

INCOME TAX ACT 2015

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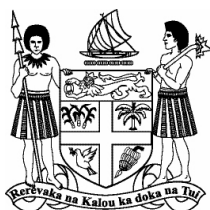
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ACT NO. 32 OF 2015

I assent.

J. K. KONROTE
President

[23 November 2015]

AN ACT

TO REVISE, SIMPLIFY AND CONSOLIDATE THE LAWS RELATING
TO INCOME TAX

ENACTED by the Parliament of the Republic of Fiji—

PART 1—PRELIMINARY*Short title and commencement*

1.—(1) This Act may be cited as the Income Tax Act 2015.

(2) Subject to subsection (3), this Act shall come into force on 1st January, 2016 and shall apply to tax years commencing on or after the commencement date.

(3) Section 9 and Part 6 shall come into force on the date appointed by the Minister by notice published in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires—

“acquisition”, in relation to an asset, has the meaning in section 83;

“amortisation deduction” means a deduction allowed under section 35;

“amount” includes an amount in kind;

“approved form” has the meaning in the Tax Administration Decree 2009;

“approved fund” has the meaning in section 3;

“arm’s length transaction” means a transaction between persons dealing at arm’s length with each other;

“asset” includes a capital asset, depreciable asset, intangible asset, or trading stock;

“associate” has the meaning in section 4;

“business” includes—

- (a) trade, commerce, agriculture, manufacture, profession, or vocation, but does not include employment;
- (b) a venture or concern in the nature of a trade, commerce, agriculture, or manufacture; or
- (c) a profit-making undertaking or scheme not covered by paragraphs (a) or (b);

“business income” has the meaning in section 17;

“business intangible” means—

- (a) an intangible asset within paragraphs (a), (b), or (c) of the definition of “intangible asset” that has a limited useful life and is wholly or partly used to derive taxable business income;
- (b) a fine, premium, or other capital amount paid or payable upon the grant or transfer of a lease of land or a structural improvement to land, or expenditure incurred pursuant to an obligation to effect improvements to land or a structural improvement to land, if the land or structural improvement is wholly or partly used to derive taxable business income;
- (c) an expenditure incurred to derive taxable business income that provides an advantage or benefit for a period of more than one year, other than expenditure incurred to acquire tangible personal or real property, or an intangible asset; or
- (d) pre-commencement expenditure;

“capital asset” means—

- (a) real property, a structural improvement to real property, an interest in real property or an interest in a structural improvement to real property, and includes the following—
 - (i) a lease of real property;
 - (ii) a lease of a structural improvement to real property; or

- (iii) an exploration, prospecting, development, or similar right relating to real property;
- (iv) information relating to a right referred to in sub-paragraph (iii);
- (b) a vessel of over a 100 tonnage;
- (c) a yacht;
- (d) a membership interest in a company, security, or other financial asset;
- (e) an intangible asset;
- (f) an interest in a partnership or trust;
- (g) an airplane, helicopter or other aircraft;
- (h) an option, right or other interest in an asset referred to in the foregoing paragraphs,

but does not include an asset that is trading stock, a depreciable asset or a business intangible;

“capital gain” has the meaning in section 66;

“Capital Gains Tax” means the Capital Gains Tax imposed under section 65;

“CEO” means the Chief Executive Officer of the Fiji Revenue and Customs Authority appointed under section 27 of the Fiji Revenue and Customs Authority Act 1998;

“chargeable income” has the meaning in section 13;

“commencement date” means the date specified in section 1(2);

“company” means—

- (a) a body or association of persons corporate or unincorporated, including a statutory corporation and a company created by charter, but not including a partnership;
- (b) a foreign association of persons, other than a partnership, that the CEO has declared to be a company for the purposes of this Act; or
- (c) a trust approved as a managed investment scheme under the Companies Act and includes a unit trust to which section 743 of the Companies Act applies;

“consideration”, in relation to an asset, has the meaning in section 86;

“cost”, in relation to an asset, has the meaning in section 85;

“Credit Card Levy” means the Credit Card Levy imposed under section 99;

“*de facto* spouse” in relation to an individual, means an individual not of the same sex, who lives with the first-mentioned individual as spouses on a genuine domestic basis although not legally married to each other;

“depreciable asset” means any tangible personal property or structural improvement to real property that—

- (a) has a useful life exceeding one year;
- (b) is likely to lose value as a result of normal wear and tear, or obsolescence; and
- (c) is used wholly or partly to derive income included in gross income;

“depreciation deduction” means a deduction allowed under section 31;

“derived” means—

- (a) in the case of Income Tax, received or the arising of the right to receive as determined under section 37; or
- (b) in the case of any other tax imposed under this Act, received;

“disposal”, in relation to an asset, has the meaning in section 84;

“dividend”, in relation to a company, means—

- (a) a distribution of profits by a company to a member of the company, and includes an entitlement to income or capital profits of a unit trust;
- (b) the capitalisation of profits by the company, whether by way of a bonus share, bonus unit, or bonus debenture issue, or increase in the amount paid-up on a membership interest, or otherwise involving a credit of profits to a share or trust capital account, but does not include a bonus share, bonus unit, or bonus debenture paid out of a share or unit premium account;
- (c) an amount returned to a member of the company in respect of a membership interest in the company on a partial reduction in capital to the extent that the amount returned exceeds the amount by which the nominal value of the membership interest was reduced;
- (d) an amount returned to a member of the company on redemption or cancellation of a membership interest in the company, including on liquidation, dissolution, or termination of the company, to the extent the amount distributed exceeds the nominal value of the membership interest;
- (e) in the case of a reconstruction, reorganisation, or amalgamation of the company, an amount paid to a member of the company in respect of a membership interest in the company in excess of the

nominal value of the membership interest before the reconstruction, reorganisation, or amalgamation; or

- (f) the amount of any loan, payment for an asset or service, value of any asset or service provided or any debt obligation released, by the company to, or in favour of, a member of the company or an associate of a member to the extent to which the transaction is, in substance, a distribution of profits;

“employee” means an individual engaged in employment;

“employer” means a person who engages or remunerates an employee;

“employment” includes—

- (a) a directorship or other office in the management of a company;
- (b) a position entitling the holder to a fixed or ascertainable remuneration; or
- (c) the holding or acting in any public office;

“employment income” has the meaning in section 15;

“executor”, in relation to a deceased estate, includes any person appointed under the laws of intestacy to administer the estate;

“exempt capital gain” has the meaning in section 67;

“exempt fringe benefit” has the meaning in section 71;

“exempt income” has the meaning in section 20;

“fair market value” has the meaning in section 5;

“Fiji asset” means—

- (a) an asset referred to in paragraph (a) of the definition of “capital asset”, if the real property is located in Fiji;
- (b) a membership interest in a company, or an interest in a partnership or trust, if the assets of the company, partnership or trust consist solely or principally of Fiji assets under paragraph (a) held by the company, partnership or trust, directly or indirectly, through one or more interposed persons;
- (c) a capital asset of a permanent establishment in Fiji;
- (d) a membership interest, security or other financial asset issued by a resident person;
- (e) an interest in a resident partnership or resident trust; or
- (f) an option, right or other interest in an asset referred to in the foregoing paragraphs;

“Fiji citizen” means an individual who is a citizen under the Citizenship of Fiji Decree 2009;

“Fiji National Provident Fund” means the Fiji National Provident Fund established under the Fiji National Provident Fund Act (Cap. 219) and continued under the Fiji National Provident Fund Decree 2011;

“financial institution” means any person carrying on the business of receiving funds from the public or from members through the acceptance of money deposits repayable upon demand, after a fixed period, or after notice, or any similar operation through the sale or placement of bonds, certificates, notes, or other securities, and the use of such funds either in whole or part for loans, investments, or any other operation authorised either by law or by customary banking practices, for the account and at the risk of the person doing such business, and includes an insurance company;

