

ARRANGEMENT OF SECTIONS

1. Short title and commencement
2. Section 3B inserted
3. Section 17 amended
4. Section 19 amended
5. Section 21 amended
6. Section 21E inserted
7. Section 34 amended
8. Section 47A inserted
9. Section 75B inserted
10. Sixth Schedule amended

ACT NO. 4 OF 2006

I assent.

[L.S.]

J. I. ULUIVUDA
President

[22nd March 2006]

AN ACT**TO AMEND THE INCOME TAX ACT**

[1st January 2006]

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 2006, and is deemed to have come into force on 1st January 2006.

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

New Section 3B added

2. The principal Act is amended by adding after section 3A, the following section—

“Tax Identification Number

3B. All taxpayers shall be identified through a number issued by the Commissioner in such manner as prescribed to be called the “Tax Identification Number”.”.

Section 17 amended

3. Section 17 of the principal Act is amended by inserting after paragraph (67), the following paragraph—

“(68) the income of prescribed small and micro enterprises engaged in Agriculture, Fisheries or Tourism which have a gross turnover not exceeding \$200,000.”.

Section 19 amended

4. Section 19 of the principal Act is amended—

- (a) by renumbering the section as subsection (1);
- (b) by inserting next after paragraph (k), the following new paragraph —
“(l) inducements paid to public officers”; and
- (c) by inserting the following new subsections—

“(2) Paragraph (l) of subsection (1) applies—

- (a) where a person gives an inducement to a public officer; and
- (b) the person gives the inducement intending to influence the public officer to act, or fail to act, in his or her official capacity in order to —
 - (i) obtain or retain business for the person; or
 - (ii) obtain an improper advantage for the person in the conduct of business; and
- (c) the public officer has acted or failed to act or has or does not have the authority to act.

(3) Paragraph (l) of subsection (1) applies—

- (a) where a person gives an inducement to a foreign public officer; and
- (b) the person gives the inducement to influence that foreign public officer to act, or to fail to act, in his or her official capacity in order to—
 - (i) obtain or retain business for the person; or
 - (ii) obtain an improper advantage for the person in the conduct of business; and
- (c) the person giving the inducement would have been, at the time the inducement was given, an offence under the laws of the foreign public officer’s country, if the benefit had been provided, and all related acts have been done, in that country; and

(d) the public foreign officer fails to act or has or does not have the authority to act.

(4) For the purpose of subsections (2) and (3), no deduction shall be allowed of the amount of inducement.

(5) In this section—

“benefit” means any money, valuable consideration, office, or employment, or any benefit, whether direct or indirect;

“enterprise” means –

(a) a company, wherever incorporated, that –

(i) the government or foreign government is able to control or dominate (whether by reason of its ownership of shares in the company, its voting powers in the company, or its ability to appoint 1 or more directors (however described), or by reason that the directors (however described) are accustomed or under an obligation to act in accordance with the directions of that government, or otherwise); and

(ii) enjoys subsidies or other privileges that are enjoyed only by companies, persons, or bodies to which subparagraph (i) or paragraph (b)(i) apply; or

(b) a person or body (other than a company), wherever situated, that –

(i) the government or foreign government is able to control or dominate (whether by reason of its ability to appoint the person or one or more members of the body, or by reason that the person or members of the body are accustomed or under an obligation to act in accordance with the directions of that government, or otherwise); and

(ii) enjoys subsidies or other privileges that are enjoyed only by companies, persons, or bodies to which subparagraph (i) or paragraph (a)(i) apply

“foreign country” includes –

(a) a territory for whose international relations the government of a foreign country is responsible; or

(b) an organised foreign area or entity including an autonomous territory or a separate customs territory;

“Government” also includes local Government and “foreign government” includes all levels and subdivisions of government;

“inducement” means money, valuable consideration, office, or employment, or any benefit, whether direct or indirect;

“government agency” and “foreign government agency” mean any person or body, wherever situated, that carries out a public function under the laws of the government of a foreign country;

“public officer” includes—

- (a) a member or officer of the executive, judiciary, or legislature of the Government or a foreign government;
- (b) a person employed by the Government or foreign government, Government agency or foreign government agency, government enterprise or foreign enterprise, or public international organisation;
- (c) a member of Parliament or a Minister of the State;

“public international organisation” means—

- (a) an organisation of which 2 or more countries or two or more governments are members, or are represented on the organisation;
- (b) an organisation constituted by an organisation to which paragraph (a) applies or by persons representing two or more such organisations;
- (c) an organisation constituted by persons representing two or more countries or two or more governments;
- (d) an organisation that is a part of an organisation referred to in any of paragraphs (a) to (c).

