

VALUE ADDED TAX BILL 2020

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**A BILL
FOR
AN ACT**

**TO REVISE, SIMPLIFY, CONSOLIDATE AND MODERNISE THE LAW
RELATING TO VALUE ADDED TAX**

Enacted by the Parliament of Fiji—

PART 1—PRELIMINARY

Short title and commencement

1.—(1) This Act may be cited as the Value Added Tax Act 2020.

(2) This Act comes into force on [].

(3) This Act applies to supplies and imports made on or after the date specified in subsection (2).

Interpretation

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

“adjustment event”, in relation to a supply by a registered person, means—

(a) for the purposes of sections 46 and 47;

(i) where the supply is cancelled;

(ii) where the nature of the supply is fundamentally varied or altered;

(iii) where the consideration for the supply is altered, whether due to an offer of a discount or for any other reason; or

(iv) for a supply of goods, where the goods, or some of the goods, that are the subject of the supply are returned to the supplier;

(b) for the purposes of section 48, where the conditions in section 48(1) are satisfied; or

(c) for the purposes of section 49, where section 49(1) applies;

“approved form” has the meaning in the Tax Administration Act 2009;

“associate” has the meaning in the Income Tax Act 2015;

"auctioneer" means a person carrying on a taxable activity that comprises or includes the supply goods by auction for or on behalf of another person;

"bailiff" means a bailiff appointed under [];

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

"commencement date" means the date specified in section 1(2);

"creditable acquisition", in relation to a registered person, means—

- (a) a taxable supply made to the person by another registered person;
- (b) a supply of imported services made to the person; or
- (c) a taxable import made by the person;

"Customs legislation" means the Customs Act 1986, the Customs Tariff Act 1986, the Excise Act 1986, the Dumping and Countervailing Duties Act 1998, and any successor legislation dealing with customs or excise;

"duty" means any duty imposed under the Customs legislation;

"employee", "employer", and "employment" have the meanings in the Income Tax Act;

"exempt import" has the meaning in section 11;

"exempt supply" has the meaning in section 10;

"generally accepted accounting principles" has the meaning in the Income Tax Act;

"goods" means any tangible personal or immovable property, but does not include—

- (a) money; or
- (b) a product that is transmitted by means of a wire, cable, radio, optical, or other electromagnetic system or by means of a similar technical system;

"Government entity" means a public authority or a local authority;

"hire purchase agreement" has the meaning in the Consumer Credit Act 1999 and includes a lease of movable property that is treated as a finance lease under generally accepted accounting principles;

"import" and "importer" have the meanings in the Customs legislation;

"input tax", in relation to a registered person, means—

- (a) the VAT payable or paid in respect of a creditable acquisition made by the person, but does not include any administrative penalty payable in respect of a creditable acquisition; and
- (b) an amount that is treated as input tax of the registered person for the purposes of this Act;

“input tax credit” means the credit for input tax allowed under this Act;

“invoice” means any document identifying an obligation to make a payment and includes a tax invoice;

“late payment penalty” means the penalty payable under section 44 of the Tax Administration Decree;

“licensing authority” means a person that has responsibility to issue a licence, permit, certificate, concession, authorisation, or other document for a fee under any law of Fiji;

“local authority” includes—

- (a) a council of a municipality established under section 8 of the Local Government Act 1972;
- (b) a provincial council established under section 7 of the iTaukei Affairs Act 1944 and a council established under section 9 of the iTaukei Affairs Act;
- (c) a council established under the Banaban Settlement Act 1970; or
- (d) a council established under the Rotuma Act, 1927;

“Minister” means the Minister responsible for finance;

“money” means—

- (a) any coins or notes that are legal tender in Fiji under the Reserve Bank of Fiji Act (Cap. 210), other than a coin or note that is collector’s piece, investment article, or item of numismatic interest;
- (b) any bill of exchange, bank draft, promissory note, postal order, or money order;
- (c) whatever is provided as payment by way of—
 - (i) a credit card or debit card; or
 - (ii) the crediting or debiting of an account operated by any person;

“non-profit organisation” has the meaning in the Income Tax Act;

“output tax”, in relation to a registered person, means—

- (a) the VAT receivable or received by the registered person in respect of a taxable supply made by the person;
- (b) the VAT payable by the registered person on a supply of imported services made to the person; or
- (c) an amount that is treated as output tax of the registered person for the purposes of this Act;

“person” has the meaning in the Income Tax Act;

“prepaid telecommunications product” means a phone card, prepaid card, recharge card, or any other form of prepayment for telecommunication services, including in electronic format;

“public authority” means all instruments of the Government, whether departments, ministries, agencies, or other instruments;

“recipient”, in relation to a supply, means the person to whom the supply is made;

“registered person” means—

- (a) a person registered under section 15; and
- (b) a person who is required to apply for registration under section 13 but who has not done so within the time specified in that section;

“registration threshold” means the registration threshold specified in the Regulations made under section 13(2);

“remote services” means services that, at the time of the supply of the services, there is no necessary connection between—

- (a) the place where the services are physically performed; and
- (b) the location of the recipient of the services;

“services” means anything that is not goods or money;

“supplier”, in relation to a supply, means the person making the supply;

“supply” means a supply of goods, a supply of services, or a supply of imported services;

“supply of goods” means—

- (a) a sale, exchange, or other transfer of the right to dispose of goods as owner; or
- (b) the hire or lease of goods under a hire purchase agreement;

“supply of imported services” has the meaning in section 5;

“supply of services” means anything done that is not a supply of goods or a supply of money, and includes—

- (a) the grant, assignment, or surrender of any right;
- (b) the making available of any facility or advantage;
- (c) the toleration of any situation;
- (d) the refraining from the doing of any act;
- (e) the transmission of a product by means of a wire, cable, radio, optical, or other electromagnetic system or by means of a similar technical system; and
- (f) the issuing of a licence, permit, certificate, concession, authorisation, or other document;

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

$$r/(100 + r)$$

where “**r**” is the rate of VAT applicable under section 8(2)(b);

“taxable activity” has the meaning in section 6;

“taxable import” means an import of goods that is not an exempt import;

“taxable period”, in relation to a registered person, means the person’s taxable period as determined under section 50;

“taxable supply” means—

- (a) a supply of goods or services that is made in Fiji by a person in the course or furtherance of a taxable activity conducted by the person, other than an exempt supply; and
- (b) anything treated as a taxable supply under this Act;

“taxpayer identification number” or “TIN”, in relation to a registered person, means the taxpayer identification number of the person issued under the Tax Administration Act;

“telecommunications services” means the transmission, emission, or reception of signals, writing, images, sounds, or information of any kind by wire, radio, optical, cable, or other electromagnetic systems, or by a similar technical system, and includes—

- (a) the related transfer or assignment of the right to use capacity for such transmission, emission, or reception; or
- (b) the provision of access to global or local information networks, but does not include the supply of the underlying writing, images, sounds, or information;

“telecommunications services supplier” means a person licensed in Fiji or elsewhere to make supplies of telecommunications services;

“trading stock” has the meaning in the Income Tax Act;

“VAT” means value added tax imposed under section 8; and

“zero-rated supply” has the meaning in section 9.

- (2) A reference in this Act to a period of days is a reference to a period of consecutive days.

Consideration

3.—(1) Subject to this section, the consideration for a supply is the total of the following amounts—

- (a) the amount in money paid or payable by any person, directly or indirectly, for the supply;
- (b) the fair market value of an amount in kind paid or payable by any person, directly or indirectly, for the supply;
- (c) for a supply of goods, a deposit paid or payable for a container in which the goods are supplied that is refundable on the return of the container;
- (d) a service charge paid or payable in respect of the supply; and
- (e) any duties, excise tax, levies, fees, and charges paid or payable on, or by reason of the supply.

(2) The consideration for a supply under subsection (1)(e) does not include any VAT, service turnover tax, or environmental and climate adaption levy paid or payable in respect of a supply.

(3) The amount determined under subsection (1) is reduced by any discounts or rebates allowed and accounted for at the time of supply.

(4) A discount or rebate in relation to a supply, or other adjustment to the price of a supply, allowed or made, after the time of the supply is accounted for under the adjustment rules in sections 46 and 47.

(5) The consideration for a supply does not include a deposit, other than a deposit referred to in subsection (1)(c), paid or payable in connection with the supply unless and until the supplier applies the deposit in payment for the supply.

(6) Section 36 applies where a deposit paid or payable in connection with a supply is forfeited to the supplier.

(7) The price of a supply of goods made under a hire purchase agreement to which section 22(7) applies does not include any amount payable in relation to the supply of financial services under the agreement.

Fair market value

4.—(1) The fair market value of a supply is the consideration that the supply would fetch in an ordinary open market transaction freely made at the time of the supply between persons dealing with each other at arm’s length.

(2) If the fair market value of a supply (referred to as the “actual supply”) cannot be determined under subsection (1), the fair market value of the supply is the consideration that a similar supply would fetch in an ordinary open market transaction freely made at the time of the actual supply between persons dealing with each other at arm’s length, adjusted to take account of the differences between the similar supply and the actual supply.

(3) If the fair market value of a supply cannot be determined under subsection (1) or (2), the fair market value is the amount that is an objective approximation of the consideration that the supply would fetch in an ordinary open market transaction freely made at the time of the supply between persons dealing with each other at arm’s length as determined by the CEO based on generally accepted principles of valuation.

(4) If a provision of this Act requires the fair market value to be determined at a particular time for particular goods or services, the fair market value is determined by reference to the fair market value of a supply of those goods or services as determined under this section at that time.

(5) For the purposes of this section, a supply is treated as having been made between persons dealing with each other at arm’s length if the parties to the supply, whether or not associates, have acted separately and independently in negotiating the terms of the supply.

(6) In this section, “similar supply”, in relation to an actual supply, means a supply that is the same as, or closely resembles, the actual supply taking into account the character, quality, quantity, functionality, materials, or reputation of the goods or services supplied in the actual supply.

Supply of imported services

5.—(1) A supply of imported services is a supply of services where—

- (a) the supply is made by a person outside Fiji, whether or a not a registered person, who does not conduct a taxable activity through a fixed place of business in Fiji;
- (b) the supply is made to a registered person;
- (c) the supply is made from a place of business outside Fiji; and

- (d) the supply would have been a taxable supply if the supply had been made from a place of business in Fiji.

(2) For the purposes of subsection (1), if a person conducts a taxable activity both in and outside Fiji—

- (a) that part of the taxable activity conducted outside Fiji is treated as a taxable activity conducted by a person (referred to as the “overseas person”) separate from the person (referred to as the “Fiji person”) conducting the taxable activity in Fiji;
- (b) the Fiji person and the overseas person are treated as associates;
- (c) the overseas person is not a registered person; and
- (d) an internal provision of services by the overseas person to the Fiji person is treated as a supply of services made from a place of business outside Fiji in the course or furtherance of a taxable activity conducted by the overseas person outside Fiji.

