**<u>Tax talk - INCOME TAX ACT 2015 REWRITE</u>**

**FS: What was the purpose for the review of the Income Tax Act?**
ACEO: The Income Tax Act rewrite has several purposes. First, the Income Tax Act 2015 implements a number of changes to the income tax such as the replacement of tax incentives with a broad-based capital allowance system (including accelerated depreciation, and the amortisation of intangibles and preliminary expenditure); the application of the new dividend withholding tax as final. Secondly, it modernises the income tax.

**FS: What does it include?**
ACEO: It includes many new provisions in areas that were previously left to administrative practice, particularly in the area of tax accounting. More detailed provisions relating to the taxation of international transactions have been included reflecting the increased importance of international transactions in the global economy. These provisions follow international norms particularly those expressed in tax treaties. Thirdly, it simplifies the structure and drafting of the income tax law. There is significant clarification of the amounts that are subject to tax or allowed as a deduction. Fourthly, it includes measures to prevent the avoidance of tax. These include transfer pricing and thin capitalisation rules. Finally, the Income Tax Act 2015 rationalises the procedural provisions consequent upon the introduction of the Tax Administration Decree 2009.

**FS: Why was it reviewed?**
ACEO: The work on the Income Tax Act 2015 had initially started in 2010 after recommendations from the International Monetary Fund for the simplification of the tax law to narrow the room for administrative discretion and provide clear tax guide to investors. The Government saw the need to re-write the Income Tax Act that was enacted in 1974 due to various drivers or factors.

**FS: What were some drivers for the Income Tax Act rewrite?**
ACEO: The drivers of the re-write included the following factors:
A) UNCERTAINTY IN APPLICATION
There had been various examples of uncertainty in the application of the old Income Tax Act, due to continuous amendments and different drafting styles used that led to the law in losing its original logical structure. Such technical deficiencies in the current law increased compliance and administrative costs.

B) CHANGE IN BUSINESS AND INVESTMENT ENVIROMENT
Taking into account the pace of change in the business and investment environment, an income tax law now probably has a ‘shelf life’ of only ten years.

C) CONTINOUS AMENDMENT OF THE INCOME TAX ACT HAS LOST ITS COHERENCY
In many countries around the World, the income tax law is one of the most amended laws. There is often more than one amending law (associated with the budget) relating to the old Income Tax law. After ten years of amendments, the law is likely to have lost some of its

coherency with different drafters using different terms/language/style, and with reforms 'grafted' onto reforms.

D) FACILITATE FOREIGN INVESTMENT THE NEED TO INCLUDE INTERNATIONAL TAX RULES

While, in the past, foreign investment into Fiji mainly came from Australia, New Zealand and the UK, today it comes from many different countries, particularly Asian countries (China, Korea and Japan). While double tax treaties facilitate foreign investment, it is not possible for Fiji to negotiate double tax treaties with a large number of countries on a timely basis. Consequently, the rewrite provided an opportunity to revise the international provisions in the income tax law so as to better facilitate foreign investment. This is done by including in the new Income Tax Act the taxing rights commonly found in tax treaties into law. For example consistent with Article 7 of tax treaties, the new act uses 'attributable to a permanent establishment' as a basis for taxing the business income of non-residents. This ensures (i) that Fiji has adequate rules for ensuring that Fiji obtains its fair share of tax on cross-border income flows; and (ii) attract foreign investment as foreign investors like to see taxing rules with which they are familiar.

**FS: What is new in the design of the new Income Tax Act?**

ACEO: The new income tax law is structured as a tax code, i.e., the law provides for the imposition of income tax, FBT and Capital Gains Tax (CGT), rather than having the FBT and CGT in separate legislations. This allows the use of common rules applicable to all the taxes, particularly in relation to assets. For example, the CGT Decree 2011 has rules on acquisition, disposal, cost and consideration applicable to capital assets – trading stock and other revenue assets – and, therefore, the new income law includes uniform rules relating to assets.

**FS: How are the substantial rules (i.e. those rules relating to determining tax liability) and procedural rules (i.e. those relating to the administration of the tax and enforcement of the liability) dealt with under the new Income Tax Act?**

ACEO: There is a clear separation of substantive rules and procedural rules. This separation is facilitated by the earlier enactment of the Tax Administration Decree, which provides for generic procedural rules applicable to all taxes administered by Fiji Revenue & Customs Authority (FRCA). The only procedural rules in the new income tax law are those that are specific to the income tax, particularly withholding tax and provisional tax.

The new law starts with the substantive rules and then provide for the procedural rules. The substantive rules start with the general rules applicable to all or most taxpayers and then provide rules specific to particular classes of taxpayers. For example, there was a need for specific rules relating to the deductions to be claimed by general insurance companies. These are quite detailed and affect only a small number of taxpayers and, therefore, it only adds to complexity if they are included as part of the general deduction provisions. Under the new income tax law, rather than including them as part of the general deduction provisions, they are provided separately under a special part of the law applicable only to insurance companies.