

INCOME TAX ACT (AMENDMENT) (NO.3) DECREE 1991

A DECREE TO AMEND THE INCOME TAX ACT

IN exercise of the powers vested in me as President of the Sovereign Democratic Republic of Fiji and Commander-in-Chief of the Armed Forces, and acting in accordance with the advice of the Prime Minister and the Cabinet, I hereby make the following Decree -

Short title and interpretation

1.-(1) This Decree may be cited as the Income Tax Act (Amendment) (No. 3) Decree, 1991.

(2) In this Decree the Income Tax Act is referred to as the "principal Act".

Section 17 amended

2. Section 17 of the principal Act is amended by substituting a semi-colon for the full stop at the end of paragraph (52) and inserting the following paragraph immediately thereafter:-

"(53) Notwithstanding the provisions of subsection (2) of Section 21 of this Act, any dividend which has been paid or credited in favour of a resident individual by a company holding an operating licence granted under the provisions of the Tax Free Zones Decree 1991 out of its profits attributable to export earning and that such company qualifies for relief in accordance with the Fifth Schedule of this Act:

Provided that -

(i) in the event of sale or disposal by any other means of shares held in such a company by a resident individual within five years immediately following their acquisition such dividend paid or credited by that company in any year

shall not be exempt from basic tax and normal tax in the hands of the resident individual shareholder and shall be assessed for such tax in accordance with subsection (2) of Section 21 of this Act and that such dividend shall be included as total income and apportioned over a period including the year of sale or disposal and the immediately preceding two years.

- (ii) exemption under this paragraph shall not apply on the cancellation or withdrawal of a company's operating licence within five years of the date the licence was granted and the resident individual shareholder shall be assessed for tax as prescribed in proviso (i) of this paragraph."

Paragraph 4 of the Fifth Schedule repealed

3. Paragraph 4 of the Fifth Schedule to the principal Act is repealed and replaced by the following paragraph:-

"4. Nature of Trade, Products and Services to be Approved and other Requirements:

- (i) The trade and product which the Minister will approve shall be a product of manufacturing, processing, or assembly including the provision of services, the manufacture or produce of deep-sea fishing or of production of minor agricultural commodities. Minor agricultural commodities shall be such commodities as the Minister may approve but will not include sugar or copra but derivatives of manufacture from those commodities may be considered by the Minister as manufactures.
- (ii) An approved trade or product may include a product manufactured, processed or assembled wholly or substantially for export although not directly exported by the company seeking approval, in which case both the manufacturer and exporter as separate entities may be eligible for deduction and both entities may seek approval in respect of the same trade or product".

Paragraph 5 of the Fifth Schedule repealed

4. Paragraph 5 of the Fifth Schedule to the principal Act is repealed and replaced by the following paragraph:-

"5. Method of Relief:

- (i) Subject to paragraph 11, in respect of an approved product, a rebate in respect of the export profits relating to such approved product for the fiscal year in which approval is first given and the seven subsequent fiscal years, the full amount of the tax chargeable on the export profits.

The rebate due for any year of assessment shall be limited to the amount calculated under this sub-paragraph or the tax payable for that income year, whichever is the less.

- (ii) Where a deduction under this Schedule is admissible in addition to an exemption under the Third Schedule the exemption under the Third Schedule shall first be allowed and a deduction under this Schedule will be applied to any balance of profits which have not been exempted. Any apportionment or computation under this paragraph shall be applied as if the net profit chargeable were the total profits of the trade.
- (iii) Any concession granted under this Schedule prior to the first day of January 1988 shall continue to apply and the rebate, commencing from the year of assessment 1988 shall be computed in accordance with sub-paragraph (i)".

Tax Free Zone - New paragraph 11 of Fifth Schedule

5. The Fifth Schedule to the principal Act is amended by the addition of the following new paragraph after paragraph 10.

"11. Tax Free Zone:

- (i) Notwithstanding the other paragraphs of this Schedule where a trade, product or service is approved in accordance with paragraph 4 and such trade, product or service is exported to the extent of ninety-five percent

or more of the annual production thereof by the company, such an enterprise shall be designated as a Tax Free Zone and shall enjoy relief in accordance with paragraph 5 but so that the full period is extended to thirteen years commencing from the fiscal year of approval and persisting for the twelve subsequent fiscal years, provided it continues to meet the ninety-five percent export criteria:

Provided further that where it is considered appropriate by the Minister the ninety-five percent export criteria may be reduced in accordance with subsection (3) of Section 7 of the Tax Free Zones Decree, 1991.

- (ii) Any enterprise engaged in re-export to the extent of ninety-five percent or more of activities conducted by it may for the purpose of this paragraph be designated as a Tax Free Zone and enjoy the relief as in sub-paragraph (i).
- (iii) Any enterprise engaged in an approved trade or product or service which supplies ninety-five percent or more of its annual output to a Tax Free Zone may itself be eligible for designation as a Tax Free Zone under this paragraph."

Commencement

6. This Decree shall come into force on the day it is signed.

Made this 4th day of December 1991.

PENAIA K GANILAU

President of the Sovereign Democratic Republic of Fiji and
Commander-in-Chief of the Armed Forces