IN THE STATUTORY TRIBUNAL, FIJI ISLANDS
SITTING AS THE TAX TRIBUNAL

Application No 1 of 2013

BETWEEN: **A FIJIAN RESORT**

Applicant

AND: **FIJI REVENUE & CUSTOMS AUTHORITY**

Respondent

Counsel: **Messrs R Krishna and R Naidu, Munro Leys Lawyers, for the Applicant**

Mr S Ravono, FRCA Legal Unit, for the Respondent

Date of Hearing: **Wednesday 4 December 2013**

Date of Decision: **Monday 6 January 2014**

DECISION

VALUE ADDED TAX DECREE 1991- Section 3(10) Taxable Supply, Provision of Employee Meals and Transport; Meaning of benefit and income for tax purposes; Fringe Benefit Decree 2012.

Background

1. The Applicant Taxpayer is a company incorporated in Fiji, with its registered office in Nadi, Viti Levu.

2. The company is part of an international hotel chain and operates a beach resort at a location on the Coral Coast.

3. The Agreed Facts and Issues[1] provided by the parties to this application, are:

    - In the relevant years (2009 - 2011) the Taxpayer employed approximately 930 employees at the 400 room resort[2];
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    - The resort operated on a 24 hour basis, with employees working in any of one or four 8 ½ hour shifts, commencing at various intervals (6.00am, 8.00am, 2.00pm, 10.00pm);

    - The Taxpayer operated a staff canteen that enabled employees to have a meal (breakfast, lunch or dinner) coinciding with the relevant shift that they were engaged on[3];

    - The Taxpayer also made available to employees, free transportation services that were available from 4.50pm to 6.30am Monday to Saturday and all day on Sunday and Public Holidays; and

    - Employees during these times could be picked up and/or collected from their home or resort and dropped to the resort or their homes at the commencement or conclusion of their shift.

4. On 27 February 2013, the Respondent conducted an audit of the Taxpayer for the financial years December 2009 to December 2011. The result of that audit was that the Respondent issued Amended Notices of Assessment for Value Added Taxes imposed against the Taxpayer, based on the value of the calculated taxable supply of meals and transportations provided to the employees during that period.

5. In short, the Respondent had deemed the meals and transportation as "employee benefits" for the purpose of Section 3(10) of the *Value Added Tax (VAT) Decree* 1991 and this is the principal issue the subject of this review application.

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1 As filed on 11 October 2013.

2 It is noted in Schedule 1 to the Affidavit of the Taxpayer's Financial Controller, Mr M, that the available data on employee numbers relevant to this matter, ranges from between 517 to 648 employees per calendar year.

3 Various arrangements also existed in the case of extra entitlements based on over time worked etc.

6. The Applicant also challenges the imposition of a penalty imposed by the Respondent in accordance with Section 46 of the *Tax Administration Decree* 2009, for the making of false statements when submitting the Value Added Tax Returns for the relevant periods.

Case of the Applicant

7. The case of the Applicant has been very well set out within the various written and oral submissions provided to the Tribunal.[4]

8. There are several principal themes that are advanced within those submissions:-

   (a) The taxation laws apply commonsense to the definition of 'employee benefit', as virtually everything provided to an employee can be rationalised as an employee benefit;

   (b) The principles from the case law, support taxation of benefits in the nature of additional rewards to employees, not provision of essential requirements to ensure that the business can run efficiently;

   (c) There is no obligation to provide meals and accommodations to employees in these such circumstances under any Collective Agreement registered or entered into under Fijian Employment law;

   (d) A majority of the employees who take advantage of the meals and transportation, earn incomes below the income tax threshold and therefore the benefit is not exposed to income tax; and

   (e) The *Fringe Benefit Decree* 2012, specifically excludes meals provided within staff canteens from exposure to Fringe Benefits Tax and being part of a legislative scheme, a similar exclusion should apply in the case of VAT.

