

**This flash report summarises the enactment of changes to the respective Acts and Regulations to the Acts following the COVID-19 Response Budget announcement. The amendment Acts were passed by Parliament and gazetted on 27 March 2020. The Regulations were gazetted on 30 and 31 March 2020. The amendments came into effect from 1 April 2020 unless otherwise stated.**

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## Tax Administration Act - Act 2 of 2020

### **Section 48D - Waiver of penalty for failure to file a tax return or lodge other document by the due date (New)**

– New Section 48D inserted as follows:

*“48D.—(1) Notwithstanding any other provision in this Act, any penalty payable in respect of any failure by a taxpayer to file a tax return or lodge any other document by the due date as required under any tax law is deemed to have been waived if the due date falls on a date within the amnesty period.*

*(2) For the avoidance of doubt, subsection (1) does not prevent a taxpayer who is liable to pay tax imposed by any tax law from payment of the tax by the due date.*

*(3) For the purpose of this section, “amnesty period” means the period commencing on and from 31 March 2020 to 31 December 2020.”*

The new S.48D provides a waiver of penalties payable for the late filing of tax returns or the late lodgement of other documents required by law where the due dates fall within 31 March 2020 to 31 December 2020. The waiver of penalties does not apply to the late payment of taxes

## Tax Administration (Electronic Fiscal Device) Regulations - Legal Notice 33 of 2020

### **Regulation 28 - Enforcement of compliance**

– New subregulations 2C and 2D are inserted as follows:

*“(2C) Notwithstanding any other provision in this regulation, a taxpayer who, operates a business that—*

*(a) is a member of the groups of businesses specified in Gazette Notice No. 834 of 2017, Gazette Notice No. 1936 of 2017 and Gazette Notice No. 579 of 2019; and*

*(b) has a gross turnover not exceeding \$100,000,*

*is exempt from the requirement under this regulation to install, implement and operate an EFD for the business and any other business operated by the taxpayer under the same Taxpayer Identification Number as the business in the group in the exemption period.*

*(2D) For the purposes of subregulation (2C), “exemption period” means the period commencing on and from 1 April 2020 to 31 December 2020.”*

The new subregulations provide that a business required to install, implement and operate an EFD under Phases 1 to 3 and has a gross turnover not exceeding \$100,000, is exempt from this requirement for the period 1 April 2020 to 31 December 2020

## Income Tax Act 2015 - Act 3 of 2020

### **Section 17 - Business income**

– New subsection 17(1B) inserted as follows:

*“(1B) Notwithstanding subsection (1)(f), any commercial debt between associates that is—*

- (a) incurred on or before 26 March 2020; and
- (b) forgiven on and from 1 April 2020 to 31 December 2020,

is not included in the business income of a person conducting a business.”

The amendment to S.17(1B) provides that any commercial debt between associates incurred on or before 26 March 2020 and forgiven on and from 1 April 2020 to 31 December 2020 will not be included in business income. Such debt forgiveness will not be subjected to tax

### Section 25 - Industry incentives

- Section 25(8) of the Act has been amended by replacing the eleventh row with the following:

Year of Assessment	Percentage of export income to be deducted
Tax year 2020	60%
Tax year 2021	60%
Tax year 2022	60%

The amendment to S.25(8) increases the export income deduction for tax year 2020 to 60 percent [previously 50 percent] and extends the export income deduction for tax years 2021 and 2022 at the rate of 60 percent

### Section 62 - Thin capitalisation

- New subsection 62(3A) is inserted as follows:

“(3A) Subsection (1) does not apply if a foreign-controlled resident company, other than a financial institution, has incurred a debt on and from 1 April 2020 to 31 December 2020 resulting in a debt-to-equity ratio in excess of 2 to 1 at any time during the foreign-controlled resident company’s tax year.”

