



FIJI REVENUE AND CUSTOMS SERVICE

FIJI REVENUE & CUSTOMS SERVICE ACT 1998

Revised up to 1st August 2023

DISCLAIMER

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Table of Amendments

Fiji Revenue and Customs Service Act 1998 (No 9 of 1998) commenced on 1 January 1999, as amended by:

Amending Legislation	Date of Commencement
Fiji Revenue and Customs Authority (Change of Name) Act 1999 (No 30 of 1999)	1 January 2000
Tax Administration Decree 2009 (No 50 of 2009)	1 January 2010
Fiji Revenue and Customs Authority (Amendment) Decree 2011 (No 15 of 2011)	1 April 2011
Fiji Islands Revenue and Customs Authority (Amendment) (No 2) Decree 2011 (No 18 of 2011)	1 March 2011
Fiji Revenue and Customs Authority (Amendment) (No 3) Decree 2011 (No 32 of 2011)	18 July 2011
Fiji Revenue and Customs Authority (Amendment) Decree 2012 (No 40 of 2012)	14 May 2012
Fiji Revenue and Customs Authority (Budget Amendment) Act 2015 (No 26 of 2015)	1 January 2016
Fiji Revenue and Customs Authority (Budget Amendment) Act 2016 (No 16 of 2016)	1 August 2016
Revised Edition of the Laws (Consequential Amendments) Act 2016 (No 31 of 2016)	1 December 2016
Fiji Revenue and Customs Authority (Budget Amendment) Act 2017 (No 38 of 2017)	1 August 2017

Commerce Commission (Budget Amendment) Act 2017 (No 41 of 2017)	1 August 2017
Fiji Revenue and Customs Service (Amendment) (No 2) Act 2017 (No 47 of 2017)	20 September 2017
Fiji Revenue and Customs Service (Budget Amendment) Act 2018 (No 18 of 2018)	1 August 2018
Stamp Duties (Repeal) Act 2020 {No 16 of 2020} Consequential Amendments	1 August 2020
Fiji Revenue and Customs Service (Amendment) Act 2020 (No 39 of 2020)	1 September 2020 (LN 96)
Fiji Revenue and Customs Service (Amendment) Act 2021 (No 7 of 2021)	4 June 2021
Tax Administration (Revised Budget Amendment) Act 2022 (No 6 of 2022)	1 April 2022
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PART 1 PRELIMINARY

(Sections 1-2)

[Section 1] Short title and commencement

(1) This Act may be cited as the Fiji Revenue and Customs Service Act 1998.

[subs (1) subst Decree 18 of 2011 s 2, effective 1 March 2011; am Act 38 of 2017 s 7, effective 1 August 2017]

(2) This Act shall come into force on such date or dates as the Minister may, by notification in the Gazette, appoint.

[Section 1A] References to Fiji Revenue and Customs Service

(1) All written laws, all State documents of any nature whatsoever (including the titles of any written law) are amended by deleting “Fiji Revenue and Customs Authority” wherever it appears and substituting “Fiji Revenue and Customs Service”, unless the context otherwise requires.

(2) All State documents of any nature whatsoever and all written laws and subsidiary legislation (including the titles of any written law) are amended by deleting “Authority” wherever it appears and substituting “Service”, unless the context otherwise requires.

[Section 2] Interpretation

In this Act, unless the context otherwise requires—

amount due means an amount due for repayment by the recipient or guarantor of a recipient in relation to loans or funds disbursed by the Service on behalf of the State;

[def inserted 39 of 2022. S2. effective 1 September 2020]

chairperson means the chairperson of the Service appointed under section 5 or of a committee appointed under section 25;

[def am Act 38 of 2017 s 7, effective 1 August 2017]

Chief Executive Officer means the person appointed as such under section 27;

committee means a committee appointed under section 25; **corporate plan**

means the plan required by section 45(1);

customs and excise has the meaning in the Tax Administration Act 2009; **legislation**

[def insrt Decree 50 of 2009 s 117 and Sch 4, effective 1 January 2010]

financial year means the period specified in section 42; **funds** means the

funds of the Service as described in section 34;

[def am Act 38 of 2017 s 7, effective 1 August 2017]

member means a member of the Service or of a committee appointed under section 4(1) or 25 and includes the permanent secretary responsible for finance;

[def am Act 38 of 2017 s 7, effective 1 August 2017]

recipient includes a person or the guarantor of a person, who is the recipient of a loan or fund disbursed by the Service on behalf of the

State

[def inserted 39 of 2022. S2. effective 1 September 2020]

revenue law refers to all laws listed in Schedule 2;

[def insrt Decree 50 of 2009 s 117 and Sch 4, effective 1 January 2010]

revenue officer means an officer under a tax law, customs and excise legislation;

[def insrt Decree 50 of 2009 s 117 and Sch 4, effective 1 January 2010]

Service means the Fiji Revenue and Customs Service established by section 3;

[def am Act 30 of 1999 s 3, effective 1 January 2000 ; Decree 18 of 2011 s 3, effective 1 March 2011; Act 38 of 2017 s 7, effective 1 August 2017]

statement of corporate intent means the statement required by section 47(1);

Tax Administration Act means the Tax Administration Act 2009;

[def insrt Decree 50 of 2009 s 117 and Sch 4, effective 1 January 2010]

Tax Agents' Board means Tax Agents' Board established under section 110 of the Tax Administration Act 2009;

[def insrt Decree 50 of 2009 s 117 and Sch 4, effective 1 January 2010]

tax law has the meaning in the Tax Administration Act 2009;

[def insrt Decree 50 of 2009 s 117 and Sch 4, effective 1 January 2010]

Tax Tribunal means the Tax Tribunal established under section 75 of the Tax Administration Act 2009; and

[def insrt Decree 50 of 2009 s 117 and Sch 4, effective 1 January 2010]

transferred in relation to an asset or liability means vested in the Service under section 16(1) and in relation to an employee means transferred to the service of the Service under section 17(1).

[def am Act 38 of 2017 s 7, effective 1 August 2017]

PART 2 ESTABLISHMENT, MEMBERSHIP AND MEETINGS OF THE SERVICE (Sections 3–15)

[Section 3] Establishment of Fiji Revenue and Customs Service

This section establishes the Fiji Revenue and Customs Service as a body corporate with perpetual succession and a common seal which may—

- a) sue and be sued;
- b) purchase, acquire, hold or alienate real or personal property;
- c) do or perform such other acts or things as bodies corporate may by law do and perform.

[s 3 am Act 30 of 1999 s 3, effective 1 January 2000 ; Decree 18 of 2011 s 3, effective 1 March 2011; Act 38 of 2017 s 7, effective 1 August 2017]

[Section 4] Membership of the Service

(1) The membership of the Service shall consist of—

- a) the permanent secretary responsible for finance; and
- b) other members, not being less than 3 or more than 5 in number, appointed by the Minister.

[subs (1) am Act 38 of 2017 s 7, effective 1 August 2017]

(2) The members shall be persons who, in the opinion of the Minister, have adequate experience in public administration, or in financial, commercial, customs and excise, tax or legal matters.

(3) Before appointing a person as a member, the Minister shall have regard to any potential conflicts of interest that the person may have.

[s 4 am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 5] Chairperson of Service

(1) The permanent secretary responsible for finance shall normally be the chairperson of the Service, but the Minister may, if he or she thinks fit, appoint any other member as chairperson.

[subs (1) am Act 38 of 2017 s 7, effective 1 August 2017]

(2) The chairperson may, in concurrence with the Minister, authorise in writing any member to exercise any power or perform any function conferred on the chairperson by or under this Act.

[s 5 am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 6] Tenure of office

A member appointed under section 4(1)(b) shall hold office for a term not exceeding 3 years and is eligible for reappointment.

[Section 7] Revocation and resignation

(1) The Minister may, at any time, revoke the appointment of a member, other than the permanent secretary responsible for finance.

(2) A member, other than the permanent secretary responsible for finance, may at any time resign his or her office by giving notice in writing to the Minister.

[Section 8] Vacation of office

(1) The office of a member shall become vacant if the member—

- a) has been absent, without leave of the Service, from 3 consecutive meetings of the Service;
- b) becomes or has, in Fiji or elsewhere, been declared bankrupt and has not been discharged;
- c) has, in Fiji or elsewhere, been convicted of an offence involving dishonesty or an offence under any law specified in Schedule 1;
- d) has, in Fiji or elsewhere, been disqualified or suspended from practising his or her profession by any competent authority by reason of misconduct.

[subs (1) am Act 38 of 2017 s 7, effective 1 August 2017]

(2) The Service may act notwithstanding a vacancy in its membership.

[subs (2) am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 9] Remuneration of members

(1) Members of the Service or persons invited to attend a meeting of the Service under section 11 are entitled to such remuneration as the Service may fix.

[subs (1) am Act 38 of 2017 s 7, effective 1 August 2017]

(2) The total remuneration paid under subsection (1) in respect of any financial year shall not exceed an amount approved by the Minister for that purpose.

[Section 10] Meetings

(1) The Service shall meet as often as may be necessary for the performance of its functions.

[subs (1) am Act 38 of 2017 s 7, effective 1 August 2017]

(2) At any meeting the quorum of the Service shall be a majority of the total members appointed at that time.

[subs (2) am Act 38 of 2017 s 7, effective 1 August 2017]

(3) Notice of a meeting of the Service shall be given to each member and shall be delivered by hand or sent by post, telex, facsimile or other written message to an address supplied to the Service for the purpose.

[subs (3) am Act 38 of 2017 s 7, effective 1 August 2017]

(4) Decisions at meetings of the Service shall be by a simple majority of the members present and voting except that, in the case of an equality of votes, the chairperson or member presiding shall have a casting vote in addition to his or her original vote.

[subs (4) am Act 38 of 2017 s 7, effective 1 August 2017]

(5) Subject to this section, the Service may regulate its procedure in such manner as it thinks fit.

