

BILL NO. 47 OF 2016

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 (Budget Amendment) Act 2016.
- (2) This Act comes into force on 1 August 2016.
- (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 by—
 - (a) in the definition of “capital asset”, deleting paragraph (b) and substituting the following—

“(b) a ship or boat;”;
 - (b) deleting the definition of “Credit Card Levy”;
 - (c) in the definition of “dividend”, in paragraph (f), inserting “or advance” after “loan”; and

- (d) in the definition of “permanent establishment”—
- (i) in paragraph (d)—
 - (A) inserting “including” before “through”; and
 - (B) inserting “by the person or an associate” after “project”; and
 - (ii) in paragraph (e)(i), deleting “has and habitually exercises an authority to conclude” and substituting “regularly negotiates”.

Section 7 amended

3. Section 7(4)(a) of the Principal Act is amended by inserting “or a dividend deemed under this Act” after “company”.

Section 10 amended

4. Section 10 of the Principal Act is amended by inserting the following new subsection after subsection (2)—

“(2A) The gross amount in relation to the provision of professional services includes the following—

- (a) accommodation provided or reimbursed;
- (b) airfare;
- (c) transport;
- (d) allowances.”

Section 14 amended

5. Section 14 of the Principal Act is amended by—

- (a) in subsection (1)(c), deleting “and” after “;”;
- (b) in subsection (1)(d), deleting “.” and substituting “; and”; and
- (c) in subsection (1), inserting the following new paragraph after paragraph (d)—
 - “(e) forfeited deposits and instalments on capital assets.”

Section 17 amended

6. Section 17 of the Principal Act is amended by—

- (a) in subsection (1)(e), deleting “.” and substituting “; and”;
- (b) inserting the following new paragraph after subsection (1)(e)—
 - “(f) any commercial debt between associates that is forgiven.”;

(c) inserting the following new subsection after subsection (1)—

“(1A) For the purpose of subsection (1)(f)—

“commercial debt” means a debt where—

- (a) the whole or any part of interest, or of an amount in the nature of interest, paid or payable in respect of the debt may be deducted by the debtor from business income; or
- (b) interest, or an amount in the nature of interest, is not payable in respect of the debt but, had interest or such an amount been payable, the whole or any part of the interest or amount may be deducted by the debtor from business income; and

“forgiven”, in the case of a commercial debt, means a debt—

(a) where—

- (i) the debtor’s obligation to pay the debt is released or waived, or is otherwise extinguished other than by repaying the debt in full; or
- (ii) the period within which the creditor is entitled to sue for the recovery of the debt ends, as a result of the operation of the Limitation Act (Cap. 35), without the debt having been paid; and

(b) in the case of paragraph (a)(i), where—

- (i) the debtor and creditor in relation to a debt enter into an agreement or arrangement, whether or not enforceable by legal proceedings;
- (ii) under the agreement or arrangement, the debtor’s obligation to pay the whole or a part of the debt is to cease at a particular future time; and
- (iii) the cessation of the obligation is to occur without the debtor incurring any financial or other obligation, other than an obligation that, having regard to the debtor’s circumstances, is of a nominal or insignificant amount or kind,

the debt or part of the debt is taken to be forgiven when the agreement or arrangement is entered into.”

New section 20A inserted

7. The Principal Act is amended by inserting the following new section after section 20—

“Deemed dividend distribution

20A.—(1) Subject to subsection (9), the whole or part of the net profit after tax, according to generally accepted accounting principles, of a resident company for the previous tax year which has not been distributed as dividends by the resident company by the end of the sixth month after the end of the resident company’s tax year, is deemed to have been distributed as dividends among the members as at the end of the sixth month after the end of the resident company’s tax year, unless the resident company proves to the satisfaction of the CEO that the net profit after tax has been or will be reinvested by the resident company for the purposes of maintenance or development of the business of the resident company.

(2) Where subsection (1) applies to deem undistributed net profit after tax of the resident company to be distributed as dividends among the members, such dividends are subject to tax in accordance with the provisions of this Act and the resident company must, by the end of the seventh month after the end of the resident company’s tax year, make the appropriate payment to the CEO as though the dividends were paid or credited to the members as at the end of the sixth month after the end of the resident company’s tax year.

(3) In default of payment of the amount of tax due, the tax is recoverable from the resident company in the manner provided by the Tax Administration Decree 2009.

(4) The tax imposed under this section is a final tax on the amount on which the tax is imposed and no further tax is payable on a subsequent distribution of the undistributed amount as a dividend.

(5) Where a company is a member deemed under subsection (1) to have received a dividend, the amount of the dividend deemed to have been paid to the company is deemed to be part of the company’s income for the purposes of calculating the net profit after tax of the company and the application of this section in respect to the undistributed net profit after tax of that company.

(6) Where any undistributed net profit after tax of a resident company has been deemed, to have been distributed as dividends to the members of that resident company, the resident company must, by the end of the seventh month after the end of the resident company’s tax year furnish each member with a certificate setting forth the amount of the dividend deemed to have been distributed to that member and must send a copy of such certificate to the CEO and, in default of such certificate being furnished, the CEO may determine such amount.

(7) For the purposes of subsection (1), the onus of proof as to whether the failure to distribute the net profit after tax has been or will be reinvested by the resident company for the purposes of maintenance or development of the business of the resident company is, in all cases, on the resident company.

(8) For the purposes of this section, “member” means a person by whom or on whose behalf shares in the resident company are held at the end of the sixth month after the end of the resident company’s tax year.

(9) This section does not apply to a resident company listed on the South Pacific Stock Exchange.”

