

BILL NO. 15 OF 2020

A BILL

FOR AN ACT TO AMEND THE INCOME TAX ACT 2015

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

- 1.—(1) This Act may be cited as the Income Tax (Budget Amendment) Act 2020.
- (2) This Act comes into force on 1 August 2020.
- (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 “, a depreciable asset”; and
 - (b) deleting the definition of “permanent establishment” and substituting the following—

““permanent establishment” means a fixed place of business through which the business of a person is wholly or partly carried on, and includes the following—

 - (a) a place of management, branch, office, factory, warehouse or workshop, but does not include a liaison office;

- (b) a mine site, oil or gas well, quarry, or other place of exploration for, or extraction of natural resources;
- (c) a building site, construction, assembly or installation project, or supervisory activities connected with such site or project, but only if the site, project, or activities continue for more than 6 months;
- (d) the furnishing of services by the person, including consultancy services, including through employees or other personnel engaged by the person for such purpose, but only if activities of that nature continue for the same or a connected project by the person or an associate for a period or periods aggregating more than 6 months in any 12-month period;
- (e) a person, other than an agent of independent status, acting on behalf of another person (referred to as the “principal”), if the first-mentioned person—
 - (i) regularly negotiates contracts on behalf of the principal; or
 - (ii) habitually maintains a stock of trading stock from which the person regularly delivers trading stock on behalf of the principal;
- (f) substantial equipment used for more than 6 months within a 12-month period or installed by, for or under contract with the person;
- (g) 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 12-month period, for or under contract with a person;”.

Section 7 amended

- 3.** Section 7 of the Principal Act is amended by deleting subsection (5).

Section 10 amended

- 4.** Section 10 of the Principal Act is amended by deleting subsection (2A).

Section 17 amended

- 5.** Section 17(1B) of the Principal Act is amended by—

- (a) in paragraph (a), deleting “26 March 2020” and substituting “31 December 2020”; and
- (b) in paragraph (b), deleting “31 December 2020” and substituting “31 December 2021”.

Section 22 amended

6. Section 22(1)(h) of the Principal Act is amended by deleting “, Capital Gains Tax or Fringe Benefits Tax” and substituting “or Capital Gains Tax”.

Section 23 amended

7. Section 23(2) of the Principal Act is amended by deleting “statutory”.

Section 24 amended

8. Section 24 of the Principal Act is amended by—

- (a) in subsection (3), deleting “exceeding \$15,000 made in a tax year to an approved sports fund established for the purposes of sports development in Fiji” and substituting “made in a tax year to a sporting entity recognised by the Fiji National Sports Commission”; and
- (b) in subsection (13), deleting the definition of “approved sports fund”.

Section 34 amended

89. Section 34 of the Principal Act is amended by—

(a) deleting subsection (1) and substituting the following—

“(1) Subject to this section, if a person disposes of a depreciable asset in a tax year the person is not allowed a depreciation deduction for the year and—

- (a) any excess of the consideration for the disposal of the asset over the written down value of the asset at the time of disposal, up to the total amount of depreciation deduction previously allowed in respect of the asset, is to be included in the gross income of the person for that year; and
 - (b) where the asset is a capital asset, any excess of the consideration over the cost of the asset does not form part of the total income, but is to be subject to Capital Gains Tax in accordance with Part 3; or
 - (c) if the written down value of the asset at the time of the disposal exceeds the consideration for the asset, the person is allowed a deduction in that year for the amount of the excess.”;
- (b) in subsection (2), deleting “and the consideration for the disposal of the depreciable asset is equal to or less than the cost of the asset at the time of the disposal”; and
- (c) deleting subsection (3).

