

# FIJI ISLANDS GOVERNMENT GAZETTE SUPPLEMENT

No. 1

FRIDAY, 13th JANUARY

2012

[LEGAL NOTICE NO. 1]

POLICE ACT  
(CAP. 85)

## Fiji Police Force (Basic Pay) (Amendment) Regulations 2012

IN exercise of the powers conferred up on me by section 60 of the Police Act (Cap. 85), I make these Regulations—

*Citation and commencement*

1.—(1) These Regulations may be cited as the Fiji Police Force (Basic Pay) (Amendment) Regulations 2012 and are deemed to come in force on 1st January 2012.

(2) The revised basic pay set out in the Seventh Schedule is to reflect the nine percent pay increase effective from 1st January 2012.

*Seventh Schedule amended*

2. The Seventh Schedule to the Fiji Police Regulation is revoked and substituted by the following new Schedule—

“SEVENTH SCHEDULE  
(Section 60—Regulation 15 [1])

RATES OF HOURLY PAY FOR MEMBERS OF THE SPECIAL CONSTABULARY

<i>Rank</i>	<i>Rate (\$)</i>
Senior Inspector	7.722
Inspector	7.111
Sergeant	5.189
Corporal	4.496
Constable	3.350”

Made at Suva this 11th day of January 2012.

J. W. COKANASIGA  
Minister for Defence, National Security and Immigration

[LEGAL NOTICE NO. 2]

CUSTOMS TARIFF ACT 1986

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## **Customs Tariff (Classification Opinion Fees) (Amendment) Regulations 2012**

IN exercise of the powers conferred upon me by section 22 of the Customs Tariff Act 1986, I hereby make these Regulations—

*Citation and commencement*

1. These Regulations may be cited as the Customs Tariff (Classification Opinion Fees) (Amendment) Regulations 2012 and shall be deemed to have come into force on 1st January, 2012.

*Regulation 2 amended*

2. Regulation 2 of the Customs Tariff (Classification Opinion Fees) Regulations 1991 is amended by deleting, in sub-regulation (2), "\$25.00" and substituting "\$25.55".

Dated at Suva this 12th day of January 2012.

A. SAYED-KHAIYUM  
*Acting Prime Minister and Minister for Finance*

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[LEGAL NOTICE NO. 3]

EXCISE ACT 1986

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## **Excise (Industrial Rebates) (Amendment) Regulations 2012**

IN exercise of the powers conferred upon me by section 86 of the Excise Act 1986, I hereby make these Regulations—

*Citation and commencement*

1. These Regulations may be cited as the Excise (Industrial Rebates) (Amendment) Regulations 2012 and shall be deemed to have come into force on 1st January, 2012.

*Regulation 3 amended*

2. Regulation 3 of the Excise (Industrial Rebates) Regulations 1986 is amended by deleting, in sub-regulation (5), "\$12.00" and substituting "\$12.30".

Dated at Suva this 12th day of January 2012.

A. SAYED-KHAIYUM  
*Acting Prime Minister and Minister for Finance*

[LEGAL NOTICE NO. 4]

CUSTOMS TARIFF ACT 1986

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## **Customs Tariff (Industrial Rebates) (Amendment) Regulations 2012**

IN exercise of the powers conferred upon me by section 22 of the Customs Tariff Act 1986, I hereby make these Regulations—

*Citation and commencement*

1. These Regulations may be cited as the Customs Tariff (Industrial Rebates) (Amendment) Regulations 2012 and shall be deemed to have come into force on 1st January, 2012.

*Regulation 3 amended*

2. Regulation 3 of the Customs Tariff (Industrial Rebates) Regulations 1986 is amended by deleting, in sub-regulation (5), "\$12.00" and substituting "\$12.30".

Dated at Suva this 12th day of January 2012.

