

[LEGAL NOTICE NO. 48]

TAX ADMINISTRATION ACT 2009

Tax Administration (Infringement Notices) Regulations 2018

IN exercise of the powers conferred on me by section 60C of the Tax Administration Act 2009, I hereby make these Regulations—

PART 1—PRELIMINARY

Short title and commencement

1.—(1) These Regulations may be cited as the Tax Administration (Infringement Notices) Regulations 2018.

(2) These Regulations come into force on 1 August 2018.

Interpretation

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

“Act” means the Tax Administration Act 2009 and includes the tax laws specified in Schedule 2 to the Act;

“court” means a court of competent jurisdiction;

“fixed penalty” means a penalty prescribed in column 4 of Schedule 1;

“fixed penalty offence” means an offence prescribed in columns 1 and 2 of Schedule 1;

“Infringement Notice” means the notice issued under regulation 5;

“late payment fee” means 50% of the fixed penalty a person is liable to pay;

“revoked Regulations” means the Value Added Tax (Infringement) Regulations 2016;

“Service” means the Fiji Revenue and Customs Service; and

“VAT Infringement Notice” means the notice prescribed in Schedule 1 to the revoked Regulations.

Objectives

3. The objectives of these Regulations are to—

- (a) ensure compliance with the Act;
- (b) address breaches of the Act;
- (c) improve self-regulation; and
- (d) ensure the efficient collection of taxes.

Application

4. These Regulations apply throughout Fiji irrespective of a person’s nationality, citizenship or place of registration or incorporation.

PART 2—PROCEEDINGS FOR INFRINGEMENT NOTICES

Issuance of Infringement Notice

5.—(1) A tax officer may issue an Infringement Notice to a person alleged to have committed a fixed penalty offence by serving the Infringement Notice—

- (a) personally upon the person;
- (b) through registered mail sent to the person’s postal address last recorded by the Service;
- (c) at the registered office of the person;
- (d) upon a person who resides at the person’s physical address last recorded by the Service, provided that the first mentioned person is of or over the age of 18 years; or
- (e) through any electronic means as approved by the Service, including by electronic mail to a valid electronic mailing address submitted by the person to the Service and verified by the Service.

(2) In these Regulations, service of the Infringement Notice is deemed to have been effected if the Infringement Notice is—

- (a) in the form prescribed in Schedule 2; and
- (b) served in accordance with this regulation.

(3) The Service may notify a person to whom an Infringement Notice is issued of the person’s alleged commission of a fixed penalty offence and such notification may be made by—

- (a) Short Message Service (SMS) messaging to a registered mobile phone contact; or
- (b) electronic mail to a valid electronic mailing address,

submitted by the person to the Service and verified by the Service.

Fixed penalty

6. A person to whom an Infringement Notice is issued is liable to a fixed penalty and must, within 30 days from the date the Infringement Notice is issued, undertake one of the following actions—

- (a) pay the fixed penalty in a single payment or by instalments; or
- (b) elect to dispute the Infringement Notice in a court.

Failure to pay fixed penalty

7.—(1) If a person to whom an Infringement Notice is issued does not undertake any of the actions in regulation 6 within the prescribed period, the person is liable to pay the late payment fee in addition to the fixed penalty and where the person is—

- (a) an individual, the individual shall be issued a departure prohibition order preventing the individual from leaving Fiji; or

- (b) a company, all the directors of the company in Fiji shall be issued a departure prohibition order preventing the directors from leaving Fiji,

unless the person undertakes one of the following actions—

- (i) pays the fixed penalty and late payment fee in a single payment or by instalments; or
- (ii) elects to dispute the Infringement Notice in court.

(2) If a person to whom an Infringement Notice is issued pays the fixed penalty and late payment fee, if applicable, and also elects to dispute the Infringement Notice in a court, the person must notify the Service, on or before the payment of the fixed penalty and late payment fee, if applicable, of the person's intention to dispute the Infringement Notice.

(3) If a person to whom an Infringement Notice is issued pays the fixed penalty and late payment fee, if applicable, and also elects to dispute the Infringement Notice and the court subsequently makes a final determination in the person's favour, including the determination of any appeal in any appellate court, the Service must refund the fixed penalty and late payment fee, if applicable, to that person.