Section 62 amended

910. Section 62 of the Principal Act is amended by deleting “2 to 1” wherever it appears and substituting “3 to 1”.

Section 67 amended

1011. Section 67 of the Principal Act is amended by deleting “\$16,000” wherever it appears and substituting “\$30,000”.

Section 88 amended

1112. Section 88 of the Principal Act is amended by—

- (a) deleting the heading and substituting “Re-organisation”;
- (b) deleting subsection (1) and substituting the following—

“(1) If—

- (a) a resident individual (referred to as the “transferor”) disposes of an asset, with or without liability not in excess of the cost of the asset or, in the case of a depreciable asset, written down value, to a resident company (referred to as the “transferee”) and the transferee is wholly owned by the transferor; or
- (b) a resident company (referred to as the “transferor company”), disposes of an asset, with or without any liability not in excess of the cost of the asset or written down value in the case of a depreciable asset, to another resident company (referred to as the “transferee company”) and the transferor company is a group company in relation to the transferee company,

then—

- (i) no gain or loss is taken to arise on disposal of the asset;
- (ii) the transferee or transferee company is treated as acquiring an asset of the same character as the asset disposed of by the transferor or transferor company; and
- (iii) the transferee or transferee company’s cost on acquisition of the asset is equal to the transferor or transferor company’s cost of the asset or, in the case of a depreciable asset, written down value at the time of disposal.”;
- (c) in subsection (2), deleting “transferee company” and substituting “transferee or transferee company”; and
- (d) after subsection (2), inserting the following new subsections—

“(2A) A transferee is wholly owned by the transferor if the transferor owns directly or through one or more interposed persons, 100% of the issued shares in the transferee.

(2B) For the purposes of subsections (1)(a) and (2A), where an asset under disposal is jointly owned by 2 or more transferors, the percentage of ownership in the asset or the depreciable asset should be the same as their percentage of beneficial ownership of the issued shares in the transferee.

(2C) Notwithstanding section 87, the deferral granted under subsection (1)(a) will cease to apply and any taxes applicable at the time of disposal shall immediately become payable if there is a change in beneficial ownership of the transferee within 2 years from the date of disposal.”.

Section 110 amended

1213. Section 110 of the Principal Act is deleted and substituted with the following—

“Advance payments of tax

110.—(1) A person liable for Income Tax for a tax year is liable to make advance payments of Income Tax—

- (a) in the case of a company, on the last day of the sixth, seventh, eighth, ninth, tenth, eleventh and twelfth months of the tax year and the first and second months of the following tax year; or
- (b) in the case of any other person, on 30 April, 31 May, 30 June, 31 July, 31 August, 30 September, 31 October, 30 November and 31 December.

(2) If the total advance payments of Income Tax payable by a person, other than a company, for a tax year is less than \$120, the advance tax payable by the person for the year is payable in one instalment on 30 September.

(3) The amount of each advance payment of Income Tax payable by a person for a tax year is computed according to the following formula—

$$11 \frac{1}{9} \% \times (A - B)$$

where—

- A** is the person’s assessed Income Tax liability for the preceding tax year, including under a self-assessment, after reduction of any foreign tax credit allowed to the person for that year; and
- B** is so much of A that was paid by amounts withheld under Subdivision 4 of Division 2.

(4) If—

- (a) the Income Tax payable by a person for the preceding tax year has not been assessed by the due date for payment of the first advance payment of Income Tax for a tax year; or
- (b) the person commenced to derive income included in gross income during the tax year,

the amount of each advance payment of Income Tax is one-ninth of the amount of Income Tax estimated by the person to be payable for the tax year, other than Income Tax to be collected by withholding under Subdivision 4 of Division 2.

(5) A statement of the Income Tax estimated to be payable by a person for a tax year in accordance with subsection (4) must be filed with the CEO at any time before the due date for payment of the seventh advance payment of Income Tax for the year.

(6) A person who reasonably believes that their Income Tax liability for a tax year will be significantly lower than the Income Tax liability assessed for the previous tax year may file a statement of the Income Tax estimated to be payable by the person for the year, at any time before the end of the twelfth month of the person's tax year, and the amount of each advance payment of Income Tax payable for the year is one-ninth of the person's estimated Income Tax liability for the year, other than Income Tax to be collected by withholding under Subdivision 4 of Division 2.

(7) If a person fails to file a statement as required under subsection (5) for a tax year, the estimated Income Tax of the person payable for the year is the amount of Income Tax estimated by the CEO to be payable by the person for the year.

(8) A statement filed by a person under subsection (5) or (6), or the CEO's estimate of the Income Tax payable by the person under subsection (7) remains in force for the whole of the tax year unless the person files a statement of a revised estimate with the CEO.

