

INTERIM GOVERNMENT OF THE REPUBLIC OF THE FIJI ISLANDS

INCOME TAX ACT (BUDGET AMENDMENT) PROMULGATION 2007  
(PROMULGATION NO. 47 OF 2007)

IN EXERCISE of the powers conferred upon the Interim Government, and upon the exercise of my own deliberate judgement as President of the Republic of the Fiji Islands as to what is best and good for the people of the Republic of the Fiji Islands, and by the exercise of the executive authority of the State in accordance with section 85 of the Constitution and such other powers as may appertain, and with the approval of the Cabinet, I, Josefa Iloilovatu Ulivuda, make this Promulgation—

## TO AMEND THE INCOME TAX ACT (CAP. 201) —

*Short title and commencement*

1.—(1) This promulgation may be cited as the Income Tax Act (Budget Amendment) Promulgation 2007, and is deemed to have come into force on 1 January 2008.

(2) The Income Tax Act shall be referred to as the "principal Act".

*Section 4 amended*

2. The principal Act is amended under Subsection 4(7) by:

- (a) deleting "or" after semi colon in (b);
- (b) deleting the coma and inserting "; or" in (c); and
- (c) inserting new paragraphs (d) and (e) as follows:  
 "(d) to the Financial Intelligence Unit; or  
 (e) to the Fiji Independent Commission Against Corruption,".

*Section 7 amended*

3. The principal Act is amended under Section 7 by deleting "\$8,840" and substituting "\$9,000" wherever it appears under subsection 7(1)(a).

*New Section 7C inserted*

4. The principal Act is amended by inserting the following new section 7C after section 7B:

*"Branch Profit Remittance—Additional Normal Tax*

- 7C.—(1) Notwithstanding any other taxes imposed under this Act, there shall be paid a tax known as branch profit remittance additional normal tax equal to fifteen per cent (15%) of any branch profits derived in Fiji a non-resident;
- (2) The non-resident company carrying on business in Fiji shall be liable for the tax and the tax shall be recovered from the company paying or crediting branch profits to a non-resident;
  - (3) The company which, in accordance with the provision of subsection (2), is required to pay the tax shall remit the same to the Commissioner of Inland Revenue within 30 days, or such period as the Commissioner of Inland Revenue may specify, of the payment or crediting of the branch profits;
  - (4) For the purposes of this section, the branch profit remittance tax shall be levied on the branch profits paid or credited by the company to the extent that it has not been paid or credited from income which has been charged to tax."

*Section 9A amended*

5. Section 9A of the principal Act is amended under Subsection (2) by:

- (a) removing the "and" after the semi colon in (c) and inserting it after the semi colon under (d);
- (b) deleting the full stop after (d) and inserting a semi colon; and
- (c) inserting a new sub-paragraph (e) after (d) the following:  
 "(e) in every subsequent year of assessment – at the rate of 31%."

*Section 17 amended*

6. Section 17 of the principal Act is amended—

- (a) by inserting the following "any pension that is paid from any fund approved by the Commissioner of Inland Revenue in accordance with Section 110 of this Act" after the word "pension" in paragraph (50);
- (b) by repealing the clauses under paragraph (63) and inserting the following:  
 "(63) the income of an Information Communication Technology operator operating:
  - (i) in the declared Kalabu Tax Free Zone from 1 January 2007 to 31 December 2016; or
  - (ii) anywhere outside the Kalabu Tax Free Zone who is granted a license between 1 January 2008 and 31 December 2010 to be exempt from tax for a period of 10 years,

Provided that the business employs 50 employees or more for any 6 months within the income year and 60 percent of its total services is exported.

For the purposes of subparagraph (ii), any operator may apply and pay a license fee of one thousand dollars (\$1,000) per annum to the Commissioner of Inland Revenue. The Minister may make regulations to prescribe matters required in the collection of license fees.";

(c) by removing the semi-colon after paragraph (69);

(d) by inserting the following new paragraphs—

"(70) the income of the Land Transport Authority earned on or after 1 January 2008;

(71) the income of the Exporters Club Limited earned on or after 1 January 2003;

(72) the income derived from:

(i) any interest received by a resident individual during the income year from any financial institution in Fiji not exceeding \$200; or

(ii) any dividend received by a resident individual during the income year from any Unit Trust in Fiji not exceeding \$200.

