



FIJI REVENUE AND CUSTOMS SERVICE

TAX ADMINISTRATION ACT 2009

Revised up to 1st August 2022 [with Legislative History]

DISCLAIMER

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Table of Amendments

Tax Administration Act 2009 (No 50 of 2009)¹ commenced on 1 January 2010 (except sections 61-67 which have not commenced), as amended by:

Amending Legislation	Date of Commencement
Tax Administration (Budget Amendment) Decree 2010 (No 4 of 2010)	1 January 2010
Tax Administration (Amendment) Decree 2010 (No 55 of 2010)	15 August 2010
Tax Administration (Budget Amendment) Decree 2010 (No 69 of 2010)	1 January 2011
Fiji Islands Revenue and Customs Authority (Amendment) (No 2) Decree 2011 (No 18 of 2011)	1 March 2011
Capital Gains Tax Decree 2011 (No 23 of 2011)	1 May 2011
Fringe Benefit Tax Decree 2012 (No 7 of 2012)	1 January 2012
Tax Administration (Amendment) Decree 2012 (No 9 of 2012)	1 January 2012
Tax Administration (Amendment) (No 2) Decree 2012 (No 38 of 2012)	1 January 2012
Tax Administration (Amendment) (No 3) Decree 2012 (No 83 of 2012)	1 January 2013
Tax Administration (Amendment) Decree 2013 (No 29 of 2013)	1 November 2013

¹ This was promulgated as Decree No 50 of 2009. In accordance with section 3 of Interpretation Act 1967, the word "Decree" used with reference to any such Decree in the title or provisions of any written law or in any document or legal proceedings may be replaced with the word "Act".

Tax Administration (Budget Amendment) Act 2014 (No 3 of 2014)	1 January 2015
Tax Administration (Amendment) Act 2015 (No 12 of 2015)	4 September 2015
Tax Administration (Budget Amendment) Act 2015 (No 18 of 2015)	s 8: 6 November 2015; remainder: 1 January 2016
Income Tax Act 2015 (No 32 of 2015)	s 9 and Pt 6 have not yet commenced; remainder: 1 January 2016
Tax Administration (Budget Amendment) Act 2016 (No 21 of 2016)	1 August 2016
Revised Edition of the Laws (Consequential Amendments) Act 2016 (No 31 of 2016)	1 December 2016
Tax Administration (Budget Amendment) Act 2017 (No 27 of 2017)	1 August 2017
Fiji Revenue and Customs Authority (Budget Amendment) Act 2017 (No 38 of 2017)	1 August 2017
Personal Property Securities Act 2017 (No 45 of 2017) ²	31 May 2019
Tax Administration (Amendment) (No 2) Act 2017 (No 48 of 2017)	20 September 2017
Tax Administration (Budget Amendment) Act 2018 (No 13 of 2018)	1 August 2018
Public Health (Budget Amendment) Act 2018 (No 31 of 2018)	1 August 2018
Tax Administration (Budget Amendment) Act 2019	1 August 2019
Income Tax (Budget Amendment) Act 2019 (No 9 of 2019)	1 August 2019
Tax Administration (COVID-19 Response) (Amendment) Act 2020 (No 2 of 2020)	1 April 2020
Tax Administration (Budget Amendment) Act 2020 (No 13 of 2020)	1 August 2020
Stamp Duties (Repeal) Act 2020 {No 16 of 2020) Consequential Amendments	1 August 2020
Service Turnover Tax (Repeal) Act 2020 (No 17 of 2020) Consequential Amendments	1 August 2020
Business Licensing (Repeal) Act 2020 (No 28 of 2020)	1 August 2020
Tax Administration (Budget Amendment) Act 2021 (No 27 of 2021)	1 August 2021
Tax Administration (Revised Budget Amendment) Act 2022 (No 6 of 2022)	1 April 2022

² The Personal Property Securities Act 2017 (No 45 of 2017) has not commenced and its amendments have not been incorporated.

Environment and Climate Adaptation Levy (Revised Budget 1 April 2022
Amendment) Act 2022 [No. 10 of 2022]

Tax Administration (Budget Amendment) (No. 2) Act 2022 [No. 1 August 2022
28 of 2022]

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PART 1 PRELIMINARY

[Sections 1-2]

[Section 1] Short Title and Commencement

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

[Section 2] Interpretation

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

approved form means the approved form specified in section 68;

authorised officer

Legislative History:

Act 32 of 2015 (s141) – from 1 January 2016 – definition was repealed

Decree 50 of 2009: from 1 January 2010 – definition of “authorized officer” read as:

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

Authority

Legislative History:

Act 31 of 2016 (s209) – from 1 December 2016 – definition was repealed

Decree 50 of 2009: from 1 January 2010 – definition of “Authority” read as:

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

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

Legislative History:

Act 32 of 2015 (s141) – from 1 January 2016 – definition was inserted

Capital Gains Tax Decree

Legislative History:

Act 32 of 2015 (s141) – from 1 January 2016 – definition was repealed

Decree 50 of 2009: from 1 January 2010 – definition of “Capital Gains Tax Decree” read as:

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

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

Legislative History:

Act 38 of 2017 (s7) – from 1 August 2017 – definition of CEO amended to substitute “Fiji Revenue and Customs Authority” to “Fiji Revenue and Customs Service”

Decree 18 of 2011 (s4) – from 1 March 2011- definition of CEO amended to substitute “Fiji Islands Revenue and Customs Authority” to “Fiji Revenue and Customs Authority”

collection agent means any person defined under section 24(1);

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

or wishes the company or its directors are accustomed, or under an obligation, whether formal or informal, to act;

Legislative History:

Act 32 of 2015 (s141) – from 1 January 2016 – definition was repealed and substituted with current provision

Decree 50 of 2009: from 1 January 2010 – definition of “controlling interest” read as:

“controlling interest” means controlling interest as defined in the Income Tax Act;

**customs and excise
legislation**

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

data storage device

Legislative History:

Act 13 of 2018 (w2) – from 1 August 2018 – definition was repealed

Decree 50 of 2009: from 1 January 2010 – definition of “data storage device” read as:

“data storage device” includes electronic data storage device;

**Environment and Climate
Adaptation Levy**

means the Environment and Climate Adaptation Levy payable under the Environment and Climate Adaptation Levy Act 2015;

Legislative History:

Act 10 of 2022 – from 1 April 2022 - Section 2 of the Tax Administration Act 2009 is amended in the definition of “Environment and Climate Adaptation Levy” by deleting “and the Superyacht Charter Act 2010”.

Act 27 of 2017 (s2) – from 1 August 2017 – definition was inserted

**Fiji Revenue and Customs
Authority Act**

Legislative History:

Act 31 of 2016 (s209) – from 1 December 2016 – definition was repealed

Decree 50 of 2009: from 1 January 2010 – definition of “Fiji Revenue and Customs Authority Act” read as:

“Fiji Islands Revenue and Customs Authority Act” means the Fiji Islands Revenue and Customs Authority Act 1998;

file

means make, furnish, lodge, provide, send or deliver;

financial institution

means an institution involved in the business or activity of—

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

and index instruments, commodity futures trading and transferable securities; and
(h) individual and collective portfolio management and advice.

Legislative History:

Decree 55 of 2010 (s2) – from 15 August 2010 – definition was inserted

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

Legislative History:

Act 32 of 2015 (s141) – from 1 January 2016 – definition was amended by deleting "Fringe Benefit Tax Decree" and substituting "Income Tax Act" in the definition of "Fringe Benefit Tax"

Decree 9 of 2012 (s2) – from 1 January 2012 – rearranged in alphabetical order

Decree 7 of 2012(s24) – from 1 January 2012 – definition inserted as:

"Fringe Benefit Tax" means Fringe Benefit Tax imposed under the Fringe Benefit Tax Decree;

Fringe Benefit Tax Decree

Legislative History:

Act 32 of 2015 (s141) – from 1 January 2016 – definition was repealed

Decree 9 of 2012 (s2) – from 1 January 2012 – rearranged in alphabetical order

Decree 7 of 2012(s24) – from 1 January 2012 – definition inserted as:

"Fringe Benefit Tax" means Fringe Benefit Tax imposed under the Fringe Benefit Tax Decree;

Gambling Turnover Tax Act

[def rep Act 31 of 2016 s 209, effective 1 December 2016]

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

Hotel Turnover Tax Act

Legislative History:

Decree 9 of 2012 (s2) – from 1 January 2012 – definition repealed

Decree 50 of 2009 – from 1 January 2010 – definition read as:

"Hotel Turnover Tax Act" means the Hotel Turnover Tax Act (Act No. 5 of 2006);

HTT

Legislative History:

Decree 9 of 2012 (s2) – from 1 January 2012 – definition repealed

Decree 50 of 2009 – from 1 January 2010 – definition read as:

"HTT" means hotel turnover tax imposed under the Hotel Turnover Tax Act;

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

Income Tax Act

Legislative History:

Act 31 of 2016 (s209) – from 1 December 2016 – definition was repealed

Decree 50 of 2009 – from 1 January 2010 – definition read as:

"Income Tax Act" means the Income Tax Act (Cap. 201);

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

Legislative History:

Act 31 of 2016 (s209) – from 1 December 2016 – definition was amended by deleting "the Judicial Service Commission established under the Administration of Justice Decree 2009" and substituting "Judicial Services Commission continued under the Constitution of the Republic of Fiji";

Decree 50 of 2009 – from 1 January 2010 – definition read as:

"Judicial Service Commission" means the Judicial Service Commission established under the Administration of Justice Decree 2009

Land Sales Act 1974

Legislative History:

Act 23 of 2011 (s21) – from 1 May 2011 – definition was repealed

Decree 50 of 2009 – from 1 January 2010 – definition read as:

"Land Sales Act" means the Land Sales Act (Cap. 137);

Minister means the Minister responsible for finance;

minor means action that is insignificant, negligible or inconsequential;

objection decision means the decision referred to in section 16(6);

Legislative Authority:

Act 13 of 2018 (s2) – from 1 August 2018 – definition was amended to read as current provision

Decree 50 of 2009 – from 1 January 2010 – definition read as:

"objection decision" means the decision referred to in section 16(5)

Permanent Secretary means the Permanent Secretary responsible for Finance;

Legislative Authority:

Act 31 of 2016 (s209) – from 1 December 2016 – definition was inserted

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

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

Legislative Authority:

Act 29 of 2013 (s2) – from 1 November 2013 - definition was inserted

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

representative means representative defined in section 41(1);

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

Legislative History:

Act 31 of 2016 (s209) – from 1 December 2016 – definition was amended to read as current provision

Decree 50 of 2009 – from 1 January 2010 – definition read as:

"resident" means resident as defined in the Income Tax Act;

reviewable decision means—
(a) an objection decision;
(b) a decision relating to the registration or cancellation of the registration of a tax agent; or
(c) a decision made by the CEO under section 12 on an application for an amendment to a self-assessment;

Legislative Authority:

Act 13 of 2018 (s2) – from 1 August 2018 – definition was amended to read as current provision

Decree 50 of 2009 – from 1 January 2010 – definition read as:

"reviewable decision" means—

(a) an objection decision; or

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

self-assessment means an assessment treated as having been made under section 8;

Legislative Authority:

Act 13 of 2018 (s2) – from 1 August 2018 – definition was amended to read as current provision

Decree 50 of 2009 – from 1 January 2010 – definition read as:

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

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

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

Service Turnover Tax Act

Legislative History:

Act 31 of 2016 (s209) – from 1 December 2016 – definition was repealed

Decree 9 of 2012 – from 1 January 2012 – definition was inserted as:

"Service Turnover Tax Decree" means the Service Turnover Tax Decree 2012;

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

Legislative History:

Decree 29 of 2013 (s2) – from 1 November 2013 – definition inserted

STT

Legislative History:

Act 17 of 2020 - from 1 August 2020 – definition was repealed

Decree 9 of 2012 – from 1 January 2012 – definition was inserted as:

"STT" means Service Turnover Tax imposed under the Service Turnover Tax Decree;"

tax means an amount payable under a tax law;

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

Tax Agents' Board or Board means the Tax Agents' Board established under section 110;

Legislative History:

Act 31 of 2016 (s209) – from 1 December 2016 – definition was amended to read as current provision

Decree 50 of 2009 – from 1 January 2010 – definition read as:

"Tax Agents Board" means the Tax Agents' Board established under section 110;

tax assessment means an assessment or determination listed in Schedule 1;

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

Legislative History:

Act 18 of 2015 (s2) – from 1 January 2016 – definition inserted

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

Legislative History:

Act 31 of 2016 (s209) – from 1 December 2016 – definition was amended to read as current provision

Decree 50 of 2009 – from 1 January 2010 – definition read as:

"Tax Court" means the Tax Court established under section 90;

tax decision means—

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

Legislative History:

Act 13 of 2018 – from 1 August 2018 – definition reads as current provision

Decree 50 of 2009 – from 1 January 2010 – definition read as:

"tax decision" means –

(a) a tax assessment; or

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

tax law

means a law listed in Schedule 2;

tax officer

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

Legislative History:

Act 38 of 2017 (s7) – from 1 August 2017 – definition amended to substitute "Fiji Revenue and Customs Authority" to "Fiji Revenue and Customs Service"

Act 31 of 2016 (s209) – from 1 December 2016 – definition was amended by deleting "of the Authority" and substituting "of the Fiji Revenue and Customs Authority"

Decree 18 of 2011 (s4) – from 1 March 2011 – definition amended to substitute "Fiji Islands Revenue and Customs Authority" to "Fiji Revenue and Customs Authority"

Decree 50 of 2009 – from 1 January 2010 – definition read as:

"tax officer" means the CEO and any officer of the Authority appointed under the Fiji Islands Revenue and Customs Authority Act to perform duties under a tax law;

tax period

means—

(a) in the case of the income tax—

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

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

(iii) for any other purposes, the tax year;

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

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

Legislative History:

Act 32 of 2015 (s141) – from 1 January 2016 – definition was amended by deleting "year of assessment" and substituting "tax year" in paragraph (a)(iii)

tax return

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

Tax Tribunal

or Tribunal means the Tax Tribunal established under section 75;

Legislative History:

Act 31 of 2016 (s209) – from 1 December 2016 – definition was amended by inserting "or Tribunal" before "means"

taxpayer

means—

(a) in the case of the income tax—

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

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

- (iii) a person who has zero chargeable income or a loss for a tax year;
- (iv) a person liable for withholding tax;
- (b) in the case of VAT, a registered person or any other person liable for VAT; or
- (c) in the case of any other tax, a person liable for the tax, and includes any other person that the CEO believes to be liable to pay tax imposed by any tax law;

Legislative History:

Act 32 of 2015 (s141) – from 1 January 2016 – definition was amended by deleting "year of assessment" and substituting "tax year" wherever it appears; and deleting "imposed under section 8, 8A, 9, 9A, 10, 10A or any other tax withheld specified in the Income Tax Act" in paragraph (a)(iv)

Taxpayer Identification Number (TIN) means a unique computer-generated number issued to a person by the Fiji Revenue and Customs Service;

Legislative History:

Act 13 of 2018 (s27) – from 1 August 2018 – definition was amended by deleting "Tax Identification Number" wherever it appears and substituting "Taxpayer Identification Number"

Act 38 of 2017 (s7) – from 1 August 2017 – definition amended to substitute "Fiji Revenue and Customs Authority" to "Fiji Revenue and Customs Service"

Decree 18 of 2011 (s4) – from 1 March 2011 – definition amended to substitute "Fiji Islands Revenue and Customs Authority" to "Fiji Revenue and Customs Authority"

Decree 55 of 2010 (s2) – from 15 August 2010 - definition inserted

trust has the meaning given in section 2 of the Income Tax Act 2015;

Legislative History:

Act 08 of 2019 (s2) – from 1 August 2019 – definition inserted

trustee has the meaning given in section 2 of the Income Tax Act 2015

Legislative History:

Act 08 of 2019 (s2) – from 1 August 2019 – definition inserted

Value Added Tax Act

Legislative History:

Act 31 of 2016 (s209) – from 1 December 2016 – definition repealed

Decree 50 of 2009 – from 1 January 2010 – definition was inserted as:
"Value Added Tax Decree" means the Value Added Tax Decree 1991; (Decree No. 45 of 1991);

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

withholding tax means—

- (a) the tax imposed under section 10 of the Income Tax Act 2015; or
- (b) an amount required to be deducted by the payer under Subdivision 4 of Division 2 of Part 9 of the Income Tax Act 2015;
- (c) [Repealed]

Legislative History:

Act 32 of 2015 (s141) – from 1 January 2016 – definition was amended by deleting "8, 8A, 9, 9A, 10 or 10A of the Income Tax Act" and substituting "10 of the Income Tax Act" in paragraph (a); and deleting "from emoluments under Part XI of the Income Tax Act; or" and substituting "under Subdivision 4 of Division 2 of Part 9 of the Income Tax Act." in paragraph (b); and deleting paragraph (c)

Decree 50 of 2009 – from 1 January 2010 – definition was inserted as:

"withholding tax" means –

(a) the tax imposed under section 8, 8A, 9, 9A, 10 or 10A of the Income Tax Act; or

(b) an amount required to be deducted by the payer from emoluments under Part XI of the Income Tax Act; or

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

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

PART 2 HARMONISED ADMINISTRATIVE RULES

(Sections 3–74E)

DIVISION 1 TAX RETURNS

(Sections 3–7)

[Section 3] Filing of tax returns

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

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

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

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

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

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

Legislative History:

Act 13 of 2018 (s3) – from 1 August 2018 – Section 3(5) was amended by deleting "any return" and substituting "any tax return"

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

Legislative History:

Act 13 of 2018 (s3) – from 1 August 2018 – Section 3(6) was inserted

[Section 4] Tax Agent's Declaration

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

- a) stating the sources available to the tax agent for the preparation of the return or the accompanying document; and

- b) to the best of the tax agent's knowledge, the return, or the accompanying document, correctly reflects the data and transactions to which it relates.

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

(3) A tax agent that refuses to provide a declaration referred to in subsection (1) must provide the taxpayer with a statement in writing of the reasons for such refusal and the taxpayer must include that statement with the return.

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

[Section 5] Extension of Time to File a Tax Return

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

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

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

[Section 6] CEO May Require Taxpayer to File a Tax Return

If, during a tax period—

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

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

[Section 7] Tax Return Duly Made

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

DIVISION 2 TAX DECISIONS (Sections 8–15)

[Section 8] Self-assessments

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

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

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

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

- a) (a)the form includes pre-filled information provided by the CEO;
- b) (b)the calculation of the tax payable or any other amount is made electronically as information is inserted into the form.

Legislative History:

Act 13 of 2018 (s3) – from 1 August 2018 – Section 8 was deleted and replaced with current provision

Decree 50 of 2009 – from 1 January 2010 – Section 8 read as:

Self-assessments

8. For the purposes of this Decree —

(a) a self-assessment taxpayer who has filed a self-assessment return is treated as having made an assessment of the amount of tax payable for the tax period to which the return relates being that amount as set out in the return; and

(b) a self-assessment return filed by a self-assessment taxpayer is treated as a notice of the assessment served by the CEO on the taxpayer on the date that the return was filed.

[Section 9] Default Assessments

(1) If a taxpayer has failed to file a tax return for a tax period on or before the due date or the CEO is not satisfied with the return filed by the taxpayer, the CEO may, at any time, make an assessment (including penalty if applicable) of, as the case may be—

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

Legislative History:

Act 28 of 2022 (s2) – from 1 August 2022 – Section 9(1) read as:

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

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

Act 13 of 2018 (s5) – from 1 August 2018 – Section 9(1) was deleted and substituted with current provision

Decree 50 of 2009 – from 1 January 2010 – Section 9(1) read as:

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

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

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

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

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

Legislative History:

Act 13 of 2018 (s5) – from 1 August 2018 – Section 9(5) was inserted

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

Legislative History:

Act 13 of 2018 (s5) – from 1 August 2018 – Section 9(6) was inserted

[Section 10] Advance Assessments

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

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

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

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

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

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

Legislative History:
Act 13 of 2018 (s6) – from 1 August 2018 – Section 10(5) was inserted

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

Legislative History:
Act 13 of 2018 (s6) – from 1 August 2018 – Section 10(6) was inserted

[Section 11] Amendment of Tax Assessments

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

- a) for a net loss for a tax year under section 30 of the Income Tax Act 2015, the taxpayer is assessed in respect of the correct amount of the net loss for the tax year;
- b) for an excess amount for a taxable period under section 39(8) of the Value Added Tax Act 1991, the taxpayer is assessed in respect of the correct amount of the excess amount for the taxable period; or
- c) in any other case, the taxpayer is assessed in respect of the correct amount of tax payable (including a nil amount) for the tax period.

Legislative History:
Act 13 of 2018 (s7) – from 1 August 2018 – Section 11(1) was deleted and substituted with current provision
Decree 50 of 2009 – from 1 January 2010 – Section 11(1) read as:

11. — (1) Subject to this section, the CEO may amend a tax assessment by making such alterations or additions to the assessment as the CEO considers necessary to ensure that a taxpayer is liable for the correct amount of tax payable in respect of the tax period to which the assessment relates.

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

- a) notwithstanding paragraphs (b) and (c), in the case of fraud, wilful neglect, or serious omission by or on behalf of the taxpayer, at any time;
- b) in the case of a company with a gross turnover of less than \$1.25 million, within 3 years of—
 - i. for a self-assessment, the date that the self-assessment taxpayer filed the self-assessment return to which the selfassessment relates; or
 - ii. for any other tax assessment, the date the CEO served notice of the tax assessment on the taxpayer; or
- c) in any other case, within 6 years of—
 - I. for a self-assessment, the date that the self-assessment taxpayer filed the self-assessment return to which the selfassessment relates; or
 - II. for any other tax assessment, the date the CEO served notice of the tax assessment on the taxpayer.

Legislative History:

Act 27 of 2021 (s2) – from 1 August 2021 – Section 11(2) was deleted and substituted with current provision

Act 13 of 2018 (s7) – from 1 August 2018 – Section 11(2)(b) was deleted and substituted with:

(b) in any other case, within 6 years of—

(i) for a self-assessment, the date that the self-assessment taxpayer filed the self-assessment return to which the self-assessment relates; or

(ii) for any other tax assessment, the date the CEO served notice of the tax assessment on the taxpayer."

Decree 50 of 2009 – from 1 January 2010 – Section 11(2)(b) read as:

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

(a) in the case of fraud, wilful neglect, or serious omission by or on behalf of the taxpayer, at any time; or

(b) in any other case, within 6 years of the date the CEO served the notice of assessment on the taxpayer.

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

(4) Subject to subsection (2)(b) and (c), if a notice of assessment (referred to as the “original assessment”) has been amended under subsection (1), the CEO may further amend the original assessment or an amended assessment—

- a) in the case of fraud, wilful neglect, or serious omission by or on behalf of the taxpayer, as the CEO deems fit after serving the notice of the original or amended assessment on the taxpayer;
- b) in the case of a company with a gross turnover of less than \$1.25 million, within 3 years after serving the notice of the original or amended assessment on the taxpayer; or
- c) in any other case, within 6 years after serving the notice of the original or amended assessment on the taxpayer.

Legislative History:

Act 27 of 2021 (s2) – from 1 August 2021 – Section 11(4) was deleted and substituted with current provision

Decree 50 of 2009 – from 1 January 2010 – Section 11(4) read as:

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

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

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

(7) For the purpose of this section—

- i. **fraud** in relation to a tax payer or anyone acting on behalf of a taxpayer, means an act of making a false statement to the CEO;
- ii. **wilful neglect** means the deliberate act by a taxpayer or anyone acting on behalf of a taxpayer to minimise tax payable; and
- iii. **serious omission** means the omission of any amount of tax as determined by the CEO.

Legislative History:

Decree 83 of 2012 – from 1 January 2013 – Section 11(7) inserted

[Section 12] Application for an Amendment to a Self-Assessment

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

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

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

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

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

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

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

Legislative History:

Act 13 of 2018 (s7) – from 1 August 2018 – Section 12 deleted and replaced with current provision

Decree 50 of 2009 – from 1 January 2010 – Section 12 read as:

Amendment of Tax Return

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

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

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

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

[Section 13] Defect Not to Affect the Validity of Tax Decisions

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

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

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

[Section 14] Finality of Tax Decisions

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

(2) For the purposes of this section—

- a) for a self-assessment, the production of the original self-assessment return or document under the hand of the CEO purporting to be a certified copy of the return is conclusive evidence of the contents of the return; or
- b) for any other tax assessment, the production of a notice of assessment or document under the hand of the CEO purporting to be a certified copy of the notice of assessment

is conclusive evidence of the due making of the assessment and that the amount and particulars of the assessment are correct.

Legislative History:

Act 13 of 2018 (s9) – from 1 August 2018 – Section 13(2) deleted and replaced with current provision

Decree 50 of 2009 – from 1 January 2010 – Section 14(2) read as:

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

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

[Section 15] Rectification of Mistakes

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

DIVISION 3 OBJECTIONS AND APPEALS (Sections 16–21)

[Section 16] Objection to Tax Decision

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

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

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

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

Legislative History:

Decree 69 of 2010 (s2) – from 1 January 2011 – Section 16(3) was amended by inserting ", and the approved form shall be signed by the taxpayer and tax agent."

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

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

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

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

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

[Section 17] Review of Objection Decision by the Tax Tribunal

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

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

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

- a) affirm, reduce, increase, or otherwise vary the assessment to which the objection decision relates;
- b) remit the assessment to the CEO for reconsideration in accordance with the directions of the Tribunal;
- c) refer a question of law to the Tax Court for its opinion in accordance with section 87; or
- d) transfer proceedings to the Tax Court as specified in section 88.

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

- a) affirm, vary or set aside the decision;
- b) refer a question of law to the Tax Court for its opinion in accordance with section 87; or
- c) transfer proceedings to the Tax Court as specified in section 88.

[Section 18] Appeal to Tax Court

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

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

(3) The Tax Court must hear and determine the appeal and may make such order as it thinks appropriate by reason of its decision, including an order affirming or setting aside the decision of the Tax Tribunal or an order referring the case to the Tax Tribunal or CEO for reconsideration.

[Section 19] Test Case Procedure

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

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

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

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

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

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

(7) For the purposes of this Act—

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

[Section 20] Implementation of Decision

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

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

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

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

- a) the expiration of the 30-day period specified in section 107 for appealing the decision to the Tax Court; or
- b) the expiration of any extension of time allowed by the Tax Court to file a notice of appeal if the application for the extension was filed before the end of the period specified in paragraph (a), if no notice of appeal is lodged with the Registrar of the Tax Court within that time.

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

[Section 21] General Provisions Relating to Objections and Appeals

(1) In any proceeding under this Division—

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

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

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

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

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

DIVISION 4 COLLECTION, RECOVERY AND REPAYMENT OF TAX (Sections 22-33A)

[Section 22] Tax is a Debt Due to the State

- (1) A taxpayer must pay tax in the prescribed manner.
- (2) Tax payable by a person is recoverable as a debt due to the State.
- (3) An amount of—
 - a) gambling turnover tax collected by an accountable person under the Gambling Turnover Tax Act 1991;
 - b) VAT collected by a registered person under the Value Added Tax Act 1991 (net of any input tax credit allowed);
 - c) withholding tax collected by a person under the Income Tax Act 2015;
 - d)
 - e) Environment and Climate Adaptation Levy; or
 - f) Airport Departure Tax,

Legislative History:

Act 17 of 2020 – from 1 August 2020 – Section 22(3)(d) was deleted

Act 27 of 2017 (s3) – from 1 August 2017 – Section 22(3) (d) was amended by deleting "service turnover tax" and substituting "STT"; and by inserting Section 22 (3) (e) and (f)

Decree 9 of 2012 (s3) – from 1 January 2012 – Section 22(3)(d) was amended by deleting -"Hotel Turnover Tax Act" and substituting "Service Turnover Tax Decree".