“fringe benefit” has the meaning in section 72;

“Fringe Benefits Tax” means the Fringe Benefits Tax imposed under section 69;

“fringe benefits taxable amount” has the meaning in section 70;

“foreign-source income” means an amount to the extent to which it is not derived from sources in Fiji;

“generally accepted accounting principles” means the accounting standards issued or recommended by the Fiji Institute of Accountants under the Fiji Institute of Accountants Act (Cap. 259) and subsidiary rules from time to time in force, and in regulations made under the Companies Act and published in the Gazette, and the standards or rules are approved by the CEO;

“Government” means the Government of Fiji;

“gross income” has the meaning in section 14;

“gross turnover”, in relation to a person carrying on a business for a period, means the total business income derived by the person from carrying on the business for the period without deduction of expenditures or losses, but not including the following—

- (a) exempt income;
- (b) an amount subject to taxation under section 10, 11, or 65;
- (c) an amount subject to withholding tax under section 112;

“income” means employment income, business income, property income, income referred to in section 14(1)(b) or (d), and deposits referred to in section 14(1)(c);

“Income Tax” means the Income Tax imposed under section 8;

“intangible asset” means—

- (a) a copyright, patent, design or model, plan, secret formula or process, trademark, or other like property or right;
- (b) a contractual right, including arising as a result of a prepayment of expenditure, with a benefit for a period of more than one year;
- (c) a customer list, distribution channel, or unique name, symbol or picture, or other marketing intangible; or
- (d) goodwill;

“interest” means—

- (a) an amount, described as interest, discount, premium, or otherwise, whether periodical or a lump sum, as consideration for the use of money or being given time to pay;
- (b) an amount that is functionally equivalent to an amount referred to in paragraph (a);
- (c) any amount treated as interest under section 41; or
- (d) a commitment, guarantee, service, or similar fee payable in respect of a debt or other instrument or agreement giving rise to interest under paragraphs (a), (b), or (c);

“international organisation” means an organisation, the members of which are sovereign powers or governments of sovereign powers;

“international traffic”, in relation to a ship, means any operation of the ship except as between two places in Fiji;

“know-how” means any scientific, technical, commercial, or industrial information, techniques, knowledge, experience, or skill likely to assist in—

- (a) the carrying on of a business,
- (b) the manufacture or processing of goods or materials;
- (c) the working of a mine, oil well, or other source of mineral deposits, including searching for, discovery, or testing of deposits, or the winning of access thereto; or
- (d) the carrying out of any agricultural, forestry, or fishing operations;

“liaison office” means an office, the sole activity of which is representation;

“life insurance business” has the meaning in section 2 of the Insurance Act enacted in 1998;

“life policy” has the meaning in section 2 of the Insurance Act enacted in 1998;

“management fee” means an amount as consideration for the rendering of any managerial service, but does not include employment income;

“member”, in relation to a company, means a person that has a membership interest in the company, including a shareholder or a holder of an interest in a trust referred to in paragraph (c) of the definition of “company”;

“membership interest”, in relation to a company, means an ownership interest in the company, including an interest in a trust referred to in paragraph (c) of the definition of “company”;

“Minister” means the Minister responsible for Finance;

“natural resource amount” means—

- (a) an amount, including a premium or like amount, as consideration for the right to take minerals or a living or non-living resource from land or sea; or
- (b) an amount calculated in whole or part by reference to the quantity or value of minerals or a living or non-living resource taken from land or sea;

“net loss” has the meaning in section 30;

“non-approved fund” means a retirement fund other than the Fiji National Provident Fund or an approved fund;

“non-profit organisation” means an organisation that satisfies the following conditions—

- (a) the organisation is—
 - (i) an institution, body of persons or irrevocable trust established solely for the relief of poverty or distress of the public, or for the advancement of education or religion;
 - (ii) a body of persons established solely for the purpose of controlling or furthering an amateur sport or game;
 - (iii) a trade union registered under the provisions of the Employment Relations Promulgation 2007 or an industrial association registered under the provisions of the Industrial Associations Act (Cap. 95); or
 - (iv) a club, society or association organised and operated solely for social welfare, civic management, pleasure or recreation, or any other purpose except pecuniary profit;
- (b) no part of the income or other funds of the organisation is used or are available for use for the pecuniary profit of a proprietor or member of the organisation;

- (c) the CEO has certified that the organisation is a non-profit organisation under the Regulations;

“Non-resident International Shipping Income Tax” means the Non-resident International Shipping Income Tax imposed under section 11;

“non-resident person” means a person who is not a resident person;

“non-resident trust” means a trust that is not a resident trust;

“Non-resident Withholding Tax” means the Non-resident Withholding Tax imposed under section 10;

“permanent establishment” means a fixed place of business through which the business of a person is wholly or partly carried on, and includes the following—

- (a) a place of management, branch, office, factory, warehouse or workshop, but does not include a liaison office;
- (b) a mine site, oil or gas well, quarry, or other place of exploration for, or extraction of natural resources;
- (c) a building site, construction, assembly or installation project, or supervisory activities connected with such site or project, but only if the site, project, or activities continue for more than 6 months;
- (d) the furnishing of services by the person, including consultancy services, through employees or other personnel engaged by the person for such purpose, but only if activities of that nature continue for the same or a connected project for a period or periods aggregating more than 6 months in any twelve-month period;
- (e) a person, other than an agent of independent status, acting on behalf of another person (referred to as the “principal”), if the first-mentioned person—
 - (i) has and habitually exercises an authority to conclude contracts on behalf of the principal; or
 - (ii) habitually maintains a stock of trading stock from which the person regularly delivers trading stock on behalf of the principal;
- (f) substantial equipment used for more than 6 months within a twelve-month period or installed by, for or under contract with the person;
- (g) carries on activities, including the operation of substantial equipment, in the exploration for or exploitation of natural resources or standing timber for a period or periods exceeding in the aggregate 90 days in any twelve-month period, for or under contract with a person;

“permanent resident” means an individual who is a permanent resident of Fiji under regulation 51 of the Immigration Regulations 2007;

“person” means an individual, company, partnership, trust, government, political subdivision of a government, or international organisation;

“pre-commencement expenditure” means any expenditure incurred by a person before the commencement of a business if the income to be derived by the person will be wholly and exclusively included in taxable business income, other than expenditure incurred in acquiring real property, a depreciable asset, an intangible asset, or a business intangible within paragraphs (a) to (c) of the definition of “business intangible”;

“prescribed” means prescribed in the Regulations;

“Presumptive Income Tax” means the Presumptive Income Tax imposed under section 9;

“property income” has the meaning in section 18;

“provide”, in relation to a fringe benefit, includes allow, confer, give, grant, transfer, or perform;

“quarter” means a period of 3 months ending on 31st March, 30th June, 30th September or 31st December;

“received”, in relation to a person, includes—

- (a) applied on behalf of the person either at the instruction of the person or under any law;
- (b) reinvested, accumulated or capitalised for the benefit of the person;
- (c) credited to an account, or carried to any reserve, or a sinking or insurance fund for the benefit of the person; or
- (d) made available to the person;

“redundancy payment” means a bona fide lump sum payment, other than a retiring allowance—

- (a) made to an employee on termination of the employment of the employee when the termination is wholly or mainly due to the fact that the position filled by the employee is, or will become, superfluous to the needs of the employer; or
- (b) made to an individual who is a seasonal worker when the individual’s usual seasonal employment is unavailable wholly or mainly due to the fact that the individual’s position or usual position is, or will become, superfluous to the needs of the employer,

but does not include the following—

- (i) a payment relating solely to a seasonal layoff;
- (ii) a payment contingent on the completion of either a fixed term contract or a contract to complete specified work;
- (iii) a payment in lieu of a notice of termination of employment;
- (iv) a payment that, if it were not made on termination of employment, would constitute monetary remuneration of the employee;
- (v) a payment made by a company to a director pursuant to its articles of association;
- (vi) a payment that is excessively large in relation to the earnings and length of service of the employee;

