

**ACT NO. 4 OF 2002**

I assent.

[L.S.]

J. I. ULUIVUDA  
President

[11 February 2002]

## **AN ACT**

### **TO AMEND THE INCOME TAX ACT**

[1st January 2002]

ENACTED by the Parliament of the Fiji Islands –

*Short title and commencement*

1. —(1) This Act may be cited as the Income Tax (Budget Amendment) Act 2002 and is deemed to have come into force on 1st January 2002.

(2) In this Act, “principal Act” means the Income Tax Act (Cap. 201).

*Non-resident dividend withholding tax*

2. Section 8(6) of the principal Act is amended by repealing paragraph (c).

*Non-resident miscellaneous withholding tax*

3. Section 8A of the principal Act is amended by repealing subsection (8) and substituting the following new subsection –

“ (8) The tax shall not be payable in respect of any sum payable to a person referred to in paragraph (5) of section 17.”

5. Section 10A of the principal Act is amended—

(a) by repealing subsection (1) and substituting the following new subsections—

“(1) Notwithstanding section 11, there shall be paid a tax, to be known as a “royalty withholding tax”, equal to 15 per cent of any royalty.

(1A) In this section “royalties” means payments of any kind to the extent to which they are made as consideration for—

(a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark, or other like property or right;

(b) the use of, or the right to use, any industrial, agricultural, commercial or scientific equipment;

(c) the supply of scientific, technical, industrial or commercial knowledge or information; or

(d) the supply of any assistance which is given as a means of enabling the application or enjoyment of, any such property or right of the kinds mentioned in paragraph (a), any such equipment as mentioned in paragraph (b) or any such knowledge or information as is mentioned in paragraph (c).”; and

(b) by repealing subsection (6).

*Section 11 amended*

6. Paragraph (e) of section 11 of the principal Act is repealed.

*Expenses deductible*

7. Section 21(1) of the principal Act is amended by repealing paragraph (s) and substituting the following new paragraph—

“(s) (i) one and one half times the amount of any cash donation made by a taxpayer between 1st January 1998 and 31st December 2001 to the South Pacific Games Infrastructure Fund;

(ii) two times the amount of any cash donation made by a taxpayer between 1st January 2002 and 31st December 2003 to the South Pacific Games Infrastructure Fund, 2003 South Pacific Games Organising Committee and South Pacific Games Organising Committee Limited:

Provided that any amount to which this paragraph applies must be deducted in the year the cash donation is made or in an equal proportion in each of any 3 out of 5 years consisting of the year in which the donation is made and the next 4 succeeding years?”.

*Export income deduction*

8. Section 21B of the principal Act is amended—

- (a) in subsection (3) by deleting “income” after “means” and substituting “profits”;
- (b) by inserting after subsection (3) the following new subsection—  
 “(4) The Commissioner may, where separate records for export income are not maintained, determine such income on the basis of the following formula:—

$$\frac{A}{B} \times C$$

Where:—

- A is total export sales;
- B is total sales; and
- C is total profits arising from all sales.”;
- (c) by renumbering former subsection (4) as subsection (5).

*Investment allowance*

9. Section 21C of the principal Act is amended by deleting the definition of “capital asset” in subsection (5) and substituting it with the following new definition—

“ “capital asset” means any capital asset but does not include—

- (a) land or buildings;
- (b) passenger vehicles; or
- (c) trading stock.”.

*Losses*

10. Section 22 of the principal Act is amended—

- (a) in subsection (1) by repealing paragraph (a) and substituting the following new paragraph—

“(a) be set off against the taxpayer’s income from other sources for the same year:

Provided that—

- (i) no relief shall be allowed under the provisions of this paragraph in respect of any loss suffered from any transaction of trade, business, profession or vocation if a profit derived from such transaction would not have been included in chargeable income;

- (ii) no relief shall be allowed under the provisions of this paragraph in respect of any loss incurred as a result of an allowance or any other relief or deduction available under the Hotels Aid Act; and”;
- (b) in paragraph (b) of subsection (1) by—
  - (1) inserting after sub-paragraph (iv) the following new sub-paragraph—

“(v) in the case of an allowance or any other relief or deduction available under the Hotels Aid Act, losses carried forward can only be set off against the total income of that hotel business or the total income from that hotel premises for the next 8 years in succession;” and
  - (2) by renumbering the former sub-paragraph (v) as sub-paragraph (vi);
- (c) by repealing subsection (2) and substituting the following new subsection—

“(2) For the purpose of this section—

  - (a) any loss incurred by a taxpayer shall be ascertained in accordance with the provisions of this Act for the calculation of total income; and
  - (b) the period of eight years referred to in paragraph (b) of subsection (1) applies to losses incurred on or after the 2001 year of income.”.

*Section 95A (Penalty for overestimating the percentage of dividend subject to corporate tax) inserted*

11. The principal Act is amended by inserting after section 95 the following new section—

“*Penalty for overestimating the percentage of dividend subject to corporate tax*

95A (1) If any company overestimates the percentage of dividend subject to corporate tax by an amount of 20 per cent or more of the correct percentage, that company shall be liable to an additional tax equal to the amount of the shortfall in tax so determined under the Dividend Regulations.

(2) The additional tax prescribed under subsection (1) is payable within 30 days of the date of written notification by the Commissioner.

(3) The additional tax prescribed under subsection (1) shall be reduced by 75 per cent if the company informs the Commissioner by way of voluntary disclosure of the shortfall so determined in regulation 10 of the Dividend Regulations.”.

*Section 97 title amended*

12. The principal Act is amended by deleting the title “Penalty for non-payment” in section 97 and substituting the title “Penalty for non-payment on an assessment or instalment”.

*Section 97A (Penalty for non-payment of taxes on the overestimation of the percentage of dividend subject to corporate tax) inserted*

13. The principal Act is amended by inserting after section 97 the following new section—

*“Penalty for non-payment of taxes on the overestimation of the percentage of dividend subject to corporate tax*

97A. If any company fails to pay the shortfall of the tax liability calculated under the Dividend Regulations, or fails to pay the additional tax in accordance with the provisions of section 95A of the Act, the company shall pay in addition to any other penalties, a penalty of \$2 or one quarter of the tax unpaid, whichever is the greater sum.”.

*Rebate of withholding tax*

14. Section 104 of the principal Act is repealed and substituted by the following new section—

*“Rebate of withholding tax*

104. The tax chargeable on any interest derived or accrued in Fiji shall be abated by any interest withholding tax paid under the provisions of section 9A in respect of the same income.”.

*Allowances under the Hotels Aid Act*

15. Section 105 of the principal Act is amended in subsection (1) by deleting “:” after “fiscal years” and inserting “subject to the period prescribed by section 22:”.

Passed by the House of Representatives this 25th day of February 2002.

Passed by the Senate this 5th day of March 2002.