns where a self-assessed return is treated as having an assessment of the amount of tax payable (including a nil amount) for the tax period to which the return relates.
39. Sections 8(2) and (3) provide for self-assessment returns of Income tax and VAT where there is a net loss or VAT refund situation and the affirmation of the assessment of the amount of the net loss or VAT excess for the tax period.
40. Section 8(4) of the Act has been introduced to classify returns that are filed electronically through an electronic form, which may include pre-filled information provided by the CEO, and where the calculation of the tax payable or any other amount is made electronically¹⁴ based on the information inserted by the taxpayer, as a self-assessed return¹⁵.

Filing of Tax Returns

41. Consequently, an amendment has been made to section 3 of the Act which administers filing of tax returns to include self-assessed returns by the introduction of Section 3(6) which states:

[TAA 3] Filing of Tax Returns

6) If a taxpayer has filed a self-assessment return, subsection (5) applies for the purposes of making an amended assessment in relation to the return

42. The implication of introduction of Section 3(6) of the Act is that the CEO is not bound by any return or information provided by or on behalf of a taxpayer in the self-assessed return and the CEO can determine a taxpayer's liability based on any sources of information available to the CEO.

Amendment of Self-Assessed Return

43. Section 12 of the Act has also been amended to allow a taxpayer to amend a self-assessed return by making an application to the CEO¹⁶.

¹⁴ and automatically

¹⁵ through the NTIS

¹⁶ Section 11(1) of the Tax Administration Act 2009

44. The application to the CEO would need to be made within 2 years of the date that the self-assessment return was filed and it must state the amendments that the taxpayer believes are required to correct the self-assessment and the reasons for the amendments¹⁷.
45. Section 12(3) of the Act empowers the CEO with the discretion to amend a self-assessed return or to disallow the application made by the taxpayer to amend the said return.
46. Section 12(4) and (5) carry forward the previous provisions which relate to amendment and refusal to amend tax assessments in the context of self-assessed returns.
47. The refusal of an application to amend a self-assessed return by the CEO is treated as an objection decision by the CEO¹⁸. Therefore, this decision is a “reviewable decision” under the paragraph (2)(c) of the Act.

A taxpayer dissatisfied with the decision can apply to the Tax Tribunal under section 82(1) of the Act for review of the decision.

Infringement Notices

48. FRCS is empowered under section 51 of the Fiji Revenue and Customs Service Act 1998 to conduct prosecution for offences under the laws administered by FRCS in a court of competent jurisdiction.
49. While FRCS has conducted prosecution on a number of matter over the years to ensure compliance, it has been noted that prosecution in a court of competent jurisdiction is not always the practical solution.

This is especially for situations where the prescribed fine does not justify the costs relating to prosecution, for example, offences relating to issuance of proper tax invoices or failure to file tax returns in the approved form. This has led to the increasing use of infringement notices.

50. Infringement notices are designed to provide a timely, cost-efficient enforcement outcome in relation to relatively minor contravention of the Act.
51. Effective 1 January 2016¹⁹, a VAT Infringement Notice [VIN] was introduced to ensure that a registered person sells goods and services at a price which reflected the actual percentage VAT decrease from 15% to 9%.
52. Moreover, Effective 6 November 2015, a Customs Infringement Notice [CIN] was introduced to ensure that, in the event of a decrease in duty, an importer sells goods at a price which reflected the actual percentage of a decrease in duty in the sale price of the goods

¹⁷ Section 11(2) of the Tax Administration Act 2009

¹⁸ Explanatory Notes to Bill 11 of 2018 – 2.28

¹⁹ Act No. 22 of 2015

53. The 2018/2019 National Budget amendments has introduced a new subdivision²⁰ in the Tax Administration Act 2009 which provides for the issuance of infringement notices and the payment of fixed penalties for certain offences prescribed by regulations.
54. Subdivision 3 has introduced the following
- a. provisions authorizing FRCS to issue infringement notices²¹ where a tax officer has reason to believe that a person has committed a prescribed offence²²;
 - b. provisions which specify rules under which an infringement notice must be issued²³;
 - c. provisions relating to the classification of the penalty as a debt due to the state, collection of the penalty and when the penalty ceases to be payable²⁴; and
 - d. the powers available to the Minister to make necessary Regulations in relation to the infringement notices.
55. If a taxpayer is issued with an infringement notice, he or she may choose to pay the fixed fine within the prescribed timeline, or her or she may elect to dispute the matter in a court of competent jurisdiction.
56. The applicable Regulations which is effective from 1 August 2018 is the Tax Administration (Infringement Notices) Regulations 2018. The application of this regulation will be discussed in a SIG on Infringement Notices. The TAA Infringement Notice Regulation consolidates the existing VAT Infringement Notice Regulation.