Decree 50 of 2009 – from 1 January 2010 – Section 22(3)(d) read as:

(d) hotel turnover tax collected by an accountable person under the Hotel Turnover Tax Act,

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

[Section 23] Collection of Tax by Suit

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

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

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

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

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

[Section 24] No Double Collection of Tax

(1) In this section—

collection agent means—

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

Legislative History:

Act 32 of 2015 (s141) – from 1 January 2016 – Section 24(1)(a) was amended by deleting "under section 8(4), 8A(6), 9(5), 9A(12), 10(5), 10A(3), 107(a)(2) or Part XI of the Income Tax Act"

Decree 50 of 2009 – from 1 January 2020 - Section 24(1)(a) read as - (a) a person liable to pay withholding tax under section 8(4), 8A (6), 9(5), 9A (12), 10(5), 10A (3), 107(a) (2) or Part XI of the Income Tax Act; or

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

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

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

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

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

[Section 25] Extension of Time to Pay Tax

- (1) A taxpayer may apply, in writing, to the CEO for an extension of time to pay tax due under a tax law.
- (2) If an application has been made under this section, the CEO may, having regard to the circumstances of the case—
 - a) grant the taxpayer an extension of time for payment of the tax due; or
 - b) require the taxpayer to pay the tax due in such instalments as the CEO may determine,

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

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

[Section 26] Liquidators, Trustees and Executors

- (1) In this section—

Liquidator means—

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

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

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

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

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

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

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

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

(6) If 2 or more persons are liquidators in respect of a taxpayer, the obligations and liabilities under this section apply jointly and severally to them but may be discharged by any of them.

[Section 27] Garnishee Order

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

- a) owes money to a taxpayer;
- b) holds money, for or on account of, a taxpayer;
- c) holds money on account of some other person for payment to a taxpayer;
- d) has authority from some other person to pay money to a taxpayer;
- e) holds money that is deposited to the credit of a taxpayer, including money held in a joint bank account in the name of the taxpayer and one or more persons, provided that the source of income is determined to be the income of the taxpayer;
- f) holds money that is deposited by the taxpayer but credited to the bank account of another person, provided the source of income is determined to be the income of the taxpayer; or

- g) administers money in the taxpayers bank overdraft facility account, provided that the defaulting taxpayers available bank balance is below the bank overdraft limit allowed to the taxpayer by the payer.

Legislative History:

Decree 83 of 2012 (s3) – from 1 January 2013 – Section 27(1) (g) was inserted

Decree 9 of 2012 (s4) – from 1 January 2012 – Section 27(1) (e) and (f) was inserted

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

- a) the tax has not been paid by the taxpayer by the due date for payment; or
- b) the CEO has reasonable grounds to believe that the taxpayer will not pay the assessed tax by the due date for payment.

(3)

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

(4) A payer must pay the amount specified in a notice under subsection (3) by the date specified in the notice, being a date that is not before the date that the amount owed to the taxpayer becomes due to the taxpayer or held on the taxpayer's behalf.

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

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

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

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

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

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

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

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

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

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

[Section 28] Tax a Charge on Property

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

(2) Subject to subsection (2A), the CEO may lodge for registration any charge or place a caveat on the property subject to the charge by depositing with the relevant registry a certificate under the hand of the CEO setting forth the description of the property charged and the amount of tax payable and the relevant registry must, without fee, register the certificate as if it were a registrable instrument under law.

Legislative History:

Act 45 of 2017 – from 31 May 2019 – Section 2 was amended by deleting “The” and substituting “Subject to subsection (2A), the”

Decree 29 of 2013 (s3) – from 1 November 2013 – Section 28(2) was amended by deleting the word “real” and deleting the words “Registrar of Titles” and substituting “the relevant Registry”, wherever it appears

Decree 50 of 2009 – from 1 January 2010 – Section 28(2) read as:

(2) The CEO may lodge for registration any charge or place a caveat on the real property subject to the charge by depositing with the Registrar of Titles a certificate under the hand of the CEO setting forth the description of the property charged and the amount of tax payable and the Registrar of Titles must without fee, register the certificate as if it were a registrable instrument under law.

(2A) If applicable, the CEO may file a notice of a charge created by this section in the registry established under the Personal Property Securities Act 2017 to establish the priority date and time of such charge, and the registry must, without fee, register the notice as if it were a registrable instrument under law.

Legislative History:

Act 45 of 2017 – from 31 May 2019 – Section 28(2A) was inserted

(3) Subject to the provisions of the Personal Property Securities Act 2017, a charge created under this section shall—

- a) be subject to any mortgage, charge or encumbrance registered on the property prior to the registration of the charge;
- b) have priority over any mortgage, charge or encumbrance created after the registration of the charge;
- c) rank equally with any charge created under another Act or any other law.

Legislative History:

Act 45 of 2017 - from 31 May 2019 – Section 3 amended by deleting “A” and substituting “Subject to the provisions of the Personal Property Securities Act 2017, a”

Act 31 of 2016 (s209) – from 1 December 2016 – Section 3(c) was amended by deleting “Decree”

Decree 50 of 2009 – from 1 January 2010 – Section 28(3) read as

(3) A charge created under this section shall –

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

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

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

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

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

[subs (5) am Act 45 of 2017 Sch, effective 31 May 2019]

Legislative History:

Act 45 of 2017 - from 31 May 2019 – Section 5 was amended by inserting “as of the date of registration of the charge” after “unregistered charge created by this section”

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

(6A) With regard to personal property, if a notice of a charge under this section has been registered and the charge has been satisfied, the CEO must file with the registry established under the Personal Property Securities Act 2017 a termination of the charge, and the relevant Registrar must, without payment of any fee, register the termination as if it were a registrable instrument under law.

Legislative History:

Act 45 of 2017 – from 31 May 2019 – Section 28(6A) was inserted

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

- a) the sale of the property or any part of the property; or
- b) the appointment of a receiver of the rents, profits or income from the property,

and, subject to subsections (2) and (3), that the proceeds of sale or the rents, profits or income must be used to pay the tax due and any costs of the CEO in enforcing the charge.

Legislative History:
Act 45 of 2017 – from 31 May 2019 – Section 28(7) was amended by deleting “subsection (2)” and substituting “subsections (2) and (3)”

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

(9) A vesting order under subsection (8) has the same effect as if all persons entitled to the property had been free from all disability and had duly executed all proper conveyances, transfers and assignments of the property for such estate or interest as is specified in the order.

Legislative History:
Act 16 of 2020 – from 1 August 2020 – Section 28(9) was amended by deleting “, and the order is subject to stamp duty accordingly”

(10) If an amount of unpaid tax is, by virtue of subsection (1), a charge on the personal property of the taxpayer, the CEO may, subject to subsections (2) and (3), sell or concur with another person in the selling of the property, or part thereof, whether by public auction or private contract.

Legislative History:
Act 45 of 2017 – from 31 May 2019 – Section 28(10) was amended by deleting “subsection (2)” and substituting “subsections (2) and (3)”

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

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

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

[Section 29] Collection of Tax by Distress and Sale

(1) The CEO, or a tax officer authorised in writing by the CEO for the purposes of this section, may issue an order, in writing, for the recovery of tax that has not been paid by the due date by distress and sale of the personal property of the taxpayer.

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

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

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

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

- a) identified by the attaching of a notice stating “PROPERTY IMPOUNDED FOR NOT COMPLYING WITH TAX OBLIGATIONS BY ORDER OF THE CHIEF EXECUTIVE OFFICER OF THE FIJI REVENUE AND CUSTOMS SERVICE UNDER SECTION 29 OF THE TAX ADMINISTRATION ACT 2009”; and
- b) kept at the premises where the distress is executed or at any other place that the CEO or authorised tax officer may consider appropriate, at the cost of the taxpayer.

Legislative History:

Act 38 of 2017 (s7) – from 1 August 2017 – Section 29(4) amended to substitute “Fiji Revenue and Customs Authority” to “Fiji Revenue and Customs Service”

Decree 18 of 2011 (s4) – from 1 March 2011 – Section 29(4) amended to substitute “Fiji Islands Revenue and Customs Authority” to “Fiji Revenue and Customs Authority”

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

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

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

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

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

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

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

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

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

[Section 30] Seizure of Goods

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

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

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

- a) identifying the goods;

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

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

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

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

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

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

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

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

(9) If the proceeds of disposal are less than the sum of the cost of taking, keeping and selling the goods seized and the VAT due, the CEO or authorised tax officer may proceed under this Division to recover the shortfall.

[Section 31] Departure Prohibition Order

(1) Where—

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

the CEO may, by order in accordance with the prescribed form, prohibit the taxpayer departing from Fiji for a foreign country.

Legislative History:

Act 6 of 2022 (s2) – from 1 April 2022 – Section 31 was amended by deleting “co-signed by a board member of the Fiji Revenue and Customs Service” wherever it appears.

Section 31(1) read as:

(1) Where—

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

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

Act 38 of 2017 (s7) – from 1 August 2017 – amended to substitute “Fiji Revenue and Customs Authority” to “Fiji Revenue and Customs Service”

Act 31 of 2016 (s209) – from 1 December 2016 – Section 31(1)(c) amended by deleting “FRCA board member” and substituting “board member of the Fiji Revenue and Customs Authority”

Act 18 of 2015 (s3) – from 1 January 2016 – Section 31(1)(c) inserted

Decree 38 of 2012(s2) – from 1 January 2012 – Section 31(1) is amended by inserting “co-signed by a FRCA board member” between “form” and “,”

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

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

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

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

(5) If a departure prohibition order is issued in respect of a taxpayer, the Commissioner of Police and the Director of Immigration must exercise the powers that they lawfully possess, or cause an officer under their direction to exercise such powers, so far as is necessary to prevent the taxpayer from departing Fiji, including the removal and retention of the taxpayer's passport, identity card, visa or other travel document authorising the taxpayer to leave Fiji.

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

(7) A departure prohibition order remains in force until revoked by the CEO or upon the expiration of 3 years from the date of the order being issued, whichever is the earlier.

(8) The CEO must revoke a departure prohibition order if—

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

Legislative History:

Act 6 of 2022 (s2) – from 1 April 2022 – Section 31 was amended by deleting “co-signed by a board member of the Fiji Revenue and Customs Service” wherever it appears.

Section 31(8) read as:

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

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

taxpayer.

Act 38 of 2017 (s7) – from 1 August 2017 – Section 31(8) amended to substitute “Fiji Revenue and Customs Authority” to “Fiji Revenue and Customs Service”

Act 31 of 2016 (s209) – from 1 December 2016 – Section 31(8) amended by deleting “FRCA board member” and substituting “board member of the Fiji Revenue and Customs Authority”

Decree 38 of 2012(s2) – from 1 January 2012 – Section 31(1) is amended by inserting “inserting “co-signed by a FRCA board member” between “order” and “if”

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

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

[Section 32] Temporary Closure of Business

(1) If a taxpayer fails—

- a) to file a return required to be filed under section 33 of the Value Added Tax Act 1991, section 5(1)(b) of the Gambling Turnover Tax Act 1991, or the Environment and Climate Adaptation Levy Act 2015, or the Superyacht Charter Act 2010, or the Airport Departure Tax Act 1986, or section 131 of the Income Tax Act 2015;

Legislative History:

Act 17 of 2020 – from 1 August 2020 – Section 31(1)(a) amended by deleting “, or section 4(1)(b) of the Service Turnover Tax Act 2012”

Act 31 of 2016 (s209) – from 1 December 2016 – Section 31(1)(a) amended by deleting “regulation 13 of the Income Tax (Employment) Regulations”; and deleting “section 19 of the Fringe Benefit Tax Decree” and substituting “section 131 of the Income Tax Act 2015”; deleting “Hotel Turnover Tax Act” and substituting “Service Turnover Tax Act 2012”

Decree 9 of 2012 (s5) – from 1 January 2012 – Section 31(1)(a) amended by deleting “Hotel Turnover Tax Act” and substituting “Service Turnover Tax Decree”; inserting “or section 19 of the Fringe Benefit Tax Decree” after “or”;

- b) to pay VAT, gambling turnover tax, Environment and Climate Adaptation Levy, Airport Departure Tax, fringe benefit tax or tax withheld from salary or wages,

Legislative History:

Act 17 of 2020 – from 1 August 2020 – Section 31(1)(b) amended by deleting “, STT”

Decree 9 of 2012 (s5) – from 1 January 2012 – Section 31(1)(b) amended by deleting “hotel turnover tax” and substituting “Service Turnover Tax”; by inserting “, Fringe Benefit Tax” after “Service Turnover Tax”

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

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

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

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

Legislative History:

Act 38 of 2017 (s7) – from 1 August 2017 – Section 32(4) was amended by deleting all references to the word "Fiji Revenue and Customs Authority" wherever it appears and inserting "Fiji Revenue and Customs Service"

Decree 18 of 2011 (s4) – from 1 March 2011 – Section 32(4) was amended by deleting all references to the word "Fiji Islands Revenue and Customs Authority" wherever it appears and inserting "Fiji Revenue and Customs Authority"

(5) If—

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

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

[Section 33] Refunds

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

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

Legislative History:

Act 27 of 2021 (s3) – from 1 August 2021 – Section 33(1)(a) was amended by deleting and replacing with current provision

Decree 50 of 2009 – from 1 January 2010 – Section 33(1)(a) read as-

(a) first apply the amount of the refund against any tax owing by the taxpayer under any tax law; and then

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

Legislative History:

Act 18 of 2015 (s4) – from 1 January 2016 – Section 33(2) was amended by deleting "\$5" and substituting "\$10".

(3) The CEO must only pay a refund of overpaid tax to a taxpayer under a tax law to the taxpayer's bank account held at a commercial trading bank.

Legislative History:

Act 08 of 2019 (s3) – from 1 January 2016 – Section 33(3) was amended by deleting the subsection and replacing with current provision

Decree 4 of 2010 (s3) – from 1 January 2010 (s3) – Section 33(3) was renumbered as Section 33(4) and Section 33(3) inserted as:

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

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

Decree 50 of 2009 – from 1 January 2010 – Section 33(3) read as-

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

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

Legislative History:

Decree 4 of 2010 (s3) – from 1 January 2010 (s3) – Section 33(3) was renumbered as Section 33(4) and

(5) A claim for a refund under a tax law is not admissible if the person making the claim has failed to—

- (a) file a tax return or lodge any other document as required under a tax law; and
- (b) make the claim within 3 years after the end of the year of assessment for which the refund is due unless the refund is attributable to an error made by the Fiji Revenue and Customs Service.

Legislative History:

Act 08 of 2019 (s3) – from 1 August 2019 – Section 33(5) was inserted

(5A) If a refund remains uncollected for a period of 5 or more years from the date the refund becomes due, the CEO may forfeit the amount payable by paying the sum into the Consolidated Fund.

Legislative History:

Act 28 of 2022 (s3) – from 1 August 2022 – Section 33(5A) inserted

(6) Subsection (5) does not apply to a mission, international organisation or international body that is exempt from any tax in accordance with any written law.

Legislative History:

Act 08 of 2019 (s3) – from 1 August 2019 – Section 33(6) was inserted

(7) If a non-resident person derived a fee for the provision of a professional service and paid Non-resident Withholding Tax to the Fiji Revenue and Customs Service in respect of the provision of the professional service contrary to an international tax treaty to which Fiji is a party, the non-resident person may make a claim to the CEO for a refund of the Non-resident Withholding Tax and the CEO is required to facilitate and pay the refund in accordance with the Mutual Agreement Procedure under the international tax treaty to which Fiji is a party.

Legislative History:

Act 27 of 2021 (s3) – from 1 August 2021 – Section 33(7) was inserted

8) Notwithstanding anything in this section, an application for a refund made by a resident who has paid Non-resident Withholding Tax in relation to professional services to the Fiji Revenue and Customs Service in respect of the provision of the professional service contrary to an international tax treaty to which Fiji is a party is not admissible if the person making the claim makes the claim after 31 December 2022.

Legislative History:

Act 28 of 2022 (s3) – from 1 August 2021 – Section 33(8) inserted

[Section 33A] Re-raising of Debt

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

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

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

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

Legislative History:

Act 18 of 2015 (s4) – from 1 January 2016 – Section 33A was inserted

DIVISION 5 RECORD KEEPING AND INFORMATION COLLECTION

(Sections 34–37A)

[Section 34] Accounts and Records

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

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

Legislative History:

Act 08 of 2019 (s3) – from 1 August 2019 – Section 33(1) was amended in paragraph (a) after "maintain", inserting ", or take reasonable care to maintain,"; and in paragraph (b), deleting "retain such accounts, documents," and substituting "retain, or take reasonable care to retain, such accounts, documents and records (including in electronic format)".

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

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

[Section 35] Power to Enter and Search

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

- a) has the right, at all times and with or without notice, to full and free access to any premises, place, property, accounts, documents, records or electronic data storage facility;
- b) may make an extract or copy of any accounts, documents, records or information stored on or in an electronic data storage facility to which access is obtained under paragraph (a);

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

Legislative History:

Act 13 of 2018 (s10) – from 1 August 2018 – Section 35(1) was amended in paragraph (a) by deleting "data storage device" and substituting "electronic data storage facility"; and in paragraph (b) by deleting "on a data storage device" and substituting "on or in an electronic data storage facility";

Act 27 of 2017 (s5) – from 1 August 2017 –Section 35(1) was amended by inserting Section 33(1)(f) as per current provision

(2) A tax officer is not entitled to exercise any power under subsection (1) if the officer is unable to produce the CEO's written authorisation permitting the officer to exercise powers under subsection (1).

Legislative History:

Act 13 of 2018 (s10) – from 1 August 2018 – Section 35(2) was amended by deleting "by the owner or lawful occupier," and substituting "if"

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

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

Legislative History:

Act 27 of 2017 (s5) – from 1 August 2017 –Section 35(3A) was inserted

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

- a) providing access to data stored on, or in, an electronic data storage facility, including the entering of a password or other basis of authentication for access to the facility; and

- b) providing access to decryption information necessary to decrypt data to which access is sought under this section.

Legislative History:

Act 13 of 2018 (s10) – from 1 August 2018 – Section 35(4) was amended by inserting ", including—

(a) providing access to data stored on, or in, an electronic data storage facility, including the entering of a password or other basis of authentication for access to the facility; and

(b) providing access to decryption information necessary to decrypt data to which access is sought under this section."

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

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

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

(8) This section has effect notwithstanding—

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

(9) In this section—

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

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

Legislative History:

Act 13 of 2018 (s10) – from 1 August 2018 – Section 35(9) was inserted

[Section 36] Administrative Notice

Legislative History:

Act 08 of 2019 (s5) – from 1 August 2019 – Section 36 was amended in the heading by deleting "summons" and substituting "notice".

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

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

Legislative History:

Act 21 of 2016 (s2) – from 1 August 2016 – Section 36(1) was amended by inserting "the CEO may," after "law,"

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

(3)

- i. A notice issued under this section must be served either—
 - a. personally upon the person to whom it is directed;
 - b. left at the person's last known usual place of business or abode; or
 - c. sent to the person by registered postal address.
- ii. The certificate of service signed by the person serving the notice is conclusive evidence of the facts stated therein.

[subs (3) subst Decree 69 of 2010 s 3, effective 1 January 2011]

- (4) The CEO may require that the information or evidence referred to in subsection (1) is—
- a) given on oath, verbally or in writing, and, for that purpose, the CEO may administer the oath, or verified by a statutory declaration or otherwise; or
 - b) furnished or given within such reasonable time as specified by the CEO.

Legislative History:

Act 21 of 2016 (s2) – from 1 August 2016 – Section 36(4) was amended in paragraph (a) by inserting ", or verified by a statutory declaration or otherwise" after "the oath"; and deleting paragraph (b) to read as current provision

*Decree 50 of 2009 – from 1 January 2010 – Section 36(4)(b) read as –
(b) verified by statutory declaration or otherwise.*

(5) This section has effect notwithstanding—

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

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

[Section 37] Audit and Investigation of Taxpayer's Tax Affairs

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

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

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

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

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

Legislative History:

Act 38 of 2017 (s7) – from 1 August 2017 – Section 32(4) was amended by deleting all references to the word "Fiji Revenue and Customs Authority" wherever it appears and inserting "Fiji Revenue and Customs Service"

Decree 18 of 2011 (s4) – from 1 March 2011 – Section 32(4) was amended by deleting all references to the word "Fiji Islands Revenue and Customs Authority" wherever it appears and inserting "Fiji Revenue and Customs Authority"

[Section 37A] Mandatory Requirement for Taxpayer Identification Number

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

Legislative History:

Act 13 of 2018 (s11) – from 1 August 2018 – Section 37A inserted

DIVISION 6 TAXPAYER IDENTIFICATION NUMBERS

(Sections 38–40)

[Section 38] Issue of Taxpayer Identification Numbers

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

- a) a person prior to renewing or applying for a licence or permit of any descriptions from the Land Transport Authority;
- b) a person who intends to register a used or new vehicle of any description with the Land Transport Authority;
- c) a person carrying on any business in Fiji;
[sub(c) amended by Act 28 of 2020, effective 1 August 2020]

Legislative History:

Act 28 of 2020 – from 1 August 2020 – Section 38(1)(c) was deleted and replaced with current provision

- d) incorporated trust board and non-government organisations (NGOs) and religious bodies registered with the Registrar of Titles;
- e) a person, registering a company, partners in partnership businesses whether jointly or severely registered with the Registrar of Companies;
- f) a person authorised to open and operate a third party's bank account together with the Taxpayer Identification Number of the third party;
- g) every person opening or operating a bank account of any description with any financial institution, from within or outside of Fiji;
- h) special bodies exempted from paying tax under a tax law; and
- i) any person who is a new or existing employee.

Legislative History:

Act 13 of 2018(s12) – from 1 August 2018 – Section 38(1) was amended in subsection (1)(f) by, deleting "operating" and substituting "operate"

Act 31 of 2016 (s209) – from 1 December 2016 – Section 38(1)(h) was amended by deleting "our" and substituting "a"

Decree 55 of 2010 (s3) – from 15 August 2010 – Section 38(1) was amended by inserting "or not liable" in between "liable" and "for"; and by inserting "including the following person(s) -" after "Taxpayer Identification Number" -

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

Decree 50 of 2009 – from a January 2010 – Section 38(1) read as

38. — (1) The CEO may, for the purposes of identification and cross-checking, require every person liable for tax to apply for a Taxpayer Identification Number.

(1A) (Repealed)

Legislative History:

Act 13 of 2018(s12) – from 1 August 2018 – Section 38(1A) was repealed

Decree 69 of 2010(s4) – from 1 January 2011 – Section 38(1A) was inserted as:

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

(2) An application for a Taxpayer Identification Number must be—

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

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

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

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

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

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

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

- a) any statutory body;
- b) the Registrar of Companies;
- c) any municipal council;
- d) financial institutions;
- e) Registrar of Titles;
- f) Fiji Public Trustee Corporation Limited;
- g) any licensing or registration agency;
- h) any Government agency; and
- i) professional bodies.

Legislative History:

Act 31 of 2018(s9) – from 1 August 2018 – Section 38(7)(c) was amended by deleting “, including any rural local authority”

Act 13 of 2018(s12) – from 1 August 2018 – Section 38(7) was amended by deleting “(g)” and substituting “(i)”

Act 38 of 2017 (s7) – from 1 August 2017 - amended to substitute “Fiji Revenue and Customs Authority” to “Fiji Revenue and Customs Service”

Act 18 of 2015 (s6) – from 1 January 2016 – Section 38(7)(a) was deleted and replaced with current provision; Section 38(7)(c) was deleted and replaced with “any municipal council, including any rural local authority;” Section 38(7) (e) to (i) inserted as:

(e) Registrar of Titles;

(f) Fiji Public Trustee Corporation;

(g) any licensing or registration agency;

(h) any government agency; and

(i) professional bodies.

Decree 18 of 2011 – from 1 March 2011 - amended to substitute “Fiji Islands Revenue and Customs Authority” to “Fiji Revenue and Customs Authority”

Decree 55 of 2010 (s3) – from 15 August 2010 – Section 38(7) was inserted as:

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

(a) the Land Transport Authority;

(b) the Registrar of Companies;

(c) the Local Authority;

(d) Financial Institutions.

(8) All taxpayers whose TINs are not provided to the Fiji Revenue and Customs Service by persons mentioned in subsection (7) must apply in person to the Fiji Revenue and Customs Service for a Taxpayer Identification Number by 31 March 2011.

Legislative History:

Act 13 of 2018 (s27) – from 1 August 2018 – Section 38(8) was amended by deleting “Tax Identification Number” and substituting “Taxpayer Identification Number”

Act 38 of 2017 (s7) – from 1 August 2017 - amended to substitute “Fiji Revenue and Customs Authority” to “Fiji Revenue and Customs Service”

Decree 18 of 2011 (s4) – from 1 March 2011 – amended to substitute “Fiji Islands Revenue and Customs Authority” to “Fiji Revenue and Customs Authority”

Decree 69 of 2010 (s4) – from 1 January 2011 – Section 38(8) amended by deleting “31st December, 2010” and substituting “31st March, 2011”

Decree 55 of 2010 (s3) – from 15 August 2010 – Section 38(8) was inserted as:

(8) All taxpayers whose TIN's are not provided to Fiji Islands Revenue and Customs Authority by persons mentioned in subsection (7) must apply in person to the Fiji Island Revenue and Customs Authority for a Tax Identification Number by 31st December, 2010.

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

Legislative History:

Act 38 of 2017(s7) – from 1 August 2017 – Section 38(9) amended to substitute “Fiji Revenue and Customs Authority” to “Fiji Revenue and Customs Service”

Act 31 of 2016 (s209) – from 1 December 2016 – Section 38(9) amended by deleting “Authority” and substituting “Fiji Revenue and Customs Authority”

Decree 55 of 2010 (s3) – from 15 August 2010 – Section 38(9) was inserted as:

(9) The Authority must observe confidentiality when collecting information from any person for the purpose of registration of the Taxpayer Identification Number.

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

Legislative History:

Act 38 of 2017 – from 1 August 2017 - Section 38(10) amended to substitute “Fiji Revenue and Customs Authority” to “Fiji Revenue and Customs Service”

Act 31 of 2016(s209) – from 1 December 2016 - Section 38(10) amended by deleting "Authority" and substituting "Fiji Revenue and Customs Authority"

Decree 55 of 2010 (s3) – from 15 August 2010 – Section 38(10) was inserted as:

(10) The person supplying the Taxpayer Identification Number is not held to be in breach of confidentiality in respect of person whose Taxpayer Identification Number is being supplied to the Authority by reason of any actions taken under this Decree.

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

Legislative History:

Decree 55 of 2010 (s3) – from 15 August 2010 – Section 38(11) was inserted

[Section 38A] Taxpayer to Notify of Change of Status

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

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

within 21 days from the date of the change.

