



I assent.

[L.S.]

K. K. T. MARA
President

[4 September 1995]

AN ACT

TO AMEND THE VALUE ADDED TAX DECREE, 1991

[1 January, 1995]

ENACTED by the Parliament of Fiji—

Short title and commencement.

- 1.—(1) This Act may be cited as the Value Added Tax (Amendment) Act, 1995.
- (2) This Act shall be deemed to have come into force on the 1st day of January, 1995.

Interpretation.

2. In this Act, the Value Added Tax Decree, 1991, is referred to as “the Decree”.

Section “2” amended

3. Section “2” of the Decree is amended in subsection (1) by erasing the semi colon at the end of paragraph (b) of the definition of “input tax” and substituting it with a colon and by adding immediately after paragraphs (a) and (b) of the definition of “input tax” the following words—

“being in any case goods and services acquired or imported for the principal purpose of carrying on that person’s taxable activity;”

Section "7" amended

4. Section "7" of the Decree is amended in subsection "(6)" by substituting for the word "of" in line 3 the word "to".

Section "8" amended

5. Section "8" is amended—

(a) in subsection "(4)" by substituting for the word "of" in line 2 the word "or" and by substituting for the words "the Crimes Act" in line 5 the words "this Decree or the Penal Code";

(b) by adding immediately after subsection "(5)" the following new subsection—

"(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 "12" amended

6. Section "12" of the Decree is amended in subsection "(2)" by substituting for the word "office" in line 5 the word "officer".

Section "23" amended

7. Section "23" of the Decree is amended by deleting the expressions words and figures "but not later than 30 June, 1993." in subsection "(7)" and substituting a full stop after the word "time".

Section "29" amended

8. Section "29" of the Decree is amended by deleting subsection (3) and substituting the following—

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

Section "30" amended

9. Section "30" of the Decree is amended by adding a new subsection "(2A)" immediately after subsection (2), as follows-

"(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."

Section "39" amended

10. Section "39" of the Decree is amended in paragraph "(b)" of subsection "(2)" by inserting in the first line of the proviso the words "or require" immediately after the word "allow."

Section "50" amended

11. Section "50" of the Decree is amended in subsection "(4)" by erasing the full stop after the word "part" and adding a proviso as follows-

" 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."

Section "60" amended

12. Section "60" of the Decree is amended by deleting the heading, opening paragraph, and subsection "(a)" and substituting the following-

"Additional Tax to be payable if default made in the furnishing of returns or payment of tax

60. 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;"

Section "62" amended

13. Section "62" of the Decree is amended-

(a) by renumbering existing subsection "(7)" as subsection "(7)(a)" and adding a new paragraph (b) as follows-

"(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."

- (b) by adding immediately after subsection "(9)" the following new subsection—

"(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."

Section "63" amended

14. Section "63" of the Decree is amended in subsection "(1)" by inserting immediately after the word "thereon" in the seventh line the words", on deposit or" and by inserting immediately after the words," that money" in the twelfth line the words "and whether or not the account into which the money is deposited is overdrawn."

New Section "63A" added

15. The Decree is amended by inserting the following new section immediately after Section "63"—

"Distraint for unpaid tax

63A 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 "70" amended

16. Section "70" of the Decree is amended by deleting subsection "(1)" and substituting the following new subsection—

"(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."

Section "71" amended

17. Section "71" of the Decree is amended by renumbering subsection (d) as "(d)(ii)" and inserting the following new paragraph immediately before it.

"(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."

*Section "72" amended***18.** Section "72" of the Decree is amended—

- (a) in subsection "(1)" by substituting the letter and marks "(1)" for the figure and marks "(1)" in line 2;
- (b) in subsection "(2)" by deleting the letter, words, and marks "paragraph (a) or" in the first and second lines;
- (c) in subsection "(2)(a)" by inserting the words "a period not exceeding" in the sixth line between the words "for" and "three months";
- (d) by adding a new subsection "(3)" immediately after subsection "(2)" and a new subsection "(4)" thereafter, as follows—

"(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."

*New section "76A" added***19.** The Decree is amended by inserting the following new section immediately after Section "76"—*"Penalty for understatements or overclaims in returns*

76A (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 be 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.

20. Section " 77" of the Decree is repealed and replaced by the following new section—

"Jurisdiction of Resident Magistrates

77(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."

Section "82" amended

21. Section "82" of the Decree is amended in subsection " (4)" by inserting immediately after the word "Section" in line 3 the words and figures "and Section 41 of this Decree".

Passed by the House of Representatives this 25th day of July, in the year of our Lord one thousand, nine hundred and ninety-five.

Passed by the Senate this 17th day of August, in the year of our Lord one thousand, nine hundred and ninety-five.