A. SAYED-KHAIYUM

*Acting Prime Minister and Minister for Finance*

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[LEGAL NOTICE NO. 5]

EXCISE ACT 1986

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## **Excise (Amendment) Regulations 2012**

IN exercise of the powers conferred upon me by section 86 of the Excise Act 1986, I hereby make these Regulations—

*Citation and commencement*

1.—(1) These Regulations may be cited as the Excise (Amendment) Regulations 2012 and shall be deemed to have come into force on 1st January, 2012.

(2) The Excise Regulations 1986 is referred to as the 'Principal Regulations'.

*Regulation 7 amended*

2. Regulation 7 of the Principal Regulations is amended by deleting—

- (a) in sub-regulation (2), "\$500" and substituting "\$511.10";
- (b) in sub-regulation (3) (a), "\$500" and substituting "\$511.10";
- (c) in sub-regulation (3) (b), "\$375" and substituting "\$383.35";
- (d) in sub-regulation (3) (c), "\$250" and substituting "\$255.55"; and
- (e) in sub-regulation (3) (d), "\$125" and substituting "\$127.80".

*Regulation 48 amended*

3. Regulation 48 of the Principal Regulations is amended by deleting—
- (a) in sub-regulation (2), "\$500" and substituting "\$511.10";
  - (b) in sub-regulation (3) (a), "\$500" and substituting "\$511.10";
  - (c) in sub-regulation (3) (b), "\$375" and substituting "\$383.35";
  - (d) in sub-regulation (3) (c), "\$250" and substituting "\$255.55"; and
  - (e) in sub-regulation (3) (d), "\$125" and substituting "\$127.80".

*Regulation 61 amended*

4. Regulation 61 of the Principal Regulations is amended by deleting "\$25.00" and substituting "\$25.55".

*Regulation 65 amended*

5. Regulation 65 of the Principal Regulations is amended by repealing the Table in sub-regulation (2) and substituting the following table—

"TABLE

<i>Type and time of attendance</i>	<i>Fee for each hour or part of an hour of attendance</i>
(a) Normal attendance—	
(i) normal time	Free
(ii) overtime	\$18.40
(iii) special overtime	\$25.55
(b) Special attendance—	
(i) normal time	\$18.40
(ii) overtime	\$18.40
(iii) special overtime	\$25.55"

*Regulation 68 amended*

6. Regulation 68 of the Principal Regulations is amended by deleting—
- (a) in Column 3 of Item 1 of the Table, "\$12.00" and substituting "\$12.30";
  - (b) in Column 3 of Item 2 of the Table, "\$12.00" and substituting "\$12.30"; and
  - (c) in Column 3 of Item 3 of the Table, "\$6.00" and substituting "\$6.15".

Dated at Suva this 12th day of January 2012.

A. SAYED-KHAIYUM  
*Acting Prime Minister and Minister for Finance*

[LEGAL NOTICE NO. 6]

CUSTOMS ACT 1986

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## **Customs (Amendment) Regulations 2012**

IN exercise of the powers conferred upon me by section 191 of the Customs Act 1986, I hereby make these Regulations—

*Citation and commencement*

1. These Regulations may be cited as the Customs (Amendment) Regulations 2012 and shall be deemed to have come into force on 25th November, 2011.

*Regulation 56 amended*

2. Regulation 56 of the Customs Regulations 1986 is amended, by deleting in sub-regulation (1), “(C.26)” and substituting “in accordance with regulation 16”.

Dated at Suva this 12th day of January 2012.

A. SAYED-KHAIYUM

*Acting Prime Minister and Minister for Finance*

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[LEGAL NOTICE NO. 7]

AIRPORT DEPARTURE TAX ACT 1986  
(NO. 5 OF 1986)

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## **Airport Departure Tax (Amendment) Regulations 2012**

IN exercise of the powers conferred upon me by section 8 of the Airport Departure Tax Act 1986, I hereby make these Regulations—

*Short title and commencement*

1.—(1) These Regulations may be cited as the Airport Departure Tax (Amendment) Regulations 2012 and shall be deemed to have come into force on 1st January, 2012.

*Regulation 4 amended*

2. Regulation 4 of the Airport Departure Tax Regulations 1986 is amended in paragraph (a) by deleting “ninety dollars” and substituting “one hundred and forty dollars”.