Taxable activity

6.—(1) Subject to subsection (3), the following are a taxable activity for the purposes of this Act—

- (a) any activity conducted continuously or regularly by a person that involves, or is intended to involve, in whole or part, the supply of goods or services to any other person for consideration and includes any business, trade, manufacture, commerce, or adventure in the nature of trade; or
- (b) any activity of a government entity or licensing authority that involves the supply of goods or services for consideration, including but not limited to the service of issuing a licence, permit, certificate, concession, authorisation, or other document for a fee.

(2) An activity done or conducted in the course of commencing, terminating, or reorganising a taxable activity is treated as done in the course or furtherance of the taxable activity.

(3) The following are not a taxable activity—

- (a) an employment;
- (b) a hobby or leisure activity of an individual;
- (c) an activity of a person, other than an individual, that is essentially carried on as a hobby or leisure activity for the benefit of a member, owner, or associate of the person; or

- (d) an activity undertaken by a non-profit organisation, other than an activity that, in the opinion of the CEO, is in competition to the disadvantage of a person conducting a taxable activity.

(4) For the purposes of subsection (3)(d), the matters that the CEO is required take into account in determining whether a non-profit organisation is conducting an activity that is in competition to the disadvantage of a person conducting a taxable activity are to be specified in the Regulations.

Act to bind State

7.—This Act binds the State.

PART 2—VALUE ADDED TAX

Imposition of Value Added Tax

8.—(1) Subject to this Act, a tax to be known as “value added tax” or “VAT” is imposed, at the rate specified in subsection (2), on the following—

- (a) a taxable supply made by a registered person;
- (b) a taxable import made by any person; and
- (c) a supply of imported services made to a registered person.

(2) The rate of VAT is—

- (a) for a taxable supply that is a zero-rated supply, zero percent; or
- (b) in any other case, 9%.

(3) The amount of VAT payable in respect of a taxable supply, taxable import, or supply of imported services is calculated by applying the rate specified in subsection (2) to the value of the supply or import.

(4) The liability for VAT on a taxable supply arises at the time of the supply and is to be accounted for to the CEO by the registered person making the supply in accordance with section 65(1).

(5) Despite anything contained in any law or agreement but subject to subsection (6), the VAT payable by a registered person in respect of a taxable supply is recoverable by the person from the recipient of the supply.

(6) Subsection (5) does not apply to taxable supplies by a person registered by the CEO under section 15(2) that are made prior to the date that the person is actually registered by the CEO.

(7) The liability for VAT on a taxable import arises at the time of the import and is payable by the importer in accordance with section 65(2).

(8) The liability for VAT on a supply of imported services arises at the time of the supply and is to be accounted for to the CEO by the registered person receiving the supply in accordance with section 65(1).

Zero-rated supply

9.—(1) A supply specified in Schedule 1 is a zero-rated supply.

(2) If a registered person has treated a supply as a zero-rated supply, the registered person must obtain and retain such documentary proof acceptable to the CEO substantiating the person's entitlement to treat the supply as a zero-rated supply.

Exempt supply

10.—(1) Subject to subsection (2), a supply specified in Schedule 2 is an exempt supply.

(2) A supply that is both a zero-rated supply under Schedule 1 and an exempt supply under the Schedule 2 is treated only as a zero-rated supply for the purposes of this Act.

Exempt import

11.—An import specified in Schedule 3 is an exempt import.

Exemptions and concessions in other laws not effective

12.—(1) A provision in any other law, whether enacted before or after this Act, specifying that a supply or class of supply, or an import or class of import, is an exempt or zero-rated supply, exempt import, or subject to a reduced rate of VAT has no legal effect unless also provided for in this Act.

(2) A provision in any other law, whether enacted before or after this Act, specifying that a person or class of persons is exempted from paying VAT or is liable for a reduced rate of VAT has no legal effect unless also provided for in this Act.

(3) In this section, "reduced rate of VAT" means a rate lower than the rate specified in section 8(2)(b).

PART 3—VAT REGISTRATION

Application for compulsory registration

13.—(1) A person must apply to the CEO for registration for VAT—

(a) at the beginning of any 12-month period, if there are reasonable grounds to believe that the total value of taxable supplies to be made by, and supplies of

imported services to be made to, the person in that period will exceed the registration threshold specified in subsection (2);

- (b) at the end of any 12-month or lesser period, if, in that period, the total value of taxable supplies made by, and supplies of imported services made to, the person exceeds the registration threshold specified in subsection (2); or
- (c) if the person is—
 - (i) a Government entity or licensing authority that commences to make taxable supplies;
 - (ii) has commenced the conduct of taxable activity in Fiji as an auctioneer; or
 - (iii) is appointed as a bailiff.

(2) The registration threshold is the amount specified in the Regulations.

(3) The CEO may, in determining whether a person exceeds the registration threshold, have regard to the value of taxable supplies made by, and supplies of imported services made to, an associate of the person.

(4) In determining whether a person exceeds the registration threshold, the value of the following taxable supplies are ignored—

- (a) a taxable supply by way of the sale of a capital asset of the taxable activity of the person; and
- (b) subject to subsection (5), a taxable supply made solely as a consequence of the person selling the whole or a part of the person’s taxable activity or permanently ceasing to carry on the person’s taxable activity.

(5) Subsection (4)(b) does not apply to the sale of the whole or part of a person’s taxable activity if the person’s business involves the acquisition and sale of taxable activities or parts of taxable activities.

(6) An application for registration must be in the approved form and be lodged with the CEO within 7 days of becoming required to apply for registration.

(7) In this section, “capital asset” means a tangible or intangible asset of a taxable activity with a useful economic life of at least one year, other than trading stock.

Application for voluntary registration

14.—A person who makes or intends to make taxable supplies but who is not required to apply for compulsory registration under section 13, may apply to the CEO, in the approved form, for voluntary registration.

Registration

15.—(1) The CEO must register a person who has applied for registration under section 13 if satisfied that the person was required to apply for registration.

(2) The CEO must, on his or her own motion, register a person who is required to apply for registration under section 13 but who has not done so within the time limit specified in that section.

(3) The CEO must register a person who has applied for registration under section 14 if all of the following conditions are satisfied—

- (a) the person is making, or intends to make, taxable supplies;
- (b) the person has a fixed place from which the person conducts their taxable activity;
- (c) if the person has commenced conducting a taxable activity, the person—
 - (i) has kept proper records of its operations; and
 - (ii) complied with its obligations under other revenue laws; and
- (d) there are reasonable grounds to believe that the person will comply with their obligations under this Act and any regulations promulgated under this Act, including keeping proper records, and filing regular and reliable VAT returns.

(4) The CEO must, within 21 days after receipt of a registration application under section 13 or 14, serve a notice in writing on an applicant for registration of the decision taken on the application.

(5) The CEO must issue a person registered under this section with a VAT registration certificate including the particulars specified in the Regulations.

(6) A registered person who carries on a taxable activity at more than one place of business must apply to the CEO, in the approved form, for an official copy of the person's VAT registration certificate for each place of business and the CEO must issue the person with such copy or copies.

(7) The registration of a person takes effect—

- (a) for registration under subsection (1) or (2) and subject to subsection (8), from the beginning of the second taxable period after the person was required to apply for registration or such later time as set out in the person's VAT registration certificate; or
- (b) for registration under subsection (3), from the date set out in the person's VAT registration certificate.

(8) If the CEO fails to process an application made by a person in accordance with section 13 within the time specified in subsection (7)(a), the registration of the person cannot commence before the start of the first taxable period after the person is actually registered.

Obligations of registered persons

16.—(1) A registered person must display—

- (a) the original of the person's VAT registration certificate in a conspicuous place at the main place of business where the person conducts their taxable activity; and
- (b) an official copy of the person's VAT registration certificate issued under section 15(6) in a conspicuous place at every other place of business where the person conducts their taxable activity.

(2) In addition to the matters specified in section 38A of the Tax Administration Act, a registered person must notify the CEO, in writing, within 14 days of a change occurring in relation to any of the following—

- (a) the phone, facsimile, electronic, and other contact details of the registered person;
- (b) the place or places through which the registered person conducts their taxable activity, including the opening or closing of new branches or divisions;
- (c) the nature of the business of the registered person;
- (d) any other matter as specified in the Regulations.

Notification by registered person ceasing to conduct taxable activities

17.—(1) A registered person must notify the CEO if the person has ceased to conduct all taxable activities.

(2) A notification by a registered person under subsection (1) must—

- (a) be in the approved form;
- (b) state the date upon which the registered person ceased to conduct their taxable activity;
- (c) state whether or not the registered person intends to carry on a taxable activity within 12 months from the date mentioned in paragraph (b); and
- (d) be lodged with the CEO within 7 days of the date the person ceased to carry on all taxable activities.

(3) Subject to subsection (4), the CEO must, by notice in writing, cancel the registration of a person who has ceased to conduct their taxable activity either on notification by the person under subsection (1) or on the CEO's own motion.

(4) The CEO may decide not to cancel the registration of a person under subsection (3) where the CEO has reasonable grounds to believe that the person will recommence conducting a taxable activity at any time within 12 months from the date of cessation of the taxable activity.

(5) The cancellation of the VAT registration of a person under subsection (3) takes effect from the last day of the taxable period in which the person ceased to conduct their taxable activity or from such later date as set out in the notice of cancellation.

Application for cancellation of registration when below the registration threshold

18.—(1) Subject to subsections (2) and (3), a registered person may apply to the CEO, in the approved form, for cancellation of the person's registration if the total annual value of the taxable supplies made by, and supplies of imported services made to, the person no longer exceeds the registration threshold.

(2) Subsection (1) does not apply to a person who was liable to apply for registration under section 13(1)(c).

(3) Subject to subsection (4), an application for cancellation of registration under subsection (1) may be made only after the expiration of 2 years from the date of registration.

(4) Despite subsection (3), an application under subsection (1) by a person who mistakenly believed that they were required to apply for registration may be made before the due date for filing the person's first VAT return after being registered.

(5) The CEO must cancel the registration of a person who has properly applied for cancellation of registration under subsection (1) if the CEO is satisfied that the total annual value of the taxable supplies made, and supplies of imported services received, by the person no longer exceeds the registration threshold.

(6) The CEO may, on his or her own motion and by notice in writing, cancel the registration of a person who is not required to be registered, if the CEO is satisfied that—

- (a) the person has not kept proper VAT records; or
- (b) the person has not lodged regular and reliable VAT returns.

(7) The cancellation of a person's registration under this section takes effect from the date specified in the notice of cancellation.

Application for refund of excess credits on cancellation of registration

19.—(1) Despite section 52, a person whose registration is cancelled under section 17 or 18 may apply to the CEO, in writing, for a refund of any unapplied excess credit of the person that has been carried forward under this Act.

(2) An application made by a person under subsection (2) must be lodged with the CEO before the date on which the cancellation of the person's registration takes effect.

(3) If, at the date on which the cancellation of the registration of a person takes effect, the person has an excess input tax credit in respect of which an application for a refund has not been made in accordance with subsections (1) and (2), the excess credit lapses and is no longer refundable to the person.