Offences and Penalty for Specified Offences

57. The 2018/2019 National Budget has introduced a number of additional offences under the Tax Administration Act. These offences are discussed below.

Offence for charging tax where no tax is payable

58. There are instances where taxpayers have charged tax where no tax is payable or the tax charged is not correct. The charged tax is not remitted to FRCS as there was no tax payable. The result of which means that the taxpayer benefits from representing to charge tax and the tax charged is retained by the taxpayer.
59. This is most evident in cases of VAT where a taxpayer who is not registered for VAT charges or represents to charge VAT. The taxpayer issues a tax invoice to a customer and the tax invoice represents that the sale (supply) is subject to VAT. Since the taxpayer is not registered, he or she does not file a tax return and does not remit the VAT collected to FRCS. This has two implications:
- a. The taxpayer has unfairly gained a benefit on top of his usual profit margin;
 - b. The customer is not able to claim VAT inputs from the purchase as the seller is not registered for VAT. No inputs are allowed if there are no corresponding inputs in relation to the transaction.

²⁰ Subdivision 3

²¹ Section 60B (1) of the Tax Administration Act 2009

²² As prescribed under Regulations

²³ Section 60B (2) of the Tax Administration Act 2009

²⁴ Section 60B (3) of the Tax Administration Act 2009

This is also applicable for other tax types such as ECAL (charging of plastic levy) or STT.

60. The 2018/2019 National Budget has made it an offence for a person who knowingly represents to any person, in writing or otherwise, including in an invoice, that any amount is charged as tax where either—
- a. no amount of tax is charged under the relevant tax law to which any such representation refers; or
 - b. the amount represented as being charged as tax is not in accordance with the relevant tax law.

The penalty for the offence is a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years or to both a fine and imprisonment²⁵.

Offence for failure to charge tax

61. On the other hand, there may be scenarios where a taxpayer who is supposed to charge tax fails to charge tax.
62. For example, a taxpayer may register for VAT voluntarily in order to claim VAT inputs. However, he or she does not impose VAT on the supply of his goods or services. If a person is registered for VAT, he or she is required to charge VAT on the supply of his goods or services according to section 15 of the Value Added Tax Act 1991.
63. This leads to an unfair situation where a taxpayer has registered for VAT and enjoyed the benefits of being able to claim inputs. To address this issue, the 2018/2019 National Budget has made it an offence if a person fails to charge a tax in accordance with a relevant tax law or charges an amount of tax which is not in accordance with the relevant tax law.

The penalty is a maximum fine a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years or to both a fine and imprisonment²⁶.

Offences by a tax agent

64. Section 116A has been introduced to align section 137 of the Customs Act 1986 to the Tax Administration Act 2009. Section 137 of the Customs Act 1986 holds Customs Agent liable for non-compliance and making false or misleading statements.
65. Similarly, the 2018/2019 National Budget has introduced offences and penalties for tax agents who are non-compliant or make false or misleading statements.
66. As taxpayer's rely on tax agents for tax advice or preparation of tax returns it is important that a degree of reasonable care or due diligence is used by tax agents²⁷.

Tax agents should exercise a degree of professional care and skill, appropriate to the circumstances of the case. It is also important that tax agents enquire further into the tax affairs

²⁵ Section 58B of the Tax Administration Act 2009

²⁶ Section 58C of the Tax Administration Act 2009

²⁷ There is an inherent fiduciary or contractual duty by tax agents as well.

of their clients and not purely rely on the information or documents provided by the clients (taxpayers).

67. As illustrated in the case law of *Taxpayer S v Fiji Revenue and Customs Authority*²⁸, the Resident Magistrate Mr. Andrew See pointed out:

“In my view, any qualified accountant who is charged with the task of attending to such returns would have had a duty to ask.”

68. The offence has been introduced to ensure that the tax agents exercise due diligence in preparation of tax returns, or any document required to be produced under any tax law.

