

BILL NO. 3 OF 2020

A BILL

FOR AN ACT TO AMEND THE INCOME TAX ACT 2015

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

1.—(1) This Act may be cited as the Income Tax (COVID-19 Response) (Amendment) Act 2020.

(2) This Act comes into force on 1 April 2020.

(3) In this Act, the Income Tax Act 2015 is referred to as the “Principal Act”.

Section 17 amended

2. Section 17 of the Principal Act is amended after subsection (1A) by inserting the following new subsection—

“(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.”.

Section 25 amended

3. Section 25(8) of the Principal Act is amended in the table by deleting the eleventh row and inserting the following new rows—

Tax Year 2020	60%
Tax Year 2021	60%
Tax Year 2022	60%

Section 62 amended

4. Section 62 of the Principal Act is amended after subsection (3) by inserting the following new subsection—

“(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.”.

Section 110A inserted

5. The Principal Act is amended after section 110 by inserting the following new section—

“Advance payments of tax during coronavirus disease (COVID-19) pandemic

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 2018 tax year ending on any date from 30 April 2019 to 30 June 2019; or
 - (B) the 2019 tax year ending on any date from 31 July 2019 to 31 December 2019; or
- (ii) in the case of any other person, the 2019 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 by the due date for payment of the first 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, before the end of the sixth 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."

Section 125A inserted

6. The Principal Act is amended after section 125 by inserting the following new section—

"Withholding tax not as a final tax

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."

March 2020

INCOME TAX (COVID-19 RESPONSE) (AMENDMENT) BILL 2020

EXPLANATORY NOTE

(This note is not part of the Bill and is intended only to indicate its general effect)

1.0 BACKGROUND

- 1.1 The Income Tax (COVID-19 Response) (Amendment) Bill 2020 (**'Bill'**) seeks to amend the Income Tax Act 2015 (**'Act'**).

2.0 CLAUSES

- 2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the amending legislation will come into force on 1 April 2020.
- 2.2 Clause 2 of the Bill amends section 17 of the Act to provide that any commercial debt between associates that is incurred on or before 26 March 2020 and forgiven on and from 1 April 2020 to 31 December 2020 is not included in the business income of a person conducting a business. This ensures that debt forgiveness between 1 April 2020 and 31 December 2020 is not treated as business income and is therefore not subjected to income tax.
- 2.3 Clause 3 of the Bill amends section 25 of the Act to provide for export income deduction for the 2020, 2021 and 2022 tax years at the rate of 60%.
- 2.4 Clause 4 of the Bill amends section 62 of the Act to provide that the thin capitalisation rules will not apply for borrowings undertaken by a foreign-controlled resident company on and from 1 April 2020 to 31 December 2020 that would result in a debt-to-equity ratio in excess of 2 to 1 (**'ratio'**) at any time during a tax year. This means that the interest paid on that part of the debt that exceeds the ratio would be an allowable deduction.
- 2.5 Clause 5 of the Bill inserts a new section 110A to provide for the relaxation of the rules in relation to advance payments of income tax under section 110 of the Act. At the moment, a person who is liable to make advance payments of income tax is required to make those payments at specific times. This amendment

spreads the payments out over a longer period to ease the cash-flow burden on the taxpayers.

- 2.6 Clause 6 of the Bill amends the Act by inserting a new section 125A to allow business losses to be deducted against employment income to compute the chargeable income and the overall tax position of a personal income taxpayer, provided that the amount deducted does not exceed \$20,000.

3.0 MINISTERIAL RESPONSIBILITY

- 3.1 The Act comes under the responsibility of the Minister responsible for finance.

A. SAYED-KHAIYUM
Attorney-General