STANDING COMMITTEE ON JUSTICE, LAW AND HUMAN RIGHTS

REPORT ON THE INCOME TAX BILL 2015

(BILL NO. 22 OF 2015)

PARLIAMENT OF THE REPUBLIC OF FIJI
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TABLE OF CONTENTS

CHAIR'S FOREWORD

Income Tax forms a major part of the country's revenue. Whether it is Company Tax, Business Tax or personal Pay As You Earn Tax, they all contribute to the Government's coffers from which, among other things, the Government provides essential services to the people and builds infrastructure via which these services are provided. No matter how much we may dislike the idea of paying taxes we will all appreciate that the schools we gain education in, the hospitals we are treated at, the roads we travel on and the security forces which protect us from interference are all funded by tax money.

The sectors from which tax is to be collected and the mechanisms which enable the authorities to collect it must be clearly defined and demarcated. It therefore becomes necessary to enact laws which direct us to the areas from which taxes are to be collected and also provide formulae and mechanisms to collect revenue for the progress of the entire nation. This Bill hopes to achieve all that.

The Income Tax Bill (Bill No. 22 of 2015) was referred to the Standing Committee on Justice, Law and Human Rights by this Honourable Parliament on 27th August 2015 for scrutiny with instructions to return a report in the November session of Parliament. I, on behalf of the Committee present that report today.

The Income Tax Bill addresses some of the many different aspects of taxation such as income tax, social responsibility tax, presumptive income tax, withholding tax, shipping income tax, company and business tax, capital gains tax, fringe benefit tax, mining tax, etcetera. Taxes touch the lives of each and every individual in one way or another. The Committee therefore ventured into hearing submissions from as many sectors as possible from around the country in the time frame given.

The Committee started consultation in Suva with its first meeting on 31st August 2015. Thereafter the Committee toured the Western Division hearing submissions which included Rakiraki, Ba, Lautoka, Nadi and Sigatoka. The following week the Committee travelled to the Northern Divisions and heard submissions in Nabouwalu, Labasa and Savusavu. The Committee also visited the Namosi Joint Venture Mining Operations to supplement information on Mining Tax. The Committee was also fortunate to hear Professor Lee Burns, the chief draftsman of the Bill, who attended the session on 2nd

November 2015 to brief the Committee on the various aspects of the Bill and to answer the queries which the members had.

This report examines and takes into consideration the written submissions received and oral evidence heard at the Committee's public hearings. The amendments, which appear in red colour in the text of the Bill for ease of reference, has been the result of many days and nights of hard work by the Committee and the Secretariat Staff in consultation with the experts from Fiji Revenue and Customs Authority and where drafting aspects were concerned in consultation with the drafters from the Solicitor General's Office.

On behalf of the Honourable Members of the Committee, I would like to express my sincere gratitude and appreciation to all those organisations and individuals who made submissions and/or attended public hearings. The strength and depth of the Committee's inquiry rests with the voluntary commitment and time of groups and individuals making submissions and appearing at public hearings. This was evident in the high quality of submissions received and with presenters at the public hearings, who candidly provided their opinions and advice to the Committee.

At this juncture, I wish to extend my sincere gratitude to the Honourable Members involved with the production of this bipartisan report: my fellow Committee colleagues Hon. Semesa Karavaki (Deputy Chair), Hon. Lorna Eden, Hon. Alvick Maharaj, Hon. Mikaele Leawere, Hon. Anare Vadei, Hon. Alex O'Connor, Hon. Salote Radrodro, Hon. Balmindar Singh, Hon. Ratu Sela Nanovo, Hon. Viam Pillay and Hon. Vijay Nath.

I wish to thank the various television and radio stations for providing valuable air time to Committee Members to interact with the public and print media organisations who provided positive coverage of the Committee's work which informed the public of the proceedings. Also the Parliament Corporate staff for liaising with the Ministry of Finance to provide transportation for the Western, Northern and Namosi tours and the drivers - Koroi from the Fiji Police Force, Bula and Apenisa from the Fiji Corrections Service.

The Committee is thankful to the Assistant Provincial Administrator Mr Jovesa Naqarikau, CEO Ba Town Council Mr Dip Narayan, CEO Lautoka City Council Mr Jone Nakauvadra, Special Administrator Nadi Mr Robin Ali, Provincial Administrator, Nabouwalu, Mr. Inoke Tuiwainunu, Commissioner Northern Mr. Jovesa Vocea, Special Administrator Labasa/Savusavu Mr Vijay Chand, Provincial Administrator, Cakaudrove Mr. Josefa

Rokonai and Roko Tui Cakaudrove Mr. F. Naiqumu for all their assistance to the Committee.

I also wish to extend my since appreciation to the FRCA Staff who travelled with the Committee during tours and committee meetings namely, Ms Koni Ravono, Mr Epeli Naua, Ms Selai Bulamainaivalu and Mr Vilimone Nailotei. Lastly, I thank the Secretary General and her staff who were present during the Committee's meetings and also assisted the Committee in one way or another, namely Kalo Takape, Sheron Narayan, Savenaca Koro, Akanisi Rumasakea, Lemeki Senibale, Jale Vuanicau, Mitieli Uculoa, Josefa Tarogi, Penijamini Valebuli, Maurice Shute, Kitione Bete, Ateca Ganey, Lavenia Ledua, Abraham Sanehi, Rahul Prasad and not forgetting the beautiful ladies in Hansard.

With these words I commend this report to the Parliament.

HON. ASHNEEL SUDHAKAR
CHAIRMAN

LIST OF ACRONYMS

CGT	-	Capital Gains Tax
FBT	-	Fringe Benefits Tax
FIA	-	Fiji Institute of Accountants
FHL	-	Fijian Holdings Limited
FNPF	-	Fiji National Provident Fund
FRCA	-	Fiji Revenue and Customs Authority
ITB	-	Income Tax Bill
JLHR	-	Justice, Law and Human Rights
NCW	-	National Council for Women
PWC	-	Price Waterhouse and Coopers
SRT	-	Social Responsibility Tax
WHT	-	Withholding Tax

1.0 INTRODUCTION

1.1 Background

The Income Tax Bill 2015 provides for the imposition of the income tax, capital gains tax and the regulation of fringe benefits. It also repeals and replaces the Income Tax Act (Cap. 201), Capital Gains Tax Decree 2011 and the Fringe Benefits Decree 2012 with effect from 1st January 2016.

During the 2012 National Budget, the Prime Minister announced that a new Income Tax Law would be implemented to simplify tax administration in Fiji in conformity with the recommendations made by the International Monetary Fund to simplify Fiji's tax laws. Additionally, it was prudent to re-write the Act that was enacted in 1974, given that it is quite outdated and has been regularly amended to the point that it has become difficult to read in totality.

1.2 Purpose of the Bill

The Bill intends to simplify and streamline the income tax laws so that all tax laws are available in a "one stop shop" legislation.

Secondly, the Bill includes new provisions in areas that were previously left to administrative practice, particularly in the area of tax accounting. The Bill includes detailed provisions relating to the taxation of international transactions which align with international norms expressed in tax treaties.

Thirdly, the Bill includes measures to prevent the avoidance of tax. These include transfer pricing and thin capitalisation rules.

The Bill has been drafted to cater for the re-write of the Act due to the following factors –

(a) uncertainties in tax application due to amendments and its logical structure which has been lost through the sheer volume of amendments and the different drafting styles used;

(b) technical deficiencies in current law increase compliance and administrative costs;

(c) given the evolving business and investment environment, an income tax law now probably has a "shelf life" of only ten years. In many countries, the income tax law is one of the most amended laws. After ten years of amendments, the law is likely to have lost some of its coherency with different drafters using different terms/language/style, and with reforms 'grafted' onto reforms;

(d) while double tax treaties facilitate foreign investment, it is not possible for Fiji to negotiate double tax treaties with a large number of countries on a timely basis. Consequently, the re-write is an opportunity to revise the international provisions in the income tax law so as to better facilitate foreign investment. This is done by 'internalising' the taxing rights commonly found in tax treaties into law;

(e) the re-write will facilitate key administrative reforms such as self-assessment, final tax (PAYE, dividend, interest) and voluntary compliance; and

(f) under self-assessment, there is an obligation by the Government to ensure that there is certainty of law. This means that the law must be capable of easy application by the vast majority of taxpayers that is, it must be 'user friendly'. As far as possible it must provide simple and clear rules. Under self-assessment, any discretionary powers left to the Chief Executive Officer of the Fiji Revenue and Customs Authority (CEO) relating to liability must be replaced by objective rules. Self-assessment will not work effectively if taxpayers have to continually seek the discretion of the CEO; and

(g) to remove the exemptions and concessions that have expired in the Act.

1.3 The Standing Committee on Justice, Law and Human Rights

The Committee is a standing committee of the Fijian Parliament and was established under Section 109(2)(f) of the Standing Orders (SO) of the Parliament of the Republic of Fiji. The Committee comprises five Honourable Members, drawn from both the Government and the Opposition parties.

The Committee is mandated to examine matters related to crime, civil rights, courts and their administration, the Constitution, policing and human rights. Section 110(1) of the SO mandates the Committee to examine and make amendments to the Bills, to the extent agreed by the Committee.

On 27th August 2015, the Attorney General and Minister for Finance, Public Enterprises, Public Service and Communications introduced a Bill for an Act to revise, simplify and consolidate the laws relating to Income Tax. The Act will come into force on 1st January 2016 and will apply to tax years commencing on or after the commencement date.

The House resolved that the Bill be committed to the Standing Committee on Justice, Law and Human Rights to review and report back to Parliament during the November sitting.

1.4 Procedure and Program

The Committee called for submissions from the public by placing advertisements through the Parliament website (www.parliament.gov.fj) and in the local newspapers (Fiji Times and Fiji Sun) on the 5th, 12th, 19th and 26th of September. The Committee also placed advertisements for public hearings at venues in the Western and Northern Divisions.

An invitation was forwarded to the Solicitor-General's Office for a briefing on various aspects of the Bill, however, a response was received that officials from the Fiji Revenue and Customs Authority would be in a better position to brief the Committee as they were involved in the drafting process. The Committee also wrote to other stakeholders who would be affected by the enactment of the Bill and invited them to present their views at public hearings in Parliament.

The Committee was mindful of the provisions in Standing Order 111(1)(a) and ensured that its meetings were open to the public and the media, except during deliberations and discussions to develop and finalise the Committee's recommendations and report.

Members of the public were also invited to submit their views on the Bill at various locations and venues in the Western and Northern Division from 28th September to 7th October, a breakdown of which is as follows:

WESTERN DIVISION		
Date	**Location**	**Venue**
28/9/15	Rakiraki	Uluda Holdings Conference Room
	Ba	Ba Town Council Chambers
29/9/15	LautOKa	LautOKa Town Council Chambers
30/9/15	Nadi	Nadi Town Council Chambers
1/10/15	SigatOKa	SigatOKa Town Council Chambers
NORTHERN DIVISION		
Date	**Location**	**Venue**
5/10/15	Nabouwalu	Naulumatua Conference Room
6/10/15	Labasa	Town Council Chambers
7/10/15	Savusavu	Commissioner Northern's Conference Room

Copies of the advertisements are attached as Appendix A

Members of the Committee, alongside FRCA officials, were also allocated 15 minutes time slots on the iTaukei and Hindi programs at the Fiji Broadcasting Commission, to provide awareness on the provisions of the Income Tax Bill 2015 and invite members of the public to the public hearings.

1.5 Committee Members

The substantive members of the Standing Committee on Justice, Law and Human Rights are:

- Hon. Ashneel Sudhakar MP (Chairman)
- Hon. Semesa Karavaki MP (Deputy Chairman)
- Hon. Lorna Eden MP (Member)
- Hon. Iliesa Delana MP (Member)
- Hon. Niko Nawaikula MP (Member)

During the Standing Committee's meetings, the following alternate membership arose pursuant to Standing Order 115(5):

- Hon. Semi Koroilavesau MP (Alternate Member for Hon. Iliesa Delana)
- Hon. Brij Lal MP (Alternate Member for Hon. Iliesa Delana)
- Hon. Balmindar Singh MP (Alternate Member for Hon. Iliesa Delana)
- Hon. Alvick Maharaj MP (Alternate Member for Hon. Hon. Iliesa Delana)
- Hon. Alex O'Connor MP (Alternate Member for Hon. Lorna Eden)
- Hon. Mikaele Leawere MP (Alternate Member for Hon. Niko Nawaikula)
- Hon. Anare Vadei MP (Alternate Member for Hon. Semesa Karavaki)
- Hon. Salote Radrodro MP (Alternate Member for Hon. Semesa Karavaki)

1.6 FRCA Officials

The Committee was also fortunate to have FRCA officials to clarify issues arising from the Income Tax Bill, during public hearings. These clarifications not only assisted members of the public but the whole Committee as it enabled them to have a better understanding of the Bill.

The Committee wishes to thank Mr Jitoko Tikolevu, Chief Executive Officer FRCA for releasing his senior staff to work with the Committee as and when required.

The Committee therefore acknowledges the presence and expertise of the following FRCA officials during the Committee's meetings:

- Ms Koni Ravono (National Manager Audit Compliance)
- Mr Epeli Naua (Chief Assessor/PR Manager)
- Ms Selai Bulamainaivalu (Manager Legislation)
- Mr Vilimone Nailotei (Manager Audit)

The Committee also wishes to thank the Solicitor General and his staff for the legal advice provided during compilation of the Committee's report on the Income Tax Bill 2015, namely Ms Lyanne Vaurasi and Ms Glenys Andrews.

2.0 INCOME TAX BILL 2015

2.1 Introduction

The Income Tax Act originated in 1974 and has been amended many times as a result of the budget, different drafting styles and language. The existing legislation is subject to a lot of interpretation difficulties

2.2 Written and oral submissions received

The Committee received a briefing on the provisions of the Income Tax Bill, 2015 from the Chief Executive Officer and senior managers of Fiji Revenue Customs Authority. The briefing enabled the Members to better understand the Bill and it also gave them confidence to respond to questions put forward by members of the public during submissions.

The Committee then received submissions from the following individuals and organisations:

i. Fiji National Provident Fund (FNPF)
   - Mr Pravinesh Singh (Chief Financial Officer)
   - Mr Pravin Dayal (Acting Manager Legal)
   - Ms Siteri Saro (Principal Legal Officer Investments)
   - Ms Laisani Macedru (Acitng Principal Legal Officer)

ii. Fiji Institute of Accountants
   - Mr Jerome Kado (Partner PWC)
   - Mr John Faktaufon (EY)
   - Mr Nouzab Fareed (CEO FHM)
   - Ms Lisa Apted (KPMG Partner)
   - Mr Madhu Sudhan (BDO Tax Director)

iii. Fiji Commerce & Employers Federation
   - Ms Lisa Apted (KPMG Partner)
   - Mr Greg Morris

iv. Telecom Fiji Limited
   - Vinit Chand, Chief Financial Officer (Written submission)

v. Mr Abhay Singh, Retired Civil Servant

vi. Mr Malakai Finau, Director Mines

vii. Shipping Services (Fiji) Ltd

- Mr Bernard Hong Tiy, Managing Director
- Mr Madhu Sudhan, Tax Advisor

viii. Mr Ravendran Achari, Chief Financial Officer Pacific & Fiji, ANZ Bank (Written submission)

ix. National Council of Women
- Ms Lorraine Foster

Copies of written submissions received by the Committee are attached as Appendix B.

2.3 Public Submissions

The Committee was of the view that wider consultations was required on the Income Tax Bill 2015 and agreed that advertisements be placed in the local newspapers seeking submissions from interested individuals and organisations in the Western and Northern Division. The Committee however noted that only two submitters from Rakiraki and Ba were able to understand and express their views on several aspects of the Bill whilst the remaining members of the public sought clarifications on parts of the Bill which they were not sure of. Those who appeared before the Committee included:-

Western Division

x. Mr Samarasan Pillay, Retired Civil Servant, Rakiraki
xi. Mr Mohammed Harun, Ba industries Limited, Ba
xii. Mr Jeremaia Namuaira, Retired Civil Servant, Viseisei Village, LautOKa
xiii. Ms Ana ROKovau, Department of Co-operatives, LautOKa
xiv. Mr Noame Vuto, Friendly Cleaning Services Co-operative Limited, LautOKa
xv. Mr Kamlesh Chand Sharma, Retired Principal Education Officer (Ba/Tavua) Accountant, Business and Educational Consultant

Northern Division

xvi. Mr Waisale Tuidama, Manager Northern Development Programme, Labasa
xvii. Mr Rupan, Director Local Timber Distributors Limited, Labasa
xviii. Mr Satish Kumar, President Labasa Chamber of Commerce, Labasa
xix. Mr Sharwan Kumar, VunikOKa, Savusavu
xx. Mr Osea Tuilagi, Naturubu Holdings Limited, Savusavu
xxi. Mr Isaia Nainoa, Nakasa Village, Savusavu
xxii. Mr Filimoni Naidumu, ROKo Tui Cakaudrove, Savusavu
xxiii. Mr Dayal Patel, Advisory Councillor, Savusavu
xxiv. Ms Helen Chang, Director Horse Shoe, Savusavu
xxv. Mr Justin Hunter, Savusavu Chamber of Commerce, Savusavu

2.4 Summary of submissions

Written and oral submissions received are summarised in the table below:

CLAUSE	TITLE	SUBMISSIONS RECEIVED
Submission by Fiji National Provident Fund		
1	*Interpretation*	Definition of non-approved fund needs to be further defined to outline its distinct characteristics Who or what can be a non-approved fund; how is it legally established and what are its objectives?
		Definition of "arms-length transactions" needs to be reviewed. Proposed definition – *An arms-length agreement is one which is freely entered into by parties who do not have a special relationship or control over one another. An arms-length agreement is indicated by the fairness of price, conditions and other terms of the agreement."* There needs to be more detail in the purpose of such transactions.
		Proposed definition of employee: *… "means an individual engaged in employment who are on contract of service or on contract for service".* For the FNPF interest, the definition of "employees" needs to be reviewed so as to coincide with standard definitions in related legislations (FNPF Decree and ERP).
		The definition of 'member' in the Bill is restricted to companies only. It must be noted that the Bill interchangeably refers to three types of Fund: Approved Fund, Non-Approved Fund and FNPF Propose to have three separate definitions for the 3 categories - Approved Fund, Non-Approved Fund and FNPF
		The word "permanent" in the definition should be changed to 'principal'

CLAUSE	TITLE	SUBMISSIONS RECEIVED
		Permanent establishment means a fixed place of business and this cannot be the case as businesses/ companies change their place of business or operations time and again and therefore is not fixed.
3	*Approved fund*	Definition and purpose of having an approved fund is not well defined and articulated in the Bill. Further explanation needed on the operations of an approved fund – is it a voluntary fund or a mandated fund to be governed by statute, etc
Division 1	*Imposition of Tax*	Proposed Bill is not clear on whether disbursement costs are also included for charging withholding tax. Withholding tax is applicable to payment of fees made offshore Bill to specify whether disbursement cost will also attract withholding tax. In the case of double tax arrangements under clause 140 which provision will prevail in cases of non-residence?
15(g)	*Employment income*	This needs to be included in the employment income of individuals. Pension/annuity is employment income. Provision appears to be conflicting and creates confusion.
18	*Property income*	A benefit paid by a retirement fund is "property income", however under Schedule 1 Part 6, pension/annuity is exempt income. The provisions appear to be conflicting and creates confusion.
23(2)	*Contribution to an approved fund or Fiji National Provident Fund*	Are excess contributions by employers limited to 50% deductibility? Clarification required on percentage of deduction allowed on excess contra as law is silent on it Excess contributions are not limited to 50% deductions. No records in regards to excess contribution. Clause is silent on excess contra but it talks about statutory contra.

CLAUSE	TITLE	SUBMISSIONS RECEIVED
Part 2 Division 5	*Depreciation and Amortisation*	Selection of the method of depreciation for a particular asset should not apply to all depreciable assets given the differences in classes of assets. It is recommended that there be some distinction in the methods in accordance with classification of assets. Depreciation method used in one case should not be applied across all classes of assets. The taxpayer should be at liberty to select which depreciation method should apply, whether it be diminishing value or straight line.
Part 2 Division 9 Sub-division 4	*Companies*	There is a restriction on new investment after a change of more than 50% shareholding, if the intention of the change was to reduce tax. Will this apply to CAPEX investments intended to boost business?
Part 2 Division 10	*International*	FNPF is currently exempt from paying any resident interest withholding tax on its interest earning under the current Income Tax Act (Cap 201) section 17(6). In the event FNPF purchases property offshore and leases to a tenant, the rental income will be subject to foreign income tax. Since the Fund does not submit the annual return summary for its local earning under section 17(26), the Fund will not be entitled to any "foreign tax credit" If any "foreign tax credit" due to the Fund could be transferred to the 'wholly owned' subsidiaries of FNPF.
Part 3 Clause 67	*Exempt capital gains*	There should be a provision under 'Natural Love and Affection' as many people transfer assets to their children. To be included in section 67 (Exempt Capital Gain) that transactions under Natural Love and Affection should be exempted only to immediate family members. "Immediate family member" should be defined with restriction to parents/children relationship.
Part 9, Sub-division 4	*Withholding Tax*	Companies already covered under tax concessions such as SLIPS should be exempted from paying WHT

CLAUSE	TITLE	SUBMISSIONS RECEIVED
		on interest earned on income. Such companies should be exempted from paying WHT on interest earned on income.
Part 9 Division 3	*Procedural rules for Capital Gains Tax*	There should be a timeline on retention of records. Suggested timeline is 7 years as the current wording requires taxpayers to retain records without any time limitation.
Schedule 1, Part 3 (d)	*Individuals*	Why 31st December 1986? Clarification sought on the date 31 December 1986? Why are refunds not exempt? Retirement funds are not subject to tax therefore it is exempt income. Refunds should not be exempt income.
Schedule 1, Part 6	*Provident and Pension Funds, and Pensions*	Pre-retirement withdrawal to be included in the Bill. No mention in the Bill of pre-retirement withdrawals as they are to be treated similar to lump sum payments thus in the category of exempt income.
Submission by Fiji Institute of Accountants (FIA)		
2	*Interpretation*	Definition of "dividend" - The definition of dividend in the current Bill is contrary to current policy. Government should consider increasing the corporate income tax instead and do away with dividend tax.
9	*Presumptive Income Tax (PIT)*	*PIT provisions may be a deterrent to SME's. It is suggested that the introduction of PIT be properly reviewed and appropriate changes be made.*
30	*Losses carried forward*	The carry forward of tax losses period should be increased to assist business and encourage investment in Fiji. It is suggested that legislation be amended to allow individuals to claim losses against salary income where they take the risk to invest and grow our economy.
62	*Thin capitalisation*	*The Bill should be amended to reflect the current debt to equity ratio of 3:1 as per the Reserve Bank of Fiji Regulations under the Exchange Control Act. It is also suggested that the transfer pricing rules in relation to the deeming of interest on related party loans be appropriately amended to reflect the same principle and ensure that there is consistency and*

CLAUSE	TITLE	SUBMISSIONS RECEIVED
		symmetry in the overall legislation.
110	*Advance payments of tax*	The advance company tax provisions should be changed to mirror the current provisional tax payment requirements for individuals.
112	*Withholding of tax from interest and dividends*	Policy should be reviewed and either progressive rates be introduced for the imposition of tax on interest or allow the taxpayer to lodge a tax return and claim appropriate tax credits/ refunds to ensure that the prevailing progressive rates of tax apply. A taxpayer without a certificate or exemption under s.112 should be allowed a credit or refund for the interest withholding tax deducted and remitted. This would encourage investment through the banking system and ensure tax is only imposed on profit rather than on gross income.
	Compliance and Taxation Costs	Overall policy framework should be reviewed to make the tax system more effective and efficient while maintaining an acceptable level of revenue for government.
	Social Responsibility Tax (SRT)	With a view to simplifying the tax system, it is suggested that consideration be given to removing SRT and appropriately increase the tax rate.
	Donations to approved organisations	The non-deductibility of donations to approved charitable organisations for tax payers earning purely employment income could have substantial social ramifications. The disallowance of donations as tax deductions may discourage employees from making donations.
	Capital assets	The distinction between capital and revenue gain should be maintained.
Submission by Mining and Quarrying Council – Fiji Commerce & Employers Federation (FCEF)		
91	*Taxation of contractors and sub-contractors*	The rate of withholding is excessive by international standards and recommends that the rate applicable to non-resident sub-contractors should be 5%, the same rate applicable to non-resident withholding tax in Australia. The rate of non-resident withholding tax (NRWHT) applicable to a non-resident subcontractor is 15%.
92	*Exploration and prospecting*	The following definition is proposed: *Expenditure on prospecting or exploration includes*

CLAUSE	TITLE	SUBMISSIONS RECEIVED
		expenditure whenever incurred on: *(a) Geological mapping, geophysical surveys, systematic search for areas containing minerals, and search by drilling or other means for such minerals within Fiji; and* *(b) Search for minerals within, or in the vicinity of a body of minerals including search by drives, shafts, cross-cuts, winzes, rises and drilling; and* *(c) Geological, geophysical and geochemical surveys; and* *(d) Exploration drilling and appraisal drilling; and* *(e) Studies and assessment activities (including pre-feasibility and feasibility studies to evaluate the economic feasibility of mining minerals once they have been discovered, including evaluation of the technical and economic feasibility of extracting, processing, storing and delivering minerals utilising processes and facilities considered by the taxpayer to be required for such activities; and* *(f) Obtaining information associated with the search for and evaluation of areas reasonably considered to contain minerals;* *But does not include expenditure on operations required to extract minerals from a mining property on a commercial scale.* There should be a definition of exploration to make it clear that it will cover all relevant expenditures, whether in the vicinity of an existing mining operation (brownfield) or in a location where no mining operations are being conducted (greenfield).
92(3)	*New subsection*	*For the purpose of Division V of Part II, a prospecting right or exploration licence is taken to be a depreciable asset and the depreciation rate applicable to costs incurred in the acquisition of such right or licence is equal to 100%*

CLAUSE	TITLE	SUBMISSIONS RECEIVED
94	*Rehabilitation expenditure*	Clause 94 should be amended to allow a contractor to carry back the deduction for mine rehabilitation costs for a period of three years from the year in which it is incurred. Mine rehabilitation costs will often be incurred at or around the time of the end of mine life. If so, the deduction for mine rehabilitation costs can effectively be wasted due to the ending of production at the mine site.
95	*Ring-fencing of mining or petroleum operations*	Clause 95(1) to be amended to read: *A deduction for expenditures or losses incurred wholly or partly by a contractor in* ***relation to or in connection with mineral or petroleum operations (whether or not incurred in the title area)*** *during the a tax year are allowed only against the gross income derived by the contractor from such operations in the title area during the period.* There should be no ring-fence of deductions and losses to activities in a title area. A ring-fence based on the georgraphical title area will result in the denial of tax recognition for expenditure clearly related to the mining project. If there is to be a ring-fence it should be based on a relationship with the mining operations, not a geographical area
97	*Indirect disposals of mining or petroleum rights.*	Clause 97(2) must be deleted. The clause is not practical or workable as changes in underlying ownership in listed companies are not generally known to the contractor on a day to day basis.
Part 6	*Mining*	Part 6 of the Bill should be amended to include restructure relief for contractors engaged in mining or petroleum operations. A mining project will generally move through different stages in its life span, and there will often be a need for project sponsors to restructure ownership interests and assets in relation to the project.
		Part 6 of the Bill should contain a provision providing a five-year tax write-off for capital expenditure that is

CLAUSE	TITLE	SUBMISSIONS RECEIVED
		not otherwise recognised for tax purposes. Expenditure that is not otherwise recognised for tax purposes is often called 'black hole' expenditure. This expenditure is incurred in the course of a business but is not deductible for tax purposes and not captured in the cost of any asset or other item for tax purposes.
		Part 6 of the Bill should be amended by inserting a new provision which is modified by incentives for mining operations made by way of Regulations or other ministerial orders. FCEF-MQC notes the economic benefits that can arise for the Fiji economy from the development of valuable mining projects.
30	*Loss carried forward*	The current carry forward tax losses provisions of 4 years are too restrictive and should be reverted to the 8 years as was the case prior to 2012. Mining projects by nature generally have very high capital costs and long life spans and payback periods (upwards of 20 years in many instances).
Submission by Telecom Fiji Limited (TFL)		
98	*Imposition of Telecommunications Levy*	•Telecommunication levy may be anti-competitive, especially for those operating VOIP calls. •TFL should have access to the telecommunication levy and use it to promote/invest in non-viable areas. •Easier to charge telecommunications levy quarterly rather than monthly to reduce administrative logistics •Telecommunication levy may need to be reviewed noting that the focus is more on data revenue.
Submission by Mr Abhay Singh, Retired Civil Servant		
		Savings deposited into the bank by retired persons should not be taxed. There is a huge discrepancy that occurs when a person earns $17,000 and when someone gets an interest of $17,000. A person who earns $17,000 pays only $70 as tax and someone who gets a $17,000 interest pays $1,700 as tax; the same tax structure should apply to both cases.

