INCOME TAX ACT
Chapter 201 Laws of Fiji

30th August 2012

UPDATED BY :-

Legal Section

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CHAPTER 201
INCOME TAX

AN ACT TO RE-ENACT AND AMEND THE LAW RELATING TO INCOME TAX

[1 January 1974]

PART I – PRELIMINARY

Short title
1. This Act may be cited as the Income Tax Act¹.


Interpretation
2 (1)¹ In this Act, unless the context otherwise requires—
“agent” includes every person who in Fiji, for or on behalf of any person out of Fiji, holds or has the control, receipt or disposal of any money belonging to such person, and every person declared by the Commissioner to be an agent under this Act, and includes an authorised officer and a sub-agent;

“approved fund” means a fund declared by the Governor, prior to 1 January 1961, to be an approved fund, or a fund, scheme or plan approved by the Commissioner under the provisions of section 110;

“arms-length transaction” means a transaction where the following conditions do not apply:—
(a) the buyer is a body of persons over whom the seller has control, or the seller is a body of persons over whom the buyer has control, or both buyer and the seller are bodies of persons, and some other person has control over both of them; or
(b) it appears with respect to the sale, or with respect to transactions of which the sale is one, that the sole and main benefit which might have expected to accrue to the parties, or any of them, was the obtaining of an allowance or deduction in respect of capital expenditure.

For the purpose of this definition—
(i) “body of persons” includes a partnership;
(ii) “control” means, in the case of a body corporate, the power of a person to secure, by means of the holding of shares or the possession of voting power in, or in relation to, that or any other body corporate, or by virtue of any powers conferred by the Articles of Association or other document regulating that or any other body corporate, that the affairs of the first-mentioned body
corporate are conducted in accordance with the wishes of that person, and, in the case of a partnership, the right to a share of more than one-half of the partnership assets or income;

“authorised officer” means the person appointed by a company under the provisions of section 41;

“basic tax”...²

“Commissioner” means the Commissioner of Inland Revenue or any person authorised ...³ to act in his stead;

“company”⁴ includes all bodies or associations, corporate or unincorporate, and any company incorporated by statute or by any charter, and every unit trust;

“controlling interest”⁵ means a direct or an indirect controlling interest by way of shareholding, and includes control of a company by a director or other person, in accordance with whose directions, instructions or wishes the company or its directors are accustomed, or under an obligation, whether formal or informal, to act;

“dealing in property” and “dealing in real and personal property” include—

(i) the acquisition (including a gift and transfer inter vivos or by inheritance) and sale or disposition of—

(a) any land scheduled for development under the Town Planning Act⁶ either before or after acquisition where any subdivision takes place;

(b) any land where permission for development is granted after acquisition;

(ii) the purchase of any land scheduled for development at the date of acquisition which is sold within 3 years of acquisition; unless the taxpayer can establish that one of the prime purposes of the purchase was not to make a profit [on]⁷ resale;

(iii) any transaction involving the sale or disposition [or]⁸ transfer of shares of a company to the extent that the transaction is a scheme or undertaking or part of a scheme or undertaking entered into with the intention of making a profit and the company is [the owner of any land, or of shares, either directly or indirectly, in another company which is the owner of any land, to which paragraph (i) or (ii) applies;]⁹

“dependent child” means any child, step-child or adopted child whose [own]¹⁰ world total income (other than income from any scholarship) in the year in respect of which the assessment is made does not exceed [1,000]¹¹ and who—

(a) is under 18 years of age and is dependent on his parents for support;

(b) is over 18 and under 27 years of age and is receiving full-time instruction at any university, college, school or other educational establishment, or is serving under articles or indentures with a view
to qualifying in a profession or trade and is dependent on his parents for support; or
(c) is over 18 years of age and is dependent on his parents for support on account of physical or mental incapacity;

“fringe benefit”\(^{12}\) means any benefit taxed pursuant to section 11(z);

“hardware”\(^{13}\) for the purpose of section 21(1)(t) means the components comprising a computer, but excludes visual display units, printers, scanners and other peripherals;

“income year” means, in respect of the income of any person, the year in which that income has been derived by him;

“know-how payment” means payment for any scientific, technical, commercial or industrial information, techniques, knowledge or assistance likely to assist in the carrying on of a business or in the manufacture of processing of goods or materials or in the working of a mine, oil well or other source of mineral deposits (including the searching for, discovery, or testing of deposits or the winning of access thereto) or in the carrying out of any agricultural, forestry or fishing operations;

“lease” includes a sub-lease and any licence, concession, permission, easement or other right granted to any person to use or over any land, and an agreement for such a transaction;

“minerals”\(^{14}\) has the meaning ascribed to it by the Mining Act\(^{15}\) and shall include natural gas and oil;

“mining”\(^{16}\) includes every method or process by which any mineral (including natural gas or oil) is won from the soil or any constituent thereof;

“mining company”\(^{17}\) includes a company engaged in winning natural gas or oil;

“non-resident” means a person who, or a company which, is not a resident;

“normal tax” means the tax authorised by section 7;

“owner of land” includes the owner of any interest in land;

“persons employed in Fiji” means all persons who receive, directly or indirectly, salary, wages, commissions, fees or other remuneration derived from sources within Fiji for personal service any part of which is performed in Fiji;

“private company”\(^{18}\) has the meanings given to it in the Companies Act;

“public company”\(^{19}\), for the purposes of paragraph (a) of subsection (2) of section 8, means—

(a) any company all classes of whose shares are publicly quoted at any time within the preceding 12 months by a stock exchange in a list issued under its authority, provided the Commissioner is satisfied—
(i) that the stock exchange is a recognised and bona fide stock exchange;
(ii) that the memorandum and articles of association of the company contain no restriction on the right to acquire or transfer any of its shares such as are likely to preclude members of the general public from becoming shareholders in any class of the company’s shares; and
(iii) that the general public was throughout the income year in question beneficially interested, either directly as shareholders or indirectly as shareholders in any other company, in more than 40 per cent of every class of shares issued by the company;

(b) any other company, not being a private company as defined in the Companies Act\(^\text{20}\), in respect of which the Commissioner is satisfied—

(i) that the general public was, throughout the income year in question, beneficially interested, either directly as shareholders in the company or indirectly as shareholders in any other company, in more than 40 per cent of every class of shares issued by the company; and
(ii) that the business of the company is conducted and its profit are distributed in such a manner that no person enjoys or receives or is entitled to enjoy or receive, by reason of any shareholding, participation in the management or otherwise, any advantage which would not be enjoyed or received by such person if the company had been under the control of a board of directors acting in the best interest of all its shareholders and had been one which could have been recognised as a public company under paragraph (a):

Provided that—

(a) the general public shall not be deemed to be beneficially interested in any shares if they are held—

(i) by any director or associate director of the company; or
(ii) by any company which is under the control of any such director or associate director; or
(iii) by any associated company of the company; or
(iv) as part of any fund the capital or income of which is applicable or applied wholly or mainly for the benefit of the employees or directors, or past employees or directors, of the company, or of any company referred to in paragraph (ii) or (iii), or their dependants; or
(v) by any relative of any director or associate director of the company, unless it is shown, to the satisfaction of the Commissioner, that such relative, if he is not the spouse or minor child of such director or associate director, has, at all times which the Commissioner considers relevant,
exercised his rights as a shareholder in the company, or in any other company through which such relative is beneficially interested in the shares of the company, independently of such director or associate director; or

(vi) by any man or his wife or any minor child of any man or his wife, if 1 or more of such persons are directly or indirectly beneficially interested together in more than 10 per cent of any class of shares issued by the company; or

(vii) by a company resident in Fiji which is a controlled company as defined in section 12, or by a company not so resident which would be a controlled company if it were so resident, if such company is directly or indirectly beneficially interested in more than 10 per cent of any class of shares issued by the company;

(b) the general public shall be deemed to be beneficially interested in any shares if they are held—

(i) by any pension fund, provident fund, or any trust or institution which, in the opinion of the Commissioner, is of a public character; or

(ii) by any statutory body established by or under an Act of Parliament; or

(iii) by the Unit Trust of Fiji; or

(iv) by the Government of Fiji;

“redundancy payment” means a bona fide lump sum payment, other than a retiring allowance on the occasion of the termination of employment, where—

(a) in the case of an individual who is an employee and who is not a seasonal worker, the employment is terminated by the employer, the termination being attributable, wholly or mainly, to the fact that the position filled by that individual is, or will become, superfluous to the needs of the employer; or

(b) in the case of an individual who is an employee and a seasonal worker, that individual’s usual seasonal employment is made unavailable by the employer, the unavailability being attributable, wholly or mainly, to the fact that the individual’s position or usual position is, or will become, superfluous to the needs of the employer;

but does not include—

(c) any payment relating to a situation solely involving a seasonal lay-off; or

(d) any payment contingent on the completion of either a fixed-term engagement or an engagement to complete work specified in a contract; or

(e) any payment in lieu of notice terminating the employment of the taxpayer; or
(f) any payment which, if it had not been made upon termination of employment, would, in the opinion of the Commissioner, have been paid so as to constitute monetary remuneration of the employee; or

(g) any payment made by a company pursuant to its articles of association to any of its directors; or

(h) any payment which, in the opinion of the Commissioner, is excessively large in relation to the earnings and length of service of the employee;

“resident” means—

(a) a person, other than a company, who resides in Fiji, and includes a person—

(i) whose domicile is in Fiji, unless the Commissioner is satisfied that his permanent place of abode is outside Fiji;

(ii) who has actually been in Fiji, continuously or intermittently, during more than one-half of the income year, unless the Commissioner is satisfied that his usual place of abode is outside Fiji and that he does not intend to take up residence in Fiji;

(b) in the case of a company, a company which is incorporated in Fiji, or in the case of a company not incorporated in Fiji, a company which carries on business in Fiji and has either its practical management and control in Fiji or its voting power controlled by shareholders who are residents;

“scholarship” includes an exhibition, bursary, or other similar educational benefit;

“shareholder” includes any registered holder or beneficial owner of a unit in a unit trust;

“software” for the purposes of section 21(1)(t) includes—

(a) the copyright in software;

(b) the right to use the copyright in software;

(c) the right to use software; and

(d) a copy of a software program which has been purchased;

“tax” means any levy or tax charged under this Act and includes any rebate withdrawn under section 100A;

“taxpayer” means any person paying, liable to pay, or believed by the Commissioner to be liable to pay, any tax imposed by this Act;

“trading stock” includes—

(a) anything produced or manufactured and anything acquired, purchased or held for purposes of manufacture, sale or exchange;

(b) any livestock or produce held in connection with the occupation of land for the purposes of pastoral, agricultural or other farming operations;
(c) any property where the business of the person by whom it is sold or disposed of comprises dealing in property of that nature; and
(d) any property acquired for the purpose of sale or otherwise disposing of the ownership of it;

"trust deed", "trustee", "unit holder" and "unit trust" shall have the meanings ascribed to them by the Unit Trusts Act;

"withholding tax" means the tax authorised by sections 8, 9, 9A, 10 and 10A;

"world total income", for the purpose only of the definition of "dependent child" in this section, of paragraph (b) of the proviso to subsection (3) of section 25, of paragraph (a) of the proviso to subsection (4) of section 25 and of paragraph (d) of the proviso to paragraph (ii) of subsection (2) of section 29, shall include all overseas income and any dividends, interest and other sum which would otherwise be excluded in arriving at total income for the purposes of this Act;

"year" means the calendar year or part of the year ended 31 December;

"year-2000-compliant", in relation to a computer means that the performance and functionality of the computer are not affected by dates prior to, during or after the year 2000;

"year of assessment" means the year in respect of which tax is payable.

(2) For the purposes of this Act, a trust includes the estate of a deceased person or settlement to which a beneficiary is presently entitled but does not include—
(a) a trust arising from bankruptcy;
(b) a unit trust as defined in the Unit Trusts Act;
(c) the Fiji National Provident Fund;
(d) any trust the income of which is exempted from taxation under this Act or any other written law; or
(e) an approved superannuation fund under section 110.
“minerals” includes the following minerals:

(a) “precious metals” which shall include gold, silver, platinum, palladium, iridium, osmium, or ores containing them, and all other substances of a similar nature;

(b) “precious stones” which shall include amber amethyst, beryl, cats-eye, chrysolite, diamond, emerald, garnet, opal, ruby, sapphire, turquoise, and all other stones of a similar nature;

(c) “earthy minerals” which shall include asbestos, ball-clay, barytes, bauxite, bentonite, china-clay, fuller’s earth, graphite, gypsum, marble, mica, nitrates, phosphates, pipeclay, potash, salt, slate, soda, sulphur, talc and all other substances of a similar nature;

(d) “radioactive minerals” which shall include minerals either raw or treated (including residues and tailings) which contain by weight at least 0.5 per cent of uranium or thorium or any combination thereof, including but not limited to—

(i) monazite sand and other ores containing thorium; and

(ii) carnotite, pitchblende and other ores containing uranium;

(e) “coal” which shall include coal in all its varieties and all other substances of a similar nature;

(f) “metalliferous minerals” which shall include aluminium, antimony, arsenic, bismuth, cadmium, chromium, cobalt, copper, iron, lead, manganese, mercury, molybdenum, nickel, tin, tungsten, vanadium, zinc and all ores containing them, and all other minerals and mineral substances of whatsoever description but excluding only the minerals and mineral substances included in paragraphs (a), (b), (c), (d) and (e), but shall not include clay, gravel, sand, stone or other common mineral substances, and for the purpose of avoiding doubt the Minister may from time to time by notice in the Gazette declare any mineral substance to be included in or excluded from this definition.”
PART II – ADMINISTRATION

Commissioner of Inland Revenue and officers

3. 1

……………………

2

1 Substituted by Schedule 2 paragraph (b) Act 9/1998 WEF 1st January 1999 – previously read:

(1) The Public Service Commission may appoint a person to be called the Commissioner of Inland Revenue, who shall administer this Act and be responsible for the collection of tax under this Act, and shall also perform such other duties as the Minister may assign to him.

(2) The Public Service Commission may appoint such persons, including a person to be called the Deputy Commissioner of Inland Revenue and persons to be called [Chief Assessors or] Principal Assessors of Inland Revenue, to be officers under the control of the Commissioner as the Minister may consider necessary for the purposes of this Act.

(3) Where, under this Act, any power is conferred on, or any duty is imposed on, the Commissioner, then, subject to any express direction by the Commissioner to the contrary, such power may be exercised by, or such duty may be performed by the Deputy Commissioner, or a Chief Assessor or a Principal Assessor:

Provided that the powers conferred by section 96 shall be exercised only by the Commissioner.

(4) The Commissioner may, notwithstanding the provisions of subsection (3), authorise any officer in the service of the Inland Revenue Department to exercise any of the powers conferred upon him by this Act other than the powers conferred by section 96.

(5) The Commissioner shall have the administration of this Act and the control and management of the collections of the taxation levied thereby and of all matters incidental thereto and the officers and the [persons] employed in that service.

2 Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009- previously read:

“(1) There shall be a Commissioner of Inland Revenue who shall administer this Act and be responsible for the collection of tax under it and shall perform such other duties as the [Fiji Islands Revenue and Customs Authority] may assign to him.

(2) The person for the time being appointed as the Chief Executive Officer of the [Fiji Islands Revenue and Customs Authority] shall hold office as the Commissioner of Inland Revenue.

(3) The Commissioner may authorise any other officer or employee of the [Fiji Islands Revenue and Customs Authority] to exercise any of the powers conferred upon him by this Act except the power of delegation under this subsection.”

Office of the Commissioner

3A. 1

T……2

1 Section and heading inserted by §2 Act 3/1982 WEF 1st January 1982
3B. Tax Identification Number

1. Inserted by §2 Act 4/2006 WEF 1st January 2006
2. Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009—previously read:
   “All taxpayers shall be identified through a number issued by the Commissioner in such manner as prescribed to be called the “Tax Identification Number”.

Official secrecy

4

(8) 2

1. Inserted by §3 Act 3/2005 WEF 1st January 2005
2. Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009—previously read:
(1) Every person required by the Commissioner to perform any special duty ... or having any official duty in or being employed in the administration of this Act (hereafter in this section referred to as an “officer”) shall regard and deal with all documents, returns, assessments and information relating to the income or items of income of any person as secret and confidential and shall take an oath in the form set out in Form I in the First Schedule before performing any duty under this Act and such oath may be administered by a magistrate.

(2) Every officer or person employed in carrying out the provisions of this Act who—
   (a) directly or indirectly asks for, or takes, in connection with any of his duties, any payment or reward whatsoever, whether pecuniary or otherwise, or any promise or security for any such payment or reward, not being a payment or reward which he is lawfully entitled to receive; or
   (b) enters into or acquiesces in any agreement to do, abstains from doing, permits, conceals, or connives at, any act or thing whereby the tax revenue is or may be defrauded, or which is contrary to the provisions of this Act or to the proper execution of his duty thereunder; or

in contravention of the provisions of subsection (1) or of the terms of his declaration of secrecy, and without lawful excuse, reveals to any person any document or information which has come into his possession or to his knowledge in the course of his official duties, or permits any other person to have access to any document in the possession or custody of the Commissioner in his official capacity;

shall be guilty of an offence against this Act and shall be liable, on conviction, to a fine not exceeding $1,000 or to imprisonment for a term not exceeding 3 years or to both such fine and imprisonment.

(3) No officer or person appointed under, or employed in carrying out the provisions of, this Act shall be required to produce in any court any return, document or assessment, or to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties under this Act, except as may be necessary for the purpose of carrying into effect the provisions of this Act, or in order to institute a prosecution, or in the course of a prosecution, for any offence committed in relation to tax.

(4) Notwithstanding anything contained in this section the Commissioner may disclose to the Minister or members of the [Fiji Islands Revenue and Customs Authority] such information, records or documents as may be necessary for the purposes of this Act or the [Fiji Islands Revenue and Customs Authority Act] and the Minister or members, as the case may be, shall thereupon become subject to the provisions of this section.

(5) The Auditor-General, exercising the powers and performing the duties imposed upon him by the provisions of section III, shall be deemed to be an officer employed in carrying out the provisions of this Act for the purposes of this section.
Nothing in this section shall prohibit the Commissioner or any person authorised by him from communicating information to the Tax Agents' Board constituted under Part VIIA.

Notwithstanding anything contained in this section, the Commissioner may, release any matter regarded as secret and confidential under this section, as may be necessary for the purpose of carrying into effect the provisions of this Act, or in order to institute a prosecution, for any offence in relation to tax, as the case may be-

(a) to the Commissioner of Police;
(b) to the Director of Immigration;
(c) to the Governor of the Reserve Bank; or
(d) to the Financial Intelligence Unit; or
(e) to the Fiji Independent Commission Against Corruption,

and such person is thereupon subject to this section.

Any person who uses any matter released under subsection (7) for any other purpose, other than the for the purpose in which it is released, commits an offence and is liable to the penalties specified in subsection (2).".

Free postage

1 Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009- previously read:

"All information and correspondence, and all payments of tax, under the provisions of this Act, shall be carried and delivered by the [Department of Posts and Telecommunications], free of postal or other charges, if the postal packet containing such information, correspondence and payments is addressed to the Commissioner of Inland Revenue or to the [Fiji Islands Revenue and Customs Authority]."

PART III – IMPOSITION OF TAX

Basic tax

Repealed by §3 Decree 30/1992 WEF 1st July 1992 – previously read:

(1) Notwithstanding the other provisions of this Act, there shall be assessed, levied and paid a tax, to be known as “basic tax”, at the rate of 2.5 cents in each complete dollar for each year of assessment—

(a) on every dollar of total income derived during the year—
(i) by every resident individual whose total income exceeds [$3,000];
(ii) by every other person, other than a company;
(b) on every dollar of chargeable income of a company, other than a non-resident shipping company.

(2) [(a) Subject to the other provisions of this subsection, where the total income of any person in employment (excluding the value of all emoluments not exceeding $100 received otherwise than in cash) is less than [$3,000] in any year or where the amount of basic tax applicable to the total income of any such person would reduce the balance of such total income (excluding the value of all emoluments not exceeding $100 received otherwise than in cash) to [$3,000] or less in any year, then that income shall be exempt from basic tax.]

(b) For the purposes of this subsection, the words "emoluments" and "employment" shall have the meanings assigned thereto respectively in section 79.

(3) Notwithstanding the provisions of any other written law, basic tax shall be collected in the manner most convenient to the source of income and, where practicable, shall be deducted at source by the person making the payment.

(4) For the purposes of assessment of basic tax on a company, the Commissioner may make a composite assessment without separately accounting for basic tax.

Normal tax

7.—(1) Subject to the other provisions of this Act there shall be assessed, levied and paid a tax to be known as normal tax for each year of assessment on every dollar of chargeable income of—

(a) an individual whose total income, in the case of a resident, exceeds [$15,600]$1, or any other person, other than a company, in respect of his chargeable income for the year of assessment [but a resident individual shall be exempt from normal tax to the extent that such normal tax, together with [basic tax]$2, would reduce the balance of his total income to [$15,600]$3 or less in any year$4:

[Provided that no resident individual whose total income is below [$8,840]$5 shall be subject to assessment under the principal Act as from 1st July 1992.]$6

(b) a company, other than a company to which paragraph (c), (d) or (e) applies, in respect of its chargeable income derived during the year preceding the year of assessment;

(c) a mutual insurance company in respect of its life insurance business derived during the year preceding the year of assessment;

(d) non-resident or a non-mutual insurance company, except to the extent that the income in respect of its life insurance business is deemed to be mutual under section 37, in respect of its chargeable income derived during the year preceding the year of assessment;

(e) a non-resident shipping company in respect of its chargeable income derived from Fiji during the year preceding the year of assessment.

For the purposes of this section—

(i) the calendar year in which more than half of the fiscal year of any company falls shall be deemed to be the year preceding the year of assessment of such company and, for all the purposes of this Act, the profits for the fiscal year shall be regarded as the profits of that calendar year;

(ii) where a trade, business, profession or vocation is carried on by an individual either solely or in partnership, the income year in relation to such trade, business, profession or vocation shall be the calendar year in which more than half of the fiscal year of such trade, business, profession or vocation falls and, for all the purposes of this Act, the

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1 Amended by Decree No.6 of 2012. Effective from 1st January 2012.
2 Amended by Decree No.6 of 2012. Effective from 1st January 2012.
profits for the fiscal year shall be regarded as the profits of that calendar year;

(iii) the normal tax charged under this section … is in addition to [basic tax].

(f) …

(g) a trustee in respect to the income of the trust, as calculated under subsection (1) or (3) of section 42, for the year of assessment.

(2) Any person may, with the leave of the Commissioner, adopt an accounting period being the 12 months ending on some date other than 31st day of December. His accounting period in each succeeding year shall end on the corresponding date of that year, unless with the leave of the Commissioner some other date is adopted.

(3) The rates of normal tax chargeable are set out in the Fourth Schedule.

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2 Basic tax not chargeable WEF 1st July 1992 by repeal of §6 by §3 Decree 30/1992


4 Words inserted by §4(b) Act 23/1985 WEF 1st January 1986


6 Words inserted by §4(b) Decree 30/1992 WEF 1st July 1992

7 Repealed and substituted by §2(b) Decree 8/2001 WEF 1st January 2001. Note: §2(b) Decree 8/2001 contained printing errors that have been rectified by §2 of Legal Notice number 47 of 2001

8 Repealed and substituted by §2(b) Decree 8/2001 WEF 1st January 2001. Note: §2(b) Decree 8/2001 contained printing errors that have been rectified by §2 of Legal Notice number 47 of 2001

9 Repealed and substituted by §2(b) Decree 8/2001 WEF 1st January 2001. Note: §2(b) Decree 8/2001 contained printing errors that have been rectified by §2 of Legal Notice number 47 of 2001

10 Repealed and substituted by §2(b) Decree 8/2001 WEF 1st January 2001. Note: §2(b) Decree 8/2001 contained printing errors that have been rectified by §2 of Legal Notice number 47 of 2001

11 Words “in the case of every person other than a company,” repealed by §4(a) Act 10/1975 WEF 1st January 1975

12 See Note 2

13 Paragraph (f) repealed by §4(b) Act 10/1975 WEF 1st January 1975 – previously read:

(f) subject to the provisions of this Act the trustee of, or other like person acting in a fiduciary capacity in the case of an estate of a deceased person, a trust, or a settlement shall be taxed in his own name and, subject to the provisions of paragraph (b) of section 15, shall be liable for a tax thereon as an unmarried person but without the benefit of the income limit of six hundred dollars referred to in paragraph (a) of this subsection in respect of the chargeable income received by or accrued to the estate, trust or settlement.

14 Inserted by §3 Act 4/2004 WEF 1st January 2004

15 Inserted by §4(b) Act 3/1982 WEF 1st January 1982

16 Renumbered from (2) by §4(c) Act 3/1982 WEF 1st January 1982
**Tax surcharge**

7A. Where, in accordance with this Act, a person (not being a company) is liable, in respect of [the year of assessment commencing on January 1 1984], to pay both basic tax and normal tax, there shall be assessed, levied and paid a tax, to be known as “surcharge”, at the rate of 5 per cent of the aggregate of the basic tax and the normal tax levied against that person in respect of that year of assessment.

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1 Inserted by §2 Act 25/1983 WEF 30th December 1983
2 Substituted for “any year of assessment commencing on or after the first day of January 1984” by §5 Act 17/1984 WEF 1st January 1984

**1992 assessment**

7B. —(1) Where a person, not being a company, is liable to taxation in the year of assessment ending 31st December 1992, that person shall be assessed to tax in accordance with the provisions of this Section.

(2) For the purposes of this Section, unless the context otherwise requires:

“Period A” means the period from 1st January 1992 to 30th June 1992;

“Period B” means the period from 1st July 1992 to 31st December 1992;

“Period A Income” means the income derived in or during period A;

“Period B Income” means the income derived in or during period B;

“Notional Annual Income” means the sum of period A income and period B income;

“Notional Period A Tax” means the tax assessed on notional annual income, applying the taxes, rates of tax, allowances and rebates under this Act applicable during period A;

“Notional Period B Tax” means the tax assessed on notional annual income, applying the taxes, rates of tax, allowances and rebates under this Act applicable during period B;

“Notional Annual Tax” means the sum of notional period A tax and notional period B tax;

“Total Tax” means the total tax due under this Act in respect of any income derived in or during the year of assessment ending 31st December 1992;

“Person” means all legal persons, other than a company.

(3) Where a person has period A income only, the total tax due will be deemed to be the notional period A tax.

(4) Where a person has period B income only, the total tax due will be deemed to be the notional period B tax.
(5) Where a person continuously derives income during the whole of period A and during
the whole of period B, the total tax due is deemed to be one half of the notional annual tax.

(6) If a person does not derive income in any of the circumstances defined in subsections
(3), (4), or (5), the total tax due will be calculated according to the formula:

\[
\left( \frac{NPAT}{1} + \frac{PAI}{NAI} \right) + \left( \frac{NPBT}{1} + \frac{PBI}{NAI} \right)
\]

where:
- NPAT means Notional Period A Tax
- NPBT means Notional Period B Tax
- PAI means period A Income
- PBI means period B Income
- NAI means Notional National Income.

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1 No heading provided in Act 9/1995 or Act 2/1993 – see Note 2; heading added for convenience only

"(1) Where, in accordance with this Act, a person (not being a company) is liable, in respect of the
year of assessment commencing on 1st January 1992, to pay both basic tax and normal tax, the
following method of assessment shall be used:

(a) Income derived in or during the period 1st January 1992 to 30th June 1992 shall be deemed
to have been derived in or during period (A), and income derived in or during the period 1st
July 1992 to 31st December 1992 shall be deemed to have been derived in or during period
(B).

(b) Period (A) income and Period (B) income shall each be proportionately increased to a
notional annual income by the use of the formula:

\[ NAI = \frac{I \times 365}{D} \]

Where
- NAI = Notional Annual Income
- I = Either Period A income or Period B income
- D = Number of days in the period over which the income was derived.

(c) Assessment to tax, according to the taxes, rates and allowances applicable to each Period
shall be made on the notional annual income of each Period. The tax due for each period will
be calculated according to the formula:

\[ T = TA \times \frac{D}{365} \]

Where
- T = Tax due for Period A or Period B
- TA = Tax assessed on the notional annual income, as hereinbefore provided
- D = Number of days in the Period over which the income was derived.

(d) The total tax for the year of assessment shall be the aggregate of the tax due in respect of
Period (A) and the tax due in respect of Period (B)."
7C\(^1\) ………

\(^1\) Repealed by Decree 8/2010 WEF 1st January 2010—previously read:

- (1) Notwithstanding any other taxes imposed under this Act, there shall be paid a tax known as branch profit remittance additional normal tax equal to fifteen per cent (15\%) of any branch profits derived in Fiji by a non-resident;

(2) The non-resident company carrying on business in Fiji shall be liable for the tax and the tax shall be recovered from the company paying or crediting branch profits to a non-resident;

(3) The company which, in accordance with the provision of subsection (2), is required to pay the tax shall remit the same to the Commissioner of Inland Revenue within 30 days, or such period as the Commissioner of Inland Revenue may specify, of the payment or crediting of the branch profits;

(4) For the purposes of this section, the branch profit remittance tax shall be levied on the branch profits paid or credited by the company to the extent that it has not been paid or credited from income which has been charged to tax.

(5) Tax shall be based on the profits paid or credited for remittance. Profits refer to the after tax earnings to the extent that the head office does not reinvest such amount to the Fiji branch.

**Branch Profit remittance additional normal tax**

7CA. — (1) Notwithstanding the repeal of section 7C of the Act by the Income Tax (Budget Amendment) Decree (No. 8 of 2010), any branch profit remittance additional normal tax payable, paid, levied, or assessed under section 7C for any period before the 1st day of January 2010, shall be made without regard to subsection (4) of section 7C.

(2) For the avoidance of doubt, subsection (4) of section 7C shall not apply to any branch profit paid, credited or remitted pursuant to section 7C for any period before the 1st day of January 2010.

(3) Notwithstanding the repeal of section 7C of the Act, any branch profit remittance additional normal tax liable to be paid, levied or assessed under section 7C for any period before the 1\(^{st}\) day of January 2010 shall be payable, regardless of whether the remittance is made after the 1\(^{st}\) day of January 2010.

**2008 assessment**

**Method of assessment of tax payable**

7D\(^2\)-(1) Where a person, not being a company, is liable to taxation in the year of assessment ending 31 December 2008, that person shall be assessed to tax in accordance with the provisions of this Section.

\(^2\) Inserted by Decree No. 13 of 2012. Retrospective effect before the 1\(^{st}\) January 2010.
(A) For the period 1st January 2008 to 31st May 2008:

(i) The taxable income for this period shall be determined by taking the income for the period grossed up using a factor 12/5;

(ii) The resultant amount shall be reduced by the annual allowances: this amount is termed “notional annual income”; 

(iii) The tax payable for this period shall be calculated on the “notional annual income” using the income tax rates prevailing as at 1st January 2008; and 

(iv) The resultant amount which is the “notional tax payable” on the “notional annual income” is reduced using a factor of 5/12.

For the purpose of this section, unless the context otherwise requires, the words “notional tax payable” and “notional annual income” as mentioned above, may be used only in the context of section 7D (2) (A).

(B) For the period 1st June 2008 to 31st December 2008:

(i) The taxable income for this period shall be determined by taking the income for the period grossed up using a factor 12/7;

(ii) The resultant amount shall be reduced by the annual allowances: this amount is termed “notional annual income”; 

(iii) The tax payable for this period shall be calculated on the “notional annual income” using the income tax rates prevailing as at 1st June 2008; and 

(iv) The resultant amount which is the “notional tax payable” on the “notional annual income” is reduced using a factor of 7/12.

For the purpose of this section, unless the context otherwise requires, the words “notional tax payable” and “notional annual income” as mentioned above, may be used only in the context of section 7D (2) (B).

(3) Where a person receives income for part of the income year, the tax will be assessed as determined by the Commissioner.

*Imposition of Social Responsibility Levy*

5 Inserted by Decree No.6 of 2012. Effective from 1st January 2012.
7E. — (1) Subject to this Decree, a levy to be known as “social responsibility levy” is imposed for a tax year at the rate specified in the Table A8 on a resident person and Table B6 Fourth Schedule on a non-resident person, (other than a company) who is liable for income tax.

(2) The Social Responsibility Levy payable under subsection (1) for a tax year is computed by applying the rate specified in –

(a) Table A8 of Fourth Schedule to the total\(^6\) chargeable income of a resident person;
(b) Table B6 of Fourth Schedule to the total\(^7\) chargeable income of a non-resident person.

(3) The individual including employee\(^8\) and employer shall be liable for the levy.

(4) The individual including employee\(^9\) and employer shall lodge the return in the approved form and pay the levy on or before the end of each month following the month in which the levy was due.

(5) Subject to subsection (2)(a), the Chief Executive Officer may refund the Social Responsibility Levy in accordance with section 33 of the Tax Administration Decree 2009, if the Social Responsibility Levy has been overpaid\(^10\).

(6) For the purposes of the Social Responsibility Levy, the term “chargeable income” shall mean chargeable income as calculated for the purpose of normal tax\(^11\).

(7) The Minister may make Regulations with regards to the Social Responsibility Levy\(^12\).

**Imposition of telecommunication levy\(^13\)**

7F. - (1) A levy to be known as “Telecommunication Levy” at a rate of 1% shall be imposed on all voice calls transmitted by any telecommunication services.

(2) The person liable for the levy shall be the user of telecommunication service to whom the charges are incurred.

(3) The licensed telecommunication service provider shall on or before 15 days after the last day of each month, lodge a return in the approved form and pay the levy due.

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\(^6\) Inserted by Decree No. 42 of 2012. Effective from 1\(^{st}\) January, 2012.
\(^7\) Inserted by Decree No. 42 of 2012. Effective from 1\(^{st}\) January, 2012.
\(^8\) Inserted by Decree No. 42 of 2012. Effective from 1\(^{st}\) January, 2012.
\(^10\) Inserted by Decree No.42 of 2012. Effective from 1\(^{st}\) January 2012.
\(^11\) Inserted by Decree No.42 of 2012. Effective from 1\(^{st}\) January 2012.
\(^12\) Inserted by Decree No.42 of 2012. Effective from 1\(^{st}\) January 2012.
\(^13\) Inserted by Decree No. 6 of 2012. Effective from 1\(^{st}\) January 2012.
Imposition of credit card levy

7G. (1) A levy to be known as “Credit Card Levy” at a rate of 2% imposed on all outstanding monthly balance on bank credit cards including interest and other bank charges.

(2) The person liable for the levy under subsection (1) shall be the owner of the bank credit card.

(3) The bank shall, on or before 15 days after the last day of each month, lodge a return in the approved form and pay the levy due.

Imposition of third party insurance levy

7H. (1) Subject to subsection (2), a levy to be known as “third party insurance levy” shall be charged at the rate of 20% of the total third party insurance premium collected in a month.

(2) The person liable for the levy shall be the insurance company.

(3) The insurance company shall on or before 20 days after the last day of each month, lodge a return in the approved form and pay the levy that due.

8.—(1) Notwithstanding anything to the contrary in the other provisions of this Act, there shall be paid a tax, to be known as “non-resident dividend withholding tax”, in respect of [a dividend] specified in subsection (2) at the rate of [15]% per cent of the gross amount payable.

(2) Such tax shall be payable in respect of—

(a) [the portion of a dividend] declared, paid or credited by a company incorporated in Fiji [and which has been paid or credited, either wholly or partly, from chargeable income upon which no tax has been paid by that company];

For the purpose of this paragraph—

“dividend” means any amount distributed by a company, whether carrying on business in Fiji or not, to its shareholders;
“amount distributed” shall be deemed to include—

(a) subject to paragraph (ee), in relation to a company that is being wound up or liquidated, any profits distributed, whether in cash or otherwise, other than of a capital nature, earned before or during the winding up or liquidation;

(bb) in relation to a company that is not being wound up or liquidated, any profits distributed other than realized capital profits, whether in cash or otherwise and whether of a capital nature or not, including an amount equal to the value of any debentures or securities awarded to shareholders, but excluding the nominal value of any bonus shares issued to a shareholder, other than a resident company, to the extent to which such shares have been paid up by means of the company’s undistributed revenue profits ascertained in accordance with the provisions of this Act;

(cc) subject to paragraph (ee), in the event of the partial reduction of the capital of a company, which is not a public company, any cash or the value of any asset which is given to a shareholder in excess of the cash equivalent of the nominal value by which the shares of that shareholder are reduced;

(dd) subject to paragraph (ee), in the event of the reconstruction, re-organisation or amalgamation of a company, which is not a public company, any cash or the value of any asset which is given to a shareholder in excess of the nominal value of the shares held by him before the reconstruction, re-organisation or amalgamation;

(ee) in the event of the winding up or liquidation or the partial reduction of the capital or the reconstruction, re-organisation or amalgamation of a company, which is not a public company or a company to which paragraph (ff) applies, any cash or the value of any asset which is given to a shareholder up to the nominal value of any bonus shares awarded to him after 31 December 1979, to the extent to which such shares were paid up by means of—

(i) the company’s undistributed revenue profits; or

(ii) profit arising from the revaluation of the company’s assets (other than goodwill and any other right where the profit from the sale of such right falls within the meaning of total income) not acquired for the purpose of resale at a profit;

(ff) in the case of an investment company or a company whose business consists wholly or mainly in the provision of professional, technical or personal services, an amount equal
to the nominal value of any bonus shares awarded to the shareholder;

\[(gg)\] any money advanced by a company, either directly or indirectly, to or for the benefit of any of its shareholders or relatives of shareholders if, in the opinion of the Commissioner, the making of the advance was not a *bona fide* investment by the company;

\[(hh)\] …?

(ii) in the case of a sale of a company, the total value of retained earnings shall be deemed to be dividends distributed to shareholders.\(^8\)

Provided that an amount distributed shall not be deemed to include—

(i) the nominal value of any bonus shares awarded to a shareholder, to the extent to which such shares have been paid up by means of the company’s share premium account;

(ii) the nominal value of any bonus shares (other than redeemable bonus shares) awarded to a shareholder, to the extent to which such shares have been paid up by means of profit arising from the revaluation of the company’s assets (other than goodwill \(\text{[and any right where the profit from the sale of such right falls within the meaning of total income]}^9\) not acquired for the purpose of resale at a profit. For the purpose of this sub-paragraph, the expression “profit arising from the revaluation” shall—

\[(a)\] be deemed not to include any such profit or gain unless—

(i) the assets which are revalued by the company were held by it continuously for a period of not less than 7 years immediately preceding the date of revaluation; and

(ii) it is a *bona fide* revaluation made by a valuer acceptable to the Commissioner;

\[(b)\] not include revaluation of land on the whole of which there has been no development;

“development” means—

\[(a)\] substantial building operations on any land;

\[(b)\] re-building operations, material alterations or additions to or major structural repairs to any building or structure;
(c) subdivision of any land by dividing the same and the laying out of plots, roads, drains, sewers, parks, gardens, lawns, orchards or the like, and shall include any development of land used or proposed to be used for agricultural development.

For the purposes of—
(i) paragraphs (cc) and (dd), where any cash or the value of any asset is given to a shareholder, such distribution shall be deemed to be firstly in respect of the nominal value of any bonus shares; and
(ii) paragraph (ee), in the event of the winding up or liquidation of a company, there shall be excluded any cash or the value of any asset which is given to a shareholder, up to the nominal value of any bonus shares awarded to him, to the extent to which such shares were paid up by means of the company’s profit arising from the revaluation of its assets (other than goodwill) not acquired for the purpose of wide at a profit;

(b) .....
(c) .....
(d) .....

if the person in whose favour or to whom [any dividend has] been declared, paid or credited is—
(i) a non-resident; or
(ii) the holder, whether a resident or not, of any bearer scrip, who was either a shareholder at the date of declaration of the dividend or was entitled to the payment at the date on which it accrued due.

Person liable for the tax
(3) The person liable for the tax shall be the person to whom or in whose favour [a dividend is declared, paid or credited].

Recovery of tax
(4) Notwithstanding the provisions of subsection (3), the tax shall be payable and recoverable from—
(a) in the case of a dividend referred to in paragraph (a) of subsection (2) distributable to any non-resident, to any person whose address appearing in the share register of the company is outside Fiji or to any holder of any bearer scrip, the company declaring or paying the dividend;
(b) in the case of a dividend referred to in paragraph (a) of subsection (2) received by an agent in Fiji on behalf of any person, the agent receiving the dividend;
(c) .....
For the purposes of this subsection—

(i) a person shall, in the case of a dividend referred to in paragraph (a) of subsection (2), be deemed to be the agent of the shareholder referred to and to have received a dividend on behalf of the shareholder if that person’s address appears in the share register of the company as the registered address of the shareholder and the dividend warrant or cheque in payment of the dividend distributable to the shareholder is delivered at that address:

Provided that any person so deemed to be the agent of a shareholder shall, as regards such dividend, have and exercise all the powers, duties and responsibilities conferred or imposed by this Act on an agent of a taxpayer absent from Fiji;

(ii) in the case of a dividend not payable in money, a company shall not pay it until an amount equal to the tax that would have been paid if it had been payable in money has been paid to the Commissioner.

Right of reimbursement

(5) [Any tax payable under the provisions of subsection (4) by any company, person or agent, otherwise than by deduction, may, notwithstanding any agreement to the contrary, be recovered by such company, person or agent, as the case may be, from the shareholder entitled to the payment concerned].

Tax not payable and abatements

(6) The tax shall not be payable in respect of—

(a) a dividend or distribution by a statutory corporation;

(b) any sum payable to a person referred to in paragraph (5) of section 17;

(c) ….

Determination of tax if company operates both inside and outside Fiji

(7) [If any dividend specified in [paragraph (a)] of subsection (2) has been received from a company which derives income from sources both within and outside Fiji, the tax payable thereon shall be calculated upon an amount which bears to such dividend the same ratio as the net profits of the company derived from sources within Fiji including dividends from a resident company bears to its net profits derived from all sources, including dividends from a resident company, as last determined by the Commissioner for the purposes of this Act or, in any case where there has been no previous determination by the Commissioner, as estimated by the Commissioner according to such information as is then available to him].

Payment

(8) The person who, in accordance with the provisions of subsection (4), is required to pay the tax shall remit the same to the Commissioner within 30 days, or such other period as the Commissioner may specify, of the declaration, payment or crediting of the sum specified in subsection (2).
Amended by deleting "the payments" and substituting "a dividend" by §3(a) Decree 8/2001 WEF 1st January 2001
2 Figure "15" substituted for "30" by §3 Act 10/1997 WEF 1st January 1997; "30" substituted for "15" by §4 Decree 10/1990 WEF 1st January 1990
3 Amended by deleting "a dividend" and substituting "the portion of a dividend" by §3(b) Decree 8/2001 WEF 1st January 2001
4 Inserted by §3(b) Decree 8/2001 WEF 1st January 2001
5 Definition of "amount distributed" substituted by §3 Act 21/1980 WEF 1st January 1980 – previously read:
   "Amount distributed" shall be deemed to include—
   (aa) in relation to a company that is being wound up or liquidated, any profits distributed, whether in cash or otherwise, other than of a capital nature earned before or during the winding up or liquidation;
   (bb) in relation to a company that is not being wound up or liquidated, any profits distributed other than realised capital profits whether in cash or otherwise and whether of a capital nature or not, including an amount equal to the nominal value of any bonus shares, debentures or securities awarded to the shareholders;
   (cc) in the event of the partial reduction of the capital of a company, any cash or the value of any asset which is given to the shareholder in excess of the cash equivalent of the nominal value by which the shares of that shareholder are reduced;
   (dd) in the event of the reconstruction, re-organisation or amalgamation of a company, which is not a public company, any cash or other value of any asset which is given to a shareholder in excess of the nominal value of the shares held by him before the reconstruction, re-organisation or amalgamation;
   (ee) any money advanced by a company either directly or indirectly to or for the benefit of any of its shareholders or relatives of shareholders if, in the opinion of the Commissioner, the making of the advance was not a bona fide investment by the company;
   (ff) any sum deemed to have been distributed as dividends among the shareholders under the provisions of subsection (7) of section 12, but shall not include—
      (i) the nominal value of any bonus shares awarded to a shareholder, to the extent to which such shares have been paid up by means of the company's share premium account;
      (ii) the nominal value of any bonus shares (other than redeemable bonus shares) awarded to a shareholder, to the extent to which such shares have been paid up by means of profit arising from the revaluation of the company's assets (other than goodwill and any right where the profit from the sale of such right falls within the meaning of total income) not acquired for the purpose of resale at a profit. For the purpose of this sub-paragraph, the expression "profit arising from the revaluation" shall—
         (a) be deemed not to include any such profit or gain unless—
            (i) the assets which are revalued by the company were held by it continuously for a period of not less than 7 years immediately preceding the date of revaluation; and
            (ii) it is a bona fide revaluation made by a valuer acceptable to the Commissioner;
         (b) not include revaluation of land on the whole of which there has been no development;
      (g) any money paid to a company as consideration for the sale of its shares or securities to a company that is being wound up or liquidated; and
      (h) any money paid to a company as consideration for the sale of its shares or securities to a company that is not being wound up or liquidated;
   (gg) amounts received by a company on the sale of any asset,
   (hh) any money advanced by a company either directly or indirectly to or for the benefit of any of its shareholders or relatives of shareholders if, in the opinion of the Commissioner, the making of the advance was not a bona fide investment by the company;
"(b) any payment made for the hire or rent of films and any sum paid for the use of such films whether by way of purchase or long term hire. For the purpose of this paragraph, “films” include—
(i) motion picture films; and
(ii) films or video tapes for use in connection with television."

11 Repealed by §3(b) Decree 8/2001 WEF 1st January 2001 - previously read:
"(c) any know-how payment and any sum paid or credited for the management of or supervision in connection with the carrying on of a business, to the extent that such payment or credit does not constitute reimbursement of expenditure, that is—
(i) of a kind that is deductible under this Act; and
(ii) incurred in relation to the payment or credit by the person to whom the payment or credit is made:
Provided that, where payment or credit is made partly for any purpose other than those mentioned in sub-paragraphs (i) and (ii), the Commissioner may, for the purposes of this paragraph, determine to what extent the sum so paid or credited is for such other purpose;"

12 Repealed by §3(b) Decree 8/2001 WEF 1st January 2001 previously read:
"(d) alimony and maintenance paid under an order of a court of competent jurisdiction, allowed as a deduction in arriving at total income."

13 Amended by deleting "any such sums have" and substituting "any dividend has" by §3(b) Decree 8/2001 WEF 1st January 2001

14 Amended by deleting "the above-mentioned sums accrue" and substituting "a dividend is declared, paid or credited" by §3(c) Decree 8/2001 WEF 1st January 2001

15 Repealed by §3(d) Decree 8/2001 WEF 1st January 2001 - previously read:
"(c) in the case of any other sum referred to in subsection (2), the person by whom such sum is paid or credited.

16 Amended by deleting the words "or other person" by §3(e) Decree 8/2001 WEF 1st January 2001

17 Repealed by §2 Act 4/2002 WEF 1st January 2002 - previously read:
"(c) any sum, where the Minister is satisfied that such non-payment is expedient for the economic development of Fiji. In any such case, he shall, by notice to the Commissioner, direct that any tax otherwise payable under the provisions of this section shall either be waived or be at such reduced rate as he may specify."

18 Amended by deleting "paragraphs (a) and (b)" and substituting "paragraph (a)" by §3(f) Decree 8/2001 WEF 1st January 2001

19 Amended by deleting "or sum" (which occurred twice) by §3(f) Decree 8/2001 WEF 1st January 2001

**Non-resident miscellaneous withholding tax**

8A. 1—(1) Notwithstanding anything to the contrary in the other provisions of this Act, there shall be paid a tax, to be known as “non-resident miscellaneous withholding tax”, in respect of the payments specified in subsection (2) at the rate of 15 per cent of the gross amount payable.

(2) Such tax shall be payable in respect of—
(a) any payment made for the hire or rent of films whether by way of purchase or long term hire; or
(b) subject to subsection (7), any know-how payment and any sum paid or credited for the management of, or supervision of, or the supply of any similar activity in connection with the carrying on of a business...
(c) ......
(d) any sum paid or credited for the supply of professional services or other independent activities of similar character.
if the person in whose favour or to whom any such sums have been paid or credited is a non-resident.

(3) For the purposes of subsection (2) (a) “films” includes—

(a) motion picture films or cinematograph films;  
(b) tapes or video tapes; and  
(c) compact discs, digital video discs, video compact discs, or any other form of electronic visual image storage medium.

(4) For the purposes of subsection (2) (b) “management” payments include payments of any kind to any persons, other than to an employee of the person making the payments, for, or in respect of, the provision of industrial, agricultural, scientific or commercial advice, or management of technical services, or similar services or facilities including consultancy services, but does not include payments for independent personal services;

(5) For the purposes of subsection (2) (d) “professional services” includes services performed in the exercise of independent scientific, literary, artistic, educational or teaching activities, as well as in the exercise of independent activities, as well as in the exercise of independent activities of physicians, lawyers, engineers, architects, dentists and accountants;

(6) For the purposes of subsection (2) (b) and (2) (d) “supply” includes all forms of supply whether in the persons physical capacity or by electronic means.

(7) If a payment or credit referred to in subsection (2) (b) is made partly for any purpose other than those mentioned in that subsection, the Commissioner may, for the purposes of this subsection, determine to what extent the sum so paid or credited is for such other purpose.

(8) The person liable for the tax shall be the person to whom or in whose favour the sums referred to in subsection (2) accrue.

(9) Notwithstanding subsection (8), the tax shall be payable and recoverable from the person by whom such sum is paid or credited.

(10) Any tax payable under subsection (9) by any person, other than by deduction, may, notwithstanding any agreement to the contrary, be recovered by such person from the person entitled to the payment concerned.

(11) The person who, in accordance with the provisions of subsection (9), is required to pay the tax shall remit the same to the Commissioner within 30 days, or such other period as the Commissioner may specify, of the payment or crediting of the sum specified in subsection (2).

(12) Subject to subsection (2), the Minister may exempt or reduce tax rate for tax payable under this section on the income of the qualifying employees under the Sixth
Schedule, who are residents of countries that do not have double tax agreements with Fiji.

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

(Inserted by Decree No. 70 of 2010)

1 New section inserted by §4 Decree 8/2001 WEF 1st January 2001
2 Inserted by §3(a) Act 1/2003 WEF 1st January 2003
3 Amended by deleting “and any sum paid for the use of such films”; and deleting the word “and” and substituting it with the word “or”.
4 “to the extent that such payment or credit does not constitute reimbursement of expenditure, that is—

(i) of a kind that is deductible under this Act; and
(ii) incurred in relation to the payment or credit by the person to whom the payment or credit is made;” deleted by §4 Act 4/2004 WEF 1st January 2004
5 Amended by substituting the number “4” with the number “7” and placing a comma after the words “management of”; inserting the word “of,” after the word supervision; and inserting the words “the supply of any similar activity” after the word or and before the words “in connection”.
6 Repealed by §3(c) Act 1/2003 WEF 1st January 2003 – previously read:
“(c) alimony and maintenance paid under an order of a court of competent jurisdiction, allowed as a deduction in arriving at total income,”
7 Inserting a new (d) “any sum paid or credited for the supply of professional services or other independent activities of similar character.” after (c).
8 Amended by inserting the words “or cinematograph films” after the word films; and by deleting “and” after “;
9 Amended by deleting the word “films” and substituting it with the word “tapes” and deleting the words “for use in connection with television.”; and substituting it with “; and”.
10 Inserting a new (c) “(c) compact discs, digital video discs, video compact discs, or any other for of electronic visual image storage medium.”
11 Inserted by SS4(a) Decree No.8/2010 WEF 1st January 2010.
14 Amended by deleting the number “5” and substituting with “8” by §8A Decree No.8/2010 WEF 1st January 2010,
15 Amended by deleting the number “6” and substituting with “9” by §8A Decree No.8/2010 WEF 1st January 2010,
17 Amended by deleting the number “6” and substituting with “9” by §8A Decree No.8/2010 WEF 1st January 2010.

[Non-resident interest withholding tax]^1

9.—(1) Notwithstanding anything to the contrary in the other provisions of this Act, there shall be paid a tax, to be known as “[non-resident]^1 interest withholding tax", [at the prescribed rate, in respect of]^2 any interest which accrued after 31 December 1973 to or in favour of—

(i) any non-resident, other than a company;
(ii) the estate of a deceased person who was, at the date of his death, a non-resident; or
(iii) a company not resident in Fiji.

if the debtor in respect of any such interest is a resident or carries on business in Fiji.]^3

[(1A) For the purposes of subsection (1), the prescribed rate is 10 percent.]^4
Application of provisions

(2) (a) Where the debtor in respect of any interest referred to in subsection (1) is a company, such company shall, for the purposes of this section, be deemed to be resident in Fiji if it is managed and controlled in Fiji.

(b) Where the payer of any such interest is the estate of a deceased person, such estate shall, for the purposes of this section, be deemed to be a resident or carrying on business in Fiji if the deceased was, at the date of his death, a resident or carrying on business in Fiji.

Cases where tax not payable

(3) The tax shall not be payable in respect of—

(a) interest accruing from the Government any local authority or statutory corporation;

(b) interest on any amount borrowed by the debtor and paid to him outside Fiji for the sole purpose of carrying on any trade outside Fiji and not intended for use in Fiji;

(c) interest which is, or under the terms of the loan is required to be, paid in Fiji on money lent in Fiji by any person who has a permanent place of business in Fiji;

(d) interest accruing from the payer to any person during any calendar year which, together with any other interest accruing from him to such person during such period, does not exceed $20;

(e) interest on any bill of exchange or any promissory note to the extent that such interest is payable [to the supplier] in respect of the purchase price of goods imported into Fiji [and acquired for the purpose of resale at a profit], if such bill or note is issued through a bank in possession of a valid licence granted under the provisions of the Banking Act and such bank has certified on such bill or note that a bill of lading or other document covering the importation of such goods has been exhibited to it;

(f) interest accruing to a person referred to in paragraph (5) of section 17;

(g) interest in respect of a loan made, or in respect of a specific sum agreed to be advanced under an agreement signed, on or before 30 November 1973, from a source outside Fiji;

(h) any interest, if—

(i) such interest accrues from any project or operation approved and undertaken pursuant to the Cotonou Agreement;

(ii) the Minister is satisfied that non-payment or payment at a reduced rate is expedient; and

(iii) the Minister, by notice to the Commissioner, directs that any tax otherwise payable under the provisions of this section shall either be waived or be reduced at such reduced rate as he may specify.
\[ (i) \] any interest which is exempt from \[ basic tax \] and normal tax under item (44) of section 17; \[ 12 \]

\[ (j) \] any interest, if the Minister is satisfied that such non-payment is expedient for the economic development of Fiji. In any such case, the Minister shall, by notice, in writing, to the Commissioner, direct that any tax otherwise payable under this section be waived or be reduced at such rate as the Minister may specify: Provided that this paragraph does not apply to an amount below $5 million in any one transaction.


Persons liable for tax

(4) The person liable for the tax shall be the person, estate or company to whom or in whose favour the interest accrues.

Deduction of tax

(5) Notwithstanding the provisions of subsection (4), either the debtor in respect of any interest referred to in subsection (1) or any person who receives the same on behalf of or in trust for the person to whom it accrues shall, on behalf of the person, estate or company liable for the tax, deduct and remit to the Commissioner a sum equal to the amount of the tax payable in respect of the interest within 14 days or such other period as the Commissioner may specify, of the accrual of the interest:

Provided that, if the Commissioner is satisfied in any case that the tax due under the provisions of this section has been or will be paid by any person, he may direct that any other person, estate or company required to deduct and remit the same under the provisions of this subsection shall be relieved from any further liability in respect of such tax.

(6) Any tax paid under the provisions of subsection (5) by any person may, notwithstanding any agreement to the contrary, be deductible or withheld from the interest which is liable to be paid and recovered by the person making the payment from the person, estate or company to whom or in whose favour the interest accrued or be retained out of any money that may be in his possession, or may come to him, as the agent of such person, estate or company, and no action shall lie against the person making any payment or deduction under the provisions of this section.

(7) For the purposes of this section, interest includes discount.

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\[ ^1 \] Substituted for “Interest withholding tax” by §4(a) Act 10/1998 WEF 1st January 1999
\[ ^2 \] Inserted by §4(b) Act 10/1998 WEF 1st January 1999
\[ ^3 \] Substituted by §3(a) Act 25/1983 WEF 30th December 1983 for “equal to ten per cent of”
\[ ^4 \] Substituted by §5(a) Act 10/1975 WEF 1st January 1975 – previously read:
Resident interest withholding tax

9A.—(1) Notwithstanding any other provisions of this Act there shall be paid a tax, to be known as “resident interest withholding tax” in respect of any interest which accrues to or in favour of a resident if the debtor in respect of any such interest is a financial institution.

(2) Resident interest withholding tax shall be paid—

(a) in the year of assessment 2001 – at the rate of 34%;

(b) in the year of assessment 2002 – at the rate of 32%;

(c) in the year of assessment 2003 – at the rate of 32%;

(d) in the year of assessment 2004 – at the rate of 31%;

(e) in every subsequent year of assessment – at the rate of 31%; and

(f) in the year of assessment 2012 and every subsequent year – at the rate of 20%.

(3) Resident interest withholding tax shall not be payable where—

(a) the depositor in whose favour the interest accrues has obtained a valid certificate of exemption in accordance with subsections (10) and (11) and

furnished the said certificate to the financial institution paying the interest; or,

c) the depositor in whose favour the interest accrues is a financial institution; 

... 

d) the interest which accrues to the depositor, in respect of each account held by the depositor, does not exceed $200 if the interest is paid or credited annually;

e) the interest which accrues to the depositor does not exceed $P if the interest is paid credited in respect of a period [less] than one year, where—

$P = \frac{200 \times n}{365}

and n = number of days in the period.

(4) The person liable for resident interest withholding tax shall be the depositor to whom or in whose favour the interest accrues.

(5) Subject to sub-section 3(b), any depositor shall provide to the financial institution a tax identification number and documentary evidence of the depositor’s identity to the satisfaction of the financial institution.

(6) Subject to subsection (7), resident interest withholding tax shall be payable in respect of any interest which accrues to or in favour of more than one person unless [at least 2 of] such persons entitled to such interest have provided their tax identification numbers in accordance with subsection (5).

(7) Notwithstanding subsection (6), where interest accrues to or in favour of a husband and wife jointly, it shall be sufficient compliance if the tax identification number of the husband only is provided in accordance with subsection (5).

(8) Where interest accrues to or in favour of a dependent child or legally incapacitated person it shall be sufficient compliance if the tax identification number of that child’s or person’s parent, guardian or other legal representative is provided in accordance with subsection (5).

(9) Where the Commissioner determines that a tax identification number provided to a financial institution is incorrect he shall notify the financial institution in writing of that fact and the financial institution shall be required, within 10 days from the date of the Commissioner’s notice, to deduct tax in accordance with subsection (12) from interest thereafter accruing to the depositor in question.

(10) Any person the whole of whose income is otherwise exempt from [tax] under the provisions of this or any other Act may apply in writing to the Commissioner for a Certificate of Exemption from resident interest withholding tax.

(11) Upon being satisfied that any person is a person to whom subsection (10) applies, the Commissioner may grant a Certificate of Exemption from resident interest withholding tax in such form as he may determine.
(12) Notwithstanding subsection (4), every financial institution when paying or crediting interest shall deduct a sum equal to the amount of resident interest withholding tax applicable thereto and remit such amount to the Commissioner within 15 days after the end of the month in which the interest is paid or credited, together with a report, in such form as may be approved by the Commissioner, containing details of tax identification numbers provided, names [and addresses]\(^{19}\) of all depositors to whom interest has accrued, amounts of interest and tax deducted therefrom.

(13) Any tax paid under subsection (12) by any financial institution may, notwithstanding any agreement to the contrary, be deducted or withheld from interest which is liable to be paid or credited and recovered by the financial institution from the person to whom or in whose favour the interest accrued and no action shall lie against a financial institution making any deduction under this section.

(14) Every financial institution shall furnish to the Commissioner in such form as he may [approve, which may include an electronic version]\(^{20}\) an annual report as required by section \(54\) containing details of—

\(a\) all tax identification numbers provided to the financial institution;

\(b\) interest paid and amounts of tax deducted effective for periods January to May 2008 and June to December 2008 respectively\(^{21}\) therefrom;

\(c\) the names [and addresses]\(^{22}\) of all depositors to whom interest has accrued;\(^{23}\)

\(d\)\(^{24}\) any other information required by the Commissioner.

(15)\(^{25}\) Every financial institution shall, not less than once a year and in writing, notify a depositor of the amount of interest which is paid or credited to each account held by the depositor.

(15A)\(^{27}\) Every financial institution shall, not later than 31st January immediately following a year of income in which it deducted tax under subsection (12), issue a notice in writing, in a form approved by the Commissioner, to the person to whom or in whose favour the interest accrued in respect of each account held by the depositor, stating—

\(a\) the name and address of the depositor;

\(b\) the total amount of interest paid or credited for the year ending 31 December 2008, withholding tax deducted for pay periods January to May 2008 and June to December 2008 respectively\(^{28}\) in that year; and

\(c\) the total amount of tax deducted under this section.

(16) For the purposes of this section—
“depositor” means any person depositing money with a financial institution on terms under which it will be repaid with or without interest and either on demand or after a fixed period or after notice;

“financial institution” means a financial institution licensed under the Banking Act 1995;

“interest” means any interest paid or credited to the account of any depositor whether actually paid, credited, reinvested, accumulated, or dealt with on behalf of the depositor;

“tax identification number” means the tax file number provided to a taxpayer by the Commissioner for the purposes of this Act.

1 Section and heading inserted by §5 Act 10/1998 WEF 1st January 1999
2 Repealed and substituted by §4(a)(i) Act 1/2003 WEF 1st January 2003 – previously read: “(c) in every subsequent year of assessment – at the rate of 30%.” (paragraphs (a) and (b) inserted by §5 Decree 8/2001 WEF 1st January 2001)
3 Word “and” deleted by §5(a) Promulgation 47/2007 WEF 1st January 2008
4 Repealed and substituted by §5(a) Act 4/2004 WEF 1st January 2004 – previously read: “(d) in every subsequent year of assessment - at the rate of 30%”
5 Inserted “; and” and deleted the full stop by §5a, b) Promulgation 47/2007 WEF 1st January 2008
6 Inserted by §3(c) Promulgation 47/2007 WEF 1st January 2008
7 Repealed by §3(i) Promulgation 35/2008 WEF 1st January 2009 – previously read:

“(a) the depositor in whose favour the interest accrues has provided the financial institution paying the interest with a tax identification number in accordance with subsection (5); or,”

8 Word “or” deleted by §2(a)(i) Act 33/1998 WEF 1st January 1999
9 Paragraph (d) inserted by §2(a)(ii) Act 33/1998 WEF 1st January 1999
10 Substituted for “$120” by §3(ii) Promulgation 35/2008 WEF 1st January 2009
11 Paragraph (e) inserted by §2(a)(ii) Act 33/1998 WEF 1st January 1999
12 Substituted for “other” by §4 Act 3/1999 WEF 1st January 1999
13 Substituted for “$120” by §3(ii) Promulgation 35/2008 WEF 1st January 2009
14 Repealed and substituted by §3(iii) Promulgation 35/2008 WEF 1st January 2009 – previously read:

“(5) Any depositor who elects to provide the financial institution with a tax identification number shall do so by providing, to the satisfaction of the financial institution, documentary evidence of the depositor’s identity and tax identification number.”
15 Substituted for “all” by §2(b) Act 33/1998 WEF 1st January 1999
16 The words “with subsection (3)(a)” repealed by §3(iv) Promulgation 35/2008 WEF 1st January 2009
17 The words “with subsection (3)(a)” repealed by §3(iv) Promulgation 35/2008 WEF 1st January 2009
18 Substituted for “a” by §2(c) Act 33/1998 WEF 1st January 1999
19 Inserted by §2(d) Act 33/1998 WEF 1st January 1999
20 Deleted “prescribe”and substituting “approve, which may include an electronic version” by §4(b) Act 1/2003 WEF 1st January 2003 (an editorial change has been made to remove fullstop after “version” in §4(b) Act 1/2003)
21 Inserted by §3(v) Promulgation 35/2008 WEF 1st January 2009
22 Amended by deleting “and” by §5(b)(i) Act 4/2004 WEF 1st January 2004
23 Inserted by §2(e) Act 33/1998 WEF 1st January 1999
24 Substituted for a full stop by §5(b)(ii) Act 6/2003 WEF 1st April 2003
26 Subsection (15) substituted by §2(f) Act 33/1998 WEF 1st January 1999 – previously read:

“(15) Every financial institution shall, not less than once a year and in writing, notify the person to whom or in whose favour any interest has accrued of the amount of interest paid or credited and the amount of any tax deducted under this section.”
27 Inserted by §2(f) Act 33/1998 WEF 1st January 1999
28 Inserted by §3(vi) Promulgation 35/2008 WEF 1st January 2009
Dividend tax

10.—(1) Notwithstanding anything to the contrary in the other provisions of this Act, there shall be paid tax, to be known as “dividend tax”, equal to [15%]¹ of any dividend paid² or credited by a company incorporated in Fiji [and holding an operating license granted under the Tax Free Zones Decree 1991]³, if the shareholder or other person in whose favour the dividend has been paid or credited is a resident:

…...

(2) ……

(3) ……

Person liable for the tax

(4) The person liable for the tax shall be the person to whom or in whose favour the dividend accrues.

Recovery of tax

(5) Notwithstanding the provisions of subsection (4), the tax shall be recoverable from the company paying or crediting the dividend.

Right of reimbursement

(6) Any tax payable under the provisions of subsection (5) by any [company]⁷, otherwise than by deduction, may, notwithstanding any agreement to the contrary, be recovered by such [company]⁸ from the person to whom or in whose favour the dividend accrues.

Payment

(7) The person who, in accordance with the provisions of subsection (5), is required to pay the tax shall remit the same to the Commissioner within 30 days, or such other period as the Commissioner may specify, of the payment or crediting of the dividend.

¹ Amended by deleting “5 per cent” and substituting “15%” by §6(a) Decree 8/2001 WEF 1st January 2001
² Amended by deleting “(including an interim dividend)” by §6(a) Decree 8/2001 WEF 1st January 2001
³ Inserted by §6(a) Decree 8/2001 WEF 1st January 2001
⁴ Proviso repealed by §6(a) Decree 8/2001 WEF 1st January 2001 - previously read:

“Provided that where any dividend which is paid or credited in favour of a resident taxpayer by a company holding an operating licence granted under the provisions of the Tax Free Zones Decree 1991, the dividend tax shall be equal to 15 per cent of any such dividend paid or credited.”

⁵ Repealed by §6(b) Decree 8/2001 WEF 1st January 2001 - previously read:

“(2) For the purpose of subsection (1), “dividend” shall have the same meaning as in paragraph (a) of subsection (2) of section 8.”

⁶ Repealed by §6(c) Decree 8/2001 WEF 1st January 2001 - previously read:

“(3) The tax shall not be payable in respect of—
   (a) a dividend or distribution by a statutory corporation;
   (b) any sum accruing to any person referred to in paragraph (5) of section 17:
(c) a dividend paid to a company incorporated in Fiji;
(d) a dividend paid or credited in favour of a resident individual in respect of shares of a company listed at the Suva Stock Exchange;
(e) a dividend paid to or credited in favour of a resident individual from the Unit Trust of Fiji;
(f) the nominal value of any bonus shares awarded to a shareholder to the extent to which such shares have been paid up by means of profit arising from the reconstruction or reorganisation of the company’s equity structure undertaken solely for the purpose of listing on the Suva Stock Exchange,

provided that—
(i) the said company is listed on the Suva Stock Exchange within 12 months of any such reconstruction or reorganisation or such longer period as the Commissioner may determine; and
(ii) the said company remains listed on the Suva Stock Exchange for a period of not less than three years."

Amended by deleting "company, person or agent" and substituting "company" by §6(d) Decree 8/2001 WEF 1st January 2001

Amended by deleting "company, person or agent, as the case may be," and substituting "company" by §6(d) Decree 8/2001 WEF 1st January 2001

Royalty withholding tax

10A.—(1) Notwithstanding section 11, there shall be paid a tax, to be known as a "royalty withholding tax", equal to [15][20] per cent of any royalty.

(1A) In this section "royalty or - royalties" means payments of any kind to the extent to which they are made as consideration for

(a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark, or other like property or right;
(b) the use of, or the right to use, any industrial, agricultural, commercial or scientific equipment;
(c) the supply of scientific, technical, industrial or commercial knowledge or information; or
(d) the supply of any assistance which is given as a means of enabling the application or enjoyment of, any such property or right of the kinds mentioned in paragraph (a), any such equipment as mentioned in paragraph (b) or any such knowledge or information as is mentioned in paragraph (c).
(e) the use of, or the right to use, motion picture films or video tapes or compact discs or digital video discs or video compact discs for use in television broadcasting or tapes for use in radio broadcasting; or
(f) the use of, or the right to use, visual images or sounds transmitted by satellite or cable, optic fibre or similar technology in connection with television broadcasting or radio broadcasting; or
(g) the reception of or the right to receive visual images or sounds transmitted by satellite or cable, optic fibre or similar technology in connection with television broadcasting or radio broadcasting;
(h) any forbearance in respect of—
(i) the use of, or the right to use any such property or right mentioned in paragraph (a) or any such equipment mentioned
in paragraph (b) or the supply of any knowledge or information mentioned in paragraph (c) or any such assistance mentioned in paragraph (d); or
(ii) the use of, or the right to use any such property mentioned in paragraph (e) or any such visual images or sounds mentioned in paragraph (f); or
(iii) the reception of or the right to receive such visual images or sounds mentioned in paragraph (g).

(2) The person liable for the tax shall be the person to or in favour the royalty or other payment accrues.

(3) Notwithstanding subsection (2), the tax shall be payable and recoverable from the person or agent by whom such royalty or other payment is made or credited.

(4) Any amount payable under subsection (3) by any person or agent, otherwise than by deduction, may, not withstanding any agreement to the contrary, be recovered by such person or agent from the person entitled to the royalty or other payment.

(5) The person or agent who, under the provisions of subsection (3), is required to pay the tax shall remit the same to the Commissioner within 30 days, or such other period as the Commissioner may specify, of the date upon which the royalty or other payment is or credited.

(6)10 If the Minister is satisfied that non-payment of the tax, or payment of the tax at a reduced rate, would be expedient for the economic development of Fiji, the Minister may, by notice in writing to the Commissioner, direct that any tax payable under this section be waived or be paid at such reduced rate as the Minister may specify in the notice: Provided that this subsection does not apply to an amount below $5 million in any one transaction.

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1 Section and heading inserted by §4 Act 21/1980 WEF 1st January 1980
2 Repealed and substituted by §5(a) Act 4/2002 WEF 1st January 2002 – previously read:
   “(1) Notwithstanding section 11, there shall be paid a tax, to be known as a ‘royalty withholding tax’, equal to 15 per cent of any royalty or other like payment dependent upon production from, or the use of, any personal property or any mine or quarry, or as consideration for the extraction, removal of other exploitation of, or the right to extract, remove or otherwise exploit, standing timber or any natural resource, whether or not such royalty or other like payment is an instalment of the purchase price of any property, paid or credited by any person who is a resident or carries on business in Fiji, if the person in whose favour or to whom any such royalty or other payment has been made or credited is a non-resident.”
3 Subsection (1A) inserted by §5(a) Act 4/2002 WEF 1st January 2002
4 Amended by inserting the words “royalty or” before the word “royalties”.
7 Inserted by Decree No.8/2010 WEF 1st January, 2010.
8 Amended by inserting the words “royalty or” before the word “royalties”.
10 Repealed by §5(b) Act 4/2002 WEF 1st January 2002 and substituted by §3 Act 6/2003 WEF 1st April 2003 – previously read:
PART IV –

Division 1 – Amounts to be Included in Arriving at Total Income

Definition of total income

11. For the purpose of this Act, “total income” means the aggregate of all sources of income including the annual net profit or gain or gratuity, whether ascertained and capable of computation as being wages, salary or other fixed amount, or unascertained as being fees or emoluments or as being profits from a trade or commercial or financial or other business or calling or otherwise howsoever, directly or indirectly accrued to or derived by a person from any office or employment or from any profession or calling or from any trade, manufacture or business or otherwise howsoever, as the case may be, including the estimated annual value of any quarters or board or residence or of any other allowance or benefit provided by his employer or granted in respect of employment whether in money or otherwise, and shall include the interest, dividends or profits directly or indirectly accrued or derived from money at interest upon any security or without security or from stock or from any other investment, and whether such gains or profits are divided or distributed or not, and also the annual profit or gain from any other source including the income from, but not the value of, property acquired by gift, bequest, devise or descent, and including the income from, but not the proceeds of, life insurance policies paid up upon the death of the person insured, or payments made or credited to the insured on life insurance, endowment or annuity contracts upon the maturity of the term mentioned in the contract:

Provided that, without in any way affecting the generality of this section, total income, for the purpose of this Act, shall include –

(a) any profit or gain accrued or derived from the sale or other disposition of any real or personal property or any interest therein, if the business of the taxpayer comprises dealing in such property, or if the property was acquired for the purpose of selling or otherwise disposing of the ownership of it, and any profit or gain derived from the carrying on or carrying out of any undertaking or scheme entered into or devised for the purpose of making a profit; 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;

(b) any rent, fine, premium or like consideration (including a payment for or in respect of the goodwill of any business or the benefit of any statutory licence or privilege) derived by the owner of land from the grant of any lease, licence, concession, permission, easement or any other right granted to any person to
use or over any land, or from the grant of any right of taking the profits thereof:

Provided that, where any such sum is derived by way of anticipation, the Commissioner may, in his discretion, apportion that income between the income year and any number of subsequent years, not exceeding 5, and the part so apportioned to each of those years shall be deemed to have been derived in that year and shall be chargeable with tax accordingly;

(c) remuneration becoming due and payable in respect of or in relation to services rendered by any person during any year in any office or employment, and such remuneration shall be total income of that person for that year but shall not include the amount of inducement allowance, education allowance or the proportion of the gratuity payable to any designated officer by the Government of the United Kingdom under the provisions of the Overseas Service (Fiji) Agreement, 1961, as amended from time to time:

Provided that, where any remuneration is received after the end of a particular year, the Commissioner may reopen such assessments as may be necessary to comply with this paragraph without the restriction as to time imposed by subsection (2) of section 59, but otherwise the provisions of that subsection shall apply to such reassessments;

(d) any royalty, profit or gain derived from the extraction, removal or sale of minerals, gravel or timber reduced by an amount equal to the cost of such minerals, gravel or timber. Such royalty, profit or gain shall be deemed to include—

(i) any royalty or other like payment dependent upon production from or the use of any real or personal property, whether or not such royalty or other payment is an instalment of the purchase price of any property;

(ii) any profit or gain derived from the sale of any rights over, or rights, to work, minerals or to extract gravel or timber;

(iii) any profit or gain derived from the sale of any option, survey or geological report or anything appertaining thereto representing valuable consideration, whether by the owner of the land from which it is obtained or by any other person;

Provided that the Minister, if satisfied that it is expedient for the economic development of Fiji, may, by notice to the Commissioner, direct that the whole or any part of any profits or gains derived from the sale of any minerals, gravel or timber shall be excluded from the total income of any taxpayer for the purposes of this Act.