(4) If a person to whom an Infringement Notice is issued does not undertake any of the actions in regulation 6 within the prescribed period, the Service must notify the Director of Immigration immediately after the expiration of the prescribed period.

(5) Upon receipt of the notification from the Service under subregulation (4), the Director of Immigration must issue to—

- (a) where the person is an individual, the individual; or
- (b) where the person is a company, all the directors of the company in Fiji,

a departure prohibition order stating—

- (i) the reasons for the issue of the departure prohibition order;
- (ii) the fixed penalty and late payment fee that the person is required to pay; and
- (iii) that the departure prohibition order may be revoked if the person undertakes any of the actions listed in subregulation (1)(i) and (ii).

(6) If a departure prohibition order is issued to a person under this regulation, the person to whom the departure prohibition order is issued may pay in full the fixed penalty and late payment fee that the person is liable to, to the Service or, if the person intends to leave Fiji, to the Department of Immigration at an international airport in Fiji.

(7) Pursuant to subregulation (6), if a person pays in full the fixed penalty and late payment fee that the person is liable to, the departure prohibition order is deemed to have been revoked and the person must not be prevented from leaving Fiji on the basis of the departure prohibition order issued under this regulation.

Failure to take action within 3 months

8. If a person to whom an Infringement Notice is issued does not undertake any of the actions provided in regulation 7(1)(i) and (ii) within 3 months from the date the Infringement Notice is issued, the Infringement Notice takes effect as a conviction and the Service may seek the maximum penalty for the prescribed offence from a court.

Evidence of matters in certificate

9. A certificate signed by a tax officer stating that the fixed penalty was or was not paid must, unless the contrary is proved, be conclusive evidence of the matters stated in the certificate.

PART 3—MISCELLANEOUS

Revocation

10. The Value Added Tax (Infringement) Regulations 2016 is revoked.

Transition

11. The provisions of the revoked Regulations continue to apply to any VAT Infringement Notice issued by the Service prior to the commencement of these Regulations until such time that—

- (a) the fixed penalty specified in the VAT Infringement Notice is paid to the Service; or
- (b) the registered person specified in the VAT Infringement Notice is required to appear before the Magistrates Court to answer to the charge specified in the VAT Infringement Notice.

Made this 31st day of July 2018.

A. SAYED-KHAIYUM
Attorney-General and Minister for Economy

SCHEDULE 1
(Regulation 2)

FIXED PENALTY OFFENCES AND FIXED PENALTIES

1. Tax Administration Act 2009

Section	Fixed Penalty Offence	Maximum Penalty: Fine Imprisonment	Fixed Penalty		
			Gross annual turnover less than \$500,000	Gross annual turnover between \$500,000 - \$1.5 million	Gross annual turnover more than \$1.5 million
49(1)	Failure to file a tax return	\$25,000 10 years	\$5,000	\$10,000	\$25,000
49(3)	False or misleading tax return	\$250,000	\$100,000	\$150,000	\$200,000
50	Failure to comply with obligations under: section 26 section 27 section 32 section 35(4) section 36 section 37A section 38 section 38A section 73(8)	\$25,000 10 years	\$5,000	\$10,000	\$25,000
52(1)	Use of false Taxpayer Identification Number	\$25,000 10 years	\$5,000	\$10,000	\$25,000
54	Obstruction of tax officer	\$25,000 10 years	\$5,000	\$10,000	\$25,000
58A(2)	Failure to display tax	\$25,000 10 years	\$5,000	\$10,000	\$25,000
58B	Charging tax where no tax payable	\$25,000 10 years	\$5,000	\$10,000	\$25,000
58C	Failure to charge tax	\$25,000 10 years	\$5,000	\$10,000	\$25,000
116	Failure to comply with Part 4	\$50,000 10 years	\$10,000	\$20,000	\$50,000
116A	Offences by a tax agent	\$50,000 10 years	\$10,000	\$20,000	\$50,000