The amendment to S.62(3A) provides that the thin capitalisation rules do not apply for borrowings undertaken by a foreign controlled resident company on and from 1 April 2020 to 31 December 2020. Interest paid on the part of the debt that exceeds the 2 to 1 ratio is an allowable deduction

### Section 110A - Advance payments of tax during coronavirus disease (COVID-19) pandemic (New)

- New Section 110A is inserted as follows:

“110A.—(1) A person liable for Income Tax for a tax year is liable to make advance payments of Income Tax—

(a) in the case of a company, on the last day of the sixth, seventh, eighth, ninth, tenth, eleventh and twelfth months of the tax year and the first and second months of the following tax year; or

(b) in the case of any other person, on 30 April, 31 May, 30 June, 31 July, 31 August, 30 September, 31 October, 30 November and 31 December,

provided that the tax year is—

(i) in the case of a company—

(A) the 2019 tax year ending on any date from 30 April 2020 to 30 June 2020; or

(B) the 2020 tax year ending on any date from 31 July 2020 to 31 December 2020; or

(ii) in the case of any other person, the 2020 tax year.

(2) If the total advance payments of Income Tax payable by a person, other than a company, for a tax year is less than \$120, the advance tax payable by the person for the year is payable in one instalment on 30 September.

(3) The amount of each advance payment of Income Tax payable by a person for a tax year is computed according to the following formula—

$$11\frac{1}{9}\% \times (A - B)$$

where—

A is the person’s assessed Income Tax liability for the preceding tax year, including under a self-assessment, after reduction of any foreign tax credit allowed to the person for that year; and

B is so much of A that was paid by amounts withheld under Subdivision 4 of Division 2.

(4) If—

(a) the Income Tax payable by a person for the preceding tax year has not been assessed by the due date for payment of the first advance payment of Income Tax for a tax year; or

(b) the person commenced to derive income included in gross income during the tax year,

the amount of each advance payment of Income Tax is one-ninth of the amount of Income Tax estimated by the person to be payable for the tax year, other than Income Tax to be collected by withholding under Subdivision 4 of Division 2.

(5) A statement of the Income Tax estimated to be payable by a person for a tax year in accordance with subsection (4) must be filed with the CEO at any time before the due date for payment of the seventh advance payment of Income Tax for the year.

(6) A person who reasonably believes that their Income Tax liability for a tax year will be significantly lower than the Income Tax liability assessed for the previous tax year may file a statement of the Income Tax estimated to be payable by the person for the year, at any time before the end of the twelfth month of the person’s tax year, and the amount of each advance payment of Income Tax payable for the year is one-ninth of the person’s estimated Income Tax liability for the year, other than Income Tax to be collected by withholding under Subdivision 4 of Division 2.

(7) If a person fails to file a statement as required under subsection (5) for a tax year, the estimated Income Tax of the person payable for the year is the amount of Income Tax estimated by the CEO to be payable by the person for the year.

(8) A statement filed by a person under subsection (5) or (6), or the CEO’s estimate of the Income Tax payable by the person under subsection (7) remains in force for the whole of the tax year unless the person files a statement of a revised estimate with the CEO.

(9) A statement of a revised estimate filed under subsection (8) applies to the calculation of advance payments of Income Tax for a tax year payable by the person both before and after the date the statement was filed and—

(a) the amount of any underpayment of advance payment of Income Tax made prior to filing the statement of revised estimate must be paid by the person together with the first advance payment due after the statement is filed; or

(b) the amount of any overpaid advance payments of Income Tax is applied against future advance payments of Income Tax payable by the person.

(10) Each advance payment of Income Tax paid by a person during a tax year is credited against the person's Income Tax liability for the year in accordance with section 8(3) and if the amount of the credit allowed exceeds the Income Tax due for the year, the amount of the excess is refunded to the person.

(11) This section applies notwithstanding section 110.

(12) In this section, "Income Tax" includes the Social Responsibility Tax."

