

**INTERIM GOVERNMENT OF THE REPUBLIC OF THE FIJI ISLANDS**

**TAX ADMINISTRATION PROMULGATION 2008**

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## INTERIM GOVERNMENT OF THE REPUBLIC OF THE FIJI ISLANDS

### TAX ADMINISTRATION PROMULGATION 2008

IN EXERCISE of the powers conferred upon the Interim Government, and upon the exercise of my own deliberate judgment as President of the Republic of the Fiji Islands, as to what is best and good for the people of the Republic of the Fiji Islands, and by exercise of the executive authority of the State in accordance with section 85 of the 1997 Constitution and such other powers as may appertain, and with the approval of Cabinet, I, Josefa Iloilovatu Uluivuda, make this Promulgation -

TO REVISE AND HARMONISE THE RULES RELATING TO THE ADMINISTRATION OF THE TAX LAWS OF THE FIJI ISLANDS AND TO ENSURE THE EFFICIENT COLLECTION OF TAXES

#### Part I – PRELIMINARY

##### *Short Title and Commencement*

1.—(1) This Promulgation may be cited as the Tax Administration Promulgation 2008.

(2) Subject to subsection (3), this Promulgation comes into force on [1 January 2009]

(3) Division IX of Part II comes into force on the date appointed by the Minister, by notice in the *Gazette*.

##### *Interpretation*

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

“approved form” has the meaning in section 68;

“authorised officer” has the same meaning as under the Income Tax Act;

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

“CEO” means the Chief Executive Officer appointed under section 27 of the Fiji Islands Revenue and Customs Authority Act;

“controlling interest” has the same meaning as under 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 Decree 1991, and includes any regulations or other subsidiary legislation made under those laws;

“data storage device” includes electronic data storage device;

“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;

“Gambling Turnover Tax Decree” means the Gambling Turnover Tax Decree 1991 (Act No. 57 of 1991)

“GTT” means gambling turnover tax imposed under the Gambling Turnover Tax Decree;

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

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

“income tax” means income tax imposed under the Income Tax Act;

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

“Judicial Service Commission” means the Judicial Service Commission established under the Constitution;

“Land Sales Act” means the Land Sales Act (Cap. 137);

“Minister” means the Minister responsible for Finance;

“objection decision” means the decision referred to in section 15(5);

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

“registered person” means a person who is a registered person for the purposes of the Value Added Tax Decree;

“representative” has the meaning in section 41(1);

“resident” has the same meaning as under the Income Tax Act;

“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(a);

“self-assessment return” means a tax return listed in Part B of the Fourth Schedule;

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

“tax” means an amount listed in the First Schedule;

“Tax Agents’ Board” means the Tax Agents’ Board established under section 86;

“tax agent” means a person registered as a tax agent under section 89;

“tax assessment” means an assessment or determination listed in the Second Schedule;

“tax decision” means –

- (a) a tax assessment; or
- (b) in relation to this Promulgation, the Income Tax Act, or Value Added Tax Decree, 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 the Third Schedule;

“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 year of assessment;
- (b) in the case of VAT, the taxable period; or
- (c) in any other case, the period for which the tax is reported;

“tax return” means a return, statement, or other document listed in Part A of the Fourth Schedule;

“Tax Tribunal” means the Tax Tribunal established under section 75;

“taxpayer” means –

- (a) in the case of the income tax –
  - (i) a person liable for income tax on chargeable income for a year of assessment;
  - (ii) a person who has chargeable income for a year of assessment 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 year of assessment;
  - (iv) a person liable for withholding tax imposed under section 8, 8A, 9, 9A, 10, or 10A of the Income Tax Act; or
  - (v) a person liable to pay withholding tax under section 8(4), 8A(6), 9(5), 9A(12), 10(5), 10A(3), or Part XI of the Income Tax Act; or
- (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;

“Value Added Tax Decree” means the Value Added Tax Decree 1991;

“VAT” means value added tax imposed under the Value Added Tax Decree; and

“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.

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

## **Part II – HARMONISED ADMINISTRATIVE RULES**

### **Division I - Tax Returns**

#### *Filing of Tax Returns*

3. (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 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 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.

#### *Tax Agent's Declaration*

4. —(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) certifying that the tax agent has examined the books, accounts, records and other relevant documentation of the taxpayer, and that, 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.

#### *Extension of Time to File a Tax Return*

**5.—(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.

#### *CEO May Require Taxpayer to File a Tax Return*

**6.** 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; 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.

*Tax Return Duly Made*

7. 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 II – Tax Decisions**

*Self-assessments*

8. For the purposes of this Promulgation –
- (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.

*Default Assessments*

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.