Section 21 amended

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

- (a) by repealing paragraphs (j) and (p);
- (b) in paragraph (zb) by substituting the full stop with a semi-colon at the end and by adding the following paragraphs—

“(zc) two times the amount of capital spent on the primary industries of agriculture and fisheries, including purchase of farm implements and plant and machinery used on the farm, cost of irrigation, the preparation of land for agriculture or grazing, the planting of income generating trees or crops:

Provided that the incentives are available only —

- (i) to taxpayers who do not enjoy other incentives under this Act; and
- (ii) for the period commencing 1 January 2006 and ending 31 December 2010;

(zd) the amount spent in investment or re-investment by a taxpayer engaged in value adding processes using at least 50 percent of local materials in food processing, agriculture processing, fisheries or forestry business.

“local content” includes material, labour and other matters prescribed.”.

New section 21E added

6. The principal Act is amended by adding after section 21D the following section—

“Information Communication Technology Tax Incentives

21E.—(1) Notwithstanding anything contained in this Act, taxpayers engaged in new Information Communication Technology business and existing taxpayers so engaged who are able to show a significant increase in capacity and the number of employees, shall be allowed the tax incentives in accordance with the following formula—

- (a) 80 percent of the taxpayer’s income shall be exempt from tax if the business is employing 101 employees or more;
- (b) 60 percent of the taxpayer’s income shall be exempt from tax if the business is employing from 60 to 100 employees; and
40 percent of the taxpayer’s income shall be exempt for taxpayers employing from 10 to 59 employees.

(2) For the purposes of this section, Information Communication Technology business includes software development, call centres and internet service provision, but does not include retail or wholesale of information technology products and the repair, sale or service of any such product”.

(3) Notwithstanding any of the provisions of section 19, a deduction of 150% shall be allowed under this section in respect of costs incurred for the development of Information Communication Technology business, including software development, call centres or internet services by any taxpayer employing 500 or more employees.

(4) The incentive referred to under subsection (1) is available for the period commencing 1 January 2006 and ending 31 December 2012.

(5) For the purpose of this section, “increase in capacity” means—

- (a) in the case of employees, an increase of 50 employees; and
- (b) in the case of sales, an increase of at least 50 percent sales, from 1 January 2006.”

Section 34 amended

7. Section 34 of the principal Act is amended by repealing subsection (2) and substituting the following new subsections—

“(2) For the purposes of subsection (1), a company is deemed to be under the control of persons—

- (a) by whom more than one half of the shares, more than one half of the issued capital, more than one half of the paid up capital or more than one half of the voting power is held; or
- (b) who have, by any other means whatsoever, control of the company; or
- (c) who, by reason of the shareholding at the end of any fiscal year of the company (or in the case of a company in liquidation at the commencement of the liquidation) would be entitled to more than one half of the profits for that year, if those profits were distributed by way of dividend at the end of that year.

(3) Where shares in a company are held by or on behalf of another company, such shares are deemed to be held by the shareholders of that other company.

(4) - If the Commissioner, by applying the provisions of subsection (2), is satisfied that two or more companies are under the control of the same person or persons, the Commissioner may, for purposes of taxation, treat those companies as if they were a single company.

(5) Where a nominee of any person holds any shares, issued capital, paid-up capital, or voting power in a company, or has by any other means whatsoever any power of control of a company, or is entitled to a share or 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 to 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.

(6) For the purpose of subsection (5), “nominee” in relation to any person, means any other person who may be required to exercise his voting power in relation to any company in accordance with the direction of that person, or who holds shares or debentures directly or indirectly on behalf of that person; and includes the husband or wife of that person and any relative of that person by blood, marriage or adoption.

(7) In determining the amount of income to be exacted under this section the Commissioner shall apply the following methods of valuation—

- (i) the comparable uncontrolled price method;
- (ii) the resale price method;
- (iii) the cost plus method;
- (iv) the profit split method; and
- (v) the comparable profits method.” .

New Section 47A added

8. The principal Act is amended by adding after section 47, the following section—

“Rental Income Reporting System

47A—(1) Every real estate agent shall furnish to the Commissioner in the prescribed form, which may be in electronic form, by the last day of February in each year, a report providing the following information in relation to the previous calendar year—

- (a) the name and address of each landlord for whom the real estate agent has collected rent;
- (b) the address of the property for which the real estate agent collected the rent on behalf of the landlord;
- (c) the total amount of the rent collected on behalf of each landlord, for each property of that landlord;
- (d) the net amount of rent referred to in paragraph (c) after deduction of commission and other expenses in relation to the management of the property;
- (e) any other income derived; and
- (f) any other information required by the Commissioner.

