

# Tax talk Dividend under the new Income Tax Act

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**FS:** What is Dividend?

**ACEO:** Basically the ordinary meaning of dividend is when there is distribution of profits by a company to a member of the company. The dividend is normally distributed from the net profit of a company after income tax. The reference to net profit is a reference to the accounting profit of the company.

**FS:** Who would be defined as a member of the company?

**ACEO:** Member is separately defined to mean any person with a membership interest in a company and membership interest is separately defined to mean an ownership interest in a company. An example of a member is a shareholder in a company. Also an example of a membership interest is a share in a company. Thus, a distribution of profits by a company to a shareholder will be a dividend. Other examples of a member are a member of a company limited by guarantee, a member of an unincorporated association or body of persons, and a unit-holder in a unit trust. As a unit trust is treated as a company for the purposes of the Act, the new Income Tax Act expressly treats an entitlement to income in a unit trust as a dividend.

**FS:** When is a company required to pay tax on dividend?

**ACEO:** As the dividend is based on the after-tax profits of a company, a timing rule when paid by the company will be on the earlier of (i) the due date for filing the company's income tax return for the tax year to which the dividend relates; or (ii) the date that the company actually files the income tax return for the tax year to which the dividend relates.

**FS:** What taxes are applicable to dividends?

**ACEO:** The new Income Tax Act imposes non-resident withholding tax on dividends paid to non-residents, taxes dividends in property income; and also provides for the collection of the tax on dividends paid to residents.

**FS:** Will the capitalization of profits though bonus share or bonus unit be taken as dividend?

**ACEO:** The capitalisation of profits by a company, whether by way of a bonus share, bonus unit (in the case of a company that is a unit trust), or bonus debenture issue, or increase in the amount paid-up on a membership interest, or otherwise involving a credit of profits to a share or trust capital account (other than the share premium account) are treated as a dividend.

**FS:** What happens to dividend when there is a reduction in corporate capital?

**ACEO:** Under the new Income Tax Act, any amount returned to a member in excess of the amount by which the nominal value of the membership interest in the company is reduced will be treated as a dividend.

**Example:** Suppose X Pty Ltd paid shareholders \$0.20 per share as consideration for a reduction in the nominal value of the share from \$1 to \$0.90. In this case, \$0.20 is paid to the shareholder, but the nominal value of the share is reduced by

only \$0.10. The effect is to treat \$0.10 per share as a dividend (i.e. a distribution of profits) and \$0.10 as the reduction in capital.

**FS:** How about the redemption or cancellation or termination of unit trust?

**ACEO:** There is a similar rule in the case of the redemption or cancellation of a membership interest (such as the cancellation of shares on liquidation of a company, or the cancellation of units on termination of a unit trust). It ensures that any amount paid in excess of the nominal value of the membership interest is a dividend. In the absence of this provision, the whole amount may be treated as capital. The same rule applies in the case of a reconstruction, reorganisation or amalgamation of a company (including a unit trust).

**FS:** What other features does FRCA look at to determine a dividend?

**ACEO:** There are certain benefits provided by a company to a member or an associate of a member as a dividend. This is, in effect, a disguised dividend rule. The following are treated as dividends-

- (1) The amount of any loan made by a company to a member or an associate of a member when the loan is, in substance, a distribution of profits. Factors relevant to determining whether a loan is, in substance, a distribution of profits include whether a fair market rate of interest is payable or, if payable, whether the interest is expected to be paid, and whether the loan is expected to be repaid.
- (2) The amount of any payment made by a company to a member or an associate of a member for an asset or services provided by the member or associate to the company to the extent to which the payment is, in substance, a distribution of profits. Such a payment may be a distribution of profits to the extent to which it is in excess of the fair market value of the asset or services provided determined as at the time the asset or services were provided.
- (3) The fair market value of any asset or services supplied by a company to a member or an associate of a member to the extent to which the supply is, in substance, a distribution of profits. Such a supply may be a distribution of profits to the extent to which the fair market value of the asset or services provided exceeds any consideration given for the asset or services.
- (4) The amount of any debt obligation owed by a member or an associate of a member to the company that has been released by the company to the extent to which the release is, in substance, a distribution of profits.

**FS:** What is the new Dividend tax rate and when is it effective?

**ACEO:** The new Dividend tax rate is 3% for residents and 9% for non-residents, whilst 1% will be levied on those distributing for the income years 2014 and 2015. The new Dividend tax rates came into force on the 1 January 2016 with the introduction of the new Income Tax Act and effectively the old Dividend Regulations 2001 and the Income Tax Act Cap 201 were repealed.

**FS:** Please explain further on the retained earnings for the income years 2014 and 2015 to be distributed in 2016.

**ACEO:** During this transitional period, all undistributed profits including capital profits in the balance of retained earnings for 2014 and 2015 (or equivalent substituted tax year) will be subject to 1% tax. The 1% tax is equally applicable to Companies registered in Fiji as Branches. The only Exemption from the 1% tax is applicable to Companies that are listed on the SPSE. The 1% tax is FINAL TAX, and no further tax will be applicable on the distribution of the dividends, thereafter. For the administration of Section 143 (7), Dividends distributed will be accounted for in the Chronological order. The due date for payment of the 1% tax for Companies, whose fiscal year is other than 31 December 2015, will be three months from the date of the end of the fiscal year. Where Extension has been granted to a Company under TALP, the due date shall be aligned to the due date approved under TALP.

**FS:** What happens to the undistributed profits prior 2014 being distributed in 2016?

**ACEO:** Any Dividend distributed (paid or credited) in 2016 and thereafter for the years prior to 2014 tax years (or equivalent substituted tax years) will be subject to the provisions of Dividend Regulations 2001 and the Income Tax Act Cap 201.