

GOVERNMENT OF FIJI GAZETTE SUPPLEMENT

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INCOME TAX ACT (CAP. 201)

Income Tax (Withholding Tax) Regulations 2013

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IN exercise of the powers conferred upon me by section 82A and 107 of the Income Tax Act (Cap. 201), I hereby make these Regulations—

PART 1—PRELIMINARY

Short title and commencement

1.—(1) These Regulations may be cited as the Income Tax (Withholding Tax) Regulations 2013.

(2) These Regulations shall be deemed to have come into force on 1 January 2013.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

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

“approved form” has the same meaning as in the Tax Administration Decree 2009;

“bi-month” means a calendar month in which an employee is paid by the employer on two occasions within that month;

“payee” means a person receiving an amount from which tax is required to be withheld under a withholding tax provision;

“payer” means a person required to withhold tax from a payment under a withholding tax provision;

“payment period”, in relation to an employee, means—

(a) if the employee is paid monthly, a calendar month;

(b) if the employee is paid bi-monthly, a bi-month;

(c) if the employee is paid fortnightly, a fortnight;

(d) if the employee is paid weekly, a week; or

(e) if the employee is paid for a period other than those specified in paragraphs (a) to (d) above, that other period;

“primary employment”, in relation to an employee, means the sole employment of the employee;

“S code tax rate”, in relation to an employee, means the rate of 20% of the Income Tax or the rate specified in the Special Tax Rate Certificate issued under regulation 8;

“secondary employment”, in relation to an employee, means any employment other than a primary employment;

“tax” means—

(a) for Part 2, Income Tax and Social Responsibility Tax imposed under the Act;

(b) for Part 3, Resident Interest Withholding Tax Final Tax imposed under the Act;

“tax code declaration” means a “P” tax code declaration or “S” tax code declaration as referred to in regulation 5; and

“withholding tax provision” means sections 9A(2A) and 82 of the Act.

(2) All other terms used but not defined in these Regulations have the meaning assigned to them under the Act.

Application

3. These Regulations shall apply to payments subject to the relevant withholding tax under the Act made on or after 1 January 2013.

PART 2—WITHHOLDING OF TAX FROM EMPLOYMENT INCOME

Registration of employers

4.—(1) A person who carries on or intends to carry on any trade, business, profession or vocation in respect of which he or she will be an employer, must, within 30 days from commencing the trade, business, profession or vocation, register with the Commissioner, in the approved form.

(2) An employer who fails to comply with sub-regulation (1) commits an offence and is liable upon conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 6 months, or to both.

(3) A person registered with the Commissioner as an employer immediately before the commencement of these Regulations shall be deemed to be registered under these Regulations.

Employee tax code declaration

5.—(1) An employee must file a tax code declaration in the approved form with his or her employer within 5 working days from the date of commencement of employment or such later time as may be determined by the Commissioner.

(2) If the employment is the employee's primary employment, the employee must file a "P" tax code declaration form with the employer.

(3) If the employment is the employee's secondary employment, the employee must file an "S" tax code declaration form with the employer.

(4) If an employee has two or more employments at the same time, the employee can file a "P" tax code declaration form with only one employer.

(5) A tax code declaration filed by an employee with an employer remains in force until the employee—

(a) ceases to be employed by the employer; or

(b) files a new tax code declaration with the employer.

(6) An employee who fails to file a tax code declaration with an employer as required under this regulation commits an offence and is liable upon conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 6 months, or to both.

Withholding of tax in relation to primary employment

6.—(1) An employer required to withhold tax under section 82 of the Act from any payment of employment income to an employee in relation to the employee's primary employment must withhold tax in accordance with this regulation.