For the purpose of this paragraph—

(a) “minerals” shall have the same meaning as in the Mining Act¹, and shall be deemed to include natural gas, oil, clay, gravel, sand, stone or other common mineral substances;
(b) ["sale" shall be deemed to include an assignment or a disposition by way of a licence or easement, or the grant of any right or taking of any profits or produce from land, or the sale of shares of a company whose major asset comprises a mining lease or tenement or the like;] 2

(c) "timber" shall be deemed to include standing timber;

Non-resident

(e) .... 3

Dividends

(f) a dividend paid or credited year. For the purpose of this paragraph, "dividend" shall, if received from a resident company, have the same meaning as in paragraph (a) of subsection (2) of section 8;

(g) any amount received by a trustee of the estate of a deceased person, which would have been total income in the hands of such deceased person if it had been received by him during his lifetime;

(h) subject to paragraph (37) of section 17, any sum received or receivable in respect of the sale of any bonus shares by a shareholder to whom such shares were awarded after 31 December 1979, by a company which is not defined as a public company for the purposes of paragraph (a) of subsection (2) of section 8 [and is not also a company all classes of the shares of which are publicly quoted at any time within the preceding twelve months by a stock exchange established and operating in Fiji in a list issued under its authority], to the extent to which such shares were paid up by means of the company’s undistributed revenue profits, up to the nominal value of such bonus shares;

(i) any income received or accrued by way of annuity or pension, including voluntary pension;

(j) any amount, including any voluntary award, received or accrued, whether contractual or not, in respect of the relinquishment, termination, repudiation, loss, cancellation or variation of any office, employment or service, or of the right or claim to be appointed to any office, employment or service……. 6:

Provided that any amount received [other than a redundancy payment] by or accrued to an employee or the holder of any office by way of bonus, gratuity or compensation upon and because of the termination of his services (less so much thereof as is exempt from [basic tax] and normal tax under the provisions of paragraph (13) of section 17) shall be deemed to have been received or accrued in 3 successive equal annual instalments over the last year and the 2 preceding years of service, if—

(i) the termination of the services of such employee or officeholder is due to superannuation, ill-health or other infirmity; or

(ii) the Commissioner is satisfied that the circumstances of the case warrant this concession;
(k) the amount of any balancing charge required to be made under instructions given by the Minister in respect of allowances for depreciation and capital improvement or in respect of deductions allowed under section 21(1)(c) or section 23;

(l) where a person acquired an interest in land after 31 December 1960 and—

(a) he has been allowed a deduction in arriving at his total income for any year in respect of capital improvements to land [used for agricultural or pastoral purposes]; or

(b) he has received assistance by way of subsidy payment towards the cost of planting, replanting, maintenance or extension of a coconut plantation,

the amount by which the consideration for the sale or disposal of the interest in land and improvements thereto exceeds the aggregate amount consisting of the original purchase price and any expenditure on improvements for which no deduction has been allowed in calculating his total income shall be deemed to be total income derived by the taxpayer in the year in which the property is sold or disposed of, to the extent of the total of such deductions allowed and subsidies received since the acquisition of the interest in the land. The Commissioner may, in his discretion, make all necessary apportionments, including apportionment or consideration for sale or disposal, of deductions in respect of capital improvements, of subsidy payments of the original purchase price of land, and of expenditure on improvements for which no deduction has been allowed:

Provided that the interest in land, together with improvements thereon, is sold or otherwise disposed of for value by the taxpayer within 10 years from the date of his acquisition of that interest, the taxpayer may elect that the amount which would otherwise be included in total income for the year of sale or disposal should be apportioned over the period of ownership or over a period of 5 years, that is to say, the year of sale or disposal and the immediately preceding 4 years whichever is the less;

(m) a bad debt recovered which has previously been written off. Such sum shall be included in the total income of the year of recovery;

(n) ...

(o) ...

**Income from trusts**

(p) any income from a trust, including such income which the beneficiary is deemed to be presently entitled under section 14;

(q) any sum disallowed by the Commissioner under the provisions of section 20 which has been deemed to be income of the person therein mentioned;

(r) any interest or discount;
any royalty or other like payment dependent upon production from, or the use of, any real or personal property, whether or not such royalty or other payment is an installment of the purchase price of any property;

in the case of any person to whom, in accordance with the terms of any agreement relating to the grant, licence, concession or permission in favour of any other person of the right to use or occupy, or over any land or buildings, or by virtue of the cession to him of any such rights, there has accrued in any year or period the right to have improvements effected on the land or to the buildings—

(i) the amount stipulated in the agreement as the value of the improvements or as the amount to be expended on the improvements; or

(ii) if neither amount is so stipulated, an amount representing in the opinion of the Commissioner the fair and reasonable value of the improvement;

any know-how payment and any sum paid or credited for the management of or supervision in connection with the carrying on of a business, to the extent that such payment or credit does not constitute reimbursement of expenditure that is—

(i) of a kind that is deductible under this Act; and

(ii) incurred in relation to the payment or credit by the person to whom the payment or credit is made:

Provided that, where the payment or credit is made partly for any purpose other than those mentioned in sub-paragraphs (i) and (ii), the Commissioner may, for the purposes of this paragraph, determine to what extent the sum so paid or credited is for such other purposes;

any sum and benefit in kind deemed to have been received under the provisions of this Act;

any sum previously allowed as a deduction under paragraph (m) of section 21 which is subsequently withdrawn and distributed to the members of any co-operative society registered under the Co-operative Societies Act;

any amount of [maritime] vessels investment allowance that, by virtue of paragraph 6 of the Eighth Schedule, is to be taken to be an amount to which this paragraph applies;

any amount of supportive projects to tourist industry investment allowance that, by virtue of paragraph 6 of the Ninth Schedule, is to be taken to be an amount to which this paragraph applies;

the value of any benefit or allowance, as estimated by the Commissioner having regard to the cost incurred by the employer in providing such benefit and the market value of such benefit as ascertained by the Commissioner, granted in respect of or arising from employment, received either directly or indirectly in
cash\(^{17}\) and whether for the benefit of the person in employment, his wife, dependent children or other dependent relatives, including—

(i) quarters, board, residence or other housing provided by the employer;

(ii) any private use of a vehicle owned, leased or otherwise hired at the cost of the employer;

(iii) private expenses such as electricity, water, telephone, gas, housemaid, medical expenses, education expenses and the like paid by the employer;

(iv) any subsidy or discount on interest on any loan provided by the employer representing the difference between the market lending rate of interest and the rate actually charged by the employer;

(v) the value of discount provided by an employer being the difference between the normal selling price of the item and the price at which the item is sold to the employee in respect of items forming stock-in-trade of the employer, or any discount provided under any reciprocal arrangement between two or more employers;

(vi) the value of free or subsidised travel provided by the employer or received by virtue of employment which entitles such free of subsidised travel to be provided by the employer or some other person;

(vii) contributions to any retirement or superannuation fund made by an employer which is in excess of the statutory minimum required to be made by the employer or in excess of the amount required to be contributed by the employer under the trust deed and rules setting up such fund, and any amount which the employer is entitled to recover from the employee, which is not so recovered;

(viii) any entertainment allowance not expended for the purpose of the employer’s business;

\(^{(aa)}\)\(^{24}\) the value of any benefit or allowance as estimated by the Commissioner, granted in respect of, or arising from any business dealings, received either directly or indirectly, in cash or otherwise, and whether for the benefit of the recipient, his wife, dependent children, or other dependent relatives or, where the recipient is a company, whether received directly or indirectly by the company, any director, shareholder, or relative of any director or shareholder, or any employee of the company; and

\(^{(bb)}\)\(^{25}\) any amount withdrawn from a cyclone reserve account in respect of which a deduction was allowed under section \(21(1)\) (\(q\)) unless the amount withdrawn together with any interest thereon was applied towards the repair of property damaged by windstorm, tidal wave, landslide or a like catastrophe and, if

\(^{17}\) Amended by Decree No. 42 of 2012. Effective from 1\(^{st}\) January, 2012. Deleted “ or otherwise”
required by the Commissioner, certified by the Commissioner of Insurance to have been so applied:

Provided that tax shall be assessed on the amount withdrawn and interest thereon in the year of withdrawal or in the year the deposit was made and interest credited, as the [company] opts.

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1. Cap. 146
2. Definition of “sale” substituted by §6 Act 21/1982 WEF 1st January 1983 – previously read:
   “sale” shall be deemed to include an assignment or a disposition by way of a licence or easement, or the grant of any right or taking of any profits or produce from land,”
   “(c) in the case of a person residing or having his head office or principal place of business outside Fiji, but carrying on business in Fiji, either directly or through or in the name of any other person, the net profit or gain arising from the business of such person in Fiji:
   Provided that any person normally residing outside Fiji who engages in the sale or other disposition either directly or by the sale of options to purchase or by any other means whatsoever of any land in Fiji or any estate or interest in any such land shall be deemed to be carrying on business in Fiji, and any profit or gain derived from the carrying on or carrying out of any undertaking or scheme connected with the disposition either directly or indirectly of any land in Fiji or any estate or interest in any such land, including schemes involving the interposition of a company, entered into or devised for the purpose of making a profit shall be deemed to be total income for the purpose of this Act;”
4. Substituted by §5 Act 21/1980 WEF 1st January 1980 – previously read:
   “(h) in the case of rent from hiring films in Fiji derived by or accrued to a non-resident, an amount equal to 7½ per cent of the gross rent so derived or accrued;”
6. Deleted,” otherwise than a sum to which paragraph (o) applies” after “employment or service” by §5 Act 1/2003 WEF 1st January 2003
8. Basic tax not chargeable WEF 1st July 1992 by repeal of §6 by §3 Decree 30/1992
   “(k) any amounts previously allowed as deductions either under paragraphs (a) and (c) [of subsection (1)] of section 21 or under section 23 which have been recovered or recouped by a taxpayer, after comparing the original cost after having been depreciated for income tax purposes or in respect of which an allowance was granted with the amount realised, in respect of any asset, property or undertaking which has been sold, destroyed or otherwise disposed of during the year of [income (hereinafter referred to as a “balancing charge”)];
   Provided that—
   [(i) a taxpayer may elect that any balancing charge be excluded if, during the year of income in which the balancing charge arises, or in the next succeeding year of income, the taxpayer acquires an asset to replace the asset in respect of which the balancing charge has arisen. Any such election shall be in writing and shall be submitted to the Commissioner not later than the date for lodgement of the return of income of the first mentioned year, or within such further time as the Commissioner may allow. The amount by which the cost of the replacement asset has been reduced by the balancing charge shall, for the purposes of this Act, be deemed to be depreciation;]
   [(ii) where the property which was acquired as a result of a transaction or transactions not at arms-length is subsequently sold, disposed of or destroyed, the deductions to be recovered and treated as income shall, where necessary, include any sums allowed as deductions to the respective vendor or vendors in such transactions to which the proviso in paragraph (a) of subsection (1) of section 21 has or would have applied;]
   [(iii) where any property in respect of which such deductions have been allowed or are allowable (for the purposes of this paragraph called “the depreciated property”) is sold, together with any other property, at an inclusive price, the Commissioner may, for the purposes of this paragraph, determine the amount of the consideration attributable to the depreciated property;]
   [(iv) in the event of the disposal or cessation of a trade, business, profession, employment or vocation, any asset, property or undertaking which is retained shall be valued at the date of cessation at the amount which, in the opinion of the Commissioner, it would
realise in the open market and any consequences shall follow under this paragraph as if the asset, property or undertaking were disposed of at such open market value. Where the Commissioner deems it necessary in such circumstances, he may request a professional valuation of the property retained. Any withdrawal of depreciation shall be regarded as income of the year in which the trade, business, profession, employment or vocation ceased.”

10 Word “the” deleted by §3(c) Act 10/1977 WEF 1st January 1977
11 Inserted by §3(d) Act 10/1977 WEF 1st January 1977
12 Substituted for “; and” by §3(e) Act 10/1977 WEF 1st January 1977
13 Repealed by §5(b) Act 1/2003 WEF 1st January 2003 – previously read:
“(n) alimony and maintenance due and paid under an order of a court of competent jurisdiction;”

14 Repealed by §5(c) Act 1/2003 WEF 1st January 2003 – previously read:
“(o) any lump sum or any refund of contributions received under any approved superannuation or retirement benefit scheme, including any contributions made to the Fiji National Provident Fund in excess of the minimum contributions other than on retirement or where contributions have been made for at least 10 years, but shall not include the commuted portion of any pension paid under any such scheme or under any written law granting pensions in respect of service with the Government of Fiji. Such sum or refund shall be deemed to be income of the recipient in the year in which the lump sum or refund is received:
Provided that the total tax due thereon shall not exceed the sum of—
(i) the additional tax which would have been due if the contributions by the employee to the scheme which are included in the lump sum or refund had not been allowed as a deduction in arriving at chargeable income; and
(ii) the tax due on any refunded contributions made by the employer as if such sums comprised additional income for the years in which the amounts were contributed;”

15 Repealed and substituted by §6 Act 4/2004 WEF 1st January 2004 – previously read:
“Income from the estate of a deceased person, trust or settlement
(p) any income from the estate of a deceased person, a trust or a settlement, accruing to or derived by a beneficiary, including such income which is deemed to be that of the beneficiary under section 14;”

16 Substituted by §5(e) Act 21/1980 WEF 1st January 1980 – previously read:
“(s) any royalty;”

17 Inserted by §5(f) Act 21/1980 WEF 1st January 1980
19 Inserted by §4 Act 25/1983 WEF 30th December 1983
21 Inserted by §4 Act 25/1983 WEF 30th December 1983
22 Applications for allowance under Ninth Schedule expired on 31st December 1993 – see 9th Sch Note Error!

Shares acquired under employee share schemes

11A1.—(1) Without affecting the generality of section 11, “total income” includes, if an individual taxpayer acquires a share or option under an employee share scheme, the discount given in relation to that share or option.

(2) Subject to subsections (6) to (8), for the purposes of this section, sections 11D and 11E and section 21(1)(u), “discount” is the market value of a share or option at the time it was acquired by the taxpayer less any consideration paid or given by the taxpayer for the acquisition of that share or option.

(3) This section applies only to shares or options acquired in a
company listed on a stock exchange.

(4) The market value of a share or option is the last price at which it was traded on the stock market of a stock exchange on which the share or option is quoted, either—

(a) on the day the share or option was acquired; or
(b) if no shares or options were traded on the day set out in paragraph (a) — on the last day traded before that day.

(5) Subject to subsections (7) and (8), the discount is included in total income—

(a) if there is no restriction on the sale or disposal of the share or option – the year in which the share or option was acquired; or
(b) if there is a restriction on the sale or disposal of the share or option – the year in which the restriction ceases to apply.

(6) If subsection (5)(b) applies, the value of the discount is the market value of the share or option at the time the restriction on the sale or disposal of the share or option ceases less any consideration paid or given by the taxpayer for the acquisition of that share or option.

(7) If an option, which is not listed on a stock exchange, is sold or otherwise disposed of without the taxpayer exercising that option to purchase shares, the proceeds of the sale or disposal, less any consideration expended by the taxpayer to acquire the option, shall be included in total income in the year when the sale or disposal occurs.

(8) If an option, which is not listed on a stock exchange, is exercised by the purchase of shares, the value of the discount is the market value of the share acquired at the time the option is exercised less any consideration expended by the taxpayer to acquire that share (which includes the cost if any in acquiring that option).

Benefits derived by associates of employees

11B——(1) If an associate of a taxpayer acquires a share or option in an employee share scheme in respect of, or for or in relation to, directly or indirectly, the employment of a taxpayer, that discount must be included in the total income of that taxpayer.

(2) For the purposes of this section “associate” means a person who is the spouse, child or relative of an employee and includes—
(a) a parent, grandparent, brother, sister, uncle, aunt, nephew, niece or adopted child of that person or of his or her spouse; and

(b) the spouse of that person or of any other person specified in paragraph (a).

**Benefit acquired other than for arm’s length consideration**

11C(1) Notwithstanding section 11A (7), if an option is sold or otherwise disposed of by a taxpayer for other than an arm’s length consideration, the value of the benefit to be included in total income in respect of that option is calculated by reference to the market value of the option at the time it is sold or otherwise disposed of less any consideration expended by the taxpayer to acquire that option.

(2) For the purposes of this section, “arm’s length consideration” means the consideration that might reasonably be expected to be agreed upon between independent parties operating under the same or similar conditions in the open market.

**Benefit received by deceased’s estate**

11D Any discount received by a trustee of the estate of a deceased person, which would have been total income in the hands of such deceased person, by operation of section 11A or 11B, if it had been received by the deceased person during the person’s lifetime is deemed to be included in the total income of the estate.

**Benefit received on loss etc. of office**

11E Any discount received by an individual in respect of the relinquishment, termination, repudiation, loss, cancellation or variation of any office, employment or service, or of the right or claim to be appointed to any office, employment or service is deemed to be included in that person’s total income.

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1 Inserted by §2 Decree 7/2001 WEF 1st January 2001
2 Inserted by §2 Decree 7/2001 WEF 1st January 2001
3 Inserted by §2 Decree 7/2001 WEF 1st January 2001
4 Inserted by §2 Decree 7/2001 WEF 1st January 2001
5 Inserted by §2 Decree 7/2001 WEF 1st January 2001

12......

1 Repealed by §7 Decree 8/2001 WEF 1st January 2001 - previously read: "Deemed distribution"

12—(1) This section shall apply to a company which, at the end of its fiscal year, is under the control of not more than 5 persons, or a company which, at the end of that year, is in liquidation and was, at the commencement of the winding up, under the control of not more than 5 persons. For the purposes of this subsection, all the members of any partnership shall be deemed to be 1 person and all the persons interested in the estate of any deceased person (whether as trustees or as beneficiaries) shall be deemed to be 1 person:
Provided that this section shall not apply to any company in which the public are substantially interested or to a subsidiary company of such a company, if the whole of the share capital of such subsidiary company is held by the parent company or by the nominees thereof.

(2) For the purposes of this section—

(a) a company shall be deemed to be under the control of the persons—

(i) by whom more than one-half of the shares, or more than one-half of the paid-up capital, or more than one-half of the voting power is held; or

(ii) who have, by any other means whatsoever, control of the company; or

(iii) who, by reason of the shareholding at the end of any fiscal year of the company (or in the case of a company in liquidation at the commencement of the liquidation), would be entitled to more than one-half of the profits for that year, if those profits were distributed by way of dividend at the end of that year.

Where shares in a company are held by or on behalf of another company, such shares shall be deemed to be held by the shareholders in the last mentioned company;

(b) a company shall be deemed to be a company in which the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than 25 per cent of the voting power have been allotted unconditionally by, and are at the end of the fiscal year of the company (or in the case of a company in liquidation at the commencement of the liquidation) beneficially held by the public (not including a company to which the provisions of this section apply), and if any such shares have in the course of such fiscal year been, in fact, freely transferable by the holder to other members of the public.

(3) If the Commissioner, by applying the provisions of subsection (2), is satisfied that 2 or more companies are under the control of the same person or persons, he may, for the purposes of taxation, treat those companies as if they were a single company.

(4) For the purposes of subsection (2), where a company is not under the control of any 1 person the company shall be deemed to be under the control of not more than 5 persons if there is any 1 group of persons not exceeding 5 in number who are deemed to have control of the company by virtue of that subsection, notwithstanding that there may also be another group of persons not exceeding 5 in number who are deemed to have control of the company by virtue of that subsection or that there may be 2 or more such other groups.

(5) Where the Commissioner treats as a single company 2 or more companies any 1 or more of which holds shares in another company, the companies so treated shall be deemed to be 1 shareholder of that other company and for the purpose of subsection (1), to be 1 person.

(6) Where a nominee of any person holds any shares, issued capital, paid-up capital, or voting power in a company, or has by any other means whatsoever any power of control in a company, or is entitled to a share or profits distributed by a company, then, for the purposes of this section, those shares or that capital or that voting power or that power of control or that tacle to profits, as the case may be, shall be deemed to be held by that person and, in every such case, that person and his nominee or that person and all his nominees shall be deemed to be 1 person. For the purpose of this subsection, “nominee”, in relation to any person, means any other person who may be required to exercise his voting power in relation to any company in accordance with the direction of that person, or who holds shares or debentures directly or indirectly on behalf of that person; and includes the husband or wife of that person and any relative of that person by blood, marriage or adoption.

(7) Where it appears to the Commissioner that, in respect of any company to which this section applies, the profits distributed as dividends by that company up to the end of the ninth month after the end of its fiscal year are less than 60 per cent of the total income of the company for that fiscal year ascertained in accordance with the provisions of this Act inclusive of any dividends received and reduced by the amount of any tax payable by that company upon that total income under the provisions of this Act, he shall, unless it appears to him that, having regard to losses previously incurred by the company or to the smallness of the profits made and taking into consideration not only the current requirements of the company’s business but also such other requirements as may be necessary or advisable for the maintenance and development of that business, a reasonable distribution was made, by notice in writing to the company, direct that the undistributed portion of 60 per cent of such total income (inclusive of any dividends received) reduced as aforesaid shall be deemed to have been distributed as dividends among the shareholders as at the end of such fiscal year of the company and thereupon the proportionate share thereof of each shareholder shall be included in the total income for the year in question of such shareholder for the purposes of this Act.
Provided that, in the case of an investment company or a company whose main business consists wholly or mainly in the provision of professional, technical or personal services, regard shall, for the purpose of this section only, be had in determining the profits distributable to the profits inclusive of any dividends received after provision has been made for the payment of tax thereon. In such cases, the Commissioner may direct that the whole of the undistributed portion of the net income after deduction of tax shall be deemed to have been distributed as dividends among the shareholders and the proportionate share thereof of each shareholder shall be included in the total income of the year in question as aforesaid. For the purpose of this proviso, “investment company” means any company whose business consists wholly or mainly in the making of investments in other companies and the principal part of whose income is derived therefrom.

(8) For the purposes of subsection (7), any such sum as is hereinafter described shall not be taken into consideration by the Commissioner as being applicable to current requirements of the company’s business or to such other requirements as may be necessary or advisable for the maintenance or development of that business, that is to say—

(a) any sum expended or applied, or intended to be expended or applied, out of the income of the company, otherwise than in pursuance of an obligation entered into by the company before 21 November 1972—

(i) in or towards payment for the business, undertaking or property which the company was formed to acquire, or which was the first business, undertaking or property of a substantial character in fact acquired by the company; or

(ii) in redemption or repayment of any share or loan capital or debt (including any premium on such share or loan capital or debt) issued or incurred in or towards payment for any such business, undertaking or property, or issued or incurred for the purpose of raising money applied or to be applied in or towards payment therefor; or

(iii) in meeting any obligations of the company in respect of the acquisition of any such business, undertaking or property; or

(iv) in redemption or repayment of any share or loan capital or loan debt (including any premium on such share or loan capital or debt) issued or incurred otherwise than for adequate consideration; and

(b) any sum expended or applied, or intended to be expended or applied, in pursuance or in consequence of any fictitious or artificial transaction.

(9) If, in any case, a company should claim exemption from the provisions of subsection (8) on the grounds that its operations are for the economic development of Fiji and that the capitalisation of the company is reasonable, the Commissioner should refer such claim to the Minister, who, if he is satisfied that the claim is established, may determine that the provisions of that subsection (other than of paragraph (b) thereof) shall not apply to that company.

(10) For the purposes of subsection (8), share or loan capital or debt shall be deemed to be issued or incurred otherwise than for adequate consideration if—

(a) it is issued or incurred for consideration the value of which to the company is substantially less than the amount of the capital or debt (including any premium thereon); and

(b) it is issued or incurred in or towards, or for the purpose of raising money applied or to be applied in or towards, the redemption or repayment of any share or loan capital or debt which itself was issued or incurred for such consideration as mentioned in paragraph (a) of subsection (8) or which represents, directly or indirectly, any share or loan capital or debt which itself was issued or incurred for such consideration.

and a reference, in this subsection and in subsection (8), to money applied or to be applied for any purpose shall be deemed to include a reference to money applied or to be applied in or towards replacement of that money.

(11) Where the Commissioner has issued a notice in writing to the company in accordance with the provisions of subsection (7) to deem undistributed income of the company to have been distributed as dividends among the shareholders, such dividends shall be subject to tax in accordance with the provisions of this Act and the company shall, within 60 days of the receipt by it of the notice in writing, make the appropriate payment to the Commissioner as though the dividends were paid or credited to the shareholders as at the date of receipt of such notice. In default of payment of the amount of tax due, it shall be recoverable from the company in the manner provided by section 77.

(12) Where tax has been paid in respect of any undistributed profits of a company under this section, and such profits are subsequently distributed, they shall not again be included as total income, for the purposes of this Act, in the hands of the recipient.
(13) When a company is a shareholder deemed under subsection (7) or (15) to have received a dividend, the amount of the dividend thus deemed to have been paid to it shall be deemed to be part of its total income for the purposes also of the application of those subsections to distributions of profits by that company.

(14) Where any undistributed portion of the total income of a company has been deemed, by notice given under the provisions of this section, to have been distributed as dividends to the shareholders of that company, the company shall within 21 days of the date of the service of such notice furnish each shareholder with a certificate setting forth the amount of the dividend deemed to have been distributed to that shareholder and shall send a copy of such certificate to the Commissioner and, in default of such certificate being furnished, the Commissioner may determine such amount.

(15) (a) Where a company to which this section applies is in liquidation—

(i) the income of the company for the period from the end of the last fiscal year to the commencement of the liquidation shall, for the purposes of this section, be deemed to be income of that period available for distribution to the shareholders of the company; and

(ii) as respects that period, and also, where the commencement of the liquidation was not more than 9 months after the end of the fiscal year, as respects that fiscal year, subsection (7) shall apply as if the words “up to the end of the ninth month after the end of its fiscal year” were omitted therefrom;

(b) any notice required under this section to be served on a company may, where the company is in liquidation, be served upon the liquidator of the company, and the liquidator shall be responsible for doing all matters or things required to be done by or on behalf of the company, and the liquidator shall be responsible for the due payment of any tax payable by or recoverable from the company under the provisions of this section;

(c) the income apportioned to a shareholder of the company for the period from the end of the last fiscal year to the commencement of the liquidation shall, for the purposes of tax, be deemed to have been received by him at the commencement of such liquidation.

(16) A notice under subsection (7) or (15) shall be deemed to be an assessment for the purpose of lodging an objection under section 62:

Provided that, notwithstanding anything contained or implied in section 71, any determination, decision or opinion of the Commissioner as to whether a distribution is reasonable or not shall be subject to review by the Court of Review and the onus of proof that a reasonable distribution was not made shall in all cases be on the Commissioner.

(17) For the purposes of this section—

“commencement of the liquidation” means the making of the order or the passing of the resolution, or the signing of the instrument, or the making of the application, or the doing of the act, as the case may be, which initiates the winding up of the company;

“company” does not include a non-resident company;

“debenture holder” means a person by whom or on whose behalf debentures issued by the company are held at the end of the fiscal year of such company (or in the case of a company in liquidation, at the commencement of the liquidation) in respect of which debentures the rate of interest payable is not specifically determined but is determinable from time to time by reference to the dividend payable by the company or otherwise howsoever;

“shareholder” means a person by whom or on whose behalf shares in the company are held at the end of the fiscal year of such company (or in the case of a company in liquidation, at the commencement of the liquidation), and includes a debenture holder.”

**Trading stock**

13.—(1) Where any trading stock is sold together with other assets of a business, the part of the consideration attributable to such trading stock shall, for the purposes of this Act, be determined by the Commissioner and the part of the consideration so determined shall be deemed to be the price paid for the trading stock by the purchaser, and the price received by the vendor.

(2) For the purposes of this section, any trading stock which has been disposed of otherwise than by sale shall be deemed to have been sold and any trading stock so disposed of and any trading stock which has been sold for a consideration other than cash shall be deemed to have realised the market price thereof at the date of the disposition or
sale but, where there is no market price, trading stock shall be deemed to have realized such price as the Commissioner in his discretion may determine.

(3) Where any trading stock is sold or otherwise disposed of without consideration in money or money’s worth or for a consideration that is less than the market price or the true value thereof at the date of the sale or other disposition, the following provisions shall apply, namely—

(a) the trading stock shall be deemed, for the purpose of this Act, to have been sold at and to have realised the market price thereof at the date of the sale or other disposition but, where there is no market price, shall be deemed to have been sold and to have realised such price as the Commissioner in his discretion may determine;

(b) the price which, under the provisions of this section, the trading stock is deemed to have realised shall be taken into account in calculating the total income of the person selling or otherwise disposing of the trading stock;

(c) the person acquiring the trading stock shall, for the purpose of calculating his total income, be deemed to have purchased the trading stock at the price which, under the provisions of this section, the trading stock is deemed to have realised.

(4) Where trading stock is stolen, destroyed or in any way lost, and is the subject of an insurance or indemnity claim, any recoveries under such insurance or indemnity shall be regarded as trading or business income.

**Income deemed to be derived from Fiji**

14. Subject to the provisions of this Act, the following classes of income shall be deemed to have been derived from Fiji:—

(a) interest in respect of loans made after 30 November 1973, borne either directly or indirectly by a resident, or by a non-resident carrying on business in Fiji:

Provided that such interest shall not be so deemed, if—

(i) the loan was provided in a currency other than Fiji currency;

(ii) the debtor is a resident carrying on business in Fiji;

(iii) neither the lender nor the debtor has control over the other, and no other person or persons has or have control directly or indirectly over both of them;

(iv) the loan moneys have been, or, in the opinion of the Commissioner will be, employed in Fiji for the purpose either of—

(a) capital construction or reconstruction of hotels, commercial, agricultural or industrial premises and similar projects, in Fiji, but excluding the cost of the land;

(b) capital expenditure relating to mining and mineral exploration in Fiji;
(c) capital expenditure relating to fixed assets in commercial, agricultural or industrial venture in Fiji; or

(d) any other use which the Minister considers expedient to the economic benefit of Fiji;

Income of beneficiaries and estates of deceased persons

(b) ……

(c) any income deemed to accrue to any person making any gift, settlement or other disposition to which the provisions of subsection (4) of section 15 apply.

1 Repealed by §7 Act 4/2004 WEF 1st January 2004 – previously read:

"(b) any income received by, or accrued or in favour of, any person in his capacity as the personal representative of the estate of a deceased person and any amount so received or accrued which would have been income in the hands of the deceased person had it been received by or accrued to him or in his favour during his lifetime. Such income or amount shall, to the extent that the Commissioner is satisfied that it has been derived for the immediate or future benefit of any beneficiary under the estate of such deceased person, be deemed to be income received by or accrued to or in favour of such beneficiary, and, to the extent that the Commissioner is not so satisfied, shall be deemed to be income of such estate. So much of the amount of any expenditure incurred by or on behalf of the estate of any deceased person during any year as, in the opinion of the Commissioner, relates to any amount of income deemed to be income received by or accrued to beneficiary of such deceased person under the provisions of this paragraph shall—

(i) not be taken into account in the determination of the taxable income of such estate; and

(ii) be deemed to be expenditure incurred by such beneficiary during such year, and shall, to the extent that the deduction of expenditure of the nature of the expenditure in question is authorised by this Act, be taken into account in the determination of the taxable income of such beneficiary. Nothing in this sub-paragraph shall be construed as imposing liability for tax in respect of the same amount both in the hands of the estate or beneficiary and in the hands of such deceased person;"
When income is deemed to have accrued or to have been received

15.—(1) Income shall be deemed to have accrued to a person, notwithstanding that such income has been invested, accumulated or otherwise capitalised by him or that such income has not been actually paid over to him but remains due and payable to him or has been credited in account or reinvested or accumulated or capitalised or otherwise dealt with in his name or on his behalf, and a complete statement of all such income shall be included by any person in the returns rendered by him under this Act.

Income of minor child deemed to be income of parent or grand-parent

(2) Income shall be deemed to have been received by the parent or grand-parent of any minor child if, by reason of any gift, settlement or other disposition made by that parent or grand-parent of that child—

(a) it has been received by or has accrued to or in favour of that child or has been expended for the maintenance, education or benefit of that child; or

(b) it has been accumulated for the benefit of that child.

Income arising from such gift, settlement or other disposition shall be regarded, for the purpose of this subsection, mutatis mutandis, as being included in such gift, settlement or other disposition.

Reciprocal arrangements - minor children

(3) Any income received by, or accrued to or in favour of, any minor child of any person, by reason of any gift, settlement or other disposition made by any other person, shall be deemed to be the income of the parents of such minor child, if either parent has made a gift, settlement or other disposition or given some other consideration directly or indirectly in favour of such other person or any member of that other person’s family.

Revocable settlements

(4) If any deed or gift, settlement or other disposition contains any stipulation, either at the time it is made or any later time, that the right to receive any income thereby conferred may, under powers retained by the person by whom that right is conferred, be revoked or conferred upon another, so much of any income as in consequence of the gift, settlement or other disposition is received by, or accrues to or in favour of, the person on whom that right is conferred shall be deemed to be the income of the person by whom it is conferred, so long as he retains those powers.

Gift, settlement or disposition if income not receivable by beneficiaries

(5) Subject to the other provisions of this section, in the case of any income arising from any gift, settlement or other disposition made by any person, which is subject to any stipulation or condition, either at the time it is made or any later time, whether made or imposed by such person or any other person, to the effect that the beneficiaries thereof or any of them shall not receive the income or some portion of the income thereof until the happening of some event, whether fixed or contingent, so much of any income as would, but for such stipulation or condition, in consequence of the gift, settlement or other disposition be received by or accrue to or in favour of the beneficiaries or any of them, shall, until the happening of that event or the death of the person making the gift,
settlement or other disposition whichever first takes place, be deemed to be the income of that person.

(6) For the purposes of this section—
“gift, settlement or other disposition” shall include the admission into a partnership of a minor child;
“minor child” means any child, adopted child or step-child who has not attained the age of 21 years before 1 January in the year of assessment.

1 Inserted by §8(a) Act 4/2004 WEF 1st January 2004
2 Inserted by §8(b) Act 4/2004 WEF 1st January 2004

[Division 2 – Items of Income Not Liable either to [Basic Tax] or Normal Tax or [Basic Tax] and Normal Tax]

Exemption of certain income from tax
16.—(1) The Minister may, by order, provide that—

Exemption of interest on Government loans

(a) the interest payable on any loan charged on the public revenue of Fiji shall be exempt from tax, and such interest shall, as from the date and to the extent specified in the order, be exempt accordingly;

Exemption of income of co-operative society

(b) the income of any co-operative society registered under the Co-operative Societies Act shall be exempt from tax. The period of the exemption shall be as specified in the order but the income of the co-operative society shall not, by virtue of such order, be exempt from tax in respect of any period after the expiration of 8 years from the date of its registration;

(c) (i) the income derived by an individual from coconut growing, rice farming, dairy farming, beef production or goat farming (in this sub-paragraph referred to as “farming income”) shall be exempt from normal tax for a period of 5 years commencing on [1 January 1986], subject to the conditions that the individual shall deliver to the Commissioner a return of his total income in accordance with the provisions of this Act, and that, if he has income other than farming income, such other income shall be liable to tax, and the farming income shall be exempt from normal tax at the average rate of normal tax of the individual for the income year in question shall be the total normal tax payable by him for that income year divided by his total income (including all exempt farming income) for that income year;

(ii) the income (in this sub-paragraph referred to as “prescribed farming income”) derived by an individual from any other farming activity,
including fishing and forestry but excluding cane farming, shall be exempt from normal tax for a period of 4 years commencing on 1 January 1987 subject to the conditions that the individual shall deliver to the Commissioner a return of his total income in accordance with the provisions of this Act, and that if he has income other than prescribed farming income, such other income shall be exempt from normal tax at the average rate of normal tax applicable to the individual for the year of assessment; and for the purposes of this sub-paragraph the average rate of normal tax of the individual for the income year in question shall be the total normal tax payable by him for that income year divided by his total income (including all exempt prescribed farming income) for that income year;

(iii) the income derived by a taxpayer, whether an individual or not, from cane farming (in this sub-paragraph referred to as “cane farming income”) shall be exempt from normal tax for a period of five years commencing on 1 January 1986 subject to the conditions that where the Commissioner requires such return or where the taxpayer derives other income he shall deliver to the Commissioner a return of his income in accordance with the provisions of this Act, and that such other income shall be liable to tax, and the cane farming income shall be exempt from normal tax at the average rate of normal tax applicable to the taxpayer for the year of assessment; and for the purposes of this sub-paragraph the average rate of normal tax of an individual for the income year in question shall be the total normal tax payable by him for that income year divided by his total income (including all exempt cane farming income) for that income year.

(2) The Minister may, either by order, or by written direction to the Commissioner, where he is satisfied that it is expedient for the economic development of Fiji—

Exemption of certain mining companies
(a) in the case of a mining company, specify that the whole of the income of such company, for such period as may be specified in such notice, shall be exempt from tax or taxable at such reduced rate as may be specified;

Companies engaged in approved enterprises
(b) specify [on or before 31st December 2000,] any company engaged in an approved enterprise as being one to which the tax concessions contained in the Third Schedule shall apply and such company shall accordingly enjoy such concession;

(c) specify any interest deemed under paragraph (a) of section 14 to be derived from Fiji to be exempt from tax or taxable at such reduced rate as may be specified;

(d) specify [on or before 31st December 2000,] any trade and any product to be an approved trade and an approved product qualifying for an export incentive under the provisions of the Fifth Schedule and any such sum referred to in that Schedule shall be exempt from tax or chargeable at such reduced rate as may be specified;
(f) specify [on or before 31st December 2000,] upon such conditions as he thinks fit, any company engaged in any agricultural enterprise designated by him, [or engaged solely in agricultural contracting,] as being a company to which the tax concessions contained in the Seventh Schedule shall apply, and such company shall accordingly enjoy such concessions.

(3) The income arising from investments made by the Banaban Trust Fund Board in accordance with section 6C of the Banaban Settlement Act shall be exempt from normal tax.

(4) A person who has been certified in accordance with sub-paragraph (1) of paragraph 3 of the Eighth Schedule shall be entitled to a deduction of [the maritime vessels] investment allowance from total income in accordance with that Schedule.

(5) A person who has been certified in accordance with sub-paragraph (1) of paragraph 3 of the Ninth Schedule shall be entitled to a deduction of supportive projects to tourist industry investment allowance from total income in accordance with that Schedule.
16A. The film-making and audio-visual incentives are set out in the Sixth Schedule.


**Binding Rulings**

16B. The Commissioner may issue binding rulings in accordance with the Tenth Schedule.

1 Inserted by §9 Act 4/2004 WEF 1st January 2004. It must be noted that §21(3) Act 4/2004 states that “For the purposes of section 16B, the Commissioner shall, with effect from 1st January 2004, issue binding rulings in relation to the Film-Making and Audio Visual incentives as set out in the Sixth Schedule.”

**Hotel investment tax incentives**

16C. The hotel investment allowance and the short life investment package are set out in the Eleventh Schedule.

1 Inserted by §2 Promulgation No. 27 of 2007

**Tax Free Region Incentives**

16D. The tax free region incentives are set out in the Twelfth Schedule.

1 Inserted by §4 Promulgation No. 35 of 2008 WEF 1st January 2009

**Incomes not taxable**

17. The following classes of income shall not be chargeable to normal tax:

1. the emoluments of office allowed to the [President of the Republic of Fiji];

2. the income of any co-operative dairy company incorporated in Fiji and registered under the provisions of the Co-operative Dairy Companies Act, in so far only as it is derived from the collection, treatment or manufacture and distribution of dairy produce from milk or cream supplied by shareholders, or from the investment of any surplus funds from such activities not distributed to shareholders;

3. the capital element repayment from any life annuity purchased and taken out by a person on his own life, being a life annuity granted for a lump sum in consideration of money or money’s worth in the ordinary course of business of granting annuities on human life;
the income of any company, commission or association not less than 90 per cent of the stock or capital of which is owned by a town council established under the provisions of the Local Government Act\(^5\) and all incomes of a town council or other local or public authority other than incomes received in trust;

(5) the income of any institution, body of persons or irrevocable trust of a public character established solely for the relief of the poverty or distress of the public, or for the advancement of religion or education, in so far as the Commissioner is satisfied that such income is to be expended either in Fiji or for purposes which result in benefit of the residents of Fiji:

Provided that any such income which consists of profits or gains from a business shall not be exempt from \([\text{basic tax}]^6\) and normal tax unless such profits or gains are applied solely for any of such purposes;

(6) the income derived from any pensions granted to any member of \([\text{the State's}]^7\) naval, military or air forces for any disability suffered by the pensioner while serving in any of \([\text{the State's}]^8\) forces during any war, and the income derived from any pension granted to any dependent relative of any person who was killed or suffered any disability while serving in such forces during any war in respect of such death or disability;

(7) the income derived by the \([\text{Reserve Bank of Fiji}]^9\) … \(\text{10}\) or any sinking fund in respect of the public debt;

(8)\(^{11}\) The income derived from any investment in any loan raised by the Government referred to in paragraph \((a)\) of subsection \((1)\) of section \(\text{16}\);

(9) the official allowances paid to the Speaker and members of the House of Representatives and to the President and members of the Senate;

(10) the income of any provident fund lawfully established by a town council.

(11) the income of the Civil Service Widows and Orphans Pensions Scheme, and the Non-Pensionable Employees Fund established under the Government Employees Provident Fund Ordinance\(^{12}\);

(12) the income of an approved fund;

(13) (i) any capital payment received by way of death gratuity or consolidated compensation for death or injury;

(ii) so much of any lump sum relating to an office or employment as [in the opinion of the Commissioner is reasonable but in any event not exceeding]\(^{13}\) \$5,000, less any other amounts which have been excluded from the taxpayer's income by virtue of the provisions of this paragraph whether in the current or any previous year of assessment. “Lump-sum” for the purpose only of this sub-paragraph means any amount, other than [a redundancy payment]\(^{14}\) a contractual sum, received by or accrued to the holder of any office or employment because of the termination or impending termination of the services required to be rendered by him as the holder of that office or employment or for the relinquishment,
termination, loss, repudiation, cancellation or variation of his office or employment or in respect of his appointment, or of his right or claim to be appointed to any office or employment and includes any sum paid on retirement which, in the opinion of the Commissioner is reasonable, if the holder of the office or employment [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]$^{15}$ and the holder has attained the age of 55 years or more, or]$^{16}$ has not been a contributor to an approved fund or to the Fiji National Provident Fund, but does not include—

(a) any refund from an approved superannuation or retirement benefit fund, including the Fiji National Provident Fund;

(b) any amount received or accrued in respect of or in commutation of any amount due under any contract or employment or service;

(c) any payment in respect of or in lieu of leave;

(iii)$^{17}$ any lump sum or refund of contributions received in respect of an approved superannuation or retirement scheme, which is paid to a contributor, or in the case of his or her death to the person entitled thereto;

(iv) for the purposes of this paragraph, the word “contributor” in relation to the Fiji National Provident Fund shall have the same meaning as “member” in the Fiji National Provident Fund Act;

(14) the pay and allowances of any member of [the State’s]$^{18}$ forces serving in Fiji, in so far as such pay and allowances are derived from funds other than the funds of the Government of Fiji;

(15) the pay and allowances of any member, of [the State’s]$^{19}$ forces who [is]$^{20}$ ordinarily resident in Fiji but [is] serving outside Fiji, in so far as such pay and allowances are derived from funds other than funds of the Government of Fiji:

[Provided that, with effect from 20 May 1978, payments made to a member of [the State’s]$^{21}$ Forces ordinarily resident in Fiji but serving with the United Nations Forces, which are additional to the normal pay and allowances to which such member would be entitled if serving in Fiji, shall not be chargeable to [basic tax]$^{22}$ and normal tax, regardless of derivation;]$^{23}$

(16) the income, other than income derived from Fiji, of a member of the armed forces of any foreign power allied with [the State]$^{24}$, serving in Fiji;

(17) the income of any society registered under the provisions of the Co-operative Societies Act$^{25}$, whose sole objects are accepting deposits from members and non-members and granting loans for productive or provident purposes to members, only in so far as such income is not derived from a trade or business carried on by such society;
(18) the income of an association of persons established solely, for the purpose of controlling or furthering any amateur sport or game, if no part of the income or other funds of the society or association is used or available for the pecuniary profit of any proprietor, member or shareholder thereof;

(19) the income arising from a scholarship awarded to a person for the of fulltime instruction at a university, college, school or other educational establishment;

(20) any education allowance paid to a designated officer in pursuance of the Overseas Service (Fiji) Agreement, 1961, or to any member of the staff of the University of the South Pacific in pursuance of an agreement with any overseas government;

(21) the income, other than income derived from Fiji, of a member of an official mission, approved by the Minister, of any foreign power allied with [the State];

(22) the income of any trade union registered under the provisions of the Trade Unions Act, or any industrial association registered under the provisions of the Industrial Associations Act, in so far as such income is not derived from a trade or business carried on by such trade union or industrial association;

(23) the income, other than income derived from Fiji, derived by any individual by reason of his service in Fiji on secondment from the Government service of another territory in such circumstances that that other territory continues to be responsible for payment of his emoluments during such secondment, if he is not also granted exemption from income tax on such income in that other territory;

(24) the income of any club, society or association, organised and operated exclusively for social welfare, civic improvement, pleasure or recreation, or for any other purpose except profit, no part of the income of which is payable to, or is otherwise available for the personal benefit of any proprietor, member or shareholder thereof, in so far as such income is not derived from a trade or business carried on by such club, society or association;

(25) …

(26) the income of the Fiji National Provident Fund [and its wholly owned subsidiary Fiji National Provident Fund Investments Limited. For the purposes of this paragraph, the income tax exemption to the Fiji National Provident Fund Investments Limited is in respect of income earned after 01 January 2005 and before 1 January 2010];

(27) interest credited to the account of a member of the Fiji National Provident Fund under the provisions of the Fiji National Provident Fund Act;

(28) compensation payable under the Compensation Scheme to a pensionable designated officer under the Overseas Service (Fiji) Agreement, 1961, who retires in the interests of localisation;

(29) the income of the Fiji Development Bank;
(30) the income of a member of the American Peace Corps working in Fiji;

(31) …

(32) any income which neither accrues in, nor is derived from or received in, Fiji by any person who satisfies the Commissioner that his permanent place of abode is outside Fiji and that he is resident in Fiji solely or mainly for the purpose of engaging in employment in Fiji under a contract of employment of not more than 3 years’ duration[.]

Provided that such exemption shall not extend to earnings derived from any employment, the duties of which are performed outside Fiji, during any year in which such person resides in Fiji;[13]

(33) such part of the emoluments of the office of public servants who are required to live outside Fiji in order to perform their duties as does not represent the basic salary, and any gratuity paid, in respect of their office;

(34) any benefits arising from passage costs incurred by an employee and reimbursed by his employer or payable on behalf of the employee by the employer where the employee is not a Fiji citizen and was not recruited in Fiji or where terms of these conditions are not satisfied but the Commissioner considers that hardship would result if such amounts were assessed. Any such costs shall be limited to the economy airfare by the most direct route between Fiji and the territory in which he was recruited in respect of the employee and his family. The journeys other than business journeys qualifying for exemptions under this paragraph shall be limited to—

(i) those on initial arrival in and final departure from Fiji;
(ii) 1 return journey per annum for leave purposes;
(iii) journeys made for urgent family reasons;

(35) the income of the Fiji National Training Council;

(36) the income of Air Pacific Limited (formerly known as Fiji Airways Limited) in respect of all income earned after 31 March 1970 and before 31 March 1975;

(37)[34] Any dividend from a company incorporated in Fiji received by or accrued to a resident company other than a unit trust; ………[35]

(38) any sum (which in the aggregate shall not be in excess of $5,000) which the Commissioner considers to be reasonable in respect of the cancellation of passage costs which the employer would otherwise have paid by virtue of any contract or implied contract entered into prior to 1 January 1972;

(39) any dividend which has been subjected to non-resident dividend withholding tax from a company incorporated in Fiji received by a non-resident;

(40) any interest paid on an overseas loan to a non-resident by a bank in possession of a valid licence granted under the provisions of the Banking Act[36];
(41) any sum paid to an employee on final retirement after a period of continuous service of not less than 10 years by a statutory corporation or by the Government of Fiji under a contract in existence at 31 December 1973;

(42) any concession enjoyed under subsection (2) of section 11 of the Ordinance repealed by this Act either—
   (i) immediately before 1 January 1969; or
   (ii) under the provisions of the Income Tax (Amendment) Ordinance, 1968, until such time as such respective concessions shall expire;

(43) the interest payable on any loan charged on the public revenue of Fiji or any interest accruing on an account in the National Bank of Fiji to any institution, body of persons or irrevocable trust of a public character which is not a resident of Fiji and which has been established solely for the relief of poverty or distress of the public or for the advancement of religion or education;

(44) the income derived by an individual who is a member of the staff of the University of the South Pacific or is the holder of any appointment sponsored by the Fiji Government which is payable under any scheme of supplementation by virtue of any agreement between the Fiji Government and the Government of another State if such income is paid, and is subject to tax, in that other State;

(45) the income of Polynesian Airlines Limited in respect of all income earned after 31 March 1974 and before 31 March 1979;

(46) the interest and other charges payable to the Commonwealth Development Corporation by the Fiji Electricity Authority in respect of the loan of £5,000,000 sterling raised by the Authority from the Corporation for the purposes of the Monasavu Hydro-Electric Scheme;

(47) for a period of 3 years commencing on 1 January 1987, the income, equivalent to the income on which rebate would be granted under paragraph 5(i) of the Fifth Schedule, of a company which is engaged in the export of timber grown in Fiji;

(48) the emoluments derived by an individual by reason of his service at the University of the South Pacific—
   (i) under the Australian Universities International Development Programme in such circumstances that the Programme is responsible for such emoluments and only to the extent that such emoluments are paid under the Programme and are subject to income tax in Australia; or
   (ii) as the holder of any appointment in respect of which emoluments are payable under any scheme of supplementation of the Government of Australia approved by the Government of Fiji, only to the extent to which such emoluments are subject to income tax in Australia;
Any pension [any pension that is paid from any fund approved by the Commissioner of Inland Revenue in accordance with Section 110 of this Act]49 received by a resident [or non-resident]49 individual…49;

the interest and other charges payable to the Commonwealth Development Corporation by the Fiji Development Bank in respect of the loan of up to five million pounds sterling raised by the Fiji Development Bank from the Commonwealth Development Corporation for the purpose of assisting the Fiji Development in its intended programme of advances by way of loans to persons in Fiji engaged in small-scale farming and fishing enterprises for the purposes of those enterprises;

any profits arising out of the transfer of assets and liabilities to Fiji Pine Limited pursuant to the provisions of the Fiji Pine Decree, 199052;

Notwithstanding the provisions of subsection (2) of section 21, any dividend which has been paid or credited in favour of a resident individual by a company holding an operating licence granted under the provisions of the Tax Free Zones Decree 199154 out of its profits attributable to export earning and that such company qualifies for relief in accordance with the Fifth Schedule of this Act:

Provided that—

(i) in the event of sale or disposal by any other means of shares held in such a company by a resident individual within 5 years immediately following their acquisition such dividend paid or credited by that company in any year shall not be exempt from [basic tax]52 and normal tax in the hands of the resident individual shareholder and shall be assessed for such tax in accordance with subsection (2) of section 21 and that such dividend shall be included as total income and apportioned over a period including the year of sale or disposal and the immediately preceding 2 years.

(ii) exemption under this paragraph shall not apply on the cancellation or withdrawal of a company’s operating licence within 5 years of the date the licence was granted and the resident individual shareholder shall be assessed for tax as prescribed in proviso (i) of this paragraph;

the income derived by the Taisei Corporation of Japan regarding the redevelopment of the Fiji School of Medicine and the Colonial War Memorial Hospital, in accordance with the Diplomatic Notes dated 23 July, 1991 exchanged between the Government of Japan and the Government of the Republic of Fiji;

Notwithstanding the provisions of subsection (2) of section 21, any dividend which has been paid to or credited in favour of a resident individual in respect of shares of a company listed at the [South Pacific Stock Exchange]58 …59.

For the purposes of this paragraph “dividend” shall have the meaning ascribed to it by subsection (2) of section 8;

the income derived by the Taisei Corporation of Japan regarding the redevelopment of the Fiji School of Medicine and the Colonial War Memorial Hospital, in accordance with the Diplomatic Notes dated 23 July, 1991 exchanged between the Government of Japan and the Government of the Republic of Fiji;
the nominal value of any bonus shares awarded to a shareholder to the extent to which such shares have been paid up by means of profit arising from the reconstruction or reorganisation of the company’s equity structure undertaken solely for the purpose of listing on the South Pacific Stock Exchange provided that—

(a) the said company is listed on the South Pacific Stock Exchange within 12 months of any such reconstruction or reorganisation or such longer period as the Commissioner may determine; and

(b) the said company remains listed on the South Pacific Stock Exchange for a period of not less than three years;

(2) the income of—

(a) the Fiji Audio-Visual Commission established by the Fiji Audio-Visual Commission Act 2002; and

(b) the Audio-Visual Collection and the Audio-Visual School established by the Fiji Audio-Visual Commission;

(5) any payment received in respect of alimony and maintenance;

(6) the income of

(a) the Fiji Institute of Directors;

(b) the income of an Information Communication Technology business—

(i) operating on or before 1 January 2007 in the declared Kalabu Tax Free Zone, from 1 January 2007 to 31 December 2016;

(ii) granted a license after 1 January 2009, for a period of 13 years from the date of issue of the license

provided that the business employs 50 employees or more for 6 months within the income year and 60 per cent or more of the total value of its services in the income year is exported.

For the purpose of subparagraph (ii)

(a) any such business may apply for and, if granted a license, pay a license fee of one thousand dollars ($1,000) per annum to the Commissioner for the period of the license; and

(b) the income of any business granted a license in terms of subparagraph (ii) who commences business before 31 December 2009 shall, for the income tax exempt period provided for under this sub-section, be deemed for the purposes of Section 7C or section 8 of the Act to have been charged to tax.
For the purposes of this sub-section, “Information Communication Technology business” means a person engaged in software development, call centers or internet service provision, but does not include an internet cafe or any retail or wholesale of information technology products or the repair, sale or service of any such products.

(64) the income of the Fiji Electricity Authority in respect of all income earned from 1 July 1992 to 31 December 1996.

(65) the income of prescribed small and micro enterprises engaged in Agriculture, Fisheries or Tourism which have a gross turnover not exceeding [[$300,000.]]

(66) the income of Hospital Corporation (South Pacific) Limited trading as Apollo Pacific Hospital Project earned from 1 January 2008 to 31 December 2017.

(67) the income of the Land Transport Authority earned on or after 1 January 2008;

(68) the income of the Exporters Club Limited earned on or after 1 January 2003;

(69) The income derived from:
    (i) any interest received by a resident individual during the income year from any financial institution in Fiji not exceeding $200; or
    (ii) any dividend received by a resident individual during the income year from any Unit Trust in Fiji not exceeding $200.

(70) Notwithstanding the provisions of section 43, the interest or dividend received by the wife of a resident individual from similar sources shall also not be chargeable to the extent of the first $200 thereof. Provided that the total interest or dividend not chargeable under this paragraph shall, in aggregate, not exceed $200 in respect of each spouse.

(71) any dividend paid to or credited in favour of a resident from the Unit Trust of Fiji, the Colonial First State Income and Growth Fund, Colonial First State Income Fund, Fijian Holdings Unit Trust and Fijian Holdings Property Trust Fund;
any interest income which accrues to or in favour of citizens of other countries recognised by Fiji in the “Fiji My Second Home” programme as administered by the Reserve Bank of Fiji, if the debtor in respect of any such interest is a financial institution in Fiji. To qualify, the applicant should fulfill the following criteria:

(i) if the applicant’s age is below 50 years old, a minimum deposit of one hundred and fifty thousand dollars (FJD$150,000) 84 and the applicant maintains the deposit in financial institutions in Fiji for a minimum of two years; or

(ii) if the applicant’s age is 50 years and above, a minimum deposit of one hundred thousand dollars (FJD$100,000) 85 and the applicant maintains the deposit in financial institutions for a minimum of two years;

To qualify the applicant must maintain a minimum balance of fifty thousand dollars (FJD$50,000) 86 from the third year onwards and throughout the entire stay in Fiji.

any interest income which accrues to or in favour of a non-resident, including former Fiji residents who hold funds in Fiji commercial bank accounts under the Foreign Currency Account Scheme, the following will be exempt from tax:

(i) for Foreign Currency Accounts, interest income from deposits above the equivalent of one hundred and fifty thousand dollars (FJD$150,000) 88; or

(ii) for Fiji Dollar External Accounts, any amount of interest income;

the income of a taxpayer derived from a new activity in commercial agricultural farming and agro-processing as approved by the Commissioner from 1 January, 2009 to 31 December 2014 is to be exempt from tax… 90:

(i) any new activity approved and established between 1 January 2009 to 31 December 2009 shall be exempt from tax as follows-

(a) capital investment from $250,000 to $1,000,000, for a period of 4 consecutive fiscal years; or

(b) capital investment above $1,000,000 to $2,000,000, for a period of 7 consecutive fiscal years; or

(c) capital investment above $2,000,000, for a period of 10 consecutive fiscal years

(ii) any new activity approved and established from 1 January 2010 to 31 December 2014 shall be exempt from tax for 10 consecutive fiscal years with a capital investment of $2,000,000 or more;

(iii) employs 30 local employees or more for every income year;
the income of a taxpayer derived from a new activity in processing agricultural commodities into bio-fuels as approved by the Commissioner from 1 January, 2009 to 31 December 2014 is to be exempt from tax for a period of 10 years provided the taxpayer has:

(i) minimum level of investment of $1,000,000; and
(ii) employs 20 local employees or more for every income year; and

the income of a taxpayer derived from a new activity in renewable energy projects and power cogeneration as approved by the Commissioner is to be exempt from tax for a period of 5 years;

the income of the Fijian Trust Fund;

Any allowances paid in accordance with the Criminal Procedure Decree (Allowances to Witnesses and Assessors) Rules 2010, to the

(i) witnesses attending at trials or inquiries before a Magistrates Court or the High Court or summons to any court exercising appellate jurisdiction;
(ii) attending trials at the High Court.
12 Cap. 53 Laws of Fiji 1955 edition
13 Substituted for "does not exceed" by §4(b) Act 10/1977 WEF 1st January 1976
14 Inserted by §5 Act 2/1996 WEF 1st October 1995
15 Substituted for "1981" by §7(d) Act 3/1992 WEF 1st January 1982
16 Inserted by §4(c) Act 10/1977 WEF 1st January 1976
17 Repealed and substituted by §6(a) Act 1/2003 WEF 1st January 2003 - previously read:

"(iii) any capital payment or refund from an approved superannuation or retirement benefit fund, including the Fiji National Provident Fund, paid to a contributor, or in the case of his death to the person entitled thereto, in any of the following cases:—

(a) on the death or permanent disability of a contributor;
(b) where the Commissioner is satisfied that a contributor has been compulsorily retired on grounds of ill-health;
(c) in the case of a female contributor, on her marriage;
(d) except in the case of the Fiji National Provident Fund, on the retirement of a contributor on his attaining the age of 55 or more years; or
c(e) in the case only of the Fiji National Provident Fund in respect of all minimum statutory contributions made;"

18 See Note Error! Bookmark not defined.
19 See Note Error! Bookmark not defined.
20 Substituted for "are" by §4(e) Act 10/1977 WEF 1st January 1977
21 Reference to "Suite" substituted for "Her Majesty" by §3(f) WEF 7th October 1987
22 Basic tax not chargeable WEF 1st July 1992 by repeal of §6 by §3 Decree 30/1992
23 Inserted by §2(b) Act 11/1979 WEF 6th April 1979
24 See Note Error! Bookmark not defined.
26 See Note Error! Bookmark not defined.
27 Cap. 96
28 Cap. 95
29 Repealed by §7(3) Decree 30/1992 WEF 1st July 1992 – previously read:

"(25) the income of the Fiji Electricity Authority;"
30 Inserted by §6(a) Act 3/2005 WEF 1st January 2005
31 Cap. 219
32 Repealed by §2(2) Decree 54/1991 WEF 1st January 1991 – previously read:

"(31) the income of the National Marketing Authority;"
33 Inserted by §4(f) Act 10/1977 WEF 1st January 1977
34 Substituted by §4 Act 23/1979 WEF 1st January 1978 – previously read:

"(37) any dividend from a company incorporated in Fiji received by or accrued to a resident company. For the purposes of this paragraph, "dividend" shall have the same meaning as in paragraph (a) of subsection (2) of section 8 of this Act;"
35 Amended by deleting the full stop after "trust", substituting a semi-colon and deleting the sentence commencing "For the purposes" by §9(a) Decree 8/2001 WEF 1st January 2001 - previously read:

"For the purposes of this paragraph, "dividend" shall have the meaning ascribed to it by subsection (2) of section 8;"
37 Cap. 176 1967 Laws of Fiji
38 Ordinance 46/1968
39 Repealed by §6(b) Act 1/2003 WEF 1st January 2003 – previously read:

"(43) any pension received by a resident from the Fiji National Provident Fund;"
40 Inserted by §7(c) Act 10/1975 WEF 1st January 1974
41 Inserted by §7(c) Act 10/1975 WEF 1st January 1974
42 Inserted by §7(c) Act 10/1975 WEF 1st January 1974
43 Inserted by §2(c) Act 11/1979 WEF 6th April 1979
“(48) for a period of 3 years commencing on 1 January 1982, the income, equivalent to the income on which rebate would be granted under paragraph 5(i) of the Fifth Schedule, of a company which is engaged in the export of indigenous timber;”

41 Inserted by §2(b) Act 9/1985 WEF 5th July 1985
42 Paragraph inserted by §7 Act 23/1985 WEF 1st January 1986
43 Inserted by §6(a) Promulgation 47/2007 WEF 1st January 2008
44 Inserted “or non-resident” after “resident” by §6(c) Act 1/2003 WEF 1st January 2003
45 Words “to the extent of $3,000” repealed by substitution by §7(4) Decree 30/1992 WEF 1st July 1992; “$3,000” substituted for “$1,000” by §5 Decree 10/1990 WEF 1st January 1990
46 Inserted by §42 Decree 4/1989 WEF 7th March 1989
47 Inserted by §2 Decree 16/1991 WEF 2nd May 1991
48 Decree 29/1990
49 Inserted by §2 Decree 58/1991 WEF 4th December 1991
50 Decree 57/1991
51 Basic tax not chargeable WEF 1st July 1992 by repeal of §6 by §3 Decree 30/1992
52 Inserted by §5 Act 2/1993 WEF 1st January 1993
53 Inserted by §5 Act 18/1995 WEF 1st January 1995
56 Repealed by §6(f) Promulgation No. 47 of 2007 WEF 1st January 2008; Inserted by §7 Act 10/1997 WEF 1st January 1997 - Previously read: “any dividend paid to or credited in favour of a resident individual from the Unit Trust of Fiji;”
57 Repealed and substituted by §9(c) Decree 8/2001 WEF 1st January 2001 - previously read:

“(57) the nominal value of any bonus shares which is exempt from dividend tax pursuant to the provisions of paragraph (f) of subsection (3) of section 10;”

58 Subsection (2) repealed by §2(a) Act 11/1979 WEF 6th April 1979 – previously read:

“(2) The House of Representatives may at any time by resolution, add to, vary or revoke the classes of income mentioned in subsection (1),”

60 Deleted full-stop and inserted semi-colon by §6(d) Act 1/2003 WEF 1st January 2003
61 Deleted full-stop and inserted semi-colon by §2 Act 14/2004

“the income of the Fiji Television Limited in respect of all income earned after 1 January 1994 and before 1 January 2009;”

64 Inserted by §6(c) Act 3/2005 WEF 1st January 2005
65 Substituted by §2 Promulgation No. 14 of 2009 WEF 1st March 2009 – previously read:

“(63) the income of an Information Communication Technology operator operating:

(i) in the declared Kalabu Tax Free Zone from 1 January 2007 to 31 December 2016; or
(ii) anywhere outside the Kalabu Tax Free Zone who is granted a license between 1 January 2008 and 31 December 2010;

/branch1/branch2/branch3/to be exempt from tax for a period of 10 years,

Provided that the business employs 50 employees or more for any 6 months within the income year and 60 percent of its total services is exported.
(iii) any new operator who is granted a license from 1 January 2009 to be exempt from tax for a period of 13 years.

Provided that the business employs 50 employees or more for any 6 months within the income year and 50 percent of its services is exported;

For the purposes of sub-paragraph (ii) or (iii), any operator may apply and pay a license fee of one thousand dollars ($1,000) per annum to the Commissioner of Inland Revenue. The tax exemption under sub-paragraph (ii) or (iii) is granted only from the date of the initial license. The Minister may make regulations to prescribe matters required in the collection of license fees.

(iv) For the purposes of this section, Information Communication Technology Business includes software development, call centers and internet service provision (excludes internet café), but does not include retail or wholesale of information technology products and the repair, sale or service of any such product;”

Substituted by §6(b) Promulgation No. 47 of 2007 WEF 1st January 2008 - previously read:

“(iii) the income of an Information Communication Technology operator operating in the declared Kalabu Tax Free Zone from 1 January 2007 to 31 December 2016 provided that the business employs 50 employees or more for any 6 months within the income year and 50 percent of its total services is exported;”

Substituted by §2(b) Promulgation No. 19 of 2007 WEF 1st January 2007; Inserted by §6(c) Act 3/2005 WEF 1st January 2005 – previously read:

“any dividend paid to or credited in favour of a resident individual from the Colonial First State Income Fund or the Colonial First State Income and Growth Fund;”

31 Repealed by §6(f) Promulgation No. 47 of 2007 WEF 1st January 2008; Inserted by §6(c) Act 3/2005 WEF 1st January 2005. Previously read:

“any dividend paid to or credited in favour of a resident individual from the Fijian Holdings Unit Trust;”

32 Repealed by §2(c) Promulgation 19/2007 WEF 1st January 2007; inserted by §6(c) Act 3/2005 WEF 1st January 2005 – previously read:

“the income arising from the investments of the Fijian Holdings Property Trust Fund in respect of income earned after 31 December 2004 and before 1 January 2010; and”

33 Repealed by §2(c) Promulgation 19/2007 WEF 1st January 2007; inserted by §6(c) Act 3/2005 WEF 1st January 2005 – previously read:

“any dividend paid or credited in favour of a resident individual from the Fijian Holdings Property Trust Fund before 1 January 2010;”

34 Inserted by §2 Act 16/2005
35 Inserted by §3 Act 4/2006 WEF 1st January 2006
36 Substituted for “$200,000” by §6(e) Promulgation No. 47 of 2007 WEF 1st January 2008

37 Inserted by §3 Promulgation No. 27 of 2007
38 Repealed semicolon by §6(c) Promulgation No. 47 of 2007 WEF 1st January 2008
39 Inserted by §6(d) Promulgation No. 47 of 2007 WEF 1st January 2008
40 Inserted by §6(d) Promulgation No. 47 of 2007 WEF 1st January 2008
41 Inserted by §5(iii) Promulgation No. 35 of 2008 WEF 1st January 2009
42 Inserted by §5(iii) Promulgation No. 35 of 2008 WEF 1st January 2009

43 Amended by deleting F$300,000 and substituting with F$150,000 by Decree No.8/2010 WEF 1st January 2010.
44 Amended by deleting F$200,000 and substituting with F$100,000 by Decree No.8/2010 WEF 1st January 2010.
45 Amended by deleting F$100,000 and substituting with F$50,000 by Decree No.8/2010 WEF 1st January 2010.
46 Inserted by §5(iii) Promulgation No. 35 of 2008 WEF 1st January 2009
47 Amended by deleting F$300,000 and substituting with F$150,000 by Decree No.8/2010 WEF 1st January 2010.
48 Inserted by §5(iii) Promulgation No. 35 of 2008 WEF 1st January 2009
49 Repealed “1 January, 2009 to 31 December 2014 is to be exempt from tax for a period of 10 years, provided the taxpayer has” by §2(i)(a) Promulgation No. 35 of 2008 WEF 1st January 2009
Redundancy payments

17A.1 Notwithstanding any other provision of this Act tax shall be assessed, levied, and paid in respect of any redundancy payment received on or after 1st October 1995 as follows:

(a) on the first $15,000 of any such payment at the rate of NIL %;
(b) on any amount in excess of $15,000 at the rate of 15%.

Shipping profits

18.—(1) Where income arises from the business of shipping carried on by a non-resident, and the Minister is satisfied that an equivalent exemption from income tax is granted to persons resident in Fiji by the country in which such non-resident resides, such income shall be exempted from tax payable under this Act.

(2) For the purpose of subsection (1)—

(a) a company shall be deemed to be resident only in that country in which the central management and control of its business is situated;
(b) “business of shipping” means the business carried on by an owner of ships, and, for the purpose of this definition, “owner” includes any charterer.

Expenses not deductible

19. (1)1 In determining total income, no deductions shall be allowed in respect of—

(a) personal and living expenses and, in cases in which personal and living expenses form part of the profit, gain or remuneration of the taxpayer, the same shall be included in total income;
(b) any disbursement or expense not being money wholly and exclusively laid out or expended for the purpose of the trade, business, profession, employment or vocation of the taxpayer;
(c) any loss not connected with or arising out of the trade, profession, business, employment or vocation of the taxpayer;
(d) any loss or expense, the deduction of which would otherwise be allowable, to the extent to which it is recoverable under any contract of insurance, guarantee, surety or indemnity;

(e) the taxation levied on incomes;

(f) any expense incurred in respect of—
   (i) any amount received, receivable, or accrued which is not included in total income or, if so included, is exempted under section 16 or 17, or is not included in chargeable income under any of the provisions of this Act;
   (ii) any investment or property the income arising from which will not be included in total income or, if so included, will be exempted under section 16 or 17, or will not be included in chargeable income under any of the provisions of this Act;

(g) subject to paragraph (m) of subsection (1) of section 21, income carried to any reserve fund or capitalised in any way;

(h) any bad debt, except any proved to the satisfaction of the Commissioner to be bad and to have been written off in the taxpayer’s books during the year;

(i) any expenditure or loss of capital nature;

(j) any expenditure on repairs, alterations and improvements, other than that actually incurred on the repair of property either occupied for the purposes of any trade, business, profession, employment or vocation or in respect of which income is receivable, including any expenditure so incurred on the treatment against attack by beetles and similar pests of any timber forming part of such property and sums expended for the repair of machinery, implements, utensils and other articles employed by the taxpayer for the purposes of his trade, profession, business, employment or vocation;

(k) alimony or maintenance.

(l) inducements paid to public officers

(2) Paragraph (l) of subsection (1) applies—
   (a) where a person gives an inducement to a public officer; and
   (b) the person gives the inducement intending to influence the public officer to act, or fail to act, in his or her official capacity in order to—
      (i) obtain or retain business for the person; or
      (ii) obtain an improper advantage for the person in the conduct of business; and
   (c) the public officer has acted or failed to act or has or does not have the authority to act.

(3) Paragraph (l) of subsection (1) applies—
   (a) where a person gives an inducement to a foreign public officer; and
(b) the person gives the inducement to influence that foreign public officer to act, or to fail to act, in his or her official capacity in order to –

(i) obtain or retain business for the person; or
(ii) obtain an improper advantage for the person in the conduct of business; and

(c) the person giving the inducement would have been, at the time the inducement was given, an offence under the laws of the foreign public officer’s country, if the benefit had been provided, and all related acts have been done, in that country; and

(d) the public foreign officer fails to act or has or does not have the authority to act.

(4) For the purpose of subsections (2) and (3), no deduction shall be allowed of the amount of inducement.

(5) In this section –

“benefit” means any money, valuable consideration, office, or employment, or any benefit, whether direct or indirect;

“enterprise” means –

(a) a company, wherever incorporated, that –

(i) the government or foreign government is able to control or dominate (whether by reason of its ownership of shares in the company, its voting powers in the company, or its ability to appoint 1 or more directors (however described), or by reason that the directors (however described) are accustomed or under an obligation to act in accordance with the directions of that government, or otherwise); and

(ii) enjoys subsidies or other privileges that are enjoyed only by companies, persons, or bodies to which subparagraph (i) or paragraph (b)(i) apply; or

(b) a person or body (other than a company), wherever situated, that –

(i) the government or foreign government is able to control or dominate (whether by reason of its ability to appoint the person or one or more members of the body, or by reason that the person or members of the body are accustomed or under an obligation to act in accordance with the directions of that government, or otherwise); and

(ii) enjoys subsidies or other privileges that are enjoyed only by companies, persons, or bodies to which subparagraph (i) or paragraph (a)(i) apply
“foreign country” includes –
(a) a territory for whose international relations the government of a foreign country is responsible; or
(b) an organised foreign area or entity including an autonomous territory or a separate customs territory;

“Government” also includes local Government and “foreign government” includes all levels and subdivisions of government;

“inducement” means money, valuable consideration, office, or employment, or any benefit, whether direct or indirect;

“government agency” and “foreign government agency” mean any person or body, wherever situated, that carries out a public function under the laws of the government of a foreign country;

“public officer” includes-
(a) a member or officer of the executive, judiciary, or legislature of the Government or a foreign government;
(b) a person employed by the Government or foreign government, Government agency or foreign government agency, government enterprise or foreign enterprise, or public international organisation;
(c) a member of Parliament or a Minister of the State;

“public international organisation” means-
(a) an organisation of which 2 or more countries or two or more governments are members, or are represented on the organisation;
(b) an organisation constituted by an organisation to which paragraph (a) applies or by persons representing two or more such organisations;
(c) an organisation constituted by persons representing two or more countries or two or more governments;
(d) an organisation that is a part of an organisation referred to in any of paragraphs (a) to (c).

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1 Renumbered as (1) by §4(a) Act 4/2006 WEF 1st January 2006
2 Substituted by §7(a) Act 21/1980 WEF 1st January 1980 – previously read:
   “(g) income carried to any reserve fund or capitalised in any way;”
3 Paragraph (h) deleted and paragraph (i) relettered as paragraph (h) by §7(b) Act 21/1980 WEF 1st January 1980.
   Original paragraph (h) – words inserted and substituted by §5(a), (b), (c) Act 10/1977 WEF 1st January 1977; previously read:
   “(h) interest, other than interest actually incurred in the production of income or interest in respect of a loan obtained by a taxpayer to purchase his own residence [in Fiji]:
      Provided that in the case of interest in respect of a loan obtained by a taxpayer to purchase his own residence [in Fiji]—”
(i) [the only residence he maintains is that in respect of which such loan was obtained]; he maintains only one residence;
(ii) any deduction shall not exceed $200 per annum; and
(iii) such deduction shall not continue on a change of residence except on enforced change;”

4 Relettered as paragraph (i) from (j) by §7(b) Act 21/1980 WEF 1st January 1980
5 Relettered as paragraph (j) from (k) by §7(b) Act 21/1980 WEF 1st January 1980
“(k) alimony or maintenance, other than sums payable under ... an order of a court of competent jurisdiction which a person can establish is paid from income which has borne, or is liable to, tax in Fiji.”

7 Inserted by §4(b) Act 4/2006 WEF 1st January 2006
8 Inserted by §4(c) Act 4/2006 WEF 1st January 2006
9 Inserted by §4(c) Act 4/2006 WEF 1st January 2006
10 Inserted by §4(c) Act 4/2006 WEF 1st January 2006
11 Inserted by §4(c) Act 4/2006 WEF 1st January 2006

Head Office Expenses
19A.1 Notwithstanding any other provisions of this Act, in determining the chargeable income of any company carrying on business in Fiji2 whether incorporated in Fiji or not,3 “no deductions shall be allowed in respect of head office charges or any other like payments in excess of 3% of total gross Fiji Income.