[subs (5) am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 11] Service may invite others to meetings

The Service may invite a person to attend a meeting of the Service for the purpose of advising it on any matter under discussion, but the person so attending shall have no right to vote at the meeting.

[s 11 am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 12] Disclosure of interest

(1) A member of the Service or of a committee who is, directly or indirectly, interested in a matter under discussion by the Service or committee shall disclose to the Service or committee the fact and nature of his or her interest.

[subs (1) am Act 38 of 2017 s 7, effective 1 August 2017]

(2) A disclosure under subsection (1) shall be recorded in the minutes of the Service or committee.

[subs (2) am Act 38 of 2017 s 7, effective 1 August 2017]

(3) After a disclosure under subsection (1) the member in question—

- a) shall not take part in nor be present during any discussion, deliberation or decision of the Service or committee; but
- b) may be counted for the purpose of forming a quorum of the Service or committee.

[subs (3) am Act 38 of 2017 s 7, effective 1 August 2017]

(4) A member who fails to disclose his or her interest as required by subsection (1) commits an offence and, is liable on conviction to a fine of \$10,000 and to imprisonment for 7 years.

[Section 13] Minutes

(1) The Service and every committee shall keep minutes of all its meetings in a proper form.
[subs (1) am Act 38 of 2017 s 7, effective 1 August 2017]

(2) Any minutes, if duly signed by the chairperson or person presiding, shall, in any legal proceedings, be admissible as evidence of the facts stated in them and a meeting of the Service or committee in respect of which minutes have been so signed is deemed to have been duly convened and held and the members present at it to have been duly appointed to act.

[subs (2) am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 14] Common seal

(1) The Service shall have a common seal of such design as it may decide.

[subs (1) am Act 38 of 2017 s 7, effective 1 August 2017]

(2) The common seal shall be kept by the chairperson and its affixing shall be authenticated by any 2 members generally or specifically authorised by the Service for the purpose, or by one such member and the chairperson.

[subs (2) am Act 38 of 2017 s 7, effective 1 August 2017]

(3) All deeds, documents, and other instruments purporting to be sealed with the common seal and authenticated in accordance with subsection (2) shall, unless the contrary is proved, be presumed to have been validly executed.

(4) The common seal of the Service shall be officially and judicially noticed for all purposes.

[subs (4) am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 15] Validity of proceedings

The validity of any proceedings or act of the Service or of a committee shall not be affected by any defect in the appointment of any member.

[s 15 am Act 38 of 2017 s 7, effective 1 August 2017]

PART 3 TRANSFER OF ASSETS, LIABILITIES AND EMPLOYEES (Sections 16–21)

[Section 16] Transfer of assets and liabilities to the Service

(1) As from the commencement of this Act, all movable property vested in the State immediately before that date and used or managed by the Inland Revenue Department or Customs and Excise Department, and all assets, interests, rights, privileges, liabilities and obligations of the State relating to those Departments shall be transferred to and shall vest in the Service without any conveyance, assignment or transfer.

[subs (1) am Act 38 of 2017 s 7, effective 1 August 2017]

(2) Every right and liability vested under subsection (1) in the Service may, on and after the commencement of this Act, be sued on, recovered or enforced by or against the Service in its own name and it shall not be necessary for the Service or the State to give notice to any person whose right or liability is affected by the vesting.

[subs (2) am Act 38 of 2017 s 7, effective 1 August 2017]

(3) On and after the commencement of this Act, any agreement relating to any property, rights and liabilities transferred to and vested in the Service under subsection (1) to which the State was a party immediately before the commencement of this Act, whether in writing or not, and whether or not of such a nature that rights and liabilities could be assigned by the State, shall have effect as if the Service had been a party to the agreement.

[subs (3) am Act 38 of 2017 s 7, effective 1 August 2017]

(4) If a question arises as to whether any particular property, asset, interest, right, privilege, liability, or obligation has been transferred to or vested in the Service under subsection (1), a certificate signed by the Minister shall be conclusive evidence that the property, asset, interest, right, privilege, liability or obligation was or was not so transferred or vested.

[subs (4) am Act 38 of 2017 s 7, effective 1 August 2017]

[s 16 am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 17] Transfer of employees

(1) As from the commencement of this Act, persons employed immediately before that date in the Inland Revenue Department or in the Customs and Excise Department whose services are required by the Service for the performance of its functions under this Act shall be transferred to the service of the Service on terms not less favorable than those enjoyed by them immediately prior to their transfer.

[subs (1) am Act 38 of 2017 s 7, effective 1 August 2017]

(2) The conduct and discipline of every employee of the Fiji Revenue and Customs Service will be, in accordance with policies and procedures issued in accordance with section 28.

[subs (2) subst Decree 50 of 2009 s 117 and Sch 4, effective 1 January 2010; am Decree 18 of 2011 s 3, effective 1 March 2011; Act 38 of 2017 ss 2 and 7, effective 1 August 2017]

(3) Nothing in this Act shall affect the rights, duties, or obligations of an employee not transferred to the Service.

[subs (3) am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 18] Rights of transferred employees

For the purposes of every enactment, law, award, determination, contract and agreement relating to the employment of a transferred employee, the contract of employment of that employee is deemed to have been unbroken and the period of service with the State is for all purposes deemed to have been a period of service with the Service.

[s 18 am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 19] Existing contracts

All deeds, bonds, agreements, instruments and arrangements to which the State is a party subsisting immediately before the commencement of this Act and relating to the Inland Revenue Department or Customs and Excise Department or to any transferred employee shall continue in force after that date and shall be enforceable by or against the Service as if the Service had been named therein or had been a party thereto instead of the State.

[s 19 am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 20] Continuation of proceedings

Any action, arbitration, proceedings or cause of action that relates to a transferred asset, liability, or employee and that immediately before the commencement of this Act is pending or existing by, against, or in favour of the State or to which the State is a party, may be prosecuted and, without amendment of any writ, pleading or other document, continued and enforced by, against, or in favour of the Service.

[s 20 am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 21] No benefits in respect of abolition or reorganisation of office

A person who is transferred to the service of the Service is not entitled to claim any benefit on the ground that he or she has been retired from the service of the State on account of abolition or reorganisation of office in consequence of the establishment and incorporation of the Service.

[s 21 am Act 38 of 2017 s 7, effective 1 August 2017]

PART 4 FUNCTIONS, DUTIES AND POWERS OF SERVICE (Sections 22–32)

[Section 22] Functions of the Service

The functions of the Service are—

- a) to act as agent of the State and to provide services in administering and enforcing the laws specified in Schedule 1;
- (aa) to disburse loans or funds on behalf of the State and to exercise all functions and perform all duties necessary for the collection and recovery of those loans or funds where necessary;
- b) generally to exercise all functions and perform all duties carried out by the Inland Revenue Department and Customs and Excise Department immediately prior to the commencement of this Act;
- c) to advise the State on matters relating to taxation and customs and excise and to liaise with appropriate Ministries and statutory bodies on such matters;
- d) to represent the State internationally in respect of matters relating to taxation or customs and excise; and
- e) to perform such other functions as the Minister may assign to the Service.

[s 22 am Act 38 of 2017 s 7, effective 1 August 2017, s39 of 2020, (s3) (aa) inserted effective 1 September 2020]

[Section 23] Powers of the Service

(1) The Service shall have all such powers as may be reasonably necessary or convenient for the purpose of carrying out its functions under this Act and regulating its own procedure.

[subs (1) am Act 38 of 2017 s 7, effective 1 August 2017]

(2) The powers of the Service do not include the powers of the Commissioner of Inland Revenue or of the Comptroller of Customs and Excise conferred by section 27 on the Chief Executive Officer.

[subs (2) am Act 38 of 2017 s 7, effective 1 August 2017]

[s 23 am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 24] Delegation of powers

(1) The Service may from time to time, by writing under the hand of the chairperson, delegate to any person or committee any of the Service's powers under this Act.

[subs (1) am Act 38 of 2017 s 7, effective 1 August 2017]

(2) A delegation under this section may be made to a specified person or committee or to the holder for the time being of a specified office or to the holders of offices of a specified class.

(3) A delegation may be made subject to such restrictions and conditions as the Service thinks fit, and may be made either generally or in relation to any particular case or class of cases.

[subs (3) am Act 38 of 2017 s 7, effective 1 August 2017]

(4) Any person or committee purporting to exercise any power of the Service by virtue of a delegation under this section shall, when required to do so, produce evidence of his or her or its authority to exercise the power.

[subs (4) am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 25] Appointment of committees

(1) At the beginning of each financial year the Service shall appoint an Audit Committee which shall have the following functions—

- a) to recommend to the Minister the name of an auditor of the Service's accounts;
- b) to develop a programme for the internal auditing of the Service's accounts and practices;
- c) to investigate allegations of corruption against members or employees of the Service and to report its findings to the Service, whereupon the Service shall submit a copy of the report to the Minister.

[subs (1) am Act 38 of 2017 s 7, effective 1 August 2017]

(2) The Service may—

- a) establish other committees to assist the Service in the performance of its functions under this Act;
- b) appoint any person to be a member of a committee established under subsection (1) or (2)(a); and
- c) appoint a chairperson of any such committee.

[subs (2) am Act 38 of 2017 s 7, effective 1 August 2017]

(3) Persons who are disqualified by this Act from being members of the Service shall also be disqualified from being members of a committee.

[subs (3) am Act 38 of 2017 s 7, effective 1 August 2017]

(4) A committee established under this section may regulate its own procedure but shall be subject to section 13 and to any directions given by the Service.

[subs (4) am Act 38 of 2017 s 7, effective 1 August 2017]

(5) Subject to subsection (4), a committee established under this section shall meet at such times and places as the chairperson may determine.

(6) A committee may invite any person to attend any meeting for the purpose of advising it on any matter and a person so invited is not entitled to vote.

(7) Members of a committee and persons invited under subsection (6) to attend are entitled to such allowances and expenses as the Service may fix.