The new S.110A provides relaxed advance tax payment rules during the COVID-19 pandemic. Advance taxes will be payable in nine instalments. The new rules apply as follows:

#### Companies

The new rules apply for tax years ending on 30 April 2020 to 31 December 2020

Advance tax payments are due at the end of each month from the sixth month of the tax year and ending on the second month of the following tax year (nine instalments in total)

#### Any other person

The new rules apply for the 2020 tax year

Advance tax payments are due monthly from 30 April 2020 to 31 December 2020 (nine instalments in total)

Where a person expects that their tax liability for the tax year to be significantly lower than the previous assessment, they have the option to file an estimated statement of income tax, that is to be payable by the person, at any time before the end of the twelfth month of the tax year

A revised estimate statement of income tax may also be filed and applies to the calculation of advance tax payable before and after the statement is filed. Any underpayment of advance tax must be paid in the instalment following the lodgement of the revised estimate. Any overpayment of advance tax is applied against future payments of advance tax

#### **Section 125A - Withholding tax not as a final tax (New)**

– New Section 125A is inserted as follows:

*"125A.—(1) Section 125 does not apply to tax withheld during a tax year under section 111 if the total deductions allowed to a person for a tax year exceed the person's gross income, other than employment income, for that year ("net loss").*

*(2) If a person has a net loss, the person's employment income is reduced by the net loss in computing the chargeable income provided that the amount reduced does not exceed \$20,000.*

*(3) For the avoidance of doubt—*

*(a) if the person's net loss exceeds \$20,000, the person's employment income is reduced only by \$20,000; and*

*(b) if the person's net loss does not exceed \$20,000, the person's employment income is reduced only by the amount equivalent to the net loss."*

The new S.125A allows business losses up to \$20,000 to be deducted against employment income when calculating chargeable income. No tax period limitation is defined

#### **Income Tax (Employment Incentives) Regulations 2016 - Legal Notice 27 of 2020**

##### **Regulation 4, 5 and 6 - First-time employees, Work placements and Part-time workers**

– Regulations 4, 5 and 6 have been updated to increase the deduction allowed for any salary and wages paid to a qualifying to 300 percent [previously 200 percent]. The incentive is extended to 31 December 2023 [previously 2020]

##### **Regulation 7 - Persons with disabilities**

– Regulation 7 has been updated to increase the deduction allowed for any salary and wages paid to a qualifying employee to 400 percent [previously 300 percent]. The incentive is extended to 31 December 2023 [previously 2020]

##### **Regulation 8C - Employees affected by COVID-19 (New)**

– A new Regulation 8C has been inserted as follows:

*"8C.—(1) A person is allowed a deduction for 300% of the amount of salary or wages paid to an employee affected by COVID-19 and who is required by the Ministry of Health and Medical Services to be quarantined.*

*(2) The deduction under subregulation (1) may only be claimed for the salary and wages paid between 1 April 2020 and 31 December 2020.*

*(3) In this regulation, "COVID-19" means the coronavirus disease as named by the World Health Organization on 11 February 2020."*

The new Regulation 8C provides a 300 percent deduction for the salary and wages paid to an employee affected by COVID-19 and is required by the Ministry of Health and Medical Services to be quarantined. The deduction can only be claimed for salary paid between 1 April 2020 and 31 December 2020

#### **Income Tax (Hotel Investment Incentives) Regulations 2016 - Legal Notice 28 of 2020**

##### **Regulation 2 - Interpretation**

– The definition of *short life investment* has been replaced with the following definition:

*"short life investment means building of a new hotel or integrated tourism development with capital investment (including the cost of support infrastructure and overseas consultant fees but excluding the cost of land) over—*

*(a) \$7,000,000, where the construction commences on or after 1 January 2009 and the construction is completed within 24 months from the date the provisional approval was granted; and*

*(b) \$250,000, where the construction commences on or after 1 April 2020 and the construction is completed within 24 months from the date the provisional approval was granted."*

The definition has mainly been updated to include investment of \$250,000 where the construction commences on or after 1 April 2020 and is completed within 24 months from provisional approval

##### **Regulation 9 - Investment allowance**

– Regulation 9(6) has been deleted. The Regulation previously limited the capital expenditure allowable under refurbishment and renovation to a hotel which had been in operation for a period of not less than 5 years

### **Regulation 11 and 12 (Deleted)**

- Regulation 11 previously provided the procedure in case of loss
- Regulation 12 previously provided the applicability of standard allowance