1 Inserted by §7 Promulgation No. 47 of 2007 WEF 1st January 2008
2 Inserted the words “carrying on business in Fiji” by §6(iii) Promulgation No. 35 of 2008 WEF 1st January 2009
3 Inserted a comma by §6(ii) Promulgation No. 35 of 2008 WEF 1st January 2009
4 Deleted “carrying on business in Fiji” by §6(i) Promulgation No. 35 of 2008 WEF 1st January 2009
5 Amended by deleting “5” and substituting with “3” by Decree No.8/2010 WEF 1st January 2010.

Remuneration or gratuity to shareholder, director, relative, etc.
20.—(1) So much of any sum paid or credited by a company and being or purporting to be—
   (a) remuneration for services rendered by any person being a shareholder or director of the company or being a relative by blood, marriage or adoption of any such shareholder or director or of the spouse of any such shareholder or director; or
   (b) (i) any sum paid by the employer for the year in respect of an employee to an approved fund,18 less any amount that is recovered from the employee in respect of that contribution, shall be allowed as an expense incurred in the year in which the same is paid;

18 Amended by Decree No. 6 of 2012 by inserting “(i)” in between “(b)” and “any”. Effective from 1st January 2012.
19 Amended by Decree No. 6 of 2012 by deleting “or to the Fiji National Provident Fund”. Effective from 1st January 2012.
(ii) half of the employers’ 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,\(^{20}\) and\(^{1}\)

as exceeds an amount which, in the opinion of the Commissioner, is a reasonable deduction to be allowed as a sum incurred wholly and exclusively for the purposes of the trade or business of the company shall not be allowable deduction, but nevertheless the excess shall be deemed to be remuneration payable to the recipient for all other purposes of this Act.

(2) So much of any sum paid or credited by a person in trade or business, other than a company, and being or purporting to be—

(a) remuneration for services rendered by any person being a relative by blood, marriage or adoption or any such person in business or of the spouse of any such person; or

(b) notwithstanding the provisions of sub-paragraph (ii) of paragraph (13) of section 17, an allowance, gratuity or compensation in consequence of the retirement of that person from any office or employment held by him in the service of such person in business or upon the termination of such office or employment,

as exceeds an amount which, in the opinion of the Commissioner, is a reasonable deduction to be allowed as a sum incurred wholly and exclusively for the purposes of the business shall not be an allowable deduction, and the excess shall, for all purposes of this Act, be deemed to reduce by a like amount the sum paid or credited to the recipient.

(3) So much of any sum credited to a partner in a family partnership business purporting to be the share of that person in the partnership profits as exceeds the actual sums drawn by him from the business where any of the partners are related shall, for the purposes of this subsection, be apportioned by the Commissioner between and be deemed to be the income of the other partner or partners if, in the opinion of the Commissioner—

(a) any partner does not hold equal authority with other partners in the business; or

(b) the sum credited to any partner as his share of the partnership profits is not within his full control, authority and disposal; or

(c) any partner contributes neither services nor capital to the partnership:

Provided that, where this subsection is invoked by the Commissioner, the actual sums drawn from the business shall be deemed to be a sum not exceeding an amount which, in the opinion of the Commissioner, a proprietor of the business would be expected to pay to an employee of equivalent age and experience as the recipient.

(4) For the purpose of subsection (3)—

\(^{20}\) Inserted by Decree No. 6 of 2012. Effective from 1\(^{st}\) January 2012.
(a) “equal authority” includes authority exercised under a deed or written agreement and de facto management and access to the business bank account;

(b) “family partnership” means a partnership in which more than 50 per cent of the profits are payable to persons who are related by blood, marriage or adoption or to the spouses of persons who are so related.

(5) So much of any sum that is:

(a) paid by a private company to an associated person by way of an advance or a loan;

(b) paid or credited by a private company on behalf of or for the benefit of an associated person,

as the Commissioner is satisfied represents a distribution of profits shall, for the purposes of this Act, be deemed to be a dividend paid by that company:

(i) to the associated person as a shareholder of the company out of the company’s profits; and

(ii) on the last day of the income year of the company, in which the payment or credit, as the case may be, is made.

(6) So much of the value in money or money’s worth of any property which is transferred by a private company to an associated person as the Commissioner is satisfied represents a distribution of the profits of that company shall, for the purposes of this Act, be deemed to be a dividend paid by that company:

(a) to the associated person as a shareholder of that company out of that company’s profits;

(b) on the last day of the income year of the company in which the transfer is made.

(7) For the purposes of subsections (5) and (6), “associated person” means any person referred to in subsection (1).

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1 Substituted new paragraph by repealing paragraph (b) §21(1)b Act 1/2003 WEF 1st January 2003
2 Inserted by §7 Act 3/2005 WEF 1st January 2005
3 Inserted by §7 Act 3/2005 WEF 1st January 2005

**Expenses deductible**

21.—(1) In determining total income, the following deductions shall be allowed:—
Depreciation

(a) an amount, in accordance with instructions issued by the Minister under this paragraph—
   (i) for depreciation of capital expenditure incurred; or
   (ii) for capital expenditure incurred on improvements to land use for agricultural or pastoral purposes;

(b) notwithstanding the provisions of sub paragraph (ii) of paragraph (13) of section 17, an allowance, gratuity or compensation in consequence of the retirement of that person from any office or employment held by him or her in that company, or upon termination of such office of employment.

Experimentation and research

(c) such amount expended in the year on experimentation, scientific research or investigation, connected with the business of the taxpayer as the Commissioner may in his discretion allow;

   Expenses of prospecting

   (ii) 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 Commissioner may, in his 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 Commissioner in his 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;

Contributions to War Memorial And-Tuberculosis Fund

(d) any donation made by the taxpayer to the War Memorial Anti-Tuberculosis Fund in the year in which the donation is made;

   Profits on sale of minerals, timber or gravel or rights therein

   (e) 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

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21 Amended by Decree No. 42 of 2012. Correction by deleting (i) any sum paid by the employer for the year in respect of an employee to an approved fund, less any amount that is recovered from the employee in respect of that contribution, shall be allowed as an expense incurred in the year in which the same is paid;

(ii) half of the employer’s 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.
wholly exclude expenditure which may be claimed under paragraph (c) or under section 23;

**Contributions to Fiji Visitors Bureau**

(f) [one and one-half times the amount of any contribution] made by a taxpayer carrying on any business in Fiji to the Fiji Visitors Bureau in the year in which such contribution is made;

**Election costs**

(g) any amount expended in the income year by a taxpayer in being elected as a member or in contesting election for membership of the House of Representatives, to the extent that all or part of such amount has not been reimbursed or paid to the taxpayer by any other person;

(h) any deductions authorised under the 11th Schedule;

**Fines, premiums for goodwill, payments for goodwill or expenditure incurred under an agreement to effect improvements**

(i) on the grant of a lease for business purposes any fine, premium, payment for goodwill or other consideration paid or any expenditure incurred in pursuance of an obligation to effect improvements on land or to buildings whereby the right of use or occupation of that land or buildings is granted by any other person. The total amount paid shall be apportioned over the period of the lease unexpired at the date of payment, and the amount deducted for any year shall not exceed the amount apportioned to that year;

(j)

**Unit trusts**

(k) in the case of a unit trust, a dividend declared, paid or credited by it, other than a dividend distributed out of profits of a capital nature or out of profits from direct investment. For the purposes of this paragraph, "direct investment" means profits or gains arising from any trade or business but not income derived from stocks, shares or other securities;

(l) ...

(m) income carried to any reserve fund or capitalised in any way by any co-operative society registered under the Co-operative Societies Act;

(n) [the amount] of any cash donation by a taxpayer to [the Cyclone Kina Appeal 1993 or to] the University of the South Pacific Endowment Fund, St. John’s Ambulance Brigade, Fiji Red Cross Society, Fiji Crippled Children’s Society, Fiji Blind Society, [Fiji Audio-Visual Commission, Audio-Visual Collection, Audio-Visual School] and such similar academic and charitable institutions as may be approved by the Commissioner:

Provided that relief shall only be granted in terms of this paragraph in respect of donations which do not exceed, in aggregate $100,000;

(o) ...
such amount as is deposited [by a company] in an account approved by the Commissioner specifically operated by any [financial institution licensed under the Banking Act 1995] for the purpose of providing a reserve for loss to property situated in Fiji caused by windstorm, tidal wave, landslide or a like catastrophe:

Provided that—

(i) the deduction allowed shall not exceed in the case of [a commercial, industrial or agricultural building] 1.5 per cent [per annum] of the replacement cost, or in the case of residential [building] the lesser of $500 or 1.5 per cent [per annum] of the replacement cost, of the property in respect of which such account is operated;

(ii) any amount … which is withdrawn [from such account] and not applied towards the repair of property damaged by windstorm, tidal wave, landslide or a like catastrophe, shall be assessed together with any interest thereon, in terms of paragraph (bb) of section 11.

[In this paragraph “building” includes outbuildings, walls, gates, fences and such other ancillary structures as may be approved by the Commissioner, which are on the same premises as, and used in connection with, a principal building.]  

(i) one and one-half times the amount of any wages or salaries paid between 1 January 1997 and 31st December 2012 by any person carrying on a trade or business in Fiji to a qualifying employee:

Provided that—

(aa) any person wishing to claim this deduction shall first register with the Commissioner by providing such information as he may require;

(bb) the wages or salaries paid to the employee in respect of whom the deduction is claimed must be not less than 72 cents per hour;

(cc) the deduction under this paragraph shall not be available unless the Commissioner is satisfied such person has not terminated the employment of any employee in order to take advantage of this deduction:

(ii) For the purposes of this paragraph “qualifying employee” means an additional employee who commences employment in Fiji after 31 December 1996 and who has not previously been in full-time paid employment of any person;

(iii) Notwithstanding the provisions of sub-paragraphs (i) and (ii), the deduction is restricted to salary and wages paid in respect of the 12-
month period commencing from the date of the appointment of the employee.

\(s\)

(i) one and one half times the amount of any cash donation made by a taxpayer between 1st January 1998 and 31st December 2001 to the South Pacific Games Infrastructure Fund;

(ii) two times the amount of any cash donation made by a taxpayer between 1st January 2002 and 31st December 2003 to the South Pacific Games Infrastructure Fund, 2003 South Pacific Games Organising Committee and South Pacific Games Organising Committee Limited:

Provided that any amount to which this paragraph applies must be deducted in the year the cash donation is made or in an equal proportion in each of any 3 out of 5 years consisting of the year in which the donation is made and the next 4 succeeding years;

\(t\)

any amount expended between 1st January 1998 and 31st December 2000 on either the modification and testing of hardware or software in making a computer year 2000 compliant, or the acquisition of hardware or software to make a computer year 2000 compliant:

Provided that any amount to which this paragraph applies must be deducted from total income in 3 equal parts in the year of expenditure and the 2 subsequent years of income;

\(u\)

subject to section 21D, an amount, not exceeding $1,000, being the value of discount included in total income under section 11A in respect of shares or options acquired in a qualifying employee share scheme;

\(v\)

one and one half times the amount of cash donation exceeding $100,000 made by a taxpayer to a Sports Fund [as approved by the Commissioner of Inland Revenue] for the purposes of sports development in the Fiji;

\(w\)

one and one half times the amount of cost, associated with preparations for listing on the South Pacific Stock Exchange incurred by a company. For the purposes of this paragraph, the following may constitute as costs associated with listing on the South Pacific Stock Exchange –

(i) investment advisory fees including advice on –

(A) suitability for listing;

(B) business establishment, business re-organisation and restructuring;

(C) overall management of the public offer and listing process;

(D) due diligence;

(E) securities valuation;
(F) preparation of offer documents; and
(G) road show costs;

(ii) legal fees involving cost associated with vetting of offer documents and general advice during restructure and offer and listing on the stock exchange;

(iii) accounting fees for services relating to preparation of independent accountants’ reports and financial statement summaries;

(iv) company administration and management cost including –

(A) stamp duties;
(B) printing costs relating to the prospectus;
(C) marketing costs;
(D) South Pacific Stock Exchange application fee;
(E) first year listing fee;
(F) costs associated with business establishment, business re-organisation and restructuring;

(v) underwriting fees;

(vi) brokers’ fees for public or private placement of the securities; or

(vii) costs of any other special reports required for floating and listing the company;\textsuperscript{42}

\textsuperscript{43} one and one half times of each dollar of direct capital expenditure by Australia and New Zealand Banking Group Limited and other commercial banks in rural banking programmes carried on by them;

\textsuperscript{44} A sum not exceeding 150 percent of the amount of contributions to the Fiji Heritage Foundation, a charitable trust registered under the Charitable Trusts Act;\textsuperscript{45}

\textsuperscript{46} three times the amount of capital expenditures spent of an amount business set up from 1st July 2005 to 31st December 2010 on the island of Vanua Levu. For the purpose of this paragraph-

“qualifying capital expenditure” means expenditure of an amount not less than $40,000 incurred for the purpose of acquiring a capital asset for use in the carrying on of an investment activity but does not include land or buildings, passenger vehicles or trading stock;
“an investment activity” means information communication and technology, agriculture, forestry, mining, manufacturing, textile, clothing and footwear, timber manufacturing, fishery manufacturing or ship building;

\( (zb)^{47} \) two times the amount of any wages or salaries paid from 1st January 2006 to 31st December 2008 by an person carrying on a trade or business on the island of Vanua Levu to a qualifying employee. The requirements under paragraph (r)(i)(aa) to (cc) apply to this paragraph.[48]

\( (zc)^{49} \) two times the amount of capital spent on the primary industries of agriculture and fisheries, including purchase of farm implements and plant and machinery used on the farm, cost of irrigation, the preparation of land for agriculture or grazing, the planting of income generating trees or crops:

Provided that the incentives are available only –
(i) to taxpayers who do not enjoy other incentives under this Act; and
(ii) for the period commencing 1 January 2006 and ending 31 December 2010;

\( (zd)^{50} \) the amount spent in investment or re-investment by a taxpayer engaged in value adding processes using at least 50 percent of local materials in food processing, agriculture processing, fisheries or forestry business.

“local content” includes material, labour and other matters prescribed.

\( (ze)^{51} \) one and one half times the amount of cash donation made or the value of the services provided by a taxpayer between 1 September 2006 and 31 October 2006 towards the organisation and sponsorship of the 3rd Melanesian Arts and Craft Festival 2006;\[52\]

\( (zf)^{53} \) ………………………..\[22\]

\( (zg)^{54} \) ………\[55\]

\( (zh)^{56} \) two times the amount of any cash donation exceeding $30,000 made by a taxpayer between 1 January, 2009 and 31 December, 2010 to the Fiji Audio Visual Commission\[57\] towards the organization and sponsorship of the “Fiji International Film Festival”;

“interest in respect of a loan obtained by a taxpayer to purchase his own residence in Fiji. Provided that –
(i) the only residence which the taxpayer maintains is that in respect of which such loan was obtained;
(ii) any deduction shall not exceed $400 per annum;
such deduction shall not continue on a change of residence;”
(zi)\(^{58}\) two times the amount of any cash donation exceeding $50,000 made by a taxpayer to the Poverty Relief Fund for Education (PRFE); and

(zj)\(^{59}\) two times the amount of any cash donation exceeding $10,000\(^{60}\) made by a taxpayer in 2009 to the Hibiscus Committee in concurrence with the Commissioner towards the organization and sponsorship of the “Miss South Pacific Pageant 2009;

(zk)\(^{61}\) two times the amount of capital spent by any existing legal entities in Vanua Levu that is engaged in commercial agricultural farming and agro-processing as approved by the Commissioner under section 17(76) –

Provided that the incentives are available only –

(i) to taxpayers who do not enjoy other incentives under this Act;
(ii) the capital investment is more than $250,000; and
(iii) for the period commencing 1 February 2009 and ending 1 March 2010;

(zl)\(^{62}\) two times the amount of any cash donation exceeding $1,000 made by a taxpayer in 2009 by –

(i) deposit to the Prime Minister’s National Disaster Relief and Rehabilitation, Colonial National Bank Account No. 4706578; or
(ii) deposit to an account operated by an organization or company as approved by the Commissioner that raises funds towards the 2009 Flood Victims;

(zn)\(^{63}\) one and one half times the amount of expenditure not exceeding $250,000, incurred by a taxpayer, on marketing goods and services for export to South Pacific Island countries, excluding Australia and New Zealand

(2) \(\ldots^{64}\)

(3) \(\ldots^{65}\)

(zm)\(^{66}\) fifty five per cent of capital expenditure (excluding motor vehicles, furniture and fittings) incurred in Fiji by Tropic Health Incorporated (Fiji) Limited trading as Suva Bay view Medical Hospital (“the company”) from profits earned in or derived from Fiji, provided that –

(i) this allowance applies only to the initial capital investment made by the company and any additional incremental investment of $100,000
and above made in each of the three years next following the making of the initial investment; and

(ii) if the company sells or otherwise disposes of the capital asset, the amount of deduction allowed under this paragraph is deemed to be income of the company in the year in which the sale or disposal took place.

(zo) 23 forty percent of capital expenditure incurred by any existing businesses located in Vanua Levu excluding those businesses under the twelfth schedule;

“capital expenditure” means expenditure of an amount (or total) not less than $50,000 excluding cost of labor incurred for the purpose of extension or renovation of buildings located in Vanua Levu.

(zp) two times the amount of any cash donation exceeding $1000 made by a taxpayer between the period of 27th January, 2012 and 31st May 2012 by depositing into the Prime Minister’s Flood Appeal Fund, Bank of the South Pacific Bank Account

Deduction for dividends

21A. 67—(1) In determining total income, a deduction shall be allowed in accordance with this section for a qualifying dividend included in a taxpayer’s total income.

(2) For the purposes of this section, “qualifying dividend” means a dividend paid or credited by a company to the extent that it has been paid or credited from income which has been charged to tax.

(3) The amount of the deduction is the amount of the qualifying dividend.

(4) A deduction shall not be allowed unless the taxpayer provides to the Commissioner a certificate issued by the company paying or crediting the dividend in accordance with the regulations.

24 Inserted by Decree No. of 2012. Effective from 27th January 2012

1 Substituted by §8 Act 10/1998 WEF 1st January 1998 – previously read:

“(a) such amount as the Commissioner may consider reasonable in respect of—

(ii) depreciation on capital expenditure incurred; or

(ii) improvements to land used for agricultural or pastoral purposes, in accordance with any general instructions of the Minister:

Provided that—

(aa) 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 realised 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 disponent the initial and depreciation allowances which have been or would have been granted in respect thereof;

Disposal, loss or destruction of an asset

(bb) 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 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 paragraph (cc) be an allowable deduction;

(cc) where any property referred to in paragraph (bb) is disposed of by a transaction other than an arm’s-length transaction, no deduction shall be given, the sale price being treated as the value as written down by initial and depreciation allowances;

(dd) for the purpose of this paragraph, the Commissioner 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;


3 Repealed and substituted by §7(a) Act 1/2003 WEF 1st January 2003 – previously read:

“(b) (i) any sum paid by the employer for the year by way of the minimum statutory contribution in respect of an employee to an approved fund or to the Fiji National Provident Fund, to the extent that it is an ordinary contribution and is not recoverable from the employee, in which case it shall be allowed as an expense incurred in the year in which the same is paid;

(ii) any contribution referred to in sub-paragraph (i) that is not an ordinary contribution, to the extent that the Commissioner considers it to be allowable, in which case it shall, as the Commissioner in his discretion may direct, be treated either as an expense incurred in the year in which the same is paid or as an expense to be spread over a number of years;

(iii) notwithstanding sub-paragraphs (i) and (ii), the maximum amount to be allowed under this paragraph as an expense in any year in respect of any 1 employee shall be—

(a) where contribution is made to the Fiji National Provident Fund, the amount of the minimum statutory contribution to that Fund in that year;

(b) where contribution is made to an approved fund, an amount of $1,000:

Provided that, in the event of any 1 employee being employed by more than 1 employer, the amount to be allowed under this paragraph shall be such amount in respect of each such employee as the Commissioner may, in his discretion, determine, so that however, the total amount allowed to all the employers of such employee shall not exceed the amount specified in either (a) or (b) above, as the case may be;”

4 Substituted for “any contribution” by §7(a) Act 21/1982 WEF 1st January 1983

5 Substituted for “Hotels Aid Act” by Promulgation No. 27 of 2007 WEF 1 July 2007

6 Repealed by §5(a) Act 4/2006 WEF 1st January 2006 – previously read:

“Export Incentives

(j) any deduction authorised under the Fifth Schedule in respect of Export Incentives;”

7 Paragraph (k) inserted by §5 Act 23/1979 WEF 1st January 1978

8 Paragraph (l) inserted by §8(b) Act 21/1980 WEF 1st January 1980; deleted by §9 Decree 30/1992 WEF 1st July 1992

9 Paragraph (m) inserted by §8(b) Act 21/1980 WEF 1st January 1980


11 Paragraph (n) inserted by §8 Act 3/1982 WEF 1st January 1982

12 Amended by deleting “one half” and substituting “the amount” by §10(a) Decree 8/2001 WEF 1st January 2001

13 Words inserted (by substitution) by §2 Act 3/1993 WEF 1st January 1993


15 Substituted for $50,000 by §8(a) Act 3/2005 WEF 1st January 2005; amended by deleting everything after “in aggregate,” and substituting “$50,000” by §10(a) Decree 8/2001 WEF 1st January 2001- previously read -
“(n) one half of any cash donation by a taxpayer to [the Cyclone Kina Appeal 1993 or to] the University of the South Pacific Endowment Fund, St. John’s Ambulance Brigade, Fiji Red Cross Society, Fiji Crippled Children’s Society, Fiji Blind Society and such similar academic and charitable institutions as may be approved by the Commissioner:

Provided that relief shall only be granted in terms of this paragraph in respect of donations which do not exceed, in aggregate, $4,000 by an individual and $10,000 by a company”

18 Inserted by §7(b) Act 21/1982 WEF 1st January 1983; repealed by §9(3) Decree 30/1992 WEF 1st July 1992 – previously read:

“(o) expenditure incurred during the income year in the acquisition of a solar appliance, manufactured or assembled in Fiji, and used for heating, lighting, air-conditioning or cooking:

Provided that—

(i) any deduction shall not exceed 20 per cent of the cost of acquisition of the appliance or the sum of $200, whichever is the less; and

(ii) the taxpayer shall satisfy the Commissioner that he intends to retain and use the appliance for a minimum period of 2 years from the date of acquisition;”

19 Inserted by §5 Act 17/1984 WEF 21st December 1984; Repealed by §5(a) Act 4/2006 WEF 1st January 2006 – previously read:

“(p) one and one half times the amount of any expenditure approved by the Economic Development Board of Fiji as incurred towards promotion of export of any product in respect of which a deduction from chargeable income or a rebate of the tax charged has been or may be allowed in accordance with the provisions of the Fifth Schedule;”

18 Inserted by §8 Act 23/1985 WEF 1st January 1986
20 Substituted for “property” by §7(1) Act 25/1986 WEF 1st January 1986
22 Words “referred to in the preceding paragraph” deleted (by substitution) by §7(1) Act 25/1986 WEF 1st January 1986
24 Substituted for “property” by §7(1) Act 25/1986 WEF 1st January 1986
Export income deduction

21B.¹ In determining total income, a deduction for export income shall be allowed in accordance with this section.
(2) The amount of the deduction, representing a percentage of the export income, is set out in the following Table—

<table>
<thead>
<tr>
<th>Year of assessment</th>
<th>Percentage of export income to be deducted</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001 and 2002</td>
<td>100%</td>
</tr>
<tr>
<td>2003 and 2004</td>
<td>75%</td>
</tr>
<tr>
<td>2005 and 2006</td>
<td>50%</td>
</tr>
<tr>
<td>2007</td>
<td>50%</td>
</tr>
<tr>
<td>2008</td>
<td>50%(^2)</td>
</tr>
<tr>
<td>2009 and 2010(^4)</td>
<td>50%(^5)</td>
</tr>
</tbody>
</table>

The period for export income deduction is extended as set out in the following table\(^6\) -

<table>
<thead>
<tr>
<th>Year of assessment</th>
<th>Percentage of export income to be deducted(^7)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>50%</td>
</tr>
<tr>
<td>2012</td>
<td>40%</td>
</tr>
<tr>
<td>2013</td>
<td>30%</td>
</tr>
<tr>
<td>2014</td>
<td>20%</td>
</tr>
<tr>
<td>2015</td>
<td>10%(^8)</td>
</tr>
</tbody>
</table>

(3) For the purposes of this section, “export income” means [net]\(^7\) profits\(^8\) derived by a taxpayer from the business of exporting goods or services [but excludes re-exports]\(^9\).

(4)\(^10\) The Commissioner may, where separate records for export income are not maintained, determine such income on the basis of the following formula:-

\[
\frac{A}{B} \times C
\]

Where: -

- A is total export sales;
- B is total sales; and
- C is total profits arising from all sales.

(5)\(^11\) A deduction may not be claimed under this section in respect of income for which a deduction or rebate is claimed or allowed under the Fifth Schedule.

Deduction for Vunua Levu
(6) In determining total income, a 100% deduction for export income derived from new business established on the island of Vanua Levu between 1st July 2005 and 31st December 2010 shall be allowed in accordance with this section. The requirements specified under subsections (3) to (5) apply to the determination of deduction under this subsection.

(7) For the purposes of this section, the export income deduction will only be allowed if the Commissioner of Inland Revenue is satisfied that the export earnings will be remitted to Fiji.

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1 New section inserted by §12 Decree 8/2001 WEF 1st January 2001
2 Table substituted by §3 Promulgation 19/2007 WEF 1st January 2007 – previously read as:

```
<table>
<thead>
<tr>
<th>Year of assessment</th>
<th>Percentage of export income to be deducted</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001 and 2002</td>
<td>100%</td>
</tr>
<tr>
<td>2003 and 2004</td>
<td>75%</td>
</tr>
<tr>
<td>2005 and 2006</td>
<td>50%</td>
</tr>
<tr>
<td>2007 and 2008</td>
<td>25%</td>
</tr>
<tr>
<td>2009 and every year thereafter</td>
<td>0%</td>
</tr>
</tbody>
</table>
```

3 Substituted for “25%” by §9(a) Promulgation No. 47 of 2007 WEF 1st January 2008
4 Substituted “2010” for “every year thereafter” by §8(ii) Promulgation No. 35 of 2008 WEF 1st January 2009
5 Substituted for “0%” by §8(i) Promulgation No. 35 of 2008 WEF 1st January 2009
6 Table is added by Decree No.70 of 2010 WEF 1st January 2011.
7 Inserted by §11 Act 4/2004 WEF 1st January 2004
8 Substituted for “income” by §8(b) Act 4/2002 WEF 1st January 2002
9 Substituted for “40%” by §8(c) Act 4/2002 WEF 1st January 2002
10 Subsection inserted by §8(c) Act 4/2002 WEF 1st January 2002 - previously numbered "(4)"
11 Inserted by §3 Act 18/2005
12 Subsection inserted by §9(b) Promulgation No. 47 of 2007 WEF 1st January 2008

Investment allowance

21C.—(1) In determining total income, a taxpayer may, in accordance with this section, claim as a deduction in a qualifying year an investment allowance equal to 40% of the qualifying expenditure.

(2) In respect of any particular asset, a taxpayer may not claim more than one investment allowance for that asset, either in the same year of assessment or any other year of assessment.

(3) A taxpayer may claim an investment allowance in respect only of—

(a) new capital assets purchased by the taxpayer, either in Fiji or in any other country and imported into Fiji; and
any capital asset purchased by the taxpayer in any country other than Fiji, and imported into Fiji.

(4) If a taxpayer sells or otherwise disposes of a capital asset within 3 years of a year in which a deduction under this section was made, the amount of the deduction is deemed to be income of the taxpayer in the year that the sale or disposal took place.

(5) For the purposes of this section—

“agricultural, forestry or marines resources business” means a business which processes or manufactures Fiji natural resources to the extent that the resources are substantially transformed, but excludes a restaurant or a retail food outlet;

“capital asset” means any capital asset but does not include -
(a) land or buildings;
(b) passenger vehicles; or
(c) trading stock;

“Fiji natural resources” means unprocessed or raw natural produce, including timber, wholly derived in or from Fiji;

“information technology business” means a business providing services specifically based on utilising information technology, and delivered by making use of open networks and tele-communications, including—
(a) call centres;
(b) ticketing, ordering and reservations services;
(c) data base, records, and list management;
(d) data entry and processing;
(e) web site development and management;
(f) software programming and design;
(g) tele-medicine services;
(h) internet service provision,
but excludes—
(A) the retailing or wholesaling of information technology products;
(B) the sale, care, repair or service of any item;

“investment activity” means—
(a) an agricultural, forestry or marines resources business;
(b) an information technology business; or
(c) a rural manufacturing business;

“manufacturing” means any activity included under Major Division 3 of the Fiji Standard Industrial Classification (FSIC) codes.

“qualifying expenditure” means expenditure of an amount (or total amounts) not less than $50,000 incurred for the purpose of acquiring a capital asset (or assets) for use in the carrying on of an investment activity;
[“qualifying year” means a year of assessment between 2001 and 2010];

“rural manufacturing business” means a manufacturing business carried on in a location not less than 25 kilometres, measured by the most direct road route, from the general post office in Suva or the principal post office in Lautoka, Nadi, Nausori or Navua;

“substantial transformation” means a process applied to Fiji natural resources which results in a different classification under the Harmonised System (HS) codes of the processed materials from that of the unprocessed materials, but excludes—

(a) repackaging and rebottling; and
(b) logging of timber.

1 New section inserted by §13 Decree 8/2001 WEF 1st January 2001
2 Substituted by §9 Act 4/2002 WEF 1st January 2002 - previously read:

‘capital asset’ means any capital asset but does not include—

(a) a building;
(b) a passenger vehicle; or
(c) trading stock;”


“―qualifying year‖ means a year of assessment between 2001 and 2005 (both years inclusive) in which the qualifying expenditure was incurred”

Employee share schemes

21D.1—(1) For the purposes of this section, section 11A and section 21(1)(u), an employee share scheme is a scheme under which an employee may acquire shares or options to acquire shares in the employer in respect of, or for or in relation directly or indirectly to, the taxpayer’s employment.

(2) For the purposes of section 21(1)(u), an employee share scheme is a qualifying employee share scheme if—

(a) the shares or options acquired under the scheme are ordinary shares or options to acquire ordinary shares;

(b) all employees, whether full-time or part-time employees, who have at least one year’s service may participate in the scheme;

(c) any financial assistance provided by the employer to its employees to assist in the acquisition shall be provided on a non-discriminatory basis; and

(d) acquired shares or options may not be sold or otherwise disposed of for a period of not less than 2 years, other than if the employee cease employment.

(3) For the purposes of this section and section 11A—
“employee” includes a director and any person providing personal services to an employer;

(a) 80 percent of the taxpayer’s income shall be exempt from tax if the business is employing 101 employees or more;
(b) 60 percent of the taxpayer’s income shall be exempt from tax if the business is employing from 60 to 100 employees; and
(c) 40 percent of the taxpayer’s income shall be exempt for taxpayers employing from 10 to 59 employees.

(2) For the purposes of this section, Information Communication Technology business includes software development, call centres and internet service provision, but does not include retail or wholesale of information technology products and the repair, sale or service of any such product.

(3) Notwithstanding any of the provisions of section 19, a deduction of 150% shall be allowed under this section in respect of costs incurred for the development of Information Communication Technology business, including software development, call centres or internet services by any taxpayer employing 500 or more employees.

(4) The incentive referred to under subsection (1) is available for the period commencing 1 January 2006 and ending 31 December 2012.

(5) For the purpose of this section, “increase in capacity” means –
(a) in the case of employees, an increase of 50 employees; and
(b) in the case of sales, an increase of at least 50 percent sales, from 1 January 2006.
Investment Allowance in Fixed Line Next Generation Network

21F. (1) In determining total income, a taxpayer may, in accordance with this section claim as a deduction in a qualifying year an investment allowance equal to 60% of the qualifying expenditure.

(2) In respect of any particular asset, a taxpayer may not claim more than one investment allowance for that asset, either in the same year of assessment or any other year of assessment.

(3) A taxpayer may claim an investment allowance in respect only of—
   (a) new capital assets purchased by the taxpayer, either in Fiji or in any other country and imported into Fiji; and
   (c) any capital asset purchased by the taxpayer in any country other than Fiji, and imported into Fiji.

(4) If a taxpayer sells or otherwise disposes of a capital asset within 3 years of a year in which a deduction under this section was made, the amount of the deduction is deemed to be income of the taxpayer in the year that the sale or disposal took place.

(5) For the purpose of this section—
   “capital asset” means any capital asset but does not include -
   (a) land or buildings;
   (b) passenger vehicles; or
   (c) trading stock;

   “investment activity” means infrastructure investment in Fixed Line Next Generation Network;
   “qualifying expenditure” means expenditure of an amount (or total amounts) not less than $50,000 incurred for the purpose of acquiring a capital asset (or assets) for use in the carrying on of an investment activity;
   [“qualifying year” means a year of assessment between 2009 and 2012];

1 Inserted by §10 Promulgation No. 35 of 2008 WEF 1st January 2009
Losses

22.—(l) Any loss incurred in the year in any trade, business, profession or vocation carried on by any [taxpayer], shall—

(a) be set off against the taxpayer’s income from other sources for the same year:

Provided that—

(i) no relief shall be allowed under the provisions of this paragraph in respect of any loss suffered from any transaction of trade, business, profession or vocation if a profit derived from such transaction would not have been included in chargeable income;

(ii) no relief shall be allowed under the provisions of this paragraph in respect of any loss incurred as a result of an allowance or any other relief or deduction available under the Eleventh Schedule; and

(b) to the extent to which it is not allowed under sub-paragraph (a), be carried forward and, subject as is hereinafter provided, be set off against what would otherwise have been [the taxpayer’s] total income for the next years in succession:

Provided that—

(i) the amount of any such loss allowed due to be set off in computing the total income of any year shall not be set off in computing the total income of any other year;

(ii)

(iii)…………

(iv) no relief shall be allowed under the provisions of this paragraph in respect of any loss suffered from any transaction of trade, business, profession or vocation, if a profit derived from such transaction would not have been included in chargeable income;

(v) a loss in respect of any trade, business, profession or vocation shall cease to be available for relief in respect of the years following the year in which such trade, business, profession or vocation is sold, ceases, or its nature changes substantially:

Provided that the Minister, where he considers it to be to the economic benefit of Fiji, may determine that any such loss may be carried forward and be available for relief subject to the other provisions of this section.

26 Amended by Decree No. 6 of 2012 by deleting “Hotels Aid Act” and substituting “Eleventh Schedule”. Effective from 1st January 2012.
27 Amended by Decree No.6 of 2012 by deleting “8” and substituting “4”. Effective from 1st January 2012.
(c) to the extent to which it is prohibited under sub-paragraph (a), in the case of an allowance or any other relief or deduction available under the Eleventh Schedule, be carried forward to be set off against what would otherwise have been the taxpayer’s total income for the next 8 years in succession provided that losses carried forward can only be set off against the total income of that hotel business or the total income from that hotel premises.$^{29}$

(2)$^8$ For the purpose of this section –

(a) any loss incurred by a taxpayer shall be ascertained in accordance with the provisions of this Act for the calculation of total income; and

(b) the period of four$^{30}$ years referred to in paragraph (b) of subsection (1) shall apply to losses incurred on or after the 2012$^{31}$ year of income.

(3)$^9$ Notwithstanding subsections (1) and (2), if a company claims to carry forward to any income year (“carry forward year”) any loss incurred by it in any former income year (“loss year”), the claim must not be allowed unless the shareholders of the company during the whole of the carry forward year were substantially the same as the shareholders of the company during the whole of the loss year.

(3A)$^{10}$ For the purposes of subsection (3)—

(a) the shareholders of a company during the whole of the carry forward year shall be deemed to be substantially the same as the shareholders of the company during the whole of the loss year if, at all times during the carry forward year and the loss year, not less than 51% of the voting power in and the right to receive dividends from the company was held by or on behalf of the same persons, and, at all times during those years, not less than 51% of the nominal value of the allotted shares in the company were held by or on behalf of the same persons;

(b) shares in a company held by or on behalf of another company are deemed to be held by the shareholders of that other company;

(c) shares held by or on behalf of the trustee of the estate of a deceased shareholder, or by or on behalf of the persons entitled to those shares as beneficiaries in the estate of a deceased shareholder, are deemed to be held by that deceased shareholder.

(4)$^{11}$ If a claim to carry forward a loss under subsection (1)(b) is not allowed by the Commissioner under subsection (3), that claim shall be allowed if the company carries on the same business in the carry forward year as it did in the loss year.

$^{29}$ Inserted by Decree No. 33 of 2012. Effective from 1st January 2012.

$^{30}$ Amended by Decree No. 6 of 2012 by deleting “eight years” and substituting “four years”

$^{31}$ Amended by Decree No.6 of 2012 by deleting “2001” and substituting “2012”.
(4A) For the purposes of subsection (4), a company does not carry on the same business if it derives income from—

(a) a business of a kind it did not carry on when the loss was incurred; or

(b) a transaction of a kind that it had not entered into in the course of its business operations when the loss was incurred;

(c) a business or kind of transaction that was not carried out during the whole of the loss year.

(5) Notwithstanding anything contained in subsections (7) and (8), any loss incurred in any trade, business, profession or vocation with effect from 1st January 2012 shall only be carried forward for a period of up to 4 years in succession.

(6) Any loss incurred in any trade, business, profession or vocation prior to 1st January, 2012 shall only be carried forward for a period of up to 4 years in succession, provided that the total period, including any period prior to or after 1st January 2012, shall not exceed 4 years in succession.

(7) Notwithstanding anything contained in this section, any taxpayer who incurred losses in any trade, business, profession or vocation and has carried forward such losses for more than 4 years in succession prior to 1st January 2012, shall cease to continue carrying forward losses from 1st January 2012.

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32 Amended by Decree No. 33 of 2012. Effective from 1st January 2012. Previously read –

“(5) Notwithstanding the provisions of this Act, all losses incurred in any trade, business, profession or vocation carried on by any taxpayer prior to 1st January, 2012, shall cease to continue from 1st January, 2012.”

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1 Amended by deleting "person, either solely or in partnership" and substituting "taxpayer" by §14(1)(a) Decree 8/2001 WEF 1st January 2001
2 Repealed and replaced by §10(a) Act 4/2002 WEF 1st January 2002 - previously read: ‘(a) be set off against the taxpayer’s income from other sources for the same year:

Provided that no relief shall be allowed under the provisions of this paragraph in respect of any loss
suffered from any transaction of trade, business, profession or vocation if a profit derived from such transaction
would not have been included in chargeable income; and”
3 Substituted for “his” by §14 (1)(c) Decree 8/2001 WEF 1st January 2001
4 Amended by deleting “6” and substituting “8” by §14 (1)(d) Decree 8/2001 WEF 1st January 2001
5 New sub-paragraph inserted by §10(b) Act 4/2002 WEF 1st January 2002
6 Amended by deleting “for the next 8 years in succession” by §9(a) Act 4/2003 WEF 1st January 2003
7 Sub-paragraph renumbered by §10(b) Act 4/2002 WEF 1st January 2002 - previously numbered "(v)"
8 Repealed and substituted by §10(c) Act 4/2002 WEF 1st January 2002. Previously read: "(2) For the purpose of this section, any loss incurred by a taxpayer shall be ascertained in accordance with the provisions of this Act for the calculation of total income."

9 Repealed and substituted by §14 (1)(e) Decree 8/2001 WEF 1st January 2001 - previously read:

"(3) Notwithstanding anything in the foregoing provisions of this section, if any company claims to carry forward to any income year any loss incurred by it in any former income year, the claim shall not be allowed unless the Commissioner is satisfied that the shareholders of the company on the last day of the first-mentioned income year were substantially the same as the shareholders of the company on the last day of the income year in which the loss was incurred. For the purposes of this subsection and subsection (4)—

(i) the shareholders of a company at any date shall be deemed not to be substantially the same as the shareholders on any other date unless, on both those dates, not less than 51 per cent of the voting power in and the right to receive dividends from the company was held by or on behalf of the same persons, nor unless, on both those dates, not less than 51 per cent of the nominal value of the allotted shares in the company were held by or on behalf of the same persons;

(ii) shares in a company held by or on behalf of another company shall be deemed to be held by the shareholders of the last-mentioned company and shares held by or on behalf of the trustee of the estate of a deceased shareholder, or by or on behalf of the persons entitled to those shares as beneficiaries in the estate of a deceased shareholder, shall be deemed to be held by that deceased shareholder."

10 Inserted by §14(1)(e) Decree 8/2001 WEF 1st January 2001

11 Repealed and substituted by §14 (1)(e) Decree 8/2001 WEF 1st January 2001 - previously read:

"(4) A company may claim exemption from the provisions of subsection (3) on the grounds that its operations are for the economic development of Fiji, if the trade or business carried on at the end of the income year is, in the opinion of the Commissioner, likely to be continued, in which case, the Commissioner shall refer the claim to the Minister who may determine that the provisions of subsection (3) shall not apply to that company. Any such determination shall cease to have effect and shall be deemed never to have been made in the event of the shareholders of the company ceasing to be substantially the same."

12 Inserted by §14(1)(e) Decree 8/2001 WEF 1st January 2001

Special provision for mining expenditure

23.—(1) Notwithstanding the other provisions of subsection (1) of [section 21], 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 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 total income one-fifth of the amount of such expenditure:

Provided that a deduction under paragraph (a) of subsection (1) of section 21 shall not be allowed in addition to expenditure allowed under this section.

(2) The expenditure to which this section refers is—

(a) capital expenditure, not claimed under paragraph (c) of subsection (1) of section 21, incurred in the development of mines and the extraction, treatment, refinement and sale of minerals therefrom; and

(b) expenditure incurred in the acquisition of any mining lease or tenement:

Provided that—

(i) where the Commissioner 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 may make such adjustment with
regard to such sum as, in his 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—

(aa) 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

(bb) 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
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 spouse and of any
relative of his, whether by blood, marriage or adoption, and in
the case of a company the provisions of subsections (2), (4),
(5) and (6) of section 12 shall apply for the purpose of
determining who is in control;

(iii) such expenditure as is excluded by sub-paragraph (bb) shall not be
claimable under paragraph (e) of section 21.\textsuperscript{2}

(3) Expenditure of the nature referred to in subsection (2) which has been incurred by
any company at any time prior to the termination of the fiscal year 1950-51 shall, to the
extent to which it appears in the annual accounts of that year as not having been written
off, be deemed for the purposes of subsection (1) to have been incurred in the fiscal year
1951-52.

(4) 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.

(5) Where, in the case of any mining company, the Minister has directed that the
provisions of paragraph (a) of subsection (2) of section 16 shall apply to such company
for any period, then, in calculating the income of that company during such period, there
shall be deducted, at the option of the company, either the set off under the provisions of
this section or the deduction provided for in paragraphs (a) and (c) of subsection (1) of
section 21.
PART V—ASCERTAINMENT OF CHARGEABLE INCOME\(^1\)

\[^1\] See Appendix B for a summary of the personal allowances and deductions available to individuals and employees under this Part, particularly §§24-29.

**[Chargeable income of person other than a company, etc.]**\(^1\)

24.—(1) Subject to the provisions of this section, “chargeable income” for any year in respect of a person other than a company \[the estate of a deceased person, a trust or settlement or a non-resident\]\(^2\), shall, for the purpose of this Act, be the total income of that person for that year whether accruing in or derived from Fiji or elsewhere, subject to the deductions specified in [sections 25 \& 26]\(^3\).

(2) Notwithstanding the provisions of section 31 and of subsection (1) …\(^4\), where a person resident in Fiji solely or mainly for the purposes of engaging in any employment \[has not resided in Fiji for the whole year\]\(^5\), he shall, if he has resided in Fiji only for part or parts of that year, [be allowed, in calculating his chargeable income, only such proportion of—\(^6\)]

\[\begin{align*}
(a) & \quad \text{the deductions specified in section 25;} \\
(b) & \quad \text{the deductions specified in paragraphs (a), (b), (c) and (f) of section 26(1); and} \\
(c) & \quad \text{any contributions allowable under paragraphs (d) and (e) of section 26(1),}\]
\end{align*}\]

as the total period of his residence in Fiji during that year bears to the full income year.

(3) For the purpose of subsection (2)—

\[\begin{align*}
(a) & \quad \text{the total period of a person’s residence in Fiji shall be deemed to be the whole of any period during which he actually resides in Fiji or in respect of which he derives emoluments from his employment in Fiji whichever is more favourable to the taxpayer;} \\
(b) & \quad \text{“employment” shall have the same meaning as in section 79[;]}\]
\end{align*}\]

\[\begin{align*}
(c) & \quad \text{the aggregate deduction allowable under paragraphs (a), (b), (c), (d), (e) and (f) of section 26(1), before apportionment under subsection (2), shall be restricted to $1,500.}\]
\end{align*}\]

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\(^1\) Heading substituted by §9(a) Act 10/1975 WEF 1st January 1975 – previously read:

“Chargeable income of person other than a company or a non-resident”

\(^2\) Inserted by §9(b) Act 10/1975 WEF 1st January 1975

\(^3\) Substituted for “sections 25, 26, 27, 29 and 30 of this Act” by §2(a) Act 35/1999 WEF 1st January 2000

\(^4\) Words “of this Act” deleted by §6(a) Act 10/1975 WEF 1st January 1977

\(^5\) Substituted for “derives in any year from such employment more than half of his total income for the year” by §6(b) Act 10/1975 WEF 1st January 1977

\(^6\) Substituted for “be allowed—” by §2(b)(i) Act 35/1999 WEF 1st January 2000

\(^7\) Substituted by §2(b)(ii) Act 35/1999 WEF 1st January 2000; previously read –
“(i) in calculating his chargeable income, only such proportion of the deductions specified in section 25, paragraphs (a), (b), (c) and (f) of subsection (1) of section 26, and sections 27, 29 and 30 together with any contributions allowable under paragraphs (d) and (e) of subsection (1) of section 26. [The aggregate deduction allowable under paragraphs (a), (b), (c), (d), (e) and (f) of subsection (1) of section 26, before apportionment as specified in this paragraph, shall be restricted to one-sixth of the taxpayer’s total income or $1,000, whichever is the less:] and

(ii) such proportion of the normal tax rebate,”

Words inserted by §6(c) WEF 1st January 1977
§ Substituted for a full-stop by §2(c) Act 35/1999 WEF 1st January 2000
8 Paragraph (c) inserted by §2(c) Act 35/1999 WEF 1st January 2000

Allowances for wife, widow and widower

25.—(1) (a) In respect of a wife living with or wholly maintained by the taxpayer, an allowance of [$1,200] shall be deducted:

[Provided that the amount of this allowance shall be reduced by $1 for every dollar of a wife’s total income which is not chargeable with tax, other than that portion of a wife’s income from interest, dividends and farming which is specifically exempted from tax under the provisions of this Act;]

[(b) in the case of a taxpayer who is widowed, an allowance of [$1,200] must be deducted:]

(c) …

(d) …

Allowance for Legally Separated Spouses, etc.

(1)(A) Notwithstanding the provisions of proviso (b) of subsection (1) of section 43, in the case of a taxpayer who is legally separated from his or her spouse under an order of a court of competent jurisdiction and who has been granted legal control and custody of a dependent child or children an allowance of [$1,200] shall be deducted:

Provided that—

(a) in the case of legally separated spouses who both have legal control and custody of a dependent child or children, the allowance of [$1,200] shall be allocated in equal proportion to each spouse;

(b) the amount of this allowance shall be reduced by one dollar for every dollar of the spouse’s total income which is not chargeable with tax other than that portion of the spouse’s income from interest or dividend which is specifically exempted from tax under the provisions of this Act.

(1)(B) In no case shall the allowance due under paragraph 1(a) of section 25 and subsection 25(1X)(A) exceed [$1,200] in any one year.

Allowance for children

(2) In respect of each dependent child of the taxpayer, [the allowance for each such child [shall be—]

[(a) $500 for the first dependent child;]
[(b) $500 for the second dependent child; and]¹⁶
[(c) $300 for the third and any subsequent dependent child:]¹⁷

(d) …¹⁸
Provided that—
(i) the total allowance to a taxpayer under this subsection shall be [[$1,900]]¹⁹;
(ii) only 1 allowance may be granted in respect of the same dependent child. Where more than 1 taxpayer would, but for this proviso, be entitled to an allowance in respect of the same dependent child, such allowance shall be apportioned between them in such proportions as they agree, or in default of agreement, equally. For the purposes of this paragraph, maintenance which is payable under …²⁰ an order of a court of competent jurisdiction and which has been allowed or would qualify as a deduction in arriving at total income, shall not be regarded as a contribution to a child’s support.

**Allowance for elderly dependants**

(3)²¹ A taxpayer may claim an allowance of $200 in respect of each elderly dependant, not exceeding 2 in number, who is at least 70 years of age, except where the elderly dependant is earning any income.

**Allowance for brother or sister**

(3) …²²

**Allowance for other dependants**

(4) …²³

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¹ Substituted for “Allowances for wife” by §12(a) Act 4/2004 WEF 1st January 2004
² Substituted for “$1,000” by §3(a) Act 35/1999 WEF 1st January 2000; substituted for “$750” by §6(a) Act 3/1999 WEF 1st January 1999
³ Inserted by §7 Act 12/1982 WEF 1st January 1982
⁴ Substituted for “$1,000” by §12(b) Act 4/2004 WEF 1st January 2004
⁵ Substituted by §6(b) Act 3/1999 WEF 1st January 1999 – previously read:
   “(b) in the case of a taxpayer who is a widower with a dependent child or children, an allowance of $750 shall be deducted;”
⁶ Paragraph (c) deleted by §6(b) Act 3/1999 WEF 1st January 1999; paragraph (b) subsequently applicable – previously read:
   “(c) in the case of a widow without a dependent child or children, an allowance of $600 shall be deducted:
   Provided that, where she is not also entitled to the age allowance, the amount of this allowance shall be reduced by the excess of the total income of the widow over $2,000.”
⁷ Subsection [numbered 25(1)(A)] inserted by §6 Decree 10/1990 WEF 1st January 1990
⁸ Substituted for “$1,000” by §3(b) Act 35/1999 WEF 1st January 2000; previously substituted for “$750” by §6(c) Act 3/1999 WEF 1st January 1999
⁹ See Note 9
¹⁰ Subsection [numbered 25(1)(B)] inserted by §6 Decree 10/1990 WEF 1st January 1990
(2) In respect of each dependent child of the taxpayer, an allowance of $130 shall be deducted:

Provided that—

(a) the total allowance to a taxpayer under this subsection shall not exceed $650;

(b) only one allowance of $130 may be granted in respect of the same dependent child. Where more than one taxpayer would, but for this proviso, be entitled to an allowance in respect of the same dependent child, such allowance shall be apportioned between them in such proportions as they agree, or in default of agreement, equally;”

Substituted for “shall be [$300];” by §3(d)(i) Act 35/1999 WEF 1st January 2000; amount substituted for “$200” by §6(e) Act 3/1999 WEF 1st January 1999; words substituted for “the following allowances shall be deducted:—” by §10(1) Decree 30/1992 WEF 1st July 1992

Re-inserted by §3(d)(i) Act 35/1999 WEF 1st January 2000; previously deleted [by substitution] by §10(2) Decree 30/1992 WEF 1st July 1992 – previously read:

“(a) for the first dependent child, $200”

Re-inserted by §3(d)(i) Act 35/1999 WEF 1st January 2000; previously deleted [by substitution] by §10(2) Decree 30/1992 WEF 1st July 1992 – previously read:

“(b) for the second dependent child, $200; and”


“(c) for the third dependent child, [$200]; and”


“(d) for the fourth and any subsequent dependent child, $130;”


Words “any enforceable legal agreement or” deleted [by substitution] by §10(2) Decree 30/1992 WEF 1st July 1992

Inserted by §10 Act 3/2005 WEF 1st January 2005

Repealed by §10(2) Decree 30/1992 WEF 1st July 1992 – previously read:

“(3) In respect of each brother or sister of the taxpayer or his wife who is dependent on and wholly maintained by the taxpayer, an allowance of $130, shall be deducted:

Provided that—

(a) a deduction shall not be allowed in respect of a brother or sister who is over the age of 18 years, unless such brother or sister is wholly dependent on the taxpayer for support—

(i) on account of physical or mental incapacity; or

(ii) being under 27 years of age, is either receiving full-time instruction at a university, college, school or other educational establishment or is serving under articles or indentures with a view to qualifying in a trade or profession;

(b) no deduction under this subsection shall be allowed in respect of any dependant who has himself a world total income exceeding $130, but the fact that a dependant has himself an income shall not, if such income is not more than $130, in itself prevent his being wholly maintained by the taxpayer;

(c) the total deduction allowed by this subsection and subsection (4) shall not be in respect of more than 2 dependants."

Repealed by §10(2) Decree 30/1992 WEF 1st July 1992 – previously read:

“(4) Subject to the provisions of subsection (3), in respect of each parent, grandparent, or other blood relative of the taxpayer or of his wife, who is dependent on and wholly maintained by the taxpayer, an allowance of $100 shall be deducted:

Provided that—

(a) no deduction shall be allowed in respect of any dependant who has himself a world total income exceeding $100, but the fact that a dependant has himself an income shall not, if such income is not more than $100, in itself prevent his being wholly maintained by the taxpayer;

(b) the total deduction allowed by this subsection and subsection (3) shall not be in respect of more than 2 dependants;

(c) a deduction shall not be allowed in respect of a child unless such child is under the custody and control of the taxpayer;

(d) a deduction shall not be allowed in respect of a child who is over the age of 18 years unless such child is wholly dependent on the taxpayer for support—
26.—(1) The following amounts shall be deducted in calculating chargeable income:

**Life insurance**

(a) in respect of policies against sickness of, or against personal injury or accident to [the taxpayer, his or her spouse]\(^1\) or dependent child (up to the maximum of 5 dependent children) taken out prior to 30 November 1973, any amounts paid by the taxpayer in that year as premiums or sums for insurance to any insurance company;

(b) any amounts paid by the taxpayer in that year as premiums or sums for insurance on the life of [the taxpayer, his or her spouse]\(^2\) or dependent child (up to a maximum of 5 children) on policies taken out prior to 30 November 1973, where a capital sum is not payable at death and the policy is for a term of less than 10 years;

(c) any amounts paid by the taxpayer in that year as premiums or sums for insurance on the life of [the taxpayer, his or her spouse]\(^3\) or dependent child (up to a maximum of 5 children) where the policy secures a capital sum payable at death and is either a whole life policy or is for a term of not less than 10 years. The amount allowable shall not exceed 7 per cent of the actual capital sum assured and, in calculating such capital sum, no account shall be taken of any sum payable on the happening of any other contingency or of the value of any premiums to be returned or of any benefit by way of bonuses or otherwise which is to be or may be received either before or after death, either by the person paying the premium or by any other person, and which is not the sum actually assured. In the event of the cessation of a policy for any reason before the expiry of 10 years, the Commissioner may, if he is not satisfied with the reasons for cancellation, disallow all premiums (if any) previously allowed in respect of such policy;

**Contribution to approved funds**

(d) the annual amount of any contributions made by the taxpayer as an employee to an approved fund;

(e) the annual amount of any sums recovered from the salary or wages of a taxpayer in respect of contributions on account of such taxpayer to the Fiji National Provident Fund under the provisions of the Fiji National Provident Fund Act\(^4\) by his employer;

(f) the annual amount of any voluntary contributions made to the Fiji National Provident Fund by any taxpayer, not being an employee for the purposes of the Fiji National Provident Fund Act\(\ldots\)\(^5\);
(g) the annual amount of any contributions made by the taxpayer to the Widows and Orphans Pensions Scheme or the Government Employees Provident Fund.

Restrictions of relief

[(2) The total deduction under subsection (1) shall not exceed—

(a) in the case of an unmarried taxpayer – an aggregate amount of $1,500; or
(c) in the case of a married man whose wife is in receipt of income exceeding $1,200 but the husband and the wife have not jointly elected to be assessed separately under section 43 – an aggregate amount of $1,500 in respect of the husband and an aggregate amount of $1,500 in respect of the wife.]

Professional dues and journals

(3) …

Trade union subscriptions

(3A) …

Equipment purchased for physically incapacitated dependent relatives

(4) …
union representing employees of a class in which the taxpayer is included or $20, whichever is the less, shall be deducted in calculating chargeable income.”


“ (4) Notwithstanding the other provisions of this Act, the amounts paid by a taxpayer during the income year in respect of special equipment for a dependant for whom an allowance may be deducted under section 25 and who is physically incapacitated, shall be deducted in calculating chargeable income.
In this subsection, “physically incapacitated” means incapacitated to such an extent that the continued survival of the person in relation to whom the term is used is impossible, or his free movement or free movement of any of his limbs is impractical, without the aid of an artificial contrivance or device, and "special equipment" means the artificial contrivance or device employed in providing such aid.”

Age allowance

27. ... 1

1 Repealed by §12 Decree 30/1992 WEF 1st July 1992; “55 years” substituted for “65 years” by §10(a) Act 21/1982 WEF 1st January 1983; “$750” substituted for “$400” by §11(a) Act 10/1975 WEF 1st January 1974; paragraph (a) substituted by §10(b) Act 21/1982 WEF 1st January 1983; paragraph (a) previously amended (by insertion) by §11(b) Act 10/1975 WEF 1st January 1974; paragraph (b) amended (by insertion) by §11(c) Act 10/1975 WEF 1st January 1974; previously read:

In respect of any person who proves that, in any income year, he was of the age of [55 years] or upwards in the case of a man, or, in the case of a woman, she was of the age of [55 years] or upwards, or in the case of a married man receiving an allowance under the provisions of section 25 or 31 in respect of a wife, his wife was of the age of [55 years] or upwards, the “chargeable income” shall be as determined in accordance with the provisions of section 24 or 31 less a further allowance of [[$750]] known as an age allowance:
Provided that—

[(a) the amount of an age allowance shall be reduced by the excess of the world total income of the person entitled to such allowance over the aggregate of all the allowances to which he is entitled under this Part, including the age allowance and a further $1,750, except in the case of a widow, in which case the aggregate of the widow’s and age allowances shall be reduced by the excess of her world total income over $3,150 or the aggregate of all the allowances to which she is entitled under this Part including the age allowance and a further $1,750, whichever is the greater;]

[(b) in the case of a non-resident, the proviso to [subsection (1) of] section 31 shall also apply;]

[(c) not more than 1 age allowance shall be allowable in respect of a married man receiving an allowance under the provisions of section 25 or 31 in respect of his wife nor shall more than 1 age allowance be allowable in respect of a husband and wife who elect to be assessed separately under the provisions of section 43.]

Maximum number of dependants

28.—(1) Where the taxpayer receives an allowance under the provisions of section 25 in respect of a wife, the number of other dependants in respect of whom allowances may be granted under the provisions of that section shall not exceed 5.

(2) Where the taxpayer does not receive an allowance under section 25 in respect of a wife, the number of other dependants in respect of whom allowances may be granted under the provisions of that section of this Act shall, subject to the provisions of paragraph (a) of subsection (2) of section 25, not exceed 6.

(3) Where a taxpayer is entitled to the [maximum total allowance]1 under the provisions of subsection (2) of section 25 and may also be entitled to an allowance under section 292 in respect of education allowance, he shall indicate in respect of which children he wishes to claim an allowance under that subsection and section.

Repealed by §13 Decree 30/1992 WEF 1st July 1992

\[\text{Education allowance}\]

29. ... ¹


“ (1) An allowance known as an "education allowance" shall be granted in respect of the education of a dependent child, up to a maximum of 5 children, in the case of a person receiving an allowance in respect of a brother or sister under the provisions of subsection (3) of section 25, an allowance in respect of the education of such brother or sister, and in the case of a person receiving an allowance in respect of a dependent blood relative under the provisions of subsection (4) of that section; in all cases, such allowances shall consist of any sum paid for tuition fees or boarding fees in respect of a dependent child, brother or sister, or dependent blood relative receiving full-time instruction at any university, college, school or other educational establishment, and any sum paid for travelling expenses to enable such a child, brother or sister, or dependent blood relative to go to and return from such university, college, school or other educational establishment at the beginning and end of a term.

(2) An education allowance shall be—

(i) in the case of a child, brother or sister or dependent blood relative attending a university, college, school or other educational establishment in Fiji, $100;

(ii) in the case of a child, brother or sister, or dependent blood relative attending a university, college or other educational establishment outside Fiji, $400:

Provided that—

(a) where the actual expenditure approved by the Commissioner exceeds $100 or $400, as the case may be, the additional expenditure may be allowed but so that the total allowance for any child, brother or sister or dependent blood relative shall not exceed $800;

(b) where a grant or scholarship is received, other than a cost sharing scholarship approved by the Ministry responsible for education on or before 31 December 1978, the total allowable deduction shall be reduced by such amount;

(c) no allowance shall be granted under this section in respect of any child, if the maximum total allowance has been granted under subsection (2) of section 25 as qualified by section 28 which does not include an allowance for such child;

(d) for the purpose of this section, but subject to the provisions of paragraph (e), a child shall not cease to be a "dependent child" only by reason of his or her world total income exceeding $200, a dependent blood relative shall not cease to be a "dependent blood relative" only by reason of his or her world total income exceeding $100 and a dependent brother or sister shall not cease to be a "dependent brother or sister" only by reason of his or her world total income exceeding $130. In each such case, the amount allowable under this section shall however be reduced by $1 for every dollar by which the child’s, the dependent blood relative’s or the dependent brother or sister’s world total income exceeds $400;

(e) no allowance shall be granted under this section, except in any case falling within proviso (f), in the case of a child, brother, sister or dependent blood relative who attends a school, college, university or other educational establishment from his home;

(f) notwithstanding paragraph (e), if a dependent child, brother, sister or dependent blood relative attends from his home the University of the South Pacific or any other tertiary establishment approved by the Ministry responsible for education on or before 31 December 1978, an allowance shall be granted only in respect of any tuition fees paid;

(g) no allowance shall be granted under this section in respect of any child, brother or sister or dependent blood relative attending primary school, secondary school or similar educational establishment outside Fiji up to and including sixth form level.”
Passages

30. Any expenditure incurred before 1 January 1974 by any person on the provision of passages for himself or for his wife or dependent children for the purposes of leave outside Fiji shall be deducted in calculating the chargeable income of that person:

Provided that—

(a) where the whole or any part of the cost of any of such passages is borne by the employer of any person, no deduction shall be allowed to that person in respect of the amount so borne;

(b) if the whole or any part of the cost of any of such passages is borne by the employer of any person at intervals of not more than 3 years, no deduction shall be allowed for any expenditure incurred by that person, during any intervening period, on the provision of passages for the purposes of leave outside Fiji for any of the persons in respect of whom the employer bears the whole or part of the cost as aforesaid;

(c) the cost of the passages to be taken into account shall be the cost of return fares by direct route between Fiji and the country of destination up to a maximum of 3 adult air fares not more often than once every 3 years but so that the cost of the passages shall not exceed the normal air fare rate for each passenger who travels;

(d) no deduction shall be allowed for passages paid by any person unless that person was resident in Fiji during the period of 24 months immediately preceding the commencement of the journey in respect of which the deduction is claimed;

(e) the deduction shall be allowed in respect of the income year in which travel overseas is commenced and in each of the 2 succeeding income years and shall be equal to one-third of the cost of the passages as calculated in accordance with the provisions of this section, or an amount equal to 10 per cent of what would otherwise be the chargeable income of such person but for the making of this deduction, whichever is the less.

Chargeable income of non-resident individual

31.—(1) For the purposes of this Act, “chargeable income”, for any year of a non-resident individual, means that part of his total income for the year accruing in or derived from Fiji, subject to the following deductions:—

(a) in respect of a wife living with or wholly maintained by the non-resident, an allowance of [$1,200]; and

(b) in respect of a non-resident who is widowed, an allowance of $1,000.

Provided that, where the income of the non-resident derived from or accruing in Fiji is less than the sum of his world total income derived from or accruing in Fiji and elsewhere, the non-resident shall be allowed to
deduct only such proportion of the allowances as equals the proportion which his income derived from or accruing in Fiji bears to his world total income derived from or accruing in Fiji and elsewhere.

(2) 

1. Substituted for “$1,000” by §5 Act 35/1999 WEF 1st January 2000; “$1,000” substituted for “$750” by §8(a) Act 3/1999 WEF 1st January 1999
2. Paragraph (b) substituted by §8(b) Act 3/1999 WEF 1st January 1999 – previously read: “(b) in respect of a non-resident who is—
(i) a widower with a dependent child or children, an allowance of $750;
(ii) a widow with a dependent child or children, an allowance of $950;
(iii) a widow without a dependent child or children, an allowance of $600:
[Provided that, where she is not also entitled to the age allowance, the amount of this allowance shall be reduced by the excess of the world total income of the widow over $2,000.]”
Proviso to sub-paragraph (ii) substituted by §8 Act 10/1977 WEF 1st January 1977; figure “$2,000” substituted for “$1,200” by §11 Act 21/1982 WEF 1st January 1983 – previously read: “Provided that the amount of such allowance shall be reduced by the excess of the world total income of the widow over $2,000.”

(2) In the case of a non-resident in receipt of a pension derived from Fiji which is liable to tax in Fiji whose other income arising in and liable to normal tax in Fiji additional to his pension does not exceed $100, the provisions of subsection (1) shall not apply, and the tax due from such non-resident pensioner shall be computed as follows:—

(a) one-half of the allowance for a wife shall be allowed to a married man and shall be deducted in arriving at chargeable income; or
(b) a sum equal to one-half of the allowance referred to in paragraph (b) of subsection (1) shall be granted to a widow or widower and shall be deducted in arriving at chargeable income; and
(c) the full amount of the general rebate of $30 as provided in section 101 shall be deducted from the tax chargeable:

Provided that a non-resident pensioner may, within 60 days after receiving notification of the amount due, furnish to the Commissioner details of his total income from all sources and elect that the provisions of subsection (1) shall apply in calculating his chargeable income.”

32. For the purposes of this Act, the chargeable income of a company shall be—

(a) in respect of a company other than a non-resident companies, the total income of the company for that year, whether accruing in or derived from Fiji or elsewhere;
(b) in respect of a non-resident company, the total income of the company for that year accruing in or derived from Fiji;
(c) in respect of a non-resident shipping company doing business in Fiji, the total amount payable to the company in respect of all outgoing business, whether freight or passengers.
**Chargeable income of deceased’s estate, trust or settlement**

33.1 For the purposes of this Act, the chargeable income of the estate of a deceased person, a trust or a settlement shall be the total income of the estate, trust or settlement for that year.


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**Transfer Pricing**

34.1 — .— (1) Subject to subsection (2), the CEO may, in respect of any transaction between persons who are associates, distribute, apportion, or allocate income, gain, deductions, or tax credits between the persons as is necessary to reflect the income that the persons would have realised in an arm’s length transaction.

(2) If a party to a transaction between associates is located in and subject to tax in Fiji, and another party to the transaction is located outside Fiji, any distribution, apportionment, or allocation of income, gain, deductions, or tax credits under subsection (1) must be made in accordance with the Regulations.

(3) The allocation of income and deductions to —

(a) a permanent establishment in Fiji of a non-resident person; or

(b) a permanent establishment outside Fiji of a resident person,

must be made in accordance with the Regulations.

(4) In this section, “arm’s length transaction” means a transaction between persons who are not associates dealing at arm’s length with each other. 33

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33 Amended by Decree No. 6 of 2012 by deleting section 34 and substituting with a new section 34. Effective from 1st January, 2012. Previously read —

Commissioner may in certain circumstances determine income of business controlled from outside Fiji

34. — (1) Where any business carried on in Fiji—

(a) is controlled exclusively or principally by a non-resident; or

(b) is carried on by a non-resident company or by a company which is under the control of a non-resident; or
(c) is carried on by persons having control of a non-resident company,

and it appears to the Commissioner from the returns made to him that the business produces no income or less than the amount of income which, in his opinion, might be expected to arise from that business, the person carrying on the business in Fiji shall, notwithstanding anything to the contrary in this Act, be assessable for and liable to pay tax on an income of such amount as the Commissioner shall determine, being, at the option of the Commissioner, either—

(i) such proportion as he shall determine of the total receipts (whether cash or credit) of the business;

(ii) such proportion as he shall determine of the total purchase moneys paid or payable (whether in cash or by the granting of credit) in the conduct of the business; or

(iii) Such other method as the Commissioner may determine.

(2) For the purposes of subsection (1), a company is deemed to be under the control of persons—

(a) by whom more than one half of the shares, more than one half of the issued capital, more than one half of the paid up capital or more than one half of the voting power is held; or

(b) who have, by any other means whatsoever, control of the company; or

(c) who, by reason of the shareholding at the end of any fiscal year of the company (or in the case of a company in liquidation at the commencement of the liquidation) would be entitled to more than one half of the profits for that year, if those profits were distributed by way of dividend at the end of that year.

(3) Where shares in a company are held by or on behalf of another company, such shares are deemed to be held by the shareholders of that other company.

(4) If the Commissioner, by applying the provisions of subsection (2), is satisfied that two or more companies are under the control of the same person or persons, the Commissioner may, for purposes of taxation, treat those companies as if they were a single company.

(5) Where a nominee of any person holds any shares, issued capital, paid-up capital, or voting power in a company, or has by any other means whatsoever any power of control of a company, or is entitled to a share or profits distributed by a company, then, for the purposes of this section, those shares or that capital or that voting power or that power of control or that title to profits, as the case may be, shall be deemed to be held by that person and, in every such case, that person and his nominee or that person and all his nominees shall be deemed to be one person.

(6) For the purpose of subsection (5), “nominee” in relation to any person, means any other person who may be required to exercise his voting power in relation to any company in accordance with the direction of that person, or who holds shares or debentures directly or indirectly on behalf of that person, and includes the husband or wife of that person and any relative of that person by blood, marriage or adoption.

(7) In determining the amount of income to be exacted under this section the Commissioner shall apply the following methods of valuation—

(i) the comparable uncontrolled price method;

(ii) the resale price method;

(iii) the cost plus method;

(iv) the profit split method; and

(v) the comparable profits method.
(5) The Minister may make Regulations with regards to transfer pricing.  


**Taxation of other than life insurance business of insurance companies**

35. (1) For the purposes of this Act, income in respect of the insurance business, other than the life insurance business, of a non-resident insurance company, whether mutual or non-mutual, means an amount ascertained—

(a) by taking the total of the gross premiums and interests and other income received or receivable in Fiji (less any premiums returned to any person and premiums paid on re-insurances and less any dividends which have borne tax in accordance with the provisions of this Act) during the year preceding the year of assessment; and

(b) by deducting from such total a reserve for unexpired risks at the percentage adopted by the company in relation to its operations as a whole for such risks at the end of such year and adding thereto a reserve similarly calculated for unexpired risks outstanding at the commencement of such year; and

(c) by deducting from the balance calculated as aforesaid the following amounts:—

(i) the actual claims paid or outstanding (less the amount recovered in respect thereof); and

(ii) the agency expenses in Fiji; and

(iii) a fair proportion of the expenses of the head office of the company:

Provided that, notwithstanding any of the other provisions of this Act, but subject to any arrangements made under the provisions of section 106, where any person carrying on business in Fiji or his agent enters into a contract of insurance in respect of any business property situated in Fiji at the time the contract was entered into with any person not carrying on business in Fiji [or the insured event is one which can happen only in Fiji], 15 per cent of the gross premiums of insurance shall be deemed to be the income of such last-mentioned person. Where any such person carrying on business in Fiji enters into a contract of insurance as aforesaid, he shall, for the purposes of this Act, be deemed to be the agent of the person with whom such contract is made and shall make returns and be assessed and chargeable to tax accordingly.

(2) For the purpose of avoiding doubt, it is hereby declared that that portion of the life insurance premiums received or receivable in respect of accident, disability and similar
benefits contained in combined life and accident insurance policies and premiums received or receivable in respect of accident, disability and similar insurance policies shall be deemed to be in respect of business other than life insurance business and shall be liable to tax calculated in accordance with the provisions of subsection (1).

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2 Inserted by §8 Act 12/1982 WEF 1st January 1982

**Taxation of re-insurance with non-residents (other than life insurance business)**

36.¹—(1) Notwithstanding anything contained in this Act, where a person carrying on the business of insurance in Fiji, other than life insurance business, re-insures outside Fiji with a non-resident the whole or any part of any risk, he shall be assessed and liable to pay tax as agent or insurance broker² on an amount equal to 15 per cent of the sum of the gross amount of the premiums paid or credited by him in the year of income to such non-resident in respect of all such re-insurances, as if that amount were the chargeable income of such non-resident carrying on business in Fiji by means of either a principal office or a branch.

(2) A person to whom this section applies shall, as agent or insurance broker³, furnish the Commissioner within the prescribed time as the Commissioner allows in respect of every year of income, a return showing the gross amounts of the premiums paid or credited by him to non-residents in respect of all such re-insurances.

(3)⁴ Subsection (1) shall not apply in respect of premiums paid or credited on or after 8 November 1985 but before 8 November [1987]⁵.

(4)⁶ For the purposes of this section, the tax shall also apply to off-shore placement of insurance.

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2 Inserted the words “or insurance broker” by §11(i) Promulgation No. 35 of 2008 WEF 1st January 2009
3 Inserted the words “or insurance broker” by §11(i) Promulgation No. 35 of 2008 WEF 1st January 2009
6 Inserted new subsection (4) by §11(ii) Promulgation No. 35 of 2008 WEF 1st January 2009

**Taxation of life insurance business**

37.¹—(1) For the purposes of this Act, income in respect of the life insurance business of a non-resident insurance company, whether mutual or non-mutual, means an amount ascertained—
(a) by taking the investment income (excluding dividends from companies incorporated in Fiji) received or receivable in respect of assets invested in Fiji and deducting therefrom the sum of the following:—

(i) an amount calculated by applying to the actuarial liabilities in respect of the policies registered in Fiji at the end of the year, the actuarial valuation rate of interest adopted by the company in relation to its operations as a whole:

Provided that, where, at the end of the year preceding the year of assessment, the assets of a company invested in Fiji in respect of its life insurance business are of a lesser amount than the aggregate of its actuarial and other liabilities in respect of its life insurance business in Fiji at that date, the sum to be allowed as a deduction under this paragraph shall be such proportion of the amount so calculated as the assets of the company invested in Fiji in respect of its life insurance business bear to the aggregate of such actuarial and other liabilities; and

(ii) expenditure, other than expenditure of a capital nature, wholly and exclusively laid out or expended in gaining this investment income (excluding such dividends as aforesaid); and

(iii) the proportion which the investment income in Fiji (excluding such dividends as aforesaid) bears to the total gross income received or receivable in Fiji (including dividends and life insurance premiums) of the following, that is to say:—

(aa) expenditure other than expenditure of a capital nature, incurred in the general management of the life insurance business of the company in Fiji including contributions made to an approved fund; and

(bb) a fair proportion of the expenditure incurred in the general management of the life insurance business at the head office of the company or at any branch of the company controlling and supervising the life insurance business in Fiji, including a proportion of contributions made to an approved fund:

Provided that such expenditure shall be deemed to exclude all payments made under life insurance policies, any expenses wholly and exclusively incurred in connection with new business, and any commissions paid to any person; and

(b) by reducing the resulting amount calculated in accordance with the provisions of paragraph (a) proportionately by the formula

\[
\frac{X}{Y}
\]

where—
X — is so much of the amount calculated under sub-paragraph (i) of paragraph (a) as is referable to the company’s superannuation business in Fiji; and

Y — is the amount calculated under sub-paragraph (i) of paragraph (a).