(9) A statement of a revised estimate filed under subsection (8) applies to the calculation of advance payments of Income Tax for a tax year payable by the person both before and after the date the statement was filed and—

- (a) the amount of any underpayment of advance payment of Income Tax made prior to filing the statement of revised estimate must be paid by the person together with the first advance payment due after the statement is filed; or
- (b) the amount of any overpaid advance payments of Income Tax is applied against future advance payments of Income Tax payable by the person.

(10) Each advance payment of Income Tax paid by a person during a tax year is credited against the person's Income Tax liability for the year in accordance with section 8(3) and if the amount of the credit allowed exceeds the Income Tax due for the year, the amount of the excess is refunded to the person.

(11) If the estimate, including the estimate of the CEO and any revised estimate, of Income Tax payable by a person for a tax year is less than 100% of the actual Income Tax liability of the person for the year (the difference referred to as the "advance tax shortfall"), the person is liable for a penalty equal to 40% of the person's advance tax shortfall.

(12) No penalty is imposed under subsection (11) if the CEO is satisfied that the reason for the advance tax shortfall was due to circumstances beyond the control of the person and all reasonable care was taken by the person in making the estimate or revised estimate.

(13) Notwithstanding subsection (12), no penalty is imposed under subsection (11) for a period of 3 years commencing on 1 August 2020.

(14) In this section, “Income Tax” includes the Social Responsibility Tax.”.

Section 110A deleted

1314. The Principal Act is amended by deleting section 110A.

INCOME TAX (BUDGET AMENDMENT) BILL 2020

EXPLANATORY NOTE

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

1.0 BACKGROUND

1.1 The Income Tax (Budget Amendment) Bill 2020 (**‘Bill’**) seeks to amend the Income Tax Act 2015 (**‘Act’**).

2.0 CLAUSES

2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the amending legislation will come into force on 1 August 2020.

2.2 Clause 2 of the Bill amends the definition of “capital asset” in section 2 of the Act to include “depreciable asset” in the definition. Clause 2 of the Bill also amends the definition of “permanent establishment” and reintroduces the previous definition of “permanent establishment” to bring consistency in its application with international taxation rules.

2.3 Clause 3 of the Bill amends section 7(5) of the Act as a result of the amendment made to the definition of “permanent establishment” in clause 2 of the Bill.

2.4 Clause 4 of the Bill amends section 10 of the Act by deleting subsection (2A) to bring consistency with international taxation rules.

2.5 Clause 5 of the Bill amends section 17(1B) of the Act to provide for debts created on or before 31 December 2020 and forgiven between 1 April 2020 and 31 December 2021, to not be treated as business income and therefore not be subject to income tax.

2.6 Clause 6 of the Bill amends section 22(1)(h) of the Act to exclude fringe benefits tax from the list of deductions not allowed.

2.7 Clause 7 of the Bill amends section 23(2) of the Act to allow employers who make FNPF additional contributions to claim the 100% deduction.

- 2.8 Clause 8 of the Bill amends section 24 of the Act to remove the threshold of \$15,000 for the 150% tax deduction available for cash donations to a sporting entity recognised by the Fiji National Sports Commission.
- 2.89 Clause 89 of the Bill amends section 34 of the Act to allow the benefit of the gain made from the sale of a capital asset where the consideration is more than the cost price, to not form part of total income; instead it will be subject to capital gains tax.
- 2.910 Clause 910 of the Bill amends section 62 of the Act to increase the debt-to-equity ratio from 2:1 to 3:1. A foreign controlled resident company would be eligible for deduction of interest paid where the debt-to-equity ratio exceeds 3:1.
- 2.1011 Clause 1011 of the Bill amends section 67 of the Act to increase the capital gains tax exemption threshold from \$16,000 to \$30,000.
- 2.1112 Clause 1112 of the Bill amends section 88 of the Act to allow an individual to transfer his or her assets to a company that he or she wholly owns. As a result, any tax arising from the transfer of assets will be deferred until the company disposes of the assets.
- 2.1213 Clause 1213 of the Bill amends section 110 of the Act to make the relaxed rules for advanced tax payments permanent. Companies would be required to make advanced tax payments in nine payments at the rate of 11 1/9 %.
- 2.1314 Clause 1314 of the Bill deletes section 110A of the Act as a result of the amendment made to section 110 of 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