New section 25A inserted

8. The Principal Act is amended by inserting the following new section after section 25—

“Employment incentives

25A. The Minister may, by regulations, prescribe—

- (a) employment incentives, including through deductions from business income;
- (b) matters that are required to be prescribed or are necessary or convenient to be prescribed for the provision of employment incentives under paragraph (a), including but not limited to—
 - (i) terms or conditions issued by the CEO;
 - (ii) offences for failure to comply with any of the terms or conditions issued by the CEO or any requirements relating to the employment incentives;
 - (iii) penalties for offences committed under regulations made in relation to employment incentives with fines not exceeding \$200,000 or imprisonment for terms not exceeding 10 years, or both.”

Section 67 amended

9. Section 67(1)(b) of the Principal Act is amended by inserting “the first” after “on”.

Section 99 deleted

10. The Principal Act is amended by deleting section 99.

Section 112 amended

11. Section 112 of the Principal Act is amended by—

- (a) in subsection (1), deleting “of 10%” and substituting “prescribed by Regulations”; and
- (b) in subsection (2), deleting “of 3%” and substituting “prescribed by Regulations”.

Section 135 amended

12. Section 135 of the Principal Act is amended by deleting subsection (2).

Section 136 amended

13. Section 136 of the Principal Act is amended by deleting “, Credit Card Levy” wherever it appears.

Section 137 amended

- 14.** Section 137 of the Principal Act is amended by deleting “, Credit Card Levy”.

Section 139 amended

- 15.** Section 139(4) of the Principal Act is amended by—

- (a) deleting “buying”; and
- (b) inserting “relevant to the transaction” after “institution”.

Section 143 amended

- 16.** Section 143 of the Principal Act is amended by—

- (a) deleting subsection (3); and
- (b) inserting the following new subsections after subsection (9)—

“(9A) If any part of the net profit after tax of a company for the tax year commencing on 1 January 2015 or equivalent substituted tax year has not been distributed as a dividend prior to 30 June 2016, the company must pay tax on the undistributed amount at the rate of 1% and the tax is due on 30 September 2016.

(9B) Section 25(15)(a)(ii), (iii) and (iv), (b) and (c), (16), (17) and (18) cease to apply when Part 6 of the Act comes into force in accordance with section 1(3).”

INCOME TAX (BUDGET AMENDMENT) BILL 2016

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 (Budget Amendment) Bill 2016 (**'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 abolishes the Credit Card Levy and provides for further tax incentives and also further transitional and savings matters.

2.0 CLAUSES

- 2.1 Clause 1 of the Bill provides the short title and commencement provisions. If the Bill is passed by Parliament, the new Act will be cited as the Income Tax (Budget Amendment) Act 2016 and the new Act will come into force on 1 August 2016.
- 2.2 Clause 2 of the Bill amends section 2 of the Act in the definition of "capital asset" to include ships or boats. In addition, clause 2 deletes the definition of "Credit Card Levy".
- 2.3 The definition of "permanent establishment" is also amended in two respects. Firstly, it is made clear that paragraph (d) applies to an individual providing services personally, as well as through employees or other personnel. Secondly, it is provided that, in determining the six-month period, account can be taken of connected projects of associates. This is a measure taken to prevent fragmentation of projects between related persons to avoid the six-month threshold. Also, paragraph (e)(i) of the definition of "permanent establishment" is amended so that an agent who regularly negotiates contracts on behalf of the principal is a permanent establishment of the principal. This counters avoidance arrangements recently identified by the Organisation for Economic Co-operation and Development (OECD) where an agent negotiates the contract but the contract is then formally concluded by the principal.

- 2.4 Clause 3 of the Bill amends section 7(4)(a) of the Act to include a deemed dividend.
- 2.5 Clause 4 of the Bill amends section 10 of the Act to clarify the gross amount in relation to the provision of professional services.
- 2.6 Clause 5 of the Bill amends section 14 of the Act to include forfeited deposits and instalments on capital assets as part of gross income.
- 2.7 Clause 6 of the Bill amends section 17 of the Act to include commercial debts that are forgiven as business income.
- 2.8 Clause 7 of the Bill inserts a new section 20A of the Act to provide for deemed dividend distributions.
- 2.9 Clause 8 of the Bill inserts a new section 25A of the Act to include new employment incentives to be prescribed by regulations.
- 2.10 Clause 9 of the Bill amends section 67(1)(b) of the Act to clarify that only the capital gain made on the first disposal of an individual's first residential property or principal place of residence is an exempt capital gain.
- 2.11 Clause 10 of the Bill deletes section 99 of the Act. This is to remove the imposition of the Credit Card Levy.
- 2.12 Clause 11 of the Bill amends section 112 of the Act so that the interest and dividend rates are prescribed by regulations.
- 2.13 Clause 12 of the Bill amends section 135 of the Act to remove the requirement to file a Credit Card Levy return.
- 2.14 Clause 13 of the Bill amends section 136 of the Act to remove the references to the Credit Card Levy.
- 2.15 Clause 14 of the Bill amends section 137 of the Act to remove the reference to the Credit Card Levy.
- 2.16 Clause 15 of the Bill amends section 139 of the Act to revise the definition of "exchange rate" in subsection (4). The existing definition refers only to the buy-rate, which will not be relevant in all cases, particularly when a payment has to be made in foreign currency. The new definition provides for the use of the telegraphic transfer rate issued by a financial institution appropriate to the transaction.

2.17 Clause 16 of the Bill amends section 143 of the Act to address transitional and savings matters relating to the Act.

3.0 MINISTERIAL RESPONSIBILITY

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

A. SAYED-KHAIYUM
Attorney-General