

BILL NO. 19 OF 2017

A BILL

FOR AN ACT TO AMEND THE INCOME TAX ACT 2015

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

- 1.—(1) This Act may be cited as the Income Tax (Budget Amendment) Act 2017.
- (2) This Act comes into force on 1 August 2017.
- (3) In this Act, the Income Tax Act 2015 is referred to as the “Principal Act”.

Section 2 amended

2. Section 2 of the Principal Act is amended in the definition of “Social Responsibility Tax” after “section 8” by inserting “, a portion of which is the Environment and Climate Adaptation Levy payable under Part 4 of the Environment and Climate Adaptation Levy Act 2015”.

Section 8 amended

3. Section 8 of the Principal Act is amended after subsection (7) by inserting the following new subsection—

“(8) Notwithstanding subsection (2), Social Responsibility Tax is not payable on the portion of chargeable income derived from a one-off payment or receipt prescribed by regulations.”.

*Section 10 amended***4.** Section 10 of the Principal Act is amended by—

- (a) in subsection (1), deleting “a dividend,” and substituting “an”;
- (b) in subsection (2), deleting “dividend,”;
- (c) in subsection (3)—
 - (i) deleting paragraph (a); and
 - (ii) in paragraph (e), deleting “dividend,”; and
- (d) in subsection (4), deleting “dividend,”.

*Section 20A deleted***5.** The Principal Act is amended by deleting section 20A.*Section 25 amended***6.** Section 25(8) of the Principal Act is amended after the seventh row by inserting the following new row—

“Tax Year 2017	50%”
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*Section 71 amended***7.** Section 71(1) of the Principal Act is amended by—

- (a) in paragraph (f), deleting “.” and substituting “; and”; and
- (b) after paragraph (f), inserting the following new paragraph—
 - “(g) the provision of a health insurance cover to an employee who is a Fijian citizen.”.

*Section 102 amended***8.** Section 102 of the Principal Act is amended by—

- (a) in subsection (1)—
 - (i) in paragraph (a) after “;”, inserting “and”;
 - (ii) in paragraph (b), deleting “; and” and substituting “;”; and
 - (iii) deleting paragraph (c); and
- (b) in subsection (5), deleting the definition of “tax avoidance scheme” and substituting the following—
 - ““tax avoidance scheme” means any scheme, whether entered into by a person affected by the scheme or by another person, that directly or indirectly—
 - (a) has tax avoidance as its purpose or effect; or
 - (b) has tax avoidance as one of its purposes or effects, if the tax avoidance purpose or effect is not merely incidental;”.

Section 112 amended

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

- (a) in the heading, deleting “and dividends”;
- (b) deleting “(1)”; and
- (c) deleting subsection (2).

Section 125 amended

10. Section 125(1) of the Principal Act is amended by—

- (a) in paragraph (b)—
 - (i) deleting “section 112(1)” and substituting “section 112”; and
 - (ii) after “;”, inserting “or”; and
- (b) in paragraph (c)—
 - (i) deleting “section 112(1)” and substituting “section 112”; and
 - (ii) in subparagraph (ii), deleting “; or” and substituting “.”; and
- (c) deleting paragraph (d).

New section 143A inserted

11. The Principal Act is amended by—

- (a) after section 143, inserting a new section 143A with the heading “Transitional undistributed profits”;
- (b) renumbering section 143(7) as section 143A(1);
- (c) renumbering section 143(9A) as section 143A(2); and
- (d) after section 143A(2), inserting the following new subsections—

“(3) If any part of the net profit after tax of a company for a tax year prior to 2014 has not been distributed as a dividend prior to 30 June 2017, the company must pay tax on the undistributed amount at the rate of 1% and the tax must be paid on or before 30 September 2017.

(4) A company who fails to pay tax on or before the due date is liable to a penalty of 75% of the amount of unpaid tax.

(5) A company who fails to comply with subsection (4) is liable to a penalty of 5% of the amount of unpaid tax for each month of default.

(6) Any penalty paid by a company under this section must be refunded to a taxpayer to the extent that the tax to which the penalty relates is found not to have been payable.

(7) For the avoidance of doubt, any payment of tax prior to 30 June 2017 on the dividends distributed from the net profit after tax of a company for a tax year prior to 2014 is not refundable by the Fiji Revenue and Customs Authority.”.

June 2017

INCOME TAX (BUDGET AMENDMENT) BILL 2017

EXPLANATORY NOTE

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

1.0 BACKGROUND

- 1.1 The Income Tax Act 2015 (**‘Act’**) provides for the imposition of Income Tax, Capital Gains Tax and Fringe Benefits Tax.
- 1.2 The Income Tax (Budget Amendment) Bill 2017 (**‘Bill’**) amends the Act to introduce certain policy changes introduced by the 2017-2018 Budget.

2.0 CLAUSES

- 2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the amending legislation will come into force on 1 August 2017.
- 2.2 Clause 2 of the Bill amends the definition of “Social Responsibility Tax” to include the Environment and Climate Adaptation Levy so that the Social Responsibility Tax (**‘SRT’**) is inclusive of the 10% Environment and Climate Adaptation Levy (**‘ECAL’**) that will be introduced under the Environment and Climate Adaptation Levy Act 2015. The tax burden will remain the same and the ECAL will be paid into the Climate Change and Environment Fund.
- 2.3 Clause 3 of the Bill amends section 8 of the Act to insert a new subsection so that SRT is not payable on the portion of chargeable income derived from a one-off payment or receipt. This means that SRT is ring-fenced to exempt taxpayers from the taxation of one-off payments or receipts that would be prescribed by regulations. These would include a gain from a sale of an asset, redundancy payment, retiree allowance, gratuity allowance and exit inducement payment.
- 2.4 Clause 4 of the Bill amends section 10 of the Act to remove the reference to dividends. The Bill removes the dividend tax of 3% for residents and 9% for non-residents. This means that there will be no dividend taxation regime and all dividend income will be exempt from taxation.

- 2.5 Clause 5 of the Bill deletes section 20A of the Act to remove the provisions on deemed dividends for consistency with the removal of the dividend tax.
- 2.6 Clause 6 of the Bill amends section 25(8) of the Act by inserting a new row to include ‘Tax Year 2017’ as a year of assessment at deduction rate of 50% of export income.
- 2.7 Clause 7 of the Bill amends section 71 of the Act to include the provision of a health insurance cover to an employee who is a Fijian citizen, as an exempt fringe benefit. This is intended to encourage employers to provide health insurance for their employees.
- 2.8 Clause 8 of the Bill amends section 102 of the Act to strengthen the anti-avoidance provisions by removing the requirement for a “main” or “dominant” tax avoidance purpose. Section 102 of the Act will be invoked as long as one of the purposes of the scheme is “tax avoidance”.
- 2.9 Clause 9 of the Bill amends section 112 of the Act for consistency with the removal of the dividend tax.
- 2.10 Clause 10 of the Bill amends section 125 of the Act for consistency with the removal of the dividend tax.
- 2.11 Clause 11 of the Bill inserts a new section 143A to address the issue of transitional undistributed profits of company profits derived prior to the 2014 tax year. A 1% transitional tax (similar to the 2014 and 2015 transitional tax) will be levied on pre-2014 retained earnings balances as at 30 June 2017. There will be a 3-month window granted to complete payment of this 1% transitional tax.

3.0 MINISTERIAL RESPONSIBILITY

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

A. SAYED-KHAIYUM
Attorney-General