For the purposes of this formula, “superannuation business” means that part of the life insurance business of the company in Fiji effected under the rules or conditions of any superannuation fund or superannuation scheme approved under the provisions of section 110:

Provided that—

(a) in the case of a non-mutual company—

(i) such proportion of the resulting amount calculated in accordance with the foregoing provisions of this subsection as is represented by the following formula shall be deemed to be the income referable to the share capital of the company; that is to say—

\[
\frac{R}{S} \times T, \text{ where—}
\]

R — is profits allocated to shareholders’ funds;

S — is profits allocated to life assurance funds for distribution to policy holders by way of reversionary bonuses or otherwise, and to shareholders’ funds.

(The figures for R and S are those which relate to the company’s operations as a whole—both within and outside Fiji).

T — is income in respect of the life insurance business calculated in accordance with paragraph (a) of this subsection, and the balance of such resulting amount shall be deemed to be the “mutual” income of such a company;

(ii) where no profits in respect of the company’s life insurance business are divided between or among either shareholders or policy holders (or allocated to either shareholders’ funds or life assurance funds) in respect of the income year, but by virtue of the company’s Memorandum or Articles of Association or any rules or other document constituting the company or governing its activities, any profits to be divided among or allocated to the life insurance policy holders of the company are required to be not less than a specified proportion or percentage and not greater than a specified proportion or percentage of the total profits to be divided or allocated—the lower of such proportions or percentages of the income in respect of the life insurance business calculated in accordance with this subsection shall be deemed to be the “mutual” income of the company for that year; and
(b) for the purpose of paragraph (a) of this proviso, any State-owned corporation or similar institution transacting life insurance business in Fiji shall be deemed to be a non-mutual company and reference in that paragraph to terms generally applicable to a company such as to share capital, divisions or allocation among shareholders, and the company’s Memorandum or Articles of Association shall respectively be deemed to refer to the capital or like funds of such corporation or institution, to divisions or allocations among other than its policyholders, and to the legal enactment or other instrument governing its incorporation, or as may otherwise be appropriate to bring such corporation or institution within the operation of such proviso.

(2) Where the proportion calculated under the proviso to sub-paragraph (i) of paragraph (a) of subsection (1) is less than 1 to 2, the income of such a company shall be deemed to be 20 per cent of the gross amount of the life insurance premiums received or receivable in respect of policies registered in Fiji without any deduction whatsoever therefrom.

(3) Where an insurance company carried on life insurance business in conjunction with any other insurance business, the assessment of the income on which tax is payable shall be made in one sum but the income arising from the life insurance business shall be computed in accordance with the provisions of this section as if such life insurance business were a separate business from the other insurance business carried on by the company.


PART VI – PERSONS CHARGEABLE

Resident partner to be agent of non-resident partners

38. Every resident member or manager of a partnership shall be the agent of any non-resident partner or partners and shall deduct the tax on all profits derived from the business payable or creditable to such non-resident partner or partners, and shall pay the amount so deducted to the Commissioner.


Trustees, assignees, executors, etc., to make return and pay tax before distribution

39. In cases where trustees in bankruptcy, assignees, liquidators, curators, receivers, administrators, heirs, executors and such like other persons or legal representatives are administering, managing, winding-up, controlling or otherwise dealing with the property, business or estate of any person who has not made a return for any taxable period or for any portion of a taxable period for which such person was required to make a return in accordance with the provisions of this Act, they shall make such return and pay any tax
and interest and penalties assessed and levied with respect thereto before making any
distribution of such property, business or estate.


Agent, etc., for non-resident

40.1- (1)2 Every agent, trustee, mortgagor or person who collects or receives or is in
any way in possession or control of income for or on behalf of a non-resident shall make
a return of such income and, in the case of default by such non-resident of the payment of
any tax, interest or penalty payable, shall, on being so notified by the Commissioner,
deduct the amount of such tax, interest and penalty from either the income or other assets
of such non-resident in his hands or coming into his hands from time to time and
thereupon pay the same to the Commissioner. The agent of a non-resident shall be
answerable for all matters required to be done by virtue of this Act for the assessment of
the income of such non-resident, and personally liable for the payment of such notified
tax, interest and penalty to the extent of any income or assets of such non-resident in his
hands or from time to time coming into his hands.

Liability of masters of ships and captains of aircraft

(2)3 Without prejudice to the provisions of subsection (1), the master of a ship, and the
captain of an aircraft, owned or chartered by a person who is assessable and
chargeable to tax in Fiji, shall be:

(a) deemed to be an agent of that person;

(b) answerable for all matters required to be done by virtue of
this Act for the assessment of the income of that person;
and

(c) personally liable for the payment of any tax assessed and
for any interest and penalty,

to the extent of any income earned within Fiji from the activities conducted
within Fiji by the said master or captain, and to the extent of any assets
utilized within Fiji in the course of conduct of such activities, including as
applicable any ship or aircraft.

2 Renumbered by §11 Act 3/2005
3 Inserted by §11 Act 3/2005 WEF 1st January 2005

Authorised officer of a company

41.1 Every company registered or carrying on business in Fiji or deriving income
from property in Fiji shall, at all times, unless exempted by the Commissioner, be
represented for the purposes of this Act by an individual person called its authorised
officer being an individual person residing in Fiji and duly appointed by the company or
on its behalf. With respect to every such company and its authorised officer, the
following provisions shall apply:

(a) an authorised officer shall be appointed by the company within 3 months after
the date when this Act becomes law or within 3 months after the company
commences carrying on business or to derive income in Fiji;

(b) the company shall at all times keep the office of its authorised officer filled;

(c) no appointment of an authorised officer shall be deemed to be duly made until
after a notice thereof in writing specifying the name of the authorised officer
and his address for service has been given to the Commissioner;

(d) service of any document at his address for service or personally on the
authorised officer shall be sufficient service upon the company for all the
purposes of this Act, and if, at any time, there is no authorised officer, then
service upon any person acting or appearing to act in the business of the
company shall be sufficient;

(e) the authorised officer shall be answerable for the doing of all such things as are
required to be done by the company under this Act, and in case of default shall
be liable to the same penalties, and to ensure that the company duly accounts
for its tax debts by sale or charging of its assets or otherwise as the case
requires;

(f) everything done by the authorised officer which he is required to do in his
representative capacity shall be deemed to have been done by the company.
The absence or non-appointment of its authorised officer shall not excuse the
company from the necessity of complying with any of the provisions of this
Act or from any penalty for failure to comply therewith, but the company shall
be liable to the provisions of this Act as if there were no requirement to
appoint an authorised officer;

(g) any notice given to or requisition made upon its authorised officer shall be
deemed to be given or made upon the company;

(h) the company shall be liable to be proceeded against as a principal in respect of
any act or default under this Act of its authorised officer;

(i) notwithstanding anything contained in this section, and
without in any way limiting, altering or transferring the
liability of the company or of its authorised officer, every
notice or process which under this Act may be given to or
served upon the company or its authorised officer may, if
the Commissioner thinks fit, be given to or served upon
any director, secretary, officer, attorney or agent who shall
thereupon have the same liability in respect of that notice
or process as the company or its authorised officer would
have had if it had been given to or served in accordance with the provisions of paragraph (d).

2 Inserted by §12 Act 3/2005 WEF 1st January 2005

Liability for tax payable by companies left with insufficient assets
41A 1, – (1) This section applies where –

(a) any arrangement has been entered into in relation to a company;

(b) an effect of that arrangement is that the company is unable to satisfy under this Act a liability for income tax (referred to in this subsection as the “tax liability”) of the company, whether the tax liability exists at the time of entry into the arrangement or arises subsequently; and

(c) it can reasonably be concluded that –

(i) a director of the company at the time of entry into the arrangement who had made all reasonable inquiries into the affairs of the company would have anticipated at that time that the tax liability would be, or would be likely to be, required to be satisfied by the company under this Act; and

(ii) a purpose of the arrangement was to have the effect specified in paragraph (b).

(2) Where an arrangement to which this section applies has been entered into, all persons who were directors of the company at the time the arrangement was entered into are, subject to subsection (4), jointly and severally liable for the tax liability, as agent of the company.

(3) Where an arrangement to which this section applies has been entered into any person who was a controlling shareholder at the time the arrangement was entered into, being a person controlling the company in any way whatsoever, is liable as agent of the company for its unsatisfied tax liability.

(4) A director is not liable under this section for any tax liability of the company where the Commissioner is satisfied that the director derived no benefit from the arrangement and either:

(a) the director has, at the first reasonable opportunity after becoming aware of the arrangement, or of those aspects of the arrangement that render it subject to this section, -

(i) formally recorded with the company the director’s dissent in relation to the arrangement; and
(ii) notified the Commissioner in writing of the arrangement and of director’s dissent from that arrangement; or

(b) the director satisfies the Commissioner that –

(i) the director was not at the material time or times involved in the executive management of the company; and

(ii) the director had no knowledge of the arrangement, or of those aspects of the arrangement that render it subject to the application of this section.

1 Inserted by §13 Act 3/2005 WEF 1st January 2005

**Liability of directors, shareholders and associates persons of private companies**

41B. – (1) A director of a private company is answerable for anything done by that company under this Act, and in case of default of the company, is liable to the same penalties and to account for the taxation debts of that company.

(2) If a private company –

(a) pays an amount to an associated person by way of an advance or loan; or

(b) pays or credits an amount on behalf of, or for the individual benefit of, an associated person,

so much of any amount paid or credited as, to the satisfaction of the Commissioner, represents a distribution of profits shall, for the purposes of this Act be deemed to be a dividend paid by the company –

(i) to the associated person as a shareholder in the company;

(ii) out of profits derived by the company; and

(iii) on the last day of the year of income of the company in which the payment or credit referred to in paragraph (a) or (b) is made.

1 Inserted by §13 Act 3/2005 WEF 1st January 2005

**Liability of new companies for tax payable by former companies with substantially the same shareholders or under the same control**
41C1-(1) For the purpose of this Section,
“company” means any company incorporated in or outside Fiji;
“new company” means a company carrying on a business in Fiji and consisting
substantially of the same shareholders as an original company or being under the
control of the same persons as an original company;
“nominee”, of a person (first person) in relation to any person means any other
person who –

(a) may be required to exercise his voting power of the first person in relation to
any company in accordance with the direction of that person; or
(b) hold shares or debentures directly, or indirectly on behalf of the first person;
and includes any relative of that first person;

“original company” means a company which having at any time carried on a
business in Fiji, after the commencement of this Act, has ceased to carry on a
business in Fiji, and includes any such company that has been wound up.

“person” includes a company and a local or public authority.

(2) Where an original company has been wound up, its shareholders and
directors, as on the commencement of its winding up, shall respectively be
deemed to be the shareholders and the persons having the control of the company
for the purpose of this section.

(3) Where an original company was, when it ceased to carry on business in
Fiji, liable under this Act for any tax or was liable to be assessed for any such tax,
and that tax has not been paid, the new company shall, for the purpose of this Act,
(a) be deemed to be the agent of the original company; and
(b) shall be liable for all tax payable by the original company.

(4) For the purpose of this Section
(a) a company shall be deemed to be under the control of the same persons -
(i) by whom more than 50% of the shares, or more than 50% of the
nominal capital, or more than 50% of the paid up capital, or more than
50% of the voting power is held; or
(ii) who have by any other means whatsoever control of the company; or
(iii) who, by reason of the shareholding at the end of any income year,
would be entitled to more than 50% of the profits for that year if those
profits were distributed by way of dividend at the end of that year.
(b) Where a nominee of any person holds any shares, nominal capital, paid-up
capital, or voting power in a company, or has by any other means whatsoever any
power of control in a company, or is entitled to a share of profits distributed by a
company, then for the purposes of this Section those shares or that capital or that
voting power or that power of control or that title profits, as the case may be, shall be deemed to be held by that person, and in every such case that person and his nominee [or that person and all his nominees] shall be deemed to be one person.

(c) Two companies shall be deemed to consist substantially of the same shareholders if not less than 50% of the paid-up capital of each of them is held by shareholders in the other or if not less than 50% in nominal value of the allotted shares in each of them is held by shareholders in the other, (shares in one company held by another company shall for this purpose be deemed to be held by the shareholders in the last-mentioned company.)

1 Inserted by §10 Promulgation No. 47 of 2007 WEF 1st January 2008

Persons chargeable in the case of a trust or settlement or income paid to a beneficiary

42. 1—(1) Subject to the other provisions of this Act, [net income of a trust, estate of a deceased person or settlement to which no beneficiary is presently entitled, other than a beneficiary who is under a legal disability,]2 shall be taxable in the hands of the trustees or other like persons acting in a fiduciary capacity.

(2) [The net income of a trust to which a beneficiary who is not under a legal disability is presently entitled]3 shall be taxed in the hands of such beneficiary and any such sums shall not also be taxed in the hands of the trustee or other like persons.

(3) [Net income of a trust to which a beneficiary who is under a legal disability is presently entitled shall]4 be taxable in the hands of the trustee or other like person acting in a similar capacity.

2 Substituted for “income accumulating to the estate of a deceased person, a trust or settlement” by §13(a) Act 4/2004 WEF 1st January 2004
3 Substituted for “Sums regarded as income of a beneficiary of the estate of a deceased person, a trust or settlement” by §13(b) Act 4/2004 WEF 1st January 2004
4 Substituted for “Income derived by or accruing to a minor may” by §13(b) Act 4/2004 WEF 1st January 2004

Income of a married woman

43. 1—(1) For all purposes of this Act, the income of a married woman shall be deemed to be income accrued to her husband and shall be assessed and be liable to taxation accordingly:

Provided that—

(a) where a married woman is in receipt of income exceeding [$1,200]2 in any year, she and her husband may jointly elect to be assessed separately and such persons shall, subject to the other provisions of this section, thereupon be assessed as if they were unmarried. Such election shall state whether the
husband or the wife is to be the person to whom allowances, if any, under the provisions of section 25 or 31 may be made and only the person so stated shall be entitled to receive any such allowance;

(b) a married woman separated from her husband under an order of a court of competent jurisdiction or a written agreement or in such circumstances that the separation is likely to be permanent shall be treated as an unmarried person [, subject to the provisions of section 25(1)(A)].

(2) (a) In no case shall the total of the allowances referred to in paragraph (a) of the proviso to subsection (1) or of the allowances, if any, available under the provisions of this Act exceed the total of such allowances or deductions as would be available to the husband [and, under section 26, to the wife] but for the election to be assessed separately.

(b) The deductions permitted under the provisions of section 26 shall be allowed to the spouse entitled in accordance with that section ….

(c) The total tax due on aggregation of the joint chargeable income shall be apportioned in the ratio of each spouse’s chargeable income and the respective apportioned sums shall be the tax due from each spouse:

Provided that nothing in this paragraph shall prevent the operation of collection processes within sections 75, 76 and 77 against the husband in respect of tax due from his wife;

(d) the rebate permitted under section 100A shall be allowed to the spouse entitled in accordance with that section, but, should the limitation imposed by this subsection apply to reduce the rebate to either or both husband and wife, the rebate shall be apportioned in terms of their respective entitlement in such manner as they may agree or, in default of agreement, in such manner as appears to the Commissioner to be reasonable.

(3) In any year in respect of which an election under the provisions of subsection (1) is effective, the income of the wife shall be assessed separately as her income and shall not be assessed as the income of the husband.

(4) An election under the provisions of this section shall be made in writing to the Commissioner not later than 31 March in the year immediately following the year of income.

(5) Where an election is made in respect of any year, it shall be irrevocable in respect of such year and such election shall continue to apply in respect of subsequent years until the election is revoked in respect thereof.

(6) Where an election is revoked after 31 March in any year, the revocation shall not have effect in respect of that year but shall affect subsequent years.
(7) Revocation of an election shall not prohibit a further election under the provisions of paragraph (a) of the proviso to subsection (1).

(8) The Commissioner may, at any time, extend the date for election under subsection (4) or for revocation under subsection (6).

(9) An election made under this section shall not be effective in respect of any year in which the income of the married woman is not in excess of [1,200].

(10) Where an election for separate assessment has been made, the tax assessed separately shall not be less than the tax which would have been assessed on the spouses’ joint incomes if no election had been made, but where a wife is in receipt of—

(a) earnings (or a pension pertaining thereto) or profits relating to personal exertion income in which her own skills are used; or

(b) income which arises from inheritance or from her own savings, or assets acquired from her own savings,

and such earnings, profits or income arise or accrue from a source which is unconnected with any funds provided by her husband or any trade, business, profession or vocation carried on by her husband, either individually or in association with any other person, or by a company in which the husband has an interest and to which subsection (1) of section 12 applies, that tax payable shall not exceed the sum of the tax payable on—

(i) the joint income, excluding the wife’s earnings, profits and income described in this subsection, taxed as a single person; and

(ii) the wife’s earnings, profits and income, as so described, taxed as a single person ... but with a deduction of [1,200] in respect of the allowance for the wife.}

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2 Substituted for “$1,000” by §6(a) Act 35/1999 WEF 1st January 2000; “$1,000” Substituted for “$750” by §9 Act 3/1999 WEF 1st January 1999
3 Inserted by §7 Decree 10/1990 WEF 1st January 1990
4 Inserted by §6(b) Act 35/1999 WEF 1st January 2000
5 Words “but, should the limitation imposed by this subsection apply to reduce the deductions available to either or both husband and wife, such deductions shall be apportioned within their respective entitlement in such proportion as they agree, or, in default of agreement, in such manner as appears to the Commissioner to be reasonable” deleted by §6(c) Act 35/1999 WEF 1st January 2000
6 Inserted by §12 Act 21/1980 WEF 1st January 1980
7 Substituted for “$1,000” by §6(d) Act 35/1999 WEF 1st January 2000; “$1,000” substituted for “$750” by §9 Act 3/1999 WEF 1st January 1999
8 Words “with no general rebate” deleted by §6(e)(ii) Act 35/1999 WEF 1st January 2000
9 Substituted for “$1,000” by §6(e)(ii) Act 35/1999 WEF 1st January 2000; “$1,000” substituted for “$750” by §9 Act 3/1999 WEF 1st January 1999
10 Substituted by §13 Act 23/1985 WEF 1st January 1986 – previously read:

“: Provided that, where a wife is in receipt of earnings (or a pension pertaining thereto) or profits relating to personal exertion income in which her own skills are used and such earnings or profits arise or accrue from a source which is unconnected with any trade, business, profession or vocation carried on by her husband, either individually or in association with any other person, or by a company in which the husband has an interest and to which subsection (1) of section 12 applies, that tax payable shall not exceed the sum of the tax payable on—

(i) the joint income, excluding the wife’s personal exertion income, taxed as a single person; and
(ii) the wife’s personal exertion income taxed as a single person with no general rebate but with a deduction of $750 in respect of the allowance for the wife.”

PART VII – RETURNS AND INFORMATION

Return of income

44.—(1) Every person liable to taxation under the provisions of this Act shall (subject in the case of a company, to the provisions of section 53, and in the case of a business, to the provisions of section 52) on or before 31 March in each year without notice or demand deliver to the Commissioner a return, in such form as may be approved by the Commissioner, of his total income for the immediately preceding year. In such return, there shall be stated an address for service in Fiji to which all assessments, notices and other documents may be posted or served:

Provided that any person whose only source of income is from emoluments as defined in section 79 and who is not liable to have any deductions of tax made and who has not had such deductions as aforesaid lawfully made from such emoluments in accordance with any regulation made under the provisions of section 81 and any person whose only liability has been for deduction of [basic tax] shall not be required to lodge a return of such income unless required to do so by notice or demand sent to him by the Commissioner.

(2) Any such return shall be made in Fiji currency.

(3) If any income is derived by a taxpayer from a business carried on in a country other than Fiji—

(a) that income must be expressed in Fiji currency at a rate equal to the average exchange rates applicable from time to time during the year that the income is derived; and

(b) any foreign tax paid in that other country in respect of that income must be expressed in Fiji currency at the exchange rate applicable at the time when the tax was paid.

(4) If any income is derived by a taxpayer from employment in a country other than Fiji—

(a) that income must be expressed in Fiji currency at a rate equal to the average exchange rates applicable from time to time during the whole or part of the year that the income is derived; and

(b) any foreign tax paid in that other country in respect of that income must be expressed in Fiji currency at the exchange rate applicable at the time when the tax was paid.

(5) If any income, other than income to which subsection (3) or (4) applies, is derived by a taxpayer from a country other than Fiji, that income and any foreign tax paid
in that other country in respect of that income, shall be expressed in Fiji currency at the exchange rate applying—

(a) if all of the income is remitted to Fiji – on the day it is remitted;
(b) if part of the income is remitted to Fiji – on the day it is remitted; or
(c) in any other case – at the end of the relevant year of income.

(6) For the purposes of subsections (3), (4) and (5)—
(a) the day an amount is remitted is the day that it is received in Fiji; and
(c) “exchange rate” means the telegraphic transfer buying rate issued by a financial institution licensed under the Banking Act 1995.

Presumption as to joint accounts

44A. For the purposes of section 44, it shall be presumed, unless the contrary is proved that –

(a) the holders of an account, at any bank or other financial institution, held jointly in the names of two or more persons are equally entitled to all moneys standing to the credit of such account; and

(b) the holders of all other property (whether moveable or immovable), held jointly in the name of two or more persons, are equally entitled, in money or money's worth, to the value of such property.

Return of corporations
2 Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009- previously read :

“The return in the case of a company, corporation, association or other body shall be made and signed by the
authorised officer or, if an authorised officer has not been appointed, by the managing director, secretary, treasurer
or chief agent having a personal knowledge of the affairs of such company, corporation, association or other body or,
in any case, by such other person or persons employed in the business liable or believed to be liable to taxation as the
Commissioner may require”. 

Return by guardian or legal representative

2 Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009- previously read :

“If a person is unable, for any reason, to make a return required by section 44, such returns shall be made by the
guardian, curator, tutor or other legal representative of such person or, if there is no such legal representative, by
someone acting as agent for such person, and, in the case of the estate of any deceased person, by the executor,
administrator or heir of such deceased person, and, if there is no person to make a return under the provisions of this
section, then by such person as may be required by the Commissioner to make such return” 

Return by employers of salary and by companies of dividends, etc.

47.1 (1) All employers shall make a return of such persons in their employ receiving
any salary or other remuneration in excess of such an amount as the Commissioner may
approve, and all companies, corporations, associations and other bodies shall make a
return of all dividends and bonuses paid to shareholders and members and all interest
paid to debenture holders, and an persons, in whatsoever capacity acting, having the
control, receipt, disposal or payment of fixed or determinable annual or periodical gains,
profits or incomes of any taxpayer shall, make and render a separate and distinct return to
the Commissioner of such gains, profits or incomes containing the name and address of
each taxpayer. Such returns shall be delivered to the Commissioner on or before the last
day of February in each year without any notice or demand being made therefore, in such
form as the Commissioner may approve [, which must1 include an electronic version,]1:

(2) Provided that, to the extent to which any person is required under other provisions
of this Act or under any regulation made under the provisions of section 81 or 107 to
furnish similar information in respect of any other person, then, to that extent, such
person is relieved of his requirement to make a return under this section.

(3) Every employer must indicate in the 2008 return, information of payment made
for contract of service and any other payment made for pay periods January to May 2008
and June to December 2008.
Rental Income Reporting System

47A—(1) Every real estate agent shall furnish to the Commissioner in the prescribed form, which may be in electronic form, by the last day of February in each year, a report providing the following information in relation to the previous calendar year —

(a) the name and address of each landlord for whom the real estate agent has collected rent;
(b) the address of the property for which the real estate agent collected the rent on behalf of the landlord;
(c) the total amount of the rent collected on behalf of each landlord, for each property of that landlord;
(d) the net amount of rent referred to in paragraph (c) after deduction of commission and other expenses in relation to the management of the property;
(e) any other income derived; and
(f) any other information required by the Commissioner.

(3) For the purposes of this section, a person is deemed to be a real estate agent if the person acts, or holds himself or herself out to the public as ready to act, for reward as an agent in respect of the sale or other disposition of land or business (either with or without any interest in land) or the purchase or other acquisition of land or of business (either with or without any interest in land), or in respect of the leasing and letting of land, whether or not the person carries on any other business. For the purposes of this section, the collection or receipt of rent money by —

(a) a real estate agent or any person employed by that real estate agent; or
(b) a director, officer or employee of a company that is a real estate agent; or
(c) a company in which a real estate agent holds, directly or indirectly, a majority of the shares or control of the voting power—

shall be deemed to be carrying on the business of a real estate agent.

(4) Where two or more persons carry on business jointly as real estate agents, each of those persons shall be deemed to be a real estate agent.

(5) For the purposes of this section “land” includes all estates and interests, whether freehold or chattel, in real property; and also includes any building and any part of a building; and, in relation to any transaction relating to land that also relates to any goods, chattel, or other property, also includes those goods or chattels and that other property

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1 Inserted by §8 Act 4/2006 WEF 1st January 2006
2 Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009- previously read:
(2) A real estate agent who fails to provide the report required under subsection (1), commits an offence and is liable on conviction to a fine not exceeding $5,000 or for imprisonment for a term not exceeding 12 months or to both.

Time may be extended

48. 1 2

2 Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009- previously read :

The Commissioner may, at any time, extend the time for making any return

Commissioner may demand special returns and make special assessments

49. 1 2

2 Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009- previously read :

(1) This section applies to the following persons:

(a) an agent, non-resident trader or person believed by the Commissioner to be about to discontinue the carrying on of business in Fiji unless such agent, trader or person satisfies the Commissioner that he intends to continue residing in Fiji;

(b) a person who is believed by the Commissioner to be about to leave Fiji;

(c) a non-resident who has ceased to carry on business in Fiji or to derive income therefrom;

(d) the executors or administrators of a deceased taxpayer in respect of income derived by him in his lifetime;

(e) a person who has become bankrupt, or a company which is in the course of being wound up.

(2) The Commissioner may, if he thinks fit, at any time during the income year or in any subsequent year, require any person to whom this section applies to make a return of income derived from any specified transaction or transactions, or during any specified period, and may assess him for tax on the income so returned, or when default is made in making any such return, or the Commissioner is dissatisfied therewith, then on a sum estimated according to the best of the Commissioner’s judgment, and shall give notice of the assessment to the person so assessed.

(3) Any person so assessed shall have the same right of objection as is conferred by section 62.

(4) Tax so assessed shall be payable by the date specified by the Commissioner in the notice of assessment and the tax shall be recoverable in the same manner as tax assessed under section 55.

(5) If any such assessment of tax on income is made during the income year, the assessment under this section shall be made in accordance with the law in force and the rate of tax applicable at the date of the making of the assessment.

(6) No assessment made under this section shall, in any manner, preclude a subsequent assessment of the same person in the ordinary course in respect of the whole of the income derived by him during the income year with respect to which the assessment under this section was made, but, in any such case, credit shall be given against the tax charged in the subsequent assessment for that paid under the earlier assessment.”

Demand for additional information

50. 1 2

2 Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009- previously read :
Production of letters, accounts, etc.

(2) ..... 3

(3) ..... 4

Persons in receipt of money, etc, for another to produce information required

(4) ..... 5

Right of access and inspection

(5) ..... 6

(b)

Protection for companies applying to Commissioner to make determination

(6) A company to which section 12 applies may, at any time after it has lodged its return of income pursuant to the provisions of this Act, apply to the Commissioner to determine whether or not, in relation to the fiscal year of the company covered by such return, a reasonable distribution of profits has been made, and the company shall, if required by the Commissioner, supply such further information as the Commissioner may deem necessary in order to enable him to make such determination. If, within 9 months after the receipt by the Commissioner of such application, or, if further information has been required as aforesaid, within 3 months after the receipt of such information, the Commissioner has not intimated to the company his intention to take further action in the case of the company under section 12 in respect of the fiscal year to which such application relates, the power of the Commissioner to take any such further action in respect of that year shall absolutely cease and determine.

Abrogation of pleas of legal professional privilege in tax cases

(7) ..... 7

Taking possession of items required to be examined by FIRCA

(8) ..... 8

2 Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009- previously read : "(1) If the Commissioner, in order to enable him to make an assessment or for any other purpose, desires any information or additional information or a return from any person who has not made a return or a complete return, he may, by registered letter or by personal service of a notice in writing, demand from such person such information, additional information or return, and such person shall deliver to the Commissioner such information, additional information or return within the period of time determined by the Commissioner in such registered letter or notice. For the purpose of any proceedings taken under this Act, the facts necessary to establish compliance on the part of the Commissioner with the provisions of this section as well as default thereunder shall be sufficiently proved in any court of law by the affidavit of the Commissioner or any other responsible officer of the [Fiji Islands Revenue and Customs Authority]. Such affidavit shall have attached thereto as an exhibit a copy or duplicate of the said letter or notice."  
3 Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009- previously read :
The Commissioner may require the production or the production on oath by the taxpayer or by his agent or officer or by any person or partnership holding or paying or liable to pay any portion of the income of any taxpayer of any letters, accounts, invoices, statements and other documents.

Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009 - previously read:

“The Commissioner may require and demand the production or the production on oath by any person or his agent or officer of any letters, accounts, invoices, statements, books or documents held by such person, agent or officer for the purpose of arriving at the tax believed to be payable by any other person, and the same shall be produced within the time determined by such demand.”

Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009 - previously read:

“Every person who, in whatsoever capacity acting, is in receipt of any money, thing of value or of profits or gains arising from any source of or belonging to any other person shall, when required to do so by notice from the Commissioner, prepare and deliver to the Commissioner any information required within the time determined by such notice.”

Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009 - previously read:

(a) “The Commissioner (or any officer authorised by him in writing upon the production of his written authority) shall at all reasonable times be entitled to enter upon any lands, buildings or places for the purpose of inspecting all books and documents, whether in the custody or under the control of a public officer or a body corporate or any other person whatsoever, if the Commissioner or officer considers such inspection likely to assist in the ascertaining of the income of any person or in the collection or recovery of tax and may inspect any such books or documents and may without fee or reward make extracts or copies of any such books or documents.

(b) The Commissioner or any officer authorised by him may, for the purposes of any inspection under this subsection, require the production of any book or document by any person in whose custody or control such book or document may be and may require any such person to give all reasonable assistance in the inspection and to answer all proper questions relating thereto.”

New subsection inserted by §15 Act 3/2005 WEF 1st January 2005

Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009 - previously read:

“Notwithstanding any provision of law relating to legal professional privilege, a court or the Commissioner or any person duly authorised by the Commissioner in that behalf may require a legal practitioner, a firm of legal practitioners or the client or person holding the same to disclose any document, thing, matter, information, communication or advice, which –

(a) consists wholly or partly of, or relates wholly or partly to, receipts, payments, income, expenditure, financial transactions or dealings; and

(b) is contained in, or comprises the whole, or part of, any book, account, statement or other record prepared or kept by the legal practitioner or firm of legal practitioners,

in connection with any client.”

New subsection inserted by §15 Act 3/2005 WEF 1st January 2005

Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009 - previously read:

“The Commissioner may remove and retain or make copies of, any book, account, statement or other record referred to in subsection (7) for so long as it is necessary to allow the Commissioner to make a full and complete inspection.”

Change of address and status

50A

50A?
The words “and status” inserted by §11(a) Promulgation No. 47 of 2007 WEF 1st January 2008

Inserted by §16 Act 3/2005 WEF 1st January 2005

Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009- previously read : “(1) Where a person charged with income tax changes his address, in Fiji, which has been given by that person to the Commissioner, the person shall, within 1 month of such change, notify the Commissioner, in writing, of:
(1) any changes in the name, address, constitution or nature of the taxpayer;
(2) A taxpayer who fails to notify the Commissioner of Inland Revenue within the specified period commits an offence and is liable on conviction to a fine of $500.

Further notices by individuals

(2) An individual who arrives in Fiji during any year of assessment shall, within 30 days of arrival in Fiji notify the Commissioner, in writing —

Partnerships – return of partners

51.1 — (1) Persons carrying on any trade, profession, business or vocation in partnership shall make a joint return as partners in respect of such trade, profession, business or vocation, together with such particulars as may from time to time be prescribed and each partner shall be separately and individually liable for rendering a joint return. The income of any partner from the partnership for the income year shall be deemed to be the share to which such partner is entitled in the income of the partnership for that year (such income being ascertained in accordance with the provisions of this Act) and shall be included in the return of income to be made by such partner under the provisions of this Act:

(2) A member of a partnership of a business of which the fiscal year is other than the calendar year shall make a return of the income of the business within 3 months of the end of such fiscal year.

(3) Notwithstanding any other provision of this Act, a husband and wife carrying on business together shall be deemed not to be partners unless it is proved to the satisfaction of the Commissioner that a husband’s or wife’s source of contribution to the partnership is separately and distinctively derived from their own capital contribution or personal skills.


2 The proviso in 51(1) deleted by §12 Promulgation No. 47 of 2007 WEF 1st January 2008. Previously read:-
“Provided that a husband and wife carrying on business together shall be deemed not to be partners for any purpose under this Act.”

3 Inserted by §13 Promulgation No. 35 of 2008 WEF 1st January 2009

Return of proprietor of a business

52.1 A proprietor of a business of which the fiscal year is other than the calendar year shall make a return of the income of the business within 3 months of the end of the fiscal year.

Return of company where fiscal year not calendar year

53.1 Any company, the fiscal year of which is not the calendar year, shall make a return within 3 months of the end of its fiscal year.


Return of withholding tax or dividend tax deducted

54.1 Any taxpayer or agent who deducts withholding tax or dividend tax on payment of income under sections 8, 8A, 9, 9A and 10, 10A shall, not later than the last day of February [each year deliver to the Commissioner] details of such payments made in the previous year of assessment on a form [approved] by the Commissioner.

2 Inserted by §13 Promulgation No. 47 of 2007 WEF 1st January 2008
3 Inserted by §9 Act 10/1998 WEF 1st January 1999
5 Substituted for “annually submit” by §9(a) Act 12/1982 WEF 1st January 1982
6 Substituted for “prescribed” by §9(b) Act 12/1982 WEF 1st January 1982

PART VIIA – REGISTRATION OF TAX AGENTS


Interpretation

54A.1

2 Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009 – previously read:

“(In this Part, unless the context otherwise requires:—
“application” means an application to the Board under this Part;
“Board” means the Tax Agents’ Board constituted under section 54B;
“person” means a natural person;
“tax agent” means any person registered as a tax agent under this Part”

Tax Agents’ Board

54B.1

35 ...
(2) A member of the Board shall be paid such expenses as the Minister may direct.”


Proceedings of the Board

54C. 1 36 …

36 Repealed by Tax Administration Decree 50/2009 WEF 27th November 2009 – previously read:

“At all meetings of the Board, a quorum shall be 2 members and all questions shall be decided by a majority of them, the Chairman having a casting and a deliberative vote. In the absence of the Auditor-General, the member nominated by the Minister shall be Chairman.”


Protection of members

54D. 1 37 …

37 Repealed by Tax Administration Decree 50/2009 WEF 27th November 2009 – previously read:

“No member of the Board shall be liable to any action or suit for any act done or omitted to be done in the bona fide execution of his duties under this Part”


Power to require attendance of witnesses, etc.

54E. 1 38 …

38 Repealed by Tax Administration Decree 50/2009 WEF 27th November 2009 – previously read:

“For the purposes of carrying out its powers, duties and functions under this Part, the Board shall, subject to the provisions of section 4 of this Act, have the same powers and authority to summon witnesses and to admit and receive evidence as are conferred upon the commissioners of a Commission of Inquiry by section 9 of the Commissions of Inquiry Act and the provisions of sections 14 and 17 of that Act shall apply mutatis mutandis in relation to the powers and authority vested in the Board under this Part.”


Registration of tax agents

54F. 1 39 …

39 Repealed by Tax Administration Decree 50/2009 WEF 27th November 2009 – previously read:

“(1) Any person desiring to be registered as a tax agent for the purposes of this Act may make application to the Board for registration.

(2) Each application to the Board for registration as a tax agent shall be accompanied by the prescribed fee.
Cancellation of registration

(3) Registration as a tax agent, if granted by the Board, shall be valid for a period of up to and including the thirty-first day of December of the year in which the application was granted.

(4) Any registered person who, upon the expiry of his registration, wishes to be registered for the following year shall submit his application, together with the prescribed fee, for registration to the Board within twenty-one days of the date of expiry of his registration, failing which his registration shall be deemed to be cancelled.

(5) Subject to subsection (6), if an applicant satisfies the Board that he is a fit and proper person to prepare income tax returns and transact business on behalf of taxpayers in income tax matters he shall be entitled to registration as a tax agent.

(6) If an applicant for registration does not possess an academic qualification acceptable to the Board, the Board may request the Fiji Institute of Accountants to conduct on its behalf an examination to determine whether the applicant’s knowledge of accounting and of income tax law and practice is sufficient to entitle him to registration.

40 Repealed by Tax Administration Decree 50/2009 WEF 27th November 2009 – previously read:

“(1) The Board may cancel the registration of any tax agent upon being satisfied that—

(a) any return to the Commissioner which has been prepared by the tax agent is false in any material particular, unless he establishes to the satisfaction of the Board that the false statement was not wilfully or negligently made;

(b) the tax agent has become bankrupt;

(c) the tax agent has ceased to carry on business as a tax agent;

(d) the tax agent has failed to maintain his personal tax affairs in a satisfactory state;

(e) for any other reason, the tax agent has ceased to be a fit and proper person to remain registered.

(2) The cancellation of a registration under this section shall not take effect in any case until the expiration of 60 days from the date of notification of the decision of the Board and, if, within that period, the person affected gives notice of his intention to appeal against the decision, shall not take effect until and unless the cancellation is confirmed by the Minister.”


“(2) Subject to subsection (3), if an applicant satisfies the Board that he is a fit and proper person to prepare income tax returns and transact business on behalf of taxpayers in income tax matters he shall be entitled to registration as a tax agent.

(3) If an applicant for registration does not possess an academic qualification acceptable to the Board, the Board may request the Fiji Institute of Accountants to conduct on its behalf an examination to determine whether the applicant’s knowledge of accounting and of income tax law and practice is sufficient to entitle him to registration.”


Appeals
54H. 41…—

41 Repealed by Tax Administration Decree 50/2009 WEF 27th November 2009 – previously read:

“—(1) Any person whose application for registration under section 54F is refused or whose registration is cancelled under section 54G may, within 60 days of notification to him of such refusal or cancellation, appeal to the Minister.

(2) Any appeal under subsection (1) shall be in writing and, after considering the appeal, the Minister may confirm or reverse the decision of the Board.”


Only tax agents to accept fees

54J. 42…—

42 Repealed by Tax Administration Decree 50/2009 WEF 27th November 2009 – previously read:

“(1) No person other than a tax agent shall demand or receive any fee for or in relation to:—

(a) the preparation of any return to the Commissioner;
(b) any objection to any assessment;
(c) the transaction of any business on behalf of any person in respect of any of that person’s rights or obligations under this Act.

(2) This section shall not apply to any barrister and solicitor 42 performing legal work in connection with income tax matters”.


Advertising

54K. 43…

43 Repealed by Tax Administration Decree 50/2009 WEF 27th November 2009 – previously read:

“No person other than a registered tax agent shall represent himself to be a tax agent or indicate that, for reward, he will offer assistance to any person in respect of that person’s rights or obligations under this Act”

1 Inserted by §6 Act 23/1979 WEF date notified by Minister in Gazette

PART VIII – ASSESSMENTS

Notice of assessment to be sent and time for payment

55. — (1) After examination of the taxpayer’s return, or, in the case of a taxpayer who has applied to be dealt with through an agent appointed under the provisions of section 56, of the agent’s report, the Commissioner shall send or cause to be sent a notice of assessment to the taxpayer stating therein the date by which the amount of such assessment is to be paid.
Appointment of agent in the United Kingdom

56. 1—(1) For the purpose of facilitating the assessment of the income of persons residing in the United Kingdom, the Minister may appoint an agent in the United Kingdom2 who shall make enquiries on behalf of the Commissioner in respect of any such person as may apply to be dealt with through such agent, and shall ascertain and report to the Commissioner the amount of the chargeable income of such person in accordance with this Act and shall forward to the Commissioner the accounts and computations upon which his report is based.

(2) If it appears to the Commissioner that any error has occurred in the accounts or computations, he may refer the report back for further consideration.

(3) Nothing in this section shall affect the right of objection and appeal conferred by section 62.

Assessment may be sent to agent

57. 1—2

Commissioner not bound by returns

58. 1—2

Additional assessments

59. 1—2
Advance assessments

59A

(1) Where in any year of assessment –

(a) a person ceases to carry on a trade, business, profession, vocation or employment; or

(b) the Commissioner is satisfied that a person having a source of income is about to leave Fiji and is likely to cease to have that source of income in that year or in the succeeding year,

the Commissioner may make an assessment or an additional assessment of that person to bring to charge the full amount of the income from all sources derived or to be derived by that person up to the year in which the source of income ceases or is likely to cease.

(2) Where in a year of assessment a person commences to receive income in respect of income from an employment or in respect of any pension, annuity, or other periodical payments, the Commissioner may in that year make an assessment in respect of that person and income from that source for that year of assessment and each of the subsequent years of assessment.

(3) The Commissioner may during any year make an assessment in respect of the income derived by a person carrying on or exercising any trade, business, profession or vocation up to that year”.

Commonwealth Development Corporation
60. Where the Commonwealth Development Corporation or the Fiji Development Company Limited is a shareholder in any company, other than a non-Fiji company, the like consequences shall follow, for all purposes of this Act, as would follow if that shareholding were an investment at interest and the gross amount of the interest payable thereon in respect of any 1 year were that sum which would yield, after deduction of tax at the normal rate, the gross amount of the dividends actually paid in respect of that shareholding in the year in question:

Provided that the provisions of this section shall only operate to the extent that any saving in tax to the company paying the dividend is passed on to the Corporation or Company.


Provisional tax and tax deducted from emoluments to be credited against tax assessed

61.—(1) The Commissioner shall, in assessing the liability of any person for tax in respect of any year of assessment in accordance with the provisions of section 55, set off against such liability the amount of tax deducted from emolument income (if any) during that year and also the amounts of provisional tax paid in respect of such liability and—

(a) if the sum of the said amounts of tax deducted from emoluments and provisional tax exceeds the amount due in respect of the said liability, the excess shall, subject to the other provisions of this section, be refunded to the taxpayer as soon as practicable thereafter; or

(b) if the amount due in respect of the said liability exceeds the sum of the said amounts of tax deducted from emolument income and of provisional tax, the excess shall, subject to the other provisions of this section, be payable by the taxpayer.

(2) If, in respect of any person to whom there is an excess amount to be refunded in accordance with paragraph (a) of subsection (1), there is an amount due to the Commissioner by that person in respect of any tax, penalty, interest of costs [under this Act, or the Value Added Tax Decree 1991, or the Gambling Turnover Tax Decree 1991] for that year or any other year of assessment, then such excess shall first be applied towards such other liability and only any then remaining excess shall be refunded to the taxpayer.

(3) In the making of any refund to a taxpayer or in the recovery of any further amount payable by a taxpayer in accordance with the provisions of this section, any amount of less than [§5] shall be ignored by the Commissioner.

2 Inserted by §7 Act 2/1993 WEF 1st January 1993
3 Substituted for “$2” by §13 Act 1/2003 WEF 1st January 2003
PART IX – APPEALS

Objection to assessment

62. 1

... 2

2 Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009 - previously read:

"(1) Any taxpayer dissatisfied with an assessment may, personally or by his agent, within 60 days of the
date upon which the notice of assessment has been served upon him or his agent or, where such notice has been posted,
the date of posting, lodge with the Commissioner an objection in writing to the assessment in the form set out in Form 2
in the First Schedule stating the grounds on which he relies:

Provided that, where the assessment is an amended assessment, the taxpayer shall have no further right of
objection except to the extent to which, by reason of the amendment, a fresh liability in respect of any particular is
imposed on him or an existing liability in respect of any particular is increased.

(2) The Commissioner may, in his discretion, extend the time for giving notice of objection under subsection (1).

(3) On receipt of the notice of objection referred to in subsection (1), the Commissioner may require the taxpayer
to furnish such particulars as the Commissioner may deem necessary with respect to his income and to produce all
books or other documents in his custody or under his control relating to such income, and may summon any person
who, he thinks, is able to give evidence respecting the assessment to attend before

2

him and may examine such person (except the clerk, agent, servant or other person confidentially employed in the affairs of the taxpayer) on oath or
otherwise.

(4) The Commissioner shall consider the objection and shall either allow or disallow it wholly or in part.

(5) The Commissioner shall give written notice of his allowance or disallowance of the objection to the person
objecting and shall state in such notice the time, not being less than [35] days, within which such person may exercise
the right of appeal given to him in subsection (6) or in subsection (7) of section 70. [Any notice required to be given
under this subsection shall be sent by registered post and the period within which an appeal may be lodged shall
commence upon the date of posting of the notice.]

(5A) Where, before the expiration of the time specified in a notice given under subsection (5), the person to
whom the notice is given makes application in writing to the Commissioner for an extension of that time, the
Commissioner may, in his discretion, extend that time for such period as he thinks fit and shall, as soon as practicable,
give notice in writing to the applicant of his decision, and, where the time is so extended, a reference in this Act to the
time specified in a notice given under subsection (5) shall be deemed to include a reference to that time as so extended.

(6) Any person objecting to the decision of the Commissioner under subsection (4) may, within the time
determined under subsection (5), appeal to the Court of Review and such appeal shall be heard and determined as
hereinafter provided. Save with the leave of the Court of Review, no person may appeal to the Court of Review upon
any ground other than a ground stated in the objection to the Commissioner.

(7) The obligation to pay and the right to receive and recover any tax chargeable under this Act (including any
interest, costs and penalties) shall not, unless the Commissioner so directs, be suspended by any objection or appeal or
pending the decision of the Court of Review under section 63, 69 or 70 but, if any assessment is altered on objection or
appeal or in conformity with any such decision, a due adjustment shall be made, amounts paid in excess being refunded
and amounts shortpaid being recoverable.

(8) Where no objection is made within the time for objecting set out in subsection (1) or where that time is
extended by the Commissioner, within the time so extended, the assessment shall stand and shall be valid and binding
upon the taxpayer, notwithstanding any defect, error or omission that may have been made therein or in any
proceeding required by this Act or any regulation thereunder."

Establishment of Court of Review

63. 1

... 2
(2) Section 102 of the Constitution\(^3\) shall apply to the office of the Court of Review.\(^4\)

\(^2\) Repealed by § Tax Administration Decree 50/2009 WEF 27\(^{th}\) November 2009 - previously read:

'(1) The Judicial Service Commission\(^1\) may appoint a person of legal knowledge and experience for the purpose of hearing and determining appeals from the assessment of the Commissioner, and the person so appointed shall hold a court to be called the Court of Review, and the said Court of Review shall, for the purpose of hearing and determining the appeals under this Act referred to it, have powers and authority similar to those vested in the [High Court]\(^2\) as if the appeal were an action between the taxpayer and the Commissioner.’


**Rules of Court**

64.\(^1\) .... \(^2\)

\(^1\) Enacted as §63 by Act 6/1974. Renumbered as §64 in 1978 Edition Laws of Fiji
\(^2\) Repealed by § Tax Administration Decree 50/2009 WEF 27\(^{th}\) November 2009 - previously read:

‘The Chief Justice shall have the power, to make rules of court generally for regulating any matters relating to the practice and procedure of the said Court of Review or the fees to be charged and the costs of proceedings therein. Such rules shall be regarded as forming part of this section’

**Court sittings**

65.\(^1\)

\(^1\) Enacted as §64 by Act 6/1974. Renumbered as §65 in 1978 Edition Laws of Fiji
\(^2\) Repealed by § Tax Administration Decree 50/2009 WEF 27\(^{th}\) November 2009 - previously read:

‘The Court of Review shall fix the date and place of hearing of appeals and shall notify the parties accordingly: Provided that the hearing of the appeal by the Court of Review shall not commence until after the expiration of not less than 30 days from such notification as aforesaid’. 

**Court of Review to decide and notify appellant and Commissioner**

66.\(^1\)

\(^2\) Repealed by § Tax Administration Decree 50/2009 WEF 27\(^{th}\) November 2009 - previously read:

(1) ‘The Court of Review, after hearing any evidence adduced and upon such other inquiry as it considers advisable, shall determine the matter and confirm or amend the assessment accordingly.

(2) The Court of Review shall have power to increase the assessment in any case before it.

(3) The Court of Review shall send a copy of its decision by registered mail to the Commissioner and to the appellant or its agent or officer.’

**Proceedings ex parte**

67.\(^1\) .... \(^2\)

\(^2\) Repealed by § Tax Administration Decree 50/2009 WEF 27\(^{th}\) November 2009 - previously read:

‘If the appellant fails to appear either in person or by agent, the Court of Review may proceed ex parte or may defer the hearing.’

**Costs**
68. 1 .... 2

2 Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009- previously read :

“In any case where the appeal is unsuccessful, the Court of Review may direct that the appellant shall pay the costs or part of the costs of such appeal, and, if such appeal is successful, the Court of Review may direct that the costs or any part thereof be paid by the [State]2”.

Appeal to [High Court] 1

69. 2 .... 3

1 Reference to “High Court” substituted for “Supreme Court” by §3(e) Interpretation Act (Cap. 7) WEF 4th December 1987
3 Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009- previously read :

“If the appellant is dissatisfied with the decision of the Court of Review, he may, within 30 days after the date of such decision, give a written notice to the Commissioner in the form set out in Form 3 in the First Schedule that he desires to appeal from the decision. If the appellant gives such notice or if the Commissioner is dissatisfied with the decision, the Commissioner shall refer the matter to the [High Court]3 for hearing and determination. Such reference may be made in the form set out in Form 4 in the First Schedule and the Commissioner shall notify the other party to the appeal by registered letter that he has made such reference. On any such reference, the [High Court]3 shall hear and consider such matter upon the papers and evidence referred and upon any further evidence which the appellant or the Commissioner produces under the direction, of the said court.”

Discretions Review Board

70. 1 —

2 Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009- previously read :

“(1) There shall be a Discretions Review Board, in this Act referred to as "the Board", which shall have the power to hear and determine appeals against the exercise by the Commissioner of his discretion in respect of such of the matters under this Act as are specified in the Second Schedule:

Provided that no appeal shall lie to the Board save in a case where the taxpayer has lodged an objection with the Commissioner under section 62 and the Commissioner has disallowed such objection either wholly or in part.

(2) The Chairman of the Board shall be appointed by the Judicial and Legal Services Commission2 and shall be a barrister and solicitor2 of at least 6 years’ standing.

(3) The Judicial and Legal Services Commission2 shall appoint a panel of 6 members of the Board in addition to the Chairman, being persons with legal, accountancy, banking, commercial or other such qualifications as may seem suitable.

(4) Section 102 of the Constitution2 shall apply to the office of Chairman of the Board and to the office of member of the Board.

(5) The Chairman and members of the Board may be paid such remuneration as the Minister may allow.
(6) For each appeal, the Board shall be constituted by the Chairman and shall consist of 3 members, 1 of whom shall be the Chairman, or, if he is for any reason unable to sit, such member as he may nominate to act as Chairman for that appeal.

(7) Any taxpayer dissatisfied with an exercise of discretion by the Commissioner in respect of any of the matters specified in the Second Schedule may personally or by his agent, within the time determined by the Commissioner under the provisions of subsection (5) of section 62, file with the Chairman of the Board and serve on the Commissioner a notice of appeal in writing in the form set out in Form 5 in the First Schedule, together with such copies thereof as may be required, stating clearly and concisely the grounds on which he is dissatisfied with the Commissioner’s decision, and together with a fee of $2. Save with the leave of the Board, no person may rely on any ground of appeal before the Board, other than a ground stated in the objection to the Commissioner.

(8) The Board shall have all the powers of a Court as to taking evidence on oath, issuing summonses, awarding costs and other matters. The Commissioner and the taxpayer may appear before the Board personally or by means of a barrister or solicitor or agent. Subject to the provisions of this section, the Board may regulate its own procedure.

(9) Appeals to the Board shall be by way of rehearing. Notwithstanding that the Board may consider that the Commissioner has made no error in law and acted on no wrong principle in exercising his discretion, the Board may substitute its own discretion for the discretion of the Commissioner. For the purpose of exercising its powers, the Board shall have all the powers which the Commissioner has in making assessments, determinations and decisions, including decisions on objections, under the provisions of this Act.

(10) A taxpayer shall not appeal both to the Court of Review and to the Board in respect of the same matter.

(11) The decision of the majority of the members of the Board hearing an appeal shall be the decision of the Board. The Chairman shall have a deliberative but not a casting vote.

(12) A decision of the Board in an appeal under this section shall be given in writing, stating shortly the grounds for the decision, and may either confirm, reduce or increase the amount determined by the Commissioner in exercise of his discretion. The Board’s decision shall be final and conclusive and shall not be subject to any further appeal. The Board shall notify its decision to the Commissioner and the Commissioner shall make such amendments to the assessment as may be necessary to give effect to such decision.

(13) The provisions of subsection (7) of section 62 and subsection (3) of section 71 shall apply to the proceedings of the Board as they apply to objection proceedings and the proceedings of a court respectively."

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No assessment to be set aside for technical reasons

71. 1

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2 Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009- previously read :

"(1) No assessment shall be set aside by a court upon the ground that there has been any error or omission in connection with any proceedings required to be taken under this act or any regulation thereunder, but such court, in any case that may come before it, may determine the true and proper amount of the tax to be paid under this Act.

Onus of proof on taxpayer

(2) On the hearing and determination of all objections to assessments under this Act, the onus of proof shall be on the taxpayer.

Proceedings in camera
(3) All the proceedings of the courts shall be held in camera if requested by the taxpayer."

PART X – COLLECTION, RECOVERY AND REPAYMENT OF TAX

Trustees, etc., to obtain certificate before distribution

72. Refunded contributions – approved superannuation or retirement benefit fund – certificate to be obtained before payment

(2) The trustees or paying agent of any approved superannuation fund or retirement benefit fund, including the Fiji National Provident Fund, before refunding any contributions, shall obtain a certificate from the Commissioner of the amount of tax due in respect of such refund having regard to the provisions of paragraph (o) of the proviso to section 11 (as qualified by paragraph (27) of section 17), and shall, on the instructions of the Commissioner, deduct any tax that is due before making payment. Distribution without such certificate shall render the trustees, paying agent or other like person personally liable for the tax.

Tax owed by companies which are deregistered

(3) Notwithstanding any other written law, a person who applies for deregistration of a company shall prior to deregistration obtain from the Commissioner a written notice stating that the Commissioner has no objection to the deregistration.

(4) A person that contravenes subsection (3) is liable for all tax of the deregistered company owing at the time of deregistration.

Instructions regarding tax clearances

72A. Notwithstanding the provisions of any other written law, the Commissioner may issue instructions to the Reserve Bank of Fiji requiring the Reserve Bank of Fiji to seek and procure tax clearances, prior to the Reserve Bank giving approval of exchange control applications.
Tax due from agent of non-resident in respect of premiums on insurance and re-insurance

73. Where a person is or may become liable under the proviso to subsection (1) of section 35 or under section 36 to pay tax as agent for a non-resident in respect of any premium paid or credited by him to that non-resident in respect of insurance or re-insurance—

(a) he shall, for all purposes of this Act, be deemed to have received the premium in his representative capacity immediately before it was so paid or credited; and

(b) if he pays or credits the premium before arrangements have been made to the satisfaction of the Commissioner for the payment of any tax which may be assessed in respect of that premium, he shall be personally liable to pay that tax.

74. Persons paying tax on behalf of others to be indemnified

74A. Directors of a company may be personally sued

75. Deduction from moneys payable to a taxpayer
“(1) Where any sum payable under this Act remains unpaid by the taxpayer for a period of at least 30 days from the date when such sum becomes [due and payable], and where notice has been served upon such taxpayer [in the manner provided by subsection (9)] warning him that such sum has become due and payable, the Commissioner may, by notice in writing in a form to be approved by him, a copy of which shall be sent to the taxpayer to his address last known to the Commissioner, require any person to deduct such sum as may be specified in such notice, not exceeding the sum due and payable, from any amount of moneys which may, at any time within 12 months from the date of such notice, be payable or become payable to such taxpayer and requiring such person to pay such sum to the Commissioner to the credit of the taxpayer within the time specified in such notice.

(2) When any such amount of moneys includes a pension, salary, wages or other remuneration or reward payable at certain fixed intervals, the notice shall state that the sum specified shall be paid by deductions not exceeding one-fifth of the amount payable at every such interval.

(3) Any amount lawfully so deducted shall be deemed to have been deducted with the consent of the taxpayer and no action shall lie against any person merely by reason of the making of such deduction.

(4) The sum deducted from any amount pursuant to a notice under the provisions of this section shall be deemed to be held in trust for the [State], and, without prejudice to any other remedies against the debtor or any other person, shall be recoverable in the same manner in all respects as if it were tax payable by the debtor.

(5) Any person receiving such notice of deduction as aforesaid who is unable to comply therewith on account of the fact that the moneys in question do not come into his possession within the period specified in such notice shall notify the Commissioner within 14 days of the expiration of such period, acquainting him with the facts. If the person receiving the notice is the employer of the taxpayer, he shall notify the Commissioner within 14 days if the taxpayer leaves his employment during the currency of the order.

(6) (a) The provisions of this section shall bind the [State].

(b) Any such notice of deduction in respect of any amount of moneys which are payable or may become payable to the [State] to any taxpayer shall be sent to the head of the appropriate department.

(7) For the purposes of subsection (1), any amount (including the penalty payable if any) referred to in subsection (under the provisions of section 81 or 107 and the date upon which such person so failed to deduct or to remit or pay the amount, as the case may be, shall be deemed to be the date when such assessment becomes due and payable.

(8) For the purposes of subsection (1), any provisional tax certified by the Commissioner as payable under the provisions of Part XII shall be deemed to be tax payable under an assessment which had become due and payable by the person who fails to remit, pay or deduct the amount in accordance with Part XII. The date upon which such amount is due shall be deemed to be the date upon which such amount should have been paid, remitted or deducted under the provisions of that Part and the provisions of this section and of sections 76 and 77 shall be regarded as applicable to such amount.

(9) For the purposes of subsection (1), notice shall be served upon a taxpayer by—

(a) delivering it personally to the taxpayer; or

(b) posting to the address furnished by the taxpayer under subsection (1) of section 44; or

(c) in the case of a non-resident, by delivering it personally or posting it to the agent of the non-resident, and, where such notice has been posted, it shall be deemed to have been received by the taxpayer or his agent, as the case may be, upon the expiry of 28 days from the date of posting.”
**Distrain for unpaid tax**

75A.  

1. Inserted by §15 Act 4/2004 WEF 1st January 2004  
2. Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009 - previously read:

“The Commissioner may levy distress on the goods, other than real property, and chattels of any taxpayer who refuses or fails to pay any tax payable or any other amount recoverable under this Act and for the disposal of any such goods or chattels by sale or otherwise to recover the amount of the tax payable by the taxpayer and any other amount recoverable including the costs and expenses of the disposal.”

**Deduction of tax from payment due to defaulters**

75B.  

1. Inserted by §9 Act 4/2006 WEF 1st January 2006  
2. Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009 - previously read:

“For the purposes of this section –

“Sum payable”, in relation to a person and to any taxpayer means any amount that is payable by the person to the taxpayer (whether on that person’s own account, or as an agent, or as a trustee, or otherwise howsoever) and means, where that person is a bank, any interest accruing therein in favour of taxpayer by deposit or deposited to the credit of that taxpayer with that bank, whether on current account or so as to bear interest for a fixed term or without limitation of time, and whether or not the taxpayer has made any application to withdraw or uplift, that money and whether or not the account into which the money is deposited is overdrawn;

“Bank means any bank that is a bank within the meaning of the Banking Act or any licensed financial institution.”

**Tax a debt due to [State]**

76.  

1. Reference to “State” substituted for “Crown” by §3(e) Interpretation Act (Cap. 7) WEF 7th October 1987  
3. Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009 - previously read:

“(1) The taxes and all interest, penalties and costs assessed shall be recoverable as a debt due to [the State] from the person on whom it is assessed or imposed.

Recovery of tax

(2) Notwithstanding anything contained in the [State] Proceedings Act, any tax, interest, costs or penalty that may be assessed, recovered or imposed under this Act may be sued for and recovered as a debt due to [the State] in any court of competent jurisdiction by the Commissioner suing in his official name.

Taxes, etc., charge upon property

(3) Taxes, interest, costs and penalties imposed under this Act shall be [a lien] and charge upon the property, whether real or personal, movable or immovable, of the person liable to pay the same [, and subsections (2) to (10) of section 62 of the Value Added Tax Decree apply to this subsection with necessary modifications].

Payment by instalments

(4) At the request of the taxpayer, the Commissioner may accept from such taxpayer payment of any such amount by instalments, each instalment to be paid on or before the date specified by the Commissioner.
Extension of time for payment

(5) The Commissioner may, at any time, extend the time for payment of tax on an assessment.

(6) A charge on any real property shall be registered by the Registrar of Titles without fee against the title of the land charged upon the filing with him by the Commissioner of a memorandum under the hand of the Commissioner setting forth the description of the land so charged and the amount payable.

(7) When any such charge as aforesaid has been satisfied, the Commissioner shall deposit with the Registrar of Titles a memorandum of satisfaction and the Registrar of Titles shall, without fee, register the same against the title of the land.

(8) If any taxes, interest, costs and penalties are in arrear and constitute, by virtue of subsection (3), a charge on any property, the Commissioner may apply by petition to the High Court for the enforcement of the charge and the Court may make such order in the premises as it thinks just, either by sale of that property or any part thereof or for the appointment of a receiver of the rents, profits or income thereof and for the payment of the amount in arrear and the costs of the Commissioner out of the proceeds of the sale or out of the said rents, profits or income.

Collection of tax by suit

77.1

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2 Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009- previously read:

“(1) Where notice has been served on any person of any tax due under this Act and payment of the tax set out therein including any interest, costs or penalty has not been made by the date specified in that notice, then the amount due by such person may be sued for and recovered as a debt in a court of competent jurisdiction by the Commissioner in his official name with full costs of suit from such person.

(2) In any suit under subsection (1), the production of a certificate signed by the Commissioner giving the name and address of the defendant and the amount of tax due by him shall be sufficient evidence that such amount of tax is due by such person and sufficient authority for the Court to give judgment for such amount.”

Departure prohibition orders

77A.1

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1 Inserted by §16 Act 4/2004 WEF 1st January 2004
2 Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009- previously read:

“(1) Notwithstanding any other provision of this Act, if the Commissioner has reason to believe that a taxpayer might leave the Fiji Islands without paying tax [owed by him or a company in which he has a controlling interest, under this Act or any other written law];2 then, whether or not the due date for payment of the tax has passed, the Commissioner may issue a departure prohibition order, in writing stating the—

(a) name and address of the taxpayer; and
(b) amount of unpaid assessed tax.

(2) A departure prohibition order has effect throughout the Fiji Islands, including aboard any vessel or aircraft within the Fiji Islands.
(3) If a departure prohibition order is issued in respect of a taxpayer, the Commissioner of Police and the Director of Immigration must each exercise the powers they lawfully possess, or cause an officer under their direction to exercise such powers, so far as is necessary to prevent the taxpayer named in the order from departing the Fiji Islands, including the removal and retention of any passport, identity card, visa or other travel document authorising the taxpayer to leave the Fiji Islands.

(4) A copy of a departure prohibition order issued by the Commissioner in respect of a taxpayer must, as soon as practicable, be served upon the taxpayer and upon the Commissioner of Police and the Director of Immigration.

(5) The Commissioner may revoke a departure prohibition order if the taxpayer—
(a) pays the amount of unpaid assessed tax; or
(b) provides or arranges for security be given to the satisfaction of the Commissioner for payment of the amount of unpaid assessed tax.

(6) A departure prohibition order is valid for a period of 3 years from the date of issue and the Commissioner upon review may extend or revoke the period.

(2) No proceedings, either criminal or civil, may be instituted or maintained, for anything lawfully done under this section, against the Commissioner or any other officer directed or authorised to act under this section.

(8) A person who, knowing that a departure prohibition order has been issued against him under this section, voluntarily leaves or attempts to leave the Fiji Islands, without:
(a) paying any tax referred to in subsection (1); or
(b) providing security, to the satisfaction of the Commissioner, for such payment, commits an offence, and may be arrested without warrant by any police officer, customs officer or immigration officer.

(9) A person subject to this section may be refused customs or immigration clearance.

(10) Where a person is refused customs or immigration clearance under subsection (9), the State, the Customs authorities or any public officer or other duly authorised person is not liable for refusing customs or immigration clearance.”

Possession agreement

77B

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1 Inserted by §23 Act 3/2005 WEF 1st January 2005
2 Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009- previously read:
3(1) This section applies where—
(a) in accordance with the provisions of this Act, a distress is authorised to be levied on the goods and chattels of a person (“person in default”) who has refused or neglected to pay any tax due or any amount recoverable as if it were tax due; and
(b) the person levying the distress and the person in default have entered into a possession agreement, as defined in subsection (2).
(2) In this section, a "possession agreement" means an agreement under which, in consideration of the property distrainted upon being allowed to remain in the custody of the person in default and of the delaying of its sale, the person in default—

(a) acknowledges that the property specified in the agreement is under distraint and held in possession; and

(b) undertakes that, except with the consent of the Commissioners and subject to such conditions as he may impose, the person will not remove or allow the removal of any of the specified property from the premises named in the agreement.

(3) Subject to subsection (4), if the person in default is in breach of the undertaking contained in a possession agreement, the person in default is liable to a penalty equal to half of the tax or other amount referred to in subsection (1)(a).

(4) The person in default is not liable to a penalty under subsection (3) if the person satisfies the Commissioners or, on appeal, a tribunal that there is a reasonable excuse for the breach in question.

Refunds

78. In respect of any assessment for any year of income, if it is proved to the satisfaction of the Commissioner by claim duly made in writing within 6 years of the end of the year of assessment that any person has paid tax in excess of the amount with which he was properly chargeable, such person shall be entitled to have refunded the amount so paid in excess:

Provided that no claims shall be admissible where a person has failed to deliver a return under subsection (1) of section 44 [and] to submit a formal application for relief or refund within 3 years after the end of the year of assessment for which a refund is due, unless such refund is attributable to an error or mistake in the Commissioner’s office.

(2) Instead of making a refund which might otherwise be made under this section, the Commissioner may, where the person is liable or about to become liable to make another payment under this Act, apply the amount of the overpayment to that other liability and notify such person of that action.

(3) Nothing in this section shall operate to extend or reduce any time limit for objection, appeal or repayment specified in any other section or to validate any objection or appeal which is otherwise invalid, or to authorise the revision of any assessment or other matter which has become valid and binding.

(4) Where a refund due to a person in respect of an assessment is not made within 6 months of the date of furnishing the return of income, there shall be paid to such person, in addition to the amount of the refund due, a further sum equal to 5% per annum of the amount of the refund, calculated from the expiry of 6 months from the date of lodgement of such return to the date on which the refund is made, provided that the delay is entirely in the office of the Commissioner.

Tax paid in excess may be set off against additional tax when assessment reopened

(5) Where, upon the investigation by the Commissioner of the liability of a taxpayer over a number of income years —
(a) the Commissioner assesses the taxpayer with tax for any income year in respect of which no assessment has been made previously or alters an assessment for any income year so as to increase the amount for that year; and

(b) the Commissioner is satisfied that in respect of any income year investigated for those income years, tax has been paid in excess of the amount properly payable,

the Commissioner may allow any amount so paid in excess to be deducted from or set off against any tax payable for any income year within those income years, although the time limited for the making of a tax refund so paid in excess may have expired.

2 Substituted for “or” by §11 Act 10/1977 WEF 1st January 1977
3 Subsection 4 inserted by §9 Act 25/1986 WEF 1st January 1987

Reciprocity of income tax, hotel turnover tax, gambling turnover tax1 and value added tax obligations 78A. A tax refund due to a taxpayer under section 78 must first be set off against any tax owed by the taxpayer under any other Act or Decree.

1 Inserted “hotel turnover tax, gambling turnover tax” by §4 Promulgation 19/2007 WEF 1st January 2007
2 New section inserted by §25 Act 3/2005 WEF 1st January 2005

PART XI – PAY AS YOU EARN

Interpretation

79.1 For the purposes of sections 80 and 81—

“emoluments” means all salary, wages, overtime, bonus, remuneration, gratuities, including the estimated annual value of any quarters or board or residence or of any other allowance granted in respect of employment whether in money or otherwise, stipend, commission, or other amounts for services, directors’ fees, retiring allowances or pension, accruing in, derived from or received in Fiji, and which are assessable to tax, but shall not include any salary or share of profits arising from a trade, business, profession or vocation carried on by any person either by himself or in partnership with any other persons;

“employment” means the position of an individual in the service of some other person, including the [State]2, and shall include an office or a position entitling the holder thereof to a fixed or ascertainable stipend or remuneration, and includes any other office the holder of which is elected by popular vote or is elected or appointed in a representative capacity and also includes the position of a director of a company.

Assessment charge on emoluments

80.1 Notwithstanding any other provisions of this Act, on the making of any payment of or on account of any emoluments, tax shall, subject to and in accordance with the regulations made by the Minister under the provisions of section 81, be deducted by the person making the payment, notwithstanding that, when the payment is made, no assessment has been made in respect of those emoluments and notwithstanding that such emoluments may be, in whole or in part, emoluments of some year other than the year during which the payment is made:

Provided that, if any question arises as to whether any emoluments are or are not emoluments within the meaning of section 79, such question shall be determined by the Commissioner, and the provisions of this Act relating to objections and appeals shall apply to any determination of the Commissioner under this section.

(2) Concurrently with the making of payments of or on account of emoluments, the person making such payments shall also make payment in respect of the value of any benefit or allowance granted in respect of or arising from employment included within the meaning of “total income” by virtue of section 11(z), the sum to be accounted for representing the difference between the cost incurred by the employer in providing such benefit and the market value of such benefit as ascertained by the Commissioner, in accordance with section 11(z).

Regulations

81.1 (1) The Minister shall make regulations with respect to the assessment, charge, collection, recovery and repayment of tax in respect of all emoluments and such regulations may, in particular, include provision—

(a) for requiring any person making any payment of, or on account of, any such emoluments, when he makes the payment, to make deduction of tax calculated by reference to tax tables prepared by the Commissioner and for rendering persons who are required to make any such deductions accountable to the Commissioner. The said tax tables shall be constructed with a view to securing that, as far as possible, the total tax payable in respect of any emoluments for any year is deducted from the emoluments paid during that year;

(b) for the production to, and inspection by, the Commissioner, or any officer authorised by him in writing upon the production of his written authority, of wages sheets and other documents and records for the purpose of satisfying

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2 Renumbered by §26 Act3/2005
3 Inserted by §26 Act3/2005 WEF 1st January 2005
30th August 2012  [REVISED INCOME TAX ACT CHAPTER 201]

the Commissioner that tax has been and is being deducted and accounted for in accordance with the regulations;

(c) for the collection and recovery, whether by deduction from income paid in any later year or otherwise, of tax in respect of emoluments to which this Act applies which has not been deducted or otherwise recovered during the year;

(d) for the making of assessments in respect of emoluments and for other matters dealing with the recovery of underpayments or the refund of overpayments arising therefrom and for ignoring any amount of less than, $2 in the amounts so ascertained of any underpayments to be recovered or overpayments to be refunded and for the manner in which amounts of excess tax are to be refunded under the provisions of section 78;

(e) for appeals with respect to matters arising under the regulations which would not otherwise be the subject of an appeal; for the charging of fees on the issue of duplicate exemption cards and other documents,

(f) for the procedures that apply to accounting by employers for fringe benefits in terms of section 80(2).

and any such regulations shall have effect notwithstanding anything in this Act contained:

Provided that such regulations shall not affect any right of appeal which any person would otherwise have apart from the regulations.

(2) Any regulations made under the provisions of subsection (1) may prescribe in respect of any contravention of or failure to comply with any provision thereof, on conviction, a fine not exceeding [$2,000] or to imprisonment not exceeding [1 year] or to both such fine and imprisonment.

2 Inserted by §27 Act 3/2005 WEF 1st January 2005
3 Substituted for “$200” by §12(a) Act 21/1982 WEF 1st January 1982
4 Substituted for “3 months” by §12(b) Act 21/1982 WEF 1st January 1982

82. All amounts deducted by any person pursuant to the provisions of any regulations made under the provisions of section 81 and 107 shall be deemed to be held in trust by such person for the [State] and shall not be subject, to attachment in respect of any debt or liability of the said person and in the event of any liquidation, assignment or bankruptcy the said amounts shall form no part of the estate in liquidation, assignment or bankruptcy but shall be paid in full to the Commissioner before any distribution of the property is made.

1 Reference to “State” substituted for “Crown” by §3(c) Interpretation Act (Cap. 7) WEF 7th October 1987
3 See Note 1

PART XII – PROVISIONAL TAX
Payment of taxes by instalments

83.1—(1) For the purpose of enabling the tax payable by persons to whom this section applies to be collected during the year for which the tax is levied, a person, other than a company deriving income (other than income from emoluments as defined in section 79), shall be liable to pay provisional tax as is hereinafter provided.

(2) The provisions of this section shall not apply to any person whose income is derived wholly or mainly from primary industry, or to any other class of person, in respect of whom the Commissioner may, in his discretion, consider an alternative type of provisional tax scheme more appropriate.


Ascertainment of provisional tax payable

84.1—(1) Subject to the provisions of section 85, the amount of provisional tax payable by a person in respect of the income of an income year shall be ascertained as follows:

(a) for each year the amount of provisional tax payable by each person to whom these provisions shall apply shall be an amount equal to the tax assessed in respect of the income of the immediately preceding income year, less the amount of any tax which was deducted in accordance with the provisions of section 80 from any emolument income included in the total income of that person for that preceding year: Provided that, in any case where the amount of tax in respect of the immediately preceding income year has not been assessed by the date set down in subsection (1) of section 85 for payment of any instalment, the amount of the instalment which then becomes payable shall be based upon the amount of provisional tax payable in respect of the immediately preceding income year. Any underpayment or overpayment of any instalment of provisional tax which arises in these circumstances shall be adjusted upon payment of the next instalment of provisional tax;

(b) in any case where a person commenced, during the year immediately preceding the income year, to derive income from any source, the amount of provisional tax payable by that person shall be an amount as estimated by the Commissioner and notified to that person.

Estimated basis may be accepted in certain circumstances

(2) Where any person to whom the provisions of subsection (1) of section 83 apply estimates that the income to be derived by him in the income year will be less by more than 10 per cent than the income derived by him in the next preceding year, that person
may apply to the Commissioner stating fully the reasons supporting his application to have the amount of the provisional tax to be paid based on such reduced estimate of income and the Commissioner may, having regard to the circumstances of the case, agree to the adoption of that basis. Such application may be made at any time before payment of the third instalment of provisional tax.


When provisional tax payable

85. — (1) Provisional tax due by any person in respect of the income of any year shall be payable in three instalments on 30 April, 31 August and 30 November in that year and the amount of each instalment shall be one-third of the amount ascertained in accordance with the provisions of section 84:

Provided that, where the Commissioner has agreed to the reduction in the amount of provisional tax payment in any year before the payment of the second and third instalments or after the payment of the second instalment and before the payment of the third instalment, the amount payable on those instalments shall be varied accordingly.