9. In addition, the Taxpayer relied on the oral and affidavit evidence of its Financial Controller, Mr M, to provide further context and justification for the provision of the meals and transportation for its staff, reinforcing the

[4] See in particular, Outline of Submissions dated 25 November 2013 and Closing Submissions dated 27 December 2013.

argument that this was an essential business expense and not provided as a form of remuneration benefit for employees.

The Case of the Respondent

10. The case of the Respondent is also very well set out within the written submissions.[5] The primary arguments advanced are:-

    (a) Section 11 (z) of the *Income Tax Act* (Cap 201) classifies free meals and transport as constituting income for the purposes of that Act;

    (b) In ordinary circumstances, employees would be expected to meet their own meal and transportation requirements while at work;

    (c) The effect of the *Fringe Benefits Tax Decree* 2012 and the exemption of meals provided in a staff canteen for the purposes of Section 7(1)(d) of that Decree, are of no consequence to the considerations impacting on the financial years 2009 to 2011.

11. In addition, the Respondent called upon the evidence of two officers within its employ, Mr Popio Gabriel and Ms Selai Nava, to provide clarification as to the purpose of the audit that was conducted and the conclusions that were drawn as a result of that action.

The *Valued Added Tax Decree* 1991

12. The Value Added Tax regime in Fiji, has been described as follows:

> *It is a multistage tax imposed at all levels on all providers of goods and services (save those exempted). The essential features of VAT is that it taxes final and intermediate sales at each stage of the production and distribution process. This is usually implemented using a credit offset mechanism, otherwise known as the invoice method. Using the invoice*

[5] See *Respondent's Outline of Submissions* dated 22 November 2013 and *Respondent's Closing Submissions* dated 27 December 2013.

method, credits are given for inputs purchased. In effect, each firm is taxed only on the "valued added" to the product. In other words, tax is levied on taxable sales minus purchases of taxable inputs. This means that, when the tax at each stage of the transaction is aggregated and credits subtracted, the total amount of tax paid is equivalent to the final consumer price times the VAT rate.[6]

13. Specifically, Section 15 of the Decree imposes a taxation on the supply of goods and services by a registered person in the course or furtherance of a taxable activity carried on by that person, by reference to the value of that supply. The meaning of supply is set out within Section 3 of the Decree.

14. Sub-section (10) of Section 3, at the relevant time, provided[7]:

> *(10) Where and to the extent that any registered person, in the course or furtherance of making taxable supplies, has or is treated to have provided an employee benefit for income tax purposes, to any other person, the provision of that employee benefit shall be deemed to be a supply of goods and services made by that registered person in the course of a taxable activity carried on by that registered person:*
>
> *Provided that this subsection shall not apply to any employee benefit to the extent that it has arisen by virtue of any supply of goods and services that is an exempt supply or a zero-rated supply*

15. At issue is whether the provision of a meal in the canteen or the provision of a bus service to transport staff to and from work, is an employee benefit for the purposes of this provision.

Definition of Income and Employee Benefit

16. The history of Section 11 of the *Income Tax Act* (Cap 201) is set out within various decisions of this Tribunal.[8]

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6 Qionibaravi , Litia and Green, Richard (1993) "The Adoption of a Consumption Tax in Fiji ," *Revenue Law Journal*: Vol. 3: Iss. 2, Article 6.

7 Prior to the introduction of Amendment Decree No 44 of 2012, that came into effect on 1 January 2012 and which added after the words "income tax", the words "or fringe benefit tax".