*Advance Assessments*

10.—(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.

#### *Amendment of Tax Assessments*

**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) A self-assessment taxpayer can apply to the CEO within the time specified in subsection (3)(b) for the CEO to make an amendment in accordance with subsection (1) to a self-assessment and the CEO must serve the taxpayer with notice of the decision on the application.

(3) 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 notice of the assessment on the taxpayer.

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

(5) Subject to subsection 3(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.

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

(7) 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.

*Defect Not to Affect the Validity of Tax Decisions*

**12.** 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 reason 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 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.

*Finality of Tax Decisions*

**13.—(1)** Except in proceedings under Division III of this Part –

- (a) no tax decision can be disputed in the Tax Tribunal, in any Court, or in any other proceedings on any ground whatsoever;
- (b) in the case of a self-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; and
- (c) in the case of any other tax assessment, the production of the original notice of a tax assessment or a document under the hand of the CEO purporting to be a certified copy of a notice of such assessment is conclusive evidence of the making of the assessment and that the amount and particulars of the assessment are correct.

(2) 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.

*Rectification of Mistakes*

14. 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 III – Objections and Appeals***Objection to Tax Decision*

15.—(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 in the approved form and state fully and in detail the grounds upon which the person objecting relies to support the objection.

(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) Subject to subsection (6), 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.

(6) The CEO is not required to consider an objection unless and until the person objecting has complied with all the requirements under this Promulgation and the tax law to which the objection relates in relation to the making of tax returns and payment of tax.

(7) The CEO must serve notice of the objection decision on the person objecting as soon as is practicable after making the decision.

(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 notwithstanding 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.

*Review of Objection Decision by the Tax Tribunal*

**16—(1)** A person dissatisfied with an objection decision may make an application to the Tax Tribunal in accordance with section 77 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, or reduce, increase, or otherwise vary the assessment to which the objection decision relates; or
- (b) remit the assessment to the CEO for reconsideration in accordance with the directions of the Tribunal.

(4) If an application for review relates to a tax decision other than a tax assessment, the Tax Tribunal may make an order to affirm, vary, or set aside the decision.

*Appeal to High Court*

**17.—(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 High Court in accordance with section 84.

(2) Except with leave of the High 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 High 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.

*Test Case Procedure*

**18.—(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 High Court without the need for the consent of the person objecting or leave of the High Court, and the objection is stayed until the test case objection is decided by the High 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 High 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 Promulgation –

- (a) for so long as an objection is stayed under this section, any time limits or periods specified in this Promulgation 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.

#### *Implementation of Decision*

**19.—**(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 High Court,

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 84 for appealing the decision to the High Court; or
- (b) the expiration of any extension of time allowed by the High 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 High 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 High Court.

#### *General Provisions Relating to Objections and Appeals*

**20.—(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 High 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 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 High 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 up to a maximum of 50% of the disputed tax, but only if the taxpayer has paid the entire amount of tax due under the assessment that is not in dispute.

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

### **Division IV – Collection, Recovery and Repayment of Tax**

#### *Tax is a Debt Due to the State*

**21.—(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 Decree;
  - (b) VAT collected by a registered person under the Value Added Tax Decree (net of any input tax credit allowed);
  - (c) withholding tax collected by a person under the Income Tax Act; or
  - (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.

*Collection of Tax by Suit*

**22. —**(1) Notwithstanding anything contained in the State Proceedings Act (Cap. 24), 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 proceedings for the recovery of tax may be heard and determined, without limit of amount, by a resident magistrate.

*No Double Collection of Tax*

**23.—(1)** In this section –

“collection agent” means –

- (a) a person referred to in sub-paragraph (v) of paragraph (a) of the definition of “taxpayer” in section 2;
- (b) a liquidator liable for tax under section 25;
- (c) a person who has been served with a garnishee order under section 26;
- (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

“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.

*Extension of Time to Pay Tax*

**24.—(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.

*Liquidators, Trustees and Executors*

**25.—(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 1 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 1 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 two 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.

*Garnishee Order*

- 26.—**(1) In this section, “payer” means a person who –
- (a) owes or may subsequently owe money to a taxpayer;
  - (b) holds or may subsequently hold money, for or on account of, a taxpayer;
  - (c) holds money on account of some other person for payment to a taxpayer; or
  - (d) has authority from some other person to pay money to a taxpayer.
- (2) This section applies if a taxpayer is, or will become 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 tax by the due date for payment.
- (3) 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.

(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 per cent (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.