Legislative History:

Act 13 of 2018 (s13) – from 1 August 2018 – Section 38A was inserted

[Section 39] Cancellation of Taxpayer Identification Number

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

Legislative History:

Act 13 of 2018 (s14) – from 1 August 2018 – Section 39(1) was amended by deleting "who ceases to be a taxpayer"; and "within 30 consecutive days of the date on which the person ceased to be a taxpayer"

Decree 50 of 2019 – from 1 January 2010 – Section 39(1) read as:

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

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

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

Legislative History:

Act 13 of 2018 (s14) – from 1 August 2018 –Section 39(2)(a) was repealed

Decree 50 of 2019 – from 1 January 2010 – Section 39(2)(a) read as:

(a) if satisfied that the person has ceased to be a taxpayer;

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

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

[Section 40] Quotation of Taxpayer Identification Number

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

Legislative History:

Act 13 of 2018 (s27) – from 1 August 2018 –Section 40 was amended by deleting “Tax Identification Number” and substituting “Taxpayer Identification Number”.

DIVISION 7 REPRESENTATIVES

(Sections 41-42)

[Section 41] Liabilities and Obligations of Representatives

(1) In this section “**representative**” means—

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

Legislative History:

Act 35 of 2015 (s141) – from 1 January 2016 – Section 41(1)(b) was amended by deleting “authorised officer,”

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

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

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

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

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

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

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

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

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

[Section 42] Liability for Tax Payable by a Company or Shareholder in Financial Difficulties

Legislative History:

Decree 83 of 2012(s2) – from 1 January 2013 – Heading amended by inserting the words "or shareholder" after the word "Company"

(1) In this section—

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

Associate, in relation to a person, means any other person who acts or is likely to act in accordance with the wishes of the first mentioned person as a result of any connection between the persons or common ownership or control, and the first mentioned person is an associate of the second mentioned person; and

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

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

Legislative History:

Act 17 of 2020 – from 1 August 2020 – Section 42(2) was amended by deleting “STT”

Decree 9 of 2012(s6) – from 1 January 2012 – Section 42(2) was amended by deleting “HTT” and substituting “STT”.

Decree 50 of 2009 – from 1 January 2010 – Section 42(2) read as:

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

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

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

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

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

Legislative History:

Decree 83 of 2012(s2) – from 1 January 2013 – Section 42(5) inserted

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

Legislative History:

DIVISION 8 ADMINISTRATIVE PENALTIES AND OFFENCES

(Sections 43–60C)

Subdivision 1 Administrative Penalties

(Sections 43–48C)

[Section 43] Penalty for Failure to File a Tax Return or Lodge Other Document

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

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

Legislative History:

Decree 9 of 2012 (s7) – from 1 January 2012 – Section 43(1) was amended by renumbering Section 43(1)(b) as 43(1)(c) and inserting current Section 43(1)(b)

Decree 69 of 2010 (s5) – from 1 January 2011 – Section 43(1)(a) was amended by deleting "tax outstanding" and substituting "tax payable"

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

[Section 44] Penalty for Failure to Pay Tax by the Due Date

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

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

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

Legislative History:

Decree 9 of 2012 (s7) – from 1 January 2012 – Section 44 was amended by renumbering Section 44(3) as 44(4) and inserting current Section 44(3)

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

Legislative History:

[Section 45] Penalty for Failure to Maintain Proper Records

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

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

[Section 46] Penalty for Making False or Misleading Statement

(1) This section applies to a person—

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

(2) Subject to subsection (5), a person to whom this section applies is liable to a penalty equal to the amount computed in accordance with the following formula—

a) in the case of income tax—

$$\text{penalty} = A \times r \times t$$

where—

A is the tax shortfall

r is the rate of penalty at 15%

t is the number of years after the year of assessment for the tax return;
and

b) in any other case—

$$\text{penalty} = A \times r \times t/12$$

where—

A is the tax shortfall
r is the rate of penalty at 15%
t is the number of months after the period of assessment for the tax return.

Legislative History:

Act 13 of 2020 – from 1 August 2020 – Section 46(2) deleted and replaced with current provision

Decree 50 of 2009 – from 1 January 2010 – Section 46(2) read as:

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

(a) if the statement or omission was made knowingly or recklessly, for a penalty equal to 75% of the tax shortfall; or

(b) in any other case, for a penalty equal to 20% of the tax shortfall.

(3) Repealed

Legislative History:

Act 13 of 2020 – from 1 August 2020 – Section 46(3) deleted

Decree 50 of 2009 – from 1 January 2010 – Section 46(3) read as:

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

(a) 10 percentage points if this is the second application of this section to the person; or

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

(4) Repealed

Legislative History:

Act 13 of 2020 – from 1 August 2020 – Section 46(4) deleted

Decree 50 of 2009 – from 1 January 2010 – Section 46(4) read as:

(4) The amount of penalty imposed under subsection (2) on a person is reduced by 10 percentage points if the person voluntarily discloses the statement to which the section applies prior to the earlier of —

(a) discovery by the CEO of the tax shortfall; or

(b) the commencement of an audit of the tax affairs of the person to whom the statement relates.

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

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

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

Legislative History:

Act 13 of 2018 – from 1 August 2018 Section 46(5A) inserted

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

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

[Section 46A] False or Misleading Statement Penalty

(1) This section applies to a person who makes a false or misleading statement as specified in section 46(1)(a) which—

- a) does not result in a tax shortfall; but
- b) results in a tax benefit arising from overstatement.

Legislative History:

Act 13 of 2020 – from 1 August 2020 – Section 46A (1) deleted and replaced with current provision

Act 18 of 2015 – from 1 January 2016 – Section 46A (1) inserted as:

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

(2) Subject to subsection (3), a person to whom this section applies is liable to a penalty equal to the amount computed in accordance with the following formula—

- a) in the case of income tax—

$$\text{penalty} = A \times r \times t$$

where—

A is the tax benefit arising from overstatement

r is the rate of penalty at 15%

t is the number of years after the year of assessment for the tax return; and

- b) in any other case—

$$\text{penalty} = A \times r \times t/12$$

where—

A is the tax benefit arising from overstatement

r is the rate of penalty at 15%

t is the number of months after the period of assessment for the tax return.

Legislative History:

Act 13 of 2020 – from 1 August 2020 – Section 46A (2) deleted and replaced with current provision

Act 18 of 2015 – from 1 January 2016 – Section 46A (2) inserted as:

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

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

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

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

Legislative History:

Act 18 of 2015 – from 1 January 2016 – Section 46A (3) inserted as current provision

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

Legislative History:

Act 18 of 2015 – from 1 January 2016 – Section 46A (4) inserted as current provision

[Section 46B] Penalty for Dishonoured Cheques

A taxpayer who has presented or submitted a dishonoured cheque is liable to a penalty of \$500.”.

Legislative History:

Act 27 of 2021 – from 1 August 2021 – current Section 46B inserted

Act 13 of 2020 – from 1 August 2020 – Section 46B was repealed

Act 18 of 2015 – from 1 January 2016 – Section 46B inserted as:

Penalty in case of VAT evasion

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

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

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

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

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

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

(ii) cause the refund to that person by the Chief Executive Officer of an amount in excess of the amount properly so refundable to that person, is liable for a penalty equal to 300% of the deficient tax.

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

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

[Section 47] Penalty for Breach of Possession Agreement

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

[Section 48] General Provisions Relating to Penalty

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

(2)

Legislative History:

Act 48 of 2017 – from 20 September 2017 – Section 48(2) was repealed

Decree 50 of 2009 – from 1 January 2010 – Section 48(2) read as:

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

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

(3A) Subject to subsections (3B) and (3C), the powers conferred upon the Service to issue penalties under this Subdivision shall be in addition to any power conferred upon the Service to institute prosecution under this Act in respect of the same act or omission.

Legislative History:

Act 48 of 2017 – from 20 September 2017 – Section 48(3A) was inserted

(3B) The powers of the Service to issue penalties and also to institute prosecution shall only be exercisable—

- a) if the person derives a gross turnover equal to or exceeding \$1.5 million in a tax year; and
- b) if the person operates a business that is a member of a prescribed group of businesses.

Legislative History:

Act 48 of 2017 – from 20 September 2017 – Section 48(3B) was inserted

(3C) The Minister may by notice in the Gazette—

- a) amend the gross turnover specified in subsection (3B)(a); and
- b) prescribe a group of businesses for which the Service may issue a penalty and also institute prosecution.

Legislative History:

Act 48 of 2017 – from 20 September 2017 – Section 48(3C) was inserted

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

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

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

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

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

Legislative History:

Act 13 of 2020 – from 1 August 2020 – Section 48(7) was amended by deleting “other than that imposed under section 46”

Decree 50 of 2009 – from 1 January 2010 – Section 48(7) read as:

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

(8) For the avoidance of doubt, subsection (3) does not apply to persons prosecuted by the Service under subsections (3A) and (3B).

Legislative History:

Act 48 of 2017 – from 20 September 2017 – Section 48(8) was deleted and replaced with current provision.

Decree 50 of 2009 – from 1 January 2010 – Section 48(8) read as:

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

(a) the imposition of penalty under more than one provision; or

(b) both the imposition of penalty and prosecution for an offence.

[Section 48A] Waiver of Tax During Amnesty Period

Legislative History:

Act 12 of 2015 (s2) – from 4 September 2015 – Section 48A inserted

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

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

Legislative History:

Act 27 of 2017 (s6) – from 1 August 2017 – Section 48A (1) amended by deleting “1 January 2016” wherever it appears and substituting “1 January 2018”

amnesty period means the period commencing on and from 1 January 2015 to 31 December 2017;

Legislative History:

Act 27 of 2017 (s6) – from 1 August 2017 – Section 48A (1) amended in definition of amnesty period by deleting “15 October 2015” and substituting “31 December 2017”

Applicant means a qualifying person who applies under subsection (3);

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

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

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

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

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

(5) Pursuant to subsection (4), the CEO shall, as the case requires, remit in whole any tax payable by the qualifying person in respect of the foreign asset, including any interest accrued from, or any penalty or fine payable, in respect of such tax for any tax period provided that the tax period is prior to 1 January 2018.

Legislative History:
Act 27 of 2017 (s6) – from 1 August 2017 – Section 48A (5) amended by deleting “1 January 2016” wherever it appears and substituting “1 January 2018”

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

[Section 48B] Waiver of Tax During Amnesty Period for Local Assets

Legislative History:
Act 18 of 2015 (s8) – from 6 November 2015 – Section 48B inserted

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

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

Legislative History:
Act 31 of 2016 (s209) – from 1 December 2016 – Section 48B definition of amnesty amended by deleting “July” and substituting “January”

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

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

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

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

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

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

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

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

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

[Section 48C] Waiver of Penalty for Failure to File a Tax Return or Payment of Tax

Legislative History:

Act 18 of 2015 (s8) – from 6 November 2015 – Section 48C inserted

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

Legislative History:

Act 27 of 2017 (s7) – from 1 August 2017 – Section 48C (1) amended by deleting “1 November 2015” wherever it appears and substituting “1 July 2017”, and by inserting “or who has filed a tax return but wishes to make an amendment to the tax return so filed in order to pay the correct chargeable taxes”;

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

amnesty means the waiver of any penalty payable in respect of any failure to file a tax return and pay any chargeable tax required under tax law for any taxable period prior to 1 July 2017;

Legislative History:

Act 27 of 2017 (s7) – from 1 August 2017 – Section 48C (1) amended by deleting “1 November 2015” wherever it appears and substituting “1 July 2017”;

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

Legislative History:

Act 27 of 2017 (s7) – from 1 August 2017 – Section 48C (1) amended in definition by deleting “6 November 2015 to 31 December 2015” and substituting “30 June 2017 to 31 December 2017”

qualifying person means a person—

- a) who is a tax resident and Fijian citizen;
- b) who is required to file a tax return under any tax law; and
- c) whose annual gross turnover is less than \$1.5 million.

Legislative History:

Act 27 of 2017 (s7) – from 1 August 2017 – Section 48C (1) amended in definition of qualifying person by deleting and replacing with current provision

Decree 50 of 2009 – from 1 January 2010 – definition read as:

"qualifying person" means a person who is a tax resident and Fiji citizen, required to file a tax return under any tax law."

[Section 48D] Waiver of penalty for failure to file a tax return or lodge other document by the due date

Legislative History:

Act 2 of 2020 – from 1 April 2020 – Section 48D inserted

(1) Notwithstanding any other provision in this Act, any penalty payable in respect of any failure by a taxpayer to file a tax return or lodge any other document by the due date as required under any tax law is deemed to have been waived if the due date falls on a date within the amnesty period.

(2) For the avoidance of doubt, subsection (1) does not prevent a taxpayer who is liable to pay tax imposed by any tax law from payment of the tax by the due date.

(3) For the purpose of this section, “amnesty period” means the period commencing on and from 31 March 2020 to 31 December 2020.

[Section 48E] Waiver of penalty for failure to pay tax by the due date

Notwithstanding any other provision in this Act, any penalty payable in respect of any failure by a taxpayer to pay tax as required under any tax law by the due date is deemed to have been waived if the taxpayer on whom the penalty is imposed—

- a) makes payment arrangements with the CEO within 3 months after 1 August 2021; and
- b) pays the tax prior to 30 June 2022.

Legislative History:

Subdivision 2 Taxation Offences (Sections 49–60)

[Section 49] Offence in Relation to a Tax Return or Other Document

Legislative History:

Act 8 of 2019 (s6) – from 1 August 2019 – Section 49 heading amended by inserting “or other documents” after “return”

Act 13 of 2018 – from 1 1 August 2018 – heading amended by deleting “for failure to file” and substituting “in relation to”

- (1) A taxpayer who, without reasonable excuse, fails—
- a) to file a tax return in the approved form by the due date, or within such further time as the CEO may allow under section 5;
 - b) to comply with section 3(3), or
 - c) to lodge any other document as required under a tax law,

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

Legislative History:

Act 8 of 2019 (s6) – from 1 August 2019 – Section 49(1)(a) amended by inserting “or other documents” after “return” and by inserting Section 49(1)(c) as current provision

Act 13 of 2018 (s16) – from 1 August 2018 – Section 49(1)(a) amended by inserting “in the approved form” after “return”

Act 27 of 2017 (s8) – from 1 August 2017 – Section 49(1) amended by deleting “\$10,000” and substituting “\$25,000”; and deleting “12 months” and substituting “10 years”.

Decree 38 of 2012 (s3) – from 1 January 2012 – Section 49(1) amended by deleting “not less than \$10,000” and substituting “not exceeding \$10,000

Decree 9 of 2012 (s9) – from 1 January 2012 – Section 49(1) amended by deleting “not exceeding \$1, 000” and substituting “not less than \$10,000”; and deleting “3 months” and substituting “12 months”

Decree 50 of 2009 – from 1 January 2010 – Section 49(1) read as:

1) A taxpayer who, without reasonable excuse, fails —

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

(b) to comply with section 3(3),

commits an offence and is liable for a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 5 months or to both a fine and imprisonment.

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

(3) A taxpayer who, without reasonable excuse—

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

commits an offence and is liable to a fine not exceeding \$250,000.

Legislative History:

Act 13 of 2018 (s16) – from 1 August 2018 – Section 49(3) inserted

[Section 50] Offence for Failure to Comply with Obligations Under this Act

(1) A person who—

a) without reasonable cause fails to—

- i. comply with section 26;
- ii. comply with a garnishee order served on the person under section 27;
- iii. comply with section 32;
- iv. provide facilities and assistance as required by section 35(4);
- v. comply with a notice under section 36;
- vi. comply with section 37A;
- vii. comply with section 38 or a requirement of the CEO under section 38;
- viii. comply with section 38A; or
- ix. comply with section 73(8);

b) knowingly sells, leases or otherwise disposes of any real or personal property that is the subject of a charge under section 28;

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

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

Legislative History:

Act 13 of 2018 (s17) - from 1 August 2018 – Section 50(1) was amended by inserting Section 50(1)(a)(vi), (vii) and (viii)

Act 27 of 2017 (s9) – from 1 August 2017 – Section 50(1) was amended by deleting “\$10,000” and substituting “\$25,000”; and deleting “12 months” and substituting “10 years”.

Decree 38 of 2012 (s4) – from 1 January 2012 – Section 50(1) was amended by deleting “not less than \$15,000” and substituting “not exceeding \$15,000”

Decree 9 of 2012 (s10) – from 1 January 2012 - Section 50(1) was amended by deleting (a) “not exceeding \$5,000” and substituting “not less than \$15,000”; and deleting “6 months” and substituting “12 months”.

Decree 50 of 2009 – from 1 January 2010 – Section 50(1) read as:

50. — (1) A person who —

(a) without reasonable cause fails to —

- (i) comply with section 26;*
- (ii) comply with a garnishee order served on the person under section 27;*
- (iii) comply with section 32;*
- (iv) provide facilities and assistance as required by section 35(4);*
- (v) comply with a notice under section 36; or*

(vi) comply with section 73(8);
(b) knowingly sells, leases, or otherwise disposes of any real or personal property that is the subject of a charge under section 28;
(c) contravenes a departure prohibition order issued under section 31, commits an offence and is liable for a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both a fine and imprisonment.

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

[Section 51] Offence for Failure to Maintain Proper Records

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

Legislative History:

Act 27 of 2017 - from 1 August 2017 – Section 51 was amended by deleting “\$10,000” and substituting “\$25,000”; and deleting “12 months” and substituting “10 years”.

Decree 38 of 2012 - from 1 January 2012 – Section 51 is amended by deleting “not less than \$15,000” and substituting “not exceeding \$15,000”

Decree 9 of 2012 - from 1 January 2012 – Section 51 is amended by deleting “not exceeding \$5,000” and substituting “not less than \$15,000”; and deleting “6 months” and substituting “12 months”.

Decree 50 of 2009 – from 1 January 2010 – Section 51 read as:

51. A taxpayer who knowingly or recklessly fails to keep, retain, and maintain accounts, documents, or records as required under a tax law commits an offence and is liable to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both a fine and imprisonment.

[Section 52] Offence for Improper Use of Taxpayer Identification Number

(1) A person who uses a false Taxpayer Identification Number on any tax return or document prescribed or used for the purposes of a tax law commits an offence and is liable to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years or to both a fine and imprisonment.

Legislative History:

Act 27 of 2017 – from 1 August 2017 – Section 52(1) was amended by deleting “24 months” and substituting “10 years”.

Decree 38 of 2012 - from 1 January 2012 – Section 52(1) is amended by deleting “not less than \$25,000” and substituting “not exceeding \$25,000”

Decree 9 of 2012 - from 1 January 2012 – Section 52(1) is amended by deleting “not exceeding \$10,000” and substituting “not less than \$25,000”; and deleting “12 months” and substituting “24 months”.

Decree 50 of 2009 – from 1 January 2010 – Section 52(1) read as:

(1) A person who uses a false Taxpayer Identification Number on any tax return or document prescribed or used for the purposes of a tax law commits an offence and is liable to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both a fine and imprisonment.

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

(3) A person who fails to apply for cancellation of the person's Taxpayer Identification Number as required under section 39 commits an offence and is liable to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years or to both a fine and imprisonment.

Legislative History:

Act 27 of 2017 – from 1 August 2017 – Section 52(3) was amended by deleting “\$10,000” and substituting “\$25,000”; and deleting “12 months” and substituting “10 years”;

Decree 38 of 2012 - from 1 January 2012 – Section 52(3) is amended by deleting “not less than \$10,000” and substituting “not exceeding \$10,000”

Decree 9 of 2012 - from 1 January 2012 – Section 52(3) is amended by deleting “not exceeding \$1,000” and substituting “not less than \$10,000”; and deleting “3 months” and substituting “12 months”

Decree 50 of 2009 – from 1 January 2010 – Section 52(3) read as:

(3) A person who fails to apply for cancellation of the person’s Taxpayer Identification Number as required under section 39 commits an offence and is liable to a fine not exceeding \$1,000 or to imprisonment for a term no exceeding 5 months or to both a fine and imprisonment.

(4) A person who fraudulently obtains a Taxpayer Identification Number using false or forged documents commits an offence and is liable to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years or to both a fine and imprisonment.

Legislative History:

Act 27 of 2017 – from 1 August 2017 – Section 52(4) was amended by deleting “\$10,000” and substituting “\$25,000”; and deleting “12 months” and substituting “10 years”;

Decree 38 of 2012 - from 1 January 2012 – Section 52(4) was amended by deleting “not less than \$10,000” and substituting “not exceeding \$10,000”

Decree 9 of 2012 - from 1 January 2012 – Section 52(4) was amended by deleting “not exceeding \$10,000” and substituting “not less than \$25,000”; and deleting “12 months” and substituting “24 months”.

Decree 50 of 2009 – from 1 January 2010 – Section 52(4) read as:

(4) A person who fraudulently obtains a Taxpayer Identification Number using false or forged documents commits an offence and is liable to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both a fine and imprisonment.

[Section 53] Offence for Making False or Misleading Statement

(1) A person who knowingly or recklessly—

- a) prepares, passes, presents or causes to be prepared, passed or presented as genuine any document required to be produced under any tax law which is not in fact a genuine document or which is false or misleading in any material particular;
- b) makes any entry in any document required to be produced under any tax law which is false or misleading in any material particular;

- c) makes in any oral declaration to a tax officer or in any document produced to a tax officer any statement which is false or misleading in any material particular or produces or delivers to a tax officer any declaration or document containing any such statement; or
- d) omits from a statement made to a tax officer any matter or thing without which the statement is false or misleading in a material particular,

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

Legislative History:

Act 13 of 2018 – from 1 August 2018 – Section 53(1) was amended by deleting paragraphs (a) and (b) and substituting current paragraphs (a), (b) and (c).

Act 27 of 2017 – from 1 August 2017 – Section 53(1) was amended by deleting “24 months” and substituting “10 years”.

Decree 38 of 2012 - from 1 January 2012 – Section 53(1) was amended by deleting “not less than \$25,000” and substituting “not exceeding \$25,000”

Decree 9 of 2012 - from 1 January 2012 – Section 53(1) was amended by deleting “not exceeding \$10,000” and substituting “not less than \$25,000”; and deleting “12 months” and substituting “24 months”.

Decree 50 of 2009 – from 1 January 2010 – Section 53(1) read as:

(1) A person who knowingly or recklessly—

(a) makes a statement to a tax officer that is false or misleading in a material particular; or

(b) omits from a statement made to a tax officer any matter or thing without which the statement is false or misleading in a material particular, commits an offence and is liable to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 12 months or both a fine and imprisonment

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

[Section 54] Offence for Obstruction of Tax Officer

A person who obstructs a tax officer in the performance of duties under a tax law commits an offence and is liable to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years or to both a fine and imprisonment.

Legislative History:

Act 27 of 2017 – from 1 August 2017 – Section 54 was amended by deleting “24 months” and substituting “10 years”

Decree 38 of 2012 - from 1 January 2012 – Section 54 was amended by deleting “not less than \$25,000” and substituting “not exceeding \$25,000”

Decree 9 of 2012 - from 1 January 2012 – Section 54 was amended by deleting “not exceeding \$10,000” and substituting “not less than \$25,000”; and deleting “12 months” and substituting “24 months”

Decree 50 of 2009 – from 1 January 2010 – Section 54 read as:

54. A person who obstructs a tax officer in the performance of duties under a tax law commits an offence and is liable to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both a fine and imprisonment.

[Section 55] Offence for Aiding or Abetting a Taxation Offence

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

[Section 56] Offence for Rescuing Seized Goods

A person who—

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

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

Legislative History:

Act 27 of 2017 – from 1 August 2017 – Section 56 was amended by deleting “\$15,000” and substituting “\$25,000”; and deleting “12 months” and substituting “10 years”.

Decree 38 of 2012 - from 1 January 2012 – Section 56 was amended by deleting “not less than \$15,000” and substituting “not exceeding \$15,000”

Decree 9 of 2012 - from 1 January 2012 – Section 56 was amended by deleting “not exceeding \$5,000” and substituting “not less than \$15,000”; and deleting “6 months” and substituting “12 months”.

Decree 50 of 2009 – from 1 January 2010 – Section 56 read as:

A person who —

(a) rescues any goods that are the subject of an order under section 29 or have been seized under section 30 or

(b) before, at, or after any seizure of goods under section 29 or 30, staves, breaks or destroys any goods, or documents relating to any goods, to prevent —

(i) the seizure or the securing of the goods; or

(ii) the proof of an offence,

commits an offence and is liable on conviction to a fine not exceeding \$5,000 or imprisonment for a term not exceeding 6 months or both a fine and imprisonment.

[Section 57] Offences by Tax Officers

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

Legislative History:

Act 38 of 2017 – from 1 August 2017 – Section 57(1) was amended by deleting “Fiji Revenue and Customs Authority” wherever it appears and substituting “Fiji Revenue and Customs Service”,

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

Legislative History:

Act 27 of 2017 – from 1 August 2017 – Section 57(2) was amended by deleting "24 months" and substituting "10 years"

Decree 38 of 2012 - from 1 January 2012 – Section 57(2) was amended by deleting "not less than \$25,000" and substituting "not exceeding \$25,000"

Decree 9 of 2012 - from 1 January 2012 – Section 57(2) was amended by deleting "not exceeding \$10,000" and substituting "not less than \$25,000"; and deleting "12 months" and substituting "24 months";

Decree 50 of 2009 – from 1 January 2010 – Section 57(2) read as:

(2) A tax officer who directly or indirectly asks for, or takes in connection with any of the officer's duties, any payment or reward whatsoever, whether pecuniary or otherwise, or promise or security for any such payment or reward, not being a payment or reward that the officer was lawfully entitled to receive, commits an offence and is liable to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both a fine and imprisonment.

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

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

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

Legislative History:

Act 27 of 2017 – from 1 August 2017 – Section 57(3) was amended by deleting "24 months" and substituting "10 years"

Decree 38 of 2012 - from 1 January 2012 – Section 57(3) was amended by deleting "not less than \$25,000" and substituting "not exceeding \$25,000"

Decree 9 of 2012 - from 1 January 2012 – Section 57(3) was amended by deleting "not exceeding \$10,000" and substituting "not less than \$25,000"; and deleting "12 months" and substituting "24 months"

Decree 50 of 2009 – from 1 January 2010 – Section 57(3) read as:

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

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

whereby the government is or may be defrauded of revenue, or that is contrary to the provisions of a tax law or to the proper execution of the officer's duty commits an offence and is liable to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both a fine and imprisonment.

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

Legislative History:

Act 27 of 2017 – from 1 August 2017 – Section 57(4) was amended by deleting “24 months” and substituting “10 years”

Decree 38 of 2012 - from 1 January 2012 – Section 57(4) was amended by deleting “not less than \$25,000” and substituting “not exceeding \$25,000”

Decree 9 of 2012 - from 1 January 2012 – Section 57(4) was amended by deleting “not exceeding \$10,000” and substituting “not less than \$25,000”; and deleting “12 months” and substituting “24 months”

Decree 50 of 2009 – from 1 January 2010 – Section 57(4) read as:

(4) A person who directly or indirectly offers or gives to a tax officer any payment or reward whatsoever, whether pecuniary or otherwise, or any promise or security for any payment or reward, not being a payment or reward that the officer was lawfully entitled to receive, commits an offence and is liable to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both a fine and imprisonment.

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

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

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

Legislative History:

Act 27 of 2017 – from 1 August 2017 – Section 57(5) was amended by deleting “24 months” and substituting “10 years”

Decree 38 of 2012 - from 1 January 2012 – Section 57(5) was amended by deleting “not less than \$25,000” and substituting “not exceeding \$25,000”

Decree 9 of 2012 - from 1 January 2012 – Section 57(5) was amended by deleting “not exceeding \$10,000” and substituting “not less than \$25,000”; and deleting “12 months” and substituting “24 months”

Decree 50 of 2009 – from 1 January 2010 – Section 57(5) read as:

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

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

whereby the government is or may be defrauded of revenue, or that is contrary to the provisions of a tax law or to the proper execution of the officer's duty commits an offence and is liable to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both a fine and imprisonment.