(2) A real estate agent who fails to provide the report required under subsection (1), commits an offence and is liable on conviction to a fine not exceeding \$5,000 or for imprisonment for a term not exceeding 12 months or to both.

(3) For the purposes of this section, a person is deemed to be a real estate agent if the person acts, or holds himself or herself out to the public as ready to act, for reward as an agent in respect of the sale or other disposition of land or business (either with or

without any interest in land) or the purchase or other acquisition of land or of business (either with or without any interest in land), or in respect of the leasing and letting of land, whether or not the person carries on any other business. For the purposes of this section, the collection or receipt of rent money by—

- (a) a real estate agent or any person employed by that real estate agent; or
- (b) a director, officer or employee of a company that is a real estate agent; or
- (c) a company in which a real estate agent holds, directly or indirectly, a majority of the shares or control of the voting power—

shall be deemed to be carrying on the business of a real estate agent.

(4) Where two or more persons carry on business jointly as real estate agents, each of those persons shall be deemed to be a real estate agent.

(5) For the purposes of this section “land” includes all estates and interests, whether freehold or chattel, in real property; and also includes any building and any part of a building; and, in relation to any transaction relating to land that also relates to any goods, chattel, or other property, also includes those goods or chattels and that other property.”

New section 75B added

9. The principal Act is amended by adding after section 75A the following section—

“Deduction of tax from payment due to defaulters

75B. – For the purposes of this section—

“Sum payable”, in relation to a person and to any taxpayer means any amount that is payable by the person to the taxpayer (whether on that person’s own account, or as an agent, or as a trustee, or otherwise howsoever) and means, where that person is a bank, any interest accruing therein in favour of taxpayer by deposit or deposited to the credit of that taxpayer with that bank, whether on current account or so as to bear interest for a fixed term or without limitation of time, and whether or not the taxpayer has made any application to withdraw or uplift, that money and whether or not the account into which the money is deposited is overdrawn;

“Bank means any bank that is a bank within the meaning of the Banking Act or any licensed financial institution.”.

10. The principal Act is amended in the Sixth Schedule—

- (a) in paragraph 44 by repealing the definitions of “applicant”, “company”, “partnership” and “sole proprietor” and substituting the following definitions in their respective alphabetical positions—

“applicant for an audio visual operating licence” means a sole proprietor, a partnership or a company, which makes an application for an audio-visual operating licence;

“applicant for the zone” means a sole proprietor, a partnership or a company which makes an application for a declaration by the Minister pursuant to subparagraph 45(5);

“company” means a company incorporated in the Fiji Islands carrying on a business of production activity in the Fiji Islands and which has its operations exclusively in the studio city zone or temporary studio city zone;

“partnership” means a partnership of 2 or more residents carrying on a business of production activity in the Fiji Islands and which has as its exclusive operating location the studio city zone or temporary studio city zone”;

“sole proprietor” means a resident carrying on a business of production activity in the Fiji Islands and whose business has as its exclusive operating location the studio city zone or temporary studio city zone.”;

- (b) in paragraph 45(5) by deleting “be used by a licensee for the purposes of developing infrastructure, services and resources for the audio visual industry” and substituting “be developed by the applicant for the zone for use by a licensee to conduct any production activity”;

- (c) in paragraph 65-40—

- (i) by inserting “and which is paid for from a Fiji bank account” after “Fiji Islands” in sub paragraph (a);
- (ii) deleting sub paragraph (b) and substituting “the use of land in the Fiji Islands and payment for which is made from a Fiji bank account”;
- (iii) in sub paragraph (c) by inserting after “film” the words “and which is paid for from a Fiji bank account”;

- (d) in paragraph 65-45(1)—

- (i) in item (1)(a), by inserting after “Fiji Islands” the words “and, paid for from a Fiji bank account” after “Fiji Islands”;
- (ii) in item (1)(b), by inserting “and payment for which is made from a Fiji bank account” after “Fiji Islands”;

- (iii) in item (1)(c), by inserting “and, paid for from a Fiji bank account” after “film”;
- (iv) in item (3)(c)(i), by inserting “and, paid for from a Fiji bank account” after “Fiji Islands”;
- (v) in item (3)(c)(ii), by inserting “and payment for which is made from a Fiji bank account” after “Fiji Islands”;
- (vi) in item (3)(c)(iii), by inserting “and paid for from a Fiji bank account” after “film”;
- (vii) in item (3)(b), by deleting “\$500,000” and substituting “\$FD500,000”.

Passed by House of Representatives on 21st February 2006.

Passed by Senate on 8th March 2006.