#### *Tax a Charge on Property*

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

(2) The following priority rules apply in relation to a charge over property created by this section –

- (a) any mortgage, charge, or encumbrance over the property existing at the time of creation of the charge has priority over the charge except to the extent of any monies advanced after creation of the charge under this section;
- (b) a charge over property created by this section has priority over a mortgage, charge, or encumbrance created over the property after the creation of the charge by this section; and
- (c) if any property is subject to a charge created by this section is also subject to a charge created by another Act, Decree, or Promulgation, the charges rank equally with each other unless by virtue of the other Act, Decree, or Promulgation the charge created thereby is deferred to the charge created by this section.

(3) The CEO may register 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.

(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.

(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.

(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 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 subsection (2), 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.

(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, 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 subsection (2), sell or concur with another person in the selling of the property, or part thereof, whether by public auction or private contract and no purchaser can be bound to see or inquire into the proprietary or regularity of such sale.

(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.

#### *Collection of Tax by Distress and Sale*

**28. —**(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 ISLANDS REVENUE AND CUSTOMS AUTHORITY UNDER SECTION 28 OF THE TAX ADMINISTRATION PROMULGATION”; 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.

(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.

#### *Seizure of Goods*

**29.—(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, or will become, 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, or will become, 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, or will become, 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.

#### *CEO May Require Security*

**30.** The CEO may, if there is reason to believe that a taxpayer will not pay tax when it becomes payable, require a taxpayer, by notice in writing, to give security by bond, deposit, or otherwise, in such amount as the CEO thinks fit.

*Departure Prohibition Order*

**31. —(1)** If the CEO has reasonable grounds to believe that a person may leave Fiji without paying any tax that is or will become payable by the person or by a company in which the person has a controlling interest, the CEO may issue a departure prohibition order, in writing, stating –

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

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

(3) 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.

(4) 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.

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

(6) A departure prohibition order remains in force until revoked by the CEO.

(7) 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.

(8) 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.

(9) 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.

*Temporary Closure of Business.*

**32. — (1) If a taxpayer fails –**

- (a) to file a return required to be filed under section 33 of the Value Added Tax Decree, Regulation 13 of the Income Tax (Employments) Regulations, section 5(1)(b) of the Gambling Turnover Tax Decree, or section 4(1)(b) of the Hotel Turnover Tax Act; or
- (b) to pay VAT, gambling turnover tax, hotel turnover tax, or tax withheld from salary or wages,

on or before the due date, 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 FIJI ISLANDS REVENUE & CUSTOMS AUTHORITY UNDER SECTION 32 OF THE TAX ADMINISTRATION PROMULGATION".

(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).

#### *Refunds*

**33.—(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 owing by the taxpayer under any tax law; and
- (b) then refund the balance (if any) to the taxpayer.

(2) Notwithstanding anything in any other tax law, the CEO, may refrain from issuing a notice of assessment, or collecting or refunding tax if the amount of tax to be assessed, collected, or refunded does not exceed 5 dollars.

### **Division V. – Record Keeping and Information Collection**

#### *Accounts and Records*

**34.—(1)** Every taxpayer must, for the purposes of a tax law –

- (a) 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 such accounts, documents, and records for 7 years after the end of the tax period to which they relate.

(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, after 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.

*Power to Enter and Search*

**35.—(1)** For the purposes of administering any tax law, 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 data storage device;
- (b) may make an extract or copy of any accounts, documents, records, or information stored on a data storage device 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; and
- (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.

(2) A tax officer is not entitled to enter or remain on any premises or place if, upon request by the owner or lawful occupier, the officer is unable to produce the CEO's written authorisation permitting the officer to exercise powers under subsection (1).

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

(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.

(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.

#### *Administrative Summons*

**36.—**(1) For the purposes of administering any tax law, 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.

(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) A notice issued under this section must be served personally upon the person to whom it is directed or left at the person's last known usual place of business or abode and the certificate of service signed by the person serving the notice is conclusive evidence of the facts stated therein.

(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
- (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.

*Audit and Investigation of Taxpayer's Tax Affairs*

**37.—(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 Islands Revenue and Customs Authority Act.

**Division VI - Taxpayer Identification Numbers**

*Issue of Taxpayer Identification Numbers*

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

- (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 (as defined in paragraph (a) of the First Schedule).

#### *Cancellation of Taxpayer Identification Number*

**39.—(1)** A person who ceases to be a taxpayer must apply to the CEO, in the approved form, for cancellation of the person's Taxpayer Identification Number within 7 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) if satisfied that the person has ceased to be a taxpayer;
- (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.

(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 re-issue 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.

