

TAX FREE ZONES DECREE 1991

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A DECREE TO PROVIDE FOR THE ESTABLISHMENT, MANAGEMENT,
CONTROL, LICENSING AND REGISTRATION OF
TAX FREE ZONES AND RELATED MATTERS

IN exercise of the powers vested in me as President of the Sovereign Democratic Republic of Fiji and Commander-in-Chief of the Armed Forces, and acting in accordance with the advice of the Prime Minister and the Cabinet, I hereby make the following Decree -

PART I - PRELIMINARY

Short title

1. This Decree may be cited as the Tax Free Zones Decree 1991.

Acts to be read as one

2. This Decree shall be read as one with the -
 - (a) Customs Act and the Customs Tariff Act in so far as it relates to customs and duties;
 - (b) Income Tax Act in so far as it relates to income tax;
 - (c) Excise Act in so far as it relates to excise; and
 - (d) the Exchange Control Act in so far as it relates to foreign exchange.

Interpretation

3. In this Decree unless the context otherwise requires -
 - "authorised officer" means any person appointed under paragraph (c) of Section 8 of this Decree;
 - "company" means a company resident in Fiji, as defined in the Income Tax Act;
 - "duty" means any duty leviable under the Customs Tariff Act;
 - "enforcement officer" means -
 - (a) any customs officer;
 - (b) an officer of the Ministry of Finance, the Ministry of Trade and Commerce or the Fiji Trade and Investment Board designated in writing by his respective Minister as an enforcement officer for the purpose of this Decree;

- "excise duty" means any duty leviable under the Excise Act ;
- "export" means to take or cause to take out of Fiji;
- "Fiji" includes the internal waters of Fiji, the archipelagic waters of Fiji and the territorial seas of Fiji as defined in the Marine Spaces Act;
- "Minister" means the Minister responsible for trade and commerce;
- "operating licence" means a licence granted by the Minister under subsection (1) of Section 7 of this Decree;
- "tax" means any levy or tax chargeable under the Income Tax Act;
- "Tax Free Zone" means any area or building declared to be a Tax Free Zone under subsection (1) of Section 4 of this Decree and includes Tax Free Factories approved by the Minister for Finance prior to the coming into force of this Decree;
- "Trade, business or manufacture" means any activity, that generates export of goods or services, which the Minister in concurrence with the Minister for Finance may authorise any Company licenced under Section 7 to carry on within a Tax Free Zone.

PART II - ESTABLISHMENT OF TAX FREE ZONES

Declaration, variation of Tax Free Zone
and provision of customs facilities

- 4.-(1) The Minister, in concurrence with the Minister of Finance, may at any time declare -
- (a) that on or after a specified date any area of land and buildings thereon shall be a Tax Free Zone;
 - (b) a variation in the size of the area already declared as a Tax Free Zone under paragraph (a) of this subsection.

(2) Areas that may be declared Tax Free Zones under subsection (1) of this Section shall include office and other facilities required for the proper customs supervision of goods entering or leaving the Zones.

Development, management and control of
Tax Free Zones

5.-(1) Responsibility for the development, management and control of Tax Free Zones shall vest in the Minister.

(2) The Minister, in concurrence with the Minister of Finance, may delegate responsibility for the development, management, or control of Tax Free Zones to any statutory body, Government Department or company.

PART III - LICENSING OF TAX FREE ZONE ACTIVITIES

Application for a licence in Tax Free Zones

6.-(1) Any company may apply to the Minister for an operating licence.

(2) Every application under subsection (1) of this Section shall be made in a form as specified in Schedule 1 to this Decree.

Grant of Tax Free Zone Licence; Criteria for grant of licence and diversion of manufactured goods for sales in Fiji

7.-(1) The Minister, in concurrence with the Minister of Finance, may grant to any company an operating licence in a form as specified in Schedule 2 to this Decree authorising the carrying on of any trade, business or manufacture in a Tax Free Zone.

(2) Any company seeking an operating licence for the carrying on of any trade, business or manufacture in a Tax Free Zone shall be required to -

- (a) derive all of its chargeable income from export sales, which may include sales to a company licensed under subsection (1) of this Section;
- (b) generate employment opportunities for the people of Fiji;
- (c) enhance, expand and improve the technological and trading capability and capacity of the economy of Fiji; and
- (d) comply with any other condition deemed by the Minister to be appropriate under the circumstances.

(3) The Minister, in concurrence with the Minister of Finance, may allow any company licensed under subsection (1) of this Section to divert part of its production for sale within Fiji provided it is demonstrated that the sale of such goods shall be to the economic benefit of Fiji. Such goods shall be deemed to have been imported into Fiji and shall become liable for duty under Schedule 2 of the Customs Tariff Act at the time of removal from a Tax Free Zone.

Conditions of operating licence

8. The Minister may attach to an operating licence certain conditions including conditions in regard to the following matters -
- (a) the date, fixed by the Minister after consultation with the licensee, on or before which the licensee shall commence the trade, business or manufacture authorised by the licence;
 - (b) the revocation of the licence if the licensee should at any time after the grant of the licence undertake in a Tax Free Zone any trade, business or manufacture not authorised by the licence; and
 - (c) the appointment by the licensee of an authorised officer who shall be an individual person and who shall be a resident as defined in the Income Tax Act.