CLAUSE	TITLE	SUBMISSIONS RECEIVED
		FRCA should create more awareness on the need to get an Exemption Certificate so that pensioners do not have to pay withholding tax, even if they are earning maybe $1,000 interest. The Income Tax Bill allows any senior citizen, 55 years old or above or a pensioner who earns a pension income paid by Government, FNPF or any approved Fund and also earns an interest income as specified in paragraph (9)(a) to be entitled to the exemption. FRCA noted the points raised and mentioned that they would have to align their practice statements and notifications to address issues in more simple terms so that pensioners would know what their obligations are and how much they have to pay.
Submission by Mr Malakai Finau, Director Mines		
90(1)	*Part 6 interpretation*	The term 'contractor' is not commonly used in the Fiji Mining sector as such. The recipient of a mining tenement, whether it be a prospecting license or a mining lease is referred to as the "holder" by MRD and the Mining Act.
		The term 'mining right' neither appears in the Mining Act nor the Petroleum (Exploration and Exploitation) Act. MRD issues a Mining Lease for Mining and a Production License for Petroleum production/extraction.
94	*Rehabilitation expenditure*	94 Rehabilitation expenditure The term 'exploration' to be inserted in clauses 94(1) and 94(2) as follows: 94(1).- A contribution made by a contractor to a rehabilitation fund in accordance with an approved rehabilitation plan in relation to exploration, mining or pretroleum operations ..... 94(2).- An expenditure incurred by a contractor in carrying out work required by an approved rehabilitation plan in respect of the contractor's

CLAUSE	TITLE	SUBMISSIONS RECEIVED
		exploration, mining or petroleum operation is.... The words "exploration site" to be included in the definition of 'approved rehabilitation plan'. Clause 94(6) would now read: "approved rehabilitation plan" means a plan for rehabilitation of an exploration site, mine site or decommissioning of a petroleum site approved by the CEO upon the advice of the Director; and... Mineral exploration and mining are two separate activities in mineral development. The whole section refers only to mining and petroleum operations and omits mineral exploration; the rehabilitation plans are also applicable for exploration as well. The term 'environment bond' is recommended to replace 'rehabilitation fund'
95	*Ring-fencing of mining or petroleum operations*	The term 'exploration' to be inserted in sub-clause (5) and to read: *In this section, "title area", in relation to* ***exploration,*** *mining or petroleum operations undertaken by a contractor, means the area covered by the* ***exploration,*** *mining or petroleum right under which the mining or petroleum operations have been undertaken and includes - ....* Ring-fencing of mining or petroleum operations for a title area is supported to ensure that losses and other issues from other areas are not transferrable between sites.
96	*Farm-out agreements*	Recommends that the prior assessment and consent of the lessor (Director Mines) be reflected in this clause. Farm-out agreements constitute dealing in a mining tenement and as with other dealing would require the prior assessment and consent of the lessor (Director of Mines) for it to be valid.
Submission by Shipping Services (Fiji) Ltd		
109	*Collection of non-resident International*	Suggest that the Committee considers appropriate amendments to ensure that clarity is reflected in the

CLAUSE	TITLE	SUBMISSIONS RECEIVED
	Shipping Income Tax from non-resident ship owners or charterers	Clause and that the returns continue to be filed on an annual basis. Under the provisions of Clause 109(4) of the Bill, a new requirement is added when compared to the current provisions in that the Comptroller of Customs will not grant a port clearance until the Comptroller is satisfied that arrangements have been made for payment of the non-resident international Shipping Income Tax; or that the non-resident international shipping income tax is not payable. Clause 109(5) should either be removed or alternatively, appropriate amendments should be made to specify the procedures and requirements that will be required to satisfy the Comptroller of Customs to issue the port clearance without any delay. This may create unnecessary delays and additional compliance costs on part of the non-resident shipping owners.
Schedule 1, Part 8	*Shipping Profits*	Strongly suggest that consideration be given to amend the provisions of Part 8 of Schedule 1 of the Bill by listing the countries that will accord equivalent tax exemption to Fiji residents in respect of income arising from business of shipping. The provision should contain a provision which allows the list to be amended to include or exclude countries. This will be considered transparent and provide the necessary clarity that does not exist and has been subject to regular dispute with the Tax Office.
Schedule 2	*Rates of Tax and Levies*	The non-resident international shipping income tax should be re-considered and removed. Any imposition of non-resident International Shipping Income Tax or freight taxes on outbound goods increases the general costs of freight and makes Fiji an unattractive country for investment.
Submission by Mr Ravendran Achari, Chief Financial Officer Pacific & Fiji, ANZ Bank		
10(6)(c)	*Imposition of Non-resident Withholding*	ANZ recommends removing the proposed additional tax impost on Branch structures with the main view of

CLAUSE	TITLE	SUBMISSIONS RECEIVED
	Tax on non-resident payments	continuing to grow foreign investor confidence in Fiji. The proposed clause will increase the cost of capital of non-residents investing in Fiji through a branch and is not common from an international tax perspective. It has the potential to discourage foreign direct investment into Fiji and discourages multinational corporations from considering Fiji as a base for their operations.
143(11)	*Transitional and savings*	If it is considered that the additional tax impost should be introduced, ANZ recommends deferral of the application date to enable consultation, consideration and clarification of the application of clause 143 of the Bill. The proposed transitional clause does not confirm that where concessions apply, no further tax will be imposed.
Submission by Ms Lorraine Foster, National Council for Women		
		• Welcomes the revising and simplification of the Income Tax Bill 2015 but weary of the adverse implications that the changes will have on women. • Tax reforms must benefit all and the tax burden must be distributed neutrally. • NCW feels that the Income Tax threshold should be increased to $18,000 effective from 2016 to enable low income earners to have more purchasing power in terms of a better standard of living. • Decrease in personal income tax rate from 31 per cent to 20 per cent is commended because it has greatly assisted working women and families to have more money in their pockets. • The Social Responsibility Tax is welcomed as NCW hopes that at least 50% of this income will be evenly distributed to underprivileged women in Fiji. • NCW suggests that a separate tax schedule be created for individual entrepreneurs and more consultation with stakeholders is needed to avoid confusion. • Schedule 1, Part 4(9)(a)(ii) is a bit confusing. Withholding tax on interest should be exempted for citizens over the age of 55. More analysis should be

CLAUSE	TITLE	SUBMISSIONS RECEIVED
		done and data gathered from the various banks on tax on bank interests and the individuals being taxed. • NCW suggests that maternity leave employment income be exempt from tax for first time mothers. Tax reforms on Company Tax must be considered carefully as high company tax reduces investments and means lesser jobs and lower salaries.
Submission by Mr Samarasan Pillay, Retired School Teacher, Rakiraki		
		• Ra is poverty stricken with a very few economic activities. Sugar used to be the main export, but production has decreased from about 350,000 tonnes to about 115,000 tonnes per year, although there are a few budding industries like tourism and a few others. No actual income is being generated in the Ra District. • The taxation regime, to some extent, can help develop the district as a whole. Government is doing its bit with the introduction of the tax free zone, unfortunately, there are no takers and there are many other reasons to it. Lack of Capital - locals be given incentives to encourage them rather than having a ceiling for minimum investment, as this will discourage them. Tax can be one of the incentives but there should not be any minimum investment. Small and Medium enterprises will grow like other business. Manufacturing is a risky business, so there is no need to tax them. Manufacturing involves employment and other benefits that comes with it. Minimum investment should apply only to overseas investors.
Submission by Mr Mohammed Haroon Hassan, Financial Controller, Ba Industries Limited		
Part 4	*Fringe Benefits Tax*	The submitter sought clarification on the Fringe Benefit Tax. FRCA officials mentioned that it only applies where there is an employer/employee relationship and where the employer provides non-cash benefits to employees. Where the cash is given, it will be subject to PAYE but where non-cash is given or in kind, then

CLAUSE	TITLE	SUBMISSIONS RECEIVED
		it will be subject to Fringe Benefit tax. Previously, where benefits were given to employees, the employees were made to pay tax on that and would be included as part of their salaries. Whatever salaries they were earning, it will be topped up by these benefits. With effect from 2012, the employers have been made to pay for this Fringe Benefit tax and it is at 20 per cent.
		Ba Industries Limited had a provision in their company for staff loans as most of them would not qualify for a loan at the bank in view of their rate of pay. It was felt that with the implementation of the new Bill, the company could no longer assist the staff. In terms of the use of motor vehicles, staff were allowed to take the vehicles home if they worked late but this would not be possible under the new Bill. For employees earning below $16,000, the company would be penalised for providing them transport, as they were not paying tax. FRCA explained that Fringe Benefit Tax does not take into account the threshold. It depends on how much is earned but if a non-cash benefit is given to an employee, it can be subject to Fringe Benefit Tax. What they have seen is that for most employers instead of giving non-cash benefit, they give cash benefit so that the employees pay for the PAYE. The submitter felt that the issue should be reviewed and a threshold brought in, for example for employees earning $16,000 and below, if the company is providing the transport or giving them soft loan, they should be exempted from paying Fringe Benefit Tax so that there is a win-win situation in that case. For executives, it was OK to tax them on fringe benefit or through PAYE.
		Concern was also raised on the issue of stamping of documents. The Committee was informed that for Ba residents, the FRCA office in Ba could only stamp documents up to $20,000, but if it was above that then the document would have to be scanned and sent to the Lautoka Office. Request was made for the same service to be provided at the Ba office as well.

CLAUSE	TITLE	SUBMISSIONS RECEIVED
		FRCA explained that it was a new policy that if anyone wanted to send money abroad for purchasing, if it was less than $20,000, there was a need to get the invoice stamped at FRCA. For anything more than $20,000, there was a need for tax clearance.
Mr Kamlesh Chand Sharma, Retired Principal Education Officer (Ba/Tavua) Accountant, Business and Educational Consultant		
PART 1 – PRELIMINIARY		
2	*Interpretation*	OK. Credit card levy – local or international needs to be re-defined
3	*Approved fund*	OK. Focus on off-shore super annuity funds
6	*Resident individual*	OK. Refer to Immigration Act & Naturalization Act
7	*Sources in Fiji*	OK. Consider income from illegal means under Crime Decree 2010
PART 2 – INCOME TAX (Division 1 – Imposition of Tax)		
9	*Imposition of Presumptive Income Taxes*	OK. Term 'Provisional Tax' is simple & widely known in Fiji
11	*Imposition of Non-resident International Shipping Income Taxes*	OK. Save for offshore ships registered in Fiji
Division 3 – Gross Income		
19	*Purchased annuities*	OK. Provide equations in boxes with some examples to users
Division 4 – Allowable Deductions		
21	*Allowable deductions*	OK. Define scope of expenses per industry or economic sector
22	*Deductions not allowed*	OK. Define scope of disallowed items
23	*Contributions to an approved fund or FNPF*	OK. Allow for any other Annuity Provider for future reference
24	*Charitable donations*	Sec 24(12) needs an urgent change to registered sporting bodies in Fiji encompassing all sports in Fiji. Section 24 (12) is highly discriminatory in nature
25	*Industry incentives*	Allow for Sugar & other commercial agriculture that sustain population in islands and rural areas S 25(8) allows for 5 years only, what about years beyond? Reflects very narrow opinion and focuses mainly on tourism?

CLAUSE	TITLE	SUBMISSIONS RECEIVED
28	*Natural disaster reserve*	OK. Include floods, dry spell & so on
29	*Scientific research expenditure*	OK. Redefine scope of sci-fi works in various economic sectors
Division 5 – Depreciation and Amortization		
31	*Depreciation of depreciable assets*	OK but the 1998 Budget allowed for St Lines basis only apart from Accelerated Method. Allow for cases where taxpayers may opt not to write – off depreciation on their income generating assets as the practice to them is a 'subjective opinion'. Allow the capital cost 'Leasehold Land or Property' to be fully written-off upon the expiry of such leases through Amortisation
32	*Straight – line depreciation*	OK Very applicable in all industries across the economy. Applicable using %age rate or time periods citing scrap value of an income generating asset
33	*Diminishing value depreciation*	Does not project a true picture of an asset over a period of time, fails to recognize inflationary trends to replace assets or amortize. Discontinue this method at once – please refer to Hon Jim Ah Koy's 1998 Budget address. Include Accelerated Method to enhance investment capital expenditure on fixed assets. DBM is not in favour of IRS
35	*Amortization of business intangibles*	OK. Include values of leases of land, property, trademarks, patents and copyrights
Division 6 – Income Tax Accounting		
37	*Method of Income Tax Accounting*	OK but also allow for accounting for incomes and expenses on VIP payment basis. VAT on payment basis
Subdivision 3 – Trusts		
57	*Taxation of trustees*	OK. Define scope of trust tax liabilities as per Trustees Act
Subdivision 4 – Companies		
58	*Principles of taxation of companies*	OK. Does this include private, public, statutory, semi-public, and sole – proprietor companies? Needs to re-define scope.
59	*Change in control of companies*	OK. Align with the provisions of Fiji Companies Act 2015
Division 10 – International		
60	*Foreign tax credit*	OK. Currency translations
62	*Thin capitalization*	OK. Need to protect local shareholders and IRS

CLAUSE	TITLE	SUBMISSIONS RECEIVED
63	*Transfer pricing*	OK. Pricing for what?
PART 3 – CAPITAL GAINS TAX		
65	*Imposition of capital gains tax (CGT)*	OK Include incidence of 'Stamp Duty' paid for secondhand assets such as vehicles and properties Re-define scope reflecting current legislation on Stamp Duty on vehicles
67	*Exempt capital gains*	OK. Exempt for first time sellers of fixed assets
71	*Exempt fringe benefits*	OK. Define its scope with some examples current and anticipated
Division 2 – Fringe Benefits		
77	*Meal or refreshment fringe benefit*	OK. This is quite 'unholy' of a highly 'spiritual nation'!!!!!!!!!!
78	*Motor vehicle fringe benefit*	OK. Quite an expensive deal for taxpayer, any relief for employer?
PART 6 – MINING		
92	*Exploration and prospecting*	OK. Tax relief for local prospectors in Fiji?
99	*Imposition of Credit Card Levy*	OK. Is this limited to offshore credit card providers?
PART 9 – PROCEDURAL RULES		
Division 1 – Application of Tax Administration decree 2009		
103	*Application of Tax Administration Decree 2009*	OK. Is it the application of this decree in its entirety?
Division 2 Procedural Rules for Income Tax, Social Responsibility tax and Presumptive Income tax		
Subdivision 1 – Tax returns and Records		
106	*Accounts and records*	OK Specify the number of years accounting records must be kept intact by the taxpayers Static period of accounting records is unknown at this point – how many years?
SCHEDULE 1 – EXEMPT INCOME		
2	*EXEMPT ENTITIES*	OK. Expand list or industries – macro based to include schools, colleges, universities, sporting, religious and social entities not engaged in direct trading or rental activities Irrespective of their legal status, require all exempt entities to file Form B & C Income Tax Returns

CLAUSE	TITLE	SUBMISSIONS RECEIVED
5	*EXEMPT DIVIDENDS*	OK. Absence of 'level playing field' for other non – state actors on stage. Create 'level playing fields' between salary & wage earner investors who have invested in their Credit Unions that have profit – making entities 100% fully owned by the members
6	*PROVIDENT AND PENSION FUND AND PENSIONS*	OK. Provide for offshore annuity providers as well as local upcoming entities in future
10	*LISTING IN SSE*	OK. Seriously limits growth of privately owned family companies
SCHEDULE 2 RATES OF TAX AND LEVIES		
	Schedule of Rates and Amount Taxation	Rates of taxation and bench-marks tend to change over the years by successive government policies on economic development and growth Better serves a guideline to successive governments in future
SCHEDULE 3 – DEPRECIATION RATES		
Schedule of Assets and Rates of Depreciation		Refer to the 1998 Budget Speech on Methods of Depreciation allowable and discontinued. Can the taxpayer adopt anything lower than the rate of depreciation on specific income generating assets listed in the schedule?

Copies of written submissions received by the Committee are attached as Appendix B.

FRCA officials also responded to issues raised by FIA with regards to their proposals for amendments to the 14th Draft of the Income Tax Bill. A copy of the issues and its response is attached as Appendix C.

3.0 COMMITTEE'S OBSERVATIONS AND DELIBERATIONS

The Committee sought further clarifications from FRCA officials, based on questions raised during public submissions in the Western and Northern Divisions. The Committee was also privileged to hold consultations with Professor Lee Burns who had assisted FRCA with the drafting of the Income Tax Bill 2015. The learned Professor's responses to pertinent issues raised are set out below.

3.1 Foreign investors

The Committee was informed that the profits of a company that re-invests in Fiji is effectively subject to 20 per cent tax, whilst profits repatriated outside of Fiji were subject to a further layer of tax at 10 per cent. The policy behind this was to try and encourage foreign investors to re-invest their profits in Fiji therefore, if Fiji did not have this repatriation tax of 10 per cent, it would simply be collected by whichever country was the home base of the foreign investor.

It was felt that there needed to be a clear distinction between re-investment in Fiji where there is no further tax on the profits of the operation in Fiji, and repatriating the profits, which subjects it to a repatriation tax of 10% to reflect the fact that they are now leaving Fiji. It also ensures that there is consistent treatment regardless of how foreign investors set up their Fijian operations. This may be done by setting up a subsidiary company to continue the business in Fiji; it will pay the 20 per cent tax and when it pays the dividends back to the parent company offshore, the 10 per cent tax will then apply. On the other hand, if they only set up a branch which is an internal part of a bigger corporate operation which has its headquarters offshore, the tax treatment will be the same; they will pay 20 per cent tax on their profits and if they remit their profits back to their headquarters, they will pay the equivalent of a dividend withholding tax. Regardless of the form of investment, there is equal treatment of that investment in Fiji.

3.2 Fringe Benefit Tax

The Income Tax Bill allows for one single set of consistent tax rules that apply across Fringe Benefits, Capital Gains and the normal Income Tax. The Fringe

Benefits Tax is already in place and is being applied; the new Income Tax Bill simply continues that situation.

A Fringe Benefit is a benefit in kind not in cash and it is very hard to collect through the wage withholding system because there is no cash payment. If Fringe Benefits are going to be taxed through the employee, it may not get picked up through the wage withholding system but the employees are required to file returns and pay the tax at the end of the year. Paying tax on benefits requires cash so some employees may be cash poor but rich in terms of benefit in kind. Employees could be provided with housing and other benefits but they may not get high cash salaries, so taxing them through that system can create problems. One way of overcoming the problem is to shift the tax to the employer through the Fringe Benefits Tax. In that way, the wage withholding from the cash can be a final tax for employees which means that many employees would not have to file returns.

This makes it simpler for most employees and also makes it simpler for tax administration purposes. There will be fewer employers to police to ensure that the tax is properly collected than would be the case if employees were asked to basically report their benefits in kind in their final returns. This has allowed Fiji to move to wage withholding as a final tax and it is also seen as an equity measure. There will be employees at the higher end who are able to get a lot of their remuneration in kind and if they are not properly taxed, then they are being treated better than lower income employees who only get cash and have to use their cash to pay for housing, vehicle, et cetera. It is both for simplification and an equity measure but it is also a consolidation since the law is already providing for the Fringe Benefits Tax.

3.3 Capital Gains Tax

The way that Capital Gains Tax is charged under the Bill is the way that it is currently charged under the legislation that is in place. In most cases, the capital asset itself (immovable property like buildings) will be used to earn income or commercial buildings that will earn income. If they are earning income, the mortgage interest would be deductable under the normal Income Tax Law and there would not be another deduction for it under the Capital Gains Tax. The cost is meant to be limited to those items and expenditure that have not been deducted

under the Income Tax so you do not get a double deduction effectively. For commercial premises where there is a mortgage on the premises, an interest is being paid and that interest would normally be a deductable expense.

The Committee was informed that the amount of $20,000 was not intended as a threshold but it was really intended to take small assets out of the system. The amount would obviously be reviewed over time because of the impact of time on the value of money but it is the number that was put in the law in 2011 to indicate what, at that time, was seen as a small value asset.

There are some rules to defer the recognition of tax where a property, such as a house, has been transferred within family groups using love and affection as a basis for transfer. The recognition of any capital gain is deferred until when the transfer goes outside the group. There are rules to allow transfers within family groups in terms of love and affection; for those transfers to take place without having a tax cost involved in them. This means that the new owner within the family will take over the cost of the asset and then when it is sold outside the family group, that is when the Capital Gains Tax will apply. The transfer is not recognised for Capital Gains Tax purposes but only when it goes outside the group. If the property remains within the family or a corporate group and there is no real change in economic ownership, tax would only be imposed when ownership goes outside of the group.

3.4 Taxation of Mines

Getting the right tax provisions for mining is very important for a country. Two features of mining that need to be clearly understood in terms of why special rules for mining are needed is that, the resources are non-renewable and once the resources are extracted and taken away, there is no second chance. Tax laws need to be right from the start because the resource will not reproduce itself unlike forestry where new trees will grow or fishing, where there will be new fish stocks. Once the resource which belongs to the country is gone, the opportunity to tax it is also gone. The government is therefore obliged to ensure that the country gets a fair share of return from those resources.

The other very important feature of mining, and oil and gas operations is that they give rise to what economists call "Economic Rent". In very simple economic terms,

a business will have a rate of return on its investment that it expects to get to keep it in business, be it nine, ten, twelve per cent or whatever. In the mining sector, because of the monopoly rights that go with mining, mining companies can often make very large profits above the normal return hence the use of the term "Economic Rent" or 'Super Profits'.

If a mining project is very profitable, it is important that the country shares in that profit. It is highly unusual to give mining companies tax holidays. Mining is one sector which takes away a country's resources and because of the profits that can be earned, it is not an area where you need to give tax holidays. What encourages them to come here is the resource.

The current law does not have very much on mining at all. The law has a generous treatment of exploration where it basically allows the companies to expense that cost. Even though it might be capital and they would normally be required to depreciate or amortise it, we are actually saying, "as an incentive for you to come here, we will allow you to expense that cost". Once they have made a commercial discovery, it is not tax incentive anymore because they know they have something valuable. Even in terms of the sort of development on the extraction side, we have taken the policy decision to put in some acceleration in there. In Fiji, because it is a new industry, we are still allowing some acceleration and allowing them to depreciate those expenditures over a much shorter time, to give them that incentive.

