
◆ INCOME TAX (EMPLOYMENTS) REGULATIONS

Made by the Minister of Finance

under section 81 Income Tax Act 1974 (Cap. 201)

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SECTION 81—INCOME TAX (EMPLOYMENTS) REGULATIONS

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PART I – PRELIMINARY

Short title

1. These Regulations may be cited as the Income Tax (Employments) Regulations.

Interpretation

- 2.—(1) In these Regulations, unless the context otherwise requires—
 - “appropriate form” means a form approved by the Commissioner for use in any particular case pursuant to these Regulations;
 - “emoluments” means all salary, wages, overtime, bonus, remuneration, gratuities, including the estimated annual value of any quarters or board or residence or of any other allowance granted in respect of employment whether in money or otherwise, stipend, commission, or other amounts for services, directors’ fees, retiring, allowances or pension, accruing in, derived from or received in Fiji, and which are assessable to tax, but shall not include any salary or share of profits arising from a trade, business, profession or vocation carried on by any person either by himself or in partnership with any other person;
 - “employee” means any person to whom emoluments are paid;
 - “employer” means any person paying emoluments whether on his own account or on behalf of any other person to an employee;
 - “tax tables” means the tax tables prepared by the Commissioner in accordance with **regulation 25**;
 - “total allowances”, in relation to an individual, means the aggregate of any deductions to which a person is entitled under the Act in computing chargeable income, including deductions under the provisions of paragraph (d) of subsection (1) of **section 21**¹, paragraphs (a), (d) and (g) of **section 26**² and **section 29**³ thereof, subject to the provisions of **regulation 4**.

¹ Donations to War Memorial Anti-Tuberculosis Fund

² Reference assumed to be to subsection (1) – (a) premiums paid in respect of policies against sickness or personal injury/accident to taxpayer and family, if taken out prior to 30th November 1973; (d) contributions as an employee by taxpayer to an approved fund; (g) contributions by taxpayer to Widows and Orphans Pension Scheme or Government Employees Provident Fund

³ §29 repealed by §13 Decree 30/1992 WEF 1st July 1992

Employer to include the [State]⁴

(2) Unless the context otherwise requires, references in these Regulations to an employer or a person paying emoluments shall be deemed to include reference to the [State]⁵.

Principal employer and immediate employer

- (3) (a) Where an employee works under the general control and management of a person who is not his immediate employer, that person (referred to hereafter in this regulation as the “principal employer”) shall be deemed (in relation to such employee) to be the employer for the purposes of these Regulations, and the immediate employer shall furnish the principal employer with such particulars of the employee's emoluments as may be necessary to enable the principal employer to comply with the provisions of these Regulations.
- (b) If the employee's emoluments are actually paid to him by the immediate employer—
- (i) the immediate employer shall be notified by the principal employer of the amount of tax to be deducted when the emoluments are paid to the employee and shall deduct the amount so notified to him accordingly; and
 - (ii) the principal employer shall make a corresponding deduction on making to the immediate employer the payment out of which the said emoluments will be paid.

PART II – REGISTRATION

Employers to register with Commissioner

3.—(1) Subject as hereinafter provided, every person who carries on or is about to carry on any trade, business, profession or vocation in respect of which he is or will be an employer, shall, on or before the 15 January 1965, or within 30 days of the commencement of such trade, business, profession or vocation, whichever is the later date, register with the Commissioner—

- (a) his name and address;
- (b) the names and addresses of his partners and associates, if any, indicating the “precedent partner” as defined by **regulation 32**;
- (c) the trade or business name where the trade, business, profession or vocation is carried on under a name or style other than his own name;
- (d) the place and address, if any, where he carries on or intends to carry on his trade, business, profession or vocation;
- (e) the number of employees employed or expected to be employed:

Provided that this regulation shall be deemed to have been complied with if, in the case of a partnership, the precedent partner and, in the case of a body of persons, the manager or other principal officer, carries out the provisions of this regulation.

⁴ Reference to “State” substituted for “Crown” by §3(e) Interpretation Act (Cap. 7) WEF 7th October 1987

⁵ See Note 4

Exemption from registration

(2) The provisions of paragraph (1) shall not apply in respect of any person who has filed a return of the income of his trade, business, profession or vocation for the income year ended 31 December 1963 and such persons shall be exempt from the provisions of this regulation.