17. Section 11 of the Act defines total income as follows :

> *For the purpose of this Act, —total income means the aggregate of all sources of income including the annual net profit or gain or gratuity, whether ascertained and capable of computation as being wages, salary or other fixed amount, or unascertained as being fees or emoluments or as being profits from a trade or commercial or financial or other business or calling or otherwise howsoever, directly or indirectly accrued to or derived by a person from any office or employment or from any profession or calling or from any trade, manufacture or business or otherwise howsoever, as the case may be, including the estimated annual value of any quarters or board or residence or of any other allowance or benefit provided by his employer or granted in respect of employment whether in money or otherwise, and shall include the interest, dividends or profits directly or indirectly accrued or derived from money at interest upon any security or without security or from stock or from any other investment, and whether such gains or profits are divided or distributed or not, and also the annual profit or gain from any other source including the income from, but not the value of, property acquired by gift, bequest, devise or descent, and including the income from, but not the proceeds of, life insurance policies paid up upon the death of the person insured, or payments made or credited to the insured on life insurance, endowment or annuity contracts upon the maturity of the term mentioned in the contract:*
>
> *Provided that, without in any way affecting the generality of this section, total income, for the purpose of this Act, shall include –*
>
> *(a).....*
>
> *(z) the value of any benefit or allowance, as estimated by the Commissioner having regard to the cost incurred by the employer in providing such benefit and-the market value of such benefit as ascertained by the Commissioner, granted in respect of or arising from employment, received either directly or indirectly in cash or otherwise and whether for the benefit of the person in employment, his wife, dependent children or other dependent relatives, including—*
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> *(i) quarters, board, residence or other housing provided by the employer;*

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[8] See for example *Taxpayer A v Fiji Revenue & Customs Authority* [2012] FJTT 3; See also Taxpayer S v Fiji Revenue & Customs Authority [2012] FJTT 18.

(ii) any private use of a vehicle owned, leased or otherwise hired at the cost of the employer;

(iii) private expenses such as electricity, water, telephone, gas, housemaid, medical expenses, education expenses and the like paid by the employer;

(iv) any subsidy or discount on interest on any loan provided by the employer representing the difference between the market lending rate of interest and the rate actually charged by the employer;

(v) the value of discount provided by an employer being the difference between the normal selling price of the item and the price at which the item is sold to the employee in respect of items forming stock-in-trade of the employer, or any discount provided under any reciprocal arrangement between two or more employers;

(vi) the value of free or subsidised travel provided by the employer or received by virtue of employment which entitles such free of subsidised travel to be provided by the employer or some other person;

(vii) contributions to any retirement or superannuation fund made by an employer which is in excess of the statutory minimum required to be made by the employer or in excess of the amount required to be contributed by the employer under the trust deed and rules setting up such fund, and any am6unt which the employer is entitled to recover from the employee, which is not so recovered;

(viii) any entertainment allowance not expended for the purpose of the employer's business;

18. The relationship between the definition of what constitutes total income for the purposes of Section 11 of the *Income Tax Act* and the language that forms Section 3(10) of the *VAT Decree,* are critical to this analysis.

19. Section 11 stipulates "*For the purpose of this Act, —total income means the aggregate of all sources of income..."* and thereafter it sets out various matters falling within that concept, including the value of any benefit or allowance set out within sub-section (z).

20. Section 3(10) of the Decree on the other hand, stipulates that the provision of an employee benefit will be a taxable supply in the case where such benefit has been

provided (as) an employee benefit for income tax purposes

21. The only sensible meaning that can be given to that expression, is where such benefit has been provided as an employee 'benefit' as the concept is recognised for the purposes of the *Income Tax Act*; as the income tax purposes are provided for within the *Income Tax Act.*

22. That is the language that should shape any inquiry as to the application of Section 3(10) of the Decree. Put in another way, Is the 'employee benefit' referred to within Section 3(10), one that would fall within the definition of 'benefit' for the purposes of Section 11 (z) of the *Income Tax Act?*

23. Counsel for the Applicant seek to gain meaning from the later intention of the *Fringe Benefit Tax Decree* 2012, to assist in interpreting Section 3(10) and what it should do. I find such submissions, at least in this instance, overly ambitious. In the first place, the language of the provisions that were in force in the relevant period (2009 to 2011) are quite clear. The exercise presently before the Tribunal is not to give meaning to the legislation outside of that time, even if it was the case that the later amendment to Section 3(10) may cause some possible ambiguity, at least in the case where provision of canteen meals appears to be exempt from fringe benefit taxation [9], yet otherwise capable of being included as income for the purposes of the *Income Tax Act.*

24. The fact of the matter is, that the definition of benefit and allowance for the purposes of the *Income Tax Act* (Cap 201) has been in place since 1986.[10]

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9 See Section 7(1)(d) of the *Fringe Benefits Decree* 2012.