Incentives have also been included to encourage rehabilitation of mine sites so that when a project is over, environmental disasters like holes in the ground or rusting equipment, et cetera, are not left behind. The incentive enables the mining company to basically get early deductions or put money aside for rehabilitation so that has a tax advantage. It gives them concessional treatment and also has an environmental advantage for the country because the tax system is being used to encourage mining companies to provide for rehabilitation.

Ring fencing is common in developing countries and perhaps less common in developed countries. The idea of ring fencing is to put a tax fence around each licenced area. The licence will specify the area and what the law is saying is that, the expenses can only be deducted against the income from that licenced area. If

a mining company has several projects going on at once, they cannot consolidate the projects into a single calculation, each one has to be calculated separately. Once a particular project has two commercial discoveries and extraction is taking place, it is only right at that point that the Government gets a return. It is getting royalties obviously but it also gets a return on the profit that those companies make from that particular licenced area. If a licenced area is next door to each other, then you can have a bigger ring fence; projects that are the next door to each other may have common facilities and, therefore, we do not have to worry about allocating costs between the two licenced areas; even within the ring fencing, there is some generosity in the way it is being structured.

3.5 Different applications of withholding tax

There are two policies at play and one is the idea is to make wage withholding a final tax for ease of administration and compliance. The main type of income that employees might have besides their salary and wages will be bank interest. To avoid them having to file a return, a small exemption has been placed on the bank interest and anything above that has been made as a final tax. In that way, employees do not have to put in returns that have employment income and interest, but they deal with it separately through the final withholding and the reporting is done by the employer in the bank.

The other policy is on how the tax system helps people provide for their retirement? Fiji has provided very generous tax incentives for people to provide for their retirement through the retirement saving system. There are effectively three taxing points, that is, when a contribution is made to the Fund on their behalf; the second is when the FNPF or the employer fund or the approved fund, invests those contributions and income is earned on those contributions; and the third is when a lump sum pension payout goes out of the Fund to the member of the Fund. The contributions are effectively exempted from tax to the employee and there might be a little bit of tax to the employer through the deduction rules but very low tax, given that the employee is not taxed.

The pension fund itself is exempt from tax so when it invests the contributions, there is no tax on that and then when the payouts come out of the Fund, again there is no tax. The system is actually a very generous system and people are

encouraged to provide for their retirement through the retirement savings system, so that the Government can make sure that those concessions are not being abused.

The Chief Executive Officer clarified that if someone turns 55 years, withdraws all his funds from FNPF (say $100,000) and deposits it into his bank account, that amount is exempt from tax. On the other hand, if money is withdrawn to start a business, the normal rule will apply, but if the $100,000 remains in the bank that is exempted.

3.6 Thin Capitalisation

Thin Capitalisation means that foreign investors try and use as much debt when they invest in Fiji, for example, if they set up a subsidiary in particular, they will finance it largely by debt rather than through shares. This is done because the interest payments that go offshore are deductable expenses, and the profits used to pay the interest effectively get taxed at a lower rate than the profits that are used to pay dividends.

It is important for countries to have Thin Capitalisation rules to ensure that, that technique is not used to basically strip profits out of the country for low tax. As long as the foreign investor keeps within that debt to equity ratio, the loan is recognised and the interest deductions are recognised. Once they exceed that ratio, interest deductions on the excess debt are denied and effectively, it gets the same as if they were shares.

On the question of whether an acceptable debt to equity ratio would encourage foreign investors to leverage up to that ratio, the response was "yes". The debt to equity ratio in the Bill is 2:1 which has become the norm now but some years ago, the ratio was 3:1. The ratio 3:1 is a big encouragement but 2:1 probably limits the planning. If someone was artificially creating debt to get up to the 3:1 ratio, the artificial debt would not be recognised. The 2:1 ratio is not a high ratio so the scope is probably not significant but most multinationals would probably use it as a safe harbour and they would make sure they stay on or below that.

In terms of Thin Capitalisation rules, it is very hard to work out what debt is being artificially created to take advantage of the rule, and what is a genuine debt. There

are reasons why multinational companies will want to use debt rather than equity and one reason is that, it protects against the exchange risk.

With Thin Capitalisation rules, it has tried to rely as far as possible on international financial reporting standards which have rules about identifying what is debt and what is equity. The characterisations will need to be consistent with international financial reporting standards which have been accepted globally around the world; what is debt and what is equity.

3.7 Soft Loan Fringe Benefits

The fringe benefit tax does acknowledge the rules in the current law, and the Bill does acknowledge that employers may provide small benefits on an ad-hoc basis to their employees. An employer might provide a small loan, the interest on it will not be very much to employees because they are getting married and weddings can be expensive and the family might not have enough money to pay for it and the same for funerals, et cetera. They are good examples, so there is a provision in the law which is intended to give flexibility to treat those as exempt fringe benefits because they are small value and they are not regular, they are ad-hoc. It would need to be dealt with, perhaps through practice notes and rulings to make the parameters of that clearer.

3.8 Benefit in kind

Under Anglo Case Law which would apply to Fiji, there is an old rule that says that, if you receive a benefit in kind that is not convertible to cash, then depending on how you read the case law, it is either not income or it is income with no value, so in other words it does not get taxed. The most common area where this can come up is in the context of employment but we have the Fringe Benefits Tax now with evaluation rules to deal with that.

In Australia, there was a case some years ago where a soft drink manufacturing company engaged distributors (not employees but independent persons) to distribute their soft drinks. If they reached a certain level of sales, they would get a bonus but the bonus was not a cash amount, the bonus was a holiday to Fiji. The distributors (owners of that business) would be able to take that holiday to Fiji but

they had no option; they either took the holiday to Fiji or they received nothing. They could not convert it to cash.

Section 44(2) ensures that once you are outside of the employment area where there are rules on valuation, taxation cannot be avoided by receiving benefits in kind rather than cash. Section 44 is saying that, if you get a benefit as your reward for business or investment, that benefit will be taxed and will be based on the fair market value of the benefit, ignoring the fact that it cannot be converted to cash. It only makes sure that everyone gets treated the same so we have rules to stop that happening on the employment front. Section 44 is only a simple rule to make sure that it will obviously be less common but in the area of business and investment, similar rules apply to make sure that everyone is being treated fairly.

3.9 Gender analysis

The Committee took into account the provisions of Standing Order 110(2) which states:

> *Where a committee conducts an activity listed in clause (1), the committee shall ensure that full consideration will be given to the principle of gender equality so as to ensure all matters are considered with regard to the impact and benefit on both men and women equally.*

The Committee received a submission from the National Council of Women (NCW) and noted that the presenter was speaking on behalf of both men and women. From a gender perspective, NCW was of the view that FRCA should be encouraged to provide details on how the Special Responsibility Tax would be used and also state how many women have benefited from the fund. NCW finds it difficult to conclude that the Income Tax Bill is gender neutral as more in-depth work is needed to analyse the various income tax clauses.

The Committee is satisfied that the matters considered in this report on the Income Tax Bill, will have an equal impact on both women and men.

4.0 CONSIDERATION OF BILL CLAUSE BY CLAUSE

The Committee considered the Bill clause by clause during its deliberations in consultation with officials from FRCA and the Solicitor-General's Office. The following amendments to the Income Tax Bill 2015 were considered, consequent to the Appropriation Bill 2016:

CLAUSE/TITLE	AMENDMENT	CLAUSE AS AMENDED
2 (Interpretation)	Clause 2(b) is amended by deleting the word "cession" in line 3 of the interpretation of 'rent' and replacing it with the word 'cessation'	*(b) the fair market value of any improvement to land or a building made under an agreement for the use or occupation of, or the right use or occupy the land or building, or by virtue of the* ***cessation*** *of such right;*
5 (Fair market value)	Clause 5(2) is amended by inserting the word "of" between the words 'consideration' and 'a' in the second line.	*2) If it is not possible to determine the fair market value of an asset, property, service or benefit at a particular time under subsection (1), the fair market value is the consideration* ***of*** *a similar asset, property, service, or benefit ....*
9 (Imposition of Presumptive Income Tax)	Include clause 143(8) as new sub-clause (5) under clause 9	**9.**-(1) Subject to this Act, a tax to be known as "Presumptive Income Tax" is imposed … ***(5) A person to whom subsection (1) applies is subject to the Presumptive Income Tax in the first quarter in which the Presumptive Income Tax applies despite being subject to the Income Tax for the period prior to the application of the Presumptive Income Tax unless the CEO has granted the person permission under subsection (4) for the Income Tax to apply to the person.***
10 (Imposition of Non-resident Withholding Tax on non-resident payments)	New sub-clause (9) under clause 10 to include section 8A(12) of the Income Tax Act (Cap. 201) Waiver or reduction of tax rate by the Minister	**10.**-(1) Subject to this Act, a tax to be known as "Non-resident Withholding Tax" is imposed … ***(9) Subject to subsection (10), the Minister may exempt or reduce tax rate for tax payable under this section on***

<table>
<tr><th>CLAUSE/TITLE</th><th>AMENDMENT</th><th>CLAUSE AS AMENDED</th></tr>
<tr><td></td><td></td><td>the income of the qualifying employees under any regulations which are made under this Act for film incentives, who are residents of countries that do not have double tax agreements with Fiji.

(10) The Minister may by notice in writing to the CEO, direct that tax payable under this section be exempt or be paid at such reduced rate as specified in the notice.

(11) In this section, "insurance premium" includes ....</td></tr>
<tr><td>24 (Charitable donations)</td><td>Sunset clauses (11) and (12) to be deleted from Clause 24 and inserted under clause 143 of the Bill. Clauses to be renumbered</td><td></td></tr>
<tr><td rowspan="2">25 (Industry incentives)</td><td>Sub-clause (4) is amended by inserting the words "the tax free region incentives apply." after the word 'which' in the third line.</td><td>(4) A person is allowed a deduction for 40% of the capital expenditure ... other than a business to which the tax free region incentives apply.</td></tr>
<tr><td>Sub-clause (8) to be amended by inserting the figures "2016" and 50% at the end of the table.</td><td>Amendment of Sub-Clause (8)

(8) A person exporting goods or services is allowed a deduction, representing a percentage of the export income, as set out in the following table-
<table><tr><th>YEAR OF ASSESSMENT</th><th>PERCENTAGE OF EXPORT INCOME TO BE DEDUCTED</th></tr><tr><td>2011</td><td>50%</td></tr><tr><td>2012</td><td>40%</td></tr><tr><td>2013</td><td>40%</td></tr><tr><td>2014</td><td>40%</td></tr><tr><td>2015</td><td>50%</td></tr><tr><td>2016</td><td>50%</td></tr></table>...</td></tr>
</table>

CLAUSE/TITLE	AMENDMENT	CLAUSE AS AMENDED
	Subclause 13 is amended by inserting the word "for" between the word 'deduction' and the figure '150%'	*(13) A person is allowed a deduction* ***for*** *150% of the amount of expenses incurred ...* ***(15) An employer is allowed a deduction for 50% of the expenditure on a uniform made in Fiji and supplied to an employee, provided that the costs of the uniform are not recovered from the employee.***
	Section 21(1)(a)(ii) of the Income Tax Act (Cap 201) to be inserted as new sub-clause (16)(a) under clause 25	***(16) In determining total income, the following deductions shall be allowed—*** ***(a) an amount, in accordance with instructions issued by the Minister under this paragraph for capital expenditure incurred on improvements to land use for agricultural or pastoral purposes, provided that—*** ***(i) in computing what deduction, if any, shall be granted under this paragraph in respect of any asset which was acquired as a result of a transaction other than an arms-length transaction, such depreciation shall be computed as if the sale price realized by the vendor or disponor was the amount of the tax written down value of the asset computed by deducting from its cost price to the vendor or disponor the initial and depreciation allowances which have been or would have been granted in respect thereof;*** ***(ii) where any property of a taxpayer in respect of which an initial or depreciation allowance has been allowed or is allowable under this Act is disposed of, lost or***

CLAUSE/TITLE	AMENDMENT	CLAUSE AS AMENDED
		destroyed at any time in the year of income, the depreciated value of the property at that time, less the amount of any consideration receivable in respect of the disposal, loss or destruction shall, subject to the provisions of sub-paragraph (iii) be an allowable deduction; ***(iii) where any property referred to in sub-paragraph (ii) is disposed of by a transaction other than an arms-length transaction, no deduction shall be given, the sale price being treated as the value as written down by initial and depreciation allowances;*** ***(iv) for the purpose of this paragraph, the CEO may, where any property referred to in this proviso is sold together with other property at an inclusive price, determine the amount of the consideration attributable to such property;*** ***(b) such amount expended on prospecting for minerals in Fiji by a taxpayer who is a holder of a valid mining right, lease or tenement issued under the provisions of any enactment for the time being in force relating to mining, whether or not prospecting for minerals is connected with any business of the taxpayer, as the CEO may, in his or her discretion, allow, and which has not already been recouped from the sale of any mining right, lease or tenement; and, for the purpose of this sub-paragraph, such allowed expenditure shall, as the CEO in his***
	Section 21(1)(c)(ii) of the Income Tax Act (Cap 201) to be inserted as a new sub-clause(16)(b) under clause 25	

CLAUSE/TITLE	AMENDMENT	CLAUSE AS AMENDED
		or her discretion may direct, be treated either as an expense incurred in the year when it was incurred or as an expense to be spread over a number of years; and
	Section 21(1)(e) of the Income Tax Act (Cap 201) to be inserted as new sub-clause (16)c) under clause 25	***(c) in the case of profits derived from the sale of any minerals, timber or gravel or of a right in or right to work such minerals, timber or gravel, an amount equal to the cost of those minerals, timber or gravel or that right, save that, in respect of minerals, the deduction so allowed under this paragraph shall wholly exclude expenditure which may be claimed under paragraph (b) or under subsection (17).***
	Section 23 of the Income Tax Act (Cap 201) to be inserted as new sub-clauses (17), (18) and (19) under clause 25	***(17) Notwithstanding subsection (16), any person engaged in mining who incurs in Fiji expenditure to which this section refers may, in each of any 5 of the 8 years immediately following the year in which such expenditure was incurred, or, if he or she prefers, out of the 8 years consisting of the year in which such expenditure was incurred and the 7 succeeding years, set off against his or her total income one-fifth of the amount of such expenditure, provided that a deduction under subsection (16)(a) shall not be allowed in addition to expenditure allowed under this section.***
		(18) The expenditure to which subsections (17) to (19) refers is—
		(a) capital expenditure, not claimed under subsection (16)(b), incurred in the development of mines and the extraction, treatment, refinement

CLAUSE/TITLE	AMENDMENT	CLAUSE AS AMENDED
		and sale of minerals therefrom; and ***(b) expenditure incurred in the acquisition of any mining lease or tenement, provided that—*** ***i. where the CEO is of the opinion that the sum expended, whether in cash or by means of an issue of shares or otherwise, is excessive, having regard to the lease or tenement acquired and to the other circumstances of the case, he or she may make such adjustment with regard to such sum as, in his or her opinion, is just and reasonable;*** ***ii. this paragraph shall not apply in respect of a sale, transfer or assignment of any mining lease or tenement, if—*** ***A. any party or parties of the one part of the sale, transfer or assignment has or have the power (whether under the terms of the transaction or otherwise) to control directly or indirectly the entry into the transaction by, or the activities in connection with the mining rights of, a party of the other part; or*** ***B. any person or persons has or have the power (whether under the terms of the transaction or otherwise) to control directly or indirectly the entry into the transaction by, or the activities in***

CLAUSE/TITLE	AMENDMENT	CLAUSE AS AMENDED
		connection with the mining rights of, a party of the one part and a party of the other part to the sale, transfer or assignment. For the purposes of this paragraph of the proviso, a person shall be deemed to be in control of his or her spouse and of any relative of his or her, whether by blood, marriage or adoption; ***iii. such expenditure as is excluded by sub-paragraph (B) shall not be claimable under subsection (16)(c).*** ***(19) The Minister may, in relation to capital expenditure incurred in the development of a new mine, substitute such other fraction for the fraction of one fifth set out in subsection (1) and make corresponding provision for the period during which such expenditure may be set aside. An order made under this subsection may be general or restricted to a particular person or persons. During the currency of such order, subsection (1) shall be read in relation to the expenditure referred to in this subsection and to the persons affected by the order as if varied in accordance with the provisions of the order. For the purposes of this subsection, "a new mine" means a mine which was not in production on 1 January 1952.***
44 (Benefits-in-kind)	Clause 44 is amended by inserting a space between sub-clauses (1) and (2).	*(1) In determining whether a benefit in kind is income included in gross income, the fact that the benefit is not otherwise convertible to cash is to be disregarded.*

CLAUSE/TITLE	AMENDMENT	CLAUSE AS AMENDED
		# *(2) Subject to this Act, the value of a benefit-in-kind included in gross income is the fair market value of the benefit at the time that the benefit is derived and ignoring any restriction on transfer.*
67 (Exempt capital gains)	Clause 67(1)(a) is amended by deleting the sum of FJD$20,000 and replacing it with the sum of FJD$16,000	*(1)(a) a capital gain made by a resident individual or Fiji citizen that does not exceed **FJD$16,000;***
110 (Advance payments of tax)	Clause 110(1)(b) is amended by deleting the months of June, September and December and replacing it with the months of April, August and 30th November	*(1)(b) in the case of any other person, on 30th **April**, 31st **August** and **30th November**.*
138 (Concessionary rate of tax for regional or global headquarters)	Clause 138 is amended by inserting a new sub-clause (4) before sub-clause (5), and renumbering of sub-clauses (4) and (5) as sub-clauses (6) and (7)	**138**.-(1) The Minister may, by regulations, provide that tax at a rate … ***(4) A foreign company which operates or is carrying on business in Fiji is allowed a 150% deduction for capital expenses incurred for the relocation of its regional or global headquarters to Fiji, which provides management, technical or other supporting services to its offices or associated companies.*** *(5) In this section - ....* *(6) For the purposes of sub-section (4) ....*
140 (Double tax and tax information exchange agreements)	Clause 140(7) is amended by deleting the word "Subsection" in the first line and replacing it with the word 'Subject'	*(7) **Subject** to subsection (8), when an agreement made under this section provides ....*
141 (Consequential amendments)	Clause 141(a)(ii)&(iii) is amended by inserting inverted commas before the definitions of "controlling interest" and "Capital Gains Tax"	*"'controlling interest" means a direct or indirect controlling interest by a director or other person .... whether formal or informal, to act;"* *"'Capital Gains Tax" means the*

CLAUSE/TITLE	AMENDMENT	CLAUSE AS AMENDED
		Capital Gains Tax imposed under the Income Tax Act;"
143 (Transitional and savings)	Clause 143 is amended by deleting sub-clauses (3), (7), (8) and (10). Clause 143(4) is also to be deleted, except section 21(1)(r) of the Income Tax Act (Cap. 201) which is to be saved. Sub-clause (5) is amended by deleting the spaces between the numbers "21", "(1)" and "(n)". New sub-clauses (8) and (9) were deleted from clause 24(11)&(12) of the Income	***143.**—(1) The repealed laws continue to apply to years of assessment prior to the tax year in which this Act comes into force.* *(2) A reference in this Act to a previous tax year includes, when the context requires, a reference to a year of assessment under the repealed laws.* *(3) Section 21(1)(r) of the Income Tax Act (Cap. 201) continues to apply.* *(4) Sections 10 and 17(53) of Income Tax Act (Cap. 201) and section 11 of the Tax Free Zones Decree 1991 continue to apply until the expiration of the Tax Free Zone licence.* *(5) An academic or charitable institution listed in, or approved by the CEO under, section **21(1)(n)** of the Income Tax Act (Cap. 201) is an approved academic or charitable institution for the purposes of section 24.* *(6) A Double Tax Agreement in force at the commencement date of this Act continues to apply unless reviewed by the CEO in consultation with the Double Tax Agreement country's competent authority.* *(7) If any part of the net profit after tax of a company for the tax year commencing on 1 January 2014 or equivalent substituted tax year has not been distributed as a dividend prior to 1 January 2016, the company shall pay tax on the undistributed amount at the rate of 1% and the tax is due on March 31, 2016.* ***(8) A business is allowed a deduction for 150% of the amount of any cash donation made in a tax year to the Fiji Association of Sports and National Olympic Committee (FASANOC) for Fiji's***

CLAUSE/TITLE	AMENDMENT	CLAUSE AS AMENDED
	Tax Bill, 2015 and inserted under clause 143	***participation at the 2015 Pacific Games.*** ***(9) A business is allowed a deduction for 150% of the amount of any cash donation made in a tax year to the Fiji Rugby Union (FRU) for Fiji's participation at the 2015 Rugby World Cup.*** *(10) In this section, "repealed laws" means the laws specified in section 144.*
AMENDMENTS TO SCHEDULE 1		
Part 1 (Government)	Paragraph (1) to be deleted and the whole of Part 1 renumbered.	
Part 2 (Exempt Entities)	Deletion of Paragraph (3) and the amendment of paragraph (5)	*(5) An international organisation* ***declared pursuant to section 6 of the Diplomatic Privileges and Immunities Act (Cap. 8) to*** *the extent specified under* ***that Act.*** *If the exemption provided to an international organisation under an agreement between the organisation and the Government of Fiji is broader than provided under the Diplomatic* ***Privileges and*** *Immunities Act* ***(Cap. 8),*** *the exemption under the agreement applies,* ***provided that the agreement has been approved by Cabinet.***
Part 3 (Individuals)	Paragraph (2)(d) is amended by deleting the word "Commissioner" and replacing it with the acronym 'CEO'. The word "employee" in the second line is also to be deleted and replaced by the word 'employer'	*(2)...(d) on retirement which, in the opinion of the* ***CEO*** *is reasonable if the* ***employer*** *of the employee has either been a contributor to an approved fund or to the Fiji National Provident Fund provided payment is made on or before 31st December 1986 and the employee has attained the age of 55 years or more, or has not been a contributor to an approved fund or to the Fiji National Provident Fund,*
	Amendment of paragraph 22	*(22) The income of an individual entitled to privileges under the Diplomatic Privileges and Immunities Act (Cap. 8) to the extent specified under that Act. If the exemption*

CLAUSE/TITLE	AMENDMENT	CLAUSE AS AMENDED
		provided to an official or employee of ***an*** *international organisation under an agreement between the organisation and the Government of Fiji is broader than provided under the Diplomatic* ***Privileges and*** *Immunities Act* ***(Cap.8),*** *the exemption under the agreement applies,* ***provided that the agreement has been approved by Cabinet.***
Part 4 (Exempt Interest)	Paragraph 9(a)(ii) is amended by deleting the word "Commissioner" and replacing it with the initials 'CEO'.	*... (ii) the* ***CEO*** *is satisfied that the interest income is....*
Part 5 (Exempt Dividends)	Paragraph (1) is amended by inserting the words "to a resident or non-resident shareholder" after the word 'Exchange'	*(1) A dividend paid by a resident company listed on the South Pacific Stock Exchange,* ***to a resident or non-resident shareholder.***
Part 9 (Economic and Development Exemptions)	Amendment of Paragraph 10	*(10) The income derived* ***by a person*** *from any new activity approved and established in the declared Tax Free Region from* ***the airport side of the Rewa Bridge, excluding the town boundary of Nausori, up to the Ba side of the Matawalu River*** *is exempt income—* ***(a) $250,000 to $1,000,000, for a period of 5 consecutive fiscal years;*** ***(b) $1,000,001 to $2,000,000, for a period of 7 consecutive fiscal years;*** ***(c) $2,000,001 or more, for a period of 13 consecutive fiscal years.***
	Deletion of Paragraph 11 Amendment of paragraph 17	*(17) The income of a taxpayer derived from a new activity in commercial agricultural farming and agro-processing as approved by the CEO from 1st January, 2015 to 31st December, 2018—* *(a) $250,000 to $1,000,000, for a period*

CLAUSE/TITLE	AMENDMENT	CLAUSE AS AMENDED
		of 5 consecutive fiscal years; *(b) $1,000,001 to $2,000,000, for a period of 7 consecutive fiscal years;* *(c) $2,000,001* ***or more****, for a period* ***of*** *13 consecutive fiscal years.*
	Paragraphs (13), (15), (16) and (17) are amended by deleting the word "CEO" and replacing it with the acronym 'CEO'. Renumbering of paragraphs in Part 9	*(13) The income of a shipping company derived from servicing the Rotuma and Lau Group, as approved by the* ***CEO****, is exempt income for a period of 7 consecutive tax years.* *(15) ... for a period of 13 years from the date of approval by the* ***CEO****.* *(16) ... for a period of 13 years from the date of approval by the* ***CEO****.* *(17) ... as approved by the* ***CEO*** *from 1st January 2015 to 31st December 2018 -*
AMENDMENTS TO SCHEDULE 2		
	Amendment of Paragraph 11	*(11) The Credit Card Levy at the rate of 3%*
AMENDMENTS TO EXPLANATORY NOTE		
Page 115	Item 1.3 is amended by deleting the word "quiet" in the second line and replacing it with the word 'quite'	*Additionally, it is prudent to re-write the Act that was enacted in 1974 given that it is* ***quite*** *outdated ....*
Page 116	Item 2.1 is amended by deleting the word "for" before the word 'Clause' in the second line.	*Clause 1 provides for the short title and commencement of the Bill. However, for Clause 9 (Presumptive Tax) and Part 6 (Mining) will come into effect on the date approved by the Minister in the Gazette*
Page 123	Item 2.70 is amended by deleting the figure "68" in the last line and replacing it with the figure '69'	*Clause 70 provides for the computation of an employers' fringe benefits taxable amount for a quarter. This is the base upon which FBT is imposed under clause* ***69****.*
Page 124	Item 2.76 is amended by inserting the words "discounted interest" before the words 'loan fringe benefit'	*Clause 76 provides for the identification and valuation of a* ***discounted interest*** *loan fringe benefit*
Page 127	Item 2.111 is amended by deleting the words "form the	*Clause 109 provides for the collection of non-resident international shipping*

CLAUSE/TITLE	AMENDMENT	CLAUSE AS AMENDED
	mater" and replacing it with the words 'from the master'.	*income tax **from the master** of the ship or the owner or charterer's shipping agent in Fiji.*
Page 129	Item 2.141 to include a new paragraph	*2.141 Clause 139 requires that amounts taken into account ....* *Clause 139 provides for consequential amendments to the Tax Administration Decree 2009.*
	The figure "2.142" to be inserted before the word and figure "Clause 140"	***2.142** Clause 140 empowers the Minister to enter into agreements with foreign governments for relief from double taxation or exchange of tax information.*
	Item 2.142 to be amended by deleting the figure "2.142" and replacing it with the figure '2.143'. The word and figure "Clause 139" is also to be deleted and replaced by the word and figure 'Clause 141'	***2.143 Clause 141** provides for consequential amendments to the Tax Administration Decree 2009.*
Page 130	Existing items 2.142 and 2.143 to be deleted so that the numbering will fall in place.	*PART 11—CONSEQUENTIAL AMENDMENTS* *2.143 Clause 141 provides for consequential amendments to the Tax Administration Decree 2009.* *PART 12—FINAL PROVISIONS* *2.144 Clause 142 empowers the Minister to make regulations for the purposes of the Bill.* *2.145 Clause 143 transitional measures and savings rules consequent upon the enactment of the Bill.* *2.146 Clause 144 provides for the repeal of the Income Tax Act (Cap. 201), the Capital Gains Tax Decree 2011 and the Fringe Benefit Tax Decree 2012.* *2.147 Schedule 1 lists amounts that are exempt income for the purposes of*

CLAUSE/TITLE	AMENDMENT	CLAUSE AS AMENDED
		the Bill. *2.148 Schedule 2 provides for rates of tax under the Bill.* *2.149 Schedule 3 provides for depreciation rates.*

5.0 CONCLUSION

5.1 The Committee notes the complexity of the Income Tax Act and commends officials of the FRCA, the Solicitor General's Office, relevant stakeholders and the Government for their initiative in consolidating the Capital Gains Act, Fringe Benefits Act and the Income Tax Act into a single volume.