(2) Where the amount of provisional tax payable by a person is less than [[$120]]


2 Substituted for “$20” by §15 Act 1/2003 WEF 1st January 2003

Additional tax where provisional tax underestimated

86. — (1) Where, in accordance with the provisions of subsection (2) of section 84, the Commissioner has accepted from any person an estimate of income as the basis of payment of provisional tax and that estimate proves to be less than 80 per cent of the actual income derived during the income year, that person shall, subject to the provisions subsection (2), be liable to pay to the Commissioner, by way of additional tax, an amount equal to 10 per cent of the difference between—

(a) the amount of tax calculated on 80 per cent of his actual income for the year; and

(b) the amount of tax calculated on the basis of the full amount of the aforesaid estimate:

Provided that, where emolument income is derived in that year, any deductions made therefrom in accordance with the provisions of section 80 shall be deducted from (a) and (b).

(2) Where the Commissioner is satisfied that any person has become liable to pay additional tax under this section by reason of his income for that year being affected by circumstances of which he was not or could not reasonably have been aware at the time
of making the estimate referred to in subsection (2) of section 84, the Commissioner may, in his discretion, remit the additional tax or any part thereof.

(3) Additional tax payable under this section shall, for all purposes, be deemed to be of the same nature as the tax that is assessed to the taxpayer in respect of the income of the income year and shall be recoverable accordingly and the provisions of sections 75, 76 and 77 shall apply thereto.


Special circumstances

87.\[^1\] Notwithstanding anything to the contrary in this Act, the Commissioner may, to meet the special circumstances of any case or class of case and subject to such terms and conditions as he, in his discretion, requires, reduce the amount of any provisional tax otherwise payable by any person or make such adjustment as in his opinion is equitable.


Voluntary payments of additional provisional tax

88.\[^1\] Any person may, at his option, at such time or times and of such amounts as he thinks fit, make voluntary payments to the Commissioner by way of additional provisional tax, being either—

\((a)\) amounts in excess of provisional tax payable by him in respect of the income of the income year; or

\((b)\) amounts in respect of an income year where no provisional tax is payable by him in respect of that year.


Provisional tax payments for farmers, etc.

89.\[^1\]—(1) For the purpose of assisting persons whose income is derived wholly or mainly from primary industry to make provisional payment during the course of the year in respect of tax which will become payable upon the income of that year, the Commissioner shall make such arrangements as he considers appropriate, which may include the deduction at source of instalments from proceeds of the sale of primary produce.

(2) For the purpose of facilitating the making of such arrangements, the Commissioner is authorised to nominate, at his discretion, the person who shall be responsible for making the deduction at source of the instalments to be paid in respect of
provisional tax and the person so nominated is hereby required to make and to account for such deductions in such manner as the Commissioner shall require.

(3) Any person who is required by the Commissioner to make such deductions and who fails so to do in the manner required shall be guilty of an offence and shall be subject to the like penalties as are set out in section 93.

(4) The provisions of sections 61 and 87 shall apply to persons whose provisional tax payments are arranged under the provisions of this section.

(5) Any amount lawfully deducted under any arrangement made under the provisions of this section shall be deemed to have been deducted with the consent of the taxpayer and no action shall lie against any person merely by reason of the making of such deductions.

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90. 1  2

**Extension of time for payment of provisional tax**

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2 Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009 - previously read:

"The Commissioner may, having regard to the circumstances of the case, extend the period within which any amount of provisional tax is to be paid, or may agree to accept payment of any such amount by instalments."

91. 1—(1) Every company shall pay to the Commissioner advance payments on account of tax to be assessed in accordance with the provisions of section 55 in respect of the income of any fiscal year and be payable in installments in the following manner—

(a) the last day of the sixth month pay thirty percent (30%) of the estimated amount of tax payable;

(b) the last day of ninth month pay another thirty percent (30%) of the estimated amount of tax payable;

(c) the last day of the fiscal year pay another thirty percent (30%) of the estimated amount of tax payable; and

(d) the last day of second month after the fiscal year pay another ten percent (10%) of the estimated amount of tax payable.

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(2) Notwithstanding subsections (1), when an assessment is issued prior to an advance company tax installment becoming due, the amount of any tax liability will need to be paid by the date specified in the notice of assessment issued under section 55.44

(3) When, in accordance with the provisions of section 55, a notice of assessment is sent to the company by the Commissioner in the ordinary course of events, credit shall be given against the amount of that assessment for the advance payments of tax made as provided in subsection (1).

(4) For the income year 2011, the advance payment of tax by every company to the Commissioner may continue under the percentage and instalment payment of tax applied before the commencement of this Decree.45

44 Amended by Decree No. 6 of 2012 by deleting subsection (1), proviso and subsection (2) and substituting with a new subsection (1) and (2). Effective from 1st January, 2012. Previously read d-

"(1) Every company shall make to the Commissioner advance payments on account of tax to be assessed in accordance with the provisions of section 55 upon the income of its fiscal year in the following manner, namely:—

(a) not later than the last day of its fiscal year, \[33 \frac{1}{3}\]% per cent of the amount of tax which it estimates will be payable upon the income of that company for that fiscal year;\"44

(b) within 3 months after the last day of its fiscal year, \[66 \frac{2}{3}\]% per cent of the amount of tax estimated as aforesaid less the amount paid in terms of paragraph; and\44

(c) within 7 months of the last day of the fiscal year, 100 per cent of the amount of tax estimated as aforesaid less the amount paid in terms of paragraphs (a) and (b).

[Provided that when an assessment is issued prior to an advance company tax installment becoming due, the amount of any tax liability will need to be paid by the date specified in the notice of assessment issued under section 55.]

(2)44 The provisions of paragraph (c) of subsection (1) will only apply with respect to the 2002 and subsequent income years.\"44

45 Amended by Decree No.6 of 2012 by inserting a new subsection (4) after subsection (3). Effective from 1st January, 2012.

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Additional tax payable by companies when advance payments are less by more than 20 per cent of final liability

92.1—(1) If the amounts of the advance payments of tax required to be paid under the provisions of subsection (1) of section 91 are less by more than 20 per cent, at the expiry of 3 months after the last day of a company’s fiscal year, of \[66 \frac{2}{3}\]% per cent\] of the tax for that year of assessment as finally assessed by the Commissioner in accordance with the provisions of section 55, then the company shall be liable to pay to the Commissioner, by way of additional tax, an amount equal to 10 per cent of the difference between the amount of the advance payment made and \[66 \frac{2}{3}\]% per cent\] of the liability to tax as finally assessed.
(2) If the amounts of the advance payments of tax required to be paid under the provisions of subsection (1) of section 91 are less by more than 20 per cent, at the expiry of 7 months after the last day of a company’s fiscal year, of 100 per cent of the tax for that year of assessment as finally assessed by the Commissioner in accordance with the provisions of section 55, then the company shall be liable to pay to the Commissioner, by way of additional tax, an amount equal to 10 per cent of the difference between the amount of the advance payment made and 100 per cent of the liability to tax as finally assessed.

(3) The Commissioner may, where it is shown to his satisfaction that the failure to make an advance payment or a sufficient advance payment was due to circumstances which were not or could not reasonably have been foreseen by the company at the time such payments were due, remit the whole or any part of the penalty provided for in this section.

(4) (a) Notwithstanding this section, at the commencement of this Decree, the following additional tax shall be payable by the companies in the following manner –

(i) Subject to section 91 subsection (1) paragraph (c), where the Commissioner accepts from any company an estimate of income as the basis of payment of advance tax and that estimate proves to be less by more than 10% of the 90% of the actual income derived during the income year, that company shall be liable to pay the Commissioner an additional tax equal to 40% of the difference between the amount of tax –

(a) calculated on 90% of the company’s actual income for the year; and

(b) paid by the company as at the last day of the fiscal year.

(ii) Subject to section 91 subsection (1) paragraph (d), where the Commissioner accepts from any company an estimate of income as the basis of payment of advance tax and that estimate proves to be less by more than 10% of the 100% of the actual income derived during the income year, that company shall be liable to pay the Commissioner an additional tax equal to 40% of the difference between the amount of tax –

(a) calculated on 100% of the company’s actual income for the year; and

(b) paid by the company.

47 Inserted by Decree No.42 of 2012. Effective from 1st January 2012. deleted “than”.
48 Inserted by Decree No.42 of 2012. Effective from 1st January 2012.deletes “than”.

2 Amended by deleting “50 per cent” and substituting “66 2/3 per cent” by §16 Decree 8/2001 WEF 1st January 2001
3 Amended by deleting “50 per cent” and substituting “66 2/3 per cent” by §16 Decree 8/2001 WEF 1st January 2001
PART XIII – OFFENCES AND PENALTIES

Penalties, etc.

93.1—(1) If any person shall fail—

(a) to deduct any amount required to be deducted by him under section 8, 9, [9A,] 10 or [10A] or under the regulations made pursuant to the provisions of section 81 or 107; or

(b) to remit or pay to the Commissioner, or as the Commissioner should so direct, any amount which has been deducted by him under sections 8, 9, [9A,] 10 or [10A] or under the regulations made pursuant to the provisions of sections 81 and 107 by such date or dates as may be prescribed by those sections or regulations,

such person shall be liable to pay every such amount to the Commissioner and, in addition, shall be liable to a penalty of 25 per cent of each such amount or $2 whichever is the greater sum, unless the Commissioner otherwise directs, and every such amount and every such penalty shall be payable as if the same were tax payable by such person on the date when such amount was required to be deducted, remitted or paid, as the case may be, and the provisions of sections 75, 76 and 77 shall apply thereto; and any person so failing as aforesaid shall be guilty of an offence and shall be liable, on conviction, to a fine of [$2,000] or to imprisonment for [1 year] or to both such fine and imprisonment in respect of each such offence.

(2) If any person fails to deliver personally or send by post any certificate, form or other document, account or return within such time or times as may be prescribed by section [9A or] 54 or by regulations made under the provisions of section 81 or 107, he shall be guilty of an offence and liable, on conviction therefor, to a fine of $10 for every day during which such failure shall continue:

Provided that it shall be a good and sufficient defence to any complaint brought under this subsection that any such failure was not due to the neglect or default of the defendant or of any person acting on his behalf.

Penalties for failing to lodge returns

94.1—
94. Every person required to make a return under the provisions of section 44 who fails to make a return within the time limited therefor shall be subject to a penalty of 50 per cent of the amount of the tax payable, and every other person who is required to make a return under the provisions of section 44, 45, 46 or 47 who fails to do so within the time limited therefor shall be subject to a penalty of $10 for each day during which the default continues, and all such penalties shall be assessed and collected from the person liable to make a return in the same manner in which taxes are assessed and collected."

2 Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009- previously read :

"(1) A person who fails to lodge a return of income under section 44, 45, 46 or 47 is liable to pay a penalty, calculated as follows—

(a) $2 for each day, or part of a day, if the failure continues after the due lodgement date to a date up to 3 months after the due lodgement date;

(b) $7 for each day, or part of a day, if the failure continues after 3 months to a date up to 6 months after 3 months specified under paragraph (a); and

(c) $15 for each day, or part of a day, if the failure continues after 6 months specified in paragraph (b) until the return is lodged.

(2) A person who fails to lodge a return of income under section 44, 45, 46, 47 or 47A commits an offence and is liable—

(a) to a fine of $400 and treble the amount of tax for which the person is liable under this Act for the year of assessment in respect of or during which the offence was committed; or

(b) to imprisonment for 6 months"

95. Any person liable to pay any tax under this Act who—

(a) makes or causes or permits to be made on his behalf a return in which the income is stated to be less than the true amount; or

(b) makes, or permits to be made on his behalf, a false statement in a claim for allowances, deductions and reliefs under any section of this Act,

shall pay to Her Majesty the additional amount of tax due and in addition interest at the rate of 10 per cent per annum upon such amount from the last day prescribed for making such return until the same is paid. If the amount of the income omitted from his return exceeds 10 per cent of the correct income, but is under 20 per cent of the same, such person shall pay to Her Majesty an additional amount equal to one-half of the amount of such deficiency, and, if the deficiency amounts to 20 per cent or more of the correct income, such person shall pay to Her Majesty an additional amount equal to the amount of such deficiency. The penalties specified in this section are additional penalties and not in lieu of any penalty that may be imposed under the provisions of section 96. All penalties and interest under this subsection shall be assessed and collected from the person liable therefor in the same manner in which tax is assessed and collected."

4 Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009- previously read :
(1) Any person liable to pay any tax under this Act who makes or causes or permits to be made on his behalf a return on which the income is stated to be less than the true amount shall pay to [the State] the additional amount of tax due and, in addition, interest at the rate of 10 per cent per annum upon such amount from the last day prescribed for making such return until the same is paid. If the amount of the income omitted from his return exceeds 10 per cent of the correct income, but is under 20 per cent of the same, such person shall pay to [the State] an additional amount equal to one-half of the amount of such deficiency, and, if the deficiency amounts to 20 per cent or more of the correct income, such person shall pay to [the State] an additional amount equal to the amount of such deficiency. The penalties specified in this section are additional penalties and not in lieu of any penalty that may be imposed under the provisions of section 96. All penalties and interest under this subsection shall be assessed and collected from the person liable therefor in the same manner in which tax is assessed and collected.

(2) Any person liable to pay any tax under this Act who makes, or permits to be made on his behalf, a false statement in a claim for allowances, deductions and reliefs under any section of this Act, shall pay to [the State] the additional amount of tax due and, in addition, interest at the rate of 10 per cent per annum upon such amount from the last date prescribed for making such return until the same is paid. If the amount of the claim for allowances, deductions and reliefs from his return exceeds 10 per cent of the correct allowances, deductions and reliefs, but is under 20 per cent of the same, such person shall pay to [the State] an additional amount equal to one-half of the amount of such excessive allowances, deductions and reliefs and, if the excessive allowances, deductions and reliefs amount to 20 per cent or more of the correct allowances, deductions and reliefs, such person shall pay to [the State] an additional amount equal to the amount of such allowances, deductions and reliefs. The penalties specified in this subsection are additional penalties and not in lieu of any penalty that may be imposed under the provisions of section 96. All penalties and interest under this subsection shall be assessed and collected from the person liable therefor in the same manner in which tax is assessed and collected.

(3) For the purpose of subsection (1), “income” means total income before any deductions in terms of section 21(1)(h), section 22 and section 105”.

Penalty for overestimating the percentage of dividend subject to corporate tax

95A

1
2

2 Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009 - previously read :

“(1) If any company overestimates the percentage of dividend subject to corporate tax by an amount of 20 per cent or more of the correct percentage, that company shall be liable to an additional tax equal to the amount of the shortfall in tax so determined under the Dividend Regulations.

(2) The additional tax prescribed under subsection (1) is payable within 30 days of the date of written notification by the Commissioner.

(3) The additional tax prescribed under subsection (1) shall be reduced by 75 per cent if the company informs the Commissioner by way of voluntary disclosure of the shortfall so determined in regulation 10 of the Dividend Regulations.”

Penal provisions

96.

1
2

1
2
(2) Any person who wilfully with intent to evade or to assist any other person to evade any tax imposed by this Act—

(a) omits from a return made by him or on his behalf under this Act any income which should be included; or

(b) makes any false statement or entry in any return or claim to allowances, deductions and reliefs made by him or on his behalf under this Act; or

(c) gives any false answer, whether orally or in writing, to any question or request for information asked or made in accordance with the provisions of this Act; or

(d) prepares or maintains or authorises the preparation or maintenance of any false books of account or other records or falsifies or authorises the falsification of any books of account or records; or

(e) makes use of any fraud, art or contrivance whatsoever or authorises the use of any such fraud, art or contrivance; or

(f) makes or furnishes a declaration which may be filed under any regulation made in accordance with the provisions of section 81 knowing or having reasonable cause to believe the same to be false,

shall be guilty of an offence and shall for each such offence be liable to a fine of $400 and treble the amount of tax for which he is liable under this Act for the year of assessment in respect of or during which the offence was committed, or

(3) Any person who contravenes the provisions of section 54J or 54K shall be guilty of an offence and shall be liable, on conviction, to a fine of $200 or to imprisonment for 6 months or to both such fine and imprisonment.”

**Penalty for disobedience to a departure prohibition order**

96A

(1) A person who contravenes a departure prohibition order issued under section 77A commits an offence and is liable upon conviction to a fine not exceeding $1000 or to a term of imprisonment not exceeding 6 months or both.

(2) The court, upon convicting a person under subsection (1), may order that the person pay to the Commissioner the actual tax liability plus up to double the amount of actual liability in respect of which the order is issued, in addition to any penalty imposed under subsection (1).
(Penalty for non-payment on an assessment or instalment)

1. Inserted by §28 Act 3/2005 WEF 1st January 2005
2. Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009 - previously read:

"Any person who contravenes section 50A is liable to a fine not exceeding $1000 or to a term of imprisonment not exceeding 6 months or both"

Penalty for non-payment on an assessment or instalment

97.2

.......3

3 Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009 - previously read:

"(1) If any person fails to pay any tax on an assessment or any instalment thereof on or before the date when such amount or instalment should be paid, he shall pay in addition to any other penalties, a penalty of $2 or one-quarter of the amount of tax unpaid, whichever is the greater sum.

(2) Any person who receives a notice of deductions under subsection (1) of section 75 from the Commissioner and without lawful excuse—

(i) fails to comply with the provisions therewith;

(ii) fails to notify the Commissioner within 14 days of the expiration of the period specified in the notice of deduction acquainting him with the facts; or

(iii) fails to notify the Commissioner within 14 days of the taxpayer leaving his employment,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding $100;

(b) without prejudice to the meaning of the words "lawful excuse" in this subsection, these words shall include the inability to pay any amount specified in such notice of deduction on account of the fact that such amount does not come into the possession of the person receiving such notice within the time specified therein, and, in the case of a person carrying on business at more than 1 branch in Fiji, shall also include any failure to deduct, where payment to a taxpayer in respect of whom a notice under this section has been issued, is properly made by a branch other than that through which the payment would normally be expected to be made and the Commissioner has not served a copy of the notice of deduction on that branch;

(c) for the purposes of subsection (1) of section 75, and of this section, "tax" shall also include interest and penalties properly imposed under this Act and also costs."

Penalty for non-payment of taxes on the overestimation of the percentage of dividend subject to corporate tax

97A.1

2

1 New section inserted by §13 Act 4/2002 WEF 1st January 2002
2 Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009 - previously read:

"If any company fails to pay the shortfall of the tax liability calculated under the Dividend Regulations, or fail to pay the additional tax in accordance with the provisions of section 95A of the Act, the company shall pay in addition to any other penalties, a penalty of $2 or one-quarter of the tax unpaid, whichever is the greater sum."
Penalty for failing to appoint an authorised officer of a company

98.1 2

2 Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009—previously read:

“Every company required to appoint an authorised officer, when and as often as such appointment becomes necessary as required by section 41, shall be subject to a penalty of $4 for each day during which the default continues, and all such penalties shall be assessed and collected from the company liable to make the appointment in the same manner in which taxes are assessed and collected.”

Provisional tax — penalty for late payment

99.1—

2 Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009—previously read:

“(1) If any person fails to pay the amount of provisional tax or any instalment thereof by the times required by the provisions of section 85 or within such extended time as may be granted by the Commissioner, then such person shall pay, in addition to any other penalties, a penalty of $2 or one-quarter of the amount unpaid, whichever is the greater sum, and such penalty shall be assessed and recovered in the same manner as tax.

Advance payment by companies

(2) If any company shall fail to make payment of tax in advance, in accordance with the provisions of sections 91 and 92, then it shall be liable to the like penalty as that to which it would have been liable if 25 per cent of the tax as finally assessed upon the income for that fiscal year had become due and payable on the last day of its fiscal year and 50 per cent had become due and payable 3 months after the end of its fiscal year and either or both amounts had not then been paid.

(3) Any person who—

(i) obstructs or refuses to permit the entry of the Commissioner or any officer authorised by him upon any land, building or place for the purpose of any inspection under subsection (5) of section 50;
(ii) obstructs the Commissioner or any officer authorised by him when carrying out such inspection;
(iii) refuses to produce any book or document in his custody or control on being so required by the Commissioner or any officer authorised by him for the purpose of any such inspection;
(iv) fails to give reasonable assistance to the Commissioner or any officer authorised by him in any such inspection upon being required so to do; or
(v) refuses to answer any proper question relating to such inspection,

shall be guilty of an offence and, upon conviction, shall be liable to a fine not exceeding $100:

Provided that a person shall not be convicted both under this subsection and under section 96 in respect of the same facts.

Limitation of proceedings

100.1—

2 Repealed by § Tax Administration Decree 50/2009 WEF 27th November 2009—previously read:

“(1) Proceedings for an offence under this Act may be instituted within 3 years after the final determination of the amount of tax covered by the assessment.”
(2) Save in respect of the penalty imposed by a Court under the provisions of section 96, the Commissioner may, in his discretion, mitigate or remit any penalty which may be assessed, recovered or imposed under this Act."

PART XIV – REBATES FROM TAX CHARGED

Home ownership savings account

100A.1—(1) There shall, in the case of a resident individual who in any year operates a home ownership savings account, be deducted from the amount of tax payable under section 7 a rebate of income tax for that year of income equivalent to 12% per cent for every complete dollar of any increase in savings in that account in relation to that year of income. The maximum rebate for any year of income shall be $125 or the amount of normal tax payable, whichever is the less:

Provided that only 1 rebate shall be due where an election is made under section 43 for separate assessments.

(2) A rebate given under this section shall be withdrawn if, in any year of income, there is a decrease in savings in relation to the immediately preceding year.

(3) The Minister shall make such regulations as he considers necessary in relation to the operation of home ownership savings accounts and such regulations may, in particular, include provision for—

(a) the maximum amount of saving that will be subject to rebate in any year of income;
(b) the aggregate amount of savings which will be eligible for a rebate;
(c) the manner in which any increase of decrease in savings will be determined for each year of income;
(d) the nomination of financial institutions which may operate home ownership savings accounts;
(e) the circumstances and the manner in which a rebate given under this section may be withdrawn.

(4) For the purposes of this section, “home ownership savings account” means a savings account under that name with a financial institution authorised to operate such accounts in terms of regulations made under section (3).

1 Inserted by §13 Act 21/1980 w.e.f 1st January 1980

Rebates, normal tax – general rebate

101.1 ... 2

2. Repealed by §14 Decree 30/1992 wef 1st July 1992 – previously read:
   “101. Save as is otherwise provided in this Act there shall, in the case of an individual, be deducted from the amount of tax payable under section 7 a sum of $255 which shall be called a general rebate.”

Substituted by §4 Decree 54/1991 wef 1st January 1991 – previously read:
   “101. Save as is otherwise provided in this Act there shall, in the case of an individual, be deducted from the amount of tax payable under section 6 and section 7 a sum of $70 which shall be called a general rebate.”

   “101. Save as is otherwise provided in this Act, there shall, in the case of an individual, be deducted from the amount of tax payable under section 7 a sum of [$70] which shall be called a general rebate.

   Provided that—
   (a) where the taxpayer is a married person who has elected separate assessment under the provisions of section 43, the general rebate shall be apportioned between husband and wife on the same basis as that elected under paragraph (c) of subsection (2) of that section and a separate general rebate shall not be due to the wife;
   (b) where a taxpayer has been divorced or separated under an order of court of competent jurisdiction, or under a written agreement or in such circumstances that the separation is likely to be permanent, the rebate shall be granted to each spouse with effect from the effective date of the order, agreement or separation;
   (c) the Commissioner may apportion the rebate due to a taxpayer so that, in the case of a change of circumstances in any year, no more than, $30 shall be granted to any taxpayer:
   Provided that nothing in this paragraph shall prevent a single woman or a widow from receiving the fix amount of the rebate for the year in which she is married as a deduction from the tax payable notwithstanding that she may be entitled to a part of the rebate for the same year in respect of her income derived or accrued from the date of marriage;
   (d) in the case of a non-resident individual, the rebate shall be apportioned in the same manner as allowances under the proviso to section (1) of section 31.”

### Allowance for double taxation relief

102.¹ The tax chargeable in respect of income derived outside Fiji by a resident shall be abated or exempted as follows:

   (a) in respect of income derived from a territory with arrangements have been made regarding relief from double taxation, relief shall be given in accordance with that arrangement;
   (b) in respect of income derived from a territory with arrangements have not been made regarding relief from double taxation, such income shall be exempt from tax to the extent that it is chargeable with income tax in that other territory:

   Provided that—
   (i) the taxpayer shall furnish evidence satisfactory to the Commissioner showing the amount of tax paid and the particulars of income;
   (ii) such income not be exempt if, under the law of that other territory, tax is deducted therefrom at source but such person has the right thereafter of making a return of that income and being assessed to tax thereon with relief in proper circumstances for the whole or any part of the tax already deducted at source and he does not exercise that right; and a certificate purporting to be signed by an officer of the Taxation Department of that other territory shall be prima facie
evidence that such a right exists and of the exercise or non-exercise thereof by the taxpayer.


Extent of relief under Double Taxation Agreement

103.1—(1) Notwithstanding the provisions of any agreement entered into by the Government of Fiji and any other territory, the relief granted by section 102 shall be subject to the following provisions:—

(i) relief shall only be granted to persons who are resident in Fiji for the year of assessment;

(ii) credit shall not be allowed by virtue of section 102 for overseas tax on a dividend unless the overseas tax is directly charged on the dividend, whether by charge to tax, deduction of tax at source or otherwise and the whole of it represents tax which neither the company nor the recipient would have borne if the dividend had not been paid;

(iii) the amount of the credit for overseas tax which is to be allowed to a person against income tax for any year of assessment shall not exceed the difference between the amounts of income tax which would be borne by him for the year (no credit being allowed for overseas tax)—

(a) if he were charged to tax on his total income, computed in accordance with this Act; and

(b) if he were charged to tax on the same income, computed in the same way but excluding the income in respect of which the credit is to be allowed.

Where credit for overseas tax is to be allowed in respect of income from more than 1 source, this basis shall be applied successively to the income from each source but so that, on each successive application, paragraph (a) shall apply to total income exclusive of the income to which this paragraph has already been applied;

(iv) where credit is to be allowed against the Fiji tax payable in respect of the overseas tax, such overseas tax, whether payable directly or by deduction on profit or income, from sources within the overseas territory (excluding, in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid), shall be computed by reference to the same profits or income by reference to which the overseas tax is computed;

(v) notwithstanding anything contained in this Act or in any agreement entered into by the Minister under section 106, “credit”, for the purpose of this section, shall not exceed the lesser of the following amounts:—
(a) the amount of Fiji tax payable on the same overseas income which is appropriate to the income which has been charged to tax in the overseas territory for the same year; or

(b) the amount of overseas tax payable on the same overseas income which is appropriate to the income which has been charged to tax in Fiji for the same year;

(vi) the Commissioner may satisfy himself regarding the amount of overseas tax paid or deducted by demanding production of any relevant notices of assessment or other confirmatory evidence.

(2) For the purposes of this Act, “overseas tax” means tax under the law of another country, and “foreign tax credit” has a corresponding meaning.

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2 Substituted by §18 Act 4/2004 WEF 1st January 2004 – previously read:
   “For the purpose of this section “overseas tax” means tax under the law of a territory outside Fiji.”

Rebate of withholding tax

104.— The tax chargeable on any interest derived or accrued in Fiji shall be abated by any interest withholding tax paid under the provisions of section 9A in respect of the same income.

2 Repealed and replaced by §14 Act 4/2002 WEF 1st January 2002 - previously read:

'104-(1) The tax chargeable on any royalties, know-how, management, supervision or other payments falling within paragraphs (s) and (u) of the proviso to section 11 derived or accrued in Fiji to a non-resident shall be abated by any withholding tax paid under the provisions of section 8 or section 10A in respect of the same income.

(2) The tax chargeable on any interest or dividends derived or accrued in Fiji shall be abated by any interest withholding tax or divided tax paid under the provisions of section 9, 9A or 10 respectively in respect of the same income.

(3) The dividend tax to be allowed as a rebate under this section against tax chargeable in respect of the same dividend income shall be limited to the dividend tax on the dividend income included in the chargeable income of the individual on whom the income is assessed.

(4) Notwithstanding the other provisions of this Act, where a dividend received before 1 January 1974 by a resident company from another resident company has borne tax in accordance with paragraph (a) of subsection (2) of section 14 of the Ordinance repealed by this Act and such resident company declares a dividend on or after that date out of profits consisting of or including such taxed dividends (whether received by it directly or derived through another company in the form of a dividend), then, to the extent to which that dividend consists of or includes such taxed dividend, the dividend shall, if paid or credited either to a resident shareholder in Fiji or to a non-resident shareholder, be taxed under sections 10 or 8 respectively of this Act after taking into account any tax deducted and paid under the above-mentioned provisions of the Ordinance repealed by this Act, but so that such credit shall not exceed 5 per cent of the amount of the taxed dividend received. A company shall keep adequate records so as to permit verification of such credit claimed.

Allowances under the 11th Schedule

105.—(1) Notwithstanding anything in the 11 Schedule, where a project has been completed and under that Act if, instead of a subsidy, a hotel owner has opted to claim
investment allowance under section 6 of such Act and [where total deductions exceed] the total income from the hotel business [or the total income from that hotel premises] for the period ended on the next accounting date after the project has been completed, the balance shall be carried forward and offset against the total income of that hotel business [or the total income from that hotel premises] for the next successive fiscal years [subject to the period prescribed by section 22:]

Provided that—

(a) ….

Profits against which remission allowable

(b) no relief under this section shall be available against profits arising from any trade or business or other income other than the profits of that hotel or extension thereto in respect of which the project has been approved;

Remission available only against profits from extension

(c) in the case of an extension, the remission referred to in paragraphs (a) and (b) shall not be available against profits arising other than from the extension. Profits from the hotel and the extension thereto, being the project in respect of which a deduction is due, shall be apportioned on the basis of the number of bedrooms in the extension to the whole or on any other basis which the Commissioner may determine;

(d) where, at the end of the period of 5 years following the year in which the extension was completed, any investment allowance in respect of the extension has not been claimed as a remission of tax, the amount of such unclaimed investment allowance may be set off by a hotel owner against total income arising to him from any hotel business or total income from any hotel premises owner by him;

(e) where the hotel owner is a company, no investment allowance shall be granted if, in any year, the Commissioner is satisfied that the shareholders of the company are not substantially the same as on the date on which provisional approval was granted, unless prior approval from the Minister for the changes of shareholders has been obtained.

(2) For the purposes of this section—

(a) the shareholders of a company at any date shall be deemed not to be substantially the same as the shareholders on any other date unless, on both those dates, not less than 30 per cent of the voting power in and the right to receive dividends from the company was held by or on behalf of the same persons, nor unless, on both those dates, not less than 30 per cent of the nominal value of the allotted shares in the company were held by or on behalf of the same persons. Shares in a company held by or on behalf of another company shall be deemed to be held by the shareholders of the last-mentioned company and shares held by or on behalf of the trustee of the
estate of a deceased shareholder, or by or on behalf of the persons entitled to those shares as beneficiaries in the estate of a deceased shareholder, shall be deemed to be held by that deceased shareholder;

(b) the following words:—
   “extension”;
   “hotel owner”; and
   “project”,
shall have the meanings as are assigned to them respectively in the Hotels Aid Act\(^\text{12}\).

\(^1\) Substituted for “Hotels Aid Act” by Promulgation No. 27 of 2007 WEF 1 July 2007
\(^3\) Substituted for “Hotels Aid Act” by Promulgation No. 27 of 2007 WEF 1 July 2007
\(^4\) Amended by deleting “such deduction exceeds” and substituting “where total deductions exceed” by §18(a) Act 1/2003 WEF 1 January 2003.
\(^5\) Inserted by §13 Act 10/1977 w.e.f 1st January 1977
\(^6\) Inserted by §13 Act 10/1977 w.e.f 1st January 1977
\(^7\) Amended by inserting “subject to the period prescribed by section 22” by §15 Act 4/2002 w.e.f 1st January 2002
\(^8\) Repealed by §18(b) Act 1/2003 WEF 1\(^\text{st}\) January 2003 – previously read:

“Hotel Aid Remission
(a) relief under this section shall be granted in terms of the tax assessed and shall be termed “Hotels Aid Remission” and shall be separately accounted for by the commissioner”.
\(^9\) Inserted by §15 Act 21/1980 WEF 1st January 1980
\(^10\) Relettered from (d) as (e) by §15(b) Act 10/1977 w.e.f 1st January 1977
\(^11\) Substituted by §15 Act 10/1975 w.e.f 21st March 1975 – previously read:

“(a) the shareholders of a company shall not be deemed to be substantially the same if 30 per cent or more of the voting power or the right to receive dividends is not held by the same persons.”
\(^12\) Cap. 215

PART XV – MISCELLANEOUS

Prevention of or relief from double taxation

106.\(^1\)—(1) The Minister may enter into an agreement\(^2\) with the Government of any other country or territory whereby arrangements are made with such Government with a view to the prevention, mitigation or discontinuance of the levying under the laws of Fiji and of such other country or territory, of income tax in respect of the same income, or to the rendering of reciprocal assistance in the administration of, and the collection of taxes under, the income tax laws of Fiji and of such other country or territory.

(2) Without limiting the generality of the foregoing provisions, it is hereby declared that any arrangements to which effect is given under this section may contain provisions in relation to any of those taxes—

(a) for relief from tax;
(b) for charging the income derived from any sources in Fiji to persons not resident in Fiji;
(c) for determining the income to be attributed to persons not resident in Fiji and other agencies, branches, or establishments in Fiji;
(d) for determining the income to be attributed to persons resident in Fiji who have
special relationships with persons not so resident.

(3) Any such arrangements may include provisions for relief from tax for periods
before 1 January 1974 or before the making of the arrangements, and provisions as to
income which is not itself subject to double taxation.

(4) As soon as may be after the conclusion of any such agreement, the arrangements
thereby made shall be notified by the Minister in the Gazette whereupon, until revoked,
the arrangements notified therein shall, so far as they relate to immunity, exemption or
relief in respect of income tax in Fiji, have effect as if enacted in this Act but only if and
for so long as such arrangements, in so far as they relate to immunity, exemption or relief
in respect of income tax levied or liable in such other country or territory, have the effect
of law in such other country or territory.

(5) The Minister may, at any time, revoke any such notification in the Gazette and
whereupon the arrangements thereby notified shall cease to have effect [from such date
as may be appropriate under the terms of such agreement]3, but the revocation shall not
affect the validity of anything previously done.

(6) The obligation as to secrecy imposed by section 4 shall not prevent the disclosure
to any authorised officer of the Government of the country or territory with which the
arrangements are made by virtue of this section of such information as is required to be
disclosed under such arrangements.

2 Agreements made with Japan LN 113/1970 (Adoption of Convention between United Kingdom and Japan dated 4th
3 Substituted for “upon the date fixed in such revocation” by §16 Act 10/1975 wfr 1st January 1975

Regulations

107.—(1) The Minister shall be empowered to make regulations with respect to—

(a) the assessment, charge, collection, recovery and repayment—

(i) of [basic tax]2 on all total income; and
(ii) of provisional tax,
as provided for in this Act; and

(b) any other matters deemed necessary for carrying this Act into effect, such
regulations may, in particular, include provision—

(i) for making, in any case or class of case, special arrangements to
facilitate the deduction, collection or payment of tax and for making
rules to govern the operation of such arrangements;
(ii) for the production to and inspection by the Commissioner (or any
officer authorised by him in writing upon the production of his written
authority) of all necessary records and documents for the purpose of
satisfying the Commissioner that tax has been and is being properly accounted for in accordance with the regulations;

(iii) for the collection and recovery whether by deduction from income derived in any later year or otherwise of tax in respect of income to which this Act applies which has not been accounted for during the year;

(iv) for the making of assessments and for other matters dealing with the recovery of underpayments or the refund of overpayments arising therefrom and for ignoring odd cents in the amounts so ascertained of any underpayments to be recovered or overpayments to be refunded and for the manner in which amounts of excess tax are to be refunded under the provisions of section 78;

(v) for appeals with respect to matters arising under the regulations which would not otherwise be the subject of an appeal, and any such regulations shall have effect notwithstanding any other provisions of this Act:

Provided that such regulations shall not affect any right of appeal which any person would otherwise have apart from the regulations.

(2) Any regulations made under the provisions of subsection (1) may prescribe in respect of any contravention of or failure to comply with any provisions thereof, on conviction, the like penalties as are provided for under section 81.

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*Schemes to reduce income tax*

**Interpretation**

108. In this section, unless the context otherwise requires—

“foreign tax credit” means a credit within the meaning of section 103;

“scheme” means –

(i) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and

(ii) any scheme, plan, proposal, action, course of action or course of conduct;

“taxpayer” includes a taxpayer in the capacity of a trustee.
(2) The definition of “taxpayer” in subsection (1) shall not be taken to affect in any way the interpretation of that expression where it is used in this Act other than this subsection.

(3) The reference in the definition of “scheme” in subsection (1) to a scheme, plan, proposal, action, course of action or course of conduct shall be read as including a reference to a unilateral scheme, plan, proposal, action, course of action or course of conduct, as the case may be.

(4) A reference in this section to the “carrying out” of a scheme by a person shall be read as including a reference to the carrying out of a scheme by a person together with another person or other persons.

(5) A reference in this section to a scheme or a part of a scheme being entered into or carried out by a person for a particular purpose shall be read as including a reference to the scheme or the part of the scheme being entered into or carried out by the person for 2 or more purposes of which that particular purpose is the dominant purpose.

Operation of this subsection

(6) No other provision of this Act shall be taken to limit the operation of this section.

(7) Where a provision of this Act other than this subsection and subsections (6) and (8) is expressed to have effect where a deduction would be allowable to a taxpayer but for or apart from a provision or provisions of this Act, the reference to that provision or to those provisions, as the case may be, shall be read as including a reference to subsection (6).

(8) Where a provision of this Act other than this subsection and subsections (6) and (8) is expressed to have effect where a deduction would otherwise be allowable to a taxpayer, that provision is deemed to be expressed to have effect where a deduction would, but for subsection (6), be otherwise allowable to the taxpayer.

Tax benefits

(9) Subject to this subsection and subsections (10), (11) and (12), a reference in this section to the obtaining by a taxpayer of a tax benefit in connection with a scheme shall be read as a reference to—

(a) an amount not being included in the total income of the taxpayer of a year of income where that amount would have been included, or might reasonably be expected to have been included, in the total income of the taxpayer of that year of income if the scheme had not been entered into or carried out; or
(b) a deduction being allowable to the taxpayer in relation to a year of income where the whole or a part of that deduction would not have been allowable, or might reasonably be expected not to have been allowable, to the taxpayer in relation to that year of income if the scheme had not been entered into or carried out; or

(c) a foreign tax credit being allowable to the taxpayer where the whole or a part of that foreign tax credit would not have been allowable, or might reasonably be expected not to have been allowable, to the taxpayer if the scheme had not been entered into or carried out; and, for the purposes of this section, the amount of the tax benefit shall be taken to be—

(i) in a case to which paragraph (a) applies - the amount referred to in that paragraph; and

(ii) in a case to which paragraph (b) applies - the amount of the whole of the deduction or of the part of the deduction, as the case may be, referred to in that paragraph; and

(iii) in a case where paragraph (c) applies - the amount of the whole of the foreign tax credit or of the part of the foreign tax credit, as the case may be, referred to in that paragraph.

(10) A reference in this section to the obtaining by a taxpayer of a tax benefit in connection with a scheme shall be read as not including a reference to—

(a) the total income of the taxpayer of a year of income not including an amount that would have been included, or might reasonably be expected to have been included, in the total income of the taxpayer of that year of income if the scheme had not been entered into or carried out where—

(i) the non-inclusion of the amount in the total income of the taxpayer is attributable to the making of an agreement, choice, declaration, election or selection, the giving of a notice or the exercise of an option expressly provided for by this Act; and

(ii) the scheme was not entered into or carried out by any person for the purpose of creating any circumstance or state of affairs the existence of
which is necessary to enable the declaration, agreement, election, selection, choice, notice or option to be made, given or exercised, as the case may be; or

(b) a deduction being allowable to the taxpayer in relation to a year of income the whole or a part of which would not have been, or might reasonably be expected not to have been, allowable to the taxpayer in relation to that year of income if the scheme had not been entered into or carried out where—

(i) the allowance of the deduction to the taxpayer is attributable to the making of a declaration, agreement, election, selection or choice, the giving of a notice or the exercise of an option by any person, being a declaration, agreement, election, selection, choice, notice or option expressly provided for by this Act; and

(ii) the scheme was not entered into or carried out by any person for the purpose of creating any circumstance or state of affairs the existence of which is necessary to enable the declaration, agreement, election, selection, choice, notice or option to be made, given or exercised, as the case may be; or

(c) a foreign tax credit being allowable to the taxpayer the whole or a part of which would not have been, or might reasonably be expected not to have been, allowable to the taxpayer if the scheme had not been entered into or carried out, where—

(i) the allowance of the foreign tax credit to the taxpayer is attributable to the making of a declaration, agreement, election, selection or choice, the giving of a notice or the exercise of an option by any person, being a declaration, agreement, election, selection, choice, notice or option expressly provided for by this Act; and

(ii) the scheme was not entered into or carried out by any person for the purpose of creating any circumstance or state of affairs the existence of which is necessary to enable the declaration, agreement, election, selection, choice, notice or option to be made, given or exercised, as the case may be.
(11) A reference in this section to the obtaining by a taxpayer of a tax benefit in connection with a scheme is to be read as not including a reference to the total income of the taxpayer of a year of income not including an amount that would have been included, or might reasonably be expected to have been included, in the total income of the taxpayer of that year of income if the scheme had not been entered into or carried out where the scheme consisted solely of the making of the agreement or election.

(12) For the purposes of subparagraph (i) of subsection (10)(a), subparagraph (i) of subsection (10)(b) and subparagraph (i) of subsection (10)(c)—
   (a) the non-inclusion of an amount in the total income of a taxpayer;
   (b) the allowance of a deduction to a taxpayer; or
   (c) the allowance of a foreign tax credit to a taxpayer;
is taken to be attributable to the making of a declaration, election, agreement or selection, the giving of a notice or the exercise of an option where, if the declaration, election, agreement, selection, notice or option had not been made, given or exercised, as the case may be—
   (d) the amount would have been included in that total income;
   (e) the deduction would not have been allowable; or
   (f) the foreign tax credit would not have been allowable.

Withholding tax avoidance

(13) This subsection and subsection (14) apply in relation to a particular amount if a taxpayer is not liable to pay withholding tax on an amount where that taxpayer would have, or could reasonably be expected to have, been liable to pay withholding tax on the amount if a scheme had not been entered into or carried out.

(14) For the purposes of this section, if this subsection and subsection (14) apply in relation to an amount, the taxpayer is taken to have obtained a tax benefit in connection with the scheme of an amount equal to the amount mentioned in subsection (13).

Schemes to which section applies

(15) This section applies to any scheme that has been or is entered into after 31 December 2003, and to any scheme that has been or is carried out or commenced to be carried out after that date (other than a scheme that was entered into on or before that date), whether the scheme has been or is entered into or carried out in Fiji or outside Fiji or partly in Fiji and partly outside Fiji, where—
(a) a taxpayer (in this section referred to as the “relevant taxpayer”) has obtained, or would but for subsections (20) to (35) obtain, a tax benefit in connection with the scheme; and

(b) having regard to—

(i) the manner in which the scheme was entered into or carried out;

(ii) the form and substance of the scheme;

(iii) the time at which the scheme was entered into and the length of the period during which the scheme was carried out;

(iv) the result in relation to the operation of this Act that, but for this section, would be achieved by the scheme;

(v) any change in the financial position of the relevant taxpayer that has resulted, will result, or may reasonably be expected to result, from the scheme;

(vi) any change in the financial position of any person who has, or has had, any connection (whether of a business, family or other nature) with the relevant taxpayer, being a change that has resulted, will result or may reasonably be expected to result, from the scheme;

(vii) any other consequence for the relevant taxpayer, or for any person referred to in subparagraph (vi), of the scheme having been entered into or carried out; and

(viii) the nature of any connection (whether of a business, family or other nature) between the relevant taxpayer and any person referred to in subparagraph (vi),

it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for the purpose of enabling the relevant taxpayer to obtain a tax benefit in connection with the scheme or of enabling the relevant taxpayer and another taxpayer or other taxpayers each to obtain a tax benefit in connection with the scheme (whether or not that person who entered into or carried out the scheme or any part of the
scheme is the relevant taxpayer or is the other taxpayer or one of the other taxpayers).

Stripping of company profits

(16) Where—

(a) as a result of a scheme that is, in relation to a company—

(i) a scheme by way of or in the nature of dividend stripping; or

(ii) a scheme having substantially the effect of a scheme by way of or in the nature of a dividend stripping,

any property of the company is disposed of;

(b) in the opinion of the Commissioner, the disposal of that property represents, in whole or in part, a distribution (whether to a shareholder or another person) of profits of the company (whether of the accounting period in which the disposal occurred or of any earlier or later accounting period);

(c) if, immediately before the scheme was entered into, the company had paid a dividend out of profits of an amount equal to the amount determined by the Commissioner to be the amount of profits the distribution of which is, in his opinion, represented by the disposal of the property referred to in paragraph (a), an amount (in this subsection and subsections (17) to (19) referred to as the “notional amount”) would have been included, or might reasonably be expected to have been included, by reason of the payment of that dividend, in the total income of a taxpayer of a year of income; and

(d) the scheme has been or is entered into after 31 December 2003, whether in Fiji or outside Fiji, the following provisions have effect—

(i) the scheme shall be taken to be a scheme to which this section applies;

(ii) for the purposes of subsections (20) to (35), the taxpayer shall be taken to have obtained a tax benefit in connection with the scheme that is referable to the notional amount not being included in the total income of the taxpayer of the year of income; and

(iii) the amount of that tax benefit shall be taken to be the notional amount.
(17) Without limiting the generality of subsection (16), a reference in that subsection to the disposal of property of a company shall be read as including a reference to—
   (a) the payment of a dividend by the company;
   (b) the making of a loan by the company (whether or not it is intended or likely that the loan will be repaid);
   (c) a bailment of property by the company; and
   (d) any transaction having the effect, directly or indirectly, of diminishing the value of any property of the company.

(18) Subsection (17) applies—
   (a) to a non-share equity interest in the same way as it applies to a share; and
   (b) to an equity holder in the same way as it applies to a shareholder; and
   (c) to a non-share dividend in the same way as it applies to a dividend.

(19) In subsection (17), “property” includes a chose in action and also includes any estate, interest, right or power, whether at law or in equity, in or over property.

Cancellation of tax benefits etc.

(20) Where a tax benefit has been obtained, or would but for this subsection and subsections (20) to (35) be obtained, by a taxpayer in connection with a scheme to which this section applies, the Commissioner may—
   (a) in the case of a tax benefit that is referable to an amount not being included in the total income of the taxpayer of a year of income - determine that the whole or a part of that amount shall be included in the total income of the taxpayer of that year of income; or
   (b) in the case of a tax benefit that is referable to a deduction or a part of a deduction being allowable to the taxpayer in relation to a year of income - determine that the whole or a part of the deduction or of the part of the deduction, as the case may be, shall not be allowable to the taxpayer in relation to that year of income; or
   (c) in the case of a tax benefit that is referable to a foreign tax credit, or a part of a foreign tax credit, being allowable to the taxpayer - determine that the whole or a part of the foreign tax credit, or the part of the foreign tax credit, as the case may be, is not to be allowable to the taxpayer;
and, where the Commissioner makes such a determination, he shall take such action as he considers necessary to give effect to that determination.

(21) Where the Commissioner determines under subsection (20) that an amount is to be included in the total income of a taxpayer of a year of income, that amount shall be deemed to be included in that total income by virtue of such provision of this Act as the Commissioner determines.

(22) Where a tax benefit has been obtained, or would but for subsections (20) to (35) (including this subsection) be obtained, by a taxpayer in connection with a scheme to which this section applies—

(a) the Commissioner may determine that the taxpayer is subject to withholding tax under this Act on the whole or part of that amount; and

(b) if the Commissioner makes such a determination, he or she must take such action as he or she considers necessary to give effect to that determination.

(23) A determination under subsection (20) or (22) must be in writing.

(24) Notice of the determination must be given to the taxpayer and, in the case of a determination under subsection (22), to the person who paid the amount.

(25) More than one determination may be included in the same notice.

(26) A failure to comply with subsection (24) does not affect the validity of a determination.

(27) If the Commissioner makes a determination under subsection (22), the amount that the Commissioner determines is taken to be subject to withholding tax is taken to have been subject to withholding tax at all times by virtue of such provision under this Act as the Commissioner determines.

(28) If the taxpayer is dissatisfied with a determination under subsection (22), the taxpayer may object to it in the manner set out in this Act.

(29) Where the Commissioner has made a determination under subsection (20) or (22) in respect of a taxpayer in relation to a scheme to which this section applies, the Commissioner may, in relation to any taxpayer (in this subsection referred to as the “relevant taxpayer”)—
(a) if, in the opinion of the Commissioner—

(i) there has been included, or would but for this subsection be included, in the total income of the relevant taxpayer of a year of income an amount that would not have been included or would not be included, as the case may be, in the total income of the relevant taxpayer of that year of income if the scheme had not been entered into or carried out; and

(ii) it is fair and reasonable that that amount or a part of that amount should not be included in the total income of the relevant taxpayer of that year of income,

determine that that amount or that part of that amount, as the case may be, should not have been included or shall not be included, as the case may be, in the total income of the relevant taxpayer of that year of income; or

(b) if, in the opinion of the Commissioner—

(i) an amount would have been allowed or would be allowable to the relevant taxpayer as a deduction in relation to a year of income if the scheme had not been entered into or carried out, being an amount that was not allowed or would not, but for this subsection, be allowable, as the case may be, as a deduction to the relevant taxpayer in relation to that year of income; and

(ii) it is fair and reasonable that that amount or a part of that amount should be allowable as a deduction to the relevant taxpayer in relation to that year of income,

determine that that amount or that part, as the case may be, should have been allowed or shall be allowable, as the case may be, as a deduction to the relevant taxpayer in relation to that year of income; or

(c) if, in the opinion of the Commissioner —

(i) an amount would have been allowed, or would be allowable, to the relevant taxpayer as a foreign tax credit if the scheme had not been entered into or carried out, being an amount that was not allowed or would not, apart from this subsection, be allowable,
as the case may be, as a foreign tax credit to the relevant taxpayer; and

(ii) it is fair and reasonable that the amount, or a part of the amount, should be allowable as a foreign tax credit to the relevant taxpayer;

determine that that amount or that part, as the case may be, should have been allowed or is allowable, as the case may be, as a foreign tax credit to the relevant taxpayer; and the Commissioner shall take such action as he considers necessary to give effect to any such determination.

(30) Where the Commissioner makes a determination under subsection (29) by virtue of which an amount is allowed as a deduction to a taxpayer in relation to a year of income, that amount shall be deemed to be so allowed as a deduction by virtue of such provision of this Act as the Commissioner determines.

(31) Where, at any time, a taxpayer considers that the Commissioner ought to make a determination under subsection (29) in relation to the taxpayer in relation to a year of income, the taxpayer may post to or lodge with the Commissioner a request in writing for the making by the Commissioner of a determination under that subsection.

(32) The Commissioner shall consider the request and serve on the taxpayer, by post or otherwise, a written notice of his decision on the request.

(33) If the taxpayer is dissatisfied with the Commissioner's decision on the request, the taxpayer may object to it in the manner set out in this Act.

(34) Nothing in this Act prevents the amendment of an assessment at any time before the expiration of 6 years after the date on which tax became due and payable under the assessment if the amendment is for the purposes of giving effect to subsection (20).

(35) Nothing in this Act prevents the amendment of an assessment at any time if the amendment is for the purpose of giving effect to subsection (29).

1 Substituted by §19 Act 4/2004 wef 1st January 2004 – previously read:

“Contracts for avoidance of tax

108. Every contract, agreement or arrangement made or entered into, orally or in writing, shall, so far as it has or purports to have the purpose or effect of in any way, directly or indirectly—
altering the incidence of any tax;
(b) relieving any person from liability to pay any tax or make any return;
(c) defeating, evading or avoiding any duty or liability imposed on any person by this Act; or
(d) preventing the operation of this Act in any respect,
be absolutely void, as against the Commissioner, or in regard to any proceeding under this Act, but without prejudice to such validity as it may have in any other respect or for any other purpose."

Books of account

109.—(1) If a taxpayer fails or refuses to keep adequate books or accounts for tax purposes, the Commissioner may require the taxpayer to keep such records and accounts as he may prescribe.

(2) Every taxpayer carrying on any trade, business or profession shall keep or cause to be kept proper books of account sufficient to record all transactions necessary in order to ascertain the profit or gain made or the loss incurred in each such trade, business or profession.

(3) Every book of account and every document including vouchers, invoices and receipts which are essential to explain any entry in such book of account relating to such trade, business or profession shall be preserved for a period of not less than 7 years after the end of the income year to which such books of account or documents relate:

Provided that—

(a) the requirement for the preservation of any book of account or document may be dispensed with—

(i) if the Commissioner gives written notice to any person to whom subsection (2) applies that its preservation is not required; or

(ii) in the case of a company which has gone into liquidation and has been finally dissolved or in the case of the cessation of a business other than carried on by a company, on the expiration of 3 months from the date on which the person having custody of the books of account or documents relating to such company or business, as the case may be, informs the Commissioner by registered letter that he proposes to destroy them and the Commissioner does not issue any directions for their preservation;

(b) the provisions of this paragraph shall apply to all books of account and documents kept in accordance with the provisions of subsection (2) after 23 December 1963 and to all such records relating to that trade, business or profession in existence at that date.

(4) For the purposes of [subsection (2)]², a taxpayer shall be deemed not to have kept or caused to have been kept proper books of account, if he has not kept such books or accounts as are necessary to exhibit or explain his transactions and financial position in
his trade, business or profession, including a book or books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealing in goods, statements of annual stock-takings and accounts of all goods sold and purchased.

2 Substituted for “this subsection” by §18(f) Act 24/1976 WEF date of publication in the Gazette

Approved funds

110.—(1) The Commissioner may approve any superannuation fund, superannuation scheme, pension or provident fund or retiring plan for the purposes of this Act, if he is satisfied that—

(a) the fund, scheme or plan is bona fide established under irrevocable trusts in connection with some trade or undertaking carried on in Fiji by a person residing therein;

(b) the fund, scheme or plan has, as its sole purpose, the provision of annuities or lump sums for all or any of the following persons in the events respectively specified, that is to say, for persons employed in the trade or undertaking, either on retirement or at a specific age, or on becoming incapacitated at some earlier age, or for the widows, children or dependants of persons who are or have been so employed, on the death of those persons; and

(c) the employer in the trade or undertaking is a contributor to the fund, scheme or plan:

Provided that the Commissioner may, if he thinks fit and subject to such conditions, if any, as he thinks proper to attach to the approval, approve a fund, scheme or plan or any part of a fund, scheme or plan—

(i) notwithstanding that the rules of the fund, scheme or plan provide for the return in certain contingencies of contributions paid to the fund, scheme or plan; or

(ii) if the main purpose of the fund, scheme or plan is the provision of such annuities or lump sums as aforesaid, notwithstanding that such provision is not its sole purpose; or

(iii) notwithstanding that the trade or undertaking in connection with which the fund, scheme or plan is established is carried on only partly in Fiji and by a person not residing therein.

(2) (a) Where there is any alteration to the instrument establishing any approved fund or to any regulations relating to any such fund, then the trustees of the fund shall, prior to the making thereof, inform the Commissioner in writing of the proposed alteration; and, if the Commissioner is not so informed, the approval of such fund shall be deemed to have been withdrawn from the date of such alteration, unless the Commissioner is satisfied that the alteration is of such a nature as not to affect his approval under subsection (1).
(b) The Commissioner may, at any time, by notice in writing to the trustees of the fund, withdraw his approval of any approved fund, if, in his opinion—
(i) the conditions on which the approval of such fund was granted have not been complied with; or
(ii) there has been any alteration to the instrument establishing such fund or to any regulations relating to any such fund.

(c) Paragraphs (a) and (b) shall apply to all funds, whether approved by the Commissioner under the provisions of this section or heretofore declared by the Minister to be approved funds.

(3) The Commissioner may approve any fidelity guarantee fund for the purposes of this Act, subject to such conditions as he may think fit.

(4) The Commissioner may approve any superannuation fund, superannuation scheme, pension or provident fund or retiring plan operated by any Government, or by any quasi-Government body or local authority of another territory within the Commonwealth for the purposes of this Act, subject to such conditions as he may think fit.


Audit

111. 1—(1) The accounts of the receipt of revenue under this Act shall be examined by the Auditor-General in order to ascertain that adequate regulations and procedure have been framed to secure an effective check on the assessment, collection and proper allocation of revenue, and the Auditor-General shall satisfy himself that any such regulations and procedure are being duly carried out.

(2) The Auditor-General shall make such examinations as he thinks fit with respect to the correctness of the sums brought to account in respect of such revenue aforesaid.


Repeal Cap. 176

111. 2  …

2 §111 deleted from 1978 Edition Laws of Fiji—previously read:
   “111. The Income Tax Ordinance is repealed.”
FIRST SCHEDULE

FORM 1.

OATH OF SECURITY
(Section 4)

I make oath and swear that I shall regard and deal with all documents, returns, assessments and information relating to the income of any person which may come into my possession or to my knowledge in the course of my official duty, as secret, and that I shall not reveal any such document or information to any person or permit any person to have access to any such document, return or assessment, save in the circumstances in which I am permitted to do so under the Income Tax Act.

Sworn before me this [day of] 19 [Magistrate].

FORM 2.

OBSERVATION TO ASSESSMENT

THE INCOME TAX ACT
(Section 62)

Name of Taxpayer:
Reference Number:

To the Commissioner of Inland Revenue:

I hereby give notice that I object to the amount for which I am assessed, for the following reasons:

[Here shortly describe reasons.]

(or)

I am not liable to taxation under the above Act for the following reasons:

[Here shortly describe reasons.]

Dated this [day of] 19

Signature.
FORM 3.

NOTICE OF APPEAL TO
[HIGH COURT]¹

THE INCOME TAX ACT
(Section 69)

Name of Taxpayer:
Reference Number:

To the Commissioner of Inland Revenue:
I hereby give notice that I am dissatisfied with the decision given by the Court of Review in this matter for the following reasons:—

[Here shortly describe reasons.]

and that I desire to appeal to the [High Court]² of Fiji.

Dated this day of 19

Signature.

FORM 4.

REFERENCE OF APPEAL
TO [HIGH COURT]³

THE INCOME TAX ACT
(Section 69)

In the matter of assessment of
By virtue of the powers vested in me in this behalf under the Income Tax Act, I hereby refer the appeal of (or my appeal) against the decision of the Court of Review to the [High Court]⁴ of Fiji for adjudication thereon.

Dated this day of 19

To the Chief Registrar of the [High Court]⁵ of Fiji.

Commissioner of Inland Revenue.
NOTICE OF APPEAL TO  
DISCRETIONS REVIEW BOARD  

THE INCOME TAX ACT  
(Section 70)  

Name of Taxpayer:  
Reference Number:  

To the Chairman,  
Discretions Review Board,  
I hereby give notice that I am dissatisfied with the exercise of the Commissioner's discretion under section __________ in the matter of __________ in connection with the assessment under the above reference, for the following reasons:—  

[Here state clearly and concisely the reasons for dissatisfaction.]  

and that I desire to appeal to the Discretions Review Board.  

I have made an objection to the Commissioner in respect of the above matter and my objection was wholly/partly disallowed by notice dated the __________ day of __________ 19__  

I enclose my fee of $2.  
Dated the __________ day of __________, 19__  

Signature.  

---  

1 Reference to “High Court” substituted for “Supreme Court” by §3(g) Interpretation Act (Cap. 7) WEF 4th December 1987  
2 See Note 1  
3 See Note 1  
4 See Note 1  
5 See Note 1
APPLICATION FOR A LICENCE IN TAX FREE REGION

[Paragraph 6(2) of the Twelveth Twelfth Schedule]

Name of Applicant: ....................................................

Company’s Name: .....................................................

Address of Company: ................................................

Nature of Project: .....................................................

Initial Level of Investment: ...........................................

Date of Project Approval: ............................................

Proposed date of Commencement: ...............................

Name and Address of Authorised Officer: ......................


1 Inserted by §14 Promulgation No. 35 of 2008 WEF 1 January 2009
GRANT OF TAX FREE REGION LICENCE

[Paragraph 7(2) of the Twelfth Schedule]

By virtue of the powers vested in me under subparagraph (2) of Paragraph 7 of the Twelfth Schedule and in concurrence with the Minister of Trade and Commerce, I hereby grant an operating licence to

........................................
(Company Name, Address, etc.)

........................................
........................................
to operate the trade, business or manufacture described below, in the TAX FREE REGION on the following terms and conditions

........................................
........................................
........................................
........................................

(Description of Trade, Business or Manufacture)

This Licence shall remain valid until it is surrendered or revoked.

Dated.................                  .........................                  MINISTER FOR FINANCE


1 Inserted by §14 Promulgation No. 35 of 2008 WEF 1 January 2009
SECOND SCHEDULE

(Section 70)

DISCRETIONS APPEALABLE UNDER SECTION 70

<table>
<thead>
<tr>
<th>Section</th>
<th>Subject matter of discretion</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Proviso (b) of section 11</td>
</tr>
<tr>
<td></td>
<td>Apportionment of fines, premiums, etc. on grant of a lease between income years.</td>
</tr>
<tr>
<td>2.</td>
<td>Paragraph (k) of section 11</td>
</tr>
<tr>
<td></td>
<td>(i) Determination of amount of consideration attributable to asset, etc., in respect of which deductions allowed, where sold with other property.</td>
</tr>
<tr>
<td></td>
<td>(ii) Determination of open market value of assets retained on cessation.</td>
</tr>
<tr>
<td>3.</td>
<td>Subsection (1) of section 13</td>
</tr>
<tr>
<td></td>
<td>Determination of part of consideration attributable to trading stock where sold with other assets.</td>
</tr>
<tr>
<td>4.</td>
<td>Subsections (2) and (3) of section 13</td>
</tr>
<tr>
<td></td>
<td>Determination of price of trading stock in absence of market price.</td>
</tr>
<tr>
<td>5.</td>
<td>Paragraph (b) of section 14</td>
</tr>
<tr>
<td></td>
<td>Income derived for the immediate or future benefit of any beneficiary under a will.</td>
</tr>
<tr>
<td>6.</td>
<td>Subsections (1) and (2) of section 20</td>
</tr>
<tr>
<td></td>
<td>Determination of reasonable remuneration, allowance, gratuity or compensation paid or credited by a company to a shareholder, director or relative, etc., or by a person in business to a relative, etc., of such person.</td>
</tr>
<tr>
<td>7.</td>
<td>Subsection (3) of section 20</td>
</tr>
<tr>
<td></td>
<td>Amount expected to be paid to an employee of equivalent age and experience.</td>
</tr>
<tr>
<td>8.</td>
<td>Paragraph (a) of subsection (1) of section 21</td>
</tr>
<tr>
<td></td>
<td>All discretions conferred on the Commissioner by this paragraph or any instructions thereunder.</td>
</tr>
</tbody>
</table>
9. Sub-paragraph (ii) of para-graph (b) of section 21
Apportionment of superannuation contributions between income years.

10. Sub-paragraph (i) of para-graph (c) of section 21
Allowance for expenditure on experimentation, scientific
research or investigation.

11. Sub-paragraph (ii) of para-graph (c) of section 21
Allowance for expenditure on prospecting for minerals.

12. Paragraph (b) of subsection (2) of section 23
Allowance for expenditure incurred in acquisition of any mining tenement.

13. Section 34
Determination of income of business controlled from abroad.

14. Proviso (c) of subsection (1) of section 105
Apportionment of profits between projects against which Hotels Aid relief to be given.

15. Section 110
Refusal to approve fund, scheme or plan or alteration in respect thereof.

THIRD SCHEDULE

1. Repealed by §21(1) Act 4/2004 WEF 1st January 2004. §21(2) Act 4/2004 clarifies that notwithstanding subsection (1), any incentive or concession granted under the repealed Schedules before the commencement of this Act shall continue as if those Schedules had not been repealed. The Third Schedule previously read:

“THIRD SCHEDULE

(Section 16 (2))

TAX CONCESSIONS IN RESPECT OF APPROVED ENTERPRISES

Tax free concessions

1. Any company which has been specified on or before 31st December 2000, in accordance with the provisions of paragraph (b) of subsection (2) of section 16 shall be exempt from the payment of tax, to the extent indicated in paragraph 4, on the profits or gains derived from an approved enterprise for such period not exceeding 5 years as may be appointed by the Minister:

Provided that such period may be extended with the authority of the Minister and upon such conditions as he thinks fit by a period not exceeding 3 years in respect of the operations of the approved enterprise in such area or areas as the Minister may direct:
Provided further that no concession shall be granted under paragraph (b) of subsection (2) of section 16 for any year, if the Commissioner is not satisfied that the shareholders of the company are substantially the same as on the date when the concession was granted. For the purposes of this paragraph, the shareholders of a company shall not be deemed to be substantially the same if 30 per cent or more of the voting power or the right to receive dividends is not held by the same person.

Computation of profits and gains

2. During the period from the appointed day to the end of the accounting period in which the last day of the tax concession period falls, such depreciation shall be written off the assets of that company in calculating its profits or gains as would have been available to it under the provisions of this Act if the company were not in receipt of the concession in respect of the approved enterprise, and the written down values of such depreciable assets at the end of the accounting period in which the last day of the tax concession period falls shall be calculated accordingly:

Provided that the company shall not be obliged to claim initial allowances but such election shall in that event continue for the whole of the tax free period.

End of tax free period

3. If the end of the tax concession period does not coincide with the end of an accounting period of the company, the profits or gains for the accounting period in which the last day of the tax concession falls will be apportioned between the parts of the accounting period which precede and follow the end of such tax concession period on a time basis, and the profits or gains so attributed to the part which precedes the end of the tax concession period shall be subject to the concessions set out in this Schedule which shall also be apportioned on a time basis.

Extent of tax concession

4. An approved enterprise shall be exempt from tax in respect of profits or gains of $8,000 per annum or if greater, 15 per cent of the smaller of—

(a) the paid up equity capital of the company relating to the enterprise; or

(b) the total fixed capital investment of the company relating to the enterprise,

at the commencement of each of the normal accounting years of the company covering the period specified by the Minister. In determining the capital relating to the enterprise, the Minister may make such apportionments as he deems necessary:

[Provided that—

(i) where an approved enterprise engages more than 25 full time employees during the year or, where employees are required for seasonal work or the like, engages the equivalent of more than 25 full time employees, the figure of 15 per cent mentioned above shall be substituted by a figure of 20 per cent; or

(ii) where an approved enterprise engages more than 50 full time employees during the year or, where employees are required for seasonal work or the like, engages the equivalent of more than 50 full time employees, the figure of 15 per cent mentioned above shall be substituted by a figure of 25 per cent.

5. Notwithstanding the provisions of section 22, relief in respect of losses of an approved enterprise shall be computed in the same manner as profits and shall be available for set off against subsequent profits of the approved enterprise up to the 6 successive years immediately following the end of the tax concession period during which the loss was incurred. Where the end of the tax concession period does not coincide
with the last day of an accounting period, the period to the end of such accounting period shall be regarded as the first successive year.

**Information**

6. Any company wishing to apply for the benefit of a concession referred to in paragraph 1 shall make application to the Minister responsible for economic planning and development providing full information of the enterprise for which approval is sought including—

(a) the proposed paid-up equity capital relating to the enterprise;

(b) the total fixed capital investment relating to the enterprise proposed by the company;

(c) full details of the extent to which the following factors will be involved:—

(i) what foreign earnings are anticipated;
(ii) the curtailment of existing imports;
(iii) the labour intensity of the enterprise;
(iv) to what extent local raw material will be utilised.

The Minister responsible for economic planning and development and the Minister may call for such further information as they deem necessary.

**Approval**

7. —(a) The Minister may grant approval upon such conditions as he thinks fit.

(b) Where the company is already trading in Fiji, nothing in this Act shall prevent the Minister approving an enterprise of the company to be an approved enterprise where the company incurs substantial capital expenditure connected with expansion of production of the original product or of an approved new product. In such case, the approved enterprise, for the purposes of this Schedule, shall relate to the expansion, the additional capital and the increase in profits attributable to such increase in profits as if the additional equity capital related to a separate company except that reference to “$8,000 per annum or if greater” shall be regarded as having been deleted from that paragraph.

In computing the profits attributable to expansion, the Commissioner may make such allocations and apportionments as he considers to be reasonable.

(c) Any concessions granted under the Fifth Schedule of the Income Tax Ordinance shall continue to apply to the conditions obtaining at the date the concession was granted.

**Annual accounts**

8. Within 6 months of the end of each accounting period, fully audited accounts of the approved enterprise shall be submitted to the Minister, together with such further information as the Minister may, in his discretion, require.

**Revocation**

9. —(1) The Minister may, if he is satisfied that any company which has been granted a concession in respect of an approved enterprise has furnished incorrect information or has in any way misrepresented the facts or failed to submit audited accounts or other information required by the Minister, revoke such concession by notice in the Gazette and the company shall cease to enjoy such concession from the date to be specified in such notice. The Minister may, at his discretion, revoke the concession as from any date and such revocation may apply from the commencement of the concession if he so considers appropriate.
(2) Where the date of revocation does not coincide with the end of all accounting period of the company, then the full profits or gains of the approved enterprise for the accounting period in which such revocation falls shall be subject to tax as if no such concession had been granted.

 Definitions

10. For the purposes of this Schedule—
“the paid up equity capital” means the total paid up share capital of the company relating to the approved enterprise excluding bonus shares, scrip and similar issues, unless the issues are made out of reserves. The Minister may, at his discretion, include in the paid up equity share capital debentures or loans, provided that such debentures or loans have been provided from funds outside Fiji, that such debentures or loans have been negotiated and the credit made available in Fiji and that the interest thereon is liable to normal tax in Fiji, whereupon the Minister may deem such debentures or loans to be paid up equity share capital for the purposes of this Schedule.

“Total fixed capital investment” means the total cost or written down values—
(a) for the first year, at the commencement of the enterprise; and
(b) for subsequent years, on the last day of the previous accounting period,
of all the assets in use which qualify for depreciation allowance under the First and Second Schedules of the instructions issued by the Governor-in-Council under section 30 of the Ordinance repealed by this Act, as depreciated at that date. Such total shall, however, exclude—
(a) the cost of written down values of all private motor vehicles and ships;
(b) all private dwellings except those built for estate workers on plantations or in remote areas, provided that the cost of a single dwelling does not exceed $3,000 and, at the discretion of the Commissioner, a limited number of houses for technical and supervisory staff built for non-Fiji citizens;
(c) in the case of buildings, the cost of the land, tunnelling and site preparation;
(d) in the case of second-hand plant, machinery, equipment and utensils, the cost shall include the cost of freight, insurance and duty but shall not exceed the sum of such items and the written down values of such items based on original cost when new. Any items previously used for productive purposes in Fiji shall be excluded.
The cost of constructing or taking the following services to the site, may, at the discretion of the Commissioner, be included in the total fixed investment—
(a) electricity;
(b) water;
(c) telephone;
(d) drainage;
(e) service roads.