“relative” in relation to an individual, means—

- (a) an ancestor, a descendant of any of the grandparents, or an adopted child, of the individual;
- (b) an ancestor, a descendant of any of the grandparents, or an adopted child of a spouse of the individual; or
- (c) a spouse of the individual or of any person specified in paragraph (a) or (b);

“remote area” means an area that is fifteen or more kilometres from a rural local authority, town, or city;

“rent” means—

- (a) any consideration for the use or occupation of, or the right to use or occupy any land or building, including any premium, fine, or like amount, but not including a natural resource amount;
- (b) the fair market value of any improvement to land or a building made under an agreement for the use or occupation of, or the right to use or occupy the land or building, or by virtue of the cessation of such right; or
- (c) an amount in lieu of undertaking an improvement referred to in paragraph (b);

“resident company” means a company—

- (a) that is incorporated, formed or settled in Fiji; or
- (b) that has any part of its central management and control located in Fiji;

“resident individual” has the meaning in section 6;

“resident partnership” means a partnership—

- (a) that is formed in Fiji; or
- (b) that has any part of its central management and control located in Fiji;

“resident person” means a resident individual, resident partnership, resident trust, resident company, the Government, and a political subdivision of the Government;

“resident trust” means a trust—

- (a) that was settled or established in Fiji;
- (b) that is the estate of a deceased resident individual; or
- (c) in respect of which a trustee is a resident person;

“retirement fund” means a fund established for the payment of benefits on retirement, permanent disability, or death of a member of the fund;

“royalty” means an amount, however described, whether periodical or a lump sum, as consideration for—

- (a) the use of, or 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 right to use any industrial, agricultural, commercial, or scientific equipment;
- (c) the supply of any scientific, technical, commercial, or industrial information, techniques, knowledge, experience, or skill, including know-how;
- (d) the use of, or right to use motion picture films, videotapes, compact discs, digital video discs, video compact discs, or similar items in connection with television, radio, or internet broadcasting;
- (e) the use of, or right to use visual images or sounds, or both, transmitted by satellite, cable, optic fibre, or similar technology in connection with television, radio, or internet broadcasting;
- (f) the receipt of, or right to receive visual images or sounds, or both, transmitted by satellite, cable, optic fibre, or similar technology in connection with television, radio, or internet broadcasting;
- (g) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any property, right, knowledge, information or equipment referred to in paragraphs (a) to (f); or

(h) any forbearance in respect of the use or right to use any property, right, knowledge, information, equipment or assistance referred to in paragraphs (a) to (g);

“short-term insurance business” means any insurance business other than life insurance business;

“Social Responsibility Tax” means the Social Responsibility Tax imposed under section 8;

“sources in Fiji” has the meaning in section 7;

“spouse”, in relation to an individual, means an individual who is legally married to the first-mentioned individual, and includes a *de facto* spouse;

“structural improvement”, in relation to real property, includes any building, road, driveway, car park, pipeline, bridge, tunnel, airport runway, canal, dock, wharf, retaining wall, fence, power lines, water or sewerage pipes, drainage, landscaping, or dam;

“tax” means a tax or levy imposed under this Act;

“tax year” means the Calendar year and includes a substituted tax year and transitional tax year under section 36;

“taxable business income” means business income included in gross income;

“taxable foreign-source income” means foreign-source income included in gross income;

“temporary resident” means an individual who is a resident individual solely or mainly for the purposes of engaging in employment in Fiji under a contract of employment of not more than 3 years, but not including a Fiji citizen or permanent resident of Fiji;

“Telecommunications Levy” means the Telecommunications Levy imposed under section 98;

“third party arranger” means a third party under an arrangement with the employer or an associate of the employer;

“Third Party Insurance Levy” means the Third Party Insurance Levy imposed under section 100;

“trading stock” includes —

- (a) any property produced, manufactured, purchased, or otherwise acquired for manufacture, production, sale or exchange;
- (b) any materials or consumables used in the production or manufacturing process; or
- (c) livestock, other than animals used as beasts of burden or working beasts;

“trust” has the meaning in section 2 of the Trustee Act (Cap. 65) and includes the following—

- (a) the estate of a deceased person;
- (b) an entity, other than a partnership or company, created outside Fiji that has legal characteristics substantially similar to those of a trust settled or created in Fiji,

but does not include a trust referred to in paragraph (c) of the definition of “company”;

“trustee” has the meaning in the Trustee Act (Cap. 65) and includes the following—

- (a) the executor of the estate of a deceased person;
- (b) a person who owes a fiduciary responsibility to an entity treated as a trust under paragraph (b) of the definition of “trust”,

but does not include a trustee of a trust referred to in paragraph (c) of the definition of “company”;

“underlying ownership”, in relation to a company, means a membership interest in the company held, directly or indirectly through an interposed person or persons, by an individual or by a person not ultimately owned by individuals; and

“use”, in relation to a depreciable asset or business intangible, includes available for use and held.

Approved fund

3.—(1) An employer-provided fund is an approved fund if the following conditions are satisfied—

- (a) the fund is established under irrevocable trusts by an employer solely for either or both of the following purposes—
 - (i) the provision of benefits to members of the fund in the event of the retirement or permanent disability of the member;
 - (ii) the provision of benefits to dependants of a member in the event of the death of the member;
- (b) membership of the fund is confined to employees of the employer or employees of an associate of the employer;
- (c) the fund is authorised to accept contributions only from the employer, associates of the employer, or members of the fund;
- (d) the rights of members and dependants to receive benefits from the fund are fully secured and members are fully informed of those rights;

- (e) the retirement ages specified for members are not less than those applicable under regulation 14 of the Public Service (General) Regulations 1999;
- (f) the benefits to which members or dependants are entitled are not excessive having regard to—
 - (i) the remuneration paid to the member;
 - (ii) the period of service; and
 - (iii) any other benefits that may be provided to the member or dependant of the member by the employer or an associate of the employer;
- (g) the total cost of in-house assets of the fund does not exceed, at any time, 10% of the cost of all assets of the fund;
- (h) the fund is not permitted, under the governing rules of the fund, to lend monies to members or dependants of members;
- (i) the amount of the fund is not in excess of the amount necessary to provide benefits having regard to contributions reasonably expected to be made to, and income reasonably expected to be earned by, the fund in succeeding years;
- (j) the CEO has certified in accordance with the Regulations that the fund is an approved fund.

(2) The CEO may certify an employer-provided fund to be an approved fund even though the conditions in subsection (1) have not been fully complied with, provided that there has been substantial compliance with those conditions.

(3) In this section—

“benefits” means an annuity, pension or lump sum paid by a fund to a member;

“dependant”, in relation to a member of a fund, means the spouse and any child under the age of 18 years, of the member;

“employer-provided fund” means a retirement fund created by an employer or an associate of an employer for the benefit of employees or, in the case of the death of an employee, for the benefit of dependants of employees;

“in-house asset”, in relation to a fund, means an asset of the fund that is a loan to, or investment in the employer who established the fund or an associate of the employer but, in the case of a public sector fund, does not include an interest in securities issued by the Government; and

“public sector fund” means a fund established by the Government or a political subdivision of the Government.

Associate

4.—(1) Subject to subsection (2), two persons are associates if the relationship between the two persons is such that one person may reasonably be expected to act in accordance with directions, requests, suggestions or wishes of the other person, or both persons may reasonably be expected to act in accordance with the directions, requests, suggestions or wishes of a third person.

(2) Two persons are not associates solely by reason of the fact that one person is an employee or client of the other, or both persons are employees or clients of a third person.