5.2 The Committee has been honoured to have been able to interact and share views on the Bill, with very senior officials from Government and the private sector organisations.

5.3 The report has been compiled as a result of careful deliberation and consideration by each substantive member of the Committee and also other honourable Members who attended meetings as alternate Members.

5.4 Once again, the Committee wishes to thank the Parliament for referring the Bill to the JLHR Committee for scrutiny and respectfully submits its report to Parliament for consideration.

APPENDICES

APPENDIX A

ADVERTISEMENTS CALLING FOR SUBMISSIONS

APPENDIX B

COPIES OF WRITTEN SUBMISSIONS RECEIVED BY THE STANDING COMMITTEE ON JUSTICE, LAW AND HUMAN RIGHTS

APPENDIX C

FRCA RESPONSE TO SUBMISSION BY FIA

PARLIAMENT OF THE REPUBLIC OF FIJI

PARLIAMENT COMPLEX, GLADSTONE ROAD
P.O.BOX 2352, GOVERNMENT BUILDING, SUVA
PHONE 3225600, FAX: 3305325

Calling for Written Submissions from the Public
Income Tax Bill 2015 (Bill No. 22 of 2015)

The Parliament passed a resolution on Thursday 27th August 2015 that the Income Tax Bill, 2015 (Bill No. 22 of 2015) be referred to the Standing Committee on Justice, Law and Human Rights and to report back to Parliament during the November sitting.

The Income Tax Bill 2015 provides for the imposition of the income tax, capital gains tax and the regulation of fringe benefits. It also repeals and replaces the Income Tax Act (Cap. 201), Capital Gains Tax Decree 2011 and Fringe Benefit Decree 2012 with effect from 1st January 2016. The new Income Tax Law will be implemented to simplify tax administration in Fiji in conformity with the recommendation made by the International Monetary Fund to simplify Fiji's tax laws.

The Standing Committee on Justice, Law and Human Rights invites interested persons or organisations wishing to express views on the Bill to base their submissions on the following areas:

1) What specific sections of the Bill do you agree with?
2) What sections do you have an issue with?
3) Are the provisions in the new Income Tax Bill 2015 sufficient to address issues which were lacking in the Income Tax Act (Cap. 201), Capital Gains Tax Decree 2011 and the Fringe Benefit Decree 2012?
4) Any other views specific to the contents of the Bill.

Written submissions are to be made on the template provided and lodged with:

The Chairman
Standing Committee on Justice, Law and Human Rights
PO Box 2352
Government Buildings
SUVA

as soon as possible but no later than **Friday, 25th September 2015.** Copies of the Bill are available on the Fiji Parliament website www.parliament.gov.fj

Parties or persons who wish to appear and make oral submissions before the Committee sitting in Suva should contact the Committee Secretary (Kalo) on the before mentioned addresses for allocation of time slots. Please note that oral submissions are not to exceed 20 minutes with 10 further minutes for questions and answers.

For further enquiries please contact the Committee Secretary (Kalo) on email (ktakape@parliament.gov.fj) or telephone contact 3225609.

PARLIAMENT OF THE REPUBLIC OF FIJI

PARLIAMENT COMPLEX, GLADSTONE ROAD
P.O.BOX 2352, GOVERNMENT BUILDING, SUVA
PHONE 3225600, FAX: 3305325

Public Hearings
Income Tax Bill 2015

The Standing Committee on Justice Law and Human Rights will be conducting public hearings in the Western and Northern Division at the following location:

No.	Location	Date	Time
	WESTERN DIVISION		
1.	Rakiraki Town (Morning Session) Ba Town (Afternoon Session)	Monday 28 September, 2015	9.00am – 12.00pm 2.30pm - 4.30pm
2.	Lautoka Town	Tuesday 29 September, 2015	9.00am – 12.30pm
3.	Nadi Town	Wednesday 30 September, 2015	9.00am – 12.00pm
4.	Sigatoka Town	Thursday 1 October, 2015	11.00am – 1.00pm
	NORTHERN DIVISION		
5.	Nabouwalu	Monday 5 October	12.00pm – 1.00pm
6.	Labasa Town	Tuesday 6 October, 2015	9.00am – 1.00pm
7.	Savusavu Town	Wednesday 7 October, 2015	9.00am – 1.00pm

Those wishing to make submissions at the above-mentioned locations are requested to contact the Committee Secretary (Kalo) through email (ktakape@parliament.gov.fj) or telephone 679 3225608 or mobile 679 9908181.

APPENDIX A

APPENDIX B

WRITTEN SUBMISSIONS RECEIVED ON THE INCOME TAX BILL, 2015

FIJI NATIONAL PROVIDENT FUND

Your ref:

Our ref:

Friday, 18th September 2015

The Chairman
Standing Committee on Justice, Law & Human Rights
Parliament of Fiji
P.O Box 2353
Government Buildings
SUVA

"Hand Delivered"

Dear Sir,

RE: INVITATION FOR SUBMISSION ON THE INCOME TAX BILL NO. 22 OF 2015

Ni sa Bula Vinaka!

We acknowledge the invitation by the Standing Committee to FNPF to tender its submission regarding the Income Tax Bill No. 22 of 2015 in reference to your letter dated 2nd September 2015.

Prior to deliberations into the Fund's submissions, we wish to highlight some of the Fund's functions and roles as follows:

- The Fiji National Provident Fund (FNPF) is the only Superannuation Fund in Fiji since its establishment in 1966 pursuant to the FNPF Act (Cap 219) and now continued under the FNPF Decree (2011);
- The Fund has over four hundred thousand (400,000) members registered including employers and pensioners and receive an average of $36 million in contributions on a monthly basis;
- Apart from the normal contributions that the Fund receives on a monthly basis, the Fund's Investment Division also pursue local and overseas investments and ensuring greater returns for its members and this has been quite visionary in the recent restoration and opening of the Grand Pacific Hotel (GPH), securing of Marriott International as the operator

Head Office Provident Plaza 2 Private Mail Bag, Suva
Lautoka Drasa Avenue Private Mail Bag Lautoka
Labasa Rosawa Street Private Mail Bag Labasa
Valelevu Agency Valelevu Complex Building Saqa Place, Valelevu
Nadi Agency Shop 2, Lot 13 Concave Subdivision Namaka Lane, Nadi
Savusavu Agency Budget Lodge Building Ltd Main Street, Savusavu
Ba Agency Ganga Singh Street, Ba Telephone: (679) 667 0009

for Momi, sale of Natadola residential lots, refurbishment of Yatule Resort and Holiday Inn, etc;

- The Fund in its Strategic Plan has since journeyed through its Reform Plans which saw the Pension Reforms taking effect from 2012 with the aim of a continuous sustainable Fund for its active and retired members;
- The Reform journey also saw the splitting of member accounts to Preserved and General with a thirty percent (30%) and seventy percent (70%) split which came into effect in 2014;
- As part of the Reforms as well the Fund reflected on its proficiency in the IT system and engaged a US based company for the complete transformation of its IT system to better its services to its members and this has since been implemented and is currently in use;
- In the Fund's End of Financial Year Report for 2014, some of the financial highlights we wish to raise are as follows:

    i) Total benefit payments to members was $296.0million (including SDB & pension);
    ii) Total assets increased to $4.5billion;
    iii) Members' balance totaled was $3.39billion;
    iv) Interest credited to members was at 5.75% totaling $175million;
    v) Total net investment income was $252.8million;
    vi) Contributions collected was $375.7million.

- The success of the Fund's reform plans has since witnessed the opening of a few of its branch offices at the Lautoka Branch, Sigatoka Branch and the Nausori Branch in ensuring convenience of service delivery to its members and stakeholders.
- The reforms have also brought about major policy changes in recognizing the needs of its members and at the same time ensuring compliance in accordance to the FNPF Decree.

Please find attached herewith is the Fund's written submission of which we have attempted our very best to represent our member's interest and the organization as well, in ensuring the efficient functions and roles for FNPF.

We have also noted that the Bill has exempted the income of the Fund, its members and the pensioners as being the current practice which will assist the organization to grow the funds and secure the future for the members.

We hope that the Fund's submissions would add value to the Standing Committee's reviews in the implementation of the Income Tax Bill.

Should the Committee have any queries on the written submissions, we will be much obliged to further clarify at your convenience.

Please do not hesitate to contact our Acting Manager Legal Services, Pravin Chand Dayal on 323 8304 or *via* email on PravinC@fnpf.com.fj.

Yours Faithfully,

.....

Uday Raj Singh
AGM Corporate Governance/Board Secretary

Encls: (1)

18/9/15 - 3rd

Fiji Institute of Accountants

Level 3, Fiji Teachers Union Building, 1-3 Berry Road, GPO Box 681, Suva, Fiji
Telephone: (679) 3 305 807, Facsimile: (679) 3 305 588, Email: fia@connect.com.fj, Website: www.fia.org.fj

18 September 2015

Hon. Ashneel Sudhakar
Chairman
Standing Committee on Justice, Law and Human Rights
Parliament of Fiji
Government Buildings
Suva

Dear Honourable Sir

INCOME TAX BILL (ITB) – BILL 22 OF 2015

Thank you for inviting us to present and meet with the Parliament Standing Committee.

We have attached written submission of Fiji Institute of Accountants to the Hon. Minister for Finance, which was made in August 2015 and the summarised submission to the Committee today.

Please do not hesitate to contact us if you require any further information or clarifications.

Yours faithfully

Nouzab Fareed
President

FIJI INSTITUTE OF ACCOUNTANTS

FIJI INSTITUTE OF ACCOUNTANTS SUBMISSION TO

THE PARLIAMENTARY STANDING COMMITTEE ON JUSTICE, LAW AND HUMAN RIGHTS

INCOME TAX BILL (BILL No 22 of 2015)

19th SEPTEMBER 2015

The Fiji Institute of Accountants (FIA) is grateful to the Government for giving us this opportunity to discuss its views and thoughts with regard to the Income Tax Bill (ITB). We commend the Government on its intention to rewrite the existing tax law and simplify the same.

We are also grateful to have had the opportunity to have extensive discussions with the FRCA on various drafts of the ITB. While we note and appreciate the good intentions behind the ITB, we also note with concern that a number of fundamental issues do not appear to have been properly considered and or addressed in finalising the ITB.

In the interests of time we have summarised for the purposes of this submission, some of the issues we note in relation to the ITB and attach a copy of our submission to the FRCA and Ministry of Finance on the last draft ITB which details some of our concerns in relation to the ITB.

We note and support Governments initiative to consult and put together an overall development framework for the country. We are of the view that the tax policy framework should be developed in line with the overall national development framework and the tax law drafted accordingly. In this instance the tax law is being rewritten before the development framework is completed and tax policy developed accordingly.

We support the rewrite of the tax law as there have been too many piecemeal changes to the law over the last few years. However we suggest that the law be developed within a framework that ensures that the country achieves its overall aims rather than simply rewrite the current muddled legislation and introduce new policies that are not properly coordinated and consistent with the overall aims of Government. The ITB contains a number of major tax reforms that do not necessarily fit into the overall Development Framework of Fiji.

FIA strongly believes that major tax reforms should not be implemented through a rewrite of the Income Tax Act but should have been subject to greater public scrutiny at all stages of development. This process would ensure better, more effective tax policy development through early and proper consideration of all aspects – and likely impacts – of these major tax reforms.

FIA believes that the process of consultation through all stages of development of any tax reforms would provide the opportunity to develop more practical options for reform by drawing on information provided by the private sector and the people who will be affected. FIA considers that such a process will provide greater opportunity for the private sector to understand the rationale underlying proposed reforms, thus improving their long-term sustainability.

In view of the above, we suggest that more time be given for the review of the ITB including developing the tax policy framework within the current Development Framework for the country before the ITB is finalised.

We detail below a summary of a number of the issues in the income tax bill over which FIA would like to present its views that can add value and build on Investor confidence, growth in investment, economic activities and employment opportunities.

FIA strongly believes that the ITB should be consistent with Governments objective to attract Investment and encourage SME's which should be a major component of the strategic plan.

We note that the ITB contains various diversions from current policy including imposing income tax on capital gain arising from the sale of depreciable buildings, definition of dividend extended to include any net profit after income tax not distributed prior to 1 January 2016, imposition of dividend tax resulting in double taxation, etc.

1. Interest and Dividend Withholding Taxes

The treatment of interest and dividend withholding tax as final taxes could adversely affect retirees, pensioners, low income earners, and persons that are incurring business losses.
To illustrate this issue, let us share an example: a retired civil servant had invested money in a bank for which he receives annual interest income of $16,100. This income is subject to 10% withholding tax which means $1,610 in tax will be deducted from total interest earning at source and is a final tax which means the taxpayer cannot claim for refunds from the FRCA.

Whereas an employee with PSC earning a gross salary of $16,100 is only pays PAYE tax of $7.00.

The pensioner civil servant and the employee both have same annual income but the pensioner pays much higher tax compared to the full time employee. This would discourage savings and would also impact investment in the country.

The imposition of IWHT as a final tax would also affect investment in new or more risky areas such as agriculture where shareholders borrow from a bank and lend the money to their company as the bank may not lend directly to the company due to the risk involved. The current ITB would impose 10% IWHT on the interest paid to the shareholder with no refund even though the shareholder would pay the same interest to the bank and make no profit from the transaction. This would discourage investment where SME and other individuals seek to invest in developing business in the Country.

We suggest that the policy be reviewed and either progressive rates be introduced for the imposition of tax on interest or allow the taxpayer to lodge a tax return and claim appropriate tax credits/refunds to ensure that the prevailing progressive rates of tax apply.

2. Compliance and Taxation Costs

We understand that it is the Government's intention to encourage voluntary compliance and that the taxation system should be service oriented. In such case, compliance cost would need to be reduced or, at least, remain the same and the taxpayers should not be further burdened by additional compliance requirements.

We note that while Government has reduced the corporate income tax rate in recent years, several other taxes and levies have been introduced which not only increases the level of taxation

on businesses, but also increases the cost of doing business by imposing the collection obligation of the additional taxes on taxpayers. We note that the ITB introduces an additional tax, namely dividend tax.

You may wish to consider removing the dividend tax regime altogether to simplify the taxation system and ensure consistency with Government policy of imposing only one layer tax on corporate entities and their shareholders. If the dividend tax regime is to be maintained we suggest that all the exemptions from tax on dividends under the existing legislation be included in the ITB and dividends payable to non-residents should be subject to 1% **and not 10%** non-resident dividend withholding tax as proposed in the ITB.

The imposition of dividend tax increases the overall tax on companies including 10% more for foreign investors. If it is Government's intention to impose the additional tax and simplify the tax system, consideration should be given to simply increasing the income tax rate and remove the additional layer of tax in the form of dividend tax.

The ITB imposes further compliance obligations on taxpayers (e.g. interest withholding tax on all interest paying entities, dividend tax requirements, etc.). This increases the cost of doing business and makes Fiji a less attractive investment option.

We suggest that the overall policy framework be reviewed to make the tax system more effective and efficient while maintaining an acceptable level of revenue for Government. In this regard we suggest that the above issue be considered in conjunction our suggestion below on the imposition of social responsibility tax (SRT) over a wider base.

3. Social Responsibility Tax

We suggest that the imposition of SRT be reconsidered. Otherwise, the application of SRT should be reviewed. We reiterate our previous comments in relation to SRT, that is –

- The imposition in its current form discourages industriousness and the drive to succeed in individuals as individuals who work hard or strive to succeed and earn more income are being penalised;
- The imposition of SRT is discriminatory against non-corporate business structures. Where a corporate business structure is used, the income tax may be limited to 20%. However, an individual making the same level of income is taxed at up to 49%.
- There may be an issue in relation to whether a tax credit would be allowed for SRT paid against non- residents' income tax payable in their home countries.

If Government wishes to maintain the SRT, we suggest that the SRT be imposed on a broader base (i.e. including companies) at a much lower rate. This should ensure a more equitable taxation system and higher revenue for Government. In this regard with a view to simplifying the tax system, similar to DWHT, we suggest that consideration be given to removing SRT and appropriately increasing the tax rate.

4. Donations to Approved Organisation

The non-deductibility of donations to approved charitable organizations for taxpayers earning purely employment income could have substantial social ramifications.

We understand that, during the recent natural disasters that adversely affected the West, a lot of assistance was provided by various Non-Government Organizations. These organizations rely on generous donations from both businesses and individuals whose main or only source of income is employment income. Most of the organizations that assist the handicap, the elderly, the children, etc. also rely on donations. A lot of donations come from individuals who earn purely employment income. The disallowance of donations as tax deductions may discourage employees from making donations.

With the tax deduction, the generous donor who contributes to help society and Government with its obligations would normally be given up to 20% of the amount a tax relief. The taxpayer would still bear at least 80% of the contribution for social obligations. Furthermore the donations help to pay for assistance which would otherwise have to be derived from the Government or other similar sources.

5. Carry forward tax Losses and offset of losses for wage earners

The carry forward of tax losses period should be increased to assist business and encourage investment in Fiji. As you may appreciate, the reason for the loss being allowed to be carried forward is to allow taxpayers to offset current losses against income they may make in the future as part of the normal business cycle of sometimes making profits and sometimes losses. The ITB only has four years which is considered well short of the normal business cycle in Fiji.

The carry forward of tax losses period should be increased to at least eight years as per the previous tax legislation. The carry forward of tax losses in respect of agricultural or pastoral pursuit should be allowed indefinitely since it normally takes years before such ventures realise profits. Mining entities should also be allowed to carry forward tax losses indefinitely for the same reason. The policy on this matter should be reviewed and changes made accordingly.

Tax losses for wage earners

Under the ITB where employees use their hard earned wages to invest in a business, if they make a profit, the profit is added to their salary and taxed accordingly. However if the employee makes a loss, the loss is not allowed as a deduction in calculating taxable income.

The employee who takes the risk to invest is likely to struggle in the first few years with some losses. A company with consulting income (like wages) and similar investments to the individual would be allowed a deduction for losses. This is inconsistent policy and unfairly penalises SME's and individuals wage earners wishing to invest in the country.

We suggest the legislation be amended to allow individuals to claim losses against salary income where they take the risk to invest and grow our economy.

6. Thin Capitalisation

The Reserve Bank of Fiji (RBF) imposes restrictions under the Exchange Control Act for borrowings by non- resident controlled entities. The debt equity ratio of 3:1 normally applies when local borrowings are made by foreign owned entities.

The "thin capitalisation" requirements in the draft ITB are considered to be too stringent for a developing country. The policy and the tax laws should encourage foreign capital, irrespective of the form of capital (whether equity or debt). We note that interest free loans from shareholders or related entity are treated as equity for the purpose of calculating the debt equity ratio under the ITB. This would be in line with the requirements under the Exchange Control Act.

We suggest the ITB be amended to reflect the current debt to equity ratio of 3:1 as per the Reserve Bank of Fiji Regulations under the Exchange Control Act.

We also suggest that the transfer pricing rules in relation to the deeming of interest on related party loans be appropriately amended to reflect the same principle and ensure that there is consistency and symmetry in the overall legislation.

7. Capital Assets

The definition of capital assets now exclude depreciable assets. That together with the revised provision of s.34 seeks to impose income tax on any capital gain derived from the sale of a depreciable asset which would include buildings.

This is contrary to existing policy which has not imposed income tax on capital gains previously and could have significant implications on investment. We suggest that the distinction be maintained between capital and revenue gain.

8. Definition of Dividend

The definition of dividend in the current ITB seeks to impose dividend tax on net profit after tax not distributed as dividends prior to 1 January 2016. This is contrary to current policy.

However, if the intention is to impose dividend tax on net profit after tax, then to avoid having to track the net profits and subsequent distribution and whether appropriate dividend tax has been paid, Government should consider increasing the corporate income tax instead and do away with dividend tax.

Additionally the definition now includes capital profits of a unit trust. Capital profits have not been subject to income tax or dividend tax under the current ITA and this should not be the case under the ITB.

The income derived from a unit trust is exempt from income tax. We understand the policy behind this was to encourage investment and growth. To impose dividend tax on the capital profits of a unit trust would be contrary to the above intention.

Furthermore, the current ITB provision would impose several layers of tax as dividend tax is imposed without any exemptions for intercompany dividend payments.

9. Presumptive Income Tax (PIT)

PIT is imposed on turnover of up to $100,000 which is option to apply to CEO to be taxed under general provisions when turnover is over $25,000.

What happens to someone with turnover of $16,000 and net profit less than $16,000? Ordinarily that person should not be subject to tax. However, under the PIT provision that person would be subject to PIT of $480.

While the PIT seeks to simplify and encourage SME's, in its current form, the PIT provisions may be a deterrent to SME's.

We suggest that the introduction of PIT be properly reviewed and appropriate changes be made.

10. Advance Tax

Advance tax payments by companies are based on the previous year's assessment where previous year's assessment is available, otherwise the company has to estimate and file a statement with FRCA. This all needs discussion – there is a divergence from current practice to "estimates" which exposes the company to unnecessary risk and penalties when there is an existing advance tax procedure that has worked well for individuals for the last few decades. We suggest that the advance company tax provisions be changed to mirror the current provisional tax payment requirements for individuals.

11. Certificate of Exemption

A taxpayer without a certificate of exemption under s.112 should be allowed a credit or refund for the interest WHT deducted and remitted.

This would encourage investment through the banking system and ensure tax is only imposed on profit rather than on gross income.

Thank you again for this opportunity to present this submission. We would be glad to answer any questions you may have or appropriately provide further comments or discussion on the relevant issues.

Income Tax Bill 2015 (No. 22 of 2015): Part 6 Mining

Submissions to the Standing Committee on Justice, Law and Human Rights by the Mining and Quarrying Council - Fiji Commerce & Employers Federation

This paper is a submission by Fiji Commerce & Employers Federation Mining and Quarrying Council (FCEF - MQC) to FRCA in relation to the proposed **Mining** provisions in the Income Tax Bill 2015 (No. 22 of 2015).

The FCEF - MQC thanks Government for the opportunity to make this submission.

This submission is made without prejudice to any further submissions that may be made by FCEF - MQC members in relation to the tax treatment oftheir project.

1. Section 95 – ring-fence of mining operations

In relation to the proposed ring-fence of expenditures and income to "operations in a title area":

(a) FCEF - MQC submits that there should be no ring-fence of deductions and losses to activities in a title area. It is important that the Fiji tax laws do not create an impediment to entities incurring expenditure and taking risks to develop valuable mining projects in Fiji. As such, FCEF - MQC submits that the deductions and losses incurred by an entity holding a mining or petroleum right should be available to be carried forward without any restriction and should be available to offset any other income of the entity.

(b) In addition to (a) FCEF - MQC notes that an entity engaged in a mining project will often incur substantial expenditure towards the end of the mine life. Where this is the case, the deductions and losses incurred can be wasted if they are incurred at a time when the entity has reduced income or no income (due to the cessation of production).

As such, FCEF - MQC submits that deductions and losses incurred in undertaking mineral or petroleum operations should be able to be carried back for a period of three years from the year in which they are incurred.

(c) In addition to (a), FCEF - MQC notes that there will be many circumstances in which the holder of a mining or petroleum right will need to incur expenditure on activities and facilities outside of the title area. For example, it may be necessary for the entity to incur expenditure developing or improving port facilities at locations which are outside of the title area. Other examples may include expenditure on improving access roads outside of the title area or community facilities outside of the title area.