[subs (7) am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 26] Appointment of employees, agents and consultants

The Service may appoint on such terms and conditions as it thinks fit such employees, agents, or consultants as may be necessary or expedient for carrying out its functions and duties.

[s 26 am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 26A] Panel of valuers or other panels

26A. The Service may establish a panel of valuers or any other panel as and when required for the purposes of administering its functions under section 22.”

[subs (2) am Act 38 of 2017 s 7, effective 1 June 2023, am Act 12 of 2023, s2, effective July 2023]

Legislative History:

Act 12 of 2023 (s27) – from 14 20 July 23 – Section 26(A) was by inserting the following new Section

“Panel of valuers or other panels

26A. The Service may establish a panel of valuers or any other panel as and when required for the purposes of administering its functions under section 22.”

[Section 27] Appointment of Chief Executive Officer

(1) The Service may, after consultation with the Minister, by notification in the Gazette, appoint a Chief Executive Officer on such terms and conditions as the Service may determine.

[subs (1) am Act 38 of 2017 s 7, effective 1 August 2017]

(2) The Chief Executive Officer shall—

a) hold office as the—

- i. Commissioner of Inland Revenue under the Income Tax Act (Cap. 201);
- ii.

[subsection (ii) removed by Act 16 of 2020, effective 1 August 2020]

iii. Comptroller of Customs and Excise under the Customs Act 1986, Customs Tariff Act 1986 and Excise Act 1986 respectively; and

- b) be responsible to the Service for the proper administration and management of the functions and affairs of the Service in accordance with the policy laid down by the Service;
- c) be responsible to the Service for the administration and enforcement of, and collection of revenue under, the laws specified in Schedule 1;
- d) perform such other functions or duties as the Service, from time to time, may determine;
- e) not be removed from office without the consent of the Minister.

[subs (2) am Decree 15 of 2011 s 2, effective 1 April 2011; Act 31 of 2016 s 82, effective 1 December 2016; Act 38 of 2017 s 7, effective 1 August 2017]

(3) If the Chief Executive Officer is temporarily “unable to perform his or her duties”, the Service may, after the chairperson has consulted the Minister, appoint a person to act in the place of the Chief Executive Officer during that period.

[subs (2) am Act 38 of 2017 s 7, effective 1 August 2017, am Act 7 of 2021, s2, effective 4 June 2021]

Legislative History:

Act 12 of 2023 (s27) – from 14 20 July 23 – Section 27(3) was by inserting the following new section—

deleting “absent from Fiji, or is temporarily unable to perform his or her duties for any other reason” and substituting “unable to perform his or her duties”.

(4) Notwithstanding anything in any other written law, the Chief Executive Officer may delegate to any other officer or employee of the Service any of his or her powers under this Act or under the laws specified in Schedule 1 except the power of delegation under this subsection and the power to compound offences in section 59 of the Tax Administration Act 2009.

[subs (4) am Decree 50 of 2009 s 117 and Sch 4, effective 1 January 2010; Act 38 of 2017 s 7, effective 1 August 2017]

[Section 28] Policies and procedures by the Service

(1) Upon the recommendation of the Chief Executive Officer, the Service may endorse policies and procedures relating to employees of the Service and such policies and procedures shall constitute the conditions of employment of the employees of the Service.

(2) The policies and procedures referred to in subsection (1) shall relate to—

- a) the appointment, promotion, transfer, suspension, retirement, retrenchment and termination of employees of the Service;
 - b) job descriptions, job classifications, employer and employee duties, privileges, responsibilities, performance criteria and performance assessment;
 - c) the remuneration and conditions of employment within the Service;
 - d) a code of conduct for the employees of the Service;
 - e) disciplinary offences and procedures;
 - f) the imposition of penalties for disciplinary breaches;
 - g) matters guaranteeing the equal opportunity and treatment of all employees of the Service; and
 - h) issues relating to the welfare and safe work practices and the assurance of a safe and healthy working environment under the Health and Safety at Work Act 1996.
- [s 28 subst Act 38 of 2017 s 3, effective 1 August 2017]

[Section 29] Imposition of surcharge

(1) If—

- a) the Service is satisfied that any officer or employee—
 - i. is or was responsible for the improper payment of moneys or for the payment of such moneys which is not duly vouched; or
 - ii. is or was responsible for any deficiency in, or for the destruction of, moneys, securities, stores or other property of the Service; and
- b) if a satisfactory explanation is not furnished within a period specified by the Service,

the Service may surcharge against the officer or employee a sum not exceeding the amount of any such payment, deficiency or loss, or the value of the property destroyed, as the case may be.

[subs (1) am Act 38 of 2017 s 7, effective 1 August 2017]

(2) If—

- a) the Service is satisfied that any officer or employee—
 - i. being or having been an accounting officer, fails or has failed to keep proper accounts or records; or
 - ii. has failed to make any payment, or is or was responsible for any delay in the payment, of moneys from the Service to any person to whom such payment is due under any contract, agreement or arrangement entered into between that person and the Service; and
- b) a satisfactory explanation is not furnished within a period specified by the Service,

the Service may surcharge against the said person such sum as the Service may think fit.

[subs (2) am Act 38 of 2017 s 7, effective 1 August 2017]

(3) Upon a surcharge being made under subsection (1) or (2), the chairperson shall notify the person surcharged.

(4) The Service may at any time withdraw any surcharge in respect of which a satisfactory explanation has been received or if it otherwise appears that no surcharge should have been made.

[subs (4) am Act 38 of 2017 s 7, effective 1 August 2017]

(5) The amount of any surcharge imposed under subsection (1) and not withdrawn under subsection (3) shall be a debt due to the Service from the person against whom it is imposed and may be sued for and recovered in any court at the suit of the Service and may also be recovered by deduction from the salary or pension of the person surcharged by equal monthly instalments not exceeding one quarter of that person's total monthly salary or pension.

[subs (5) am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 30] Minister may give directions and require information

(1) The Minister may, in writing, give to the Service directions of a general character not inconsistent with this Act relating to the performance of the Service's functions and the Service shall give effect to such directions.

[subs (1) am Act 38 of 2017 s 7, effective 1 August 2017]

(2) The Service shall provide to the Minister such returns, accounts and other information as he or she may, from time to time, require.

[subs (2) am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 31] Limitation of liability

(1) No proceedings, civil or criminal, shall lie against the Service for anything it may do or fail to do in the course of the exercise or intended exercise of its functions, unless it is shown that it did not act in good faith or with reasonable care.

[subs (1) am Act 38 of 2017 s 7, effective 1 August 2017]

(2) No proceedings, civil or criminal, shall lie against any member, officer, or employee of the Service for anything done or said, or any failure to do or say anything in the course of the

operation of the Service, unless it is shown that the person did not act in good faith or with reasonable care.

[subs (2) am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 32] Public servants

All members of the Service and any of its committees and all officers, employees or agents of the Service, while discharging their duties, shall be deemed to be public servants within the meaning of the Crimes Act 2009.

[s 32 am Act 31 of 2016 s 82, effective 1 December 2016; Act 38 of 2017 s 7, effective 1 August 2017]

[Section 32A] Loan and fund agreements

(1) A person who is the recipient of loans or funds disbursed by the Service is required to enter into an agreement with the Service.

(2) An agreement entered into pursuant to subsection (1) is *prima facie* evidence of a recipient's obligation to make repayments, where applicable, on the loans or funds received or fulfill terms and conditions, which is deemed to be an obligation in law.

(3) A recipient who has entered into an agreement pursuant to subsection (1) is required to provide a guarantor or guarantors in the event he or she intends to leave the country for any purpose during the term of his or her loan conditions or bond period.

[Section 32B] Recovery of loans or funds disbursed by the Service

(1) In accordance with section 22(aa), the Service must take action on any recipient, who—

- a. obtains such loans or funds from the Service or the State by fraudulent means or by providing false information;
- b. fails to use the loans or funds for the purpose for which it was intended;
- c. fails to make loan repayments or partial payments thereof; or
- d. breaches or fails to fulfil any terms or conditions required by an agreement made under section 32A.

(2) Pursuant to subsection (1), any action taken by the Service includes—

- a. any action provided for in section 32C, 32D, 32E, 32F, 32G or 32H to recover such loans or funds;
- b. acquisition of property used as security on the loan;
- c. taking court action;
- d. reporting to local and international credit bureaus or agencies; or
- e. such other action as the Service deems necessary.

[Section 32C] Garnishee order

- (1) In this section, “payer” means a person who—
 - a) owes money to a recipient;
 - b) holds money, for or on account of a recipient;
 - c) holds money on account of some other person for payment to recipient;
 - d) has authority from some other person to pay money to a recipient;
 - e) holds money that is deposited to the credit of a recipient, including money held in a joint bank account in the name of the recipient and one or more persons, provided that the source of income is determined to be the income of the recipient;
 - f) holds money that is deposited by the recipient but credited to the bank account of another person, provided the source of income is determined to be the income of the recipient; or
 - g) administers money in the recipient’s bank overdraft facility account, provided that the defaulting recipient’s available bank balance is below the bank overdraft limit allowed to the recipient by the payer.

- (2) This section applies if a recipient is liable to pay an amount due and—
 - a) the amount due has not been paid by the recipient by the due date for payment; or
 - b) the Chief Executive Officer has reasonable grounds to believe that the recipient will not pay the assessed amount due by the due date for payment.

- (3) The Chief Executive Officer may, in writing issue a garnishee order to a payer requiring the payer to pay the amount specified in the garnishee order to the Chief Executive Officer in relation to the recipient.

- (4) The amount specified in a garnishee order issued under subsection (3) must be an amount that does not exceed the amount that has not been paid or the amount that the Chief Executive Officer believes will not be paid by the due date.

