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VALUE ADDED TAX (AMENDMENT) DECREE 2010
 (DECREE NO. 42 OF 2010)

IN exercise of the powers vested in me as the President of the Republic of Fiji and 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—

Short title and commencement

- 1.—(1) This Decree may be cited as the Value Added Tax (Amendment) Decree 2010.
- (2) This Decree is deemed to have come into force on 1st August, 2010.

Section 2 amended

2. Section 2 of the Value Added Tax Decree 1991 (“the Decree”) is amended by inserting a new definition “insurance” after the definition of “input tax schedule”—

“Insurance” means insurance or guarantee against loss, damage, injury or risk of any kind whatever, 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;”

Section 3 amended

3. Section 3 of the Decree is amended by—

- (i) deleting subsection (8) and substituting—

“(8). Subject to this section, except for subsection (8A), if a registered person receives a payment under a contract of insurance, whether or not the person is a party to the contract of insurance, the payment is, to the extent that it relates to a loss incurred in the course or furtherance of the registered person’s taxable activity, deemed to be consideration received for a supply of goods and services performed by the registered person—

- (a) on the day the registered person receives the payment; and
- (b) in the course or furtherance of the registered person’s taxable activity,

Provided this subsection shall not apply in respect of any indemnity payment received pursuant to a contract of insurance where that payment is in respect of an entitlement for a loss of earnings within the meaning of the Workmen’s Compensation Act (Cap.94), the Motor Vehicle (Third Party Insurance Act) (Cap.177), or for accidental personal injury or damages.”

- (ii) inserting a new subsection (8A)—

“(8A) For the purposes of this section, where an insurer recovers an amount (other than aggravated or exemplary damages) as a result of the exercise of rights acquired by subrogation under a contract of insurance, the amount recovered is deemed to be consideration received for the supply of goods and services performed in the course of that insurer’s taxable activity, and a supply of goods and services is deemed to be performed on the day of the insurer’s receipt of the amount.”

Section 39 amended

4. Section 39 of the Decree is amended by inserting a new sub section (9)—

“(9) No deduction shall be allowed for any VAT charged

- (a) on any payment made during the taxable period by a registered person, to indemnify another person pursuant to any contract of insurance, which shall apply only where the supply of that contract of insurance is a taxable supply; or
- (b) where the supply of that contract of insurance would have been a taxable supply if the time of performance of that supply is on or after the 1st of August, 2010.”

Section 85A amended

5. The Decree is amended by inserting a new section —

“Registration of Insurance companies liable to be registered on 1st of August 2010

85A.—(1) Any person who supplies insurance services including licensed insurance brokers or agents under the Insurance Act 1998, for the purpose of section 3(8) and (8A) of the Decree shall be registered in accordance with section 22 commencing on the 1st of August, 2010.

(2) Subject to section 18(1), any new or renewed policy should this be “made” receipt depends on delivery received by a registered person pursuant to any contract of insurance issued on or after the 1st of August 2010, shall be taxable pursuant to this Decree.”

First Schedule amended

6. The First Schedule of the Decree is amended—

(a) by deleting in paragraph (1) subparagraph (b) “(b) insurance services including reinsurance” and substituting—

“(b) the provision, or transfer of ownership of life insurance or a medical insurance contract or set out clearly the provision of re-insurance in respect of any such contracts and those for loss of earnings, (being earnings within the meaning of the Workmen’s Compensation Act (Cap.94) or accidental personal injury or damages).”

(b) by inserting in paragraph (10) the definition of “life insurance contract” after “gambling”—

“life insurance contract” means a contract lawfully entered into which places a sum or sums at risk upon the contingency of the termination or continuance of human life or civil union;”

Given under my hand this 2nd day of August 2010.

EPELI NAILATIKAU
President of the Republic of Fiji