

[2161]

INTERIM GOVERNMENT OF THE REPUBLIC OF THE FIJI ISLANDS

VALUE ADDED TAX DECREE (BUDGET AMENDMENT) PROMULGATION 2007  
(PROMULGATION NO. 46 OF 2007)

IN EXERCISE of the powers conferred upon the Interim Government, and upon the exercise of my own deliberate judgement as President of the Republic of the Fiji Islands as to what is best and good for the people of the Republic of the Fiji Islands, and by the exercise of the executive authority of the State in accordance with section 85 of the Constitution and such other powers as may appertain, and with the advice of the Cabinet, I, Josefa Iloilovatu Uluivuda, make this Promulgation—

TO AMEND THE VALUE ADDED TAX DECREE 1991

*Short title and commencement*

1. This Act may be cited as the Value Added Tax Decree (Budget Amendment) Promulgation 2007, and comes into force on 1 January 2008.

*Subsection (3)5 amended*

2. Subsection 3(5) of the VAT Decree is amended by inserting the expression "other than a payment under Standard Expenditure Group 1 or Standard Expenditure Group 2" after the word "payment".

*New Section 31A*

3. The Decree is amended by inserting after section 31 the following new section—

*"Liability for VAT payable by companies left with insufficient funds*

31A—(1) This section applies where—

- (a) any arrangement has been entered into in relation to a company;
- (b) an effect of that arrangement is that the company is unable to satisfy under this Decree a liability for VAT of the company, whether the VAT liability exists at the time of entry into the arrangement or arises subsequently; and

(c) it can reasonably be concluded that—

- (i) a director of the company at the time of entry into the arrangement who had made all reasonable inquiries into the affairs of the company would have anticipated at that time that the VAT liability would be, or would be likely to be, required to be satisfied by the company under this Decree; and
- (ii) a purpose of the arrangement was to have the effect specified in paragraph (b).

(2) Where an arrangement to which this section applies has been entered into, all persons who were directors of the company at the time the arrangement was entered into are, subject to subsection (4), jointly and severally liable for the VAT liability, as agent of the company.

(3) Where an arrangement to which this section applies has been entered into any person who was a controlling shareholder at the time the arrangement was entered into, being a person controlling the company in any way whatsoever, is liable as agent of the company for its unsatisfied VAT liability.

(4) A director is not liable under this section for any VAT liability of the company where the Commissioner is satisfied that the director derived no benefit from the arrangement and either:

- (a) the director has, at the first reasonable opportunity after becoming aware of the arrangement, or of those aspects of the arrangement that render it subject to this section,—
  - (i) formally recorded with the company the director's dissent in relation to the arrangement; and
  - (ii) notified the Commissioner in writing of the arrangement and of director's dissent from that arrangement; or
- (b) the director satisfies the Commissioner that—
  - (i) the director was not at the material time or times involved in the executive management of the company; and
  - (ii) the director had no knowledge of the arrangement, or of those aspects of the arrangement that render it subject to the application of this section."

*New Section 31B*

4. The Decree is amended by inserting after section 31A the following new section

*\*Directors of a company may be personally sued.*

31B. Where a company that becomes insolvent or liquidated owes VAT and all associated penalties, each person who is a director of the company is liable to pay to the Commissioner such VAT owed and all the associated penalties."

*Section 70(2) repealed*

5. Section 70(2) of the Decree is repealed.

Given under my hand this 21st day of December 2007.

J. I. ULUIVUDA  
President  
of the Republic of Fiji Islands