(2) Subject to sub-regulations (4) and (5) and regulation 7, if an employee has provided his or her employer with a "P" tax code declaration, the amount of tax to be withheld by the employer from a payment of employment income to the employee for a payment period, referred to in this regulation as the "current payment period", is computed according to the following formula where—

Income Tax to withhold = $[A1/F \times G] - B1 + \text{Income Tax on C2} - \text{Income Tax on C1}$ [if result < 0, then tax to be withheld = 0];

SRT to withhold = $[A2/F \times G] - B2$ [If result < 0, then tax to be withheld = 0];

A1 = Income Tax payable on C1;

A2 = SRT payable on C2;

B1 = Income Tax withheld to date;

B2 = SRT withheld to date;

"F" means the number of payment periods in the tax year;

"G" means the number of completed payment periods, including current period;

"B" means the tax withheld to date;

"C1" means $[D \times (F - G + 1)] + E$ [however, if the pay period is the same as the previous, then $C1 = C1$ in the previous pay period];

"C2" means $C1 + H$;

"D" means the amount of employment income paid by the employer to the employee in the current payment period;

"E" means the total amount of employment income paid by the employer to the employee in the previous payment periods in the tax year;

"H" means the total bonus paid to date including that paid in the current period; and

"SRT" means Social Responsibility Tax.

(3) If there are unusual payments and at the end of a tax year the employee considers that the amount of tax withheld has been over deducted, he or she may seek clarification from the Commissioner.

(4) If, for any reason, the employer is uncertain as to the amount of tax to withhold from a payment of employment income, the employer may write to the Commissioner seeking clarification of the amount of tax to be withheld.

(5) If an employer has written to the Commissioner under sub-regulation (4), the Commissioner must advise the employer, by notice in writing, of the amount of tax to be withheld by the employer from the employment income paid by the employer to the employee and the employer must withhold tax accordingly.

(6) The Commissioner may prepare tax tables to assist employers with the withholding of tax under this regulation.

Withholding of tax in relation to secondary employment

7.—(1) An employer required to withhold tax under section 82 of the Act from any payment of employment income to an employee in relation to the employee's secondary employment must withhold tax in accordance with this regulation.

(2) If an employee has provided his or her employer with an "S" tax code declaration, the amount of tax to be withheld by the employer from a payment of employment income to the employee for any payment period is computed according to the following formula —

$$J \times K$$

where —

J is the S code tax rate applicable to the employee at the time of the payment; and

K is the amount of employment income paid to the employee for the payment period.

Special Tax Rate Certificate

8.—(1) The Commissioner may, on the application of any employee in the approved form, issue to that employee a Special Tax Rate Certificate specifying the rate of tax to be withheld from any secondary employment income payment made to that employee.

(2) The Commissioner must, within 5 working days of receipt of an application made under sub-regulation (1), either issue a Special Tax Rate Certificate or decline the application in writing.

(3) The Commissioner may, at any time, cancel any Special Tax Rate Certificate.

(4) Not later than 7 working days after the Commissioner has given notice of the cancellation of a Special Tax Rate Certificate to the person to whom it is addressed, that person shall return the certificate to the Commissioner.

(5) Not later than 7 working days after the cancellation of a Special Tax Rate Certificate, the Commissioner must notify the employers concerned.

(6) No person shall alter any Special Tax Rate Certificate issued by the Commissioner under this regulation, or pretend to be the person to whom any such certificate is addressed, or have in his or her possession, without lawful justification or excuse, an imitation of any such certificate, or cause or attempt to cause any person to refrain from making a tax deduction by the production of any such certificate which is not for the time being in force.

(7) Any person who contravenes sub-regulation (6) commits an offence and is liable upon conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months, or to both.

Redundancy payment

9. An employer required to withhold tax under section 82 of the Act from a redundancy payment to an employee must withhold tax at the rates specified in section 17A of the Act.

Departing employee

10.—(1) If an employee's employment ceases during a tax year, the Commissioner may furnish the employee with a statement of employment income setting out —

(a) the total employment income paid by the employer to the employee for that part of the year prior to termination of employment; and

(b) the total tax deducted from that employment income.