[Section 58] Offences by Companies

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

- a) the chief executive officer, authorised officer, managing director, a director, company secretary, treasurer or other similar officer of the company; or
- b) acting or purporting to act in that capacity.

(2) Subsection (1) does not apply to a person if—

- a) the offence was committed without the person's consent or knowledge; and
- b) the person, having regard to the nature of the person's functions and all the circumstances, has exercised reasonable diligence to prevent the commission of the offence.

[Section 58A] Offence for Failure to Display Tax

(1) A taxpayer must ensure that the price of all goods and services supplied at the retail level for its customers is displayed as inclusive of all applicable taxes.

(2) A taxpayer who fails to display any chargeable tax as required under a tax law commits an offence and is liable for a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years or to both a fine and imprisonment.

Legislative History:

Act 27 of 2017 – from 1 August 2017 – Section 58A inserted

[Section 58B] Offence for Charging Tax Where no Tax Payable

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

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

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

Legislative History:

Act 13 of 2018 – from 1 August 2018 – Section 58B inserted

[Section 58C] Offence for Failure to Charge Tax

If a person fails to charge a tax in accordance with a relevant tax law or charges an amount of tax which is not in accordance with the relevant tax law the person commits an offence and is liable to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years or to both a fine and imprisonment.

Legislative History:

Act 13 of 2018 – from 1 August 2018 – Section 58C inserted

[Section 59] Power of CEO to Compound Offences

(1) If a person (referred to as the “offender”) has committed an offence against a tax law, other than an offence under section 57, the CEO may, at any time prior to the commencement of the hearing by a court of a charge in relation thereto, compound the offence and order, by notice in writing, the offender to pay such sum of money, not exceeding the amount of the fine to which the offender would have been liable if convicted of the offence, as the CEO may think fit.

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

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

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

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

[Section 60] General Provisions Relating to Offences

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

Legislative History:

Act 27 of 2017 – from 1 August 2017 – Section 60(1) amended by deleting “within 7 years”.

Decree 50 of 2009 – from 1 January 2010 – Section 60(1) read as:

(1) The prosecution of an offence under a tax law may be instituted at any time within 7 years after the commission of the offence.

(2) A Resident Magistrate who hears and determines any prosecution for an offence under a tax law has, notwithstanding anything contained in any tax law, jurisdiction to impose a fine or sentence of imprisonment that may be imposed under the relevant tax law on any person convicted of the offence.

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

Subdivision 3 Infringement Notices (Sections 60A–60C)

Legislative History:

Act 13 of 2018 (s20) – from 1 August 2018 – Subdivision 3 inserted

[Section 60A] Interpretation of this Subdivision

In this Subdivision, unless the context otherwise requires—

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

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

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

Legislative History:

Act 13 of 2018 (s20) – from 1 August 2018 – Section 60A inserted

[Section 60B] Infringement Notices

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

(2) An infringement notice issued under subsection (1) must—

- a) name the person to whom the infringement notice is issued;
- b) specify the particulars of the offence;
- c) specify the fixed penalty that the person named on the infringement notice is required to pay; and
- d) specify any other information prescribed by regulations.

(3) A fixed penalty payable under this Act or any regulations made under this Act is a debt due to the State that—

- a) is to be collected by the Fiji Revenue and Customs Service in the manner and form prescribed by regulations;
- b) following the collection of the fixed penalty under paragraph (a), is to be paid by the Fiji Revenue and Customs Service into the Consolidated Fund; and
- c) ceases to be due—
 - i. at the time the fixed penalty is paid; or
 - ii. on acquittal or conviction of the prescribed offence or on the determination of the proceedings by the court or tribunal in which the proceedings were instituted.

*Legislative History:
Act 13 of 2018 (s20) – from 1 August 2018 – Section 60B inserted*

[Section 60C] Regulations for Issuance of Infringement Notices

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

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

*Legislative History:
Act 13 of 2018 (s20) – from 1 August 2018 – Section 60C inserted*

DIVISION 9 RULINGS

(Sections 61–67)

Division 9 - Effective from 25th October 2021 [LN 113 of 2021]

Subdivision 1 Public Rulings

(Sections 61–63)

[Sections 61] Binding Public Rulings

- (1) The CEO may make a public ruling in accordance with section 62 setting out the CEO's interpretation on the application of a tax law.
- (2) A public ruling made in accordance with section 62 is binding on the CEO until withdrawn.
- (3) A public ruling is not binding on a taxpayer.

[Section 62] Making a Public Ruling

- (1) The CEO makes a public ruling by publishing a notice of the ruling in the Gazette.
- (2) A public ruling must state that it is a public ruling and have a number and subject heading by which it can be identified.
- (3) A public ruling applies from the date specified in the ruling and if no date is specified, from the date of publication in the Gazette.
- (4) The making of a public ruling is not a tax decision for the purposes of this Act.

[Section 63] Withdrawal of a Public Ruling

- (1) The CEO may withdraw a public ruling, in whole or part, by publishing notice of the withdrawal in the Gazette.
- (2) If legislation is passed, or the CEO makes a public ruling that is inconsistent with an existing public ruling, the existing ruling is treated as withdrawn to the extent of the inconsistency.
- (3) The withdrawal of a public ruling, in whole or part, has effect—

- a) if subsection (1) applies, from the date specified in the notice of withdrawal and if no date is specified, from the date notice of the withdrawal is published in the Gazette; or
 - b) if subsection (2) applies, from the date of application of the inconsistent legislation or public ruling.
- (4) A public ruling that has been withdrawn in whole or in part—
- a) continues to apply to a transaction commenced before the public ruling was withdrawn; and
 - b) does not apply to a transaction commenced after the ruling was withdrawn to the extent that the ruling is withdrawn.

Subdivision 2 Private Rulings

(Sections 64–67)

[Section 64] Binding Private Rulings

- (1) Subject to section 65, the CEO must, upon application in writing by a taxpayer, issue to the taxpayer a private ruling setting out the CEO's position regarding the application of a tax law to a transaction entered into, or proposed to be entered into, by the taxpayer.
- (2) An application for a private ruling must be accompanied by a non-refundable prescribed fee.
- (3) If the taxpayer has made a full and true disclosure of all aspects of the transaction relevant to the making of a private ruling and the transaction has proceeded in all material respects as described in the taxpayer's application for the ruling, the ruling is binding on the CEO in relation to the taxpayer.
- (4) A private ruling is not binding on the taxpayer to whom it is issued.
- (5) If a private ruling is inconsistent with an existing public ruling, the private ruling has priority to the extent of the inconsistency.

[Section 65] Refusing an Application for a Private Ruling

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

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

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

[Section 66] Making a Private Ruling

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

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

(3) A private ruling must state that it is a private ruling and have a number and subject heading by which it can be identified set out the matter ruled on, identifying—

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

Legislative History:

Act 13 of 2018 (s20) – from 1 August 2018 – Section 66(3) was amended by inserting “state that it is a private ruling and have a number and subject heading by which it can be identified” after “must”

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

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

[Section 67] Withdrawal of a Private Ruling

- (1) The CEO may, for reasonable cause, withdraw a private ruling, in whole or part, by written notice served on the applicant.
- (2) If legislation is passed, or the CEO publishes a public ruling, that is inconsistent with a private ruling, the private ruling is treated as withdrawn to the extent of the inconsistency.
- (3) The withdrawal of a private ruling, in whole or part, has effect—
 - a) if subsection (1) applies, from the date specified in the notice of withdrawal; or
 - b) if subsection (2) applies, from the date of application of the inconsistent legislation or public ruling.
- (4) A private ruling that has been withdrawn—
 - a) continues to apply to a transaction commenced before the ruling was withdrawn; and
 - b) does not apply to a transaction commenced after the ruling was withdrawn to the extent that the ruling is withdrawn.

DIVISION 10 FORMS AND NOTICES

(Sections 68–74)

[Section 68] Approved Form

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

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

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

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

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

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

[Section 69] Forms and Notices; Authentication of Documents; Compliance with Tax Law

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

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

Legislative History:

Act 38 of 2017 – from 1 August 2017 – Section 69(2) was amended by deleting "Fiji Revenue and Customs Authority" wherever it appears and substituting "Fiji Revenue and Customs Service",

Act 31 of 2016 (s209) – from 1 December 2016 – Section 69(2) was amended by deleting "Authority" wherever it appears and substituting "Fiji Revenue and Customs Authority"

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

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

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

[Section 70] Manner of Lodging Documents

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

Legislative History:

Act 8 of 2019 s7, effective 1 August 2019 – Section 70 was amended by inserting “or electronic means” after “post”.

Act 38 of 2017 – from 1 August 2017 – Section 70 was amended by deleting “Fiji Revenue and Customs Authority” wherever it appears and substituting “Fiji Revenue and Customs Service”,

Act 31 of 2016 (s209) – from 1 December 2016 – Section 70 was amended by deleting “Authority” wherever it appears and substituting “Fiji Revenue and Customs Authority”

[Section 71] Free Postage

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

Legislative History:

Act 38 of 2017 – from 1 August 2017 – Section 70 was amended by deleting “Fiji Revenue and Customs Authority” wherever it appears and substituting “Fiji Revenue and Customs Service”,

Act 31 of 2016 (s209) – from 1 December 2016 – Section 70 was amended by deleting “Authority” wherever it appears and substituting “Fiji Revenue and Customs Authority”

[Section 72] Service of Notices

(1) In this section, “person” includes the person's representative.

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

Legislative History:

Act 8 of 2019 s7, effective 1 August 2019 – Section 72(2) was amended by inserting “or an electronic address” after “Fiji”

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

- a) if served personally on the person;
- b) if an address for service is provided as specified in subsection (2), if left at, or sent by registered or normal post or electronically to, the address for service stated in the most recently filed tax return of the taxpayer including an address for service; or
- c) if no address for service is provided in a tax return, if—
 - i. left at, or sent by registered or normal post to, the person’s usual or last known address in Fiji; or
 - ii. sent to the person’s last known electronic address.

Legislative History:
Act 8 of 2019 s7, effective 1 August 2019 – Section 72(3)(b) was amended by inserting “or electronically” after “post”; Section 72(3)(c) was deleted and replaced with current provision.

Decree 50 of 2009 – from 1 January 2010 – Section 72(3) read as:
(3) Subject to this Decree and except as otherwise provided in a tax law, a notice or other document required to be served by the CEO on a person for the purposes of a tax law is treated as properly served on the person—
(a) if served personally on the person;
(b) if an address for service is provided as specified in subsection (2), left at, or sent by registered or normal post to, the address for service stated in the most recently filed tax return of the taxpayer including an address for service; or
(c) if no address for service is provided in a tax return, left at, or sent by registered or normal post to, the person’s usual or last known address in Fiji.

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

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

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

[Section 73] Electronic Returns and Notices

(1) The CEO may establish and operate a procedure (referred to as the “electronic notice system”) for electronic filing of tax returns or other documents to the CEO and electronic service

of notices and other documents by the CEO and, for this purpose, the CEO may provide written conditions for—

- a) the registration of taxpayers to participate in the electronic notice system (referred to as “registered users”);
- b) the issuing and cancellation of authentication codes to registered users;
- c) the tax returns and other documents that may be transmitted through the electronic notice system, including the form and manner in which they are to be transmitted;
- d) the correction of errors in or amendments to electronic returns or other documents;
- e) the use of the electronic notice system, including the procedure applicable if there is a breakdown or interruption in the system;
- f) the use in any electronic transmission of symbols, codes, abbreviations or other notations to represent any particulars or information required under a tax law; and
- g) any other matters for the better provision of the electronic notice system.

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

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

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

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

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

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

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

(7) Section 14 also applies to—

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

user and the device involved in the production and transmission of the electronic tax assessment; and

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

Legislative History:

Act 13 of 2018 – from 1 August 2018 – Section 73(7)(a) was amended by inserting “(b)” after “(2)”; Section 73(7)(b) was amended by deleting “tax return” wherever it appears and substituting “self assessment return”; and inserting “(a)” after “(2)”

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

[Section 74] Due Date for Documents and Tax Payments

If the due date for—

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

is a Saturday, Sunday or public holiday, the due date is—

- i. subject to paragraph (ii), the last working day before the due date; or
- ii. where filing, payment or any other action taken under paragraph (a), (b) or (c) is done electronically, the actual due date.”.

Legislative History:

Act 8 of 2019 - from 1 August 2019 – Section 74 was amended by deleting “is a Saturday, Sunday or public holiday, the due date is the last working day before the due date” and substituting with current provision

Decree 69 of 2010 – from 1 January 2011 – Section 74 was amended by deleting “is the next following business day” and substituting “is the last working day before the due date.”

DIVISION 11 TAX COMPLIANCE CERTIFICATE (Sections 74A–74E)

[Section 74A] Tax Compliance Certificate

Any resident person who—

- a) submits an expression of interest or tender to supply goods and services for any Government or public sector business contract; or
- b) applies for any registration, permit or licence from any Government ministry or entity,

must submit a tax compliance certificate issued by the CEO, attached to his or her documents, unless exempted by the Minister in writing.

<i>Legislative Authority: Act 18 of 2015 – from 1 January 2016 – Section 74A inserted</i>

[Section 74B] Application

A person may apply to the CEO for a tax compliance certificate in the approved form and the application must be accompanied by any other information required.

<i>Legislative Authority: Act 18 of 2015 – from 1 January 2016 – Section 74B inserted</i>

[Section 74C] Issuance of Tax Compliance Certificate

(1) The CEO shall issue a tax compliance certificate to a person, if the CEO is satisfied that the person has fulfilled relevant obligations to lodge outstanding tax returns and pay tax due to the State.

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

<i>Legislative Authority: Act 18 of 2015 – from 1 January 2016 – Section 74C inserted</i>

[Section 74D] Refusal

A person may be refused a tax compliance certificate, if—

- a) a return required under a relevant law specified in Schedule 2; or
- b) any tax liability under any tax law,

is outstanding.

*Legislative Authority:
Act 18 of 2015 – from 1 January 2016 – Section 74D inserted*

[Section 74E] Revocation

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

*Legislative Authority:
Act 18 of 2015 – from 1 January 2016 – Section 74E inserted*

PART 3 TAX TRIBUNAL (Sections 75–109)

DIVISION 1 TAX TRIBUNAL (Sections 75–89)

[Section 75] Establishment of Tax Tribunal

- (1) This section establishes the Tax Tribunal.
- (2) The Tribunal is a subordinate court to the Tax Court.
- (3) The Tribunal has the jurisdiction, powers and functions conferred on it by this Act or any other written law.

[Section 76] Appointment of Members of the Tax Tribunal

- (1) The person appointed as the Tax Tribunal shall be a legal practitioner with not less than 7 years post-admission practice or legal experience.
- (2) The Judicial Services Commission or the President of the Republic of Fiji in the absence of the Judicial Services Commission, shall appoint a person to the Tribunal.

[Section 77] Term of Office

- (1) The Tribunal is appointed for a term not exceeding 3 years.
- (2) The Tribunal is eligible for reappointment.

[Section 78] Vocation and Resignation

- (1) The Judicial Services Commission may remove the Tribunal for bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Commission.
- (2) In the case of alleged misconduct, the Judicial Services Commission may, appoint a committee consisting of a legal practitioner qualified for appointment as a Judge and 2 lay members to conduct the hearing of the misconduct and make recommendations to the Commission.
- (3) The Tribunal may, by notice in writing addressed to the Judicial Services Commission, resign from office.

[Section 79] Remuneration

The Tribunal member is entitled to remuneration and other allowances determined by the Judicial Services Commission.

[Section 80] Protection of Tax Tribunal

(1) The Tribunal, in the performance of the tribunal's duties under this Act, has the same protection as is given under section 65 of the Magistrates Court Act 1944 to judicial officers.

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

[Section 81] Jurisdiction of Tax Tribunal

(1) The Tribunal has jurisdiction—

- a) to review a reviewable decision under this Act; and
- b) exercise any other function or jurisdiction conferred to the Tribunal under this Act or any other written law.

(2) The Tribunal has power—

- a) to adjudicate on matters within its jurisdiction relating to disputes up to \$500,000;
- b) to determine claims where the amount in dispute exceeds \$500,000 if both parties consent to the tribunal's jurisdiction; and
- c) to determine any decision relating to the registration or cancellation of registration of a tax agent.

Legislative Authority:

Act 13 of 2018 – from 1 August 2018 – Section 81(2) was amended by deleting “\$50,000” wherever it appears and substituting “\$500,000”.

[Section 82] Application for Review of Reviewable Decision

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

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

- a) be in the approved form;
- b) include a statement of the reasons for the application;

- c) be lodged with the Tax Tribunal within 30 consecutive days after the applicant has been served with notice of the reviewable decision; and
- d) be accompanied by the prescribed fee.

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

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

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

[Section 83] CEO required to Lodge Documents with the Tax Tribunal

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

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

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

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

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

[Section 84] Procedures

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

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

[Section 85] Agreement Between the Parties to a Proceeding Before the Tax Tribunal

- (1) This section applies if, at any stage in a proceeding before the Tax Tribunal, the parties agree in writing as to the terms of a decision of the Tax Tribunal in the proceeding or in a part of the proceeding or a matter arising out of a proceeding.
- (2) If subsection (1) applies and the agreement reached is as to the terms of a decision of the Tax Tribunal in the proceeding, the Tax Tribunal may make a decision in accordance with those terms.
- (3) If subsection (1) applies and the agreement reached relates to a part of a proceeding or a matter arising out of a proceeding, the Tax Tribunal may, in its decision in the proceeding, give effect to the terms of the agreement.

[Section 86] Tax Tribunal or Tax Court May Remit the Matter to The CEO

- (1) At any stage in a proceeding for review of a reviewable decision, the Tax Tribunal or Tax Court may remit the decision to the CEO for reconsideration and the CEO may—
 - a) affirm the decision;
 - b) vary the decision; or
 - c) set aside the decision and make a new decision.
- (2) If the CEO affirms, varies or sets aside a decision under subsection (1), the decision as affirmed, varied or set aside is a reviewable decision and the applicant may either proceed with or withdraw the application.

Legislative History:

Act 27 of 2021- from 1 August 2021 – Section 86 was amended by inserting “or Tax Court” after “Tribunal” wherever it appears

[Section 87] Referral of Question of Law

- (1) The Tax Tribunal may, in proceedings before it, refer a question of law to the Tax Court for its opinion and may for that purpose defer deciding upon and adjourn the proceedings subject to receiving that opinion.
- (2) A reference under subsection (1) must be made in the prescribed manner.
- (3) If the Tax Court makes a determination on the question of law, the Court may refer the matter to the Tribunal for a decision in accordance with the determination.

[Section 88] Transfer of Proceedings to Tax Court

- (1) A party to the proceedings may apply to the Tax Tribunal to have the proceedings transferred to the Tax Court for the hearing and determination of the matter.
- (2) The Tribunal may order the transfer of the proceedings to the Tax Court if the Tribunal is of the opinion that—
 - a) an important question of law is likely to arise; or
 - b) the case is of such a nature and of such urgency that it is in the public interest that it be transferred to the Tax Court.
- (3) If the Tax Tribunal declines to transfer proceedings to the Tax Court, the party concerned may seek special leave of the court for an order that the proceedings be transferred to the Court and the Court must apply the criteria that govern the Tax Tribunal's decision under subsection (2).
- (4) An order for transfer of proceedings to the Tax Court under this section may be made subject to any conditions as the Tax Tribunal or Tax Court may impose.
- (5) If an order for transfer is made under subsection (2), the Tax Court may, if it considers that the proceedings were not properly transferred, order that the Tax Tribunal adjudicate on the proceedings at the first instance.

[Section 89] Decision of Tax Tribunal

- (1) The Tax Tribunal must—
 - a) in the case of a review of a tax decision, make an order as set out in section 17(3) or (4);
 - or

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

(2) The Tax Tribunal must—

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

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

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

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

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

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

DIVISION 2 TAX COURT

(Sections 90–95)

[Section 90] Establishment and Constitution of Tax Court

This section establishes the Tax Court, as a division of the High Court.

[Section 91] Jurisdiction of the Tax Court

(1) The Tax Court has jurisdiction—

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

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

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

[Section 92] Appointment of Experts to Assist Tax Court

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

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

- a) the person is enrolled as a legal practitioner in Fiji and has significant experience in tax matters;

- b) the person is a member of the Fiji Institute of Accountants and has significant experience in tax matters;
- c) the person has previously been engaged as a tax officer with significant technical and administrative experience in tax matters; or
- d) the person has special knowledge, experience or skills relevant to the Tax Court.

(3) The following persons cannot be appointed as expert members under subsection (2)—

- a) a person who—
 - i. has committed an act which has given rise to an offence under the tax law or customs and excise legislation;
 - ii. has been convicted of an offence under the tax law or customs and excise legislation; or
 - iii. has been subject to an order under section 59;
- b) a person who is an undischarged bankrupt.

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

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

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

[Section 93] Power of Tax Court to Order Compliance

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

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

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

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

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

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

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

- a) be subject to the terms and conditions as the Court thinks fit (including conditions as to the actions of the applicant); and
- b) be expressed to continue in force until a specified time or the happening of a specified event.

(5) If the Court makes an order of the kind described in subsection (1) in any proceedings, it may then adjourn the proceedings, without imposing a penalty or fine or making a final determination in the proceedings, to enable the order of the Court to be complied with while the proceedings are adjourned.

(6) If a person fails to comply with a compliance order made under this section, the Court may do one or more of the following things—

- a) if the person in default is a plaintiff, order that the proceedings be stayed or dismissed as to the whole or any part of the relief claimed by the plaintiff in the proceedings;
- b) if the person in default is a defendant, order that the defendant's defence be struck out and that judgment be entered accordingly;
- c) order that the person in default pays a penalty in a sum not exceeding \$25,000, or be sentenced to imprisonment for a term not exceeding 10 years; or
- d) order that the property of the person in default be sequestered.

Legislative History:

Act 27 of 2017- from 1 August 2017 – Section 93 was amended by deleting “\$10,000” and substituting “\$25,000”; and deleting “3 months” and substituting “10 years”

[Section 94] Sittings

(1) Sittings of the Tax Court must be held at times and places as are from time to time fixed by a Judge.

(2) Sittings may be fixed either for a particular case or generally for a class of cases then before the Court and ready for hearing.

(3) The Court may be adjourned from time to time and from place to place by a Judge, a Master or by the Registrar of the Court, whether at a sitting or at a time before the time fixed for the sitting.

[Section 95] Proceedings Not to Abate by Reason of Death

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

DIVISION 3 OTHER GENERAL PROVISIONS

(Sections 96–109)

[Section 96] Registrar and staff of the Court and the Tribunal

The Chief Registrar may—

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

[Section 97] Seals

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

[Section 98] Contempt

(1) This section applies if a person—

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

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

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

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

Legislative History:
Act 27 of 2017- from 1 August 2017 – Section 98(4) was amended by deleting “\$2,000” and substituting “\$25,000” and deleting “3 months” and substituting “10 years”.

[Section 99] Appearance of Parties

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

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

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

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

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

[Section 100] Evidence

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

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

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

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

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

[Section 101] Power to Summons and Produce Documents

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

- a) on the application of any of the parties, the Registrar of the Court must issue a summons to a person to appear and give evidence before or to produce documents or things to the Tribunal or the Court;
- b) the summons must be in the prescribed form, and may require the person to produce before the Tribunal or the Court; books, papers or other documents in that person's possession or under that person's control in any way relating to the proceedings;
- c) all documents produced before the Tribunal or the Court, whether produced voluntarily or pursuant to a summons, may be inspected by the Tribunal or the Court, and also by the parties as the Tribunal or the Court allows, but the information obtained must not, unless the Tribunal or the Court in its discretion so directs, be made public, and the parts of the documents as, in the opinion of the Tribunal or the Court, do not relate to the matter at issue may be sealed;
- d) subject to the discretion of the Tribunal or the Court, a person attending the Tribunal or the Court on a summons, and every other person giving evidence before the Tribunal or the Court is entitled, as against the party calling that person, to a sum for that person's expenses and loss of time according to the scale of fees prescribed for witnesses and upon application by a party, the Court may use its discretion to award enhanced costs including witnesses costs and disbursements;
- e) a person present in Court or before the Tribunal who is required to give evidence but refuses to be sworn or to give evidence is liable on conviction by the Tribunal or the Court to a fine not exceeding \$2,000;
- f) for the purpose of obtaining evidence of witnesses, where witnesses are unable to attend court, the Judge may allow witnesses to give evidence through other means including through a duly authorised officer, a registrar, or a district officer;
- g) the Tribunal or the Court may take evidence on oath, and for that purpose the Judge, the Registrar or any other person acting under the express or implied direction of the Tribunal or the Court, may administer an oath;
- h) on an indictment for perjury it is sufficient to prove that the oath was administered under paragraph (g);
- i) a party to the proceedings must be competent and may be compelled to give evidence as a witness; and
- j) the Tribunal or the Court in its discretion may order that all or a part of its proceedings may be taken down in shorthand or recorded in any other manner.

[Section 102] Power to Proceed if Parties Fail to Attend

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

[Section 103] Powers to Join as Parties etc

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

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

[Section 104] Costs

The Tribunal or the Court in proceedings may order a party to pay to any other party costs and expenses (including expenses of witnesses) as it thinks reasonable, and may apportion the costs between the parties or any of them as it thinks fit, and may at any time vary or alter the order in the manner as it thinks reasonable.

[Section 105] Power to Prohibit Publication

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

[Section 106] Rules of the Tribunal and Court

- (1) The Chief Justice may from time to time make rules for the purpose of regulating the practice and procedure of the Tribunal or the Court.
- (2) In the absence of such rules, or where no provision is made for a particular circumstance—
 - a) the Magistrates Court Rules 1945 apply to the proceedings before the Tribunal; and
 - b) the High Court Rules 1988 apply to the proceedings before the Tax Court.

[Section 107] Appeals from Tribunal to Tax Court

- (1) A party to proceedings before the Tribunal who is aggrieved by a decision of the Tribunal in the proceedings may appeal as of right or by leave to the Court.
- (2) An appeal to the Court must be made in the prescribed manner within 28 days from the date of the decision of the Tribunal.
- (3) A notice of appeal must specify—
- a) the grounds of appeal;
 - b) the decision or the part of the decision appealed from; and
 - c) the precise form of the order which the appellant proposes to seek from the Court.
- (4) Subject to subsection (2) an appeal lies as of right to the Tax Court—
- a) from any first instance decision of the Tribunal; or
 - b) where any ground of appeal from the Tribunal involves a question of law.
- (5) No appeal shall lie—
- a) from an appeal allowing an extension of time;
 - b) from any decision of the Tribunal where it is provided by this Act that the decision is final;
 - c) except with leave of the Tribunal, from a decision made by consent of the parties;
 - d) except with leave of the Tribunal, from a decision as to costs only;
 - e) except with leave of the Tribunal or the Court—
 - i. from any interlocutory decision; or
 - ii. from any compliance order of the Tribunal.
- (6) For the purposes of hearing and determination of any appeal, the Court has all the power, authority and jurisdiction of the Tribunal and such other authority vested in a superior court.
- (7) When hearing and determining an appeal the Court may—
- a) confirm, modify or reverse the decision or a part of the decision of the Tribunal or set aside the decision of the Tribunal and substitute its own decision; or
 - b) refer the matter with or without any direction to the Tribunal to reconsider, either generally or in respect of specified matters, the whole or a part of the matter to which the appeal relates.
- (8) If an appeal is referred back to the Tribunal, the Tribunal must hear and dispose of the matter without any delay.