3. Section 94 – rehabilitation of mine sites

Subsection 94(2) provides a deduction for expenditure incurred for work required by an approved rehabilitation plan. The deduction is allowed in the year in which the expenditure is incurred.

FCEF - MQC notes that mine rehabilitation costs will often be incurred at or around the time of the end of mine life. If so, the deduction for mine rehabilitation costs can effectively be wasted due to the ending of production at the mine site.

As such, FCEF - MQC submits that section 94 should be amended to allow a contractor to carry back the deduction for mine rehabilitation costs for a period of three years from the year in which it is incurred.

4. Section 97- direct and indirect disposals of mining rights

FCEF - MQC submits that subsection 97(2) must be deleted. FCEF - MQC understands that the intention of subsection 97(2) is to put the contractor in the position of a collection agent for any tax that may be payable on disposals by a non-resident person.

This has the potential to put the contractor in an impossible position. In short, it can impose an obligation on the contractor to pay tax on behalf the non-resident in circumstances where the contractor has no contractual or other right to claim the cash from the non-resident. In those circumstances the contractor can be left in the position of having to use its own cash resources (or borrowings) to pay the tax, without recourse to the non-resident. Clearly that would be an unacceptable environment for a contractor to undertake the business activities and risks of developing valuable mining projects in Fiji.

In addition to the above comments, Section 97 is not practical or workable as changes in *underlying ownership* in listed companies are not generally known to the contractor on a day to day basis. Particularly where the interest is an indirect one, as the definition of "underlying ownership" in respect of a company extends to direct or indirect ownership through interposed person(s) and therefore appears to look through to the ultimate individual or non-individual owner.

5. Restructure relief

FCEF - MQC notes that a mining project will generally move through different stages in its life span, and that there will often be a need for project sponsors to restructure ownership interests and assets in relation to the project.

FCEF - MQC submits that Part 6 of the Decree should be amended to include restructure relief for contractors engaged in mining or petroleum operations. The restructure relief would ensure that

- assets used in a project and ownership interests of project sponsors can be transferred where there is no change in underlying ownership with no tax cost;
- tax attributes (such as tax losses, depreciation balances, etc) can be transferred within a wholly owned group without detriment.

10. Losses carried forward

FCEF - MQC notes that mining projects by nature generally have very high capital costs and long life spans and payback periods (upwards of 20 years in many instances). The mining sector also is exposed to global resource demands and pricing.

FCEF - MQC submits that the current carry forward tax losses provisions (of 4 years) are too restrictive and should be reverted to the 8 years as was the case prior to 2012.

In addition, with the removal of the provision (section 23 of FITA) allowing an election to *write off mining expenditure in any five of the eight years (i.e 1/5th) immediately following the year in which the expenditure was incurred*, FCEF - MQC submits that mining projects should be granted indefinite carry forward of losses to align with the extended life span and payback periods of mining projects. We note that tourism projects with hotel incentives were previously granted 13 years.

END

Kalo Galuvakadua

From: Vinit Chand <Vinit.Chand@TFL.COM.FJ>
Sent: Monday, October 19, 2015 9:50 AM
To: Kalo Galuvakadua
Subject: Income Tax Bill -2015(Bill No 22 of 2015)

Hi Ms. Takape, As discussed pls find TFL's response. If needed , I can join teleconference on mobile – 9375759 or 3540260. Pls acknowledge receipt, we will forward signed copy accordingly.

15th Oct, 2015

Hon Ashneel Sudhakar,

The Chairman Standing Committee On Justice, law & Human Rights

Dear Sir,

RE: Income Tax Bill, 2015 (Bill number 22 of 2015)

We are very grateful and delightful for allowing us to present submission in regards to Imposition of Telecommunication levy under Income Tax Bill. Currently the telecommunication levy is imposed on gross voice revenue. On the monthly average, TFL pays approximately $12k a month in relation to above levy. While we do not have any major or specific concern in regards to this levy, we note the following under current Telecommunication environment .

- Levy may be anti-competitive to those Telco especially for those that operates VOIP calls. In this regards traditional voice operators have to pay levy but not the VOIP operators
- TFL feels that it should have access to this fund somehow to use it promote /invest in non-viable areas . TFL operates lot of USO sites especially under satellite and CDMA ie more than 150 sites which are not economical . These sites have voice as major component, thus if levy could be excluded from these uneconomical sites.
- It may be easier if levy is charged quarterly rather than monthly to reduce administrative logistic .
- Further this levy in future may need to be reviewed noting worldwide Telco Voice Trend is decreasing and now there is more focus on Data Revenue . Most Telco's is now offering voice as bundle or value added services as part of their Offering.

We thank you once again for allowing us to contribute to above bill.

Many Thanks

Vinit Chand

Chief Financial Officer -TFL

TELEPHONE: 3381611
FAX: (679) 3370039

MINERAL RESOURCES DEPARTMENT
PRIVATE MAIL BAG, GPO
SUVA, FIJI

OUR REF:
YOUR REF:

(ALL CORRESPONDENCE TO BE ADDRESSED TO THE DIRECTOR)

Hon Ashneel Sudhakar
The Chairman
Standing Committee on Justice, Law and Human Rights

Dear Sir

Re: INCOME TAX BILL 2015 (BILL NO 22 OF 2015)

Your correspondence dated 13/10/15 refers which sought the comments of the department with regards to section 6 (Mining) of the above.

Please find my comments as follows:

1. *Part VI interpretation*

The comments relates to the usage of different terms in taxation and in mining usage. There is the need to use the same term for consistency and avoidance of doubt and also to reflect the linkage between the taxation and mining acts.

a. Contractor - The term contractor is not commonly used in the Fiji Mining sector as such. The recipient of a mining tenement whether it be a prospecting license or a mining lease is referred to as the "holder" by the Mineral Resources Department (MRD) and the Mining Act. The two parties of a mining lease as in the lease document are the lessor and the lessee.
b. Mining Right - The term "mining right" neither appears in the Mining Act nor the Petroleum (Exploration and Exploitation) Act. MRD issues a Mining Lease for Mining and a Production License for Petroleum production / extraction.

2. Section 94 – Rehabilitation Expenditure

Mineral exploration and Mining are two separate activities in mineral development. The whole section refers to only mining & petroleum operations and omitted mineral exploration.

The term mineral exploration is to be added as an activity under the rehabilitation plan together with mining or petroleum operations as rehabilitation plans are applicable for exploration as well.

The term exploration to be inserted in S 94(1) and 94(2) respectively as follows:

94. – (1) A contribution made by a contractor to a rehabilitation fund in accordance with an approved rehabilitation plan in relation to ***exploration***, mining or petroleum operations is allowed as a deduction for the tax year in which the contribution was made.

(2) An expenditure incurred by a contractor in carrying out work required by an approved rehabilitation plan in respect of the contractor's ***exploration,*** mining or petroleum operations is allowed as a deduction for the tax year in……

94 (6) - The word exploration site to be included as approved rehabilitation plan is used for exploration as well as follows:

"approved rehabilitation plan" means a plan for rehabilitation of an exploration site, mine site or decommissioning of a petroleum site approved by the CEO upon the advice of the Director; and

The term for rehabilitation fund as used and understood in the mining industry in Fiji is the Environment Bond. The inclusion of this term is recommended for the avoidance of doubt and clarity between the terms used in the local mining industry and those used for taxation.

S95: Ring-fencing of mining or petroleum operations

The ring fencing of mining or petroleum operations based for a title area is supported to ensure that losses and other issues from other areas are not transferrable between sites. This would allow for better monitoring and control for taxation per title area.

S95 (5) – the term exploration to be included as follows:

In this section, "title area", in relation to exploration, mining or petroleum operations undertaken by a contractor, means the area covered by the exploration, mining or petroleum right under which the exploration, mining or petroleum operations have been undertaken and includes

S 96 - Farm-out agreements

Farm–out agreements constitute dealing in a mining tenement and as with other dealing would require the prior assessment and consent of the lessor (Director of Mines) for it to be valid. Recommend for the reflection of this under this section.

I would like to thank the honourable members of this committee for the opportunity to present views towards the review of the Income Tax Bill 2015.

Sincerely,

Malakai Finau

Director Mineral Development / Director of Mines

SHIPPING SERVICES (FIJI) LTD

As Agents for MAERSK LINE
www.maerskline.com

Head Office:
25 High Street, Toorak
P.O. Box 12671, Suva, Fiji Islands
Ph: (679) 330 5577 Fax: (679) 330 1615
E-mail: salfjsuv@ssfl.com.fj

Branch:
Suites 3 & 4, Saku Street
P.O. Box 2891, Lautoka, Fiji Islands
Ph: (679) 666 7677 Fax: (679) 666 4813
E-mail: salfjsuv@ssfl.com.fj

By email: ktakape@parliament.gov.fj

30 October 2015

The Honourable Chairman,
Standing Committee for Justice, Law and Human Rights
P.O. Box 2352
Government Buildings
SUVA

Dear Honourable Chairman

INCOME TAX BILL, 2015
- **Clauses 11 and 109, Part 8,**

Introduction

We refer to your letter of invitation dated 13 October 2015 seeking our comments to the proposed provisions of the Income Tax Bill 22/2015 (the Bill) relating to the taxation of the non-resident ship owners or charters or the shipping agents for non-resident ship owners or charters in Fiji.

Shipping Services (Fiji) Limited (SSFL) is grateful to the government and the Standing Committee on Justice, Law and Human Rights (the Committee) for providing us this opportunity to provide our views and observations with regards to a number of Clauses of the Bill dealing with non-resident ship owners or charters or the shipping agents in Fiji for non-resident ship owners or charters in Fiji.

Shipping Services (Fiji) Ltd was established in 1992 and we offer our customers a comprehensive global **shipping** services via our liner principal Maersk Line.

At the outset, SSFL commends the government for reviewing, simplifying, consolidating and harmonising the tax laws through the Bill. We note that the Bill will be a single tax code or "one stop shop" tax legislation that provides for the imposition of income tax, capital gains tax and fringe benefit tax.

General Observations – 2% Non-Resident International Shipping Income Tax

In spite of the fact that the currently a 2% tax is imposed on non-resident shipping companies in respect of their outbound freight from Fiji, we wish to mention that any imposition of Non-resident International Shipping Income Tax or freight taxes on out bound goods increases the general costs of freight and makes Fiji an unattractive country for investment.

Shipping freight is a major component of exporting or importing goods into or outside Fiji and hence, the cost of freight has a significant bearing on Fiji business which uses shipping as a means of transporting the goods. Any tax impost on the non-resident shipping companies for the out bound

goods or passengers including any associated administrative, compliance cost will be passed onto and borne by Fiji businesses in form increased freight charges.

Fiji, due to its geographic location already has a relative high freight charges and any taxes on freight increases the cost of doing business in Fiji which we consider is contrary to the Government's desire to increase exports and generate economic activity in Fiji.

Generally, the freight rates from Fiji are relatively higher when compared to world standards.

Accordingly, we humbly suggest to the Committee that the non-resident international shipping income tax is re-considered and removed.

Shipping Profits Exemption - Schedule 1, Part 8

This provision is similar to the current provisions of Section 18 of the Income Tax Act.

In the event, the 2% non-resident international shipping income tax is not removed, then we strongly suggest that consideration should be given to amend the provisions of Part 8 of Schedule 1 of the Bill by listing the countries that will accord equivalent tax exemption to Fiji residents in respect income arising from business of shipping. The provision should contain a provision to allow the list to be amended to include or exclude countries.

We consider that this will be transparent and provide the necessary clarity that currently does not exists and has been subject to regular dispute with the Tax Office.

Currently, for the income exemption to be accorded to the non-resident shipping owners it has to be demonstrated to the Minister's satisfaction that the non-resident shipping owner's resident country will accord equivalent tax exemption to Fiji residents.

Non-Resident International Shipping Income Tax - Clause 11 of the Bill

This provision is similar to the current provisions of Section 32 (c) and the Fourth Schedule of the Income Tax Act.

However, the provisions of this Clause is simple, clear and provides the clarity in the application of the non-resident shipping income tax.

We do not have any comments on the Clause.

Collection of Non-Resident International Shipping Income Tax - Clause 109

Similar provisions are in the current Income Tax Act. However, the Clause has two significant requirements or changes.

a) Under provisions of Clause 109(3) of the Bill, it appears the return should be filed within 30 days after departure of the ship from Fiji provided satisfactory arrangements for payment of Non-resident International Shipping Income Tax has been made.

   This appears to be a significant departure from the current provisions and will be tedious task to file a return within 30 days after every departure of the ship.

   Currently, the shipping agents file an annual income tax return on behalf of the non-resident shipping owners and pay the 2% tax the following month of deduction.

We suggest that the Committee considers appropriate amendments to ensure that clarity is reflected in the Clause that the returns are continued to be filed on an annual basis.

b) Under the provisions of Clause 109(4) of the Bill a new requirement is added when compared to the current provisions in that the Comptroller of Customs will not grant a port clearance until the Comptroller is satisfied:

- that arrangements have been made for payment of the non-resident International Shipping Income Tax; or
- that the non-resident International Shipping Income Tax is not payable.

This may unnecessarily create delays and additional compliance costs on part of the non-resident shipping owners. In order to avoid any confusion on the requirements and application of the this provision, we suggest that the Committee considers removing Clause 109(5) of the Bill or alternatively, make appropriate amendments to specify the procedures and requirements that will be required to satisfy the Comptroller of Customs to issue the port clearance without any delay.

We would be pleased to provide any additional details on the matter set out in our submission, either in writing, by phone or in person, if required by the Committee.

Yours sincerely

Jeffrey Lin
Chief Executive Officer

Ravendran Achari | Chief Financial Officer Pacific & Fiji

Confidential

Hon. Aiyaz Sayed-Khaiyum
Attorney General & Minister for Finance, Public Enterprises
Public Service and Communications
Office of the Attorney-General
Level 7, Suvavou House
Victoria Parade

21 October 2015

Dear Honourable Minister

INCOME TAX BILL – BILL 22 OF 2015
- CLAUSES 10(6) AND 143(11)

ANZ writes with regards to the Income Tax Bill ('the Bill') and ANZ's views on a proposed change within the Bill.

Income Tax Bill

ANZ commends the government for reviewing, simplifying and consolidating the laws relating to taxes in Fiji through the Bill. Apart from consolidating and harmonising existing provisions, the Bill seeks to provide a foundation for further modernisation of the administration of the Taxing Acts/Decrees and to close certain gaps identified by the Fiji Revenue & Customs Authority reviews and the contributions made by the various local professional and business associations.

ANZ notes that the Bill contains certain tax policy changes that could potentially impact investors and the business community at large.

ANZ writes regarding one major change of particular concern and the transitional rules associated with that change.

Taxation of Dividends – Clause 10(6) (c) of the Bill

ANZ is concerned with an apparent change in policy concerning the taxing of dividends of Company Branches as this may have an adverse impact on foreign investment in Fiji.

Clause 10(6) of the Bill ('the proposed Clause') deems any after tax profits paid /credited by a "permanent establishment" (or Branch) to its head office as dividends and as such, will prima facie be subject to an additional 10% non-resident dividend withholding tax. This 10% non-resident dividend withholding tax will be in addition to the company tax rate (of 20%).

ANZ Bank, ANZ House, 25 Victoria Parade, Suva, Fiji | P O Box 179, Suva, Fiji
Telephone +679 3213899 | Fax +679 3312527 | Ravendran.Achari@anz.com

Under the current provisions of the Income Tax Act, after tax profits of any Branch paid/credited to its Head Office are not subject to any further Fiji income tax (including withholding tax)

With respect, ANZ considers that this policy change of taxing after tax profits of a Branch is inconsistent with Fiji's desire to attract foreign direct investments which assists Fiji's growth.

The proposed Clause will increase the tax impost on non-resident investments into Fiji via a Branch structure. Such an increase in tax will increase the cost of capital as typically this additional tax burden will not be recognised in the non-resident's home country as a tax credit.

Further, there is a risk that such additional costs to a non-resident investor could be passed onto Fiji businesses and individuals. This may arise where the non-resident looks for a higher rate of return from their Fiji investment to ensure they are no worse off due to the additional tax levied. Consequently, this increase in the cost of capital could be borne by Fiji residents in the form of reduced employment and lower wages.

Further, ANZ considers that the proposed Clause is a departure from international practice of taxing companies so as not to impose withholding taxes on intracompany transfers. Departing from understood international practice can create uncertainty, risk and loss of confidence by foreign investors.

In summary, the proposed Clause will increase the cost of capital of non-residents investing in Fiji through a Branch and is not common from an international tax perspective. The proposed Clause has the potential to discourage foreign direct investment into Fiji and discourage multinational corporations considering Fiji as a base for their operations.

ANZ notes that the proposed Clause may have been intended to align the level of tax impost of Fiji Branches with local subsidiaries and offshore jurisdictions. However, ANZ considers that Fiji should focus on making foreign investment attractive as opposed aligning with other jurisdictions.

Consequently, ANZ recommends removing the proposed additional tax impost on Branch structures not just for existing investors but potential investors.

Transitional Provisions – Clause 143(11) of Income Tax Bill

If it is considered that the additional tax impost should be introduced ANZ recommends deferral of the application date to enable consultation, consideration and clarification of the application of Clause 143 of the Bill ('the proposed transitional clause'). ANZ considers that there is currently insufficient certainty regarding the application of the proposed transitional clause.

Ordinarily, ANZ expects the application of any new or additional taxes to have effect on a prospective basis. However, the proposed Clause and the proposed transitional clause combine to enable after tax income of earlier income years to be taxed again which appears to have an effective retrospective application. ANZ is not sure if this was intended.

ANZ Bank, ANZ House, 25 Victoria Parade, Suva, Fiji | P O Box 179, Suva, Fiji
Telephone +679 3213899 | Fax +679 3312527 | Ravendran.Achari@anz.com

ANZ notes that there are some concessions within the proposed transitional clause. However, the concessions seem to differentiate between after tax profits between 1 January 2014 (or equivalent substituted year) and 1 January 2016 and after tax profits prior to 1 January 2014. We are unsure why appropriate concessions would not apply to all pre 1 January after tax profits. Further, we consider that no further tax should be imposed on after tax income derived in earlier income years i.e. changes should not have an effective retrospective application.

In addition, the proposed transitional clause does not confirm that where concessions apply, no further tax will be imposed. This should also be considered and clarified.

Given the uncertainty regarding the application of the proposed transitional clause, ANZ recommends that if it is considered that the proposed new tax is introduced that the application date should be deferred to enable consultation, consideration and clarification of the application of the proposed transitional clause.

Conclusion

We appreciate and request your kind consideration of our above submission.

In summary, our recommendations are:

- to remove the proposed additional tax impost on Branch structures with the main view of continuing to grow foreign investor confidence in Fiji
- that if it is considered that the additional tax impost should be introduced, ANZ recommends deferral of the application date to enable consultation, consideration and clarification of the application of Clause 143 of the Bill

May I take this opportunity to reiterate ANZ's firm commitment to Fiji, our customers, our staff and communities. We've had a presence here for a long time, having first established in the old capital of Levuka in 1880 as the Union Bank of Australia. In 1951, the Bank of Australasia merged with the Union Bank of Australia to form ANZ Bank Limited. We've since continued to grow our presence in Fiji with the acquisition of the Fiji operations of Barclay's and Grindleys Banks in 1985, Bank of New Zealand in 1990, and Bank of Hawaii in 2002. Our journey has been a long one and our confidence in Fiji has been unwavering. We've been here for 135 years, and we want to be here for another 135 years and beyond.

We would be happy to meet you and/or your Ministry officers and discuss this further.

Yours faithfully,

Ravendran Achari

ANZ Bank, ANZ House, 25 Victoria Parade, Suva, Fiji | P O Box 179, Suva, Fiji
Telephone +679 3213899 | Fax +679 3312527 | Ravendran.Achari@anz.com

National Council of Women, Fiji

Established in 1968

"Networking for Development"

THE NATIONAL COUNCIL OF WOMEN FIJI ORAL SUBMISSION TO THE PARLIMENTARY STANDING COMMITTEE ON JUSTICE, LAW AND HUMAN RIGHTS

INCOME TAX BILL [BILL NO 22 OF 2015]

29TH OCTOBER 2015

Good Morning Chair, Deputy Chair and Members of the Parliamentary Standing Committee on Justice, Law and Human Rights. The National Council of Women Fiji is delighted to have this opportunity of making an oral submission on the Income Tax Bill No.22 of 2015 from a gender perspective.

For those of you who do not know about the National Council of Women Fiji [NCWF], I would just like to give you a brief on who we are and what we do. The National Council of Women Fiji was established in 1968 and we are a national coordinating body for women. We have over 60 women organizations affiliated to us. We have the faith based organizations like the Catholic Women's League and Sangam Women. We have national based organizations like ACS Old Girls. We have Professional based organizations like the Fiji Teachers Association. We have district based organizations like Nadi Tikina. We have issue based organizations like Fiji Girl Guides and even have a marginalized based organization Rainbow Women's Network. Therefore we are proud to admit that we represent at least 70 to 80% of the women in Fiji. The National Council of Women Fiji is affiliated to the International Council of Women and we have a common cause of advocating human rights for women.

This morning NCWF is here to voice our opinion on the Income Tax Bill No.22 of 2015 which no doubt will eventually be passed in Parliament. Admittedly we welcome the revising and simplification of the Income Tax Law because our previous Income Tax Law was somewhat complex, out dated and non practical from the various changes it has been through over the years.

Tax Reform is much needed here in Fiji and we commend Government for initiating the process of revising and simplifying the Income Tax Laws. But on the same token we are weary of the adverse implications the changes in the Income Tax Bill will have on women.

Tax affects all citizens of Fiji directly or indirectly and we request Government to have more constructive consultations with literally all stakeholders. This consultation must be a two way process where the stakeholders must also take into consideration that Government is dependent on Taxes for Income. Effective Tax Reforms must benefit all and the tax burden must be distributed neutrally.

From the 130 pages of the new Income Tax Bill 2015, NCWF has tried to dissect certain areas that directly affect women from a gender perspective. We have not looked at the technical aspect of the Bill – we will leave that to the experts. We have looked at the practical aspects of the Bill and our submission is fairly simplistic and logical and we have concentrated on 6 specific areas.

1. **Personal Income Tax Threshold**

In the new Income Tax Bill, the Income Tax Threshold is still at $16,000 and this was effective from 2013 where only a 3% increase happened in 2012. NCWF feels that the Income Tax Threshold should be at $18,000 effective from 2016. With Inflation and cost of living increasing, at least wage earners at the low income level can have more purchasing power in terms of a better standard of living.

We also noted that the amount of redundancy payment tax free stood at $15,000. With high unemployment, NCWF feels that the redundancy payment tax free amount should also increase to at least $18,000 in 2016. This will enable the individual to survive financially while looking for another job.

2. **Personal Income Tax Rate**

In 2005 to 2006, the Personal Income Tax Rate reached an all high of 31% and in 2013, it decreased to a record low of 20%. In the new Income Tax Bill, the Personal Income Tax Rate is still at 20%. We commend the Government for this as it greatly assisted working women and families to have more money in their pockets at the end of the day and to be able to afford their standard of living.

3. **Social Responsibility Tax [SRT]**

As we understand it, Social Responsibility Tax is tax levied on an individual who has chargeable income exceeding FJD$270,000. According to FRCA's official website, it is a special contribution to the welfare of the underprivileged in Fiji. NCWF welcomes this Tax as we are hoping that at least 50% of this income in tax is evenly distributed to underprivileged women in Fiji. After all we women make up at least 49.11% of the total population in Fiji.

But from a professional working woman's point of view, this type of tax would discourage her to earn more income as she pushes forward in her professional career as earning more income incurs more Tax. It would also be interesting to see how many women earn more than $270,000 Chargeable Income in a year in Fiji.

NCWF welcomes SRT as it hopefully benefits the underprivileged women but we are also sympathetic to our professional career minded women who strives to earn more income.

From a gender perspective, we encourage FRCA to provide details on how this SRT is used and how many women have benefited from the fund. Gender mainstreaming would also be an idea for all Ministries to start implementing in the sharing of their data.

4. **Presumptive Income Tax [PIT]**

PIT is quarterly tax imposed on an individual conducting a business in Fiji and whose annual gross turnover is more than $25,000 but less than $100,000. This applies to some of our women in Fiji who have small businesses. This tax is confusing as the Personal Income Tax System applies to this individual and therefore this individual will be taxed if he/she earns more than $16,000 at a rate of 3%.

NCWF suggests that a separate Tax Schedule be created for individual entrepreneurs and more consultation with stakeholders is needed to avoid confusion.

5. **Interest Withholding Taxes [IWT]**

Withholding Taxes on Interest should be exempted for citizens who are over the age of 55 years old. Normally citizens at 55 years old withdraw their superannuation or receive insurance policies that have matured. The norm is to bank these funds. Interest earned from these funds are then taxed at 10% for those senior citizens whose interest exceed $16,000.

Part 4 – Exempt Interest No.9 (a) (ii) of the Income Tax Act is a bit confusing but we understand this clause as Interest below $16,000 is exempt for residents over the age of 55. This is not enough and we are hoping that this clause be revised as the current clause would discourage savings

NCWF is urging Government to reconsider these Withholding Taxes on Interest and be considerate to our senior citizens. We suggest that more analysis be done and data gathered from the various Banks on Tax on Bank Interests and individuals being taxed. A consensus can be sought and Exempt Interest from withholding tax can be changed.

6. Exempt Income

Part 2 of the Income Tax Act is Amounts of Individuals that are exempt income. NCWF is suggesting that maternity leave employment income be tax exempted for first time mothers. This extra income will certainly assist the first time mothers during maternity leave and give them a fair idea on costs of having a baby.