(2) If requested by an employee after cessation of the employee's employment, a statement of employment income required under sub-regulation (1) shall be furnished by the Commissioner to the employee—

- (a) by personal collection; or
- (b) by posting it to the employee's last known postal address.

(3) If an employee ceases employment during a tax year and the amounts of tax withheld have not been remitted to the Commissioner, the Commissioner may request the employer to furnish the Commissioner with the statement of employment income in the prescribed form in respect of that employee.

Statement of employment income upon request to the Commissioner

11. An employee may request the Commissioner to furnish a statement of employment income setting out—

- (a) the total employment income paid by the employer to the employee for that part of the year prior to termination of employment; and
- (b) the total tax deducted from that employment income.

Records

12. An employer must keep records of the following—

- (a) the gross amount of employment income paid to each employee, including any lump sum or redundancy payment;
- (b) the amount of tax withheld from each payment of employment income; and
- (c) employee tax code declarations.

Withholding tax disputes

13.—(1) Pursuant to regulation 11, if an employee considers that tax is being incorrectly withheld by his or her employer from payments of employment income, the employee may file a written complaint with the Commissioner.

(2) The Commissioner must review, within 10 working days, any complaint filed under sub-regulation (1).

(3) If, after reviewing a complaint filed under sub-regulation (1), the Commissioner is satisfied that—

- (a) tax has been withheld in excess of the amount that should have been withheld, the Commissioner must refund the excess in accordance with section 33 of the Tax Administration Decree 2009; or
- (b) the tax withheld is less than the amount that should have been withheld, the Commissioner may recover the underpaid amount from the employee.

Withheld tax treated as a single debt

14. The total amount of Income Tax and Social Responsibility Tax that an employer is required to withhold from employment income and pay to the Commissioner is treated as a single debt.

PART 3—WITHHOLDING OF TAX FROM INTEREST

Withholding of tax from interest paid by a financial institution

15.—(1) Subject to sub-regulation (2), a financial institution must have regard to section 17 of the Act in determining the amount of tax to be withheld, if any, under section 9A of the Act from interest payable by the financial institution to a resident individual.

(2) If a resident individual has more than one deposit with a financial institution or financial institutions at the same time and the amount is exempted in accordance with section 9A(3)(d) of the Act, the resident individual may apply to the Commissioner for a valid certificate of exemption.

PART 4—WITHHOLDING TAX DOCUMENTATION

Notice of tax withheld

16. If a payee requests for a notice of tax withheld, a payer who withholds tax from a payment under a withholding tax provision must, within 7 working days give the payee a notice in writing specifying the tax that has been withheld from the payment.

Monthly summary

17.—(1) A payment to the Commissioner of the tax withheld by a payer for a month as required under section 114 of the Act must be accompanied by a remittance advice, in the approved form, of all amounts withheld by the payer during the month.

(2) The payer shall submit a monthly summary of taxes withheld, in the electronic format approved by the Commissioner.

Tax Withholding Certificate

18.—(1) A Tax Withholding Certificate required to be given by a payer to a payee for a tax year under section 117(1) of the Act must be given to the payee on or before the last day of February following the end of the year—

- (a) by personal collection; or
- (b) by posting it to the payee's last known postal address.

(2) A payer must file a copy of each Tax Withholding Certificate given to a payee under sub-regulation (1) for a tax year with the Commissioner on or before the last day of February following the end of the year or such later time as the Commissioner may allow.

(3) If a Tax Withholding Certificate posted in accordance with sub-regulation (1)(b) is returned to the payer undelivered, the payer must forward the certificate to the Commissioner within 5 working days of the date of return of the certificate.

(4) If a payee is required to attach a Tax Withholding Certificate to the payee's Income Tax return under section 117(2) of the Act and the certificate has been lost, stolen, or destroyed, the payee may apply, in writing, to the payer for a duplicate certificate.

(5) If an application has been made under sub-regulation (4), the payer must comply with the application within 5 working days and the Tax Withholding Certificate given to the payee must be clearly marked with "copy".

