

ARRANGEMENT OF SECTIONS

1. Short title, etc
2. Section 2 amended
3. Section 4 amended
4. Section 7 amended
5. Section 9 amended
6. Section 17 amended
7. Section 20 amended
8. Section 21 amended
9. Section 21C amended
10. Section 25 amended
11. Section 40 amended
12. Section 41 amended
13. Sections 41A and 41B inserted
14. Section 44A inserted
15. Section 50 amended
16. Section 50A inserted
17. Section 59 amended
18. Section 59A inserted
19. Section 72 amended
20. Section 72A inserted
21. Section 76 amended
22. Section 77A amended
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28. Sections 96A and 96B inserted
29. Fourth Schedule amended
30. Tenth Schedule amended

ACT NO. 3 OF 2005



I assent.

[L.S.]

RATU JONI MADRAIWIWI
Acting President

[17th March 2005]

AN ACT

TO AMEND THE INCOME TAX ACT

[1st January 2005]

ENACTED by the Parliament of the Fiji Islands—

Short title, etc

1.—(1) This Act may be cited as the Income Tax (Budget Amendment) Act 2005, and is deemed to have come into force on 1st January 2005.

(2) In this Act, the Income Tax Act (Cap 201) is referred to as the principal Act.

Section 2 amended

2. The principal Act is amended in section 2 by inserting the following definition—

““controlling interest” 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;”;

““fringe benefit” means any benefit taxed pursuant to section 11(z);”;

““private company” has the meaning given to it in the Companies Act;”.

Section 4 amended

3. The principal Act is amended in section 4 by adding after subsection (6) the following subsections—

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“(7) 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, or in the course of 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; or
- (c) to the Governor of the Reserve Bank,

and such person is thereupon subject to this section.

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

Section 7 amended

4. Section 7(1) of the principal Act is amended in paragraph (a) by deleting “\$7,500” wherever it occurs and substituting, therefore in each case, “\$8,840”.

Section 9 amended

5. Section 9(3) of the principal Act is amended—

(a) by adding after paragraph (g) the following paragraph —

“(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.”.

(b) by adding the following subsection —

“(3A) In subsection (3), “Cotonou Agreement” means the Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States of the One Part, and the European Community and its Member States of the Other Part Signed in Cotonou, Benin on 23 June 2000 (a copy of which agreement is deposited at the office of the Commissioner) .”.

Section 17 amended

6. Section 17 of the principal Act is amended—

(a) in paragraph (26), by inserting next after “Fund” the following —

“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”;

- (b) by deleting the full-stop at the end of paragraph (60) and substituting a semi-colon; and
- (c) by inserting after paragraph (61) the following paragraphs—
 - “(62) the income of the Fiji Institute of Directors;
 - (63) 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;
 - (64) any dividend paid to or credited in favour of a resident individual from the Fijian Holdings Unit Trust;
 - (65) 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
 - (66) any dividend paid or credited in favour of a resident individual from the Fijian Holdings Property Trust Fund before 1 January 2010.”.

Section 20 amended

7. The principal Act is amended in section 20 by adding after subsection (4) the following subsections—

“(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;

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- (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)."

Section 21 amended

8. Section 21(1) of the principal Act is amended—
- (a) in paragraph (n) by deleting "\$50,000.00" and substituting "\$100,000";
- (b) in paragraph (r)(i) by deleting "31st December 2004" and substituting "31st December 2008";
- (c) in paragraph (x) by substituting the full stop with a semi-colon at the end and by adding the following paragraphs—
- (y) 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;
- (z) 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."

Section 21C amended

9. Section 21C of the principal Act is amended in subsection (5) by repealing the definition of "qualifying year" and substituting the following definition—

"qualifying year" means a year of assessment between 2001 and 2008".

Section 25 amended

10. Section 25 of the principal Act is amended by inserting after subsection (2) the following new subsection—

"Allowance for elderly dependant.

"(3) 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."

Section 40 amended

11. Section 40 is amended by renumbering the existing provision as subsection (1), and by adding the following subsection—

"Liability of masters of ships and captains of aircraft

"(2) 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.”

Section 41 amended

12. Section 41(e) of the principal Act is amended by adding “, 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.” after “penalties”.

Sections 41A and 41B inserted

13. The principal Act is amended by adding after section 41 the following sections—

“Liability for tax payable by companies left with insufficient assets

- 41A.—(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.