2. Tax Administration (Electronic Fiscal Device) Regulations 2017

Regulation	Fixed Penalty Offence	Maximum Penalty: Fine Imprisonment	Fixed Penalty		
			Gross annual turnover of supplier's business is less than \$500,000	Gross annual turnover of supplier's business between \$500,000 - \$1.5 million	Gross annual of turnover of supplier's business above \$1.5 million
22	Failure to comply with regulation 15	If gross annual turnover of the supplier's business is less than \$500,000 - \$10,000	\$2,000	\$5,000	\$10,000
		If gross annual turnover of the supplier's business is \$500,000 or more but less than \$1.5 million - \$25,000	\$5,000	\$10,000	\$25,000
		If the gross annual turnover of the suppliers business is \$1.5 million or more - \$50,000	\$10,000	\$20,000	\$50,000
		24 months			

Regulation	Fixed Penalty Offence	Maximum Penalty: Fine Imprisonment	Fixed Penalty		
			Gross annual turnover of supplier's business is less than \$500,000	Gross annual turnover of supplier's business between \$500,000 - \$1.5 million	Gross annual of turnover of supplier's business above \$1.5 million
23	Failure to comply with regulation 18	<p>If gross annual turnover of the taxpayer's business is less than \$500,000 - \$10,000</p> <p>If gross annual turnover of the taxpayer's business is \$500,000 or more but less than \$1.5 million - \$25,000</p> <p>If the gross annual turnover of the taxpayer's business is \$1.5 million or more - \$50,000</p> <p>24 months</p>	<p>\$2,000</p> <p>\$5,000</p> <p>\$10,000</p>	<p>\$5,000</p> <p>\$10,000</p> <p>\$20,000</p>	<p>\$10,000</p> <p>\$25,000</p> <p>\$50,000</p>
28(4)	Offence against regulation 28(3)	<p>If gross annual turnover of the taxpayer's business is less than \$500,000 - \$10,000</p> <p>If gross annual turnover of the taxpayer's business is \$500,000 or more but less than \$1.5 million - \$25,000</p> <p>If the gross annual turnover of the taxpayer's business is \$1.5 million or more - \$50,000</p> <p>24 months</p>	<p>\$2,000</p> <p>\$5,000</p> <p>\$10,000</p>	<p>\$5,000</p> <p>\$10,000</p> <p>\$20,000</p>	<p>\$10,000</p> <p>\$25,000</p> <p>\$50,000</p>

3. Value Added Tax Act 1991

Section	Fixed Penalty Offence	Maximum Penalty: Fine Imprisonment	Fixed Penalty		
			Gross annual turnover of supplier's business is less than \$500,000	Gross annual turnover of supplier's business between \$500,000 - \$1.5 million	Gross annual of turnover of supplier's business above \$1.5 million
72(2)	Offence against section 71(c) or section 71(m) on the first occasion	\$5,000 10 years	\$1,000	\$3,000	\$5,000
	Offence against section 71(c) or section 71(m) on the second occasion	\$15,000 10 years	\$5,000	\$10,000	\$15,000
	Offence against section 71(c) or section 71(m) on every other occasion	\$25,000 10 years	\$5,000	\$10,000	\$25,000
72(3)	Offence against section 71(a)	\$10,000	\$2,000	\$5,000	\$10,000
72(4)	Offence against section 71(d), (e), (f), (g), (h) or (k) on the first occasion	\$10,000 or 3 times the tax involved if greater 10 years	\$2,000	\$5,000	\$10,000
	Offence against section 71(d), (e), (f), (g), (h) or (k) on every other occasion	\$20,000 or 3 times the tax involved if greater 10 years	\$10,000	\$15,000	\$20,000
72A(3)	Failure to comply with section 72A(1)	\$50,000	\$20,000	\$25,000	\$50,000
72A(4)	Failure to pay fine	\$100,000 10 years	\$40,000	\$50,000	\$100,000