- (5) A payer must pay the amount specified in a garnishee order by the date specified in that order, being a date that is not before the date that the amount owed to the recipient becomes due to the recipient or held on the recipient’s behalf.²⁶⁶

- (6) If a garnishee order requires a payer to deduct amounts from a pension, salary, wages or other remuneration payable at fixed intervals to the recipient, 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) If a payer served with a garnishee order is unable to comply with the order, the person must notify the Chief Executive Officer, in writing within 14 days after receipt of the garnishee order, setting out the reasons for the person’s inability to comply.

- (8) If a notice is served on the Chief Executive Officer under subsection (7), the Chief Executive

Officer may, by notice in writing—

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

(9) A payer or the payer’s representative is precluded from appealing the decision of the Chief Executive Officer under subsection (8).

(10) The Chief Executive Officer must, by notice in writing to the payer, revoke or amend a garnishee order if the recipient has paid the whole or part of the amount due or has made an arrangement satisfactory to the Chief Executive Officer for payment of the amount due.

(11) A copy of a garnishee order or any notice served on a payer under this section must be served on the recipient.

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

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

[Section 32D] Charge on property

(1) Loans or funds payable by a recipient is a lien and charge upon the property, real or personal, of the recipient.

(2) Subject to subsection (3), the Chief Executive Officer may lodge for registration any charge or place a caveat on the property subject to the charge by depositing with the relevant registry a certificate under the hand of the Chief Executive Officer setting forth the description of the property charged and the amount due and the relevant registry must, without fee, register the certificate as if it were a registrable instrument under law.

(3) If applicable, the Chief Executive Officer may file a notice of a charge created by this section in the registry established under the Personal Property Securities Act 2017 to establish the priority date and time of such charge, and the registry must, without fee, register the notice as if it were a registrable instrument under law.

(4) Subject to the provisions of the Personal Property Securities Act 2017, a charge created under this section must—

- a) be subject to any mortgage, charge or encumbrance registered on the property prior to the registration of the charge;
- b) have priority over any mortgage, charge or encumbrance created after the registration of the charge;
- c) rank equally with any charge created under another Act or any other law.

(5) Registration of a certificate under subsection (4) is treated as actual notice to all persons of the existence and amount of the charge and, subject to subsection (2), the charge has operation and priority accordingly in relation to the property.

(6) A charge created by this section that is registered operates to secure all amounts owing by the recipient under any prior unregistered charge created by this section as of the date of registration of the charge.

(7) If a registered charge has been satisfied, the Chief Executive Officer must deposit with the Registrar of Titles a release of the charge, and the Registrar must, without payment of any fee, register the release as if it were a registrable instrument under law.

(8) With regard to personal property, if a notice of a charge under this section has been registered and the charge has been satisfied, the Chief Executive Officer must file with the registry established under the Personal Property Securities Act 2017 a termination of the charge, and the relevant Registrar must, without payment of any fee, register the termination as if it were a registrable instrument under law.

(9) If an unpaid amount due is, by virtue of subsection (1), a charge on the real property of the recipient, the Chief Executive Officer may apply by petition to the High Court for the enforcement of the charge and the High Court may order—

- a) the sale of the property or any part of the property; or
- b) the appointment of a receiver of the rents, profits or income from the property,^{267 268}

and, subject to subsections (2) and (4), that the proceeds of sale or the rents, profits or income must be used to pay the amount due and any costs of the Chief Executive Officer in enforcing the charge.

(10) If any property has been sold under petition referred to in subsection (9), the High Court may, on application of the purchaser, make an order vesting the property in the purchaser.

(11) A vesting order under subsection (10) has the same effect as if all persons entitled to the property had been free from all disability and had duly executed all proper conveyances, transfers and assignments of the property for such estate or interest as is specified in the order, and the order is subject to stamp duty accordingly.

(12) If an unpaid amount due is, by virtue of subsection (1), a charge on the personal property of the recipient, the Chief Executive Officer may, subject to subsections (2) and (4), sell or concur with another person in the selling of the property, or part thereof, whether by public auction or private contract.

(13) The proceeds of disposal under subsection (9)(a) or (12), or the rents, profits or income referred to in subsection (9)(b) must be applied by the Chief Executive Officer as follows—

- a) first towards the costs of selling or renting the property;
- b) then towards payment of any amount due by the recipient; and
- c) the remainder of the proceeds, if any, must be paid to the recipient.

(14) If the proceeds of disposal are less than the sum of the costs of the sale and the amount due, the Chief Executive Officer may proceed under any of the options set out in section 32B(2) to recover the shortfall.

[Section 32E] Collection by distress and sale

(1) The Chief Executive Officer, or a revenue officer authorised in writing by the Chief Executive Officer for the purposes of this section, may issue an order, in writing, for the recovery of an amount due that has not been paid by the due date by distress and sale of the personal property of the recipient.

(2) An order under subsection (1) must specify—

- a) the recipient against whose property the proceedings are authorised;
- b) the property against which the proceedings are to be executed and the location of that property; and
- c) the liability to which the proceedings relate.

(3) The Chief Executive Officer or authorised revenue officer may, at any time, enter any premises described in an order issued under subsection (1) for the purposes of executing distress and may require a police officer to be present while distress is being executed.

(4) Any property distrained under this section must be—

- a) identified by the attaching of a notice stating “PROPERTY IMPOUNDED FOR NOT COMPLYING WITH REPAYMENT OBLIGATIONS BY ORDER OF THE CHIEF EXECUTIVE OFFICER OF THE FIJI REVENUE AND CUSTOMS SERVICE UNDER SECTION 32E OF THE FIJI REVENUE AND CUSTOMS SERVICE ACT 1998”; and
- b) kept at the premises where the distress is executed or at any other place that the Chief Executive Officer or authorised revenue officer may consider appropriate, at the cost of the recipient.

(5) If the recipient does not pay the amount due described in the order, together with the costs of the distress—

- a) in the case of perishable goods, within a period that the Chief Executive Officer or authorised revenue officer considers reasonable having regard to the condition of the goods; or
- b) in any other case, within 10 consecutive days after the distress is executed,

the property distrained may be sold by public auction or in such other manner as the Chief Executive Officer or authorised revenue officer may direct.

(6) The proceeds of disposal under subsection (5) must be applied by the Chief Executive Officer or authorised revenue officer as follows—

- a) first towards the cost of taking, keeping and selling the property distrained;
- b) then towards payment of any amount due by the recipient; and
- c) the remainder of the proceeds, if any, must be paid to the recipient.

(7) If the proceeds of disposal are less than the sum of the costs of the distress and the amount due, the Chief Executive Officer or authorised revenue officer may proceed under this Act to recover the shortfall.

(8) A person subject to an order under subsection (1) may enter into an agreement referred to as a “possession agreement” with the Chief Executive Officer or authorised revenue officer under which, in consideration of the property distrained upon being allowed to remain in the custody of the recipient and delaying of the sale of the property, the recipient—

- a) acknowledges that the property specified in the agreement is under distraint and held in possession for payment of the amount specified in the agreement; and^{269 270}
- b) undertakes that, except with the consent of the Chief Executive Officer or an authorised revenue officer, in writing, for the purposes of this section and subject to such conditions as the Chief Executive Officer or authorised revenue officer may impose, the recipient will not remove or allow the removal of the property specified in the agreement from the premises specified in the agreement.

(9) If a recipient has entered into a possession agreement under subsection (8), subsections (4) to (7) do not apply unless the recipient is in breach of the agreement.

[Section 32F] Seizure of goods

(1) The Chief Executive Officer or a revenue officer authorised by the Chief Executive Officer in writing may seize any goods in respect of which the Chief Executive Officer or authorised revenue officer has reasonable grounds to believe have been acquired through loans or funds disbursed by the Service in accordance with section 22(*aa*).

(2) Any goods seized under this section must be stored in a place approved by the Chief Executive Officer or authorised revenue officer for the storage of seized goods.

(3) If goods have been seized under subsection (1), the Chief Executive Officer or authorised revenue officer must, as soon as is practicable after the seizure, serve on the owner of the goods or the person who had custody or control of the goods immediately before the seizure, a notice in writing—

- a) identifying the goods;
- b) stating that the goods have been seized under this section and the reason for seizure; and
- c) setting out the terms of subsections (6), (7) and (8).

(4) The Chief Executive Officer or authorised revenue officer is not required to serve a notice under subsection (3) if, after making reasonable enquiries, the Chief Executive Officer or authorised revenue officer does not have sufficient information to identify the person on whom the notice should be served.

(5) If subsection (4) applies, the Chief Executive Officer or authorised revenue officer may serve a notice under subsection (3) on any person claiming the goods, provided the person has given the Chief Executive Officer or authorised revenue officer sufficient information to enable the notice to be served.

(6) The Chief Executive Officer or authorised revenue officer may authorise any goods seized under subsection (1) to be delivered to the person on whom a notice under subsection (3) has been served if that person has paid, or makes an arrangement satisfactory to the Chief Executive Officer or authorised revenue officer for payment of the amount due by the recipient.

(7) Except if subsection (6) applies, the Chief Executive Officer or authorised revenue officer must detain the goods seized under subsection (1)—

- a) in the case of perishable goods, for such period as the Chief Executive Officer or authorised revenue officer considers reasonable having regard to the condition of the goods; or
- b) in any other case, for the greater of—
 - i. 10 consecutive days after seizure of the goods; or
 - ii. 10 consecutive days after the date for payment of the amount due.

(8) If the detention period in subsection (7) has expired, the Chief Executive Officer or authorised revenue officer may sell the goods by public auction or, in the case of perishable goods, may sell the goods in such manner as the Chief Executive Officer or authorised revenue officer determines, and applies the proceeds of sale as follows—

- a) first towards the amount due by the recipient;
- b) then towards the cost of taking, keeping and selling the goods seized; then towards payment of any fees or charges that is payable in respect of the seizure of the goods; then towards payment of any other amount due by the person whose goods have been seized; and
- c) then the remainder of the proceeds, if any, must be paid to the person whose goods have been seized.

(9) If the proceeds of disposal are less than the sum of the cost of taking, keeping and selling the goods seized and the amount due, the Chief Executive Officer or authorised revenue officer may proceed under any other options set out in section 32B(2) to recover the shortfall.

