

# BILL NO. 10 OF 2017

## A BILL

### FOR AN ACT TO AMEND THE INCOME TAX ACT 2015

ENACTED by the Parliament of the Republic of Fiji—

*Short title and commencement*

**1.**—(1) This Act may be cited as the Income Tax (Amendment) Act 2017.

(2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

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

*Section 2 amended*

**2.** Section 2 of the Principal Act is amended in the definition of “permanent establishment” by—

(a) deleting “fixed”;

(b) in paragraph (g), deleting “;” and substituting “,”; and

(c) inserting after paragraph (g) the following—

“but, notwithstanding the above, does not include the business of a person that enters into a contractual arrangement, including with respect to matters prescribed in paragraphs (a) to (g), solely with—

- (i) the Government; or
- (ii) persons in which the Government has an interest,

where the Minister is satisfied that the contractual arrangement will contribute to an identifiable benefit to Fiji following an application made pursuant to section 7(5) and the Minister has notified the CEO in writing that such business is deemed not to be a permanent establishment under this Act;”.

*Section 7 amended*

**3.** Section 7 of the Principal Act is amended by inserting the following new subsection after subsection (4)—

“(5) For the purposes of the definition of “permanent establishment”, a person seeking for the person’s business to be deemed not to be a permanent establishment must—

- (a) make an application in writing to the Minister;
- (b) set out in the application the details of the contractual arrangement with the Government or persons in which the Government has an interest;
- (c) state in the application that the person will only enter into contractual arrangements with the Government or persons in which the Government has an interest;
- (d) outline in the application the benefit to Fiji of the contractual arrangement with the Government or persons in which the Government has an interest; and
- (e) provide any further information or a declaration or undertaking as required by the Minister.”.

## INCOME TAX (AMENDMENT) BILL 2017

### EXPLANATORY NOTE

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

#### **1.0 BACKGROUND**

- 1.1 The Income Tax (Amendment) Bill 2017 (**'Bill'**) seeks to amend the Income Tax Act 2015 (**'Act'**).
- 1.2 The Act provides for the laws relating to income tax.
- 1.3 The Bill provides for an amendment to the definition of "permanent establishment".

#### **2.0 CLAUSES**

- 2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the amending legislation will come into force on a date or dates appointed by the Minister.
- 2.2 Clause 2 of the Bill amends section 2 of the Act in the definition of "permanent establishment" to empower the Minister to exclude a person's business from the application of the definition of "permanent establishment" where the person enters into a contractual arrangement with the Government or a person in which the Government has an interest and the contractual arrangement will contribute to an identifiable benefit to Fiji. Clause 2 also clarifies the application of the permanent establishment definition by deleting the word "fixed".
- 2.3 Clause 3 of the Bill amends section 7 of the Act to provide the mechanism to apply to the Minister to be deemed not to be a permanent establishment.

#### **3.0 MINISTERIAL RESPONSIBILITY**

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

A. SAYED-KHAIYUM  
Attorney-General