10 See *Income Tax (Amendment)(No2) Act* 1985. Act No 23 of 1985.

The provision that is Section 3(10) of the *Decree* for these purposes, has been in place since 1991.

25. If there was any ambiguity as to the application of these provisions, there would appear to have been ample time for the law makers of this country to clarify the same. In any event, the language of both pieces of legislation seems quite plain and should be capable of interpretation without the need to rely on later legislation, some 21 years down the track, for clarification.

26. Hetterachchi J, in *RB Patel Group v Suva City Council &Ors*[11], provided a good account of the way in which the interpretation of legislation should be undertaken as follows:-

> *34. The most common rule of statute interpretation is the literal rule. According to this rule, the words in a statute must be given their plain, ordinary and literal meaning.*
>
> *35. The literal approach to statutory interpretation was defined and explained by Higgins J. in Amalgamated Society of Engineers v. Adelaide Steamship Co. Ltd [1920] HCA 54; [1920] 28 C.L.R. 129 at 161,162 as follows:*
> *'The fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded according to the intent of the Parliament that made it; and that intention has to be found by an examination of the language used in statute as whole. The question is, what does the language mean; and when we find the language means, in its ordinary and natural sense, it is our duty to obey that meaning, even if we think the result to be inconvenient or impolitic or improbable.'*
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> *36. Further, L.J. Denning in Seaford Court Estates v . Asher [1949] 2 All ER 155 stated as hereunder:*
> *"A Judge must not alter the material of which the Act is woven but he can and should iron out the creases. When a defect appears, a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of the Parliament and then he must supplement the written words so as to give force and life to the intention of the Legislature."*
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> *37. The duty of the court and its limits in interpreting statutes was explicated in Magor And St. Mellons Rural District Council v . Newport Corporation [1952] A.C. 189,as follows:*

[11] [2011] FJHC 606

In the construction of a statute the duty of the court is limited to interpreting the words used by the legislature and it has no power to fill any gaps disclosed. To do so would be to usurp the function of the legislature.

38. In Nokes V . Doncaster Amalgamated Collieries, Ltd [1940] A.C 1014, per Viscount Simon L.C at 1022,

'if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that parliament would legislate only for the purpose of bringing about an effective result.'

39. In interpreting a statute Court cannot go beyond the words used in the statute itself and when the meaning of the statute on the face of it is plain and obvious I do not think that it is necessary to apply the normal canons of statutory interpretations.

40. One of the leading statements of the literal rule was made by Tindal CJ in the Sussex Peerage Case (1844) 11 C1&Fin 85:
"The only rule for the construction of Acts of Parliament is, that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver."

41. Further, the one and only goal of statutory interpretation should be to find the intention of the legislature. In other words, the task confronting a court when construing a statue is to determine what was Parliament's intention when the statute was enacted.

42. In Nolan v . Clifford [1903-4] 1 C.L.R.429 at 453,O'Connor J. stated the rule in the construction of statutes as follows:

'The first and most important rule in the construction of Statutes is to give effect to words according to their grammatical meaning. If that meaning is clear, then, whether alteration is made in the common law or the statute law or not, and whether of a serious character or not, is of no moment; effect must be given to the words the legislature has used.'

43. In Swiss Bank v . Lloyds Bank [1980] 3 W.L.R.457 at 474 BuckleyL.J. stated the approach to be adopted by Court in constructing a statute as follows:
'In my judgment, the language of paragraph 88(B) must be construed in accordance with the ordinary rules of construction. The language must be given its normal meaning if this is clearly expressed, unless this would lead to so surprising a result in the context and having regard to the subject matter as to lead convincingly to the conclusion that the author cannot have intended

that meaning, and even so the language cannot be construed in any other sense unless it is capable of bearing it.'

44. In Black-Clawson International Ltd v . PapierwerkeWaldhof Aschaffenburg A.G [1975] UKHL 2; (1975) 1 A.E.R 810 at 814, Lord Reid stated:
'We often say that we are looking for the intention of Parliament, but that is not quite correct. We are seeking the meaning of the words which parliament used. We are seeking not what Parliament meant, but the true meaning of what they said.