Dated this 12th day of January 2012.

A. SAYED-KHAIYUM

*Acting Prime Minister and Minister for Finance*

[LEGAL NOTICE NO. 8]

INCOME TAX ACT  
(CAP. 201)

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**Income Tax(Allowances for Depreciation and  
Improvements) (Amendment) Instructions 2012**

IN exercise of the powers conferred upon me by section 21 of the Income Tax Act (Cap. 201), I hereby make these Instructions—

*Short title and commencement*

1.—(1) These Instructions may be cited as the Income Tax (Allowances for Depreciation and Improvements) (Amendment) Instructions 2012 and shall be deemed to have come into force on 1st January, 2012.

*Paragraph 37 amended*

2. Paragraph 37 of the Income Tax (Allowances for Depreciation and Improvements) Instructions 1998 is amended—

- (a) in subparagraph (3) (c) by deleting “31st December 2012” and substituting “31st December 2014”; and
- (b) in subparagraph (5) by deleting “31st December 2012” and substituting “31st December 2014”.

Dated this 12th day of January 2012.

A. SAYED-KHAIYUM  
*Acting Prime Minister and Minister for Finance*

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[LEGAL NOTICE NO. 9]

CUSTOMS ACT 1986

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**Customs (Amendment) (No. 2) Regulations 2012**

IN exercise of the powers conferred upon me by section 191 of the Customs Act 1986, I hereby make these Regulations—

*Citation and commencement*

1.—(1) These Regulations may be cited as the Customs (Amendment) (No. 2) Regulations 2012 and shall be deemed to have come into force on 1st January, 2012.

- (2) The Customs Regulations 1986 is referred to as the ‘Principal Regulations’.

*Regulation 7 amended*

2. Regulation 7 of the Principal Regulations is amended, by deleting in sub-regulation (3), “\$18.00” and substituting “\$18.40”.

*Regulation 8 amended*

3. Regulation 8 of the Principal Regulations is amended by deleting—
- (a) in paragraph (a), “\$25.00” and substituting “\$25.55”; and
  - (b) in paragraph (b) (i), “\$18.00” and substituting “\$18.40”.

*Regulation 10 amended*

4. Regulation 10 of the Principal Regulations is amended by deleting, in paragraph (c), “\$187.00” and substituting “\$191.15”.

*Regulation 36 amended*

5. Regulation 36 of the Principal Regulations is amended by deleting, in sub-regulation (3), “\$12.00” and substituting “\$12.30”.

*Regulation 37A amended*

6. Regulation 37A of the Principal Regulations is amended by deleting, in sub-regulation (1), “\$1,755.00” and substituting “\$1,794.00”.

*Regulation 37C amended*

7. Regulation 37C of the Principal Regulations is amended by deleting, in sub-regulation (1), “\$1,755.00” and substituting “\$1,794.00”.

*Regulation 38 amended*

8. Regulation 38 of the Principal Regulations is amended by deleting, in sub-regulation (3), “\$12.00” and substituting “\$12.30”.

*Regulation 38A amended*

9. Regulation 38A of the Principal Regulations is amended by deleting, in sub-regulation (1), “\$1,755.00” and substituting “\$1,794.00”.

*Regulation 47 amended*

10. Regulation 47 of the Principal Regulations is amended by deleting—
- (a) in sub-regulation (3), “\$7.00” and substituting “\$7.15”; and
  - (b) in sub-regulation (4), “\$12.00” and substituting “\$12.30”.

*Regulation 56 amended*

11. Regulation 56 of the Principal Regulations is amended by deleting, in sub-regulation (3), “\$25.00” and substituting “\$25.55”.

*Regulation 63 amended*

12. Regulation 63 of the Principal Regulations is amended by deleting—
- (a) in sub-regulation (1), “\$1,252.00” and substituting “\$1,279.80”; and
  - (b) in sub-regulation (2), “\$1,755.00” and substituting “\$1,794.00”.

