

VALUE ADDED TAX

DECREE 1991

4th Edition

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4th Edition incorporates amendments enacted vide Act No.1 of 1992, Decree No.28 of 1992, Legal Notice No.68 of 1992, Act No.1 of 1993, Act No.16 of 1995, Act No.29 of 1995, Act No.28 of 1999, Legal Notice No.144 of 1999, Legal Notice No.1 of 2000, Decree No.5 of 2001, Act No.1 of 2001, Legal Notice No.87 of 2002, Act No. 11 of 2002, Act No.34 of 2002, Act No.3 of 2004, Act No. 4 of 2005, Act No. 27 of 2005, Legal Notice No. 77 of 2005, Act 14 of 2006.

GOVERNMENT OF THE
SOVEREIGN DEMOCRATIC REPUBLIC OF FIJI DECREE NO.45
VALUE ADDED TAX DECREE 1991

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In exercise of the powers vested in me as President of the Sovereign Democratic Republic of Fiji and Commander-in-Chief of the Armed Forces, and acting in accordance with the advice of the Prime Minister and the Cabinet, I hereby make the following Decree:

LIST OF AMENDMENTS INCORPORATED

Decree No.28 of 1992, Legal Notice No.68 of 1992, Act No.1 of 1993, Act No.16 of 1995, Act No.29 of 1995, Act No.28 of 1999, Legal Notice No.144 of 1999, Legal Notice No.1 of 2000, Decree No.5 of 2001, Act No.1 of 2001, Legal Notice No.87 of 2002, Act No.11 of 2002, Act No.34 of 2002, Act No.3 of 2004, Act No. 4 of 2005, Act No. 27 of 2005, Legal Notice No. 77 of 2005, Act 14 of 2006.

AN ACT TO RE-ENACT AND AMEND THE LAW RELATING TO VALUE ADDED TAX
DECREE 1991.

PART I - PRELIMINARY

Section 1 **Short title and commencement**

- (1) This Decree may be cited as the Value Added Tax Decree 1991.
- (2) This Decree shall come into force on the first day of July 1992.

Section 2 **Interpretation**

- (1) In this Decree unless the context otherwise requires -

“Additional tax” means the additional tax payable under section 60 of this Decree;

“Agent” includes every person who in Fiji, for or on behalf of any person out of Fiji, holds or has the control, receipt or disposal of any money belonging to such person, and every person declared by the Commissioner to be an agent under this Decree, and includes an authorised officer (within the meaning of Section 41 of the Income Tax Act 1974) and a sub-agent;

“Agriculture”, without limiting the meaning of the term, includes coconut planting, dairy farming, fruit growing, sugar cane growing, all forms of animal husbandry, poultry keeping, grazing, market gardening, horticulture and epiculture; but does not include silviculture;

“Arms-length transaction” means a transaction where the following conditions do not apply: the recipient is a body of persons over whom that supplier has control, or the supplier is a body of persons over which the recipient has control, or both the recipient and the supplier are bodies of persons, and some other person has control over both of them;

For the purposes of this definition “control” means, in the case of a body corporate, the power of a person to secure, by means of the holding of shares or the possession of voting power in, or in relation to, that or any other body corporate, or by virtue of any powers conferred by the Articles of Association or other documents regulating that or any other body corporate, that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person, and, in the case of a partnership, the right to a share of more than one-half of the partnership assets or income;

History

Definition of “Chief Assessor” deleted. Amendment No.1 of 1992. Decree 28 effective 1 July 1992. Previously read - “Chief Assessors means Chief Assessors as approved by the Public Service Commission under this Decree”.

“Commissioner” means the Commissioner of Inland Revenue appointed under the Income Tax Act 1974;

“Company” means a company as defined in the Companies Act, Cap. 274, or a body corporate formed under any statute or charter, and includes every unit trust;

“Comptroller” means the Comptroller of Customs and Excise appointed under the Customs Act 1986;

“Consideration”, in relation to the supply of goods and services to any person, includes any payment made or any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of any goods and services, whether by that person or by any other person; but does not include any payment made by any person as an unconditional gift to any non-profit body;

“Consideration in money” includes consideration expressed as an amount of money;

“Constitution” means the Constitution of the Sovereign Democratic Republic of Fiji made on 25th day of July, 1990;

[Inserted by Decree 28/92, s36]

“Document” includes any electronic data, computer programmes, computer tapes, and computer discs;

“Due date”, in relation to the payment of tax by any registered person, means the last day for the payment determined in subsection (1) of Section 38, Section 40 or subsection (4) of Section 44 of this Decree, as the case may be, in respect of that registered person;

“Exempt supply” means a supply described in the First Schedule to this Decree;

“Fiji” includes the air space, the internal waters, the Archipelagic waters and the territorial seas of Fiji, as defined in the Marine Spaces Act, Cap. 158A;

“Goods” means all kinds of personal and real property; but does not include choses in action or money;

“Grant” means any Standard Expenditure Group 6 or Standard Expenditure Group 10 payment other than a payment which is an income transfer payment, a loan, an advance or an equity injection;

“Hire”, in relation to goods, includes a letting on any terms, including a lease;

“Independent of each other”, in relation to a supplier and a recipient, means the supply is an arms-length transaction;

History

Definition of Input Tax amended by adding after person both in (a) and (b) the following: “being in any case goods and services acquired or imported for the principal purpose of carrying on that persons taxable activity.” [Amended by Act No.16 of 1995 effective 1 January 1995]

“Input tax”, in relation to a registered person, means -

- (a) tax charged under Section 15 of this Decree on the supply of goods and services made to that person: being in any case goods and services acquired or imported for the principal purpose of carrying on that persons taxable activity.
- (b) tax levied under Section 14 of this Decree on goods imported under the Customs Act 1986 by that person: being in any case goods and services acquired or imported for the principal purpose of carrying on that persons taxable activity.

“Local authority” includes any municipality established under the Local Government Act, Cap. 125, any provincial council established under the Fijian Affairs Act, Cap. 120, and any council established under the Banaban Settlement Act, Cap. 123 or the Rotuma Act, Cap. 122;

“Minister” means the Minister responsible for finance;

History

Definition of “money” amended by adding after the word “exchange” the following: “but does not include collectors piece, investment article or item of numismatic interest”

“Money” includes the currencies of Fiji and any other country, postal and money orders, promissory notes and bills of exchange but does not include collectors piece, investment article or item of numismatic interest;

[Amended by Act 1/93, s (3) effective 1/1/93]

“Non-profit body” means any society, association, or organisation, whether incorporated or not, -

- (a) being any recognised religious organisation; or
[Inserted by Decree 28/92, s3(b) effective 1/7/92]
- (b) which is carried on other than for the purposes of profit or gain to any proprietor, member, or shareholder; and
- (c) which is, by the terms of its memorandum, articles of association, rules, or other document constituting or governing the activities of that society, association, or organisation, prohibited from making any distribution whether by way of money, property, or otherwise howsoever, to any such proprietor, member, or shareholder;

“Open market value”, in relation to a supply of goods and services, means the consideration in money that would be expected to be payable for that supply, being a supply at that date in Fiji, between a supplier and a recipient independent of each other;

“Output tax”, in relation to a registered person, means the tax charged pursuant to Section 15 of this Decree in respect of the supply of goods and services made by that person;

History

Definition of “person” altered to read “persons”[Amendment No 1 of 1992. Decree No 28 of 1992, effective 1 July 1992]

“Persons” includes a company, an association or body of persons, corporate or unincorporate, a local authority, and a public authority;

[Amended by Decree 28/92, s3(e)]

“Produce” means the produce, in a raw and unprocessed state, from the activity of agriculture and includes any fruits, vegetables and root crops of the forest, fish and other aquatic produce;

“Produce supplier” means a person who, in the course or furtherance of all taxable activities carried on by that person, supplies produce and the supply of that produce constitutes at least ninety percent of that person’s total value of supplies and the balance of the goods and services supplied by that person is produce but not in a raw and unprocessed state:

Provided that any such person shall not cease to be a produce supplier as a consequence of -

- (a) any cessation of, or any substantial and permanent reduction in the size or scale of, any taxable activity carried on by that person; or
- (b) the replacement of any plant or other capital assets used in any taxable activity carried on by that person.

“Public authority” means all instruments of the Government of the Republic of Fiji, whether

“Rates” has the same meaning as in the Local Government Act, Cap. 125 and includes any amount imposed by a provincial council or any council established under the Banaban Settlement Act, Cap. 123 or the Rotuma Act, Cap. 122;

“Raw and unprocessed state” in relation to produce, means not yet cooked, smoked, or baked; not yet processed by any mechanical or chemical means or otherwise other than through basic separation, cutting of parts, packaging, or freezing (not being the process of freezing through blast, quick or snap freezing); unmanufactured; undiluted; crude; unmilled; unpowdered; unpounded;

“Registered person” means any person who is registered or is liable to be registered under Section 22 of this Decree and includes a person, for the purposes of Parts VII, VIII, IX, X, and XI of this Decree, who is not otherwise required to register under this Decree, but was required to charge tax, has charged tax, or has represented to charge tax on a supply of goods and services in terms of Section 34 or Section 44 of this Decree;

History

Definition of “service” altered to read “services” and “good” to read “goods” [Amendment No 1 of 1992. Decree No 28, effective 1 July 1992]

“Resident” means resident as defined in Section 2 of the Income Tax Act 1974;

“Services” means anything which is not goods or money;
[Amended by Decree 28/92, s3(f),(g)]

“State” means the Government of the Republic of Fiji;

“Tax” means value added tax charged or levied under this Decree;

History

Definition of “Tax fraction” amended by deleting “expressed as a whole number” after “Decree”. [Section 2, Act No. 3 of 2004, effective 1 January 2004]

“Tax fraction” means the fraction calculated in accordance with the following formula:

$$\frac{a}{100 + a}$$

where -

a is rate of tax specified in Section 15 of this Decree;

“Tax invoice” means a document issued pursuant to Section 41 of this Decree;

“Tax payable” means an amount calculated in accordance with Section 38 or section 39 of this Decree; and includes -

- (a) any amount referred to in Section 34 or Section 44 of this Decree;
- (b) any amount of additional tax; and
- (c) any amount of tax refundable pursuant to subsection (4) of Section 38 or subsection (8) of Section 39 of this Decree;

“Taxable period”, in relation to a registered person, means a taxable period determined under Section 32 of this Decree;

“Taxable supply” means any supply of goods and services which is charged with tax pursuant to Section 15 of this Decree;

“Taxpayer identification number”, in relation to a registered person, means a number allocated to that registered person upon registration for the purposes of this Decree;

“Tribunal” means the Value Added Tax Tribunal established under this Decree;

“Unconditional gift” means a payment voluntarily made to any non-profit body for the carrying on or carrying out of the purposes of that non-profit body and in respect of which no identifiable direct valuable benefit arises or may arise in the form of a supply of goods and services to the person making that payment whether that payment is enforceable or not, or any other person where that person and that other person are not independent of each other; but does not include any payment made by the State or a public authority;

“Zero-rated supply” means a supply described in the Second Schedule to this Decree.

- (2) For the purposes of this Decree, a reference to goods and services includes a reference to goods or services.

Section 3 **Meaning of the term “supply”**

- (1) For the purposes of this Decree, the term “supply” includes all forms of supply and without limiting the generality of the term has the same meaning as in section 2 of the Sale of Goods Act, Cap. 230.
- (2) Where goods and services acquired or produced by a registered person in the course or furtherance of making taxable supplies by that person are appropriated to use other than for the purposes of making those taxable supplies, the appropriation of those goods and services shall be deemed to be a supply made in the course or furtherance of that person’s taxable activity.

History

S 3(3) amended by adding the word “and services” before the word “shall”. Previously read “goods” only. [Amendment No 1 of 1992. Decree No 28 of 1992, effective 1 July 1992]

- (3) Where goods and services acquired or produced by a registered person in the course or furtherance of a taxable activity carried on by that registered person are, under a power exercisable by another person, sold in satisfaction of a debt owed by that registered person in or towards the satisfaction of that debt owed by that registered person, those goods and services shall be deemed to be supplied by that registered person in the course of that taxable activity.

[Amended by Decree 28/92, s4(a)]

- (4) Where a person ceases to be a registered person, any goods and services then forming part of the assets of a taxable activity carried on by that registered person shall be deemed to be supplied by that registered person in the course of that taxable activity immediately before that person ceases to be a registered person, unless the taxable activity is carried on by another person who, pursuant to Section 28 of this Decree, is deemed to be a registered person.
- (5) For the purpose of this Decree, every public authority shall be deemed to supply goods and services to the State where any payment is made by the State to or on behalf of the public authority.

- (6) For the purposes of this Decree, where any payment in the nature of a grant is made by the State to or on behalf of any person in the course or furtherance of any taxable activity, which involves or will involve the making of taxable supplies, carried on by that person, that payment shall be deemed to be consideration for a supply of goods and services by
- (7) For the purposes of this Decree, every local authority is deemed to supply goods and services to any person where any amount of rates is payable by that person to that local authority.
- (8) Where under a contract of insurance, a registered person receives an amount by way of an indemnity payment relating to a loss incurred in respect of goods and services in the course or furtherance of making taxable supplies, that person shall, for the purposes of the application of this Decree to that person but not to the person by whom the payment is made, be deemed to have made a supply of goods and services to which the payment relates in the course or furtherance of the taxable activity, at the time when the payment is received, and the amount of the payment shall be deemed to be the consideration for that supply.
- (9) Any contract that is a layby sale to which Part IV of the Sale of Goods Act, Cap. 230 applies shall not constitute a supply of goods and services unless the goods to which the contract relates are delivered to the buyer and the property therein is transferred to the buyer:

Provided that a supply of services shall, in respect of any such contract, be deemed to take place where -

- (a) a layby sale is canceled pursuant to Part IV of the Sale of Goods Act, Cap. 230; and
 - (b) the seller either -
 - (i) retains any amount paid to the seller to recoup that seller's selling costs in respect of the layby sale; or
 - (ii) recovers any amount (including, or in addition to, the amount referred to in subparagraph (i) of this paragraph) from the buyer -
- pursuant to Section 68 of the Sale of Goods Act, Cap. 230.

- (10) Where and to the extent that any registered person, in the course or furtherance of making taxable supplies, has or is treated to have provided an employee benefit for income tax purposes, to any other person, the provision of that employee benefit shall be deemed to be a supply of goods and services made by that registered person in the course of a taxable activity carried on by that registered person:

Provided that this subsection shall not apply to any employee benefit to the extent that it has arisen by virtue of any supply of goods and services that is an exempt supply or a zero-rated supply

History

S 3(11) repealed. Previously read -

“(11) Where a person carried on a taxable activity which involves –

- (a) the supply by a person of any unprocessed produce in the course or furtherance of a taxable activity involving agriculture or the supply by a person of any unprocessed fish or other aquatic animal and plant in the course or furtherance of a taxable activity, where that supply is not a zero-rated supply in terms of the Second Schedule to this Decree; and
- (b) an activity which involves the processing of that produce, fish or other aquatic animals and plants the activity referred to in paragraph (a) of this subsection,

the transfer of that produce, fish or other aquatic animals and plants from the activity referred to in paragraph (a) of this subsection to the activity referred to in paragraph (b) of this subsection, shall for the purposes of this Decree, be deemed to be a supply of goods and services as if these activities referred to in paragraph (a) and (b) of this subsection were carried on by separate persons.

Sub-sections (12) and (13) renumbered (11) - (12)

- (11) The disposition of a taxable activity as a going concern shall be deemed to be a supply of goods made in the course or furtherance of the taxable activity.
- (12) For the purposes of this Decree, where a supply is charged with tax in part under subsection (1) of Section 15 of this Decree and in part under subsection (2) of Section 15 of this Decree, each such part shall be deemed to be a separate supply.

Section 4 **Meaning of the term “taxable activity”**

(1) For the purposes of this Decree, the term “taxable activity” means -

- (a) any activity which is carried on continuously or regularly by any person, whether or not for pecuniary profit, and involves or is intended to involve, in whole or in part, the supply of goods and services to another person for a consideration; and includes any such activity carried on in the form of a business, services, trade, manufacture, profession, vocation, association, or club; and
- (b) without limiting the generality of paragraph (a) of this subsection, the activities of any local authority or public authority.

(2) Anything done in the commencement or termination of a taxable activity shall be deemed to be carried out in the course or furtherance of that taxable activity.

(3) Notwithstanding anything in subsections (1) and (2) of this Section, for the purposes of this Decree the term “taxable activity” shall not include, in relation to any person, -

- (a) any activity carried on essentially as a private recreational pursuit or hobby; or
- (b) any employment in terms of Section 79 of the Income Tax Act 1974; or
- (c) any activity carried on by a non-profit body, other than an activity, which in the opinion of the Commissioner is in competition to the disadvantage of any taxable activity carried on by any other person.

Section 5 **Decree to bind Government**

This Decree shall bind the Government of the Republic of Fiji

PART II - ADMINISTRATION

Section 6 **Administration of the Tax**

- (1) The Commissioner shall have the administration of this Decree and the control and management of the collection of the taxation charged thereby and of all matters incidental thereto and the officers and the persons employed in the Department.
- (2) The Public Service Commission shall appoint such officers, including an officer to be called the Deputy Commissioner of Inland Revenue and officers to be called Chief Assessors and Principal Assessors of Inland Revenue, to be officers under the control of the Commissioner as the Minister may consider necessary for the purposes of the administration of this Decree.
- (3) Where, under this Decree, any power is conferred on, or any duty is imposed on, the Commissioner, then, subject to any express direction by the Commissioner to the contrary, such power may be exercised by, or such duty may be performed by the Deputy Commissioner or Chief Assessors or Principal Assessors:

Provided that the powers conferred by Section 76 shall be exercised only by the Commissioner or the Deputy Commissioner or the Chief Assessors.

- (4) The Commissioner may, notwithstanding the provisions of subsection (3), authorize any officer in the service of the Inland Revenue Department to exercise any of the powers conferred upon him by this Decree other than the powers conferred by Section 76 of this Decree.
- (5) Notwithstanding anything in this Section, in respect of all imported goods into Fiji, the collection of this tax shall be under the control and management of the Comptroller.
- (6) All money and securities for money collected or received for or on account of the tax, except deposits and securities required under the Customs Act 1986, shall be paid into the Fiji Government Consolidated Fund.

History

New section 6(A) inserted

[Amendment No 1 of 1992. Decree No 28 of 1992, effective 1 July 1992]

- (6A) (1) Any notice required by this Decree to be given by the Commissioner to any person may be:
 - (i) given to him personally; or
 - (ii) sent to him by post addressed to him at his usual or last known place of abode or business; or

- (iii) given personally to any other person authorised to act on behalf of that person; or sent to that other person by post addressed to him at his usual or last known place of abode or business.
- (3) Any notice sent by post to any person, or to any other person authorised to act on behalf of that person, shall be deemed to have been received by that person or, as the case may be, that other person when in the normal course of post it would have been delivered.

Section 7 **Official Secrecy**

- (1) Every officer required by the Commissioner to perform any special duty in the Inland Revenue Department or having any official duty in or being employed in the administration of this Decree shall regard and deal with all documents, returns, assessments and information relating to the affairs of any person as secret and confidential and shall take an oath in the form set out in Form 1 in the Third Schedule to this Decree before performing any duty under this Decree and such oath may be administered by a magistrate.
- (2) Every officer employed in carrying out the provisions of this Decree who -
- (a) directly or indirectly asks for, or takes, in connection with any of his duties, any payment or reward whatsoever, whether pecuniary or otherwise, or any promise or security for any such payment or reward, not being a payment or reward which he is lawfully entitled to receive; or
 - (b) enters into or acquiesces in any agreement to do, abstains from doing, permits, conceals, or connives at, any act or thing whereby the tax revenue is or may be defrauded, or which is contrary to the provisions of this Decree or to the proper execution of his duty thereunder; or
 - (c) in contravention of the provisions of subsection (1) or of the terms of his declaration of secrecy, and without lawful excuse, reveals to any person any document or information which has come into his possession or to his knowledge in the course of his official duties, or permits any other person to have access to any document in the possession or custody of the Commissioner in his official capacity,

shall be guilty of an offence against this Decree and shall be liable, on conviction, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

- (3) No officer or person appointed under, or employed in carrying out the provisions of this Decree shall be required to produce in any court any return, document or assessment, or to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties under this Decree, except as may be necessary for the purpose of carrying into effect the provisions of this Decree, or in order to institute a prosecution, or in the course of a prosecution, for any offence committed in relation to tax.

- (4) Notwithstanding anything contained in this Section, the Commissioner shall permit the Minister to have such access to any information, records or documents as may be necessary for the purposes of this Decree and the Minister shall himself, in relation to such information, records or documents, become subject to the provisions of this Section.
- (5) The Auditor-General, exercising the powers and performing the duties imposed upon him by the provisions of Section 10 of this Decree, shall be deemed to be an officer employed in carrying out the provisions of this Decree for the purposes of this Section.

History

The word “of” altered to read “to”

[Amended Act No 16 of 4 September 1995, effective 1 January 1995]

Subsection (6) amended by inserting “to the Commissioner of Police, the Director of Immigration or the Governor of the Reserve Bank” after “Income Tax Act 1974” by Act No 4 of 2005 effective from 1st January 2005

- (6) Nothing in this section shall prohibit the Commissioner or any person authorized by him from communicating information to the Tax Agents’ Board constituted under Part VIIA of the Income Tax Act 1974 to the Commissioner of Police, the Director of Immigration or the Governor of the Reserve Bank.

Section 8 **Disclosure of Information**

History

S 8 amended by adding new sub-sections (3) (4) (5)

[Amendment No 1 of 1992. Decree No 28 of 1992, effective 1 July 1992]

- (1) No obligation as to secrecy or other restriction upon the disclosure of information imposed by any enactment or otherwise shall prevent either -
 - (a) the Commissioner or any officer authorized in that behalf; and
 - (b) the Comptroller or any officer of Customs authorized in that behalf, -from disclosing to each other information obtained for revenue-gathering purposes and which is required to be disclosed by the officers authorized by this subsection for the same purpose to give effect to the provisions of this Decree.
- (2) Information obtained pursuant to subsection (1) of this Section shall not be disclosed except -
 - (a) to the officers authorized under that subsection; or
 - (b) for the purpose of any proceedings connected with a matter in relation to which those officers so authorized perform their duties.
- (3) Notwithstanding anything in Section 7 of this Decree, officers will maintain secrecy except for the purpose of carrying into effect the provisions of this Decree or the Income Tax Act, 1974.

[Inserted by Decree 28/92, s6(a)]

History

Sub-section (4) amended by altering the word “of” before the word “communicating” to read “or” and the word “this Decree or the Penal Code.” substituted for “crimes act”

[Amended Act No 16 of 1995, effective 1 January 1995]

- (4) Nothing in Section 7 of this Decree shall be deemed to prohibit the Commissioner from divulging or communicating any matter or thing or producing in any Court any letter, accounts, invoices, statements, books or documents or records that the Commissioner considers desirable for the purposes of any investigation into any suspected offences or prosecution under the this Decree or the Penal Code where the investigation or prosecution is in relation to any tax imposed or payable or any refund made or claimed under this Decree, and any such matter or thing shall be deemed to be divulged or communicated and any such letters, accounts, invoices, statements, books or documents or records shall be deemed to be produced for the purpose of carrying this Decree into effect.

[Inserted by Decree 28/92, s6(a)]

- (5) Nothing shall prohibit the Commissioner from disclosing the registration status of any person.

[Inserted by Decree 28/92, s6(a)]

History

S 8 amended by adding new sub-section (6). [Amended Act No 16 of 1995, effective 1 January 1995]

- (6) Notwithstanding anything in Section 7 of this Decree and without limiting the generality of subsections (3) to (5) of this Section where-
- (a) any registered person has failed to lodge a return as required by Section 33 of this Decree; and
 - (b) the Commissioner has attempted to notify that registered person of such failure; and
 - (c) the failure continues for 6 months or more after the last day by which the said return was required by this Decree to be furnished;

the Commissioner may, by Notice in the Fiji Republic Gazette or any daily newspaper published and circulated in Fiji, publish the name and address of that person and give notice of his failure to furnish the required return.