*Quotation of Taxpayer Identification Number*

**40.—** 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.

**Division VII – Representatives**

*Liabilities and Obligations of Representatives*

- 41.—(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, authorised 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 25 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.

(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 two 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.

*Liability for Tax Payable by a Company in Financial Difficulties*

**42. —(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, HTT or tax withheld from salaries or wages paid by the company and any penalty payable thereon, each person who was a director of the company at the time it became insolvent or was liquidated is personally liable for the amount of VAT, GTT, HTT, tax withheld and penalty owing by the company.

(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.

## **Division VIII –Administrative Penalties and Offences**

### **Subdivision I - Administrative Penalties**

#### *Penalty for Failure to File a Tax Return or Lodge Other Document*

**43.—(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; or
- (b) in any other case, for a penalty of \$10 for each day of default.

(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.

#### *Penalty for Failure to Pay Tax by the Due Date*

**44.—(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 24, the extended due date, is liable for a penalty of 25% of the amount of unpaid tax.

(3) 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.

#### *Penalty for Failure to Maintain Proper Records*

**45.** 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.

#### *Penalty for Making False or Misleading Statement*

**46.—(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 (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) 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) 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.

(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.

*Penalty for Breach of Possession Agreement*

**47.** 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.

*General Provisions Relating to Penalty*

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

(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 II 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.

(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 Promulgation).

(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 other than that imposed under section 46.

(8) Nothing in this subdivision precludes the imposition of penalty under a tax law (other than this Promulgation), 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.

### **Subdivision II – Taxation Offences**

#### *Offence for Failure to File a Tax Return*

**49.—(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 [3 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.

#### *Offence for Failure to Comply with Obligations under this Promulgation*

**50. —(1)** A person who -

- (a) without reasonable cause fails to -
  - (i) comply with section 25;
  - (ii) comply with a garnishee order served on the person under section 26;
  - (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 27;
- (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 26(7) is considered to be in compliance with garnishee order served on the person under section 26(3) until the CEO serves the person with a notice under section 26(8) amending the order served under section 26(3) or rejecting the person's notice under section 26(7).

*Offence for Failure to Maintain Proper Records*

**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.

*Offence for Improper Use of Taxpayer Identification Number*

**52.—(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 [\$1,000] or to imprisonment for a term not exceeding [3 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 [\$10,000] or to imprisonment for a term not exceeding [12 months] or to both a fine and imprisonment.

*Offence for Making False or Misleading Statement*

- 53.—**(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.

*Offence for Obstruction of Tax Officer*

**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.

*Offence for Aiding or Abetting a Taxation Offence*

**55.** 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.

*Offence for Rescuing Seized Goods*

- 56.** A person who –
- (a) rescues any goods that are the subject of an order under section 28 or have been seized under section 29; or
  - (b) before, at, or after any seizure of goods under section 28 or 29, 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.

*Offences by Tax Officers*

**57.—(1)** In this section, “tax officer” means any person employed or engaged by the Authority in any capacity, and includes a former officer or employee of the Authority.

(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 [\$5,000] or to imprisonment for a term not exceeding [6 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 [\$5,000] or to imprisonment for a term not exceeding [6 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 [\$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 [\$10,000] or to imprisonment for a term not exceeding [12 months] or to both a fine and imprisonment.

#### *Offences by Companies*

**58.—**(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.

#### *Power of CEO to Compound Offences*

**59. —** (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.

#### *General Provisions Relating to Offences*

**60. —**(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.

### **Division IX – Rulings**

#### **Subdivision I - Public Rulings**

##### *Binding Public Rulings*

**61. —** (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.

##### *Making a Public Ruling*

**62. —** (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 Promulgation.

#### *Withdrawal of a Public Ruling*

**63. —** (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 II - Private Rulings**

#### *Binding Private Rulings*

**64. —** (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 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.

#### *Refusing an Application for a Private Ruling*

**65. —(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 of a decision to refuse to make a private ruling.

#### *Making a Private Ruling*

**66. —(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 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.

(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 Promulgation.

#### *Withdrawal of a Private Ruling*

**67. —**(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 X - Forms and Notices**

#### *Approved Form*

**68.** (1) A tax return, notice, or other document required to be filed under a tax law (other than Part III or IV of this Promulgation) is in the approved form if –

- (a) it is in the form approved in writing by the CEO for that type of tax return, notice, or document; and
- (b) 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 III of this Promulgation is in the approved form if –

- (a) it is in the form approved by the President of the Tax Tribunal; and
- (b) 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 IV of this Promulgation is in the approved form if –

- (a) it is in the form approved by the Tax Agents' Board; and
- (b) it contains the information (including any attached documents required) and is signed as required by the form.