69. The offence relates to a tax agent who:

- a. prepares, passes, presents or causes to be prepared, passed or presented as genuine any document required to be produced under any tax law which is not in fact a genuine document or which is false or misleading in any material particular;
- b. makes any entry in any document required to be produced under any tax law which is false or misleading in any material particular;
- c. makes in any oral declaration to a tax officer or in any document produced to a tax officer any statement which is false or misleading in any material particular or produces or delivers to a tax officer any declaration or document containing any such statement; or
- d. 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.

The penalty for the offence stated above is a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 10 years or to both a fine and imprisonment.

70. Given the significance of this legislative provision, a separate SIG on Offences by Tax Agents would be released shortly.

Declaration in a Tax Return

71. Effective from 1 August 2018, all businesses and commercial taxpayers will be required to declare their assets along with their Income Tax Returns in the approved form. The taxpayers will also have to declare any assets paid for by them even if held in any other person’s name.

72. A taxpayer who, without reasonable excuse—

- a. makes any declaration in any tax return which is false or misleading in any material particular; or
- b. omits from any tax return or declaration, any matter or thing required to be made in the tax return,

commits an offence and is liable to a fine not exceeding \$250,000²⁹.

²⁸ [2013] FJTT 15; Income Tax Appeal 14 of 2012 (15 October 2013)

²⁹ Section 49(3) of TAA 2009

ACT NO. 13 OF 2018

I assent.

J. K. KONROTE
President

[13 July 2018]

AN ACT**TO AMEND THE TAX ADMINISTRATION ACT 2009**

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

1.—(1) This Act may be cited as the Tax Administration (Budget Amendment) Act 2018.

(2) This Act comes into force on 1 August 2018.

(3) In this Act, the Tax Administration Act 2009 is referred to as the “Principal Act”.

Section 2 amended

2. Section 2(1) of the Principal Act is amended by—

- (a) deleting the definition of “data storage device”;
- (b) in the definition of “objection decision”, deleting “16(5)” and substituting “16(6)”;
- (c) in the definition of “reviewable decision”—
 - (i) in paragraph (a), deleting “or”;
 - (ii) in paragraph (b) after “;”, inserting “or”; and

(iii) after paragraph (b), inserting the following new paragraph—

“(c) a decision made by the CEO under section 12 on an application for an amendment to a self-assessment;”;

(d) in the definition of “self-assessment”, deleting “(a)”; and

(e) in the definition of “tax decision” in paragraph (a) after “assessment”, inserting “, other than a self-assessment”.

Section 3 amended

3. Section 3 of the Principal Act is amended by—

(a) in subsection (5), deleting “any return” and substituting “any tax return”; and

(b) after subsection (5), inserting the following new subsection—

“(6) If a taxpayer has filed a self-assessment return, subsection (5) applies for the purposes of making an amended assessment in relation to the return.”.

Section 8 amended

4. The Principal Act is amended by deleting section 8 and substituting the following—

“Self-assessments

8.—(1) A self-assessment taxpayer who has filed a self-assessment return in the approved form for a tax period is treated, for all purposes of this Act, as having made an assessment of the amount of tax payable (including a nil amount) for the tax period to which the return relates being that amount as set out in the return.

(2) If a self-assessment taxpayer has filed an income tax return in the approved form for a tax year and the taxpayer has a net loss for the year under section 30 of the Income Tax Act 2015, the taxpayer is treated, for all purposes of this Act, as having made an assessment of the amount of the net loss for the tax year being that amount as set out in the return.

(3) If a registered person has filed a tax return in the approved form for a taxable period and the person has an excess amount for the period as referred to in section 39(8) of the Value Added Tax Act 1991, the person is treated, for all purposes of this Act, as having made an assessment of the excess amount for the period being that amount as set out in the return.

(4) A tax return in the approved form completed and filed electronically by a taxpayer is a self-assessment return despite either or both of the following applying—

(a) the form includes pre-filled information provided by the CEO;

(b) the calculation of the tax payable or any other amount is made electronically as information is inserted into the form.”.