Section 9 **Extension of Time**

- (1) Where anything required by or under this Decree to be done at or within a fixed time cannot be or is not done, the Commissioner may, at any time extend such time for doing the same, whether the time at or within which the same ought to have been done has or has not expired.
- (2) Anything done at, or as the case may be, within the time prescribed by the Commissioner shall be valid as if it had been done, or, as the case may be, within the time fixed by or under this Decree.

Section 10 **Audit**

- (1) The accounts of the receipt of revenue under this Decree shall be examined by the Auditor-General in order to ascertain that adequate regulations and procedure have been framed to secure an effective check on the assessment, collection and proper allocation of revenue, and the Auditor-General shall satisfy himself that any such regulations and procedure are being duly carried out.
- (2) The Auditor-General shall make such examinations as he thinks fit with respect to the sums brought to account in respect of such revenue aforesaid.

Section 11 **Demand for additional information**

History

S 11 repealed by Decree 28 of 1992 and replaced as follows – [Amendment No 1 of 1992, effective 1 July 1992.]

- (1) Every person (including any officer employed in or in connection with any Department of the Government or by any public authority, and any other public officer) shall, when required by the Commissioner furnish in writing any information and produce for inspection any books and documents which the Commissioner considers necessary or relevant for any purpose relating to the administration or enforcement of any provisions of the Income Tax Act 1974 or this Decree or for any purpose relating to the administration or enforcement of any matter arising from or connected with any other function lawfully conferred on the Commissioner.
- (2) Without limiting the foregoing provisions of this Section, it is hereby declared that the information in writing which may be required under this Section shall include list of shareholders of companies, with the amount of capital contributed by and dividends paid to each shareholder, copies of balance sheets and of profit and loss accounts and other accounts and statements of assets and liabilities.
- (3) The Commissioner may, if he considers it reasonable to do so, remove and retain any books or documents under this Section for so long as it is necessary for a full and complete inspection of such books and documents.
- (4) Any person producing any books or documents which are retained by the Commissioner pursuant to subsection (3) of this Section, shall, at all reasonable times and subject to such reasonable conditions as may be determined by the Commissioner, be entitled to inspect the retained books or documents and to obtain copies thereof at his own expense.
- (5) The Commissioner may require that any written information or particulars furnished under this Section shall be verified by statutory declaration or otherwise.
- (6) The Commissioner may, without fee or reward, make extracts from or copies of any books or documents produced for inspection in accordance with the provisions of this Section.
- (7) The Commissioner may stipulate the date, time and place that the information is to be delivered.
- (8) The Commissioner may at any time request information, books and documents in terms of this Section.

- (9) If any person required to furnish in writing any information or to produce any books or documents under this Section refuses or fails to furnish any such information as aforesaid as and when required by the Commissioner, or refuses or fails to produce any books or documents as aforesaid as and when required by the Commissioner, that person commits an offence against this Section.

[Repealed and substituted by Decree 28/92, s7]

Previously read -

- “(1) If the Commissioner, in order to enable him to make an assessment or for any other purpose, desires any information or additional information or a return from any person who has not made a return or a complete return, he may, by registered letter or by personal service of a notice in writing, demand from such person such information, additional information or return, which such person shall deliver to the Commissioner such information, additional information or return within the period of time determined by the Commissioner in such registered letter or notice. For the purpose of any proceedings taken under this Decree, the facts necessary to establish compliance on the part of the Commissioner with the provisions of this section as well as default thereunder shall be sufficiently proved in any Court of law by the affidavit of the Commissioner or any other responsible officer of the Inland Revenue Department. Such affidavit shall have attached thereto as an exhibit a copy or duplicate of the said letter or notice.
- (2) The Commissioner may require and demand the production or the production on oath by any person or his agent or officer of any letters, accounts, invoices, statements, books or documents or records held by such person, agent, or officer for the purpose of determining the tax payable by any person and the same shall be produced within the time determined by such demand.”

Section 12

Commissioner to have power to inspect books and documents

History

S 12 repealed by Decree No 28 of 1992. Amendment No 1 of 1992, effective 1 July 1992 and replaced as follows

- (1) Notwithstanding anything in any other Act, Decree, laws or rules the Commissioner or any other officer of the department authorised by him in that behalf shall at all reasonable times be entitled to enter upon or into any land, buildings and places for the purpose of inspecting any books, documents, goods, property, process or matter the Commissioner considers relevant for the purpose of collecting any tax under this Decree or for the purpose of carrying out any function lawfully conferred on the Commissioner, or considers likely to provide any information otherwise required for the purpose of any Acts, Decrees, laws administered by the Commissioner or any of those functions, and may without fee or reward, make extracts from or copies of any such books or documents.
- (2) The Commissioner or any authorised officer may for any purpose under this Section require the owner or manager of any property or business which is being investigated, or any other person employed, or previously employed, in connection with the property or business, to give him all reasonable assistance in the investigation and to answer all proper questions either orally or, if the Commissioner or officer so requires, in writing, or by statutory declaration, and for that purpose may require the owner or manager or, in the case of a company, any officer of the company to attend at the premises with him.

[Repealed and Amended by Decree 28/92, s8]

Previously read –

- "(1) The Commissioner or any officer authorized by him in writing upon the production of his written authority shall at all reasonable times be entitled to enter upon any lands, buildings, or places for the purposes of inspecting all books and documents, whether in the custody or under control of a public officer or a body corporate or any other person whatsoever, if the Commissioner or the officer considers such inspection is likely to assist in the ascertainment of the tax payable under this Decree by any person or in the collection or recovery of tax and may inspect any such books or documents and may without fee or reward make extracts or copies of any such books or documents.
- (2) The Commissioner or any officer authorized by him may, for the purposes of any inspection under this subsection, require the production of any book or document by any person in whose custody or control such book or document may be and may require any such person to give reasonable assistance in the inspection and to answer all proper questions relating thereto"

Section 13 **Power to take samples**

- (1) The Commissioner or any officer authorized by him in writing upon the production of his written authority, if it appears necessary for the protection of the revenue against mistake or fraud, may at any time take, from the possession of any person who supplies goods, such samples as the Commissioner or the officer may require with the view to determining how the goods or the materials of which the goods are made ought to be or to have been treated for the purposes of tax.
- (2) Any sample taken under this section from the goods in a person's possession shall be returned to him within a reasonable time and in good condition.

PART III - IMPOSITION OF TAX ON IMPORTS

Section 14 **Imposition of tax on imports**

History

S 14 is amended by substituting "twelve and a half" for "ten" by Act No 34 of 2002, effective 1 January, 2003

S 14 amended by Decree No 28 of 1992. Amendment No 1 of 1992, effective 1 July 1992 by adding a proviso after subsection (1)

S 14 is amended by substituting "Subject to subsection (5) for "Notwithstanding anything in the Decree" in subsection (1) by Act No. 11 of 2002

S 14 is amended by repealing the proviso by Act No. 11 of 2002. Previously read:-

"Provided that, and for avoidance of doubt, in the case of any person subject to the Tax Free Zones Decree 1991 all goods imported for or on behalf of that person shall be liable in terms of this Section upon importation of those goods into Fiji."

S 14 amended by inserting "(including import excise duty)" after "any duties" by Act No 27 of 2005, effective 1 January, 2006

S 14 is amended in subsection (2), by replacing the full stop with a semi-colon at the end of paragraph (b), and inserting a new paragraph (c) by Act No 27 of 2005, effective 1 January, 2006

- (1) Subject to subsection (5), a tax shall be levied, collected and paid in accordance with the provisions of this Section at the rate of twelve and a half percent on the importation of goods into Fiji, being goods that are imported or removed from a bonded or customs warehouse, for home consumption on or after the 1st day of July 1992 under the Customs Act 1986 and the Customs Tariff Act 1986 by reference to the value of the goods determined under subsection (2) of this Section.

Sub-section (4)(e) amended by adding Code 126 of Customs Tariff Act II [Amendment No 1 of 1993, effective 1 January 1993]

History

S 14 Sub-section 4A inserted by Act No. 27 of 2005, effective 1 January, 2006. The existing subsection (4)(e) is renumbered as the new paragraph (a) for the Sub-section 4A.

(4A) Notwithstanding subsection (4), the following shall not be subject to tax levied under subsection (1)-

- (a) Concession Code Numbers: 102(i) (family planning goods imported by non-profit bodies), 108 (trade samples), 110 (goods imported for disabled persons), 126 (money), 201 (the President and his family), 203 (diplomatic missions), 204 (an international organisation to which the provision of Section 2 of the Diplomatic Privileges and Immunities Act apply), 205 (members of a State, organisation or an agency), 206 (consulates), 207 (consular officers), 212 (a private individual), 215 (charitable and religious organisations), 216 (the owner or trustee of goods of a deceased Fiji resident), 218 and 219 (passengers disembarking in Fiji), 220 (Fiji residents), 222 (a hospital or medical institution), 223 (a university, school or other educational institution), 226 (a person to whom medals and decorations are awarded), 227 (an owner or temporary owner of trophies), 228 (tourists) and 229 (an institution or organisation approved by the Minister of Finance) in Parts II and III of the Second Schedule to the Customs Tariff Act 1986.
[Amended by Decree 28/92, s9(b)-(g) and by Act 1/93, s4]
- (b) the following tariff items under the heading numbers 04.02 (powdered milk), 09.02(tea), 10.01(wheat), 10.06(rice), 11.01(flour and sharps from wheat), 15.07 to 15.17(edible fats and oils; crude and refined oils), 16.04(prepared or preserved canned fish), and 27.10 (kerosene), as are listed in Part 1 of Schedule 2 to the Customs Tariff Act 1986.

History

S 14(4)(f) is repealed by Act No 1 of 2001 (made on 9th November 2001 and effective from 1st January 2001) and Decree No 5 of 2001 (made on 23rd January 2001 and effective from 1st January 2001). Decree No 5 of 2001 was repealed by Act No 1 of 2001. Previously* read:

“(f) the tariff items with the heading numbers 04.02 (powdered milk), 09.02(tea), 10.01(wheat), 10.06 (rice), 11.01(flour and sharps from wheat), 15.01 to 15.03 and 15.06 to 15.17(edible fats and oils; crude and refined oils) and 16.04(prepared or preserved canned fish) in Part 1 of Schedule 2 to the Customs Tariff Act 1986.”

*The previous 14(4)(f) was inserted by Act No 28 of 1999, effective 1st January 2000 and referred to Part 1 of Schedule 2 to the Customs Tariff Act 1986 instead of Part 2. [Legal Notice No. 87 of 2002 - Rectification of Errors (No. 2) Order 2002, dated 29 October 2002 rectified this anomaly]

History

Subsection (5) inserted by Act 11 of 2002 .

- (5) Notwithstanding any other provision of this Decree, no tax shall be levied under this Part in respect of importation of goods which are subject to the Tax Free Zones Decree 1991 or the duty suspension scheme.
- (6) For the purposes of this Section the term “goods” has the same meaning as defined in the Customs Act 1986.

PART IV - IMPOSITION OF TAX ON SUPPLY

Section 15 **Imposition of tax on supply**

S 15 is amended by substituting "twelve and a half" for "ten" by Act No 34 of 2002, effective 1 January, 2003

- (1) Subject to the provisions of this Decree, the tax shall be charged in accordance with the provisions of this Decree at the rate of twelve and a half percent on the supply (but not including an exempt supply) in Fiji of goods and services on or after the 1st day of July 1992, by a registered person in the course or furtherance of a taxable activity carried on by that person, by reference to the value of that supply.
- (2) Where, but for this subsection, a supply of goods and services would be charged with tax under subsection (1) of this Section, any such supply shall be charged at the rate of zero percent where that supply is a zero-rated supply.

Section 16 **Place of supply**

- (1) For the purposes of Section 15 of this Decree, the following provisions of this Section shall apply for determining, for the purposes of the charge of tax, whether goods and services are supplied in Fiji.
- (2) In relation to a supply of goods which does not involve their removal from or to Fiji, those goods shall be deemed to be supplied in Fiji if those goods are in Fiji, and otherwise shall be deemed to be supplied outside Fiji.
- (3) In relation to a supply of goods which involves their removal
 - (a) from Fiji, those goods shall be deemed to be supplied in Fiji:
 - (b) to Fiji, those goods shall be deemed to be supplied outside Fiji.
- (4) Subject to this Section, a supply of services shall be deemed to be -
 - (a) in Fiji if the supplier belongs in Fiji; or
 - (b) in another country, if that supplier belongs in that other country.

Section 17 **Place where supplier or recipient of services belongs**

- (1) Subsection (2) of this Section shall apply for determining, in relation to any supply of services, whether the supplier belongs in one country or another and subsections (3) and (4) of this Section shall apply for determining, in relation to a supply of services, whether the recipient belongs in one country or another.
- (2) The supplier of services shall be deemed to belong in a country if the supplier -
 - (a) has there a taxable activity establishment or some other fixed establishment and no such establishment elsewhere; or
 - (b) has no such establishment there or elsewhere but the supplier's usual place of residence is there; or
 - (c) has such establishments both in that country and elsewhere and the establishment of the supplier which is most directly concerned with the supply is there.

S 17 sub-section (3) amended by adding a proviso.

[Decree No 28 of 1992. Amendment No 1 of 1992, effective 1 July 1992]

- (3) If the supply of services is made to an individual and received by that person otherwise than for the purposes of any taxable activity carried on by that person, that person shall be deemed to belong in whatever country that person has his usual place of residence.

Provided that this subsection shall not apply to any individual who is present in Fiji at the time the services are supplied, other than when the goods in respect of which the supply is being made are situated outside Fiji.

[Amended by Decree 28/92, s10 (a), (b)]

- (4) Where subsection (3) of this Section does not apply, the person to whom the supply of services is made shall be deemed as belonging in a country if -
- (a) either of the conditions mentioned in paragraphs (a) and (b) of subsection (2) of this Section is satisfied; or
 - (b) that person has such establishments as are mentioned in subsection (2) of this Section both in that country and elsewhere and the establishment of that person at which, or for the purposes of which, the services are most directly used or to be used in that country.
- (5) For the purposes of this Section -
- (a) a person carrying on a taxable activity through a branch or agency in any country shall be deemed to have a taxable activity establishment there; and
 - (b) the expression “usual place of residence”, in relation to a body corporate, means the place where it is legally constituted.

Section 18 **Time of supply**

- (1) Subject to this Decree, a supply of goods and services shall be deemed to take place at the time -
- (a) a tax invoice is issued by the supplier or the recipient; or
 - (b) any payment is received by the supplier; or
 - (c) the delivery of the goods and services takes place, -
- whichever is the earlier.
- (2) Notwithstanding anything in subsection (1) of this Section, a supply of goods and services shall be deemed to take place -
- (a) where the supply is for a consideration in money received by the supplier by means of any machine, meter, or other device operated by a coin or token, at the time any such coin or token is taken from that machine, meter, or other device by or on behalf of the supplier;
 - (b) where that supply is a supply to which subsection (9) of Section 3 of this Decree refers, at the time at which the property in the goods is transferred to the buyer:

Provided that in any case in which a supply of services is deemed to take place pursuant to the proviso to, subsection (9) of Section 3, that supply of services shall be deemed to take place at the time that the layby sale is cancelled pursuant to Part IV of the Sale of Goods Act, Cap. 230:

- (c) where goods are supplied under an agreement for hire, or services are supplied under any agreement or enactment which provides for periodic payments, those goods or services shall be deemed to be successively supplied for successive parts of the period of the agreement or enactment, and each of the successive supplies shall be deemed to take place when a payment becomes due or is received, whichever is the earlier:

History

S 18 sub-section (2)(d) amended by adding “and services” after the word “goods” in line 5. [Amended Decree No 28 of 1992. No 1 of 1992, effective 1 July 1992]

- (d) where and to the extent that goods and services are supplied progressively or periodically pursuant to any agreement or enactment which provides for the consideration for that supply to be paid in instalments or periodically and in relation to the progressive or periodic supply of those goods and services those goods and services shall be deemed to be successively supplied, and each such successive supply shall be deemed to take place whenever any payment in respect of that supply becomes due, is received, or a tax invoice relating only to that payment is issued, whichever is the earlier:
[Amended by Decree 28/92, s11 (a), (b)]
 - (e) where and to the extent that goods and services supplied directly in the construction, major reconstruction, manufacture or extension of a building or engineering work are supplied pursuant to any agreement or enactment which provides for the consideration for that supply to become due and payable in instalments or periodically in relation to the progressive nature of that construction, manufacture or extension, those goods and services shall be deemed to be successively supplied, and each successive supply shall be deemed to take place whenever any payment in respect of that supply becomes due, is received or any tax invoice relating to that payment is issued, whichever is the earlier:
[Amended by Decree 28/92, s11 (c)]
 - (f) where goods are supplied under an agreement, other than an agreement for hire, and the goods or part of them are appropriated under that agreement by the recipient in circumstances where the whole of the consideration is not determined at the time those goods are appropriated, that supply shall be deemed to take place when and to the extent that any payment under the agreement is due or is received or a tax invoice relating to the supply is issued by the supplier or the recipient,
 - (g) the supply of goods and services which is deemed to be made by a registered person pursuant to subsection (10) of Section 3 of this Decree shall be deemed to take place at the time that that registered person is liable to deduct income tax from the value of the employee benefit in terms of the Income Tax Act, Cap. 201.
- (3) For the purposes of subsection (2) of this Section, the term “agreement for hire” means an agreement for the bailment of goods for hire and includes a lease of goods and a rental agreement but excludes an agreement under which the property in goods passes to the bailee or which expressly contemplates that the property in the goods will pass to the bailee.

Section 19

Value of supply of goods and services

- (1) For the purposes of this Decree the following provisions of this Section shall apply for determining the value of supply of goods and services.

- (2) Subject to this Section and Section 20 of this Decree, the value of a supply of goods and services shall be such amount as, with the addition of the tax charged, is equal to the aggregate of, -
- (a) to the extent that the consideration for the supply is consideration in money, the amount of the money;
 - (b) to the extent that the consideration for the supply is not consideration in money, the open market value of that consideration.
- (3) Subject to subsections (4) and (6) of this Section where -
- (a) a supply is made by a person for no consideration or for a consideration in money that is less than the open market value of that supply; and
 - (b) the supplier and recipient are not independent of each other, -
the consideration in money for the supply shall be deemed to be the open market value of that supply.
- (4) Subsection (3) of this Section shall not apply to any supply made by a registered person where the recipient acquired that supply wholly for the purposes of making taxable supplies and is entitled under subsection (2) of Section 39 of this Decree to make a deduction in respect of that supply.

History

S 19 sub-section (5) amended by addition of definition of “cash price” Previously no such definition. [Amendment No 1 of 1992. Decree No 28, effective 1 July 1992]

- (5) Notwithstanding anything in subsection (2) of this Section, where any supply of goods and services is made pursuant to -
- (a) a hire purchase agreement (being a conditional sale agreement whereby the property in the goods will pass to the bailee); or
 - (b) a financial lease (being an agreement to lease whereby the lessee is expressly required or has the option to purchase the goods subject to the lease at a guarantee residual value or nil),

the consideration in money for the supply shall be deemed to be the cash price of those goods and services.

“Cash price” in relation to goods and services supplied means:

- (a) the lowest price at which a person could have purchased those goods and services from the supplier thereof on the basis of payment in full at the time of supply; or
 - (b) if there is no such price, the open market value of those goods and services at the time of supply.
[Amended by Decree 28/92, s12]
- (6) Where goods and services are deemed to be supplied by a person under subsection (2) of Section 3 and subsection (4) of Section 3 of this Decree, the consideration in money for that supply shall be deemed to be the lesser of -
- (a) the cost of those goods and services to the supplier, including any tax charged in respect of the supply of those goods and services to that supplier;
 - (b) the open market value of that supply.

- (7) Notwithstanding anything in this Section, where goods and services are, or are deemed to be supplied to the State by any public authority pursuant to subsection (5) of Section 3 of this Decree, the consideration in money for any such supply shall be an amount equal to any amount from time to time paid by the State to or on behalf of that public authority for that supply.
- (8) Notwithstanding anything in this Section, where goods and services are, or deemed to be supplied to any person by any local authority pursuant to subsection (7) of Section 3 of this Decree, the consideration in money for any such supply shall be an amount equal to any amount from time to time paid or payable by or on behalf of that person for that supply.
- (9) Where a supply of services is deemed to be made under the proviso to subsection (9) of Section 3 of this Decree, the consideration in money for that supply shall be deemed to be an amount equal to the amount referred to in paragraph (b) of that proviso as being retained or recoverable.
- (10) Where a right to receive goods and services for a monetary value stated on any token, stamp (not being a postage stamp) or voucher is granted for a consideration in money, that supply shall be disregarded for the purposes of this Decree, except to the extent (if any) that consideration exceeds that monetary value.
- (11) Where a registered person supplies goods and services by way of a gift or as a trade sample for no consideration in the course or furtherance of taxable activity, the consideration in money for that supply shall be deemed to be the open market value of that supply:
Provided that this provision shall not apply where -
 - (a) the good or service gifted did not cost the supplier more than ten dollars and does not form part of a series or succession of gifts made to the same recipient from time to time:
 - (b) the good or service is a trade sample supplied to an actual or potential customer of the taxable activity, in a form not ordinarily available for supply to the public.
- (12) Where goods and services are deemed to be supplied by a registered person under subsection (10) of Section 3 of this Decree, the consideration in money for the supply shall be deemed to be an amount equal to the value of the employee benefit determined by the Commissioner for income tax purposes.
- (13) Where a taxable supply is not the only matter to which a consideration relates, the supply shall be deemed to be for such part of the consideration as is properly attributable to it.
- (14) Subject to the foregoing provisions of this Section where any supply is made for no consideration, the value of that supply shall be nil.

Section 20

Second-hand goods

History

S 20 amended by adding a proviso after sub-section (1). Previously no such proviso. [Amendment No 1 of 1992. Decree No 28, effective 1 July 1992]

- (1) Where a registered person, who is a dealer in second-hand goods, has purchased second-hand goods of whatever kind from a non-registered person, the consideration in money for the supply of those goods by that registered person shall be an amount equal to the gross margin by allowing the purchase price as a deduction from the sale price of those goods at the time of the sale of those goods.

Provided that the Commissioner may determine the gross margin to be applied to specified goods or classes of goods; being goods that are supplied in the normal course of that person's taxable activity for a consideration less than five hundred dollars.

[Inserted by Decree 28/92, s13(a)]

- (2) Where the supplier and recipient are not independent of each other, the purchase price for the second-hand goods shall, for the purpose of subsection (1) of this Section, be deemed to be the lesser of the purchase price or the open market value of that supply of second-hand goods.
- (3) The registered person, shall in respect of second-hand goods purchased from a non-registered person maintain sufficient records to enable the following particulars to be ascertained:
- (a) the name and address of the supplier;
 - (b) the date upon which the secondhand goods were supplied;
 - (c) a description of the goods supplied;
 - (d) the quantity or volume of the goods supplied; and
 - (e) the consideration for the supply.

History

S 20 amended by adding new sub-sections (4) and (5)

[Amendment No 1 of 1992. Decree No 28, effective 1 July 1992]

- (4) Subsections (1) and (3) of this Section shall apply only to dealers in "second hand goods".
[Inserted by Decree 28/92, s13 (b)]
- (5) For the purposes of this Section -
- (a) the term "second hand goods" shall not include:
 - (i) land;
 - (ii) improvements to any land, including buildings constructed thereon;
 - (iii) produce.
 - (b) the term "dealer in second hand goods" shall include a person continuously or regularly making purchase and sale of second hand goods, without making significant alterations to their structure or content and shall not include bottle collectors.