*Regulation 71 amended*

13. Regulation 71 of the Principal Regulations is amended by deleting, in sub-regulation (2), “\$12.00” and substituting “\$12.30”.

*Regulation 72 amended*

14. Regulation 72 of the Principal Regulations is amended by deleting, in sub-regulation (3), “\$12.00” and substituting “\$12.30”.

*Regulation 73 amended*

15. Regulation 73 of the Principal Regulations is amended by deleting—
- (a) in sub-regulation (2), “\$7.00” and substituting “\$7.15”; and
  - (b) in sub-regulation (3), “\$12.00” and substituting “\$12.30”.

*Regulation 76 amended*

16. Regulation 76 of the Principal Regulations is amended by deleting, in sub-regulation (1), “62 cents” and substituting “65 cents”.

*Regulation 82 amended*

17. Regulation 82 of the Principal Regulations is amended by deleting—
- (a) in sub-regulation (2), “\$7.00” and substituting “\$7.15”; and
  - (b) in sub-regulation (3), “\$12.00” and substituting “\$12.30”.

*Regulation 84 amended*

18. Regulation 84 of the Principal Regulations is amended by deleting, in sub-regulation (3), “\$25.00” and substituting “\$25.55”.

*Regulation 86 amended*

19. Regulation 86 of the Principal Regulations is amended by deleting, in sub-regulation (3), “\$12.00” and substituting “\$12.30”.

*Regulation 91 amended*

20. Regulation 91 of the Principal Regulations is amended by deleting—
- (a) in sub-regulation (2), “\$7.00” and substituting “\$7.15”; and
  - (b) in sub-regulation (3), “\$12.00” and substituting “\$12.30”.

*Regulation 92A amended*

21. Regulation 92A of the Principal Regulations is amended by deleting, in sub-regulation (1), “\$1,755.00” and substituting “\$1,794.00”.

*Regulation 94 amended*

22. Regulation 94 of the Principal Regulations is amended by deleting, in sub-regulation (2), “\$12.00” and substituting “\$12.30”.

*Regulation 95 amended*

23. Regulation 95 of the Principal Regulations is amended by deleting, in sub-regulation (2), “\$25.00” and substituting “\$25.55”.

*Regulation 95A amended*

24. Regulation 95A of the Principal Regulations is amended by deleting, in sub-regulation (2), “\$25.00” and substituting “\$25.55”.

*Regulation 98 amended*

25. Regulation 98 of the Principal Regulations is amended by deleting, in sub-regulation (3), “\$12.00” and substituting “\$12.30”.

*Regulation 119 amended*

26. Regulation 119 of the Principal Regulations is amended by deleting “\$18.00” and substituting “\$18.40”.

*Regulation 122 amended*

27. Regulation 122 of the Principal Regulations is amended by deleting, in sub-regulation (2), “\$12.00” and substituting “\$12.30”.

*Regulation 125 amended*

28. Regulation 125 of the Principal Regulations is amended by deleting, in sub-regulation (3), “\$12.00” and substituting “\$12.30”.

*Regulation 129 amended*

29. Regulation 129 of the Principal Regulations is amended by deleting, in sub-regulation (2), “\$250.00” and substituting “\$255.55”.

*Regulation 129A amended*

30. Regulation 129A of the Principal Regulations is amended by deleting, in paragraph (b) of the Proviso, “\$25.00” and substituting “\$25.55”.

*Regulation 132 amended*

31. Regulation 132 of the Principal Regulations is amended by deleting, in sub-regulation (2), “\$125.00” and substituting “\$127.80”.

*Regulation 133 amended*

32. Regulation 133 of the Principal Regulations is amended by deleting, “\$25.00” and substituting “\$25.55”.

*Regulation 140 amended*

33. Regulation 140 of the Principal Regulations is amended by repealing the Table of Fees and substituting the following table—

“TABLE OF FEES

<i>Item</i>	<i>Document</i>	<i>Fee (\$)</i>
1	Landing certificate for each original bill of entry on which goods are entered	12.30
2	Certificate of examination and verification of the contents of the package, per package	12.30
3	Certificate of weight for each consignment	12.30
4	Any other certificate issued by Customs	12.30
5	Certification of exports, per certificate	12.30
6	EUR - 1 certificate and similar certificate, per certificate	12.30
7	Certified copy of any document (for each 100 words or part thereof)	6.15”

Dated at Suva this 12th day of January 2012.