Section 9 amended

5. Section 9 of the Principal Act is amended by—

(a) deleting subsection (1) and substituting the following—

“(1) If a taxpayer has failed to file a tax return for a tax period on or before the due date, the CEO may, at any time, make an assessment (including penalty if applicable) of, as the case may be—

- (a) the tax (including a nil amount) payable by the taxpayer for the period;
- (b) the net loss of the taxpayer for the tax year under section 30 of the Income Tax Act 2015; or
- (c) the excess amount for the taxable period under section 39(8) of the Value Added Tax Act 1991.”; and

(b) after subsection (4), inserting the following new subsections—

“(5) Nothing in this section relieves a taxpayer from the requirement to file the tax return for the tax period to which a notice of assessment served on the taxpayer under this section relates.

(6) A tax return filed by a taxpayer for a tax period after a notice of assessment has been served on the taxpayer for the period under this section is not a self-assessment return.”.

Section 10 amended

6. Section 10 of the Principal Act is amended after subsection (4) by inserting the following new subsections—

“(5) Nothing in this section relieves a taxpayer from the requirement to file the tax return for the tax period to which a notice of assessment served on the taxpayer under this section relates.

(6) A tax return filed by a taxpayer for a tax period after a notice of assessment has been served on the taxpayer for the period under this section is not a self-assessment return.”.

Section 11 amended

7. Section 11 of the Principal Act is amended by—

(a) deleting subsection (1) and substituting the following—

“(1) Subject to this section, the CEO may amend a tax assessment of a taxpayer for a tax period by making such alterations or additions to the assessment as the CEO considers necessary to ensure that—

- (a) for a net loss for a tax year under section 30 of the Income Tax Act 2015, the taxpayer is assessed in respect of the correct amount of the net loss for the tax year;

- (b) for an excess amount for a taxable period under section 39(8) of the Value Added Tax Act 1991, the taxpayer is assessed in respect of the correct amount of the excess amount for the taxable period; or
 - (c) in any other case, the taxpayer is assessed in respect of the correct amount of tax payable (including a nil amount) for the tax period.”; and
- (b) deleting subsection (2)(b) and substituting the following—
- “(b) in any other case, within 6 years of—
- (i) for a self-assessment, the date that the self-assessment taxpayer filed the self-assessment return to which the self-assessment relates; or
 - (ii) for any other tax assessment, the date the CEO served notice of the tax assessment on the taxpayer.”.

Section 12 amended

8. The Principal Act is amended by deleting section 12 and substituting the following—

“Application for an amendment to a self-assessment

12.—(1) A taxpayer who has filed a self-assessment return may apply to the CEO for an amendment to be made to the self-assessment constituted by the return.

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

- (a) state the amendments that the taxpayer believes are required to correct the self-assessment and the reasons for the amendments; and
- (b) be lodged with the CEO within 2 years of the date that the self-assessment taxpayer filed the self-assessment return to which the self-assessment relates.

(3) If an application has been made under subsection (1), the CEO may make a decision to amend the self-assessment or disallow the application.

(4) If the CEO makes a decision to amend the self-assessment, the CEO must—

- (a) make the amended assessment in accordance with section 11(1); and
- (b) serve the taxpayer with notice of the amended assessment in accordance with section 11(3).

(5) If the CEO makes a decision to disallow an application under subsection (1), the CEO must serve the taxpayer with written notice of the decision stating the reason for the refusal.”.

Section 14 amended

9. The Principal Act is amended by deleting section 14(2) and substituting the following—

“(2) For the purposes of this section—

- (a) for a self-assessment, the production of the original self-assessment return or document under the hand of the CEO purporting to be a certified copy of the return is conclusive evidence of the contents of the return; or
- (b) for any other tax assessment, the production of a notice of assessment or document under the hand of the CEO purporting to be a certified copy of the notice of assessment is conclusive evidence of the due making of the assessment and that the amount and particulars of the assessment are correct.”.

Section 35 amended

10. Section 35 of the Principal Act is amended by—

(a) in subsection (1)—

- (i) in paragraph (a), deleting “data storage device” and substituting “electronic data storage facility”; and
- (ii) in paragraph (b), deleting “on a data storage device” and substituting “on or in an electronic data storage facility”;

(b) in subsection (2), deleting “by the owner or lawful occupier,” and substituting “if”;

(c) in subsection (4), deleting “.” and substituting the following—

“, including—

- (a) providing access to data stored on, or in, an electronic data storage facility, including the entering of a password or other basis of authentication for access to the facility; and
- (b) providing access to decryption information necessary to decrypt data to which access is sought under this section.”; and

(d) after subsection (8), inserting the following new subsection—

“(9) In this section—

“data storage device” means a computer, mobile electronic device, portable information storage media, or any other electronic device for the storage of data; and

“electronic data storage facility” means a data storage device or any other facility, including an electronic facility, for the electronic storage of data.”.