[Section 108] Appeal on Interlocutory Order of the Court

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

[Section 109] Appeals to Court of Appeal

- (1) An appeal from the Tax Court shall lie to the Court of Appeal.
- (2) For the purposes of an appeal to the Court of Appeal, the Court of Appeal Act 1949 applies, with necessary modifications.
- (3) An appeal from the Tax Court must be filed within 42 days of the delivery of the decision or judgment.

<i>Legislative History: Act 21 of 2016- from 1 August 2016 – Section 98(4) was amended by deleting “28” and substituting “42”.</i>
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- (4) A notice of appeal does not operate as a stay of proceedings in respect of the decision to which the appeal relates unless the Tax Court or the Court of Appeal so orders.

PART 4 TAX AGENTS' BOARD

(Sections 110–116A)

[Section 110] Establishment of Tax Agents' Board

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

[Section 111] Appointment of Members of the Tax Agents' Board

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

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

Legislative History:

Act 27 of 2017 – from 1 August 2017 – Section 111(1) was amended by deleting "Permanent Secretary" wherever it appears and substituting "CEO"

Act 3 of 2014 – from 1 January 2015 – Section 111(1) was amended by deleting "Auditor-General" and substituting "Permanent Secretary for Finance or his or her appointed representative", wherever it appears

Decree 50 of 2009 – from 1 January 2010 – Section 111(1) read as:

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

(a) the Auditor-general;

(b) a member of the Fiji Institute of Accountants nominated by the Council of the Institute and appointed by the Minister; and

(c) a person with accounting knowledge and experience appointed by the Minister.

(2) The CEO or his or her appointed representative is the chairperson of the Board.

Legislative History:

Act 27 of 2017 – from 1 August 2017 – Section 111(1) was amended by deleting "Permanent Secretary" wherever it appears and substituting "CEO"

Act 3 of 2014 – from 1 January 2015 – Section 111(2) was amended by deleting "Auditor-General" and substituting "Permanent Secretary for Finance or his or her appointed representative", wherever it appears

Decree 50 of 2009 – from 1 January 2010 – Section 111(2) read as:

(2) The Auditor-general is the chairperson of the Board.

(3) The following persons cannot be appointed as a member under subsection (1)(b) or (1)(c)—

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

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

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

- a) becomes an undischarged bankrupt;
- b) is liable for a significant penalty or convicted of an offence under a tax law or is subject to an or under section 59;
- c) resigns by notice in writing to the Minister; or
- d) is removed by the Minister, by notice in writing, for inability to perform the duties of office or proven for misconduct.

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

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

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

[Section 112] Proceedings of Tax Agents’ Board

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

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

Legislative History:

Act 28 of 2022 – from 1 August 2022 - Section 112(2) amended to substitute “Auditor General” to “chairperson”

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

Legislative History:

Act 38 of 2017 – from 1 August 2017 - Section 112(3) amended to substitute “Fiji Revenue and Customs Authority” to “Fiji Revenue and Customs Service”

Act 31 of 2016(s209) – from 1 December 2016 - Section 112(3) amended by deleting “Authority” and substituting “Fiji Revenue and Customs Authority”

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

Legislative History:

Act 18 of 2015 – from 1 January 2016 – Section 112(4) inserted

[Section 113] Registration of Tax Agents

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

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

(3) Subject to subsection (4), if an applicant under subsection (1) satisfies the Board that the applicant is a fit and proper person to prepare tax returns and transact business under the tax laws on behalf of taxpayers, the applicant is entitled for registration as a tax agent.

(4) If an applicant under subsection (1) does not possess an academic qualification related to tax matters acceptable to the Board, the Board may request the Fiji Institute of Accountants to conduct on its behalf an examination to determine whether the applicant's knowledge of accounting and tax matters is sufficient to justify registration of the applicant as a tax agent.

(5) The Board must provide an applicant under subsection (1) with notice, in writing, of its decision on the application.

(6) An applicant dissatisfied with a decision on an application registration as a tax agent can challenge the decision only under section 82.

(7) Registration as a tax agent is valid for a period commencing on the date of registration and ending on 31 December of the year in which registration is granted.

(8) A registered tax agent who, upon expiry of the tax agent's registration, wishes to be registered for the following year must submit an application to the board, in the approved form and accompanied by the prescribed fee, for registration within 21 consecutive days of the date of expiry of the tax agent's registration, failing which the tax agent's registration must be cancelled.

[Section 114] Cancellation of Registration

(1) A tax agent must notify the Board, in writing, if the tax agent ceases to carry on business as a tax agent.

(2) Notification under subsection (1) must be made within 7 consecutive days of ceasing to carry on business as a tax agent.

(3) A tax agent may apply to the Board, in the approved form, for cancellation of the agent's registration if the agent no longer wishes to be registered.

(4) The Board may cancel the registration of a tax agent if—

- a) the tax agent has notified the Board under subsection (1);
- b) the Board is satisfied that an application should have been made even though no application has been made under subsection (1);
- c) the tax agent has applied for cancellation of the agent's registration under subsection (3);
- d) a tax return prepared and filed with the CEO by the tax agent is false in any material particular, unless the tax agent establishes to the satisfaction of the Board that the false statement was not wilfully or negligently made;
- e) the tax agent is liable for a significant penalty or convicted of an offence under a tax law or is subject to an order under section 59;
- f) the agent becomes an undischarged bankrupt;
- g) the tax agent has failed to maintain his or her personal tax affairs in a satisfactory state;
- h) the tax agent has, for any other reason, ceased to be a fit and proper person to remain registered; or
- i) the tax agent has breached the code of conduct.

Legislative History:

Act 18 of 2015 – from 1 January 2016 – Section 114(4) amended by inserting Section 114(4)(i)

(5) The Board must give notice, in writing, of a decision of the Board's intention to cancel the registration of a tax agent.

(6) A tax agent dissatisfied with the Board's decision of the Board's intention to cancel his or her registration can challenge such notice of intention to cancel the registration only under section 82.

(7) Subject to subsection (8), the intention to cancel under subsection (5) or the actual cancellation of the registration under subsection (4) takes effect 30 consecutive days after the tax agent has been served with notice of intention to cancel or the actual cancellation.

(8) If a tax agent served with notice of intention to cancel or where actual cancellation has been effected, and such a tax agent gives, notice to the Board of his or her intention to appeal either the intention to cancel or where actual cancellation of his or her registration has been effected, such cancellation becomes effective if affirmed by the Tax Tribunal upon appeal.

[Section 115] Only Tax Agents to Accept Fees and Advertise as Tax Agents

- (1) No person other than a tax agent can demand or receive any fee for or in relation to—
- a) the preparation of a tax return;
 - b) the preparation of an objection; or
 - c) the transaction of any business on behalf of any person in respect of the person's rights or obligations under a tax law.
- (2) Subsection (1) does not apply to a barrister and solicitor performing legal work in relation to a tax law.
- (3) No person, other than a registered tax agent, can represent themselves as a tax agent or indicate that, for reward, the person will offer assistance to another person in respect of that other person's rights or obligations under a tax law.

[Section 115A] Investigation of complaint by the Fiji Revenue and Customs Service

- (1) A person may lodge a complaint against a tax agent with the Board.
- (2) The Board may forward the complaint to the Fiji Revenue and Customs Service for investigation.
- (3) During the course of investigation, the Board must provide the tax agent investigated an opportunity to respond to the complaint made against him or her.
- (4) Upon completion of an investigation, the Fiji Revenue and Customs Service must provide a report of the investigation to the Board in order for the Board to make a decision on the matter.

<i>Legislative History:</i> <i>Act 28 of 2022 – from 1 August 2022 – Section 115A inserted</i>

[Section 115B] Power of Tax Agents' Board to compound offences

- (1) Subject to subsection (2), if a tax agent has committed an offence under this Part, the Board may, at any time prior to the commencement of a hearing by a court of a charge in relation thereto, compound the offence and order, by notice in writing, the tax agent to pay such sum of money as the Board may determine, not exceeding the amount of fine to which the tax agent would have been liable if convicted of the offence.

(2) The Board may compound an offence under this section where the tax agent admits to committing the offence in writing and requests the Board to deal with the offence under this section.

(3) If the Board compounds an offence under this section, an order of the Board under subsection (1)—

- (a) must specify the name of the offender, the offence committed, the sum of money ordered to be paid, and the date or dates on which payment is to be made by;
- (b) must have a copy of the written admission referred to in subsection (2) attached;
- (c) must be served on the offender;
- (d) is final and is not subject to appeal;
- (e) may be enforced in the same manner as a decree of a court for payment of the amount stated in the order; and
- (f) on production to any court, is treated as proof of conviction of the tax agent for an offence under this Part.

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

Legislative History:

Act 28 of 2022 – from 1 August 2022 – Section 115B inserted

[Section 116] Offences Relating to Tax Agent's Registration

A person who fails to comply with this Part commits an offence and is liable for a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 10 years or to both a fine and imprisonment.

Legislative History:

Act 27 of 2017 - from 1 August 2017 – Section 116 amended by deleting "24 months" and substituting "10 years".

Act 21 of 2016 - from 1 August 2016 – Section 116 amended by deleting "this section" and substituting "this Part".

Decree 38 of 2012 - from 1 January 2012- Section 116 amended by deleting "not less than \$50,000" and substituting "not exceeding \$50,000".

Decree 9 of 2012 - from 1 January 2012 – Section 116 amended by deleting "not exceeding \$5,000" and substituting "not less than \$50,000"; and deleting "6 months" and substituting "24 months".

Decree 50 of 2009 – from 1 January 2010 – Section 116 read as:

116. A person who fails to comply with this section commits an offence and is liable for a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both a fine and imprisonment.

[Section 116A] Offences by a Tax Agent

A tax agent who, in his or her capacity as tax agent for a taxpayer, knowingly or recklessly—

- a) prepares or causes to be prepared any document required to be produced for the purposes of complying with any tax law which is false or misleading in any material particular;
- b) makes any entry in any document required to be produced for the purposes of complying with any tax law which is false or misleading in any material particular;
- c) makes in any document produced to a tax officer for the purposes of complying with a tax law any statement which is false or misleading in any material particular or produces or delivers to a tax officer any such document containing any such statement; or
- d) omits from a statement made to a tax officer any matter or thing without which the statement is false or misleading in a material particular,

commits an offence and is liable to a fine not exceeding \$50,000 or imprisonment for a term not exceeding 10 years or both.

Legislative History:

Act No. 13 of 2020 – from 1 August 2020 - Section 116A deleted and replaced with current provision

Act 13 of 2018 – from 1 August 2018 – Section 116A inserted as:

Offences by a tax agent

116A. A tax agent who—

- (a) prepares, passes, presents or causes to be prepared, passed or presented as genuine any document required to be produced under any tax law which is not in fact a genuine document or which is false or misleading in any material particular;*
- (b) makes any entry in any document required to be produced under any tax law which is false or misleading in any material particular;*
- (c) makes in any oral declaration to a tax officer or in any document produced to a tax officer any statement which is false or misleading in any material particular or produces or delivers to a tax officer any declaration or document containing any such statement; or*
- (d) omits from a statement made to a tax officer any matter or thing without which the statement is false or misleading in a material particular,*

commits an offence and is liable to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 10 years or to both a fine and imprisonment.”.

PART 5 CONSEQUENTIAL AMENDMENTS

(Sections 117)

[Section 117] Consequential Repeals and Amendments

The following enactments are amended as specified in Schedule 4—

- a) the Fiji Islands Revenue and Customs Authority Act;
- b) the Gambling Turnover Tax Decree;
- c) the Hotel Turnover Tax Act;
- d) the Income Tax Act;
- e) the Lands Sales Act; and
- f) the Value Added Tax Decree.

PART 6 FINAL PROVISIONS

(Sections 118–119)

[Section 118] Regulations

(1) The Minister may make regulations—

- a) prescribing forms, fees or other matters as required under this Act;
- b) for the administration of the Tax Tribunal and Tax Agents' Board;
- c) for the proper and efficient administration of this Act.

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

- a) contain provisions of a saving or transitional nature consequent on the making of this Act;
or
- b) prescribe penalties for the contravention of the regulations.

(3) If regulations made under this section are of a transitional nature and are made within 6 months after the commencement of this Act, the regulations may provide that they take effect from the date on which the Act comes into force.

[Section 118A] Electronic systems

Legislative History:

Act 21 of 2016 – from 1 August 2016 – Section 118A inserted

(1) The Fiji Revenue and Customs Service shall implement electronic systems to obtain and monitor accurate records relating to the imposition of a tax.

Legislative History:

Act 38 of 2017 – from 1 August 2017 – Section 118A (1) amended by deleting “Fiji Revenue and Customs Authority” wherever it appears and substituting “Fiji Revenue and Customs Service”,

(2) The Minister may make regulations prescribing matters that are required to be prescribed or are necessary or convenient to be prescribed for the implementation of electronic systems established under subsection (1), including but not limited to—

- a) terms or conditions issued by the Fiji Revenue and Customs Service;
- b) procedures or guidelines for the collection and verification of data;
- c) offences for failure to comply with any term or condition issued by the Fiji Revenue and Customs Service or any requirement relating to the electronic systems;

- d) penalties for offences committed under any regulations prescribed under this section, with fines not exceeding \$200,000 or imprisonment for terms not exceeding 10 years, or both.

[Section 119] Transitional and Savings

- (1) Subject to this section, this Act applies to any act or omission occurring, or any tax decision made, before the commencement date.
- (2) Any appeal or prosecution commenced before the commencement date is continued and disposed of as if this Act had not come into force.
- (3) If the period for any application, appeal or prosecution had expired before the commencement date, nothing in this Act can be construed as enabling the application, appeal or prosecution to be made under this Act by reason only of the fact that a longer period is specified in this Act.
- (4) Any tax liability that arose before the commencement date may be recovered under this Act, but without prejudice to any action already taken for the recovery of the tax.

SCHEDULES

SCHEDULE 1

(Section 2) - Tax Assessments

1) The following are tax assessments for the purposes of this Act—

- a) an assessment of income tax, including a self-assessment under section 8, and including a nil or loss notice;

Legislative History:

Act 13 of 2018 – from 1 August 2018 – paragraph (1)(a) amended by inserting “including a self-assessment under section 8, and” after “tax”

- b) the ascertainment of provisional tax or advance payments of tax under Subdivision 3 of Division 2 of Part 9 of the Income Tax Act 2015;

Legislative History:

Act 32 of 2015 - from 1 January 2016 – paragraph (1)(b) amended by deleting “Part XII of the Income Tax Act” and substituting “Subdivision 3 of Division 2 of Part 9 of the Income Tax Act”

- c) an assessment of VAT, including a self-assessment under section 8;
- d) an assessment of capital gains tax, including a self-assessment under section 8;

Legislative History:

Decree 23 of 2011 – from 1 May 2011 – paragraph (1)(d) amended by deleting “land sales tax” and substituting “capital gains tax, including a self-assessment under section 5”

- e) an assessment of penalty or additional tax under a tax law;
- f) a default assessment of tax under section 9;
- g) an advance assessment of tax under section 10;
- h) an assessment including a self-assessment of gambling turnover tax under section 8;
- i) an amendment of an assessment referred to in paragraphs (a) to (g);
- j)

Legislative History:

Act 17 of 2020 – from 1 August 2020 - paragraph (1)(j) deleted

Decree 7 of 2012 – from 1 January 2012 - paragraph (1)(j) amended by deleting “HTT” and substituting “STT” and by inserting paragraph (1)(k)

*Decree 50 of 2009 – from 1 January 2010 - paragraph (1)(j) read as:
an assessment including a self-assessment of the Hotel Turnover Tax under section 5*

- k) an assessment of fringe benefit tax, including a self-assessment under section 8;

Legislative History:

Decree 7 of 2012 – from 1 January 2012 - paragraph (1)(k) inserted

- l) an assessment of telecommunications levy, including a self-assessment under section 8;
and

Legislative History:

Act 13 of 2018 – from 1 August 2018 – paragraph (1)(l) amended

- m) an assessment of environment and climate adaptation levy, including a self-assessment under section 8.

Legislative History:

Act 8 of 2019 - from 1 January 2019 – paragraph (1)(m) inserted

Legislative History:

Act 32 of 2015 - from 1 January 2016 – Schedule 1 amended by deleting “section 5” and substituting “section 8” wherever it appears

2) The determination of the withholding tax payable is not a tax assessment

Legislative History:

Act 32 of 2015 - from 1 January 2016 – paragraph 2 inserted

SCHEDULE 2

(Section 2) - Tax Laws

1) The following are tax laws for the purpose of this Act—

- a) this Act;
- b) the Gambling Turnover Tax Act 1991;
- c)

Legislative History:

Act 17 of 2020 – from 1 August 2020 – paragraph (1)(c) deleted

Decree 9 of 2012 – from 1 January 2012 – paragraph (1)(c) amended by deleting "Hotel Turnover Tax Act" and substituting "Service Turnover Tax Decree 2012"

*Decree 50 of 2009 – from 1 January 2010 – paragraph (1)(c) read as:
(c) the Hotel Turnover Tax Act;*

- d) the Income Tax Act 2015;
- e) the Environment and Climate Adaptation Levy Act 2015;

Legislative History:

Act 27 of 2017 – from 1 August 2017 – paragraph (1)(e) inserted

Act 31 of 2016 – from 1 December 2016 – paragraph (1)(e) deleted

Decree 23 of 2011 – from 1 May 2011 – paragraph (1)(e) amended by deleting "Land Sales Act" and substituting "Capital Gains Tax Decree"

*Decree 50 of 2009 – from 1 January 2010 – paragraph (1)(e) read as:
(e) the Land Sales Act;*

- f) the Value Added Tax Act 1991;
- g)

Legislative History:

Act 28 of 2022 – from 1 August 2017 – paragraph (1)(g) deleted which previously read as "the Superyacht Charter Act 2020"

Act 27 of 2017 – from 1 August 2017 – paragraph (1)(g) inserted

Act 31 of 2016 – from 1 December 2016 – paragraph (1)(g) deleted

*Decree 7 of 2012 – from 1 January 2012 – paragraph (1)(g) inserted as:
(g) the Fringe Benefit Tax Decree 2012*

- ga) the Airport Departure Tax Act 1986;

Legislative History:

Act 27 of 2017 – from 1 August 2017 – paragraph (1)(ga) inserted

- h) any other Act or any other written law (other than the customs and excise legislation) under which a tax or levy is imposed if responsibility for the general administration of the tax or levy is imposed on the CEO.

Legislative History:

Act 31 of 2016 – from 1 December 2016 – paragraph (1)(h) amended by deleting ", Decree or Promulgation" and substituting "or any other written law"

Decree 7 of 2012 – from 1 January 2012 – previous paragraph (1)(g) renumbered as (1)(h)

2) A reference to a tax law in paragraph (1) includes any regulations or other subsidiary legislation made under the law.

SCHEDULE 3

(Section 2) – Returns

PART A TAX RETURNS

(Sections 1–9)

1) In relation to income tax—

- a) a return required under section 104 or 109 of the Income Tax Act 2015;
- b) a report required under section 107 of the Income Tax Act 2015; or
- c) an monthly withholding tax summary required under section 121 of the Income Tax Act 2015.

Legislative History:

Act 9 of 2019 – from 1 August 2019 – paragraph (1)(c) was amended by deleting “an annual” and substituting “a monthly”.

2) In relation to value added tax—

- a) a return required to be furnished under sections 33, 34 and 35 of the Value Added Tax Act 1991; and
- b) particulars required to be furnished under section 37 of the Value Added Tax Act 1991.

3)

Legislative History:

Act 17 of 2020 – from 1 August 2020 – paragraph (3) deleted

Decree 50 of 2009 – from 1 January 2010 – paragraph 3 read as:

(3) A return required under section 4(1)(b) of the Hotel Turnover Tax Act and payment required under section 4(1)(a).

4) A return required under section 5(1)(b) of the Gambling Turnover Tax Act 1991 and payment required under section 5(1)(a).

5) A return required under section 126 of the Income Tax Act 2015.

6) A return required under section 131 of the Income Tax Act 2015.

6A) A return required under section 135 of the Income Tax Act 2015.

7) A return and payment required under the Environment and Climate Adaptation Levy Act 2015.

8) A return and payment required under the Superyacht Charter Act 2010.

9) A return and payment required under the Airport Departure Tax Act 1986.

PART B SELF-ASSESSMENT RETURNS

(Sections 1-2)

1) A return required under section 33, 34 or 35 of the Value Added Tax Act 1991.

2) A return required under section 104, 107, 109, 121, 126, 131 or 135 of the Income Tax Act 2015.

Legislative History:

Act 8 of 2019 – from 1 August 2019 – paragraph 2 amended by deleting “109” and substituting “107, 109, 121”

SCHEDULE 4

(Section 117) - Consequential Repeals and Amendments

1) FIJI ISLANDS REVENUE AND CUSTOMS AUTHORITY ACT

The Fiji Islands Revenue and Customs Authority Act is amended—

a) in section 2, by inserting the following definitions in the correct alphabetical order—

customs and excise legislation has the meaning in the Tax Administration Act;

revenue law refers to all laws listed in the Second Schedule;

revenue officer means an officer under a tax law, customs and excise legislation;

Tax Agents' Board means the Tax Agents' Board established under section 110 of the Tax Administration Decree;

Tax Administration Decree means the Tax Administration Decree (No XX of 2009);

tax law has the meaning in the Tax Administration Decree;

Tax Tribunal means the Tax Tribunal established under section 75 of the Tax Administration Decree;

b) by repealing subsection (2) of section 17 and replacing with

“(2) The conduct and discipline of every employee of the Fiji Islands Revenue and Customs Authority will be, in accordance with the provisions of the Conduct and Discipline Regulations 2002.”

c) by amending subsection (4) of section 27, by deleting the "full stop" after "subsection" and inserting at the end of the subsection the following words “and the power to compound offences in section 59 of the Tax Administration Decree”;

d) by repealing section 52 and replacing with the following new section—

“Secrecy

52 (1) A revenue officer must take an oath in the prescribed form administered by a magistrate or a Justice of the Peace before performing any duty under any revenue law.

(2) A revenue officer must regard as secret and confidential all information and documents received in performance of duties as a revenue officer.

(3) Subject to subsection (4)(b), no revenue officer can be required to produce in the Tax Tribunal or any court any document or divulge to the Tribunal or any court any information that has come into the officer's possession or knowledge in the performance of the officer's duties under a revenue law, except as may be necessary for the purpose of carrying into effect the provisions of a revenue law or in order to bring, or assist in the course of, a prosecution for any offence in relation to tax

(4) Nothing in this section prevents a revenue officer from revealing a document or information to—

- a) another revenue officer or the Minister, but only to the extent necessary for the purposes of carrying out any duty arising under a revenue law;
- b) the Commissioner of Police, Director of Immigration, Governor of the Reserve Bank, Financial Intelligence Unit and Fiji Independent Commission Against Corruption but only to the extent necessary for carrying into effect the provisions of any revenue law or to institute a prosecution for an offence under any revenue law;
- c) the Tax Agents' Board, but only to the extent necessary for the performance of the functions of the Board;
- d) the Auditor-General or a person authorised by the Auditor-General in writing to the extent that the disclosure is necessary for the performance of the audit of the Authority's accounts, provided the Auditor-General or person authorised by the Auditor-General to audit the accounts of the Authority has taken an oath as required by subsection (7);
- e) the competent authority of a government of a foreign country with which Fiji has entered into an agreement providing for the exchange of information, to the extent permitted under that agreement; or
- f) a person with the written consent of the person to whom the documents or information relate.

(5) If a revenue officer is permitted to disclose documents or information under subsection (4), the officer must maintain secrecy and confidentiality except to the minimum extent necessary to achieve the object for which the disclosure is permitted.

(6) Subsections (2) and (9) apply to a person receiving documents or information under subsection (4) as if the person were a revenue officer.

(7) The Auditor-General and every person authorised by the Auditor-General in writing for the purpose of the audit of the Authority's accounts must take an oath in accordance with subsection (1),

(8) A reference to revenue officer in this section, other than in subsection (1), includes a person employed or engaged by the Authority in any capacity and includes the Minister or former Minister, a director or former director of the Board, a member or former member of a committee of the Board, a person invited to a Board or committee meeting, or a former officer or employee of the Authority,

(9) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding [12] months or to both,”

(e)in Schedule 1, by inserting the following in correct alphabetical order—
“Tax Administration Decree”.

2) GAMBLING TURNOVER TAX DECREE

The Gambling Turnover Tax Decree is amended—

- a) in section 5, by repealing subsections (3), (4), and (5);
- b) in section 7, by repealing subsections (3) and (4);
- c) by repealing sections 8, 8A, 9, 11, and 12; and
- d) in section 10—
 - a) in subsection (1), by deleting the words “Subject to this section, where” and substituting “Where”; and
 - b) by repealing subsection (2),

3) HOTEL TURNOVER TAX ACT

The Hotel Turnover Tax Act is amended—

- a) in section 4, by deleting subsections (4) and (5);
- b) by repealing sections 5 and 5A; and
- c) by repealing section 7 and substituting the following section—

“Application of the Income Tax Act

Section 108 of the Income Tax Act applies for the purposes of this Act.”

4) INCOME TAX ACT

The Income Tax Act is amended—

- a) by repealing sections 3, 3A, 3B, 4, 5, 45, 46, 48, 49, 50A, 54A to 54K, 57, 58, 59, 59A, 62 to 71, 74, 74A, 75 to 77B, 90, 94 to 100;
- b) in section 44, by deleting the last sentence of subsection (1);
- c) in section 47A, by repealing subsection (2);
- d) in section 50, by repealing subsections (1)– (5), and (7) and (8);
- e) in section 55, by repealing subsection (2); and
- f) in section 72, by repealing subsections (1), (3), and (4).

5) LAND SALES ACT

The Land Sales Act is amended by repealing section 13, 14, and 16.

6) VALUE ADDED TAX DECREE

The Value Added Tax Decree is amended—

- a) by repealing sections 6A, 7, 9, 10, 11, 12, 45, 46, 47, 48, 50 to 60, 61 (1), 62, 63, 63A, 64, 64A, 68, 73, 76, 76A, 77, and 78;
- b) in section 6, by repealing subsections (1), (2), (3), (4), and (6);
- c) in section 8, by repealing subsections (1), (2), (3), (4), and (5);
- d) in section 44—
 - i. in subsection (1), by deleting paragraphs (a), (b) and (c);
 - ii. by repealing subsection (2);
 - iii. in subsection (3)—
 - A. by deleting the words “or amended assessment” after the word “assessment”;
 - B. by deleting the word “registered” before the word “person”; and
 - C. by deleting the words “or further tax” after the word “tax”; and
 - iv. by repealing subsections (4) and (5); and
 - v. in subsection (6), by deleting the words “sections 44, 45, 46 or any other section relating to assessment of tax” and substituting “this section”;
- e) in section 65, by repealing subsection (4);
- f) in section 70, by repealing subsection (1); and
- g) in section 71, by repealing paragraphs (i), (j), and (q).

SCHEDULE 5

LIST OF FINANCIAL INSTITUTIONS

[Sch 5 insrt Decree 55 of 2010 s 4, effective 15 August 2010]

- 1) Bank of the South Pacific;
- 2) Westpac Banking Corporation;
- 3) Australia and New Zealand Banking Group Limited;
- 4) Bank of Baroda;
- 5) Fiji Development Bank;
- 6) Housing Authority;
- 7) Home Finance Company Limited;
- 8) Dominion Finance Limited;
- 9) Merchant Finance and Investment Company Limited;
- 10) Credit Corporation (Fiji) Limited.