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.”.

Section 44A inserted

14. The principal Act is amended by adding after section 44 the following section—

“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.”.

New subsections added

15. The principal Act is amended in section 50 by adding after subsection (6), the following subsections—

“Abrogation of pleas of legal professional privilege in tax cases

“(7) 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.

Taking possession of items required to be examined by FIRCA

(8) 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.”.

New section 50A added

16. The principal Act is amended by adding after section 50 the following section—

Change of address

50A.—(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 3 months of such change, notify the Commissioner, in writing, of his new address.”.

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.”.

Section 59 amended

17. Section 59 of the principal Act is amended by adding after subsection (2) the following subsection—

“(3) Where the Commissioner is satisfied that an assessment or an additional assessment made under subsection (1) is incorrect, the Commissioner may, whether or not any tax or additional tax has been paid, amend such assessment.”.

Section 59A inserted

18. The principal Act is amended by adding after section 59 with the following section—

“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.”.

Section 72 amended

19. The principal Act is amended in section 72 by adding the following subsections—

“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.”.

Section 72A inserted

20. The principal Act is amended by inserting after section 72 the following section—

“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.”.

Section 76(3) amended

21. Section 76 of the principal Act is amended in subsection (3) by adding at the end of that subsection the following—

“, and subsections (2) to (10) of section 62 of the Value Added Tax Decree apply to this subsection with necessary modifications”.

Section 77A amended

22. Section 77A of the principal Act is amended—

(a) in subsection (1), by deleting “assessed upon him” and substituting “owed by him or a company in which he has a controlling interest, under this Act or any other written law;”;

(c) by adding the following subsections—

“(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.”.

Section 77B inserted

23. The principal Act is amended by inserting after section 77A the following section—

“Possession agreement

77B.—(1) This section applies where—

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- (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 distrained 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 Commissioner 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 Commissioner or, on appeal, a tribunal that there is a reasonable excuse for the breach in question."

Section 78 amended

24. The principal Act is amended in section 78 by adding after subsection (4), the following subsection—

"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."

New Section 78A added

25. The principal Act is amended by inserting after section 78 the following section—

"Reciprocity of income tax 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."

Section 80 amended

26. The principal Act is amended in section 80 by renumbering the existing provision as subsection (1), and the adding the following subsection—

"(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)."

Section 81 amended

27. The principal Act is amended in section 81(1) by adding after paragraph (e) the following paragraph—

"(f) for the procedures that apply to accounting by employers for fringe benefits in terms of section 80(2)."

Sections 96A and 96B inserted

28. The principal Act is amended by adding after section 96 the following sections—

"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 failure to notify the Commissioner

96B. 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."

Rates of normal tax

29. The Fourth Schedule to the principal Act is amended by repealing Tables A4, B4 and C4 and substituting the following tables—

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“Table A4 – Year of assessment 2005 and every subsequent year

A. RESIDENT INDIVIDUALS AND RESIDENT INDIVIDUAL TRUSTEES

<i>Chargeable income</i> \$	<i>Tax payable</i> \$
0 – 8,840	Nil
8,841 – 10,000	15% of excess over \$8,840
10,001 – 20,000	174 + 25% of excess over \$10,000
20,001+	2,674 + 31% of excess over \$20,000

Table B4 – Year of assessment 2005 and every subsequent year

B. NON-RESIDENT INDIVIDUALS AND NON-RESIDENT INDIVIDUAL TRUSTEES

<i>Chargeable income</i> \$	<i>Tax payable</i> \$
0 – 8,840	20% of excess over \$0
8,841 – 10,000	1,768 + 25% of excess over \$8,840
10,001 – 20,000	2,058 + 30% of excess over \$10,000
20,001+	5,058 + 31% of excess over \$20,000

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%.”.

Tenth Schedule amended

30. The Tenth Schedule to the principal Act is amended—

(a) by repealing paragraph 1-5 and substitution the following paragraph —

“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.”;

(b) in paragraph 1-10, by repealing the definition of “eligible taxation law” and substituting the following definition—

““eligible taxation law” means any provision of the Sixth Schedule and subsidiary legislation made under the Sixth Schedule;”;

(c) by repealing paragraph 1-15(3) and paragraph 1-27.

Passed by the House of Representatives this 16th day of February 2005.

Passed by the Senate this 2nd day of March 2005.