

Monthly Legal News Bulletin

31st January 2011

Introduction

The purpose of this periodical newsletter is to improve access to justice and enhance the rule of law by keeping people informed of changes under new Decrees, judicial news and other significant legal developments in Fiji.

For further information on any of the issues covered in this newsletter, please contact CCF at ccf@kidanet.net.fj

Public Emergency Regulations

Pursuant to the Public Safety Act, on Friday 18 December 2010, the *Extension of the Public Emergency Regulations 2009* was gazetted.

The *Public Emergency Regulations 2009* has been extended for a further period of 30 days with effect from 1200 hours on 16 January 2011

New Decrees

The following new decrees have been promulgated or published since our last issue:-

- 1) Tax Administration (Budget Amendment) Decree 2010.
- 2) Customs Tariff (Budget Amendment) (No. 4) Decree 2010
- 3) Customs Tariff (Budget Amendment) (No.3) Decree 2010.
- 4) Value Added Tax (Budget Amendment) Decree 2010
- 5) Value Added Tax Decree (Amendment) (No. 2) Decree 2010
- 6) Income Tax (Budget Amendment) Decree 2010

- 7) Public Hospitals and Dispensaries (Amendment) Regulations 2011
- 8) Extension of The Public Emergency Regulations 2009
- 9) Trade Standards and Quality Control (Amendment) Decree 2011
- 10) Commerce (Price Control) (Petroleum Prices) (No.1) Order 2011
- 11) Water Resource Tax (Budget Amendment) Decree 2011
- 12) Customs (Amendment) Regulations 2011.

Customs Tariff (Budget Amendment) (No. 4) Decree 2010.

This decree came into force on the 26th of November, 2010 and amends Part 1 of Schedule 2 to the Customs Tariff Act 1986 is amended by deleting the duty rates appearing in columns 2, 3 or 4 as mentioned against each tariff item and inserting with new duty rates for selected tariff items. Part II of Schedule 2 to the customs Tariff Act 1986 is amended by inserting a new Note 5 after Note 4 "5. Part 2 duty concessions are to be claimed at the time of importation or at the time of clearance from bonded warehouses".

Value Added Tax (Budget Amendment) Decree 2010

This decree is to amend the Value Added Tax Decree 1991 and shall come into force on 1st January 2011. Section 14 of the Value Added Tax Decree 1991 is amended by deleting in subsection (1) "twelve and a half percent" and inserting "fifteen percent".

The CCF is a non-government organisation that educates and advocates for the good governance, human rights and multiculturalism in Fiji. We are not aligned with any political party.

CCF maintains that to ensure accountability and transparency, the proper method for law reform is through a democratically elected parliament. CCF does not intend to support the legality or validity of any of the Decrees referred to by publishing or distributing this newsletter.

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Section 15 of the Value Added Tax Decree 1991 is amended by deleting subsection (1) "twelve and a half percent" and inserting "fifteen percent". Fourth schedule of the Value Added Tax Decree 1991 is amended in 7 sub paragraph (1) by deleting "(e)" and inserting a new (e) – which states "if goods have been acquired from an approved registered person or from different approved registered persons in a day or in different days on each trip to Fiji, the purchase price paid by the tourist must be at least \$500 (including VAT). Furthermore, this decree clearly states that at the commencement of this Decree, any tax, impost, duty free, charge or other amount prescribed in any written law, which includes the 12.5% rate of value added tax and to be calculated at the 15% rate.

Land Transport (Road Levy) (Amendment) Decree 2010

This decree amends Section 24 by inserting " ", after the words Consolidated Fund and removes the following from subsection 2 " except the Road User Levy which shall be paid into the Infrastructure Rehabilitation and Development Fund Account held by the Authority for the Ministry responsible for Transport.

Value Added Tax Decree (Amendment) (No. 2) Decree 2010.

This decree comes into force on 1st January, 2011 and amends the Second schedule of the decree by adding a new paragraph which includes the specific educational items

that are to be exempted from Value Added Tax. Also it states that it must provide zero rating of such supply specified in paragraph 26 (1) shall only be allowed from 4th January 2011 to 28th February, 2011.

Income Tax (Budget Amendment) Decree 2010

This decree came into force on the 1st of January, 2011; it amends various sections of the Income Tax decree. Section 8A of the Act is amended by inserting a new subsection" (12) – (1) Subject to subsection (2) the Minister may exempt or reduce tax rate for tax payable this section on the income of the qualifying employees under the Sixth schedule. (2) The Minister may by notice in writing to the Commissioner, direct that tax payable under this section be exempt or be paid at such reduced rate as specified in the notice. Section 21 of the Act is also amended by deleting "31st December 2010" and substituting "31st December 2012". Section 21B is amended in subsection (2) by adding the following new Table for the period for export income deduction is extended as set out. Moreover, the Sixth schedule is also amended by deleting the Sixth Schedule and substituting Sixth schedule "Sixth Schedule (Section A)".

Public Hospitals And Dispensaries (Amendment) Regulations 2011

This decree amends the first schedule of the Public Hospitals and Dispensaries by deleting in item (1) under the subject the word "Senators", under the fees column for

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General Wards "\$5" and inserting "no charge", furthermore, it also highlights changes to the charges that public hospitals can charge to the general public.

Trade Standards and Quality Control (Amendment) Decree 2011

This decree is to amend the National Trade standards and quality control decree 1991, it amends several sections of the decree, Section 4 is amended by inserting the definition of "government entities" after the definition of "defect notice". Also Section 32 is amended by inserting in subsection "(1) Subject to subsection (3), "before the words "The Minister" and also inserting a new subsection (3) after subsection (2) which states that the "The Minister may exempt class or classes of people including government entities and within a geographic area or areas within Fiji from the application of subsection (1) upon such terms and the conditions as the Minister may from time to time specify.