*Forms and Notices; Authentication of Documents; Compliance with Tax Law*

**69.—**(1) Subject to the Regulations to this Promulgation, 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 Authority and at such other locations, or by mail or such other means, as the CEO may determine.

(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.

(5) An affidavit referred to in subsection (4) must have attached to it a copy of any notice to which the affidavit relates.

*Manner of Lodging Documents*

**70.** Subject to this Promulgation 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 to an office of the Authority.

*Free Postage*

**71.** 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 Authority.

*Service of Notices*

**72.—(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 for service of notices and such address applies for the purposes of all tax laws.

(3) Subject to this Promulgation 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.

(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.

*Electronic Returns and Notices*

**73. —** (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 13 also applies to –

- (a) an electronic tax assessment served by the CEO on the basis that the reference in section 13(1)(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 tax return furnished by a registered user on the basis that the reference in section 13(1)(c) to a copy of a tax return includes a certificate under the hand of the CEO identifying the tax return; stating the authentication code of the registered user and the device (if known) involved in the production and transmission of the electronic tax return.

(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.

#### *Due Date for Documents and Tax Payments*

**74.** 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 the next following business day.

### **Part III – TAX TRIBUNAL**

#### *Establishment of Tax Tribunal*

**75.—**(1) There is established a tribunal to be called the Tax Tribunal to hear applications for review of reviewable decisions made under a tax law.

(2) A reviewable decision can be challenged only under this Part.

#### *Appointment of Members of the Tribunal*

**76.—**(1) The Tax Tribunal consists of a President and such other members as the Minister considers necessary having regard to the needs of the Tribunal.

(2) The President of the Tax Tribunal is a Judge of the High Court appointed by the Chief Justice.

(3) The other members of the Tax Tribunal are appointed by the Judicial Service Commission.

(4) Subject to subsection (5), a person may be appointed as a member under subsection (3) if the person satisfies any one 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 functions of the Tax Tribunal.

(5) The following persons cannot be appointed as a member under subsection (3) –

- (a) a person currently engaged as a tax officer;
- (b) a person who has been liable for a penalty or convicted of an offence under a tax law, or has been subject to an order under section 59; or

- (c) a person who is an undischarged bankrupt.
- (6) A member appointed under subsection (3) –
- (a) may be appointed as either a full-time or part-time member;
  - (b) is appointed for a term of [3] years and is eligible for re-appointment; and
  - (c) holds office on such terms and conditions, including in relation to remuneration, as the Judicial Service Commission determines.
- (7) The President of the Tax Tribunal holds that office until the earlier of –
- (a) ceasing to hold the office of Judge of the High Court; or
  - (b) resigning from the office of President by notice in writing to the Chief Justice.
- (8) The appointment of a member under subsection (3) terminates if the member –
- (a) becomes an undischarged bankrupt;
  - (b) becomes engaged as a tax officer;
  - (c) is liable for penalty or convicted of an offence under a tax law, or is subject to an order under section 59;
  - (d) resigns by notice in writing to the Judicial Service Commission; or
  - (e) is removed by the Judicial Service Commission, by notice in writing, for inability to perform the duties of office or for proven misconduct.
- (9) No member of the Tax Tribunal 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.
- (10) The reference to "tax law" in subsections (5)(b) and (8)(c) includes the customs and excise legislation.

*Application for Review of Reviewable Decision*

**77.—(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.

*CEO Required to Lodge Documents with the Tax Tribunal*

**78.—(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 members of 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.

*Proceedings of the Tax Tribunal*

**79.—(1)** The President of the Tax Tribunal may make rules for the conduct of hearings before the Tax Tribunal.

(2) A proceeding before the Tax Tribunal is to be conducted with as little formality and technicality as possible and the Tax Tribunal is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks appropriate.

(3) The Tax Tribunal may –

- (a) take evidence on oath or affirmation;
- (b) proceed in the absence of a party who has had reasonable notice of the proceeding; or
- (c) adjourn the proceeding from time to time.

(4) The President may summon a person to appear before the Tribunal at the hearing to give evidence.

(5) If the members constituting the Tax Tribunal for a proceeding are divided in opinion as to the decision to be made on any question, the question is decided according to the opinion of the majority provided that in the event of a tie, the President has the casting vote.

(6) A member of the Tax Tribunal who has a material, pecuniary, or other interest in any proceeding that could conflict with the proper performance of the member's functions must disclose the interest and such member must not take part in that proceeding.