PART III – DECLARATIONS

Employee may file declaration as to allowances to be taken into account in calculating deductions

4.—(1) Any employee to whom any payment is made at any time during the year 1965 or any year thereafter of or on account of any emoluments may, for the purpose of enabling any deductions which may be made under **regulation 6** to be calculated with reference to the allowances to which such employee may be entitled under the Act, file with the person making the payment a declaration in the appropriate form containing such particulars as may be required therein:

Provided that—

- (a) for the purpose of the declaration lodged with the person making the payment, the allowance which may be claimed by any 1 employee in respect of—
 - (i) paragraphs (a), (d) and (g) of **section 26**⁶ of the Act, shall not exceed \$300; and
 - (ii) **section 29**⁷ of the Act, shall not exceed \$400 for each child; and
 - (iii) subsections (3) and (4) of **section 25**⁸ of the Act, shall not exceed \$100;
- (b) any employee who wishes to claim a greater allowance than that provided in paragraph (a) or who, for any reason, elects so to do, shall file his declaration with the Commissioner instead of with the person making the payment, and the Commissioner shall, following receipt of such declaration, advise the person making the payment of the amount of total annual allowances for that employee for the purposes of **regulation 5**;
- (c) no declaration shall be filed by—
 - (i) an employee resident outside Fiji; or
 - (ii) such employees or classes of employees as may be specified by the Commissioner by notice published in accordance with these Regulations, unless the Commissioner, in any particular case, authorises any such employee to file a declaration;
- (d) if any employee entitled by this regulation to file a declaration and wishing to file the same is, at the time or times when he is required by these Regulations to file such declaration, in the employment of more than 1 person by whom any such payment is made, he shall file a declaration with 1 only of the persons by whom any such payment is made as he shall think fit.

(2) Every employee who is a married woman living with her husband shall submit to her employer a declaration to that effect in the appropriate form on first receiving emoluments

⁶ See Note 2

⁷ See Note 3

⁸ Repealed by §10(2) Decree 30/1992 WEF 1st July 1992

from her employer and thereafter on the first working day of January in every year during which she is an employee and, in such declaration, may claim only the personal allowance and any allowance to which she may be entitled under paragraphs (a), (d) and (g) of **section 26**⁹ of the Act as modified by paragraph (i) of proviso (a) to paragraph (1).

(3) The declaration which an employee may file under the provisions of this regulation may include particulars of all or any of his total allowances as the employee may think fit.

Time for filing declaration

(4) An employee entitled to and wishing to file a declaration under the provisions of this regulation shall do so at the following times:—

- (a) on the day on which his employment commences;
- (b) within 7 days of the day on which a change occurs in the total allowances to which he is entitled; and
- (c) within such other time or times as may be specified by notice published by the Commissioner in the Gazette and in at least 1 newspaper circulating in Fiji, or in such other manner as the Commissioner may think fit:

Provided that the Commissioner may, in his discretion, permit any such employee to file a declaration at any time other than the aforesaid times.

(5) On a change occurring in the total allowances of any employee by whom a declaration has been filed which results in the total allowances of that employee being less than the total allowances claimed by him in his declaration, such employee shall file a further declaration within 7 days of the day on which the change occurs.

(6) The employer within 15 days of receipt of a declaration from an employee shall send it to the office of the Commissioner.

(7) The Commissioner may, if he is not satisfied with the amount of any allowances claimed by an employee in the declaration made by him under the provisions of this regulation, require that employee to substantiate his claim in such manner as may be required. The Commissioner, in such circumstances, may issue to the employer a direction as to the total amount of allowances in respect of such employee.

Penalty

(8) If any employee who, under these Regulations, is liable to have tax deducted from his emoluments—

- (a) files a declaration in which the provisions of proviso (a) to paragraph (1) are contravened; or
 - (b) files a declaration with more than 1 person in contravention of proviso (d) to paragraph (1); or
 - (c) fails to file a further declaration as required by paragraph (5),
- he shall be guilty of an offence and liable, on conviction, to a fine of \$100.