Obligations of person on cancellation of registration

20.—(1) If a person's VAT registration is cancelled under section 17 or 18, the person must—

- (a) immediately cease to hold out that the person is a registered person, including on any documentation used by the person;
- (b) lodge a final VAT return in the approved form and pay all VAT due, including the VAT due as a result of the application of section 21, within one month after the date of cancellation of the person's registration or by such earlier date as notified by the CEO in writing; and
- (c) immediately return the person's VAT registration certificate, and any official copies of the certificate, to the CEO.

(2) The obligations and liabilities of a person under this Act, including the lodging of VAT returns and payment of VAT, in respect of anything done or omitted to be done by that person while being a registered person is not affected by cancellation of the person's registration.

Deemed taxable supply on cancellation of registration

21.—(1) A person whose VAT registration is cancelled under section 17 or 18 is treated as having made a taxable supply of trading stock (including raw materials for trading stock) on hand at the time the person's registration is cancelled but only if the person was allowed an input tax credit on acquisition or import of the trading stock or on acquisition or import of goods that have been subsumed into that trading stock.

(2) A taxable supply of trading stock under subsection (1) is treated as having been made by the person immediately before cancellation of the person's registration and the person is treated as having received, at that time, an amount of output tax equal to the amount of the input tax credit allowed to the person in respect of the acquisition or import of the trading stock or of goods that have been subsumed into the trading stock.

PART 4—GENERAL RULES RELATING TO SUPPLIES

Mixed supplies

22.—(1) A supply of goods that is incidental to a supply of services is treated as part of the supply of services.

(2) A supply of services that is incidental to a supply of goods is treated as part of the supply of goods.

(3) A supply of services is treated as part of an import of goods where the value of the supply is included in the value of the import under section 29(1)(a).

(4) Subject to subsections (1) and (2), if a supply is both a supply of goods and a supply of services, the CEO may determine on any reasonable basis the extent to which the supply is treated as a supply of goods or a supply of services.

(5) Subsection (6) applies to a supply that consists of all or some of the following elements:

- (a) a supply that is charged with consumption tax at a positive rate;
- (b) a zero-rated supply;
- (c) an exempt supply.

(6) Subject to subsection (7), each element of a supply referred to in subsection (6) is treated as a separate supply.

(7) If a supply of goods under a hire purchase agreement involves a credit charge that is specified as a separate charge and disclosed to the recipient of the supply, the supply is treated as two supplies being a supply of goods and a supply of financial services.

Time of supply

23.—(1) Subject to this Act, a supply occurs on the earlier of—

- (a) the date on which the invoice for the supply is issued;
- (b) the date on which any payment (including a part payment) for the supply is made; or
- (c) the date on which—
 - (i) for a supply of goods, the goods are delivered or made available; or
 - (ii) for a supply of services or a supply of imported services, the performance of the services is complete.

(2) A supply of goods by means of any machine, meter, or other device operated by a coin, note, or token occurs on the date that any such coin, note, or token is taken from the machine, meter, or other device by or on behalf of the supplier.

(3) A periodic supply—

- (a) is treated as a series of separate, successive supplies corresponding to the successive parts of the period of the lease or agreement, or as determined by law, as the case may be; and

- (b) each successive supply is treated as occurring on the earlier of the date on which the payment for that successive supply is due or received.

(4) In this section, “periodic supply” means—

- (a) a supply of goods under a hire purchase agreement; or
- (b) a supply of services—
 - (i) by way of a lease of goods (other than a lease covered by paragraph (a)); or
 - (ii) supplied progressively under an agreement or law that provides for periodic payments.

Value of a supply

24.—(1) Subject to this section, the value of a supply is the consideration for the supply.

(2) The value of a supply is the fair market value of the supply determined at the time of the supply if—

- (a) the supply is made by a person to an associate for a price that is less than the fair market value of the supply (including a supply made for no consideration); and
- (b) the recipient is not entitled to an input tax credit for the whole of the input tax payable in respect of the supply.

(3) Except as provided in subsection (2), the value of a supply for no consideration is zero.

(4) If a registered person makes a taxable supply without a separate amount being identified as VAT, the value of the supply is calculated according to the following formula—

$$A - (A \times B)$$

where—

- A** is the total amount charged for the supply; and
- B** is the tax fraction.

(5) If subsection (4) applies to a taxable supply made by a registered person to another registered person, the input tax payable by the registered person receiving the supply is calculated based on the value of the supply determined under subsection (4).

Supply of goods in Fiji

25.—A supply of goods occurs in Fiji if:

- (a) for a supply of goods that involves transportation, the goods are in Fiji when the transportation commences; or
- (b) for any other supply, the goods are made available in Fiji by the supplier.

Supply of services in Fiji

26.—(1) Subject to subsection (2) and section 27, a supply of services occurs in Fiji if the place of business of the supplier from which the services are supplied is in Fiji.

(2) Despite subsection (1), a supply of services by a person who does not have a place of business in Fiji occurs in Fiji if the recipient of the supply is not a registered person and—

- (a) the services are physically performed in Fiji by a person who is in Fiji at the time of the supply;
- (b) the services are remote services supplied to a resident of Fiji; or
- (c) the services are telecommunication services and a person physically in Fiji initiates the supply from a telecommunications supplier whether on the person's own behalf or on behalf of another person, other than a supply initiated by—
 - (i) a supplier of telecommunications services; or
 - (ii) a person who is global roaming while temporarily in Fiji.

(3) For the purposes of subsection (2)(b) and subject to subsection (4), a recipient of a supply of remote services is treated as a resident of Fiji if at least two of the following factors support the conclusion that the person is a resident of Fiji—

- (a) the recipient's billing address;
- (b) the internet protocol address of the device used by the recipient or another geolocation method;
- (c) the recipient's bank details, including the account the recipient uses for payment or the billing address held by the bank;
- (d) the mobile country code of the international mobile subscriber identity stored on the subscriber identity module card used by the recipient;
- (e) the location of the recipient's fixed land line through which the service is supplied to the recipient;
- (f) any other commercially relevant information.

(4) If there are two factors on the list in subsection (3) supporting that the recipient is a resident of Fiji and two factors supporting residence in another country, the supplier must

determine the recipient's residence based on the factors that, in the circumstances, are the most reliable indicators of the recipient's residence.

(5) Having established that the recipient of a supply is a resident of Fiji under subsection (3), a supplier must treat the recipient as not being a registered person unless the recipient notifies the supplier, in writing, that they are a registered person and provides the supplier with a certified copy of their VAT registration certificate.

(6) For the purposes of subsection (2)(c), the person who initiates a supply of telecommunications services is the person who is identified by the supplier of the telecommunication services as the person who controls the commencement of the supply.

(7) If a supplier of telecommunications services is not able to identify the person who controlled the commencement of a supply of telecommunications services under subsection (6), the person who is treated as initiating the supply is the person who is identified by the supplier as —

- (a) the person who pays for the supply;
- (b) the person who contracts for the supply; or
- (c) the person to whom the invoice for the supply is sent.

(8) If the supplier identifies more than one person as initiating the supply under subsection (7), the person who is treated as initiating the supply is the person who appears highest in the list in that subsection.

Supply of remote services through electronic marketplace

27.—(1) This section applies if the following conditions are satisfied—

- (a) a supplier (referred to as the “underlying supplier”) makes a supply of remote services through an electronic marketplace;
- (b) the electronic marketplace is operated by a person who does not have a place of business in Fiji and who—
 - (i) authorises the charge to the recipient of the supply;
 - (ii) authorises the delivery of the supply to the recipient of the supply; or
 - (iii) sets the terms and conditions under which the supply is made; and
- (c) the recipient of the supply is a resident of Fiji as determined under section 26(3) and is not a registered person.

(2) Where this section applies and subject to subsection (3), section 26(2) applies on the basis that the operator of the electronic marketplace is treated as having made the supply of remote services in the course or furtherance of a taxable activity conducted by the operator.

(3) This section does not apply when the underlying supplier and the operator of the marketplace have agreed in writing that the underlying supplier is liable for the payment of VAT on taxable supplies made through the electronic marketplace.

(4) In this section, “electronic marketplace” means a website, internet portal, gateway, store, distribution platform, or other similar platform that is operated electronically through which an underlying supplier makes a supply of remote services electronically through another person (the operator of the marketplace) to a third person (the recipient), but does not include a marketplace that solely processes payments.

PART 5—IMPORTS

Time of import

28.—(1) An import of goods occurs—

- (a) for goods that are entered for home consumption under the Customs legislation, on the date on which they are so entered; or
- (b) for any other goods, on the date the goods are brought into Fiji.

(2) If any goods have been imported into a bonded warehouse but have not been entered for home consumption, any supply of such goods before they are entered for home consumption is disregarded for the purposes of this Act.

(3) In this section, “bonded warehouse” has the meaning under the Customs legislation.

Value of an import

29.—(1) Subject to subsection (2), the value of an import of goods is the total of the following amounts—

- (a) the value of the goods under the Customs legislation, whether or not any duty is payable on the import; and
- (b) the amount of any duty, excise tax, and other fiscal charge (other than VAT), and any fee or other charge, payable in respect of the import.

(2) If goods are re-imported after being exported for the purpose of undergoing repair, renovation, or improvement, the value of the import is the amount of the increase in value of the goods as a result of the repair, renovation, or improvement provided there has been no change in—

- (a) the form or character of the goods; and
- (b) the ownership of the goods since the goods were exported.

PART 6—INPUT TAX CREDITS

Allowance of an input tax credit

30.—(1) Subject to this Act, a registered person is allowed a credit for the input tax imposed on a creditable acquisition made by the person to the extent that the acquisition was for the purpose of making taxable supplies as determined at the time of the supply or import comprising the acquisition.

(2) The input tax credit allowed to a registered person for creditable acquisitions made by the person during a taxable period partly to make taxable supplies and partly to make other supplies is calculated according to the following formula—

$$A \times B/C$$

where –

- A** is the total amount of input tax payable in respect of creditable acquisitions made by the registered person during the taxable period partly to make taxable supplies and partly to make other supplies;
- B** is the total value of taxable supplies made by the registered person during the taxable period; and
- C** is the total value of all supplies made by the registered person during the taxable period.

(3) Where the fraction B/C in subsection (2) is

- (a) 0.90 or more, the registered person is allowed a credit for the total amount of input tax in respect of creditable acquisitions referred to in that subsection; or
- (b) less than 0.10, the registered person is not allowed a credit for any input tax in respect of creditable acquisitions referred to in that subsection.

(4) Subject to subsection (5), an input tax credit is allowed in the taxable period in which the supply or import to which the creditable acquisition relates occurred.

(5) If, at the time a registered person files a VAT return for a taxable period in which an input tax credit would otherwise be allowable under this Act, the person does not hold the documentation referred to in subsection (6), the input tax credit is not allowed in that taxable period but instead is allowed in the first taxable period in which the person holds the required documentation.