*Discontinuance, Dismissal or Reinstatement of Application to the Tax Tribunal*

**80.—(1)** An applicant to the Tax Tribunal may discontinue or withdraw their application at any time by filing a written notice of withdrawal with the Tax Tribunal and the Tax Tribunal must dismiss the application.

(2) If an applicant fails to appear in person or be represented at a hearing of the proceeding, the Tax Tribunal may dismiss the application.

(3) If an applicant fails within a reasonable time to proceed with an application or comply with a direction of the Tax Tribunal in relation to an application, the President may, on behalf of the Tax Tribunal, dismiss the application.

(4) If the Tax Tribunal has dismissed an application under subsection (2) or (3), the applicant may, within 30 consecutive days after receiving

notification that the application has been dismissed, apply to the Tax Tribunal for reinstatement of the application.

(5) If an application has been made under subsection (4), the Tax Tribunal may, reinstate the application with directions.

*Agreement Between the Parties to a Proceeding Before the Tax Tribunal*

**81.—**(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.

*Tax Tribunal May Remit the Matter to the CEO*

**82.—**(1) At any stage in a proceeding for review of a reviewable decision, the Tax Tribunal 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 varies or sets aside a decision under subsection (1), the decision as varied or set-aside is a reviewable decision and the applicant may either proceed with or withdraw the application.

*Decision of Tax Tribunal*

**83.—**(1) The Tax Tribunal must –

- (a) in the case of a review of a tax decision, make an order as set out in section 16(3) or 16(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.

*Appeal to High Court from Decision of the Tax Tribunal*

**84.—**(1) A party to a proceeding before the Tax Tribunal dissatisfied with the decision of the Tribunal may, within 30 consecutive days after being notified of the decision of the Tribunal or within such further time as the High Court may allow on an application in writing, lodge a notice of appeal to the decision in the approved form with the Registrar of the High Court.

(2) An appeal to the High Court may be made on a question of law only, and the notice of appeal must state the question or questions of law that will be raised on the appeal.

(3) The party appealing to the High Court must serve a copy of the notice of appeal on the other party to the proceeding before the Tax Tribunal.

(4) The High Court shall hear and determine the appeal and –

- (a) in the case of an appeal relating to a tax decision, make an order as set out in section 17(2); or

- (b) in the case of a review of an appeal relating to any other reviewable decision, 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 remitting the case to the original decision maker for reconsideration.

*Offences Relating to the Tax Tribunal*

**85. —(1)** A person who –

- (a) insults a member of the Tax Tribunal in, or in relation to, the exercise of his or her powers or functions as member;
- (b) interrupts a proceeding of the Tax Tribunal;
- (c) creates a disturbance, or takes part in creating a disturbance, in or near a place where the Tax Tribunal is sitting; or
- (d) does any other act or thing that would, if the Tax Tribunal were a Court, constitute a contempt of that Court,

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 knowingly refuses or fails –

- (a) to comply with a summons to appear before the Tax Tribunal;
- (b) to take an oath or affirmation before the Tax Tribunal;
- (c) to answer any question asked of the person during a proceeding before the Tax Tribunal;
- (d) to produce any book, record or document to the Tax Tribunal that the person was required to produce by a summons served on the person; or
- (e) gives false or misleading evidence to the Tax Tribunal

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.

## Part IV – TAX AGENTS’ BOARD

### *Establishment of Tax Agents’ Board*

**86.** There is established a Board to be called the Tax Agents’ Board to register and regulate the work of tax agents.

### *Appointment of Members of the Board*

**87. —(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 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 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 penalty or convicted of an offence under a tax law or is subject to an order 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 for proven 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.

#### *Proceedings of Board*

**88. —(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 Auditor-General is absent from a meeting, the member nominated by the Minister is the chairperson for that meeting.

(3) For the purposes of carrying out its powers, duties and functions under this Part, the Board has, subject to section 52 of the FIRCA Act, 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 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.

#### *Registration of Tax Agents*

**89. —(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 to 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 77.

(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.

### *Cancellation of Registration*

**90. —**(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 must 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 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; or
- (h) the tax agent has, for any other reason, ceased to be a fit and proper person to remain registered.

(5) The Board must give notice, in writing, of a decision to cancel the registration of a tax agent.

(6) A tax agent dissatisfied with the Board's decision to cancel the agent's registration can challenge the decision only under section 77.

(7) Subject to subsection (8), the cancellation of a registration under subsection (4) takes effect 30 consecutive days after the tax agent has been served with notice of the cancellation.

(8) If a tax agent served with notice of the cancellation of the tax agent's registration gives notice to the Board of the tax agent's intention to appeal against the decision, the cancellation takes effect only if decided by the Tax Tribunal upon appeal.

