



[2042]

WATER RESOURCE TAX PROMULGATION 2008

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Schedule 1: Progressive Resource Tax on Extraction of Water

INTERIM GOVERNMENT OF THE REPUBLIC OF THE FIJI ISLANDS

WATER RESOURCE TAX PROMULGATION 2008
(PROMULGATION NO. 30 OF 2008)

IN EXERCISE of the powers conferred upon the Interim Government, and upon the exercise of my own deliberate judgment 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 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 approval of the Cabinet, I, Josefa Ilojlovatu Uluivuda, make this Promulgation

TO IMPOSE TAX ON EXTRACTION OF WATER RESOURCE AND FOR
RELATED MATTERS

PART 1—PRELIMINARY

Short title and commencement

- 1.—(1) This Promulgation may be cited as the Water Resource Tax Promulgation 2008, and comes into force on 1 January, 2009.
- (2) This Promulgation must be read together with the Customs Act, 1986.

Interpretation

2. In this Promulgation, unless context otherwise requires—
- “accountable person” means the owner, manager, director, sole precedent partner and, otherwise the person who is responsible for the day to day management of the business;
- “approved meter” means meter as approved by Department of Fair Trading & Consumer Affairs and the Law that administers the water meter;
- “enforcement officer” means any customs officer, an officer of the Department of Mineral Resources, an officer of the Department of Fair Trading & Consumer Affairs designated in writing by his respective Minister as an enforcement officer for the purpose of this Promulgation;
- “Minister” means the Minister responsible for Finance;
- “water resource tax” means the tax imposed under section 5(1)
- “proper officer” means the officer authorized by the Comptroller under the Customs Act and the provision of this Promulgation ;

PART 2—ADMINISTRATION

Functions of Comptroller and officers

- 3.—(1) The Comptroller is responsible for the administration of this Promulgation subject to any directions given to the Comptroller by the Minister.
- (2) The Minister may give the Comptroller general or special directions on the administration of this Promulgation, not inconsistent with this Promulgation .
- (3) An officer shall perform their duties and follow procedures in accordance with the Comptroller’s instructions.
- (4) The Comptroller may authorise an officer—
- (a) to exercise a power conferred; or
- (b) to perform a duty imposed, by this Promulgation on the Comptroller.

(5) An officer employed on a duty or service relating to this Promulgation by the order or with the concurrence of the Comptroller is deemed to be the proper officer for that duty or service.

Authority to be produced by officer

4. If an officer is acting against a person under this Act and is not in uniform, he or she shall, on being asked to do so by that person—
- (a) declare their office; and
 - (b) produce to that person such document establishing his identity as the Comptroller directs to be carried by that officer.

PART 3 – LEVY OF WATER RESOURCE TAX

Levy and payment of water resource tax

5. — (1) Subject to the provisions of this Promulgation, a tax at the appropriate rate under Schedule 1 shall be levied upon the extraction of water in its natural state, including artesian water, natural mineral and spring water, from an underground water table or deposit and emerging from a spring tapped at one or more natural or bore exits, for sale for human consumption.

(2) The water resource tax is payable by any business extracting water in its natural state for the purpose of bottling or packaging for sale.

(3) The tax is payable by the person extracting water subject to the water resource tax.

(4) The volume of water extraction shall be measured by an approved meter on a monthly basis.

Water resource tax to be paid and returns made to Comptroller

6. — (1) The accountable person shall—

- (a) within fourteen working days or such longer period as the Comptroller may approve of the close of each month pay the Comptroller any water resource tax that has been payable since the previous month;
- (b) deliver together with such payment a duly signed account of—
 - (i) the total volume of natural water extracted in the month; and
 - (ii) the monthly volume of all extracted water lost in that factory by evaporation or leakage or otherwise not used for the purpose of bottling for human consumption; and
 - (iii) the monthly production figures for finished product.

(2) If water resource tax is not paid in accordance with subsection (1), the accountable person is liable to a penalty at a rate of 10% of the unpaid water resource tax in addition to the water resource tax, and if the default continues an additional two and a half percent penalty per month of default shall be added to the 10% penalty if the default continues for more than one month after the due date for payment.