[Inserted by Decree 28/92, s13(b)]

Section 21 **Reverse charge on supplies received from abroad**

- (1) For the purposes of this Section “relevant service” means services of any of the descriptions specified in paragraph (14) of the Second Schedule to this Decree, not being services within any of the descriptions specified in paragraph (1) of the First Schedule to this Decree.
- (2) Subject to subsection (3) of this Section, where relevant services are -
 - (a) supplied by a person who belongs in a country other than Fiji; and
 - (b) received by a person (hereafter in this subsection referred to as a recipient) who belongs in Fiji for the purposes of any taxable activity carried on by that person;then all the consequences shall follow under this Decree (and particularly so much as charges tax on supply and entitles a registered person to a deduction for input tax) as if the recipient had supplied the services in Fiji in the course or furtherance of that recipient’s taxable activity.
- (3) The provisions of this Decree relating to the deduction of input tax shall apply in respect of supplies, which are treated as made by a registered person under subsection (2) of this Section, although those supplies themselves shall not be treated as being taxable supplies made by that person for the purposes of determining the input tax deductible under subsection (2) of Section 39 of this Decree.
- (4) For the purposes of this Decree, where subsection (2) of this Section, treats a supply of relevant services as being made by a person in the course or furtherance of that person’s taxable activity –
 - (a) the value of that supply shall be for whatever consideration was paid or payable for the relevant services; and
 - (b) the supply shall take place when the relevant services are paid for, or if the consideration is not in money, the last day of the taxable period in which the services are performed.
[Amended by Decree 28/92, s14]
- (5) Where a person carried on a taxable activity through an establishment of the person in Fiji and through another establishment outside Fiji, any supply of relevant services by the establishment outside Fiji to the establishment in Fiji shall be treated as a supply to which subsection (2) of the Section applies, as if that supply between the two establishments were between two separate persons who are independent of each other.
- (6) Notwithstanding anything in paragraph (a) of subsection (4) of this Section, where subsection (5) of this Section applies, the value of the supply shall be deemed to be the open market value of the relevant services.

PART V – REGISTRATION

Section 22

Persons making taxable supplies to be registered

History

“thirty” substituted for “twenty” in S 22(a)(i) by Act No 29 of 1995, effective 1 January 1996

- (1) Subject to this Decree, every person (other than a produce supplier) who, on or after the 1st day of July 1992, carries on any taxable activity and is not registered, becomes liable to be registered -

- (a) in the case of any person who solely supplies goods –

- (i) at the end of any month where the total value of supplies (not being exempt supplies) made in Fiji in that month and the eleven months immediately preceding that month in the course of carrying on all taxable activities has exceeded thirty thousand dollars in gross turnover or such other amount as the Minister may from time to time, by Legal Notice declare:

Provided that a person does not become liable to be registered by virtue of this paragraph where the Commissioner is satisfied that the value of all those supplies in the twelve month period beginning on the day after the last day of the period referred to in the said paragraph will not exceed that amount:

- (ii) at the commencement of any month where there are reasonable grounds for believing that the total value of the supplies (not being exempt supplies) to be made in Fiji in that month and the eleven months immediately following that month will exceed the amount specified in subparagraph (i) of this paragraph:

History

“fifteen” substituted for “ten” in S22(1)(b)(i) by Act No 29 of 1995, effective 1 January 1996

- (b) in the case of any other person –

- (i) at the end of any month where the total value of supplies (not being exempt supplies) made in Fiji in that month and the eleven months immediately preceding that month in the course of carrying on all taxable activities has exceeded fifteen thousand dollars in gross turnover or such other amount as the Minister may from time to time, by Legal Notice declare:

Provided that a person does not become liable to be registered by virtue of this paragraph where the Commissioner is satisfied that the value of all those supplies in the twelve month period beginning on the day after the last day of the period referred to in the said paragraph will not exceed that amount:

- (ii) at the commencement of any month where there are reasonable grounds for believing that the total value of the supplies (not being exempt supplies) to be made in Fiji in that month and the eleven months immediately following that month will exceed the amount specified in subparagraph (i) of this paragraph.
- (2) For the purposes of subsection (1) of this Section, the total value of a registered person's taxable supplies shall be deemed not to have exceeded any amount specified in or under that subsection where that total value exceeds any such amount solely as a consequence of-
 - (a) any cessation of, or any substantial and permanent reduction in the size or scale of, any taxable activity carried on by that person; or
 - (b) the replacement of any plant or other capital asset used in any taxable activity carried on by that person.
- (3) Every person who, by virtue of subsection (1) of this Section, becomes liable to be registered shall apply to the Commissioner on the prescribed registration form, as may be approved by the Commissioner, within twenty one days of becoming so liable.
- (4) Notwithstanding subsections (1) and (3) of this section, every person who satisfies the Commissioner that on or after the 1st day of July 1992, -
 - (a) that person is carrying on a taxable activity that involves the making of other than exempt supplies; or
 - (b) that person intends to carry on any taxable activity, which will involve the making of other than exempt supplies, from a specific date, -may apply to the Commissioner on the prescribed registration form for registration.
- (5) Where any person -
 - (a) applies to be registered pursuant to subsection (3) or (4) of this Section, and the Commissioner is satisfied that that person is eligible to be registered under this Decree, that person shall be a registered person for the purposes of this Decree with effect from such date as the Commissioner may determine; or
 - (b) has not made application for registration pursuant to subsection (3) of this Section, and the Commissioner is satisfied that that person is liable to be registered under this Decree, that person shall be a registered person for the purposes of this Decree with effect from the date on which that person first became liable to be registered under this Decree:
 - Provided that the Commissioner may, having regard to the circumstances of the case, determine that person to be a registered person from such later date as the Commissioner considers equitable.
- (6) The provisions of this Decree relating to the determination of the value of any supply of goods and services shall apply for the purposes of this Section, with the modification that no regard shall be made to any tax charged in respect of any such supply.
- (7) An application for registration under this Decree purporting to be made by or on behalf of any person shall for all purposes be deemed to have been made by that person or by that person's authority, as the case may be, unless the contrary is proved.

Section 23 **Cancellation of registration**

History

S 23 sub-section (1) amended by addition of a proviso to cater for cancellation of registration of a produce supplier any time after 12 months. Previously no such proviso. [Amendment No 1 of 1992. Decree No 28, effective 1 July 1992]

- (1) Subject to this Decree, every registered person who carries on any taxable activity shall cease to be liable to be registered where at any time, if that person has been registered for the whole of the twelve months then ending, the Commissioner is satisfied that the value of that person's taxable supplies in the period of twelve months then beginning will not be more than the amounts specified in paragraphs (a) or (b) of subsection (1) of Section 22 of this Decree for the purposes of that said Section.

Provided that where a registered person is a produce supplier he may apply for cancellation of registration at any time after having been registered for a period of twelve months.

[Amended by Decree 28/92, s15]

- (2) Every person who, by virtue of subsection (1) of this Section, ceases to be liable to be registered may request the Commissioner in writing to cancel that registration, and if the Commissioner is at any time satisfied, as mentioned in subsection (1) of this Section, the Commissioner shall cancel that person's registration with effect from the last day of the taxable period during which the Commissioner was so satisfied, or from such other date as may be determined by the Commissioner, and shall notify that person of the date on which the cancellation of registration takes effect.
- (3) Every registered person who ceases to carry on all taxable activities that involve the making of taxable supplies shall notify the Commissioner of that fact within seven days of the date of cessation and the Commissioner shall cancel the registration of any such person with effect from the last day of the taxable period during which all such taxable activities ceased, or such other date as may be determined by the Commissioner;

Provided that the Commissioner shall not at any time cancel the registration of any such registered person if there are reasonable grounds for believing that the registered person will carry on any taxable activity that will involve the making of taxable supplies at any time within twelve months from that date of cessation.

- (4) Any notification by a registered person pursuant to subsection (3) of this Section shall be made in writing to the Commissioner and shall state the date upon which that person ceased to carry on all such taxable activities and whether or not that person intends to carry on any such taxable activity within twelve months from that date.
- (5) Where the Commissioner is satisfied that a registered person is not carrying on any taxable activities that involve the making of taxable supplies the Commissioner may cancel that person's registration with effect from the last day of the taxable period during which the Commissioner was so satisfied, or from such other date as may be determined by the Commissioner, and shall notify that person of the date on which the cancellation of registration takes effect.

- (6) Any date determined by the Commissioner for the cancellation of registration under subsection (5) of this Section may be retrospective to a date not earlier than -
- (a) the last day of the taxable period during which all such taxable activities carried on by that person ceased; or
 - (b) the date on which the person was registered under this Decree, if the Commissioner is satisfied that the person did not, from that date, carry on any taxable activity involving the making of taxable supplies.

History

S 23 amended by adding new sub-sections (7) and (8). [Amendment No 1 of 1993, effective 1 January 1993]

- (7) Notwithstanding anything in subsection (1) where a registered person is -
- (a) a produce supplier; or
 - (b) a non-profit body which in the opinion of the Commissioner is not carrying on a taxable activity in competition with another registered person; or
 - (c) any other person who has registered in error,

he may apply for cancellation of registration at any time.

[S 23 subsection (7) amended by deleting the words “but not later than 30th of June 1993” and inserting a full stop after the word “time”]

- (8) Notwithstanding anything in subsection (4) of Section 3 of this Decree, where a person ceases to be registered under subsection (7), any input tax credit which has not been claimed by the registered person in respect of any goods or services then forming part of the assets of any taxable activity carried on by that registered person shall not be deemed to be in the course of that taxable activity for the purposes of ceasing to be a registered person.

[Added by Act 1/93, s5]

Section 24 **Registered person to notify of change of status**

Subject to this Decree, every registered person shall within twenty one days notify the Commissioner in writing of -

- (a) any changes in the name, address, constitution or nature of the principal taxable activity or activities of that registered person;
- (b) any change of address from which, or the name in which, any taxable activity is carried on by that registered person;
- (c) any change whereby that registered person ceases to satisfy the conditions of subsection (3) of Section 32 of this Decree;
- (d) any change whereby that registered person ceases to satisfy the conditions of subsection (2) of Section 36 of this Decree;

Provided that this Section shall not apply to the notification of any changes in the ownership of a company.

Section 25

Liabilities not affected by ceasing to be registered person

The obligations and liabilities under this Decree of any person in respect of anything done, or omitted to be done, by that person while that person is a registered person shall not be affected by the fact that that person ceases to be a registered person, or by the fact that, being a registered person, the Commissioner cancels that person's registration.

PART VI - SPECIAL CASES

Section 26

Unincorporated bodies

- (1) For the purpose of this Section -
“Body” means an unincorporated body of persons; and includes
- (a) a partnership;
 - (b) a joint venture;
 - (c) the trustees of a trust;

“Members” means a partner, a joint venturer, a trustee or a member of any body;

“Partnership” has the same meaning as in the Partnership Act, Cap. 248.

History

S 26 sub-section (2)(c) amended by adding “and services” before the words “by, any” by Amendment No 1 of 1992. Decree No 28, effective 1 July 1992]

- (2) Where a body that carries on any taxable activity is registered pursuant to this Decree,
- (a) the members of that body shall not themselves be registered or liable to be registered under this Decree in relation to the carrying on of that taxable activity; and
 - (b) any supply of goods and services made in the course of carrying on that taxable activity shall be deemed for the purposes of this Decree to be supplied by that body, and shall be deemed not to be made by any member of that body; and
 - (c) any supply of goods and services to, or acquisition of goods and services by, any member of that body acting in the capacity as a member of that body and in the course of carrying on that taxable activity, not being a supply to which paragraph (b) of this subsection applies, shall be deemed for the purposes of this Decree to be supplied to or acquired by that body, and shall be deemed not to be supplied to or acquired by that member; and
[Amended by Decree 28/92, s16 (a), (b)]
 - (d) that registration shall be in the name of the body, or where that body is the trustees of a trust, in the name of the trust; and
 - (e) subject to subsection (3) of this Section, any change of members of that body shall have no effect for the purposes of this Decree.

- (3) Notwithstanding anything in this Section, every member is liable jointly and severally with any other members for all tax payable by the body while that member remains a member of that body, and, where that member is an individual, after that member's death, that member's estate shall be severally liable in due course of administration for such tax payable as far as it remains unpaid:

Provided that where any such body is a partnership, joint venture, or the trustees of a trust, a member shall not cease to be a member for the purposes of this Section until the date on which any change of membership of that body is notified in writing to the Commissioner.

- (4) For the purpose of this Decree, any notice served in accordance with this Decree which is addressed to a body by the name in which it is registered pursuant to this Decree, shall be deemed to be served on that body and on all members of that body.
- (5) Subject to subsection (6) of this Section, where anything is required to be done pursuant to this Decree by or on behalf of any body, it shall be the joint and several liability of all the members to do any such thing:

Provided that any such thing done by one member shall be sufficient compliance with any such requirement.

- (6) Notwithstanding anything in this Section, but subject to subsection (3) of this Section, where anything is required to be done pursuant to this Decree by or on behalf of any body, not being a partnership, joint venture, or trustees of a trust, the affairs of which are managed by its members or a committee or committees of its members, it shall be the joint and several responsibility of -
- (a) every member holding office as president, chairman, treasurer, secretary or any similar office; or
- (b) in default of any such member, every member holding office as a member of a committee:

Provided that if it is done by any official or committee member, referred to in paragraph (a) or paragraph (b) of this subsection, that shall be sufficient compliance with any such requirement.

Section 27 **Branch or division**

History

S 27 sub-section (1) repealed and replaced by existing sub-section.

Previously read -

“(1) Where a taxable activity is carried on by any registered person in branches or divisions and those branches and divisions are a produce supplier, that registered person may apply in writing to the Commissioner for any such branch or division to be treated as a separate person for the purpose of this Decree”

[Amendment No 1 of 1992. Decree No 28, effective 1 July 1992]

- (1) Where a taxable activity is carried on by any registered person in branches or divisions and any branch or division solely supplies produce, that registered person may apply in writing to the Commissioner for that branch or division to be treated as a separate person for the purposes of this Decree.

[Repealed and substituted by Decree 28/92, s17]

- (2) The Commissioner may, upon application made pursuant to subsection (1) of this Section treat any branch or division as a separate person if each branch or division maintains an independent system of accounting, solely supplies produce in a raw and unprocessed state and can be separately identified by reference to being a produce supplier or the location of the branch or division and where any such branch or division is so separately treated, any taxable activity carried on by that branch or division shall, to that extent, be deemed not to be carried on by the registered person first mentioned in subsection (1) of this Section.

Section 28 **Personal representative, liquidator, receiver, etc**

- (1) Where a registered person dies, or goes into liquidation or receivership, or becomes bankrupt or incapacitated, the Commissioner shall, from the date on which that person died, or went into liquidation or receivership, or became bankrupt or incapacitated, until such time as some other person is registered in respect of the taxable supplies made or intended to be made by that registered person in the course or furtherance of that person's taxable activity or until such time as the incapacity ceases, as the case may be, deem any person carrying on that taxable activity to be a registered person.
- (2) Where a mortgagee is in possession of any land or other property previously mortgaged by the mortgagor, being a registered person, the Commissioner shall, from the date on which the mortgagee took possession of that land or other property, until such time as the mortgagee ceases to be in possession of that land or other property, deem the mortgagee, in any case where and to the extent that the mortgagee carries on any taxable activity of the mortgagor, to be a registered person.
- (3) Any person carrying on such taxable activity as aforesaid shall, within twenty one days of commencing to do so, inform the Commissioner in writing of that fact and of the date of the death or of the liquidation or receivership or bankruptcy or mortgagee taking possession of any land or other property previously mortgaged by the mortgagor, or of the nature of the incapacity and the date on which it began.

Section 29 **Liability of agent of non-resident principal for returns and tax**

History

S 29(1)(b) amended by deleting the word "place" and replacing with "establishment".

[Amendment No 1 of 1992. Decree No 28, effective 1 July 1992]

- (1) For the purposes of this Section, the term "non-resident" means -
 - (a) any person, not being a company, who is for the time being out of Fiji;
 - (b) any company, not being a company incorporated in Fiji, unless it has a fixed or permanent establishment in Fiji relating to the carrying on of any taxable activity in Fiji in its own name;
[Amended by Decree 28/92, s18]
 - (c) any company, not being a company incorporated in Fiji, which is declared by the Commissioner to be a non-resident for the purposes of this Decree by notice given to that company or to its agent or attorney in Fiji, so long as that declaration remains unrevoked.

- (2) Every person who in Fiji carries on any taxable activity for and on behalf of a principal who is a non-resident shall, for the purposes of this Decree, be the agent of that principal in respect of that taxable activity so carried on in Fiji by means of that agent, and the agent shall make returns and be liable for the tax charged or levied under this Decree.

History

S 29 sub-section (3) amended by inserting the words “or an agent of a non-resident” after the word “non-resident” [Amended Act No 16 of 1995, effective 1 January 1995]

- (3) The Commissioner shall have the power to declare any person a non-resident or an agent of a non-resident for the purpose of this Section.

Section 30 **Agents and auctioneers**

History

S 30 amended by adding new sub-section (2A). [Amended Act No 16 of 1995, effective 1 January 1995]

- (1) Subject to this Section, where an agent makes a supply of goods and services for and on behalf of any other person who is the principal of that agent, that supply shall be deemed to be made by that principal and not by that agent.
- (2) Subject to this Section, where any registered person makes a taxable supply of goods and services to an agent who is acting on behalf of another person who is the principal for the purposes of that supply, that supply shall be deemed to be made to that principal and not to that agent.
- (2A) Where goods or services are supplied through an agent who acts in his own name the Commissioner may, if he thinks fit, treat the supply both as a supply to the agent and as a supply by the agent.
- (3) For the purposes of subsection (4) of this Section, the expression “auctioneer” means a registered person carrying on a taxable activity which comprises or includes the supply by auction of goods as an auctioneer or agent for or on behalf of another person (hereafter in this Section referred to as a principal)
- (4) Notwithstanding anything in the foregoing provisions of this Section, where the principal and the auctioneer agree to have a supply by auction of any goods, not being a taxable supply, treated as if that supply had been made by that auctioneer and not by that principal, that supply shall be charged with tax as if it were made by that auctioneer in the course or furtherance of that auctioneer’s taxable activity and that auctioneer may -
 - (a) recover the amount of tax charged on that supply from that principal as a debt together with the costs of recovery in any Court of competent jurisdiction; or
 - (b) retain or deduct the same out of any money in that auctioneer’s hands belonging or payable to that principal.
- (5) Notwithstanding anything in subsection (2) of this Section, where any registered person makes a taxable supply (not being a supply to which subsection (2) of Section 15 of this Decree applies) of goods and services to an agent, being a registered person, who is acting for or on behalf of another person who is the principal for the purposes of that supply, and -
 - (a) that principal is not resident in Fiji and is not a registered person; and

- (b) that supply is directly in connection with either the exportation, or the arranging thereof, of goods from Fiji to any country or place outside Fiji, or the importation, or the arranging thereof, of goods to Fiji from any country or place outside Fiji, including, in either case, the transportation of those goods within Fiji as part of that exportation or, as the case may be importation, -

this Decree shall, where that agent and that principal agree, have effect as if that supply were made to that agent and not to that principal.

Section 31 **Liability of new companies for tax payable by former companies with substantially the same shareholders or under the same control**

- (1) For the purpose of this Section,

“Company” means any company incorporated in or outside Fiji;

“New Company” means a company carrying on a taxable activity in Fiji and consisting substantially of the same shareholders as an original company or being under the control of the same persons as an original company;

“Nominee”, in relation to any person means any other person who may be required to exercise his voting power in relation to any company in accordance with the direction of that person, or who hold shares or debentures directly, or indirectly on behalf of that person; and includes any relative of that person;

[Inserted by Decree 28/92, s19(a)]

“Original company” means a company which having at any time carried on a taxable activity in Fiji, after the commencement of this Decree, has ceased to carry on a taxable activity in Fiji, and includes any such company that has been wound up.

[Inserted by Decree 28/92, s19(b)]

“Person” includes a company and a local or public authority.

- (2) Where an original company has been wound up, its shareholders and directors, as on the commencement of its winding up, shall respectively be deemed to be the shareholders and the persons having the control of the company for the purpose of this section.
- (3) Where an original company was, when it ceased to carry on a taxable activity in Fiji, liable under this Decree for any tax or was liable to be assessed for any such tax, and that tax has not been paid, the new company shall, for the purpose of this Decree, be deemed to be the agent of the original company and shall be liable for all tax payable by the original company.
- (4) (a) For the purpose of this Section a company shall be deemed to be under the control of the persons -
- (i) by whom more than fifty percent of the shares, or more than fifty percent of the nominal capital, or more than fifty percent of the paid up capital, or more than fifty percent of the voting power is held; or
 - (ii) who have by any other means whatsoever control of the company; or
 - (iii) who, by reason of the shareholding at the end of any income year, would be entitled to more than fifty percent of the profits for that year if those profits were distributed by way of dividend at the end of that year.

- (b) Where a nominee of any person holds any shares, nominal capital, paid-up capital, or voting power in a company, or has by any other means whatsoever any power of control in a company, or is entitled to a share of profits distributed by a company, then for the purposes of this Section those shares or that capital or that voting power or that power of control or that title profits, as the case may be, shall be deemed to be held by that person, and in every such case that person and his nominee or that person and all his nominees shall be deemed to be one person.
- (c) For the purpose of this Section two companies shall be deemed to consist substantially of the same shareholders if not less than fifty percent of the paid-up capital of each of them is held by shareholders in the other or if not less than fifty percent in nominal value of the allotted shares in each of them is held by shareholders in the other. Shares in one company held by another company shall for this purpose be deemed to be held by the shareholders in the last-mentioned company.
[Inserted by Decree 28/92, s19(c)]

PART VII - RETURNS AND PAYMENT OF TAX

Section 32 **Taxable periods**

- (1) Each registered person shall be placed by the Commissioner in one of the following categories for the purposes of determining that person's taxable periods for the purposes of this Decree:
- (a) Category A, with taxable periods of one month ending on the last day of each month in each year.
- (b) Category B, with taxable periods of three months ending on the last day of any month in any year, as may be determined by the Commissioner;
[Amended by Act 1/93, s6(a)]
- (c) Category C, with taxable period of twelve months ending on the last day of any month in any year, for produce suppliers primarily engaged in the supply of sugarcane as may be determined by the Commissioner.
[Inserted by Act 1/93, s6(b)]
- (2) Every registered person who is not placed in Category B pursuant to subsection (3) of this Section, shall be placed by the Commissioner in Category A.
[Amended by Act 1/93, s6(c)]
- (3) The Commissioner may, on written application by a registered person, place that person in Category B or C if the total value of that person's taxable supplies -
- (a) has not, in the twelve months ending with the last day of any month, exceeded one hundred thousand dollars or such other amount as the Minister may from time to time, by Legal Notice declare; or
- (b) is not likely to exceed that amount in the period of twelve months beginning on the first day of any month.
[Amended by Act 1/93, s6(d)]

- (4) For the purposes of subsection (3) of this Section, the total value of a registered person's taxable supplies shall be deemed not to have exceeded any amount specified in or under that subsection where that total value exceeds any such amount solely as a consequence of-
- (a) any cessation of, or any substantial and permanent reduction in the size or scale of, any taxable activity carried on by that registered person; or
 - (b) the replacement of any plant or other capital asset used in any taxable activity carried on by that registered person.
- (5) The Commissioner may from time to time direct that a registered person change from category A to category B or C or, as the case may be, category B or C to category A -
[Amended by Act 1/93, s6(e)]
- (a) on written application by the registered person; or
 - (b) following the notification by the registered person under paragraph (c) of Section 24 of this Decree of a change in status; or
 - (c) where the Commissioner is otherwise satisfied that the registered person has ceased to satisfy the conditions of subsection (3) of this Section:
[Amended by Decree 28/92, s20]
- Provided that a registered person may only make a written application to the Commissioner to change the category that determines the registered person's taxable periods after the expiry of twelve months from the date on which the last written application was made.
- (6) Where the Commissioner directs that a registered person change from one category to the other, the person shall be deemed to have been placed in the new category with effect from the day following the end of the taxable period during which the direction was made by the Commissioner.
- (7) Notwithstanding anything in this Section, the Commissioner may, upon written application by a registered person, determine a day in substitution for the last day referred to in paragraphs (a), (b) and (c) of subsection (1) of this Section, not being a day more than seven days earlier or seven days later than that last day, but any such determination shall be disregarded for the purposes of subsection (1) of Section 33 of this Decree.