⁹ See Note 2

PART IV – DEDUCTION OF TAX

Employer to ascertain periodical allowances applicable

5.—(1)¹⁰ On receiving from an employee a declaration made under the provisions of **regulation 4** or upon receipt of a direction from the Commissioner as to the total amount of allowances in respect of an employee, the employer shall ascertain what amount of the total annual allowances claimed is applicable to each periodical payment of emoluments as follows:—

- (a) in the case of an employee who is paid weekly, by dividing the total annual allowances claimed by 52;
- (b) in the case of an employee who is paid fortnightly, by dividing the total annual allowances claimed by 26;
- (c) in the case of an employee who is paid 4 weekly, by dividing the total annual allowances claimed by 13; and
- (d) in the case of an employee who is paid monthly, by dividing the total annual allowances claimed by 12,

and shall enter the amount thus ascertained (hereinafter referred to as the “free emoluments”) in the appropriate part of the declaration form, and in his own pay records and, after making such entries, shall send the declaration to the Commissioner within the time prescribed by paragraph (6) of **regulation 4**:

Provided that the Commissioner may deduct from the total amount of allowances in respect of an employee—

- (i) an amount representing the estimated annual value of all emoluments received by such employee otherwise than in money; and
- (ii) with the consent of the employee, for the more convenient accounting for tax thereon, an amount in respect of income, other than income from emoluments, of that employee,

and, by notice in writing to the employer, require the employer to treat as the free emoluments of such employee the net amount specified in such notice.

(2) Where emoluments are payable to any employee at intervals other than a week, a fortnight, 4 weekly or a month, the employer shall refer the question of ascertainment of free emoluments to the Commissioner for direction.

(3) Where no declaration under the provisions of **regulation 4** has been received from an employee, the total annual allowances for such employee shall be deemed to be the amount of the personal allowance provided for in subsection (1) of **section 25**¹¹ of the Act:

Provided that, for an employee resident outside Fiji, the amount of such allowances shall be deemed to be NIL.

(4) In any case where a person commences employment in Fiji during the year, he may apply to the Commissioner for his free emoluments for that year to be fixed by reference to the unexpired portion of the year and the Commissioner shall determine the free emoluments for

¹⁰ Amended by LN 38/1967

¹¹ \$1,200 WEF 1st January 2000

that year accordingly and shall notify the employer the amount of free emoluments as thus determined.

Employer to deduct tax as provided in tax tables

6.—(1)¹² Every employer, when making payment of emoluments to an employee in excess of the free emoluments (such excess emoluments hereinafter being referred to as “taxable emoluments”), shall deduct therefrom such amount of tax as shall be prescribed in the tax tables:

Provided that the proportion of the annual value of all emoluments received by such employee otherwise than in money applicable to the period in respect of which the emoluments are being paid shall, unless already taken into account in the ascertainment of such employee's free emoluments under the provisions of the of **regulation 5**, be deemed for the purposes of this emoluments being paid and shall be taken into account of tax to be deducted therefrom.

(2) Every employer shall be deemed to make payment of emoluments to an employee not only when an amount of emoluments is actually paid but also when emoluments are credited for the benefit of an employee to an account on which the employee can draw or over which he has control or are otherwise applied for his benefit or at his direction or are applied in reduction of a debt due by him to the employer, unless such indebtedness arose from a payment in advance of or on account of remuneration from which tax was deducted at the time of payment.

(3) In any case where an employee is in receipt of emoluments from more than 1 employer at the same time, the Commissioner shall, on request of the employee, determine and notify each of such employers in writing the amount to be deducted by each of such employers as tax from the emoluments of the employee and, in such a case, the employer shall not act upon the amount of total annual allowances which may be shown in a declaration submitted to him by the employee under the provisions of **regulation 4**.

(4) No action shall lie against any person for deducting any sum of money in compliance or intended compliance with the provisions of these Regulations.

(5) Where, by these Regulations, any obligation is imposed on any person to deduct any tax upon payment of emoluments, any agreement made by such person not to deduct such tax shall be void and of no force or effect whatsoever.

(6) Every person from whose emoluments any amount shall be deducted pursuant to these Regulations shall, upon the amount being so deducted, be deemed to have paid the same and shall thereupon cease to be liable for payment of tax to the extent of the amount so deducted.