Conclusion

NCWF recognizes that the Government is dependent on Taxes for Income as Taxes finances about 90% of the Government Budget. In some of our recommendations, the effect for Government is that Taxes will decrease but we are confident that our Government will improve on the distribution of the 2016 Annual Budget and be more gender sensitive.

Tax Reforms on Company Tax must be considered carefully as high company tax reduces investments and this means lesser jobs and lower salaries – this indicates that adverse Tax Reform on Company Tax directly affects all of us.

Tax Reforms on Personal Income Tax is another area to consider and one must admit that the changes in Chargeable Income and Personal Income Tax in the last few years in Fiji have been effective where savings have increased for individuals as well as their purchasing powers.

In conclusion, NCWF finds it difficult to conclude at this moment that this Income Tax Bill is gender neutral as more in-depth work is needed to analyze the various Income Tax clauses and we invite Government to invite us to discuss and consult further on having an effective gender sensitive Income Tax Bill. We humbly request that more time be given to further analyze the Income Tax Bill 2015.

Thank you all for your time and again this opportunity to present this submission.

APPENDIX C

FRCA RESPONSE TO FIA SUBMISSION ON 14TH DRAFT OF INCOME TAX BILL

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INCOME TAX BILL 2015 PARLIAMENT STANDING COMMITTEE ON JUSTICE, LAW AND HUMAN RIGHTS		FIJI REVENUE AND CUSTOMS AUTHORITY RESPONSE TO FIJI INSTITUTE OF ACCOUNTANTS	
Sections	**Provisions**	**FIA Submission**	**FRCA response to FIA Submission**
s2	"arm's length transaction"	Ensure that the definition is consistent with the Income Tax (Transfer Pricing) Regulations and the OECD Model Tax Treaties.	The definition of "arm's length transaction" in section 2 is consistent with the principles of arm's length in the transfer pricing and OECD Model Tax Treaties. Basically dealing at arm's length between related parties.
s2 s34	"capital asset"	The definition of "capital asset" now excludes depreciable assets. That together with the revised provisions of s.34 seek to impose income tax on any capital gain derived from the disposal of a depreciable asset which would include buildings. This is contrary to existing policy and could have significant implications on investment. We suggest that the distinction be maintained between a capital and revenue gain.	S2 of the Bill does exclude depreciable assets. s34 (3) of the Bill is different from what used to be treated before, For example if a person is selling a depreciable asset above cost and the consideration for the disposal is more than the cost of the asset at the time of the asset. In this case, the income included in gross income is the sum of the following amounts: (1) The total gain above cost (i.e. no apportionment for part business use). This continues the current situation whereby the whole of the gain above cost is taxed (although now under the income tax rather than CGT). (2) Depreciation recapture amount. <u>Example</u> Mere bought a car for $5,000 and sold it above

			cost at $10,000. Thus, 50% will be subject to depreciation recapture which is $2,500 and the balance of $2,500 and the gain of $5,000 will be subject to income tax.
s2	"dividend"	Explanation required from FRCA/Prof Burns as to what this is intended to capture? The definition of "dividend" in the current form seeks to impose dividend tax on net profits of an entity even before the profits are "distributed". This is contrary to current policy. However, if the intention is to impose dividend tax on net profit after tax, then to avoid having to track the net profits and subsequent distributions and whether appropriate dividend tax has been paid, Government should consider increasing the corporate income tax rate instead. Additionally, the definition now includes capital profits of a unit trust. Capital profits should not be subject to income tax.	In the current draft Bill, the definition of dividend - (i) The treatment of (a) any net profit after Income Tax has been <u>REMOVED</u> after consultation with FIA on the 12th draft in 2014; (ii) Paragraph (b) a distribution of profits by a company to a member of the company, and includes an entitlement to income or capital profits of a unit trust, but does not include profits taxed as a dividend under paragraph (a) The capitalization of profits by a company, whether by way of a bonus share, bonus interest in unit trust (currently termed in the case of a company as "Managed Investment Scheme" under the Company Act 2015), or bonus debentures issue, or increase in the amount paid- up on a membership interest, or otherwise involving credit of profits to share to a unit trust (aka MIS) or an unit trust (MIS) capital account (other than the share premium account) is treated as a Dividend.

		The income derived from a unit trust is exempt from income tax. We understand that the policy behind this was to encourage investment and growth. To impose dividend tax on the capital profits of a unit trust would be contrary to the above intention. Furthermore, the current ITB provisions would impose several layers of tax as dividend tax is imposed without any exemption for intercompany dividend payments. Similar to (b) every other item under the definition of dividend should have the proviso: "… *but does not include profits taxed as a dividend under paragraph (a)"* "dividend" in relation to a	<u>Encourage investments and growth</u> The current exemption remains – (a) s67 (1)(e) any capital gain made from disposal of shares in a unit trust (aka MIS); (b) First Schedule – Part 5 (EXEMPT DIVIDENDS) (i) Paragraph (3) – dividend paid to a resident person from unit trust of Fiji, colonial first state income and growth fund, Fijian holdings etc. (ii) Paragraph (4) dividend paid or credited in favor of a resident under a Unit Trust Company approved by the CEO. (iii) Intercompany dividend payments are currently exempt under the IT Bill 2015 – refer to First Schedule, Part 5 – Exempt Dividends. (iv) s112 (2) - The <u>resident dividend withholding tax is final</u> under the IT Bill; for a resident company paying a dividend to a resident person must withhold tax from the gross amount of the dividend at 1%. (v) The paragraph (h) referred to by FIA "*(h) in the case of a disposal of a*

		company, means – (h) in the case of a disposal of a company, the total value of the retained earningsThis is a confusing term and there has been much dispute with FRCA as to what it actually means – i.e. 100% of the shares or any portion of the sales? For clarity and the avoidance of doubt, the definition should be reworded to refer to "sale of shares".	*company, the total value of the retained earnings"* has been deleted in the definition "dividend" as the gain is taxed under the Capital Gains Tax.
s2	"remote area"	"Rural local authority" is a new insertion. Change "fifteen" to "15" (for consistency throughout Bill) What determines where the "rural local authority" is located?	(a) "rural local authority" is the local authority appointed by the Public Health to service rural areas. (b) Yes, as per raised by FIA we had ensured that "fifteen" remains consistent throughout the Bill.
s2	"resident company"	resident company" in subsection (a) refers to a company "settled" in Fiji and in (b) is defined as any company that has any part if its practical management and control located in Fiji'. The word "settled" has a very broad meaning, which may appear to include non-resident	The two alternative test for determining whether a company is resident companies are provided for in (a) and (b). As per issues raised by FIA on the terms used within the definition of "resident company"– (a) *that is incorporated, formed or <u>settled</u> in Fiji*; or

		companies with a branch in Fiji. Consider amending the provision to clarify the definition of resident company. The definition under the current FITA or the income tax law of Australia (i.e., a company which is incorporated in Fiji, or which, not being incorporated in Fiji, carries on business in Fiji, and has either its central management and control in Fiji, or its voting power controlled by shareholders who are residents of Fiji) may be considered. The effect of the words "***any part***" means that FRCA could create a contest about the head office of a company whose practical management and control is clearly in another country. This is bad for international tax harmonization and investment. It will simply discourage business from having any presence in Fiji at all. We should revert to original definition The issue still remains. FIA has no issue with the current	The term "settled"- This ensures that if a unit trust is treated as a resident company for the purpose of the IT Bill, the unit trust is settled in Fiji. (b) *that has <u>any part</u> of its central management and control located in Fiji*; This is intended as reference to the United Kingdom case law concept of residence of companies. The case established that central management and control of a company refers to the superior directing authority of the company and not the day to day management of its operations. Normally, a company's board of directors holds the superior directing authority of a company and that authority will be exercised in meetings of the board. Therefore, the location of the directors meetings will be a significant factor in determining the location of the central management and control of the company.

		definition in the ITA. The FRCA said they will consider the FIA's suggestion. Reiterate earlier comments. Definition of "resident company" should be amended in accordance with the current ITA.	
s2	"permanent establishment"	"permanent establishment" includes *"carries on activities, including the operation of substantial equipment, in the exploration for or exploitation of natural resources or standing timber for a period or periods exceeding in the aggregate* ***90 days*** *in any twelve-month period, for or under contract with a person"* The 90 days should be increased to 6 months to ensure consistency with other definitions of what constitutes a permanent establishment eg. In DTA in the current ITB itself.	In the definition of "permanent establishment" in paragraph (h), this includes the conduct of activities including substantial equipment's used for exploration not exceeding an aggregate exceeding 90 days of any 12 months period for or under contract with a person as permanent establishment for tax purposes. The "6 months period" as suggested by FIA, under the tax treaties is in relation to the period for building site or construction or installation of project to constitute as a permanent establishment but not in relation to exploration and exploitation of natural resources.
s2	"foreign sourced income"	It is suggested that "a*mount*" be changed back to "*income*".	As per raised by FIA "amounts" to change to "income". FRCA maintained "amount" in the IT Bill and is defined.

s2	"Fiji assets"	In the definition "Fiji Assets" want to remove paragraph (b) *a membership interest in a company, or an interest in a partnership or trust, if the assets of the company , partnership or trust consists solely or principally of Fiji assets under paragraph (a) held by a company, partnership, trust, directly or indirectly, through one or more interposed of persons*	The purpose of the paragraph (b) is to counter arrangement aimed at avoiding paragraph (a) by a person holding an interest in Fiji land through an entity and then selling the interest in the entity rather than selling the interest in the land. The value of an interest in an entity (such as shares in a company) will reflect the value of the assets owned by the entity. Thus, if the assets of an entity comprise primarily Fiji land, a capital gain arising on the disposal of the interest in the entity will be equivalent of the capital gain that would have arisen if the land had been sold. It applies to any entity (resident/ nonresident), as the main concern here is the nature of the assets of the entity namely Fiji land. The application of paragraph (b) is illustrated by the following example. **Example:** Consider the following corporate structure under which Foreign Company 1 holds 100% of the issued shares in Foreign Company 2 and the only asset of Foreign Company 2 is land in Fiji - Foreign company 1 ⇩ Foreign company 2 ⇩ Fiji land Foreign Company 1's shares in

			Foreign Company 2 are classified as a Fiji asset because the assets of Foreign Company 2 consist solely of Fiji land. Consider the following corporate structure under which Foreign Company 1 holds 100% of the issued shares in Foreign Company 2, Foreign Company 2 holds 100% of the issued shares in Foreign Company 3, and the only asset of Foreign Company 3 is land in Fiji – Foreign company 1 ⇩ Foreign company 2 ⇩ Foreign company 3 ⇩ Fiji land Foreign Company 1's shares in Foreign Company 2 are classified as a Fiji asset because the assets of Foreign Company 2 consist of land in Fiji held by Foreign Company 2 indirectly through the intermediary of Foreign Company 3. The treatment of the shares in Foreign Company 2 as a Fiji asset in these circumstances is

			consistent with the jurisdiction to tax that Fiji as source country is permitted to assert under Article 13 of double tax treaties. The language used in paragraph (b) is similar to that used in Article 13 of tax treaties.
s2	"received" includes (c) credited to an account	It is suggested that account be clarified (i.e., bank account as opposed to an account). It is also suggested that "paid" have a similar definition to match the income and expenditure. Suggest changes be made or at least indicate awareness of *"recipient of the amount"* as although an amount may be credited by an entity in favor of a third party, the third party may not be aware of the amount being credited	A taxpayer accounting for income tax on a cash basis derives income when it is received. For the purpose of paragraph (c) treats an amount received by a person if it is credited to an account.
s3	Approved Fund	Approved funds are limited to employer provided funds. The current provisions in the Income Tax Act are not limited to employer provided funds. Furthermore, expatriate employees and their employers may be required to contribute to offshore funds. It is suggested that the qualifications for approved funds not be	The conditions for an approved fund under the Income Tax Act 1974 still remains in the current employer approved fund as an approved fund. The idea of the conditions is to ensure that the tax concessions granted to approve funds are not subject of tax avoidance arrangements. Even subsection (2) provides that the CEO has the discretion to decide whether an employer approved fund to be an approved fund even though the conditions are not fully complied with

		limited to employer provided funds. Reiterate earlier comments and suggest amendments be made accordingly.	but a substantial compliance with the conditions. Mostly it would be retirement fund created by the employer or associate for the benefit of the employee.
s3; First Schedule Part VI	Pensions received by military personnel limited to disability or death only	The pension fund of the Civil Servants should also be included (7) is limited to pension received by a military personnel or relative for any disability or death of the principal. The exemption should include pension received by military personnel which is not due to disability. Should Parliamentary pension also be exempt income? First Schedule, Part VI, paragraph (7) is limited to disability or death. Should be extended to include pension received for other reasons. Should consider inclusion of parliamentary pension under the Schedule as exempt income.	Currently in section 17(6) of the Income Tax Act 1974, pension received by military personnel for disability is exempt from income tax. Therefore, this was translated to the Income Tax Bill 2015. Therefore anything more than the current exemption is a matter for POLICY MAKERS TO DECIDE.
s7(4) Sources in Fiji		s8 (7) of the current ITA which excludes dividend paid from foreign source income of a resident company, should be	Currently section 8(7) of the ITA 1974 is the determination of Non Resident Dividend withholding tax for a company which operates both inside and outside Fiji.

		incorporated. Reiteration earlier comments. Suggest changes be made to avoid double/triple taxation.	Section 7(4) (a) of IT Bill 2015 simply provides a source rule, that a dividend paid by a resident is derived from sources in Fiji. Any amount that is not derived from sources in Fiji is "foreign source income" which is an amount that is not derived from sources in Fiji. The draft IT Bill 2015 has catered for the issues raised by FIA.
s7(4)(g)(i)		s7 (4) (g) reconsider rephrasing to "resident person, other than as an expenditure of a business carrying on by the person outside Fiji through a permanent establishment.	Suggest to remain the same because s7(4(g) states interest, royalty, management fee, professional fee or other independent services, pension, charge or annuity are derived from sources in Fiji if (g) paid by a resident person, UNLESS the amount paid is an expenditure of a business carried by a person outside Fiji through a permanent establishment
s8(5)		FRCA was to email the sample application of this provision. FIA stated that there should be symmetry in application. The application discourages investment by local employees (e.g., rental property – there usually are losses in the beginning due to the interest paid on loans obtained to purchase property). This only applies to about 20% of employee population. These potential investors should be encouraged since this assist in	Subsection 6 provides for taxation of employee who have both employment income (subject to final withholding) and other income that is included in gross income (such as business income or rent). The formula ensures that the tax payable by the employee on his or her chargeable income takes into account the employee's employment income subject to final withholding under section 125. This is necessary to ring fence the loss not to offset the chargeable employment income, because from the employment income the withholding tax has taken into account the

		driving the economy. Runs against the whole logic of promoting investment and entrepreneurship spirit. Penalises the people who have the initiative to start a business while being employed. This discourages investment among local employees. FRCA comments that PAYE is a final tax and Government has already given away by lowering tax rates. Hence, business losses should not be offset against employment income. This year (2012) is a bonus year – freak year. Only affectedwith losses are SMEs. FIA states that it is the whole point. Government should promote SMEs in the country. The tax avoidance issue should be covered under tax avoidance and not make it a tax policy. FIA also showed the distortion between an employee with business income and a consultant with business income by example.Reiterate earlier comments. Ring-fencing of losses may be a deterrent to investment and	marginal rate scale (tax – free threshold). The example given by FIA if it was subject to final tax : Employment income - $20, 000 ($20000-$16000 = $4000 is subject to PAYE) Loss from rental property - $5,000 If we were to offset the $5000 loss from rental income against $4,000 (subject to PAYE Final), then the taxpayer would be refunded $1,000. The ring fence is necessary for PAYE to be fully final and employee doesn't get the benefit of the marginal rate scale twice.

		SME's especially where SME's are funded from employment income. Also creates disparity between taxpayers. Refer following example: **Employee subject to final tax:** Employment income - $20,000 Loss from rental property - $5,000 Total tax payable - $280 **Contractor:** Contractual income - $20,000 Loss from rental property - $5,000 Total tax payable – nil. Suggest that the above be considered in line with policy framework.	
s9	Presumptive Income Tax – on registered persons with gross turnover less than $50k. The presumptive income tax is a final income tax	FIA members generally do not have significant stakes in this sector of the taxpaying public but as a matter of policy this should be carefully considered: - is it a good use of resources to try to capture a maximum of $1,500 p.a. from a presumptive taxpayer	As mentioned in the consultations, PT is subject to Government Policy and in section 1(3) of IT Bill will be introduced at a later date. PT is a tax on individuals who carries on a small business and meets the following condition – 1. conducting a business; 2. business conducted solely in fiji; 3. An individual whose annual turnover is below the registration threshold ($100,000) and has not voluntarily registered for VAT. The advantage of the presumptive income tax for small business is that it has a

		[anyone paying more will file a return] when the individual threshold is $15,000? - does such a tax – and the administration involved – not discourage enterprise and small business initiative? Therefore isn't this a "lose-lose"? Better SME simplified taxation regimes have been suggested before (refer D Tansey Paper) A person who pays PIT before obtaining approval from the CEO to be subject to normal income tax should also be allowed to claim the PIT as credits against its income tax. To be discussed later since implementation has been postponed till date appointed by Minister. There is still time to discuss and amend as necessary before it becomes applicable. ***FIA will subsequently review the provisions and provide its comment.*** Reiteration earlier comments. PIT is imposed on turnover of up to $100,000 which the option to	simplified record keeping and reporting obligations.

		apply to CEO to be taxed under general provisions when turnover is over $25,000. What happens to someone with turnover of $16,000 and net profit less than $16,000? Ordinarily that person should not be subject to tax. However, under the PIT provisions that person would be subject to PIT of $480. The PIT provisions may be a deterrent to SME's. Suggest that the introduction of PIT be reviewed and appropriate changes be made.	
s10(5)	Nonresident withholding tax is discharged if withheld and paid to FRCA.	The liability of the nonresident should be discharged if the tax has been withheld even though not paid to the FRCA. The liability after the tax has been withheld should be the payer who withheld the tax. It is suggested that "... *and paid to the CEO under section 117*" be deleted. Reiterate earlier comments. NRWHT in respect of dividends now extended to branch profits	The section ensures that Nonresident withholding that has been paid is remitted to FRCA.

		even though the same is not remitted to the head office. This goes beyond the current ITA and is a change in policy. Appropriate changes should be made.	
s11(3)(c)	Transshipment of livestock	What is meant by "transshipment"? Is there a definition?	Non-resident shipping international income tax is not imposed on the transshipment of livestock, mail, merchandise or goods. Transshipment is not defined therefore it has its normal commercial meaning, namely shipment of goods between two places via an intermediate destination (in the case of Fiji).
s12	General Provisions relating to s9,10 and 11	Once paid, not required to file returns PIT should only be a final tax if the person is solely carrying out a business, which meets the criteria for PIT unless the person's only other income is subject to final tax (e.g. bank interest, etc.).To be discussed later since PIT has been postponed. ***FIA will subsequently review the provisions and provide its comment.*** Reiterate earlier comments. Suggest appropriate changes be made particularly where an	The section makes it clear that a deduction is not allowed for expenditure or loss incurred in deriving an amount which is subject to S9 (presumptive tax), S10 (non-resident withholding tax) and 11(non-resident international shipping income tax); (i) in calculating chargeable income and (ii) in calculating the taxable amount of the PT, NRWHT or NR international shipping tax. The second point is a matter of practice by FRCA. The disputes on whether NRWHT is applicable or not, and if there is to be refunds then the TAD provisions in section 33, whereby the CEO is obliged to refund for overpaid taxes. The section provides for PT, NRWHT and Nonresident international shipping income tax as final.

		entity is deemed to have a permanent establishment in Fiji.	
s14	Amounts included in Gross Income	s.14(1)(b) is not clear and for clarity purpose we need to explain "ordinary concepts". s.14(1)(d) is a circular phrase. It is suggested that s.14(1)(d) be deleted. It is suggested that the word "amount" in subsection 3 is substituted with "income". Reference to "amounts" is very broad and should be limited to "income" as income is already defined in s.14(1). Use of the word "amount" as opposed to "income" would substantially change the potential tax implications under this law as it would include all amounts as part of gross income.	The reference to "income according to ordinary concepts" is intended as a reference to the ordinary meaning of income as determined under case law. Ordinarily an amount is income according to ordinary concept if it is a product or ordinary incident of an income earning activity. Further an amount derived periodically may be within the ordinary meaning of income even though it is not related to any earning activity. Some examples of total income that the section of the Bill expressly includes in gross income are employee share schemes section 16, recouped deductions are included in gross income section 27, amount of an expenditure allowed as a deduction on an accrual basis but not paid within 12 months after the end of the tax year in which it was deducted is included in gross income under section 39(3). In the definition "amounts" includes benefit in kind. FIA suggested that "gross amount" be changed to "gross income" and this has been included in the draft IT Bill 2015.

s15(1)(a)	Work Condition Supplements	Reiterate earlier comments and suggest that the term "work condition supplements" be appropriately defined.	Basically work condition supplements are unpleasant and dangerous work conditions. For example, FEA workers who are paid height allowances and mine workers are paid dangerous work conditions for going into the mines.
s15(1)(b)	Value of a fringe benefit	Some care should be taken (perhaps in regulations) to ensure that the **employee** knows what has **not** been subjected to FBT For clarity, it is suggested that "*tax under*" be deleted. Hence, provision would state "... *the value of fringe benefit... that is subject to fringe benefit tax...*" Reiterate earlier comments and suggest that amendments be made.	In the current ITA the value of the fringe benefit that has not been taxed under FBT is considered as employment income.
s15(1)(c) & 16	Employee Share Scheme	S.16 includes the definition of qualifying employee share scheme but the exemption of $1,000 has not been included. The section would need to be appropriately amended to consider the exemption.	The section 16 provides for the taxation of benefits under an employee share scheme. The amount of a benefit under an employee share scheme is included in gross income under section 14(1)(d). While an employee share scheme benefit relates to employment, the amount of the benefit is not included in employment income as

		Whatever the treatment (e.g. deduction or exemption) should be consistent. Suggest that s.15 and s.16 be reviewed to ensure that employee share scheme benefits are properly included under the appropriate tax type (ie. employment income?). We also suggest that the qualifying employee share scheme exemption be included.	it is not easily subject to tax by withholding. For the same reason, employee share benefits are not subject to tax to the employer under FBT even though it is a benefit in kind provided by the employer to an employee. In subsection (1) the value of the right or option granted to employee to acquire shares under employee share schemes is not included in employment income. The taxing point of employee share scheme benefits is either when the employee exercises the right or option (subsec 2) or disposes of the right or option (subsec 5). <u>For example</u> On 1st July 2016, an employee is granted an option to acquire 10,000 shares under an employee share scheme. Exercise price is $10 per share, which is the market value of the shares at the time the option is granted. Employee pays $10 for the option. On 30 June 2018, employee exercises the option, paying $100,000 for the shares. At the time the option is exercised the market value of the shares is $12 per share. Employee has received an employee share scheme benefit of $19,990 that is included in gross income for the tax year December 31 2018($120,000 - $110,000 ($100,000 (cost of shares) + $10 (cost of option)). Employee's total cost of the shares is $120,000 (compose of $100,000 (consideration of shares + $10(consideration for the option) + $19,990

			(employment income)). The inclusion of the amount of employment income in the cost of the shares ensures that the amount is not taxed again on disposal of the shares if the shares are held on revenue account or are a capital asset of the employee.
s15(1) (c) & (d)	Employee allowances	Practical implementation of s15(1)(d) and (e) Some clarity should be provided on what FRCA will consider an allowance *to the extent expended in the performance of the employee's duties*... These can be needlessly (and unproductively) ambiguous and difficult. Clarity is also required in respect to per diem allowances, which is a norm, paid to employees, officers, directors for business travelling. The practical implementation of s.15(1)(d) and (e) should be clarified.	Section 15(1)(c) any allowance to the extent expended in the performances of the employee's duties of employment. An example of an allowance that may come within the exception is a travel allowance received by the employee to cover fares, accommodation and living expenses incurred when travelling for the purposes of employment. In this case, to the extent that an employee expends the allowance of fares, accommodation and living expenses while travelling for work, the allowance is not employment income. Paragraph (e) includes in employment income certain amounts relating to the employee's conditions of employment. (i) Employment income any consideration for a person's agreement to enter into an employment relationship. For example, inducement fee or signing on fee. (ii) Employment income for any consideration for an employee's agreement to any conditions of

			employment or an employee's agreement to any change in his or her employment. For example, employee may be paid a lump sum amount as consideration for giving up a benefit of employment under the employee's conditions of employment. E.g Golden handcuff payment meaning an amount paid to an employee for his or her agreement to a condition to work for the employer exclusively. (iii) Employment income any consideration for an employee's agreement to accept a restrictive covenant in respect of any past, present or prospective employment. E.g. an employer may pay an employee on termination of employment for the employee to agree not to set up a competing business for a number of periods after termination. In terms of the PRACTICALITY as raised by FIA there would be SOP's issued or practice statements for the practicality of the law.
s15(1)(h)	Loan payment for an asset or service, value of any asset or services provided	A new subsection (h) is introduced. *(h) the amount of any loan, payment for an asset or services, value of any asset or services provided, or any debt obligation released, by the company to, or in favour of, a*	In the current IT Bill the issue raised by FIA on "*in substance, employment income of the member*" only appears under employment income (s15(1)(h)) and not s17(1)(e) as suggested by FIA. It is not appearing in both employment and business income.