### **Regulation 13 - Power to grant short life investment package**

- Regulation 13 has been replaced with the following:  
*“13. The Minister or CEO, as applicable, may grant or refuse to grant a short life investment package to a company, which has completed a short life investment and has complied with this Part.”*

### **Regulation 17 - Completion of short life investment**

- Regulation 17 has been updated by replacing all references to “project” with “short life investment”

### **Regulation 19 - Final approval is completed**

- Regulation 19 has been updated by replacing all references to “hotel” with “short life investment”

### **Regulation 21 - Exemption from tax**

- A new subregulation (2) has been inserted as follows:  
*“(2) If final approval is granted under this Part to a company, the income of the company is exempt from tax on profits derived from the operation of the hotel if the capital investment in the hotel is—*
  - (a) from \$250,000 to \$1,000,000, in the case of a company that applies on or after 1 April 2020, for a period of 5 consecutive fiscal years;*
  - (b) from \$1,000,000 to \$2,000,000, in the case of a company that applies on or after 1 April 2020, for a period of 7 consecutive fiscal years; and*
  - (c) more than \$2,000,000, in the case of a company that applies on or after 1 April 2020, for a period of 13 consecutive fiscal years.”*

### **Income Tax (Other Incentives) Regulations 2018 - Legal Notice 29 of 2020**

#### **Regulation 5 - Reduction of rent (New)**

- A new Regulation 5 is inserted as follows:  
*“5.—(1) Subject to subregulation (2), a landlord that reduces the rent payable under a tenancy agreement is allowed a deduction for the aggregate sum of the difference between the rent payable on 26 March 2020 and the rent payable in the deduction period.*  
*(2) The tenancy agreement must have taken effect before 26 March 2020 and the landlord must prove to the satisfaction of the CEO that the tenancy agreement has been in effect for the 6 consecutive months before 26 March 2020.*  
*(3) In this regulation—*  
*“tenancy agreement” means a tenancy agreement for any premises used for commercial purposes but does not include residential purposes; and*  
*“deduction period” means the period commencing on and from 27 March 2020 to 31 December 2020.”*

The new Regulation provides landlords of commercial properties that reduce rent payable from 27 March 2020 to 31 December 2020 with a deduction of the aggregate sum of the difference between the rent payable on 26 March 2020 and the rent payable in the deduction period

### **Regulation 5 - COVID-19 pandemic (New)**

- A new Regulation 6 is inserted as follows:  
*“6.—(1) A person is allowed a deduction for 300% of the amount of a cash donation made in a tax year to a fund established by the Government to respond to the COVID-19 pandemic.*  
*(2) The fund will be used for any of the following—*
  - (a) to procure medical supplies and personal protective equipment;*
  - (b) to establish and maintain quarantine facilities;*
  - (c) to maintain food security;*
  - (d) to assist employees affected by the COVID-19 pandemic;*
  - (e) to assist industries affected by the COVID-19 pandemic; or*
  - (f) any other COVID-19 pandemic related response approved by the Minister.*  
*(3) In this regulation, “COVID-19” means the coronavirus disease as named by the World Health Organization on 11 February 2020.”*

The new Regulation provides a 300 percent deduction for cash donations made to the Government COVID-19 fund

### **Income Tax (Depreciation Rates) Regulations 2016 - Legal Notice 30 of 2020**

#### **Regulation 4 - 100% write-off expenditure**

- Regulation 4(1) has been replaced with the following:  
*“(1) Notwithstanding the provisions of these Regulations, where the cost of a depreciable asset is—*
  - (a) \$1,000 or less; or*
  - (b) more than \$1,000 but less than or equal to \$10,000 provided the asset is acquired in the period commencing on and from 1 April 2020 to 31 December 2020,*  
*a taxpayer may deduct the full cost of the asset in the tax year it was acquired.”*

Regulation 4(1) has been updated to allow the deduction for the full cost of an asset acquired on and from 1 April 2020 to 31 December 2020 up to \$10,000 in the same tax year it was acquired