(6) If a payee dies during a tax year, the trustee of the payee's estate may apply, in writing, to a payer for a Tax Withholding Certificate for that part of the tax year prior to the death of the payee.

(7) A payee who intends to cease being a resident individual during a tax year may apply, in writing, to a payer for a Tax Withholding Certificate for that part of the tax year prior to the payee ceasing to be a resident individual.

(8) If an application has been made under sub-regulation (6) or (7), the payer must give the trustee or payee a Tax Withholding Certificate within 5 working days of the application being made or such other time as may be approved by the Commissioner.

(9) A payer who fails to comply with this regulation commits an offence and is liable upon conviction to a fine of \$1,000 or to imprisonment for a term not exceeding 6 months, or to both.

(10) The payee may fill an approved form for the issuance of a certificate of exemption by the Commissioner, for any exempt interest under section 9A(3) of the Act.

(11) If a resident payee has more than one deposit whereby interest is derived from a financial institution in Fiji, the resident payee shall elect one deposit where the exemption under section 9A(3)(d) of the Act shall apply.

Annual withholding tax summary

19. An annual withholding tax summary required to be filed by a payer with the Commissioner under section 118 of the Act must be in the approved form.

Cessation of being an employer

20.—(1) A payer who carries on any trade, business, profession or vocation and ceases to be an employer during a tax year must, within 30 days or such other time as the Commissioner may determine after cessation of being an employer—

- (a) give to each payee of the payer a Tax Withholding Certificate for that part of the year prior to cessation of being an employer;
- (b) file with the Commissioner a monthly summary for the month or part of the month in which the cessation of the trade, business, profession or vocation occurred;
- (c) a payment of any tax withheld for the month or part of the month; and
- (d) submit a request for deregistration as an employer.

Deceased payees

21.—(1) If a payer pays an amount to the estate of a deceased payee, the payer must withhold tax as required under the Act and these Regulations as if the payee were still alive.

(2) If a payer becomes aware of the passing away of the payee, the payer must notify the Commissioner in the approved form.

Adjustments

22. An employer may make necessary adjustments during a payment period during the tax year, if the employer pays an employee an amount within the year that is likely to increase or decrease the amount of withholding tax to be remitted to the Commissioner.

Transitional

23. Employers and employees must fully comply with these Regulations within 4 months from the date of their publication in the *Gazette*.

Repeal

24. The Income Tax (Employments) Regulations are hereby repealed.

Made this 21st day of November 2013.

J. V. BAINIMARAMA

Prime Minister and Minister for Finance, Strategic
Planning, National Development, Statistics, Public Service,
People's Charter for Change and Progress, Information, iTaukei Affairs,
Provincial Development, Sugar Industry, Lands and Mineral Resources

[LEGAL NOTICE NO. 67]

AIRPORT DEPARTURE TAX ACT 1986
(ACT NO. 5 OF 1986)

**Airport Departure Tax (Amendment)
Regulations 2013**

IN exercise of the powers conferred upon me by section 8 of the Airport Departure Tax Act 1986, I hereby make these Regulations—

Short title and commencement

1.—(1) These Regulations may be cited as the Airport Departure Tax (Amendment) Regulations 2013, and shall come into force on 1 January 2014.

(2) The Airport Departure Tax Regulations 1986 shall be referred to as the “Principal Regulations”.

Regulation 4 amended

2. The Principal Regulations are amended by deleting regulation 4 and substituting the following—

“Distribution of tax payable

4.—(1) The tax collected under regulation 3 shall be paid as follows—

- (a) \$175 shall be paid directly to the Consolidated Fund;
- (b) \$10 shall be paid to Airports Fiji Limited;
- (c) \$5 shall be paid to the Civil Aviation Authority of Fiji; and
- (d) \$10 shall be the environmental levy paid directly to the Consolidated Fund.

(2) The distribution of tax payable specified in sub-regulation (1) shall be shown on every purchased airline ticket.”