27. To that end and in support of the clear language of the provisions of the statutes in place at the relevant time, I am not persuaded by the arguments advanced by the Applicant, that would otherwise attempt to rely on European case law, for the purposes of understanding the meaning of clear terms or concepts[12]. I also see no need to rely on later provisions of an Act or Decree, in a bid to attempt to find meaning to clear terms and expressions set out within earlier legislation.

Provision of Meals in Staff Canteen

28. The evidence of the Taxpayer in this regard is quite clear. There is nothing unique or confusing in relation to the concept or practice of supplying employees with meals in a staff canteen.

29. The Applicant argues that the provision of the meals is to defeat the difficulties of staff accessing alternative eating options, given the remote location. It was also stated in the oral evidence of the witness for the Taxpayer, Mr M, that there were also health and safety reasons that supported providing the meals to employees, rather than entrusting them to cater for themselves. It was further suggested by Mr M, that if the Taxpayer was to otherwise provide the employees with a cash equivalence in lieu of

[12] Note Paragraphs 18 to 22 of the Applicant's Closing Submissions in which Counsel seek to draw parallels in the cases on Article 6 of the Sixth Directive.

the meal provided, that there would be no guarantee that this money would be spent on food. It is not for this Tribunal to judge the motivations of the Taxpayer, nor how well founded they may be.[13] The task before the Tribunal, is to assess whether the meals provided could be considered a 'benefit' for the purposes of Section 11 or Section 11(z) of the *Income Tax Act.* That is what Section 3(10) of the Decree requires. The benefit needs to be assessed as to whether it is a "benefit for income tax purposes".

30. Having regard to the classes of benefit that have been described within Sections 11 and 11(z), I am of the view that the provision of meals in a staff canteen, would also fall within either the language of the general provision, or the more specific provision that is at sub-section (z). Insofar as the general provision is concerned, the language and class of words seems wide enough to incorporate notions of meals provided, where it states:

> *including the estimated annual value of any quarters or board or residence or of any other allowance or benefit provided by his employer or granted in respect of employment whether in money or otherwise*

31. While the language of the words may be somewhat dated[14] and seem to lend themselves more at first instance to circumstances where board (accommodation) is provided, rather than meals in a staff canteen; it would nonetheless seem illogical when valuing that board[15], to assess the value of the accommodation and not the meals that may be provided. The corollary of that would be that it would be equally as illogical to not quantify the value of meals provided, in such cases where no accommodation is provided. The concept of meals provided by an employer to an employee, as some form of

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13 Having said that, I am not entirely convinced that the location of the resort, given the small land mass of Viti Levu, could be regarded as remote; nor that it would be particularly onerous on employees to bring their own meal to work. There would be many Fijian workers who each day bring their own meal to the workplace.

14 And gender biased.

15 Assuming board would also including meals provided.

benefit, would in my view, sit well within the construction of that language. It would certainly be consistent with the ordinary rule of construction that is the ejusdem generis rule. The concept of meals being provided as a benefit for the purposes of the language of Section 11, would sit well within the specific class of words that preceded the term.[16] A similar conclusion is able to be drawn when one looks at the more specific example that is given as Section 11(z)(i) of the Act.

32. Of course the value of the benefit may not always be that easily identified; though, given the information provided by the Applicant, some general approximation for illustrative purposes can be made.

33. For example, in Schedule 1 to the Affidavit of Mr M dated 21 December 2013, the costing for the provision of meals for the Financial Year 2011 is given as $573,800.00. The schedule identifies 648 employees engaged in that period. Assuming that each day every employee took one meal in the canteen, provides an estimated cost per meal of $2.40 per day per employee. Assuming an employee was engaged for approximately 300 days per year, the total cost or value of that meal (or benefit) per annum, would be $720.00.