[Section 32G] Departure prohibition order

(1) Where a person is subject to an amount due and the Chief Executive Officer believes on reasonable grounds that it is desirable to do so for the purposes of ensuring that the person does not depart from Fiji for a foreign country without—

- a) wholly discharging the amount due; or
- b) making arrangement satisfactory to the Chief Executive Officer for the liability to be wholly discharged,

the Chief Executive Officer may, by order in accordance with the prescribed form, prohibit the recipient departing from Fiji for a foreign country.

Legislative History:

Act 6 of 2022 (s2) – from 1 April 2022 – Section 32G was amended by deleting “co-signed by a board member of the Fiji Revenue and Customs Service” wherever it appears.

Section 32G(1) read as:

(1) Where a person is subject to an amount due and the Chief Executive Officer believes on reasonable grounds that it is desirable to do so for the purposes of ensuring that the person does not depart from Fiji for a foreign country without— a) wholly discharging the amount due; or b) making arrangement satisfactory to the Chief Executive Officer for the liability to be wholly discharged, the Chief Executive Officer may, by order in accordance with the prescribed form co-signed by a board member of the Fiji Revenue and Customs Service, prohibit the recipient departing from Fiji for a foreign country.

(2) The Chief Executive Officer must state the following on the departure prohibition order—

- a) the name and address of the recipient; and
- b) the amount due that is or will become payable.

(3) A departure prohibition order has effect throughout Fiji, including aboard any vessel or aircraft within Fiji.

(4) A copy of a departure prohibition order issued in respect of a recipient must, as soon as practicable, be served on the recipient, and upon the Commissioner of Police and the Director of Immigration.

(5) If a departure prohibition order is issued in respect of a recipient, the Commissioner of Police and the Director of Immigration must exercise the powers that they lawfully possess, or cause an officer under their direction to exercise such powers, so far as is necessary to prevent the recipient from departing Fiji, including the removal and retention of the recipient's passport, identity card, visa or other travel document authorising the recipient to leave Fiji.

(6) A recipient the subject of a departure prohibition order must be refused customs or immigration clearance.

(7) A departure prohibition order remains in force until revoked by the Chief Executive Officer or upon the expiration of 3 years from the date of the order being issued, whichever is the earlier.

(8) The Chief Executive Officer must revoke a departure prohibition order if—

- a) the recipient makes payment in full of the amount due or that will become payable by the recipient; or
- b) the recipient makes an arrangement satisfactory to the Chief Executive Officer for payment of the amount due that is or will become payable by the recipient.

Legislative History:

Act 6 of 2022 (s2) – from 1 April 2022 – Section 32G was amended by deleting “co-signed by a board member of the Fiji Revenue and Customs Service” wherever it appears.

Section 32G(8) read as:

(8) The Chief Executive Officer must revoke a departure prohibition order co-signed by a board member of the Service if—

- a) the recipient makes payment in full of the amount due or that will become payable by the recipient; or*
- b) the recipient makes an arrangement satisfactory to the Chief Executive Officer for payment of the amount due that is or will become payable by the recipient.*

(9) As soon as practicable after making a decision to revoke a departure prohibition order, the Chief Executive Officer must serve notice of revocation on the recipient and on any person on whom a copy of the departure prohibition order was served.

(10) No proceedings, criminal or civil, may be instituted or maintained against the State, the Chief Executive Officer, a revenue officer authorised to act under this section, or a custom, immigration, police or other officer for anything lawfully done under this section.

[Section 32H] Temporary closure of business

(1) Where a recipient fails to make repayments in relation to an amount due, provided, no satisfactory arrangements are made, the Chief Executive Officer or a revenue officer authorised by the Chief Executive Officer in writing for the purposes of this section may notify the recipient in writing of the intention to close down the whole or part of the recipient’s business unless the recipient delivers the return or pays the amount due, as the case may be, within a period of 7 consecutive days of the date of the notice.

(2) If a recipient fails to comply with a notice issued under subsection (1), the Chief Executive Officer or authorised revenue officer may issue an order to close down the whole or part of the recipient’s business for a period not exceeding 14 consecutive days.

(3) The Chief Executive Officer or authorised revenue officer may, at any time, enter any premises described in an order issued under subsection (2) for the purposes of executing the order and may require a police officer to be present while the order is being executed.

(4) The Chief Executive Officer or authorised revenue officer must seal the premises of the business or the part of the business closed under an order issued under subsection (2) and must affix to the premises, in a conspicuous place, a notice in the following words “CLOSED TEMPORARILY FOR NOT COMPLYING WITH REPAYMENT OBLIGATIONS BY ORDER OF THE CHIEF EXECUTIVE OFFICER OF THE FIJI REVENUE AND CUSTOMS SERVICE UNDER SECTION 32H OF THE FIJI REVENUE AND CUSTOMS SERVICE ACT 1998”.

(5) If—

- a) the return is delivered; or
- b) the amount due is paid or an arrangement satisfactory to the Chief Executive Officer for payment is made,

within the period of closure, the Chief Executive Officer or authorised revenue officer must, as soon as practicable, cancel the order referred to in subsection (2), and arrange for removal of the seal and the notice referred to in subsection (4).

[Section 31I] Limitation Act 1971

The Limitation Act 1971 does not apply to the provisions of this Act, for the recovery of loans or funds disbursed by the Service to a recipient pursuant to an agreement under section 32A.

PART 5 FINANCIAL PROVISIONS (Sections 33–41)

[Section 33] Money to be appropriated by Parliament

All sums payable to the Service for services rendered to the State as its agent under this Act shall be payable out of money to be appropriated by Parliament for the purpose.

[s 33 am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 34] Funds of the Service

The funds of the Service shall consist of—

- a) money appropriated by Parliament and paid to the Service for services rendered to the State as its agent;
- b) money received by it for services rendered by the Service to any other persons;
- c) money received by the Service by way of grants;
- d) money derived from the disposal, lease or hire of, or any other dealing with, any property vested in or acquired by the Service;
- e) money borrowed by the Service in accordance with this Act;
- f) income from investments by the Service made under this Act;
- g) fees or other charges imposed by the Service under this Act or authorised under any of the laws specified in Schedule 1 and payable to the Commissioner of Inland Revenue or Comptroller of Customs and Excise;
- h) other money which may become payable to the Service in respect of any matter incidental to its functions and powers.

[s 34 am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 35] Bank accounts

(1) The Service shall open at one or more banks such accounts as are necessary for the exercise of its functions and powers.

[subs (1) am Act 38 of 2017 s 7, effective 1 August 2017]

(2) Money received by the Service or by any officer or employee on behalf of the Service shall, as soon as practicable after it has been received, be paid into such bank accounts opened under subsection (1) as the Service from time to time determines.

[subs (3) am Act 38 of 2017 s 7, effective 1 August 2017]

(3) Subsection (2) does not affect any requirement of any other Act that revenue and other moneys raised for the purpose of Government be paid into the Consolidated Fund.

(4) The withdrawal or payment of money from an account opened under subsection (1) shall be authorised by prior resolution of the Service or shall be submitted to the Service for confirmation in a meeting as soon as practicable after the withdrawal or payment.

[subs (4) am Act 38 of 2017 s 7, effective 1 August 2017]

(5) The withdrawal or payment of money from an account opened under subsection (1) shall be effected only by such person or persons as the Service may from time to time authorise.

[subs (5) am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 36] Grants

For the purpose of enabling the Service to carry out its functions, the Minister may, from time to time, make grants-in-aid to the Service of such sums as the Minister may determine out of moneys provided by Parliament.

[s 36 am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 37] Investment

The Service may invest part of its funds in so far as the funds are not required to be expended by the Service.

[s 37 am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 38] Power to borrow

(1) The Service may borrow, upon such terms and conditions as the Minister may approve, any sums required by the Service to meet any of its obligations or to perform any of its functions.

[subs (1) am Act 38 of 2017 s 7, effective 1 August 2017]

(2) Borrowings under subsection (1) require the approval of the Minister, except for overdraft facilities required for working capital purposes.

[Section 39] Conservation of funds

The Service shall conserve its funds by performing its functions and exercising its powers under this Act so as to ensure that the total revenues of the Service are sufficient to meet all sums properly chargeable to its revenue account including depreciation and interest on capital.

[s 39 am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 40] Expenditure to be charged on funds of the Service

The funds of the Service shall be expended for the purposes of—

- a) paying any expenditure lawfully incurred by the Service in the performance of its functions or the exercise of its powers under this Act;

- b) discharging any obligations and liabilities of the Service and making any payments which the Service is required or authorised to make;
- c) generally paying any expenses for carrying into effect the provisions of this Act.

[s 40 am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 41] Payment of surplus funds to State

(1) Subject to subsection (2) but notwithstanding any other Act or any rule of law the Minister may at any time or times, by written notice to the Service, require the Service to pay into the Consolidated Fund such amount as the Minister specifies in the notice and any such amount shall become the property of the State.

[subs (1) am Act 38 of 2017 s 7, effective 1 August 2017]

(2) The Minister may not give notice under subsection (1) until he or she has consulted the Service as to the appropriate amount and is satisfied that the payment will not materially disadvantage any creditor of the Service or materially impede the Service in performing its functions or satisfying its obligations.

[subs (2) am Act 38 of 2017 s 7, effective 1 August 2017]

PART 6 REPORTING AND ACCOUNTABILITY (Sections 42–49)

[Section 42] Financial Year

The Service's financial year shall be from 1 August to 31 July of each year.

[s 42 am Act 16 of 2016 s 2, effective 1 August 2016; Act 38 of 2017 s 7, effective 1 August 2017]

[Section 43] Half yearly reports

(1) The Service shall furnish the Minister with a report on its activities for the first half of each financial year (in this Part referred to as the half yearly report).

[subs (1) am Act 38 of 2017 s 7, effective 1 August 2017]

(2) The half yearly report shall be given to the Minister by the end of March or on such later date as may be agreed between the Service and the Minister.