A. SAYED-KHAIYUM  
Acting Prime Minister and Minister for Finance

[LEGAL NOTICE NO. 10]

INCOME TAX ACT  
(CAP. 201)

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**Income Tax (Employment)  
(Amendment) Regulations 2012**

IN exercise of the powers conferred upon me by section 81 of the Income Tax Act (Cap. 201), I hereby make these Regulations—

*Short title and commencement*

1.—(1) These Regulations may be cited as the Income Tax (Employment) (Amendment) Regulations 2012 and shall be deemed to have come into force on 1st January, 2012.

(2) The Income Tax (Employment) Regulations 1985 shall be referred to as the “Principal Regulations”.

*Regulation 19 amended*

2. Regulation 19 of the Principal Regulations is amended in subregulation (1) by deleting “commencing January to May 2008 and June to December 2008 respectively where, the employee has been in continuous employment for both respective pay periods”.

*Regulation 20 amended*

3. Regulation 20 of the Principal Regulations is amended by deleting “from each payment for pay periods commencing January to May 2008 and June to December 2008 respectively where, the employee has been in continuous employment for both respective pay periods”.

*Regulation 21 amended*

4. Regulation 21 of the Principal Regulations is amended by deleting “2009” and “2008”.

*Regulation 21A repealed*

5. Regulation 21A is hereby repealed.

Dated this 12th day of January 2012.

A. SAYED-KHAIYUM  
*Acting Prime Minister and Minister for Finance*

[LEGAL NOTICE NO. 11]

INCOME TAX ACT  
(CAP. 201)

## Income Tax (Transfer Pricing) Regulations 2012

IN exercise of the powers conferred upon me by section 107 of the Income Tax Act (Cap. 201), I hereby make these Regulations—

### PART I—PRELIMINARY

#### *Short title and commencement*

1.—(1) These Regulations may be cited as the Income Tax (Transfer Pricing) Regulations 2012.

(2) These Regulations shall be deemed to have come into force on 1st January, 2012 and shall apply to transactions occurring on or after that date.

#### *Interpretation*

2. In these Regulations, unless the context otherwise requires—

“Act” means the Income Tax Act (Cap. 201);

“arm’s length principle”, in relation to a controlled transaction, means the results of the transaction are consistent with the results that would have been realised in a transaction between independent persons dealing under the same or similar conditions;

“associate” has the meaning in regulation 3;

“comparability factors” means the factors specified in regulation 4;

“comparable uncontrolled price method” means the transfer pricing method under which the price charged in a controlled transaction is compared with the price charged in a comparable uncontrolled transaction;

“comparable uncontrolled transaction”, in relation to the application of a transfer pricing method to a controlled transaction, means an uncontrolled transaction that, after taking account of the comparability factors, satisfies the following—

- (a) the differences, if any, between the two transactions or between the persons undertaking the transactions that do not materially affect the financial indicator applicable under the method; or
- (b) if the differences referred to in paragraph (a) do materially affect the financial indicator applicable under the method, reasonably accurate adjustments may be made to eliminate the effects of such differences;

“controlled transaction” means a transaction between associates;

“cost plus method” means the transfer pricing method under which the mark up on the costs directly and indirectly incurred in the supply of property or services in a controlled transaction is compared with the mark up on those costs directly or indirectly incurred in the supply of property or services in a comparable uncontrolled transaction;

“financial indicator” means —

- (a) in relation to the comparable uncontrolled price method, the price;
- (b) in relation to the cost plus method, the mark up on costs;
- (c) in relation to the resale price method, the resale margin;
- (d) in relation to the transaction net margin method, the net profit margin;
- or
- (e) in relation to the transactional profit split method, the division of profit and loss;