34. In the case of a full time employed Assistant Housekeeper engaged at the resort, for example, who would earn approximately $11,500 per annum[17] , this amount of $720.00 would represent approximately a further 6% contribution to income. That appears to be a benefit that is not in a relative sense, inconsiderable. While the Tribunal appreciates the fact that there may be some factors that create a level of difficulty for employees to otherwise access alternative eating arrangements,[18] that is not the key consideration. Such issues may now be relevant for the sake of the *Fringe Benefits Decree*,

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16 For clarity in relation to that syntactical presumption, see for example. *Attorney-General v Brown* [1920] 1 KB 773.

17 See Collective Agreements also appended to the Affidavit of Mr M.

18 Though these would not be the only workers in this country, that could be required to bring their own lunches to work.

but they are certainly not for the relevant period, nor for the purposes of determining the value of taxable supply under the *VAT Decree.*.

35. As a result, the provision of canteen meals would be regarded as income for the purposes of the *Income Tax Act* (Cap 201) and on that basis, should be deemed to be the provision of the supply of goods and services for the purposes of Section 3(10) of the *Value Added Tax Decree* 1991.

Provision of Transport

36. The provision of employee transport to and from the resort venue, is also something that is easily comprehended. In this case, the imperatives for providing the transport, particularly in the case of shift workers who finish during night hours, is quite understandable. There are perhaps in some situations, even statutory health and safety obligations imposed on an employer to ensure the safety of its workers, while departing from work after the completion of a shift. Though no such issues were identified by Counsel.

37. Be that as it may, again the language of Section 3(10) of the Decree and Section 11 (z) of the *Income Tax Act,* is clear and unambiguous.

38. Relevantly, Section 11 (z)(vi) provides a definition of benefit that includes:

> *the value of free or subsidised travel provided by the employer or received by virtue of employment which entitles such free of subsidised travel to be provided by the employer or some other person;*

39. While it is recognised that this definition may encapsulate all sorts of travel, there is no reason why free bus transport cannot be regarded as a benefit falling within either the general definition of Section 11(z) of the more specific provision that is Section 11(z)(vi). Again here, the value of the benefit and its contribution as part of the total employment cost of the employee is easily illustrated. For illustrative purposes, in the Year 2011, the cost of provision of transportation was placed at $115,548.00. Assuming a take up rate of 60% of employees, the estimated daily cost of providing that service to an employee

is 90cents per day, equating to a benefit valued at approximately $250.00 - $300.00 per annum. Again an extra benefit to total employment cost (TEC) of approximately 2.5%. [19]

40. For the sake of completing the picture, when aggregated, that combined benefit of meals and transport could equate to an increase of approximately 8.5% of total income.

41. As a result, I find that the provision of employee travel would be regarded as income for the purposes of the *Income Tax Act* (Cap 201) and on that basis, should be deemed to be the provision of the supply of goods and services for the purposes of Section 3(10) of the *Value Added Tax Decree* 1991.

How Is the Supply to be Valued?

42. Within Paragraph 37 of the *Applicant's Closing Submissions*, it is argued that in calculating the value of supply, that the Commissioner should consider the FRCA's Practice Statement applicable at the relevant times and not the actual costs incurred by the Taxpayer.

43. Counsel Ravono argues, that the value of the benefits is based on the actual costs provided by the Applicant as deemed for income tax purposes. He cites Section 19(12) of the Decree, that provides:

> *Where goods and services are deemed to be supplied by a registered person under subsection (10) of Section 3 of this Decree, the consideration in money for the supply shall be deemed to be an amount equal to the value of the employee benefit determined by the Commissioner for income tax purposes.*

44. The requirement and basis for calculation is quite clearly defined and there is no need for the Respondent to look outside of the words of that provision in order to form its calculation.

[19] Based on the earlier income of an Assistant Housekeeper paid under the Taxpayer's Collective Agreement.

Imposition of Penalty

45. Finally, the Applicant pleads for relief against the imposition of a penalty under Section 46 (5)(b) of the *Tax Administration Decree* 2009, on the basis that the:

> *Tax shortfall arose as a result of a self-assessment taxpayer taking a reasonably arguable position on the application of a tax law to the taxpayer's circumstances in filing a self assessment tax return.*

46. The Respondent has referred the Tribunal to the decision of *Taxpayer S*[20] in which the issues pertaining to the application of Section 46 are considered. What is being submitted by Counsel for the Applicant, is that the taxpayer has taken a reasonably arguable position on the application and effect of the *Value Added Tax Decree,* when filing its self assessment tax return.