Assessment of water resource tax

7. — (1) The proper officer may, measure or otherwise examine the volume of water extraction for the purpose of ascertaining the amount of tax leviable on them.

(2) When a measurement of the volume of water extraction has been made by the proper officer, that measurement shall be presumed to be correct unless the contrary is proved.

(3) Necessary operations relating to measuring and examination of the volume of extracted water under subsection (1) shall be performed by or at the expenses of the person liable to the tax.

(4) The approved meter and its maintenance and up-keep shall be provided at the expense of the person liable to the tax.

Refunds—general

8.—(1) Where—

- (a) any water resource tax has been levied and paid and repayment of water resource or any portion of it is claimed on the ground that it was levied or paid through inadvertence or from any other error; and
- (b) the Comptroller is satisfied that the claim is correct, the excess water resource tax shall be refunded and any sum to be so refunded is a charge on the Consolidated Fund.

(2) A repayment referred to under subsection (1) shall not be made by the Comptroller where the claim in respect of the refund is made more than 1 year after the date of the payment.

(3) If a refund is erroneously made under subsection (1) the Comptroller may, within 1 year of the date of the refund demand repayment of that refund.

(4) If such refund under subsection (3) is not paid within the time period of demand repayment, the Comptroller may recover the amount of the refund as a debt due to the Government in a court of competent jurisdiction.

Recovery of water resource tax

9.—(1) The correct amount of water resource tax due and payable under this Promulgation may be demanded by the Comptroller within 1 year of the date when that water resource tax, should have been paid and shall constitute a debt payable to the Government from the person liable for the tax, and may be sued for in a court of competent jurisdiction in the name of the Comptroller.

Disputes as to water resource tax payable

10. If a dispute arises as to the proper rate or amount of water resource tax, the person liable for the tax shall deposit with the Comptroller the water resource tax demanded and the amount so paid or received shall be deemed to be the proper water resource tax unless the Court of Review, upon application to it by that person within 3 months after that deposit or receipt, otherwise decides.

PART 4—POWER OF THE COMPTROLLER

Access to premises

11.—(1) The proper officer shall for the purposes of this Promulgation during daylight hours have access to the premises of the person liable for the tax.

(2) Where the proper officer enters any premises in accordance with subsection (1) he may—

- (a) require the person liable for the tax to produce, either forthwith or at a time to be fixed by the officer, any book, document, computer or other electronic storage device or thing, which relate to the production of bottled water;
- (b) examine a book, document, computer or other electronic storage device or thing referred to in paragraph (a) and take copies of it;
- (c) seize and detain a book, document, computer or other electronic storage device or thing referred to in paragraph (a), if, in their opinion, it may afford evidence of the commission of any offence under this Promulgation ;
- (d) require the that person or the employer to answer questions relating to a book, document, computer or other electronic storage device or thing referred to in paragraph (a), or to an entry in such a book or document, or relating to the production of bottled water;
- (e) require a container, envelope, or other receptacle, in the premises to be opened;
- (f) lock up, seal, mark or otherwise secure—
 - (i) a building, room, place, receptacle, or item of plant, in the factory; and
 - (ii) goods or materials in a factory.

(3) Where the proper officer, acting in accordance with this section, is unable to obtain free access to premises referred to in subsection (1), or to a receptacle contained in those premises, he may, at any time, enter those premises, and open the receptacle, in such manner, if necessary by force, as he thinks necessary.

Powers of entry, detention and seizure without search warrant

12. When an officer observes an act being committed which is an offence under this Promulgation, that officer may enter a building or place where that offence is being committed, using whatever force may be necessary to secure entry, and may—

- (a) detain any person found to be in the building or place who may be reasonably suspected of being involved in the commission of the offence;
- (b) seize any goods which may be the subject of the offence; and
- (c) seize any documents relating to the goods which are the subject of the offence.

Power to require certificate of audit

13.—(1) The Comptroller may require the person liable for the tax to submit annually, a certificate of audit by a chartered accountant.

(2) A certificate of audit submitted under subsection (1) shall certify the correctness of all the books and records required by or under this Promulgation to be kept by the person liable for the tax.

(3) The person liable for the tax is guilty of an offence if, without reasonable excuse, he fails to submit a certificate of audit in accordance with subsection (1), and is liable on conviction to a fine not exceeding \$10,000.