[subs (2) am Act 38 of 2017 s 7, effective 1 August 2017, am Act 7 of 2021, s2, effective 4 June 2021]

(3) The half yearly report shall include the information required by the Service's statement of corporate intent to be given in the report.

[subs (3) am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 44] Annual report

(1) Within 4 months after the end of each financial year the Service shall in accordance with its statement of corporate intent prepare a report of its activities during that financial year (in this Part referred to as the annual report).

[subs (1) am Act 38 of 2017 s 7, effective 1 August 2017]

(2) The Service shall send a copy of the annual report to the Minister who shall cause it to be laid before Parliament as soon as practicable.

[subs (2) am Act 38 of 2017 s 7, effective 1 August 2017]

(3) The annual report required by subsection (1) shall contain, among other things—

- a) an audited statement of accounts prepared in accordance with generally accepted accounting practice as determined by the Fiji Institute of Accountants;
- b) a statement of financial performance, including a statement of the financial position of the Service;
- c) a statement of cash flows;
- d) such other information as is required to give a true and fair view of the Service's financial affairs; and
- e) a copy of the auditor's report.

[subs (3) am Act 38 of 2017 s 7, effective 1 August 2017]

(4) The annual report shall include the information required by the Service's statement of corporate intent to be given in it.

[subs (4) am Act 38 of 2017 s 7, effective 1 August 2017]

(5) The statement of accounts of the Service shall be audited by such auditor as the Minister appoints upon the recommendation of the Audit Committee as provided for by section 25(1)(a).

[subs (5) am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 45] Service to have a corporate plan

(1) The Service shall in each year publish a corporate plan setting out plans for the future operations of the Service and shall act in accordance with it.

[subs (1) am Act 38 of 2017 s 7, effective 1 August 2017]

(2) The Minister may issue guidelines as to the format and content of the corporate plan and the Service shall comply with the guidelines except as otherwise agreed in writing by the Minister.

[subs (2) am Act 38 of 2017 s 7, effective 1 August 2017]

(3) A corporate plan shall, except as otherwise agreed in writing by the Minister, contain—

- a) a forecast of profit and loss accounts, balance sheets and cash flows for the current and following 2 financial years; and
- b) a statement of the assumptions on which the forecasts are based.

(4) The corporate plan shall be consistent with the Service's statement of corporate intent.

[subs (4) am Act 38 of 2017 s 7, effective 1 August 2017]

[s 45 am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 46] Draft corporate plan

(1) The Service shall, not later than 3 months before the commencement of each financial year, prepare a draft corporate plan.

[subs (1) am Act 38 of 2017 s 7, effective 1 August 2017]

(2) The draft corporate plan shall, as soon as possible, be sent to the Minister, who shall within one month give his or her comments in writing or inform the Service that he or she has no comments.

[subs (2) am Act 38 of 2017 s 7, effective 1 August 2017]

(3) If the Minister has no comments on the draft corporate plan, the plan shall be treated as approved.

(4) If the Minister comments on the draft corporate plan, the Service shall give effect to the comments and deliver the finalised corporate plan to the Minister, within one month after receiving them, for approval.

[subs (4) am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 47] Service to have statement of corporate intent

(1) The Service shall, in each year, publish a statement of corporate intent containing a summary of the corporate plan and setting out the financial and non-financial performance targets of the Service for that year.

[subs (1) am Act 38 of 2017 s 7, effective 1 August 2017]

(2) In addition to the matters mentioned in subsection (1), the statement of corporate intent shall include—

- a) an outline of the objectives of the Service;

- b) an outline of the nature and scope of the activities proposed to be undertaken by the Service;
- c) an outline of the Service's main undertakings;
- d) an outline of the borrowings made and proposed to be made by the Service, and the corresponding sources of funds;
- e) an outline of the Service's policies and procedures relating to the acquisition and disposal of major assets;
- f) a description of the Service's accounting policies;
- g) a description of the financial information to be given to the Minister in the half yearly report and annual report;
- h) a description of measures by which the performance of the Service may be judged in relation to its objectives, in addition to the performance targets required by subsection (1);
- i) such other matters as are agreed by the Minister and the Service or are directed by the Minister to be included in the statement of corporate intent.

[subs (2) am Act 38 of 2017 s 7, effective 1 August 2017]

(3) The Minister may, in writing, exempt the Service from including in its statement of corporate intent any matter, or any aspect of a matter, mentioned in subsection (2).

[subs (3) am Act 38 of 2017 s 7, effective 1 August 2017]

[s 47 am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 48] Draft statement of corporate intent

(1) The Service shall, not later than 3 months before the commencement of each financial year, prepare a draft statement of corporate intent.

[subs (1) am Act 38 of 2017 s 7, effective 1 August 2017]

(2) The draft statement of corporate intent shall, as soon as possible, be sent to the Minister who shall, within one month, give his or her comments in writing on the draft statement of corporate intent or inform the Service that he or she has no comments.

[subs (2) am Act 38 of 2017 s 7, effective 1 August 2017]

(3) If the Minister has no comments on the draft statement of corporate intent, the statement shall be treated as approved.

(4) If the Minister comments on the draft statement of corporate intent, the Service shall give effect to the comments and deliver the finalised statement of corporate intent to the Minister, within one month after receiving them, for approval.

[subs (4) am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 49] Commencement and modification of corporate plan and statement of corporate intent

- (1) The corporate plan and the statement of corporate intent come into effect when approved by the Minister.
- (2) A corporate plan or a statement of corporate intent may, with the agreement of the Minister, be modified during the relevant financial year.
- (3) The Minister may, in writing, direct the Service to modify its corporate plan or statement of corporate intent during the relevant financial year.

[subs (3) am Act 38 of 2017 s 7, effective 1 August 2017]

PART 7 MISCELLANEOUS (Regulations 50–55)

[Section 50] No proceedings against the Service as agent of Government

No action or legal proceedings shall be brought against the Service in respect of any matter relating to any tax or duty payable under any law specified in Schedule 1 and for which the Service is acting as agent of the State.

[s 50 am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 51] Proceedings conducted by persons authorised by the Chief Executive Officer

- (1) Any person authorised in writing by the Chief Executive Officer may—
 - (a) for any offence under this Act or under the laws specified in Schedule 1, conduct any prosecution in a court of competent jurisdiction; and
 - (b) for the recovery of any tax or duty payable under the laws specified in Schedule 1, appear in any civil proceedings in a court of competent jurisdiction.
- (2) At any stage before the close of a case for prosecution or before a final order is made for the purposes of civil proceedings conducted in accordance with this section—
 - (a) a person authorised under subsection (1) may, with the leave of the court, withdraw, substitute or amend any proceedings including any complaint or charge; or

(b) where it appears to the court that the proceedings, including any complaint or charge, is defective either in substance or in form, the court may make such orders for—

- (i) amendment to the proceedings, including any complaint or charge; or
- (ii) a substitution or addition of a new proceedings, including any complaint or charge,

as the court thinks necessary to meet the circumstances of the case.

[s 51 subst Act 18 of 2018 s 2, effective 1 August 2018]

[Section 51A] Protection of informers

(1) This section applies to this Act and any other written law under which a tax, tariff, fee, duty or levy is imposed, if responsibility for the general administration of that tax, tariff, fee, duty or levy is conferred upon the Chief Executive Officer.

(2) Subject to subsection (4), any person involved in any proceedings or investigation with regard to the laws referred to in subsection (1) must not—

- a) disclose the name or address of any informer who has given information with respect to an offence against any law referred to in subsection (1); or
- b) answer any question if the answer would lead, or would tend to lead, to the discovery of the name, address or identity of such informer, and the informer is not a witness in the proceedings.

(3) If any record which is in evidence or liable to inspection in any proceedings or investigation contains an entry in which any such informer is named or described or which might lead to his or her discovery, the court must cause all such entries to be concealed from view or to be obliterated so far as may be necessary to protect the information or such person from discovery.

(4) If in any proceedings before the court under the laws referred to in subsection (1), the court, after full enquiry into the case, is satisfied that an informer wilfully made a material statement which the informer knew to be false or did not believe to be true, the court may permit enquiry and require full disclosure concerning the informer.

(5) If in any other proceedings the court is of the opinion that justice cannot be fully done between the parties without disclosure of the name of an informer or another person who assisted in any investigation or the proceedings under the laws referred to in subsection (1), the court may permit enquiry and require full disclosure concerning the informer.

[s 51A insrt Act 26 of 2015 s 2, effective 1 January 2016]

[Section 51B] Rewards for informers

The Chief Executive Officer with the approval of the Service, may upon the recovery of any tax, tariff, fee, duty or levy short fall or short payment, award a payment as may be prescribed by Regulations to any person through whose information or evidence the short fall or short payment has been recovered.

[s 51B insrt Act 26 of 2015 s 2, effective 1 January 2016; am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 52] Secrecy

(1) A revenue officer must take an oath in the prescribed form administered by a Magistrate or a Justice of the Peace before performing any duty under any law specified in Schedule 1.

[subs (1) am Act 18 of 2018 s 3, effective 1 August 2018]

(2) A revenue officer must regard as secret and confidential all information and documents received in performance of duties as a revenue officer.

(3) Unless otherwise prescribed under subsection (4A), no revenue officer can be required to produce in the Tax Tribunal or any court any document or divulge to the Tribunal or any court any information that has come into the officer's possession or knowledge in the performance of the officer's duties under a law specified in Schedule 1, except as may be necessary for the purpose of carrying into effect the provisions of a law specified in Schedule 1 or in order to bring, or assist in the course of, a prosecution for any offence in relation to tax.

[subs (3) am Act 18 of 2018 s 3, effective 1 August 2018]

(4) Pursuant to subsection (2), a revenue officer must not, except in accordance with regulations issued under subsection (4A), disclose any documents or information received in the performance of his or her duties.