Commerce (Price Control) (Petroleum Prices) (No.1) Order 2011

This order came into force on 17 January 2011 and subject to sub paragraph (2) below sets out the prices set out in Schedule 1 to Schedule 13 herein shall be the maximum retail or wholesale price, as the case may be. At which the goods mentioned therein may be sold in the areas so specified in the Schedule. Furthermore, it goes on to say that the prices set out in Schedule 2 are the maximum retail or wholesale prices as the

case maybe, at which the goods specified in it may be sold within the cities of Suva and Lautoka and the town of Lami.

Water Resource Tax (Budget Amendment) Decree 2011

This decree is to amend the water resource tax promulgation and comes into effect on the day it is gazetted. Schedule 1 is amended by deleting the current table and substituting with the new tax rate of the natural water that is being extracted.

Customs (Amendment) Regulations 2011

These regulations came into force on 26th November, 2010 amending the "Principal Regulations" (Customs Regulation). Regulations 8, 101 and 107 of the Principal Regulation have been amended by this Regulations 2011. This is to inform the general public of the new charges that will come into effect as per the Customs Regulations.

Customs (Prohibition Imports and Exports) (Budget Amendment) Regulations 2011

The Minister for Finance in exercise of the powers conferred upon it by *section 64 of the Customs Act 1986* made this Regulation (Legal Notice No. 6 of 2011) to amend Schedule 3 of the *Customs (Prohibited Imports and Exports) Regulations 1986* by deleting all of Item No. 5 in the said 1986

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Regulations and inserting the paragraphs stated and/or outlined therein.

Civil Aviation (Fees and Charges) (Amendment) Regulations 2011

The Chairman of the Civil Aviation Authority of the Fiji Islands (CAAFI) in exercise of the powers conferred upon it by section 29 of the CAAFI Act 1979 and with the approval of the Minister for Civil Aviation promulgated this Regulations to amend the Civil Aviation (Fees and Charges) Regulations 2007. The Regulations approved the increase of all fees and charges imposed by CAAFI for its purpose. The said increase as approved by the Regulations came into force on 1st January 2011.

Income Tax (Allowance for Depreciation and Improvements) (Amendment) Instructions 2011

This Regulation came into force on 1st January 2011 to amend the "Principal Instructions" (i.e. Income Tax (Allowance for Depreciation and Improvements) Instructions 1998). It amended paragraph 37 of the Principal Instruction by deleting "31st December 2010" in sub-paragraph (3) (c) of the Principal Instructions and substituting "31st December 2012". Further to the above, this Instruction 2011 amended the Principal Instruction by inserting a new instruction to the same. i.e. a taxpayer may apply to claim 100% write off in the year of expenditure in respect of the capital expenditure incurred upon the purchase of new plant and machinery for manufacturing purposes.

Dairy Restructure Decree 2010 – Commencement Notice

The Attorney-General and Minister for Justice in exercising powers conferred upon him under section 1(2) of the Decree (Dairy Restructure) appointed 1st January 2011 to be the commencement date of the Dairy Restructure Decree 2010.

Bank of South Pacific Limited (National Bank of Fiji Limited) Decree 2011

This Decree was promulgated to provide for the transfer of the undertaking of National Bank of Fiji Limited (NBF) and for related purposes to Bank of South Pacific Ltd (BSP) which includes assumption of responsibility for NBF employees, release and discharge of NBF liabilities and obligations, vesting of contracts, liabilities from NBF to BSP etc.

HIV/AIDS DECREE 2011

This Decree was promulgated by the President to provide human rights-based measures to assist in HIV prevention and HIV/AIDS care and support and for related purposes. The Decree came into force on 15th February 2011 by way of a Commencement Notice issued on 2nd February 2011. The Decree established a Board called the HIV/AIDS Board where the guiding principles in the exercise of its duty, power and/or function are to ensure that full regard is made to the recognized universal human rights standards and public international law applicable to the protection of rights, apply as far as

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practicable accepted international practices and universal standards indentified in the context of HIV/AIDS and apply to the fullest extent possible within Fiji the principles, rights and obligations of ICCPR, ICESCR, CEDAW, CRC and CRPD in the administration of health facilities and the provision of health services to all persons living with or affected by HIV/AIDS. The Decree also criminalises an act of deliberate or attempted infection of a person by a person who knows he or she carries HIV. The Act is currently administered and enforced by the relevant Ministry of Health.

Denarau (Nadi River) Development Decree 2011

This Decree came into force on 9th February 2011 as the commencement date by way of a Commencement Notice issued on the same date.

The Decree aims to promote Fiji as a premier tourist and travel destination, through the creation of a 'demised area' for such purpose.

The Decree prohibits any person and/or body from obstructing or preventing the use of the said 'demised area'. The same is for the purpose of developing and liberalizing access for the purposes of tourism.

Extension of the Public Emergency Regulations 2009

This Decree came into force at 1200 hours on 14th February 2011 to extend the Public Emergency Regulations 2009 for a further period of 30 days from the above mentioned date.

Value Added Tax (Amendment) Decree 2011

This Decree which was promulgated by the President and came into force on 1st January 2011. The said Decree amends the Second Schedule of the Value Added Tax Decree 1991 by inserting a new paragraph "27" after paragraph 26 of the VAT Decree 1991.

Denarau (Nadi River) Development Decree 2011 - COMMENCEMENT NOTICE

This Notice appoints 9th February 2011 to be the commencement date for the Denarau (Nadi River) Development Decree 2011.

HIV/AIDS Decree 2011 - COMMENCEMENT NOTICE

The said Notice appoints 15th February 2011 as the commencement date for the HIV/AIDS Decree 2011.