

WATER RESOURCE TAX PROMULGATION 2008

25th May 2011

UPDATED BY :-

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TABLE OF LEGISLATION INCORPORATED IN THIS REVISED EDITION

<u>Name</u>	<u>Decree Number</u>
1. Water Resource Tax	Promulgation No.30 of 2008
2. Water Resource (Budget Amendment)	Decree No.2 of 2011
3. Water Resource Tax (Amendment)	Decree No.14 of 2011
4. Water Resource Tax (Amendment)	Decree No.20 of 2011

WATER RESOURCE TAX PROMULGATION 2008

ARRANGEMENT OF SECTIONS

Part 1- Preliminary

1. Short title and commencement
2. Interpretation

Part 2- Administration

3. Functions of the Comptroller and officers
4. Authority to be produced by the officer

Part 3 – Levy of Water Resource Tax

5. Levy and payment of water resource tax
6. Water resource tax to be paid and returns made to Comptroller
7. Assessment of water resource tax
8. Refund – general
9. Recovery of water resource tax
10. Disputes as to water resource tax payable

Part 4- Power of the Comptroller

11. Access to premises
12. Powers of entry, detention and seizure without search warrant
13. Power to require certificate of audit
14. Assistance to be afforded to officers
- 14A. Station of Proper Officer at business premise

Part 5- General Offences and Penalties

15. Penalty for making incorrect statements and falsifying documents
16. Penalty for refusing to answer questions, etc
17. Obstruction of Officers, etc

18. Penalty for abuse of authority

Part 6- Appeals to Court of Review

19. Court of Review to hear dispute

Part 7- Miscellaneous

20. Limitations on methods of manufacture and storage and instruments to be kept

21. Enforcement Officer

22. Regulations

Schedules

Schedule 1: Progressive Resource Tax on Extraction of Water

**WATER RESOURCE TAX PROMULGATION 2008
(PROMULGATION NO.30 OF 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 Constitution and such other powers as may appertain, and with the approval of the Cabinet, I, Josefa, I, Josefa Iloilovatu Uluivuda, make this Promulgation

**TO IMPOSE TAX ON EXTRACTION OF WATER RESOURCE AND FOR
RELATED MATTERS**

PART 1 - PRELIMINARY

Short title and commencement

1. - (1) This Promulgation may be cited as the Water Resource Tax Promulgation 2008, and comes into force on 1 January, 2009.
(2) This Promulgation must be read as one with the Customs Act, 1986.

Interpretation

2. - In this Promulgation, unless context otherwise requires -
“accountable person” means the owner, manager, director, sole precedent partner and, otherwise the person who is responsible for the day to day management of the business;
“approved meter” means meter as approved by Department of Fair Trading & Consumer Affairs and the law that administers the water meter;
“enforcement officer” means any customs officer, an officer of the Department of Mineral Resources, an officer of the Department of Fair Trading & Consumer Affairs designated in writing by his respective Minister as an enforcement officer for the purpose of this Promulgation;
"Minister" means the Minister responsible for Finance;
“water resource tax” means the tax imposed under section 5(1);

“proper officer” means the officer authorized by the Comptroller under the Customs Act and the provision of this promulgation;

PART 2—ADMINISTRATION

Functions of Comptroller and officers

3. — (1) The Comptroller is responsible for the administration of this Promulgation subject to any directions given to the Comptroller by the Minister.
- (2) The Minister may give the Comptroller general or special directions on the administration of this Promulgation, not inconsistent with this Promulgation.
- (3) An officer shall perform his duties and shall follow procedures in accordance with the Comptroller's instructions.
- (4) The Comptroller may authorise an officer—
- (a) to exercise a power conferred; or
 - (b) to perform a duty imposed, by this Promulgation on the Comptroller.
- (5) An officer employed on a duty or service relating to this Promulgation by the order or with the concurrence of the Comptroller is deemed to be the proper officer for that duty or service.

Authority to be produced by officer

4. — If an officer is acting against a person under this Act and is not in uniform, he or she shall, on being asked to do so by that person—
- (a) declare their office; and
 - (b) produce to that person such document establishing his identity as the Comptroller directs to be carried by that officer.

PART 3 – LEVY OF WATER RESOURCE TAX

Levy and payment of water resource tax

5. — (1) Subject to the provisions of this Promulgation, a tax at the appropriate rate under Schedule 1 shall be levied upon the extraction of water in its natural stateⁱⁱⁱ including artesian water, natural mineral and spring water, from an underground water table or deposit and emerging from a spring tapped at one or more natural or bore exits.ⁱⁱⁱ
- (2) The water resource tax is payable by any business extracting water in its natural state^{iv}.
- (3) The tax is payable by the person extracting water subject to the water resource tax.
- (4) The volume of water extraction shall be measured by an approved meter on a monthly basis.

