

VALUE ADDED TAX DECREE 1991 (AMENDMENT) (NO. 1) DECREE 1992

A DECREE TO AMEND THE VALUE ADDED TAX DECREE 1991

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.

*Short title*

1. This Decree may be cited as the Value Added Tax Decree 1991 (Amendment) (No. 1) Decree 1992.

*Interpretation*

2. In this Decree the Value Added Tax Decree 1991 is referred to as the "principal Decree".

*Section 2 of the principal Decree amended*

3. Subsection (1) of Section 2 of the principal Decree is amended by:

- (a) deleting the term "Chief Assessor" and the meaning ascribed to it;
- (b) inserting the following after the definition of "consideration in money"  
"Constitution" means the Constitution of the Sovereign Democratic Republic of Fiji made on 25th day of July, 1990";
- (c) adding a new paragraph (a) to the meaning of "Non-profit body" as follows:  
"(a) being any recognised religious organisation; or";
- (d) renumbering of existing paragraphs (a) and (b) of the meaning of "Non-profit body" as paragraphs (b) and (c) respectively;
- (e) adding the letter "s" to the word "person" in definition of "Person";
- (f) adding the letter "s" to the term "Service"; and
- (g) deleting the letter "a" before the word "good" and adding the letter "s" to the word "good" in definition of "Services".

*Section 3 of the principal Decree amended*

4. Section 3 of the principal Decree is amended by:

- (a) inserting the words "and services" after the word "goods" in line seven of subsection (3);
- (b) deleting subsection (11);
- (c) renumbering subsections (12) and (13) as subsections (11) and (12) respectively.

*New Section 6A added to the principal Decree*

5. The principal Decree is amended by adding a new Section 6A as follows:

*"Giving of notices*

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
- (iv) sent to that other person by post addressed to him at his usual or last known place of abode or business.

(2) 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 8 of the principal Decree amended*

6. Section 8 of the principal Decree is amended by:

(a) inserting the following new subsections after subsection (2):—

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

*Section 11 of the principal Decree repealed and substituted*

7. Section 11 of the principal Decree is hereby repealed and substituted as follows:

*"Demand for additional information*

11.—(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."

*Section 12 of the principal Decree repealed and amended*

8. Section 12 of the principal Decree is repealed and amended as follows:—

*"Commissioner to have power to inspect books and documents*

12.—(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 office 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."

*Section 14 of the principal Decree amended*

9. Section 14 of the principal Decree is amended by:—

(a) adding the following proviso after subsection (1)—

"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";

(b) deleting the following expressions, words and figures in the second line of paragraph (a) of subsection (4) "(except Section 33)";

(c) deleting the figures "95" in the fourth line of paragraph (a) of subsection (4);

(d) adding a comma after the figures "11" and adding the figures "11A" after that comma in paragraph (c) of subsection (4);

(e) deleting the figures, expressions and words "102 (family planning goods)" in the first and second lines of paragraph (e) and substituting the following figures, expressions and words—"102(i) (family planning goods imported by non-profit bodies)";

(f) inserting the following figures, expressions and words in the ninth line of paragraph (e) of subsection (4) before the figures "215"—"212 (a private individual)";

(g) deleting the words "the owner of trustee" in the tenth line of paragraph (e) of subsection (4) and substituting "the owner or trustee".

*Section 17 of the principal Decree amended*

10. Subsection (3) of Section 17 of the principal Decree is amended by:—

(a) deleting the word "their" in the fifth line and substituting the word "his";

(b) adding the following proviso:

"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."

*Section 18 of the principal Decree amended*

11. Subsection (2) of Section 18 of the principal Decree is amended by:

- (a) deleting the word "installments" on the fifth line of paragraph (d) and substituting "instalments";
- (b) adding the words "and services" after the word "goods" in the sixth and seventh lines of paragraph (d), and
- (c) deleting the word "installments" on the seventh line of paragraph (e) and substituting "instalments".

*Section 19 of the principal Decree amended*

12. Subsection (5) of Section 19 of the principal Decree is amended by the insertion of the following definition at the end:

"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."

*Section 20 of the principal Decree amended*

13. Section 20 of the principal Decree is amended by:

- (a) the addition of the following proviso after subsection (1):  
"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."
- (b) the addition of the following subsections after subsection (3):  
"(4) Subsections (1) and (3) of this Section shall apply only to dealers in "second hand goods".  
(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."

*Section 21 of the principal Decree amended*

14. Subsection (4) of Section 21 of the principal Decree is amended by deleting the word "or" in the second line and substituting the word "of" in its place.

*Section 23 of the principal Decree amended*

15. Subsection (1) of Section 23 of the principal Decree is amended by the addition of the following proviso at the end of the subsection:—

"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."

*Section 26 of the principal Decree amendment*

16. Paragraph (c) of Subsection (2) of Section 26 of the principal Decree is amendment by:

- (a) adding the words "and services" after the word "goods" in the second line; and
- (b) deleting the word "supplies" in the seventh line and substituting the word "supplied".

*Section 27 of the principal Decree amended*

17. Subsection (1) of Section 27 of the principal Decree is repealed and substituted by the following new subsection (1):—

"(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."

*Section 29 of the principal Decree amended*

18. Paragraph (b) of subsection (1) of Section 29 of the principal Decree is amended by deleting the word "place" in the second line and substituting the word "establishment".