4. Stamp Duties Act 1920

Section	Fixed Penalty Offence	Maximum Penalty: Fine	Fixed Penalty		
			Gross annual turnover less than \$500,000	Gross annual turnover between \$500,000 - \$1.5 million	Gross annual turnover more than \$1.5 million
20	Defacement of adhesive stamp	\$25,000	\$5,000	\$10,000	\$25,000
26	Failure to comply with notice	\$25,000	\$5,000	\$10,000	\$25,000
37 (1)(a)	Instrument is presented to be stamped more than 2 months but not more than 3 months after execution	25% on the amount of duty payable but not less \$500	\$200	\$300	\$500
37 (1)(b)	Instrument is not presented to be stamped within 3 months after execution	50% on the amount of duty payable but not less \$1,000	\$400	\$600	\$1,000
47(2)	Refusal to permit inspection or obstructs inspection	\$25,000	\$5,000	\$10,000	\$25,000
51	Neglect or refusal to cancel adhesive stamp	\$25,000	\$5,000	\$10,000	\$25,000
55	Failure to affix and cancel stamp	\$25,000	\$5,000	\$10,000	\$25,000
64(2)	Make or execution of bill of lading not stamped	\$25,000	\$5,000	\$10,000	\$25,000
64A(2)	Make or execution of air waybill not stamped	\$25,000	\$5,000	\$10,000	\$25,000
68(a)	Failure by charter party to stamp within 7 days after first execution	\$1,000	\$100	\$500	\$1,000
68(b)	Failure by charter party to stamp after 7 days after first execution	\$2,000	\$200	\$1,000	\$2,000

Section	Fixed Penalty Offence	Maximum Penalty: Fine	Fixed Penalty		
			Gross annual turnover less than \$500,000	Gross annual turnover between \$500,000 - \$1.5 million	Gross annual turnover more than \$1.5 million
78(1)	Notary public attesting or certifying the due execution of any instrument liable to duty and not appearing to be duly stamped	\$25,000	\$5,000	\$10,000	\$25,000
103	Issuing unstamped documents, writs or processes	\$25,000	\$5,000	\$10,000	\$25,000

5. Gambling Turnover Tax Act 1991

Section	Fixed Penalty Offence	Maximum Penalty: Fine	Fixed Penalty		
			Gross annual turnover less than \$500,000	Gross annual turnover between \$500,000 - \$1.5 million	Gross annual turnover more than \$1.5 million
6(5)	Failure by accountable person to register	\$25,000	\$5,000	\$10,000	\$25,000

SCHEDULE 2
(Regulation 5(2)(a))



FIJI REVENUE AND CUSTOMS SERVICE

INFRINGEMENT NOTICE

Infringement Notice Number:

1. Details of Offender
Name:
Address:
TIN:
2. Details of Offence
Statement of Offence:
Particulars of Offence:
Contrary to:

This offence carries a maximum penalty of [\\$]. If you do not wish to contest this Infringement Notice, you are required to pay the fixed penalty of [\\$] to the Fiji Revenue and Customs Service.

The payment of the fixed penalty is due within 30 days from the date of issue of this Infringement Notice and is payable at any Fiji Revenue and Customs Service office. If you pay the fixed penalty, all liability in respect of the offence will be discharged and no further action will be taken against you with respect to this particular offence.

If you wish to contest this Infringement Notice, you may elect to dispute this Infringement Notice in court within 30 days from the date of issue of this Infringement Notice.

If you fail to pay the fixed penalty or dispute this Infringement Notice in court within 30 days from the date of issue of this Infringement Notice, you will be—

- (i) liable to a late payment fee equivalent to 50% of the fixed penalty, in addition to the fixed penalty; and
- (ii) issued a departure prohibition order preventing you from leaving Fiji.

You may pay your fixed penalty and late payment fee in a single payment or in instalments.

The departure prohibition order will continue until you pay your fixed penalty and late payment fee in full or elect to dispute this Infringement Notice in court.

If you do not pay your fixed penalty and late payment fee in full or elect to dispute this Infringement Notice in court within 3 months from the date this Infringement Notice is issued to you, this Infringement Notice will take effect as a conviction from the court and the Fiji Revenue and Customs Service may seek the maximum penalty from the court.

3. Details of Tax Officer

Name:	Date: [day/month/year]
Signature:	

4. Affidavit of Service

I, [name of Tax Officer whose signature appears in section 3], make oath and say that, on the [specify day] day of [specify month], 20 [specify year] at [specify address] I did serve upon the offender specified therein.

[signature of Tax Officer]

Sworn by the above named Tax Officer this [specify day] day of [specify month] 20 [specify year].

Before:

[name and signature of Commissioner for Oaths/Justice of the Peace]

Commissioner for Oaths/Justice of the Peace