Deductions in case of overtime, bonus, gratuity, etc.

7.—(1) If an employer makes a payment in respect of overtime services to an employee and such payment is not made at the same time as the payment of his regular emoluments, the employer shall, for the purpose of determining the tax to be deducted in respect thereof, include the amount of the overtime as part of the regular emoluments next to be paid, and deduct tax from those next emoluments by reference to the total of those emoluments and the overtime payment made earlier.

¹² Amended by LN 38/1967

(2)¹³ If an employer makes a payment in respect of bonus, gratuity, or other additional earnings or retrospective increase in emoluments, the employer shall either—

(a) upon making the payment, deduct therefrom an amount in respect of tax thereon in accordance with the following scale, based upon the employer's estimate upon a reasonable basis of what the employee's emoluments, including such payment, will be from the same employer for the year in which the payment is made:—

- (i) emoluments for the year from the same employer \$2,500 or under—10 per cent of the payments;
 - (ii) emoluments for the year from the same employer between \$2,501 and \$4,000—18 per cent of the payment;
 - (iii) emoluments for the year from the same employer between \$4,001 and \$7,000—30 per cent of the payment;
 - (iv) emoluments for the year from the same employer between \$7,001 and \$10,000—40 per cent of the payment;
 - (v) emoluments for the year from the same employer between \$10,001 and \$12,000—45 per cent of the payment;
 - (vi) emoluments for the year from the same employer between \$12,001 and \$20,000—47 per cent of the payment;
 - (vii) emoluments for the year from the same employer in excess of \$20,000—50 per cent of the payment;
- or, at the request of the employee

(b) make application to the Commissioner to determine the amount of tax to be deducted from the amount of these additional emoluments and, upon advice of the amount to be so deducted, the employer shall deduct such amount from the emoluments upon making payment thereof to the employee.

Casual and seasonal employees, etc.

8.—(1) The Commissioner may direct employers as to the amount of tax, if any, to be deducted from—

- (a) the emoluments of employees engaged in casual or seasonal employment; and
- (b) the emoluments of any other class which, in the opinion of the Commissioner, is of such a nature that deduction of tax by reference to the tax tables would be impracticable or would constitute undue hardship.

(2) Where the Commissioner is satisfied that the deduction of the amount of tax otherwise to be deducted from the emoluments of an employee would constitute an undue hardship, he may determine and advise the employer of the amount, if any, to be so deducted.

(3) Any directions given pursuant to the provisions of this regulation may, in particular, include directions as to the manner in which the tax, if any, shall be deducted, the period over which such deductions shall be made and such other matters as the Commissioner may think fit; and any employer to whom any such directions may be given shall comply with the directions so given.

¹³ Amended by LN 69/1976, LN 31/1982

Exemption cards

- (4)(a) The Commissioner may, in any case which he considers appropriate, issue to an employee an exemption card which shall be valid for the term specified thereon or for such shorter term as he shall notify to the employee holding the exemption card.
- (b) An employee holding an exemption card shall return it to the Commissioner when it ceases to be valid or whenever the Commissioner so directs.
- (c) For the purposes of **regulations 5 and 6**, the amount of total allowances signified on the exemption card shall be deemed to have been determined by the Commissioner as the appropriate total amount of allowances in respect of that employee for each of the years for which the exemption card is valid.
- (d) Where an employee to whom an exemption card has been issued produces such card to his employer upon the commencement of this employment, it shall not then be necessary for him to file a declaration under the provisions of paragraph (4) of **regulation 4**.
- (e) For the purposes of these Regulations, an “exemption card” means a card in the appropriate form bearing the words “exemption card”, on which has been signified by the Commissioner the appropriate total annual allowances.
- (f) If an exemption card should become lost or destroyed, the employee to whom it was issued may apply to the Commissioner for a new exemption card stating fully the circumstances surrounding such loss or destruction and, on the Commissioner being satisfied that it is appropriate to do so, he may issue a new exemption card.
- (g) Any person other than the person to whom an exemption card is issued who uses or attempt to use such card to avoid deduction of tax from his emoluments shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding \$200 or to imprisonment for a term not exceeding 3 months or to both such fine and imprisonment.