*Section 31 of the principal Decree amended*

19. Section 31 of the principal Decree is amended by—

- (a) inserting the following definition immediately after the definition of "New Company" in subsection (1)—
- "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."
- (b) inserting the following definition after the definition of "Original company" in subsection (1)—
- "Person" includes a company and a local or public authority."
- (c) inserting a new subsection after subsection (3) as follows:
- "(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 per cent of the shares, or more than fifty per cent of the nominal capital, or more than fifty per cent of the paid up capital, or more than fifty per cent 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 per cent 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 to 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 purposes of this Section two companies shall be deemed to consist substantially of the same shareholders if not less than fifty per cent of the paid-up capital of each of them is held by shareholders in the other or if not less than fifty per cent 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."

*Section 32 of the principal Decree amended*

20. Paragraph (c) of subsection (5) of Section 32 of the principal Decree is amended by deleting "Where" in the first line and substituting "where".

*Section 39 of the principal Decree amended*

21. Section 39 of the principal Decree is amended by:

- (a) adding a proviso after paragraph (b) of subsection (2) as follows:
- "Provided that the Commissioner may at his discretion, allow a registered person, to adopt any other suitable basis to determine the proportion of input tax to be deducted.";
- (b) deleting paragraph (c) of subsection (2);
- (c) deleting reference to paragraphs "(d)" and "(e)" and substituting "(c)" and "(d)";
- (d) adding open and close brackets to the figures "2" and "3" respectively in the first line to subsection (4);
- (e) adding the words "of this Decree" after the figures "36" in the fourth line to subsection (4);
- (f) deleting the word "No" in the first line of subsection (5) and substituting the following words—"Notwithstanding anything in this Decree, no".

*Section 42 of the principal Decree amended*

22. Paragraph (c) of subsection (2) of Section 42 of the principal Decree is amended by deleting all the words after "one" and substituting the words, "credit note or debit note for the amount of the difference."

*Section 44 of the principal Decree amended*

23. Section 44 of the principal Decree is amended by deleting the word "decree" on the last line of subsection (4) and substituting the word "Decree".

*Section 47 of the principal Decree amended*

24. Section 47 of the principal Decree is amended by inserting the word "or" between the words "of" and "an" in the second line.

*Section 48 of the principal Decree amended*

25. Subsection (1) of Section 48 of the principal Decree is amended by—

- (a) deleting the word "made" on the first line and substitute the word "furnished";
- (b) inserting the word "the" before the word "taxable" in the sixth line.

*Section 50 of the principal Decree amended*

26. Section 50 of the principal Decree is amended by:

- (a) repealing subsection (2) and substitute the following:  
"(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."
- (b) repealing subsection (3) and substitute the following:—  
"(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."
- (c) repealing subsection (5) and substitute the following:  
"(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."
- (d) repealing subsection (6).
- (e) renumbering subsections (7), (8) and (9) as subsections (6), (7) and (8) respectively.
- (f) inserting in the ninth line of subsection (8) between the words "refunded" and "and" the words "subject to Section 65 of this Decree".

*Section 51 of the principal Decree amended*

27. Subsection (2) and (5) of Section 51 of the principal Decree are amended by the deletion of the figures "1990" and of the words "of the Republic of Fiji".

*Section 58 of the principal Decree amended*

28. Section 58 of the principal Decree is amended by—

- (a) deleting the word "notify" on the eleventh line and substituting the words "give notice to";
- (b) deleting the words "by registered letter" on the twelfth line.

*Section 60 of the principal Decree amended*

29. Paragraph (c) of Section 60 of the principal Decree is amended by deleting the word "On" on the first line and substituting "on".

*Section 62 of the principal Decree amended*

30. Section 62 of the principal Decree is amended by:

- (a) deleting all the words from and including "under" on the second line and ending with the comma on the third line of subsection (3);
- (b) deleting all the words after the word "were" on the ninth and tenth lines of subsection (3) and substituting the following words:  
"a registrable instrument under law";
- (c) deleting the words "under the Registration Act" in the first and second lines of subsection (4);
- (d) deleting "and to the Registration Act" in the sixth line of subsection (4) and substituting the following words—"under law";
- (e) deleting all the words after the word "were" on the fifth and sixth lines of subsection (5) and substituting the following words—"a registrable instrument under law."

**"FOURTH SCHEDULE"**  
(SECTION 7)

**RATES OF NORMAL TAX**

**A. Individuals, Estates of Deceased Persons, Trusts and Settlements**

When the chargeable income:

exceeds \$4500 but does not exceed \$7000, Nil Plus 15% of each dollar in excess of \$4500  
exceeds \$7000 but does not exceed \$15,000, \$375 plus 25% of each dollar in excess of \$7000  
exceeds \$15,000 ....., \$2375 plus 35% of each dollar in excess of \$15,000."

*Export Incentives*

16.—(1) The Fifth Schedule to the principal Act is amended:

(a) by adding the following sub-paragraph immediately after sub-paragraph (ii) of paragraph 4:

"(iii) No deduction will be due in respect of deduction relating to the increase in exports for any fiscal year in which total export sales of approved products do not exceed thirty per cent of total output, with a minimum of ten thousand dollars." and

(b) by adding the following sub-paragraph immediately after sub-paragraph (iii) of paragraph 5:

"(iv) Where the Minister considers that an approved product has not been adequately marketed overseas and further government assistance is desirable to facilitate exports which will generate substantial foreign exchange earnings, he may by direction to the Commissioner extend the 8 year period referred to in sub-paragraph (i), upon such conditions as he thinks fit, by a period not exceeding 5 years."

(2) The amendment made by subsection (1) of this Section shall be deemed to have come into force on the first day of January 1992.

*Commencement*

17. Except as otherwise provided, this Decree shall come into force on the first day of July 1992.

Dated this 12th day of May 1992.

**PENAIA K. GANILAU**  
President of the Sovereign Democratic  
Republic of Fiji and Commander-in-Chief  
of the Armed Forces