47. The 2009 VAT Return was filed on 29 January 2010. The 2010 VAT Return was filed on 31 January 2011. The 2011 VAT Return was filed on 31 January 2012. [21]

48. Certainly at the time of filing these returns, except in the case of the 2011 Return, there was simply no *Fringe Benefits Decree* in place.[22] The language of Section 11 of the *Income Tax Act* (Cap 201) and the *Value Added Tax Decree* 1991 was quite clear. The Taxpayer cannot mount any defense that at the time of filing the 2009 and 2010 returns, the position in relation to any inconsistency in approaches, viz a viz the Fringe Benefit and Income Tax laws, was available. The time for considering whether arguments can be reasonably made, is at the time of filing, not at the time of trial.

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20 *Taxpayer S v Fiji Revenue & Customs Authority* [2013]FJTT 15.

21 See *Respondent's Bundle of Documents* filed 3 December 2013 at Folios 2 to 4.

22 And even if it was in place on 1 January 2012, it was not in force during the 2011 Financial Year Period.

49. The Taxpayer is part of an international resort and hotel chain, that one would expect would have extensive experience in worldwide taxation matters pertaining to a general consumption tax, such as the Value Added Tax. In a similar manner to that in *Taxpayer S,* Counsel for the Applicants have not provided the Tribunal with any evidence as to what was in the mind of the taxpayer at the time in which the returns were lodged. I have not been provided with any evidence at all to this effect. There is also no evidence as to whether or not the Taxpayer had claimed any input credits associated with the provision of the employee meals or transportation during the relevant period. If it is the case that it did, one would have thought that this could have provided an opportunity for reflection as to whether or not, any taxation was due as a result of the taxable supplies.[23]

50. The Taxpayer has made a false or erroneous statement for the purposes of Section 46 of the *Tax Administration Decree* 2009. Other than the simple statement contained at page 16 of the *Outline of Applicant's Submission,* that the Taxpayer had made no false statements, Counsel have provided no other submissions that the VAT Returns did not contain statements that were false or misleading in a material particular. The only submission that was mounted in the Closing Submission, deals with the arguable defense at Section 46(5)(b) of the *Tax Administration Decree* 2009. Keep in mind, that the onus of proof in disturbing the finding, rests with the Taxpayer in accordance with Section 21(1)(a) of that *Decree.* For the above reasons, I am not prepared to disturb the imposition of the penalty imposed. The Applicant has not made out its case in this regard.

Conclusions

51. For the above reasons, I find that the case of the Taxpayer must fail. In accordance with Section 17(3) of the *Tax Administration Decree* 2009, the decision of the Respondent is affirmed.

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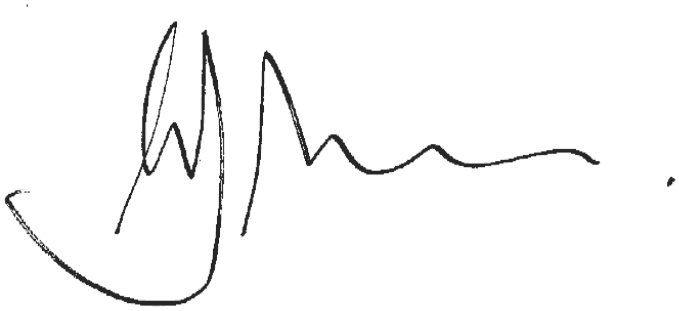
[23] That is an observation only and is not a consideration in the determination of this matter, partly due to the lack of evidence being provided on the specifics raised.

Decision

It is the Decision of the Tribunal, that the:-

(i) Application for review is dismissed;

(ii) The Respondent is free to make application for costs within 28 days.



Mr Andrew J See
Resident Magistrate

6/1/2014