Assistance to be afforded to officers

14.—(1) The person liable for the tax shall, when requested to do so by an officer, provide safety equipment to enable the officer to ascend to and examine a vessel or utensil in the factory or any other premises, or to gauge or ascertain the contents or capacity of any such vessel or utensil.

(2) The person is guilty of an offence if he fails to comply with a request made under subsection (1), and is liable on conviction to a fine not exceeding \$10,000.

PART 5—GENERAL OFFENCES AND PENALTIES

Penalty for making incorrect statements and falsifying documents

15. A person is guilty of an offence if he—

- (a) wilfully makes, orally or in writing, or signs a statement, certificate or other document required for the purposes of this Promulgation, which is untrue or incorrect in any particular;
- (b) wilfully makes, orally or in writing, or signs a statement or document, for consideration of an officer on an application which is untrue or incorrect in any particular;
- (c) wilfully counterfeits or falsifies, or uses, when counterfeited or falsified, a document which is or may be required under this Promulgation or a document used in a transaction of any business or matter relating to the administration of this Promulgation;
- (d) fraudulently alters a document or counterfeits the seal, signature, initials or other mark of, or used by, an officer for the verification of a document or for the security of goods or any other purpose in the conduct of business relating to the administration of this Promulgation; or
- (e) knowingly obtains a remission or refund, of water resource tax which he is not entitled to obtain, and is liable on conviction to a fine not exceeding \$10,000, or to imprisonment for a term not exceeding 10 years, or to both.

Penalty for refusing to answer questions, etc.

16. A person is guilty of an offence if he or she refuses—

- (a) to answer a question lawfully as required under this Promulgation; or
- (b) to give information, which it is in their power to give, in response to a question lawfully as required under this Promulgation, and is liable on conviction to a fine not exceeding \$10,000.

Obstruction of officers, etc.

17. A person is guilty of an offence if he—

- (a) obstructs, hinders, molests or assaults or uses threatening language to, or attempts to intimidate or endeavours to bribe a person duly engaged in the performance of a duty or the exercise of a power imposed or conferred by this Promulgation or a person acting in that person's aid;
- (b) does anything which impedes or is intended to impede the carrying out of a search for anything liable to be forfeited under this Promulgation or the detention, forfeiture or removal of any such thing;
- (c) rescues, damages or destroys anything liable to be forfeited, under this Promulgation, or does anything intended to prevent the procuring or giving of evidence as to whether or not anything is so liable to be forfeited; or
- (d) prevents the arrest of a person by a person duly engaged in the performance of a duty or the exercise of a power imposed or conferred by this Promulgation or a person acting in that person's aid, or rescues a person so arrested, and is liable on conviction to a fine not exceeding \$10,000, or to imprisonment for a term not exceeding 2 years, or to both.

Penalty for abuse of authority

18. An officer or other person employed in the administration of this Promulgation is guilty of an offence if he—

- (a) accepts or agrees to accept a bribe, gratuity, recompense or reward for the neglect or non-performance of their duty;
- (b) conspires or connives with another person to do an act or thing whereby the water resource tax is or may be defrauded, or which is contrary to this Promulgation or the proper execution of their duty;
- (c) knowingly demands from another person an amount in excess of the authorised water resource tax;
- (d) withholds for their own use or otherwise, the whole or any portion of the amount of any water resource tax collected;
- (e) renders a false return, whether orally or in writing, of the amount of water resource tax collected or received;
- (f) defrauds another person, embezzles money, or otherwise abuses their position; or (h) not being authorised under this Promulgation to do so, collects or attempts to collect water resource tax, and is liable on conviction to a fine not exceeding \$10,000, or to imprisonment for a term not exceeding 10 years, or to both.

PART 6—APPEALS TO THE COURT OF REVIEW

Court of Review to hear dispute

19. The Minister may appoint a person of legal knowledge and experience for the purpose of hearing and determining appeals from the decisions of the Comptroller upon any of the matters specified in Section 10 and the person so appointed shall hold a Court of Review in accordance with Part 23 of the Customs Act.