Deductions in case of death of employee

9. If any emoluments are paid by an employer at any time after the date of death of an employee, the employer by whom the emoluments are paid, shall, subject to the provisions of **regulation 10**, on making any such payment, deduct, in accordance with the provisions of these Regulations, the tax on those emoluments as if the deceased employee was still alive at the date of payment.

Exemptions from deductions

10. Tax shall not be deducted by an employer from—

- (a) the emoluments of an employee whose income is exempt from the payment of tax; or
- (b) any payment made in respect of domestic services performed in or in connection with any dwelling-house, apartment or other similar place of residence in which place the employer as a general rule sleeps or eats when in Fiji,

unless the Commissioner, in any particular case, directs the employer to deduct tax in accordance with these Regulations.

Commissioner may determine questions on emoluments

11. If any question shall arise as to—

- (a) the amount of tax to be deducted on payment of any emoluments; or
- (b) whether or not any emoluments are of any class specified in **regulation 8**; or
- (c) whether or not any payment of emoluments is a payment of a bonus or of a retrospective increase in emoluments,

such question shall be determined by the Commissioner.

PART V – PAYMENT OF TAX DEDUCTED

Employer to pay to Commissioner amount of tax deducted

12. Every employer shall pay to the Commissioner or as the Commissioner directs the total amount of tax deducted by him in compliance or intended compliance with the provisions of these Regulations on or before the fifteenth day of the month next succeeding the month in which the employer paid the emoluments and, on payment of such total amount, the Commissioner shall cause to be sent to such employer a receipt therefor:

Provided that, where the employer ceases to carry on business, all amounts of tax deducted by him as required by these Regulations and not paid to the Commissioner shall be paid by him to the Commissioner within 7 days of the day on which the employer ceased to carry on business.

PART VI – ACCOUNTING FOR TAX DEDUCTED

Returns to accompany payments of tax deducted

13. Every payment made as required by **regulation 12** shall be accompanied by a return made out on the appropriate form by or on behalf of the employer.

Employer to submit separate accounts in respect of retrospective emoluments

14. Where the payment of a bonus or of any sum to meet any retrospective increase in emoluments granted to an employee is made at any time in any year and the whole or any part of such payment relates to any calendar year preceding the year in which such payment is made, the employer shall, within 7 days of such payment being made, deliver or send by post to the Commissioner a separate account of such payment, made out on the appropriate form, and showing the total of such emoluments paid and the total amount of tax deducted therefrom.

Employer to furnish certificates of deduction

15.—(1) On or before the last day of the month of February of each year next following a year in which tax was deducted from the emoluments of an employee, the employer by whom the tax was deducted shall, unless he has previously delivered or sent to the employee a

certificate provided for by **regulation 16, 17 or 18**, deliver personally or send by post to the employee a certificate in duplicate made out on the appropriate form and containing the following particulars, namely—

- (a) the name and address of the employee;
- (b) the number, if any, used to identify the employee;
- (c) the gross amount of all emoluments paid by him to the employee during the year immediately preceding that in which the certificate is by this regulation required to be sent or delivered;
- (d) the value of free quarters and/or rations or any other allowance provided;
- (e) the total amount, if any, deducted by him on the making of any payment of these emoluments to the employee for or in respect of any amount contributed by the employee under any approved fund;
- (f) the total amount of tax deducted in accordance with these Regulations from the emoluments of the employee;
- (g) the total of the personal allowances claimed by the employee in his declaration under **regulation 4**;
- (h) the date when the employment commenced if such date is a date subsequent to 1 January in the year to which the certificates relates.

(2)¹⁴Where an employer is required to deliver or send a certificate in duplicate to an employee under the provisions of paragraph (1), he shall make, on the appropriate form, 2 further copies of such certificate, 1 of which copies he shall deliver personally or send by post to the Commissioner on or before the last day of February in each year, and the other copy shall be retained by the employer for record purposes.