Water resource tax to be paid and returns made to Comptroller

6. — (1) The accountable person shall –
- (a) within seven working^{vi} days or such longer period as the Comptroller may approve of the close of each month pay the Comptroller any water resource tax that has been payable since the previous month;
 - (b) deliver together with such payment a duly signed account of—
 - (i) the total volume of natural water extracted in the month; and
vii viii
 - (ii)^{ix} the monthly production figures for finished product.
- (2) If water resource tax is not paid in accordance with subsection (1), the accountable person is liable to a penalty at a rate of 10% of the unpaid water resource tax in addition to the water resource tax, and if the default continues an additional two and a half percent penalty per month of default shall be added to the 10% penalty if the default continues for more than one month after the due date for payment.

Assessment of water resource tax

7. — (1) The proper officer may, measure or otherwise examine the volume of water extraction for the purpose of ascertaining the amount of tax leviable on them.
- (2) When a measurement of the volume of water extraction has been made by the proper officer, that measurement shall be presumed to be correct unless the contrary is proved.
- (3) Necessary operations relating to measuring and examination of the volume of extracted water under subsection (1) shall be performed by or at the expenses of the person liable to the tax.
- (4) The approved meter and its maintenance and up-keep shall be provided at the expense of the person liable to the tax.

Refunds—general

8. — (1) Where —
- (a) any water resource tax has been levied and paid and repayment of water resource or any portion of it is claimed on the ground that it was levied or paid through inadvertence or from any other error; and
 - (b) the Comptroller is satisfied that the claim is correct, the excess water resource tax shall be refunded and any sum to be so refunded is a charge on the Consolidated Fund.

(2) A repayment referred to in subsection (1) shall not be made by the Comptroller where the claim in respect of the refund is made more than 1 year after the date of the payment.

(3) If a refund is erroneously made under subsection (1) the Comptroller may, within 1 year of the date of the refund demand repayment of that refund.

(4) If such refund under subsection (3) is not paid within the time period of demand repayment, the Comptroller may recover the amount of the refund as the debt due to the Government in a court of competent jurisdiction.

Recovery of water resource tax

- 9.— (1) The correct amount of water resource tax due and payable under this Promulgation may be demanded by the Comptroller within 1 year of the date when that water resource tax, should have been paid and shall constitute a debt payable to the Government from the person liable for the tax, and may be sued for in a court of competent jurisdiction in the name of the Comptroller.

Disputes as to water resource tax payable

- 10.— If a dispute arises as to the proper rate or amount of water resource tax, the person liable for the tax shall deposit with the Comptroller the water resource tax demanded and the amount so paid or received shall be deemed to be the proper water resource tax unless the Court of Review, upon application to it by that person within 3 months after that deposit or receipt, otherwise decides.

PART 4 – POWER OF THE COMPTROLLER

Access to premises

- 11.— (1) The proper officer shall for the purposes of this Promulgation during daylight hours have access to the premises of the person liable for the tax.
- (2) Where the proper officer enters any premises in accordance with subsection (1) he may—
- (a) require the person liable for the tax to produce, either forthwith or at a time to be fixed by the officer, any book, document, computer or other electronic storage device or thing, which relate to the production of bottled water;
 - (b) examine a book, document, computer or other electronic storage device or thing referred to in paragraph (a) and take copies of it;
 - (c) seize and detain a book, document, computer or other electronic storage device or thing referred to in paragraph (a), if, in his opinion, it may afford evidence of the commission of any offence under this Promulgation ;
 - (d) require the that person or a person employed by him to answer questions relating to a book, document, computer or other electronic storage device or thing referred to in

paragraph (a), or to an entry in such a book or document, or relating to the production of bottled water;

(e) require a container, envelope, or other receptacle, in the premises to be opened;

(f) lock up, seal, mark or otherwise secure—

(i) a building, room, place, receptacle, or item of plant, in the factory; and

(ii) goods or materials in a factory.

(3) Where the proper officer, acting in accordance with this section, is unable to obtain free access to premises referred to in subsection (1), or to a receptacle contained in those premises, he may, at any time, enter those premises, and open the receptacle, in such manner, if necessary by force, as he thinks necessary.