For the purposes of this Schedule—
“approved enterprise” means an enterprise which has been approved by the Minister under paragraph 7 and the company has been specified under the provisions of paragraph (b) of subsection (2) of section 16;
“enterprise” means any project for which a concession is applied for under the provisions of paragraph 1.
FOURTH SCHEDULE

*(Section 7)*

**RATES OF NORMAL TAX**

**A2. RESIDENT INDIVIDUALS AND RESIDENT INDIVIDUAL TRUSTEES**

Table A1 – Year of assessment 2001

<table>
<thead>
<tr>
<th>Chargeable income $</th>
<th>Tax payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–6,500</td>
<td>Nil</td>
</tr>
<tr>
<td>6,501–10,000</td>
<td>15% of excess over $6,500</td>
</tr>
<tr>
<td>10,001–20,000</td>
<td>525 + 25% of excess over $10,000</td>
</tr>
<tr>
<td>20,001 +</td>
<td>3,025 + 34% of excess over $20,000</td>
</tr>
</tbody>
</table>

Table A2 – Year of assessment 2002

<table>
<thead>
<tr>
<th>Chargeable income $</th>
<th>Tax payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–6,500</td>
<td>Nil</td>
</tr>
<tr>
<td>6,501–10,000</td>
<td>15% of excess over $6,500</td>
</tr>
<tr>
<td>10,001–20,000</td>
<td>525 + 25% of excess over $10,000</td>
</tr>
<tr>
<td>20,001 +</td>
<td>3,025 + 32% of excess over $20,000</td>
</tr>
</tbody>
</table>

Table A3 – Year of assessment 2003

<table>
<thead>
<tr>
<th>Chargeable income $</th>
<th>Tax payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–7,500</td>
<td>Nil</td>
</tr>
<tr>
<td>7,501–10,000</td>
<td>15% of excess over $7,500</td>
</tr>
<tr>
<td>10,001–20,000</td>
<td>375 + 25% of excess over $10,000</td>
</tr>
<tr>
<td>20,001 +</td>
<td>2,875 + 32% of excess over $20,000</td>
</tr>
</tbody>
</table>
Table A4 – Year of assessment 2005 and every subsequent year

<table>
<thead>
<tr>
<th>Chargeable income</th>
<th>Tax payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–8,840</td>
<td>Nil</td>
</tr>
<tr>
<td>8,841–10,000</td>
<td>15% of excess over $8,840</td>
</tr>
<tr>
<td>10,001–20,000</td>
<td>174 + 25% of excess over $10,000</td>
</tr>
<tr>
<td>20,001+</td>
<td>2,674 + 31% of excess over $20,000</td>
</tr>
</tbody>
</table>

Table A5 – Year of assessment 2008 and every subsequent year

<table>
<thead>
<tr>
<th>Chargeable income</th>
<th>Tax payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–9,000</td>
<td>Nil</td>
</tr>
<tr>
<td>9,001–10,000</td>
<td>15% of excess over $9,000</td>
</tr>
<tr>
<td>10,001–20,000</td>
<td>150 + 25% of excess over $10,000</td>
</tr>
<tr>
<td>20,001+</td>
<td>2,650 + 31% of excess over $20,000</td>
</tr>
</tbody>
</table>

Table A6 – Year of assessment 2008 (1st June – 31st December) and every subsequent year

<table>
<thead>
<tr>
<th>Chargeable income</th>
<th>Tax payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–15,000</td>
<td>Nil</td>
</tr>
<tr>
<td>15,001–15,600</td>
<td>25% of excess over $15,000</td>
</tr>
<tr>
<td>15,601–22,000</td>
<td>150 + 31% of excess over $15,600</td>
</tr>
<tr>
<td>22,001+</td>
<td>2,650 + 31% of excess over $22,000</td>
</tr>
</tbody>
</table>
Table A7 – Year of Assessment 2010 and every subsequent year

A. RESIDENT INDIVIDUALS AND RESIDENT INDIVIDUAL TRUSTEES

<table>
<thead>
<tr>
<th>Chargeable income $</th>
<th>Tax payable $</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–15,000</td>
<td>Nil</td>
</tr>
<tr>
<td>15,001–15,600</td>
<td>25% of excess over $15,000</td>
</tr>
<tr>
<td>15,601–22,000</td>
<td>150 + 31% of excess over $15,600</td>
</tr>
<tr>
<td>22,001+</td>
<td>2,134 + 31% of excess over $22,000</td>
</tr>
</tbody>
</table>

Table A8 – Year of Assessment 2012 and every subsequent year

<table>
<thead>
<tr>
<th>Chargeable Income ($)</th>
<th>Tax Payable ($)</th>
<th>Social Responsibility Levy</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–15,600</td>
<td>Nil</td>
<td></td>
</tr>
<tr>
<td>15,601–22,000</td>
<td>7% of excess over $15,600</td>
<td></td>
</tr>
<tr>
<td>22,001–50,000</td>
<td>448 + 18% of excess over $22,000</td>
<td></td>
</tr>
<tr>
<td>50,001–270,000</td>
<td>5488 + 20% of excess over $50,000</td>
<td></td>
</tr>
<tr>
<td>270,001–300,000</td>
<td>49,488 + 20% of excess over $270,000</td>
<td>23%</td>
</tr>
<tr>
<td>300,001–350,000</td>
<td>55,487 + 20% of excess over $300,000</td>
<td>24%</td>
</tr>
<tr>
<td>350,001–400,000</td>
<td>65,487 + 20% of excess over $350,000</td>
<td>25%</td>
</tr>
<tr>
<td>400,001–450,000</td>
<td>75,487 + 20% of excess over $400,000</td>
<td>26%</td>
</tr>
<tr>
<td>450,001–500,000</td>
<td>85,487 + 20% of excess over $450,000</td>
<td>27%</td>
</tr>
<tr>
<td>500,001–1,000,000</td>
<td>95,487 + 20% of excess over $500,000</td>
<td>28%</td>
</tr>
<tr>
<td>1,000,001+</td>
<td>195,486 + 20% of excess over $1,000,000</td>
<td>29%</td>
</tr>
</tbody>
</table>

B. NON-RESIDENT INDIVIDUALS AND NON-RESIDENT INDIVIDUAL TRUSTEES
Table B1 – Year of assessment 2001

<table>
<thead>
<tr>
<th>Chargeable income $</th>
<th>Tax payable $</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–6,500</td>
<td>20% of excess over $0</td>
</tr>
<tr>
<td>6,501–10,000</td>
<td>1,300 + 25% of excess over $6,500</td>
</tr>
<tr>
<td>10,001–20,000</td>
<td>2,175 + 30% of excess over $10,000</td>
</tr>
<tr>
<td>20,001 +</td>
<td>5,175 + 34% of excess over $20,000</td>
</tr>
</tbody>
</table>

Table B2 – Year of assessment 2002

<table>
<thead>
<tr>
<th>Chargeable income $</th>
<th>Tax payable $</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–6,500</td>
<td>20% of excess over $0</td>
</tr>
<tr>
<td>6,501–10,000</td>
<td>1,300 + 25% of excess over $6,500</td>
</tr>
<tr>
<td>10,001–20,000</td>
<td>2,175 + 30% of excess over $10,000</td>
</tr>
<tr>
<td>20,001 +</td>
<td>5,175 + 32% of excess over $20,000</td>
</tr>
</tbody>
</table>

Table B3 – Year of assessment 2003

<table>
<thead>
<tr>
<th>Chargeable income $</th>
<th>Tax payable $</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–7,500</td>
<td>20% of excess over $0</td>
</tr>
<tr>
<td>7,501–10,000</td>
<td>1,500 + 25% of excess over $7,500</td>
</tr>
<tr>
<td>10,001–20,000</td>
<td>2,125 + 30% of excess over $10,000</td>
</tr>
<tr>
<td>20,001 +</td>
<td>5,125 + 32% of excess over $20,000</td>
</tr>
</tbody>
</table>
Table B4\(^{11}\) – Year of assessment 2005 and every subsequent year

**B. NON-RESIDENT INDIVIDUALS AND NON-RESIDENT INDIVIDUAL TRUSTEES**

<table>
<thead>
<tr>
<th>Chargeable income $</th>
<th>Tax payable $</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–8,840</td>
<td>20% of excess over $0</td>
</tr>
<tr>
<td>8,841–10,000</td>
<td>1,768 + 25% of excess over $8,840</td>
</tr>
<tr>
<td>10,001–20,000</td>
<td>2,058 + 30% of excess over $10,000</td>
</tr>
<tr>
<td>20,001 +</td>
<td>5,058 + 31% of excess over $20,000</td>
</tr>
</tbody>
</table>

Table B5\(^{12}\)-Year of assessment 2008 and every subsequent year

**B. NON-RESIDENT INDIVIDUAL AND NON-RESIDENT INDIVIDUAL TRUSTEES**

<table>
<thead>
<tr>
<th>Chargeable income $</th>
<th>Tax payable $</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-9,000</td>
<td>20% of excess of $0</td>
</tr>
<tr>
<td>9,000-10,000</td>
<td>1,800 + 25% of excess over $9,000</td>
</tr>
<tr>
<td>10,001-20,000</td>
<td>2,050 + 30% of excess over $10,000</td>
</tr>
<tr>
<td>20,001 +</td>
<td>5,050 + 31% of excess over $20,000</td>
</tr>
</tbody>
</table>

Table B6\(^{13}\) – Year of Assessment 2012 and every subsequent year

<table>
<thead>
<tr>
<th>Chargeable Income ($)</th>
<th>Tax Payable ($)</th>
<th>Social Responsibility Levy</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-15,600</td>
<td>20% of excess of $0</td>
<td>19%</td>
</tr>
<tr>
<td>15,601 – 22,000</td>
<td>3,120 + 20% of excess over $15,600</td>
<td>20%</td>
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<td>22,001 – 50,000</td>
<td>4,400 + 20% of excess over $22,000</td>
<td>21%</td>
</tr>
<tr>
<td>50,001 – 270,000</td>
<td>10,000 + 20% of excess over $50,000</td>
<td>22%</td>
</tr>
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<td>270,001 - 300,000</td>
<td>53,999 + 20% of excess over $270,000</td>
<td>23%</td>
</tr>
<tr>
<td>300,001 - 350,000</td>
<td>59,999 + 20% of excess over $300,000</td>
<td>24%</td>
</tr>
<tr>
<td>350,001 - 400,000</td>
<td>69,999 + 20% of excess over $350,000</td>
<td>25%</td>
</tr>
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<td>400,001 - 450,000</td>
<td>79,999 + 20% of excess over $400,000</td>
<td>26%</td>
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<td>450,001 – 500,000</td>
<td>89,999 + 20% of excess over $450,000</td>
<td>27%</td>
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<td>500,001 – 1,000,000</td>
<td>99,999 + 20% of excess over $500,000</td>
<td>28%</td>
</tr>
<tr>
<td>1,000,001 +</td>
<td>199,998 + 20% of excess over $1,000,000</td>
<td>29%</td>
</tr>
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</table>
C14. COMPANIES (INCLUDING COMPANIES ACTING AS TRUSTEES)

Table C1 – Year of assessment 2001

(a) Every company, other than companies to which paragraph (b), (c) or (d) applies.................................................................34%

(b) Mutual insurance companies in respect of life insurance business .........................................................................................30%

(c) Non-resident or non-mutual insurance companies to the extent that the income of their life insurance businesses is deemed to be mutual under section 37(1) ................................................30%

(d) Non-resident shipping companies ..............................................2%

Table C2 – Year of assessment 2002

(a) Every company, other than companies to which paragraph (b), (c) or (d) applies.................................................................32%

(b) Mutual insurance companies in respect of life insurance business .........................................................................................30%

(c) Non-resident or non-mutual insurance companies to the extent that the income of their life insurance businesses is deemed to be mutual under section 37(1) ................................................30%

(d) Non-resident shipping companies ..............................................2%

Table C3 – Year of assessment 2003

(a) Every company, other than companies to which paragraph (b), (c) or (d) applies.................................................................32%

(b) Mutual insurance companies in respect of life insurance business .........................................................................................30%

(c) Non-resident or non-mutual insurance companies to the extent that the income of their life insurance businesses is deemed to be mutual under section 37(1) ................................................30%

(d) Non-resident shipping companies ..............................................2%

Table C4 – Year of assessment 2005 and every subsequent year

C. COMPANIES (INCLUDING COMPANIES ACTING AS TRUSTEES)
(a) Every company, other than companies to which paragraph (b), (c) or (d) applies.................................................................31%

(b) Mutual insurance companies in respect of life insurance business ..............................................................30%

(c) Non-resident or non-mutual insurance companies to the extent that the income of their life insurance businesses is deemed to be mutual under section 37(1) .......................................................30%

(d) Non-resident shipping companies .................................2%.

Table C5 – Year of assessment 2009

C. COMPANIES (INCLUDING COMPANIES ACTING AS TRUSTEES)

(a) Every company, other than companies to which paragraph (b) applies.................................................................29%

(b) Non-resident shipping companies.......................................................2%  

Table C6 – Year of assessment 2010 and every subsequent year

C. COMPANIES (INCLUDING COMPANIES ACTING AS TRUSTEES)

(a) Every company, other than companies to which paragraph (b) or (c) applies.................................................................28%

(b) Non-resident shipping companies .......................................................2%

(c) Any company listed with the South Pacific Stock Exchange and has a minimum of 40% resident shareholding is eligible for this tax rate for at least 3 years .................................................................20%

Table C7 – Year of assessment 2012 and every subsequent year

COMPANIES (INCLUDING COMPANIES ACTING AS TRUSTEES)

(a) Every company, other than companies to which paragraph (b) or (c) applies.................................................................20%;

(b) Non resident shipping companies .................................2%

(c) Any company listed with the South Pacific Stock Exchange is eligible for this tax rate .................................................................20%
1. Amended by inserting the main title as "RATES OF NORMAL TAX" and deleting Tables A, B and C and substituting new tables A1, A2, A3, B1, B2, B3, C1, C2 and C3 by §18 Decree 8/2001 WEF 1st January 2001. For rates of previous years of income, see Appendix A.

2. Title substituted by §20(a) Act 4/2004 WEF 1st January 2004 – previously read:
   “A. ESTATES OF DECEASED INDIVIDUALS, TRUSTS, SETTLEMENTS AND RESIDENT INDIVIDUALS”

3. Amended by deleting Table A3 and substituting the new Tables A3 and A4 by §19 Act 1/2003 WEF 1st January 2003
4. Amended by inserting Table A4 and substituting the new Table A4 by §29 Act 3/2005 WEF 1st January 2005
5. Amended by inserting new Table A5 by §15 Promulgation 47 of 2008 WEF 1st January 2008; Table A5 is applicable from 1 January 2008 – 31 May 2008 inserted by §4(a) Promulgation 15 of 2008 WEF 1st June 2008
6. Table A6 inserted by §4(b) Promulgation No.15 of 2008 WEF 1st June 2008

7. Inserting a new Table A7 by Decree No.8/2010 WEF 1st January 2010.
8. Inserted by Decree No.6 of 2012 by inserting a new Table A8 after Table A7. Effective from 1st January, 2012
9. Title substituted by §20(a) Act 4/2004 WEF 1st January 2004 – previously read:
   “B. NON-RESIDENT INDIVIDUALS”
10. Amended by deleting Table B3 and substituting the new Tables B3 and B4 by §19 Act 1/2003 WEF 1st January 2003
11. Amended by inserting new Table B5 by §15 Promulgation 47 of 2008 WEF 1st January 2008
12. Inserted by Decree No.6 of 2012 by inserting a new Table B6 after Table B5. Effective from 1st January, 2012.
13. Title substituted by §20(a) Act 4/2004 WEF 1st January 2004 – previously read:
   “C. COMPANIES”
14. Amended by inserting "or (c)" after “(b)" by Decree No.8/2010 WEF 1st January 2010.
16. Amended by inserting a new paragraph (c) by Decree No.8/2010 WEF 1st January 2010.
17. Inserted by Decree No.6 of 2012 by inserting a new Table C7 after Table C6. Effective from 1st January, 2012.
FIFTH SCHEDULE

1 Repealed by §21(1) Act 4/2004 WEF 1st January 2004. §21(2) Act 4/2004 clarifies that notwithstanding subsection (1), any incentive or concession granted under the repealed Schedules before the commencement of this Act shall continue as if those Schedules had not been repealed. The Fifth Schedule previously read:

FIFTH SCHEDULE
(Section 16(2)(d))

EXPORT INCENTIVES

1. Preliminary:
Where the Minister has specified, on or before 31st December 2000, any trade and product as an approved trade or product under paragraph (d) of subsection (2) of section 16, a deduction from chargeable income or a rebate of the tax charged may be allowed in accordance with the provisions of this Schedule.

2. Commencement:
These provisions shall apply to any fiscal year ending after 1 January 1974.

3. Application for Approval:
(a) Every company resident in Fiji for the fiscal year of any year of assessment which desires to avail itself of the deduction under this Schedule shall apply to the Minister for approval to be treated as a company eligible for a deduction or rebate for that year,
(b) The Minister may require a company which applies for approval under (a) to furnish him with particulars which he considers necessary for the purpose of considering the application including, inter alia—
(i) the name and address of the company;
(ii) the nature of the trade in respect of which approval is sought;
(iii) the nature of the product in respect of which approval is sought;
(iv) details of manufacture or production including capacity and amount available, for export and to which countries the company expects to export.

4. Nature of Trade and Products to be Approved and other Requirements:
(i) The trade and product which the Minister will approve shall be a product of manufacturing, processing, or assembly including the provision of services, the manufacture or produce of deep-sea fishing or of production of minor agricultural commodities. Minor agricultural commodities shall be such commodities as the Minister may approve, but will not include sugar or copra but derivatives of manufacture from these commodities may be considered by the Minister as manufactures.
(ii) An approved trade or product may include a product manufactured, processed or assembled wholly or substantially for export although not directly exported by the company seeking approval, in which case both the manufacturer and exporter as separate entities may be eligible for deduction and both entities may seek approval in respect of the same trade or product.
(iii) No deduction will be due in respect of the deduction relating to the increase in exports for any fiscal year in which total export sales of approved products do not exceed $10,000.

5. Method of Relief:
   (I) Subject to paragraph 11, in respect of an approved product, a rebate in respect of the export profits relating to such approved product for the fiscal year in which approval is first given and the 12 subsequent fiscal years, the full amount of the tax chargeable on the export profits. The rebate due for any year of assessment shall be limited to the amount calculated under this sub-paragraph or the tax payable for that income year whichever is the less.

   (ii) Where a deduction under this Schedule is admissible in addition to an exemption under the Third Schedule the exemption under the Third Schedule shall first be allowed and a deduction under this Schedule will be applied to any balance of profits which have not been exempted. Any apportionment or computation under this paragraph shall be applied as if the net profit chargeable were the total profits of the trade.

   (iii) Any concession granted under this Schedule prior to 1st January 1988 shall continue to apply and the rebate, commencing from the year of assessment 1988, shall be computed in accordance with sub-paragraph (i).

   (iv) Where the Minister considers that an approved product has not been adequately marketed overseas and further government assistance is desirable to facilitate substantial foreign exchange earnings, he may by direction to the Commissioner extend the 13 year period referred to in sub-paragraph (i), upon such conditions as he thinks fit, by a period not exceeding 5 years.

6. Time Limits:
   (i) Except in respect of an application made during the year 1974 in respect of a fiscal year ending in that year, an application for an export incentive deduction shall be submitted to the Minister not later than 9 months after the commencement of the fiscal year the profits of which are to be the subject of an application.

   (ii) Provided that satisfactory records are maintained, a taxpayer may continue to claim relief for the year of claim and the 12 subsequent fiscal years.

7. Termination:
   The Minister may, on the recommendation of the Commissioner, terminate his approval, if
   (a) inadequate records are maintained or insufficient information is furnished to the Commissioner;
   (b) in the event of an inadequate supply to the Fiji market of the approved product, satisfactory arrangements are not made to expand or divert production.

8. Determination of Export Profits:
   Where a trade is approved which manufactures or processes both qualifying and non-qualifying products, the trader shall satisfy the Commissioner that separate records of output, sale and expenditure to the Minister’s requirements are maintained.

   The Commissioner may, where separate records for export profits are not maintained, determine such profits on the basis of the following formula:

   \[
   \frac{A}{B} \times C
   \]

   Where:
   \(A\) is total export sales of the qualifying product;
   \(B\) is total sales of all products; and
$C$ is total profits arising from sales of all products manufactured by a person qualifying for this relief.

In the case of export sales of timber grown in Fiji, the export profits may be deemed to be equal to 10 per cent of the Free On Board value of all armslength sales, with the maximum export profit equivalent to 50 per cent of the chargeable income arising in the income year from sales of timber grown in Fiji.

9. **Definition:**
   “Manufacturing” means any product wholly manufactured or produced in Fiji or any product which includes components which are imported but the additional costs relating to assembly, processing, further manufacturing or treatment represent an addition to cost of not less than 30 per cent or such percentage as the Minister may direct.
   “Exports” shall not include re-exports except to the extent referred to in the meaning of “Manufacturing”.

10. **Certificate by Comptroller of Customs and Excise:**
    The amount of exports shall be certified by the Comptroller of Customs and Excise.
    The Commissioner may also call for any books, documents, bills of lading or any other information which he may require for the purposes of examining a claim under this Schedule.

11. **Tax Free Zone:**
   (i) Notwithstanding the other paragraphs of this Schedule where a trade, product or service is approved in accordance with paragraph 4 and such trade, product or service is exported to the extent of seventy percent or more of the annual production thereof by the company, such an enterprise shall be designated a Tax Free Zone and shall enjoy full relief in accordance with paragraph 5 but so that the full period is extended to 13 years commencing from the fiscal year of approval and persisting for the 12 subsequent fiscal years, provided it continues to meet the seventy percent criteria:
       Provided further that where it is considered appropriate by the Minister the seventy percent export criteria may be reduced in accordance with subsection 3 of Section 7 of the Tax Free Zones Decree, 1991.
   (ii) Any enterprise engaged in re-export to the extent of seventy percent or more of activities conducted by it may for the purpose of this paragraph be designated as a Tax Free Zone and enjoy the relief as in sub-paragraph (i).
   (iii) Any enterprise engaged in an approved trade or product or service which supplies seventy percent or more of its annual output to a Tax Free Zone may itself be eligible for designation as a Tax Free Zone under this paragraph.
Sixth Schedule(I)

(Section 16A)

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SIXTH SCHEDULE

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FILM-MAKING AND AUDIO-VISUAL INCENTIVES

PART I – GENERAL

Interpretation

1. - (1) For the purposes of this Schedule, unless the context otherwise requires -

“Fiji Islands Audio-Visual Commission” means the corporation of that name established by section 3 of the Fiji Islands Audio-Visual Commission Act 2002;

“FAVC” means the Fiji Islands Audio-Visual Commission;

“FIRCA” means the Fiji Islands Revenue and Customs Authority.

(2) In this Schedule, unless otherwise defined herein, words and phrases shall have the meanings given to them under the Income Tax Act Cap 201 or, where the case may be, the Tax Administration Decree Cap 2009.

Regulations
2. The FAVC may with the concurrence of the Minister make regulations to prescribe:-

(c) forms and fees payable for the purpose of this Schedule; and

(d) the type of expenditure to be specified for the purpose of paragraphs 73, 74, 75 and 76 of Part 5.

Limitation on applications for incentives

3. (1) A company, production entity or any person engaged in the making of a film or audio-visual production in the Fiji Islands may apply for only one incentive under Parts 2, 3 4 or 5 of this Schedule for each film or audio-visual production made in Fiji.

(2) Notwithstanding anything contained in subparagraph (1), the Minister may approve an application made under Part 2 by a company, production entity or any person engaged in the making of a film or audio-visual production who has applied for an incentive under either Part 3 or 5 of this Schedule.

Audits to be in form approved by FAVC

4. (1) Any company, production entity or person engaged in the making of a film or audio-visual production in the Fiji Islands that applies for an incentive under this Schedule shall provide the FAVC with an audited report in a form approved by the FAVC.

(2) An audit referred to in subparagraph (1) must be conducted:

(a) in accordance with all applicable Fiji accounting standards, including any standards relating to the independence of auditors; and

(c) by an auditor who has been approved in writing by

(d) FIRCA.

PART 2 – NON-RESIDENT EMPLOYEE TAX WAIVER

Interpretation

5. For the purposes of this Part, unless the context otherwise requires—

“applicant” means a film company which makes an application under either paragraph 7 or 17;
“application” means an application made under either paragraph 7 or 16;

“film” means a cinematographic or digital or analogue film made or intended for public exhibition or for use in connection with television;

“film company” means a non-resident company engaged, or intending to be engaged, in making a film in the Fiji Islands;

“local goods and services” means:-

(a) emoluments paid to employees who are citizens or are permanently resident in the Fiji Islands; and

(b) the cost of goods produced in their entirety in the Fiji Islands except that, if goods acquired in the Fiji Islands have foreign and local cost contents, the estimated foreign cost content is excluded

“qualifying employee” means an employee of a film company who, other than in relation to being in the Fiji Islands for the purpose of the film company making a film, is a non-resident, and includes an individual engaged by a film company to work in the Fiji Islands on a contract of service or contract for services either with that individual or with any other person.

Non-resident tax incentive

6. If the Minister is satisfied that it is expedient for the economic development of the film-making industry in the Fiji Islands, the Minister may upon the recommendation of the FAVC approve the income of the film company’s qualifying employees to be:-

(a) exempt from tax; or

(b) taxed at a reduced rate specified by the Minister,

for a period determined by the Minister.

Application for approval

7. - (1) A film company seeking exemption or reduction of the rate of tax under this Part may apply to the FAVC for the Minister’s approval under paragraph 6.

(2) An application under subparagraph (1) must be made in the prescribed form and must include:-
(a) the full name and address of the film company;

(b) the full name, address, nationality and country of usual residence of each qualifying employee concerned and the amount of emoluments payable by the film company while the employee is engaged in the Fiji Islands;

(c) the total amount of emoluments that the film company proposes to pay local employees who would be engaged by it;

(d) the total amount the film company proposes to expend on local goods and services and a brief description of the good and services in respect of which the goods and services will be used;

(e) the duration for which the film company will be engaged in making the film in the Fiji Islands;

(f) the title of the film and the script; and

(g) the locations where the film company will be engaged during the making of the film in the Fiji Islands.

FAVC to consider applications and make recommendations

8. (1) The FAVC shall consider and refer each application to the Minister together with the recommendation in respect of the application.

(2) The FAVC may before making a recommendation to the Minister require an applicant to provide additional information or particulars in order that it may properly consider the application.

Minister must approve or reject an application

9. The Minister upon receiving an application and recommendation from the FAVC, shall consider and by written notice to the FAVC approve or refuse the application.

Approval must specify details of exemption or reduction

10. (1) Where the Minister approves an application in accordance with subparagraph 9 and the approval allows for-

(a) an exemption, it shall specify:-

(i) the qualifying employees whose income is exempt from tax; and
(ii) the period during which the exemption of tax applies

(b) a reduced rate of tax, it shall specify:-

(i) the qualifying employees whose income is chargeable to tax at a reduced rate;

(ii) the reduced rate of tax determined by the Minister; and

(iii) the period during which the reduced rate of tax applies.

FAVC to inform applicant

11. – (1) The FAVC shall inform the applicant in writing of the Minister’s decision.

(2) If the Minister approves an application, the FAVC shall provide the Commissioner with a copy of the approval,

Method of relief if final certificate is granted

12. Where a final certificate has been granted, the amount of tax payable by the applicant in respects of each qualifying employee the lesser of:-

(a) the amount of tax assessed in accordance with the general provisions of this Act; or

(b) the amount of tax assessed in accordance with the Minister’s approval under paragraph 6.

FAVC may require security

13. An approved film company may be required by the FAVC to provide a suitable monetary security in favour of the Commissioner on the basis of tax payable by its qualifying employees under paragraph 12.

PART 3 – F1/F2 AUDIO-VISUAL INCENTIVE

Division 1 – Interpretation

Definitions
14. - (1) In this Part, unless the context otherwise requires—

“applicant” means an applicant for a provisional or final certificate who is a resident individual, a resident partnership or a company incorporated in the Fiji Islands but excludes—

(a) a holder of a broadcast license in television or radio in the Fiji Islands or any associated company or individual with substantial holdings in a broadcast license in the Fiji Islands; and

(b) a theatrical exhibitor in the Fiji Islands or any associated company or individual with substantial holdings in a theatre or group of theatres in the Fiji Islands;

“approved financing charges” means the reasonable budgeted and approved cost of financing an audio-visual production and includes legal fees for financing, brokerage for financing, prospectus or offer document costs and disbursements if those charges do not exceed 8% of the production budget of an audio-visual production;

“approved marketing materials costs” means the reasonable budgeted and approved cost of generating masters for marketing materials if not less than 85% of the expenditure to produce such items is spent in the Fiji Islands and the budgets have been approved by the FAVC;

“audio recording” means an audio recording for commercial sale on disk, audio cassette, audio disc or on-line services and includes music, a voice recording of spoken word, a book on tape or audio disc and a dramatic performance in any language;

“audio-visual production” has the meaning given to it in paragraph 15;

“audio-visual production account” means, in relation to an audio-visual production, an account that opened in a Fiji Islands bank for the purpose of audio-visual production and from which withdrawals may only be made for expending audio-visual production costs;

“audio-visual production costs” means, in relation to an audio-visual production, monies expended directly—

(a) in producing the audio-visual production;

(b) on approved financing charges; and

(c) on approved marketing materials costs;
“audio-visual production levy” means a fee prescribed by the FAVC included in the budget of every qualifying audio-visual production payable to the FAVC;

“broadcast television programmes” means programmes produced on film or video tape, or digitally recorded for broadcast on free-to-air, free satellite or pay television, and includes television movies, mini-series, drama series, situation comedy series, documentaries and documentary series, educational programmes and series, animation series and current affairs series;

“completion bond” means an insurance policy ensuring completion of an audio-visual production for the benefit of the production entity and investors;

“completion bond company” means a company specialising in insuring and managing the risk associated with audio-visual production with operations and offices in the Fiji Islands which has in place necessary underwriting arrangements with internationally recognised insurance companies;

“computer software” means an interactive product or instruction set, operating system, manufacturing system, manufacturer controller set or communications protocol for use in or use such as computers, modems, play stations and other games consoles, televisions, video players, digital equipment, telecommunication devices, web servers, CD rom drives and stored on media including CD, Zip drive, computer disc, digital video disc, computer chip or online or any other electronic equipment and includes games, educational products and business products produced for sale, products for research and design and development, and the establishment software costs of a commercial operation, online e-commerce businesses, websites or internet businesses;

“direct to video or video disc programme” means a programme produced for marketing to the public by retail sale produced specifically for home use;

“F1 audio-visual production” means an audio-visual production which qualifies under Division 4;

“F2 audio-visual production” means an audio-visual production which qualifies under Division 4;

“feature film” means any film production with a running time of not less than 80 minutes and is intended for public exhibition as a theatrical release or television film or for sale as direct to video film;

“Fiji Islands bank” means a financial institution licensed under the Banking Act 1995;
“Fiji Production Company” means a limited liability company registered in the Fiji Islands and having 100% of its shares owned by residents;

“final certificate” means a certificate issued under Division 3;

“gross international and domestic revenues” means the revenues derived from the commercial exploitation of an audio-visual production (including advances, licence fees and royalties) collected by a collection agent or by other arrangements on behalf of international sales agents, distributors (including the production company where it performs that function) and their sub-agents (including associated companies or entities operating at arm’s-length);

“large format film” means a film produced in 70mm for exhibition in IMAX, IWERKS, SHOWSCAN and other 15/70, 81/70 and 4/70 large format theatres and ride simulators;

“marketing materials”, in relation to an audio-visual production, includes—

(a) broadcast television commercials (no more than 2 commercials per audio-visual production);

(b) radio commercials (no more than 2 commercial per audio-visual production);

(c) film art for advertising including posters,

(d) press kit masters;

(e) electronic press kits;

(f) internet websites; and

(g) film trailers;

“production entity” means an applicant entity which has been granted a provisional certificate or a final certificate;

“provisional certificate” means a certificate issued under Division 2;

“qualifying audio-visual production” means an F1 or F2 audio-visual production that has been made—

(a) wholly or substantially in the Fiji Islands and for F1 has substantial Fiji Islands content; or
(b) in pursuance of an agreement or arrangement entered into between the Fiji Government or an authority of the Fiji Government and the Government or an authority of the Government of another country under a co-production agreement or arrangement;

“resident” has the meaning given to it under the Income Tax Act;

“relevant 24 months period” in relation to an audio-visual production, means the period of 24 months after the end of the year of assessment in which monies of a capital nature were first expended as audio-visual production costs, or by way of contribution to those costs;

“short film” means an approved film produced for public exhibition, television, theatres or at film festivals with a running time of less than 60 minutes and intended primarily as a demonstration of new and emerging film-making talent;

“substantial Fiji Islands content” means at least 51% of the running time of the completed qualifying audio-visual production showing the Fiji Islands as the Fiji Islands;

“theatrical feature film” means a film intended to be produced for initial release in theatres.

(2) For the purposes of the definition of “gross international and domestic revenues”, the income is net of any deduction of the distributor in a specific country or place but no other deductions.

Audio-visual productions

15. Subject to paragraphs 16 and 17, “audio-visual production” means the production, wholly or principally for exhibition or sale, or use in the conduct of business, of—

(a) a large format film in large format theatres;

(b) a theatrical film or a short film in cinemas;

(c) broadcast television programmes by—

(i) broadcast on free-to-air, satellite or pay television; or

(ii) internet broadcast;

(d) a direct-to-video and video disc programme;
(e) an audio recording;

**Exclusions from references to audio-visual productions**

16. For the purposes of Divisions 2 to 6, a reference to an audio-visual production does not include a reference to an audio-visual production that is or is intended to be to a substantial extent—

(a) an audio-visual production for exhibition as an advertising programme or a commercial other than where that advertising programme or commercial is part of the marketing budget of an audio-visual production and is only advertising the audio-visual production which has funded it;

(b) an audio-visual production for exhibition as a discussion programme, a quiz programme, a panel programme, a variety programme or a programme of like nature, unless the AVP is produced by a Fiji Production Company;

(c) an audio-visual production which is substantially (more than 50%) of a public event; and

(d) an audio-visual production produced principally as a training aid.

**Further exclusions from references to audio-visual productions**

17. (1) For the purposes of Divisions 2 to 6, a reference to an audio-visual production does not include—

(a) an extension of broadcast television programmes beyond the first 26 episodes of a continuing series;

(b) an extension of broadcast television programmes and television movies beyond 2 full length films in a continuing series;

(c) more than 2 audio recordings by the same artist or substantially the same artist; or

(d) more than 1 short film by an individual director.
(2) Subparagraph (1) does not apply in the case of an AVP produced by a Fiji Production Company.

References to audio-visual production

18. In this Part, unless a contrary intention appears, a reference to an audio-visual production includes a reference to a proposed audio-visual production.

Division 2 – Provisional Certificates

Application for provisional certificate

19. An applicant may apply to the FAVC for a provisional certificate stating that a proposed audio-visual production will, when complete, be a qualifying audio-visual production for the purposes of this Part.

Application for another provisional certificate

20. - (1) An applicant who holds a current provisional certificate may not apply to the FAVC for a provisional certificate for another or a new audio-visual production until after a final certificate for the first or current audio-visual production has been issued by the FAVC.

(2) Notwithstanding anything in subparagraph (1), the FAVC may if it deems it expedient for the development of the audio-visual industry in Fiji, exercise its discretion to grant a provisional certificate for another or a new audio-visual production to an applicant who holds a current provisional certificate and has not yet been issued with a final certificate in respect thereof.

Form of application

21. An application under paragraph 19 shall be—

(a) in the prescribed form and accompanied by the prescribed fee;
(b) signed by an authorised officer of the applicant; and
(c) accompanied by such information as the FAVC requires.

FAVC to consider and decide applications

22. - (1) Upon receiving an application under paragraph 19, the FAVC must consider
it and either approve or refuse it.

(2) The FAVC must not approve an application, unless it is satisfied that—

(a) the proposed audio-visual production, when complete, will be a qualifying Fiji Islands audio-visual production; and

(b) having regard to the role of the applicant in the production of the audio-visual production, a provisional certificate should be issued.

**FAVC to issue provisional certificate or give notice of refusal**

23. The FAVC shall—

(a) if it approves the application, issue a provisional certificate to the applicant in respect of the proposed audio-visual production; or

(b) if it refuses the application, give written notice to the applicant of its refusal of the application.

**Information to be provided to FAVC**

24. A production entity that applies for a provisional certificate shall furnish to the FAVC in writing, within a period specified by the FAVC, any information in relation to the proposed audio-visual production as the FAVC requests.

**FAVC may revoke or vary certificate in certain circumstances**

25. (1) If the FAVC has issued a provisional certificate and—

(a) at any time after the issue of the certificate, the FAVC becomes satisfied that the proposed audio-visual production does not comply with the conditions or requirements in respect of which the certificate was issued; or

(b) the production entity fails to comply with a request for information made by the FAVC under paragraph 24,

the FAVC may, by written notice to the person to whom the provisional certificate was issued revoke the provisional certificate with effect from the date of the certificate's issue or in the case of a qualifying audio-visual production which is an F1 AVP, vary its audio-visual production status from F1 to F2.
Revocation does not prevent subsequent issue of certificate

26. The revocation of a provisional certificate in respect of a proposed audio-visual production does not prevent the re-issue of a provisional certificate in respect of the same proposed audio-visual production or for a new audio-visual production by the same applicant.

Certificate deemed to be in force from time of issue

27. Subject to paragraphs 25 and 28, a provisional certificate is deemed to have been in force at all times from the date of its issue.

Certificate lapses unless application for final certificate made

28. - (1) If an application for a final certificate in respect of an audio-visual production is not made in accordance with Division 3 before the expiration of 12 months after the time when the audio-visual production is completed, a provisional certificate in respect of that audio-visual production is deemed never to have been in force.

(2) If an application is made by a Fiji Production Company, a provisional certificate issued in respect of the proposed AVP is deemed never to have been in force if the application for a final certificate in respect of the AVP is not made in accordance with Division 3 before the expiration of 6 months after the time when the AVP is completed.

(3) For the purposes of this Part, an audio-visual production is deemed complete when the FAVC is satisfied that it is ready for commercial distribution.

(4) The FAVC may at its discretion extend the periods in subparagraphs (1) and (2) above.

Division 3 – Final Certificates

Application for final certificate

29. An applicant may apply to the FAVC for a final certificate stating that an audio-visual production that has been completed is a qualifying audio-visual production for the purposes of this Part.

Method of application

30. An application under paragraph 29 must be—
(a) in the prescribed form and accompanied by the prescribed fee;
(b) signed by an authorised officer of the applicant; and
(c) accompanied by such information as the FAVC requires.

**FAVC to consider and decide applications**

31. - (1) If an application is made under paragraph 29, the FAVC must consider it and either approve or refuse it.

(2) The FAVC must not approve an application unless it is satisfied that –

(a) the audio-visual production is a qualifying audio-visual production; and
(b) having regard to the role of the applicant in the production of the audio-visual production, a final certificate should be issued.

**FAVC to issue final certificate or give notice of refusal**

32. The FAVC must, on receiving an application under paragraph 29—

(a) if it approves the application, issue a final certificate to the applicant in respect of the audio-visual production; or
(b) if it refuses the application, give written notice to the applicant of its refusal of the application.

**Information to be provided to the FAVC**

33. A production entity that applies for a final certificate must furnish to the FAVC in writing, within a period specified in writing by the FAVC, such information in relation to the proposed audio-visual production as the FAVC requests.

**Final certificate deemed to be in force from time of issue**

34. A final certificate is irrevocable and deemed to have been in force from the date of its issue.
Division 4 – Qualifying Audio-Visual Productions

AVP may qualify as F1 or F2 AVP

35. An audio-visual production qualifies as an F1 AVP or an F2 AVP if—

(a) it satisfies the minimum prerequisites set out in paragraph 36; and
(b) it satisfies the additional criteria set out –

(i) paragraph 37, in the case of F1 AVPs;
(ii) paragraph 38, in the case of F2 AVPs.

Minimum prerequisites for F1 and F2 AVPs

36. - (1) The minimum prerequisites for an audio-visual production to qualify as an F1 AVP or an F2 AVP are—

(a) 100% of the production budget less approved pre-production expenses must be deposited in an audio-visual production account prior to the commencement of the production;

(b) 100% of the profits or revenues to be paid to any Fiji investors in the production must pass through an approved Fiji Islands bank account prior to disbursement and the Commissioner must be provided with half yearly statements of income and disbursement;

(c) an audio-visual production levy must be paid to the FAVC upon full financing;

(d) a refundable producer’s bond equal to 5% of the budgeted producer’s fees must be paid to the FAVC before principal photography begins in Fiji;

(e) the audio-visual production is not, in the opinion of the FAVC, culturally derogative in its portrayal of the Fiji Islands or the people of the Fiji Islands;

(f) the audio-visual production must be produced by a production entity;

(g) the audio-visual production must have a completion bond from a company that is independent of the applicant and is approved by the FAVC as an acceptable completion bond company;

(h) the audio-visual production has a certificate from the completion bond company confirming that—
(i) the budget does not contain fees or costs which are not commercial;

(ii) producer fees and overheads paid or payable by the production entity for services of production do not exceed 15% of the total budget;

(iii) expenses to be paid by the production entity to non-arms length parties associated with the production are genuine and reasonable;

(iv) all expenses, allowances, wages and fees for service in the budget are commercial and are for services to be rendered on the audio-visual production;

(v) the audio-visual production has been, or will be able to be, completed within the relevant 24 months period; and

(vi) approved financing charges or approved marketing materials costs will be, or have been, spent in accordance with this Part.

(2) If an application is made by a Fiji Production Company, the requirement under subparagraph (g) does not apply but without requiring a certificate from a completion bond company the FAVC must be satisfied that the conditions under subparagraph (h) are met.

Additional criteria to be satisfied for F1 status

37. - (1) Subject to paragraph 36, an audio-visual production who qualifies as an F1 AVP, shall satisfy the following —

(i) the production entity has secured for the audio-visual production, to the satisfaction of the FAVC and on commercial terms, distribution for the production when complete in at least one significant international market; and

(ii) one of the following levels of expenditure has been or is budgeted, to be spent in the Fiji Islands —

(a) 40% for a large format film, a feature film or broadcast television programmes;

(b) 50% for a direct to video programme or video disk programme; and
(c) 55% for an audio recording;

(2) In addition to subsection (1), an audio visual production who qualifies as F1 AVP must also satisfy one of the criteria —

(i) a large format film, a feature film, a short film, broadcast television, a direct to video or video disc programme is directed, written or based on the creative idea of a citizen or a resident;

(ii) an audio recording is produced or composed by or is the performance principally of a resident or citizen;

(iii) computer software is based on the original creative idea developed by a resident or citizen; or

(iv) the content satisfies the guidelines set down by the FAVC from time to time for being a satisfactory portrayal of the Fiji Islands, the history or life of the people of the Fiji Islands and Fiji’s flora and fauna.

(3) If the F1 AVP is produced by a Fiji Production Company, then the requirement under subparagraph (1)(i) does not apply provided the FAVC is satisfied that the F1 AVP shall distribute through at least one significant local distributor when production is completed.

(4) For the purposes of assessing the levels of expenditure in subparagraph (1)(ii), the provisions of Division 3 of Part 5 shall apply and any reference to “tax rebate” therein shall for the purposes of subparagraph (3) be read as or to mean “F1 incentive”.

Additional criteria to be satisfied for F2 status

38. - (1) Subject to paragraph 36, an audio-visual production who qualifies as an F2 AVP shall also satisfy the following —

(a) the production entity has secured for the audio-visual production, to the satisfaction of the FAVC and on commercial terms, distribution for the production when completed in at least one significant international market;

(b) one of the following levels of expenditure has been, or is budgeted to be, spent in the Fiji Islands —

(i) 40% for a large format film, a feature film or broadcast television programmes;
(ii) 50% for a direct to video programme or video disk programme; and

(iii) 55% for an audio recording.

(2) If the F2 AVP is produced by a Fiji Production Company then the requirement under subparagraph (1)(a) does not apply provided that the FAVC is satisfied that the F2 AVP will when completed be distributed through at least one significant local distributor.

(3) For the purposes of assessing the levels of expenditure in subparagraph (1)(b), the provisions of Division 3 of Part 5 shall apply and any reference to “tax rebate” therein shall for the purposes of subparagraph (1)(b) be read as or to mean “F2 incentive”.

**Criteria for determining Fiji Islands content of AVP**

39. An F1 or F2 AVP has, or will have substantial Fiji Islands content for the purposes of being a qualifying audio-visual production, the FAVC must have regard to—

(a) the subject matter of the audio-visual production;

(b) the place where the audio-visual production was, or will be, made;

(c) the nationalities and places of residence of—

(i) the persons who took part, or will take part, in the making of the audio-visual production (including actors, authors, composers, designers, directors, editors, musicians, producers, script writers, singers and technicians);

(ii) the persons who are, or will be, the beneficial owners of the copyright in the audio-visual production; and

(iii) the persons who are, or will be, the beneficial owners in any shares in any company concerned in the making of the audio-visual production;

(d) the source from which monies that were used in the making of the audio-visual production were, or that are to be used in the making of the proposed audio-visual production will be derived;

(e) details of the production expenditure incurred, or the budgeted production expenditure to be incurred, in respect of the audio-visual production; and

(f) any other matter that the FAVC considers relevant.
Division 5 – Deductions For Capital Expenditure On Audio-Visual Productions

Deduction for capital expenditure

40. Subject to this Division, if a taxpayer during a year of assessment expends monies of a capital nature, under a contract by way of contribution to the audio-visual production costs in respect of a qualifying AVP and at the time when the monies were expended a provisional certificate or a final certificate was in force in relation to the AVP, an amount shall be allowed as a deduction in the assessment of the taxpayer in respect of the income in the year the monies are expended, being an amount equal to—

(a) in the case of an F1 AVP – 150% of the monies expended; or
(b) in the case of an F2 AVP – 125% of the monies expended.

Deduction in event of taxpayer’s death

41. If a taxpayer dies before he has realised any deductions in relation to a qualifying AVP to which paragraph 40 applies, an amount must be allowed as a deduction in the assessment of the taxpayer’s estate in respect of the year of income in which the taxpayer died, being an amount equal to—

(a) in the case of an F1 AVP – 150% of the monies expended; or
(b) in the case of an F2 AVP – 125% of the monies expended.

Licensees may not claim deduction

42. A taxpayer, being a production entity, which is a licensee for the purposes of Part 4, shall not claim a deduction under this Division.

Division 6 – Taxation of Audio-Visual Income

Tax exemption of income derived from qualifying AVP

43. If a taxpayer expends monies of a capital nature, under a contract, by way of contribution to the audio-visual production costs in respect of a qualifying AVP, the income derived by the taxpayer from his investment in the qualifying AVP is exempt from tax until the taxpayer has received a return of—
(a) in the case of an F1 AVP – 60% of the monies expended; or
(b) in the case of an F2 AVP – 50% of the monies expended,

and thereafter all income so derived must be included in total income.

Sale of copyright interest

44. A taxpayer who sells any copyright interest in a qualifying AVP, in respect of which a deduction under Division 5 has been claimed, must include the gross receipts of the sale in his total income.

PART 4 – STUDIO CITY ZONE

Division 1 – Studio City Zone

Definitions

45. In this Division, unless the context otherwise requires—

“applicant for an audio visual operating licence” means a sole proprietor, a partnership or a company, which makes an application for an audio-visual operating licence;

“applicant for the zone” means a sole proprietor, a partnership or a company which makes an application for a declaration by the Minister pursuant to subparagraph 46(5);

“audio-visual operating licence” means a licence issued under paragraph 47;

“AVOL” means audio-visual operating licence;

“company” means a company incorporated in the Fiji Islands carrying on a business of production activity in the Fiji Islands and which has its operations exclusively in the studio city zone or temporary studio city zone;

“licensee” means a sole proprietor, a partnership or a company holding an audio-visual operating licence;

“partnership” means a partnership of 2 or more residents carrying on a business of production activity in the Fiji Islands and which has as its exclusive operating location in the studio city zone or temporary studio city zone;
“production activity” means any activity in the production of, world-wide distribution of, conduct of business in, or supply of services to:-

(a) a large format film in large format theatres;
(b) a theatrical film or a short film in cinemas;
(c) broadcast television programmes by-
   (i) broadcast on free-to-air, satellite or pay television; or
   (ii) internet broadcast,
(d) a direct-to-video and video disk programme;
(e) musical recordings for the purposes of local or international distribution;
(f) the development of computer software; and
(g) development of interactive websites and other e-commerce and telecommunications operations,

“sole proprietor” means a resident carrying on a business of production activity in the Fiji Islands and whose business has as its exclusive operating location the studio city zone or temporary studio city zone.

Minister may declare studio city zone

46. - (1) Subject to other provisions of this paragraph, the Minister may, declare by notice in the Gazette any area of land (including any buildings situated or erected on that land) in the Fiji Islands to be a studio city zone for the purposes of this Part.

(2) Subject to the issue of a licence required under any written law and the Town Planning Act, the Minister may declare-

(a) a studio city zone for the purposes of the development of infrastructure, services and resources for the audio-visual industry and tourist attractions, hotels, residential accommodation, sporting facilities, amusement parks; and

(b) a temporary studio city zone for the purposes of the development of infrastructure, services and resources for the audio-visual industry.
(3) The Minister may declare, by notice published in the Gazette, any area of land (including buildings situated or erected on that land) in the Fiji Islands to be incorporated into and to form part of a studio city zone or a temporary studio city zone.

(4) The Minister may not declare more than one studio city zone at any time for a period of 15 years from the date the studio city zone was first declared following which period this provision will be subject to review.

(5) The Minister may declare, by order in the Gazette, any area of land (including any buildings situated or erected on that land) to be a temporary studio city zone in order that the land (and buildings) may be developed by the applicant for the zone for use by a licensee to conduct any production activity.

(6) The Minister may declare more than one temporary studio city zone.

(7) A temporary studio city zone may be used as an interim facility for such period or periods as the Minister may declare.

FAVC may approve application for operating licence in studio city zone

47. (1) An application for an audio visual operating licence authorising the carrying on of a production activity in the studio city zone or in a temporary studio city zone, by a sole proprietor, a partnership or a company for an audio-visual must be made to the FAVC.

(2) The FAVC may approve the operating licence in accordance with this Part.

Method of application

48. An application under paragraph 47 must be—

(a) made to the FAVC in writing in the prescribed form and accompanied by the prescribed fee;

(b) signed by an authorised officer; and

(c) accompanied by such information as the FAVC requires.

FAVC to consider and decide applications

49. - (1) If an application is made under paragraph 47, the FAVC may approve or refuse the application.
(2) The FAVC must not approve an application unless it is satisfied that—

(a) the applicant has entered into a contract or has secured a right to operate from facilities within the studio city zone or temporary studio city zone and will engage in a production activity;

(b) the applicant’s production activity will generate employment opportunities for the people of the Fiji Islands; and

(c) the applicant’s production activity will enhance, expand and improve the technological, trading capability and capacity of the economy of the Fiji Islands.

(3) The FAVC may approve an application subject to the applicant complying with any other condition the FAVC considers to be appropriate.

**FAVC to issue audio-visual operating licence or give notice of refusal**

50. The FAVC must —

(a) on approval of an application – issue an audio-visual operating licence, including any conditions imposed by it; or

(b) on refusal of an application – give written notice to the applicant of its refusal of the application.

**FAVC may vary conditions of audio-visual operating licence**

51. - (1) The FAVC, may, if it considers it appropriate in the circumstances, vary the conditions of an audio-visual operating licence.

(2) The FAVC must, by written notice, inform a licensee of any variation in the conditions of the licensee’s audio-visual operating licence and the variation is deemed to be effective from the date the notice is received by the licensee.

**FAVC may approve transfer of audio-visual operating licence**

52. - (1) A licensee may apply to the FAVC in the prescribed form for its operating licence to be transferred to another sole proprietor, a partnership or a company.

(2) The FAVC may require the licensee or the proposed transferee to provide any other information as the FAVC requires in order for it to consider the transfer application.
(3) The FAVC may—
   (a) approve the transfer of the licensee’s audio-visual operating licence; or
   (b) refuse the application.

(4) The FAVC may not approve a transfer of an audio-visual operating licence unless it is satisfied that the proposed transferee satisfies the criteria set out in paragraph 49(2).

(5) The FAVC must give written notice to the licensee of its decision under subparagraph (3).

FAVC may revoke an audio-visual operating licence

53. - (1) The FAVC may give written notice to a licensee that it intends to revoke the licensee’s audio-visual operating licence if—
   (a) there has been a breach of the audio-visual operating licence;
   (b) there has been non-compliance with any condition of the audio-visual operating licence; or
   (c) the licensee is convicted of an offence against this Act, the Value Added Tax Decree 1991 or the Customs Act 1986.

   (2) If notice is given in accordance to subparagraph (1), FAVC must inform the licensee of the licensee’s right to make representations to the FAVC on or before a date specified by the FAVC, being not less than 21 days from the day that notice is given under subparagraph (1).

   (3) If a licensee makes representations, the FAVC must consider them and may by written notice to the licensee, withdraw its notice under subparagraph (1).

   (4) If the FAVC does not withdraw its recommendation in accordance with subparagraph (3), or the licensee does not make any representations by the specified date the FAVC may, by written notice to the licensee, revoke the audio-visual operating licence from a date (being not less than 14 days and not more than 42 days from the date of the notice).

Register of operating licences

54.—(1) The FAVC must establish and maintain a register of all audio-visual operating licences and there must be entered in the register in respect of each audio-visual
operating licence—

(a) the date of commencement of the audio-visual operating licence;

(c) the name, registered address and authorised representative of the sole proprietor, partnership or company to which the audio-visual operating licence was granted; and

(c) the production activity relating to the audio-visual operating licence.

(2) The register must be kept at the FAVC’s principal office and be open to inspection during the times the FAVC directs, subject to the payment of the prescribed fee for each inspection.

Transfer must be registered within 7 days

55. If an audio-visual operating licence is transferred under paragraph 52, the sole proprietor, partnership or company to which it is transferred must within 7 days of the transfer, submit its name and address, and the name and address of its authorised representative, for inclusion in the register.

Exemption from tax of licensee’s production activity income

56. An audio-visual operating licence exempts the licensee from the payment of income tax under this Act (except for withholding tax) on any income derived by the licensee from the production activity with effect from the date of commencement of the audio-visual operating licence.

Non-AVP and distribution income subject to tax

57. Any income of a licensee that is not derived from a production activity must be charged tax in accordance with the other provisions of this Act notwithstanding the business being located in the studio city zone.

Tax assessable on sale of company or business in studio city zone

58.—(1) In respect of any business activity carried out pursuant to this Division and notwithstanding any other provision of this Act, tax must be assessed, levied and paid, at the rate set out in subparagraph (2), in respect of any income from—

(a) the sale of shares in a licensee; or
(b) the sale of the licensee’s business or part of a business, 
if the sale occurs less than 8 years after the commencement of the 
business.

(2) The rate at which tax must be assessed, levied and paid under subsection (1) is—

(a) if the sale occurs within 2 years after the commencement of the business – 20%;

(b) if the sale occurs within 4 years after the commencement of the business – 15%;

(c) if the sale occurs within 6 years after the commencement of the business – 10%; or

(d) if the sale occurs within 8 years after the commencement of the business – 2½%.

Division 2 – Taxation Concessions To Residents Of The Studio City Zone

Definitions

59. For the purposes of this Division, unless the context otherwise requires—

“audio-visual earnings” means—

(a) income derived from work in AVPs or production activities including contracted fees, wages, royalties and distributions of profits from AVPs or production activities but does not include any income from an AVP in respect of which a deduction has been claimed under this Part; and

(b) income from sports performances including prize money, performance fees and endorsements.

FAVC may approve individuals for studio city zone benefits

60.—(1) The FAVC may approve an individual to enjoy the benefits specified in subparagraph (2) if—

(a) the individual indicates his or her intention to reside in the studio city zone:
(b) the individual derives audio-visual earnings; and

(c) the individual complies with the requirements of this Division.

(2) The earnings derived by an individual approved by the FAVC under subparagraph (1) are exempt from tax.

Applications by non-residents

61. An application under this Division by an individual who is not a resident must be made in writing to the FAVC in the prescribed form and accompanied by the prescribed fee and must include,—

   (a) confirmation that the applicant’s country of citizenship is other than the Fiji Islands;

   (b) confirmation of a contract to take up residence at the studio city zone;

   (c) confirmation and certification by a chartered accountant holding a certificate of public practice of—

      (i) net annual audio-visual earnings in excess of $100,000; and

      (ii) assets held in the studio city zone in excess of $250,000 in either real estate, tangible business assets including stock, plant and equipment and tools of trade, or other valuable and confirmable assets excluding cash and other liquid assets.

Requirements and conditions for tax exemption

62. An individual, who is not a resident, approved by the FAVC is not eligible to claim in a year of assessment the tax exemption under paragraph 60(2) unless the individual —

   (a) is resident in the studio city zone for a period or periods in aggregate of at least 60 days in the year of assessment;

   (b) maintains a permanent place of residence in the studio city zone during the year of assessment; and

   (c) provides to the Commissioner confirmation and certification by a chartered accountant holding a certificate of public practice of—
(i) net annual audio-visual earnings in excess of $100,000 in the year of assessment; and

(ii) assets held during the year of assessment in the studio city zone in excess of $250,000 in either real estate, tangible business assets including stock, plant and equipment and tools of trade, or other valuable and confirmable assets excluding cash and other liquid assets.

Applications by residents

63. An application under this Division by a resident must be made in writing to the FAVC in the prescribed form and accompanied by the prescribed fee and must include—

(a) confirmation of a contract to take up residence in the studio city zone;

(b) confirmation and certification by a chartered accountant holding a certificate of public practice of—

(i) net annual audio-visual earnings in excess of $50,000; and

(ii) assets held in the studio city zone in excess of $100,000 in either real estate, tangible business assets including but not limited to stock, plant and equipment and tools of trade, or other valuable and confirmable assets excluding cash and other liquid assets.

Requirements and conditions for tax exemption

64. An individual, who is a resident, approved by the FAVC is not eligible to claim in a year of assessment the tax exemption under paragraph 60(2) unless the individual—

(a) is resident in the studio city zone for a period or periods in aggregate of at least 183 days in the year of assessment; or, in the case of a resident who derives a minimum of 80% of audio-visual earnings from outside Fiji, is resident in the studio city zone for a period or periods in aggregate of at least 60 days in the year of assessment;

(b) maintains a primary place of residence in the studio city zone during the year of assessment; and

(c) provides to the Commissioner confirmation and certification by a chartered accountant holding a certificate of public practice of—
(i) net annual audio-visual earnings in excess of $50,000 in the year of assessment;

(ii) the source of audio visual earnings whether from within Fiji or from outside Fiji; and

(iii) assets held during the year of assessment in the studio city zone in excess of $100,000 in either real estate, tangible business assets including stock, plant and equipment and tools of trade, or other valuable and confirmable assets excluding cash and other liquid assets.

FAVC must consider and decide application

65.—(1) The FAVC must consider an application made under paragraph 61 or 63 for tax exemption and may approve or refuse the application for tax exemption.

(2) The FAVC must not approve an application unless—

(a) it is satisfied that it is expedient for the development of the audio-visual industry in the Fiji Islands;

(b) the work in audio-visual productions from which income is derived is original and creative and has cultural or creative merit; and

(c) the applicant has complied with all the requirements of this Division.

(3) The FAVC must give written notice to an applicant of its decision under subparagraph (1).

PART 5 – FILM TAX REBATE

Division 1—INTERPRETATIONS

Definitions

66.—(1) In this Part, unless the context otherwise requires—

“audio visual agent” has the same meaning given in the Fiji Audio-Visual Commission ( Licensing of Audio Visual Agents) Regulations 2012.49

“broadcast television programmes” has the meaning given by paragraph 14 in Part 3;

“completed” in relation to a film, has the meaning given by paragraph 69(2);

“development expenditure” for a film means expenditure to the extent to which it is incurred in meeting the development costs for the film and includes expenditure to the extent to which it is incurred on any of the following –

(a) location surveys and other activities undertaken to assess locations for possible use in the film;

(b) storyboarding for the film;

(c) scriptwriting for the film;

(d) research for the film;

(e) casting actors for the film;

(f) developing a budget for the film;

(g) developing a shooting schedule for the film;

“feature film” includes animated feature film;

“film” means an aggregate of images, or of images and sounds, embodied in any material;

“large format film” has the meaning given by paragraph 15 in Part III;

“make”, in relation to a film, has the meaning given by subparagraphs 70(2), (3) and (4);

“production expenditure” has the meaning given by paragraphs 70 to 72;

“qualifying Fiji Islands production expenditure” has the meaning given by paragraphs 73 to 76;

“short film” has the meaning given by paragraph 14 in Part 3.
“total Fiji expenditure” or “Fiji expenditure” means the production expenditure on goods and services purchased from and paid to a Fiji resident.  

Division 2—Tax Rebate For Fiji Islands Expenditure In Making A Film

Film Production Company entitled to tax rebate

67.—(1) A company is entitled to a tax rebate for an income year in respect of a film if—

(a) the film was completed in the income year; and

(b) the FAVC, with the concurrence of the Minister, has issued a certificate to the company for the film under paragraph 69; and

(c) the company claims (which are irrevocable) the rebate in its income tax return for the income year; and

(d) the company—

(i) is a Fiji Islands resident; or

(ii) is not a Fiji Islands resident but lodges an income tax return for the purpose of claiming the tax rebate under this Part; and

(e) the company is not—

(i) the holder of a broadcast licence in television or radio in the Fiji Islands and it is not associated with any company or individual with substantial holdings in a broadcast licence in the Fiji Islands; or

(ii) a theatrical exhibitor in the Fiji Islands and it is not associated with any company or individual with substantial holdings in a theatre or group of theatres in the Fiji Islands.

(f) the film production company is able to release and have the movie distributed for the production in at least one significant international market to the satisfaction of the Minister responsible for FAVC;

(g) the film production company demonstrates to the satisfaction of the Minister responsible for FAVC that it—

30 Inserted by Decree No.47 of 2012. Effective from the 14th May 2012.
(i) will engage services of Fiji citizens in movie productions; and

(ii) will utilise technicians, students and technical aid facilities at the film making School at Fiji National University or any other specified local institutions.

(h) the company engages audio visual agents for the production of the film; and

(i) Fiji as a location needs to be accredited and acknowledged in the film’s credits and any other required accreditation as stipulated in the approval letter by the Fiji Audio Visual Commission.51

(2) The company or any other person is not entitled to the tax rebate if –

(a) an application has been made under Part 3 of the Sixth Schedule to the Income Tax Act; or

(b) a provisional or final certificate for the film has been issued at any time under Part 3 of the Sixth Schedule to the Income Tax Act, whether or not the certificate is still in force.

Amount of tax rebate

68. – (1) Subject to subparagraph (2), the amount of the tax rebate is 47% of the total of the company’s qualifying Fiji production expenditure on the film (worked out using Division 3).

(2) If the qualifying Fiji production expenditure on the film exceeds $25 million, the maximum allowable tax rebate is $11.75 million.

FAVC may issue certificate for a film

69. – (1) The FAVC may, with the concurrence of the Minister, issue a certificate to a company stating that a film satisfies the following requirements –

(a) the company –

(i) is a Fiji resident or

(ii) is not a Fiji resident but lodges an income tax return for the purpose of claiming the tax rebate under this Part; and


(b) the FAVC has provided the company with provisional approval it make
their film in Fiji under this incentive;

(c) the film was produced for –
   (i) exhibition to the public in cinemas; or
   (ii) exhibition to the public by way of television broadcasting or
        pay television; or
   (iii) distribution to the public as a video recording (whether on
        video tapes, digital video disks or otherwise); or
   (iv) distribution to the public via the internet; and

(d) the film is –
   (i) a large format film or a feature film or a short film; or
   (ii) a broadcast television programme including television
        movies, mini-series, drama series, situation comedy series,
        documentaries and documentary series, educational programmes
        and series, animation series and current affairs series; or
   (iii) a production intended for exhibition as an advertising programme
        or a commercial in at least 1 significant international market.

(e) the total of the company’s qualifying Fiji production expenditure on the
    film (worked out using Division 3) is at least:-
   (i) $250,000 for films described under subparagraph (d)(i) and (ii); or
   (ii) $50,000 for films described under subparagraph (d) (iii); and

(f) the company either carried out, or made the arrangements for the carrying
    out of, all the activities in the Fiji that were necessary for the making of
    the film; and

(g) the company is the only company that satisfies sub-subparagraph (f) in
    relation to the film; and

(h) the film is not culturally derogative in its portrayal of the Fiji or the people
    of the Fiji; and
(i) the application for certificate for rebate was made no later than 12 months from the time that the film was completed;

(j) the film production company is able to release and have the movie distributed to the satisfaction of the Minister;
(k) the film production company demonstrates to the satisfaction of the Minister that it—

(i) will engage services of Fiji citizens in movie productions; and
(ii) will utilise technicians, students and technical aid facilities at the film making School at Fiji National University or any other specified local institutions.

(2) A film is completed when it is first in a state where it could reasonably be regarded as ready to be distributed, broadcasted or exhibited to the general public.

Division 3—Production Expenditure And Qualifying Fiji Islands Production Expenditure

Production expenditure—general test

70. — (1) A company’s production expenditure on a film is expenditure that the company incurs to the extent to which it –

(a) is incurred in, or in relation to, the making of the film; or

(b) is reasonably attributable to –

(i) the use of equipment or other facilities for; or

(ii) activities undertaken in;

the making of the film.

(2) The making of a film means the doing of the things necessary for the production of the first copy of the film.

(3) The making of a film includes –

(a) pre-production activities in relation to the film;

(b) post-production activities in relation to the film; and

(c) any other activities undertaken to bring the film up to the state where it could reasonably be regarded as ready to be distributed, broadcasted or
exhibited to the general public.

(4) The making of a film does not include –

(a) developing the proposal for the making of the film;

(b) arranging or obtaining finance for the film;

(c) distributing the film; or

(d) promoting the film.

(5) Without limiting subparagraph (1), a company’s production expenditure on a film—

(a) may be expenditure that is incurred in the income year for which the tax rebate is sought or in an earlier income year;

(b) may be expenditure of either a capital or a revenue nature; and

(c) may be expenditure that gives rise to a deduction, subject to item 10 in the table in paragraph 72.

(6) If –

(a) a company –

(i) holds a depreciating asset; and

(ii) uses the asset, while held, in the making of a film; and

(b) deductions in relation to the asset are available under the Income Tax (Allowances for Depreciation and Improvements) Instructions 1998;

the production expenditure of the company on the film includes an amount equal to the accumulated depreciation of the asset to the extent to which that accumulated depreciation is reasonably attributable to the use of the asset in the making of the film. The accumulated depreciation of the asset is to be worked out using the Income Tax (Allowances for Depreciation and Improvements) Instructions 1998.

**Production expenditure—special qualifying Fiji Islands production expenditure**

71. Expenditure of a company is also production expenditure of the company on a film if it is qualifying Fiji Islands production expenditure of the company on the film under paragraph 74.
**Production expenditure—specific exclusions**

72. Notwithstanding paragraphs 70 and 71, the following expenditure of a company is not production expenditure of the company on a film –

<table>
<thead>
<tr>
<th>Item</th>
<th>This kind of expenditure by the company is not production expenditure</th>
<th>except to the extent to which the expenditure is</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><strong>Financing expenditure</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Expenditure incurred by way of, or in relation to, the financing of the film (including returns payable on amounts invested in the film and expenditure in relation to raising and servicing finance for the film)</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td><strong>Development expenditure</strong></td>
<td>Qualifying Fiji Islands production expenditure under item 1 in the table in paragraph 74(1)</td>
</tr>
<tr>
<td></td>
<td>Development expenditure on the film.</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td><strong>Copyright acquisition expenditure</strong></td>
<td>Qualifying Fiji Islands production expenditure under item 2 in the table in paragraph 74 (1)</td>
</tr>
<tr>
<td></td>
<td>Expenditure incurred in acquiring copyright, or a licence in relation to copyright, in a pre-existing work for use in the film</td>
<td></td>
</tr>
</tbody>
</table>
### EXPENDITURE THAT DOES NOT COUNT AS PRODUCTION EXPENDITURE ON A FILM

<table>
<thead>
<tr>
<th>Item</th>
<th>This kind of expenditure by the company is not production expenditure</th>
<th>except to the extent to which the expenditure is</th>
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</thead>
<tbody>
<tr>
<td>4</td>
<td><strong>General business overheads</strong></td>
<td>Qualifying Fiji Islands production expenditure under item 3 in the table in paragraph 74(1)</td>
</tr>
<tr>
<td></td>
<td>Expenditure incurred to meet the general business overheads of the company that:-</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) are not incurred in, or in relation to, the making of the film; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) are not reasonably attributable to:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(i) the use of equipment or other facilities for; or</td>
<td></td>
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<tr>
<td></td>
<td>(ii) activities undertaken in; the making of the film</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td><strong>Publicity and promotion expenditure</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Expenditure incurred in publicising or otherwise promoting the film (including press expenses, still photography, videotapes, public relations and other similar expenses)</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td><strong>Defe</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Amounts that are payable only out of the receipts, earnings or profits from the film</td>
<td></td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
<td>Notes</td>
</tr>
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<td>------</td>
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</tr>
</tbody>
</table>
| 7    | Profit participation | Amounts that:—  
- depend on the receipts, earnings or profits from the film; or  
- are otherwise dependent on the commercial performance of the film |
| 8    | Residuals | Amounts payable in satisfaction of the residual rights of a person who is a member of the cast  
Paid out by the company before the film is completed |
| 9    | Advances | Amounts paid by way of advance on a payment to which item 6, 7 or 8 applies to the extent to which it may become repayable by the person to whom it is paid |
| 10   | Acquisition of depreciating asset | Expenditure to the extent to which it sets, or increases, the cost of a depreciating asset. This item has effect subject to paragraph 70(6)  
Qualifying Fiji Islands production expenditure under item 2 in the table in paragraph 74(1) |
| 11   | Regulations | Expenditure specified in regulations |
Qualifying Fiji Islands production expenditure—general test

73. A company’s qualifying Fiji Islands production expenditure on a film is the company’s production expenditure on the film to the extent to which it is incurred for, or is reasonably attributable to –

(a) goods and services provided in the Fiji Islands and which is paid from a Fiji bank account; or

(b) the use of land in the Fiji Islands and payment for which is made from a Fiji bank account; or

(c) the use of goods that are located in the Fiji Islands at the time they are used in the making of the film and which is paid for from a Fiji bank account.

Qualifying Fiji Islands production expenditure—specific inclusions

74. – (1) The following expenditure of a company is also qualifying Fiji Islands production expenditure of the company on a film –
## EXPENDITURE THAT COUNTS AS SPECIAL FIJI ISLANDS EXPENDITURE ON A FILM

<table>
<thead>
<tr>
<th>Item</th>
<th>Type of expenditure</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Fiji Islands development expenditure</td>
</tr>
</tbody>
</table>

Development expenditure on the film to the extent to which it is incurred for, or is reasonably attributable to –

(a) goods and services (including foreign cast, crew and other service providers) provided in the Fiji Islands and paid for from a Fiji bank account; or

(b) the use of land or building located in the Fiji Islands and payment for which is made from a Fiji bank account; or

(c) the use of goods that are located in the Fiji Islands at the time they are used in the making of the film and paid for from a Fiji bank account

(d) the allowable expenditure incurred for services rendered by the producer (producer’s fees), provided that such expenditure shall not exceed 10% of the total Fiji expenditure. The producer is not restricted to remain in Fiji throughout the production of the film; or[^53]

(e) 75% of the expenditure incurred to purchase costumes, make up and set design properties not available in Fiji that will be used in relation to the film production in Fiji, provided that such costumes, make up and set design properties shall be left in Fiji at the end of the production[^54]; and

(f) goods and services provided in Fiji relating to the final location survey and other activities undertaken to assess locations for possible use in the film[^55].

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[^54]: Instead by Decree No.47 of 2012. Effective from 14th May, 2012. Deleted “75% of the expenditure incurred to purchase costumes, make up and set design properties not available in Fiji that will be used in relation to the film production in Fiji provided that such costumes, make up and set design properties shall be left in Fiji at the end of the production[^54].
## EXPENDITURE THAT COUNTS AS SPECIAL FIJI ISLANDS EXPENDITURE ON A FILM

<table>
<thead>
<tr>
<th>Item</th>
<th>Type of expenditure</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Expenditure incurred in acquiring Fiji Islands copyright</td>
</tr>
</tbody>
</table>

(a) Expenditure incurred to acquire copyright, or a licence in relation to copyright, in a pre-existing work for use in the film if the copyright is held by a qualified person under the Copyright Act 1999

(b) Expenditure incurred to purchase the writer’s story and rights for the production of the film provided that the producer submits the following documentary evidence –

(i) Notarised legal contract with the writer which is registered in Fiji with the Registrar of Deeds upon payment of the appropriate stamp duty;

(ii) Evidence of payment made directly into the writer’s bank account from the Fiji bank account; and

(iii) Receipt or acknowledgement of payment received.

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### EXPENDITURE THAT COUNTS AS SPECIAL FIJI ISLANDS EXPENDITURE ON A FILM

<table>
<thead>
<tr>
<th>Item</th>
<th>Type of expenditure</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Fiji Islands business overheads</td>
</tr>
</tbody>
</table>

Subject to subparagraph (3), general business overheads of the company that:

(a) are incurred in or in relation to the making of the film; and
(b) are reasonably attributable to –

(i) the use of equipment or other facilities for; or
(ii) activities undertaken in;

the making of the film, to the extent to which they –

(aa) are incurred for, or are reasonably attributable to –

(i) goods and services provided in the Fiji Islands and paid from a Fiji bank account; or
(ii) the use of land or buildings located in the Fiji Islands and payment for which is made from a Fiji bank account; or
(iii) the use of goods that are located in the Fiji Islands at the time they are used in the making of the film and paid from a Fiji bank account; and

(bb) represent a reasonable apportionment of those overheads between the making of the film and the other activities undertaken by the company.
<table>
<thead>
<tr>
<th>Item</th>
<th>Type of expenditure</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td><strong>Travel to the Fiji Islands</strong>&lt;br&gt;Expenditure of the company in relation to a person’s travel to Fiji to undertake activities in Fiji in relation to the making of the film if the remuneration paid to the person for those activities is qualifying Fiji’s production expenditure of the company as follows –&lt;br&gt;(a) 100% of the expenditure included in travelling to and from any aircraft operated by Air Pacific Limited; and&lt;br&gt;(b) 15% of the expenditure included in travelling to and from any aircraft not operated by Air Pacific Limited.58</td>
</tr>
<tr>
<td>5</td>
<td><strong>Approved post-production expenditure</strong>&lt;br&gt;Approved post-production expenditure on the film paid from a Fiji bank account to the extent that it is incurred or reasonably attributable to approved post-production services in relation to the completing of the film made in Fiji.&lt;br&gt;The maximum amount payable as rebate under these expenditure items shall be as follows, upon the production of the documentary evidence of the expenditure –&lt;br&gt;(a) Budget up to FJ$3 million – up to $75,000;&lt;br&gt;(b) Budget up to FJ$5 million – up to $100,000;&lt;br&gt;(c) Budget up to FJ$7 million – up to $150,000;&lt;br&gt;(d) Budget up to FJ$10 million – up to $200,000; and&lt;br&gt;(e) Budget more than FJ$10 million – up to $250,000.59</td>
</tr>
</tbody>
</table>

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EXPENDITURE THAT COUNTS AS SPECIAL FIJI ISLANDS EXPENDITURE ON A FILM

<table>
<thead>
<tr>
<th>Item</th>
<th>Type of expenditure</th>
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</thead>
<tbody>
<tr>
<td>6</td>
<td>Equipment</td>
</tr>
<tr>
<td></td>
<td>The hiring of cameras and filming equipment from outside Fiji, where such cameras and filming equipment are not available in Fiji.(^{60})</td>
</tr>
<tr>
<td>7</td>
<td>Regulations</td>
</tr>
<tr>
<td></td>
<td>Expenditure prescribed by the regulations</td>
</tr>
</tbody>
</table>

(2) Legal costs will be covered by item 1 in the table in subparagraph (1) only if they relate to –

(a) writers’ contracts; or

(b) chain of title and other copyright issues.

(3) General business overheads of the company are covered by item 3 in the table in subparagraph (1) only to the extent to which they do not exceed the lesser of –

(a) 2% of the total of all the company’s production expenditure on the film; or

(b) FJD$250,000.

Qualifying Fiji Islands production expenditure—specific exclusions

75. Notwithstanding paragraphs 73 and 74, the following expenditure of a company is not qualifying Fiji production expenditure of a company on a film –

(a) expenditure in relation to –

   (i) remuneration and other benefits provided to a person for the person’s services in relation to the making of the film; or

   (ii) travel and other costs associated with the services a person provides in relation to the making of the film,

   if the person is not a member of the cast or crew and enters the Fiji Islands to work on the film for less than 2 consecutive calendar weeks;

\(^{60}\) Amended by Decree No.25 of 2012. Effective from 14\(^{th}\) March, 2012.
(b) expenditure prescribed by the regulations.

Qualifying Fiji Islands production expenditure—treatment of services embodied in goods

76. If –

(a) a company incurs expenditure for the provision of what is essentially a service; and

(b) the results of the service are provided to the company by being embodied in goods that are delivered to the company; and

(c) the service that is embodied in the goods was predominantly performed outside the Fiji;

the service is not provided to the company in the Fiji merely because the goods are delivered to the company in the Fiji.

Expenditure to be worked out in Fiji dollars

77. – (1) Expenditure that is incurred in foreign currencies is to be converted into Fiji dollars for the purposes of quantifying the total of the company’s qualifying Fiji production expenditure on a film.

(2) The conversion rate to be used is the average of the exchange rates applicable from time to time during the period that –

(a) starts on the earliest day on which –

(i) principal photography takes place; or

(ii) the production of the animated image commences; and

(b) ends when the film is completed.

Expenditure to be worked out on an arm’s length basis

78. For the purposes of this Part, if any two or more parties to –

(a) an arrangement under which a company incurs expenditure in relation to a film; or
(b) any act or transaction directly or indirectly connected with expenditure that a company incurs in relation to a film;

do not deal with each other at arm’s length in relation to the arrangement, or in relation to the act or transaction, the expenditure is taken to be only so much (if any) of the expenditure as would have been incurred if they had been dealing with each other at arm’s length in relation to the arrangement, or in relation to the act or transaction.

Expenditure incurred by prior production companies

79. – (1) For the purposes of this Part, if a company (the incoming company) takes over the making of a film from another company (the outgoing company) –

(a) expenditure incurred in relation to the film by the outgoing company is taken to have been incurred in relation to the film by the incoming company; and

(b) expenditure that the incoming company incurs in order to be able to take over the making of the film is to be disregarded for the purposes of this Part; and

(c) any activities carried out, and arrangements made, by the outgoing company in relation to the film are taken, for the purposes of paragraph 69(1)(f) to have been carried out or made by the incoming company in relation to the film.