SUBSIDIARY LEGISLATION

Tax Agents' Code of Conduct 2018

IN exercise of the powers conferred on the Tax Agents' Board by section 112(4) of the Tax Administration Act 2009, the Tax Agents' Board hereby makes this Code of Conduct—

- 1) A tax agent must act honestly and with integrity.
- 2) A tax agent must comply with the tax laws in the conduct of his or her personal and professional affairs.
- 3) Where a tax agent receives money or other property from or on behalf of a client and holds the money or other property in trust, the tax agent must account to his or her client for the money or other property.
- 4) A tax agent must act lawfully and in the best interests of his or her client.
- 5) A tax agent must have in place adequate arrangements, policies and procedures for the management of conflicts of interest that may arise in relation to the activities that the tax agent undertakes in his or her capacity as a tax agent.
- 6) A tax agent must not disclose any information relating to his or her client's affairs to a third party without his or her client's permission, unless it is necessary to do so for the purposes of producing a document or giving evidence to a court in the course of civil or criminal proceedings or proceedings under the tax laws or any other written law.
- 7) A tax agent must ensure that any service provided by the tax agent, or that is provided on behalf of the tax agent, is provided competently with reasonable care. The responsibility and accountability for any service provided by a tax agent lies with the tax agent.
- 8) A tax agent must maintain knowledge and skills relevant to the services that the tax agent provides.
- 9) A tax agent must take reasonable care in ascertaining his or her client's state of affairs, to the extent that ascertaining the state of those affairs is relevant to a statement that the tax agent is making or a service that the tax agent is providing on behalf of his or her client.

- 10) A tax agent must take reasonable care to ensure that the tax laws are applied correctly to the circumstances in relation to which the tax agent is providing advice to his or her client and any material issues must be explicitly included as notes or written advice to the client.
- 11) A tax agent must not knowingly obstruct or advise his or her client on how to evade the proper administration of the tax laws.
- 12) A tax agent must advise his or her client of the client's rights and compliance obligations under the tax laws.
- 13) A tax agent may maintain professional indemnity insurance.
- 14) A tax agent must respond to requests and directions from the Tax Agents' Board in a timely, responsible and reasonable manner.

TAX ADMINISTRATION (INFRINGEMENT NOTICES) REGULATIONS 2018

Table of Amendments

Tax Administration (Infringement Notices) Regulations 2018 (LN 48 of 2018) commenced on 1 August 2018, as amended by:

Amending Legislation	Date of Commencement
Tax Administration (Infringement Notices) (Amendment) Regulations 2019 (LN 60 of 2019)	1 August 2019
Stamp Duties (Repeal) Act 2020 {No 16 of 2020} Consequential Amendments	1 August 2020
Fijian Competition and Consumer Commission (Budget Amendment) Act 2020 (Act 29 of 2020) Consequential Amendments	1 August 2020

PART 1 PRELIMINARY

(Regulations 1–4)

[Regulation 1] Short title and commencement

(1) These Regulations may be cited as the Tax Administration (Infringement Notices) Regulations 2018.

(2) These Regulations come into force on 1 August 2018.

[Regulation 2] Interpretation

In these Regulations, unless the context otherwise requires—

Act	means the Tax Administration Act 2009 and includes the tax laws specified in Schedule 2 to the Act;
court	means a court of competent jurisdiction;
fixed penalty	means a penalty prescribed in column 4 of Schedule 1;
fixed penalty offence	means an offence prescribed in columns 1 and 2 of Schedule 1;
Infringement Notice	means the notice issued under regulation 5;
late payment fee	means 50% of the fixed penalty a person is liable to pay;
revoked Regulations	means the Value Added Tax (Infringement) Regulations 2016;
Service	means the Fiji Revenue and Customs Service; and
VAT Infringement Notice	means the notice prescribed in Schedule 1 to the revoked Regulations.

[Regulation 3] Objectives

The objectives of these Regulations are to—

- a) ensure compliance with the Act;
- b) address breaches of the Act;
- c) improve self-regulation; and

- d) ensure the efficient collection of taxes.

[Regulation 4] Application

These Regulations apply throughout Fiji irrespective of a person's nationality, citizenship or place of registration or incorporation.

PART 2 PROCEEDINGS FOR INFRINGEMENT NOTICES (Regulations 5–9)

[Regulation 5] Issuance of Infringement Notice

(1) A tax officer may issue an Infringement Notice to a person alleged to have committed a fixed penalty offence by serving the Infringement Notice—

- a) personally upon the person;
- b) through registered mail sent to the person's postal address last recorded by the Service;
- c) at the registered office of the person;
- d) upon a person who resides at the person's physical address last recorded by the Service, provided that the first mentioned person is of or over the age of 18 years; or
- e) through any electronic means as approved by the Service, including by electronic mail to a valid electronic mailing address submitted by the person to the Service and verified by the Service.

(2) In these Regulations, service of the Infringement Notice is deemed to have been effected if the Infringement Notice is—

- a) in the form prescribed in Schedule 2; and
- b) served in accordance with this regulation.

(3) The Service may notify a person to whom an Infringement Notice is issued of the person's alleged commission of a fixed penalty offence and such notification may be made by—

- a) Short Message Service (SMS) messaging to a registered mobile phone contact; or
- b) electronic mail to a valid electronic mailing address,

submitted by the person to the Service and verified by the Service.

[Regulation 6] Fixed penalty

A person to whom an Infringement Notice is issued is liable to a fixed penalty and must, within 30 days from the date the Infringement Notice is issued, undertake one of the following actions—

- a) pay the fixed penalty in a single payment or by instalments; or
- b) elect to dispute the Infringement Notice in a court.

[Regulation 7] Failure to Pay Fixed Penalty

(1) If a person to whom an Infringement Notice is issued does not undertake any of the actions in regulation 6 within the prescribed period, the person is liable to pay the late payment fee in addition to the fixed penalty and where the person is—

- a) an individual, the individual shall be issued a departure prohibition order preventing the individual from leaving Fiji; or
- b) a company, all the directors of the company in Fiji shall be issued a departure prohibition order preventing the directors from leaving Fiji,

unless the person undertakes one of the following actions—

- i. pays the fixed penalty and late payment fee in a single payment or by instalments; or
- ii. elects to dispute the Infringement Notice in court.

(2) If a person to whom an Infringement Notice is issued pays the fixed penalty and late payment fee, if applicable, and also elects to dispute the Infringement Notice in a court, the person must notify the Service, on or before the payment of the fixed penalty and late payment fee, if applicable, of the person's intention to dispute the Infringement Notice.

(3) If a person to whom an Infringement Notice is issued pays the fixed penalty and late payment fee, if applicable, and also elects to dispute the Infringement Notice and the court subsequently makes a final determination in the person's favour, including the determination of any appeal in any appellate court, the Service must refund the fixed penalty and late payment fee, if applicable, to that person.

(4) If a person to whom an Infringement Notice is issued does not undertake any of the actions in regulation 6 within the prescribed period, the Service must notify the Director of Immigration immediately after the expiration of the prescribed period.

(5) Upon receipt of the notification from the Service under subregulation (4), the Director of Immigration must issue to—

- a) where the person is an individual, the individual; or
- b) where the person is a company, all the directors of the company in Fiji,

a departure prohibition order stating—

- i. the reasons for the issue of the departure prohibition order;
- ii. the fixed penalty and late payment fee that the person is required to pay; and
- iii. that the departure prohibition order may be revoked if the person undertakes any of the actions listed in subregulation (1)(i) and (ii).

(6) If a departure prohibition order is issued to a person under this regulation, the person to whom the departure prohibition order is issued may pay in full the fixed penalty and late payment fee that the person is liable to, to the Service or, if the person intends to leave Fiji, to the Department of Immigration at an international airport in Fiji.

(7) Pursuant to subregulation (6), if a person pays in full the fixed penalty and late payment fee that the person is liable to, the departure prohibition order is deemed to have been revoked and the person must not be prevented from leaving Fiji on the basis of the departure prohibition order issued under this regulation.

[Regulation 8] Failure to Take Action Within 3 Months

If a person to whom an Infringement Notice is issued does not undertake any of the actions provided in regulation 7(1)(i) and (ii) within 3 months from the date the Infringement Notice is issued, the Infringement Notice takes effect as a conviction and the Service may seek the maximum penalty for the prescribed offence from a court.

[Regulation 9] Evidence of Matters in Certificate

A certificate signed by a tax officer stating that the fixed penalty was or was not paid must, unless the contrary is proved, be conclusive evidence of the matters stated in the certificate.

PART 3 MISCELLANEOUS (Regulations 10-11)

[Regulation 10] Revocation

The Value Added Tax (Infringement) Regulations 2016 is revoked.

[Regulation 11] Transition

The provisions of the revoked Regulations continue to apply to any VAT Infringement Notice issued by the Service prior to the commencement of these Regulations until such time that —

- a) the fixed penalty specified in the VAT Infringement Notice is paid to the Service; or
- b) the registered person specified in the VAT Infringement Notice is required to appear before the Magistrates Court to answer to the charge specified in the VAT Infringement Notice.

SCHEDULES

SCHEDULE 1

(Regulation 2) - Fixed Penalty Offences and Fixed Penalties

1. Tax Administration Act 2009

Section	Fixed Penalty Offence	Maximum Penalty: Fine Imprisonment	Fixed Penalty		
			Gross annual turnover less than \$500,000	Gross annual turnover between \$500,000 — \$1.5 million	Gross annual turnover more than \$1.5 million
49(1)	Failure to file a tax return or other documents	\$25,000 10 years	\$5,000	\$10,000	\$25,000
(amended by LN 60 of 2019 Regulation 2, effective 1 August 2019)					
49(3)	False or misleading tax return	\$250,000	\$100,000	\$150,000	\$200,000
50	Failure to comply with obligations under: section 26 section 27 section 32 section 35(4) section 36 section 37A section 38 section 38A section 73(8)	\$25,000 10 years	\$5,000	\$10,000	\$25,000
52(1)	Use of false Taxpayer Identification Number	\$25,000 10 years	\$5,000	\$10,000	\$25,000
54	Obstruction of tax officer	\$25,000 10 years	\$5,000	\$10,000	\$25,000
58A(2)	Failure to display tax	\$25,000 10 years	\$5,000	\$10,000	\$25,000

58B	Charging tax where no tax payable	\$25,000 10 years	\$5,000	\$10,000	\$25,000
58C	Failure to charge tax	\$25,000 10 years	\$5,000	\$10,000	\$25,000
116	Failure to comply with Part 4	\$50,000 10 years	\$10,000	\$20,000	\$50,000
116A	Offences by a tax agent	\$50,000 10 years	\$10,000	\$20,000	\$50,000

2. Tax Administration (Electronic Fiscal Device) Regulations 2017

(amended by LN 60 of 2019 Regulation 2, effective 1 August 2019)

Section	Fixed Penalty Offence	Maximum Penalty: Fine Imprisonment	Fixed Penalty		
			First Offence	Second offence	Third offence and subsequent offence
22	Failure to comply with regulation 15	If gross annual turnover of the supplier's business is less than \$500,000 - \$10,000	\$2,000	\$5,000	\$10,000
		If gross annual turnover of the supplier's business is \$500,000 or more but less than \$1.5 million - \$25,000	\$5,000	\$10,000	\$20,000
		If the gross annual turnover of the suppliers business is \$1.5 million or more - \$50,000	\$10,000	\$25,000	\$50,000
		24 months			
23	Failure to comply with regulation 18	If gross annual turnover of the supplier's	\$2,000	\$5,000	\$10,000

		business is less than \$500,000 - \$10,000 If gross annual turnover of the supplier's business is \$500,000 or more but less than \$1.5 million - \$25,000 If the gross annual turnover of the supplier's business is \$1.5 million or more - \$50,000 24 months	\$5,000 \$10,000	\$10,000 \$25,000	\$20,000 \$50,000
28(4)	Offence against regulation 28(3)	If gross annual turnover of the supplier's business is less than \$500,000 - \$10,000 If gross annual turnover of the supplier's business is \$500,000 or more but less than \$1.5 million - \$25,000 If the gross annual turnover of the supplier's business is \$1.5 million or more - \$50,000 24 months	\$2,000 \$5,000 \$10,000	\$5,000 \$10,000 \$25,000	\$10,000 \$20,000 \$50,000

3. Value Added Tax Act 1991

Section	Fixed Penalty Offence	Maximum Penalty: Fine Imprisonment	Fixed Penalty		
			Gross annual turnover less than \$500,000	Gross annual turnover between \$500,000 — \$1.5 million	Gross annual turnover more than \$1.5 million
72(2)	Offence against section 71(c) or section 71(m) on the first occasion	\$5,000 10 years	\$1,000	\$3,000	\$5,000
	Offence against section 71(c) or section 71(m) on the second occasion	\$15,000 10 years	\$5,000	\$10,000	\$15,000
	Offence against section 71(c) or section 71(m) on every other occasion	\$25,000 10 years	\$5,000	\$10,000	\$25,000
72(3)	Offence against section 71(a)	\$10,000	\$2,000	\$5,000	\$10,000
72(4)	Offence against section 71(d), (e), (f), (g), (h) or (k) on the first occasion	\$10,000 or 3 times the tax involved if greater 10 years	\$2,000	\$5,000	\$10,000
	Offence against section 71(d), (e), (f), (g), (h) or (k) on every other occasion	\$20,000 or 3 times the tax involved if greater 10 years	\$10,000	\$15,000	\$20,000
72A(3)* deleted					
72A(4)* deleted					

4.

[para 4 deleted by Act 16 of 2020, effective 1 August 2020]

5. Gambling Turnover Tax Act 1991

Section	Fixed Penalty Offence	Maximum Penalty: Fine Imprisonment	Fixed Penalty		
			Gross annual turnover less than \$500,000	Gross annual turnover between \$500,000 — \$1.5 million	Gross annual turnover more than \$1.5 million
6(5)	Failure by accountable person to register	\$25,000	\$5,000	\$10,000	\$25,000

6. Income Tax (Collection of Provisional Tax) Regulations 2016

(inserted by LN 60 of 2019 Regulation 2, effective 1 August 2019)

Section	Fixed Penalty Offence	Maximum Penalty: Fine Imprisonment	Fixed Penalty
5	Failure to make deductions or remit the deductions	\$25,000 10 years	\$2,000

SCHEDULE 2
(Regulation 5(2)(a)) - Infringement Notice

Infringement Notice Number:

Details of Offender	
Name:	
Address:	
TIN:	
Details of Offence	
Statement of Offence:	
Particulars of Offence:	
Contrary to:	
This offence carries a maximum penalty of [\$]. If you do not wish to contest this Infringement Notice, you are required to pay the fixed penalty of [\$1 to the Fiji Revenue and Customs Service.	
The payment of the fixed penalty is due within 30 days from the date of issue of this Infringement Notice and is payable at any Fiji Revenue and Customs Service office. If you pay the fixed penalty, all liability in respect of the offence will be discharged and no further action will be taken against you with respect to this particular offence.	
If you wish to contest this Infringement Notice, you may elect to dispute this Infringement Notice in court within 30 days from the date of issue of this Infringement Notice.	
If you fail to pay the fixed penalty or dispute this Infringement Notice in court within 30 days from the date of issue of this Infringement Notice, you will be— (i) liable to a late payment fee equivalent to 50% of the fixed penalty, in addition to the fixed penalty; and (ii) issued a departure prohibition order preventing you from leaving Fiji.	
You may pay your fixed penalty and late payment fee in a single payment or in instalments.	
The departure prohibition order will continue until you pay your fixed penalty and late payment fee in full or elect to dispute this Infringement Notice in court.	
If you do not pay your fixed penalty and late payment fee in full or elect to dispute this Infringement Notice in court within 3 months from the date this Infringement Notice is issued to you, this Infringement Notice will take effect as a conviction from the court and the Fiji Revenue and Customs Service may seek the maximum penalty from the court.	
3. Details of Tax Officer	

Name: Signature:	Date: [day/month /year]
4. Affidavit of Service	
I, [name of Tax Officer whose signature appears in section 3], make oath and say that, on the [specify day] day of [specify month], 20 [specify year] at [specify address] I did serve upon the offender specified therein.	
[signature of Tax Officer]	
Sworn by the above named Tax Officer this [specify day] day of [specify month] 20 [specify year].	
Before:	
[name and signature of Commissioner for Oaths/Justice of the Peace]	
Commissioner for Oaths/Justice of the Peace	

TAX ADMINISTRATION (ELECTRONIC FISCAL DEVICE) REGULATIONS 2017

Table of Amendments

Tax Administration (Electronic Fiscal Device) Regulations 2017 (LN 37 of 2017) commenced on 1 June 2017, as amended by:

Amending Legislation	Date of Commencement
Environmental Levy (Budget Amendment) Act 2017 (No 36 of 2017)	1 August 2017
Fiji Revenue and Customs Authority (Budget Amendment) Act 2017 (No 38 of 2017)	1 August 2017
Tax Administration (Electronic Fiscal Device) (Amendment) Regulations 2019 (LN 26 of 2019)	21 May 2019
Tax Administration (Electronic Fiscal Device) (Amendment) (No.2) Regulations 2019 (LN 59 of 2019)	1 August 2019
ax Administration (Electronic Fiscal Device) (Amendment) Regulations 2020 [LN 33 of 2020)	1 April 2020
Tax Administration (Electronic Fiscal Device) (Amendment) (No. 2) Regulations 2020 {LN 57 of 2020)	1 April 2020
Tax Administration (Electronic Fiscal Device) (Amendment) (No. 3) Regulations 2020 (LN 65 of 2020)	1 August 2020
Service Turnover Tax (Repeal) Act 2020 (No 17 of 2020) Consequential Amendments	1 August 2020
Tax Administration (Electronic Fiscal Device) (Amendment) Regulations 2021(LN 60 of 2021)	1 August 2021

PART 1 PRELIMINARY

(Regulations 1-3)

[Regulation 1] Short Title and Commencement

(1) These Regulations may be cited as the Tax Administration (Electronic Fiscal Device) Regulations 2017.

(2) These Regulations come into force on 1 June 2017.

[Regulation 2] Interpretation

(1) In these Regulations, unless the context otherwise requires—

accredited	in relation to a POS or E-SDC, means accredited by the CEO under regulation 8 or 9;
application	means an application that is in a form approved by the CEO;
audits and investigations	means audits and investigations under section 37 of the Act;
be part of a fiscal invoice	means recorded on the fiscal invoice and payable as part of the total amount payable specified on the fiscal invoice;
business	means a business— a) supplying goods and services that is operated by a taxpayer; b) with a gross annual turnover exceeding \$100,000; and c) that is a member of a group of businesses specified by the Minister by notice in the Gazette under regulation 28;
[def am LN 57 of 2020 s 2, effective 1 April 2020]	
cashier	means a person who, as part of his or her employment, operates a POS for a business;
company	means a company registered under the Companies Act 2015;
customer	means a person to whom, or to which, a business supplies goods and services;
customer compliance award program	means a customer compliance award programme conducted under regulation 26;

digital certificate	means a unique electronic document issued by the CEO for each EFD that— a) authenticates the EFD when it links with the Service’s system; and b) contains public and private key for creating, producing and verifying the digital signature of the EFD;
[def am Act 38 of 2017 s 7, effective 1 August 2017]	
digital signature	means an encrypted digital code that— a) is created by an SDC using private key; b) is recorded on each fiscal invoice by the SDC; c) identifies the taxpayer; and d) verifies the integrity of the SDC when it transmits fiscal data to the Service’s system;
[def am Act 38 of 2017 s 7, effective 1 August 2017]	
electronic fiscal device	or EFD means a system, composed of one SDC and at least one POS connected together, that— a) receives, records, analyses and stores fiscal data; b) formats fiscal data into fiscal invoices; c) has a secure element which transmits the fiscal data to the Service’s system; and d) produces fiscal invoices and issues them to a customer;
[def am Act 38 of 2017 s 7, effective 1 August 2017]	
external SDC	or E-SDC means a SDC that is hardware set up as a separate component of the EFD used by a taxpayer;
fiscal data	means the transaction data that the Service requires for calculating and imposing a tax;
[def am Act 38 of 2017 s 7, effective 1 August 2017]	
fiscal invoice	means a receipt that— a) is issued from an EFD to acknowledge that a transaction has occurred between a business and a customer; and b) has printed on it the fiscal data and other information relating to the transaction specified in regulation 12(2);
FRCS employee	means a person appointed by the Service under section 26 of the Fiji Revenue and Customs Service Act 1998 for the purpose of carrying out its functions and duties;
[def am Act 38 of 2017 s 7, effective 1 August 2017]	
Guideline set out in a Schedule	means a guideline specified in regulation 20;
issue	in relation to a fiscal invoice, means to make available for a customer to receive and retain;
POS	means a point of sale invoicing device or software which is an electronic device or software application that is—

- a) used by a business for management control in the areas of sales analysis and stock control; and
- b) a component of the business's EFD—
 - i. into which a cashier enters the transaction data for each transaction made by the business; and
 - ii. from which a fiscal invoice for the transaction is issued;

protocol	means a protocol made available to the public by the CEO under regulation 21(2);
receipt	means a receipt or invoice;
SDC	means a sales data controller which is the component of an EFD that— a) receives transaction data from a POS component of the EFD; b) analyses the transaction data into fiscal data; c) formats the fiscal data as a fiscal invoice, creates the digital signature for the EFD and records the digital signature on the fiscal invoice; d) transmits the fiscal invoice to the POS; e) preserves the transaction data and fiscal data in an irrevocable and secure manner; and f) transmits the fiscal data to the Service's system;
[def am Act 38 of 2017 s 7, effective 1 August 2017]	
secure element	means the software and hardware used by an EFD and the Service to prevent tampering and unauthorised use of fiscal data transmitted to the Service's system and to maintain the integrity of the fiscal data;
[def am Act 38 of 2017 s 7, effective 1 August 2017]	
Service	means the Fiji Revenue and Customs Service established under section 3 of the Fiji Revenue and Customs Service Act 1998;
[def am Act 38 of 2017 s 7, effective 1 August 2017]	
Service's system	means the electronic information system that the Service must operate under regulation 6(1);
[def am Act 38 of 2017 s 7, effective 1 August 2017]	
supplier	means a person who supplies an EFD or a component of an EFD to a taxpayer;
supply	means— a) supply within the meaning of the Sale of Goods Act 1979; or b) providing services under an agreement for installing, implementing, servicing or maintaining an EFD or a component of an EFD;
tax	means— a) the tax as defined in section 2 of the Value Added Tax Act 1991;

- b)
- c) the Environment and Climate Adaptation Levy as defined in section 2 of the Environment and Climate Adaptation Levy Act 2015; or
- d) any other tax that is specified by the CEO by notice in the Gazette to be part of a fiscal invoice;

[def am Act 36 of 2017 s 12, effective 1 August 2017; def amended by Act 17 of 2020, effective 1 August 2020]

taxpayer

[def rep LN 26 of 2019 reg 2, effective 21 May 2019]

transaction means a transaction between the business of a taxpayer and a customer by which—

- a) the business supplies goods or services to the customer and the customer pays the price for the supply of the goods and services to the business; or
- b) the business pays the customer a refund of the whole or a part of the price the customer has paid for goods or services previously supplied by the business to the customer;

transaction data means the data relating to a transaction entered into a POS by a cashier; and

V-SDC means a virtual SDC that is software attached to the Service's system.

[def am Act 38 of 2017 s 7, effective 1 August 2017]

(2) In these Regulations, words and phrases have the same meaning as under the Act unless the context otherwise requires.

(3) A reference in these Regulations to the supply of goods and services is a reference to a supply of goods and services that is charged with a tax.

(4) A reference to—

- a) a Schedule is a reference to a Schedule to these Regulations; and
- b) a Schedule by number is a reference to a Schedule so numbered.

[Regulation 3] Objective

The objective of these Regulations is to implement an electronic system that enables the Service to securely obtain, monitor and assess accurate fiscal data for calculating and imposing a tax that is required to be part of a fiscal invoice.

[reg 3 am Act 38 of 2017 s 7, effective 1 August 2017]

PART 2 ELECTRONIC SYSTEM
(Regulations 4-12)
DIVISION 1 ESTABLISHMENT AND DESCRIPTION OF ELECTRONIC SYSTEM
(Regulations 4-5)

[Regulation 4] Establishment of electronic system

- (1) There is an electronic system that transmits, receives, records, analyses, formats, stores and monitors fiscal data.
- (2) The electronic system is composed of—
 - a) the Service's system; and
 - b) the EFDs used by taxpayers in operating their businesses.

[subreg (2) am Act 38 of 2017 s 7, effective 1 August 2017]

- (3) The function of the electronic system is to obtain and monitor accurate data to create a database for assessing, calculating and imposing liability for a tax.

[Regulation 5] Description of operations of electronic system

The following are the operational components of the electronic system—

- a) an electronic information system operated by the Service that receives, verifies, records, analyses, stores and transmits fiscal data;
- b) EFDs operated by taxpayers for their businesses that connect and communicate electronically to the Service's system using a secure encryption protocol and mutual authentication;
- c) POSes that transmit transaction data for every transaction to SDCs, receive fiscal invoices for every transaction from SDCs and issue the fiscal invoices;
- d) SDCs that receive transaction data from POSes, instantly format that data into fiscal data and fiscal invoices, transmit the fiscal data to the Service's system and transmit the fiscal invoices to POSes;
- e) the Service's system authenticates the SDCs transmitting fiscal data to it and receives, stores, analyses and verifies the fiscal data;
- f) security features for the hardware and software of the Service's system and the EFDs securely maintain the privacy and integrity of the fiscal data using secure encryption protocols, digital certificates and mutual authentication mechanisms for receiving, verifying, recording, analysing, storing and transmitting fiscal data;

- g) a software feature in the Service's system enables taxpayers and customers to access fiscal data stored on the Service's system to verify the following in relation to either a single transaction or more than one transaction—
 - i. that the Service's system has received fiscal data transmitted to it;
 - ii. the accuracy of fiscal data stored on the Service's system.

[reg 5 am Act 38 of 2017 s 7, effective 1 August 2017]

DIVISION 2 OPERATIONAL COMPONENTS OF ELECTRONIC SYSTEM (Regulations 6-12)

[Regulation 6] Service to operate an electronic information system

(1) The Service must operate an electronic information system that has hardware and software that—

- a) connects electronically with each taxpayer's EFD;
- b) authenticates each SDC that transmits fiscal data to the system;
- c) receives, records, analyses and stores fiscal data transmitted by an SDC;
- d) securely maintains the privacy and integrity of the secure elements, digital certificates, digital signatures and the fiscal data it receives, analyses, stores and transmits;
- e) manages the secure elements, digital certificates and digital signatures;
- f) manages an auditing process for monitoring and supervising EFDs and fiscal data;
- g) provides accurate data to the Service for assessing the taxes payable by taxpayers; and
- h) enables taxpayers and customers to access fiscal data stored on the Service's system to verify the following in relation to either a single transaction or more than one transaction—
 - i. that the Service's system has received fiscal data transmitted to it;
 - ii. the accuracy of fiscal data stored on the Service's system.

[subreg (1) am Act 38 of 2017 s 7, effective 1 August 2017]

(2) The operations of the Service's system must comply with the Guidelines set out in the Schedules.

[subreg (2) am Act 38 of 2017 s 7, effective 1 August 2017]

[reg 6 am Act 38 of 2017 s 7, effective 1 August 2017]

[Regulation 7] Electronic fiscal devices

(1) A taxpayer must operate an EFD for each business of the taxpayer.