*Only Tax Agents to Accept Fees and Advertise as Tax Agents*

**91.—**(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.

*Offences Relating to Tax Agent's Registration*

**92.** A person who fails to comply with section 90(1) or 91 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.

**Part V – CONSEQUENTIAL AMENDMENTS**

*Consequential Repeals and Amendments*

**93.** The following enactments are amended as specified in the Fifth Schedule –

- (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 VI – FINAL PROVISIONS**

### *Regulations*

- 94.—**(1) The Minister may make regulations –
- (a) prescribing forms, fees or other matters as required under this Promulgation;
  - (b) for the administration of the Tax Tribunal and Tax Agents' Board;
  - (c) for the proper and efficient administration of this Promulgation.
- (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 Promulgation; 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 Promulgation, the regulations may provide that they take effect from the date on which the Promulgation comes into force.

### *Transitional and Savings*

- 95. —**(1) In this section, “commencement date” means the commencement date of the Promulgation under section 1(2);
- (2) Subject to this section, this Promulgation applies to any act or omission occurring, or any tax decision made, before the commencement date.
- (3) Any appeal or prosecution commenced before the commencement date is continued and disposed of as if this Promulgation had not come into force.

(4) If the period for any application, appeal or prosecution had expired before the commencement date, nothing in this Promulgation can be construed as enabling the application, appeal or prosecution to be made under this promulgation by reason only of the fact that a longer period is specified in this Promulgation.

(5) Any tax liability that arose before the commencement date may be recovered under this Promulgation, but without prejudice to any action already taken for the recovery of the tax.

**FIRST SCHEDULE***(Section 2)***TAX**

The following are tax types for the purposes of this Promulgation -

- (a) any tax or levy payable under a tax law;
- (b) withholding tax;
- (c) provisional tax payable under Part XII of the Income Tax Act;
- (d) advance payments on account of tax made by companies under Part XII of the Income Tax Act;
- (e) penalty, additional tax or other similar amount payable under a tax law;
- (f) an amount that a liquidator is personally liable for under section 25(4)(c);
- (g) an amount that a person served with a garnishee order is personally liable for under section 26(13);
- (h) the costs of disposing of real or personal property under section 27;
- (i) the costs of distress incurred under section 28;
- (j) the costs of taking, keeping and disposing of seized goods under section 29;
- (k) the amount that a representative is personally liable for under section 41(4); and
- (l) the amount that a person is liable for under section 42(2) or 42(3).

**SECOND SCHEDULE***(Section 2)***TAX ASSESSMENTS**

The following are tax assessments for the purposes of this Promulgation –

- (a) an assessment of income tax, including a nil or loss notice;
- (b) the ascertainment of provisional tax or advance payments of tax under Part XII of the Income Tax Act;
- (c) an assessment of VAT, including a self-assessment under section 5;
- (d) an assessment of land sales tax;
- (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; and
- (h) an amendment of an assessment referred to in paragraphs (a) to (g).

**THIRD SCHEDULE**  
*(section 2)*

**TAX LAWS**

- (1) The following are tax laws for the purpose of this Promulgation –
  - (a) this Promulgation;
  - (b) the Gambling Turnover Tax Decree;
  - (c) the Hotel Turnover Tax Act;
  - (d) the Income Tax Act;
  - (e) the Land Sales Act;
  - (f) the Value Added Tax Decree; and
  - (g) any other Act, Decree or Promulgation (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.
- (2) A reference to a tax law in paragraph (1) includes any regulations or other subsidiary legislation made under the law.

**FOURTH SCHEDULE**  
*(Section 2)*

**PART A**

**TAX RETURNS**

The following are tax returns for the purposes of this Promulgation –

- (1) In relation to income tax –
  - (a) a return referred to in sections 36, 44, 47, 49, and 51 of the Income Tax Act;
  - (b) a report referred to in section 47A of the Income Tax Act;
  - (c) the details of withholding tax or dividend tax required to be delivered to the CEO under section 54 of the Income Tax Act; and
  - (d) a return referred to in Regulation 13 of the Income Tax (Employments) Regulations.
- (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 Decree; and
  - (b) particulars required to be furnished under section 37 of the Value Added Tax Decree.
- (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 Decree and payment required under section 5(1)(a).

**PART B**

**SELF-ASSESSMENT RETURNS**

The following are self-assessment returns for the purposes of this Promulgation –

A return required under section 33, 34 or 35 of the Value Added Tax Decree.