(2) For the purposes of subparagraph (1) –

(a) expenditure incurred on the film by the outgoing company includes expenditure that the outgoing company is itself taken to have incurred on the film because of the operation of subparagraph (1); and

(b) activities carried out by the outgoing company in relation to the film include activities that the outgoing company is taken to have carried out in relation to the film because of the operation of subparagraph (1); and

(c) arrangements made by the outgoing company for the carrying out of activities in relation to the film include arrangements that the outgoing company is taken to have made because of the operation of subparagraph (1).
Division 4—Certificates For Films

Production company may apply for certificate

80. — (1) Once a film is completed, a company may apply to the FAVC for the issue of a certificate to the company for the film under paragraph 69.

(2) The application must be made in accordance with the rules determined by the FAVC under paragraph 86 so far as they relate to the requirements for applications.

Refusal to issue certificate

81. If the FAVC, with the concurrence of the Minister, decides not to issue a certificate for a film, the FAVC must give the applicant written notice of the decision and reasons for the decision.

Issue of certificate

82. — (1) A certificate issued to a company under paragraph 69 must be in writing. The FAVC must give the Fiji Islands Revenue and Customs Authority notice of the issue of a certificate for a film within 30 days after issuing the certificate.

(2) The notice under subparagraph (2) must –

(a) specify the company’s name and address; and

(c) be accompanied by a copy of the certificate issued under paragraph 69; and

(c) specify other matters agreed to between the FAVC and the Fiji Islands Revenue and Customs Authority.

Revocation of certificate

83. — (1) The FAVC may, with the concurrence of the Minister, revoke a certificate issued to a company for a film under paragraph 69 if the FAVC is satisfied that the issue of the certificate was obtained by fraud or serious misrepresentation.

(2) If the FAVC revokes a certificate under subparagraph (1), the FAVC must give the company to whom the certificate was issued written notice of the revocation including reasons for the decision to revoke the certificate.
(3) If a certificate is revoked under subparagraph (1), it is taken, for the purposes of this Part, never to have been issued.

(4) Subparagraph (3) does not apply for the purposes of –

(a) the operation of this paragraph or paragraph 84; or

(b) a review by the High Court of the decision to revoke the certificate.

Notice of decision

84. – (1) This paragraph applies to a notice of a decision given under paragraph 81 or 83.

(2) The notice of the decision is to include the statements set out in subparagraph (3).

(3) There must be a statement to the effect that an application may be made to the High Court, by or on behalf of any entity whose interests are affected by the decision, for review of the decision.

Review of decisions by the High Court

85. Applications may be made to the High Court for review of –

(a) a decision made by the FAVC to refuse an application for a certificate under paragraph 69; or

(b) a decision made by the FAVC under paragraph 83 to revoke a certificate.

FAVC may make rules

86. – (1) The FAVC may, by notice in the Gazette, make rules –

(a) for it –

(i) to consider applications under paragraph 80; and

(ii) to perform such other functions in relation to the operation of this Part as are specified in the rules;
specifying procedures to be followed by the FAVC in performing its functions;

(c) providing for the issue of provisional certificates; and

(d) specifying how applications for certificates (including provisional certificates) are to be made, including –

(i) the form in which applications are to be made;

(ii) the information to be provided in applications;

(iii) methods for verifying such information; and

(iv) procedures for providing, at the FAVC’s request, additional information in support of an application.

(2) Rules under subparagraph (1) (d) (iii) may include rules requiring reports by auditors or independent line producers.

Division 5 — Review Of Operation of This Part

Review of operation of this Part

87. – (1) The FAVC must cause a review of the operation of this Part to be conducted and completed before 1 January 2015 and thereafter at the end of every five year unless the Cabinet directs otherwise.

(2) The review –

(a) must include –

(i) an evaluation of the success of the tax rebate provided for by this Part as an incentive for attracting audio-visual production to the Fiji Islands, taking into account the net cost of the rebate; and

(ii) an assessment of the impact of the tax rebate on the Fiji Islands audio-visual industry including an assessment of the opportunities it generates for employment and skills transfer; and

(b) must allow an opportunity for any person or organization involved in the audio visual industry to make written submissions to the person conducting the review.

(2) The person who conducts the review must give the FAVC a writ
(3) A written report of the review.

(4) Within three months of receipt by the FAVC of the written report of the review, the FAVC must submit a copy to the Minister for tabling to Cabinet.

Division 6 — Tax Rebate Rules

Tax rebate amount

88.—(1) A company entitled to a tax rebate under paragraph 67 must lodge a return of income with the Fiji Islands Revenue and Customs Authority for the relevant year in which the production was complete.

(2) The company that is entitled to a tax rebate under paragraph 67 may use that tax rebate as a rebate or credit against any tax due and payable by that company in the Fiji Islands in the relevant income year.

(3) If the total of the rebate exceeds the amount of tax that the company is due to pay in the relevant income year then the company will receive a refund from the Fiji Islands Revenue and Customs Authority.

\[\text{Substituted the old Sixth Schedule with a new Sixth Schedule WEF 1st January 2011.}\]

\[\text{———}\]
SEVENTH SCHEDULE

1 Repealed by §21(1) Act 4/2004 WEF 1st January 2004. §21(2) Act 4/2004 clarifies that notwithstanding subsection (1), any incentive or concession granted under the repealed Schedules before the commencement of this Act shall continue as if those Schedules had not been repealed. The Seventh Schedule previously read:

SEVENTH SCHEDULE
(Section 16(2)(f))

AGRICULTURAL ENTERPRISES INCENTIVES

1. Any company which have been specified, on or before 31st December 2000, in accordance with the provisions of section 16(2)(f) shall be exempt from the payment of tax under the provisions of this Act on the profits or gains derived from the agricultural enterprise in respect of which the concession has been granted during any 5 out of 10 years from such date as may be appointed by the Minister as the date on which the company is deemed to have commenced commercial production, which 5 years together are hereinafter referred to as the "tax-free period".

2. During the period from the date appointed by the Minister under the provisions of paragraph 1 to the end of the accounting period in which the last day of the tax-free period falls, such depreciation shall be written off the assets of that company in calculating its profits or gains as would have been available to it under the provisions of this Act (other than the initial allowances which might have been claimed in respect of expenditure on plant and machinery, etc., and buildings; and an allowance for improvements contained in Part VI of the Allowances for Depreciation and Improvement Instructions issued under section 21(1)(a)) if the company were not in receipt of the concession provided by this Schedule, and the written down values of such depreciable assets at the end of the accounting period in which the last day of the tax-free period falls shall be calculated accordingly.

3. If the end of the tax-free period does not coincide with the end of an accounting period of the company, the profits or gains for the accounting period in which the last day of the tax-free period falls shall be apportioned between the parts of the accounting period which precede and follow the end of such tax-free period on a time basis, and the profits or gains so attributed to the part which precedes the end of the tax-free period shall be exempt from tax.

4. Notwithstanding the provisions of section 22, if a loss is incurred in any accounting period by a company in respect of any enterprise for which concessions have been granted under this Schedule, such loss or accumulation of losses, if there be more than 1 accounting period involved, shall, for the purposes of carry forward be available for set off for a period of 10 years commencing from the date as may be appointed by the Minister as the date on which the company is deemed to have commenced commercial production, against:

(i) any profits or gains of the company derived during the tax-free period but not exempted from tax under the concessions provided for by this Schedule;
(ii) any profits or gains of a corn any which, at the end of the relevant year, tax the holding company, or an associated company, of a company which is engaged solely or mainly in coconut growing, rice growing, dairy farming, beef production, or goat farming;
(iii) any profits or gains liable to tax upon an apportionment being necessary in accordance with the provisions of paragraph 3.

To the extent that losses are not wholly set off under sub-paragraphs (i), (ii) and (iii) above, the balance shall be available for carry forward and may be set off against the profits or gains of the company enjoying
relief under this Schedule during the successive years immediately following the end of the relevant accounting period, with no restriction on the number of years for which the losses may be carried forward.

5. Any company wishing to apply for the benefit of the concessions contained in this Schedule shall provide the Minister responsible for economic planning and development with such details as he may, in his discretion, require of the agricultural enterprise in which the company is engaged or proposes to engage, whereupon the Minister responsible for economic planning and development shall make his recommendation to the Minister of Finance who may specify the company pursuant to section 16(2)(f), upon such conditions as he thinks fit, as a company to which the concessions contained in this Schedule apply.

6. There shall be submitted to the Minister, within 9 months of the end of each accounting period of a company to which the concessions contained in this Schedule apply, a copy of the accounts of the company for that period, duly audited by an auditor approved by the Minister, together with such further information as the Minister may, in his discretion, require.

7.——(1) If the Minister is satisfied that any company to which the concessions contained in this Schedule apply has contravened any of the provisions of this Schedule or conditions imposed by the Minister in specifying the company under section 16(2)(f) he may, by notice in the Gazette, revoke the concessions and the company shall cease to enjoy such concessions from the date to be specified in such notice, which may be any date from the date on which the company is deemed to have commenced commercial production.

   (2) Where the date of revocation does not coincide with the end of an accounting period of the company, then the full profits or gains of the accounting period in which such revocation date falls shall be subject to tax as if the concessions had not been granted.

8. Any company to which concessions contained in this Schedule apply which fails to furnish the accounts or further information required by the Minister in accordance with the provisions of paragraph 6 shall be subject to a like penalty to that provided for in section 93 which penalty shall be assessed and collected accordingly.

9.——(1) A company shall not be entitled to the concessions contained in this Schedule if 20 per cent or more of the issued and paid up capital in that company is beneficially owned either directly or indirectly by a person who is himself a shareholder of the company, or—

   (a) a relative by blood, marriage or adoption of such a shareholder; or

   (b) the spouse of such a shareholder; or

   (c) a relative by blood, marriage or adoption of the spouse of such a shareholder,

if that person is, or previously has been, engaged in any business which, in the opinion of the Minister, is similar to that of the enterprise in respect of which the concessions contained in this Schedule are applied for.

   (2) For the purposes of paragraph (1)—

   (a) if 20 per cent of more of the shares in a company applying for the concessions contained in this Schedule are held by another company (in this paragraph referred to as the “second company”); or

   (b) if, in circumstances where sub-paragraph (a) applies, 20 per cent or more of the shares in the second company are held by another company (in this sub-paragraph referred to as the “third company”)
then individuals who are shareholders in either the second company or the third company shall be deemed indirectly to beneficially own shares in the company applying for the concessions:

Provided that where the Minister considers that it shall be expedient for the economic development of Fiji, he may direct—

(a) that the reference in this paragraph to 20 per cent or more of the issued and paid up capital of a company be substituted by a reference to 51 per cent or more of the issued and paid up capital of such company;

(b) that any existing company, engaged in any of the activities described in paragraph 10, which incurs substantial expenditure in the expansion of any such activities shall be entitled to the concessions contained in this Schedule upon such conditions as the Minister may specify.

10. Any company engaged in any of the farming activities specified in sub-paragraphs (i) and (ii) of paragraph (c) of section 16(1), or in processing agricultural produce, or in exporting agricultural produce, or engaged solely in agricultural contracting may qualify for the concessions contained in this Schedule.

11. The provisions of paragraph (l) of the proviso to section 11 shall not apply to any company which, in accordance with sub-paragraph (ii) of paragraph 4, is permitted to set off losses incurred by it in any year during the tax-free period against any profits or gains of the holding company or against any profits or gains of an associated company. In the event of such a company disposing of its assets in respect of which deductions were allowed for improvements under Part VI of the Allowances for Depreciation and Improvements Instructions or the sale by any shareholder of his shares in the company, the deductions granted shall fall to be recouped and dealt with in accordance with paragraph (k) of the proviso to section 11, and, for the purposes of that paragraph, a shareholder who disposes of his interest in the company shall be deemed to be the owner or part owner of the company’s land or interest in land, and to be disposing of that proportion of the ownership of such land or interest in land which his interest in the company bears to the total issued capital of the company, provided that recoupment made previously in respect of the sale of the same shares is not duplicated.

12. In this Schedule, unless the context otherwise requires—

“agricultural contracting” means the carrying on of a trade by any company which has incurred substantial capital expenditure on the purchase of plant and machinery which is predominantly used in carrying on such trade, being a trade which consists of all or any of the following activities:—

(a) the clearing, ploughing or preparing for agricultural purposes land not in the occupation of the company;

(b) engaging in any other agricultural operation on such land;

“associated company” means a company in which the shareholders are common to another company, and, in determining whether shareholders are common, shares in 1 company held by another company, shall be deemed to be held by shareholders in the last mentioned company;

“exporting agricultural produce” means being engaged solely or mainly in the export of local produce;

“holding company” means a company which holds not less than 80 per cent of the issued and paid up capital of a subsidiary company;

“processing agricultural produce” means processing produce which includes agricultural produce of Fiji representing not less than 50 per cent of the total cost of production of the end product.
EIGHTH SCHEDULE
(Sections 11 (x) and 16(4))

[MARITIME] VESSELS INVESTMENT ALLOWANCE

Applications for investment allowance

1.—(1) In order to obtain the benefit of the maritime vessels investment allowance, a person who proposes to use an eligible vessel in Fiji may apply in writing to the Tourism Minister.

(2) An application under sub-paragraph (1) shall—

(a) contain—
   (i) the information specified in sub-paragraph (3);
   (ii) particulars of the relevant area;
   (iii) particulars of the method of financing the construction of the vessel; and
   (iv) such other information as may be required by the Tourism Minister; and

(b) be accompanied by—
   (i) a Maritime Safety Authority of Fiji Approved plan of the vessel; and
   (ii) such other documents as may be required by the Tourism Minister.

(3) The information referred to in sub-item (i) of item (a) of sub-paragraph (2) is the following information in relation to the vessel:—

(a) its overall size, including its length and beam;
(b) its tonnage;
(c) a description of its main propulsion system, with the following particulars:—
   (i) whether single or twin screw or otherwise;
   (ii) name, model and horse-power rating of main engine or engines;
(d) its estimated (or, where known, actual) fuel consumption per hour;
(e) its estimated (or, where known, actual) service speed in knots;
(f) its passenger capacity, with the following particulars:—
   (i) the number of suites;
   (ii) the number of twin cabins;
   (iii) the number of single cabins;
   (iv) the overall seating capacity otherwise than in suites, cabins and dining rooms;
   (v) the dining room capacity;
   (vi) the number of toilets, showers and similar facilities;
   (vii) any other amenities;
(g) its construction (whether steel, timber or otherwise);
(h) its total estimated (or, where known, actual) cost;
(i) the name of its builder.
Approval

2.—(1) The Tourism Minister, upon receiving an application under paragraph 1, shall consider the application and refer it, together with his recommendations in relation to it, to the Minister, who shall, by notice in writing—

(a) reject the application;

(b) give provisional approval to the application, with or without such conditions as he considers reasonable; or

(c) give provisional approval to a part, and reject the remainder, of the application, imposing such conditions in relation to his partial provisional approval as he considers reasonable.

(2) In arriving at his decision under sub-paragraph (1), the Minister shall take into consideration the following matters, that is to say:—

(a) the requirements for such a vessel in the relevant area;

(b) whether the vessel is likely to make an adequate contribution to the meeting of those requirements in the relevant area;

(c) whether the vessel is, or is to be, of suitable size and standard for operations in the relevant area;

(d) whether the facilities proposed to be provided in the vessel would be adequate for the comfort and safety of passengers, but shall, in all other respects, exercise his own discretion.

(3) Without prejudice to his powers under sub-paragraphs (1) and (2), the Minister may specify particular requirements applicable to any particular area of operation in Fiji.

(4) The decision of the Minister under sub-paragraph (1) shall be final but, in case of rejection (whether total or partial), shall not preclude the applicant from submitting a fresh application or amending his original application.

Allowance

3.—(1) Where—

(a) the construction, refurbishment or renovation of a vessel is completed in accordance with provisional approval granted to a person; and

(b) the Minister is satisfied that it is expedient for the economic development of Fiji that that person should be entitled to a [maritime] vessels investment allowance in respect of that vessel,

the Minister may, either by order or by written direction to the Commissioner, certify that person, upon such conditions as he thinks fit, to be entitled to a [maritime] vessels investment allowance in respect of that vessel.
(2) Subject to sub-paragraphs (3), (4) and (5) and paragraph 6, the investment allowance in respect of a vessel is a deduction from total income arising from the use of that vessel in accordance with the conditions (if any) referred to in sub-paragraph (1), for operations over the primary allowance period of amounts not exceeding in the aggregate an amount equal to 55% of the total capital expenditure incurred in the construction of the vessel, as approved by the Minister.

Provided, investment allowance or refurbishment or renovation under subparagraph (2) shall only be applicable to a vessel that is wholly or principally engaged in the carriage of tourists within Fiji and providing accommodation for more than 3 nights.

(2A) For the purpose of the proviso in subparagraph (2), “refurbishment or renovation” means those construction works of a substantial nature carried out in or upon an existing vessel which have the effect of restoring the vessel to a sound and as new state and/or which reconstruct, remodel, alter, upgrade or amend the interior of an existing vessel, such not to be confined only to the repainting or redecorating of an existing vessel. The capital expenditure allowable under sub paragraph (2) shall be given—

(a) only to the eligible vessels stated in the proviso; and

(b) which has been in operation for a period of not less 5 years.

(3) Where, at the expiration of the primary allowance period, any part of the investment allowance in respect of the vessel has not been claimed, the owner of the vessel may set off against total income derived by him in succeeding fiscal years from business conducted by him …

amounts not exceeding in the aggregate the amount of that unclaimed part of the investment allowance.

(4) Where income is derived by the owner of the vessel from the use of other vessels, the profit in respect of the first-mentioned vessel shall be deemed to be—

(a) except where item (b) applies, an amount that bears to the total profit derived by him from the use of [all such] vessels … the same proportion as the gross income derived by him from the first-mentioned vessel bears to the total gross income derived by him from the use of [all such] vessels …; or

(b) where the Commissioner so directs, an amount ascertained on such other basis as the Commissioner may determine.

(5) Where the owner of the vessel is a company, no deduction from total income by way of investment allowance shall be allowed in relation to a fiscal year of that company if the Commissioner is satisfied that, in that year, the shareholders of the company are not substantially the same as on the date on which the provisional approval was granted unless prior approval from the Minister for the changes of shareholders has been obtained.
(6) For the purposes of sub-paragraph (5), the test to be applied to determine whether there has been a substantial change in shareholding shall be the same as that applied under paragraph (a) of subsection (2) of section 105.

**Depreciation**

4. Nothing in paragraph 3 shall be taken to prevent a person who is entitled to an investment allowance in relation to a vessel from claiming depreciation under this Act in relation to that vessel and, for that purpose, the investment allowance shall not be deducted in calculating the prime cost of that vessel.

5.

**Losses**

6.—(1) If, before the expiration of the primary allowance period, the vessel is sold, transferred, lost, destroyed or otherwise disposed of, the amount of any proceeds shall be taken, for the purposes of ascertaining the total income of its owner, to be an amount to which paragraph (x) of the proviso to section 11 applies, but that amount shall not exceed an amount equal to the aggregate of the deductions from total income by way of investment allowance which have been allowed previously.

(2) For the purposes of sub-paragraph (1), the reference in that sub-paragraph to the proceeds in relation to the sale, transfer, loss, destruction or other disposal of a vessel shall, without limiting the generality of that reference, be taken to include, in particular—

(a) the market value of any consideration received otherwise than in cash; and

(b) any moneys received—

(i) under any policy of insurance;

(ii) by way of indemnity;

(iii) by way of damages; or

(iv) in settlement of any claim,

in relation to that sale, transfer, loss, destruction or other disposal.

(3) If, during the primary allowance period, the nature of the use of the vessel changes substantially, an amount equal to the aggregate of deductions from total income by way of investment allowance already allowed shall be taken, for the purposes of ascertaining the total income of its owner, to be an amount to which paragraph (x) of the proviso to section 11 applies in the year in which the change occurred.

(4) Sub-paragraphs (1) and (3) shall not be taken to affect the operation of paragraph (k) of the proviso to section 11 in respect of any balancing charge arising in respect of the vessel.

(5) The Minister may, where he considers it warranted, upon application by the owner of a vessel, direct that an amount that, in accordance with sub-paragraph (1) or (3), is to be taken to be an amount to which paragraph (x) of the proviso to section 11 applies be reduced to such extent as he deems fit.
Application to certain vessels

7. The provisions of this Schedule (other than this paragraph) apply in relation to an eligible vessel the construction of which commenced before the coming into effect of this Schedule subject to such modifications and adaptations as the Minister, either generally by order or, in a particular case, by written direction to the applicant for the allowance, directs.

Interpretation

8. In this Schedule, unless the contrary intention appears—

“eligible vessel”, in relation to a person, means a sea-going vessel that has been, is being or is to be built in Fiji by or on behalf of that person at a cost of not less than [$250,000];

“investment allowance” means the [maritime] vessels investment allowance referred to in sub-paragraph (1) of paragraph 3;

“Maritime Safety Authority of Fiji” means Maritime Safety Authority of Fiji, established under the Maritime Safety Authority of Fiji Decree 2009;

“MSA Approved Plan” means a vessel plan that bears the official seal of MSA;

“primary allowance period” in relation to a person who is certified under subparagraph (1) of paragraph 3 to be entitled to the investment allowance in respect of a vessel, means the 5 fiscal years of that person commencing with the fiscal year in which the vessel is completed in accordance with the relevant provisional approval;

“provisional approval” means an approval in principle given by the Minister under paragraph 2;

“relevant area”, in relation to a vessel that is the subject of an application under paragraph 2 or a provisional approval, means the area over which it is proposed in the application or the provisional approval, as the case requires, that the vessel be used …;

“Tourism Minister” means the Minister for the time being having responsibility for tourism;

“tourist operations” …

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1 Inserted by §8 Act 25/1983 WEF 30th December 1983
   “(1) In order to obtain the benefit of the investment allowance, a person who proposes to use an eligible vessel for tourist operations shall, before 31 December [1999], make application, in writing, accordingly to the Tourism Minister.”
4 Amended by deleting “a complete set of drawings of the vessel” and substituting it with “a Maritime Safety Authority of Fiji Approved plan of the vessel” by Decree No.8/2010 WEF 1st January 2010.
   “(a) the requirements for the carriage of overseas tourists, and provision to them of extended cruises, in the relevant area;”
" (c) whether the vessel is, or is to be, of suitable size and standard for tourist operations in the relevant area;"

3 Inserted by s6(a) in Decree No.70 of 2011. WEF 1st January 2011.
5 See Note Error! Bookmark not defined.
6 Word "tourist" deleted by §14(e) Act 10/1998 WEF 1st January 1998
7 Inserted by s6(b) of Decree No.70 of 2010.WEF 1st January 2011.
12 See Note Error! Bookmark not defined.
13 See Note Error! Bookmark not defined.
15 See Note Error! Bookmark not defined.
16 See Note Error! Bookmark not defined.
17 Amended by Decree No.6 of 2012 by deleting paragraph 5. Effective from 1st January, 2012. Previously read –
5. Where a loss is incurred in the operation of a vessel in respect of which an investment allowance [is]19 enjoyed, the period of 6 years referred to in paragraph (b) of subsection (1) of section 22 shall commence at the expiration of the primary allowance period.”

22 Inserting definitions of two terms “Maritime Safety Authority of Fiji” and “MSA Approved Plan” after the the definition of “eligible vessel” by Decree No.8/ 2010 WEF 1st January 2010.
“tourist operations’ means the carriage of tourists on day trips or extended cruises within Fiji waters.”
SUPPORTIVE PROJECTS TO TOURIST INDUSTRY INVESTMENT ALLOWANCE

Applications for investment allowance

1.—(1) In order to obtain the benefit of the investment allowance, a person who proposes to carry out a project may, during the qualifying period, make application, in writing, accordingly to the Tourism Minister.

(2) An application under sub-paragraph (1) shall—
   (a) contain—
       (i) a detailed description of the site on which it is proposed to carry out the project, including, in particular, its location and principal features;
       (ii) a detailed description of the proposed project;
       (iii) a detailed description of the buildings to be constructed for the purposes of the proposed project and of the use to which it is proposed that they be put;
       (iv) an analysis of the estimated cost of establishing the facilities comprised in the project, setting out, in particular, the respective costs of the acquisition of the site, preparation of the site, construction of buildings and other items of a capital nature;
       (v) particulars of the proposed method of financing the project; and
       (vi) an estimate of the number of employees who will be engaged on a full-time basis in the operation of the facilities comprised in the project; and
   (b) be accompanied by—
       (i) a set of drawings showing, in detail satisfactory to the Tourism Minister, the site and the layout of the proposed facilities; and
       (ii) such other documents as may be required by the Tourism Minister.

Approval

2.—(1) The Tourism Minister, upon receiving an application under paragraph 2, shall consider the application and refer it, together with his recommendation in relation to it, to the Minister, who shall, by notice in writing—
   (a) reject the application;
   (b) give provisional approval to the application, with or without such conditions as he considers reasonable; or
   (c) give provisional approval to a part, and reject the remainder, of the application, imposing such conditions in relation to his partial provisional approval as he considers reasonable.

(2) In arriving at his decision under sub-paragraph (1), the Minister shall take into consideration the following matters, that is to say:—
   (a) the requirements for facilities of the kind comprised in the proposed project;
(b) whether the proposed project is likely to make an adequate contribution to the meeting of those requirements in the area in which it is proposed to be carried out, but shall, in all other respects, exercise his own discretion.

(3) Without prejudice to his powers under sub-paragraphs (1) and (2), the Minister may specify particular requirements applicable to the carrying out of a project in any particular area in Fiji.

(4) The decision of the Minister under sub-paragraphs (1) shall be final but, in case of rejection (whether total or partial), shall not preclude the applicant from submitting a fresh application or amending his original application.

Allowance

3.—(1) Where—

(a) the establishment of the facilities comprised in a project is completed in accordance with provisional approval granted to a person; and

(b) the Minister is satisfied that it is expedient for the economic development of Fiji that that person should be entitled to a supportive projects to tourist industry investment allowance in respect of that project, the Minister may, either by order or by written direction to the Commissioner, certify that person, upon such conditions as he thinks fit, to be entitled to a supportive projects to tourist industry investment allowance in respect of that project.

(2) Subject to sub-paragraph (3) and paragraph 6, the investment allowance in respect of a project is a deduction from total income of the promoter arising, in accordance with the conditions (if any) referred to in sub-paragraph (1), from that project and other sources related to tourism of amounts not exceeding in the aggregate an amount equal to 55% of the total qualifying expenditure incurred in the establishment of the facilities comprised in the project, as approved by the Minister.

(3) Where a promoter is a company, no deduction from total income by way of investment allowance shall be allowed in relation to a fiscal year of that company if the Commissioner is satisfied that, in that year, the shareholders of the company are not substantially the same as on the date on which the provisional approval was granted unless prior approval from the Minister for the changes of shareholders has been obtained.

(4) For the purposes of sub-paragraph (3), the test to be applied to determine whether there has been a substantial change in shareholding shall be the same as that applied under paragraph (a) of subsection (2) of section 105.

Depreciation

4. Nothing in paragraph 3 shall be taken to prevent a person who is entitled to an investment allowance in relation to a project from claiming depreciation under this Act in
relation to assets employed in the project and, for that purpose, the investment allowance shall not be deducted in calculating the prime cost of those assets.

**Losses**

5. Where a loss is incurred in carrying on the operations comprised in a project in respect of which an investment allowance is enjoyed, the period of 6 years referred to in paragraph (b) of subsection (1) of section 22 shall commence at the expiration of the prescribed period.

**Recoupment**

6.—(1) If, before the expiration of the prescribed period, the facilities comprised in a project are sold, transferred, destroyed or otherwise disposed of, the amount of any proceeds shall be taken, for the purposes of ascertaining the total income of the promoter, to be an amount to which paragraph (y) of the proviso to section 11 applies, but that amount shall not exceed an amount equal to the aggregate of the deductions from total income by way of investment allowance which have been allowed previously.

(2) For the purposes of sub-paragraph (1), the reference in that sub-paragraph to the proceeds in relation to the sale, transfer, destruction or other disposal of facilities shall, without limiting the generality of that reference, be taken to include, in particular—

(a) the market value of any consideration received otherwise than in cash; and

(b) any moneys received—

(i) under any policy of insurance;
(ii) by way of indemnity;
(iii) by way of damages; or
(iv) in settlement of any claim,

in relation to that sale, transfer, destruction or other disposal.

(3) If, during the prescribed period, the nature of a project changes substantially, an amount equal to the aggregate of deductions from total income by way of investment allowance already allowed shall be taken, for the purposes of ascertaining the total income of the promoter, to be an amount to which paragraph (y) of the proviso to section 11 applies in the year in which the change occurred.

(4) Sub-paragraphs (1) and (3) shall not be taken to affect the operation of paragraph (k) of the proviso to section 11 in respect of any balancing charge arising in respect of the project.

(5) The Minister may, where he considers it warranted, upon application by a promoter, direct that an amount that, in accordance with sub-paragraph (1) or (3), is to be taken to be an amount to which paragraph (y) of the proviso to section 11 applies be reduced to such extent as he deems fit.
7. In this Schedule, unless the contrary intention appears—

“investment allowance” means the supportive projects to tourist industry investment allowance referred to in sub-paragraph (1) of paragraph 3;

“prescribed period”, in relation to the promoter of a project, means the 5 fiscal years of that promoter commencing with the fiscal year in which the establishment of the facilities comprised in the project is completed in accordance with the relevant provisional approval;

“project” means the establishment and operation, at a site in Fiji of facilities of a permanent nature for the public presentation, especially to overseas visitors to Fiji, of matter of interest to tourists that relates to Fiji, including, in particular and without derogating from the generality of the foregoing, matters relating to—

(a) the flora, fauna and other natural characteristics of Fiji; and

(b) the history, traditions, cultures and ways of life of its peoples;

“promoter”, in relation to a project, means the person (if any) who is entitled, in accordance with sub-paragraph (1) of paragraph 3 to an investment allowance in respect of that project;

“provisional approval” means an approval in principle given by the Minister under paragraph 2;

“qualifying expenditure” means capital expenditure on—

(a) landscaping, buildings, plant and machinery; and

(b) stocks of animals, plants and artifacts for display purposes,

but does not include the cost of—

(c) the acquisition of land;

(d) site preparation; or

(e) buildings, plant, machinery and fixtures that—

(i) are used for the provision of goods which are generally available to the public; and

(ii) do not form an integral part of the project;

“qualifying period” means the period commencing on 1 January [1989], and ending on 31 December [1993];

“Tourism Minister” means the Minister for the time being having responsibility for tourism.

1 Inserted by §8 Act 25/1983 WEF 30th December 1983 – note that Allowance not available after 31st December 1993


TENTH SCHEDULE

BINDING RULINGS

PART 1 - GENERAL

1.5 The purpose of this Schedule is to provide taxpayers with certainty about the way the Commissioner will apply the Sixth Schedule, and to help taxpayers to meet their obligations under the Sixth Schedule by enabling the Commissioner to issue binding rulings that will bind the Commissioner on the application of the said Sixth Schedule.

1-10 Interpretation

In this Schedule:

“arrangement” means-

(a) scheme, plan, action, proposal, course of action, course of conduct, transaction, agreement, understanding, promise or undertaking; or

(b) part of an arrangement.

“applicant” means a person applying for a binding ruling.

“binding ruling” means a product ruling or a status ruling.

“consumer” means a party to the arrangement who is not the applicant.

“discretion”, in relation to the exercise of the Commissioner’s discretion under an eligible taxation law includes -

(a) the exercising of a power by the Commissioner;

(b) the refusal or failure to exercise a power by the Commissioner;

(c) the forming of an opinion by the Commissioner;

(d) the refusal or failure to form an opinion by the Commissioner;

(e) the attaining by the Commissioner of a state of mind;

(f) the refusal or failure to attain a state of mind by the Commissioner;

(g) the making of a determination by the Commissioner; and
(h) the refusal or failure to make a determination by the Commissioner.

[“eligible taxation law” means any provision of the Sixth Schedule and subsidiary legislation made under the Sixth Schedule;]^{3}

“non-application of a binding ruling form” means a form approved by the Commissioner to be the non-application of a binding ruling form.

“product ruling” means a binding ruling made under Part 3.

“status ruling” means a binding ruling made under Part 5.

1-12 Commencement of arrangements

For the purposes of this Schedule, an arrangement is taken to begin to be carried out when a contract requiring an arrangement to be carried out is entered into.

1-15 Taxation laws in respect of which binding rulings may be made

(1) The Commissioner may only make a binding ruling in relation to eligible taxation laws.

(2) For the avoidance of doubt, the Commissioner under subparagraph (1) may make a binding ruling:

(a) on any provision of any eligible taxation law;

(b) on how the Commissioner will exercise his or her discretion under any provision of any eligible taxation law; and

(c) on the application or otherwise of a general anti-avoidance provision or specific anti-avoidance provisions of any eligible taxation law,

provided the primary or main provisions the binding ruling relates to are eligible taxation laws

(3)^{4}

1-20 Fees

(1) The fees payable in respect of applications for binding rulings are to be specified by the Commissioner by giving notice in a publication of the Commissioner.

(2) Any notice made by the Commissioner under subparagraph (1) may:
(a) specify the persons by whom any fees are payable;
(b) prescribe specific fees for specific work or services;
(c) prescribe a scale of fees or a rate based on the time involved in carrying out the work or services; and
(d) allow the Commissioner to waive, in whole or in part, any fees that are payable.

1-25 Commissioner may not issue binding ruling to applicant with outstanding debts

(1) The Commissioner may refuse to issue a binding ruling to an applicant with an outstanding debt that relates to an earlier binding ruling application.

(2) An applicant has an outstanding debt if the applicant has not paid, on or before 30 days after the date stated in an invoice sent by the Commissioner, the amount stated in the invoice.

1-27 Effect of legislative change on binding ruling

A binding ruling does not apply from the date a eligible taxation law is repealed or amended to the extent that the repeal or amendment changes the way the eligible taxation law applies in the binding ruling.

1-35 Effect of minor error on binding ruling

(1) The Commissioner does not have to withdraw and reissue a new binding ruling to correct a typographical or a minor error if the correction does not change the meaning of the binding ruling.

(2) A binding ruling with a typographical or a minor error that is not withdrawn and reissued remains valid.

1-40 Applications for binding rulings not to affect obligations and powers

The fact that there has been an application for a binding ruling does not affect a person’s obligation to provide any return, provide any information, make any payment, or do any other act, or the Commissioner’s power to make any assessment or additional assessment.

1-45 Application of penalties
(1) The Commissioner must take into account a binding ruling penalty factor in exercising any discretion the Commissioner may have in relation to the imposition of, the extent of the imposition of or the extent of a remission of a penalty.

(2) A binding ruling penalty factor under subparagraph (1) exists in relation to a person when-

(a) a binding ruling has been issued;

(b) the binding ruling applies to a person;

(c) the person has not notified the Commissioner using a non-application of a binding ruling form under paragraph 3-9 or paragraph 5-35 that they are not applying the binding ruling; and

(d) the person in preparing or lodging a return or requesting an amendment to an assessment does not apply the eligible taxation law in accordance with the binding ruling.

PART 3 - PRODUCT RULINGS

3-1 Interpretation

In this Part:

“consumer of a product” means a proposed party, participant or investor of a product that involves, is or relates to the arrangement.

“product ruling applicant” means a person that is a party to or that is intending to be a party to the arrangement that is the subject of the product ruling.

3-2 Application for a product ruling

(1) A product ruling applicant may apply to the Commissioner for a product ruling on how eligible taxation laws applies, or would apply to-

(a) an arrangement;

(b) the parties to an arrangement; or

(c) to the consumer of a product.

(2) An application for a product ruling must-

(a) be made in such form as may be approved by the Commissioner; and
(b) comply with the disclosure requirements of paragraph 3-15.

(3) A product ruling applicant may at any time withdraw the application for a product ruling by notice in writing to the Commissioner.

3-5 Commissioner may make product rulings

(1) The Commissioner may make a product ruling on how any eligible taxation law applies to any person in relation to any arrangement if the Commissioner receives an application for a product ruling on an arrangement.

(2) In making a product ruling under subparagraph (1) the Commissioner may make the product ruling on how an eligible taxation law applies to-

(a) any arrangement;

(b) the parties to any arrangement; or

(c) to the consumer of a product,

whether or not reference was made in the application to the:

(d) eligible taxation law;

(e) party; or

(f) consumer of a product.

(3) In making a product ruling under subparagraph (1) the Commissioner may not make the product ruling apply to a period before the later of-

(i) receipt of the product ruling application; or

(ii) commencement of the arrangement the subject of the product ruling.

(4) The Commissioner may decline to make a product ruling if-

(a) the Commissioner considers that the correctness of the product ruling would depend on which assumptions were made about a future event or other matter and the Commissioner considers it inappropriate to make assumptions as allowed by paragraph 3-35; or

(b) the matter on which the product ruling is sought is subject to an objection, challenge, or appeal, whether in relation to the applicant or any other person; or
(c) the applicant has outstanding debts relating to earlier binding ruling applications; or

(d) the Commissioner considers that the characteristics of persons who may enter into the arrangement would affect the correctness of the product ruling for other persons who may enter into the arrangement; or

(e) the Commissioner considers that the arrangement purports to have the purpose or effect of in any way directly or indirectly to-

(i) alter the incidence of any tax;

(ii) relieve any person from liability to pay any tax or make any return;

(iii) defeat, evade or avoid any duty or liability imposed on any person by any eligible taxation law; or

(iv) prevent the operation of any eligible taxation law in any respect.

(5) The Commissioner may not make a product ruling if-

(a) the application for the product ruling would require the Commissioner to determine questions of fact; or

(b) at the time the application is made or at any time before the product ruling is issued, the Commissioner considers that the person to whom the product ruling is to apply is not seriously contemplating the arrangement for which the product ruling is sought; or

(c) the application is frivolous or vexatious; or

(d) the matter on which the product ruling is sought is being dealt with, or in the Commissioner’s opinion should be dealt with, by one or both competent authorities of the parties to a double tax agreement; or

(e) a binding ruling already exists on how the eligible taxation law applies to the arrangement, to the parties to the arrangement or to a consumer of a product in relation to an arrangement and the proposed product ruling would apply to a period or income year to which the existing binding ruling applies; or

(f) in the Commissioner’s opinion the applicant has not provided sufficient information in relation to the application after the Commissioner has requested further information; or
(g) in the Commissioner’s opinion it would be unreasonable to make a product ruling in view of the resources available to the Commissioner; or

(h) the application for the product ruling would require the Commissioner to form an opinion as to a generally accepted accounting principle or to form an opinion as to a commercially acceptable practice; or

(i) in the Commissioner’s opinion the application for the product ruling would require the Commissioner to form an opinion as to the commerciality or commercial viability of an arrangement.

3.9 Binding application of a product ruling

(1) A product ruling is binding in relation to a person if-

(a) the person is specified in or is within a class of persons specified in the product ruling; and

(b) the person enters into the arrangement identified in the product ruling,

and a product ruling is binding:

(c) only in relation to the eligible taxation laws identified and referred to in the product ruling; and

(d) only for the period or income years for which the product ruling applies.

(2) A product ruling is not binding in relation to a person if-

(a) the arrangement entered into or carried out is materially different from the arrangement identified in the product ruling; or

(b) there was a material omission or misrepresentation in, or in connection with, the application for the product ruling; or

(c) the Commissioner makes an assumption about a future event or another matter that is material to the application of the product ruling, and the assumption subsequently proves to be incorrect; or

(d) the Commissioner stipulates a condition in the product ruling and that condition is not satisfied; or

(e) the person elects under subparagraph (3) for the product ruling not to be binding in relation to them in relation to a period, income year or income years.
(3) A person may elect for a product ruling not to be binding to them in relation to a period, income year or income years by-

(a) the person sending to the Commissioner a non-application of a binding ruling form specifying the product ruling and the period, income year or income years that the product ruling will not be binding to them; and

(b) the Commissioner receiving the non-application of a binding ruling form at the same time as or before the time the person is required to deliver to the Commissioner a return that relates to or includes the period, income year or income years specified in the non-application of a binding ruling form.

3-10 Effect of a product ruling being binding to a person

(1) Notwithstanding anything in any other provision of this Act or any other Act, if in accordance with paragraph 3-9 a product ruling is binding in relation to a person the Commissioner must apply the eligible taxation law in accordance with the product ruling.

(2) In accordance with subparagraph (1) the Commissioner in applying the eligible taxation law must apply the eligible taxation law in accordance with the product ruling even if-

(a) the Commissioner has subsequently adopted or published a different interpretation of the eligible taxation law; or

(b) the eligible taxation law has been subsequently judicially considered; or

(c) the application of the eligible taxation law in accordance with the product ruling results in more tax being payable than what would otherwise result.

(3) If a product ruling is binding in relation to a person, that person-

(a) must prepare and deliver all returns with the eligible taxation law applied in accordance with the product ruling; and

(b) must not-

(i) deliver any request for a further assessment that involves

(ii) lodge any objection that involves; or

(iii) lodge any appeal that involves,
the eligible taxation law not being applied in accordance with the product ruling,

regardless of whether that person or the Commissioner has subsequently adopted or published a different interpretation of the eligible taxation law or the eligible taxation law has been subsequently judicially considered.

3-15 Disclosure requirements

(1) An application for a product ruling must-

(a) identify the product ruling applicant; and

(b) disclose all relevant facts and documents relating to the arrangement for which the product ruling is sought; and

(c) if an arrangement has not commenced at the time of the application disclose all draft documents relating to the arrangement; and

(d) state the eligible taxation laws in respect of which the product ruling is sought; and

(e) state the propositions of law (if any) which are relevant to the issues raised in the application; and

(f) provide a draft of the product ruling that the applicant wishes the Commissioner to make.

(2) If the Commissioner considers that it would be unreasonable to require the applicant to comply with any of the requirements in sub-subparagraphs (d) to (f) of subparagraph (1), the Commissioner may waive those requirements.

3-20 Commissioner may request further information

The Commissioner may at any time request further relevant information from a product ruling applicant.

3-25 Assumptions in making a product ruling

(1) If the Commissioner considers that the correctness of a product ruling would depend on assumptions being made about a future event or other matter, the Commissioner may-

(a) make the assumptions that the Commissioner considers to be most appropriate; or
(b) decline to make the product ruling under paragraph 3-5.

(2) The Commissioner may not make assumptions about information which the applicant can provide.

3-30 **Right to consultation**

Before the Commissioner makes a product ruling, the Commissioner is not required to but may provide the product ruling applicant with-

(a) a draft of the proposed product ruling that the Commissioner intends to make; and

(b) a reasonable opportunity to be consulted if the content of the proposed product ruling differs from that requested by the applicant.

3-35 **Content and notification of a product ruling**

(1) A product ruling must state-

(a) that it is a product ruling made under paragraph 3-5; and

(b) the name of the person who applied for the product ruling; and

(c) the eligible taxation law and the arrangement to which the product ruling applies; and

(d) how the eligible taxation law applies to the arrangement; and

(e) the period for which the product ruling applies; and

(f) material assumptions about future events or other matters made by the Commissioner; and

(g) conditions stipulated by the Commissioner; and

(h) that the Commissioner does not sanction, guarantee or provide any assurance that the arrangement or product the subject of the product ruling is-

(i) commercially viable;

(ii) that charges are reasonable, appropriate or represent industry norms; or

(iii) that projected returns will be achieved or are reasonably based.
Anything that does not contain these statements is not a product ruling.

(2) A product ruling does not commence until the Commissioner notifies the making of the product ruling by notice in a publication of the Commissioner.

(3) The Commissioner must-

- send a copy of the product ruling to the applicant as soon as practicable after the date on which the product ruling is made; and

- publish the product ruling in a publication of the Commissioner as soon as possible.

(4) A person, other than the product ruling applicant, cannot obtain a copy of a product ruling before it is published by the Commissioner.

3-36 Applicant to be given reasons

If the Commissioner declines or may not issue a product ruling under paragraph 3-5 the Commissioner must notify the product ruling applicant in writing of-

- the decision not to issue a product ruling; and

- the reasons why the product ruling will not be issued.

3-37 Completion of product ruling applications

(1) If the Commissioner has neither made the product ruling or provided written notice to the product ruling applicant that a product ruling will not be made a product ruling applicant may after the later of-

- 3 months of the date of an application under paragraph 3-2; or

- if the Commissioner requests further information in accordance with paragraph 3-20, 3 months after the applicant provides the further information requested,

request the Commissioner by notice in writing to consider the product ruling application.

(2) The Commissioner within 90 days of receiving a request in writing from a product ruling applicant under subparagraph (1) must-

- make the product ruling under paragraph 3-5; or
(b) notify the product ruling applicant in writing under paragraph 3-36 that a ruling will not be issued and the reasons why the product ruling will not be issued.

(3) If the Commissioner does not respond to the request in writing from an applicant under subparagraph (1) within the time provided in subparagraph (2) the Commissioner is deemed to have made a decision not to issue a product ruling.

(4) A product ruling applicant who has lodged a request under subparagraph (1) may withdraw the request at any time by notice in writing to the Commissioner of the withdrawal.

3-40 Withdrawal of a product ruling

(1) The Commissioner may at any time withdraw a product ruling.

(2) The Commissioner must provide notice of the withdrawal of a product ruling by giving notice in a publication of the Commissioner.

(3) A product ruling is withdrawn on the date stated in the notice of withdrawal. The date cannot be before the date on which notice is given under subparagraph (2).

(4) A status ruling on a withdrawn product ruling does not apply on and after the date specified in the notice of withdrawal.

(5) If the Commissioner withdraws a product ruling-

    (a) the product ruling does not apply to an arrangement entered into after the date of withdrawal; but

    (b) the product ruling continues to apply to which it previously applied for the remainder of the current income year or the income year specified in the product ruling provided that such arrangement was entered into before the date of withdrawal; and

    (c) a status ruling that has been made on the product ruling continues to apply, for the remainder of the period or income year specified in the product ruling, if the arrangement to which it previously applied was entered into before the date of withdrawal.

(6) A notice of withdrawal must specify-

    (a) that it is a withdrawal of a product ruling under this paragraph; and

    (b) the product ruling that is being withdrawn; and
(c) the original period for which the product ruling applied; and
(d) any status ruling that applied to the product ruling; and
(e) that the status ruling is also being withdrawn; and
(f) the date of the withdrawal.

Anything that does not contain these statements is not a notice of withdrawal of a product ruling.

(7) The Commissioner must-

(a) send a copy of the notice of withdrawal to the person who applied for the product ruling as soon as practicable after the date of the withdrawal; and
(b) publish the notice of withdrawal in a publication of the Commissioner as soon as possible after the date of the withdrawal.

3-45 No liability

The Commissioner is not liable for damages, loss or any other claim arising from any cause of action by the fact that the Commissioner-

(a) makes a product ruling;
(b) withdraws a product ruling; or
(c) makes any comment, assumption or arrives at any conclusion in relation to-

(i) the commercial viability;
(ii) reasonableness or appropriateness of charges; or
(iii) whether projected returns will be achieved or are reasonably based,

of any business or commercial arrangement in a product ruling.

PART 5 - STATUS RULINGS

5-1 Interpretation

In this Part:

“status ruling applicant” means a person applying for a status ruling that is-
(a) a person who applied for a product ruling made under paragraph 3-2; or
(b) a person to whom a product ruling applies under paragraph 3-9.

5-2 Applying for status ruling on effect of change in legislation

A status ruling applicant may apply to the Commissioner for a status ruling on whether a product ruling applies to a person because-

(a) the amendment or repeal of a eligible taxation law that is stated as applying in the product ruling;

(b) the facts and documents taken place, executed and implemented in relation to an arrangement are materially the same as the assumptions that are stated as applying in the product ruling; or

(c) the facts and documents taken place, executed and implemented in relation to an arrangement are materially the same as the relevant facts and documents disclosed to the Commissioner in the product ruling,

has changed the way that the law applies in the product ruling.

5-5 Commissioner to make status rulings on request

(1) The Commissioner must make a status ruling on whether a product ruling applies to a person if-

(a) the amendment or repeal of an eligible taxation law that is stated as applying in the product ruling;

(b) the facts and documents taken place, executed and implemented in relation to an arrangement are materially the same as the assumptions that are stated as applying in the product ruling; or

(c) the facts and documents taken place, executed and implemented in relation to an arrangement are materially the same as the relevant facts and documents disclosed to the Commissioner in the product ruling,

has changed the way that the law applies in the product ruling.

(2) The Commissioner may make a status ruling on the way that the law applies in the product ruling has been varied as a consequence of a change to-

(a) the amendment or repeal of an eligible taxation law that is stated as applying in the product ruling; or
(b) the facts and documents taken place, executed and implemented in relation to an arrangement as compared to assumptions made in the product ruling; or

(c) the facts and documents taken place, executed and implemented in relation to an arrangement as compared to the relevant facts and documents disclosed to the Commissioner in the product ruling.

(3) In making a status ruling under subparagraph (1) or (2) the Commissioner may make a status ruling on whether a product ruling applies to a person to any period to which the product ruling is stated to apply.

(4) In making a status ruling under subparagraph (1) the Commissioner may make a status ruling on the way that the law applies in the product ruling has been varied applying to a period before the later of:

(i) receipt of the status ruling application; or

(ii) commencement of the arrangement the subject of the product ruling.

(5) In making a status ruling under subparagraph (2) the Commissioner may not make a status ruling on the way that the law applies in the product ruling has been varied applying to a period before the later of-

(a) the application is frivolous or vexatious; or

(b) the Commissioner considers that the correctness of the product ruling would depend on which assumptions were made about a future event or other matter; or

(c) the Commissioner considers that it would be unreasonable to make a status ruling in view of the resources available to the Commissioner.

5-10 **Requirements for status ruling applications**

(1) An application for a status ruling must be made in such form as may be approved by the Commissioner and must-

(a) identify that the applicant is-

(i) a person who applied for a product ruling made under paragraph 3-2; or

(ii)
(ii) a person to whom a product ruling potentially applies under paragraph 3-9; and

(b) identify the product ruling on which the status ruling is sought; and

(c) as relevant, identify and state-
   
   (i) the eligible taxation laws that are stated as applying in the product ruling that have been amended or repealed;
   
   (ii) all relevant facts and documents and the assumptions that are stated as applying in the product ruling; and
   
   (iii) all relevant facts and documents and the relevant facts and documents disclosed to the Commissioner in the product ruling;

(d) state any propositions of law that are relevant to the issues raised in the application; and

(e) provide a draft of the status ruling that the applicant wishes the Commissioner to make.

(2) If the Commissioner considers that it would be unreasonable to require the applicant to comply with any of the requirements in sub-subparagraph (c) to (e) of subparagraph (1), the Commissioner may waive those requirements.

5-15 Commissioner may request further information

The Commissioner may at any time request further relevant information from a status ruling applicant for a status ruling.

5-20 Right to consultation

Before the Commissioner makes a status ruling, the Commissioner must give the status ruling applicant-

(a) a draft of the status ruling that the Commissioner proposes to make; and

(b) a reasonable opportunity to be consulted if the content of the proposed status ruling differs from that requested by the status ruling applicant.

5-25 Content of status ruling

A status ruling must identify the product ruling on which it is a status ruling and state-
(a) that it is a status ruling made under paragraph 5-5;
(b) whether the product ruling applies to the person;
(c) if the product ruling does not apply to the person the reasons why the product ruling does not apply;
(d) any variation to the way the law applies in the product ruling; and
(e) the date of the status ruling.

Anything that does not contain these statements is not a status ruling.

5-30 Notification of status ruling

(1) A status ruling does not commence until the Commissioner notifies the making of the status ruling by notice in a publication of the Commissioner.

(2) The Commissioner must-

(a) send a copy of the status ruling to the status ruling applicant as soon as practicable after the date on which the status ruling is made; and

(b) without disclosing the name or details sufficient to identify the status ruling applicant, publish the status ruling in a publication of the Commissioner as soon as possible.

5-35 Effect of status ruling varying a product ruling

(1) A status ruling stating a variation to the way the law applies in a product ruling has the effect of varying the product ruling on which it is a status ruling.

(2) The product ruling as varied by the status ruling is binding in relation to a person in accordance with paragraph 3-10 from the date of the status ruling.

(3) For the avoidance of doubt, a person may elect for a product ruling as varied by the status ruling not to be binding to them in relation to a period, income year or income years by-

(a) the person sending to the Commissioner a non-application of a binding ruling form specifying the status ruling and the period, income year or income years that the product ruling as varied by the status ruling will not be binding to them; and

(b) the Commissioner receiving the non-application of a binding ruling form at the same time as or before the time the person is required to deliver to
the Commissioner a return that relates to or includes the period, income year or income years specified in the non-application of a binding ruling form.

5-45 No liability

The Commissioner is not liable for damages, loss or any other claim arising from any cause of action by the fact that the Commissioner-

(a) makes a status ruling;

(b) withdraws a status ruling; or

(b) makes any comment, assumption or arrives at any conclusion in relation to-

(i) the commercial viability;

(ii) reasonableness or appropriateness of charges; or

(iii) whether projected returns will be achieved or are reasonably based,

of any business or commercial arrangement in a status ruling.

1 Inserted by §22 Act 4/2004 WEF 1st January 2004
2 Substituted by §30(a) Act 3/2005 WEF 1st January 2005 – previously read:

“1-5 Purpose of this Schedule

(1) The purpose of this Schedule is to-

(a) provide taxpayers with certainty about the way the Commissioner will apply eligible taxation laws; and

(b) help taxpayers to meet their obligations under those laws,

by enabling the Commissioner to issue binding rulings that will bind the Commissioner on the application of those laws.

(2) In enabling the Commissioner to issue binding rulings the Schedule also recognises-

(a) the importance of collecting the taxes imposed by Parliament;

(b) the need for full and accurate disclosure by taxpayers who seek to obtain binding rulings; and

(c) the need for the Commissioner not to provide or to be seen to be providing commercial advice or advice regarding the commercial viability of any arrangements the subject of any binding ruling.”

3 Substituted by §30(b) Act 3/2005 WEF 1st January 2005 – previously read:
“eligible taxation law” means any provision—
(a) of the “Sixth Schedule” to the Income Tax Act (Cap. 201) and all subsidiary legislation made in relation to the “Sixth Schedule” to the Income Tax Act (Cap. 201);
(b) of the Income Tax Act (Cap. 201) and all subsidiary legislation made in relation to the Income Tax Act (Cap. 201) (other than a provision specified in sub-subparagraph (a)) specified in the regulations; and
(c) any other Act or subsidiary legislation specified in the regulations.”

4 Repealed by §30(c) Act 3/2005 WEF 1st January 2005 – previously read:
“(3) Despite subparagraph (1), the Commissioner may not make a binding ruling on any provision—
(a) specified in the regulations made in relation to this subparagraph; or
(b) that authorises or requires the Commissioner to—
(i) impose or remit a penalty; or
(ii) inquire into the correctness of any return or other information supplied by any person; or
(iii) prosecute any person; or
(iv) recover any debt owing by any person.”

5 Repealed by §30(c) Act 3/2005 WEF 1st January 2005 – previously read:
“1-27 Regulations
The Minister is empowered to make regulations with respect to—
(a) the definition of eligible taxation law under paragraph 1-10; and
(b) provisions in respect of which binding rulings may not be made under subparagraph 1-15(3).”
ELEVENTH SCHEDULE¹
(Section 16C)

HOTEL INVESTMENT TAX INCENTIVES

PART 1 – GENERAL

Purpose

1. The purpose of this Schedule is to provide hotel or integrated tourism development investors with certainty about the way the Minister will apply this Schedule to provide for the encouragement of hotels or integrated tourism development by the provision of financial inducements.

Interpretation

2. In this Schedule, unless the context otherwise requires—

“amenity”² include features and facilities that contribute to the physical and material comfort of the tourist in a hotel or a resort;

“capital goods” for the purpose of paragraph 11, means capital equipments, plant, machineries and any other goods employed in the production of other goods but does not include furniture or motor vehicles;

“company” means a company registered under the Companies Act (Cap. 247);

“consultant fees” includes salaries, allowances, per diem and incidental expenses, food and accommodation, and any other fees that directly or indirectly relate to the short life investment, paid or provided to a local and an overseas consultant;

“extension” means any additional accommodation or additional amenity to an existing hotel or integrated tourism development;

“hotel” (a) means any premises in which accommodation is supplied to or is available to be supplied to persons in exchange for money or other valuable consideration;

(b) and includes –

(i) a villa for resort purposes; or

(ii) a retirement resort constructed with facilities, services and amenities for retirement, including facilities for health services for such resort,
and the villa or retirement resort will provide accommodation for guests for hire or reward or for the owner or occupier, for a period of not more than 12 weeks;

(c) for the purpose of Part 3, does not include quarters and any facility constructed for the residence of the owner or for managers or workers of the hotel or integrated tourism development;
(d) for the purpose of Part 2, it includes quarters constructed for the workers of the hotel in an island resort.

“hotel owner” means the owner of a hotel who has been given an approval under Part 2;

“island resort” means any resort separated by 15km or more of sea from Viti Levu

“integrated tourism development” must include the development of a hotel and the subdivision and sale of residential lots and include, but not limited to the development of jetties, moorings, recreational facilities and other amenities.

“Minister” means the Minister responsible for Finance;

“project” means the building of a new hotel or integrated tourism development, the extension of an existing hotel or integrated tourism development or any refurbishment and renovation;

“provisional approval” means a provisional approval given under Part 2 and 3;

“refurbishment and renovation” means any substantial construction works (which the estimated cost per square metre of floor area is determined under paragraph 6(5)) of an existing hotel or integrated tourism development building (excluding its mere repainting or redecorating) which –
  (a) have the effect of restoring the hotel or integrated tourism development building to a sound and new state; or
  (b) reconstruct, remodel, alter, upgrade or amend the interior of an existing hotel or integrated tourism development building so as to form new rooms or alter the sizes of existing rooms;

“short life investment” means a project for the building of a new hotel or integrated tourism development with capital investment (including the cost of support infrastructure and overseas consultant fees but excluding the cost of land) over $7,000,000 and the building of the
new hotel commences on or after 01 January, 2009 or integrated tourism development and the building is completed on or before 31 December 2018.\footnote{11}

“short life investment package” means the various exemptions, concessions and allowances given under a short life investment.

PART 2 – STANDARD ALLOWANCE

Specification of particular requirements

3. The Minister may prescribe particular requirements applicable to any particular area of Fiji.

Power to approve application

4. – (1) The Minister has the power—
(a) to reject the application for approval;
(b) to approve the application for approval, with or without any conditions; or
(c) to approve part of the application for approval, with or without conditions, and reject other parts\footnote{12} of such application.

(2) The Minister must take into account the\footnote{13} following matters when determining an application under subparagraph (1) —
(a) the requirements for the accommodation of travellers in the area concerned;
(b) whether the proposed hotel or integrated tourism development or extension will make an adequate contribution to the requirements of the area concerned;
(c) whether the proposed accommodation is of suitable size and standard for the area;
(d) whether adequate amenities would be provided by the project.

(3) The Minister must, in writing, notify the Commissioner of the decision made under subparagraph (1).

(4) The decision of the Minister under this paragraph is final.

(5) Notwithstanding\footnote{14} subparagraph (4), a person whose application (including partial rejected application) has been rejected has the right to make a new application or to amend and resubmit the original application.

Application for provisional\footnote{15} approval

5. A person wishing to carry out a project may apply in writing to the Minister for approval of the proposed project, and such application must set out the following matters—
(a) the name and details of the person;
(b) a current\textsuperscript{16} statement of all assets and liabilities of the person;
(c) the location and description of the site of the hotel or integrated tourism development;
(d) in the case of an existing hotel or integrated tourism development, the number and description of bedrooms and beds and of the toilet facilities;
(e) the number and description of proposed new bedrooms and beds and the toilet facilities proposed to be established in connection with them;
(f) a description of each public room for proposed new hotel or extension of an existing hotel or integrated tourism development;
(g) a detailed description of existing or proposed amenities;
(h) a sketch plan showing in sufficient detail the site and layout of the proposed hotel or integrated tourism development or extension and the amenities;
(i) the estimate cost of the project;
(j) if the project is to be carried out in stages, a description and the estimate cost, of each stage and details of the proposed timetable;
(k) details of the proposed method of financing the project;
(l) any other information, the Minister may require.

**Completion of Project**

5A.\textsuperscript{18} — (1)\textsuperscript{19}(a) Any hotel or integrated tourism development owner who has been given provisional approval shall commence the implementation of the project within one year from the date of which the provisional approval was granted.

(b) Subject to the other provisions of this paragraph where a hotel or integrated tourism development owner has been given provisional approval and has completed the project, the hotel or integrated tourism development owner may apply to the Minister for final approval.

(2) An application under subparagraph (1) shall be made in writing and be supported by the following:

(a) fully audited final accounts showing the total cost of the project; and

(b) a completion certificate from the local authority.

(3) Subject to the provision of paragraph 5B the Minister shall refuse to grant final approval if the hotel or integrated tourism development owner has failed to complete the project or has failed to comply with any conditions upon which provisional approval was given.

**Final approval if completed**

5B.\textsuperscript{20} An application for final approval shall not be given unless –
(a) the Minister is satisfied that the hotel or integrated tourism development owner has in all respects completed the requirements of the project; and

(b) the project is fully completed.

Investment allowance

6. – (1) Subject to subparagraph (3), a hotel or integrated tourism development owner is entitled to the following allowance —

(a) an amount of taxable income equal to 55% of the total capital expenditure incurred in the project including the provision of amenities approved by the Minister, but less the cost of any land acquired for the project or refurbishment and renovation, is not chargeable to tax;

(b) so much of the amount not charged to tax under sub-subparagraph (a) and which cannot be set off against the taxable income of the hotel or integrated tourism development owner for the first year of income after the commencement of operation or after the completion of the extension must be carried forward and be set off against the taxable income of the next successive fiscal years of income of the hotel or integrated tourism development owner until the amount is wholly set off.

(2) Notwithstanding subparagraph (1), a hotel or integrated tourism development owner who has claimed an investment allowance under this section may claim depreciation under this Act and, for such purpose, the investment allowance must not be taken into account.

(3) In the case of Fiji residents or to non-residents, the investment allowance shall only be given if there is no shift of tax revenue to other countries.

(4) Subject to this Part, if –

(a) a project has been completed; and

(b) an investment allowance under this section exceeds the taxable income of the hotel or integrated tourism development owner from the hotel business; or

(c) the taxable income from the hotel business for the period ended on the next year of income after the project has been completed, the balance must be carried forward and set off against the taxable income of that hotel business or the taxable income from the hotel or integrated tourism development premises, for the next successive years of income.

(5) For the purpose of the definition of “refurbishment and renovation” in paragraph 2, the Minister has the power to prescribe the cost per square metre...
of not less than 40% of the estimated cost per square metre of the floor area or a newly built equivalent hotel or integrated tourism development building.

(6) The capital expenditure allowable under refurbishment and renovation shall be given only to a hotel or integrated tourism development, which has been in operation for a period of not less than 5 years.

Procedure on sale of hotel

7. If the property of an hotel or integrated tourism development has been sold and the investment allowance in respect of such hotel has in accordance with paragraph 6, been wholly or partly set off against income, the like consequences shall ensue as respects both the vendor and the purchaser with regard to section 21(1) of the Act, as would have ensued if the transaction were the sale and purchase of depreciable property in the normal course of events.

Procedure in case of loss

8. If a loss is incurred in connection with a hotel in respect of which investment allowance has been approved under paragraph 6, any loss incurred in the operation of the hotel may be carried forward and set off against the total income of that hotel business or the total income from that hotel premises for the next 8 years in succession, subject to the period in section 22 of the Act.

PART 3 – SHORT LIFE INVESTMENT

Power to grant short life investment package

9. The Minister has the power to grant or refuse to grant a short life investment package to a company, which has completed a short life investment and has complied with this Part.

Provisional approval

10. – (1) The Minister has the power, after consulting the Minister responsible for Tourism —

(a) to reject the application for provisional approval for short life investment; or

(b) to give provisional approval to such application, with or without conditions.

(2) The Minister shall not give provisional approval under subparagraph (1) unless the Minister is satisfied that —

(a) the application is for short life investment;

(b) the company intends to complete and is capable of completing such short life investment; and

(c) the short life investment will benefit the economic development of Fiji.

(3) When considering an application for short life investment under subparagraph (1), the Minister shall take into account the following matters —

(a) the assets and liabilities of the company;
(b) the nature and extent of the short life investment;
(c) the requirements for hotel accommodation or integrated tourism development in the area concerned;
(d) whether the short life investment will adequately contribute to the requirements of the area concerned;
(e) whether the proposed hotel or integrated tourism development is a suitable size and standard for the area concerned;
(f) whether adequate amenities would be provided as part of the proposed hotel;
(g) such other matters as the Minister may consider relevant to the desirability or otherwise of the short life investment for Fiji and the capability of the company to complete it.

(4) The decision of the Minister under this paragraph is final.

(5) Notwithstanding subparagraph (4), a person whose application (including partial rejected application) has been rejected has the right to make a new application or to amend and resubmit the original application.

Effect of provisional approval

11. – (1) When a provisional approval is granted, all capital goods, imported within the period specified in the definition of “short life investment” under paragraph 2, by or on behalf of the company and used in the carrying out of the short life investment, shall be exempt from all duties payable in respect of their importation.

(2) Before capital goods are allowed to be imported by a company, it is a condition of importation that the company must first provide proof that such goods cannot be produced locally to the satisfaction of the Minister, who shall decide whether such goods are to be imported.

(3) Nothing in this paragraph shall apply to any tax payable under the Value Added Tax Decree 1991.

(4) For the purposes of this paragraph, capital equipment, plant and machinery does not include kitchenware, raw materials, furniture and fittings and other prescribed goods.

Application for short life investment
12. – (1) A company (“applicant”) may, in writing, apply to the Minister for provisional approval to carry out a short life investment, setting out the following—
   
   (a) the name and registered office of the company;
   (b) the names of all directors and shareholders of the company together, including shareholdings of the directors and shareholders;
   (c) a recent statement of all assets and liabilities of the company;
   (d) the location and description of the hotel or intergrated tourism development site;
   (e) the number and description of proposed bedrooms and beds and the toilet facilities;
   (f) the description of each proposed public room;
   (g) the detailed description of all proposed amenities, such as swimming pools, tennis courts, golf courses and recreation facilities;
   (h) a sketch plan showing in sufficient detail the site and layout of the proposed hotel and its amenities;
   (i) an estimate of the total cost of the short life investment;
   (j) the description, and an estimate of the cost, of each individual stage of construction and details of the proposed timetable for completion of the short life investment;
   (k) details of the proposed method of financing the short life investment;
   (l) evidence of the company’s ability to complete the short life investment;
   (m) estimates of the projected income from the new hotel or integrated tourism development;
   (n) the requirement of a hotel or integrated tourism development in the area;
   (o) the contribution of the short life investment into the area;
   (p) the nature and extent of short life investment
   (q) The project must provide evidence that proceeds from the sale of lots which form part of the integrated tourism development is reinvested in that project.

(2) The applicant must also send a copy of the application together with supporting documents to the Minister responsible for Tourism.

(3) The Minister may—
   
   (a) require the applicant to provide other information he may consider necessary in relation to the application; or
   (b) prescribe particular requirements applicable to any particular area of Fiji on short life investment package.

Completion of short life investment

13. – (1) If a company who has been given provisional approval, the company shall commence the implementation of the project within one year form the date of which the provisional approval was granted.
(b) Subject to the other provisions of this paragraph, where a company has been given provisional approval and has completed the project, the company may apply to the Minister for final approval.

(2) An application under subparagraph (1) shall be made in writing and be supported by the following—
   (a) fully audited final accounts showing the total cost of the short life investment; and
   (b) a final plan showing the site, layout and surrounding areas of the hotel.

(3) Upon receiving an application under subparagraph (1), the Minister may, after consulting with the Minister responsible for Tourism—
   (a) reject the application; or
   (b) give final approval to the application, with or without such conditions.

(4) Subject to paragraphs 14 and 15, no approval shall be given under this paragraph if the Minister is satisfied that the company has failed to complete the short life investment or has failed to comply with any conditions upon which provisional approval was given.

(5) If an application for final approval is rejected, the duties exempted under this Part immediately become due and payable by the company.

(6) The Minister must, in writing, notify the following persons of the decision to reject or grant the application—
   (a) the applicant;
   (b) the Minister responsible for Tourism;
   (c) the Commissioner; and
   (d) the Comptroller of Customs.

**Extension of time for completion**

14. — (1) If a company to which provisional approval has been given is unable to complete its short life investment within the period specified in the definition of “short life investment” in paragraph 2 due to unforeseen circumstances or some other act beyond the control of the company, the company may apply in writing to the Minister to extend the time by which the short life investment must be completed.

(2) If the Minister extends the time under subparagraph (1), the company shall continue to enjoy the duty free concession provided for by paragraph 11 during the extended period.
Final approval if completed

15. An application for final approval shall not be given unless –

(a) the Minister, after consulting the Minister responsible for Tourism, is satisfied that the company has in all respects completed the requirements of a short life investment; and

(b) the hotel or integrated tourism development is fully completed.

Effect of final approval

16. – (1) The final approval entitles the company to the benefits of a short life investment package from the first day of commercial operation of the hotel or integrated tourism development or such other date as the Minister may specify.

(2) The company is not entitled to claim the benefits of a short life investment package in any year unless it has been granted final approval and the Minister is satisfied that the shareholders of the company are substantially the same as the shareholders of the company when provisional approval was given.

(3) For the purposes of subparagraph (2), the shareholders of the company shall be deemed not to be substantially the same as the shareholders on the date when provisional approval was given unless –

(a) not less than 51 percent of the voting power in and the right to receive dividends from the company is held by or on behalf of the same persons; or

(b) not less than 50 percent of the nominal value of the allotted shares in the company are held by or on behalf of the same persons.

(4) Notwithstanding subparagraphs (2) and (3), the company may, in writing, apply for exemption from those paragraphs to the Minister who may grant or refuse to grant the exemption.

Exemption from tax

17. – If final approval is given under this Part to a company, the income of the company is exempt from tax on profits derived from the operation of the hotel or integrated tourism development if the capital investment in the hotel is more than $7,000,000. for a period of 10 years.

Depreciation

18. – (1) During the period from the date appointed by the Minister under paragraph 16 to the end of the accounting period in which the last day of the tax-free period falls, such depreciation shall be written off the assets of that company in calculating its profits or gains as would have been available to it under this Act if the company were not in receipt of the concession provided by this Part, and the written down values of such depreciable
assets at the end of the accounting period in which the last day of the tax-free period falls shall be calculated accordingly.

(2) For the purpose of subparagraph (1), the company shall not be obliged to claim initial allowances but such election shall in that event continue for the whole of the tax free period.

**Carry forward losses**

19. Subject to this Act or this Schedule, any loss incurred by the company in the operation of the hotel may be carried forward and set off against the total income of that hotel business or the total income from that hotel premises for the next 8 years in succession.  

**Electricity generation**

20. – (1) The company is entitled to be issued with a licence under the Electricity Act (Cap.180) to operate a generating station for the purposes of providing electricity for the hotel or integrated tourism development.

(2) Any electricity generated by the company and surplus to the company’s requirements may be sold.

(3) The company shall comply with all requirements of the Electricity Act (Cap. 180) in respect of its generating station.

**Annual accounts**

21. Within 6 months after the end of each financial year a company which is entitled to the benefits of a short life investment package shall submit to the Minister fully audited accounts, including other information that the Minister may require.

**Transferability of package**

22. If the hotel or integrated tourism development in respect of which a short life investment package has been granted is sold or to be sold, the purchaser or prospective purchaser may apply in writing to the Minister for the transfer to it of any remaining benefits of the short life investment package.

**Revocation of package**

23. The Minister may revoke any Part 2 or Part 3 investment if the company or hotel or integrated tourism development owner –

(a) has breached any conditions of provisional or final approval; or

(b) has failed to comply with any of the requirements of this Act or this Part; or

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34 Amended by Decree No.33 of 2012. Effective from 1st January 2012.
(c) has been convicted of an offence under this Act or any other written law relating to taxation, customs or excise.

Applicability of incentives

24. A hotel or integrated tourism development owner or a company is only entitled to either Part 2 investment allowance or Part 3 short life investment package for the same project, but not both.

 Regulations

25. The Minister may make regulations to prescribe matters required to be prescribed under this Schedule.

Transitional

26. – (1) Any approval for hotel or integrated tourism development investment granted in this Schedule before the 1st of January, 2009 will continue to ensure the benefits provided thereof, however approval for hotel investment granted after the 1st of January, 2009 will ensure benefits under the current amendments to the Schedule.

(2) Any integrated tourism development investment may be granted an approval under this Schedule commencing from the 6th April, 2009.

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1 Inserted by §5 Promulgation No. 27 of 2007
2 Inserted by §17(i) Promulgation No. 35 of 2008 WEF 1st January 2009
3 Amended by inserting the word “a local and‖ before the word‖an‖ by Decree No.8/2010 WEF 1st January 2010.
4 Substituted for “of‖ by §17(iii) Promulgation No. 35 of 2008 WEF 1st January 2009
5 New subparagraph (d) inserted by §17(ii) Promulgation No. 35 of 2008 WEF 1st January 2009
7 Inserted by Decree No. 37 of 2011 WEF 10th August 2011
8 Inserted by §18 Promulgation No.47 of 2007 WEF 1st January 2008
9 Inserted “2 and‖ by §17(iv) Promulgation No. 35 of 2008 WEF 1st January 2009
10 Repealed “‖ by §17(v)(a) Promulgation No. 35 of 2008 WEF 1st January 2009
11 Substituted by §17(v)(a), (b) & (c) Promulgation No. 35 of 2008 WEF 1st January 2009 – previously read: “(a) between $10,000,000 and $40,000,000, and the building of the new hotel commences on or after 1 July 1998; or
(b) over $40,000,000, and the building of the new hotel commences on or after 13 February 1996; and the building under sub-subparagraph (a) or (b) is completed on or before 31 December 2008;‖
12 Substituted for “14‖ by §19 Promulgation No.47 of 2007 WEF 1st January 2008
13 Inserted “s‖ by §18(i) Promulgation No. 35 of 2008 WEF 1st January 2009
14 Inserted “the‖ by §18(ii) Promulgation No. 35 of 2008 WEF 1st January 2009
15 Substituted for “despite‖ by §18(iii) Promulgation No. 35 of 2008 WEF 1st January 2009
16 Inserted the word “provisional‖ by §19(i) Promulgation No. 35 of 2008 WEF 1st January 2009
17 Substituted for “recent‖ by §19(ii) Promulgation No. 35 of 2008 WEF 1st January 2009
18 Re-numbered the existing sub-paragraph (l) as new sub-paragraph (m) by §19(iv) Promulgation No. 35 of 2008 WEF 1st January 2009
19 Inserted by §20 Promulgation No. 35 of 2008 WEF 1st January 2009
20 Amended by s7(b) deleted subparagraph (1) and substituted a new subparagraph (1)(a) and (b) in Decree No.70 of 2010.WEF 1st January 2011.
8. If a loss is incurred in connection with a hotel or integrated tourism development in respect of which investment allowance has been approved under paragraph 6, the loss may be set off against the income of any other hotel owned by the hotel or integrated tourism development for subsequent years, subject to the period specified under section 22 of the Act.

9. Subject to this Act or this Schedule, any loss incurred by the company in the operation of the hotel or integrated tourism development may be carried forward and set off against the total income of that hotel or integrated tourism development business or the total income from that hotel premises for the next 8 years in succession.
TWELFTH SCHEDULE¹
(Section 16D)

TAX FREE REGION INCENTIVES

PART 1 – GENERAL

Purpose
1. The purpose of this Schedule is to provide investors with certainty about the way the Minister will apply this schedule for encouragement of development in the Tax Free Region by the provision of financial inducements.