(2) An EFD must comply with the following—

- a) the components of the EFD are one or more POSes and one SDC (which may be an E-SDC or V-SDC);
- b) each POS and E-SDC are accredited;
- c) each POS transmits to the SDC a receipt, on which is recorded the transaction data specified in regulation 12(2), for each transaction of the business;
- d) the SDC receives the transaction data, analyses the data and calculates taxes to produce fiscal data for the transaction, and puts the digital signature on the receipt;
- e) there is a digital certificate that authenticates the EFD and enables the SDC to transmit the fiscal data to the Service's system;
- f) the SDC transmits the fiscal data to the Service's system and the Service's system verifies the fiscal data and transmits it back to the SDC;
- g) the SDC formats a fiscal invoice for the transaction, records the digital signature on the fiscal invoice and transmits the fiscal invoice to the POS;
- h) a fiscal invoice is produced for each transaction.

[subreg (2) am Act 38 of 2017 s 7, effective 1 August 2017]

(3) The operations of the EFD must comply with the Guidelines set out in the Schedules.

[Regulation 8] Accreditation of POSes and E-SDCs — Applications by Suppliers

(1) A supplier, who wants to supply to a taxpayer a POS or E-SDC of a particular brand, model and specification that is not an accredited POS or E-SDC, must apply to the CEO for accreditation of the POS or E-SDC of that brand, model and specification.

(2) On receiving the application, the CEO must take steps to determine whether to accredit the brand, model and specification of the POS or E-SDC. In doing so, the CEO must comply with the processes set out in the Guideline set out in Schedule 3.

(3) During the accreditation process, the supplier must provide the CEO with access to information and equipment, and any other assistance, the CEO reasonably requires for carrying out the process.

(4) After completing the accreditation process, the CEO—

- a) accredits, or refuses to accredit, the brand, model and specification of a POS or E-SDC in accordance with the Guideline set out in Schedule 3; and
- b) must, without delay—
 - i. give notice in writing to the supplier of the CEO's decision to accredit or refuse to accredit; and
 - ii. give to the supplier a copy of the accreditation report produced under paragraph 4 of the Guideline.

(5) The CEO must, without delay after accrediting a POS or E-SDC under this regulation, publish the details of the brand, model and specification of the POS or E-SDC, and the date it is accredited, on the Service's website.

[subreg (5) am Act 38 of 2017 s 7, effective 1 August 2017]

(6) The accreditation of a POS or E-SDC under this regulation does not have effect unless the details of the brand, model and specification of the POS or E-SDC, and the date of its accreditation, are specified on the Service's website.

[subreg (6) am Act 38 of 2017 s 7, effective 1 August 2017]

[Regulation 9] Accreditation of POSes and E-SDCs — Applications by Taxpayers

(1) A taxpayer, who wants to develop, install and implement an EFD for a business of the taxpayer, must, before implementing the EFD, apply to the CEO for accreditation of each POS and E-SDC of the EFD.

(2) On receiving the application, the CEO must take steps to determine whether to accredit each POS and E-SDC of the taxpayer's EFD. In doing so, the CEO must comply with the processes set out in the Guideline set out in Schedule 3.

(3) During the accreditation process, the taxpayer must provide the CEO with access to information and equipment, and any other assistance, the CEO reasonably requires for carrying out the process.

(4) After completing the accreditation process, the CEO—

- a) accredits, or refuses to accredit, each POS and E-SDC of the EFD in accordance with the Guideline set out in Schedule 3; and
- b) must, without delay—
 - i. given notice in writing to the taxpayer of the CEO's decision to accredit or refuse to accredit; and
 - ii. give to the taxpayer a copy of the accreditation report produced under paragraph 4 of the Guideline.

(5) The accreditation of an EFD under this regulation is not effective until the taxpayer receives the CEO's notice given under subregulation (4)(b)(i).

[Regulation 10] Revocation of Accreditation

(1) The CEO may revoke the accreditation of a POS or E-SDC if the POS or E-SDC does not comply with a Guideline set out in a Schedule.

(2) If the CEO revokes the accreditation of a POS or E-SDC that was accredited under regulation 8, the CEO must, without delay—

- a) remove the details of the POS or E-SDC from the Service’s website; and
- b) give notice in writing of the revocation to the suppliers supplying the POS or E-SDC.

[subreg (2) am Act 38 of 2017 s 7, effective 1 August 2017]

(3) If the CEO revokes the accreditation of a POS or E-SDC that was accredited under regulation 9, the CEO must, without delay, give notice in writing of the revocation to the taxpayer operating the EFD of which the POS or E-SDC is a component.

(4) A notice of a decision under this regulation must specify the reasons for the decision.

[Regulation 11] Digital Certificates

(1) There must be a digital certificate for the EFD of a taxpayer’s business that does the following—

- a) reproduces the taxpayer’s digital signature for recording on each fiscal invoice issued by the taxpayer to a customer;
- b) reproduces the protected password or PIN code of the taxpayer and securely delivers the password or PIN Code to the Service’s system to enable the EFD to link to the Service’s system and securely transmit the fiscal data to the Service’s system;
- c) records the date on which the data is transmitted to the Service’s system.

[subreg (1) am Act 38 of 2017 s 7, effective 1 August 2017]

(2) The CEO must issue the digital certificate for an EFD.

(3) The CEO must not issue more than one digital certificate for an EFD.

[Regulation 12] Fiscal Invoices

(1) There must be a fiscal invoice for each transaction of a business.

(2) The fiscal invoice must specify the following particulars—

- a) the type of receipt;
- b) the type of transaction;
- c) the method of payment;
- d) the name or unique identification of the cashier;
- e) the name or unit code of each good or service supplied;
- f) the unit price and quantity of each good or service supplied;
- g) the total price of the goods or services supplied;

- h) the taxes that are a part of the invoice and the tax rates applied;
- i) the total amount payable by the customer;
- j) if the customer is a taxpayer, the customer's TIN;
- k) the name and TIN of the business, and the identification of the business premises where the transaction occurred;
- l) the date and time the receipt is issued;
- m) the sequential serial number of the receipt;
- n) the serial number of the digital certificate of the business's EFD;
- o) the digital signature of the EFD in the form of a Quick Response (QR) Code issued by the Service.

(Regulation 12(2)(o) amended by LN 59 of 2019 Reg 2, effective 1 August 2019)

(3) The type of receipt referred to in subregulation (2)(a) must be one of the following types—

- a) a normal receipt, which is the receipt that is issued when a transaction occurs and which affects tax liability;
- b) a copy of a receipt, which is generated as a copy of a normal receipt when a transaction occurs and does not affect tax liability;
- c) a training receipt that is used for training purposes only and does not affect tax liability;
- d) a pro-forma receipt, which has the characteristics of a normal receipt, but is not proof of a transaction and does not affect tax liability.

(4) The type of transaction referred to in subregulation (2)(b) must be one of the following types—

- a) a supply of goods and services;
- b) a refund of a payment or part of a payment made for a previous supply of goods or services.

(5) The method of payment referred to in subregulation (2)(c) includes, and is not limited to, payment by cash, credit or debit card, cheque, voucher, promissory note, direct debit transfer and wire transfer.

(6) A training or pro-forma receipt referred to in subregulation (3)(c) or (d) must be clearly distinguishable from a normal receipt by recording on the receipt—

- a) "TRAINING" or "PRO-FORMA", as the case requires, below the receipt header and above the item description section; and
- b) "THIS IS NOT A FISCAL INVOICE" below the total amount payable.

(7) The text referred to in subregulation (6) must be—

- a) recorded on the receipt in such a manner so that it may not be altered or erased; and
- b) in a font size that is at least twice the size of the text on the receipt that specifies the total amount payable.

PART 3 ROLES, RESPONSIBILITIES AND CONDUCT

(Regulations 13-19)

[Regulation 13] Role and Responsibilities of CEO

- (1) The CEO is responsible for the administration of these Regulations.
- (2) In administering these Regulations, the CEO is responsible for—
 - a) operating the Service's system in a manner that complies with these Regulations;
 - b) receiving appropriate advice on technical matters relating to electronic information systems, electronic fiscal devices, fiscal invoicing and fiscal data for administering these Regulations;
 - c) authorising FRCS employees to perform tasks that enable the CEO to comply with these Regulations;
 - d) establishing and maintaining, in an electronic form and in any other form that the CEO considers appropriate, an accurate up-to-date record of—
 - i. the name and address of each taxpayer;
 - ii. the address of each premises where the taxpayer operates a business;
 - iii. details of the EFD operated for the taxpayer's business;
 - iv. details of any erroneous data entered into a POS and the manner in which it was corrected or cancelled; and
 - v. details of a defect in or misuse of an EFD;
 - e) accrediting POSes and E-SDCs;
 - f) receiving complaints and reports about EFDs;
 - g) setting up and maintaining a system that enables taxpayers and customers to access fiscal data stored on the Service's system to verify the following in relation to either a single transaction or more than one transaction--
 - i. that the Service's system has received fiscal data transmitted to it;
 - ii. the accuracy of fiscal data stored on the Service's system;
 - h) publishing information, including by publishing information on a website or in another electronic form, about the process by which taxpayers and customers access and verify the matters referred to in paragraph (g);
 - i) conducting audits, inspections and other supervisory activities for ensuring the Service's system and each taxpayer's EFD do not contravene these Regulations;
 - j) taking steps and making decisions for prosecuting persons who allegedly commit offences against these Regulations or compounding those offences and ordering the offender to pay money under section 59 of the Act; and
 - k) conducting a customer compliance award programme.

[subreg (2) am Act 38 of 2017 s 7, effective 1 August 2017]

[Regulation 14] Role and Responsibilities of Suppliers

- (1) A supplier may supply an accredited POS or E-SDC to a taxpayer.
- (2) If a supplier becomes aware of a defect in, or misuse of, an accredited POS or E-SDC, the supplier must report the defect and its cause (if known), or the misuse, to the CEO as soon as practicable after becoming aware of it.
- (3) In subregulation (3), “defect” includes failure to operate, incorrect labelling, damage or missing a part.
- (4) A supplier, who has an agreement with a taxpayer to install and implement an EFD or component of an EFD in the taxpayer’s business, may, for and on behalf of the taxpayer obtain the digital certificate of the EFD.

[Regulation 15] Conduct of Suppliers

A supplier must not offer for sale, or supply, a POS or E-SDC (whether as an EFD or as a component of an EFD) to a taxpayer unless the POS or E-SDC is accredited.

[Regulation 16] Role and Responsibilities of Taxpayers — EFDs

- (1) A taxpayer is responsible for operating an EFD for each business of the taxpayer in accordance with the Guidelines set out in the Schedules.
- (2) The POS and E-SDC components of the EFD for a taxpayer’s business must be accredited.
- (3) A taxpayer is responsible for giving the CEO the following information—
 - a) the taxpayer’s name and address;
 - b) the name and address of each business operated by the taxpayer;
 - c) the brand, model and specifications of each component of the EFD the taxpayer operates for the business of the taxpayer;
 - d) justification for each case when a normal refund is issued by the business.
- (4) A taxpayer is responsible for making a report to the CEO if the taxpayer is not able to verify any of the following matters by the system referred to in regulation 13(2)(g)—
 - a) that the Service’s system has received fiscal data transmitted to it by the taxpayer’s EFD;
 - b) the accuracy of fiscal data transmitted by the taxpayer’s EFD to the Service’s system.

[subreg (4) am Act 38 of 2017 s 7, effective 1 August 2017]

[Regulations 17] Role and Responsibilities of Businesses of Taxpayers — Issue of Fiscal Invoices

- (1) A taxpayer is responsible for ensuring that, at each business of the taxpayer—
- a) a fiscal invoice is issued to a customer for each transaction between the business and the customer; and
 - b) there is displayed, in each premises where the transactions of the business are conducted, on or beside each POS operated on the premises, the following notice—

“NOTICE TO ALL CUSTOMERS: The Tax Administration (Electronic Fiscal Device) Regulations 2017 requires the operator of this business to issue a fiscal invoice to each customer. You may verify the authenticity of each invoice issued to you on the Fiji Revenue and Customs Service’s website — www.frsc.org.fj”. Please contact the Fiji Revenue and Customs Service via e-mail at efdcompliance@frsc.org.fj or the nearest Fiji Revenue and Customs Service office if you are not issued a fiscal invoice.

[subreg (1) am Act 38 of 2017 s 7, effective 1 August 2017; amended by LN 59 of 2019 Reg 3, effective 1 August 2019]

- (2) The notice referred to in subregulation (1)(b) must be displayed in the manner and position that ensures that its wording is clearly visible to the customers of the business.

[Regulations 18] Conduct of Taxpayers

- (1) A taxpayer must not operate a business unless the taxpayer—
- a) operates an EFD for the business; and
 - b) each POS and E-SDC of the EFD is accredited.
- (2) A taxpayer must install, implement and operate the EFD in accordance with the Guidelines set out in the Schedules.
- (3) A taxpayer must issue a fiscal invoice to a customer for each transaction between the taxpayer’s business and the customer.
- (4) Subregulation (3) applies even if a customer fails or refuses to take the fiscal invoice.
- (5) A taxpayer must not issue a fiscal invoice that does not comply with regulation 12 to a customer.
- (6) If a transaction of a business of the taxpayer is a business to business transaction or a business to government transaction, the taxpayer must—
- a) request the customer to provide the customer’s TIN to the taxpayer; and

- b) on being given the TIN, enter it into the taxpayer's POS as part of the transaction data for the transaction.
- (7) A taxpayer must not fail to give the information specified in regulation 16(3) to the CEO.
- (8) A taxpayer must not fail to display a notice in accordance with regulation 17(1)(b).
- (9) A taxpayer must comply with the Service's procedures and requests for auditing an EFD and fiscal data.

[subreg (9) am Act 38 of 2017 s 7, effective 1 August 2017]

[Regulation 19] Role and Responsibilities of Customers

- (1) A customer is responsible for checking each fiscal invoice issued to the customer and verifying the information recorded on the fiscal invoice.
- (2) A customer who has been issued a fiscal invoice may, by the system referred to in regulation 13(2)(g), verify that the fiscal data recorded on the fiscal invoice has been received by the Service's system.

[subreg (2) am Act 38 of 2017 s 7, effective 1 August 2017]

- (3) A customer must report the following matters to the CEO as soon as practicable after they happen—
 - a) that the customer has not been issued a fiscal invoice for a transaction;
 - b) that fiscal data printed on a fiscal invoice issued to the customer is not an accurate record of the transaction it was issued for;
 - c) that the customer is not able to verify, by the system referred to in regulation 13(2)(g), whether the Service's system has received fiscal data recorded on a fiscal invoice issued to the customer.

[subreg (3) am Act 38 of 2017 s 7, effective 1 August 2017]

- (4) A customer, who is eligible to do so, may participate in a customer compliance awards programme.
- (5) If a customer enters into a transaction that is a business to business transaction or a business to government transaction and the taxpayer operating the business requests the customer to provide the customer's TIN, the customer must provide the TIN to the taxpayer so it may be entered into the taxpayer's POS as part of the transaction data for the transaction.

PART 4 MISCELLANEOUS
(Regulations 20-28)
DIVISION 1 GUIDELINES AND PROTOCOLS
(Regulations 20-21)

[Regulations 20] References to Guidelines

The Guidelines referred to in these Regulations are set out in the Schedules as follows—

- a) Technical Guideline for Accredited POSes is set out in Schedule 1;
- b) Technical Guideline for Accredited E-SDCs is set out in Schedule 2;
- c) Technical Guideline for Accreditation Methodology is set out in Schedule 3.

[Regulations 21] Protocols for Communication and Data Exchange between EFDs and Service's System

- (1) The CEO must establish and maintain protocols to ensure that—
- a) the secure elements of EFDs and the Service's system are integrated; and
 - b) communication and data exchange between EFDs and the Service's system is established in a manner that message confidentiality, integrity, origin and authenticity are secured.

[subreg (1) am Act 38 of 2017 s 7, effective 1 August 2017]

- (2) The CEO must publish each protocol on the Service's website in a format that enables a person to download a copy of the protocol.

[subreg (2) am Act 38 of 2017 s 7, effective 1 August 2017]

- (3) A protocol does not have effect unless it is made available to the public under subregulation (2).

[reg 21 am Act 38 of 2017 s 7, effective 1 August 2017]

DIVISION 2 OFFENCES AND PENALTIES

(Regulations 22-24)

[Regulation 22] Supplier must Comply with Regulation 15

(1) A supplier who contravenes regulation 15 commits an offence and is liable upon conviction to—

- a) a fine not exceeding—
 - i. if the gross annual turnover of the supplier's business is less than \$500,000, \$10,000;
 - ii. if the gross annual turnover of the supplier's business is \$500,000 or more but less than \$1,500,000, \$25,000; or
 - iii. if the gross annual turnover of the supplier's business is \$1,500,000 or more, \$50,000;
- b) a term of imprisonment not exceeding 24 months; or
- c) both a fine and imprisonment.

(2) Where a supplier under subregulation (1) is a company, each director of the company is also liable upon conviction to a term of imprisonment not exceeding 24 months.

[Regulation 23] Taxpayer must Comply with Regulation 18

(1) A taxpayer who contravenes regulation 18 commits an offence and is liable upon conviction to—

- a) a fine not exceeding—
 - i. if the gross annual turnover of the supplier's business is less than \$500,000, \$10,000;
 - ii. if the gross annual turnover of the supplier's business is \$500,000 or more but less than \$1,500,000, \$25,000; or
 - iii. if the gross annual turnover of the supplier's business is \$1,500,000 or more, \$50,000;
- b) a term of imprisonment not exceeding 24 months; or
- c) both a fine and imprisonment.

(2) Where a taxpayer under subregulation (1) is a company, each director of the company is also liable upon conviction to a term of imprisonment not exceeding 24 months.

[Regulation 24] Offences for Dishonest and Fraudulent Conduct

(1) A person commits an offence if the person operates an EFD installed and implemented in a taxpayer's business, or a component of the EFD, in a manner that results in the person—

- a) entering false data into a POS;
- b) tampering with, altering or falsifying data transmitted to or received, recorded, analysed, formatted or stored by the EFD or a component of the EFD;
- c) causing the EFD or a component of the EFD to malfunction or to cease operating; or
- d) causing the EFD or a component of the EFD to—
 - i. transmit incorrect or false fiscal data; or
 - ii. operate in a manner that results in a taxpayer avoiding or evading paying a tax.

(2) A person who commits an offence against subregulation (1) is liable upon conviction to—

- a) a fine not exceeding \$50,000;
- b) a term of imprisonment not exceeding 24 months; or
- c) both a fine and imprisonment.

DIVISION 3 OTHER MISCELLANEOUS MATTERS

(Regulations 25-28)

[Regulation 25] Publication of Conditions and Procedures for Accessing Service's System to Verify Receipt and Accuracy of Fiscal Data

The CEO—

- a) must set up, in a manner that is in accordance with the Guidelines set out in the Schedules, the system referred to in regulation 13(2)(g); and
- b) may publish the conditions and procedures for accessing the system.

[reg 25 am Act 38 of 2017 s 7, effective 1 August 2017]

[Regulation 26] Customer Compliance Award Programme

(1) The CEO may conduct a customer compliance award programme involving a fiscal invoice lottery.

(2) The procedure and criteria for participation in the customer compliance award programme are those specified in writing by the CEO and publicly displayed on the premises of the businesses that are part of the programme.

[Regulation 27] Audits and Investigations

The CEO must conduct audits and investigations at different levels to ensure that taxpayers are complying with these Regulations, including by—

- a) checking if the taxpayer is issuing valid fiscal invoices;
- b) checking if the POSes and E-SDC for the taxpayer's business are accredited;
- c) checking if the EFD complies with the Guidelines set out in the Schedules;
- d) checking the operation of the protocols; and
- e) requiring taxpayers to provide relevant information and documents as necessary.

[Regulation 28] Enforcement of Compliance

(1) In this regulation—

EFD means an EFD of which each POS and E-SDC is accredited;

group of businesses means a group of businesses specified by the Minister by notice in the Gazette; and

time specified by the Minister in respect of a group of businesses means the period of time specified by the Minister, by notice in the Gazette, within which a taxpayer, who has a business that is a member of the group, must be operating an EFD for the business.

(2) The Minister may by notice in the Gazette extend the time specified by the Minister in respect of a group of businesses.

(2A) The Minister may delegate the power under subregulation (2) to the CEO.

(2B) A taxpayer who operates a business that is a member of a group of businesses must, before the expiry of the time specified by the Minister in respect of a group of businesses or the extension, ensure that an EFD is installed, implemented and operating for each business that is a member of the group and any other business operated by the taxpayer under the same Taxpayer Identification Number as the business in the group.

[subreg (2) subst LN 26 of 2019 reg 3, effective 21 May 2019; amended by LN 59 of 2019; Reg 4, effective 1 August 2019]

(2C) Notwithstanding any other provision in this regulation, a taxpayer who operates a business that is a member of a group of businesses specified in Gazette Notice No. 834 of 2017 and Gazette Notice No. 1936 of 2017 is exempt from the requirement under this regulation to install, implement and operate an EFD for the business and any other business operated by the taxpayer under the same Taxpayer Identification Number as the business in the group in the exemption period.

(2D) For the purposes of subregulation (2C), “**exemption period**” means the period commencing on and from 1 April 2020 to 31 December 2023

[subreg(2D) amended by reg 2 of LN 65 of 2020; effective 1 August 2020, subreg(2D) amended by reg 2 of LN 60 of 2021; effective 1 August 2021]

(3) A taxpayer who contravenes subregulation (2B) commits an offence and is liable on conviction to a fine not exceeding \$50,000 and an additional penalty of \$100 for each day the offence continues.

(subreg (3)(4) and (5) repealed and replaced by LN 59 of 2019, Reg 4, effective 1 August 2019)

SCHEDULES

SCHEDULE 1

(Regulation 20(a)) - Technical Guideline for Accredited POSes

[Sch 1 am Act 38 of 2017 s 7, effective 1 August 2017]

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 - 7.5. Issue of Fiscal Invoice for a Normal or Refund Receipt for a Business to Business Transaction
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 - 7.5.2. Expected Results

1) Each accredited POS should be able to connect to an E-SDC or V-SDC and issue a fiscal invoice. Accredited POSes are developed for different platforms, designed to use a variety of communication standards to connect to other software or hardware components. As wide acceptance and low cost of integration are crucial for successful fiscalisation, the Service is dedicated to providing detailed integration instructions for all manufacturers and software developers (suppliers).

This Guideline is the technical guideline for activation of accredited POSes and integration with an E-SDC or V-SDC service. This Guideline sets standards that will enable seamless integration of accredited POSes with the V-SDC that is part of the Service's system.

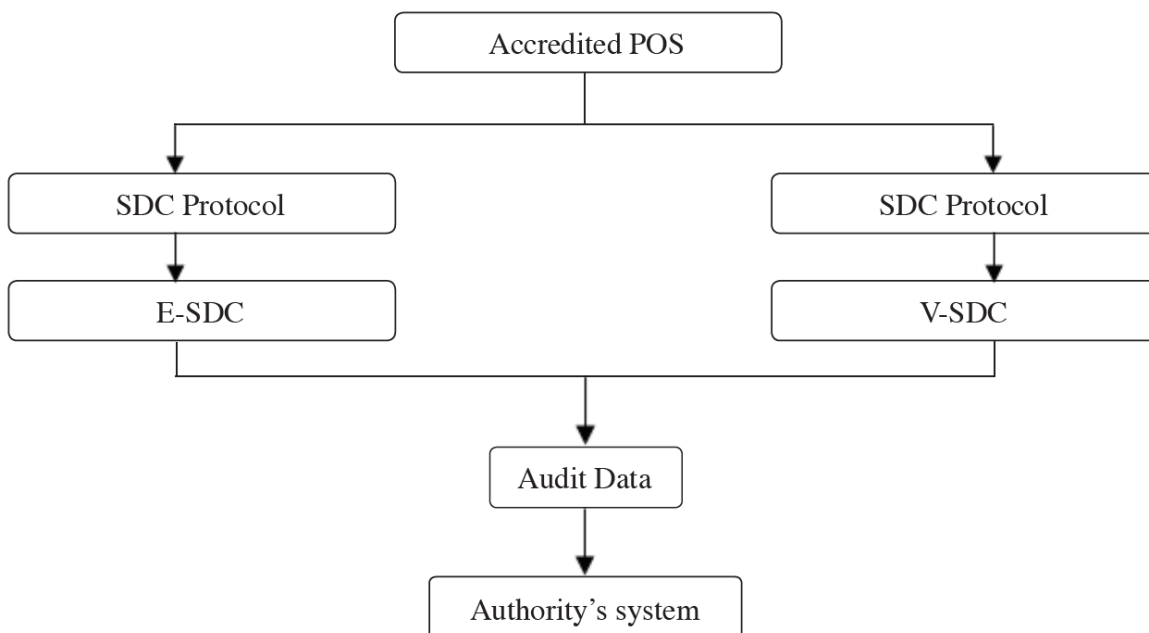
2) In this Guideline—

ERP means the enterprise resource planning software system that enables the integration of a POS with other systems operated by a taxpayer such as an accounting system;

QR code means a Quick Response code, which is a matrix barcode that is easily read with a device equipped with a bar code reader; and

verification URL means the unified resource location used to verify a particular fiscal invoice.

3)



This Guideline describes high level requirements for an accredited POS for all possible scenarios.

3.1. Connected Scenarios

The simplest scenario is software application (taxpayer) creates receipts, designates taxes and calls V-SDC web service to fiscalise invoices. V-SDC authenticates caller (verifies taxpayer digital certificate), performs initial validation, calculates taxes, signs receipt and returns response to a taxpayer.

A response consists of digital signature of receipt or invoice data, internal data field containing an encrypted message to the Service, digital certificate metadata, textual representation of fiscal invoice and verification URL.

The taxpayer has to generate QR code from verification URL and print textual representation of fiscal invoice and QR code. In case fiscal invoice is delivered in electronic form, verification URL should be rendered as 'clickable' hyperlink in email or web page.

Advantages

- 1) Does not require specialised hardware.
- 2) Accredited POS can be implemented as mobile application.
- 3) Existing ERPs can integrate quickly.
- 4) Cost of fiscalisation is reduced.

Disadvantages

- 1) Internet connection is required to issue fiscal invoice.

3.2. Semi-Connected Scenarios

Semi-Connected systems are designed around E-SDCs to fiscalise receipts while internet connection is not available for short or long periods of time. Some E-SDCs could be designed to work offline all the time.

In order to fiscalise a receipt in semi-connected or disconnected mode, an E-SDC receives a receipt from an accredited POS, prepares it for signing and submits the same to the secure element (implemented as smart card containing digital certificate and special applet). The secure element returns signature and internal data to the E-SDC, the E-SDC adds metadata and creates textual representation of a fiscal invoice and returns it to the accredited POS.

As in the connected scenario, a response consists of digital signature of receipt or invoice data, internal data field containing an encrypted message to the tax authority, digital certificate metadata, textual representation of the fiscal invoice and verification URL.

A taxpayer has to generate QR code from verification URL and print textual representation of the fiscal invoice and QR code. In case the fiscal invoice is delivered in electronic form, verification URL should be rendered as 'clickable' hyperlink in email or web page.

The E-SDC will automatically take care of audit data delivery to the Service when the device comes online or manually, using SD cards or USB Flashes.

Advantages

- 1.Works without internet connection.

Disadvantages

- 1.Requires specialised hardware.
- 2.Prone to physical destruction.
- 3.Requires network of maintenance shops.