### **Income Tax (Collection of Provisional Tax) Regulations 2016 - Legal Notice 31 of 2020**

#### **Regulation 3A - Certificate of exemption on provisional tax (New)**

- A new Regulation 3A is inserted as follows:  
*“3A.—(1) The CEO may, subject to conditions he or she thinks fit, issue a certificate of exemption to any person who is engaged in a contract for service and is required to pay provisional tax.*  
*(2) A person issued with a certificate of exemption is entitled to receive any monies due under any contract for service without any deduction of any sum as provisional tax.*  
*(3) The CEO may, if he or she thinks fit, withdraw a certificate of exemption by giving a written notice to the certificate holder.”*

The new Regulation 3A (re-)introduces the certificate of exemption (COE) on contractors provisional tax

**Income Tax (Allowances for Depreciation and Improvements) Regulations 2019 - Legal Notice 32 of 2020**

**Regulation 10 - Interpretation**

- Regulation 10 is updated with the following definitions:
  - “building construction project” means a project for the construction of a building as provided under regulation 11(2)(e);*
  - “company” means a company registered under the Companies Act 2015;*
  - “Minister” means the Minister responsible for finance;*

**Regulation 11 - Application for write-off of capital expenditure**

- A new subregulation 11(2)(e) is inserted as follows:
  - “(e) buildings which are used for commercial or industrial purposes, including multi-storey and multi-unit residential buildings provided that—*
    - (i) the erection of such building commences on or after 1 April 2020; and*
    - (ii) a provisional and final approval is granted for such building under Division 3.”*

The new subregulation 11(2)(e) provides that taxpayer may claim a write-off of capital expenditure for buildings used for commercial and industrial purposes, including multi-storey and multi-unit residential buildings. The construction of the building must commence on or after 1 April 2020

**Part 4, Division 3 - Commercial or industrial buildings (New)**

- A new Division 3 is inserted in Part 4 follows:
  - “Applications*
    - 11A.—(1) A taxpayer that seeks to claim a write-off of capital expenditure for buildings referred to in regulation 11(2)(e) must apply in writing to the CEO for provisional approval of the building construction project.*
    - (2) The application must contain the following information—*
      - (a) the name and address of the taxpayer;*
      - (b) if the taxpayer is a company, the registered office of the company and the names of all directors and shareholders of the company together, including shareholdings of the directors and shareholders;*
      - (c) a recent statement of all assets and liabilities of the taxpayer;*
      - (d) evidence of the taxpayer’s ability to complete the building construction project; and*
      - (e) estimates of the projected income from the new building.*
    - (2) The CEO may—*
      - (a) require the applicant to provide other information he or she may consider necessary in relation to the application; or*
      - (b) prescribe particular requirements applicable to any particular area of Fiji.*

*Provisional approval*

- 11B.—(1) The CEO may—*

- (a) reject the application; or*
  - (b) grant provisional approval, with or without any conditions.*
- (2) The CEO must not grant provisional approval under subregulation (1) unless he or she is satisfied that—*
- (a) the application is for an investment in a building construction project;*
  - (b) the taxpayer intends to complete and is capable of completing the building construction project.*
- (3) When considering an application the CEO must take into account the following matters—*
- (a) the assets and liabilities of the taxpayer;*
  - (b) the nature and extent of the investment;*
  - (c) the capability of the taxpayer to complete the building construction project; and*
  - (d) such other matters as the CEO may consider relevant.*
- (4) If the CEO grants provisional approval he or she must refer the taxpayer to the Building Permits Evaluation Committee established under section 4(1) of the Regulation of Building Permits Act 2017.*

- (5) The decision of the CEO under this regulation is final.*
- (6) Notwithstanding subregulation (5), a person whose application (including partial rejected application) has been rejected may make a new application or amend and resubmit the original application.*
- (7) If a taxpayer has been granted provisional approval, the taxpayer must commence the erection of the building construction project within 12 months from the date on which the provisional approval is granted.*