Notwithstanding the provisions of section 43, the interest or dividend received by the wife of a resident individual from similar sources shall also not be chargeable to the extent of the first \$200 thereof. Provided that the total interest or dividend not chargeable under this paragraph shall, in aggregate, not exceed \$200 in respect of each spouse.

(e) by deleting "\$200,000" in paragraph (68) and substituting "\$300,000." and

(f) by repealing paragraphs (56), (60), (61) and (64).

*New Section 19A inserted*

7. Section 19 of the principal Act is amended by inserting a new section 19A with the following:

*"Head Office Expenses*

19A. Notwithstanding any other provisions of this Act, in determining the chargeable income of any company whether incorporated in Fiji or not carrying on business in Fiji no deductions shall be allowed in respect of head office charges or any other like payments in excess of 5% of total gross Fiji Income."

*Section 21 amended*

8. Section 21(1) of the principal Act is amended—

(a) in paragraph (v):

(i) by deleting "two" and substituting "one and one half";

(ii) by deleting "between 1st January 2004 and 31st December 2007"; and

(i) by inserting "as approved by the Commissioner of Inland Revenue" after "Fund".

(b) by replacing the full stop with a semi-colon at the end of paragraph (ze) and by adding the following new paragraphs—

"(zf) interest in respect of a loan obtained by a taxpayer to purchase his own residence in Fiji: Provided that—

(i) the only residence which the taxpayer maintains is that in respect of which such loan was obtained;

(ii) any deduction shall not exceed \$400 per annum;

(iii) such deduction shall not continue on a change of residence;

(zg) one and one half times of capital expenditure (excluding motor vehicles, furniture and fittings) incurred in Fiji by a non-resident company carrying on business in Fiji from profits earned or derived in Fiji.

If the non-resident company carrying on business in Fiji sells or otherwise disposes of the capital asset, the amount of deduction allowed under this section is deemed to be income of the company in the year that the sale or disposal took place"; and

(c) by repealing paragraph (w).

*Section 21B amended*

9. Section 21B of the principal Act, is amended by:

- (a) deleting "25%" and substituting "50%" in the year 2008 in paragraph 21B(2); and
- (b) inserting a new paragraph 21B(7) with the following:

"(7) For the purposes of this section, the export income deduction will only be allowed if the Commissioner of Inland Revenue is satisfied that the export earnings will be remitted to Fiji."

*New Section 41C*

10. The principal Act is amended by inserting a new section 41C with the following:

*"Liability of new companies for tax payable by former companies with substantially the same shareholders or under the same control"*

41C—(1) For the purpose of this Section,

"company" means any company incorporated in or outside Fiji;

"new company" means a company carrying on a business in Fiji and consisting substantially of the same shareholders as an original company or being under the control of the same persons as an original company;

"nominee", of a person (first person) in relation to any person means any other person who—

- (a) may be required to exercise his voting power of the first person in relation to any company in accordance with the direction of that person, ; or
- (b) hold shares or debentures directly, or indirectly on behalf of the first person; and includes any relative of that first person;

"original company" means a company which having at any time carried on a business in Fiji, after the commencement of this Act, has ceased to carry on a business in Fiji, and includes any such company that has been wound up.

"person" includes a company and a local or public authority.

(2) Where an original company has been wound up, its shareholders and directors, as on the commencement of its winding up, shall respectively be deemed to be the shareholders and the persons having the control of the company for the purpose of this section.

(3) Where an original company was, when it ceased to carry on business in Fiji, liable under this Act for any tax or was liable to be assessed for any such tax, and that tax has not been paid, the new company shall, for the purpose of this Act,

- (a) be deemed to be the agent of the original company; and
- (b) shall be liable for all tax payable by the original company.