Section 33

Returns

- (1) Every registered person shall, on or before the last day of the month following the last day of every taxable period, without notice or demand furnish to the Commissioner a tax return, in such prescribed form as may be approved by the Commissioner.
- (2) Any registered person who ceases to be registered shall, not later than one month after so ceasing, furnish to the Commissioner a final tax return, in such form as may be approved by the Commissioner, in respect of that part of the last taxable period during which that registered person was registered.

Section 34 **Special Returns**

Where goods are deemed to be supplied by a person pursuant to subsection (3) of Section 3 of this Decree, the person selling the goods, whether or not that person is a registered person, shall, on or before the last day of the month following the month within which the sale was made, -

- (a) furnish to the Commissioner in the prescribed form a return showing -
 - (i) that person's name and address and, if registered taxpayer identification number;
 - (ii) the name, address, and taxpayer identification number of the person whose goods were sold;
 - (iii) the date of the sale;
 - (iv) the description and quantity of the goods sold;
 - (v) the amount for which they were sold and the amount of tax charged on that supply; and
 - (vi) such other particulars as may be prescribed;
- (b) pay to the Commissioner the amount of tax charged on that supply; and
- (c) send to the person whose goods were sold a copy of the return referred to in paragraph (a) of this Section, -

and the person selling the goods and the person whose goods were sold shall exclude from any return, other than a return required pursuant to this Section, which either or both may be required to furnish under this Decree, the tax charged on that supply of goods.

Section 35 **Other returns**

In addition to the returns specified in Sections 33 and 34 of this Decree, the Commissioner may require any person, whether a registered person or not, to furnish (whether on that person's own behalf or as an agent or trustee) to the Commissioner such further or other returns in the prescribed form as and when the Commissioner requires for the purpose of this Decree.

Section 36 **Accounting basis**

- (1) Subject to this Section, every registered person shall account for tax payable on an invoice basis for the purposes of Section 39 of this Decree.
- (2) The Commissioner may, on application in writing by a registered person, direct that the registered person account for the tax payable on a payments basis for the purposes of Section 39 of this Decree if -
 - (a) that registered person is a public authority, local authority or a non-profit body; or

- (b) in respect of that registered person -
 - (i) at the end of any month, the total value of the person's taxable supplies in the period of twelve months then ending has not exceeded one hundred thousand dollars or such other amount as the Minister may from time to time, by Legal Notice declare; or
 - (ii) in the twelve months beginning on the first day of any month, the total value of that person's taxable supplies is not likely to exceed the amount specified in subparagraph (i) of this paragraph.
- (3) Where the Commissioner has, pursuant to subsection (2) of this Section, directed that a registered person account for tax payable on a payments basis, and -
 - (a) that registered person has ceased to satisfy the conditions of subsection (2) of this Section under which any such direction may be given, and -
 - (i) that registered person has notified the Commissioner under paragraph (d) of Section 24 of this Decree of a change in status; or
 - (ii) the Commissioner is otherwise satisfied that the registered person has ceased to satisfy the conditions of subsection (2) of this Section; or
 - (b) that registered person has made an application in writing to the Commissioner to account for tax payable on an invoice basis -

the Commissioner shall direct that that registered person account for the tax payable on an invoice basis.
- (4) Where the Commissioner gives a direction in respect of a registered person's accounting basis under subsection (2) or subsection (3) of this Section, the registered person shall account for the tax payable on the accounting basis directed by the Commissioner with effect from -
 - (a) the commencement of the taxable period immediately following the taxable period during which the direction is given by the Commissioner, in any case to which paragraph (b) of this subsection does not apply; or
 - (b) the person's registration under this Decree, where the direction is given by the Commissioner before the end of the first taxable period of the person that follows that registration.
- (5) For the purposes of subsection (3) of this Section, the total value of a registered person's taxable supplies shall be deemed not to have exceeded any amount specified in or under subsection (2) of this Section where the total value exceeds any such amount solely as a consequence of -
 - (a) any cessation of, or any substantial and permanent reduction in the size or scale of, any taxable activity carried on by that registered person; or
 - (b) the replacement of any plant or other capital asset used in any taxable activity carried on by that registered person.

Section 37

Particulars to be furnished and prepare where change in accounting basis

- (1) Where the Commissioner directs a change in a registered person's accounting basis under Section 36 of this Decree, the registered person shall furnish to the Commissioner particulars in the prescribed form calculating the tax payable in respect of the change in the basis of accounting.
- (2) The particulars required to be furnished under subsection (1) of this Section shall be furnished to the Commissioner not later than the last day for furnishing a return pursuant to subsection (1) of Section 33 of the Decree for the taxable period preceding that in which the direction of the Commissioner takes effect.
- (3) Where the Commissioner directs a change in a registered person's accounting basis under Section 36 of this Decree, the registered person shall prepare -
 - (a) A list of creditors of the registered person in relation to that person's taxable activity, showing the amounts due by that person as at the last day of the taxable period preceding that in which the direction takes effect; and
 - (b) A list of debtors of the registered person in relation to that person's taxable activity, showing the amount due to that person as at the last day of the taxable activity in which the direction takes effect.

Section 38

Tax payable, or refund, where change in accounting basis

- (1) Every registered person whose accounting basis is changed pursuant to Section 36 shall, not later than the last day allowed under subsection (2) of Section 37 of this Decree for furnishing particulars in respect of the change, pay to the Commissioner the tax payable (if any) as determined pursuant to this Section.
- (2) Where a registered person changes from an invoice basis to a payments basis of accounting, the tax payable under the subsection (1) if this section shall be an amount determined in accordance with the following formula:

$$(a - b) - (c - d)$$

where -

- a is an amount equal to the aggregate amount of the input tax deducted pursuant to Section 39 of this Decree in relation to any taxable period up to and including the taxable period preceding that in which the direction changing the person's accounting basis takes effect; and
- b is an amount equal to the aggregate amount of input tax that would have been deducted pursuant to Section 39 of this Decree if the person had, for those taxable periods been accounting for tax payable on a payments basis; and
- c is an amount equal to the aggregate amount of the output tax accounted for pursuant to Section 39 of this Decree in those taxable periods; and
- d is an amount equal to the aggregate amount of output tax that would have been accounted for pursuant to Section 39 of this Decree if the person had, for those taxable periods, been accounting for tax payable on a payments basis.

- (3) Where a registered person changes from a payments basis to an invoice basis of accounting, the tax payable under subsection (1) of this Section shall be an amount determined in accordance with the following formula:

$$(a - b) - (c - d)$$

where

- a is an amount equal to the aggregate amount of output tax that would have been accounted for pursuant to Section 39 of this Decree if the person had, in relation to any taxable period up to and including the taxable period preceding that in which the direction changing the person's accounting basis takes effect, been accounting for tax payable on an invoice basis; and
- b is an amount equal to the aggregate amount of the output tax accounted for pursuant to Section 39 in those taxable periods; and
- c is an amount equal to the aggregate amount of input tax that would have been deducted pursuant to Section 39 of this Decree if the person had, for those taxable periods been accounting for tax payable on an invoice basis; and
- d is an amount equal to the aggregate amount of the input tax accounted for pursuant to Section 39 of this Decree in those taxable periods.
- (4) Subject to this Decree, if, in relation to any particulars required to be furnished by Section 37 of this Decree, the amount determined in accordance with subsection (2) or (3) of this Section is a negative amount, the amount of the negative amount shall be refunded to the registered person by the Commissioner pursuant to Section 65 of this Decree.
- (5) For the purposes of this Decree, any previous adjustment made to input tax or output tax, as the case may be, when a registered person changed -
- (a) from an invoice basis to a payments basis; or
- (b) from a payments basis to an invoice basis -
- shall be deemed to have been deducted, or accounted for, as the case may be, pursuant to Section 39 of this Decree.

Section 39 **Calculation of tax payable**

- (1) In respect of each taxable period every registered person shall calculate the amount of tax payable by that registered person in accordance with the provisions of this Section.
- (2) Subject to this Section, in calculating the amount of tax payable in respect of each taxable period, there shall be deducted from the amount of output tax of a registered person attributable to the taxable period -
- (a) where all the supplies made or to be made by the registered person are or will be taxable supplies, the total amount of the input tax;

History

S 39 of the Decree is amended in paragraph “(b)” of subsection “(2)” by inserting in the proviso the words “or require” immediately after the word “allow”. [Amendment No 16 of 1995].

- (b) where some, but not all, the supplies made or to be made by the registered person are or will be taxable supplies-
- (i) all the input tax for the taxable period that is in respect of goods and services supplied to or imported by that registered person wholly for the purposes of making, whether or not during that taxable period, taxable supplies;
 - (ii) none of the input tax for the taxable period that is in respect of goods and services supplied to or imported by that registered person wholly for the purposes of making, whether or not during that taxable period, supplies which are not taxable supplies;
 - (iii) such proportion of the input tax for the taxable period that is not in respect of supplies referred to in subparagraphs (i) and (ii) of this paragraph as the value of the registered person’s taxable supplies during that taxable period or, such longer period that the Commissioner considers equitable, represents as a proportion of the registered person’s total supplies during that taxable period or, such longer period as allowed by the Commissioner;

Provided that the Commissioner may at his discretion, allow or require a registered person, to adopt any other suitable basis to determine the proportion of input tax to be deducted.

[Added by Decree 28/92, s21(a)]

History

S 39 (2)(c) repealed. Sub-section (d) renumbered to read (c) and (e) to (d).

[Amendment No 1 of 1992. Decree No 28, effective 1 July 1992.

Previously read -

“(c) where no taxable supplies were made during the taxable period, such proportion, if any, of the input tax for that taxable period as the Commissioner considers to be fair and reasonable.”

- (c) where a credit note or, as the case may be, a debit note has been issued in that taxable period pursuant to subsection (2) of Section 42 of this Decree and that registered person is, -
- (i) the supplier, in relation to a credit note, the amount of the tax credit:
 - (ii) the recipient, in relation to a debit note, the amount of the tax debit:

Provided that this subparagraph shall only apply to the extent that the recipient was entitled to an input tax deduction in respect of the original supply to which the debit note refers;

- (d) any amount calculated in accordance with Section 43 of this Decree.
[Amended by Decree 28/92, s21 (b), (c)]

- (3) For the purposes of subsection (2) of this Section, the amount of output tax in relation to a supply made by a registered person attributable to a taxable period is, -
- (a) the total of tax charged on all taxable supplies made or deemed to be made during that taxable period; and

- (b) where a credit note or, as the case may be, a debit note has been issued in that period pursuant to subsection (2) of Section 42 of this Decree and that registered person is, -
 - (i) the supplier, in relation to a debit note, the amount of the tax debit:
 - (ii) the recipient, in relation to a credit note, the amount of the tax credit:

Provided that this subparagraph shall only apply to the extent that the recipient has claimed an input tax deduction in respect of the original supply to which that credit note relates.

- (4) Notwithstanding anything in subsections (2) and (3) of this Section, where a registered person is required to account for tax payable on a payments basis pursuant to Section 36 of this Decree the amount of input tax or, as the case may be, output tax attributable to the taxable period shall be, -

[Amended by Decree 28/92, s21(d),(e)]

- (a) in respect of a supply of goods and services which is deemed to take place pursuant to subsection (1) of Section 18 or paragraphs (c), (d), (e) or (f) of subsection (2) of Section 18 of this Decree;
- (b) in respect of a credit note or a debit note to which paragraph (d) of subsection (2) or, as the case may be, paragraph (b) of subsection (3) of this Section applies,-

the amount of any payment made or, as the case may be, received in respect of that supply or, as the case may be, in respect of that credit or debit note during that taxable period:

Provided that this subsection shall not apply in respect of any supply of goods and services -

- (c) in terms of a hire purchase agreement (being a conditional sale agreement whereby the property in the goods will pass to the bailee);
- (d) in terms of a financial lease (being an agreement to lease whereby the lessee is expressly required or has the option to purchase the goods subject to the lease at a guaranteed residual value or nil); or
- (e) between persons who are not independent of each other.

History

S 39 sub-section (5) amended to read “notwithstanding anything in this Decree”. Previously read “no deduction”.
[Amendment No 1 of 1992. Decree No 28, effective 1 July 1992]

- (5) Notwithstanding anything in this Decree, no deduction of input tax shall be made in respect of a supply, unless -

- (a) a tax invoice or credit note or debit note, in relation to that supply, has been issued in accordance with Sections 41 and 42 of this Decree and is held and retained in accordance with Section 79 of this Decree by the registered person making that deduction at the time that any return in respect of that supply is furnished; or
- (b) a tax invoice is not required to be issued pursuant to any regulation made under this Decree.

[Amended by Decree 28/92, s21(f)]

- (6) Where a registered person is entitled, pursuant to the provisions of this Section, to deduct input tax in respect of any taxable period from the amount of output tax attributable to that taxable period, the registered person may deduct that amount from the amount attributable to any later taxable period to the extent that it has not previously been deducted from the output tax of that registered person.
- (7) For the purposes of paragraph (b) of subsection (2) of this Section, where, in relation to a taxable period, the value of supplies made by a registered person that are not taxable supplies is not more than -
 - (a) five percent of the value of all supplies made by that person during that taxable period; or
 - (b) the amount of four thousand dollarswhichever is the lesser, any input tax, other than input tax to which subparagraph (ii) of paragraph (b) of subsection (2) of this Section applies, shall be deemed to have been incurred wholly for the purposes of making taxable supplies.
- (8) If, in relation to any taxable period and any registered person, the total amount that may be deducted under subsection (2) of this Section and Section 86 of this Decree exceeds that aggregate amount of output tax of that registered person attributable to that taxable period, the amount of excess may, subject to this Decree, be refunded to that registered person by the Commissioner pursuant to Section 65 of this Decree.

Section 40 **Payment of tax**

- (1) Every registered person, for each taxable period, shall, not later than the last day allowed under this Decree for furnishing a return for that taxable period, pay to the Commissioner the tax payable for that period as calculated pursuant to Section 39 of this Decree.
- (2) Notwithstanding subsection (1) of this Section, where a later due date has been fixed pursuant to Section 44 of this Decree, the tax payable shall be paid to the Commissioner on or before that later due date.
- (3) Subject to Part VIII and Part IX of this Decree, the amount set forth as tax payable on any tax return furnished by a registered person shall be conclusively deemed and taken to be correct for the purposes of this Decree.
- (4) A return purporting to be made by or on behalf of any person shall for all purposes be deemed to have been made by that person or by that person's authority, as the case may be, unless the contrary is proved.

Section 41 **Tax invoices**

Except as otherwise provided by regulation, a supplier, being a registered person, making a taxable supply to a recipient, shall issue a tax invoice containing such particulars as specified by regulation at the time that the supply takes place:

Provided that -

- (a) it shall not be lawful to issue more than one tax invoice for each taxable supply;
- (b) if a registered person claims to have lost the original tax invoice, the supplier or the recipient, as the case may be, may provide a copy clearly marked “copy only”.

Section 42 **Credit and debit notes**

- (1) This Section shall apply where a registered person has issued a tax invoice in respect of a taxable supply and -
 - (a) that supply has been cancelled; or
 - (b) the previously agreed consideration for the supply has been altered whether due to an offer of discount (not being a discount for prompt payment which is clearly stated on the face of the tax invoice) or otherwise; or
 - (c) the goods and services or part of the goods and services supplied have been returned to the supplier.
- (2) Where this Section applies, the supplier shall issue to the recipient a credit note or, as the case may be, a debit note containing such particulars as specified by regulation, to adjust the amount shown on the tax invoice as being in respect of tax to the amount, if any, that would have been so shown if -
 - (a) the cancellation or alteration referred to in paragraphs (a) or (b) of subsection (1) had taken place before the tax invoice was issued;
 - (b) the goods and services returned had not been supplied:
Provided that -

History

S 42 sub-section (2)(c) amended by rewording.

Previously read -

- “(2)(c) it shall not be lawful to issue more than one credit note or debit note to adjust the amount shown on the tax invoice”. [Amendment No 1 of 1992. Decree No 28, effective 1 July 1992]
- (c) it shall not be lawful to issue more than one credit note or debit note for the amount of the difference;
[Amended by Decree 28/92, s22]
- (d) if any registered person claims to have lost the original credit note or debit note, the supplier or the recipient, as the case may be, may provide a copy clearly marked “copy only”.

Section 43

Bad debts

(1) Where -

- (a) a registered person has made a taxable supply for consideration in money; and
- (b) that registered person has furnished a return in relation to the taxable period during which the supply was made and has properly accounted for tax on that supply as required under this Decree; and
- (c) the registered person has written off as a bad debt the whole or part of the consideration not paid to him; and
- (d) the registered person has taken all reasonable steps to recover the bad debt; and
- (e) the registered person satisfies the Commissioner that there is no reasonable or probable expectation that the bad debt will ever be recovered, -

then the Commissioner may allow the registered person to make a deduction under subsection (2) of Section 39 of this Decree of that portion of the amount of tax chargeable in relation to that supply as the amount written off as a bad debt bears to the total consideration for the supply:

Provided that where goods and services are supplied under -

- (i) a hire purchase agreement (being a conditional sale agreement whereby the property in the goods will pass to the bailee); or
- (ii) a financial lease (being an agreement to lease whereby the lessee is expressly required or has the option to purchase the goods subject to the lease at a guaranteed residual value or nil),

the registered person shall only make a deduction under this Decree of the tax fraction of that portion of the amount written off as a bad debt as the cash price bears to the total amount payable under the hire purchase agreement or, as the case may be, the financial lease.

(2) Where any amount in respect of which a deduction has been made in accordance with subsection (1) of this Section is at any time wholly or partly recovered by the registered person, that portion of the amount of the deduction allowable under subsection (1) of this Section as the amount of the bad debt recovered bears to the bad debt written off shall be deemed to be the tax charged in relation to a taxable supply made during the taxable period in which the bad debt is wholly or partly recovered.

PART VIII - ASSESSMENT OF TAX

Section 44 **Assessment of tax**

- (1) Where -
- (a) a registered person liable to pay tax fails to furnish any return; or
 - (b) a registered person is not satisfied with any return furnished by him in respect of any tax paid and within twelve months of furnishing the return, request the Commissioner in writing to make any alteration or addition to that return, or
 - (c) the Commissioner is not satisfied with the return made by any registered person; or
 - (d) the Commissioner has reason to believe that any person, although that person is not required to make a return, is liable to pay tax; or
 - (e) any person, not being a registered person, supplies goods and services and represents that tax is chargeable on that supply, -

the Commissioner shall make an assessment of the amount which, in his opinion, is the tax payable pursuant to this Decree and that registered person shall be liable to pay the tax so assessed.

- (2) Subject to Section 48 of this Decree, the Commissioner may from time to time and at any time make all such alterations in or addition to an assessment made under this Section as he thinks necessary to ensure the correctness thereof, notwithstanding that tax or further tax may have been paid.
- (3) The Commissioner shall cause notice of the assessment or amended assessment to be sent to the registered person liable to pay the tax or further tax.
- (4) In any case where an assessment is not made until after the due date of the tax payable or is increased after the due date, and the Commissioner is satisfied that the registered person has not been guilty of wilful neglect or default in making due and complete returns for the purposes of that tax, the Commissioner shall fix a new date, being one month after the date of the assessment, for the payment of the tax payable or of the increase in the tax payable, as the case may be, and the date so fixed shall be deemed to be the due date of the tax or increase for the purposes of this Decree.
[Amended by Decree 28/92, s23]
- (5) The omission to send any such notice under subsection (3) of this Section shall not invalidate the assessment or in any manner affect the operation thereof.

History

S 44(6) inserted by section 3, Act No. 3 of 2004, effective 1 January 2004.

- (6) For the purposes of sections 44, 45, 46 or any other section relating to assessment of tax, the Commissioner may, in the assessment of one taxable period, raise or include assessment of any other taxable period.

Section 45 **Validity of the assessment**

The validity of an assessment shall not be affected by reason that any of the provisions of this Decree have not been complied with.

Section 46 **Assessment deemed correct except in proceedings on objection**

Except in proceedings on objection to an assessment under Section 50 of this Decree, no assessment made by the Commissioner shall be disputed in any Court or in any proceedings, either on grounds that the person so assessed is not a registered person or any other ground; and except as aforesaid, every such assessment and all the particulars thereof shall be conclusively deemed and taken to be correct and the liability of the person so assessed shall be determined accordingly.

Section 47 **Evidence of returns and assessment**

The production of any document by the Commissioner purporting to be a copy of or an extract from any return or assessment shall in all Courts and the Tribunal and all proceedings be sufficient evidence of the original and the production of the original shall not be necessary and all Courts and the Tribunal shall in all proceedings take judicial notice of the signature of the Commissioner either to the original or to any such copy or extract.

[Amended by Decree 28/92, s24]

Section 48 **Limitation of time for issue of an assessment or amendment of assessment**

History

S 48 amended by deleting the word “made” in the first line and replacing with the word “furnished”. [Amendment No 1 of 1992. Decree No 28, effective 1 July 1992]

- (1) Where any registered person has furnished a return in respect of any taxable period or has been assessed for tax or further tax in respect of that period, it shall not be lawful for the Commissioner to issue an assessment or reopen an assessment after the expiration of six years from the end of the taxable period in respect of which the return was furnished or when the assessment was made.
[Amended by Decree 28/92, s25(a), (b)]
- (2) Notwithstanding anything in subsection (1) of this Section where any registered person has failed to make a return as required by this Decree or in the opinion of the Commissioner has knowingly and fraudulently failed to make a full and true disclosure to the Commissioner of any material facts necessary to determine the true amount of tax payable, the Commissioner may at any time:
 - (a) where an assessment has not been issued, make an assessment; or
 - (b) where an assessment has been issued, amend the assessment so as to amend or alter the assessment thereof.

PART IX - OBJECTION AND APPEALS

Section 49 **Objection to determination to treat non-profit body**

- (1) Where the Commissioner has in his opinion, pursuant to paragraph (c) of subsection (3) of Section 4 of this Decree, determined that any person (being a non-profit body) is carrying on a taxable activity or, as the case may be, is not carrying on a taxable activity, and that person is dissatisfied with that determination, that person may object to that determination as if that determination were an assessment.
- (2) The Commissioner shall give notice of any determination pursuant to paragraph (c) of subsection (3) of Section 4 of this Decree to the person affected thereby.
- (3) For the purposes of this Section, Section 50 and Sections 55 to 59 of this Decree shall, in relation to any objection under this Section, apply with any necessary modifications in the same manner and to the same extent that they would apply if the said objection were an objection made under Section 50 of this Decree.

Section 50 **Objection to assessment**

History

S 50 sub-sections (2) (3) (5) (6) repealed.[Amendment No 1 of 1992. Decree No 28, effective 1 July 1992]

- (1) Any registered person dissatisfied with an assessment may, personally or by his agent, within twenty eight days of the date upon which the notice of assessment has been served upon him or his agent or, where such notice has been posted, the date of posting, lodge with the Commissioner an objection in writing to the assessment in the form set out in Form 2 in the Third Schedule to this Decree stating fully and in detail the grounds on which he objects:

Provided that, where the assessment is an amended assessment, the person so assessed shall have no further right of objection except to the extent to which, by reason of the amendment, a fresh liability in respect of any particular is imposed on him or an existing liability in respect of any particular is increased.

- (2) No notice of objection given after the time specified in the notice of assessment shall be of any force or effect unless the Commissioner, in the Commissioner's discretion, accepts the same and gives notice to the objector accordingly.
[Repealed and substituted by Decree 28/92, s26(a)]

Previously read -

“(2) The Commissioner may, in his discretion, extend the time for giving notice of objection under subsection (1) of this Section.”

- (3) On receipt of the notice of objection referred to in subsection (1) of this Section, the Commissioner may require any person to furnish such particulars as the Commissioner may deem necessary in accordance with Sections 11 and 12 of this Decree.
[Repealed and substituted by Decree 28/92, s26(b)]

Previously read -

- “(3) On receipt of the notice of objection referred to in subsection (1) of this Section, the Commissioner may require the registered person so assessed to furnish such particulars as the Commissioner may deem necessary with respect to the supplies made and received by that person and to produce all books or other documents in that person’s custody or under that person’s control relating to such supplies, and may summon any person who, the Commissioner thinks, is able to give evidence respecting the assessment to attend before him and may examine such person (except the clerk, agent, servant or other person confidentially employed in the affairs of that person) on oath or otherwise.”
- (4) The Commissioner shall consider the objection and shall either allow or disallow it wholly or in part.