**FIFTH SCHEDULE**  
(Section 93)

**CONSEQUENTIAL REPEALS AND AMENDMENTS**

**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 Schedule 1;
- “revenue officer” means an officer under a tax law, customs and excise legislation;
- “Tax Agents’ Board” means the Tax Agents’ Board established under section 82 of the Tax Administration Promulgation;
- “Tax Administration Promulgation” means the Tax Administration Promulgation (Promulgation No. XX of 2008);
- “tax law” has the meaning in the Tax Administration Promulgation;
- “Tax Tribunal” means the Tax Tribunal established under section 74 of the Tax Administration Promulgation;
- (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 Promulgation”;
- (c) 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, 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."

- (d) in Schedule 1, by inserting the following in correct alphabetical order –

"Tax Administration Promulgation".

### **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).

## **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.”.

## **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).

## **LAND SALES ACT**

The Land Sales Act is amended by repealing section 13, 14, and 16.

## **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).

## CONVERSION TABLE

### Current Laws to Promulgation

Current Law	Promulgation or FIRCA Act (references to Promulgation unless otherwise provided)
<b>Income Tax Act</b>	
3	27(2)(c) FIRCA – the CEO has responsibility for the administration of the ITA.
3A	This should be covered by FIRCA Act.
3B	38-40
4	New section 52 FIRCA
5	71
45	3 - 7
46	3 - 7
48	5
49	6
50(1)-(4)	6, 34, 35
50(5), (7) & (8)	41
59	9, 11
50A	Regulations
54A-54K	Part IV
55(2)	72 & 73
57	72 & 73
58	3(5)
59(1)	9
59(2) & (3)	11
59A	10
62	15
63-69	16, 17, Part III
70	15
71(1)	13
71(2)	21(1) (a)
71(3)	20(5)
72(1), (3) & (4)	23
74	41(3)
74A	42(2)
75	26
75A	28
75B	26
76(1)	21(2)
76(2)	22
76(3), (6)-(8)	27
76(4)	24
76(5)	24

77	22
77A	31
77B	28
90	24
94(1)	43
94(2)	49
95	46
96(1)	50 & 45
96(2)	46 & 53
96A	50(1)(c)
96B	Regulations
97	44
99	44
100(1)	60(1)
100(2)	48(6) & (7)
<b>VAT Act</b>	
6(1)	27(2)(c) FIRCA Act – the CEO has responsibility for the administration of the VAT Decree
6(2)	26 FIRCA Act – there is a conflict between section 26 of FIRCA and section 6(2) of VAT Decree in relation to the appointment of officers. The rule should be in the FIRCA Act.
6(3)	27(4) FIRCA Act – the CEO has power to delegate under any law listed in the First Schedule to FIRCA Act. The Tax Administration Act has been added to the list. An exception to the power has been included in section 27(4) of FIRCA for the power to compound offences.
6(4)	27(4) FIRCA Act
6(6)	35(3) FIRCA Act
6A	72 & 73
7(1)	New 52 FIRCA Act
7(2)(a) & (b)	57
7(2)(c)	New 52(9) & 52(9) FIRCA Act
7(3)	New 52(3) FIRCA Act
7(4)	New 52(4)(a) FIRCA Act
7(5)	New 52(4)(d) & (7) FIRCA Act
7(6)	New 52(4)(b) & (c) FIRCA Act
8(1)-(5)	New 52(4)(a) FIRCA Act
9	Specific provisions included such as sections 5 & 24
10	New 52(4)(d) & 52(7) FIRCA Act
11	35 & 36
12	35

44(1)(a)	9 & 10
44(1)(b)	11(2)
44(1)(c)	This has been deleted as it is inconsistent with the VAT as a self-assessed tax. A VAT return is a self-assessment of the registered person's VAT liability. If the CEO is not satisfied with a VAT return (i.e., a self-assessed liability), the self-assessment must be amended under section 11.
44(2)	11
44(3)	72
44(4)	8
44(5)	12
44(6)	Section 44(6) has been amended so that it applies only for the purposes of section 44.
45	12
46	13
47	13
48	11
50	15
51-57	16, Part III + Regulations
58	17
59(1)	12
59(2)	20(1)(a)
59(3)	20(5)
60	43 & 44
61(1)	21(2)
62	27
63	26
63A	28
64	22
64A	31 & 50
65(4)	33(1)
68	33(2)
70(1)	48(6) & (7)
71(i)	54
71(j)	45 (penalty) & 51(offence)
71(q)	55
73	55
76	53 - Evasion necessarily involves the making of a false or misleading statement or the omission from a statement that makes it false or misleading.
76A	53
77(1)	60(2)