(6) The documentation required for the purposes of subsection (5) is the following—

- (a) for a creditable acquisition that is a taxable import, a bill of entry or other document required under the Customs legislation for the import;
- (b) for a creditable acquisition that is a taxable supply, the tax invoice for the taxable supply to which the acquisition relates;

- (c) for a creditable acquisition that is a supply of imported services, the buyer-created tax invoice for the supply as required under section 57(4);
- (d) for a creditable acquisition referred to in section 57(5) applies, the buyer-created tax invoice for the supply as required under section 57(5);
- (e) for an input tax credit allowed in respect of input tax referred to in section 45(3)(b), the debit note required to be issued under section 45(3)(a);
- (f) for an input tax credit allowed under section 46(3)(b), a copy of the credit note issued to the recipient of the supply under section 46(3)(a); or
- (g) for an input tax credit allowed under section 48(3)(b), the debit note required to be issued under section 48(3)(a).

(7) If, for whatever reason, a registered person fails to claim an input tax credit in the VAT return for the taxable period in which the credit arises, the registered person can claim the credit in the VAT return for a subsequent taxable period but only if that taxable period is within 12 months after the taxable period in which the credit arose.

(8) Nothing in subsection (7) prevents an input tax credit being allowed in an amended assessment made by the CEO other than an amended assessment made under section 12 of the Tax Administration Act.

Denial of an input tax credit

31.—(1) Subject to subsection (2), a registered person is not allowed an input tax credit under this Act for input tax payable in respect of the following—

- (a) a creditable acquisition by a registered person of a passenger vehicle, or spare parts or repair or maintenance services for such vehicle, unless the person's taxable activity involves dealing in, or hiring out, such vehicles and the vehicle was acquired for the purposes of the taxable activity;
- (b) a creditable acquisition of petroleum products unless those products are acquired solely for use in the taxable activity of the person;
- (c) a creditable acquisition by a registered person to the extent that the acquisition is used to provide entertainment, unless—
 - (i) the entertainment is provided in the ordinary conduct of the taxable activity of the person to provide the entertainment and the entertainment is not supplied to an associate or employee;
 - (ii) the entertainment is provided while the recipient of the entertainment is away from home for the purposes of the business of the recipient or the recipient's employer; or

- (iii) the person's taxable activity involves the making of taxable supplies of transportation services and the entertainment is provided to passengers as part of the transportation service; or
- (d) a creditable acquisition by a registered person of membership for any person of a club, association, or society of a sporting, social, or recreational nature.

(2) A registered person who does not conduct a taxable activity through a fixed place of business in Fiji is not allowed any input tax credits in relation to the making of taxable supplies.

(3) In this section—

“entertainment” means the provision of food, beverages, recreation, or hospitality of any kind; and

“passenger vehicle” means a road vehicle designed or adapted for the transport of 9 or fewer seated passengers.

Input tax credit for newly registered person

32.—(1) Subject to this Act, a registered person may claim an input tax credit determined in accordance with sections 30 and 31 for the input tax paid in respect of goods held at the date of registration for the purpose of making taxable supplies provided the following conditions are satisfied—

- (a) the person held the goods as trading stock at the end of the last day before the date of the person's registration;
- (b) the trading stock was acquired by the person in a creditable acquisition;
- (c) the creditable acquisition occurred no more than 4 months prior to the date of registration; and
- (d) the person can provide a tax invoice or other documentary evidence satisfactory to the CEO that input tax has been paid in respect of the creditable acquisition.

(2) An input tax credit under subsection (1) is allowed in the first taxable period after the person was registered.

(3) Section 30(5) does not apply for the purposes of an input tax credit allowed under this section.

PART 7—SPECIAL CASES

Self-supplies

33.—(1) An application of goods by a registered person to a private or exempt use is treated as a taxable supply made by the person, but only if the person has been allowed an input tax credit in respect of the acquisition or import of the goods.

(2) A taxable supply under subsection (1) is made by the registered person at the time that the goods are first applied to private or exempt use.

(3) The amount of output tax payable by a registered person in respect of a taxable supply under subsection (1) is the amount of the input tax credit allowed to the registered person for the acquisition or import of the goods that have been applied to a private or exempt use.

(4) In this section, “exempt use”, in relation to goods, means the use of the goods to make an exempt supply.

Supplies of second-hand goods

34.—(1) This section applies if the following conditions are satisfied—

- (a) a second-hand goods supplier has purchased second-hand goods from a person who is not a registered person;
- (b) the second-hand goods supplier did not import the second-hand goods;
- (c) the second-hand goods supplier did not acquire the second-hand goods in an exempt or zero-rated supply; and
- (d) the second-hand goods supplier has—
 - (i) supplied the second-hand goods in a taxable supply by way of sale or exchange; and
 - (ii) the goods are supplied in substantially the same state as they were in at the time the second-hand goods supplier purchased the goods.

(2) If this section applies, the second-hand goods supplier is—

- (a) treated as having acquired the second-hand goods in a creditable acquisition;
- (b) treated as having paid an amount of input tax in respect of the acquisition of the second-hand goods equal to the tax fraction of the consideration paid for the second-hand goods; and
- (c) allowed an input tax credit for the input tax treated as having been paid under paragraph (b) in the taxable period in which the second-hand goods supplier makes the supply referred to in subsection (1)(d).

(3) If a supplier receives second-hand goods (referred to as “traded-in goods”) as part payment for a supply that the supplier makes to a person who is not registered, the fair market value of the traded-in goods used to determine the price for the supply must be the same as the fair market value used to determine the price paid by the supplier to acquire the traded-in goods.

(4) A second-hand goods supplier receiving a supply of second-hand goods from a non-registered person must the records specified in the Regulations.

(5) In this section—

“second-hand goods” means goods that have previously been used in Fiji by a person who is not a registered person, but does not include—

- (a) land or an improvement to land; or
- (b) produce; and

“second-hand goods supplier” means a registered person whose taxable activity includes the sale or exchange of second-hand goods in substantially the same state as they were in when purchased by the person.

Lay by sales

35.—(1) A supply of goods pursuant to a lay-by agreement occurs when the goods are delivered to the purchaser.

(2) If a lay-by agreement is cancelled and the supplier retains any amount paid by the purchaser or recovers any amount owing by the purchaser under the agreement, the cancellation of the agreement is treated as a supply of services by the supplier at the time of cancellation of the agreement.

(3) The value of the supply under subsection (2) is—

- (a) for a supplier who is a registered person at the time of cancellation, the amount retained or recovered by the seller reduced by an amount equal to the amount retained or recovered multiplied by the tax fraction; or
- (b) for any other supplier, the amount retained or recovered by the supplier.

(4) In this section, “lay-by agreement” means a purchase agreement for goods under which—

- (a) the price is payable by at least one additional payment after the payment of a deposit;
- (b) the purchaser takes possession of the goods after payment in full is made for the goods; and
- (c) the ownership of the goods is transferred at the time that the purchaser takes possession of the goods.

Forfeited Deposit

36.—(1) If a supplier has received a deposit in connection with a supply of goods or services and the deposit is forfeited to the supplier, the forfeiture of the deposit is treated as a supply of services by the supplier at the time of forfeiture of the deposit.

(2) A supply of services under subsection (1) has the same character as the supply to which the forfeited deposit relates.

(3) The value of a supply of services under subsection (1) is—

- (a) for a supplier who is a registered person at the time of forfeiture of the deposit, the forfeited amount reduced by an amount equal to the forfeited amount multiplied by the tax fraction; or
- (b) for any other supplier, the amount of the forfeited deposit.

(4) This section does not apply to a deposit on a returnable container.

Supplies of rights and options

37.—(1) This section applies if—

- (a) there is a supply of a right or option; and
- (b) another supply (“the subsequent supply”) is made on the exercise of the right or option.

(2) Where this section applies and the supply of the right or option is a taxable supply, the amount of the consideration for the subsequent supply is limited to the additional consideration, if any, given for the subsequent supply or in connection with the exercise of the right or option.

(3) Where this section applies and the supply of the right or option is not a taxable supply but the subsequent supply is a taxable supply, the amount of the consideration for the subsequent supply includes any consideration given for the supply of the right or option.

Vouchers

38.—(1) The issue of a voucher is not a supply if the voucher—

- (a) entitles the holder to receive supplies of goods or services up to a monetary amount on redemption of the voucher; and
- (b) is issued for an amount in money.

(2) If a voucher referred to in subsection (1) is redeemed for a taxable supply by a registered person, the amount referred to in subsection (1)(b) is treated as comprising two components—

- (a) an amount as the consideration or part of the consideration for the supply calculated as the amount referred to in subsection (1)(b) reduced by the tax fraction of that amount; and
- (b) an amount as the VAT or part of the VAT payable in respect of the supply calculated as the tax fraction of the amount referred to in subsection (1)(b).

(3) Subsection (4) applies if the following conditions are satisfied—

- (a) a registered person issues a voucher for no charge;
- (b) the voucher entitles the holder to a discount on the price of goods or services supplied by another person; and
- (c) the voucher is redeemed for a taxable supply,

(4) If the conditions in subsection (3) are satisfied, the consideration for the supply includes the monetary value of the voucher reduced by an amount equal to the monetary value multiplied by the tax fraction.

(5) A registered person is entitled to an input tax credit in respect of any amount paid to a supplier in respect of the redemption by the supplier of a voucher referred to in subsection (4).

(6) The amount of the input tax credit referred to in subsection (5) is the amount paid to the supplier multiplied by the tax fraction and the input tax credit is allowed in the taxable period in which the amount is paid to the supplier.

(7) In this section, “voucher” means a voucher, stamp, token, coupon, or similar article, including an article issued electronically, that can be redeemed by the holder only for supplies of goods or services, and includes a prepaid telecommunications product, but does not include a postage stamp.

Prepaid supplies of telecommunications services

39.—(1) Subject to subsection (2), this section applies to—

- (a) a supply, by a telecommunications service supplier, of a prepaid telecommunications product; or
- (b) a supply by a person who acts as a distributor, agent, or telecommunications intermediary in relation to the supply of a prepaid telecommunications product.

(2) Subsection (1) does not apply to a supply by one telecommunications service supplier to another telecommunications service supplier and such a supply is subject to the normal operation of the Act.

(3) If a telecommunications service supplier supplies a prepaid telecommunications product to a telecommunications intermediary at a discount from the intended retail price, the consideration for the supply is calculated as if the intermediary had paid the intended retail price.

(4) If a telecommunications intermediary purchases and on-sells a prepaid telecommunications product—

- (a) the acquisition by the intermediary is treated as if it were not an acquisition; and
- (b) the supply by the intermediary is treated as if it were not a supply.

(5) When a telecommunications service supplier supplies a prepaid telecommunications product through a telecommunications intermediary acting as agent for the telecommunications supplier, the consideration for the supply is not reduced by the commission paid to the intermediary.

Employee benefits

40.—(1) Subject to subsection (2), where a registered person is an employer who makes a taxable supply to an employee as part of the employee’s remuneration, the supply is treated as having been made for consideration equal to fair market value of the supply.

(2) A taxable supply made by an employer to an employee is treated as having a nil value if the employer is not entitled to an input tax credit in respect of a creditable acquisition to make the taxable supply to the employee.