		member of the company or an associate of a member to the extent to which the transaction is, in substance, employment income of the member. Some clarity should be provided on what FRCA will consider "*in substance, employment income of the member*". These can be needlessly (and unproductively) ambiguous and difficult. Similar subsection appears under Business Income s.17 (1) (e). It is suggested that this additional paragraph is reconsidered. Should be appropriately amended and included in the definition of either Employment Income or business Income, but not both.	
s16		**Employee Share Scheme** There is no longer any qualifying employee share scheme and a corresponding exempt income not exceeding $1,000 in relation to the same. If it is not the intention of the Government to eliminate the exemption, the proposed law	Due to PAYE Final Tax in 2013 there were no more deductions allowable. They were all removed including FNPF to make PAYE as a final tax.

		should be amended accordingly. s.16 includes the definition of qualifying employee share scheme but the exemption of $1,000 has not been included. The section would need to be appropriately amended to consider the exemption. Whatever the treatment (e.g. deduction or exemption) should be consistent.	
s17	Business Income	Section 2 states that "*"**business income**" has the meaning in section 17*". Section 17 provides that "*.... the following are included in the **business income** of a person.... - ... **an amount included in business income** under this Decree...*" The definition is not very clear. It appears to be a question of "Which comes first – the chicken or the egg?" (The definition appears to go around in circles, i.e., the phrase is defined by including the same phrase that is being defined.) Consider amending the definition by amending or totally deleting subparagraph (e) of section 17(1). S.17(d) is not clear and s.17(e) is a circular	s17 (1) (d) includes any other income according to ordinary concepts derived by a person from the conduct of business. The reference to "income according to ordinary concepts" is intended as reference to the ordinary meaning of income as determined under case laws. In the business context, an amount is income according to ordinary concepts if it is a product or ordinary incident of the conduct of a business. s17 (1) (e) includes business income any amount that is expressly included in business income under the Act. Amounts that are treated as taxable business income under this Act is considered as business income.

		phrase. It is suggested that s.17(e) be deleted and s.17(d) be amended to - *"(b) any other income derived in the conduct of a business."* S.17(d) is not clear and s.17(e) is a circular phrase. It is suggested that s.17(e) be deleted and s.17(d) be amended to – *"(d) any other income derived in* *the conduct of a business."*	
s17 s17(1)(b)	Business Income	Need to clarify that gross proceeds exclude VAT, HTT, excise duty, etc. □ 17(1)(a) – 'gross proceeds' need to clarified to exclude VAT, HTT, etc. □ 17(1)(b)- need to review the rationale and scope. The principal sum can sought to be included under the paragraph. Suggest it to read *'the gross revenue proceeds from investment including dividend.....'*	Gross proceeds from the conduct of business. For an income to be a business income of a person, the person must derive the income in conducting a business. VAT, HTT, excise duty are not gross proceeds for the conduct of the business. Gross revenue derived by the person from the investment of the capital of the business. Example of such income are dividends arising from any shares or other interest of the business, interest arising from any debt securities of the business, royalties arising from any industrial or intellectual property of the business and rental income from any real property of the business. If a business of a person has excess funds that the person puts on deposit with a bank, any interest income derived is included as business income. The net gain derived by a person on the disposal of an asset held on revenue account in carrying on

s17(1)(c) s17(1)(e) and (f)		This subsection appears to include revenue gains as gains as part of business income. However, it does not specifically exclude capital gains. Suggest inclusion of a proviso similar to that under s.11(a) of the current ITA: *"but nevertheless, the profit or gain derived from a transaction of purchase and sale which does not form part of a series of transactions and which is not in itself in the nature of trade or business shall be excluded"* new subsection is introduced *"the amount of any loan, payment for an asset or services, value of any asset or services provided, or any debt obligation released, by the company to, or in favour of, a member of the company or an associate of a member to the extent to which the transaction is, in substance, business income of the member".* Some clarity should be provided on what FRCA will consider "*in substance, business income of the member".* These can be	a business. Example, under case law a person may hold an asset of a business on revenue account even though the person does not trade in the asset has been acquired in circumstances where it may be reasonably expected that the asset will disposed of for a profit. Under case law the amount treated as income arising from the disposal of a revenue asset is the net gain arising from the disposal rather than the gross proceeds. This is no longer stated in 17(e) and (f) but only in employment income.

		needlessly (and unproductively) ambiguous and difficult. Similar subsection appears under Employment Income. It is suggested that this additional paragraph is reconsidered. Should be appropriately amended and included in the definition of either Employment Income or Business Income, but not both.	
s18	Property Income	□ Review the rationale and scope. 18(b) also included in 'Employment Income'. Should be included in the definition of one only; either Employment Income or Property Income. □ Also need to explain the meaning of *'supplement to a pension'*.	18(1)(c) includes pensions, charges and annuities, and any supplements to such amounts. If the annuity is a purchased annuity, section 19 applies to reduce the amount of the annuity included in property income by the capital component of each annuity payment.
s19	Annuity	Clarify the term "*Annuity*" It is suggested that a definition of "Annuity" is included in the section.	An annuity under case law it is treated as income according to ordinary concepts even when it has been purchased from a life company or similar organization. If an annuity is a purchase annuity, each payment of the annuity is part income and part return of capital price.
s20	Exempt income	Need to carefully consider the income tax exemptions that are provided in other legislations for e.g. "Parliamentary	The modern drafting approach is that all tax exemptions should be provided in the tax law for transparency reasons. This is subject to subsection (3), which preserves exemptions in existing laws

		Pensions" and "statutory bodies or corporates". Appropriate amendments should be made.	at the commencement date of the Act.
s21 s21(1)(c) and (d)	Election cost is no longer allowed as deductions	New subsections (2),(3) and (4) added which make reference to subsection 1(h), but there appears to be no 1(h). It is suggested that the provisions be amended to "the total amount of depreciation(or amortization) as determined under section 31	In the IT Bill in section 21 (2) – (4) doesn't make any reference to subsection 1(h). The current IT Bill has already reflected the FIA's submission.
s21(1) (e)(ii) s21(2) and (3) s22(1)(c)		FIA and FRCA have to relook at s.21(2) and (3) and how to reconcile the provisions to s.22(1)(c). FRCA will revisit s.21(5) and (6). The provisions are not good for business. The practical application of the same should also be considered.	A net loss incurred on the disposal of an asset held on revenue account by a person in carrying on a business. Under case law, a net loss on disposal of a revenue asset is treated as a revenue loss. s22(1)(c) does not allow as a deduction for an expenditure or loss that is taken into account in computing a net gain included in business income under business income, property income or a net loss allowed as a deduction under section 21(1)(e). The intention is to prevent such expenditure or loss being both included in the net gain or net loss calculation, and allowed as a deduction. In other words, this is to prevent the expenditure or loss from being double counted. The expenditure or loss is counted once only and that is in the computation of the net gain or loss.

s21(5) and (6) s21(18) and (9) s21(1)(h)		Now s.21(5) and (6). Suggest that these provisions be reconsidered and that appropriate amendments be made. Now s.21(8) and (9). Suggest that these provisions be reconsidered and that appropriate amendments be made. s.21(1)(h) is missing!! It's referred to in ss 2, 3 and 4. We understand that s.21(1)(h) relates to first time employee deduction. We suggest that relevant subsection be included.	This is an integrity measure, that a net loss is allowed as a deduction under subsection (1) only if the person notify the CEO in writing that the asset was acquired by the person for the purpose of disposal for a profit. Subsection (8) and (9) have been removed and are no longer reflected in the current IT Bill 2015. S21 (1)(h) is the current s21(1)(r) under IT Act which is an allowable deduction. We have removed s21 (1)(h) but simply saved under section 143(4), s21(1)(r). Therefore, the first time employee's deduction is still allowable. IT Bill still maintains the current stance.
s21(10)		However, if it is a policy, it is suggested that the apportionment between spouses be expressly stated and the Regulations to provide the scenarios. It is also suggested that (b) be amended to "*total employment income of **each** employee...*" to properly reflect the intention of the law. ***Please refer to above comment in relation to***	There is no section 21(10)) under current IT Bill.

		the 2013 National Budget.	
s22(1)(h)	Non deductibility of FBT	FBT is part of cost of doing business. It is an employee cost and should be deductible. Reiterate comments in respect of non-deductibility of FBT especially as FBT is calculated on a grossed-up basis. @ 25%. Section should be clarified to avoid non-deductibility of taxes deducted at sources as these really form part of the gross amount of mostly deductible expenditure.	The non-deductibility of FBT was introduced in 2012 by Government. This is a policy issue.
s22(1)(j)	Contribution to non-approved fund	The employer contribution is a benefit and income in the hands of the employee. Hence, employer should be allowed the deduction.	Contributions to non-approved funds do not satisfy the condition of an approved fund so therefore does not enjoy the incentives given to approved funds. The deductions by the employer is not an allowable deduction
s22(1)(l)	Disallow deduction for repairs	New provision on expenditure on repairs. Seeks to disallow deduction for repairs. Inconsistent with s.21(1)(f). Is this a mistake? Suggest review and appropriate amendments be made	In the Bill, there is no section 22(1) (l) as suggested by FIA.
s23(2)		It is suggested that "paid" be amended to "paid or payable" or "paid or accrued" but the FRCA refused to amend the	The suggestion from FIA has been considered and reflected in the current IT Bill. It now reads *"50% of the employer statutory contribution"*. E.g. only 50% of 10% of the employer's contribution to

		same. Amend instead "for the year" to "for a tax year." Reiterate earlier comments and suggest that appropriate amendments be made. Now reads: *"The total amount allowed as a deduction under subsection (1) for a tax year for an employer contribution to the Fiji National Provident Fund and an approved fund in respect of an employee is limited to 50% of half of the employer statutory contribution paid in respect of the employee for the tax year"* Should be amended to the same wording in the current ITA to take into account increased in employer contribution to 10%: *"half of the ten percent statutory contribution paid by the employer to the Fiji National Provident Fund in respect of an employee, shall be allowed as an expense incurred in the year in which it was paid".*	FNFP is an allowable deduction. The reason for stating "employer statutory contribution" is just in case if Government decides to reduce or increase the employer statutory contribution there would be no need for amendments to the law.
s24(2)	Charitable donations	Suggest that it be changed from FJD$ to $	In terms of tax, all income tax are to be converted to FJD. There is a special provision for currency translation under the Bill for all currency to be in FJD. A deduction is allowable if a cash donation to a

			charitable donation exceeds $100,000 Fijian dollars
s24(5), (8), (9) and (10)		Consider making it all consistent by moving "made in a tax year" to just before the charity's name.	The term "made in a tax year" is consistently used throughout section 24.
s24(14)		The list of charitable organisations would be in Regulations. Most of the donations are by employees. The social ramifications of the provision would need to be considered. Reiterate earlier comments. *"business" means a sole trader or a company"* Is there a policy reason for this limitation? What about partnerships and trading trusts? Suggest that amendment be made.	The current IT Bill is simply transferring what was an allowable deduction for charitable donations under the Income Tax Act into the Bill. In the ITA, section 2, "businesses" is defined as sole trader or companies.
s25	Industry incentives	S.21(1)(zd) and s.21(1)(v) of the Income Tax Act would be included as (5) and (6). Any other similar provisions should also appropriately be included. The SPSE listing cost is no longer enumerated. It would be included in (7) and (5)	The incentives under the Schedules are saved in section 143. s21(1)(zd) ITA – s25(7) ITB s21(1)(v) ITA – S24(3) ITB All the deductions that were in the ITA are in the Bill, except for those that have expired.

		would become (8). Should not (5) include construction of a new building?	
s26(1)	Bad debts	Reiterate earlier comments and suggest that Practice Statements be made available for review by the FIA. Deduction for bad debt in respect of money lent by the person is now limited to cases where the money was lent in the normal course of carrying on a business of money lending to derive taxable business income. Deduction should be allowed especially where the person had charged interest and that interest had been included in assessable income. Suggest review and appropriate amendments.	There must be reasonable grounds for believing that the amount will not be recovered. For example, the debtor is in bankruptcy or has absconded without paying their debts. The loss is allowed as a deduction when it is written off in the financial institutions accounts rather than when it actually incurred.
s28	Natural Disaster Reserve	ss(1) refers to "deposited by a company whilst (3) and (4) refer to a person. Need to make it consistent.	In the current IT Bill subsections (1),(3) and (4) are consistent with reference only to company.
s29	Scientific research	The deduction is allowed only "*to the extent that the expenditure is incurred to derive taxable business income.*" There may not be a link between the expenditure and income. This is the	Subsection (1) allows a contribution by a person to a scientific research institution that is used by the institution in undertaking research for the purpose of developing the person's business. A deduction is allowed only to the extent that the expenditure is incurred in deriving taxable

		development stage and the expenditure may or may not result in taxable income. Hence, it is suggested that the phrase be deleted or amended similar to the Income Tax Act provisions	business income.
s30	Loss carried forward	S.21(1)(c) of the current ITA would be included in the transitional provisions [s.142(3)]. It is suggested that the same business and owner test under s.59 and the foreign losses under s.61 be moved to this section since it is in relation to tax losses.	Such tax loss to be carried forward indefinitely as suggested by FIA is a policy decision for Government. The current loss carried forward in the ITA is 4 years.
s32;s33 and third schedule	Depreciation methods	The diminishing value was repealed in 1999 since there was a difficulty by assessors in reviewing the calculations. The 40% depreciation rate in relation to computers, etc is more realistic. A range of depreciation rates for each category is also preferable. The FRCA took note of the comments and would consider them.	s32 (2) provides that the person may elect for the depreciation deduction to be computed by either straight line or diminishing value method. The person has the discretion to elect. The current rates are maintained in the Third Schedule of the IT Bill.
s34	Disposal of depreciable assets	With the changes in the definition of a "depreciable asset" and changes in s.34, a capital gain on a depreciable	New subsection (3) inserted applying to a partial use case when the consideration for the disposal is more than the cost of the asset at the time of the asset. In this case, the income included in gross income is the sum of the following amounts:

		asset is subject to income tax. This is contrary to existing policy and a deterrent to investment. Income tax should only be imposed on recouped depreciation and not any capital gain. Suggest review in line with current policy and that amendments be made. Offsetting of balancing charge against replacement assets – required to give notice in writing to the CEO. This increases compliance costs on the part of the taxpayer. Suggest removing this requirement. In order to simplify and allow easy access to rates of amortisations, these rates should be put in a table form into a Schedule similar to that in case of depreciation rates.	(1) The total gain above cost (i.e. no apportionment for part business use). This continues the current situation whereby the whole of the gain above cost is taxed (although now under the income tax rather than CGT). In the previous version of the final draft, the gain above cost is apportioned with the private use portion not taxed. (2) Depreciation recapture amount. <u>Example</u> Assume that in the example, Lote has used the computer 75% of the time in his business to derive business income included in the gross income and 25% of the time for private purposes. Assume that Lote uses straight line depreciation method, the total decline in value for each of the 2016 and 2017 tax years is $1,000 and therefore the depreciation deduction for each year is $750($1,000 x 75% - section 31(5). Then in 2018 Lote sold the computer in June 30. Section 34(1) provides that there is no depreciation deduction for the 2018 tax year. The consideration for the disposal ($4500) exceeds the cost of the computer at the time of disposal ($4,000). Subsection (3) provides that the income included in gross income under subsection (1)(a) is the sum of the following amounts: (1) The difference between the consideration for the disposal and the cost of the asset,

			namely $4500-$4000 = $500. (2) The proportionate part of the difference between the cost of the asset and the written down value of the asset at the time of disposal, namely $1500($2000x 75%) (Subsection 3(b)). This represents the recapture of the depreciation deductions allowed to Lote in respect of the computer. Therefore, $4000 - $1500 (recaptured amount) = $2500 (subject to income tax) and gain above cost which $500 (subject to income tax). The application to the CEO under subsection (4) is for any person who either would have income included in gross income under section 34(1)(a) in respect of the disposal of a depreciable asset and who has acquired a replacement asset to elect to defer the inclusion of the income in gross income under section 34(1)(a) through the making of adjustments to the cost of the replacement asset. The person making the election under subsection (4) only if the conditions are satisfied – (1) Section 34(1)(a) applies to the disposal of a depreciable asset ("replaced asset); (2) The person acquires a similar depreciable asset ("replacement asset") within twelve months of the disposal of the replaced asset; (3) The replacement asset must be used

			wholly in deriving income included in gross income.
s35	Amortisation of business intangible	Should the reference to "gross income" in both ss(7) and ss(8) instead be a reference to "business taxable income". Suggest review and that amendments be made.	The term "gross income" is correctly reflected in subsections (7) and (8) as we refer to subsection (9) it is consistently used throughout section 35.
s39	Accrual basis Accounting	It is suggested that the provisions be deleted and the tax avoidance provisions be tightened. This is the case for all specific tax avoidance provisions in the various sections of the draft Decree.	Subsection (1) provides that a person derives an amount under accrual basis accounting at the time the amount is due to the person. Subsection (2) provides that an amount is due to a person at the time the person is entitled to it (i.e at the time of the amount is recoverable as a debt) even though the time for payment may be postponed or payment may be made in installments. <u>Example</u> Chanelle sells large electrical goods and accounts for business income on an accrual basis. Chanelle's tax year is the calendar year. On 1 December 2016, Chanelle's sells a television to a customs for $500. Chanelle allows the customer 90 days to pay for the TV. The customer pays for the TV on 15 February 2017. The combined effect of subsections (1) and (2) is that Chanelle is treated as having derived $500 of business income on 1 December 2016. This must be included in Chanelle's gross income for the 2016 tax year even though he receives payment in the following year.
s41	Finance leases	Does the provision require further clarification on tests for "ownership" e.g. risks and benefits of ownership – or is it sufficient to	For financial accounting purposes, a finance lease is treated as a sale of terms. The effect of this section is to ensure that the tax treatment of finance leases follows the financial accounting treatment. The Bill applies to a person who has entered into a

		refer to GAAP?	finance lease on the basis that – (a) Lessee is treated as the owner of the leased asset. This means that the lessee (and not the lessor) is entitled to any tax benefits of ownership, such as depreciation deductions for the cost of the asset. (b) The lessee is treated as having acquired the asset at the commencement of the lease (s1(b)). This overrides the normal rule of acquisition determined under section 83(i.e when ownership passes). There is an exception to this if the lease originally owned the asset, such as in a sale and leaseback agreement. In this case, the lessee is treated as always owning the asset. (c) The lessor is treated as having made a blended loan to the lessee at the commencement of the lease(s1(c)).
s42	Long Term Contracts	Consider instances where carry forward is impeded by change in ownership or other rules for carry forward of losses (Section 60). Should be allowed to carry back the loss in such instances. This should apply to all long term contracts and not only to persons who will cease to carry on business in Fiji at the end of the contract. It is suggested that (2)(b) be deleted . This should apply to all longterm contracts and not only	There are two financial accounting methods 1. Percentage of completion method; 2. Completed contract method. Financial accounting standards favor the percentage completion method as a better measure of periodic accomplishment over the life of the contract. From tax view the completed contracted method gives rise to unwarranted deferral of tax and thus under subsection (1) requires recognition of gross income and expenditures arising under long term contracts on the percentage of completion method. Under the definition of "percentage of completion method" in subsection (5), the percentage of completion is

		to persons who will cease to carry on business in Fiji at the end of the contract. It is suggested that (2)(b) be deleted.	determined by reference to the actual costs incurred as a percentage of the estimated total contract costs. Subsection (2) If in a tax year in which a long term contract is completed, the person carrying out the contract has made a final year loss and the person has ceased to carry on business in Fiji, the loss may be carried back to the preceding two years and applied against the amount included in gross income under the contract for those years starting with the immediately preceding tax year.
s44	Benefit in kind	Review the rationale and scope. /Clarify that this section covers benefit in-kind under employment. FRCA will seek clarification from the consultant in relation to "*...ignoring any restriction on transfer*" under (2).	Subsection (2) provides that the value of the benefit in kind included in gross income is the fair market value of the benefit (section 5) at the time the benefit is derived determined by ignoring the restriction on transfer. The fair market value rule in subsection (2) applies unless the Act provides otherwise. An example of when the Act provides otherwise is for fringe benefits. Division 2 of Part 4 provides rules for valuing fringe benefits. These rules apply in priority to the fair market value rule in subsection (2).
s45(1) s45(2)	Classes of income	Reiterate earlier comments and suggest that Practice Statements be made available to FIA for review and comments.	This is an issue that can be handled by FRCA on Practice Statement. This section provides for the apportionment of expenditures that are incurred to derive more than one class of income. Apportionment is necessary in the case of taxable foreign source income because of the quarantine of Deductions under section 61. Apportionment is necessary in the case of exempt income because expenditures are not deductible to the

			extent incurred in deriving such income (section 21 – deductions is allowed only for expenditures and losses to the extent incurred in deriving gross income). <u>Example</u> If the taxpayer shows that 80% of the employee's time was spent on work relating to the derivation of the income included in gross income and 20% was spent on work relating to derivation of exempt income, it would be reasonable to apportion 80% of the employee's salary costs to the derivation of income included in gross income. Subsection (2)(b) in the Bill has been changed from "amounts" to "income".
s48	Short term life insurance	Applicable to resident and non-resident short term insurance companies with PE in Fiji [link to s.10(3)(d)]. Insurance premiums of nonresident short term insurance companies without PE would be subject to tax of 3%.	Subsection(2)(a) and 4(a) provide for the allowance of a deduction for the amounts of claims admitted by the company in the tax year less any amount recovered or recoverable under any contract of reinsurance, guarantee, security or indemnity. This covers both claims that arise and are paid out during the tax year and claims that arise during the year, but are not been paid out as at the end of the year. Subsections (1) and (2) apply to resident insurance companies and subsections (3) and (4) apply to non-resident insurance companies. The difference being that the jurisdictional scope for non-resident insurance companies is limited to the insurance of risks in Fiji.
s49	Life Insurance	Mechanics to be included in regulations.Regulations should be provided to allow appropriate FIA/industry submissions to be made.	Regulations will be formulated later and will discuss with the Insurance Industry on the recommendations.
s50	Chargeable income of	Consider keeping the option	Yes under this section husband and wife are treated as

	individuals	available for spouses to lodge joint returns (particularly if the income of the wife is very minimal). Only a minor issue.	separate taxpayers under the Act and must lodge separate income tax returns.
s51(6)	Principles of Taxation for Partnerships	Unfair to treat resident partners as representatives of non-resident partners. Consider deleting this provision.	Subsection (6) treats the resident partners or partners in a partnership as "representatives" under section 41 of Tax Administration Decree of the non-resident partner or partners. This means the obligations set out in section 41 of TAD (filing of returns and payment of tax) apply to the resident partners in respect of the non-resident partner.
s52	Computation of Chargeable Partnership Income and Partnership loss	Consider including provisions wherein venturers in a joint venture may elect to lodge a return as a partnership or separately. How the income of owners in a hotel villa management scheme may account for tax should also be addressed. Related changes would need to be made to the other relevant provisions of the Decree (e.g., procedural rules under Part VII) Treatment of joint ventures may need to be appropriately covered in this section. Reiterate earlier comments and suggest that appropriate amendments be made.	The computation of chargeable partnership income for a tax year involves applying the terms of the Act to the partnership on the assumption that the partnership is a resident person for the year. The residency assumption means that the gross income for the partnership includes income from all sources both within and outside Fiji (section 14(3)(a)). The definition of partnerships is not defined in the Act, therefore has its ordinary meaning namely two or more persons carrying on business for joint profits.