Acts to be read as one
2. This Schedule shall be read as one with the –
   (a) Customs Act and the Customs Tariff Act in so far as it relates to customs and duties;
   (b) Excise Act in so far as it relates to excise; and
   (c) Value Added Tax Decree 1991.

Interpretation
3. In this Schedule unless the context otherwise requires -

   "authorised officer" means any person appointed under paragraph (d) of Paragraph 8 of this Schedule;
   "enforcement officer" means any customs officer; an officer of the Ministry of Finance designated in writing by his respective Minister as an enforcement officer for the purpose of this Schedule;
   “indigenous Fijian landowner” means any native Fijian who holds a proprietary landowning unit in the Tax Free Region and who is registered in the Native Lands Commission (Vola ni Kawa Bula) under the Native Lands Act, Cap 133.
   "Minister” means the Minister responsible for Finance;
   "operating licence” means a licence granted by the Minister under subparagraph (2) of Paragraph 7 of this Schedule;
   "Tax Free Region" means any area under subparagraph (1) of Paragraph 4 of this Schedule.
"Trade, business or manufacture" means any activity that generates income, which the Minister may authorise any Company licensed under Paragraph 7 within a Tax Free Region.

PART 2 - ESTABLISHMENT OF TAX FREE REGION

Declaration of Tax Free Region

4.- (1) The following areas have been declared as the Tax Free Region:
   (a) Vanua Levu,
   (b) Rotuma,
   (c) Kadavu,
   (d) Levuka,
   (e) Lomaiviti; and
   (f) Lau.

   For the purpose of this paragraph, Vanua Levu includes Taveuni, Rabi, Kioa and other islands generally included for government’s administrative purpose as being in the Northern Division.

   (2) Areas that may be declared Tax Free Region under subparagraph (1) of this Paragraph shall include office and other facilities required for the proper customs supervision of goods entering or leaving the Region and shall conform to the requirements of a bonded Customs Area as stipulated under Paragraph 6 of the Customs Act.

Development, management and control of Tax Free Region

5.- (1) Responsibility for the development, management and control of Tax Free Region shall vest in the Minister.

   (2) The Minister may delegate responsibility for the development, management, or control of Tax Free Region to any statutory body, Government Department or company.

PART 3 - LICENSING OF TAX FREE REGION ACTIVITIES

Application for a licence in Tax Free Region
6. - (1) Any company may apply to the Minister for an operating licence.

(2) Every application under subparagraph (1) of this Paragraph shall be made in a form set out in Form 6 in the First Schedule.

**Grant of Tax Free Region licence and Criteria for grant of licence**

7.-(1) The Minister, when considering an application shall take into account that the company is a newly incorporated entity engaged in a new trade, business or manufacture in the Fiji Islands with the following level of investment-

(a) capital investment from $250,000 to $1,000,000
(b) capital investment above $1,000,000 to $2,000,000;
(c) capital investment above $2,000,000;

(2) The Minister, in concurrence with the Minister of Trade and Commerce, may grant to any company an operating licence in a form set out in Form 7 in the First Schedule authorising the carrying on of any trade, business or manufacture in a Tax Free Region.

(3) Any company seeking an operating licence for the carrying on of business in a Tax Free Region shall be required to -

(a) derive all of its income from trade, business or manufacture carried out in a Tax Free Region;
(b) generate employment opportunities for the people of Fiji;
(c) enhance, expand and improve the technological and trading capability and capacity of the economy of Fiji; and
(d) comply with any other condition deemed by the Minister to be appropriate under the circumstances.

**Conditions of operating licence**

8. - The Minister may attach to an operating licence certain conditions including conditions in regard to the following matters -

(a) the date, fixed by the Minister after consultation with the licensee, on or before which the licensee shall commence the trade, business or manufacture authorised by the licence. The date should be no longer than 12 months from the date of the project approval;
(b) If the licensee cannot commence the trade, business or manufacture at the date fixed by the Minister, the licensee may apply in writing to the Minister to extend
the time of commencement. If the Minister extends the time under this subparagraph, the commencement date will be the date determined by the Minister;

(c) the revocation of the licence if the licensee should at any time after the grant of the licence, undertake in a Tax Free Region any trade, business or manufacture not authorised by the licence; and

(d) the appointment by the licensee of an authorised officer who shall be an individual person and who shall be a resident as defined under this Act.

Revocation of licence

9. - (l) The Minister may revoke a licence if the company -

(a) has breached any conditions of the licence; or

(b) has failed to comply with any of the requirements of this Act or this Part; or

(c) has been convicted of an offence under this Act or any other written law relating to taxation, customs or excise.

(2) The Minister shall not revoke an operating licence unless a notice in writing is given informing the licensee of the intention to revoke the licence, the reasons for revoking the licence and giving the licensee at least twenty one days within which the licensee may make representation to the Minister.

(3) The Minister shall consider any representation made by the licensee and make a decision whether or not to revoke a licence.

Variation of conditions and transfer of Licence

10. - (1) The Minister, in concurrence with the Minister of Trade and Commerce, may

(a) vary at any time the conditions of a licence; and

(b) approve the transfer of a licence to another company fulfilling the requirements set out at subparagraph (3) of Paragraph 7.

(2) The approval for the transfer of the licence shall only be made if the Commissioner is satisfied that the former company has been in operation for two consecutive years from the date of the transfer.

(3) The transferee shall only enjoy the balance of the exemptions granted under Paragraph 12.
Register of licences

11. - (1) The Minister shall establish and maintain a register of the licences granted under subparagraph (3) of Paragraph 7 of this Schedule.

(2) There shall be entered in the register in respect of each licence -
(a) the date of commencement of the licence;
(b) the name, registered address and the authorised officer of the company to which the licence was granted; and
(c) the trade, business or manufacture to which the licence relates.

(3) The register shall be kept in the Ministry of Finance in Suva and shall be open to inspection during such times as the Minister may direct.

(4) Where a licence is transferred by the licensee in accordance with subparagraph (10) (1) (b) of this Schedule, the Company to which it is transferred shall submit its name, and registered address and authorised officer for inclusion in the register.

PART 4 - DUTY AND TAX EXEMPTIONS

Duty and tax exemptions for licensed activities in Tax Free Region

12. (1) A licence granted by the Minister under sub paragraph (2) of Paragraph 7 from the commencement year of such a licence, shall be provided in the following periods –

(i) any new activity approved and established between 1 January 2009 to 31 December 2014 shall be exempt from tax as follows:
   (a) capital investment from $250,000 to $1,000,000, for a period of 5 consecutive fiscal years; or
   (b) capital investment above $1,000,000 to $2,000,000, for a period of 7 consecutive fiscal years; or
   (c) capital investment above $2,000,000 for a period of 13 consecutive fiscal years.

(ii) any new activity approved and established from 1st January 2015 shall be exempt from tax for a period of 13 consecutive fiscal years with an initial capital investment of $2,000,000 or more.
(2) Subject to sub paragraph (1) and in accordance with the Customs Tariff Act, the Excise Act and this Act, the licensee shall be exempt from the following payments -

(a) duties leviable on the importation or purchase ex bond or excise duty leviable on purchase ex-excise factory of raw materials, machinery and equipment (including parts and materials) insofar as they are required for the establishment of the business in the Tax Free Region;

(b) tax normally leviable on chargeable income under this Act in respect of a company licensed under subparagraph (2) of Paragraph 7.

13. - (1) Notwithstanding, the exemptions granted under Paragraph 12:

(a) the income of any company granted a licence under subparagraph (2) of Paragraph 7 and having beneficial Indigenous Fijian landowner equity of at least 25 percent, shall be exempted from tax on profits for an additional five consecutive fiscal years; and

(b) the income of any hotel developer granted a licence under subparagraph (2) of Paragraph 7 and having beneficial Indigenous Fijian landowner equity of at least 25 percent shall be exempted from tax on profits for an additional seven consecutive fiscal years.

Provided further that no concession shall be granted under paragraph 13 for any year, if the Commissioner is not satisfied that the shareholders of the company are substantially the same as on the date when the concession was granted. For the purposes of this paragraph, the shareholders of a company shall not be deemed to be substantially the same if 25 per cent or more of the voting power or the right to receive dividends is not held by the same person.

(2) Where such income is subjected to tax under the laws of the State of that person, then tax exemption under this paragraph will not apply.

Computation of profits and gains

14. During the period from the appointed day to the end of the accounting period in which the last day of the tax concession period falls, such depreciation shall be written off the assets of that company in calculating its profits or gains as would have been available to it under the provisions of this Act if the company were not in receipt of the concession in respect of the approved enterprise, and the written down values of such depreciable assets at the end of the accounting period in which the last day of the tax concession period falls shall be calculated accordingly:
Provided that the company shall not be obliged to claim initial allowances but such election shall in that event continue for the whole of the tax free period.

End of tax free period

15. If the end of the tax concession period does not coincide with the end of an accounting period of the company, the profits or gains for the accounting period in which the last day of the tax concession falls will be apportioned between the parts of the accounting period which precede and follow the end of such tax concession period on a time basis, and the profits or gains so attributed to the part which precedes the end of the tax concession period shall be subject to the concessions set out in this Schedule which shall also be apportioned on a time basis.

PART 5 - CUSTOMS CONTROL AND DISPOSAL OF GOODS IN TAX FREE REGION

Disposal of goods taken into Tax Free Region

16. (1) No person shall deal with or otherwise dispose of any goods taken into a Tax Free Region except in the manner hereinafter provided.

(2) Goods in a Tax Free Region may -
(a) be removed from such Tax Free Region for export or sent into another Tax Free Region either in the original pack or otherwise; or
(b) be stored, exhibited, processed or manufactured or put to other uses in accordance with the provisions of this Schedule, or
(c) be destroyed or be disposed of as the Comptroller may direct.

Utilisation of exempted goods

17. Subject to the provisions of Paragraph 16 all goods exempted under Paragraph 12 shall be utilised only in a Tax Free Region.

PART 6 - MISCELLANEOUS

Enforcement officers
18.- Enforcement officers shall be responsible for the proper and efficient administration and control of the provisions of this Schedule.

**Power to make regulations**

19.- The Minister may make regulations for the proper administration of this Schedule.

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1 Inserted by §29 Promulgation No. 35 of 2008 WEF 1st January 2009
2 Substituted by §4(i) Promulgation No. 13 of 2009 WEF 1st January 2009 previously read:-

“7. - (l) The Minister, when considering an application shall take into account the following matters-

(a) the company is a newly incorporated entity engaged in a new trade, business or manufacture in the Fiji Islands; and

(b) the initial level of investment is more than $2,000,000.”

3 Amended by deleting the amount “$500,000” and substituting it with “$250,000” by Decree No.8/2010 WEF 1st January 2010.
4 Substituted by §4(ii) Promulgation No. 13 of 2009 WEF 1st January 2009 previously read:-

“(12) A licence granted by the Minister under subparagraph (2) of Paragraph 7 shall provide, for a period of thirteen consecutive fiscal years from the commencement year of such a licence, the exemption of the licensee, in accordance with the Customs Tariff Act, the Excise Act and this Act, from the payment of the following -

(a) duties leviable on the importation or purchase ex bond or excise duty leviable on purchase ex-excisery factory of raw materials, machinery and equipment (including parts and materials) insofar as they are required for the establishment of the business in the Tax Free Region;

(b) tax normally leviable on chargeable income under this Act in respect of a company licensed under subparagraph (2) of Paragraph 7.”

5 Amended by deleting the year “2009” and substituting it with the year “2014” by Decree No.8/2010 WEF 1st January 2010.
6 Amended by deleting the amount “$500,000” and substituting it with “$250,000” by Decree No.8/2010 WEF 1st January 2010.

7 Amended by deleting the amount the year “2010” and substituting it with “2015” by Decree No.8/2010 WEF 1st January 2010.

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**Controlled by Ministry of Finance**
## APPENDIX A

### TAX RATES FOR YEARS OF INCOME 1974 – 2005

#### I. Year of income 1974

**FOURTH SCHEDULE**

**RATES OF NORMAL TAX**

<table>
<thead>
<tr>
<th>When the chargeable income does not exceed</th>
<th>7½% of each dollar of chargeable income plus 12½% of each dollar in excess of $600</th>
</tr>
</thead>
<tbody>
<tr>
<td>$600</td>
<td>$45</td>
</tr>
<tr>
<td>exceeds $600 but does not exceed $2,000</td>
<td>$45 plus 12½% of each dollar in excess of $600</td>
</tr>
<tr>
<td>exceeds 2,000 but does not exceed $3,000</td>
<td>$220 plus 17½% of each dollar in excess of $2,000</td>
</tr>
<tr>
<td>exceeds 3,000 but does not exceed $4,000</td>
<td>$395 plus 22½% of each dollar in excess of $3,000</td>
</tr>
<tr>
<td>exceeds 4,000 but does not exceed $5,000</td>
<td>$620 plus 25% of each dollar in excess of $4,000</td>
</tr>
<tr>
<td>exceeds 4,500 but does not exceed $6,000</td>
<td>$745 plus 27½% of each dollar in excess of $4,500</td>
</tr>
<tr>
<td>exceeds 5,000 but does not exceed $7,000</td>
<td>$882.50 plus 30% of each dollar in excess of $5,000</td>
</tr>
<tr>
<td>exceeds 5,500 but does not exceed $8,000</td>
<td>$1,032.50 plus 32½% of each dollar in excess of $5,500</td>
</tr>
<tr>
<td>exceeds 6,000 but does not exceed $9,000</td>
<td>$1,195 plus 35% of each dollar in excess of $6,000</td>
</tr>
<tr>
<td>exceeds 6,500 but does not exceed $10,000</td>
<td>$1,370 plus 37½% of each dollar in excess of $6,500</td>
</tr>
<tr>
<td>exceeds 7,000 but does not exceed $11,000</td>
<td>$1,557.50 plus 40% of each dollar in excess of $7,000</td>
</tr>
<tr>
<td>exceeds 7,500 but does not exceed $12,000</td>
<td>$1,757.50 plus 42½% of each dollar in excess of $7,500</td>
</tr>
<tr>
<td>exceeds 8,000 but does not exceed $13,000</td>
<td>$1,970 plus 45% of each dollar in excess of $8,000</td>
</tr>
<tr>
<td>exceeds 10,000 but does not exceed $12,000</td>
<td>$2,870 plus 47½% of each dollar in excess of $10,000</td>
</tr>
<tr>
<td>In excess of $12,000</td>
<td>3,820 plus 50% in respect of any excess</td>
</tr>
</tbody>
</table>
APPENDIX A

TAX RATES FOR YEARS OF INCOME 1974—2005

I. Year of income 1974

FOURTH SCHEDULE

RATES OF NORMAL TAX

A. INDIVIDUALS

<table>
<thead>
<tr>
<th>Income Range</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>When the chargeable income does not exceed $600</td>
<td>7½% of each dollar of chargeable income</td>
</tr>
<tr>
<td>exceeds $600 but does not exceed $2,000</td>
<td>$45</td>
</tr>
<tr>
<td>exceeds $2,000 but does not exceed $3,000</td>
<td>$220</td>
</tr>
<tr>
<td>exceeds $3,000 but does not exceed $4,000</td>
<td>$395</td>
</tr>
<tr>
<td>exceeds $4,000 but does not exceed $4,500</td>
<td>$620</td>
</tr>
<tr>
<td>exceeds $4,500 but does not exceed $5,000</td>
<td>$745</td>
</tr>
<tr>
<td>exceeds $5,000 but does not exceed $5,500</td>
<td>$822.50</td>
</tr>
<tr>
<td>exceeds $5,500 but does not exceed $6,000</td>
<td>$1,032.5</td>
</tr>
<tr>
<td>exceeds $6,000 but does not exceed $6,500</td>
<td>$1,195</td>
</tr>
<tr>
<td>exceeds $6,500 but does not exceed $7,000</td>
<td>$1,370</td>
</tr>
<tr>
<td>exceeds $7,000 but does not exceed $7,500</td>
<td>$1,557.5</td>
</tr>
<tr>
<td>exceeds $7,500 but does not exceed $8,000</td>
<td>$1,757.5</td>
</tr>
<tr>
<td>exceeds $8,000 but does not exceed $10,000</td>
<td>$1,970</td>
</tr>
<tr>
<td>exceeds $10,000 but does not exceed $12,000</td>
<td>$2,870</td>
</tr>
<tr>
<td>In excess of $12,000</td>
<td>$3,820</td>
</tr>
</tbody>
</table>

B. COMPANIES
(i) Non-resident companies carrying on business in Fiji (other than non-Fiji shipping companies, non-Fiji mutual insurance companies in respect of life insurance business and non-Fiji proprietary or non-mutual insurance companies to the extent that the income of life insurance business is deemed to be mutual under subsection (1) of section 37) ........................................................................................................37½%
(ii) Non-resident mutual insurance companies in respect of life insurance business ..................................................................................................................22½%
(iii) Non-resident or non-mutual insurance companies to the extent that the income of their life insurance businesses is deemed to be mutual under subsection (1) of section 37 ..................................................22½%
(iv) Non-resident shipping companies in respect of all outgoing business from Fiji, whether freight or passengers ........................................................................2%
(v) Every other company ..............................................................................................................................30½%
II. Years of income 1975, 1976

FOURTH SCHEDULE

RATES OF NORMAL TAX

A. INDIVIDUALS, [ESTATES OF DECEASED PERSONS, TRUSTS AND SETTLEMENTS]

When the chargeable income does not exceed $600
7½% of each dollar of chargeable income
plus 12½% of each dollar of chargeable income in excess of $600
plus 17½% of each dollar in excess of $2,000
plus 22½% of each dollar in excess of $3,000
plus 25% of each dollar in excess of $4,000
plus 27½% of each dollar in excess of $4,500
plus 30% of each dollar in excess of $5,000
plus 32½% of each dollar in excess of $5,500
plus 35% of each dollar in excess of $6,000
plus 37½% of each dollar in excess of $6,500
plus 40% of each dollar in excess of $7,000
plus 42½% of each dollar in excess of $7,500
plus 45% of each dollar in excess of $8,000
plus 47½% of each dollar in excess of $10,000
plus 50% in respect of any excess

B. COMPANIES

(i) Non-resident companies carrying on business in Fiji (other than non-Fiji shipping companies, non-Fiji mutual insurance companies in respect of life insurance business and non-Fiji proprietary or non-mutual insurance companies to the extent that the income of life
insurance business is deemed to be mutual under subsection (1) of section 37) ................................................................. 37½\%
(ii) Non-resident mutual insurance companies in respect of life insurance business .............................................................. 22½\%
(iii) Non-resident or non-mutual insurance companies to the extent that the income of their life insurance businesses is deemed to be mutual under subsection (1) of section 37 .......................................................... 22½\%
(iv) Non-resident shipping companies ...................................................... 2\%
(v) Every other company .................................................................. 30½\%

1 Inserted (by substitution) by §17 Act 10/1975 WEF 1st January 1975
### III. Years of income 1977, 1978, 1979

#### FOURTH SCHEDULE

**RATES OF NORMAL TAX**

**A. INDIVIDUALS, ESTATES OF DECEASED PERSONS, TRUSTS AND SETTLEMENTS**

<table>
<thead>
<tr>
<th>Chargeable Income</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>$600</td>
<td>7½% of each dollar of chargeable income</td>
</tr>
<tr>
<td>$600 to $2,000</td>
<td>$45 plus 12½% of each dollar of chargeable income in excess of $600</td>
</tr>
<tr>
<td>$2,000 to $3,000</td>
<td>$220 plus 17½% of each dollar in excess of $2,000</td>
</tr>
<tr>
<td>$3,000 to $4,000</td>
<td>$395 plus 22½% of each dollar in excess of 3,000</td>
</tr>
<tr>
<td>$4,000 to $4,500</td>
<td>$620 plus 25% of each dollar in excess of 4,000</td>
</tr>
<tr>
<td>$4,500 to $5,000</td>
<td>$745 plus 27½% of each dollar in excess of 4,500</td>
</tr>
<tr>
<td>$5,000 to $5,500</td>
<td>$882.50 plus 30% of each dollar in excess of 5,000</td>
</tr>
<tr>
<td>$5,500 to $6,000</td>
<td>$1,032.50 plus 32½% of each dollar in excess of 5,500</td>
</tr>
<tr>
<td>$6,000 to $6,500</td>
<td>$1,195 plus 35% of each dollar in excess of 6,000</td>
</tr>
<tr>
<td>$6,500 to $7,000</td>
<td>$1,370 plus 37½% of each dollar in excess of 6,500</td>
</tr>
<tr>
<td>$7,000 to $7,500</td>
<td>$1,557.50 plus 40% of each dollar in excess of 7,000</td>
</tr>
<tr>
<td>$7,500 to $8,000</td>
<td>$1,757.50 plus 42½% of each dollar in excess of 7,500</td>
</tr>
<tr>
<td>$8,000 to $10,000</td>
<td>$1,970 plus 45% of each dollar in excess of 8,000</td>
</tr>
<tr>
<td>$10,000 to $12,000</td>
<td>$2,870 plus 47½% of each dollar in excess of 10,000</td>
</tr>
<tr>
<td>In excess of $12,000</td>
<td>$3,820 plus 50% in respect of any excess</td>
</tr>
</tbody>
</table>

**B. COMPANIES**

(i) Non-resident companies carrying on business in Fiji (other than non-Fiji shipping companies [in respect of all outgoing business from Fiji, whether freight or passengers], non-Fiji mutual insurance companies in respect of life insurance business and non-Fiji proprietary or non-
mutual insurance companies to the extent that the income of life insurance business is deemed to be mutual under subsection (1) of section 37 .......................................................... 37½%

(ii) Non-resident mutual insurance companies in respect of life insurance business .......................................................................................................................... 22½%

(iii) Non-resident or non-mutual insurance companies to the extent that the income of their life insurance businesses is deemed to be mutual under subsection (1) of section 37 .......................................................... 22½%

(iv) Non-resident shipping companies [in respect of all outgoing business from Fiji, whether freight or passengers] .............................................................. 2%

(v) Every other company .............................................................................. 30½%

1 Inserted by §14(a) Act 10/1977 WEF 1st January 1977
2 Inserted by §14(b) Act 10/1977 WEF 1st January 1977
IV. Year of income 1980

FOURTH SCHEDULE

RATES OF NORMAL TAX

A. INDIVIDUALS, ESTATES OF DECEASED PERSONS, TRUSTS AND SETTLEMENTS

When the chargeable income does not exceed ............................... $600

7½% of each dollar of chargeable income

plus 12½% of each dollar of chargeable income in excess of $600

plus 17½% of each dollar in excess of $2,000

plus 22½% of each dollar in excess of 3,000

plus 25% of each dollar in excess of 4,000

plus 27½% of each dollar in excess of 4,500

plus 30% of each dollar in excess of 5,000

plus 32½% of each dollar in excess of 5,500

plus 35% of each dollar in excess of 6,000

plus 37½% of each dollar in excess of 6,500

plus 40% of each dollar in excess of 7,000

plus 42½% of each dollar in excess of 7,500

plus 45% of each dollar in excess of 8,000

plus 47½% of each dollar in excess of 10,000

plus 50% in respect of any excess

B. COMPANIES

(i) Non-resident companies carrying on business in Fiji (other than non-Fiji shipping companies in respect of all outgoing business from Fiji, whether freight or passengers, non-Fiji mutual insurance companies in respect of life insurance business and non-Fiji proprietary or non-
mutual insurance companies to the extent that the income of life insurance business is deemed to be mutual under subsection (1) of section 37) .................................................................42½%\(^1\)

(ii) Non-resident mutual insurance companies in respect of life insurance business .................................................................27½%\(^2\)

(iii) Non-resident or non-mutual insurance companies to the extent that the income of their life insurance businesses is deemed to be mutual under subsection (1) of section 37.................................................................22½%

(iv) Non-resident shipping companies in respect of all outgoing business from Fiji, whether freight or passengers .................................................................2%

(v) Every other company.................................................................35%\(^3\)

---

\(^1\) Substituted for 37½% by §17 Act 21/1980 WEF 1st January 1980

\(^2\) Substituted for 22½% by §17 Act 21/1980 WEF 1st January 1980

\(^3\) Substituted for 30⅔% by §17 Act 21/1980 WEF 1st January 1980

FOURTH SCHEDULE

RATES OF NORMAL TAX

A. INDIVIDUALS, ESTATES OF DECEASED PERSONS, TRUSTS AND SETTLEMENTS

When the chargeable income does not exceed $600, 5% of each dollar of chargeable income in excess of $600

When the chargeable income exceeds $600 but does not exceed $2,500, $30.00

When the chargeable income exceeds $2,500 but does not exceed $4,000, $239.00

When the chargeable income exceeds $4,000 but does not exceed $5,500, $509.00

When the chargeable income exceeds $5,500 but does not exceed $7,000, $921.50

When the chargeable income exceeds $7,000 but does not exceed $8,500, $1,409.00

When the chargeable income exceeds $8,500 but does not exceed $10,000, $2,209.00

When the chargeable income exceeds $10,000 but does not exceed $12,000, $2,646.5

When the chargeable income exceeds $12,000 but does not exceed $20,000, $3,546.5

When the chargeable income exceeds $20,000, $7,346.5

B. COMPANIES

(i) Non-resident companies carrying on business in Fiji (other than non-Fiji shipping companies in respect of all outgoing business from Fiji, whether freight or passengers, non-Fiji mutual insurance companies in respect of life insurance business and non-Fiji proprietary or non-mutual insurance companies to the extent that the income of life insurance business is deemed to be mutual under subsection (1) of section 37) ................................................................. 42½%

(ii) Non-resident mutual insurance companies in respect of life insurance business ................................................................. 27½%

(iii) Non-resident or non-mutual insurance companies to the extent that the income of their life insurance businesses is deemed to be mutual under subsection (1) of section 37 ................................................................. 22½%
(iv) Non-resident shipping companies in respect of all outgoing business from Fiji, whether freight or passengers .......................................................... 2%
(v) Every other company............................................................................ 35%

1 Table A substituted by §2 Act 1/1981 wef 1st January 1981

FOURTH SCHEDULE

RATES OF NORMAL TAX

A. INDIVIDUALS, ESTATES OF DECEASED PERSONS, TRUSTS AND SETTLEMENTS

<table>
<thead>
<tr>
<th>When the chargeable income—</th>
<th>$</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>does not exceed ..........</td>
<td>1,500</td>
<td>5% of each dollar of chargeable income plus 10% of each dollar of chargeable income in excess of $1,500</td>
</tr>
<tr>
<td>exceeds $1,500 but does not exceed 3,000</td>
<td>75.00</td>
<td>5% of each dollar of chargeable income in excess of $1,500</td>
</tr>
<tr>
<td>exceeds $3,000 but does not exceed 4,000</td>
<td>225.00</td>
<td>plus 18% of each dollar in excess of $3,000</td>
</tr>
<tr>
<td>exceeds $4,000 but does not exceed 5,500</td>
<td>405.00</td>
<td>plus 27.5% of each dollar in excess of $4,000</td>
</tr>
<tr>
<td>exceeds $5,500 but does not exceed 7,000</td>
<td>817.50</td>
<td>plus 32.5% of each dollar in excess of $5,500</td>
</tr>
<tr>
<td>exceeds $7,000 but does not exceed 9,000</td>
<td>1,305.00</td>
<td>plus 37.5% of each dollar in excess of $7,000</td>
</tr>
<tr>
<td>exceeds $9,000 but does not exceed 15,000</td>
<td>2,055.00</td>
<td>plus 42.5% of each dollar in excess of $9,000</td>
</tr>
<tr>
<td>exceeds $15,000 but does not exceed 25,000</td>
<td>4,605.00</td>
<td>plus 45% of each dollar in excess of $15,000</td>
</tr>
<tr>
<td>exceeds $25,000 but does not exceed 40,000</td>
<td>9,105.00</td>
<td>plus 47.5% of each dollar in excess of $25,000</td>
</tr>
<tr>
<td>exceeds $40,000............</td>
<td>16,230.00</td>
<td>plus 50% in respect of any excess</td>
</tr>
</tbody>
</table>

B. COMPANIES

(i) Non-resident companies carrying on business in Fiji (other than non-Fiji shipping companies in respect of all outgoing business from Fiji, whether freight or passengers, non-Fiji mutual insurance companies in respect of life insurance business and non-Fiji proprietary or non-mutual insurance companies to the extent that the income of life insurance business is deemed to be mutual under subsection (1) of section 37) .................................................................................................................. 45%

(ii) Non-resident mutual insurance companies in respect of life insurance business ......................................................................................................................................... 30%

(iii) Non-resident or non-mutual insurance companies to the extent that the income of their life insurance businesses is deemed to be mutual under subsection (1) of section 37.................................................................................................................. 30%
(iv) Non-resident shipping companies in respect of all outgoing business
from Fiji, whether freight or passengers .......................................................... 2%
(v) Every other company ............................................................................. 35%

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1 Table A substituted by §14 Act 23/1985 w.e.f 1st January 1986
2 Table B substituted by §14 Act 23/1985 w.e.f 1st January 1986

FOURTH SCHEDULE

RATES OF NORMAL TAX

A. INDIVIDUALS, ESTATES OF DECEASED PERSONS, TRUSTS AND SETTLEMENTS

<table>
<thead>
<tr>
<th>$ not exceed</th>
<th>$</th>
<th>$</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>1,500</td>
<td>60.00</td>
<td>4% of each dollar of chargeable income plus 8% of each dollar of chargeable income in excess of $1,500</td>
<td></td>
</tr>
<tr>
<td>3,000</td>
<td>180.00</td>
<td>plus 14.4% of each dollar in excess of $3,000</td>
<td></td>
</tr>
<tr>
<td>4,000</td>
<td>324.00</td>
<td>plus 22% of each dollar in excess of $4,000</td>
<td></td>
</tr>
<tr>
<td>5,500</td>
<td>654.00</td>
<td>plus 26% of each dollar in excess of $5,500</td>
<td></td>
</tr>
<tr>
<td>7,000</td>
<td>1,044.00</td>
<td>plus 30% of each dollar in excess of $7,000</td>
<td></td>
</tr>
<tr>
<td>9,000</td>
<td>1,644.00</td>
<td>plus 34% of each dollar in excess of $9,000</td>
<td></td>
</tr>
<tr>
<td>15,000</td>
<td>3,684.00</td>
<td>plus 36% of each dollar in excess of $15,000</td>
<td></td>
</tr>
<tr>
<td>25,000</td>
<td>7,284.00</td>
<td>plus 38% of each dollar in excess of $25,000</td>
<td></td>
</tr>
<tr>
<td>40,000</td>
<td>12,984.00</td>
<td>plus 40% in respect of any excess</td>
<td></td>
</tr>
</tbody>
</table>

B. COMPANIES

(i) Non-resident companies carrying on business in Fiji (other than non-Fiji shipping companies in respect of all outgoing business from Fiji, whether freight or passengers, non-Fiji mutual insurance companies in respect of life insurance business and non-Fiji proprietary or non-mutual insurance companies to the extent that the income of life insurance business is deemed to be mutual under subsection (1) of section 37) .......................................................... 45%

(ii) Non-resident mutual insurance companies in respect of life insurance business .................................................. 30%

(iii) Non-resident or non-mutual insurance companies to the extent that the income of their life insurance businesses is deemed to be mutual under subsection (1) of section 37................................. 30%
(iv) Non-resident shipping companies in respect of all outgoing business from Fiji, whether freight or passengers ............................................ 2%
(v) Every other company .................................................................................................................. 35%

1 See §7B for special rules of assessment and application of rates of tax for 1992 year of income
2 Table A substituted by §9 Decree 10/1990 w.e.f 1st January 1990
VIII. Years of income 1992 (1st July-31st December)\(^1\), 1993, 1994

FOURTH SCHEDULE\(^2\)

RATES OF NORMAL TAX FOR INDIVIDUALS, ESTATES OF DECEASED PERSONS, TRUSTS AND SETTLEMENTS

A. \(^3\) RESIDENTS

<table>
<thead>
<tr>
<th>Chargeable Income $</th>
<th>Tax payable $</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 – 4,500</td>
<td>Nil</td>
</tr>
<tr>
<td>4,501 – 7,000</td>
<td>Nil + 15% of excess over $4,500</td>
</tr>
<tr>
<td>7,001 – 15,000</td>
<td>375 + 25% of excess over $7,000</td>
</tr>
<tr>
<td>15,001 +</td>
<td>2,375 + 35% of excess over $15,000</td>
</tr>
</tbody>
</table>

B. NON-RESIDENTS

<table>
<thead>
<tr>
<th>Chargeable Income $</th>
<th>Tax payable $</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 – 4,500</td>
<td>Nil + 20% of excess over 0</td>
</tr>
<tr>
<td>4,501 – 7,000</td>
<td>900 + 25% of excess over 4,500</td>
</tr>
<tr>
<td>7,001 – 15,000</td>
<td>1,525 + 30% of excess over 7,000</td>
</tr>
<tr>
<td>15,001 +</td>
<td>3,925 + 35% of excess over $15,000</td>
</tr>
</tbody>
</table>

C. COMPANIES

(i) Non-resident companies carrying on business in Fiji (other than non-Fiji shipping companies in respect of all outgoing business from Fiji, whether freight or passengers, non-Fiji mutual insurance companies in respect of life insurance business and non-Fiji proprietary or non-mutual insurance companies to the extent that the income of life insurance business is deemed to be mutual under subsection (1) of section 37) ................................................................. 45%

(ii) Non-resident mutual insurance companies in respect of life insurance business ................................................................. 30%

(iii) Non-resident or non-mutual insurance companies to the extent that the income of their life insurance businesses is deemed to be mutual under subsection (1) of section 37. ................................................................. 30%

(iv) Non-resident shipping companies in respect of all outgoing business from Fiji, whether freight or passengers .................................................. 2%

(v) Every other company ................................................................................. 35%

\(^1\) See §7B for special rules of assessment and application of rates of tax for 1992 year of income

\(^2\) Fourth Schedule substituted by §9(1) Act 2/1993 w.e.f 1st July 1992

\(^3\) Table A previously substituted by §15 Decree 30/1992 w.e.f 1st July 1992 – previously read:
## A. INDIVIDUALS, ESTATES OF DECEASED PERSONS, TRUSTS AND SETTLEMENTS

When the chargeable income:

<table>
<thead>
<tr>
<th>Income Range</th>
<th>Tax Liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>exceeds $4,500 but does not exceed $7,000</td>
<td>Nil plus 15% of each dollar in excess of $4,500</td>
</tr>
<tr>
<td>exceeds $7,000 but does not exceed $15,000</td>
<td>$375 plus 25% of each dollar in excess of $7,000</td>
</tr>
<tr>
<td>exceeds $15,000</td>
<td>$2,375 plus 35% of each dollar in excess of $15,000</td>
</tr>
</tbody>
</table>

FOURTH SCHEDULE

RATES OF NORMAL TAX FOR INDIVIDUALS, ESTATES OF DECEASED PERSONS, TRUSTS AND SETTLEMENTS

A. 1 RESIDENTS

<table>
<thead>
<tr>
<th>Chargeable Income $</th>
<th>Tax payable $</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 – 5,000</td>
<td>Nil</td>
</tr>
<tr>
<td>5,001 – 7,000</td>
<td>Nil + 15% of excess over $5,000</td>
</tr>
<tr>
<td>7,001 – 15,000</td>
<td>300 + 25% of excess over $7,000</td>
</tr>
<tr>
<td>15,001 +</td>
<td>2,300 + 35% of excess over $15,000</td>
</tr>
</tbody>
</table>

B. 2 NON-RESIDENTS

<table>
<thead>
<tr>
<th>Chargeable Income $</th>
<th>Tax payable $</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 – 4,500</td>
<td>Nil + 20% of excess over 0</td>
</tr>
<tr>
<td>4,501 – 7,000</td>
<td>900 + 25% of excess over 4,500</td>
</tr>
<tr>
<td>7,001 – 15,000</td>
<td>1,525 + 30% of excess over 7,000</td>
</tr>
<tr>
<td>15,001 +</td>
<td>3,925 + 35% of excess over $15,000</td>
</tr>
</tbody>
</table>

C. COMPANIES

(i) Non-resident companies carrying on business in Fiji (other than non-Fiji shipping companies in respect of all outgoing business from Fiji, whether freight or passengers, non-Fiji mutual insurance companies in respect of life insurance business and non-Fiji proprietary or non-mutual insurance companies to the extent that the income of life insurance business is deemed to be mutual under subsection (1) of section 37) ................................................................. 45%

(ii) Non-resident and resident mutual insurance companies in respect of life insurance business ................................................................. 30%

(iii) Non-resident or non-mutual insurance companies to the extent that the income of their life insurance businesses is deemed to be mutual under subsection (1) of section 37 ................................................................. 30%

(iv) Non-resident shipping companies in respect of all outgoing business from Fiji, whether freight or passengers ........................................... 2%

(v) Every other company ................................................................................. 35%

1 Table A substituted by §7 Act 18/1995 w.e.f 1st January 1995
2 Table B substituted by §7 Act 18/1995 w.e.f 1st January 1995 – identical to Table B substituted by §9(1) Act 2/1993 w.e.f 1st July 1992
X. Years of income 1999, 2000

FOURTH SCHEDULE

RATES OF NORMAL TAX FOR INDIVIDUALS, ESTATES OF DECEASED PERSONS, TRUSTS AND SETTLEMENTS

A. 1 RESIDENTS

<table>
<thead>
<tr>
<th>Chargeable Income $</th>
<th>Tax payable $</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 – 6,500</td>
<td>Nil</td>
</tr>
<tr>
<td>6,501 – 8,500</td>
<td>Nil + 15% of excess over $6,500</td>
</tr>
<tr>
<td>8,501 – 15,500</td>
<td>300 + 25% of excess over $8,500</td>
</tr>
<tr>
<td>15,501 +</td>
<td>2,050 + 35% of excess over $15,500</td>
</tr>
</tbody>
</table>

B. 2 NON-RESIDENTS

<table>
<thead>
<tr>
<th>Chargeable Income $</th>
<th>Tax payable $</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 – 6,500</td>
<td>Nil + 20% of excess over 0</td>
</tr>
<tr>
<td>6,501 – 8,500</td>
<td>1,300 + 25% of excess over $6,500</td>
</tr>
<tr>
<td>8,501 – 15,500</td>
<td>1,800 + 30% of excess over $8,500</td>
</tr>
<tr>
<td>15,501 +</td>
<td>3,900 + 35% of excess over $15,500</td>
</tr>
</tbody>
</table>

C. COMPANIES

(i) Non-resident companies carrying on business in Fiji (other than non-Fijian shipping companies in respect of all outgoing business from Fiji, whether freight or passengers, non-Fijian mutual insurance companies in respect of life insurance business and non-Fijian proprietary or non-mutual insurance companies to the extent that the income of life insurance business is deemed to be mutual under subsection (1) of section 37) .................................................. 45%
(ii) Non-resident [and resident] 3 mutual insurance companies in respect of life insurance business ................................................................. 30%
(iii) Non-resident or non-mutual insurance companies to the extent that the income of their life insurance businesses is deemed to be mutual under subsection (1) of section 37 ................................................................. 30%
(iv) Non-resident shipping companies in respect of all outgoing business from Fiji, whether freight or passengers ........................................ 2%
(v) Every other company ........................................................................... 35%

1 Table A substituted by §10 Act 3/1999 w.e.f. 1st January 1999
2 Table B substituted by §10 Act 3/1999 w.e.f. 1st January 1999
3 Inserted by §12 Act 10/1998 w.e.f. 1st January 1999
XI. Year of income 2001, 2002, 2003¹

FOURTH SCHEDULE

RATES OF NORMAL TAX

A. ESTATE OF DECEASED INDIVIDUAL, TRUSTS, SETTLEMENTS AND RESIDENT INDIVIDUALS

<table>
<thead>
<tr>
<th>Chargeable Income</th>
<th>Tax payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 – 6,500</td>
<td>Nil</td>
</tr>
<tr>
<td>6,501 – 10,000</td>
<td>Nil + 15% of excess over $6,500</td>
</tr>
<tr>
<td>10,001 – 20,000</td>
<td>525 + 25% of excess over $10,000</td>
</tr>
<tr>
<td>20,001 +</td>
<td>3,025 + 34% of excess over $20,000</td>
</tr>
</tbody>
</table>

Table A2 - Year of assessment 2002

<table>
<thead>
<tr>
<th>Chargeable Income</th>
<th>Tax payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 – 6,500</td>
<td>Nil</td>
</tr>
<tr>
<td>6,501 – 10,000</td>
<td>Nil + 15% of excess over $6,500</td>
</tr>
<tr>
<td>10,001 – 20,000</td>
<td>525 + 25% of excess over $10,000</td>
</tr>
<tr>
<td>20,001 +</td>
<td>3,025 + 32% of excess over $20,000</td>
</tr>
</tbody>
</table>

Table A3 - Year of assessment 2003 and subsequent years

<table>
<thead>
<tr>
<th>Chargeable Income</th>
<th>Tax payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 – 6,500</td>
<td>Nil</td>
</tr>
<tr>
<td>6,501 – 10,000</td>
<td>Nil + 15% of excess over $6,500</td>
</tr>
<tr>
<td>10,001 – 20,000</td>
<td>525 + 25% of excess over $10,000</td>
</tr>
<tr>
<td>20,001 +</td>
<td>3,025 + 30% of excess over $20,000</td>
</tr>
</tbody>
</table>

B. NON-RESIDENTS

Table B1 - Year of assessment 2001

<table>
<thead>
<tr>
<th>Chargeable Income</th>
<th>Tax payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 – 6,500</td>
<td>20% of excess over 0</td>
</tr>
<tr>
<td>6,501 – 10,000</td>
<td>1,300 + 25% of excess over $6,500</td>
</tr>
<tr>
<td>10,001 – 20,000</td>
<td>2,175 + 30% of excess over $10,000</td>
</tr>
<tr>
<td>20,001 +</td>
<td>5,175 + 34% of excess over $20,000</td>
</tr>
</tbody>
</table>
Table B2 - Year of assessment 2002

<table>
<thead>
<tr>
<th>Chargeable Income</th>
<th>Tax payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0 – 6,500</td>
<td>20% of excess over 0</td>
</tr>
<tr>
<td>6,501 – 10,000</td>
<td>1,300 + 25% of excess over $6,500</td>
</tr>
<tr>
<td>10,001 – 20,000</td>
<td>2,175 + 30% of excess over $10,000</td>
</tr>
<tr>
<td>20,001 +</td>
<td>5,175 + 32% of excess over $20,000</td>
</tr>
</tbody>
</table>
Table B3 - Year of assessment 2003 and subsequent years

<table>
<thead>
<tr>
<th>Chargeable Income</th>
<th>Tax payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>0 – 6,500</td>
<td>20% of excess over 0</td>
</tr>
<tr>
<td>6,501 – 10,000</td>
<td>1,300 + 25% of excess over $6,500</td>
</tr>
<tr>
<td>10,001 +</td>
<td>2,175 + 30% of excess over $10,000</td>
</tr>
</tbody>
</table>

C. COMPANIES

Table C1

(a) Every company, other than companies to which paragraph (b), (c) or (d) applies ................................................................. 34%
(b) Mutual insurance companies in respect of life insurance business ........................................ 30%
(c) Non-resident or non-mutual insurance companies to the extent that the income of their life insurance businesses is deemed to be mutual under section 37(1) ..................................................................................................................................................................................... 30%
(d) Non-resident shipping companies ................................................................................................................................. 2%

Table C2

(a) Every company, other than companies to which paragraph (b), (c) or (d) applies ................................................................. 32%
(b) Mutual insurance companies in respect of life insurance business ........................................ 30%
(c) Non-resident or non-mutual insurance companies to the extent that the income of their life insurance businesses is deemed to be mutual under section 37(1) ..................................................................................................................................................................................... 30%
(d) Non-resident shipping companies ................................................................................................................................. 2%

Table C3

(a) Every company, other than companies to which paragraph (b), (c) or (d) applies ................................................................. 30%
(b) Mutual insurance companies in respect of life insurance business ........................................ 30%
(c) Non-resident or non-mutual insurance companies to the extent that the income of their life insurance businesses is deemed to be mutual under section 37(1) ..................................................................................................................................................................................... 30%
(d) Non-resident shipping companies ................................................................................................................................. 2%

---

XIII. Year of income 2001, 2002, 2003\(^1\)

RATES OF NORMAL TAX

A. ESTATES OF DECEASED INDIVIDUALS, TRUSTS, SETTLEMENTS AND RESIDENT INDIVIDUALS

Table A1 – Year of assessment 2001

<table>
<thead>
<tr>
<th>Chargeable income $</th>
<th>Tax payable $</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–6,500</td>
<td>Nil</td>
</tr>
<tr>
<td>6,501–10,000</td>
<td>15% of excess over $6,500</td>
</tr>
<tr>
<td>10,001–20,000</td>
<td>525 + 25% of excess over $10,000</td>
</tr>
<tr>
<td>20,001 +</td>
<td>3,025 + 34% of excess over $20,000</td>
</tr>
</tbody>
</table>

Table A2 – Year of assessment 2002

<table>
<thead>
<tr>
<th>Chargeable income $</th>
<th>Tax payable $</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–6,500</td>
<td>Nil</td>
</tr>
<tr>
<td>6,501–10,000</td>
<td>15% of excess over $6,500</td>
</tr>
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<td>525 + 25% of excess over $10,000</td>
</tr>
<tr>
<td>20,001 +</td>
<td>3,025 + 32% of excess over $20,000</td>
</tr>
</tbody>
</table>

Table A3 – Year of assessment 2003

<table>
<thead>
<tr>
<th>Chargeable income $</th>
<th>Tax payable $</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–7,500</td>
<td>Nil</td>
</tr>
<tr>
<td>7,501–10,000</td>
<td>15% of excess over $7,500</td>
</tr>
<tr>
<td>10,001–20,000</td>
<td>375 + 25% of excess over $10,000</td>
</tr>
<tr>
<td>20,001 +</td>
<td>2,875 + 32% of excess over $20,000</td>
</tr>
</tbody>
</table>
Table A4 - Year of assessment 2004 and subsequent years

<table>
<thead>
<tr>
<th>Chargeable income</th>
<th>Tax payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–7,500</td>
<td>Nil</td>
</tr>
<tr>
<td>7,501–10,000</td>
<td>15% of excess over $7,500</td>
</tr>
<tr>
<td>10,001–20,000</td>
<td>375 + 25% of excess over $10,000</td>
</tr>
<tr>
<td>20,001+</td>
<td>2,875 + 30% of excess over $20,000</td>
</tr>
</tbody>
</table>
B. NON-RESIDENT INDIVIDUALS

Table B1 – Year of assessment 2001

<table>
<thead>
<tr>
<th>Chargeable income $</th>
<th>Tax payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>0– 6,500</td>
<td>20% of excess over $0</td>
</tr>
<tr>
<td>6,501–10,000</td>
<td>1,300 + 25% of excess over $6,500</td>
</tr>
<tr>
<td>10,001–20,000</td>
<td>2,175 + 30% of excess over $10,000</td>
</tr>
<tr>
<td>20,001 +</td>
<td>5,175 + 34% of excess over $20,000</td>
</tr>
</tbody>
</table>

Table B2 – Year of assessment 2002

<table>
<thead>
<tr>
<th>Chargeable income $</th>
<th>Tax payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>0– 6,500</td>
<td>20% of excess over $0</td>
</tr>
<tr>
<td>6,501–10,000</td>
<td>1,300 + 25% of excess over $6,500</td>
</tr>
<tr>
<td>10,001–20,000</td>
<td>2,175 + 30% of excess over $10,000</td>
</tr>
<tr>
<td>20,001 +</td>
<td>5,175 + 32% of excess over $20,000</td>
</tr>
</tbody>
</table>

Table B3 – Year of assessment 2003

<table>
<thead>
<tr>
<th>Chargeable income $</th>
<th>Tax payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>0– 7,500</td>
<td>20% of excess over $0</td>
</tr>
<tr>
<td>7,501–10,000</td>
<td>1,500 + 25% of excess over $7,500</td>
</tr>
<tr>
<td>10,001–20,000</td>
<td>2,125 + 30% of excess over $10,000</td>
</tr>
<tr>
<td>20,001 +</td>
<td>5,125 + 32% of excess over $20,000</td>
</tr>
</tbody>
</table>

Table B4 - Year of assessment 2004 and subsequent years

<table>
<thead>
<tr>
<th>Chargeable income $</th>
<th>Tax payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>0– 7,500</td>
<td>20% of excess over $0</td>
</tr>
<tr>
<td>7,501–10,000</td>
<td>1,500 + 25% of excess over $7,500</td>
</tr>
</tbody>
</table>
C. COMPANIES

Table C1 – Year of assessment 2001

(a) Every company, other than companies to which paragraph (b), (c) or (d) applies.................................................................34%

(b) Mutual insurance companies in respect of life insurance business .................................................................30%

(c) Non-resident or non-mutual insurance companies to the extent that the income of their life insurance businesses is deemed to be mutual under section 37(1) .................................................................30%

(d) Non-resident shipping companies ........................................2%

Table C2 – Year of assessment 2002

(a) Every company, other than companies to which paragraph (b), (c) or (d) applies.................................................................32%

(b) Mutual insurance companies in respect of life insurance business .................................................................30%

(c) Non-resident or non-mutual insurance companies to the extent that the income of their life insurance businesses is deemed to be mutual under section 37(1) .................................................................30%

(d) Non-resident shipping companies ........................................2%

Table C3 – Year of assessment 2003

(a) Every company, other than companies to which paragraph (b), (c) or (d) applies.................................................................32%

(b) Mutual insurance companies in respect of life insurance business .................................................................30%

(c) Non-resident or non-mutual insurance companies to the extent that the income of their life insurance businesses is deemed to be mutual under section 37(1) .................................................................30%

(d) Non-resident shipping companies ........................................2%.

Table C4 – Year of assessment 2004 and subsequent years

(a) Every company, other than companies to which paragraph (b), (c) or (d) applies.................................................................30%
(b) Mutual insurance companies in respect of life insurance business .................................................. 30%

(c) Non-resident or non-mutual insurance companies to the extent that the income of their life insurance businesses is deemed to be mutual under section 37(1) .......................................................... 30%

(d) Non-resident shipping companies .......................................................... 2%

1 The legislated 2003 tax rates with regards to Tables A, B and C was amended in the 2003 Budget. It was decided that the tax rate for the year of assessment 2003 be maintained at 32%. A further policy decision of increasing the tax threshold from $6500 to $7500 is also reflected in Tables A and B.

**RATES OF NORMAL TAX**

A RESIDENT INDIVIDUALS AND RESIDENT INDIVIDUAL TRUSTEES

Table A1 – Year of assessment 2001

<table>
<thead>
<tr>
<th>Chargeable income $</th>
<th>Tax payable $</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–6,500</td>
<td>Nil</td>
</tr>
<tr>
<td>6,501–10,000</td>
<td>15% of excess over $6,500</td>
</tr>
<tr>
<td>10,001–20,000</td>
<td>$525 + 25% of excess over $10,000</td>
</tr>
<tr>
<td>20,001+</td>
<td>$3,025 + 34% of excess over $20,000</td>
</tr>
</tbody>
</table>

Table A2 – Year of assessment 2002

<table>
<thead>
<tr>
<th>Chargeable income $</th>
<th>Tax payable $</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–6,500</td>
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</tr>
<tr>
<td>20,001+</td>
<td>$3,025 + 32% of excess over $20,000</td>
</tr>
</tbody>
</table>

Table A3 – Year of assessment 2003

<table>
<thead>
<tr>
<th>Chargeable income $</th>
<th>Tax payable $</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–7,500</td>
<td>Nil</td>
</tr>
<tr>
<td>7,501–10,000</td>
<td>15% of excess over $7,500</td>
</tr>
<tr>
<td>10,001–20,000</td>
<td>$375 + 25% of excess over $10,000</td>
</tr>
<tr>
<td>20,001+</td>
<td>$2,875 + 32% of excess over $20,000</td>
</tr>
</tbody>
</table>
Table A4 – Year of assessment 2004

<table>
<thead>
<tr>
<th>Chargeable income $</th>
<th>Tax payable $</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–7,500</td>
<td>Nil</td>
</tr>
<tr>
<td>7,501–10,000</td>
<td>15% of excess over $7,500</td>
</tr>
<tr>
<td>10,001–20,000</td>
<td>$375 + 25% of excess over $10,000</td>
</tr>
<tr>
<td>20,001 +</td>
<td>$2,875 + 31% of excess over $20,000</td>
</tr>
</tbody>
</table>

B. NON-RESIDENT INDIVIDUALS AND NON-RESIDENT INDIVIDUAL TRUSTEES

Table B1 – Year of assessment 2001

<table>
<thead>
<tr>
<th>Chargeable income $</th>
<th>Tax payable $</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–6,500</td>
<td>20% of excess over $0</td>
</tr>
<tr>
<td>6,501–10,000</td>
<td>$1,300 + 25% of excess over $6,500</td>
</tr>
<tr>
<td>10,001–20,000</td>
<td>$2,175 + 30% of excess over $10,000</td>
</tr>
<tr>
<td>20,001 +</td>
<td>$5,175 + 34% of excess over $20,000</td>
</tr>
</tbody>
</table>

Table B2 – Year of assessment 2002

<table>
<thead>
<tr>
<th>Chargeable income $</th>
<th>Tax payable $</th>
</tr>
</thead>
<tbody>
<tr>
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<td>20,001 +</td>
<td>$5,175 + 32% of excess over $20,000</td>
</tr>
</tbody>
</table>

Table B3 – Year of assessment 2003

<table>
<thead>
<tr>
<th>Chargeable income $</th>
<th>Tax payable $</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–7,500</td>
<td>20% of excess over $0</td>
</tr>
</tbody>
</table>
Table B4 – Year of assessment 2004

<table>
<thead>
<tr>
<th>Chargeable income $</th>
<th>Tax payable $</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–7,500</td>
<td>20% of excess over $0</td>
</tr>
<tr>
<td>7,501–10,000</td>
<td>1,500 + 25% of excess over $7,500</td>
</tr>
<tr>
<td>10,001–20,000</td>
<td>2,125 + 30% of excess over $10,000</td>
</tr>
<tr>
<td>20,001 +</td>
<td>5,125 + 32% of excess over $20,000</td>
</tr>
</tbody>
</table>

C. COMPANIES (INCLUDING COMPANIES ACTING AS TRUSTEES)

Table C1 – Year of assessment 2001

(a) Every company, other than companies to which paragraph (b), (c) or (d) applies ................................................................. 34%
(b) Mutual insurance companies in respect of life insurance business .................................................................................................................. 30%
(c) Non-resident or non-mutual insurance companies to the extent that the income of their life insurance businesses is deemed to be mutual under section 37(1) ................................................................. 30%
(d) Non-resident shipping companies ..................................................... 2%

Table C2 – Year of assessment 2002

(a) Every company, other than companies to which paragraph (b), (c) or (d) applies ................................................................. 32%
(b) Mutual insurance companies in respect of life insurance business .................................................................................................................. 30%
(c) Non-resident or non-mutual insurance companies to the extent that the income of their life insurance businesses is deemed to be mutual under section 37(1) ................................................................. 30%
(d) Non-resident shipping companies ..................................................... 2%

Table C3 – Year of assessment 2003
(a) Every company, other than companies to which paragraph 
(b), (c) or (d) applies.................................................................32%

(b) Mutual insurance companies in respect of life insurance 
business .........................................................................................30%

(c) Non-resident or non-mutual insurance companies to the extent 
that the income of their life insurance businesses is deemed to 
be mutual under section 37(1) .........................................................30%

(d) Non-resident shipping companies ............................................2%.

Table C4 – Year of assessment 2004

(a) Every company, other than companies to which paragraph 
(b), (c) or (d) applies........................................................................31%

(b) Mutual insurance companies in respect of life insurance 
business .........................................................................................30%

(c) Non-resident or non-mutual insurance companies to the extent 
that the income of their life insurance businesses is deemed to 
be mutual under section 37(1) .........................................................30%

(d) Non-resident shipping companies ............................................2%.

1 New tax rates were legislated in 2004 Budget. Tables A4, B4 and C4, which was gazetted earlier was substituted by 
new tables to reflect the tax rate reduction from 32% to 31% in 2004.
RATES OF NORMAL TAX


A. RESIDENT INDIVIDUALS AND RESIDENT INDIVIDUAL TRUSTEES

Table A1 – Year of assessment 2001

<table>
<thead>
<tr>
<th>Chargeable income $</th>
<th>Tax payable $</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–6,500</td>
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</tr>
<tr>
<td>10,001–20,000</td>
<td>525 + 25% of excess over $10,000</td>
</tr>
<tr>
<td>20,001+</td>
<td>3,025 + 34% of excess over $20,000</td>
</tr>
</tbody>
</table>

Table A2 – Year of assessment 2002

<table>
<thead>
<tr>
<th>Chargeable income $</th>
<th>Tax payable $</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–6,500</td>
<td>Nil</td>
</tr>
<tr>
<td>6,501–10,000</td>
<td>15% of excess over $6,500</td>
</tr>
<tr>
<td>10,001–20,000</td>
<td>525 + 25% of excess over $10,000</td>
</tr>
<tr>
<td>20,001+</td>
<td>3,025 + 32% of excess over $20,000</td>
</tr>
</tbody>
</table>

Table A3 – Year of assessment 2003

<table>
<thead>
<tr>
<th>Chargeable income $</th>
<th>Tax payable $</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–7,500</td>
<td>Nil</td>
</tr>
<tr>
<td>7,501–10,000</td>
<td>15% of excess over $7,500</td>
</tr>
<tr>
<td>10,001–20,000</td>
<td>375 + 25% of excess over $10,000</td>
</tr>
<tr>
<td>20,001+</td>
<td>2,875 + 32% of excess over $20,000</td>
</tr>
</tbody>
</table>
Table A4 – Year of assessment 2005 and every subsequent year

A. RESIDENT INDIVIDUALS AND RESIDENT INDIVIDUAL TRUSTEES

<table>
<thead>
<tr>
<th>Chargeable income $</th>
<th>Tax payable $</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–8,840</td>
<td>Nil</td>
</tr>
<tr>
<td>8,841–10,000</td>
<td>15% of excess over $8,840</td>
</tr>
<tr>
<td>10,001–20,000</td>
<td>174 + 25% of excess over $10,000</td>
</tr>
<tr>
<td>20,001 +</td>
<td>2,674 + 31% of excess over $20,000</td>
</tr>
</tbody>
</table>
### Table B1 – Year of assessment 2001

<table>
<thead>
<tr>
<th>Chargeable income $</th>
<th>Tax payable $</th>
</tr>
</thead>
<tbody>
<tr>
<td>0– 6,500</td>
<td>20% of excess over $0</td>
</tr>
<tr>
<td>6,501–10,000</td>
<td>1,300 + 25% of excess over $6,500</td>
</tr>
<tr>
<td>10,001–20,000</td>
<td>2,175 + 30% of excess over $10,000</td>
</tr>
<tr>
<td>20,001 +</td>
<td>5,175 + 34% of excess over $20,000</td>
</tr>
</tbody>
</table>

### Table B2 – Year of assessment 2002

<table>
<thead>
<tr>
<th>Chargeable income $</th>
<th>Tax payable $</th>
</tr>
</thead>
<tbody>
<tr>
<td>0– 6,500</td>
<td>20% of excess over $0</td>
</tr>
<tr>
<td>6,501–10,000</td>
<td>1,300 + 25% of excess over $6,500</td>
</tr>
<tr>
<td>10,001–20,000</td>
<td>2,175 + 30% of excess over $10,000</td>
</tr>
<tr>
<td>20,001 +</td>
<td>5,175 + 32% of excess over $20,000</td>
</tr>
</tbody>
</table>

### Table B3 – Year of assessment 2003

<table>
<thead>
<tr>
<th>Chargeable income $</th>
<th>Tax payable $</th>
</tr>
</thead>
<tbody>
<tr>
<td>0– 7,500</td>
<td>20% of excess over $0</td>
</tr>
<tr>
<td>7,501–10,000</td>
<td>1,500 + 25% of excess over $7,500</td>
</tr>
<tr>
<td>10,001–20,000</td>
<td>2,125 + 30% of excess over $10,000</td>
</tr>
<tr>
<td>20,001 +</td>
<td>5,125 + 32% of excess over $20,000</td>
</tr>
</tbody>
</table>
Table B4 – Year of assessment 2005 and every subsequent year

B. NON-RESIDENT INDIVIDUALS AND NON-RESIDENT INDIVIDUAL TRUSTEES

<table>
<thead>
<tr>
<th>Chargeable income $</th>
<th>Tax payable $</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–8,840</td>
<td>20% of excess over $0</td>
</tr>
<tr>
<td>8,841–10,000</td>
<td>1,768 + 25% of excess over $8,840</td>
</tr>
<tr>
<td>10,001–20,000</td>
<td>2,058 + 30% of excess over $10,000</td>
</tr>
<tr>
<td>20,001+</td>
<td>5,058 + 31% of excess over $20,000</td>
</tr>
</tbody>
</table>

C. COMPANIES (INCLUDING COMPANIES ACTING AS TRUSTEES)

Table C1 – Year of assessment 2001
(a) Every company, other than companies to which paragraph (b), (c) or (d) applies........................................34%
(b) Mutual insurance companies in respect of life insurance business .................................................................30%
(c) Non-resident or non-mutual insurance companies to the extent that the income of their life insurance businesses is deemed to be mutual under section 37(1) .........................................................30%
(d) Non-resident shipping companies ........................................2%

Table C2 – Year of assessment 2002
(a) Every company, other than companies to which paragraph (b), (c) or (d) applies........................................32%
(b) Mutual insurance companies in respect of life insurance business .................................................................30%
(c) Non-resident or non-mutual insurance companies to the extent that the income of their life insurance businesses is deemed to be mutual under section 37(1) .........................................................30%
(d) Non-resident shipping companies ........................................2%

Table C3 – Year of assessment 2003
(a) Every company, other than companies to which paragraph (b), (c) or (d) applies........................................32%
(b) Mutual insurance companies in respect of life insurance business ................................................................. 30%

(c) Non-resident or non-mutual insurance companies to the extent that the income of their life insurance businesses is deemed to be mutual under section 37(1) ................................................................. 30%

(d) Non-resident shipping companies ................................................................. 2%.

Table C4 – Year of assessment 2005 and every subsequent year

C. COMPANIES (INCLUDING COMPANIES ACTING AS TRUSTEES)

(a) Every company, other than companies to which paragraph (b), (c) or (d) applies ................................................................. 31%

(b) Mutual insurance companies in respect of life insurance business ................................................................. 30%

(c) Non-resident or non-mutual insurance companies to the extent that the income of their life insurance businesses is deemed to be mutual under section 37(1) ................................................................. 30%

(d) Non-resident shipping companies ................................................................. 2%.

1 Following the 2005 Budget the tax threshold was increased from $7500 to $8840 which is reflected in the new Tables A4, B4 and C4.
XIV. APPENDIX B

PERSONAL ALLOWANCES AND DEDUCTIONS
FOR YEARS OF INCOME 1974 – 2002

This list provides general guidance to the value of the principal allowances and deductions which can be claimed by resident individuals and employees. The tables should not be regarded as a substitute for the actual legislation which should always be referred to. The relevant legislation is found in Part V, particularly sections 24 to 29 (pages 109 to 116). A number of the allowances are granted subject to complex restrictions, often involving the offsetting of other allowances.


<table>
<thead>
<tr>
<th>Section</th>
<th>Allowance/Deduction</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>25(1)(a)</td>
<td>Allowance for wife</td>
<td>$750</td>
</tr>
<tr>
<td>25(1)(b)</td>
<td>Allowance for widower with dependent child</td>
<td>$750</td>
</tr>
<tr>
<td>25(1)(c)</td>
<td>Allowance for widow with dependent child</td>
<td>$950</td>
</tr>
<tr>
<td>25(1)(d)</td>
<td>Allowance for widow without dependent child</td>
<td>$600</td>
</tr>
<tr>
<td>25(2)</td>
<td>Allowance for children (per child, maximum 5)</td>
<td>$130</td>
</tr>
<tr>
<td>25(3)</td>
<td>Allowance for brother or sister (per sibling, maximum 2)</td>
<td>$130</td>
</tr>
<tr>
<td>25(4)</td>
<td>Allowance for other dependents (per dependent, maximum 2)</td>
<td>$100</td>
</tr>
<tr>
<td>26(1)</td>
<td>Superannuation &amp; FNPF contributions/life insurance premiums</td>
<td>$1,000</td>
</tr>
<tr>
<td>26(3)</td>
<td>Professional dues and journals</td>
<td>$40</td>
</tr>
<tr>
<td>26(4)</td>
<td>Equipment for physically incapacitated relatives</td>
<td>variable</td>
</tr>
<tr>
<td>27</td>
<td>Age allowance</td>
<td>$750</td>
</tr>
<tr>
<td>29</td>
<td>Education Allowance (per child, maximum 5)</td>
<td>$100 (Fiji) / $400 (overseas)</td>
</tr>
</tbody>
</table>

II. Years of income 1980, 1981

<table>
<thead>
<tr>
<th>Section</th>
<th>Allowance/Deduction</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>25(1)(a)</td>
<td>Allowance for wife</td>
<td>$750</td>
</tr>
<tr>
<td>25(1)(b)</td>
<td>Allowance for widower with dependent child</td>
<td>$750</td>
</tr>
<tr>
<td>25(1)(c)</td>
<td>Allowance for widow with dependent child</td>
<td>$950</td>
</tr>
<tr>
<td>25(1)(d)</td>
<td>Allowance for widow without dependent child</td>
<td>$600</td>
</tr>
<tr>
<td>25(2)</td>
<td>Allowance for children (per child, maximum 5)</td>
<td>$200 (x2) $130 (x3)</td>
</tr>
<tr>
<td>25(3)</td>
<td>Allowance for brother or sister (per sibling, maximum 2)</td>
<td>$130</td>
</tr>
<tr>
<td>25(4)</td>
<td>Allowance for other dependents (per dependent, maximum 2)</td>
<td>$100</td>
</tr>
<tr>
<td>26(1)</td>
<td>Superannuation &amp; FNPF contributions/life insurance premiums</td>
<td>$1,000</td>
</tr>
<tr>
<td>26(3)</td>
<td>Professional dues and journals</td>
<td>$40</td>
</tr>
<tr>
<td>26(4)</td>
<td>Equipment for physically incapacitated relatives</td>
<td>variable</td>
</tr>
</tbody>
</table>
III. Years of income 1982, 1983

<table>
<thead>
<tr>
<th>Section</th>
<th>Allowance/Deduction</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>25(1)(a)</td>
<td>Allowance for wife</td>
<td>$750</td>
</tr>
<tr>
<td>25(1)(b)</td>
<td>Allowance for widower with dependent child</td>
<td>$750</td>
</tr>
<tr>
<td>25(1)(c)</td>
<td>Allowance for widow with dependent child</td>
<td>$950</td>
</tr>
<tr>
<td>25(1)(d)</td>
<td>Allowance for widow without dependent child</td>
<td>$600</td>
</tr>
<tr>
<td>25(2)</td>
<td>Allowance for children (per child, maximum 5)</td>
<td>$200 (x2) $130 (x3)</td>
</tr>
<tr>
<td>25(3)</td>
<td>Allowance for brother or sister (per sibling, maximum 2)</td>
<td>$130</td>
</tr>
<tr>
<td>25(4)</td>
<td>Allowance for other dependents (per dependent, maximum 2)</td>
<td>$100</td>
</tr>
<tr>
<td>26(1)</td>
<td>Superannuation &amp; FNPF contributions/life insurance premiums</td>
<td>$1,000</td>
</tr>
<tr>
<td>26(3)</td>
<td>Professional dues and journals</td>
<td>$100</td>
</tr>
<tr>
<td>26(4)</td>
<td>Equipment for physically incapacitated relatives</td>
<td>variable</td>
</tr>
<tr>
<td>27</td>
<td>Age allowance</td>
<td>$750</td>
</tr>
<tr>
<td>29</td>
<td>Education Allowance (per child, maximum 5)</td>
<td>$100 (Fiji) / $400 (overseas)</td>
</tr>
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</table>

IV. Years of income 1984, 1985

<table>
<thead>
<tr>
<th>Section</th>
<th>Allowance/Deduction</th>
<th>Amount</th>
</tr>
</thead>
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<tr>
<td>25(1)(a)</td>
<td>Allowance for wife</td>
<td>$750</td>
</tr>
<tr>
<td>25(1)(b)</td>
<td>Allowance for widower with dependent child</td>
<td>$750</td>
</tr>
<tr>
<td>25(1)(c)</td>
<td>Allowance for widow with dependent child</td>
<td>$950</td>
</tr>
<tr>
<td>25(1)(d)</td>
<td>Allowance for widow without dependent child</td>
<td>$600</td>
</tr>
<tr>
<td>25(2)</td>
<td>Allowance for children (per child, maximum 5)</td>
<td>$200 (x2) $130 (x3)</td>
</tr>
<tr>
<td>25(3)</td>
<td>Allowance for brother or sister (per sibling, maximum 2)</td>
<td>$130</td>
</tr>
<tr>
<td>25(4)</td>
<td>Allowance for other dependents (per dependent, maximum 2)</td>
<td>$100</td>
</tr>
<tr>
<td>26(1)</td>
<td>Superannuation &amp; FNPF contributions/life insurance premiums</td>
<td>$1,000</td>
</tr>
<tr>
<td>26(3)</td>
<td>Professional dues and journals</td>
<td>$100</td>
</tr>
<tr>
<td>26(4A)</td>
<td>Trade Union dues</td>
<td>$20</td>
</tr>
<tr>
<td>26(4)</td>
<td>Equipment for physically incapacitated relatives</td>
<td>variable</td>
</tr>
<tr>
<td>27</td>
<td>Age allowance</td>
<td>$750</td>
</tr>
<tr>
<td>29</td>
<td>Education Allowance (per child, maximum 5)</td>
<td>$100 (Fiji) / $400 (overseas)</td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>Section</th>
<th>Allowance/Deduction</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>25(1)(a)</td>
<td>Allowance for wife</td>
<td>$750</td>
</tr>
<tr>
<td>25(1)(b)</td>
<td>Allowance for widower with dependent child</td>
<td>$750</td>
</tr>
</tbody>
</table>
Allowance for widow with dependent child............................... $950
25(1) (d) Allowance for widow without dependent child............................... $600
25(2) Allowance for children (per child, maximum 5) ................ $200 (x3 $130 (x2)
25(3) Allowance for brother or sister (per sibling, maximum 2)............................... $130
25(4) Allowance for other dependents (per dependent, maximum 2)............................... $100
26(1) Superannuation & FNPF contributions/life insurance premiums............................... $1,000
26(3) Professional dues and journals.................................................. $100
26(3A) Trade Union dues.............................................................................. $20
26(4) Equipment for physically incapacitated relatives ....................................... variable
27 Age allowance...................................................................................... $750
29 Education Allowance (per child, maximum 5).................................. $100 (Fiji) / $400 (overseas)


<table>
<thead>
<tr>
<th>Section</th>
<th>Allowance/Deduction</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>25(1)(a)</td>
<td>Allowance for wife</td>
<td>$750</td>
</tr>
<tr>
<td>25(1)(b)</td>
<td>Allowance for widower with dependent child</td>
<td>$750</td>
</tr>
<tr>
<td>25(1)(c)</td>
<td>Allowance for widow with dependent child</td>
<td>$950</td>
</tr>
<tr>
<td>25(1)(d)</td>
<td>Allowance for widow without dependent child</td>
<td>$600</td>
</tr>
<tr>
<td>25(1)(A)</td>
<td>Allowance for Legally Separated Spouse</td>
<td>$750</td>
</tr>
<tr>
<td>25(2)</td>
<td>Allowance for children (per child, maximum 5)</td>
<td>$130</td>
</tr>
<tr>
<td>25(3)</td>
<td>Allowance for brother or sister (per sibling, maximum 2)</td>
<td>$130</td>
</tr>
<tr>
<td>25(4)</td>
<td>Allowance for other dependents (per dependent, maximum 2)</td>
<td>$100</td>
</tr>
<tr>
<td>26(1)</td>
<td>Superannuation &amp; FNPF contributions/life insurance premiums</td>
<td>$1,000</td>
</tr>
<tr>
<td>26(3)</td>
<td>Professional dues and journals</td>
<td>$100</td>
</tr>
<tr>
<td>26(3A)</td>
<td>Trade Union dues</td>
<td>$20</td>
</tr>
<tr>
<td>26(4)</td>
<td>Equipment for physically incapacitated relatives</td>
<td>variable</td>
</tr>
<tr>
<td>27</td>
<td>Age allowance</td>
<td>$750</td>
</tr>
<tr>
<td>29</td>
<td>Education Allowance (per child, maximum 5)</td>
<td>$100 (Fiji) / $400 (overseas)</td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>Section</th>
<th>Allowance/Deduction</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>25(1)(a)</td>
<td>Allowance for wife</td>
<td>$750</td>
</tr>
<tr>
<td>25(1)(b)</td>
<td>Allowance for widower with dependent child</td>
<td>$750</td>
</tr>
<tr>
<td>25(1)(c)</td>
<td>Allowance for widow with dependent child</td>
<td>$950</td>
</tr>
<tr>
<td>25(1)(d)</td>
<td>Allowance for widow without dependent child</td>
<td>$600</td>
</tr>
<tr>
<td>25(1)(A)</td>
<td>Allowance for Legally Separated Spouse</td>
<td>$750</td>
</tr>
<tr>
<td>25(2)</td>
<td>Allowance for children (per child, maximum 5)</td>
<td>$200</td>
</tr>
<tr>
<td>26(1)</td>
<td>Superannuation &amp; FNPF contributions/life insurance premiums</td>
<td>$1,000</td>
</tr>
</tbody>
</table>
VIII. Year of income 1999

<table>
<thead>
<tr>
<th>Section</th>
<th>Allowance/Deduction</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>25(1)(a)</td>
<td>Allowance for wife</td>
<td>$1,000</td>
</tr>
<tr>
<td>25(1)(b)</td>
<td>Allowance for widowed taxpayer</td>
<td>$1,000</td>
</tr>
<tr>
<td>25(1)(A)</td>
<td>Allowance for Legally Separated Spouse</td>
<td>$1,200</td>
</tr>
<tr>
<td>25(2)</td>
<td>Allowance for children (per child, maximum 5)</td>
<td>$300</td>
</tr>
<tr>
<td>26(1)</td>
<td>Superannuation &amp; FNPF contributions/life insurance premiums</td>
<td>$1,500</td>
</tr>
</tbody>
</table>

IX. Year of income 2000, 2001, 2002

<table>
<thead>
<tr>
<th>Section</th>
<th>Allowance/Deduction</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>25(1)(a)</td>
<td>Allowance for wife</td>
<td>$1,200</td>
</tr>
<tr>
<td>25(1)(b)</td>
<td>Allowance for widowed taxpayer</td>
<td>$1,000</td>
</tr>
<tr>
<td>25(1)(A)</td>
<td>Allowance for Legally Separated Spouse</td>
<td>$1,200</td>
</tr>
<tr>
<td>25(2)</td>
<td>Allowance for children (per child, maximum 5)</td>
<td>$500 (x2) $300 (x3)</td>
</tr>
<tr>
<td>26(1)</td>
<td>Superannuation &amp; FNPF contributions/life insurance premiums</td>
<td>$1,500 per spouse</td>
</tr>
</tbody>
</table>