(3) Without limiting the generality of subsection (1), the following are treated as associates—

- (a) an individual and a relative of the individual, except if the CEO is satisfied that neither person may reasonably be expected to act in accordance with the directions, requests, suggestions or wishes of the other;
- (b) a partner in a partnership and the partnership, if the partner, either alone or together with an associate or associates under another application of this section, controls more than 50% of the rights to income or capital of the partnership;
- (c) a trust and a person who benefits under the trust or who may benefit under the trust through the exercise of a power of appointment or otherwise;
- (d) a member of a company and the company, if the member, either alone or together with an associate or associates under another application of this section, controls either directly or through one or more interposed persons—
 - (i) more than 50% of the voting power in the company;
 - (ii) more than 50% of the rights to dividends; or
 - (iii) more than 50% of the rights to capital;
- (e) two companies, if a person, either alone or together with an associate or associates under another application of this section, controls either directly or through one or more interposed persons—
 - (i) more than 50% of the voting power in both companies;
 - (ii) more than 50% of the rights to dividends in both companies;
or
 - (iii) more than 50% of the rights to capital in both companies.

(4) In applying subsection (3)(b), (d) or (e), holdings that are attributable to a person from an associate are not reattributed to another associate.

Fair market value

5.—(1) The fair market value of an asset, property, service, or benefit at a particular time is the ordinary open market value of the asset, property, service or benefit at that time.

(2) If it is not possible to determine the fair market value of an asset, property, service, or benefit at a particular time under subsection (1), the fair market value is the consideration of a similar asset, property, service or benefit would ordinarily fetch in the open market at that time, adjusted to take account of the differences between the similar asset, property, service, or benefit and the actual asset, property, service or benefit.

(3) For the purposes of subsection (2), an asset, property, service or benefit is similar to another asset, property, service or benefit, as the case may be, if it is the same as, or closely resembles, the other asset, property, service or benefit in character, quality, quantity, functionality, materials or reputation.

(4) If the fair market value of an asset, property, service or benefit cannot be determined under subsection (1) or (2), the fair market value is the amount determined by the CEO provided that the valuation is consistent with generally accepted valuation principles.

(5) This section is subject to sections 63 and 85(11)-(14).

Resident individual

6.—(1) Subject to subsections (2) and (3), an individual is a resident individual if the individual—

- (a) resides in Fiji;
- (b) is domiciled in Fiji unless the individual has a permanent place of abode outside Fiji;
- (c) is present in Fiji for a period of, or periods amounting in aggregate to, 183 days in any twelve-month period; or
- (d) is an employee of the Government posted abroad.

(2) An individual who is a resident individual under subsection (1) in relation to a tax year, in this section referred to as the “current tax year”, but who was not a resident individual for the preceding tax year is treated as a resident individual in the current tax year only for the period commencing on the day on which the individual was first present in Fiji.

(3) An individual who is a resident individual under subsection (1) for the current tax year but who is not a resident individual for the following tax year is treated as a resident individual in the current tax year only for the period ending on the last day on which the individual was present in Fiji.

Sources in Fiji

7.—(1) Employment income is derived from sources in Fiji—

- (a) to the extent to which it is derived in respect of employment exercised in Fiji, wherever paid; or
- (b) if it is paid by, or on behalf of, the Government, wherever the employment is exercised.

(2) Business income derived by a resident person is derived from sources in Fiji except to the extent that it is attributable to a business carried on by the person through a permanent establishment outside Fiji.

(3) Business income derived by a non-resident person is derived from sources in Fiji to the extent to which it is directly or indirectly attributable to—

- (a) a business carried on by the person through a permanent establishment in Fiji;
- (b) sales in Fiji of goods or merchandise of the same or similar kind as those sold by the person through a permanent establishment in Fiji; or
- (c) any other business activity carried on in Fiji of the same or similar kind as that carried on by the person through a permanent establishment in Fiji.

(4) Notwithstanding subsections (2) and (3), the following are derived from sources in Fiji—

- (a) a dividend paid by a resident company;
- (b) rent from the lease of real property in Fiji;
- (c) a gain arising on the disposal of a Fiji asset;
- (d) a natural resource amount if it relates to the taking of minerals or a living or non-living resource from land in, or from the territorial waters of, Fiji;
- (e) an insurance premium in respect of the insurance of a risk in Fiji;
- (f) income included in gross income under section 16 if the employment giving rise to benefits under the employee share scheme is exercised in Fiji; or
- (g) interest, a royalty, management fee, fee for the provision of professional or other independent services, pension, charge or annuity if it is paid by a—
 - (i) resident person, other than as an expenditure of a business carried on by the person outside Fiji through a permanent establishment; or
 - (ii) non-resident person as an expenditure of business carried on by the person through a permanent establishment in Fiji.

PART 2—INCOME TAX

*Division 1—Imposition of Tax**Imposition of Income Tax and Social Responsibility Tax*

8.—(1) Subject to this Act, a tax to be known as “Income Tax” is imposed for each tax year at the rate or rates prescribed by Regulations made under this Act on a person who has chargeable income for the year.

(2) In addition to the Income Tax imposed under subsection (1) and subject to this Act, a tax to be known as the “Social Responsibility Tax” is imposed for each tax year at the rate prescribed by Regulations made under this Act on an individual, including an employee, who is liable for Income Tax for the tax year.

(3) The Income Tax and Social Responsibility Tax imposed under subsections (1) and (2) for a tax year are computed by applying the rate or rates of Income Tax and Social Responsibility Tax applicable to the person prescribed by Regulations made under this Act to the chargeable income of the person for the year, with any tax credits allowed to the person for the year subtracted from the resulting amount.

(4) If a person is allowed more than one tax credit for a tax year, the credits are applied in the following order—

- (a) the foreign tax credit allowed under section 60;
- (b) the tax credits allowed under sections 53(4), 110, and 124.

(5) Instead of taxation under subsection (1), certain classes of income, including the income of certain classes of persons, may be subject to—

- (a) tax as provided in section 9, 10 or 11; or
- (b) withholding of tax as a final tax as provided in section 125.

(6) If, for a tax year, an individual has both chargeable income and employment income to which section 125 applies, the Income Tax payable on the chargeable income is computed according to the following formula—

A—B

where—

- A** is the amount of Income Tax that would be payable on an amount of chargeable income equal to the aggregate of the individual’s chargeable income and employment income to which section 125 applies for the year; and
- B** is the amount of Income Tax that would be payable on an amount of chargeable income equal to the individual’s employment income to which section 125 applies for the year.

(7) The reference to “Income Tax” in subsection (6) includes the Social Responsibility Tax.

Imposition of Presumptive Income Tax

9.—(1) Subject to this Act, a tax to be known as “Presumptive Income Tax” is imposed for each quarter at the rate prescribed by Regulations made under this Act on an individual conducting a business who satisfies the following conditions—

- (a) the business is conducted solely in Fiji;
- (b) the individual is not registered or liable to be registered for the purposes of the Value Added Tax Decree 1991;
- (c) the individual’s annual gross turnover is less than \$100,000.

(2) The Presumptive Income Tax imposed under subsection (1) for a quarter is computed by applying the rate of tax applicable to the individual prescribed by Regulations made under this Act to the gross turnover of the individual for the quarter.

(3) If the annual gross turnover of an individual to whom subsection (1) applies is \$25,000 or more, the individual may apply, in writing, to the CEO for section 8 to apply instead of this section.

(4) If the CEO is satisfied that an individual who has lodged an application under subsection (3) will keep proper records, the CEO may grant the application subject to such conditions as the CEO may specify by notice in writing to the applicant.

(5) A person to whom subsection (1) applies is subject to the Presumptive Income Tax in the first quarter in which the Presumptive Income Tax applies despite being subject to the Income Tax for the period prior to the application of the Presumptive Income Tax unless the CEO has granted the person permission under subsection (4) for the Income Tax to apply to the person.

Imposition of Non-resident Withholding Tax on non-resident payments

10.—(1) Subject to this Act, a tax to be known as “Non-resident Withholding Tax” is imposed at the rate prescribed by Regulations made under this Act on a non-resident person who has derived a dividend, interest, royalty, insurance premium, management fee, natural resource amount or fee for the provision of professional or other independent services from sources in Fiji.