Powers of entry, detention and seizure without search warrant

12.— When an officer observes an act being committed which is an offence under this Promulgation, that officer may enter a building or place where that offence is being committed, using whatever force may be necessary to secure entry, and may—

(a) detain any person found to be in the building or place who may be reasonably suspected of being involved in the commission of the offence;

(b) seize any goods which may be the subject of the offence; and

(c) seize any documents relating to the goods which are the subject of the offence.

Power to require certificate of audit

13.— (1) The Comptroller may require the person liable for the tax to submit annually, a certificate of audit by a chartered accountant.

(2) A certificate of audit submitted under subsection (1) shall certify the correctness of all the books and records required by or under this Promulgation to be kept by the person liable for the tax.

(3) The person liable for the tax is guilty of an offence if, without reasonable excuse, he fails to submit a certificate of audit in accordance with subsection (1), and is liable on conviction to a fine not exceeding \$10,000.

Assistance to be afforded to officers

14.— (1) The person liable for the tax shall, when requested to do so by an officer, provide safety equipment to enable the officer to ascend to and examine a vessel or utensil in the factory or any other premises, or to gauge or ascertain the contents or capacity of any such vessel or utensil.

(2) That person is guilty of an offence if he fails to comply with a request made to him under subsection (1), and is liable on conviction to a fine not exceeding \$10, 000.

Station proper officer at business premise

14A. –(1) The Comptroller may station a proper officer in the premises of a business that is extracting water from its natural state for the purpose of bottling or packaging for sale, to-

- (a) watch the process of such business from the point of extracting water from its natural state up to the bottling and packaging for sale of that water; and
- (b) enforce compliance with the Promulgation.

(2) If requested to do so by the Comptroller, such businesses shall provide office accommodation to the Comptroller's satisfaction at or adjacent to the premises of such businesses for such use of a proper officer referred to in subsection (1).

(3) Any business failing under this Promulgation is guilty of an offence if it fails to comply with a request made to them in accordance, with subsection (2) and is liable on conviction to a fine not exceeding 100 penalty units.

Part 5—General Offences and Penalties

Penalty for making incorrect statements and falsifying documents

15. — A person is guilty of an offence if he—

- (a) wilfully makes, orally or in writing, or signs a statement, certificate or other document required for the purposes of this Promulgation, which is untrue or incorrect in any particular;
- (b) wilfully makes, orally or in writing, or signs a statement or document, for consideration of an officer on an application which is untrue or incorrect in any particular;
- (c) wilfully counterfeits or falsifies, or uses, when counterfeited or falsified; a document which is or may be required under this Promulgation or a document used in a transaction of any business or matter relating to the administration of this Promulgation;
- (d) fraudulently alters a document or counterfeits the seal, signature, initials or other mark of, or used by, an officer for the verification of a document or for the security of goods or any other purpose in the conduct of business relating to the administration of this Promulgation; or
- (e) knowingly obtains a remission or refund, of water resource tax which he is not entitled to obtain, and is liable on conviction to a fine not exceeding \$10, 000, or to imprisonment for a term not exceeding 10 years, or to both.

Penalty for refusing to answer questions, etc.

- 16. -** A person is guilty of an offence if he refuses—
- (a) to answer a question lawfully put to him under this Promulgation; or
 - (b) to give information, which it is in their power to give, in response to a question lawfully as required under this Promulgation, and is liable on conviction to a fine not exceeding \$10,000.

Obstruction of officers, etc.

- 17. -** A person is guilty of an offence if he—
- (a) obstructs, hinders, molests or assaults or uses threatening language to, or attempts to intimidate or endeavours to bribe a person duly engaged in the performance of a duty or the exercise of a power imposed or conferred on him by this Promulgation or a person acting in that person's aid;
 - (b) does anything which impedes or is intended to impede the carrying out of a search for anything liable to be forfeited under this Promulgation or the detention, forfeiture or removal of any such thing;
 - (c) rescues, damages or destroys anything liable to be forfeited, under this Promulgation, or does anything intended to prevent the procuring or giving of evidence as to whether or not anything is so liable to be forfeited; or
 - (d) prevents the arrest of a person by a person duly engaged in the performance of a duty or the exercise of a power imposed or conferred on him by this Promulgation or a person acting in that person's aid, or rescues a person so arrested, and is liable on conviction to a fine not exceeding \$10,000, or to imprisonment for a term not exceeding 2 years, or to both.