“liaison office” means an office, the sole activity of which is representation;

“permanent establishment”, in relation to a person —

- (a) if there is a tax treaty applicable to the person, means permanent establishment as defined in the treaty; or
- (b) in any other case, means a fixed place of business through which the business of the person is wholly or partly carried on, and includes —
  - (i) a place of management, branch, office, factory, warehouse, or workshop, but does not include a liaison office;
  - (ii) a mine, oil or gas well, quarry, or other place of extraction of natural resources;
  - (iii) a building site, or a construction, assembly or installation project, or supervisory activities connected with such site or project, but only if the site, project or activities continue for more than six months;
  - (iv) the furnishing of services by the person, including consultancy services, through employees or other personnel engaged by the person for such purpose, but only if activities of that nature continue for the same or a connected project for a period or periods aggregating more than six months in any twelve-month period; or
  - (v) a person, referred to as an “agent”, acting on behalf of another person, referred to as the “principal”, if the agent —
    - (A) has and habitually exercises an authority to conclude contracts on behalf of the principal; or
    - (B) habitually maintains a stock of trading stock from which the agent regularly delivers trading stock on behalf of the principal,

but does not include an agent of independent status;

“person” means an individual, company, partnership, trust, government, political subdivision of a government, or public international organisation, and includes a “PE person” and “headquarters person” as defined in Regulation 5;

“resale price method” means the transfer pricing method under which the resale margin that a purchaser of property in a controlled transaction earns from reselling the property in an uncontrolled transaction is compared with the resale margin that is earned in a comparable uncontrolled purchase and resale transaction;

“transaction” means a supply or acquisition of property, services, money, intangibles or any other asset, and includes an arrangement, understanding, agreement, or mutual practice whether or not legally enforceable or intended to be legally enforceable, and a dealing between a branch of a person and another part of the person;

“transactional net margin method” means the transfer pricing method under which the net profit margin relative to the appropriate base such as costs, sales or assets that a person achieves in a controlled transaction is compared with the net profit margin relative to the same basis achieved in a comparable uncontrolled transaction;

“transactional profit split method” is the transfer pricing method under which the division of profit and loss that a person achieves through participation in a controlled transaction is compared with the division of profit and loss that would be achieved when participating in a comparable uncontrolled transaction;

“transfer pricing method” means the—

- (a) comparable uncontrolled price method;
- (b) resale price method;
- (c) cost plus method;
- (d) transaction net margin method; or
- (e) transactional profit split method; and

“uncontrolled transaction” means a transaction that is not a controlled transaction.

*Associate*

3.—(1) Subject to sub-regulation (2), two persons are associates if the relationship between them is such that one may reasonably be expected to act in accordance with directions, requests, suggestions, or wishes of the other, or both persons may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of a third person.

(2) Two persons are not associates solely by reason of the fact that one person is an employee of the other or both persons are employees of a third person.

(3) Without limiting the generality of sub-regulation (1), the following are treated as associates—

- (a) an individual and a relative of the individual, except if the Chief Executive Officer is satisfied that neither person may reasonably be expected to act in accordance with the intentions of the other;
- (b) a partner in a partnership and the partnership, if the partner, either alone or together with an associate or associates under another application of this section, controls fifty per cent or more of the rights to income or capital of the partnership;
- (c) a trust and a person who benefits or may benefit under the trust;
- (d) a member of a company and the company, if the member, either alone or together with an associate or associates under another application of this section, controls either directly or through one or more interposed persons—
  - (i) fifty per cent or more of the voting power in the company;

- (ii) fifty per cent or more of the rights to dividends; or
- (iii) fifty per cent or more of the rights to capital, and
- (e) two companies, if a person, either alone or together with an associate or associates under another application of this section, controls either directly or through one or more interposed persons—
  - (i) fifty per cent or more of the voting power in both companies,
  - (ii) fifty per cent or more of the rights to dividends in both companies, or
  - (iii) fifty per cent or more of the rights to capital in both companies.

