DIVIDEND REGULATIONS

Chapter 201 Laws of Fiji

Revised to 31 March 2009

UPDATED BY :-
POLICY, ECONOMIC ANALYSIS AND RESEARCH UNIT

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INCOME TAX (DIVIDEND) REGULATIONS 2001

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INCOME TAX ACT
(CAP 201)

INCOME TAX (DIVIDEND) REGULATIONS 2001

In exercise of the powers conferred on me by section 107 of the Income Tax Act I make these Regulations –

Citation etc.

1-(1) These Regulations may be cited as the Income Tax (Dividend) Regulations 2001.

(2) In these Regulations, “the Act”, means the Income Tax Act (Cap. 201)

(3) Subject to paragraph (4), these Regulations are deemed to have come into force on 1st January 2001.

(4) If a person would be subject to a penalty in respect of any act or omission under these Regulations, no penalty may be imposed unless that act or omission occurred on or after the date these Regulations were published in the Gazette.
Interpretation

2 In these Regulations, unless the context otherwise requires-
“appropriate form” means a form approved by the Commissioner [which may
include an electronic version,]\(^1\) for use in any particular case pursuant to these
Regulations;

“corporate tax” means tax paid on the chargeable income of a company]\(^2\)

“deemed tax paid”\(^3\) means a credit for taxes that would otherwise have been payable
on that portion of income that would normally be subject to tax but for a concession
granted under [section 21(1) (v), section 21(1) (w)]\(^4\) section 21B, section 21C [section

Record of dividend distribution

3.- (1) Every company shall make and keep a record of dividend distribution under
these Regulations as if it were a book of account under section 109 of the Act.

(2) A record of dividend distribution shall continue the following information-
(a) the total income tax paid by the company in each year of assessment;
(b) the dated on which a dividend is paid or credited each year;
(c) the cut-off date for determining the entitlement to a dividend;
(d) the amount of total dividends paid to shareholders;
(e) the balance of retained earnings together with opening and closing balances
from previous years;
(f) the percentage of each dividend subject to corporate tax, calculated in
accordance with regulation 4;
(g) the dollar amount of excess tax credits that can be carried forward;
(h) the total dividends paid to other resident companies;
(i) the total income tax previously paid on dividend received from other
companies and
(j) (i) in the case of non-resident shareholders, all other information that will
help to ascertaining the correct amount of withholding tax that should be
paid on the dividend; and
(ii) in the of resident individual shareholders, all other information that will
assist in ascertaining the correct amount of qualifying dividend that can
be claimed as a deduction.

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\(^1\) Inserted by §2 of Legal Notice 38/2003 WEF 1st January 2003
\(^2\) Substituted for a full stop by §2(a) Legal Notice 43/2002
\(^3\) Inserted by §2(b) Legal Notice 43/2002 WEF 1st January 2002
\(^4\) Inserted by LN 66/2004
\(^5\) Inserted by LN 26/2006
Percentage of dividends subject to corporate tax

(4) The percentage of dividends subject to corporate tax shall be calculated in accordance with the following formula

\[ P = \frac{(A+S)}{(B-S)} \times \frac{(1-C)}{C} \times 100 \]

Where-

\[ P \] = percentage of dividend subject to corporate tax
\[ A \] = corporate tax paid including excess tax credits from previous years and income tax paid on dividends received from other companies
\[ B \] = dividend paid
\[ C \] = company tax rate in the year of distribution
\[ S \] = deemed tax paid.

(2) The Formula set out in paragraph 91) is used as the basis for calculating both the qualifying dividend to be allowed as an income tax deduction under section 21(A) and also as the basis for calculation the portion of the dividend liable to withholding tax under section 8(2).

(3) The percentage of dividend subject to corporate tax that is calculated in paragraph (1) cannot exceed 100%

(4) Any excess tax paid that would otherwise have resulted in the percentage of dividend subject to corporate tax being greater than 100% shall be carried forward to the following year.

(5) A tax credit referred to in paragraph (4) may not be refunded in any circumstances.

Calculation of qualifying dividend

5. Subject to paragraph (3) of regulation 4 the amount of qualifying dividend shall be calculated in accordance with the following formula-

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\(^6\) Substituted by §3 Legal Notice 43/2002 WEF 1st January 2002– previously read:

“(1) The percentage of dividend subject to the corporate tax shall be calculated in accordance with the following formula-

\[ P = \frac{(A)}{(B)} \times \frac{(1-C)}{C} \times 100 \]

Where-

\[ P \] = percentage of dividend subject to corporate tax
\[ A \] = corporate tax paid including excess tax credits from previous years and income tax paid on dividends received from other companies
\[ B \] = dividends paid
\[ C \] = company tax rate in the year distribution”
Q = D \times P