(2) The tax imposed under subsection (1) is computed by applying the rate prescribed by Regulations made under this Act to the gross amount of the dividend, interest, royalty, insurance premium, management fee, natural resource amount or fee for the provision of professional or other independent services.

(3) This section does not apply to the following—

- (a) any dividend if the holding giving rise to the dividend is effectively connected with a permanent establishment in Fiji of the non-resident person;
- (b) any interest if the debt claim or other instrument or agreement giving rise to the interest is effectively connected with a permanent establishment in Fiji of the non-resident person;

- (c) any royalty or natural resource amount if the property, right or supply giving rise to the royalty or natural resource amount is effectively connected with a permanent establishment in Fiji of the non-resident person;
- (d) any insurance premium, management fee or fee for the provision of professional or other independent services if the services giving rise to the premium or fee are rendered through a permanent establishment in Fiji of the non-resident person;
- (e) any dividend, interest, royalty, insurance premium, management fee, natural resource amount or fee for the provision of professional or other independent services that is exempt income of the non-resident person.

(4) Any dividend, interest, royalty, insurance premium, management fee, natural resource amount or fee for the provision of professional or other independent services described in subsection (3)(a), (b), (c) or (d) is treated as income attributable to the permanent establishment and is taxable under section 8.

(5) The tax payable by a non-resident person under this section is discharged if the tax has been withheld from the payment of the income under section 113 and paid to the CEO under section 117.

(6) For the purposes of this section, section 7, and Subdivision 4 of Division 2 of Part 9—

- (a) a permanent establishment in Fiji of a non-resident company and the rest of the company are treated as separate persons;
- (b) the permanent establishment is treated as a resident company and the rest of the company (referred to as the “head office company”) is treated as a non-resident company; and
- (c) the after-tax earnings of the permanent establishment as determined according to generally accepted accounting principles paid or credited in favour of the head office company is treated as a dividend derived by the head office company and paid by the permanent establishment.

(7) If subsection (6) applies, section 12 applies only to the after-tax earnings of a permanent establishment treated as a dividend under subsection (6)(c).

(8) If a non-resident person provides professional or other independent services, or leases equipment, to a resident person or a permanent establishment in Fiji of a non-resident person (referred to as the “recipient”) and the fee for the services or lease rental is paid to the non-resident person by a non-resident associate of the recipient, this section applies to any recharge of the fee or rental by the associate to the recipient as if the associate provided the services or leased the equipment to the recipient.

(9) Subject to subsection (10), the Minister may exempt or reduce tax rate for tax payable under this section on the income of the qualifying employees under any regulations which are made under this Act for film incentives, who are residents of countries that do not have double tax agreements with Fiji.

(10) The Minister may by notice in writing to the CEO, direct that tax payable under this section be exempt or be paid at such reduced rate as specified in the notice.

(11) In this section, “insurance premium” includes a premium relating to reinsurance and any other amount payable in respect of the offshore placement of insurance, but does not include a premium payable under a life policy.

Imposition of Non-resident International Shipping Income Tax

11.—(1) Subject to this Act, a tax to be known as “Non-resident International Shipping Income Tax” is imposed at the rate prescribed by Regulations made under this Act on a non-resident person operating a ship in international traffic.

(2) The tax imposed under subsection (1) is computed by applying the rate prescribed by Regulations made under this Act to the gross amount derived by the non-resident person for the carriage of passengers, livestock, mail, merchandise or goods embarked or loaded in Fiji.

(3) This section does not apply to the following—

- (a) an amount that is exempt income;
- (b) an amount derived in respect of a passenger who is in Fiji solely as a result of being in transit between two places outside Fiji;
- (c) the transshipment of livestock, mail, merchandise or goods.

(4) The tax payable under this section is discharged if the tax has been paid in accordance with section 109.

General provisions relating to taxes imposed under sections 9, 10 and 11

12. Subject to this Act, the tax imposed under sections 9, 10, and 11 on a person is a final tax on the income in respect of which it is imposed and—

- (a) the income is not included in gross income in computing the chargeable income of the person for any tax year;
- (b) no deduction is allowed under this Act in computing the chargeable income of the person for any tax year for any expenditure or loss incurred by the person in deriving the income;
- (c) the amount on which tax is imposed under section 9, 10 or 11 is not reduced by a deduction allowed under this Act including for any loss carried forward; and
- (d) the tax payable by the person under section 9, 10 or 11 is not reduced by any tax credits allowed under this Act.

Division 2—Chargeable Income

Chargeable income

13. The chargeable income of a person for a tax year is the gross income of the person for the year reduced by the total amount of deductions allowed to the person for the year.

*Division 3—Gross Income**Income included in gross income*

14.—(1) Subject to this Act, the gross income of a person for a tax year is the total of the following—

- (a) employment income, business income, and property income derived by the person during the year;
 - (b) income according to ordinary concepts, other than income referred to in paragraph (a), derived by the person during the year;
 - (c) unexplained and unidentified deposits during the year in any bank account if the deposit can be sourced to the person; and
 - (d) income that a section of this Act includes in the gross income of the person for the year.
- (2) Income is not included in gross income if it is—
- (a) exempt income; or
 - (b) subject to tax under section 9, 10, or 11.
- (3) Subject to this Act—
- (a) the gross income of a resident person includes income derived from all sources within and outside Fiji; and
 - (b) the gross income of a non-resident person includes only income derived from sources in Fiji.

Employment income

15.—(1) The following are employment income—

- (a) salary, wages, or other remuneration derived by an employee in respect of employment, including leave pay, payment in lieu of leave, overtime pay, bonus, commission, fees, gratuity, or work condition supplements;
- (b) the value of a fringe benefit, other than an exempt fringe benefit, derived by an employee in respect of employment that is not subject to tax under the Fringe Benefits Tax;
- (c) the amount of any allowance derived by an employee in respect of employment, including a cost of living, subsistence, rent, utilities, education, entertainment, meeting or travel allowance, but not including any allowance to the extent expended in the performance of the employee's duties of employment;
- (d) the amount of any expenditure incurred by an employee that is reimbursed by the employer, other than expenditure to the extent incurred on behalf of the employer in the performance of the employee's duties of employment;

- (e) an amount derived by an employee as consideration for—
 - (i) the agreement by the employee to enter into employment;
 - (ii) the employee to agree to any conditions of employment or any changes to the employee’s conditions of employment; or
 - (iii) the agreement of the employee to accept a restrictive covenant in respect of any past, present or prospective employment;
- (f) an amount derived by an employee on termination of employment, whether paid voluntarily or under an agreement, including a redundancy payment or other compensation for loss of employment, and golden handshake payments;
- (g) any pension, annuity or supplement to a pension or annuity derived by an employee in respect of employment, including a past employment;
- (h) the amount of any loan, payment for an asset or services, value of any asset or services provided, or any debt obligation released, by the company to, or in favour of, a member of the company or an associate of a member to the extent to which the transaction is, in substance, remuneration for services provided in any capacity to the company by the member.

(2) The value of a fringe benefit included in employment income under subsection (1) (b) or an amount referred to in subsection (1)(h) is determined under Division 2 of Part 4.

(3) An amount or benefit is derived by an employee in respect of employment regardless of whether it is paid or provided by—

- (a) the employer of the employee;
- (b) an associate of the employer; or
- (c) third party arranger.

(4) An amount or benefit is derived by an employee even though it is paid or provided to an associate of the employee by the employer of the employee, an associate of the employer, or a third party arranger.

(5) In this section, “work condition supplements” includes an additional amount paid as compensation for difficult, unpleasant, or dangerous work conditions.

Employee share scheme benefits

16.—(1) The value of a right or option to acquire shares granted to an employee under an employee share scheme is not included in gross income.