Employer to furnish certificates on cessation of employment

16.—(1) If any employer ceases to employ an employee from whose emoluments tax was deducted by him in accordance with these Regulations, he shall, not later than 7 days after the day on which the last payment of emoluments was made, deliver personally or send by post to the employee a certificate in duplicate on the appropriate form containing the following particulars, namely:—

- (a) the name and address of the employee;
- (b) the number, if any, used to identify the employee;
- (c) the date on which the employment ceased;
- (d) the gross amount of all emoluments paid by him to the employee from the first day of his employment in the year in which the employment ceased up to and including the day on which the last payment of emoluments was made to the employee;
- (e) the value of the free quarters and/or rations or any other allowance provided;
- (f) the total amount, if any, deducted by him on the making of any payment of those emoluments for or in respect of any amount contributed by the employee under any approved fund;

¹⁴ Substituted by LN 38/1967

- (g) the total amount of tax deducted in accordance with these Regulations from the emoluments of the employee;
- (h) the total of the personal allowances claimed by the employee in his declaration under **regulation 4**.

(2)¹⁵ Where an employer is required to deliver or send a certificate in duplicate to an employee under the provisions of paragraph (1), he shall make, on the appropriate form, 2 further copies of such certificate, 1 of which copies he shall deliver personally or send by post to the Commissioner not later than 7 days after the day on which the last payment of emoluments was made, and the other copy shall be retained by the employer for record purposes.

(3) If an employee retires from the service of an employer and is granted a pension, such retirement shall not be treated as a cessation of employment for the purposes of this regulation, if the emoluments are paid by or on behalf of the same person both before and after the retirement.

Employer to furnish certificates of deductions on cessation of business

17.—(1) If an employer ceases to carry on business, he shall, not later than 1 month after the cessation of the business, deliver personally or send to each employee from whose emoluments any tax was deducted during the year in which the business ceased a certificate in duplicate made out in the appropriate form and containing the particulars specified in **regulation 15** for or in respect of a period beginning with the first day of the year in which the business ceased to be carried on and ending on the day of cessation of that business:

Provided that, in the case of a business commenced to be carried on in the year in which it ceases, the date of commencement of the period for or in respect of which the particulars of the certificate shall relate shall be the date on which the business commenced to be carried on in that year.

(2)¹⁶ Where an employer is required to deliver or send a certificate in duplicate to an employee under the provisions of paragraph (1) he shall make, on the appropriate form, 2 further copies of such certificate, 1 of which copies he shall deliver personally or send by post to the Commissioner within 1 month of the day of cessation of business, and the other copy shall be retained by the employer for record purposes.

Employer to furnish certificate on death of employee

18.¹⁷ Where an employee dies, the employer shall, not later than the fifteenth day of the month next following that in which the death occurred, deliver personally or send to the legal or personal representative, or to the next of kin of the deceased employee, if known to him, the certificate in duplicate referred to in **regulation 16** and shall, within the same time, deliver personally or send by post to the Commissioner a further copy of such certificate made on the

¹⁵ Substituted by LN 38/1967

¹⁶ Amended by LN 38/1967

¹⁷ Amended by LN 38/1967

appropriate form and shall insert thereon the name and address of the legal or personal representative, or of the next of kin of the deceased employee, if known to him.

Employer to furnish employee with particulars of emoluments and deductions

19. When an employer makes any payment of emoluments to an employee from whom tax is deducted as required by these Regulations, he shall, at the same time, furnish to the employee particulars of payment, including particulars of the gross emoluments for the pay period and of the amount of tax deducted therefrom, in the appropriate form:

Provided that, where the Commissioner is satisfied that it is expedient to do so, he may, by notice in writing, exempt any or all employers from complying with the provisions of this regulation in respect of such classes of employees as may be specified in such notice, which shall be operative until revoked.

Employer to keep records of emoluments paid and deductions

20. Every employer who makes any payment of emoluments to an employee from whose emoluments tax is deducted as required by these Regulations shall keep, to the satisfaction of the Commissioner, a record of the emoluments paid to each such employee and of the tax deducted therefrom on each payment thereof.