*Final approval*

- 11C.—(1) If a taxpayer has been granted provisional approval and has completed the building construction project, the taxpayer may apply to the Minister for final approval.*
- (2) An application under subregulation (1) must be made in writing and supported by the following—*
  - (a) fully audited final accounts showing the total cost of the project; and*
  - (b) a completion certificate from the local authority.*
- (3) Upon receiving an application under subregulation (2), the Minister may—*
  - (a) reject the application; or*
  - (b) give final approval to the application, with or without any conditions.*
- (4) Subject to regulation 11D, no approval must be granted under this regulation if the Minister is satisfied that the taxpayer has failed to complete the project or has failed to comply with any condition upon which provisional approval was granted.*
- (5) The Minister must, in writing, notify the applicant and the CEO of the decision to reject or grant the application.*

*Extension of time*

*11D. If an applicant to whom provisional approval has been granted is unable to commence the erection of the building construction project within the period specified in regulation 11B(7) due to unforeseen circumstances or some other act beyond the control of the applicant, the applicant may apply in writing to the Minister to extend such period.”*

The new Division 3 provides the application process for taxpayers who want to apply for the new write-off of capital expenditure for commercial and industrial buildings

#### **Regulation 12 - Calculation of write-off**

- Subregulation 12(3) is updated as follows:

*“(3) Subject to subregulation (7), the amount of deduction under this regulation in a year of income is—*

*(a) for buildings referred to regulation 11(2)(a) and (b), 20%; and*

*(b) for buildings referred to in regulation 11(2)(c) to (e), 100%,*

*of the capital expenditure incurred by the taxpayer on the erection of the building”*

The update to Regulation 12 provides for the 100 percent write-off of capital expenditure for commercial and industrial buildings. The amendment also extends to 100 percent write-off to buildings used for ICT business, agriculture, fisheries and forestry or buildings used for greenhouse and nursery buildings, research labs and pack houses.

#### **Value Added Tax Act 1991 - Act 4 of 2020**

##### **Section 14 - Imposition of tax on imports**

- Section 14(4A)(a) of the Act has been amended by inserting a new concession code *“298 (Concession for medical emergencies - companies, entities and individuals)”*

The amendment to S.14(4A)(a) now includes items for medical emergencies under new Concession Code 298 as exempt from import VAT. A corresponding amendment is made in Customs Tariff Act

#### **Stamp Duties Act 1920 - Act 5 of 2020**

##### **Schedule - Part 2 - General exemptions from stamp duty**

- New paragraph (31) inserted as follows:

*“(31) In the period commencing on and from 1 April 2020 to 31 December 2020—*

*(a) any mortgage, except the transfer or assignment of a mortgage and, for the avoidance of doubt, where stamp duty payable on any other instrument is as per the like duty for a mortgage, the exemption in this subparagraph does not apply to such instrument; and*

*(b) any air waybill for any goods, merchandise or effects to be exported from Fiji.”*

The amendment to the Schedule provides an exemption on stamp duties payable on mortgages and air waybills in the period 1 April 2020 to 31 December 2020

#### **Customs Act 1986 - Act 6 of 2020**

##### **Section 52 - Period of warehousing**

- Section 52 has been replaced with the following:

*“52.—(1) If the owner does not lawfully remove any goods which have been deposited in a bonded warehouse within 12 months from the date the goods were deposited, the Comptroller may, after giving one month’s notice of his or her intention to do so to the owner, proceed to sell the goods in the prescribed manner or otherwise dispose of the goods, and the proceeds of any sale of the goods shall be dealt with in accordance with section 63.*

*(2) For the purposes of subsection (1), the Comptroller may allow any goods deposited in a bonded warehouse to be re-warehoused by the owner for a further period determined by the Comptroller.*

*(3) If the owner does not lawfully remove the goods deposited in a bonded warehouse within the extended period approved by the Comptroller in accordance with subsection (2), the Comptroller may, after giving one month’s notice of his or her intention to do so to the owner, proceed to sell or dispose of the goods in accordance with subsection (1).”*

The amendment to S.52 increases the warehousing period from 6 months to 12 months and allows for goods to be re-warehoused for a further extended period determined by the Comptroller. The Comptroller may, after giving one month’s notice, proceed to sell or dispose of the goods where the goods are not removed within the prescribed period