		Alternatively definition for "partnership" should be included to include joint ventures.	
s53(9)	Taxation of partners	Where the allocation of partnership income in the agreement does not reflect the contributions of the partner to the partnership's operations, a partners' share of the partnership income or loss is equal to the partners' percentage interest in the capital of the partnership. This provision should be reviewed to reflect the practical business reality. Where the actual income is distributed on a different basis, it will create a difference between income actually received and taxable income of the partners. If the concern here is in relation to tax avoidance, this issue should be appropriately addressed under the avoidance provisions of the Decree.	Subsection (9) provides that if the allocation of income in the partnership agreement does not have substantial economic effect, a partner's share of chargeable partnership income or partnership loss is to be made according to the partner's interest in the capital of the partnership. Example The allocation of chargeable partnership income and partnership loss is as follows – (1) The chargeable partnership income of the partnership for the 2017 tax year is $300 ($400 -$100). Under section 53(1)(a), each partner includes $100 in gross income for the 2017 tax year. (2) The partnership loss for the 2017 tax year is $200($400 - $600).Under section 53(2)(a) each partner is allowed a deduction for $66.67 for the 2017 tax year.
s54(4)	Principles of taxation of partnerships	It is suggested that "amounts" be amended to "income" in (1). We understand that if settlor is a non-resident, the trust income would be taxed in the beneficiary or trustees' hands.	While section 56 provides for the taxation of non-resident beneficiaries in respect of Fiji source income to which they are presently entitled, there may be difficulties in collecting tax from the non-resident beneficiary. Subsection (4) treats the trustee as a "representative" under section 41 of the TAD of any non-resident beneficiaries. This means the obligations

		Reflec Very broad. To what extent should trustee be treated as a representative of the non-resident beneficiary? Consider deleting this provision or limiting its applicationtion in law?	of section 41 apply to the trustee of a trust in respect of the non-resident beneficiaries.
s59	Change in control of company	Consideration should be given to appropriately amending s. 60(1)(b) to allow change but no substantial change in business. This would also be necessary, if no such loss is offset against any income from such new investment. Hence the company would still be able engage in any new business or investment after a change of 50% or more in the underlying ownership of such a company. is suggested that this be moved to s.30 on tax losses. The principal purpose for the new business under (1)(b) depends on the facts of the case (e.g.; new business is closely related to the existing business, etc.)	This is an anti-avoidance measure to limit the ability of persons to trade in companies that have accrued losses. **Example** - Manufacturers Pty Ltd is a company that is owned by two individuals, A and B. Manufacturers has loss carry forward amounts. A holds 60% of the membership interests in Manufacturers and B holds 40%. In this case both A and B hold their membership interest directly in Manufacturers and, therefore, there membership interest is also their underlying ownership interest in Manufacturers. If A were to sell her interest to C, then there is a change in more than 50% of the underlying ownership of Manufacturers. If, instead, Manufacturers is wholly-owned by Holders Pty Ltd, which is owned by two individuals, A and B. A holds 60% of the membership interests in Manufacturers and B holds 40%. As Holders wholly owns Manufacturers, A's has an indirect membership interest and, therefore, an underlying ownership

			interest, in Manufacturers of 60% and B has an underlying ownership interest of 40%. If A were to sell her membership interest in Holders to C, then there is a change in more than 50% of the underlying ownership of Manufacturers. If there is a change in more than 50% underlying ownership of the company, any carry forward of loss incurred prior to the change is not allowed as a deduction for the tax year of the change. However there are exceptions subject to two conditions (1) Company carries on the same business after the majority change in underlying ownership as it carried on before the change until the earlier of: (i) the loss has been fully deducted; or (ii) loss carry forward period (four years) has expired. (2) Either there is no new business or investment entered into before the loss has been fully deducted or, if there is a new business or investment, it was not entered into with the principal purpose of utilising the company's tax losses.
s60	Foreign Tax Credit	Under the tax laws, assessment is within six years and refund is within three years. Hence, what is the basis for the two years? Change to at least 4 years?	Subsection (5) limits the claiming of the foreign tax credit to 2 years after the end of the tax year in which the foreign income was derived. If the foreign tax is paid after that time, the credit is lost unless the CEO allows for further time for the foreign tax to be paid and still qualify for the credit.
s62(1)	Thin capitalization	**Thin Capitalisation** □ Requirement to maintain debt	The debt: equity ratio is consistent with other countries around the World.

		to equity throughout the year (Section 68(1)). □ Full tax deduction disallowed (on pro-rata basis for number of days the ratio is not maintained) irrespective of the level of ratio (Section 68(2)). □ Equity threshold for foreign controlled resident company is 50% or more (Section 68(2)). Should be more than 50%. □ Thin capitalisation requirement is considered to be too stringent. □ Proposed provisions are considered to be 'antiinvestment' and 'anti-economic development'. □ The policy and the tax laws should encourage foreign capital, irrespective of the form The tax policy should support the Government's policy to promote investments, and focus needs to be for the "wider growth of the economy". □ Remove 'thin capitalisation' rule from investment and economic development view point, and on the basis that this matter is already regulated by RBF under exchange control. □ Alternatively, equity	The thin capitalization rules applies only to a "foreign controlled resident company" which is defined in subsection (4) to mean a resident company in which more than 50% of the membership interests in the company is held by a non-resident person either alone or together with an associate or associates. Assumed the debt is from a related party. Subsection (3) extends the operation of thin capitalization rule to permanent establishment in Fiji of nonresident companies. Many nonresident companies will be doing business in Fiji through a permanent establishment rather than a subsidiary and it is important therefore that thin capitalization applies also to permanent establishment. This section is intended to prevent thin capitalization practices (i.e financing business through operations through an excessive use of debt over equity).

		threshold should be more than 50% (instead of 50% or more), and the definition and scope of equity should be extended to include 'interest free and unsecured loans and advances' provided by shareholders and related entities. This will be in line with the requirements under the Exchange Control Regime. Should this still be applicable given the non-resident interest WHT rate is 10% and the company income tax rate is 20% (difference of only 10% implies effective profit margin of 50%). Shouldn't the debt be from a related party? This is not specifically indicated in the provisions. It is also suggested that the arm's length debt amount not be limited to financial institution, but include any other entity that is not an associate Reiterate earlier comments. The debt to equity ratio has been changed from 3:1 to 2:1. Should this still be applicable	

		given the non-resident interest WHT rate is 10% and the company income tax rate is 20% (difference of only 10% implies effective profit margin of 50%). Shouldn't the debt be from a related party? This is not specifically indicated in the provisions. It is also suggested that the arm's length debt amount not be limited to financial institution, but include any other entity that is not an associate.	
s63		Policy around "parent entity" loans at nil interest being permissible, needs to be considered.	Non-resident persons, in particular, may use transfer pricing as a means of reducing income derived from sources in Fiji. For example, a non-resident parent company may supply goods or services to a Fiji subsidiary for a price that is greater than the arm's length price so as to reduce the chargeable income of the Fiji subsidiary. Similarly, a foreign head office of a non-resident company may deal with a Fiji permanent establishment of the company in such a way as to reduce the non-resident's chargeable income in Fiji. For this reason, subsections (2) and (3) provide that cross-border transfer pricing adjustments must be made in accordance with the Transfer Pricing Regulations.
s64-68		CGT does not provide for the adjustment of historical cost to "fair market value" as on 1 May	The issue of indexation as s method of providing relief to pre CGT assets before CGT Decree was

		2011 (being the effective date for the commencement of CGT). □ Furthermore, CGT does not provide for indexation adjustment. □ The current method of calculating cost of capital asset (without considering fair value as on 1 May) is unjust, unfair and unreasonable. □ The current system effectively imposes CGT on 'inflation gains'. Such system does not encourage voluntary compliance. Consideration should be given to introduce 'indexation' adjustment to ensure the tax is imposed on real capital gains, and not 'inflation gains'. Alternatively, **at least allow for 'cost adjustment at fair value' as onMay 2011**. Refer previous FIA submissions on this matter, providing reasons and justifications in support of indexation.	introduced in 2011. <u>Pre CGT assets (2011)</u> An issue arises as to the treatment of the gain that has accrued on capital assets acquired before the CGT comes into force ("pre-CGT assets"). There are two main arguments for providing relief in relation to such gain: first, it is argued that to tax the gain would amount to retrospective taxation; and, secondly, the practical problem of having records to determine the cost of the asset for the purposes of computing the capital gain, particularly for assets held for many years. There are two methods of providing relief in relation to pre-CGT assets. First, the assets could be <u>grandfathered</u> so that CGT does not apply to them. In other words, CGT applies only to capital assets acquired on or after the start date of the tax. The main downside of this approach is that it will lead to a significant delay in the raising of CGT revenue given that capital assets are usually held for some years before they are sold. Further, the experience of Australia with grandfathering was that there was considerable planning, particularly in the early years of the tax, aimed at shifting value from assets subject to CGT to pre-CGT assets so as to avoid tax. Secondly, a <u>valuation day</u> approach could be adopted under which all pre-CGT assets are given

			a cost equal to their market value as at the start of the tax. While this is preferable to grandfathering, it does involve considerable compliance and administrative burdens in having valuations done for all pre-CGT assets. Obviously, some administrative flexibility could be adopted under which valuations done within a twelve-month period (six months before through to six months after the start date) could be accepted. While pre-CGT assets are subject to tax, the valuation day approach also results in delay in the raising of CGT revenue, although this will not be as extensive as under grandfathering as long-held pre-CGT assets may be sold in the first few years of the tax. Nevertheless, it would be expected that little revenue would be raised in the first year of the tax. An alternative to using market value under a valuation day approach is to index the cost of pre-CGT assets up to the start date of the tax. This will not exclude the whole of the pre-CGT gain for many assets, but will, at least, take the part of the pre-CGT gain related to inflation out of the amount of the taxable gain. After considering the options, it was decided that no relief would be given for pre-CGT assets as any such relief will significantly delay the raising of CGT revenue. In making this decision, account was taken of the low rate of tax (10%) applicable for the CGT.
s67(1)(f)		The reference to "shares" is	In the Bill the word "share" is no longer used but

s67(1)(h) s67(3)		generally in respect of a company – a better description would be "***ownership interest***". Suggest amendments be made. What is the distinction between these??Suggest review and appropriate amendments be made. It should only allow the joint owners are not related parties. The reference to "shares" is	"interest". The term shares are shares in a company. Refer to section 87(1)(c). Subsection (3) states that in disposing of an asset that is jointly owned, the exemption of the $20,000 is the total gain made by all owners of the asset on disposal. Section 82 states that the owners of the jointly owned asset to apportion a gain or loss arising on disposal of the asset according to their respective interest in the asset. **Example 1** - George and Mia own a rental property as tenants-in-common. They have an equal interest in the property. The property is sold and a capital gain of $100,000 is made on the disposal. The effect of section 82(1) is that the capital gain is apportioned equally between the owners so that George and Mia each report a capital gain of $50,000. Even though, George and Mia each report a capital gain of $50,000 each. According to section 67(3), that in order for George and Mia to get the exemptions then their total gain which must not exceed $20,000. In the above example, George and Mia will not qualify as their total gain is $100,000. In the Bill the reference to shares is no longer

s67(4)		generally in respect of a company – a better description would be "***ownership interest***".	used but the term "interest" is used.
s71(1)(c)		This is very general and subject to dispute with FRCA in term of identifying what is "*so small as to make accounting for it unreasonable or administratively impracticable*". It is suggested that a dollar value is used instead of "*so small as to make accounting for it unreasonable or administratively impracticable*".	In determining whether the fringe benefit value is small, unreasonable or impracticable to account for as a fringe benefit; regard must be put to the frequency with which the fringe benefit is provided to a particular employee or employees
s75(2)	Housing fringe benefit	(a) & (b) look like a duplication – wouldn't (b) alone be sufficient for this purpose?	Subsection (2) value of the housing fringe benefit provided by employer to employee for a quarter is (a) If employer owns the accommodation, fair market rent; (b) In any other case, rent paid by the employer (if the accommodation is not owned by the employer), Reduced by the amount paid by the employee.

s75(3) s75(4)		Removed 1/8th and 1/9th provisions –Why? Suggest review and limitation on value of housing benefit be maintained. This ss is redundant as 71(1)(e) only exempts accommodation provided to ***non-management employees.*** Suggest review and amendments be made.	The FBT is the value of the housing fringe benefit as mentioned above. Subsection (3) is not redundant as suggested by FIA, because the word state "Despite section 71(1)(e)" which is the exemption given to remote areas, those hotels or executive managers are subject to FBT. This was announced in the 2015 budget by the Minister. Under the current IT Bill, the issue by FIA has been addressed and subsection (4) has been removed due to duplication.
s76	Loan Fringe Benefit	This is actually a "concessionary interest rate fringe benefit" – whilst we're changing the law, we should correct this! Suggest amendments be made.	Under the IT Bill, the issue raised by FIA has been corrected, and it now reads "(1) A discounted interest loan .."
s83	Acquisition	Need to clarify the phrase "when the person ***begins to own*** the asset". ***FIA and FRCA need to look at what this means***	The section provides two things – (i) What constitutes an acquisition of an asset; and (ii) States when an acquisition occurs. The basic rule in subsection (1), which provides that a person acquires an asset if the person begins to own the asset. This is consistent with section 84 on disposal, when a person has parted with ownership of the asset.
s85	Cost of the Asset	Cost of disposing of asset should not be part of 'cost of asset', but ***should be adjusted to disposal proceeds***. This is in	The IT Bill now includes in subsection (2)(b) "disposing of the asset". Examples of incidental expenditure incurred

s85(6) s85(7)		line with the accepted accounting standards and accounting practices. Holding costs, including interest cost, should also be allowed as part of cost if not claimed for income tax purposes Interest cost, insurance cost, repairs, etc should also be allowed as part of cost if not claimed for income tax purposes. Missing "***and***" at the end of (b) before (c). Suggest amendments be made. Cost apportionment should be based on fair value ***at the time of asset disposal*** (instead of time of acquisition).	would be profession fees (service of an agent, lawyer, valuer etc. Subsection (6) provides that an amount is included in the cost of an asset on the earlier of the date that it is paid or is payable. Subsection (7) applies to part disposals and it apportions the original cost of the undivided asset between the dividend parts in proportion to the fair market value (section 5) of the parts at the time of the asset's acquisition (section 83(2)).
s87	Deferral of Recognition of Capital Gain	One year is unrealistic, unreasonable and impractical. Approvals normally take an average of 7 to 12 months. Construction normally takes 18 months. Hence, three years is more realistic.	The one year time limit is in the current Capital Gains Decree which is reflected in the current section 87(1)(d).

s88	Corporate Reorganisation	Limited to ***resident companies***. Should this not be "persons"? What about non-resident? And the new Companies Act – with single shareholders permitted? What about trustee ownership? Suggest review and appropriate amendments especially in case of transfer of shares to beneficial owner.	This section provides for a deferral rule in relation to the transfer of assets on the re-organisation of companies within a wholly-owned corporate group. As the assets remains within the wholly owned corporate group, the deferral rule applies because the transfer does not involve any change in economic ownership of the asset.
s98(2)	Telecommunications Levy	Should the word "***provider***" be at the end of the sentence? Suggest review and that appropriate amendments be made.	In the current Bill the term "provider" is included at the end of the sentence.
s99	Third Party Insurance Levy	All other levies are imposed on the user (indirect tax). However, the third party insurance levy is imposed on the insurance companies. Consider amending "total insurance premiums collected" to "net insurance premiums..." (net of discounts, credits, commissions, etc) – needs to be clarified for practical purposes.	The word "total" as stated in the Income Tax Act.
s100	Income Spitting	For most entities, one of the reasons for income splitting is to reduce income. However, this	This is tax avoidance, we request if it remains as it is.

		reason may not be the primary reason for the splitting of income. Consider amending to cases where the sole or main reason for the split is reducing income tax. Tax avoidance should be the main or principal (and not only one of the) purpose or reason for the income splitting. Consistent with other foreign jurisdictions. There is a lot of case law in relation to this matter.	
s104	Filing of returns	An "**assessed** loss" only comes about after the return is lodged – this is a bit of a "chicken and egg" scenario! What about a person who wants a refund (but not necessarily from a loss)? Suggest review and that appropriate amendments be made.	In the Bill subsection (1) the word used is "net loss" and "assessed loss" was removed.
s105	Income Tax return not required to be filed	There is an issue with this, because FRCA does not let an employer equalise the PAYE for the year – so happens when it is	This is covered under the Income Tax (PAYE Final withholding tax) Regulations 2013

		over-deducted? Suggest review and that appropriate amendments be made	
s107	Rental Income Reporting	***FIA and FRCA should ensure that the provisions and implications are similar to the Income Tax Act.***	Current Bill is as required under the Act.
s108	Due date	This should be considered along with the provisions in relation to provisional tax, advance payments of company tax and PAYE taxes.	Subsection (1) provides that the income tax and social responsibility tax payable by a person for a tax year are due on the date for the filing of the income tax return for the year. This is three months after the end of the tax year (section 104).
s110	Advance payment of company tax	The amendments in the Income Tax Act in relation to the discrepancy should be included. Taxpayers need some form of certainty. Entities may not know their exact tax position at the balance sheet date. FRCA's contention is that entities have professionals that may be able to estimate. The 10% leeway is reasonable. Entities are required to lodge a statement of estimates. However, the penalties are still applicable despite lodging the statement of estimates. ***FIA to suggest the wording of the section.***	The advance payment of company tax and provisional tax is aligned as suggested by FIA.

		We understand that this has already been provided to the FRCA Advance tax based on previous years' assessment where previous years' assessment is available, otherwise company has to estimate and file a statement with FRCA. This all needs discussion – there is a divergence from current practice to "estimates". Suggest provisions mirror current provisional tax payment requirements.	
s111(2)(b)	Withholding tax for employment income	Currently – top marginal rate and SRT at 29% plus FNPF breach the requirements of the ERP. FRCA should work with Labour to correct the law	Policy issue for policy makers (Government) to decide.
s112	Interest Withholding tax	Should be limited to financial institutions paying the interest as per the Income Tax Act. ***FIA to propose wording.*** Final tax for resident individuals (refer to s.125).	Refer to the Income Tax (PAYE Withholding as final tax) contains the COE provisions. Yes this interest WHT is limited to financial institutions.(Already covered in the Bill).

		Hence, in cases of people who earn below the threshold, the income is still subject to tax. The limit is only $200. Hence, people below the poverty line who earn interest of more than $200 will unfairly be subject to the highest rate of income tax. There should be a provision granting Certificate of Exemption to qualifying individuals "subject to the Regulations". ***FIA to propose wording of provision.*** Reiterate earlier comments that interest WHT should be limited to financial institutions paying the interest as per the Income Tax Act. Suggest amendments be made.	
s112 & 113	Withholding of tax from payments from non-residents	For consistency (and style) the sections should refer to "Second Schedule" and show the WHT rates there. Suggest amendments be made.	s112 – contains the rates of RIWT (10%) and resident dividend WHT (1%) S113- NRWHT in the Second Schedule.
s114	NRWT	The tax exemption for dividends to non-residents under the Tax Free Zone Decree subject to the condition should be incorporated in the draft Decree. The exemption	The twelve schedule is saved

		would be included under the transitional provision of the draft Decree. Makes reference to the Regulations and the Decree for the calculation of NRWHT	
s123 & 124	Indemnity and Credit to Withholding Tax	No credit is allowed for tax withheld in respect of employment income, interest income paid by financial institution to a resident individual and dividend paid to resident individual. An individual who receives income from these sources cannot file a return even in case where an excessive amount of tax has been deducted and the individual is not entitled to a refund of tax withheld at source. This is highly unfair. Tax withheld should not be a final tax. The individual should be allowed the option of being able to file a return and claim a refund in case where a	Under section 124 that a tax credit is applied against the tax due on the recipients chargeable income for the tax year in which the tax was withheld. Subsection (5) states that if the tax credit allowed under this section is not fully credited against the tax payable on chargeable income, subsection (5) provides that the excess is refunded in accordance with section 33 of TAD.

		refund is correctly due. Alternatively, does the employee have recourse against the person withholding tax in case of excessive amount withheld? There should be check and balance mechanism in place to ensure correct amounts are being deducted and paid by the employer. Refer to the discussion in relation to fallback clause for non-resident withholding taxes under s.10(3) and s.12. If the withholding taxes are deducted and remitted and subsequently deemed inappropriate, there should be a credit or refund mechanism in relation to the withholding taxes paid. A taxpayer without a certificate of exemption under s.112 should be allowed a credit or refund for the interest WHT deducted and remitted. Appropriate amendments to s.125 in relation to PAYE and withholding tax on interest and dividends should also be considered.	

s128	Capital Gains Tax Records	Extend retention period to 7 years (in line with TAD). There should be a provision in the draft Decree where only income tax or CGT is applicable and not both. Please look at s.65(3) if it appropriately covers the issue of double taxation.	Under the Bill, the time period for keeping of records for CGT is 7 years as per TAD.
s137	Concessionary rate of tax for regional or global headquarters	Ensure consistent with current ITA.	The Bill still maintains the tax rate and treatment of regional or global headquarters that are in the current Income Tax Act.
s139(2)	Currency Translation	The word "Bill" is missing from the end of the sentence.	The Bill already has corrected the inclusion of the word "Act" at the end of the sentence.
s140	Double Tax and tax information exchange agreements	**Double Tax and Tax Information Exchange Agreements** □ The risk of non-availability of tax credits in DTA countries. □ Foreign investors and foreign suppliers of services may not get tax credit for tax payments in Fiji. Assess the impact to foreign investors, and suppliers of services from offshore. Consider to provide "imputed tax credits" within foreign sourced dividend income to promote Fiji as investment hub. This will also encourage, and provide incentives, for distribution and remittance of	In the Bill subsection (2), the taxation of income derived from sources in Fiji by non-resident persons, the taxation of capital gains in relation to Fiji assets of non-resident persons, or the taxation of fringe benefits received by non-resident employees. In broad terms, this means that the agreement may contain provisions relating to Fiji's jurisdiction to tax non-residents who are residents of the other contracting state of the agreement. Subsection (3) provides that an agreement made under this section may include relief from double taxation for periods before the commencement date or before the agreements enters into force, and provisions relating to income that is not subject to double taxation. Subsection (7) prevents such arrangements by

		profits back to Fiji Does this eliminate the benefit of the Double Taxation Agreement (DTA) to branches and non-resident controlled companies? This is a new subsection. It is suggested that this provision not be included as this seems to be relevant to DTAs. Such provisions should instead be incorporated into the DTAs, if required. This is somewhat similar to the Third Protocol to Fiji/New Zealand DTA.	confining the benefits of a double tax agreement to genuine residents of the other contracting state. Subsection (7) applies when an agreement made under the section provides that income derived from sources in Fiji is exempt or excluded from tax or the application of the agreement results in a reduction in the Fiji Income tax payable (such as when the agreement provides for a lower rate of Fiji rate than applies under the Act). It is provided that the benefit of the exemption, exclusion, or reduction is not available to any person who, for the purposes of the agreement, is a resident of the other contracting state when 50% or more of the beneficial ownership of that person is held by an individual or individuals who are not residents of that other Contracting State for the purposes of the agreement. Thus, to obtain benefits under a double tax agreement, the individuals who ultimately own a non-resident company that is a resident of country with which Fiji has entered into a double tax agreement must also be a resident of that country. This prevents the establishment of a base company in a third country to take advantage of a double tax agreement that the third country has with Fiji. Subsection (8) provides for an exception when the company is listed on a stock exchange in the other contracting state. In this case, it is too difficult to look through to the individuals who ultimately own the company because the interests in the company will be widely held. Thus, listing on a stock exchange in the other contracting state is sufficient to obtain treaty benefits.

s141	Regulations	Regulations –provision in (3) for retrospective application of Regulations if made within 6 months of commencement. Regulations cannot prescribe penalties unless there is a law that set the limitations in relation to the same. Contrary to statutory interpretation of making law applicable for a period when taxpayers not aware of law. Penalties deprive persons of properties. One of the basic human rights is that no person shall be deprived of life, liberty or property without due process of law. Hence, there should be provisions in the law allowing the imposition of penalties and the law itself should set the basis for the CEO to prescribe the same. Consider amending the provision to allow the CEO to prescribe penalties with reference to the penalties prescribed under the Tax Administration Decree.	The Regulations will be discussed.

		Regulations should not have retrospective application. Suggest that regulations that are intended to come into effect at the date of commencement of the Bill should be made available for review and comments as soon as possible. Alternatively, suggest appropriate amendments.	
s143	Transitional and Savings	Transitional and Savings – repealed legislation continues to apply to years of assessment prior to the tax year in which this Decree comes into force S.21E (ICT incentive)and s.21F(fixed line Next Gen network) continue to supply until 31 Dec 2012. The transitional provisions do not include any provision in relation to concessions granted or deductions allowed under the FITA (e.g., standard allowance for hotels, short life investment package, Tax Free Regions, etc). The provisions also do not provide what legislations are repealed by this Decree The transitional provisions should include a provision	s21E – Expired on 31st December 2012 s22(1)(c) – refer subsection (3) s17(53) – refer subsection (5) All relevant provisions that require savings are saved.

s143(11)		wherein any concessions or deductions under the FITA that have been repealed but has not yet expired shall be valid until the expiration of the validity period under the current FITA. The Decree should specify what laws are repealed (e.g., Income Tax Act and CGT Decree). Consider all the amendments indicated above. (3) to include s.22(1)(c) of Income Tax Act. S.10 and s.17(53) of Income Tax Act and s.11 of the Tax Free Zone Decree 1991 to be in a separate paragraph. S.17(53) in relation to different concession (i.e., 5th Schedule and Tax Free Zone Decree). Reference in (7) should be to s.24 instead of s.23. What is the policy rationale behind this provision? Retained earnings don't necessarily mean "cash" is available to pay a dividend? And if a dividend is declared but not paid, will the shareholder loan be subject to TP rules of arms	In the Bill "retained earnings" is no longer used. This provision was agreed upon after consultations with FIA.

		length interest charges? Needs to be carefully considered in line with overall policy and framework.	
First Schedule Part I Part II Part 3 paragraph (5) Part 4 Part 5 Part 6	Government	***FIA and FRCA to ensure that all current exemptions are included (together with s.142)*** S.22(1)(y) and s.22(1)(zd) of Income Tax Act to be included. Should also relook at Part IV (4) and Part V (4) with reference to s.9A and s.17(72) of the Income Tax Act No clause 8 and 9. Clauses 10, 11 and 12 should be amended to state "The income of..." Film Fiji should be included under Part I and removed under Part II. The provision of clause 1 should be the same as to s.16(1) (b) of the Income Tax Act. The last sentence of clause 2 should be deleted since it appears to be a reference to s.17(2) of the Income Tax Act. The Fiji-sourced income as defined under the draft Decree will not be exempt. Have to	All exemptions are reflected in the Schedule. Done Done Done Done Done

		reword. Nehla of Munro Leys to email FRCA the wording of the additional exempt income. It is also suggested that a new clause similar to s.17(3) of the Income Tax Act be included. Removed inter-corporate dividends being exempt – why? What is the general policy re dividends? It should include an annuity. Should also include After Care Fund. Reiterate earlier comments and suggest that amendments be made. In particular, we suggest that the Minister's discretion to exempt certain income from withholding tax as contained in sections 8A and 9A of the current ITA be included in the ITB.	Done covered under section 143 (3) Transitional.
Third Schedule	Depreciation Rates	Please refer to comments under s.31. Consider range as follows – First category 10 - 40% Second category 5 - 25% Third category 2.5 – 15% Consider amending the depreciation rate for the	Done in the IT Bill the timber buildings are depreciated at 4%.

		buildings to include others with range of 1.5 to 10% and amend timber to 2.5 to 10%. Currently timber buildings are depreciated at 4%. Under the ITB timber buildings can only be depreciated at 1.25% which is lower than the rate for concrete buildings. Normally timber building depreciate at a faster rate than concrete building. To reconsider and make appropriate adjustments.	