Provided that the Commissioner shall not be required to consider any objection unless and until the objector has complied with all requirements under this Decree for the furnishing of returns and the payment of tax.

- (5) If an objection is not wholly allowed by the Commissioner, the objector may, within two months after the date on which notice of disallowance is given to the objector by or on behalf of the Commissioner, by notice in writing to the Commissioner require that the objection be heard and determined by the Tribunal.
[Repealed and substituted by Decree 28/92, s26(c)]

Previously read -

- “(5) The Commissioner shall give written notice of his allowance or disallowance of the objection to the registered person objecting and shall state in such notice the time, not being less than twenty eight days, within which such person may exercise the right of appeal given to him in subsection (7) of this Section. Any notice required to be given under this subsection shall be sent by the registered post and the period within which an appeal may be lodged shall commence upon the date of posting of the notice.”
- (6) Any person objecting to the decision of the Commissioner under subsection (4) of this Section may, within the time determined under subsection (5) of this Section, appeal to the Tribunal and such appeal shall be heard and determined as hereinafter provided. Save with the leave of the Tribunal, no person may appeal to the Tribunal upon any ground other than a ground stated in the objection to the Commissioner.

Previously read -

- “(6) Where, before the expiration of the time specified in a notice given under subsection (5) of this Section, the registered person to whom the notice is given makes application in writing to the Commissioner for an extension of that time, the Commissioner may, in his discretion, extend that time for such period as he thinks fit and shall, as soon as practicable, give notice in writing to the applicant of his decision, and, where the time is so extended, a reference in this Decree to the time specified in a notice given under subsection (5) of this Section shall be deemed to include a reference to that time as so extended.”
- (7) The obligation to pay and the right to receive and recover any tax chargeable under this Decree (including any interest, costs and penalties) shall not, unless the Commissioner so directs, be suspended by any objection or appeal or pending the decision of the Tribunal under Section 55 of this Decree but, if any assessment is altered on objection or appeal or in conformity with any such decision, a due adjustment shall be made, amounts paid in excess being refunded subject to Section 65 of this Decree and amounts shortpaid being recoverable.
[Amended by Decree 28/92, s26(f)]
- (8) Where no objection is made within the time for objecting set out in subsection (1) of this Section or where that time is extended by the Commissioner, within the time so extended, the assessment shall stand and shall be valid and binding upon the registered person, notwithstanding any defect, error or omission that may have been made therein or in any proceeding required by this Decree or any regulation thereunder.

Section 51 **Establishment of Value Added Tax Tribunal**

History

S 51 sub-sections (2) and (5) amended by deleting the figure “1990” and the words “of the Republic of Fiji” in sub-section (2) and figure “1990” and the words “of the Republic” in sub-section (5)

S 51 is amended in subsection (2) by deleting the words “Judicial and Legal Services Commission established under Section 123” and substituting “Judicial Service Commission established by section 131” by Act No. 27 of 2005, effective from 1 January, 2006

S 51 is amended in subsection (3) by deleting the words “a person of legal knowledge and experience” and substituting “a legal practitioner who has substantial experience in taxation law and who is qualified for appointment as a Judge of the High Court” by Act No. 27 of 2005, effective from 1 January, 2006

S 51 is amended in subsection (4) by deleting the words “Sections 111 and 112” and substituting “Sections 119 and 120” by Act No. 27 of 2005, effective from 1 January, 2006

S 51 is amended in subsection (5) by deleting the words “Section 124” and substituting “Section 194(2), (3), (4) and (5)” and by deleting “as if the office of the Tribunal is specified in Schedule 2 of the Constitution” by Act No. 27 of 2005, effective from 1 January, 2006

- (1) There shall be established a Tribunal to be called the Value Added Tax Tribunal.
- (2) The Tribunal shall be appointed by the Judicial Service Commission established by section 131 of the Constitution and shall hear and determine appeals made under Section 50 of this Decree.
[Amended by Decree 28/92, s27]
- (3) The Tribunal shall be a legal practitioner who has substantial experience in taxation law and who is qualified for appointment as a Judge of the High Court for the purpose of hearing and determining appeals made under this Decree.
- (4) The Tribunal shall have powers and authority similar to those vested in the judge of the High Court under Sections 119 and 120 of the Constitution as if the appeal under this Decree were an action between the registered person and the Commissioner.
- (5) Section 194(2), (3), (4) and (5) of the Constitution shall apply to the Tribunal
[Amended by Decree 28/92, s27]

Previously read -

“(5) S 124 of the 1990 Constitution of the Republic of Fiji shall apply to the Tribunal as if the office of the Tribunal is specified in Schedule 2 of the Constitution.”

Section 52 **Registrar of the Tribunal**

- (1) There shall be a Registrar of the Tribunal who shall be primarily responsible to ensure that sittings and other administrative duties necessary for the efficient and effective work of the Tribunal is maintained.
- (2) The Registrar shall be appointed by the Commissioner in consultation with the Chief Justice.

Section 53 **Rules of Tribunal**

The Chief Justice shall have the power, to make rules of the Tribunal generally for regulating any matters relating to the practice and procedure of the said Tribunal and the fees to be charged and the costs of proceedings therein. Such rules shall be regarded as forming part of this Section.

Section 54

Tribunal sittings

The Tribunal shall fix the date and place of hearing of appeals and shall notify the parties accordingly:

Provided that the hearing of the appeal by the Tribunal shall not commence until after the expiration of not less than twenty-eight days from such notification as aforesaid.

Section 55 **Tribunal to decide and notify appellant and Commissioner**

- (1) The Tribunal, after hearing any evidence adduced and upon such other inquiry as it considers advisable, shall determine the matter and confirm or amend the assessment accordingly.
- (2) The Tribunal shall have power to increase the assessment in any case before it.
- (3) The Tribunal shall send a copy of its decision by registered mail to the Commissioner and to the appellant or its agent or officer.

Section 56 **Proceeding ex-parte**

If the appellant fails to appear either in person or by agent, the Tribunal may proceed ex-parte or may defer the hearing.

Section 57 **Costs**

In any case where the appeal is unsuccessful, the Tribunal may direct that the appellant shall pay the costs or part of the costs of such appeal, and, if such appeal is successful, the Tribunal may direct that the costs or any part thereof be paid by the State.

Section 58 **Appeal to High Court**

History

S 58 amended by replacing the word “notify” with the words “give notice to” and deleting the words “by registered letter”. [Amendment No 1 of 1992. Decree No 28, effective 1 July 1992]

If the appellant is dissatisfied with the decision of the Tribunal, he may, within twenty eight days after the date of such decision, give a written notice to the Commissioner in the form set out in Form 3 in the Third Schedule to this Decree that he desires to appeal from the decision.

If an appellant gives such notice or if the Commissioner is dissatisfied with the decision, the Commissioner shall refer the matter to the High Court for hearing and determination. Such reference may be made in the form set out in Form 4 in the Third Schedule to this Decree and the Commissioner shall give notice to the other party to the appeal that he has made such reference. On any such reference, the High Court shall hear and consider such matter upon the papers and evidence referred and upon any further evidence which the appellant or the Commissioner produces under the direction of the said Court.

[Amended by Decree 28/92, s28 (a), (b)]

Section 59 **No assessment to be set aside for technical reasons**

- (1) No assessment shall be set aside by a Court of law upon the ground that there has been an error or omission in connection with any proceedings required to be taken under this Decree or any regulation thereunder, but such Court, in any case that may come before it, may determine the true and proper amount of the tax to be paid under this Decree.
- (2) On the hearing and determination of all objections to assessments under this Decree, the onus of proof shall be on the registered person objecting to the assessment.

- (3) All proceedings of the courts (including the Tribunal) shall be held in camera if requested by the registered person.

PART X - RECOVERY OF TAX

Section 60 **Additional tax to be payable if default made in the furnishing of returns or payment of tax**

History

S 60 amended by deleting the heading, opening paragraph and sub-section (a). Previously read -

“(a) on the amount of any tax remaining unpaid at the expiry of the due date, additional tax of ten percent.”
[Amended Act No 16 of 1995, effective 1 January 1995]

Subject to this Section, additional tax shall be, and be deemed to be, added to any tax remaining unpaid, and shall be payable accordingly, as follows:

- (a) where any return for any taxable period is not furnished or any tax remains unpaid on the expiry of the due date then notwithstanding anything contained in any other section of this Decree, additional tax of ten percent of the tax payable in respect of that taxable period;
- (b) on the amount of so much, if any, of the tax, (being the tax referred to in paragraph (a) of this subsection and the additional tax added thereto in accordance with the provisions of paragraph (a) of this subsection) as remains unpaid at the expiry of the day on which there expires the period of one month immediately following the due date referred to in paragraph (a) of this subsection, additional tax of two and a half percent;
- (c) on the amount of so much, if any, of the tax (being the tax referred to in paragraph (a) of this subsection, the additional tax added thereto in accordance with the provisions of paragraphs (a) and (b) of this subsection, and the additional tax, if any, theretofore added thereto in accordance with the provisions of this paragraph) as remains unpaid at the expiry of any of the periods of one month that, consecutively, succeed the period of one month referred to in paragraph (b) of this subsection, additional tax of two and a half percent.

[Amended by Decree 28/92, s29]

Section 61 **Recovery of Tax**

- (1) Tax payable by any person shall be recoverable as a debt due to the State.
- (2) Where a registered person has not paid the amount of the tax payable or any part thereof in the manner required by Part VII of this Decree, the amount of tax for the time being unpaid to the Commissioner shall, in the application of the assets of the registered person, rank as follows:
- (a) where the person is an individual, upon his bankruptcy or upon his making an assignment for the benefit of his creditors, the amount of the tax payable shall rank without limitation on amount, in priority to all other claims:

- (b) where the person is a company, upon the liquidation of the company or upon the appointment of a receiver on behalf of the holder of any debentures given by the company secured by a charge over any property of the company or upon possession being taken on behalf of that debenture holder of that property, the amount of tax payable shall rank in priority over the claims of holders of debentures under any floating charge created by the company and be paid accordingly out of any property comprised in or subject to that charge:
- (c) where a person is a body as defined in Section 26 of this Decree, the amount of any tax payable shall rank ahead of any claims of holders of debentures under any floating charge created by the person and be paid accordingly out of any property comprised in or subject to that charge.
- (3) Trustees in bankruptcy, assignees, administrators, executors, liquidators and receivers appointed and other like persons before distributing any assets under their control shall obtain a certificate from the Commissioner certifying that their requirements relating to tax, interest and penalties properly chargeable against the person, property, business or estate, as the case may be, have been satisfied. Distribution without such certificate shall render such persons personally liable for the tax and interest and penalties.
- (4) For the purpose of this Section, a floating charge shall include a charge that conferred a floating security at the times of its creation but has since become a fixed or specific charge.
- (5) This Section shall apply notwithstanding anything in any other Act or Decree.

Section 62 **Unpaid Taxes To Constitute Charge On Registered Person’s Property**

- (1) Where a registered person fails wholly or in part to pay any tax payable in accordance with his obligations under this Decree, an amount equal to the total for the time being unpaid to the Commissioner in respect of that tax including any additional tax, penalties or penal tax and in respect of any judgment obtained thereof including any costs, fees or expenses included in the judgment or otherwise payable by the registered person to the Commissioner in respect thereof shall be a charge on all the real and personal property of the registered person.
- (2) Every charge created by this Section shall be subject to all mortgages, charges, or encumbrances existing at the time of the creation of the charge, but, subject to this Section, shall have priority over all other mortgages, charges, or encumbrances. Notwithstanding anything in any other Act or Decree, if any property subject to the charge created by this Section is also subject to a charge created by that other Act or Decree, the charges shall rank equally with each other unless by virtue of that Act or Decree the charge created thereby would be deferred to the charge created by this Section.

History

Amended by deleting the words “under the Registration Act” and the words “an instrument registrable under the Registration Act”. [Amendment No 1 of 1992. Decree No 28, effective 1 July 1992]

- (3) The Commissioner may register any charge or place a caveat on the property, created by this Section, to which the property is subject, by depositing with the Registrar of Titles a certificate under the hand of the Commissioner setting forth the description of the property charged and the amount payable; and in every such case the Registrar of Titles shall, without payment of any fee, register the certificate as if it were a registrable instrument under law.

[Amended by Decree 28/92, s30 (a), (b)]

History

Amended by deleting the words “under the Registration Act” and the words “and to the Registration Act”. [Amendment No 1 of 1992. Decree No 28, effective 1 July 1992]

- (4) Upon the registration of any such certificate, it shall be deemed to be actual notice to all persons of the existence and amount of the charge, and the charge shall have operation and priority accordingly in relation to the property that is subject to the charge under law:

Provided that in so far as any mortgage that is registered in respect of that property before the registration of the charge secures any money that is advanced after written notice of the charge, or of the registration of the charge, has been given to the mortgagee or to any solicitor for the time being acting for the mortgagee in respect of the mortgage, the charge shall have priority over the mortgage.

[Amended by Decree 28/92, s30(c), (d)]

History

By deleting the words “an instrument registrable under the Registration Act”. [Amendment No 1 of 1992. Decree No 28, effective 1 July 1992]

- (5) Where any registered charge has been satisfied, the Commissioner shall deposit with the Registrar of Titles a release of the charge, and the Registrar of Titles shall, without payment of any fee, register the release as if it were a registrable instrument under law.

[Amended by Decree 28/92, s30 (e)]

- (6) Any charge created by this Section which is registered against any property shall operate to secure any amount secured by any prior unregistered charge and unpaid at the time of the registration of the charge, to the extent that the registered charge shall operate to secure the total of all amounts for the time being owing by the registered person under all charges created by this Section.

History

Sub-section (7) amended by renumbering existing sub-sec (7) as 7(a) and adding new sub-sec (7)(b) as follows:

- (7) (a) If any amount constitutes by virtue of this Section a charge on any property, the High Court may make such order as it thinks fit, either for the sale of that property or any part thereof, or for the appointment of a receiver of the rents, profits or income thereof, and for the payment of the amount of the charge and the costs of the Commissioner out of the proceeds of the sale or out of the rents, profits, or income.
- (b) If any amount constitutes by virtue of this section a charge on any personal property, the Commissioner may sell or concur with any other person in selling the said property, or any part thereof, whether by public auction or private contract, to recover the amount so charged and the expenses of the sale, and no purchaser shall be bound to see or inquire into the propriety or regularity of any such sale.

[Amended Act No 16 of 1995, effective 1 January 1995]

- (8) Where any property has been sold under any such order, the High Court may, on the application of the purchaser make an order vesting the property in the purchaser.
- (9) Every such vesting order shall have 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 shall be subject to stamp duty accordingly.

Add new sub-section (10)

- (10) Any registered person who knowingly sells, leases, or otherwise disposes of any real or personal property which is subject to a charge registered under this section commits an offence against this section.

[Amended Act No 16 of 1995, effective 1 January 1995]

Section 63 **Deduction of tax from payment due to defaulters**

History

S 63 sub-sec(1) amended by adding the words “by deposit or” after the word “thereon” and the words “and whether or not the account into which the money is deposited is overdrawn” after the word “money”. [Amended Act No 16, effective 1 January 1995]

- (1) For the purposes of this Section -

“Amount payable”, in relation to a person and to any registered person means any amount that is payable by the person (whether on that person’s own account, or as an agent, or as a trustee, or otherwise howsoever) to the registered person and includes, where that person is a bank, money including any interest thereon by deposit or deposited to the credit of that registered person with that bank, whether on current account or so as to bear interest for a fixed term or without limitation of time, and whether or not the registered person has made any application to withdraw or uplift, that money and whether or not the account into which the money is deposited is overdrawn;

“Bank” means any bank that is a bank within the meaning of the Banking Act.

- (2) Where any registered person has made default in the payment to the Commissioner of any tax or any part thereof payable by the registered person, the Commissioner may from time to time by notice in writing require any person to -
 - (a) deduct or extract from any amount payable or any amount to become payable by that person to the registered person such sum as is specified in the notice; and
 - (b) pay to the Commissioner, within such time as is specified in the notice, every sum to be deducted or extracted, to the credit of an account maintained by the Commissioner in relation to that tax.
- (3) Any notice under this Section may be at any time revoked by the Commissioner by a subsequent notice to the person to whom the original notice was sent, and shall be so revoked at the request of the registered person at any time when the Commissioner is satisfied that all tax then payable by the registered person have been paid.
- (4) A copy of every notice sent under this Section in respect of any registered person and of the revocation of any such notice shall be sent to the registered person by the Commissioner.

- (5) Whenever, pursuant to a notice under this Section, any deduction or extraction is made from any amount payable to any registered person, the registered person shall be entitled to receive from the debtor a statement in writing of the fact of the deduction or extraction and of the purpose for which it was made.
- (6) Any person making any deduction, extraction, or payment pursuant to a notice under this Section shall be deemed to have been acting under the authority of the registered person to whom the notice relates and of all other persons concerned and is hereby indemnified in respect of such deduction, extraction, or payment.
- (7) The sum deducted or extracted from any amount pursuant to a notice under this Section shall be deemed to be held in trust for the State, and, without prejudice to any other remedies against the debtor or any other person, shall be recoverable in the same manner in all respects as if it were tax payable by the debtor.
- (8) Any person receiving such notice of deduction as aforesaid who is unable to comply therewith on account of the fact that the monies in question do not come into his possession within the period specified in such notice shall notify the Commissioner within fourteen days of the expiration of such period, acquainting him with the facts.
- (9) Where, in relation to any notice under this Section and during any period, that period being, -
 - (a) where a notice under subsection (2) of this Section requires any person, being a bank, to deduct or extract no more than one sum, the period that commences on the day on which the notice to the person is given and expires with the day on which the deduction or extraction is required to be made in compliance with the notice:
 - (b) where a notice under subsection (2) of this Section requires any person, being a bank, to deduct or extract more than one sum, by way of instalment, -
 - (i) in relation to the sum first required deducted or extracted in compliance with the notice, the period that commences on the day on which the notice to the person is given and expires with the day on which the deduction or to be extraction is so required to be made:
 - (ii) in relation to each succeeding sum required to be deducted or extracted in compliance with the notice, the period that commences on the day immediately following the day on which the previous deduction or extraction (being the deduction or extraction that, in relation to that succeeding sum, was the deduction or extraction last required to be made therefore) was required to be made in compliance with the notice and expires with the day on which that succeeding sum is so required to be deducted or extracted, -

any amount is, or becomes, an amount payable in relation to the registered person, that amount or, as the case may be, the aggregate of all such amounts shall, until the expiry of that period and to the extent of an amount that is equal to the amount of the sum that, in compliance with the notice, is required to be deducted or extracted, be deemed to be an amount held in trust for the State and, without prejudice to any other remedies against the debtor or any person, shall, if the deduction or extraction required to be made therefrom pursuant to the notice is not so made, be recoverable in the same manner in all respects as if it were tax taxable by the debtor.

Add new section 63A [Amended Act No 16, effective 1 January 1995]

Section 63A **Distrain for unpaid tax**

The Commissioner may levy distress on the goods, other than real property, and chattels of any registered person who refuses or fails to pay any tax payable by him or any other amount recoverable from him under this Decree and for the disposal of any such goods or chattels by sale or otherwise to recover the amount of the tax payable by the registered person and any other amount recoverable from him including the costs and expenses of the disposal.

Section 64 **Application of Section 77 of Income Tax Act relating to recovery procedures**

Section 77 of the Income Tax Act, as far as it is applicable and with any necessary modifications, shall apply for the purposes of this Decree, as if every reference in that provision to tax were a reference to tax under this Decree.

Added new section 64A. [Inserted by Act No 4 of 2005]

Application of the Income Tax Act

64A. Sections 77A and 96A of the Income Tax Act apply to this Decree.

PART XI - REFUNDS AND RELIEF FROM TAX

Section 65 **Refund of excess tax**

History

S 65 amended by deleting the words “payable for” and replacing with the words “calculated in accordance with this Decree in respect of” [Amendment No 1 of 1992. Decree No 28, effective 1 July 1992]

- (1) Subject to this Section, in any case where the Commissioner is satisfied that tax has been paid by a registered person in excess of the amount properly calculated in accordance with this Decree in respect of any taxable period, he shall refund the amount paid in excess:

Provided that no refund shall be made under this subsection after the expiration of the period of three years immediately after the end of the taxable period, unless written application for the refund is made by or on behalf of the registered person before the expiration of the period.

[Amended by Decree 28/92, s31 (a)]

- (2) Subject to this Section, where the Commissioner is required to refund any amount to any registered person pursuant to subsection (4) of Section 38 or subsection (8) of Section 39 of this Decree, the Commissioner shall refund to that registered person the amount required to be refunded pursuant to subsection (4) of Section 38 or subsection (8) of Section 39 of this Decree not later than -
- (a) the end of the month following the month in which the return of that registered person was received by the Commissioner; or
 - (b) the end of the month following the month in which the return was due to be furnished by that registered person pursuant to subsection (1) of Section 33 of this Decree,
- whichever is the later.

History

S 65 sub-sec (3) amended,
previously read –

- “(3) Notwithstanding the provision of subsection (2) of this Section, where the Commissioner is required to refund any amount to any registered person under Section 86 of this Decree, the Commissioner shall in respect of trading stock acquired on or after the first day of July, 1991 and held on the first day of July, 1992 cause the amount to be paid no later than six months from the date the return was received by the Commissioner and the provisions of Section 67 of this Decree shall not apply unless the Commissioner has failed to refund any amount within six months as provided under this subsection.

History

S 65 sub-section (3) amended.

Previously read - “the amount”.

[Amendment No 1 of 1992. Decree No 28, effective 1 July 1992]

- (3) Notwithstanding the provision of subsection (2) of this Section, where any registered persons claim deductions under Section 86 of this Decree, making them eligible for a refund under subsection (8) of Section 39 of this Decree the Commissioner shall in respect of trading stock acquired on or after the first day of July, 1991 and held on the first day of July, 1992 cause that refund to be paid no later than six months from the date the return was received by the Commissioner and the provisions of Section 67 of this Decree shall not apply unless the Commissioner has failed to refund that amount within six months as provided under this subsection.

[Amended by Decree 28/92, s31 (b) - (d)]

- (4) Where any registered person has, -
- (a) in respect of a taxable period, failed to pay the Commissioner, in whole or in part, any tax payable before the due date for the payment of such tax (in this subsection referred to as unpaid tax); or
 - (b) in respect of any obligations imposed under the Income Tax Act, or the Gambling Turnover Tax Decree 1991, failed to pay to the Commissioner, in whole or in part, any amount (in this subsection referred to as unpaid tax), -

the Commissioner may set off, against that unpaid tax, any amount or any part of any amount otherwise refundable to that registered person under subsection (1) of this Section or subsection (4) of Section 38 or subsection (8) of Section 39 or any amount of interest payable under Section 67 of this Decree, and treat any amount so set off as a payment received from that registered person.

[Amended by Decree 28/92, s31(e)]

- (5) Where any registered person, in respect of a taxable period, has failed to submit returns for any taxable period as required by this Decree, the Commissioner may withhold payment of any amount refundable in accordance with subsection (1) of this Section, or subsection (4) of Section 38 or subsection (8) of Section 39 or any amount of interest payable under Section 67 of this Decree, until the registered person has complied with that requirement and paid the amount of tax payable.

- (6) Notwithstanding anything in subsection (2) of this Section, where the Commissioner is required to refund any amount to a registered person pursuant to subsection (4) of Section 38 or subsection (8) of Section 39 or any interest payable under Section 67, and the Commissioner is of the opinion that the amount should not be refunded, the Commissioner may withhold that amount and set off that amount against any future tax payable by that registered person in respect of any subsequent taxable period or otherwise set off that amount in terms of paragraph (b) of subsection (4) of this Section, and treat any amount so set off as a payment received from that registered person.
[Amended by Decree 28/92, s31(e)]

History

S 65(7) repealed by section 4, Act 3 of 2004 – effective from 1 January 2004.