Where-
- Q = \text{amount of qualifying dividend that is allowable as a deduction to a resident individual shareholder}
- D = \text{total dividend paid to each shareholder}
- P = \text{percentage of dividend subject to corporate tax.}

Calculation of dividend subject to withholding tax

6. Subject to regulation 4, the portion of a dividend liable to withholding tax under section 8(2) of the Act is calculated in accordance with the following formula-

W = D \times (1 - P)

Where-
- W = \text{the portion of dividend paid to a non-resident shareholder that is subject to withholding tax.}
- D = \text{total dividend paid to each shareholder}
- P = \text{percentage of dividend subject to corporate tax.}

Excess tax credit

7. Where the percentage of dividends that is subject to corporate tax is greater than 100% as calculated in paragraph (1) of regulation 4, the excess tax credit that can be carried forward shall be calculated in accordance with the following formula-

X = [(A+S) - [(B-S) \times \frac{C}{1-C}]]

Where-
- X = \text{excess tax credit}
- A = \text{corporate tax paid including excess tax credits from previous years and income tax paid on dividends received from other companies}
- B = \text{dividends paid}
- C = \text{company tax rate in the year of distribution}
- S = \text{deemed tax paid.}

7 Substituted by §3 LN 38/2003 – previously read:

“Excess tax credit

7. Where the percentage of dividends that is subject to corporate tax is greater than 100% as calculated in paragraph (1) of regulation 4, the excess tax credit that can be carried forward shall be calculated in accordance with the following formula-

X = A - [B \times \frac{1-C}{C}]

Where –
- X = \text{Excess tax credit}
- A = \text{Corporate Tax paid including excess tax credits from previous years and income tax paid on dividends received from other companies}
- B = \text{Dividends Paid}
- C = \text{Company tax rate in the year of distribution}”
8. For the purpose of regulations 4 to 7 all distribution of dividends are deemed to have been paid from retained earnings in the chronological order that such profits have been accumulated.

Shareholder Certificate

9-(1) A resident company which pays or credits a dividend to any shareholders shall provide to each shareholder, within 21 days of the date of payments or crediting of that dividend, a certificate in duplicate in an appropriate form containing the following information -

(a) name, address and tax identification number of the company;
(b) the date of payment or crediting;
(c) name, address and tax identification number (if applicable) of each shareholder;
(d) type or class of each share held;
(e) total shares held at the date of the entitlement to the dividend;
(f) the amount of dividend paid or credited in respect of each type or class of share to each shareholder;
(g) total dividend paid to each shareholder;
(h) percentage of dividend (expressed to 2 decimal places) subject to corporate tax;
(i) the amount of each qualifying dividend (on which corporate tax was paid) that is allowable as a deduction to a resident individual shareholder and
(j) the amount of withholding tax paid (if any).

(2) Where a company is required to deliver or send the shareholder certificate in duplicate to the shareholder under the provisions of paragraph (1) a company shall make on the appropriate form, 2 further copies of such certificate, 1 of which shall be delivered personally or sent by post to the Commissioner on or before the last day of February in each year, and the other copy shall be retained by the company for record purposes.

Overestimation of percentage of dividends subject to corporate tax

10- (1) For the purposes of calculating the qualifying dividend under regulation 5 or for determining the correct liability to withholding tax under regulation 6, if a company overestimates the percentage of the dividend subject to corporate tax, it shall be liable for the shortfall of the tax liability within 30 days of the date of written notification by the Commissioner.

(2) For the purposes of paragraph (1) a shortfall is considered to arise if the calculation of the percentage of dividend subject to corporate tax has been based on advance company tax payments under section 91 of the Act and the company subsequently receives a refund in whole or part of the advance tax payments.

(3) For the purposes of paragraph (1), a shortfall may also arise if the company subsequently receives a refund of tax paid as result of an amended assessment.
(1) If any company fails or neglects to deduct withholding tax in accordance with regulations 6, or fails or neglects to remit to the Commissioner any withholding tax so deducted the company commits an offence and is liable on conviction to a fine not exceeding $2,000.

(2) If any company fails or neglects to keep records required by regulation 3, or fails or neglects to provide the shareholder certificate in accordance with the provisions of paragraph (1) of regulation 9, or fails or neglects to provide the Commissioner the required information in accordance with the provision of paragraph (2) of regulation 9, the company commits an offence and is liable on conviction, to fine not exceeding $2,000 in respect of each such failure or neglect on its part under there regulations.

(3) If any company overestimates the percentage of dividends subject to corporate tax, which results in a shortfall of tax liability in accordance with regulation 10, the company commits an offence and is liable on conviction to a fine not exceeding $2,000.

12 Any notice issued by the Commissioner under paragraph (1) of regulation 10 is deemed to be an assessment for the purpose of Part IX and Part X of the Act.

Made at Suva on the 2nd day of May 2001.

J.Y Kubuabola
Minister for Finance
and National Planning