[subs (4) subst Act 18 of 2018 s 3, effective 1 August 2018]

(4A) The Minister may make regulations to prescribe, in relation to any documents or information received by a revenue officer in the performance of his or her duties under this Act—

- a) the type of documents or information which may be disclosed by a revenue officer under this subsection;
- b) the agencies, competent authorities, boards, the holder for the time being of a specified office, persons or classes of persons to whom a revenue officer may disclose documents or information;
- c) the manner and the purposes for which the documents or information being disclosed may be used;

- d) the arrangements which must be in place prior to the sharing of any documents or information under this subsection;
- e) the terms and conditions for the disclosure and use of any documents or information disclosed or to be disclosed under this provision;
- f) offences and penalties for—
 - i. the improper use or unauthorised disclosure or dissemination, of any documents or information disclosed by a revenue officer; or
 - ii. the breach of any term or condition prescribed in accordance with paragraph (e); and
- g) any other measures deemed necessary to ensure that documents or information issued pursuant to these regulations are maintained as secret and confidential.

[subs (4A) insrt Act 18 of 2018 s 3, effective 1 August 2018]

(5) If a revenue officer is permitted to disclose documents or information pursuant to regulations issued under subsection (4A), the officer must maintain secrecy and confidentiality except to the minimum extent necessary to achieve the object for which the disclosure is permitted.

[subs (5) am Act 18 of 2018 s 3, effective 1 August 2018]

(6) Subsections (2) and (9) apply to a person receiving documents or information pursuant to regulations issued under subsection (4A) as if the person were a revenue officer.

[subs (6) am Act 18 of 2018 s 3, effective 1 August 2018]

(7) The Auditor-General and every person authorised by the Auditor-General in writing for the purpose of the audit of the Service's accounts must take an oath in accordance with subsection

(1).

[subs (7) am Act 38 of 2017 s 7, effective 1 August 2017]

(8) A reference to revenue officer in this section, other than in subsection (1), includes a person employed or engaged by the Service in any capacity and includes the Minister or former Minister, a director or former director of the Board, a member or former member of a committee of the Board, a person invited to a Board or committee meeting, or a former officer or employee of the Service.

[subs (8) am Act 38 of 2017 s 7, effective 1 August 2017]

(9) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years or to both.

[subs (9) am Act 38 of 2017 s 4, effective 1 August 2017]

[s 52 subst Decree 50 of 2009 s 117 and Sch 4, effective 1 January 2010]

[Section 52A] Publication of information in the public interest

(1) Notwithstanding section 52 and subject to subsection (2), the Service may publish information, including but not limited to the following—

- a) description of the goods;
- b) value for duty of goods imported into Fiji;
- c) landing costs of the goods;
- d) taxes or duties applicable to the goods; or
- e) selling price of the goods.

[subs (1) am Act 38 of 2017 s 7, effective 1 August 2017]

(2) The Minister may by order prescribe, but only after taking into account the public interest with the approval of Cabinet, the goods in relation to which the information must be published by the Service under subsection (1).

[s 52A insrt Act 16 of 2016 s 3, effective 1 August 2016; am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 52B] Enforcement officers

(1) The Minister may, from time to time, by written notice appoint enforcement officers to exercise any powers rendered to the Chief Executive Officer, Comptroller or any other officer appointed under any of the laws listed under Schedule 1.

(2) A written notice issued under subsection (1) may be made to a specified person, committee or unit or to the holder for the time being of a specified office or to the holders of offices of a specified class.

(3) An appointment made under this section may be made subject to such restrictions and conditions as the Minister thinks fit, and may be made either generally or in relation to any particular case or class of cases.

(4) Any person, committee or unit purporting to exercise any power by virtue of an appointment under this section must, when required to do so, produce evidence of authority to exercise the power.

(5) The Minister shall by notice in the Gazette publish the name of a person or names of persons appointed under this section.

[s 52B insrt Act 38 of 2017 s 5, effective 1 August 2017]

[Section 52C] Publication of information on tax and duty evaders and defaulters

(1) Notwithstanding section 52, where an investigation or audit has been carried out by the Service with regard to tax or duty evasion or default of payment of tax or duty by a person, the Service may publish and make publically available information regarding the person, if the person derives a gross turnover equal to or exceeding \$1.5 million in a tax year, operates a business that is a member of a prescribed group of businesses and—

- a) has made an error in the submission of any document or information required by the Service for tax returns or any document or information required for customs purposes; or
- b) has failed to comply with any tax or customs obligation under any law specified in Schedule 1.

(2) Where a tax or customs agent has made an error in the submission of any document or information required by the Service for a tax return or any document or information required for customs purposes, the Service may publish and make publically available information regarding that tax or customs agent.

(3) The publication of information referred to in subsection (1) or (2) may specify—

- a) the name, area of residence and registered office of the person or tax or customs agent;
- b) the particulars of the sum of the tax or duty lawfully owed;
- c) the penalties applicable to the act of default or tax or duty evasion in those circumstances; or
- d) any other information that the Chief Executive Officer thinks fit.

(4) A person whose information has been published and made publically available in accordance with this section may submit a written notification to the Service if it has come to the person's attention that the information published and made publically available by the Service contains an error.

(5) The Service must as soon as practicable publish and make publically available the information mentioned in subsection (4) in order to correct the information.

(6) The Minister may by notice in the Gazette—

- a) amend the gross turnover specified in subsection (1);
- b) prescribe a group of businesses for which the Service may publish or make publically available information in accordance with this section.

[s 52C insrt Act 47 of 2017 s 2, effective 20 September 2017]

[Section 53] Exemption from taxes

(1) The income of the Service shall be exempt from income tax.

[subs (1) am Act 38 of 2017 s 7, effective 1 August 2017]

(2)

[subs (2) am Act 38 of 2017 s 7, effective 1 August 2017; [subsection (2) removed by Act 16 of 2020, effective 1 August 2020]]

[Section 54] Regulations

The Service may, with the approval of the Minister, make regulations for the better carrying out of the provisions of this Act.

[s 54 am Act 38 of 2017 s 7, effective 1 August 2017]

[Section 55] Repeals and amendments

(1) The following enactments are amended as specified in Schedule 2—

- a) Customs Act 1986;
- b) Excise Act 1986;
- c) Gambling Turnover Tax Decree 1991;
- d) Income Tax Act (Cap. 201);
- e) Value Added Tax Decree 1991.

(2) Unless the context otherwise requires, where in any written law reference is made to the Inland Revenue Department or the Customs and Excise Department then such references shall, without further amendment, be construed as referring to the Service.

[subs (2) am Act 38 of 2017 s 7, effective 1 August 2017]

SCHEDULE

SCHEDULE 1 (Sections 22, 27(4), 55) - Laws to be Administered and Enforced by the Service

[Sch 1 am Decree 50 of 2009 s 117 and Sch 4, effective 1 January 2010; Act 31 of 2016 s 82, effective 1 December 2016; Act 38 of 2017 ss 6 and 7, effective 1 August 2017; Act 18 of 2018 s 4, effective 1 August 2018]

1. Customs Act 1986
2. Customs Tariff Act 1986
3. Excise Act 1986
4. Gambling Turnover Tax Act 1991
5. Income Tax Act 2015
6. Land Sales Act 1974
7. Merchandise Marks Act 1933
8. Tax Administration Act 2009
9. Value Added Tax Act 1991
10. Water Resource Tax Act 2008
11. Environment and Climate Adaptation Levy Act 2015
12. Tertiary Scholarship and Loans Act 2014
13. Airport Departure Tax Act 1986
14. Service Turnover Tax Act 2012
- 15.

[para 15 removed by Act 16 of 2020, effective 1 August 2020]

SCHEDULE 2 (Section 55) - Consequential Repeals and Amendments

CUSTOMS ACT 1986

The Customs Act 1986 is amended—

- a) in section 2, by deleting “Customs and Excise Department” in the definition of “the Customs” and substituting “Fiji Revenue and Customs Authority”;
- b) in section 3, by repealing subsections (1), (2), (3) and (4) and substituting—

“(1) There shall be a Comptroller of Customs and Excise who shall administer this Act and be responsible for the enforcement of its provisions and the collection of revenue under it and who shall perform such other duties as the Fiji Revenue and Customs Authority may assign to him.

(2) The person for the time being appointed as the Chief Executive Officer of the Fiji Revenue and Customs Authority shall hold office as the Comptroller of Customs and Excise.

(3) The Comptroller may authorise any other officer or employee of the Fiji Revenue and Customs Authority to exercise any of the powers conferred upon him by the customs laws except the power of delegation under this subsection.

(4) The Minister may give to the Comptroller general or special directions which are not inconsistent with provisions of the customs laws.”;

c) in section 166—

- i. in paragraph (a) by deleting “credited to the Consolidated Fund” and substituting “paid to the Fiji Revenue and Customs Authority”; and
- ii. in paragraph (b) by deleting “out of the Consolidated Fund by the Chief Accountant” and substituting “by the Fiji Revenue and Customs Authority”.

EXCISE ACT 1986

The Excise Act 1986 is amended in section 2 by deleting “appointed under” in the definition of “Comptroller” and substituting “as provided by”.

GAMBLING TURNOVER TAX DECREE 1991

The Gambling Turnover Tax Decree 1991 is amended—

- a) in section 2(1) by deleting “appointed under” in the second line of the definition of “Commissioner” and substituting “as provided by”;
- b) by repealing section 12 and substituting—

“12. The Commissioner may, by instrument in writing signed by him, appoint and authorise any officer or employee of the Fiji Revenue and Customs Authority to exercise any of the powers conferred upon him by or under this Decree.”.

INCOME TAX ACT (CAP. 201)

The Income Tax Act (Cap. 201), is amended—

- a) in section 2 in the definition of “Commissioner” by deleting “by the Public Service Commission”;
- b) by repealing section 3 and substituting—

“Commissioner of Inland Revenue

3 (1) There shall be a Commissioner of Inland Revenue who shall administer this Act and be responsible for the collection of tax under it and who shall perform such other duties as the Fiji Revenue and Customs Authority may assign to him.