Penalty for abuse of authority

- 18. -** An officer or other person employed in the administration of this Promulgation is guilty of an offence if he—
- (a) accepts or agrees to accept a bribe, gratuity, recompense or reward for the neglect or non-performance of his duty;
 - (b) conspires or connives with another person to do an act or thing whereby the water resource tax is or may be defrauded, or which is contrary to this Promulgation or the proper execution of their duty;
 - (c) knowingly demands from another person an amount in excess of the authorised water resource tax;

- (d) withholds for their own use or otherwise, the whole or any portion of the amount of any water resource tax collected;
- (e) renders a false return, whether orally or in writing, of the amount of water resource tax collected or received;
- (f) defrauds another person, embezzles money, or otherwise abuses his position; or
- (h) not being authorised under this Promulgation to do so, collects or attempts to collect water resource tax, and is liable on conviction to a fine not exceeding \$10,000, or to imprisonment for a term not exceeding 10 years, or to both.

PART 6 – APPEALS TO THE COURT OF REVIEW

Court of Review to hear dispute

- 19. -** The Minister may appoint a person of legal knowledge and experience for the purpose of hearing and determining appeals from the decisions of the Comptroller upon any of the matters specified in Section 10 and the person so appointed shall hold a Court of Review in accordance with Part 23 of the Customs Act.

PART 7– MISCELLANEOUS

Limitations on methods of extraction and storage and instruments to be kept

- 20. —** (1) There may be prescribed—
- (a) standards and methods of—
 - (i) extraction; and
 - (ii) marking and storing, taxable goods; and
 - (b) implements and materials used in the filling of bottled water.
- (2) The person liable for the tax shall keep in his factory such reasonable and necessary apparatus and instruments for measuring, weighing and testing volume of extracted water; and permit an officer to use the apparatus and instruments for the purpose of measuring, weighing or taking account of volume of extracted water.
- (3) The person liable for the tax is guilty of an offence if he;
- (a) uses, or allows to be used, false, or insufficient apparatus or instruments in respect of volume of extracted water or; or
 - (b) practises or allows to be practised any art, device or contrivance by which an officer may be hindered or prevented from taking a just and true measure or account of volume of extracted water is liable on conviction to a fine not exceeding \$10,000.

(4) Any false apparatus and instruments used in connection with an offence under subsection (2) are liable to be forfeited.

Enforcement Officers

21. — Enforcement officers shall be responsible for the proper and efficient administration and control of the provisions of this Promulgation.

Regulations

22. — The Minister may make regulations to give effect to the provisions of this Promulgation .

SCHEDULE 1: Progressive Resource Tax on Extraction of Water

^x Litres extracted monthly	Rates (Cents per litre)
0-3,499,999	0.11
3,500,000 and above	15.0

For the avoidance of doubt, where a person or business extracts 3,500,000 litres of water or above in a month, that person or business shall pay water resource tax at the rate of 15 cents for every litre of water extracted in that month and not only for every litre extracted over and above 3,500,000 litres.^{xi}

GIVEN UNDER MY HAND this day of December 2008.

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J.I.Uluivuda
President of the Republic of Fiji Islands

ⁱ Amended by Decree No.14 of 2011.WEF from 1st April,2011.

ⁱⁱ Amended by Decree No.20 of 2011.WEF from 21st January 2011.Previously read – “less wastage of 15%”

ⁱⁱⁱ Amended by Decree No.20 of 2011.WEF from 21st January 2011. Previously read – “for sale of human consumption.”

^{iv} Amended by Decree No.14 of 2011.WEF from 1st April 2011.

^v Amended by Decree No.20 of 2011.WEF from 21st January 2011.Previously read – “less wastage of 15%”.

^{vi} Amended by Decree No.14 of 2011.WEF from 1st April,2011.Previously read – “seven working days”

^{vii} Amended by Decree No.14 of 2011.WEF from 1st April 2011.

^{viii} Amended by Decree No.20 of 2011.WEF from 21st January 2011.Previously read –“ (ii) the monthly volume of all extracted water lost in that factory by evaporation or leakage or otherwise not used for the purpose of bottling for human consumption whereby only the maximum of 15% wastage is allowable.”

^{ix} Amended by Decree No.20 of 2011.WEF from 21st January 2011.Previously read “(iii)

^x Amended by Decree No.2 of 2011.WEF from the 21st January 2011.Previously read

No	Litres Extracted Monthly	Rate (cents per litre)
1	0 – 4,999,999	0.11
2	5,000,000 -9,999,999	0.22
3	10,000,000 and above	0.33

^{xi} Amended by Decree No.2 of 2011.WEF from 21st January,2011.