(4) In applying sub-regulation (3) (b), (d), or (e), holdings that are attributable to a person from an associate are not reattributed to another associate.

(5) In this regulation—

“relative” in relation to an individual, means—

- (a) an ancestor, a descendant of any of the grandparents, or an adopted child, of the individual;
- (b) an ancestor, a descendant of any of the grandparents, or an adopted child of a spouse of the individual; or
- (c) a spouse of the individual or of any person specified in paragraph (a) or (b); and

“spouse”, in relation to an individual, includes another individual who, although not legally married to the first-mentioned individual, lives with the individual on a genuine domestic basis in a relationship as a couple.

*Comparability factors*

4.—(1) In determining whether two or more transactions are comparable, the following factors are considered to the extent that they are economically relevant to the facts and circumstances of the transactions—

- (a) the characteristics of the property transferred or services transferred or supplied;
- (b) the functions undertaken by the person entering into the transaction taking account of assets used and risks assumed;
- (c) the contractual terms of the transactions;
- (d) the economic circumstances in which the transactions take place; and
- (e) the business strategies pursued by the associate to the controlled transaction.

*Permanent establishments*

5.—(1) Subject to sub-regulation (2), for the purposes of these Regulations—

- (a) a permanent establishment is deemed to be a separate and distinct person (referred to as the “PE person”) from the person in respect of whom it is a permanent establishment (referred to as the “headquarters person”);
- (b) the PE person and headquarters person are deemed to be associates; and
- (c) a PE person and a headquarters person are located where their activities are located.

(2) The Chief Executive Officer may choose not to apply this regulation if the foreign country in which the headquarters person is located does not apply the same rule as expressed in sub-regulation (1).

*Relevance of OECD Material to Interpretation of Regulations*

6.—(1) Subject to sub-regulation (2), these Regulations are to be applied in a manner consistent with—

- (a) the arm's length principle in Article 9 of the OECD Model Tax Convention on Income and Capital; and
- (b) the OECD Transfer Pricing Guidelines for Multi-national Enterprises and Tax Administrations approved by the Council of the OECD for publication on 13th July, 1995 (C(95)126/FINAL), as supplemented and updated from time to time.

(2) If there is any inconsistency between the Act, including these Regulations, and the OECD documents referred to in sub-regulation (1), the Act prevails.

*Application*

7.—(1) The Regulations apply to a controlled transaction between—

- (a) resident and a non-resident person;
- (b) resident persons; or
- (c) a permanent establishment of a non-resident person in Fiji and a non-resident person outside Fiji,

other than a transaction that takes place wholly in Fiji.

## PART II—APPLICATION OF THE ARM'S LENGTH PRINCIPLE

*Consistency with the Arm's Length Principle*

8.—(1) If a person has entered into a transaction or a series of transactions to which these Regulations apply, the person must determine its income and expenditures resulting from the transaction or transactions in a manner that is consistent with the arm's length principle.

(2) If a person does not comply with sub-regulation (1), the Chief Executive Officer may make such adjustments as necessary to ensure that the income and expenditures resulting from the transaction or transactions are consistent with the arm's length principle.

(3) The determination of the whether the result of a transaction or series of transactions is consistent with the arm's length principle is made by using the most appropriate transfer pricing method or a combination of methods having regard to the—

- (a) respective strengths and weaknesses of the transfer pricing methods in the circumstances of the case;
- (b) appropriateness of a transfer pricing method having regard to the nature of the controlled transaction determined, in particular, through an analysis of the functions undertaken by each person that is a party to the controlled transaction;
- (c) availability of reliable information needed to apply the transfer pricing methods; and
- (d) degree of comparability between controlled and uncontrolled transactions, including the reliability of adjustments, if any, that may be required to eliminate differences.

(4) If, having regard to sub-regulation (3), a person has used an appropriate transfer pricing method, the Chief Executive Officer's examination as to whether income and expenditures resulting from the person's transaction or transactions are consistent with the arm's length principle is based on the transfer pricing method used by the person.