4) The Service will setup and run development environment accessible to all developers of accredited POS and E-SDC components. Development environment has to expose same application programming interfaces and protocols as production environment.

5) Everyone who registers as a software developer of an accredited POS on the Service website should receive a set of test certificates, technical documentation and user manual. Test certificates should make possible to test failing scenarios like trying to fiscalise a receipt with an expired certificate.

6) A fiscal invoice consists of two parts. The first part (Invoice Request) is created by an accredited POS and contains the information specified in regulation 12(2)(a), (b), (c), (d), (e), (f), (g), (h), (i) and (j) and other industry specific information. An invoice request is then submitted by the accredited POS using protocol for communication to V-SDC or E-SDC, depending on implementation specifics of an accredited POS system and targeted audience.

The second part (Invoice response) is generated by V-SDC or E-SDC after data validation. A response contains the information specified in regulation 12(2)(k), (l), (m), (n) and (o). V-SDC or E-SDC returns response data to the accredited POS. Response data is an integral part of a fiscal invoice, and a receipt cannot be a fiscal invoice without it.

7)

7.1 Issue of Fiscal Invoice for a Normal Receipt

A receipt and fiscal invoice must contain visible markings indicating receipt type "NORMAL".

7.1.1. Steps

Cashier on an accredited POS selects the NORMAL type of receipt, and registers sale by: typing items, selecting items from previously made list or scanning with a bar code reader. At the end, cashier is choosing way of payment and finishing receipt.

An accredited POS is sending message to V-SDC or E-SDC. After positive invoice data verification, receipt is digitally signed, counters and totals are updated and internal data is finished.

V-SDS or E-SDC is sending back a fiscal invoice response to an accredited POS.

A fiscal invoice is issued to the customer.

7.1.2. Expected Results

A fiscal invoice is the final result of this process and can be printed or sent by SMS or email message if a customer requests it. A normal receipt is digitally signed. Internal data is stored in the data base of the Service's system. Internal data is shown at the end of the fiscal invoice in the form of a QR code. The invoice counter is in the form 5/7NS (5-number of normal receipts/ 7-total number of receipts issued by E-SDC or V-SDC, NS — designation of normal receipt.)

7.2. Issue of Fiscal Invoice for a Refund Receipt

A receipt and fiscal invoice must contain visible markings indicating "REFUND".

The totals on refund receipts and fiscal invoices are negative, starting with "-".

7.2.1. Steps

Cashier on an accredited POS is selecting refund type of receipt, registering sale by: typing items, selecting items from previously made list or scanning with a bar code reader. At the end, cashier is choosing way of payment and finishing receipt.

An accredited POS is sending message to V-SDC or E-SDC. After positive invoice data verification, receipt is digitally signed, counters and totals are updated and internal data is finished.

V-SDS or E-SDC is sending back a fiscal invoice response to an accredited POS.

A fiscal invoice is issued to the customer.

7.2.2. Expected Results

A fiscal invoice is the final result of this procedure and can be printed or sent by SMS or email message if the customer is asking for it. A receipt for refund is digitally signed. Internal data is stored in the data base of the Service's system. Internal data is present on the end of the fiscal invoice in the form of a QR code. A fiscal invoice counter is in the form 5/7NR (5-number of normal receipts for refunds/7-total number of receipts issued by E-SDC or V-SDC, NR — designation of normal receipt for refund).

7.3. Issue of Fiscal Invoice for a Copy Receipt

Receipts and fiscal invoices must contain visible markings indicating the receipt type “COPY”.

7.3.1. Steps

(a) Cashier on an accredited POS is selecting copy type of receipt. Depending on the implementation method, an accredited POS may offer to select already issued receipt from the journal memory or recall receipt number. At the end, cashier is choosing the selected receipt and producing a copy of it.

(b) An accredited POS is sending message to V-SDC or E-SDC. After positive invoice data verification, a receipt is digitally signed, counters are updated.

(c) V-SDC or E-SDC is sending back a fiscal invoice response to an accredited POS.

(d) A copy of a fiscal invoice is issued to the customer.

7.3.2. Expected Results

A copy of already issued fiscal invoice is the final result of this procedure. A fiscal invoice counter is in the form 1/9 CS (1-number of copies of normal receipts/9-total number of receipts issued by E-SDC or V-SDC, CS — designation of copy of normal receipt).

7.4. Issue of Fiscal Invoice for a Training or Pro-forma Receipt

Receipts and fiscal invoices must contain visible markings indicating the receipt type “TRAINING” or “PRO-FORMA”.

Training or pro-forma receipts and fiscal invoices are produced in the same way as normal receipts and fiscal invoices, with an exception that totals are not accounted for.

7.4.1. Steps

(a) Cashier on an accredited POS is selecting Training or Pro-forma type of the receipt, is registering sale by: typing items, selecting items from previously made list or scanning with a bar code reader. At the end, cashier is choosing way of payment and finishing receipt.

(b) An accredited POS is sending message to V-SDC or E-SDC. After positive invoice data verification, a receipt is digitally signed and counters are updated.

(c) VSDS or E-SDC is sending back a fiscal invoice response to an accredited POS.

(d) A fiscal invoice is issued.

7.4.2. Expected Results

Training or pro-forma fiscal invoice is the final result of this procedure. A fiscal invoice counter is in the form 3/8TS (3-number of receipts for training or pro-forma receipts/8-total number of receipts issued by E-SDC or V-SDC, TS— designation of receipts for training or pro-forma receipts).

7.5. Issue of Fiscal Invoice for Normal or Refund Receipt for a Business to Business Transaction

A receipt and fiscal invoice must contain visible markings of receipt type “NORMAL”, or “REFUND”.

Receipts and fiscal invoices contain business customer data, name and TIN.

7.5.1. Steps

(a) Cashier on an accredited POS is selecting receipt type, is asking customer for and inputting provided TIN, is registering sale by: typing items, selecting items from previously made list or scanning with a bar code reader. At the end, cashier is choosing way of payment and finishing receipt.

(b) An accredited POS is sending message to V-SDC or E-SDC. After positive invoice data verification, a receipt is digitally signed, counters and totals are updated and internal data is finished.

(c) VSDS or E-SDC is sending back a fiscal invoice response to an accredited POS.

(d) A fiscal invoice is issued to the customer.

7.5.2. Expected Results

A fiscal invoice is the final result of this procedure and can be printed or sent by SMS or email message if the customer is asking for it. A normal or refund receipt is digitally signed. Internal data is stored in the data base of the Service's system. Internal data is shown at the end of the fiscal invoice in the form of a QR code. A receipt counter is in the form 5/7NS or NR number of normal receipts or normal receipts for refunds/7-total number of receipts issued by E-SDC or V-SDC, NS or NR — designation of normal receipt or normal receipt for refund).

SCHEDULE 2

(Regulation 20(b)) - Technical Guideline for Accredited E-SDCs

[Sch 2 am Act 38 of 2017 s 7, effective 1 August 2017]

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1) This Guideline is the technical guideline for implementing E-SDCs. This Guideline sets standards that will enable simple integration of accredited E-SDCs with the Service's system.

V-SDC is a web service published and maintained by the CEO and it represents an integral part of the Service's system. E-SDC is a device provided by an accredited supplier.

E-SDCs must comply with the protocols.

2)

2.1. Accredited POS

An accredited POS is responsible for submitting transaction data on receipts to E-SDC for fiscalisation and for printing fiscal invoices received from the SDC.

When the E-SDC is restarted, the user is required to enter the PIN code to authorise E-SDC to access the secure element.

2.2. E-SDC

High-Level Requirements are:

1. An E-SDC will sign a receipt only if the previous receipt is signed by the same digital certificate unless—

- the last operation was local or remote audit; or
- the E-SDC memory is empty — no receipts have been signed by this device since the beginning of an audit operation.

2. The E-SDC will submit proof of audit that will be generated by the Service's system to the secure element to reset maximum invoice amount counter to zero as soon as the E-SDC receives that piece of information as web response in case of remote audit or from a SD card in case of a local audit.

3. The E-SDC will process all commands received from the Service's system in a consecutive order. These commands might include time synchronisation, locking of the device and so forth.

4. The E-SDC does not have to keep audit data that is submitted and successfully stored on the Service's system.

5. The E-SDC encrypts audit data and stores it locally in an encrypted form.

6. The E-SDC is required to keep audit data locally until proof of audit has been received from the Service's system that the audit data has been securely stored on the Service's system.

7. The E-SDC should not store the secure element's PIN Code except in the working memory. Once the E-SDC is restarted, the cashier will be required to enter the PIN Code again.

2.3. Fiscalisation of Normal Receipt

Processes are:

- 1) the accredited POS generates a receipt;
- 2) the accredited POS sends the receipt and journal template to E-SDC;
- 3) the E-SDC verifies the format of the receipt;
- 4) the E-SDC verifies if tax calculation is correct based on applied tax rates;
- 5) the E-SDC sends the receipt to the secure element for fiscalisation providing current date and time and PIN code/password for digital certificate;
- 6) the secure element verifies if all amounts are positive numbers;
- 7) the secure element calculates internal data and encrypts it with the Service's system public key;
- 8) the secure element signs the receipt;
- 9) the E-SDC produces a journal file;
- 10) the E-SDC stores the receipt with signature and journal in one package, generates one-time key and encrypts a package using symmetric algorithm. The E-SDC encrypts one-time symmetric key using the Service's system public key and adds it to the package so that the Service's system can decrypt symmetric key and access package content once it arrives on the Service's system.

2.4. Dump Audit Data Kept on E-SDC when Secure Element is Damaged

If the secure element is damaged and data cannot be restored from the card, but the E-SDC is operational, the Service will be able to dump data from E-SDC device and upload audit data using the same application used to upload audit data submitted by a taxpayer.

2.5. E-SDC Process Commands Sent from Service's Systems

Commands are means of communication between the Service's system and occasionally connected E-SDC. Commands are stacked in the queue list on the server for specific E-SDC and submitted to the E-SDC as part of the response once it reports to the Service's system using remote or local audit.

Command Type	Action
Time server URL	E-SDC will update URL of the time server used to keep local clock in sync
Tax rates	E-SDC will update tax rates and check new invoices against updated tax rates from effective date
Print message	E-SDC will print this message(s) in consecutive order next time accredited POS contacts E-SDC device
Proof of audit	Proof of audit is transmitted to the secure element to unlock signing or to update maximum allowed sum of fiscal invoice amounts counter
Lock device	Send command to secure element

Unlock device	Send command to secure element
Current state of secure element	Returns current internal data of the fiscal card to the Authority's system, plus E-SDC date and time. Executes and returns data to Authority's system immediately
Update maximum allowed sum of fiscal invoice amounts	Updates maximum sum of fiscal invoice amounts allowed for the particular secure element – used to limit total number of fiscal invoices issued between two audits

2.5.1. Synchronisation of E-SDC Clock Online

The E-SDC will check the time server specified in configuration and keep internal clock in sync.

2.5.2. Lock/Unlock Card

1.Lock/Unlock command is issued by the Service's system in case the CEO suspects that illegal activities are carried out by the taxpayer or in case the secure element has to be disabled due to the outstanding debt to supplier.

2.Content of command is verified by the secure element and the state is changed accordingly.

3.If the secure element is locked, no new receipts of any type may be signed by the secure element.

2.5.3. Update Maximum Allowed Sum of Fiscal Invoice Amounts

1.Maximum allowed sum of fiscal invoice amounts limit is set by the Service's system on the secure element during personalisation for a particular taxpayer or during exploitation if for any reason that limit has to be increased or decreased by the Service.

2.Content of command is verified by the secure element and the limit is changed to the new value. Once new value is applied, all new fiscal invoices are verified against the new limit. Changing this value on the fly has the same technical implications.

2.5.4. Apply New Tax Rates

The E-SDC has to prevent fiscalisation of receipts with invalid tax rates.

The E-SDC will keep current and all new tax rates (with effective dates) in memory.

2.6. E-SDC

This paragraph describes specifics of an E-SDC.

An E-SDC can work in the following modes:

2.6.1 Offline

In the offline mode, the secure element signs a receipt and the E-SDC device stores it locally in a secure manner.

2.6.2 Semi-offline

In the semi-offline mode, the secure element signs a receipt and the E-SDC device will immediately try to contact the Service's system and perform remote audit. If the Service's system is not accessible, the E-SDC will switch to offline mode.

2.7. Authentication

Authentication against the Service's system is performed using taxpayer digital certificate.

3)

3.1. Service's System Issues Secure Element to Taxpayer

- 1) A taxpayer's digital certificate is stored on the secure element.
- 2) The secure element is stored on the smart card.
- 3) The PIN or Password is generated and printed on PIN mailer.
- 4) The secure element and PIN code are securely delivered to taxpayer.

4)

4.1. Acquisition of Test Digital Certificate

The Service will issue the required number of test digital certificates to each accredited supplier and each accredited taxpayer.

5)

5.1. Unique Identification of Fiscal Invoice

A fiscal invoice is uniquely identified with the combination of the receipt ordinal number and the secure element identification number.

5.2. Elements

This paragraph defines the minimum set of attributes required to produce a fiscal invoice.

A fiscal invoice may contain additional data as required by a specific industry.

- 1) A fiscal invoice consists of two parts produced by an accredited POS and associated secure element.
- 2) An accredited POS submits the information specified in regulation 12(2)(a), (b), (c), (d), (e), (f), (g), (h), (i) and (j) to the V-SDC or E-SDC.
- 3) The V-SDC or E-SDC returns the response data to the POS which contains the additional information specified in regulation 12(2)(k), (l), (m), (n) and (o).

5.3. Signature

Fiscalisation of a receipt is a process of applying digital signature by the secure element on the electronic content of the receipt.

5.4. Internal Data

Internal data contains fiscal data in encrypted form. Content of internal data is readable by the Service only.

5.5. QR Code

QR code contains URL of verification service used to verify the authenticity of the fiscal invoice for customer convenience.

6) Audit data represents machine readable formatted fiscal invoice signed by a taxpayer's private key followed by journal data — textual representation of a fiscal invoice generated by an E-SDC.

Content of audit data is kept in encrypted form that makes sure no changes have been made and that no one was able to access its content after creation except the CEO (and the Service's system) after successful audit.

Each package of audit data has associated metadata — ordinal number of package. It is used to track order and make sure audit data is submitted in the consecutive order.

6.1. Encryption of Audit Data

Encryption of audit data prevents access to sales data by unauthorised persons and enables addition of fiscal lottery to the Service's system in the future. The only one who can decrypt audit data is the Service's system software running on the Service premises and by the CEO only.

6.2. Proof of Audit

Proof of audit is generated by the Service's system once audit data has been received and securely stored on the Service's system.

Minimum information contained in proof of audit must ensure that proof of audit can be used only by the secure element which signed receipts that are contained in the audit data received by the Service's system.

6.3. Audit Process

An audit is a process of sequential transfer of audit data from an E-SDC to the Service's system and handling the response generated by the Service's system for the specific device.

There are three specific scenarios: remote audit, local audit initiated by a taxpayer and local audit initiated by the Service. Basic rules and processes described in this paragraph apply to all scenarios.

An audit is always a synchronous process. Depending on the amount of data and means of communication, it can take from less than a second to a couple of hours or even days to complete.

6.4. SD Card or USB Flash Memory Stick

SD cards or USB memory stick are used as transport mechanism instead of internet connection in cases of local audits initiated by a taxpayer or by the Service. In any case, the carrier has to be empty for an E-SDC to initiate dumping of audit data.

Once the E-SDC receives audit data (signed receipt and journal) from the secure element, it is encrypted and stored in the permanent memory (hard drive, flash or internal SD card).

An E-SDC device is fully functional during audit. The taxpayer must be able to sign new receipts as long as the secure element permits. There is a mechanism in place that is responsible for continuous operation of the secure element and E-SDC while audit data is on its way to the Service's system.

Depending on the connection availability audit may be triggered by the arrival of a signed receipt from the secure element or insertion of an external memory device into the E-SDC. No matter which event triggered the audit, the following conversation will take place between the E-SDC, the Service's system and the secure element:

- 1) the E-SDC signals the beginning of the audit to the secure element;
- 2) the secure element returns token to the E-SDC;
- 3) the E-SDC starts sending (by HTTPS) or dumping on external memory (SD card, USB flash) audit data starting with the oldest unaudited package in piecemeal fashion. A token is sent to the Service's system using the same communication channel;
- 4) the Service's system receives audit data, decrypts packages and does a basic verification;
- 5) if verification is successful, the Service's system will generate proof of audit and return it using the same transport channel;
- 6) the E-SDC receives proof of audit and passes it to secure the element;
- 7) the secure element verifies if proof of audit is signed by the Service's system private key, which ensures that audit data has been successfully received by the Service's system;

- 8) if proof of audit is valid, the secure element will conclude audit process;
- 9) the E-SDC stores proof of audit in its long-term memory. Consequently—
 - i. audit data created before beginning of audit is considered safe for deleting because it has been received by the Service's system;
 - ii. audit data created after beginning of audit is considered unaudited and E-SDC is responsible to preserve this audit data unit which is submitted to the Service's system in the next audit;
 - iii. audit data created after end of audit is considered unaudited and E-SDC is responsible to preserve this audit data unit which is submitted to the Service's system in the next audit.

6.5 Remote Audit

Remote audit is the process of transferring data to the Service's system using internet connection. It is the most common way to perform audit for any occasionally connected device.

An E-SDC checks if the Service's system is online. If it is online, the E-SDC authenticates the Service's system by using server-side certificate installed on the API endpoint, enabling HTTPS protocol. The Service's system authenticates the E-SDC using digital certificate issued on the secure element. The E-SDC starts sending audit data in small chunks, performing a series of audits until no more unaudited data is stored on its long-term memory.

Not all E-SDC devices are required to perform remote audit. In cases where the network connection is not available due to the interruption of the service or missing GPRS modem or network card, the E-SDC will still be able to perform Local Audit.

6.6. Local Audit Initiated by Taxpayer

Local audit initiated by a taxpayer is a common scenario for devices that lack ability to connect to internet due to the technical limitations of the devices or limited infrastructure.

An audit is initiated by attaching an empty SD card or USB Flash to E-SDC device. An E-SDC will verify if media is empty. If not, the E-SDC will signal error to the user.

6.7. Submitting Data in Service Office

The CEO can upload data using specific application that will store deleted audit data from media and save proof of audit generated by the Service's system to media once audit data has been received.

6.8. Submitting Data Using Web Application

Anyone should be able to upload limited amount of audit data (for example, up to 30Mb) using web site. The Service's system will verify received audit data and generate proof of audit as a response. A user will be required to manually delete audit data from media and save received proof of audit for later use.

6.9. Completing Audit in Progress

A taxpayer inserts media with proof of audit file on it. An E-SDC loads proof of audit and verifies if the format is valid. If the format is valid, proof of audit is sent to the secure element for processing.

If the format is invalid or the E-SDC and the secure element cannot process proof of audit for any reason, the E-SDC signals error message to the operator.

6.10. Local Audit Initiated by Service

Local Audit initiated by the CEO is required when the taxpayer is not reporting transactions for any reason. If an E-SDC and the secure element are operational, the CEO will dump data using the same scenario as the taxpayer.

SCHEDULE 3

(Regulation 20(c)) - Technical Guideline for Accreditation Methodology

Table of Contents

1. Introduction
2. Interpretation
3. Evaluation Process
4. Outcomes

1) This Guideline is the technical guideline for accreditation of a POS or E-SDC.

The CEO accredits the brand, model and specification of each POS or E-SDC supplied by a supplier. The CEO accredits each POS and E-SDC of an EFD developed, installed and implemented by a taxpayer. This is done to ensure that EFDs for taxpayers' businesses are operating in accordance with these Regulations..

2) In this Guideline—

Application means an application for accreditation under regulation 8 or 9;

Applicant means a supplier or taxpayer who makes an application.

3) The evaluation process commences when the CEO receives an application for accreditation of a POS or E-SDC.

The evaluation process consists of an administrative review and a technical review of the working processes of the applicant's POS and E-SDC together as an EFD or a POS or E-SDC as a separate component.

The CEO evaluates the POS or E-SDC by testing the applicant's internal procedures. The purpose is to check that the applicant is complying with all administrative and technical requirements and to test and verify all deliverables.

The CEO evaluates documentation by cross-examining functionality stated in the user manual and other documentation to ensure described implemented functions.

The technical review identifies whether there are any of the following type of issues:

- 1) Non-compliance: represents a deviation of the expected output, and must be solved by the applicant;
- 2) Bug: represents a failure, flow or fault in software that produces incorrect or unexpected results, and must be solved by the applicant;
- 3) Doubt: represents uncertainty due to misinterpretation and is resolved by investigation and clarification by the applicant;
- 4) Observation: represents minor faults, mainly in documentation or sample appearance; these issues shall contain sub-class mandatory or voluntary which will reflect the applicant's level of obligation to solve;
- 5) Improvement: represents proposal to improve functionality, which the applicant may solve or not.

The CEO writes test reports about technical review findings and specifies issues.

All issues that are non-compliance, bugs, doubts and observations with mandatory sub-class must be solved before accreditation is granted.

The applicant responds to each issue identified by preparing and finalising deliverables for resolving the issue and updating the testing report with answer and version number. Example is:

File name: "Testing report EFD01_15 ver.1.doc" containing history of revisions and description of the issue number 15 of application ID EFD01 shall be returned to the same address from which it has been received after being saved by the applicant as file name: "Testing report EFD01_15 ver.2.doc" containing updated history of revisions and answer on the evaluation issue. This upgrading of version number shall be continuous until the issue number 15 is resolved.

Communication between the CEO and applicant is open, honest and co-operative in dealing with each issue.

Possible difficulties arising during the evaluation process are:

- 1) the applicant's delays preparing the required deliverables for resolving issues identified during the evaluation process;
- 2) necessity for numerous testing reports containing problems and questions which are found during evaluation;
- 3) misinterpretation of the requirements.

The CEO may allow the applicant additional time to respond to issues and finalise deliverables.

4) When the issues are resolved and finalised to the satisfaction of the CEO and applicant, the CEO writes the accreditation report describing the evaluation process and the outcome of the process and making recommendation for or against accreditation.

If the outcome of the evaluation process indicates that the applicant's administrative and technical processes comply with these Regulations, the CEO accredits the POS or E-SDC.

The CEO refuses to accredit the applicant if applicant is unable to prepare and finalise deliverables for resolving issues identified during the evaluation process with the effect that the applicant's administrative and technical processes do not comply with these Regulations.

TAX ADMINISTRATION (DIPLOMATIC MISSIONS AND INTERNATIONAL ORGANISATIONS) (REFUND) REGULATIONS 2019

Table of Amendments

Tax Administration (Diplomatic Missions and International Organisations) (Refund) Regulations 2019 (LN 46 of 2019) commenced on 1 August 2019, as amended by:

Amending Legislation	Date of Commencement

[Regulation 1] Short title and commencement

(1) These Regulations may be cited as the Tax Administration (Diplomatic Missions and International Organisations) (Refund) Regulations 2019.

(2) These Regulations come into force on the date of publication in the Gazette.

[Regulation 2] Interpretation

In these Regulations, unless the context otherwise requires—

Act means the Diplomatic Missions and International Organisations Act 2016;

exemption period means the period during which a mission, international organisation or international body is exempt from any tax;

international body has the meaning given in section 2 of the Act;

international organisation has the meaning given in section 2 of the Act; and

mission has the meaning given in section 2 of the Act.

[Regulation 3] Application for refund

(1) Any mission, international organisation or international body that is exempt from any tax in accordance with any written law may apply to the CEO for a refund of the payment of the tax if the mission, international organisation or international body had paid for the tax during the exemption period.

(2) An application for a refund must—

- a) be made in the form approved by the CEO;
- b) specify the tax period to which the application relates;
- c) be accompanied by a refund schedule as prescribed in the Schedule;
- d) be supported by a tax invoice indicating the amount of tax paid by the mission, international organisation or international body; and
- e) be accompanied by any other document or information as required by the CEO.

(3) The mission, international organisation or international body which made an application for a refund may, at any time, amend the application with the amendments clearly identified.

(4) The CEO may reject an application for a refund if the application fails to comply with this regulation.

[Regulation 4] Registration

4. An international body, international organisation or mission making an application under these Regulations is not required to register for each tax type in order to qualify for the refund.

TAX ADMINISTRATION (PRIVATE RULINGS) REGULATIONS 2021

Table of Amendments

Tax Administration (Private Rulings) Regulations 2021 (LN 114 of 2021) commenced on 25 October 2021, as amended by:

Amending Legislation	Date of Commencement
Tax Administration (Private Rulings) (Amendment) Regulations 2022 (LN 92 of 2022)	1 August 2022

[Regulation 1] Short title and commencement

- (1) These Regulations may be cited as the Tax Administration (Private Rulings) Regulations 2021.
- (2) These Regulations come into force on the date Subdivision 2 of Division 9 of Part 2 of the Act comes into force.

[Regulation 2] Interpretation

In these Regulations, unless the context otherwise requires—

“Act” means the Tax Administration Act 2009;

“applicant” refers to the taxpayer making an application for a ruling under regulation 3; and

“ruling” refers to a private ruling that is issued by the CEO to a taxpayer under Subdivision 2 of Division 9 of Part 2 of the Act that sets out the CEO’s position regarding the application of a tax law to a transaction entered into, or proposed to be entered into, by the taxpayer.

[Regulation 3] Application for a ruling

- (1) For the purposes of Subdivision 2 of Division 9 of Part 2 of the Act, a taxpayer may make an application for a ruling in accordance with these Regulations.
- (2) An application for a ruling must be made in the form approved by the CEO and must be accompanied by any document or information as required by the CEO in the approved form.

[Regulation 4] Preliminary assessment of application

- (1) The CEO may conduct a preliminary assessment of the application received under regulation 3 to determine whether to accept or refuse an application.
- (2) The CEO may request for additional documents or information from the applicant in order to conduct the preliminary assessment or to make a ruling.
- (3) The decision to accept an application must be communicated to the applicant within 5 working days from the receipt of the application or from the date on which additional documents or information are provided as requested under regulation 4(2) with the following—
 - a) the applicable fee as determined under regulation 5; and
 - b) the expected timeline by which the ruling may be issued.
- (4) Upon acceptance of the application by the CEO, the applicant may elect to proceed with the application by payment of the non-refundable prescribed fee.

(5) Nothing in these Regulations limits the application of section 65 of the Act, where the CEO may refuse an application for a ruling at any time prior to issuing the ruling.

[Regulation 5] Non-refundable fees

- (1) The non-refundable fee for a ruling is to be paid in accordance with the table in the Schedule.
- (2) The CEO may determine the complexity of an application made under regulation 3.

[Regulation 6] Withdrawal of an application

An applicant may withdraw an application made under regulation 3 by a written notice to the CEO within 20 days from the date of the payment of the fee under regulation 4(4).

[Regulation 7] Issuance of the ruling

The CEO must issue the ruling in accordance with Subdivision 2 of Division 9 of Part 2 of the Act.

[Regulation 8] Transitional

Any application for a ruling received by the CEO on or before 31 July 2022 is subject to the prescribed fees applicable before the commencement of the Tax Administration (Private Rulings) (Amendment) Regulations 2022.

SCHEDULE
(Regulation 5(1))

FEES

The fees to be determined on the basis of complexity as given below—

Complexity of Matter	Fees (VEP)
Easily determinable	\$300
Requires a moderate degree of analysis	\$1500
Requires highly technical and complex analysis	\$3000

Legislative History:

LN 92 of 2022 – from 1 August 2022 – fees changed to current fees which previously read as:

\$100

\$500

\$1000