General Insurance

41.—(1) Subject to subsection (2), if a registered person receives a payment under a general insurance contract that relates to a loss to the extent incurred in the course or furtherance of the person’s taxable activity, whether or not the person is a party to the contract, the payment is treated as consideration for a supply of services made by the registered person in the course or furtherance of the person’s taxable activity.

(2) Subsection (1) does not apply if—

- (a) the supply of the general insurance contract to which the payment relates was not a taxable supply; or
- (b) the payment is compensation made under the Accident Compensation Act 2017, or for accidental personal injury.

(3) The supply under subsection (1) occurs on the date that the person receives the payment and the value of the supply is the amount received reduced by the tax fraction of that amount.

(4) Subject to subsection (5), if a registered person that is an insurer makes a payment to another person to indemnify that other person under a general insurance contract, the insurer is allowed an input tax credit for an amount equal to the tax fraction of the payment made but only if—

- (a) the supply of the general insurance contract was a taxable supply; and
- (b) the payment is made to a resident person or a non-resident person who is a registered person.

(5) Subsection (4) does not apply if—

- (a) the payment is in respect of a supply to, or an import by, the insurer; or
- (b) the supply of the general insurance contract is a zero-rated supply.

(6) The input tax credit under subsection (4) is allowed in the taxable period in which the insurer makes the payment.

(7) If a registered person that is an insurer recovers an amount, other than aggravated or exemplary damages, as a result of the exercise of rights acquired by subrogation under a general insurance contract and subsection (4) applies to the payment to which the recovered amount relates, the payment is treated as consideration for a supply of services made by the insurer in the course or furtherance of the insurer's taxable activity.

(8) The supply under subsection (7) occurs on the date that the insurer receives the payment.

(9) In this section—

“general insurance business” has the meaning in the Insurance Act 1998;

“general insurance contract” means a contract of insurance entered into in the course of conducting a general insurance business, but does not include a health insurance contract; and

“non-resident person” and “resident person” have the meanings under the Income Tax Act.

Supplies relating to government

42.—(1) A payment in the nature of a grant made by the State to, or for the benefit of, a person conducting a taxable activity to make taxable supplies is treated as a consideration for a supply made by the person in the course or furtherance of the taxable activity.

(2) Rates payable by a person to a local authority are treated as the consideration for a supply made by the authority.

(3) In this section, “grant” means any Standard Expenditure Group 6 or Standard Expenditure Group 10 payment, other than a payment that is an income transfer payment, a loan, an advance, or an equity injection.

Supplies by, or to, agents

43.—(1) A supply made by a person as agent for another person (the “principal”) is treated as a supply made by the principal.

(2) A supply made to a person as agent for a principal is treated as a supply made to the principal.

(3) Where goods or services are supplied through an agent who acts in his or her own name the CEO may, if he or she thinks fit, permit the principal and agent to treat the supply both as a supply to the agent and as a supply by the agent.

(4) Subsections (1) and (2) do not apply to—

- (a) a supply of services made by an agent to the agent's principal; or
- (b) a supply referred to in section 44.

Supplies by an auctioneer or bailiff

44.—(1) A supply of goods by auction is treated as a supply of goods for consideration by the auctioneer as supplier made in the course or furtherance of a taxable activity carried on by the auctioneer.

(2) If VAT is payable by an auctioneer in respect of a supply of goods specified in subsection (1), the auctioneer must—

- (a) charge the purchaser the amount of VAT payable in respect of the supply by adding the VAT to the amount of a successful bid or, in the case of a sale out-of-hand, to the purchase price; and
- (b) recover the VAT from the purchaser.

(3) A supply of goods by a bailiff is treated as a supply of goods for consideration by the bailiff as supplier made in the course or furtherance of a taxable activity carried on by the bailiff.

(4) If VAT is payable by a bailiff in respect of a supply of goods specified in subsection (3), the bailiff must—

- (a) charge the purchaser the amount of VAT payable in respect of the supply by adding the VAT to the purchase price; and
- (b) recover the VAT from the purchaser.

Sale of property by a debtor

45.—(1) Where a creditor supplies the property of a debtor to a third person in full or partial satisfaction of a debt owed by the debtor to the creditor—

- (a) the supply to the third person is treated as having been made by the debtor and the nature of the supply is to be determined accordingly; and
- (b) the creditor is liable to pay the VAT payable on the supply unless the debtor provides the creditor with a written statement that the supply is not subject to VAT.

(2) A statement provided by a debtor under subsection (1)(b) must set out the reasons why the supply is not subject to VAT.

(3) A creditor who has not received a statement under subsection (1)(b) may, based on any reasonable information available to the creditor, treat the supply as a supply that would not have been subject to VAT if the supply had been made by the debtor.

(4) The VAT payable under subsection (1)(b) must be paid in priority to—

- (a) the satisfaction of the debt; and
- (b) the return to the debtor or any other person of any part of the proceeds that is surplus to the debt.

(5) A creditor making a supply of the property of a debtor is not entitled to a credit for any input tax incurred by the creditor against the output tax referred to in subsection (1)(b).

(6) A creditor who is not a registered person but who is required to pay VAT by operation of subsection (1) must file a return and pay the VAT at such time and manner as may be prescribed in the regulations.

PART 8—ADJUSTMENTS

Adjustment event resulting in VAT being under-charged

46.—(1) This section applies where—

- (a) a registered person has made a supply;
- (b) an adjustment event has occurred in relation to the supply; and
- (c) as a result of the occurrence of the adjustment event, the correct amount of VAT payable in respect of the supply exceeds the VAT that the registered person actually accounted for to the CEO in respect of the supply.

(2) If this section applies, the excess referred to in subsection (1)(c) is treated as output tax of the supplier for the taxable period in which the event occurred.

(3) If the recipient of a supply to which this section applies is a registered person and the supplier has provided the recipient with an original tax invoice for the supply—

- (a) the supplier must provide the recipient with a debit note specifying the additional VAT payable in respect of the supply; and
- (b) the additional VAT specified in the debit note is treated as input tax of the recipient for the taxable period in which the recipient received the debit note.

Adjustment event resulting in VAT being over-charged

47.—(1) This section applies where—

- (a) a registered person has made a supply;
- (b) an adjustment event has occurred in relation to the supply; and

- (c) as a result of the occurrence of the adjustment event, the VAT actually accounted for to the CEO by the supplier exceeds the correct amount of VAT payable in respect of the supply.

(2) Subject to subsection (4), if this section applies, the excess referred to in subsection (1)(c) is treated as input tax of the supplier for the taxable period in which the event occurred.

(3) If the recipient of a supply to which this section applies is a registered person and the supplier has provided the recipient with an original tax invoice for the supply—

- (a) supplier must provide the recipient with a credit note specifying the amount by which the VAT payable in respect of the supply is reduced; and
- (b) the amount referred to in paragraph (a) is treated as input tax of the recipient for the taxable period in which the recipient received the credit note.

(4) If the recipient of a supply to which subsection (2) applies is not a registered person, the supplier is not allowed a credit for the input tax referred to in that subsection until the supplier has repaid the excess VAT to the recipient of the supply in cash or as a credit against any amount owing to the supplier by the recipient.

Adjustment for bad debts

48.—(1) Subject to subsection (3), if a registered person has accounted to the CEO for output tax payable on a taxable supply made by the person and the whole or a part of the consideration for the supply is subsequently treated in the accounts of the person as a bad debt, the person is allowed an input tax credit for the amount of output tax accounted for to the CEO in respect of the supply that corresponds to the amount of the debt treated as bad.

(2) An input tax credit under subsection (1) arises on the later of—

- (a) the date on which the bad debt was written off in the accounts of the registered person; or
- (b) 12 months after the end of the taxable period in which the registered person accounted for output tax to the CEO in respect of the supply.

(3) If the recipient of a taxable supply to which subsection (1) applies is a registered person that is still in existence at the time the input tax credit arises under subsection (2), the input tax credit is allowed only if the supplier issues a credit note to the recipient specifying the amount of the VAT that relates to the bad debt calculated in accordance with subsection (1).

(4) The recipient of a taxable supply issued with a credit note under subsection (3) must treat the amount of VAT specified in the credit note as output tax payable by the recipient in the taxable period in which the credit note was received to the extent that the recipient claimed an input tax credit for the VAT referred to in the credit note.

Bad debt recovered

49.—(1) If an amount in respect of which an input tax credit has been allowed in accordance with subsection (1) is, at any time, wholly or partly recovered by the registered person, the registered person is treated as having charged output tax in respect of a taxable supply made by the person during the taxable period in which the bad debt is wholly or partly recovered, being an amount of output tax calculated according to the following formula—

$$A \times B/C$$

where—

A is the amount allowed as a credit under section 47(1);

B is the amount of the bad debt recovered; and

C is the amount of the bad debt written off.

(2) Subsection (3) applies if the following conditions are satisfied—

- (a) section 47 has applied in respect of a taxable supply (referred to as the “original taxable supply”);
- (b) subsequently, subsection (1) applies to an amount that the supplier of the original taxable supply has recovered from the recipient of the original taxable supply; and
- (c) the recipient of the original taxable supply was a registered person at the time of the original taxable supply and at the time of the deemed taxable supply under paragraph (b).

(3) Where the conditions in subsection (2) are satisfied:

- (a) the supplier must issue a debit note to the recipient stating the amount of output tax referred to subsection (1); and
- (b) the recipient is allowed an input tax credit for that amount to the extent that the original taxable supply was used by the recipient to make taxable supplies in the taxable period in which the recipient receives the debit note referred to in paragraph (a).

PART 9—CALCULATION OF NET VAT PAYABLE

Taxable Period

50.—(1) The taxable period of a registered person is—

- (a) for a Category A registered person, the period of 1 month ending on the last day of each month of a calendar year; or

(b) for a Category B registered person, the period of 3 months ending on the last day of any month in a calendar year as determined by the CEO.

(2) The following registered persons are a Category A registered person—

(a) a person to whom section 13(1)(c) applies; and

(c) any other registered person who is not a Category B registered person under subsection (3).

(3) A registered person is a Category B registered person if—

(a) the CEO is satisfied that—

(i) the total value of the taxable supplies made by, and supplies of imported services made to, the person in the period of 12 months ending on the last day of any month did not exceed \$300,000; or

(ii) there are reasonable grounds to believe that the total value of taxable supplies to be made by, and supplies of imported services to be made to, the person will not exceed \$300,000 in the period of 12 months beginning on the first day of any month; and

(b) the CEO has notified the person, in writing, that the person is a Category B registered person.

(4) Section 13(3), (4), and (5) apply, with the necessary changes made, in determining the total value of taxable supplies made by, and supplies of imported services made to, a person for the purposes of this section.

(5) A Category B registered person must immediately notify the CEO if they no longer satisfy subsection (3)(a).

(6) The CEO, either on notification under subsection (5), or on his or her own motion, may direct, by notice in writing, that a Category B registered person is changed to a Category A registered person with effect from the day following the end of the taxable period during which the direction was made by the CEO and subject to such conditions as the CEO may specify in the notice of change.

(7) The CEO may, by notice in writing, require a Category B registered person to be a Category A registered person if the person has regularly failed to comply their obligations under this Act.