Section 37A inserted

11. The Principal Act is amended after section 37 by inserting the following new section—

“Mandatory requirement for Taxpayer Identification Number

37A. Every Fijian citizen or resident must, whether liable or not liable for tax, apply for a Taxpayer Identification Number in accordance with section 38.”.

Section 38 amended

12. Section 38 of the Principal Act is amended by—

- (a) in subsection (1)(f), deleting “operating” and substituting “operate”;
- (b) deleting subsection (1A); and
- (c) in subsection (7), deleting “(g)” and substituting “(i)”.

Section 38A inserted

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

“Taxpayer to notify of change of status

38A. Subject to the provisions of this Act, every taxpayer that conducts a business must notify the CEO in writing of—

- (a) any change in the name, address, constitution or nature of the principal taxable activity or activities of the taxpayer;
- (b) any change of address from which, or the name in which, any taxable activity is carried on by the taxpayer;
- (c) any change in controlling interest; or
- (d) any other change or information required in the approved form,

within 21 days from the date of the change.”.

Section 39 amended

14. Section 39 of the Principal Act is amended by—

- (a) in subsection (1)—
 - (i) deleting “who ceases to be a taxpayer”; and
 - (ii) deleting “within 30 consecutive days of the date on which the person ceased to be a taxpayer”; and
- (b) deleting subsection (2)(a).

Section 46 amended

15. Section 46 of the Principal Act is amended after subsection (5) by inserting the following new subsection—

“(5A) A position taken by a taxpayer in making a self-assessment that is contrary to a public ruling in force under section 62 or a private ruling issued to the taxpayer under section 66 is not regarded as a reasonably arguable position for the purposes of subsection (5)(b) unless the ruling is held to be incorrect.”.

*Section 49 amended***16.** Section 49 of the Principal Act is amended by—

- (a) in the heading, deleting “for failure to file” and substituting “in relation to”;
- (b) in subsection (1)(a) after “return”, inserting “in the approved form”; and
- (c) after subsection (2), inserting the following new subsection—
 - “(3) A taxpayer who, without reasonable excuse—
 - (a) makes any declaration in any tax return which is false or misleading in any material particular; or
 - (b) omits from any tax return or declaration, any matter or thing required to be made in the tax return,commits an offence and is liable to a fine not exceeding \$250,000.”.

*Section 50 amended***17.** Section 50(1)(a) of the Principal Act is amended by—

- (a) in subparagraph (v), deleting “or”;
- (b) renumbering subparagraph (vi) as subparagraph (ix);
- (c) after subparagraph (v), inserting the following new subparagraphs—
 - “(vi) comply with section 37A;
 - (vii) comply with section 38 or a requirement of the CEO under section 38;
 - (viii) comply with section 38A; or”;
- (d) in subparagraph (ix), deleting “,” and substituting “;”.

*Section 53 amended***18.** Section 53(1) of the Principal Act is amended by deleting paragraphs (a) and (b) and inserting the following new paragraphs—

- “(a) prepares, passes, presents or causes to be prepared, passed or presented as genuine any document required to be produced under any tax law which is not in fact a genuine document or which is false or misleading in any material particular;
- (b) makes any entry in any document required to be produced under any tax law which is false or misleading in any material particular;
- (c) makes in any oral declaration to a tax officer or in any document produced to a tax officer any statement which is false or misleading in any material particular or produces or delivers to a tax officer any declaration or document containing any such statement; or

- (d) 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.”.

Sections 58B and 58C inserted

19. The Principal Act is amended after section 58A by inserting the following new sections—

“Offence for charging tax where no tax payable

58B. If a person knowingly represents to any person, in writing or otherwise, including in an invoice, that any amount is charged as tax where either—

- (a) no amount of tax is charged under the relevant tax law to which any such representation refers; or
- (b) the amount represented as being charged as tax is not in accordance with the relevant tax law,

the person 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.

Offence for failure to charge tax

58C. If a person fails to charge a tax in accordance with a relevant tax law or charges an amount of tax which is not in accordance with the relevant tax law the person 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.”.