Revocation of licence, variation of
conditions and transfer

- 9.-(1) A licence may be revoked by the Minister -
- (a) where there has been a breach of any condition of the licence, or
 - (b) where the licensee is convicted of an offence against the Customs Act.
- (2) The Minister shall not revoke an operating licence unless a notice in writing is given informing the licensee of the intention to revoke the licence and giving the licensee at least twenty one days within which the licensee may make representation to the Minister.
- (3) The Minister shall consider any representation made by the licensee and make a decision whether or not to revoke a licence. The Minister's decision under this subsection shall be final and shall not be challenged in any Court.
- (4) The Minister, in concurrence with the Minister of Finance, may -
- (a) vary at any time the conditions of a licence; and
 - (b) approve the transfer of a licence to another company fulfilling the requirements set out at subsection (2) of Section 7.

Register of licences

10.-(1) The Minister shall establish and maintain a register of the licences granted under subsection (1) of Section 7 of this Decree.

(2) There shall be entered in the register in respect of each licence -

- (a) the date of commencement of the licence;
- (b) the name, registered address and the authorised officer of the company to which the licence was granted; and
- (c) the trade, business or manufacture to which the licence relates.

(3) The register shall be kept in the Ministry of Trade and Commerce in Suva and shall be open to inspection during such times as the Minister may direct, subject to the payment of a fee of ten dollars for each inspection.

(4) Where a licence is transferred by the licensee in accordance with paragraph (b) subsection (4) of Section 9 of this Decree, the Company to which it is transferred shall submit its name, and registered address and authorised officer for inclusion in the register.

PART IV - DUTY AND TAX EXEMPTIONS

Duty and tax exemptions for licensed activities in Tax Free Zones

11. A licence granted by the Minister under subsection (1) of Section 7 shall provide, for a period of thirteen consecutive fiscal years from the commencement of such a licence, the exemption of the licensee, in accordance with the Customs Tariff Act, the Excise Act and the Income Tax Act, from the payment of the following -

- (a) duties leviable on the importation or purchase ex bond or excise duty leviable on purchase ex-excise factory of machinery and equipment (including parts and materials) insofar as they are required for the establishment and factory operation of the trade, business or manufacture to be carried out in a Tax Free Zone;
- (b) taxes normally leviable under the Income Tax Act in respect of chargeable income of a company licensed under subsection (1) of Section 7;

- (c) taxes leviable under the Income Tax Act, excepting dividend tax, on dividends derived by a resident shareholder in companies licensed under subsection (1) of Section 7;
- (d) withholding taxes leviable on income under the Income Tax Act:

Provided that where such income is subjected to tax under the laws of the State of that person, then tax exemption under this paragraph will not apply.

PART V - CUSTOMS CONTROL AND DISPOSAL OF GOODS IN TAX FREE ZONES

Disposal of goods taken into Tax Free Zones

12.-(1) No person shall deal with or otherwise dispose of any goods taken into a Tax Free Zone except in the manner hereinafter provided.

(2) Goods in a Tax Free Zone may -

- (a) be removed from such Tax Free Zone for export or sent into another Tax Free Zone either in the original package or otherwise; or
- (b) be stored, exhibited, processed or manufactured or put to other uses in accordance with the provisions of this Decree, or
- (c) be destroyed or be disposed of as the Comptroller of Customs may direct.

Utilisation of exempted goods

13. Subject to the provisions of section 12 all goods exempted under section 11 shall be utilised only in a Tax Free Zone.

PART VI - MISCELLANEOUS

Enforcement officers

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

Power to make regulations

15. The Minister of Finance may make regulations for the proper administration of this Decree and shall prescribe the places where and the form and manner in which entry of goods under the Customs Act shall be delivered and customs duties shall be paid.

Offences and penalties

16.-(1) Any person who contravenes any provisions of this Decree or the provisions of any regulations made in accordance with section 15, shall be guilty of an offence and shall, notwithstanding the provisions of Section 9 of this Decree, upon conviction, be liable to a fine not exceeding three times the value of the goods which are the subject matter of the offence, or five thousand dollars whichever is the greater; or to imprisonment for a term not exceeding two years; or to both such fine and term of imprisonment.

(2) Notwithstanding the provision of subsection (1) of this Section, any article in respect of which an offence under this Decree may have been committed, together with any vehicle or anything whatsoever used for conveyance, handling, deposit or concealment of such article or goods is liable to forfeiture and to be disposed of as the Comptroller of Customs may direct.

Application to Tax Free Factories

17. For the avoidance of doubt, the provisions of this Decree shall be deemed to apply to the operations of Tax Free Factories approved by the Minister of Finance before the commencement of this Decree, as if this Decree was in force at the time that Minister's approval was given for the operation of those Tax Free Factories.

Commencement

18. This Decree shall come into force on the day it is signed.

Made this 4th day of December 1991.

PENAIK K. GANILAU
President of the Sovereign Democratic
Republic of Fiji and Commander-in-Chief
of the Armed Forces

SCHEDULE 1
[Section 6(2)]

Name of Applicant:

Company's Name:

Address of Company:

Nature of Project:

Date of Project Approval:

Proposed date of Commencement:

Name and Address of Authorised Officer:
.....

SCHEDULE 2
[Section 7(1)]

By virtue of the powers vested in me under subsection (1) of Section 7 of the Tax Free Zones Decree, 1991 and in concurrence with the Minister of Finance, I hereby grant an operating licence to

.....
(Company Name, Address, etc.)
.....
.....

to operate the trade, business or manufacture described below, in the TAX FREE ZONE known as.....
(Designation of Tax Free Zone)

.....

on the following terms and conditions

.....
.....
.....
.....
(Description of Trade, Business or Manufacture)

This licence shall remain valid until it is surrendered or revoked.

Dated

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MINISTER OF TRADE & COMMERCE