(2) Subject to subsection (3), if an employee is allotted shares under an employee share scheme, including shares allotted as a result of the exercise of an option or right to acquire the shares, the fair market value of the shares at the date of allotment reduced by the employee’s contribution for the shares is income included in the gross income of the employee for the tax year in which the benefit is derived as determined under subsection (6).

(3) If shares allotted to an employee under an employee share scheme are subject to a restriction on the transfer of the shares—

- (a) income is included in the gross income of the employee under subsection (2) on the earlier of—
 - (i) the time the employee is able to freely transfer the shares; or
 - (ii) the time the employee disposes of the shares; and
- (b) the amount of income included in gross income is the fair market value of the shares at the time the employee is able to freely transfer the shares or disposes of the shares, as the case may be, reduced by the employee's contribution for the shares.

(4) For the purposes of this Act, if subsection (2) or (3) applies, the cost of the shares to the employee is the sum of the employee's contribution for the shares and the amount included in gross income under this section.

(5) A gain derived on the disposal by an employee of a right or option to acquire shares under an employee share scheme is income included in the gross income of the employee for the tax year in which the disposal occurs.

(6) Income under this section is derived by an employee—

- (a) in the case of an amount under subsection (2), at the time the shares are allotted to the employee in accordance with the rules governing the employee share scheme;
- (b) in the case of an amount under subsection (3), at the time determined under subsection (3)(a); or
- (c) in the case of an amount under subsection (5), at the time of disposal of the right or option by the employee.

(7) In this section—

“employee's contribution”, in relation to shares allotted to an employee under an employee share scheme, means the sum of the consideration, if any, given by the employee—

- (a) for the shares; and
- (b) for the grant of any right or option to acquire the shares; and

“employee share scheme” means an agreement or arrangement under which a company that is an employer may allot shares in the company to—

- (a) an employee of the company or an employee of a company that is an associate of the first-mentioned company; or
- (b) the trustee of a trust and under the trust deed the trustee may transfer the shares to an employee of the company or an employee of a company that is an associate of the first-mentioned company.

Business income

17.—(1) The following are included in the business income of a person conducting a business—

- (a) the gross proceeds from the conduct of the business, including the consideration for the disposal of trading stock and the gross fees from the provision of services;
- (b) the gross revenue from the investment of the capital of the business, including dividends, interest, royalties and rents;
- (c) the net gain from—
 - (i) the conduct of a venture or concern in the nature of a trade, commerce, agriculture or manufacture;
 - (ii) the carrying on or carrying out of a profit-making undertaking or scheme; or
 - (iii) the disposal of an asset, other than trading stock or an asset subject to sub-paragraph (i) or (ii), held on revenue account by a person in carrying on a business;
- (d) any other income according to ordinary concepts from the conduct of a business;
- (e) any other income that a section of this Act deems to be business income.

(2) For the purposes of subsection (1)(c)(i) and (ii), and subject to subsection (3), the net gain arising from the conduct of a venture or concern in the nature of a trade, commerce, agriculture or manufacture, or in carrying on or carrying out of a profit-making undertaking or scheme is the amount by which the gross proceeds derived by the person from the venture, concern, undertaking or scheme exceed the expenditures or losses incurred in conducting the venture, concern, undertaking or scheme.

(3) An expenditure or loss is taken into account in computing the net gain under subsection (2) only if the expenditure or loss is allowed as a deduction under this Act (ignoring section 22(1)(c)).

(4) Subject to this Act, the net gain arising on disposal of an asset to which subsection (1)(c)(iii) applies is the consideration for the disposal reduced by the cost of the asset at the time of disposal.

Property income

18.—(1) Subject to subsection (2) and section 19, the following are included in the property income of a person—

- (a) a dividend, interest, royalty, rent, natural resource amount, or other amount arising from the provision, use or exploitation of property;
- (b) the net gain from the disposal of an asset that was acquired for the purpose of disposal at a profit;

- (c) a pension, charge or annuity, or any supplement to a pension, charge or annuity;
 - (d) a benefit paid by a retirement fund.
- (2) Property income does not include income that is business or employment income.
- (3) The net gain arising on disposal of an asset to which subsection (1)(b) applies is the consideration for the disposal of the asset reduced by the cost of the asset at the time of disposal.

Purchased annuities

19.—(1) If an annuity was purchased by a person, the amount of the annuity included in the property income of the person is reduced by the capital component of the annuity.

(2) Subject to subsection (3), the capital component of an annuity is computed according to the following formula—

$$(A - B) / C$$

where—

- A** is the undeducted purchase price of the annuity;
- B** is the residual capital value of the annuity; and
- C** is the relevant number in relation to the annuity.

(3) If an annuity is derived by more than one person, the capital component of the annuity for a person deriving the annuity is computed according to the following formula—

$$A \times B / C$$

where—

- A** is the amount ascertained under subsection (2);
- B** is the amount of the annuity derived by the person; and
- C** is the total amount of the annuity derived by all persons entitled to the annuity.

(4) In this section—

“life expectancy factor”, in relation to a person in relation to an annuity, means the number of whole years of the life expectancy of the person as ascertained under prescribed life tables at the time the first payment of the annuity occurs;

“relevant number”, in relation to an annuity, means—

- (a) if the annuity is payable for a number of years, that number of years;
- (b) if the annuity is payable only during the lifetime of a person, the life expectancy factor of the person; or
- (c) in any other case, the number of years that the annuity is reasonably expected to be payable;

“residual capital value”, in relation to an annuity, means the capital amount payable on termination of the annuity; and

“undeducted purchase price”, in relation to an annuity, means so much of the purchase price of the annuity that has not been and will not be allowed as a deduction under this Act.

Exempt income

20.—(1) The Minister may prescribe by Regulations made under this Act amounts that are exempt income for the purposes of this Act.

(2) Subject to subsection (3), a provision in another law providing that an amount is exempt income does not have legal effect unless also provided for in this Act.

(3) Subsection (2) does not apply to a provision in another law that is in force at the commencement date of this Act.

Division 4—Allowable Deductions

Allowable deductions

21.—(1) Subject to this Act, a person is allowed a deduction for a tax year for—

- (a) an expenditure or loss on revenue account to the extent incurred by the person during the tax year in deriving income included in gross income;
- (b) the cost of trading stock disposed of by the person during the year as determined under section 40;
- (c) the total amount of depreciation of the person’s depreciable assets for the tax year as determined under section 31;
- (d) the total amount of amortisation of the person’s business intangibles for the tax year as determined under section 35;
- (e) the net loss incurred by the person during the tax year from—
 - (i) the conduct of a venture or concern in the nature of a trade, commerce, agriculture or manufacture;
 - (ii) the carrying on or carrying out of a profit-making undertaking or scheme;
 - (iii) the disposal of an asset, other than trading stock or an asset subject to sub-paragraph (i) or (ii), held on revenue account; or
 - (iv) the disposal of an asset that was acquired for the purpose of disposal at a profit;
- (f) any expenditure to the extent incurred by the person during the tax year on the repair of property used to derive income included in gross income; or
- (g) any other expenditure or loss of the person that a section of this Act allows as a deduction for the tax year.

(2) For the purposes of subsection (1)(e)(i) and (ii), and subject to subsection (6), the net loss arising from a venture or concern in the nature of a trade, commerce, agriculture or manufacture, or in the carrying on or carrying out a profit-making undertaking or scheme is the amount by which the expenditures or losses incurred in conducting the venture, concern, undertaking or scheme exceed the gross proceeds derived by the person from the venture, concern, undertaking or scheme.

(3) An expenditure or loss is taken into account under subsection (5) only if the expenditure or loss is allowed as a deduction under this Act (ignoring section 22 (1)(c)).

(4) The net loss arising on disposal of an asset to which subsection (1)(e)(iii) or (iv) applies is the cost of the asset at the time of disposal reduced by the consideration for the disposal.