Net VAT payable for a taxable period

51.—The net VAT payable by a registered person for a taxable period is calculated according to the following formula—

$$(A + B) - C$$

where—

- A** is the total of the following amounts—
- (a) the total amount of output tax receivable in respect of taxable supplies made by the person during the taxable period; and
 - (b) the total amount treated as output tax of the person for the period;
- B** is the total VAT that the registered person is liable for under section 8(1)(c) and (8) in respect of supplies of imported services made to the person during the taxable period; and
- C** is the total of the following amounts:
- (a) the total amount of input tax payable in respect of creditable acquisitions made by the person during the taxable period for which an input tax credit is allowed; and
 - (b) total input tax credit allowed to the person for the taxable period under sections 32(1), 34(2)(c), 37(5), 40(4), 46(3), 47(2), 48(2), 49(3), and 52(1).

PART 10—REFUNDS

Carry forward of excess input tax

52.—(1) Subject to subsections (3) and (4), and sections 53 and 54, if, for any taxable period of a registered person, component “**C**” of the formula in section 51 exceeds component “**(A + B)**” of the formula for the period, the excess is carried forward and allowed to the person as an input tax credit in the next following taxable period and any amount of the excess not credited in that period is carried forward and allowed as an input tax credit in the next following taxable period, and so on until the excess has been fully credited.

(2) If a registered person has an excess under subsection (1) carried forward under this section for more than one taxable period, the excess of the earliest taxable period is allowed first.

(3) Despite subsection (1), if an excess amount for a Category “**A**” registered person for a taxable period has not been fully credited after being carried forward for 4 taxable periods, the registered person may apply to the CEO, in the approved form, for a refund of the amount of the uncredited excess.

(4) Despite subsection (1), if an excess amount for a Category “**B**” registered person for a taxable period has not been fully credited after being carried forward for 2 taxable periods, the registered person may apply to the CEO, in the approved form, for a refund of the amount of the uncredited excess.

(5) If a registered person has made an application under subsection (3) or (4) and the CEO is satisfied that a refund is due to the person, the CEO must refund the amount within 45 days after the person lodged the refund application.

Refund of excess input tax credit without carry forward

53.—If the excess of a registered person referred to in subsection (1) is due to the person making zero-rated supplies as a regular feature of the taxable activity of the person, the CEO must, upon written application by the person, in the approved form, refund the excess within 45 days after the person lodged the refund application.

Time limit for an application for a refund of excess input tax

54.—(1) An application for a refund of excess input tax under this section must be made—

- (a) for a refund under section 51(3), within 2 years after the end of the fourth taxable period;
- (b) for a refund under section 51(4), within 2 years after the end of the second taxable period; or
- (c) for a refund under section 52, within 2 years after the date of filing of the VAT return for the taxable period to which the excess relates.

(2) If an application for a refund of excess input tax is not made within the relevant time limit specified in subsection (1), the amount of the uncredited input tax is reduced to zero.

Refunds for non-profit organisations, diplomatic missions, foreign governments and international organisations

55.—(1) Subject to subsection (2), the CEO may, on application, grant of a refund of part or all the VAT paid in relation to a taxable supply made to—

- (a) a diplomatic or consular mission, or a diplomat or consular official, to the extent that the mission, diplomat, or consular official is exempt from VAT under the Diplomatic Privileges and Immunities Act (Cap. 8);
- (b) a foreign government or international organisation to the extent that the foreign government or organisation is exempt from VAT under—
 - (i) an agreement between the Government of Fiji and the foreign government or international organisation for the provision of financial, technical, humanitarian, or administrative assistance to the Government; or
 - (ii) the Diplomatic Privileges and Immunities Act (Cap. 8); or
- (c) a non-profit organisation to the extent that the goods or services acquired in the taxable supply are solely for the purposes of providing charitable activities.

(2) An application for a refund under subsection (1) must be—

- (a) lodged in the approved form within 1 month after the time of the supply to which the application relates or within such further period as allowed by the CEO; and
- (b) accompanied by the following supporting documentation—
 - (i) a tax invoice or other evidence that the VAT for which the refund is sought was paid;
 - (ii) evidence of the applicant's entitlement to make an application for the refund under subsection (1); and
 - (iii) such other documentation that the CEO may require.

(3) The CEO may grant a refund under this section based on such conditions and subject to such restrictions as the CEO considers appropriate.

(4) The CEO may register a person entitled to a refund under this section in accordance with the Regulations.

(5) In this section:

"charitable activities" means activities consisting of the free distribution of food, meals, board, lodging, clothing, necessities, or amenities to any person in necessitous circumstances, but not including any activities relating to the conduct of a taxable activity; and

"international organisation" has the meaning in the Income Tax Act.

Tourist VAT refund scheme

56.—(1) Subject to subsection (2), the CEO must refund to a tourist the VAT paid by the tourist on a taxable supply of goods made to the tourist if—

- (a) the taxable supply of goods was made to the tourist by an approved licensed person;
- (b) subject to subsection (3), the taxable supply was made to the tourist no earlier than 2 months before the goods are to be taken out of Fiji to another country;
- (c) the consideration paid by the tourist for the taxable supply of the goods is equal to or greater than the prescribed amount;
- (d) at the time of the taxable supply of the goods to the tourist, the tourist completes an application, in the approved form, for a refund of the VAT paid on the taxable supply

- (e) the tourist has submitted the refund application form together with the goods and the supporting tax invoice to the proper Customs officer at a prescribed tourist VAT refund counter in prescribed premises for inspection and the officer has endorsed the application form before the goods are checked in or brought onto the aircraft or cruise ship as hand luggage; and
- (f) the tourist leaves Fiji with the goods as hand luggage or accompanied baggage on the same flight or cruise ship voyage as he or she is travelling.

(2) No refund is payable under this section in respect of following goods—

- (a) goods that have been partly consumed before the tourist leaves Fiji;
- (b) goods exported for business or commercial purposes, including samples;
- (c) goods that are to be exported by freight or mail as unaccompanied baggage; or
- (d) alcohol and tobacco products.

(3) If the tourist is the holder of a student's permit, the reference in subsection (1)(b) to “2 months” is treated as a reference to “4 months before the expiry of the student permit”.

(4) A proper Customs officer must endorse a refund application form submitted to the officer by a tourist if satisfied that the tourist is entitled to a refund under subsection (1).

(5) After the refund application form has been endorsed by the proper Customs officer—

- (a) the goods must not be taken out of the prescribed premises; and
- (b) the tourist must not part with possession of the goods or give the goods to any other person except to airline or cruise ship staff for checking in.

(6) A tourist must produce the endorsed refund application form to the financial institution that is located at the prescribed premises and the financial institution must pay the tourist the entitled amount in cash and in Fijian currency before the tourist leaves Fiji.

(7) In this section—

“approved licensed person” means a registered person licensed under the Regulations to make VAT-free taxable supplies of goods to tourists; and

“tourist” means an individual who—

- (a) is a resident of a country other than Fiji;
- (b) is the holder of a foreign passport;
- (c) is 13 years of age or above at the time of supply of the goods; and
- (d) if employed, is employed in a country other than Fiji.

VAT refund for film production company

57.—(1) A film production company issued with a certificate under the Income Tax (Film-making and Audio-visual Incentives) Regulations 2016 is entitled to a refund of the VAT payable by the company in respect of any qualifying expenditure incurred by the company under the Income Tax (Film-making and Audio-visual Incentives) Regulations 2016.

(2) The procedure for claiming a refund under subsection (1) is to be specified in the regulations.

PART 11—VAT DOCUMENTATION*Tax invoices*

58.—(1) Subject to subsections (2) and (3), a registered person making a taxable supply must, at the time of supply, issue the recipient of the supply with the original tax invoice for the supply.

(2) Unless requested by the recipient of a taxable supply, a registered person is not required to provide a tax invoice for a taxable supply if the total consideration for the supply is paid in cash and does not exceed the amount specified in the Regulations.

(3) A registered person who makes a supply of imported services that is subject to VAT under section 8(1)(c) must not provide a tax invoice to the recipient of the supply.

(4) A registered person may provide a simplified tax invoice for a taxable supply where—

- (a) the total consideration for the supply is paid in cash and does not exceed the amount specified in the Regulations; or
- (b) the supply is made by a registered person who is a retailer.

(5) A registered person liable for VAT under section 8(1)(c) and (8) in respect of a supply of imported services made to the person must, at the time of the supply, prepare a buyer-created tax invoice for the supply.

(6) A registered person may prepare a buyer-created tax invoice for a taxable supply made to the person by another registered person if—

- (a) the taxable supply is of a class of taxable supplies in respect of which the CEO has granted the recipient, or a class of recipients that includes the recipient, written approval to prepare a buyer-created tax invoice for the taxable supply;
- (b) the supplier and the recipient have agreed, in writing, that the supplier will not issue a tax invoice with respect to the taxable supply;

- (c) the original of the buyer-created tax invoice is provided to the supplier and a copy is retained by the recipient; and
- (d) the recipient complies with any other conditions that may be imposed by the CEO in relation to the preparation of a buyer-created tax invoice under this subsection.

(7) For the purposes of this Act, where a registered person has prepared a buyer-created tax invoice for a taxable supply in accordance with subsection (6)—

- (a) the buyer-created tax invoice is treated as a tax invoice issued by the supplier to the recipient for the taxable supply; and
- (b) any tax invoice issued by the supplier in respect of the taxable supply is not a tax invoice.

(8) A tax invoice, simplified tax invoice, and a buyer-created tax invoice must include the particulars specified in the Regulations.

Credit and debit notes

59.—(1) A registered person must issue a credit or debit note, as the case may be, to a registered person in the circumstances specified in Part 8.

(2) A registered person must issue a credit or debit note to the recipient of a supply by the end of the taxable period in which the adjustment event to which the note relates occurred.

(3) A credit note and a debit note must include the particulars specified in the Regulations.

Requests for VAT documentation

60.—(1) A registered person who, for any reason, has not been issued with an original tax invoice, credit note, or debit note as required under this Part may make a written request to the supplier to issue the tax invoice, credit note, or debit note to the person.

(2) A request under subsection (1) must be made—

- (a) for a tax invoice, within 60 days of the time of the supply to which the tax invoice relates; or
- (b) for a credit note or debit note, within 60 days of the date of the adjustment event to which the credit note or debit note relates.

(3) A registered person receiving a request under subsection (1) must comply with the request within 14 days of receiving the request.

(4) Where a registered person claims to have lost the original tax invoice issued to the person for a taxable supply, or the original credit or debit note issued to the person for an adjustment event, the registered person who made the supply may issue a copy of the tax invoice, credit note, or debit note.

(5) A copy of a tax invoice, credit note, or debit note issued to a registered person under subsection (4) shall be clearly marked “copy”.

Maintenance of VAT documentation

61.—(1) A registered person must issue only one original tax invoice for a taxable supply, or one original credit note or debit note for an adjustment event, but a copy clearly marked as such may be provided to a registered person in accordance with section 60(4) who claims to have lost the original.

(2) A person must not issue a tax invoice, credit note, or debit note other than in the circumstances specified in this Part.