(2) The person for the time being appointed as the Chief Executive Officer of the Fiji Revenue and Customs Authority shall hold office as the Commissioner of Inland Revenue.

(3) The Commissioner may authorise any other officer or employee of the Fiji Revenue and Customs Authority to exercise any of the powers conferred upon him by this Act except the power of delegation under this subsection.”;

- c) in section 4(1), by deleting the words “in the Inland Revenue Department”;
- d) by deleting section 4(4) and substituting—

“(4) Notwithstanding anything contained in this section the Commissioner may disclose to the Minister or members of the Fiji Revenue and Customs Authority such information, records or documents as may be necessary for the purposes of this Act or the Fiji Revenue and Customs Authority Act and the Minister or members, as the case may be, shall thereupon become subject to the provisions of this section.”;

- e) in section 5 by deleting “Inland Revenue Department” and substituting “Fiji Revenue and Customs Authority”;
- f) in section 50 by deleting “Department of Inland Revenue” in the twelfth line and substituting “Fiji Revenue and Customs Authority”.

VALUE ADDED TAX DECREE 1991

The Value Added Tax Decree 1991 is amended—

- a) in section 2(1) by deleting “appointed under” in the second line of the definition of “Commissioner” and substituting “as provided by”;
- b) by deleting subsections (1), (2), (3) and (4) of section 6 and substituting—

“(1) The Commissioner shall administer this Decree and be responsible for the collection of tax under it and for all matters incidental thereto and shall perform such other duties as the Fiji Revenue and Customs Authority may assign to him.

(2) The Commissioner may authorise any other officer or employee of the Fiji Revenue and Customs Authority to exercise any of the powers conferred upon him by this Decree except the power of delegation under this subsection.”;

- c) by renumbering subsections (5) and (6) of section 6 as subsections (3) and (4) respectively;
- d) in section 7(1) by deleting the words “in the Inland Revenue Department” in the second line;
- e) by repealing section 7(4) and substituting—

“(4) Notwithstanding anything contained in this section the Commissioner may disclose to the Minister or members of the Fiji Revenue and Customs Authority such information, records or documents as may be necessary for the purposes of this Decree and the Minister or members, as the case may be, shall thereupon become subject to the provisions of this section.”.

SUBSIDIARY LEGISLATION

FIJI REVENUE AND CUSTOMS SERVICE (PUBLICATION OF INFORMATION IN THE PUBLIC INTEREST — MOTOR VEHICLES) ORDER 2016

Table of Amendments

Fiji Revenue and Customs Service (Publication of Information in the Public Interest — Motor Vehicles) Order 2016 (LN 111 of 2016) commenced on 30 December 2016, as amended by:

Amending Legislation	Date of Commencement
Fiji Revenue and Customs Authority (Budget Amendment) Act 2017 (No 38 of 2017)	1 August 2017

[Order 1] Short title and commencement

(1) This Order may be cited as the Fiji Revenue and Customs Service (Publication of Information in the Public Interest — Motor Vehicles) Order 2016.

[para (1) am Act 38 of 2017 s 7, effective 1 August 2017]

(2) This Order comes into force on the date of publication in the Gazette.

[Order 2] Publication of information in the public interest

Motor vehicles are herein prescribed as goods in relation to which the Fiji Revenue and Customs Service must publish information on, as and when required by the Minister.

[O2 am Act 38 of 2017 s 7, effective 1 August 2017]

FIJI REVENUE AND CUSTOMS SERVICE (INFORMATION SHARING) REGULATIONS 2019

Table of Amendments

Fiji Revenue and Customs Service (Information Sharing) Regulations 2019 (LN 71 of 2019) commenced on 1 August 2018, as amended by:

Amending Legislation	Date of Commencement
Fiji Revenue and Customs Service (Information Sharing) (Amendment) Regulations 2021 (LN 64 of 2021)	1 August 2021

[Regulation 1] Short title and commencement

- (1) These Regulations may be cited as the Fiji Revenue and Customs Service (Information Sharing) Regulations 2019.
- (2) These Regulations shall be deemed to have come into force on 1 August 2018.

[Regulation 2] Interpretation

In these Regulations, unless the context otherwise requires—

authorised agency means an agency prescribed in the Schedule with which the Service has an existing agreement to share information; and

Service means the Fiji Revenue and Customs Service.

[Regulation 3] Information sharing

- (1) For the purposes of section 52(4A) of the Fiji Revenue and Customs Service Act 1998, the agencies prescribed in the Schedule are the authorised agencies with which the Service may share information.
- (2) Any agency seeking to access information held with the Service must first enter into an information sharing agreement with the Service prior to being issued with such information.
- (3) Any information shared in accordance with subregulation (1) and (2) shall be shared—
 - (a) in accordance with these regulations; and
 - (b) in accordance with and to the extent prescribed in an information sharing agreement between the Service and that agency.
- (4) Pursuant to subregulation (2) the Chief Executive Officer, shall at his or her discretion determine the agencies with which the Service may enter into an information sharing agreement with, the manner in which the information is to be shared and the type of information that can be shared.
- (5) An information sharing agreement made pursuant to this regulation may also provide for sharing of information from the authorised agency to the Service.
- (6) For the purposes of maintaining the confidentiality of information shared in accordance with these regulations, the Chief Executive Officer may issue policies, rules and procedures with regard to the sharing of information between the Service and the authorised agencies and vice versa.
- (7) The contravention or breach of any policies, rules and procedures specified in subregulation

(6) by any authorised agency or person within the authorised agency or the Service shall, at the discretion of the Chief Executive Officer, warrant the termination of the information sharing agreement between the authorised agency and the Service or such other measures deemed necessary by the Chief Executive Officer including the initiation of legal proceedings.

(8) The Chief Executive Officer may by notice in the Gazette amend the Schedule to vary or amend the list of authorised agencies with whom the Service may share information in accordance with these regulations.

[Regulation 4] Terms and conditions

(1) The Chief Executive Officer may, within an information sharing agreement, impose additional terms and conditions to be complied with by an authorised agency in relation to the disclosure of information by the Service and use of information disclosed by the Service under regulation 3.

(2) The contravention of any term or condition specified in subregulation (1) by any authorised agency or person within the authorised agency or the Service or person within the Service shall, at the discretion of the Chief Executive Officer, warrant the termination of the information sharing agreement between the authorised agency and the Service or such other measures deemed necessary by the Chief Executive Officer including the initiation of legal proceedings.

[Regulation 5] Information leading to the identification of a person

(1) For the purposes of these Regulations, the Service must take all necessary measures to prevent the disclosure of any information which can lead or may lead to the identification of a person whose information is held with the Service.

(2) For the purposes of subregulation (1) the Service may disclose—

- a) summaries of information that are not likely to enable the identification of a person; and
- b) statistics derived from information that is not likely to enable the identification of a person.

(3) Notwithstanding subregulation (1), at the discretion of the Chief Executive Officer, information regarding the identification, income or other records held with the Service relating to a person may be released by the Service—

- a) where an authorised agency has obtained the consent of the person to whom the information pertains to have his or her information released to the authorised agency; and

- b) where that information will assist an authorised agency in verifying information in the performance of its functions and duties; or
- c) where it is necessary to do so in order to assist in an audit or an investigation conducted by an authorised agency.

(4) An authorised agency, officer of an authorised agency or person engaged by an authorised agency, must not use, apply, share or disseminate any information obtained under subregulation (3) for purposes other than those approved by the Chief Executive Officer.

(5) Any person who contravenes subregulation (4) commits an offence and shall be liable to the penalties prescribed in regulation 6.

[Reg amended through LN 64 of 2021, Regulation 2, effective 1 August 2021]

[Regulation 6] Offences

A person who—

- a) facilitates the improper use or unauthorised disclosure or dissemination, of any documents or information held with the Service;
- b) depending on the severity of the contravention, contravenes any policies, rules and procedures specified in regulation 3(6); or
- c) contravenes any terms or conditions prescribed in accordance with regulation 4,
- d) commits an offence and is liable upon conviction to, in the case of a natural person, a fine up to \$10,000 or imprisonment for a term of 10 years or both or in the case of a body corporate, a fine up to \$25,000.

SCHEDULE

(Regulation 3) - Authorised Agencies

1. Bank of the South Pacific
2. Biosecurity Authority of Fiji
3. Bureau of Statistics
4. Civil Aviation Authority of Fiji
5. Customs and Excise Department of Hong Kong, China
6. Customs Brokers and Forwarders Council of Fiji
7. Customs of the Republic of Vanuatu
8. Customs Services of the Republic of Kiribati
9. Energy Fiji Limited
10. Fiji Airports Limited
11. Fiji Financial Intelligence Unit

12. Fiji Independent Commission Against Corruption
13. Fiji National Provident Fund
14. Fiji National University
15. Fiji Pharmaceutical Society
16. Fiji Police Force
17. Fijian Competition and Consumer Commission
18. Film Fiji
19. Home Finance Company Ltd
20. Investment Fiji
21. iTaukei Land Trust Board
22. Land Transport Authority
23. Maritime Safety Authority of Fiji
24. Ministry responsible for defence
25. Ministry responsible for environment
26. Ministry responsible for finance
27. Ministry responsible for fisheries
28. Ministry responsible for forestry
29. Ministry responsible for health
30. Ministry responsible for industry and trade
31. Ministry responsible for infrastructure and transport
32. Ministry responsible for justice
33. Ministry responsible for lands and mineral resources
34. New Zealand Customs Service
35. Oceania Customs Organisation
36. Pacific Islands Tax Administration Association
37. Real Estates Agents Licensing Board
38. Reserve Bank of Fiji
39. Revenue and Border Protection Service of Tuvalu Islands
40. The Department of Immigration
41. The Republic of Fiji Military Forces
42. Water Authority of Fiji
43. Westpac Banking Corporation
44. World Customs Organisation