Previously read:

“Where, in relation to the return furnished by any registered person, subsection (4), or subsection (5), or subsection (6) of this Section applies, the Commissioner shall give notice in writing to the registered person accordingly within the period specified in subsection (2) of this Section.”

- (7)
- (8) Notwithstanding anything in this Section no refund shall be payable where the registered person, his agent, his representative or any person associated with the registered person has not complied with any request for any information, documents or co-operation by the Commissioner.
[Inserted by Decree 28/92, s31(f) effective 1/7/92]

Section 66 **Tax paid in excess may be set off against additional tax where assessment re-opened**

In any case where, upon the investigation by the Commissioner of the liability of a registered person for tax over a group of taxable periods -

- (a) the Commissioner assesses the registered person with tax for any taxable period in respect of which no assessment has been made previously or alters an assessment for any taxable period so as to increase the amount thereof; and
- (b) the Commissioner is satisfied that in respect of any taxable period or taxable periods within that group of taxable periods, tax has been paid in excess of the amount properly payable,

he may, in his discretion and to the extent that in his opinion is equitable, allow any amount so paid in excess to be deducted from or set off against any tax payable for any taxable period or taxable periods, notwithstanding that the time limited for the making of a refund of any tax so paid in excess may have expired.

Section 67 **Interest on late refunds**

- (1) Where the Commissioner is required by subsection (2) of Section 65 to refund any amount to a registered person and the Commissioner does not refund that amount within the period specified in that subsection, there shall, subject to the provisions of Section 65, be paid by the Commissioner to the registered person interest on so much, if any, of the amount as is required to be refunded by the Commissioner to the registered person in accordance with subsection (4) of Section 38 or subsection (8) of Section 39 of this Decree.

- (2) Interest payable in accordance with this Section shall be payable, in relation to any amount required to be refunded or set off by the Commissioner by the provisions of Section 65 of this Decree, that, in the said period, is an amount applied to, or standing to, the credit of the account of the registered person with the Commissioner, and shall be calculated in accordance with the following formula:

$$\frac{X \times Y}{365} \times Z$$

where -

X is the number of days in the period, -

- (a) in relation to any case where subsection (5) of Section 65 applies, -

- (i) that commences on the day following the end of the month following the month in which the registered person complied with the requirement to furnish outstanding returns; and
- (ii) ends on the day on which the amount required to be refunded by the Commissioner by the provisions of Section 65 is refunded or is set off by the Commissioner in accordance with this Decree:

- (b) in relation to any case where subsection (6) of Section 65 applies, -

- (i) that commences on, whichever of the following days is the latest, the day following the end of the month following the month in which the return was due to be furnished or was furnished, or the day following the day on which a notice was given by the Commissioner pursuant to subsection (7) of Section 65; and
- (ii) ends on the day on which the amount to be refunded by the Commissioner by the provisions of Section 65 is set off by the Commissioner in accordance with subsection (6) of that Section:

- (c) in relation to any other case, -

- (i) that commences on the day following the end of the month following the month in which the return was due to be furnished or was furnished (whichever is the later); and
- (ii) ends on, whichever of the following days is the earlier, the day on which the amount required to be refunded by the Commissioner by the provisions of Section 65 of this Decree is refunded by the Commissioner in accordance with this Decree, or the day on which a notice is given by the Commissioner pursuant to subsection (7) of Section 65 of this Decree; and

Y is the lesser of the amount required to be refunded or the amount still to be set off pursuant to subsection (6) of Section 65 of this Decree; and

Z is the rate of interest per annum, which is twelve and a half per cent or such other rate as the Minister may from time to time, by Legal Notice declare.

[Amended by Decree 28/92, s32 (a)]

- (3) Where the Commissioner is satisfied that the amount of any interest paid to the registered person under this Section is in excess of the proper amount, the Commissioner may recover the amount of the excess in the same manner, with any necessary modifications, as if it were tax payable by the registered person.

- (4) Notwithstanding anything in this Section no amount shall be payable in terms of this Section where the registered person, his agent, his representative, or any person associated with a registered person has not complied with any request for any information, documents or co-operation by the Commissioner.
[Inserted by Decree 28/92, s32(b)]

Section 68 **Power of Commissioner in respect of small amounts**

Notwithstanding anything in this Decree, the Commissioner may, in his discretion, refrain from either issuing a notice of assessment or collecting or refunding tax in any case where, as the case may be, the amount of tax calculated in accordance with this Decree does not exceed five dollars.

Section 69 **Refund of overpaid deposit on temporary imports**

Notwithstanding the provisions of Section 14 of this Decree, any sum of deposit which may have been paid in excess of the correct amount at the time of importation of goods may be refunded by the Comptroller pursuant to Section 33 of the Customs Act 1986.

Section 70 **Relief from tax**

History

S 70(1) amended, previously read:

“The Commissioner, may in his discretion mitigate or remit any additional tax (other than additional tax imposed under paragraph (a) of subsection (1) of Section 60 of this Decree), penal tax, or penalty which may be assessed or imposed under this Decree.”

- (1) The Commissioner may in his discretion mitigate or remit in whole or in part any additional tax or penal tax or penalty which may be assessed under this Decree.
[Amended by Decree 28/92, s33 (a)]

History

S 70(2)(a) amended by deleting the full-stop after “subsection” and inserting colon and the proviso. [Section 5(a), Act 3 of 2004, effective 1 January 2004]

- (2) (a) Where -
- (i) A new dwelling house; or
 - (ii) Land acquired for the purpose of having a new dwelling house erected on it, -is supplied by way of sale, being a supply to which subsection (1) of Section 15 of this Decree applies, to an eligible person by a registered person in the course or furtherance of a taxable activity carried on by that registered person, the Commissioner shall, subject to this subsection, upon application by the eligible person, refund to the eligible person an amount of tax paid in respect of that supply calculated in accordance with paragraph (c) of this subsection:

Provided that such claim can only be made once by an eligible person.
- (b) Every application made under paragraph (a) of this subsection by an eligible person shall be in such prescribed form as may be approved by the Commissioner and be supported by such tax invoices or other evidence as the Commissioner considers necessary.

History

“\$50,000” substituted for \$30,000 in s 70(2)(c)(i)* by Legal Notice No. 144 of 1999, effective 1 January 2000].

*Legal Notice No. 144 of 1999 refers to an amendment to section 70(2)(c)(ii). It should have made reference to section 70(2)(c)(i). This anomaly was rectified by Legal Notice No. 87 of 2002 - Rectification of Errors (No. 2) Order 2002

“\$90,000” substituted for “\$50,000” in s70 (2) (c) (i) by Act No. 4 of 2005, effective from 1 January 2005

- (c) For the purposes of paragraph (a) of this subsection, the amount of the refund of the tax paid in respect of the supply shall be the lesser of -
- (i) An amount equal to the tax fraction of \$90,000 (or such other amount as the Minister may, from time to time, by Legal Notice declare):
 - (ii) An amount equal to the tax fraction of the consideration in money for the supply.
- (d) The Commissioner shall not be required to refund any tax paid on any land to which subparagraph (ii) of paragraph (a) of this subsection refers until a new dwelling house has been erected on that land.
- (e) Where an eligible person -
- (i) Acquires goods and services necessary to construct a new dwelling house; and
 - (ii) has either constructed or arranged for the construction of that new dwelling house; andThe Commissioner is satisfied that those goods and services have been used in the construction of that new dwelling house, -

that eligible person shall be eligible to make application to the Commissioner for a refund of the tax paid on those goods and services pursuant to the provisions of this subsection.

History

S 70(2)(f) amended by inserting “, subject to paragraph (h),” between “shall” and “refund”. [Section 5(b), Act 3 of 2004, effective 1 January 2004]

- (f) Where an eligible person has authorised, in such prescribed form as may be approved by the Commissioner, that another person be paid any refund payable under this subsection, the Commissioner shall, subject to paragraph (h), refund that amount refundable to that authorised person.
- (g) The Commissioner shall not be required to refund any tax under this subsection to an eligible person unless, within 5 years after the time of supply of the new dwelling house or land on which a new dwelling house will be erected for the eligible person, the eligible person has applied to the Commissioner for the refund of tax in the prescribed form and manner.

[Amended by Decree 28/92, s33(b)]

History

S 70(2)(ga) inserted by section 5(c), Act 3 of 2004, effective 1 January 2004.

- (ga) If, in respect of an eligible person to whom a refund is due in accordance with paragraph (c), there is an amount owing to the Commissioner by that person in respect of any tax, penalty, interest or costs [under this Decree, or the Income Tax Act, or the Gambling Turnover Tax Decree 1991] for that year or any other year of assessment, then such refund shall first be applied towards such other liability and only then shall any remaining excess be refunded to the taxpayer;
- (h) For the purposes of this subsection -

“Dwelling house”, in relation to an eligible person, means a building constructed solely as a residence for the exclusive occupation, as a principal place of abode of that eligible person’s household; and includes any land, improvements, or appurtenances belonging to the dwelling house or usually enjoyed with it, but excludes any portion on which a taxable activity is carried out.

“Eligible person” means any natural person who is a citizen of Fiji; and includes a non-profit body, approved by the Commissioner engaged in the provision of residential accommodation to the underprivileged.

“New” means not having been either used by any person or acquired or held by any person for use of that person, or an existing dwelling house which passes from the possession of a registered person to an eligible person.

History

New Section 70(A) inserted by Act No. 14 of 2006, effective 1st October 2006

Section 70A

VAT refund for construction of premises for diplomatic mission

- 70A. – (1) Notwithstanding anything contained in the Decree, a Diplomatic Mission (as defined in the Vienna Convention on diplomatic relations) is entitled for Value Added Tax refund in respect of the initial costs of newly constructed premises of its Mission in Fiji.
- (2) The entitlement under subsection (1) does not extend to-
- (a) to any other premises except for premises to be used for the professional diplomatic purposes of the Diplomatic Mission;
 - (b) costs of extensions to, improvements, enlargements or repairs of any existing premises to be used for its missions; or
 - (c) any extensions to, improvements of or enlargements of premises to which the entitlement was provided under subsection (1).

PART XII - OFFENCES AND PENALTIES

Section 71

Offences

Every person commits an offence against this Decree who:-

- (a) fails to:
 - (i) apply for registration as required pursuant to Section 22 or Section 85 of this Decree; or
 - (ii) respond, within one month of the issue by the Commissioner, to an application form for registration under this Decree issued to the person as part of the initial registration process provided for by Section 85 of this Decree; or [Amended by Decree 28/92, s34 (a), effective 1/7/92]
- (b) fails to notify the Commissioner of any of the matters required pursuant to Section 24 of this Decree; or
- (c) refuses or fails to furnish any return or information or additional information as and when required or fails to comply with any demands made under this Decree, or any regulations made under this Decree; or

History

S 71(d) amended by adding new sub-section (d)(i) as follows -

- “(d)(i) does any Act or makes default in the performance of any duty imposed on him under this Decree with intent to evade the payment of tax or the performance of any such duty under this Decree.
- (d)(ii) makes any false return, or any false statement, or any false declaration, or gives any false information, knowing it to be false, or being reckless as to whether it was false, or intentionally misleads or attempts to mislead the Commissioner or any other officer of the Inland Revenue Department in relation to any matter under this Decree; or
- (e) knowingly falsifies any records required to be kept under this Decree; or
- (f) knowingly issues any tax invoices showing any amount charged as tax where:
- (i) no amount of tax is charged in respect of any supply to which such tax invoice applies; or
 - (ii) the amount shown as being charged as tax is in excess of the amount properly so charged under this Decree; or
 - (iii) the supply in respect of the tax charged will not take place; or
- (g) knowingly represents to any person, in writing or otherwise howsoever, that any amount is charged as tax where either:
- (i) no amount of tax is charged in respect of any supply to which any such representation refers; or
 - (ii) the amount represented as being charged as tax is not the amount properly so charged under the Decree; or
- (h) receives, acquires possession of, or deals with any goods, or accepts the supply of any services, where that person knows or has reason to believe that the tax on the supply of the goods or the services has been or will be evaded; or
- (i) obstructs any officer of the Inland Revenue Department acting in the discharge of that officer’s duties or the exercise of that officer’s powers under this Decree; or
- (j) fails to keep or properly maintain records of any taxable activity carried on by that person sufficient to satisfy the requirements of Section 79 of this Decree; or
- (k) knowingly issues any tax invoice required under this Decree which is in any material aspect erroneous or incomplete, or knowingly makes any statement or declaration in relation to any matter under this Decree which is erroneous or incomplete in any material aspect; or
- (l) knowingly contravenes the provisions of Section 41 and Section 42 of this Decree; or
or
[Amended by Decree 28/92, s34(b), (c)]
- (m) being a registered person, fails to issue a tax invoice as required under this Decree; or
- (n) knowingly fails to make any deduction or extraction required by a notice under Section 63 of this Decree; or
- (o) fails, after making any deduction or extraction required by a notice under Section 63 of this Decree, to pay the sum deducted or extracted to the Commissioner within the time specified in the notice; or

- (p) permits the payment to or on behalf of any person, other than the Commissioner, of any amount that under Section 63 of this Decree, is deemed to be held in trust for the State; or
- (q) aids, abets, incites or conspires with any other person to commit any offence against this Decree or against any regulation made under this Decree.

Section 72 **Penalty for specified offences**

- (1) Every person who commits an offence against paragraph (b) or paragraph (l) of Section 71 of this Decree shall;
 - (a) on the first occasion on which the person is convicted of any such offence or more than one such offence, be liable, in respect of that offence or, as the case maybe, each of those offences, to a fine not exceeding five hundred dollars, or to imprisonment for a period not exceeding three months, or to both such fine and imprisonment;
 - (b) on the second occasion on which the person is convicted of any such offence or more than one such offence, be liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding one thousand dollars, or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment;
 - (c) on every occasion other than those referred to in paragraphs (a) and (b) of this subsection, on which the person is convicted of any such offence or more than one such offence, be liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding one thousand five hundred dollars, or to imprisonment for a period not exceeding one year, or to both such fine and imprisonment.
- (2) Every person who commits an offence against paragraph (c) or paragraph (m) of Section 71 of this Decree shall;
[Amended by Act No.16 effective 1/1/95]
 - (a) on the first occasion on which the person is convicted of any such offence or more than one such offence, be liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding five hundred dollars, or to imprisonment for a period not exceeding three months, or to both such fine and imprisonment, for each month of default.
[Amended by Act No.16 effective 1/1/95]
 - (b) on the second occasion on which the person is convicted of any such offence or more than one such offence, be liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding one thousand dollars, or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment, for each month of default.

- (c) on every occasion other than those referred to in paragraphs (a) and (b) of this subsection, on which the person is convicted of any such offence or more than one such offence, be liable, in respect of that offence or, each of those offences, to a fine not exceeding one thousand five hundred dollars, or to imprisonment for a period not exceeding one year, or to both such fine and imprisonment, for each month of default.

S 72 amended by addition of new sub-section (3) and (4). [Act No.16 effective 1/1/95]

- (3) Every person who commits an offence against paragraph (a) of Section 71 of this Decree shall on conviction be liable:
 - (a) where the delay does not exceed six months to a fine not exceeding 50% of the tax payable;
 - (b) where the delay exceeds six months to a fine not exceeding the tax payable.
- (4) Every person who commits an offence against paragraph (d), or paragraph (e), or paragraph (f), or paragraph (g), or paragraph (h), or paragraph (k), of Section 71 of this Decree shall:
 - (a) On the first occasion on which the person is convicted of such offence or, more than one such offence, be liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding one thousand five hundred dollars, or three times the tax involved where this is greater or to imprisonment for a period not exceeding one year, or to both such fine and imprisonment;
 - (b) On every occasion other than that referred to in paragraph (a) of this subsection on which the person is convicted of any such offence, or more than one such offence, be liable, in respect of that offence, or as the case may be, each of those offences, to a fine not exceeding three thousand dollars, or three times the tax involved where this is greater or to imprisonment for a period not exceeding two years, or to both such fine and imprisonment.

Section 73 **Penalty for aiding, abetting, etc**

Every person who commits an offence against paragraph (q) of Section 71 of this Decree shall be liable to a fine not exceeding three thousand dollars, or to an imprisonment for a period not exceeding two years, or to both such fine and imprisonment.

Section 74 **General penalty**

Every person who commits an offence against this Decree for which no other penalty is prescribed shall;

- (a) On the first occasion on which the person is convicted of such offence or, more than one such offence, be liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding one thousand five hundred dollars, or to imprisonment for a period not exceeding one year, or to both such fine and imprisonment;
- (b) On every occasion other than that referred to in paragraph (a) of this Section, on which the person is convicted of any such offence, or more than one such offence, be liable, in respect of that offence, or as the case may be, each of those offences, to a fine not exceeding three thousand dollars, or to imprisonment for a period not exceeding two years, or to both such fine and imprisonment.

Section 75 **Officers and employees of registered persons**

- (1) For the purposes of this Section, unless the context otherwise requires, “officer”, in relation to a registered person, includes -
 - (a) a director or secretary or other statutory officer of the registered person:
 - (b) a receiver or a manager of any property of the registered person, or a person having powers or responsibilities, similar to those of such a receiver or manager, in relation to the registered person:
 - (c) a liquidator of the registered person.
- (2) Every person commits an offence against this Decree who, being an officer or an employee of a registered person, is by reason of that office or, as the case may be, that employment, responsible (whether pursuant to any statute or rules of law, or any instructions of the registered person or for any other reason) for furnishing to the Commissioner any information or any statement or any return pursuant to this Decree or pursuant to any notice, order, or requirement issued, made, or notified pursuant to this Decree, and who fails to furnish that information or that statement or that return, as the case may be, to the Commissioner within the time specified for the furnishing thereof.

Section 76 **Penalty in case of evasion**

- (1) Where -
 - (a) any registered person -
 - (i) evades; or
 - (ii) attempts to evade, or
 - (iii) does any act with intent to evade; or
 - (iv) makes default in the performance of any duty imposed upon that person by this Decree or regulations made under this Decree with intent to evade, the payment of any amount of tax payable (which amount is hereinafter referred to as the deficient tax); or
 - (b) any registered person -
 - (i) causes, or
 - (ii) attempts to cause, or
 - (iii) does any act with intent to cause; or
 - (iv) makes default in the performance of any duty imposed upon that person by this Decree or regulations made under this Decree with intent to cause, the refund to that person by the Commissioner of any amount (which amount is hereinafter also referred to as the deficient tax), pursuant to subsection (8) of Section 39 of this Decree, in excess of the amount properly so refundable to that person;
- that person shall be chargeable, by way of penalty for that offence, with additional tax hereafter called penal tax not exceeding an amount equal to treble the amount of the deficient tax.

- (2) For the purposes of this Section, penal tax shall be deemed to be tax of the same nature as the deficient tax to which it relates, and shall be deemed to be payable in and for the same taxable period as deficient tax.
- (3) Penal tax shall be assessed by the Commissioner in the same manner, so far as may be, as the deficient tax to which it relates, but separately therefrom.
- (4) It shall be lawful for the Commissioner to make or reopen an assessment of penal tax at any time.

Section 76A **Penalty for understatements or overclaims in returns**

- (1) In any case where -
 - (a) a return under Part VII of this Decree is furnished which understates output tax or overstates input tax; or
 - (b) an assessment under Section 44 of this Decree is made which understates a person's liability to pay tax and within 30 days from the date of the said assessment that person has not taken all such steps as are reasonable to draw the understatement to the attention of the Commissioner, that person shall subject to subsection (2) of this section and Section 70(1) of this Decree be liable to a penalty not exceeding the full amount of the deficient tax..
- (2) Where, by reason of conduct falling within subsection (1) above:
 - (a) a person is convicted of an offence under this Decree; or
 - (b) a person is assessed to a penalty under Section 76 of this Decree;that conduct shall not also give rise to liability to a penalty under this Section.
- (3) Any penalty under this section shall be assessed by the Commissioner in the same manner, as far as may be, as the deficient tax to which it relates, but separately therefrom.

Section 77 repealed and replaced by new section.
[Act No.16 effective 1/1/95]

Section 77 **Jurisdiction of Resident Magistrates**

- (1) Where any resident magistrate hears and determines any prosecution for any offence under this Decree, then, notwithstanding anything contained in any other Act or Decree, he shall have jurisdiction to impose any fine or any sentence of imprisonment which may be imposed under this Decree on any person convicted of the offence.
- (2) Without prejudice to the powers of any other court of competent jurisdiction, any proceedings for the recovery of any tax payable or any penal tax or penalty under this Decree may be heard and determined, without limit of amount, by a resident magistrate.

Previously read - Failure to furnish returns

“Any person who fails to furnish a return required to be furnished by him under Part VII of this Decree shall be liable to a penalty not exceeding ten percent of the amount of tax payable”.

Section 78 **Proceedings to be taken summarily**

All proceedings for offences against this Decree shall be taken by way of summary prosecution before a Court of competent jurisdiction upon the information of the Commissioner.

PART XIII - MISCELLANEOUS

Section 79 **Keeping of Records**

- (1) Every registered person who supplies in Fiji goods and services shall keep in Fiji sufficient records in the English language to enable ready ascertainment by the Commissioner or any officer authorised by him, of that person's liability to tax and shall retain in Fiji all such records for a period of at least seven years after the end of the taxable period to which they relate:

Provided that the requirement for the preservation of any records may be dispensed with -

- (a) if the Commissioner gives written notice that preservation is not required;
- (b) in the case of a company which has been wound-up and finally dissolved.
- (2) Without limiting the generality of subsection (3) of this Section, the records required to be kept and retained, pursuant to subsection (1) of this Section, shall contain a record of all goods and services supplied by or to that registered person showing the goods and services, and the suppliers or their agents, in sufficient detail to enable the goods and services, the suppliers, or the agents to be readily identified by the Commissioner, and all invoices, tax invoices, credit notes, and debit notes relating thereto.
- (3) For the purpose of this Section the term "records" includes books of account (whether contained in manual, mechanical, electronic format, or microfilm) recording receipts or payments or income or expenditure, and also includes vouchers, bank statements, invoices, tax invoices, credit notes, debit notes, receipts, and such other documents as are necessary to verify the entries in any such books of account.

Section 80 **Contracts for avoidance of tax**

- (1) Notwithstanding anything in any law, every contract, agreement, transaction or arrangement made or entered into, orally or in writing, shall, so far as it has or purports to have the purpose or effect of in any way, directly or indirectly –

- (a) altering the incidence of the tax; or
- (b) relieving any person from liability to pay the tax or make any return; or
- (c) defeating, evading or avoiding any liability imposed on any person by this Decree; or

- (d) preventing the operation of this Decree in any respect,

be absolutely void, as against the Commissioner, or in regard to any proceeding under this Decree.

[Amended by Decree 28/92, s35(a), (b)]

- (2) The Commissioner may, for the purposes of this Section, deem -
- (a) any person not being, apart from this subsection, a registered person who is a party to or has participated in any way in any contract, agreement, or arrangement, to be a registered person;
 - (b) any supply of goods and services, whether or not a taxable supply, that is affected by or is part of any contract, agreement, or arrangement, to be both made to and made by any registered person;
 - (c) any supply of goods and services to occur in any taxable period that but for any contract, agreement, or arrangement affected by this Section, would have been the taxable period in which the supply was made;
 - (d) any supply of goods and services to have been made or consideration for such supply to be given, at open market value.
- (3) Where –
- (a) any person (in this subsection hereafter referred to as the original person) enters into any arrangement on or after the 3rd day of May 1991 whereby any taxable activity formerly carried on by the original person is carried on, in whole or in part, by any other person or other persons; and
 - (b) the original person and the other person or other persons are not independent of each other, -

for the purposes of Section 22, Section 32 or Section 36 of this Decree, the value of the supplies made in the course of carrying on all taxable activities in any period of twelve months commencing on the first day of any month by the original person and by the other person or, as the case may be, by the other persons shall, so far as the value relates to those supplies arising from the taxable activity formerly carried on by the original person, each be deemed to be equal to the aggregate of the value of the taxable supplies made by all of them for that period:

Provided that the Commissioner may, having regard to the circumstances of the case and if the Commissioner thinks it equitable to do so, determine in any particular case that this subsection shall not apply to all or any of the original person and that other person or, as the case may be, those other persons.

