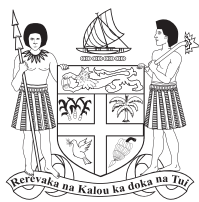


EXTRAORDINARY



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GOVERNMENT OF FIJI

CUSTOMS (AMENDMENT) DECREE 2012
 (DECREE No. 4 OF 2012)

IN exercise of the powers vested in me as the President of the Republic of Fiji and the Commander in Chief of the Republic of Fiji Military Forces by virtue of the Executive Authority of Fiji Decree 2009, I hereby make the following Decree—

A DECREE TO AMEND THE CUSTOMS ACT 1986

Short title and commencement

- 1.—(1) This Decree may be cited as the Customs (Amendment) Decree 2012.
- (2) This Decree shall be deemed to have come into force on 1st January, 2012.
- (3) The Customs Act 1986 is referred to as the ‘Principal Act’.

New sections inserted

2. The Principal Act is amended by inserting the following new sections after section 95A—

“Garnishee Order

95B.—(1) In this section, “payer” means a person who—

- (a) owes money to an importer;
- (b) holds money, for or on account of, an importer;
- (c) holds money, for a joint account of, an importer, with a spouse or another party;
- (d) holds money on account of some other person for payment to an importer or has authority from some other person to pay money to an importer; or
- (e) holds money that is deposited to the credit of an importer and includes money held in a joint bank account in the name of the importer and one or more other person, provided the source of income is determined to be the income of the importer.

- (2) This section applies if an importer is liable to pay duty and the—

- (a) duty has not been paid by the importer by the due date for payment; or
- (b) Comptroller has reasonable grounds to believe that the importer will not pay the assessed duty by the due date for payment.

(3) If this section applies, the Comptroller may, by notice in writing, require a payer in respect of the importer to pay the amount specified in the notice to the Comptroller, being an amount that does not exceed the amount of duty that has not been paid or the amount that the Comptroller believes will not be paid by the due date.

- (4) The notice in subsection 3 shall remain effective for a period of 12 months from the date of its issue.

(5) A payer must pay the amount specified in a notice under subsection (3) by the date specified in the notice, being a date that is not before the date that the amount owed by the importer becomes due to the importer or held on the importer’s behalf.

(6) If a notice served under subsection (3) requires a payer to deduct amounts from a pension, salary, wages or other remuneration payable at fixed intervals to the importer, the amount required to be deducted by the payer from each payment must not exceed 20% of the amount of each payment of pension, salary, wages or other remuneration.

(7) Subject to subsection (6), if a notice served under subsection (3) requires a payer who holds monies in accordance with subsection (1) (c), the payer must deduct the payment of duty specified in the notice, from the income of the importer liable to pay duty owed.

(8) If a payer served with a notice under subsection (3) is unable to comply with the notice, the person must notify the Comptroller, in writing within 14 consecutive days after receipt of the notice, setting out the reasons for the importer's inability to comply.

(9) If a notice is served on the Comptroller under subsection (8), the Comptroller may, by notice in writing—

- (a) accept the notification and cancel or amend the notice issued under subsection (3); or
- (b) reject the notification.

(10) A payer or the payer's representative is precluded from appealing the decision of the Comptroller under subsection (9).

(11) The Comptroller, must, by notice in writing to the payer, revoke or amend a notice served under subsection (3) if the importer has paid the whole or part of the duty due or has made an arrangement satisfactory to the Comptroller for payment of duty.

(12) A copy of a notice served on a payer under this section must be served on the importer.

(13) An amount deducted from the payment by a payer pursuant to a notice served on a payer under this section is held by the payer in trust for the State.

(14) A payer making a payment under this section is treated as acting under the authority of the importer and of any other persons concerned and is hereby indemnified in respect of the payment.

(15) A payer who, without reasonable cause, fails to comply with a notice under this section is personally liable for the amount specified in the notice.

Service of notice

95C.—(1) A person shall be served with a garnishee notice under section 95B (3), by the Comptroller and the notice shall be treated as properly served on the person, if—

- (a) served personally on the person;
- (b) sent to an address for service which is provided; or
- (c) served by using the electronic notice system.

(2) If a notice is served by normal post, service is, in the absence of proof to the contrary, deemed to have been effected at the time at which the notice would be delivered in the ordinary course of post and in proving such service, it is sufficient to prove that the envelope containing the notice was properly addressed and was posted.

(3) If the person to whom a notice has been sent by registered post is informed of the fact that there is a registered letter awaiting him or her at a Post Office, and the person refuses or fails to take delivery of the notice, service of the notice is deemed to have been effected and the burden of proof rests on the person to rebut, that service of the notice has been effected.

(4) An electronic notice or printed copy thereof, must not be ruled out as inadmissible as evidence merely on the basis that a hard copy of the return or document was not filed or delivered by the person sending the return, notice or other document.

(5) If an electronic notice is admissible under subsection (4), it is presumed that, until the contrary is proved, the contents of the electronic notice have been accurately transmitted.

(6) The validity of service of notice under section 95B cannot be challenged after the notice has been wholly or partly complied with.

Failure to comply with Garnishee Order

95D.—(1) A person who, without reasonable cause fails to comply with a garnishee order served on him or her under section 95C commits an offence and is liable for a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or both.

(2) A person who notifies the Comptroller in writing under section 95B (9) is considered to be in compliance with the garnishee order served on the person under section 95B (3) until the Comptroller serves the person with a notice under section 95B (10) amending the order served under section 95B (3) or rejecting the person's notice under section 95B (9)."

Section 143C amended

3. Section 143C of the Principal Act is amended by deleting, in subsection (2), "Income Tax Act" and substituting "Tax Administration Decree 2009".

GIVEN under my hand this 6th day of January 2012.

EPELI NAILATIKAU
President of the Republic of Fiji