(3) The following documents must be maintained by a registered person for the purposes of this Act and the Tax Administration Act—

- (a) the original of all tax invoices, credit notes, and debit notes received by the person;
- (b) a copy of all tax invoices, credit notes, and debit notes received by the person under section 59(4);
- (c) a copy of all tax invoices, credit notes, and debit notes issued by the person;
- (d) customs documentation relating to imports and exports of goods by the person; and
- (e) any buyer-created tax invoices prepared by the person in respect of taxable supplies or supplies of imported services made to the person.

(4) The documents referred to in subsection (3)(c) must be maintained in chronological order.

VAT documentation for supplies by agents

62.—(1) If a taxable supply is made by, or to, an agent on behalf of a principal and both the agent and principal are registered persons, any tax invoice, credit note, or debit note required to be issued by, or to, the principal may be issued by, or to, the agent, using the name, address, and VAT registration number of the agent.

(2) If a taxable supply is made by, or to, an agent on behalf of a principal and the principal is a registered person but the agent is not, any tax invoice, credit note, or debit note required to be issued by, or to, the principal may be issued by, or to, the agent, but using the name, address, and VAT registration number of the principal.

(3) If a taxable supply is made by, or to, an agent on behalf of a principal, any tax invoice, credit note, or debit note required to be issued under this Act in relation to the supply can be issued once only and must not be issued by, or to, both the agent and the principal.

(4) A tax invoice, credit note, or debit note issued by, or to, an agent in accordance with this section is treated as having been issued by, or to, the principal, as the case may be, for the purposes of this Act.

PART 12—VAT PROCEDURE

Application of Tax Administration Act

63.—The Tax Administration Act applies for the purposes of the administration of this Act but subject to this Part.

VAT returns

64.—A registered person must file a VAT return for each taxable period on or before the last day of the month following the end of the period.

Due date for payment of VAT

65.—(1) The net VAT payable by a registered person for a taxable period is due and payable by the due date for filing the VAT return for that period.

(2) The VAT payable by an importer in respect of a taxable import is due and payable at the time of import.

Collection of VAT on imports

66.—(1) The CEO—

- (a) must collect VAT payable under this Act on a taxable import at the time of import and must, at that time, obtain the name and taxpayer identification number (if any) of the importer, the invoice values in respect of the import, and a copy of the customs declaration; and
- (b) may make arrangements for the function referred to in paragraph (a) to be performed on behalf of the CEO by the postal authority in respect of imports made by post.

(2) Except when a contrary intention appears and for the purposes of the collection of VAT payable on a taxable import, the provisions of the Customs legislation relating to the import, transit, coastwise carriage, clearance of imported goods, and the payment and recovery of duty, in so far as they are relevant and with any necessary modifications made, apply in relation to the VAT payable on a taxable import.

(3) For the purposes of the collection of the VAT payable on a taxable import, the CEO may exercise any power conferred on the CEO by the Customs legislation as if the reference to duty in that legislation included a reference to VAT payable on a taxable import under this Act.

(4) In this section, “postal authority” means the Postal Authority of Fiji appointed under the Posts and Telecommunications Act 1998.

Assessment of recipient of a supply

67.—(1) This section applies where a registered person has, in consequence of misrepresentation or fraud by the recipient of a supply, incorrectly treated the supply as—

- (a) an exempt supply;
- (b) a zero-rated supply; or
- (c) not otherwise subject to VAT.

(2) Where this section applies, the CEO may assess the recipient of the supply for payment of the VAT due in respect of the supply and any late payment penalty imposed as a result of the incorrect VAT treatment of the supply.

(3) The CEO must serve a notice of an assessment made under subsection (1) on the recipient of the supply specifying—

- (a) the reason for making the assessment under subsection (1);
- (b) the VAT and late payment penalty payable under the assessment;
- (c) the due date for payment of the VAT and late payment penalty; and
- (d) the time, place, and manner of challenging the assessment as provided for under the Tax Administration Act.

(4) Subsection (2) does not preclude the CEO from recovering the whole or part of the VAT due in respect of the supply together with any late payment penalty from the registered person who made the supply and—

- (a) any amount recovered from the recipient of the supply is credited against the liability of the supplier in respect of the supply; and
- (b) any amount recovered from the supplier is credited against the liability of the recipient of the supply,

but the CEO may not recover more than the total amount of VAT and late payment penalty payable in relation to the supply.

(5) A supplier who pays VAT and late payment penalty assessed to the recipient of the supply under subsection (1) may recover the amount from the recipient of the supply.

(6) An amount assessed under this section is treated, for all purposes of this Act and the Tax Administration Act, as VAT charged under this Act.

(7) Nothing in the Tax Administration Act limits the power of the CEO to amend an assessment, including a self-assessment, of the registered person making the supply to give effect to subsection (4).

VAT representative of foreign service provider

68.—(1) The CEO may require a person who is required to apply for registration under section 13 but who does not conduct a taxable activity through a fixed place of business in Fiji to do either or both of the following—

- (a) to appoint a VAT representative in Fiji;
- (b) lodge security with the CEO in accordance with the Tax Administration Act.

(2) A VAT representative appointed under subsection (1) is responsible for doing all things required under this Act of the person they represent, including applying for registration, the filing of VAT returns, and the payment of VAT.

(3) The registration of a VAT representative must be made in the name of the person they represent.

(4) A person may be a VAT representative for more than one person but must have a separate registration for each person they represent.

(5) A VAT representative of a person under this section is—

- (a) a representative of the person for the purposes of the Tax Administration Act; and
- (b) is personally liable for the VAT liability of the person they represent.

(6) The CEO may specify the mode, manner, and requirements for appointment of a VAT representative and the responsibilities of the representative.

PART 13—MISCELLANEOUS PROVISIONS*Branches and divisions*

69.—(1) Subject to subsection (2)—

- (a) a taxable activity conducted by a person in branches or divisions is treated as a single taxable activity for the purposes of this Act; and
- (b) a person who conducts a taxable activity in branches or divisions must be registered in the name of the person and not in the names of the branches or divisions.

(2) A Government entity may register its branches or divisions separately as if they were separate persons for the purposes of this Act.

Retail prices to be displayed as VAT-inclusive

70.—(1) For the purposes of this Act, the price of all goods and services supplied at the retail level—

- (a) must be displayed as inclusive of the VAT (if any) chargeable on the supply; and
- (b) the VAT component of the price must not be shown as a separate item.

(2) Despite subsection (1) and subject to subsection (3), where any tourism publicity material is, or will be, utilised outside Fiji to advertise the supply of any goods and services by a registered person, the price of those goods and services advertised may be displayed as exclusive of VAT (if any) chargeable on the supply.

(3) Any tourism publicity material that displays a price as exclusive of VAT must clearly state that the price displayed is subject to VAT.

(4) The Commerce Commission, established under section 7 of the Commerce Commission Act 2010, is responsible for the administration of this section and section 58 as if it is a function of the Commission specified under section 15 of the Commerce Commission Act 2010.

Continuity of partnerships and unincorporated bodies

71.—(1) This section applies where—

- (a) a partnership or other unincorporated body of persons is dissolved or otherwise ceases to exist as a result of the retirement or withdrawal of one or more, of its partners or members, or of the admission of a new partner or member;
- (b) a new partnership or body comes into existence consisting of the remaining members, or of the existing or some of the existing members and one or more new members; and
- (c) the new partnership or body continues to carry on the same taxable activity that was carried on by the dissolved partnership or body.

(2) For the purposes of this Act, the former partnership or unincorporated body and the new partnership or body is treated as one and the same, unless the CEO directs otherwise.

*Death or insolvency
of registered person; and mortgagee-in-possession*

72.—(1) Subsection (2) applies where the following conditions are satisfied—

- (a) a registered person has died or the estate of a registered person is sequestered; and
- (b) either of the following applies—

- (i) the taxable activity previously carried on by the registered person is carried on by, or on behalf of, the executor or trustee of the person's estate; or
- (ii) anything is done in connection with the termination of the taxable activity of the registered person.

(2) Where the conditions in subsection (1) are satisfied, the estate of the registered person, as represented by the executor or trustee of the estate, is, for the purposes of this Act, treated as continuing to carry on the taxable activity of the registered person.

(3) Where a mortgagee takes possession of land or other property previously mortgaged by a mortgagor who is a registered person and, while in possession of the land or property, the mortgagee carries on the taxable activity previously carried on by the mortgagor in relation to the land or other property, the mortgagee is, to the extent of, and for the duration that it carries on that taxable activity, treated as the mortgagor.

VAT avoidance schemes

73.—(1) This section applies where all the following conditions are satisfied—

- (a) a scheme has been entered into or carried out;
- (b) a person has obtained a tax benefit in connection with the scheme;
- (c) having regard to the substance of the scheme, it would be concluded that a person, or one of the persons, who entered into or carried out the scheme did so for the sole or dominant purpose of enabling the person to obtain the tax benefit referred to in paragraph (b).

(2) Where this section applies, the CEO must determine the VAT liability of the person who obtained the tax benefit, and of any other person related to the scheme, as if the scheme had not been entered into or carried out.

(3) Where the CEO has made a determination under subsection (1), the CEO must serve a notice or notices of assessment, including an amended assessment under the Tax Administration Act, to give effect to the determination on the person or persons whose VAT liability is affected by the determination.

(4) Despite anything in the Tax Administration Act, a notice or notices of assessment under subsection (3) must be served within 6 years from the last day of the taxable period to which the determination relates.

(5) An assessment made under this section is a taxation assessment for all purposes of the Tax Administration Act.

(6) In this section—

“scheme” includes

- (a) an agreement, arrangement, or promise, whether express or implied, whether or not legally enforceable in legal proceedings; and
- (b) any undertaking, plan, proposal, course of action, or course of conduct whether undertaken unilaterally or by 2 or more persons; and

“tax benefit” means—

- (a) a reduction in the liability of a person to pay VAT;
- (b) an increase in the entitlement of a person to an input tax credit;
- (c) an entitlement to a refund of VAT;
- (d) a postponement of a liability for the payment of VAT;
- (e) an acceleration of an entitlement to an input tax credit;
- (f) any other advantage arising because of a delay in the payment of VAT or an acceleration of the entitlement to an input tax credit;
- (g) anything that causes a taxable supply, taxable import, or supply of imported services not to be a taxable supply, taxable import, or supply of imported services, as the case may be; or
- (h) anything that gives rise to an input tax credit entitlement for a creditable acquisition that is used, or is to be used, other than in making taxable supplies.

Currency translation

74.—(1) An amount taken into account under this Act must be expressed in Fijian dollars.

(2) Subject to subsection (3), if an amount is expressed in a currency other than Fijian dollars—

- (a) for an import of goods, the amount must be converted into Fijian dollars at the exchange rate applicable under the Customs legislation for the purposes of calculating the duty payable on the import; or
- (b) for any other case, the amount must be converted into Fijian dollars at the exchange rate applying between the foreign currency and Fijian dollars on the date the amount is taken into account for the purposes of this Act.