PART 7—MISCELLANEOUS

Limitations on methods of extraction and storage and instruments to be kept

20.—(1) There may be prescribed—

- (a) standards and methods of—
 - (i) extraction; and
 - (ii) marking and storing, taxable goods; and
- (b) implements and materials used in the filling of bottled water.

(2) The person liable for the tax shall keep in their factory such reasonable and necessary apparatus and instruments for measuring, weighing and testing volume of extracted water; and permit an officer to use the apparatus and instruments for the purpose of measuring, weighing or taking account of volume of extracted water.

(3) The person liable for the tax is guilty of an offence if he;

- (a) uses, or allows to be used, false, or insufficient apparatus or instruments in respect of volume of extracted water or; or
- (b) practises or allows to be practised any art, device or contrivance by which an officer may be hindered or prevented from taking a just and true measure or account of volume of extracted water is liable on conviction to a fine not exceeding \$10,000.

(4) Any false apparatus and instruments used in connection with an offence under subsection (2) are liable to be forfeited.

Enforcement Offices

21. Enforcement officers shall be responsible for the proper and efficient administration and control of the provisions of this Promulgation.

Regulations

22. The Minister may make regulations to give effect to the provisions of this Promulgation .

SCHEDULE 1: Progressive Resource Tax on Extraction of Water

No	Litres Extracted Monthly	Rate (cents per litre)
1	0 – 4,999,999	0.11
2	5,000,000 – 9,999,999	0.22
3	10,000,000 and above	0.33

GIVEN UNDER MY HAND this 30th day of December 2008.

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

WATER RESOURCE TAX PROMULGATION 2008

EXPLANATORY NOTE

[This Note is not part of the Promulgation and it is only intended to give its general effect and implications]

1.0 BACKGROUND

1.1 This Promulgation gives effect to the water resource tax as announced by the Minister for Finance and National Planning in his Budget Address on 21st November, 2008.

2.0 CLAUSES

- Clause 1 Confers a short title and the Promulgation is deemed to come into force on 1 January 2009.
- Clause 2 Covers the interpretation of important terms used in the Promulgation for example the definition of accountable person, approved meter, Minister and so on.
- Clause 3 States that the Comptroller of Customs and Excise is responsible for the administration of this Promulgation.
- Clause 4 The requirement for an officer to establish his identity when not in uniform is provided for under Clause 4.
- Clause 5 Explains that the water resource tax is levied upon the extraction of water in its natural state and is payable by any business that extracts water for commercial purposes.
- Clause 6 The requirement to pay the water resource tax and lodging of monthly returns is provided for in Clause 6. The accountable person is expected to pay to the Comptroller, within 3 working days of each month, the amount of water resource tax payable.
- Clause 7 Allows the Comptroller to correctly assess the volume of water extraction for determining the amount of tax leviable.
- Clause 8 Provides for refunds in cases where the water resource tax has been levied or paid through inadvertence or from any other error.
- Clause 9 States that the Comptroller can demand any water resource tax payable a year from when that tax should have been paid. Any outstanding payment comprises a debt payable to Government.
- Clause 10 Grants the Comptroller right to levy distress upon goods, chattels, etc of the accountable person where water resource tax is unpaid after the time within which it is payable.
- Clause 11 Provides the mechanism available that the accountable person can undertake with respect to disputes on the rate or the amount of water resource tax payable.
- Clause 12 Grants power to the Comptroller to have access to the premises of the accountable person for the purpose of inspecting documents relating to the production of water.
- Clause 13 Grants the Comptroller the power to enter, detain or seize any goods if he observes that an act which is an offence under this promulgation.
- Clause 14 Is the requirement for the accountable person to submit to the Comptroller an annual audited account.
- Clause 15 Requires of the accountable person to provide necessary assistance to the Comptroller with respect to examination at the factory.
- Clause 16 It is a penalty to make incorrect statements and falsify documents for the purpose of this promulgation.
- Clause 17 The accountable person is guilty of an offence if he refuses to answer questions relating to this promulgation.
- Clause 18 It is an offence if a person obstructs or does anything to impede any officer from performing his duties conferred on him by this Promulgation.
- Clause 19 It is a penalty if an officer abuses his authority granted under this promulgation.
- Clause 20 The establishment of the Court of Review for hearing and determining appeals.