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GOVERNMENT OF FIJI

VALUE ADDED TAX (AMENDMENT) (NO. 2) DECREE 2012
 (DECREE NO. 11 OF 2012)

IN exercise of the powers vested in me as the President of the Republic of Fiji and the Commander in Chief of the Republic of Fiji Military Forces by virtue of the Executive Authority of Fiji Decree 2009, I hereby make the following Decree—

TO AMEND THE VALUE ADDED TAX DECREE 1991

Short title and commencement

- 1.—(1) This Decree may be cited as the Value Added Tax (Amendment) (No. 2) Decree 2012.
- (2) The Decree shall be deemed to have come into force on 1st August, 2010.
- (3) The Value Added Tax Decree 1991 shall be referred to as the “Decree”.

Section 2 amended

2. Section 2 of the Decree is amended by deleting the definition of “insurance” and substituting the following—

“insurance” means insurance or guarantee against loss, damage, injury or risk of any kind whatsoever, whether pursuant to any contract or any enactment; and includes reinsurance and ‘contract of insurance’ includes a policy of insurance or reinsurance, insurance cover and a renewal of a contract of insurance, provided that nothing in this definition shall apply to any insurance specified in paragraph (1) (b) of the First Schedule to this Decree;”

Section 3 amended

3. Section 3 of the Decree is amended by deleting—

(a) in subsection (8)—

- (i) “goods and”; and
- (ii) the proviso and substituting the following—

“provided that this subsection shall not apply in respect of any payment received pursuant to a contract of insurance where the supply of that contract of insurance was—

- (i) exempted;
- (ii) zero rated; or
- (iii) in respect of an entitlement for loss of earnings within the meaning of the Workmen’s Compensation Act (Cap. 94) or the Motor Vehicle (Third Party Insurance) Act (Cap. 177) or accidental personal injury or damages.”; and

(b) subsection (8A) and substituting the following—

“(8A) For the purposes of this section, where, in relation to a claim made under a contract of insurance an insurer recovers an amount, other than aggravated or exemplary damages, as a result of the exercise of rights acquired by subrogation under the contract of insurance, and that amount exceeds the amount paid out by the insurer to the insured person in relation to the claim, then the

insurer is deemed to have performed a supply of services in the course of its taxable activity, and the consideration for the deemed supply is the amount of the excess, and the supply of services is deemed to be performed on the day the insurer receives the amount and if there is more than one such payment, on each such day.

(8B) Notwithstanding anything in subsections (8) and (8A) of this section, where an insurer receives an amount under a contract of reinsurance, that amount is not deemed to be consideration received for a supply of services performed by the insurer.”

Section 39 amended

4. Section 39 of the Decree is amended by deleting subsection (9) and substituting the following—

“(9) Notwithstanding anything in this section, a registered person who makes a payment to which subsection (8) or (8A) of section 3 applies shall not be allowed a deduction for the Value Added Tax payable under those subsections.”

Section 85A amended

5. Section 85A of the Decree is amended by deleting subsections (1) and (2) and substituting the following—

“(1) Any person who supplies insurance services, including licensed insurance agents as defined in section 2 or brokers, unless already registered, shall where the person is liable to be registered under provisions of section 22, be deemed to be registered with effect from the commencement of this Decree.

(2) Notwithstanding the provisions of section 18(1), only new or renewed insurance policies issued on or after the commencement of this Decree shall be taxable pursuant to this Decree.

(3) Notwithstanding any provisions of this Decree, a registered person shall be entitled to claim input tax credit for expenses incurred and paid or invoiced from 1st June, 2010 to 31st July, 2010, where such expenditure was utilised for the provision of taxable insurance supplies on or after the commencement of this Decree.”

First Schedule amended

6. The First Schedule of the Decree is amended—

(a) in paragraph (1) by deleting subparagraph (b) and substituting the following—

“(b) a supply, including a transfer, assignment, or surrender, of a contract of insurance, to the extent that the insurance is—

- (i) life insurance;
- (ii) medical insurance;
- (iii) indemnity payments of insurance against loss of earnings, being earnings within the meaning of the Workmen’s Compensation Act (Cap. 94) or the Motor Vehicle (Third Party Insurance) Act (Cap.177); or
- (iv) indemnity payments of insurance against accidental personal injury or damages,

provided any premiums paid for any contract of insurance in relation to subparagraphs (iii) and (iv) shall not be exempted under this schedule and is a supply under section 15.”;

(b) by inserting a new paragraph after paragraph (1)—

“(1A) Any stamp duties assessed under the Stamp Duties Act (Cap.205) and the amount of levy order under National Fire Services Act 1994 in relation to contract of insurance.”; and

(c) by deleting the definition of “life insurance contract” in paragraph (10) and substituting the following—

“life insurance contract” means a contract lawfully entered into to the extent that it places a sum or sums at risk upon the contingency of the termination or continuance of human life, marriage, civil union or de facto relationship, or the birth of a child;”

Second Schedule amended

7. The Second Schedule of the Decree is amended in paragraph 14 (1) by inserting after (h) the following—

“(i) insurance services including reinsurance services or agreeing to do or arranging any such insurance or reinsurance services.”

GIVEN under my hand this 10th day of January 2012.

EPELI NAILATIKAU
President of the Republic of Fiji