(5) A person is allowed a deduction for a net loss under subsection (1)(e) only if the person has notified the CEO, in writing, that the asset was acquired by the person with the purpose or intention of disposal for a profit.

(6) A person must lodge a notice under subsection (5) with the CEO within 7 days of acquiring the asset or within such further time as the CEO may allow.

Deduction not allowed

- 22.—**(1) Except as provided in this Act, no deduction is allowed for the following—
- (a) an expenditure or loss to the extent to which it is of a domestic or private nature;
 - (b) an expenditure or loss incurred by an employee in deriving employment income;
 - (c) an expenditure or loss that is taken into account in computing a net gain included in business income under section 17(1)(c) or property income under section 18(1)(b), or a net loss allowed as a deduction under section 21(1)(e);
 - (d) an expenditure or loss of a capital nature except as provided under this Act;
 - (e) a dividend or other distribution of profits, an amount of capital withdrawn, or a sum employed or intended to be employed as capital;
 - (f) an amount carried to a reserve fund, a provision for expected expenditures or losses, or an amount capitalised in any way;
 - (g) an expenditure or loss to the extent recoverable or recovered under a contract of insurance, guarantee, surety, or indemnity;
 - (h) Income Tax, Social Responsibility Tax, Capital Gains Tax or Fringe Benefits Tax payable in Fiji or elsewhere, including any penalty, additional tax, or interest payable in respect of Income Tax, Social Responsibility Tax, Capital Gains Tax or Fringe Benefits Tax due;

- (i) a fine or penalty imposed for violation of any law, or a rule or regulation made under a law;
- (j) a contribution made to a non-approved fund;
- (k) subject to subsection (3), an inducement paid or provided by a person to a public officer, including a foreign public officer, if the inducement is intended to influence the 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 an associate; or
 - (ii) obtain an improper advantage for the person or an associate in the conduct of business.

(2) If a person is allowed a deduction for a payment from which the person is required to withhold tax under Subdivision 4 of Division 2 of Part 9, the deduction is not allowed until the tax withheld has been paid to the CEO.

(3) Subsection (1)(k) does not apply to an inducement paid or provided by a person to a foreign public officer unless the person providing the inducement committed or would have committed an offence under the laws of the foreign country in which the public officer holds office.

(4) In this section—

“foreign government” means a government of a foreign country or territory;

“foreign public officer” means a public officer in respect of a foreign government;

“government agency” means a person or body that carried out a public function under the laws of Fiji or of a foreign country or territory;

“inducement” means money, the offering of an office or employment, or the provision of any other benefit; and

“public officer” includes—

- (a) a member or officer of the executive, judiciary or legislature of the Government or a foreign government;
- (b) an employee of the Government or a foreign government, a political subdivision of the Government or a foreign government, a government agency, or an international organisation; or
- (c) a member of Parliament or a Minister of State.

Contribution to an approved fund or Fiji National Provident Fund

23.—(1) Subject to subsection (2), an employer is allowed a deduction for the amount of a contribution paid by the employer in a tax year to the Fiji National Provident Fund or an approved fund in respect of an employee, other than by way of deduction from the salary or wages of the employee, or which is otherwise recovered from the employee.

(2) The total amount allowed as a deduction under subsection (1) for a tax year for an employer contribution to the Fiji National Provident Fund and an approved fund in respect of an employee is limited to 50% of the employer statutory contribution paid in respect of the employee for the tax year.

Charitable donations

24.—(1) Subject to this section, a person is allowed a deduction for a cash donation made in a tax year to an approved academic or charitable institution.

(2) The total deduction allowed under subsection (1) for cash donations made by a person in a tax year must not exceed FJD\$100,000.

(3) A business is allowed a deduction for 150% of the full amount of a cash donation exceeding \$50,000 made in a tax year to an approved sports fund established for the purposes of sports development in Fiji.

(4) A person is allowed a deduction for 150% of the amount of a cash donation made in a tax year to the Fiji Heritage Foundation.

(5) A person is allowed a deduction for 200% of the amount of a cash donation exceeding FJD\$50,000 made in a tax year to the Poverty Relief Fund for Education.

(6) Subject to subsection (7), a person is allowed a deduction for—

- (a) 200% of the cost of new computers, laptops, and tablets donated to schools registered with the Ministry of Education and located in a remote area; or
- (b) 150% of the cost of new computers, laptops, and tablets donated to schools registered with the Ministry of Education and located in any other area.

(7) For the purposes of subsection (6)—

- (a) a deduction is allowed for a tax year only if the minimum cost incurred for the year on new computers, laptops, and tablets is FJD\$10,000; and
- (b) the maximum cost for a tax year is FJD\$100,000.

(8) A business is allowed a deduction for 150% of the amount of a cash donation with a minimum of FJD\$10,000 and a maximum of FJD\$100,000 made in a tax year to the Disaster Rehabilitation Fund.

(9) A company is allowed a deduction for 150% of the amount of a cash donation with a minimum of FJD\$100,000 and a maximum of FJD\$200,000 made in a tax year towards the hiring of international sporting coaches.

(10) A business is allowed a deduction for 150% of the amount of a cash donation not exceeding FJD\$50,000 made in a tax year towards any approved housing project by the Government for squatters.

(11) A business is allowed a deduction for 200% of the amount of cash donations with a minimum of FJD\$10,000 made in a tax year to the Farmers Disaster Relief Emergency Fund Account.

(12) No deduction is allowed under this section to reduce the employment income, or withholding tax as a final tax under section 125, of an employee.

(13) In this section—

“approved academic institution” means an academic institution approved by the CEO in accordance with the Regulations;

“approved charitable institution” means a charitable institution approved by the CEO in accordance with the Regulations;

“approved sports fund” means a sports fund approved by the CEO in accordance with the Regulations; and

“business” means a company or an individual carrying on business as a sole trader.

Industry incentives

25.—(1) A person carrying on business is allowed a deduction for 150% of the amount contributed to Tourism Fiji in a tax year.

(2) A company is allowed a deduction for 150% of the prescribed costs incurred in a tax year in preparation for listing on the South Pacific Stock Exchange.

(3) A person is allowed a deduction for 150% of the expenditure, not exceeding FJD\$250,000, incurred in a tax year on marketing goods and services for export to South Pacific Island countries, excluding Australia and New Zealand.

(4) A person is allowed a deduction for 40% of the capital expenditure incurred by the person in a tax year in respect of an existing business of the person in Vanua Levu, other than a business to which the tax free region incentives apply.

(5) For the purpose of subsection (4), “capital expenditure” means expenditure of an amount not less than FJD\$50,000, excluding the cost of labour, incurred for the purpose of the extension or renovation of buildings located in Vanua Levu used in business.

(6) A financial institution is allowed a deduction for 150% of the direct capital expenditure incurred by the institution in rural banking programmes undertaken by the institution.

(7) A person engaged in value adding process using at least 50% of local content in a food processing, agriculture processing, fisheries, or forestry business is allowed a deduction for the amount incurred in a tax year for investment and reinvestment in that business.

(8) A person exporting goods or services is allowed a deduction, representing a percentage of the export income, as set out in the following table—

YEAR OF ASSESSMENT	PERCENTAGE OF EXPORT INCOME TO BE DEDUCTED
2011	50%
2012	40%
2013	40%
2014	40%
2015	50%
2016	50%

(9) For the purposes of this section, “export income” means net profits derived by a person from the business of exporting goods or services, but excludes re-exports.

(10) The export income deduction under subsection (8) is only allowed if the CEO is satisfied that the export earnings have been remitted to Fiji.

(11) In subsection (7), “local content” includes material, labour and other matters prescribed.

(12) A person is allowed a deduction for 150% of the amount of expenses incurred in the Information Communications Technology start-ups involved in application design or software development.

(13) An Information Communications Technology training institution is allowed a deduction of 150% for the amount of expenses incurred.

