FOREIGN EXCHANGE LEVY REGULATIONS 2016

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Arrangement of Sections

Regulation

Tonga

FOREIGN EXCHANGE LEVY REGULATIONS 2016

FOREIGN EXCHANGE LEVY ACT 2015

IN EXERCISE of the powers conferred by section 8 of the Foreign Exchange Levy Act 2015, the Minister for Finance and National Planning hereby makes the following Regulations —

1   Short title and commencement

(1)   'These Regulations may be cited as the Foreign Exchange Levy Regulations 2016.

(2)   These Regulations shall come into force on a date to be declared by notice in the Gazette by the Minister for Finance.

2   Interpretation

(1)   In these Regulations, unless the context otherwise requires -

"Act" means the Foreign Exchange Levy Act 2015;

"due date" means the fifth working day of every month in respect of the levy payable on the purchase or sale of foreign currency during the preceding month;

"Minister" means the Minister responsible for finance; and

"Ministry" means the Government Ministry responsible for finance.

(2)   The terms and definitions in the Act shall have the same meaning in these Regulations.

3   Calculation of Levy

(1)   For the purposes of this Regulation -

"income" means the income that financial institutions derive (price difference when a financial institution purchases or sells foreign currency) from any purchase or sale of foreign exchange transaction as quoted in Tongan seniti;

"midrate" means the midpoint between the carded selling and buying rate in any purchase or sale of foreign currency transaction; and

"spread" for the avoidance of doubt, means the difference in Pa'anga value between the midrate and the applied selling rate or applied buying rate, as the case may be, in every purchase or sale of foreign currency transaction.

(2)   Subject to section 4 of the Act and for the avoidance of doubt, the levy shall be imposed and paid at a rate of one half of a seniti from the spread on each one Pa'anga of every purchase and sale of foreign currency transaction.

Provided that the levy shall only be imposed if the spread on each one Pa'anga in a purchase or sale of foreign currency transaction is more than one half of a seniti.

(3)   Subject to sub-regulation (2), the levy shall be calculated using the simple mathematical steps in the Schedule to these Regulations.

4   Nominated Accounts

(1)   Subject to section 3(3) of the Act, the Ministry shall notify all financial institutions in writing of the accounts in which the levy payable shall be paid.

(2)   Notwithstanding sub-regulation (1), financial institutions may directly pay the levy payable to the Ministry's head office or sub-offices.

5   Reporting of Information

(1)   Subject to section 3(3) of the Act, all financial institutions shall on the due date, furnish to the Ministry in relation to the preceding month, the following information -

(a)   records of every purchase and sale of foreign currency transactions during the month;

(b)   the buying and selling rates with the calculated midrate notified each day during the month;

(c)   the actual applied rates that was used for all purchase and sale of foreign currency transactions during the month, which may be the notified rates or spot rates determined separately;

(d)   the calculated spread on each one pa'anga of every purchase and sale of foreign currency transaction during the month; and

(e)　　the overall calculated levy collected out of the spread and paid to the Ministry for the month.

(2)　　The information required under sub-regulation (1) may be furnished in electronic form to the Ministry including evidence of the calculated variables in the Schedule to these Regulations. A hard copy shall be submitted to the Ministry when an electronic copy is not available.

(3)　　If any financial institution fails to comply with sub-regulation (1), and the Minister is satisfied that such failure was unreasonable, the Minister may impose an administrative penalty of a fine not exceeding $20,000.

(4)　　If the Minister is satisfied that a financial institution has furnished information in accordance with sub-regulation (1), and such information is false, grossly inaccurate or misleading, the Minister may impose an administrative penalty of a fine not exceeding $20,000.

6　Repeal

These Regulations shall be repealed on 30 June 2020.

Made at Nuku'alofa this 5th day of February 2016.

Hon. 'Aisake Valu Eke

Minister for Finance and National Planning

SCHEDULE

CALCULATION OF THE LEVY

(Regulation 3)

The calculation of the levy is based on four simple mathematical steps, using the following variables:

Variables	Source (for calculation)
Carded Sell rate	Reported by the financial institution
Carded Buy rate	Reported by the financial institution
Applied buy rate	Reported by the financial institution
Applied sell rate	Reported by the financial institution
TA$_{TOP}$	Transaction amount in Tongan Pa'anga
TA$_{Midrate}$	Transaction amount in foreign currency revalued at midrate into Tongan Pa'anga
TA$_{FOC}$	Transaction amount in foreign currency

Step 1: Calculating the Midrate

Average of the carded buy and sell rate as follows:

$Midrate$ = (Buy rate + Sell rate) / 2

Step 2: Calculating the Spread - Two-step process

Calculating the spread involves two steps:

(i)   Calculate the **foreign currency spread (S_{FOC})** which is the difference between the selling or buying rate, as the case may be, and the midrate in foreign currency. In the case of:

         Selling   : S_{FOC} = Midrate – Applied rate
         Buying   : S_{FOC} = Applied rate - Midrate

(ii)   Convert the **foreign currency spread (S_{FOC})** into Tongan Pa'anga (S_{TOP}). S_{TOP} is expressed by converting the S_{FOC} into Tongan Pa'anga at midrate:

$$S_{TOP} = S_{FOC}/Midrate$$

Step 3: Calculating the Income (total spread by transaction)

The income expressed by (I) is the difference between the actual transaction amount in Tongan Pa'anga and the transaction amount in foreign currency revalued at midrate into Tongan Pa'anga as follows:

I   = $(\mathbf{TA}_{TOP}$ - $TA_{Midrate})$

where

$TA_{Midrate}$ = $\dfrac{\mathbf{TA}_{FOC}}{\mathbf{Midrate}}$

Step 4: Calculating the applied Levy to be collected

Levy = $(\dfrac{l}{S_{TOP}}$ **x I)**

$l \ denotes$ levy of ½ seniti to be deducted from the spread as defined by the S_{TOP} taking into account the levy would only be collected when:

$(S_{TOP} > l)$