Summary of emoluments

21.¹⁸ On or before the last day of February of each year next following the year in which tax was deducted from emoluments of employees, every employer shall deliver personally, or send by post, to the Commissioner a summary in duplicate made out in the appropriate form containing the following particulars:—

- (a) the name and address of the employer;
- (b) the gross amount of all emoluments paid to all employees during the year immediately preceding that for which the summary is, under the provisions of this regulation, required to be delivered or sent;
- (c) the total amount of tax deducted from all employees from their emoluments in accordance with the provisions of these Regulations; and
- (d) the total amount of basic tax accounted for in accordance with the provisions of the Income Tax (Collection of Basic Tax) Regulations¹⁹ on all emoluments of employees:

Provided that, on the cessation of business by the employer, the Commissioner may require the employer to deliver or send the summary within such time as he may specify.

¹⁸ Inserted by LN 202/1968

¹⁹ Regulations made 28th December 1964; basic tax charged under §6; §6 repealed by §3 Decree 30/1992 WEF 1st July 1992

PART VII – ASSESSMENT OF EMOLUMENTS

Commissioner to assess tax on emoluments and notify employee of assessment

22.—(1) Tax in respect of emoluments shall be assessed by the Commissioner in accordance with the provisions of **section 55** of the Act, and a notice of assessment shall be sent to every employee so assessed by whom tax is payable or from whose emoluments any tax was deducted during the year:

Provided that nothing in this regulation shall be construed as requiring a notice of assessment to be sent in any case which does not require adjustment of tax, unless the employee so requires.

(2)²⁰ If the tax payable under the assessment is less than the total tax deducted from the employee's emoluments in respect of the year, the Commissioner shall refund the difference to the employee:

Provided that, in all such cases, the Commissioner shall ignore the amount of such difference if it be less than \$2.

(3)²¹ If the tax payable under the assessment exceeds the total tax deducted from the employee's emoluments in respect of the year, the Commissioner shall require the employee to pay the difference to him:

Provided that, in all such cases, the Commissioner shall ignore the amount of such difference if it be less than \$2.

(4) The provisions of the Act relating to objections and appeals shall apply to any assessment made in accordance with this regulation.

PART VIII – MISCELLANEOUS AND PENALTIES

Personal representative to assume liability of deceased employer

23. If an employer dies, anything which he would have been liable to do under these Regulations shall be done by his personal representative, or, in the case of an employer who paid emoluments on behalf of another person by the person succeeding him, or if no person succeeds him, by the person on whose behalf the emoluments were paid.

Change of employer

24.—(1) This regulation shall apply where there has been a change only in the employer from whom an employee receives emoluments in respect of his employment in any trade business, profession or vocation or in connection with the working of any property, or from whom an employee receives any annuity or pension or allowance in respect of past services.

(2) Where this regulation applies, the change shall not be treated as a cessation of employment for the purposes of **regulation 16** and, in relation to any matter arising after the

²⁰ Amended by LN 202/1968

²¹ Amended by LN 202/1968

change, the employer after the change shall be liable to do anything which the employer before the change would have been liable to do under these Regulations if the change had not taken place:

Provided that the employer after the change shall not be liable for the payment of any tax which was deductible from emoluments paid to the employee before the change took place.

Commissioner to prepare tax tables

25.—(1) The tax tables shall be constructed by the Commissioner with a view to securing that, so far as practicable, the tax to be deducted as required by these Regulations from the emoluments of any employee may be readily ascertained and with a view to securing that, so far as practicable, the total tax payable in respect of any emoluments is deducted from the emoluments paid during the year.

(2) Separate tables shall be prepared for weekly, fortnightly, 4 weekly and monthly pay periods. Such tables shall make provision for such ranges of emoluments as the Commissioner shall think fit.

(3) For the purposes of this regulation, reference to the total tax payable shall in relation to the tables referred to in paragraph (1), be construed as references to the total tax estimated to be payable, having regard only to the allowances claimed by the employee in the declaration required to be completed and filed under the provisions of **regulation 4** and without aggregating emoluments from 2 or more sources or emoluments with other income, or the emoluments of a husband with those of his wife.

Employer to produce wages sheets, etc., for inspection

26. Every employer, when called upon to do so by the Commissioner or by any person authorised in writing by the Commissioner in that behalf, shall produce to the Commissioner or to such authorised person for inspection all wages sheets and other documents and records whatsoever relating to the calculation or payment of the emoluments of his employees to whom he pays emoluments or to the deduction of tax therefrom or to the accounting for any tax deducted therefrom.