[Amended by Decree 28/92, s35(c)]

Section 81 **Liability to pay past tax**

Except as otherwise expressly provided in any enactment, the repeal or amendment of any provision of this Decree shall not affect any liability or right of any person that existed under the provision immediately before its repeal or amendment, and in particular, -

- (a) any liability to tax, or to any fine or penalty, of any person pursuant to the repealed or amended provision, and the right of the State to any revenue, tax, fee, fine, or penalty pursuant to the repeal or amendment provision, shall not be affected by the repeal or amendment; and
- (b) all acts and proceedings for the assessment or recovery of any revenue, tax, fine, or penalty assessed or assessable or paid or payable pursuant to the repealed or amended provision, and all proceedings in respect of offences committed or alleged to be committed in respect of the repealed or amended provision, may be instituted or continued as if the provision had not been repealed or amended.

Section 82 **Price to be displayed**

- (1) For the purposes of this Decree, the price of all goods and services supplied at the retail level in Fiji shall be displayed as inclusive of tax (if any) chargeable on that supply.
- (2) After the 1st day of July 1993, it shall be unlawful for a registered person to display the tax component of the price of goods and services supplied at the retail level as a separate item.
- (3) Notwithstanding anything in the foregoing provisions of this Section, where any tourism publicity material is or will be utilized overseas to advertise the supply of any goods and services by any registered person, the price of those goods and services advertised may be displayed as exclusive of tax (if any) chargeable on that supply:

Provided that any tourism publicity material on which an exclusive of tax price is displayed must clearly state that the price displayed is subject to the tax.

S 82 sub-section (4) amended by adding after the words “this Section” the words “and Section 41 of this Decree”.
[Amended Act No 16 of 1995, effective 1 January 1995]

- (4) The Prices and Incomes Board, established under Section 3 of the Counter - Inflation Act, shall be responsible for the administration of this Section and Section 41 of this Decree as if it were a function of the Board specified under Section 7 of the Counter - Inflation Act.

Section 83 **Fiji currency**

For the purposes of this Decree, all amounts of money shall be expressed in the Fiji currency, and in any case where and to the extent that any such amount is consideration in money for a supply, that amount shall be expressed in terms of Fiji currency as at the time of that supply.

Section 84 **Regulations**

- (1) The Minister may from time to time, make regulations, not inconsistent with this Decree, for all or any of the following purposes :
 - (a) prescribing the duties and functions of officers and other persons appointed or employed under this Decree;
 - (b) prescribing the form or returns to be made, the particulars to be set forth therein, the persons by whom and the time when or within which such returns are to be made, and the forms of the assessments, notices, and other documents referred to in this Decree or necessary in order to give effect thereto;
 - (c) providing, where there is no provision in this Decree or no sufficient provision in respect of any matter or thing necessary to give effect to this Decree, in whatever manner and form the deficiency shall be supplied;
 - (d) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Decree and for the due administration thereof; and
 - (e) providing for making, in any case or class of case, special arrangements to facilitate the deduction, collection, or payments of tax and for making rules to govern the operation of such arrangements.
- (2) Any regulations made under the provisions of subsection (1) of this Section may prescribe in respect of any contravention of or failure to comply with any provisions thereof, on conviction, the like penalties as are provided under Part XII of this Decree.

PART XIV - TRANSITIONAL PROVISIONS

Section 85 **Registration of persons liable to be registered on 1 July 1992**

(1) Notwithstanding anything in Section 22 of this Decree, every person who, on or before the last day of February 1992, knows, or could with reasonable diligence have known, that that person will be liable to be registered with effect on or from the 1st day of July 1992 pursuant to Section 22 of this Decree, shall, to enable the Commissioner to effect registration of any such person with effect from 1st July 1992, apply for registration in the approved form, before the 1st day of March 1992, to the Commissioner to be registered, and the Commissioner may register that person in the manner prescribed by Section 22 of this Decree. [

Amended by Decree 28/92, s36(a)]

(2) Every other person who is liable to be registered under this Decree on or after the 1st day of July 1992, shall apply for registration pursuant to Section 22 of this Decree.

(3) Notwithstanding anything in subsection (2) of Section 1 of this Decree, this Section shall come into force on the first day of February, 1992.

[Inserted by Decree 28/92, s36(b) effective 1/7/92]

Section 86 **Deduction for Customs and Excise Duty**

(1) For the purposes of this Section -

“Capital asset” means any goods forming part of the capital assets of a taxable activity ;

“Customs Duty” means customs duty imposed by the Customs Tariff Act 1986 prior to 1st day of July 1992 ;

“Excise duty” means excise duty imposed by the Excise Act 1986 prior to the first day of July 1992 ;

“Trading stock” has the same meaning as in the Income Tax Act; but does not include -

(a) any capital asset; or

(b) any goods held on hire or for hire; or

(c) any second-hand goods, not being goods in respect of which that registered person has paid either customs duty or excise duty and those goods have not been supplied and subsequently acquired by that person;

(d) beer, cigarettes, manufactured tobacco, spirits, or stout subject to excise duty at specific rate;

(e) any goods being consumables and spare parts of the taxable activity;

(f) any goods that have been written off as being obsolete for income tax purposes.

(2) Notwithstanding anything in subsection (2) of Section 39 of this Decree, in calculating the amount of the tax payable by a registered person in one taxable period ending on or before the 30th day of September 1992, there may be deducted an amount equal to the customs duty and excise duty credit calculated in accordance with Subsections (3), (4), (5) or any combination thereof as appropriate.

[Amended by Decree 28/92, s37(a)]

- (3) For the purposes of subsection (2) of this Section, where a registered person held, at the close of the 30th day of June 1992, goods which are trading stock of a taxable activity carried on by that registered person and the Commissioner is satisfied that -
- (a) those goods were acquired on or after the 1st day of July 1991; and
 - (b) customs duty or excise duty has been paid by that registered person in respect of those goods,

the amount of the customs duty and excise duty credit that may be deducted pursuant to subsection (2) of this Section shall be the amount of the customs duty or excise duty paid.

[Amended by Decree 28/92, s37 (b)-(e)]

- (4) For the purpose of subsection (2) of this Section, where a registered person held, at the close of 30th day of June 1992, goods which are trading stock of a taxable activity carried on by that registered person and the Commissioner is satisfied that -
- (i) those goods were acquired on or after the 1st day of July 1991; and
 - (ii) that person has records to show the amount of customs or excise duty paid by another person in respect of those goods,

the amount of the customs duty and excise duty credit that may be deducted pursuant to subsection (2) of this Section shall be the amount of the customs duty or excise duty paid.

[Inserted by Decree 28/92, s37(f)]

- (5) For the purposes of subsection (2) of this Section, where a registered person held, at the close of the 30th day of June 1992, goods which are trading stock of a taxable activity carried on by that registered person and the Commissioner is satisfied that -
- (a) those goods were acquired on or after the 1st day of July 1991; and
 - (b) customs duty or excise duty has been paid in respect of those goods on the importation or entry for home consumption of those goods,

the amount of the customs duty and excise duty that may be deducted pursuant to subsection (2) of this Section shall be the lesser of, -

- (c) the amount of customs duty or excise duty that would have been correctly payable, if the registered person had imported or entered for home consumption those goods at a cost, inclusive of customs duty and excise duty at a rate of ten percent, equal to the total consideration paid by the registered person in respect of the purchase of those goods; or
- (d) the amount of one thousand dollars.

[Amended by Decree 28/92, s37(g)]

- (6) Subsections (3), (4) and (5) of this Section shall only apply in respect of goods which are trading stock, that when supplied on or after the 1st day of July 1992, will be a taxable supply.

[Amended by Decree 28/92, s37(h)]

Section 87 **Supplies prior to 1 July 1992**

- (1) For the purposes of this Section, except as otherwise provided in the Regulations, the expression “time of performance” means, -
 - (a) in relation to supply of goods, -
 - (i) where the goods are to be removed, the time of removal :
 - (ii) where the goods are not to be removed, the time when they are made available to the recipient :
 - (iii) where the goods (being sent or taken on approval, sale or return, or similar terms) are removed before it is known whether a supply will take place, the time when it becomes certain that the supply has taken place; or
 - (b) in relation to a supply of services, the time when the services are performed.
[Amended by Decree 28/92, s38(9)]
- (2) Notwithstanding anything in this Decree, for the purposes of subsection (1) of this Section, goods supplied under an agreement for hire as defined in subsection (3) of Section 18 of this Decree shall be deemed to be a supply of services.
- (3) Subject to subsection (4) of this Section and notwithstanding anything in Section 18 of this Decree, where, and to the extent that, the time of performance of any supply of goods and services -
 - (a) is before the 1st day of July 1992, and that supply would, but for this Section, be deemed by Section 18 of this Decree to take place on or after the 1st day of July 1992, and the value of that supply is ascertainable, that time of performance shall, for the purposes of this Decree, be the time when the supply of those goods and services is deemed to take place :
 - (b) is on or after the 1st day of July 1992, and that supply would, but for this Section, be deemed by Section 18 of this Decree to take place before the 1st day of July 1992, -
 - (i) that time of performance shall, for the purposes of Section 15 of this Decree, be the time when the supply of those goods and services is deemed to take place; and
 - (ii) the time when the supply of those goods and services is made shall, for the purposes of Section 39 of this Decree, be deemed to be the 1st day of July 1992.
- (4) Subject to subsection (5) of this Section and notwithstanding anything in subsection (3) of this Section, where and to the extent that any supply of goods is the construction, major reconstruction, manufacture, or extension of a building or an engineering work by the supplier, and the goods, -
 - (a) are sold pursuant to any written contract entered into before the 1st day of July 1992; and
 - (b) are made available to the recipient on or after the 1st day of July 1992, -
the value of all work and materials permanently incorporated in or affixed on the site of the building or engineering work pursuant to that contract shall be determined as at the close of the 30th day of June 1992, and -

- (c) to the extent that the aggregate of the consideration in money for all supplies in respect of the sale of those goods which, pursuant to subsection (1) of Section 18 or paragraph (e) of subsection (2) of Section 18 of this Decree, took place before the 1st day of July 1992, exceeds that value, the amount of that excess shall be deemed to be consideration in money for a taxable supply by that supplier on the 1st day of July 1992 and charged with tax pursuant to Section 15 of this Decree :
- (d) to the extent that the value exceeds the aggregate of the consideration in money for all supplies in respect of the sale of those goods which, pursuant to subsection (1) of Section 18 or paragraph (e) of subsection (2) of Section 18 of this Decree, took place before the 1st day of July 1992, the consideration in money for the first supply in respect of the sale of those goods which, pursuant to subsection (1) of Section 18 or paragraph (e) of subsection (2) of Section 18 of this Decree, takes place on or after the 1st day of July 1992 shall be deemed to be reduced by the amount of that excess:
- Provided that any part of the amount of that excess remaining, in any case where the consideration is reduced to nil as a result of the application of this paragraph, shall be carried forward and the consideration for any subsequent supply shall be deemed to be reduced to that extent, and so on.
- (5) The provisions of subsection (4) of this Section shall only apply to the extent that that value has been determined on or before the 1st day of September 1992 in a manner acceptable to the Commissioner by an independent qualified valuer or surveyor registered in Fiji or by any other competent valuer that the Commissioner may, in his discretion, approve.

Section 88

Effect of imposition of tax

- (1) For the purposes of this Section the expression “alteration in the law” means the coming into force of the provision of this Decree.
- (2) Where -
- (a) a supplier has at any time entered into any agreement or contract for the supply of goods and services with a recipient; and
- (b) the alteration in the law renders that supply liable to be charged or chargeable with tax,

the supplier may, unless the alteration in the law has been taken into account or express provision for the exclusion of the alteration in the law is contained in the agreement or contract, add to the agreed price in the said agreement or contract the amount of that tax :

Provided that this subsection shall not apply where that agreement or contract is entered into on or after the 1st day of July 1992.

[Amended by Decree 28/92, s39]

- (3) Where the alteration in the law renders any fee, charge, or other amount, prescribed by, or determined pursuant to, any Act, Decree, or regulation in respect of any supply of goods and services liable to be charged or chargeable with tax, the said fee, charge, or other amount so prescribed or determined shall, unless provision to the contrary is contained in that Act, Decree, or regulation, be deemed to be increased by that amount of tax charged or chargeable.
- (4) Where any Act, Decree, or regulation prescribes or determines either a maximum or minimum amount in respect of any supply of goods and services, that maximum amount or, as the case may be, minimum amount shall, for the purposes of any such Act, Decree, or regulation, be deemed to be increased by the amount of the tax charged or chargeable.
- (5) Subsection (3) and subsection (4) of this Section shall not apply to any fee, charge, or other amount prescribed or determined which is required to be paid by any public authority to any other person by virtue of that Act, Decree, or regulation.
- (6) Where any supply is or becomes charged with tax pursuant to this Decree, the amount of any increase in consideration in respect of that supply attributable to the tax charged on that supply shall be recoverable by the supplier from the recipient of the taxable supply.

PART XV - AMENDMENTS AND REPEALS

Section 89 **Amendments and Repeals**

For the purpose of this Decree, any existing Acts, Decrees, laws, rules, regulations, or other related legal instructions currently enforced or to be enforced in the State which directly contravene provisions of this Decree, may for all intents and purpose, and for clarity, as far as those provisions are concerned, in respect of payment of tax in Fiji, become null and void and this Decree shall supersede every other Act, Decrees, law, rule, regulation, or other legal instruction, instrument or document.

Made this 22nd day of November 1991.

PENAIA K GANILAU

**President of the Sovereign Democratic Republic of Fiji
and Commander-in-Chief of the Armed Forces**

SCHEDULES

First Schedule - Exempt supplies (Section 2)

The supplies of goods and services listed in this schedule shall be exempt from tax:

1. The supply of financial services, where that supply is not a zero-rated supply in terms of the Second Schedule to this Decree consisting of -
 - (a) banking services such as the issue, transfer or receipt of, or any dealing with, money, any security for money or any note or order for the payment of money and the operation of any current, deposit, or savings account;
 - (b) insurance services including reinsurance;
 - (c) the issue, transfer or receipt of, or dealing with, any stocks, shares, debentures and other securities; including the underwriting or sub-underwriting of such securities;
 - (d) the making of any advance or the granting of credit;
 - (e) the granting of, or any dealing in, credit guarantees or other security for money and the management of credit guarantees by the person who granted the credit;
 - (f) the provision, or transfer of ownership, of an interest in a superannuation scheme, or the management of a superannuation scheme; and
 - (g) agreeing to do, or arranging any of the services specified in the above subparagraphs, other than advising thereon.
2. The supply of accommodation in a residential dwelling by way of hire.
3. The supply of leasehold land by way of rental (not being a grant or sale of the lease of that land) to the extent that the land is used for the principal purposes of accommodation in a dwelling erected on that land.
[Inserted by Decree 28/92, s40(a)]
4. The supply of leasehold lands by the Native Land Trust Board for and on behalf of the native owners under the Native Land Trust Act but only in relation to the portion of rent monies, royalties etc. that are to be distributed to native owners from time to time.
[Inserted by Decree 28/92, s40(b)]

Provided that the exemption shall not apply to the statutory deductions (for example, 25% for rents received or collected) due to the Native Land Trust Board under the Native Land Trust Act.
5. The supply and provision of the right to partake in any gambling.
6. The supply by any non-profit body of donated goods and services.
7. The supply by a registered person of goods and services used wholly by the registered person for the purposes of making exempt supplies and for which no deduction for input tax was claimed on the acquisition or production of those goods and services.
[Amended by Decree 28/92, s40(d)]
8. The supply of education by an educational institution, where that supply is not a zero-rated supply in terms of the Second Schedule to this Decree.

9. The supply of any goods and services incidental to the provision of education by an educational institution to which paragraph 6 applies, where that supply is not a zero-rated supply in terms of the Second Schedule to this Decree.
10. For the purposes of this Schedule the terms :
 - “Donated goods and services” means goods and services that are gifted to a non-profit body and are intended for use in carrying on or carrying out of the purposes of that non-profit body;
 - “Dwelling” means any building, premises, structure, or other place, or any part thereof, used predominantly as a place of residence or abode of any individual, together with any appurtenances belonging thereto and enjoyed with it; but does not include a commercial dwelling;
 - “Educational institution” means any pre-school registered by the Ministry of Education, primary school, secondary school, the Fiji College of Agriculture, the Fiji Institutes of Technology, the Fiji School of Medicine, the Fiji School of Nursing, Fiji National Training Council, the Lautoka Teachers College, Monfort Boystown, the Pacific Regional Seminary, the Pacific Theological College and the University of the South Pacific; or any other similar educational institute as approved by the Commissioner, but does not include any educational institution which is carried on for the purposes of commercial profit or gain to any proprietor, member, or shareholder;
[Amended by Act 1/93, s7]
 - “Gambling” includes any game of chance for money or events of great risks for the chance of winning something or making a profit, lotteries, bets placed on a race or other events.

Second Schedule - Zero-rated supplies

(Section 2)

1. The supply of goods where the supplier has entered the goods for export, pursuant to the Customs Act 1986, and those goods have been exported by the supplier.
2. The supply of goods where the goods have been deemed to be entered for export pursuant to the Customs Act 1986, and those goods have been exported by the supplier.
3. The supply of goods where the supplier has satisfied the Commissioner that the goods have been exported by the supplier to a place outside Fiji.
4. The supply of goods where the supplier will enter the goods for export pursuant to the Customs Act 1986, in the course of, or as a condition of, making that supply :

Provided that in any case where such goods are not exported within twenty eight days of the time of supply, the supply shall, subject to paragraph (1) of this Schedule, be charged with tax pursuant to Section 15(1) of this Decree.
5. The supply of goods which are not situated in Fiji at the time of supply.
6. The supply of goods where those goods are supplied in the course of repairing, renovating, modifying, or treating any goods which are a temporary import or ships or aircrafts in transit in terms of the Customs Act 1986 and those goods supplied -
 - (a) are wrought into, affixed to, attached to, or otherwise form part of the temporary import of ships or aircrafts in transit; or
 - (b) being consumable goods, become unusable or worthless as a direct result of being used in that repair, renovation, modification, or treatment process.
[Amended by Act 1/93, s8(a), (b)]
7. The supply of goods where those goods have been supplied pursuant to Part XII of the Customs Act 1986, for use as stores for consumption outside Fiji on an aircraft or ship proceeding to a place outside Fiji.
8. The supply of a taxable activity as a going concern or part of a taxable activity as a going concern where that part is capable of separate operation to a registered person.
9. The supply of services directly in connection with goods situated outside Fiji.
10. The supply of transport services relating to the international carriage of passengers and goods -
 - (a) from a place outside Fiji to another place outside Fiji; or
 - (b) from a place in Fiji to a place outside Fiji; or
 - (c) from a place outside Fiji to a place in Fiji; or
 - (d) from a place in Fiji to another place in Fiji to the extent that the transport is by aircraft and constitutes “international carriage” for the purposes of the Civil Aviation Act.
11. The supply of services comprising the insurance or the making of the arrangement of the insurance or the making of the arrangement of the transport of passengers or goods to which any provision of paragraph 10 of this Schedule applies.

12. The supply of services directly in connection with any goods which are a temporary import or ships or aircrafts in transit in terms of the Customs Act 1986.
[Amended by Act 1/93, s8(c)]
13. The supply of services which are physically performed outside Fiji.
14. The supply of the following services to a person who belongs in a country, other than Fiji-
 - (a) the filing, prosecution, granting, maintenance, transfer, assignment, licensing, or enforcement of intellectual property rights, including patents, designs, trade marks, copyright, know-how, confidential information, trade secrets, or similar rights;
 - (b) advertising services;
 - (c) services of consultants, engineers, consultancy bureaux, lawyers, accountants, and other similar services, data processing and provision of information;
 - (d) the acceptance of any obligation to refrain from pursuing or exercising in whole or in part, any taxable activity or such rights as referred to in subparagraph (a) above;
 - (e) the provision of staff;
 - (f) financial services described in paragraph (1) of the First Schedule to this Decree.

History

Paragraph 15 amended by inserting (1) at the start of paragraph 15 and adding a new sub-paragraph (2)
[Amended Act No 28 of 1999, effective 1 January 2000]

- 15(1) The supply to a person in that persons' taxable activity capacity (and not in that person's private capacity) who in that capacity belongs in a country other than Fiji of services comprising of -
 - (a) the handling or storage of goods at or their transportation to or from a place at which they are to be exported or have been imported or the handling or storage of such goods in connection with such transport; or
 - (b) ancillary transport activities in relation to any ship or aircraft in a port or airport; or
 - (c) the making of the arrangements for the supply of any of the services referred to in this paragraph and paragraph 7 of this Schedule.
 - (2) For the purposes of this paragraph, "ancillary transport activities" includes loading, unloading, handling, landing, berthing and stevedoring.
16. The supply of sugar cane.

Para 17 repealed by Act No.29 of 1995, effective 1/1/96.
Previously read –

"The supply of public passenger transportation by bus".

Rest of the paragraphs renumbered.

17. The supply of medicines and drugs dispensed on the prescription of a medical practitioner or a registered dentist.

18. The supply of goods, being goods supplied by a registered person to an inbound passenger in the international disembarkation concourse of the airport.
19. The supply of fertilizer solely for the planting of cane under the FSC Advancement Scheme as approved by the Commissioner.
[Inserted by Act 1/93, s8(d)]
20. Supplies of goods cleared ex-bond or imported direct for or on behalf of approved persons or bodies under paragraph (e) of subsection (4) of Section 14 of this Decree.

Provided the liability to import tax shall be collected and paid at the time of disposal in accordance with the provisions of the Customs Tariff Act.

[Inserted by Act 1/93, s8(e)]

21. The handling of international inbound telecommunication services (except where charges are accounted for by the recipient) and all mails and parcels on which postage or freight has been accounted for and for which an income is received for services provided.
[Inserted by Act 1/93, s8(f)]

History

Paragraph 22 repealed by Act No 1 of 2001 (made on 9th November 2001 and effective from 1st January 2001) and Decree No 5 of 2001 (made on 23rd January 2001 and effective from 1st January 2001). Decree No 5 of 2001 was repealed by Act No 1 of 2001. Previously* read:

- “(1) The supply of essential food items.
- (2) For the purposes of this paragraph, “essential food items” means-
- (a) tinned fish;
 - (b) flour and sharps;
 - (c) powdered milk;
 - (d) edible oil;
 - (e) rice;
 - (f) tea.”

*The previous paragraph 22 was substituted** by Act No 28 of 1999, effective 1st January 2000.

**The following was removed

“22 For the purpose of this schedule the terms :
“Ancillary transport activities” includes loading, unloading, handling, landing, berthing and stevedoring.”

***“Public passenger transportation”, in relation to a bus, means stage carriage within the meaning of the Traffic Act.”

*** Amended by Act No. 29 of 1995, effective 1/1/96. Previously read:

““Bus” means any heavy public service vehicle licensed to carry thirteen or more passengers within the meaning of the Traffic Act.”

History

The Second Schedule is amended by adding new paragraph 23 [Amended Act No 28 of 1999, effective 1 January 2000]

23. The supply by the State of water and sewerage services.

History

The Second Schedule is amended by adding new paragraph 24 [Amended by Act No 27 of 2005, effective 1 January 2006]

24. The supply of kerosene and the following basic food items-

- (a) tinned fish;
- (b) flour and sharps;
- (c) powdered milk;
- (d) edible oil;
- (e) rice;
- (f) tea.

THIRD SCHEDULE - FORMS

FORM 1

**OATH OF SECRECY
(Section 7)**

I ----- make oath and swear that I shall regard and deal with all documents, returns, assessments and information relating to the taxable activity of any person which may come into my possession or to my knowledge in the course of any official duty, as secret, and that I shall not reveal any such document or information to any person or permit any person to have access to any such document, return or assessment, save in the circumstances in which I am permitted to do so under this Decree.

Sworn before me this ----- day of -----, 20--.