Subdivision 3 of Division 8 of Part 2 inserted

20. The Principal Act is amended after section 60 by inserting the following new Subdivision—

“Subdivision 3—Infringement notices

Interpretation of this Subdivision

60A. In this Subdivision, unless the context otherwise requires—

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

“infringement notice” means a notice prescribed by regulations and issued by a tax officer under section 60B; and

“prescribed offence” means an offence under any tax law for which a fixed penalty is payable as prescribed by regulations.

Infringement notices

60B.—(1) Subject to this Subdivision, where a tax officer has reason to believe that a person has committed a prescribed offence, the tax officer may institute proceedings in respect of the alleged commission of the offence by issuing upon that person an infringement notice.

- (2) An infringement notice issued under subsection (1) must—
- (a) name the person to whom the infringement notice is issued;
 - (b) specify the particulars of the offence;
 - (c) specify the fixed penalty that the person named on the infringement notice is required to pay; and
 - (d) specify any other information prescribed by regulations.
- (3) A fixed penalty payable under this Act or any regulations made under this Act is a debt due to the State that—
- (a) is to be collected by the Fiji Revenue and Customs Service in the manner and form prescribed by regulations;
 - (b) following the collection of the fixed penalty under paragraph (a), is to be paid by the Fiji Revenue and Customs Service into the Consolidated Fund; and
 - (c) ceases to be due—
 - (i) at the time the fixed penalty is paid; or
 - (ii) on acquittal or conviction of the prescribed offence or on the determination of the proceedings by the court or tribunal in which the proceedings were instituted.

Regulations for issuance of infringement notices

60C. The Minister may make regulations prescribing matters that are required to be prescribed or are necessary or convenient to be prescribed for the issuance of infringement notices under this Subdivision, including—

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

Section 66 amended

21. Section 66(3) of the Principal Act is amended after “must” by inserting “state that it is a private ruling and have a number and subject heading by which it can be identified”.

Section 73 amended

22. Section 73(7) of the Principal Act is amended by—

- (a) in paragraph (a) after “(2)”, inserting “(b)”; and

(b) in paragraph (b)—

- (i) deleting “tax return” wherever it appears and substituting “self-assessment return”; and
- (ii) after “(2)”, inserting “(a)”.

Section 81 amended

23. Section 81(2) of the Principal Act is amended by deleting “\$50,000” wherever it appears and substituting “\$500,000”.

Section 116A inserted

24. The Principal Act is amended after section 116 by inserting the following new section—

“Offences by a tax agent

116A. A tax agent who—

- (a) prepares, passes, presents or causes to be prepared, passed or presented as genuine any document required to be produced under any tax law which is not in fact a genuine document or which is false or misleading in any material particular;
- (b) makes any entry in any document required to be produced under any tax law which is false or misleading in any material particular;
- (c) makes in any oral declaration to a tax officer or in any document produced to a tax officer any statement which is false or misleading in any material particular or produces or delivers to a tax officer any declaration or document containing any such statement; or
- (d) 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 \$50,000 or to imprisonment for a term not exceeding 10 years or to both a fine and imprisonment.”.

Schedule 1 amended

25. Schedule 1 to the Principal Act is amended in paragraph 1 by—

- (a) in subparagraph (a) after “tax,”, inserting “including a self-assessment under section 8, and”;
- (b) in subparagraph (h), deleting “and”;
- (c) in subparagraph (j), deleting “and”;
- (d) in subparagraph (k), deleting “.” and substituting “; and”;

- (e) after subparagraph (k), inserting the following new paragraph—
- “(l) an assessment of telecommunications levy, including a self-assessment under section 8.”.

Schedule 3 amended

26. Schedule 3 to the Principal Act is amended by—

- (a) in Part A—
- (i) in paragraph 1(a), deleting “108” and substituting “109”; and
- (ii) after paragraph 6, inserting the following new paragraph—
- “6A. A return required under section 135 of the Income Tax Act 2015.”; and
- (b) in Part B in paragraph 2, deleting “108” and substituting “109”.

All references to “Tax Identification Number” amended

27. The Principal Act is amended by deleting “Tax Identification Number” wherever it appears and substituting “Taxpayer Identification Number”.

Passed by the Parliament of the Republic of Fiji this 12th day of July 2018.