Employee may complain to Commissioner in respect of deductions made by employer

27. If any employee considers that any tax deducted by his employer is less than or in excess of the amount of tax which ought properly to be deducted from his emoluments in accordance with these Regulations, he may, in writing, give notice of complaint, stating the grounds of his complaint, to the Commissioner.

Commissioner to determine complaint

28. In the event of the Commissioner being satisfied on the complaint of any employee made under **regulation 27**—

(a) that any tax in excess of the amount which ought properly to have been deducted in accordance with these Regulations from the emoluments of the employee was

deducted by the employer, he shall, as soon as practicable, cause the excess to be refunded to the employee;

- (b) that less tax than the amount which ought properly to have been deducted in accordance with these Regulations from the emoluments of the employee was deducted by the employer he shall, as soon as practicable, cause the amount of the deficiency to be collected from the employee.

Publication of notice by Commissioner

29. Any notice published by the Commissioner pursuant to these Regulations shall be published in the *Gazette* and in at least 1 newspaper circulating in Fiji or in such other manner as the Commissioner may think fit.

Tax deductions by employer to be treated as single debt

30.—(1) The total amount of tax which an employer is liable under the provisions of **regulation 12** to pay to the Commissioner within the time specified by that regulation may, for the purposes of recovery thereof, be treated as a single debt, notwithstanding that the employer is liable to pay separate amounts in respect of more than 1 employee but nothing in this regulation shall prevent the bringing of separate actions for the recovery of each of the several amounts which the employer is liable to pay within the first 15 days of any month in respect of his several employees to whom he pays emoluments.

(2) A certificate of the Commissioner that any amount of tax mentioned in paragraph (1) has not been paid to him, or to the best of his knowledge and belief to any person acting on his behalf, shall be *prima facie* evidence that the sum mentioned in the certificate is due and unpaid; and any document purporting to be such a certificate as aforesaid shall be deemed to be such a certificate until the contrary is proved.

Commissioner may sanction use of certificates and tax tables other than prescribed

31. It shall be lawful for the Commissioner to give permission in writing to any employer to use for the purposes of these Regulations—

- (a) in lieu of the certificate as prescribed in **regulations 14, 15, 16 and 17**, some other certificate which, in the opinion of the Commissioner, is adequate; or
- (b) tax tables other than tables prepared by the Commissioner, provided he is satisfied that such tables will produce the same result as the tax tables which he is required to prepare under the provisions of **regulation 25**.

Personal liability in cases of partnership or company

32.—(1) Where a trade, business, profession or vocation is carried on by 2 or more persons jointly, the precedent partner shall be personally liable for the performance of the duties required by the provisions of these Regulations to be performed by the person making the payment or by the person deducting any amount of tax; and, where a trade, business or profession is carried on by a company, the managing director and the secretary of the company

shall each, in addition to the company itself, be personally liable for the performance of the said duties.

(2) For the purposes of these Regulations, in relation to a “partnership”, the expression “precedent partner” shall mean the partner who of the partners resident in Fiji—

(a) is first named in the agreement of partnership; or

(b) if there is no agreement, is named singly or with precedence to the other partners in the usual name of the firm; or

(c) is the precedent active partner if the partner named with precedence is not an active partner,

and, where no partner is resident in Fiji, the expression “precedent partner” shall mean the attorney, agent, manager or factor of the firm resident in Fiji.

Obstructions

33. If any person shall hinder, prevent or obstruct the Commissioner or any person authorised in writing by the Commissioner in that behalf from inspecting any wages sheets or other documents or records mentioned in **regulation 26** after being called upon to produce the same, he shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding \$200 or to imprisonment for a term not exceeding 3 months or to both such fine and imprisonment.

Offences by employer

34.²² If an employer fails or neglects to deduct tax from the emoluments of an employee in accordance with any of the provisions of these Regulations or of any direction issued thereunder by the Commissioner, or fails or neglects to remit to the Commissioner any tax deducted in accordance with these Regulations or with any such direction of the Commissioner or fails or neglects to keep the records required by **regulation 20**, he shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding one year in respect of each such failure or neglect on his part or to both such fine and imprisonment.

²² Amended by LN 6/1983