(4) For the purpose of this Section

- (a) a company shall be deemed to be under the control of the same person—
  - (i) by whom more than 50% of the shares, or more than 50% of the nominal capital, or more than 50% of the paid up capital, or more than 50% of the voting power is held; or
  - (ii) who have by any other means whatsoever control of the company; or
  - (iii) who, by reason of the shareholding at the end of any income year, would be entitled to more than 50% of the profits for that year if those profits were distributed by way of dividend at the end of that year.
- (b) Where a nominee of any person holds any shares, nominal capital, paid-up capital, or voting power in a company, or has by any other means whatsoever any power of control in a company, or is entitled to a share of profits distributed by a company, then for the purposes of this Section those shares or that capital or that voting power or that power of control or that title profits, as the case may be, shall be deemed to be held by that person, and in every such case that person and his nominee [or that person and all his nominees] shall be deemed to be one person.
- (c) Two companies shall be deemed to consist substantially of the same shareholders if not less than 50% of the paid-up capital of each of them is held by shareholders in the other or if not less than 50% in nominal value of the allotted shares in each of them is held by shareholders in the other, (shares in one company held by another company shall for this purpose be deemed to be held by the shareholders in the last-mentioned company.)".

*Section 50A amended*

11. Section 50A of the principal Act is amended by the following:

- (a) by inserting "and status" after "address" in sub-heading;
- (b) by deleting "3" and substituting "1" under subsection (1)"
- (c) by deleting "s" in "months" under subsection (1);
- (d) by deleting "his new address" and substituting a semi colon after "of";
- (e) by inserting the following:

"(1) any changes in the name, address, constitution or nature of the taxpayer;

(2) A taxpayer who fails to notify the Commissioner of Inland Revenue within the specified period commits an offence and is liable on conviction to a fine of \$500."

*Section 51 amended*

12. Section 51 of the principal Act is amended under subsection 51(1) by deleting the proviso paragraph.

*Section 54 amended*

13. Section 54 of the principal Act is amended by inserting "8A" after "8" and "10A" after "10".

*Section 94 amended*

14. Section 94 of the Act is amended by—

- (a) inserting ", 47" after "46"; and
- (b) deleting "47" and inserting "47A" after "or".

*Fourth Schedule amended*

15. The Fourth Schedule to the Act is amended by adding the following tables:

"Table A5 — Year of assessment 2008 and every subsequent year

## A. RESIDENT INDIVIDUALS AND RESIDENT INDIVIDUAL TRUSTEES

<i>Chargeable income</i> \$	<i>Tax payable</i> \$
0—9,000	Nil
9,000—10,000	15% of excess over \$9,000
10,001—20,000	150 + 25% of excess over \$10,000
20,001 +	2,650 + 31% of excess over \$20,000

Table B5 — Year of assessment 2008 and every subsequent year

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

<i>Chargeable income</i> \$	<i>Tax payable</i> \$
0—9,000	20% of excess over \$0
9,000—10,000	1,800 + 25% of excess over \$9,000
10,001—20,000	2,050 + 30% of excess over \$10,000
20,001 +	5,050 + 31% of excess over \$20,000

*Sixth Schedule amended**New sections 2-1 and 2-2*

16.—(1) The Sixth Schedule to the Act is amended by adding the following section 2-1 and section 2-2—

"2-1 A company or any person engaged in the making of a film or Audio Visual Production is only entitled to apply for one incentive only.

2-2 A company, production entity or any person engaged in the making of a film or audio visual production is required to provide an audited report in the form approved by the Commission.

Such an audit must be conducted:

(a) in accordance with all applicable accounting standards, including any standards relating to the independence of auditors; and

(b) by an auditor who has been approved in writing by FIRCA."

*New Section 17-1*

17. The Sixth Schedule to the principal Act is amended by adding a new section 17-1 with the following:

"17-1 An applicant who holds a current provisional certificate cannot apply to the Commission for a provisional certificate for another or a new audio visual production until after the application for a Final Certificate for the first or current audio visual production has been made to the Commission."

*Eleventh Schedule amended*

*Section 2 amended*

18. The Eleventh Schedule to the Act is amended by inserting the following under section 2:

**"Minister" means the Minister responsible for Finance;**

*Section 18 amended*

19. The Eleventh Schedule to the principal Act is amended in subsection 18(1) substituting "16" after the word "paragraph".

Given under my hand this 21st day of December 2007.

**J. I. ULUIVUDA**  
President  
of the Republic of Fiji Islands