(5) A person may apply a transfer pricing method other than those listed in the definition of "transfer pricing method" in regulation 2 if the person can establish that—

- (a) none of the listed methods can reasonably be applied to determine whether a controlled transaction is consistent with the arm's length principle; and
- (b) the method used gives rise to a result that is consistent with that between independent persons engaging in comparable uncontrolled transactions in comparable circumstances.

### PART III—DOCUMENTATION

#### *Documentation*

9.—(1) A person must record, in writing, sufficient information and analysis to verify that its controlled transactions are consistent with the arm's length principle.

(2) The documentation referred to in sub-regulation (1) for transactions undertaken in a tax year must be in place prior to the due date for filing the income tax return for that year.

(3) The Chief Executive Officer may, by notice, specify the items of documentation that a person is required to keep for the purposes of this regulation.

(4) A person who fails to comply with this regulation commits an offence and is liable upon conviction to a fine not less than \$100,000.

### PART IV—CORRESPONDING ADJUSTMENTS

#### *Corresponding Adjustments*

10. If—

- (a) an adjustment is made by a competent authority of a country which Fiji has a double tax treaty (referred to as the "foreign country") to the taxation of a transaction or transactions of a person subject to tax in Fiji; and
- (b) the adjustment results in taxation in the foreign country of income or profits that are also taxable in Fiji,

the Chief Executive Officer must, upon request by the person subject to tax in Fiji, determine whether the adjustment is consistent with the arm's length principle and, if the Chief Executive Officer determines that it is consistent, the Chief Executive Officer must make a corresponding adjustment to the amount of tax charged in Fiji on the income or profits so as to avoid double taxation.

Dated this 12th day of January 2012.

A. SAYED-KHAIYUM  
*Acting Prime Minister and Minister for Finance*

[LEGAL NOTICE NO. 12]

## CUSTOMS ACT 1986

## Customs (Prohibited Imports And Exports) (Amendment) Regulations 2012

IN exercise of the powers conferred upon me by section 64 of the Customs Act 1986, I hereby make these Regulations—

*Citation and commencement*

1.—(1) These Regulations may be cited as the Customs (Prohibited Imports and Exports) (Amendment) Regulations 2012 and shall come into force on the date of its publication in the *Gazette*.

(2) The Customs (Prohibited Imports and Exports) Regulations 1986 is referred to as the ‘Principal Regulations’.

*Schedule 1 amended*

2. Schedule 1 of the Principal Regulations is amended by inserting the following new item after item No. 15—

<i>Item No.</i>	<i>Description of Goods</i>
“16	<ul style="list-style-type: none"> <li>(i) Non-biodegradable High and Low Density Plastic Bags of Polyethylene or of other Plastics.</li> <li>(ii) Non—biodegradable High and Low Density Plastics of Polyethylene or other Plastics in rolls or sheets.”</li> </ul>

*Schedule 2 amended*

3. Schedule 2 of the Principal Regulations is amended by inserting the following new items after item No. 14—

<i>Item No.</i>	<i>Description of Goods</i>	<i>Conditions, Restrictions or Requirements</i>
“15	(i) Biodegradable High and Low Density Plastic Bags of Polyethylene or other types of Plastics or Plastics in rolls or sheets.	The importer shall produce to the Comptroller an import permit with conditions or standards issued by the Director of Environment.

<i>Item No.</i>	<i>Description of Goods</i>	<i>Conditions, Restrictions or Requirements</i>
	(ii) Biodegradable High and Low Density Plastic Bags of Polyethylene or other Plastic in rolls or sheets.	For the purpose of these Regulations, 'biodegradable plastic' means a plastic capable of natural decomposition and is capable of being broken down by bacteria and other micro-organisms to microscopic particles within two years of production.
16	Any product containing chewing tobacco or labeled as containing tobacco which is marked as suitable for chewing or for any other oral use.	The importer shall produce to the Comptroller, a permit to import, issued by the Permanent Secretary for Health."

Dated at Suva this 12th day of January 2012.

A. SAYED-KHAIYUM  
*Acting Prime Minister and Minister for Finance*