(3) A supplier of remote services to which section 26(2)(b) applies may elect to convert foreign currency amounts to Fijian dollars—

- (a) in accordance with subsection (2)(b);
- (b) on the last day of the relevant taxable period; or

(c) on such other basis as agreed with the CEO.

(4) An election made by supplier of remote services under subsection (3) applies to all supplies of remote services and the supplier cannot revoke the election until at least one year after making the election, unless the CEO agrees otherwise.

(5) For the purposes of this section, “exchange rate” means the telegraphic transfer buying rate issued by a financial institution.

PART 14—FINAL PROVISIONS

Regulations

75.—(1) The Minister may make regulations—

- (a) on matters specified in the Act to be made by regulations;
- (b) concerning particular types of supplies or the allowance of input tax credits;
- (c) the application of a change in the treatment of a supply resulting from an amendment to this Act, including a change in the rate of VAT applicable to the supply or the characterisation of the supply; or
- (d) for the proper and efficient administration of the Act.

(2) Without limiting the generality of subsection (1), regulations made under that subsection may—

- (a) contain provisions of a saving or transitional nature consequent upon the making of this Act; or
- (b) specify appropriate penalties for the contravention of the regulations.

(3) Transitional regulations made within 6 months after the commencement of this Act may provide that they take effect from the date on which the Act comes into force.

Transitional

76.—(1) The repealed law continues to apply to taxable periods prior to the commencement of this Act.

(2) A reference in this Act to a previous taxable period includes, when the context requires, a reference to a taxable period under the repealed law.

Repealed law

77.—The Value Added Tax Act 1991 is hereby repealed.

SCHEDULE 1*(section 9)***ZERO-RATED SUPPLIES****PART 1—EXPORTS OF GOODS**

1. Subject to paragraph 2, a supply of goods is a zero-rated supply if—
 - (a) the supplier has entered the goods for export under the Customs legislation and the goods have been exported from Fiji by the supplier;
 - (b) the supply is a supply of ship’s stores for use or consumption outside Fiji on—
 - (i) an aircraft or ship going to a destination outside Fiji; or
 - (ii) a fishing vessel going outside Fiji’s fisheries waters; or
 - (c) the supply of goods is made in the course of repairing, renovating, modifying, or treating temporarily imported goods under the Customs legislation if the first-mentioned goods—
 - (i) are wrought into, affixed to, attached to, or otherwise form part of the temporarily imported goods; or
 - (ii) are stores that become unusable or worthless as a direct result of being used in the repair, renovation, modification, or treatment process.
2. A supply of goods is not a zero-rated supply under paragraph (1)(a) or (b) if the goods have been or will be re-imported into Fiji.

3. In this Part—

“export”, relation to goods, means the delivery of the goods to, or the making available of the goods at, an address outside Fiji as evidenced by documentary proof acceptable to the CEO;

“Fiji’s fisheries waters” has the meaning under the Fisheries Act (Cap. 158);

“fishing vessel” has the meaning under the Fisheries Management Act;

“ship’s stores” has the meaning under the Customs legislation; and

“temporarily imported goods” means goods that are temporarily imported under the Customs legislation.

PART 2 – EXPORTS OF SERVICES

1. A supply of services is a zero-rated supply if—
 - (a) the services are for use or consumption outside Fiji as evidenced by documentary proof acceptable to the CEO;
 - (b) the services are supplied directly in connection with goods that are temporarily imported under the Customs legislation;
 - (c) the services are international transport services, other than ancillary transport services;
 - (d) the services are the transport of passengers by aircraft from a place in Fiji to another place in Fiji to the extent that the transport constitutes “international carriage” for the purposes of the [Carriage by Air Act];
 - (e) the services are the transport of passengers by sea from a place in Fiji to another place in Fiji as part of a cruise if the initial place of departure or final destination of the cruise is a place outside Fiji;
 - (f) the services are the transport of goods from one place in Fiji to another place in Fiji to the extent that the services are supplied by the same supplier as part of the supply of services to which subparagraph (c) applies; or
 - (g) the services are insuring, arranging for insuring, or arranging for the transport of passengers or goods to which subparagraph (c), (d), (e), or (f) applies.

2. A supply of services is not a zero-rated supply under paragraph 1(a) if the services:
 - (a) consist of the facilitation of inbound tour operations;
 - (b) relate to real property in Fiji.

3. For the purposes of paragraph 2, services that consist of the facilitation of inbound tour operations are services provided in packaging one or more tourism products or services in Fiji and selling them outside Fiji to a person who is not a registered person.

4. In this Part—

“ancillary transport services” means stevedoring services, lashing and securing services, cargo inspection services, preparation of customs documentation, container handling services, and the storage of transported goods or goods to be transported;

“international transport services” means the services, other than ancillary transport services, of transporting goods or passengers by sea or air—

 - (a) from a place outside Fiji to another place outside Fiji, including, if relevant, any part of the transport that takes place across the territory of Fiji;
 - (b) from a place outside Fiji to a place within Fiji as the final destination for the transportation; or

- (c) from a place within Fiji as the place where the transportation commenced to a place outside Fiji;

“temporarily imported goods” means goods that are temporarily imported under the Customs legislation; and

“tourism product or services” includes accommodation, meals, transport, tours, or other tourist activities in Fiji.

PART 3 – DOMESTIC ZERO-RATED SUPPLIES

1. The following supplies are zero-rated supplies—
 - (a) A supply of goods or services as part of the transfer of a taxable activity, or a part of a taxable activity, as a going concern by a registered person to another registered person if the following conditions are satisfied—
 - (i) all the goods or services necessary for the continued operation of the taxable activity or part of the taxable activity are supplied to the transferee;
 - (ii) the transferor carries on the taxable activity until the day of transfer;
 - (iii) the transferee will not carry on the taxable activity to make exempt supplies and will not use the goods or services for private use; and
 - (iv) the transferor and transferee agree in writing, on or before the date of the transfer, that the transfer will be treated as a transfer of a taxable activity or part of a taxable activity as a going concern for the purposes of this Act;
 - (v) the transferor notifies the CEO, in the approved form, and within 28 days of the transfer or within such further time as the CEO may allow, that the transfer is treated as a transfer of an enterprise, or a part of an enterprise, as a going concern for the purposes of this Act.
 - (b) a supply of goods by a registered person to an inbound passenger in the international disembarkation concourse of a prescribed airport;
 - (c) a supply of transport services for the carriage of passengers and goods from a place in Fiji to another place in Fiji by an omnibus licensed as a public service vehicle and constitutes “carriage” for the purposes of the Land Transport Act 1998.
2. In this Part, “omnibus” and “passenger” have the meanings in the Land Transport Act 1998.

SCHEDULE 2
(section 10)

EXEMPT SUPPLIES

1. The following supplies are exempt supplies—
 - (a) a supply of financial services;
 - (b) a supply of an education course by an education institution, including a supply by the supplier of the course of a textbook, materials; or equipment to a student undertaking the course the cost of which is included in the tuition fee for the course; and
 - (c) a supply of donated goods or services by a non-profit organisation; and
 - (d) a supply by way of a lease of residential premises, other than a lease for a term of less than 2 months.

2. In this Schedule —

“donated goods or services”, in relation to a non-profit organisation, means goods or services that are gifted to the organisation and that are intended for use in carrying on or carrying out the purposes of the organisation;

“education institution” means—

- (a) a pre-school registered by the Ministry of Education;
- (b) a registered school under the Education Act (Cap. 262);
- (c) a higher education institution registered under the Higher Education Promulgation 2008;

“financial services” means —

- (a) the granting, negotiating, and dealing with loans, credit, credit guarantees, and any security for money, including management of loans, credit, or credit guarantees by the grantor;
- (b) transactions concerning money, deposit and other accounts, payments, transfers, debts, cheques, or negotiable instruments, other than debt collection and factoring;
- (c) transactions relating to financial derivatives, forward contracts, options to acquire financial instruments, and similar arrangements;
- (d) transactions relating to shares, stocks, bonds, and other securities, other than custody services;

- (e) the management of investment funds;
- (f) the provision, or transfer of ownership, of a life or health insurance policy or the provision of reinsurance in respect of any such policy;
- (g) the provision, or transfer of ownership, of an interest in a scheme for the payment or granting of benefits by a benefit fund, provident fund, pension fund, retirement annuity fund, or preservation fund;
- (h) a supply of credit under a hire purchase agreement, if the credit for the goods is provided for as a separate charge and the charge is disclosed to the recipient of the goods; or
- (i) the arranging of any of the services in paragraphs (a) to (h); and

“holiday or hotel accommodation” means –

- (a) accommodation in a hotel, motel, inn, boarding house, guest house, hostel, or similar establishment in which lodging is regularly or normally provided to multiple persons at a daily, weekly, monthly, or other periodic charge; or
- (b) accommodation not covered by paragraph (a) if the accommodation is held out for use for short term occupation by individuals other than as their main residence;

“lease” includes a licence but does not include a long-term lease;

“life policy” has the meaning in the Insurance Act 1998;

“long-term lease” means a lease with a term of [] years or more; and

“residential premises” means real property occupied or capable of being occupied as a private residence, but not including hotel or holiday accommodation.

SCHEDULE 3
(Section 11)

EXEMPT IMPORTS

1. The following imports are exempt imports—
 - (a) an import of goods exempt from VAT under the following Concession Code Numbers in Parts 2 and 3 of Schedule 2 to the Customs Tariff Act 1986—
 - (i) 102 (family planning goods imported by non-profit bodies)
 - (ii) 108 (trade samples);
 - (ii) 110 (goods imported for disabled persons);
 - (iv) 111 (artificial parts of the body, corrective spectacles, invalid carriages, etc);
 - (v) 124 (wedding apparel imported by foreign couples or brought into the country by other persons for the brides and grooms that will be worn by wedding couples to get married in Fiji)
 - (vi) 126 (issued and circulated money);
 - (vii) 141 (hybrid and electric charging vessels);
 - (viii) 201A (the President and his or her family);
 - (ix) 203 (diplomatic missions);
 - (x) 204 (an international organisation to which the provision of section 2 of the Diplomatic Privileges and Immunities Act 1971 apply);
 - (xi) 205 (members of a State organisation or an agency), 206 (consulates), and 207 (consular officers);
 - (xii) 212 (a private individual);
 - (xiii) 215 (charitable and religious organisations);
 - (xiv) 216 (the owner, temporary owner, or trustees of goods of a deceased Fiji resident);
 - (xv) 218 and 219 (passengers disembarking in Fiji);
 - (xvi) 220 (Fiji residents);
 - (xvii) 222 (a hospital or medical institution);

- (xviii) 223 (a university, school or other educational institution);
 - (xix) 228 (tourists); and
 - (xx) 292 (approved company under the Income Tax (Medical Investment Incentive) Regulations 2016);
- (b) an import of electoral equipment, including Biometric Voter Registration Systems (BVRS) and accessories thereto;
 - (c) an import of an aircraft used for commercial air transport operations; and
 - (d) an import of a ship for coasting-trade under the Maritime Transport Act 2013.
- 2 In this Schedule, “commercial air transport operation” has the meaning in the Air Navigation Regulations 1981.