-----Magistrate

OBJECTION TO ASSESSMENT

VALUE ADDED TAX DECREE 1991
(Section 50)

Name of Taxpayer :-----

Tax Identification Number :-----

To the Commissioner of Inland Revenue :

I hereby give notice that I object to the amount for which I am assessed, for the following reasons: -

[Here fully and in detail describe reasons]

(or I am not liable to taxation under the above Decree for the following reasons :-

[Here shortly describe reasons]

Dated this ----- day of-----, 20--.

Signature

NOTICE OF APPEAL TO HIGH COURT

VALUE ADDED TAX DECREE 1991
(SECTION 58)

Name of Taxpayer :-----

Tax Identification Number :-----

To the Commissioner of Inland Revenue :

I hereby give notice that I am dissatisfied with the decision given by the Value Added Tax Tribunal in this matter for the following reasons :-

[Here shortly describe reasons]

and that I desire to appeal to the High Court of Fiji.

Dated this ----- day of -----, 20--.

Signature

REFERENCE OF APPEAL TO HIGH COURT

VALUE ADDED TAX DECREE 1991
(Section 58)

In the matter of assessment of -----

By virtue of the powers vested in me in this behalf under this Decree, I hereby refer the appeal of -----(or my appeal) against the decision of the Value Added Tax Tribunal to the High Court of Fiji for adjudication thereon.

Dated this ----- day of-----, 20--.

To the Chief Registrar of the High Court of Fiji.

Commissioner of Inland Revenue

[LEGAL NOTICE NO.39]

VALUE ADDED TAX DECREE 1991

VALUE ADDED TAX TRIBUNAL RULES
(Section 53)

IN exercise of the powers conferred on me by Section 53 of the Value Added Tax Decree 1991, I have made the following Rules :

Short Title

1. These Rules may be cited as the Value Added Tax Tribunal Rules.

Interpretation

2. In these Rules:
“the Decree” means the Value Added Tax Decree;
“the Tribunal” means the Value Added Tax Tribunal as for the time being constituted under Section 51 of the Decree;
“Registrar” means the Registrar of the Tribunal.

Registrar of the Tribunal

3. The Chief Registrar of the High Court of Fiji shall be the Registrar of the Tribunal.

Office of the Tribunal

4. The office of the Tribunal shall be at the High Court Registry at Suva.

Place of Sittings

5. The Tribunal may sit for the hearing of an appeal, or for the hearing of any interlocutory application incidental to an appeal, at any place within Fiji which the Tribunal from time to time or at any time may deem convenient for the sitting.

Notice of Appeal

- 6.-(1) Every appeal to the Tribunal shall be brought by notice of motion (in these Rules referred to as “the notice of appeal”) in the form appearing in the First Schedule.
 - (2) The notice of appeal shall state clearly and concisely the grounds of the appeal. The notice shall be signed by the appellant or his agent or barrister and solicitor and shall state therein an address for service in Fiji to or at which notices, process, and other documents and written communications relating to the appeal may be sent by registered post or left for the appellant. Service by post or delivery as aforesaid shall be deemed to be good service on the appellant.
 - (3) The original notice of appeal and one copy thereof shall be filed in the office of the Tribunal within the time notified to the appellant by the Commissioner under subsection (5) of Section 50 of the Decree as the time within which the appellant may exercise the right of appeal to the Tribunal.

- (4) The appellant shall cause a copy of the notice of appeal to be served upon the Commissioner at his office at Suva, either personally or by registered post, within the time referred to in paragraph (3).

Entry of appeal and direction for hearing

- 7.-(1) Upon the filing of the notice of appeal the Registrar shall cause the appeal to be entered in the books of the Tribunal and shall obtain a direction by the person for the time being appointed to hold the Tribunal as to the day, time and place to be appointed for the hearing of the appeal.
- (2) Unless, on the application of the appellant, it is otherwise directed, the place of the hearing of the appeal shall be at Suva. An appellant may apply at any time to the person for the time being appointed to hold the Tribunal for a direction that the appeal be entered for hearing at any place other than at Suva or, if the appeal has been entered for hearing at Suva, to change the place of hearing. Any such application may be made by motion on not less than four days notice to the Commissioner.

Notice of hearing of appeal

8. The Registrar shall give not less than twenty eight days' notice in writing (in these Rules referred to as "the notice of hearing") to the appellant and to the Commissioner of the day, time and place appointed for the hearing of the appeal.

Service

9. Service of the notice of hearing on the Commissioner may be effected by sending a copy of the notice by registered post to him at his office at Suva, or by leaving a copy of the notice at that office. Service on the appellant may be effected in accordance with paragraph (2) of Rule 6.

Amendment of notice of appeal

10. A notice of appeal may be amended at any time by or with the leave of the Tribunal on such terms and conditions as the Tribunal may think just.

Attendance of witness under subpoena

11. At the request of the appellant or the Commissioner or by the direction of the Tribunal itself, a subpoena and testificandum or ducus tecum may be issued requiring any person to attend to give evidence or to produce documents in connection with the appeal.

Hearing of the appeal

- 12.-(1) On the day fixed for the hearing of the appeal or on any other day to which the hearing may be adjourned, the appellant, or his agent or barrister and solicitor, shall be heard in support of the appeal.
- (2) The Tribunal shall then, if it does not dismiss the appeal at once, hear the Commissioner or his officer or barrister and solicitor, and in such case the appellant shall have the right of reply.
- (3) Subject to the provisions of the Decree or to these Rules, the ordinary practice and the Rules of the High Court shall apply, with necessary modifications in relation to an appeal under these Rules.

Fees of Tribunal

- 13.-(1) The fees set out in the Second Schedule shall be charged and paid in respect of the matters therein specified.
- (2) The fees to be charged and paid in respect of matters not specified in the said Schedule shall be the fees payable in respect of similar matters in civil proceedings in the High Court.

Provided that no fees shall be charged or be payable by the Commissioner in relation to any act, application or proceedings by him in relation to an appeal.

Costs

- 14.-(1) Subject to the provisions of Section 57 of the Decree, the costs of an incidental to an appeal shall be in the discretion of the Tribunal but, unless the Tribunal in any particular case for good reason shall think fit otherwise to order, legal practitioners' costs shall not exceed the maximum allowance prescribed by the scale of costs set out in Appendix 4 of the High Court Rules.
- (2) When the Tribunal directs that the cost, or any part of the costs, of an appeal be paid by the appellant or by the State, the Tribunal may specify the amount of such costs to be paid or may direct that the costs be taxed by the Registrar.
- (3) The Tribunal may allow as costs of an appeal the allowances and expenses of witnesses attending the hearing of the appeal in accordance with the Rules for the time being in force in the High Court of Fiji in relation to allowances and expenses of witnesses attending at trials before the High Court, and for that purpose any reference in such Rules to the Chief Registrar of the High Court, shall be deemed to be a reference to the Registrar of the Tribunal.
- (4) The Tribunal may allow such other necessary costs or allowances as may seem to the Tribunal to be fair and reasonable.

Made theday of20...

First Schedule
[Rule 6(1)]

VALUE ADDED TAX DECREE 1991

In the Matter of an appeal to the Value Added Tax Tribunal by the Appellant

TAKE NOTICE that the Value Added Tax Tribunal will be moved by the above-named appellant upon such day and time at such place as may be appointed for the sitting of the Tribunal for an order that the decision of the Commissioner of Inland Revenue dated the day of 20 , disallowing the objection by the appellant to the following assessment(s):

(state particulars of assessment(s) appealed against)

be revised or set aside and the State do pay to the appellant the costs of his appeal.

And further take notice that the grounds of this appeal are as follows:

(Set out clearly and concisely the grounds of appeal which, save with the leave of the Tribunal, shall be the reasons stated in the objection to the assessment)

Dated this day of 20

Signature of appellant, or his agent,
or barrister and solicitor
*Address for service:

To the Commissioner of Inland Revenue, Suva

*The appellant must ensure that the address for service given is adequate to ensure that notices, etc., posted to or left at that address will reach him without delay.

Second Schedule
(Rule 13)

FEES (VAT INCLUSIVE)

	\$	c
1. On filing notice of appeal and copy	50.00	
2. On filing any other notice or motion and copy	10.00	
3. On filing an affidavit or any other document	5.00	
4. On sealing a writ of subpoena for a witness	10.00	
5. On filing a Bill of Costs and obtaining an appointment to tax.....	15.00	
6. On taxation – for every \$4 or fraction thereof allowed	0.66	
7. On sealing a certificate or allocatur	10.00	

EXTRAORDINARY
FIJI REPUBLIC GAZETTE SUPPLEMENT

[Legal Notice No.65)

VALUE ADDED TAX DECREE 1991
(Section 84)

VALUE ADDED TAX REGULATIONS 1991

In exercise of the powers conferred upon me by Section 84 of the Value Added Tax Decree 1991, I have made the following Regulations –

Part I – Preliminary

Short Title

- (1) These Regulations may be cited as the Value Added Tax Regulations, 1991.

History

The relocation of old Regulation (21) should take place instead of old Regulation (25) as clarified by Legal Notice No 87 of 2002 - Rectification of Errors (No. 2) Order 2002.

Regulation amended by relocating old Regulation (25) as the new Regulation (1A) and inserting the word “commencement” as the title of new Regulation (1A)
[Legal Notice No 1 of 2000, effective 1 January 2000]

Commencement

- (1A) These Regulations come into force on 1st July 1992.

History

Definition of “essential food items” in Regulation 2 revoked by Legal Notice No 87 of 2002 - Rectification of Errors (No. 2) Order 2002. Previously* read -

“essential food items” has the meaning given to it in paragraph 22(2) of the Second Schedule to the Decree

*Inserted by Legal Notice No 1 of 2000, effective 1 January 2000

Regulation (2) amended by adding the definition of “basic food items” by Legal Notice No. 77 of 2005

Interpretation

- (2) In these Regulations, unless the context otherwise requires -

“The Decree” means the Value Added Tax Decree, 1991.

“basic food items” means the food items listed under paragraph 24 of the Second Schedule to the Decree.

Part II – Tax Invoices

- (3) Subject to regulation 5 and 7, a tax invoice shall contain the following particulars:
- (a) the words “tax invoice” in a prominent place;
 - (b) the name, address and taxpayer identification number of the supplier;
 - (c) the name and address of the recipient;

- (d) an individual serialised number and the date upon which the tax invoice was issued;
 - (e) a description of the goods and services supplied;
 - (f) the quantity or volume of the goods and services supplied, and
 - (g) the total amount of the tax charged, the consideration, excluding tax, and the consideration, inclusive of tax for that supply.
- (4) Where a registered person issues a tax invoice containing the particulars prescribed in regulation 3 and specifies thereon any goods and services which are subject of an exempt or zero-rated supply, he shall distinguish on the tax invoice between the goods and services which are the subject of an exempt or zero-rated supply and state separately the gross total amount payable in respect of each.
- (5) Notwithstanding anything in regulation 3, where the consideration in money for a supply does not exceed one hundred dollars or such amount as the Minister may from time to time by Legal Notice declare or the supply is made by a retailer, a tax invoice shall contain the particulars in regulation three or the following particulars :
- (a) the word “tax invoice” in a prominent place;
 - (b) the name and taxpayer identification number of the supplier;
 - (c) the date upon which the tax invoice was issued;
 - (d) a description of the goods and services supplied, and
 - (e) the consideration for the supply and a statement that it includes a charge in respect of tax.
- (6) Where a registered person provides a tax invoice in accordance with regulation 5, the tax invoice shall include only particulars of supplies which are subject to tax and shall not contain any reference to any exempt or zero-rated supply.

History

Regulation (7) amended by inserting the phrase “ unless requested by the recipient” between the words “not” and “be”.
[Legal Notice No 68 of 1992, effective 1 July 1992]

- (7) Notwithstanding any other regulation, a supplier shall not unless requested by the recipient be required to provide a tax invoice if the consideration in money for a supply does not exceed ten dollars or such amount as the Minister may from time to time, by Legal Notice declare.

History

Regulation (8) amended by inserting the word “a” between the words “be” and “tax invoice”
[Legal Notice No. 87 of 2002 - Rectification of Errors (No. 2) Order 2002]

- (8) Where a recipient, being a registered person, creates a document containing the particulars specified in regulation 3 and purporting to be a tax invoice in respect of a taxable supply of goods and services made to the recipient by a supplier, being a registered person, that document shall be deemed to be a tax invoice issued by the supplier under subsection (1) of Section 41 of the Decree where –

- (a) the Commissioner has granted prior approval for the issue of such documents by a recipient in relation to the taxable supplies to which the documents relate; and
- (b) the supplier and the recipient agree that the supplier shall not issue a tax invoice in respect of any taxable supply to which this regulation applies; and
- (c) the document is provided to the supplier and a copy is retained by the recipient; and
- (d) the words “buyer created tax invoice – Inland Revenue Department approved” are contained on that document :

Provided that where a tax invoice is issued pursuant to this regulation any tax invoice issued by the supplier in respect of that taxable supply shall be deemed not to be a tax invoice for the purposes of the Decree.

History

**Regulation (9) amended by deleting the figure “7” and substituting the figure “8”
[Legal Notice No 68 of 1992, effective 1 July 1992]**

- (9) Where approval has been granted by the Commissioner to issue tax invoices pursuant to regulation 8, that approval may be withdrawn at any time where the Commissioner is satisfied that the conditions of that approval have not been complied with.
- (10) Where a registered person receives relevant services to which Section 21 of this Decree applies, the relevant invoice or other documentation from the person supplying the service shall serve the same purpose as a tax invoice.

Part III – Credit and Debit notes

- (11) A credit note or, as the case may be, a debit note shall contain the following particulars :
 - (a) the word “credit note” or, as the case may be, “debit note” in a prominent place;
 - (b) the name and taxpayer identification number of the registered person;
 - (c) the name and address of the recipient;
 - (d) the date on which the credit or debit note was issued;
 - (e) the amount shown on the tax invoice as being in respect of tax, the adjusted amount, and the amount of the credit or, as the case may be, debit, that is necessary to make the adjustment;

History

Regulation (11) amended by deleting paragraph [f] and renumbering paragraph [g] as paragraph [f] [Legal Notice No 68 of 1992, effective 1 July 1992]

Previously read -

- (f) the number of the tax invoice if required to be shown the tax invoice and the date on which it was issued, and
- (f) a brief explanation of the circumstances giving rise to the issuing of the credit or debit note.

History

Figure "11" substituted for figure "8" in Regulation 12 by Legal Notice No. 87 of 2002 - Rectification of Errors (No. 2) Order 2002. Figure "8" was inserted by Legal Notice No. 68 of 1992, effective 1 July 1992

- (12) Where a recipient, being a registered person, creates a document containing the particulars specified in regulation 11 and purporting to be a credit note or, as the case may be, a debit note in respect of a supply of goods and services made to the recipient by a supplier, being a registered person, that document shall be deemed to be a credit note or, as the case may be, a debit note provided by the supplier under subsection (2) of Section 42 of the Decree where -
 - (a) the Commissioner has granted prior approval for the issue of such documents by a recipient in relation to the supplies to which the documents relate; and
 - (b) the supplier and the recipient agree that the supplier shall not issue a credit note or, as the case may be, a debit note in respect of any supply to which this regulation applies; and
 - (c) a copy of any such document is provided to the supplier and another copy is retained by the recipient; and
 - (d) the words “buyer created credit note – Inland Revenue Department approved” or, as the case may be, “buyer created debit note – Inland Revenue Department approved” are contained on that document.

Provided that where a credit note or, as the case may be, a debit note issued pursuant to subsection (2) of Section 42 of the Decree, any credit note or, as the case may be, debit note issued by the supplier in respect of that supply shall be deemed not to be a credit note or, as the case may be, a debit note for the purposes of the Decree.

Part IV – Miscellaneous provisions relating to tax invoices and credit and debit notes

- (13) Where a supply is a taxable supply to which subsection (1) of Section 30 of the Decree applies, that agent, being a registered person, may, notwithstanding anything in the Decree, issue a tax invoice or a credit note or a debit note in relation to that supply as if that agent had made a taxable supply, and to the extent that that tax invoice or credit note or debit note relates to that supply, that principal shall not also issue, as the case may be, a tax invoice or a credit note or a debit note.

- (14) Where a taxable supply of goods and services is made to an agent in terms of subsection (2) of Section 30 of the Decree, the agent may request that that agent be issued with a tax invoice and the registered person shall issue a tax invoice or a credit note or a debit note as if the supply were made to that agent.

History

Regulation (15) amended by deleting figure “12” in paragraph (a) and substituting the figure “13”; and deleting figure “13” in paragraph (b) and substituting the figure “14”.

[Legal Notice No 68 of 1992, effective 1 July 1992]

- (15) Where a tax invoice or a credit note or a debit note in relation to a supply has been issued-
- (a) by an agent pursuant to regulation 13; or
- (b) to an agent pursuant to regulation 14,

the agent shall maintain sufficient records to enable the name and address and registration number (if any) of the principal to be ascertained.

History

The word "purposes" substituted for "purpose" by Legal Notice No. 87 of 2002 - Rectification of Errors (No. 2) Order 2002

Part V of the Regulations is amended by renumbering Regulation (16) as” (16) (a)”; deleting the words “Notwithstanding anything in” in the first line of new Regulation (16) (a) and substituting “ Pursuant to”; deleting the words “for the purpose of that Section”; deleting reference to paragraphs “(a)”, “(b)” and “(c)” under the renumbered Regulation (16) (a) and substituting “(i)”, “(ii)”, and “(iii)” respectively.

[Legal Notice No 68 of 1992, effective 1 July 1992]. A number of these amendments was also repeated in Legal Notice No. 87 of 2002 - Rectification of Errors (No. 2) Order 2002

Part V – Time of Performance

- (16)(a) Pursuant to Section 87 of the Decree, the “time of performance”, with respect to the following supplies, shall be deemed to take place at the time –
- (i) an invoice issued by the supplier or the recipient; or
- (ii) any payment is received by the supplier; or
- (iii) the delivery of the goods and services takes place,-

whichever is the earlier.

History

Deleting figure “17” in Regulation (17) and substituting the alphabet (b);

Deleting figure “18” in Regulation (18) and substituting the alphabet (c);

Deleting figure “19” in Regulation (19) and substituting the alphabet (d);

Deleting figure “20” in Regulation (20) and substituting the alphabet (e).

[Legal Notice No 68 of 1992, effective 1 July 1992]

- (b) In relation to the supply of the right of admission or membership of a club, association, or a like body by way of a subscription or a similar fee, if the time of performances occurred on or before the 3rd day of May 1991.

- (c) In relation to the supply of any publication by way of a subscription or similar fee which involves the periodic delivery of that publication, if the time of performance occurred on or before the 3rd day of May 1991.
- (d) In relation to the supply of the right to life membership of a club, association, or a like body by way of a single payment as consideration for the granting or exercising of that right, if the time of performance occurred before the 1st day of July 1992.
- (e) In relation to the supply of any goods by way of an agreement to hire (as defined in subsection (3) of Section 18 of the Decree) which provides for a single payment as the consideration for the supply of those goods, if the time of performance occurred on or before the 3rd day of May 1991.

Part VI – Taxable activities of non-profit bodies

History

In Regulation 17(c) the word "the" inserted between the words "than" and "cost" by Legal Notice No. 87 of 2002 - Rectification of Errors (No. 2) Order 2002

Renumbering Regulations 21, 22, 23, 24 and 25 as Regulations 17, 18, 19, 20, and 21 respectively.

[Legal Notice No 68 of 1992, effective 1 July 1992]

Regulation 17(c) is amended by inserting the word "the" between the words "than" and "cost".

[Legal Notice No. 87 of 2002 - Rectification of Errors (No. 2) Order 2002]

- (17) For the purposes of determining whether any non-profit body is carrying on an activity in competition to the disadvantage of any taxable activity carried on by any other person, the Commissioner shall have due regard to :
 - (a) the nature and type of goods and services being supplied;
 - (b) the value of supplies, if registered under the Decree, would be taxable supplies (hereafter in this Part referred to as said taxable supplies);
 - (c) whether the consideration received for the said taxable supplies is less than the cost of making those said taxable supplies;
 - (d) the value of any unconditional gifts received both in kind and money, and
 - (e) whether the making of the said taxable supplies is being subsidised by the unconditional gifts received.

History

Deleting the figure "21" in new Regulation (18) and substituting the figure "17"

[Legal Notice No 68 of 1992, effective 1 July 1992]

- (18) Subject to regulation (17) and without limiting the generality of subsection (1) of Section 4 of the Decree, a non-profit body shall be carrying on a taxable activity, if carried on continuously and regularly, in respect of the supply of goods and services of the following kind :
 - (a) the right of admission or membership of a club association, or like body by way of a subscription or a similar fee and includes affiliation fees;

- (b) the admission, for a consideration, of persons to any premises;
 - (c) the leasing or hiring of any real or personal property;
 - (d) the operation of a commercial oriented venture that involves the supply of goods and services for a consideration;
 - (e) the supply of advertising services by way of a fee or sponsorship, and
 - (f) the right to participate in any event carried on or organised by that non-profit body, for a fee or charge.
- (19) Where the Commissioner is of the opinion that a non-profit body is carrying on one or more taxable activities, the Commissioner may, notwithstanding that Section 22 of the Decree provides for the registration of all the taxable activities carried on by a person, direct that the registration shall only apply in respect of any identifiable separate activity or activities.

History

Deleting figure “23” in new regulation (20) and substituting figure ‘19’

[Legal Notice No. 68 of 1992, effective 1 July 1992]

- (20) Where the Commissioner makes a direction in terms of regulation (19), the Commissioner must notify the non-profit body of the activity or activities that have been registered under the Decree.

History

Part (20A) inserted by Legal Notice No. 77 of 2005, effective 1 January 2006

Part VII – Supply of Kerosene and Certain Basic Food Items

- (20A) A registered person who supplies kerosene or basic food items must maintain the following records, in accordance with section 79 of the Decree, for the purpose of determining that person’s liability to tax-
- (d) inventory records of kerosene and basic food items held as stock at 31st December 2005;
 - (e) separate purchases journal or records of kerosene and basic food items;
 - (f) inventory records of kerosene and basic food items held as stock on hand; and-
 - i) at a date, elected by the registered person, no later than 31st December 2006; and
 - ii) 12 months after the date elected under subparagraph (i) and annually therefore,
 - (g) separate sales records of kerosene and basic food items.
- (20B) The Commissioner may, accept, allow or require a registered person to adopt any other suitable method for determining that person’s liability to tax in respect of supplies of kerosene and basic food items.
- (20C) If insufficient records are kept by a registered person in accordance with these Regulations and section 79 of the Decree, and if the Commissioner is not satisfied with a return made by the registered person, the Commissioner may make an assessment pursuant to section 44(1) of the Decree in respect of the tax payable under the Decree.

History

Regulation 21 revoked by Legal Notice No. 87 of 2002 - Rectification of Errors (No. 2) Order 2002. Previously* read -

“Part VII – Supply of Essential Food Items

- (21) A registered person who makes supplies of essential food items must maintain the following records, in accordance with section 79 of the Decree, for the purpose of determining that person’s liability to tax –
- (a) inventory records of essential food items held as stock at 31st December 1999;
 - (b) tax invoices for purchases of essential food items; and
 - (c) inventory records of essential food items held as stock on hand -
 - (i) at a date, elected by the registered person, not later than 31st December 2000; and
 - (ii) 12 months after the date elected under subparagraph (i) and annually thereafter.”

*Inserted by Legal Notice No 1 of 2000, effective 1 January 2000 . The insertion should be done after Regulation 20 and not Regulation (24) as clarified by Legal Notice No. 87 of 2002 - Rectification of Errors (No. 2) Order 2002

- (22) The Commissioner may, in his or her discretion, accept, allow or require a registered person to adopt any other suitable method for determining that person’s liability to tax in respect of supplies of essential food items.
- (23) If sufficient records are not kept by a registered person in accordance with these regulations and section 79 of the Decree, and if the Commissioner is not satisfied with a return made by the registered person, the Commissioner may make an assessment pursuant to section 44(1) of the Decree in respect of the tax payable under the Decree.

Dated at Suva this 22nd day of November 1991.

[Josevata N Kamikamica]
MINISTER FOR FINANCE AND ECONOMIC PLANNING