#### **Customs Tariff Act 1986 - Act 7 of 2020**

This Act came into force on 27 March 2020

##### **Schedule 2 - Customs tariff**

- Part 1 of Schedule 2 to the Act is amended to allow for an increase in fiscal duty by 20 cents per litre for diesel and unleaded fuel
- Part 3 of Schedule 2 to the Act is amended by introducing a new concession to allow for the exemption of import duty and import VAT on medical supplies during medical emergencies such as the current COVID-19 pandemic. A corresponding amendment is made in the Value Added Tax Act

#### **Fiji National Provident Funds Act - Act 8 of 2020**

##### **Section 4 - Interpretation**

- Section 4(1) of the Act has been amended by updating the definition of *mandated contribution* to include S.40B

##### **Division 3A - Contributions to the FNPF during the coronavirus disease (COVID) pandemic (New)**

- The new Division 3A is inserted in Part 3 of the Act as follows:

###### “Application of this Division

*40A.—(1) This Division applies on and from 1 April 2020 to 31 December 2020.*

*(2) For the purposes of section 40B(1) and for the avoidance of doubt, in relation to employment undertaken in the month of December in 2020, “last day of each following month” means 31 January 2021.*

###### Mandated contributions

*40B.—(1) Despite Division 3 of this Part, no later than the last day of each following month an employer must—*

*(a) pay to the Board, for each person who was an employee of the employer for all or part of the month, the amount of contributions calculated in accordance with this section; and*

*(b) give the Board a remittance statement complying with the requirements of the regulations in relation to those payments.*

*Penalty — \$5,000.*

*(2) Strict liability applies to subsection (1).*

(3) It is a defence to a prosecution for an offence against subsection (1) in respect of an employee that the employee was an exempt employee of the employer.

(4) The amount of contributions for an employee for a month is the amount equal to 10% of the total wages payable to the employee by the employer for the month. The amount must be rounded up to the nearest cent.

Recovery of contributions from employee

40C.—(1) Despite any provision of a written law or contract to the contrary, an employer may recover from the employee an amount equal to 50% of the amount paid as mandated contributions for the month, rounded up to the nearest cent. The amount may be recovered only by deduction from the employee's wages for the month in respect of which the contributions are paid.

(2) A person commits an offence if—

(a) the person recovers an amount from an employee of an employer;

(b) the recovery is on account of a payment of mandated contributions by the employer or a related company of the employer; and

(c) the contributions in respect of which the amount was recovered are not paid as required by this Division.

Penalty — \$25,000, or imprisonment for 3 years, or both.

(3) Strict liability applies in respect of subsection (2)(a) and (c).

Penalty amounts

40D.—(1) If an employer fails to pay, in full, the contributions for a particular month required by this Division, the employer must also pay to the Board, as penalty, for each employee concerned, for each month or part of a month during which the contributions are unpaid—

(a) \$100 for each employee concerned, for each month or part of a month during which the contributions are unpaid; or

(b) if a higher amount is prescribed by the regulations, the higher amount for each employee concerned, for each month or part of a month during which the contributions are unpaid.

(2) If a penalty amount is due and payable under this section, the Board may, on application by an employer, waive some or all of the amount.

(3) If the amount due is recovered from an employer under this section for a failure to pay contributions, the employer may not be prosecuted for an offence against section 40B in respect of the failure."

The new Division 3A in Part 3 of the Act reduces the mandatory contributions for employers and employees from 10 percent and 8 percent to 5 percent each respectively for the period 1 April 2020 to 31 December 2020

**Section 65 - Application of the Retirement Income Fund**

– A new Section 65(da) is inserted as follows:

"(da) by utilising surplus in the Retirement Income Fund to make payments to one or more classes of annuitants in accordance with the regulations; and"

**Section 108A - Notice of unpaid contributions**

– Section 108A has been amended by including references to the Section 40B(a)

Please contact your KPMG client service personnel or a member of our Tax team for further information, or assistance in respect of this

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