(14) An employer is allowed a deduction for 50% of the expenditure on a uniform made in Fiji and supplied to an employee, provided that the costs of the uniform are not recovered from the employee.

(15) In determining total income, the following deductions shall be allowed—

- (a) an amount, in accordance with instructions issued by the Minister under this paragraph for capital expenditure incurred on improvements to land use for agricultural or pastoral purposes, provided that—
 - (i) in computing what deduction, if any, shall be granted under this paragraph in respect of any asset which was acquired as a result of a transaction other than an arms-length transaction, such depreciation shall be computed as if the sale price realised by the vendor or disponor was the amount of the tax written-down value of the asset computed by deducting from its cost price to the vendor or disponor the initial and depreciation allowances which have been or would have been granted in respect thereof;

- (ii) where any property of a taxpayer in respect of which an initial or depreciation allowance has been allowed or is allowable under this Act is disposed of, lost or destroyed at any time in the year of income, the depreciated value of the property at that time, less the amount of any consideration receivable in respect of the disposal, loss or destruction shall, subject to the provisions of sub-paragraph (iii) be an allowable deduction;
 - (iii) where any property referred to in sub-paragraph (ii) is disposed of by a transaction other than an arms-length transaction, no deduction shall be given, the sale price being treated as the value as written down by initial and depreciation allowances;
 - (iv) for the purpose of this paragraph, the CEO may, where any property referred to in this proviso is sold together with other property at an inclusive price, determine the amount of the consideration attributable to such property;
- (b) such amount expended on prospecting for minerals in Fiji by a taxpayer who is a holder of a valid mining right, lease or tenement issued under the provisions of any enactment for the time being in force relating to mining, whether or not prospecting for minerals is connected with any business of the taxpayer, as the CEO may, in his or her discretion, allow, and which has not already been recouped from the sale of any mining right, lease or tenement; and, for the purpose of this sub-paragraph, such allowed expenditure shall, as the CEO in his or her discretion may direct, be treated either as an expense incurred in the year when it was incurred or as an expense to be spread over a number of years; and
- (c) in the case of profits derived from the sale of any minerals, timber or gravel or of a right in or right to work such minerals, timber or gravel, an amount equal to the cost of those minerals, timber or gravel or that right, save that, in respect of minerals, the deduction so allowed under this paragraph shall wholly exclude expenditure which may be claimed under paragraph (b) or under subsection (16).

(16) Notwithstanding subsection (15), any person engaged in mining who incurs in Fiji expenditure to which this section refers may, in each of any 5 of the 8 years immediately following the year in which such expenditure was incurred, or, if he or she prefers, out of the 8 years consisting of the year in which such expenditure was incurred and the 7 succeeding years, set off against his or her total income one-fifth of the amount of such expenditure, provided that a deduction under subsection (15)(a) shall not be allowed in addition to expenditure allowed under this section.

- (17) The expenditure to which subsections (16) to (18) refers is—
- (a) capital expenditure, not claimed under subsection (15)(b), incurred in the development of mines and the extraction, treatment, refinement and sale of minerals therefrom; and
 - (b) expenditure incurred in the acquisition of any mining lease or tenement, provided that—
 - (i) where the CEO is of the opinion that the sum expended, whether in cash or by means of an issue of shares or otherwise, is excessive, having regard to the lease or tenement acquired and to the other circumstances of the case, he or she may make such adjustment with regard to such sum as, in his or her opinion, is just and reasonable;
 - (ii) this paragraph shall not apply in respect of a sale, transfer or assignment of any mining lease or tenement, if—
 - (A) any party or parties of the one part of the sale, transfer or assignment has or have the power (whether under the terms of the transaction or otherwise) to control directly or indirectly the entry into the transaction by, or the activities in connection with the mining rights of, a party of the other part; or
 - (B) any person or persons has or have the power (whether under the terms of the transaction or otherwise) to control directly or indirectly the entry into the transaction by, or the activities in connection with the mining rights of, a party of the one part and a party of the other part to the sale, transfer or assignment. For the purposes of this paragraph of the proviso, a person shall be deemed to be in control of his or her spouse and of any relative of his or her, whether by blood, marriage or adoption;
 - (iii) such expenditure as is excluded by sub-paragraph (B) shall not be claimable under subsection (15)(c).

(18) The Minister may, in relation to capital expenditure incurred in the development of a new mine, substitute such other fraction for the fraction of one-fifth set out in subsection (1) and make corresponding provision for the period during which such expenditure may be set aside. An order made under this subsection may be general or restricted to a particular person or persons. During the currency of such order, subsection (1) shall be read in relation to the expenditure referred to in this subsection and to the persons affected by the order as if varied in accordance with the provisions of the order. For the purposes of this subsection, “a new mine” means a mine which was not in production on 1 January 1952.

Bad debts

26.—(1) A person is allowed a deduction for a tax year for a bad debt if the following conditions are satisfied—

- (a) the amount of the debt—
 - (i) was previously included in the gross income of the person; or
 - (ii) is money lent by the person in the normal course of carrying on a business of money lending to derive taxable business income;
- (b) the debt or part of the debt is written off in the person's financial accounts for the tax year;
- (c) there are reasonable grounds for believing that the debt is irrecoverable.

(2) The amount of the deduction allowed to a person under this section for a tax year must not exceed the amount of the debt written off in the person's financial accounts for that year.

Recouped deductions

27. If a person has been allowed a deduction for any expenditure or loss incurred, or bad debt written off, in a tax year in the computation of the chargeable income of the person for the year and, subsequently, the person has received, in cash or in kind, any amount as a reimbursement or recovery of, or an indemnity for the expenditure or loss, or debt, the amount received is—

- (a) income included in the gross income of the person in the tax year in which it is received; and
- (b) treated as income of the same character as the income to which the deduction is related.

Natural disaster reserve

28.—(1) Subject to subsection (2), a deduction is allowed for an amount deposited by a company in a tax year in an account with a financial institution for the purpose of providing a reserve for the loss to a building situated in Fiji caused by a windstorm, tidal wave, landslide, or like catastrophe.

(2) The deduction allowed under subsection (1) for a tax year—

- (a) in relation to a commercial, industrial or agricultural building, is limited to 1.5% of the replacement cost of the building; or
- (b) in relation to a residential building, is limited to the lesser of—
 - (i) 1.5% of the replacement cost of the building; or
 - (ii) \$500.

(3) No deduction is allowed under this Act for expenditure incurred by a company in relation to damage to a building to the extent that the expenditure is financed by an amount previously deposited to an account referred to in subsection (1) and for which a deduction has been allowed under that subsection in respect of the deposit.

(4) An amount for which a company has been allowed a deduction under subsection (1) that is withdrawn by the company from the account referred to in subsection (1) and that is not applied to the repair of a building damaged by a windstorm, tidal wave, landslide, or like catastrophe is income included in the gross income of the company for the tax year in which the amount is withdrawn.

(5) In this section, “building” includes structural improvements to land on which a building is located that are used in connection with the building.

Scientific research expenditure

29.—(1) A person is allowed a deduction for scientific research expenditure incurred during a tax year in the course of carrying on a business to the extent that the expenditure is incurred for the purpose of deriving taxable business income.

(2) In this section—

“scientific research” means any activities in the fields of natural or applied science for the development of human knowledge;

“scientific research expenditure”, in relation to a person carrying on a business, means the cost of scientific research undertaken for the purposes of developing the person’s business, including any contribution to a scientific research institution which is used by the institution in undertaking research for the purposes of developing the person’s business, but does not include the following—

- (a) expenditure incurred for the acquisition of a depreciable asset or an intangible asset;
- (b) expenditure incurred for the acquisition of land or structural improvement to land;
- (c) expenditure incurred for the purpose of ascertaining the existence, location, extent, or quality of a natural deposit; and

“scientific research institution” means an association, institute, college or university that undertakes scientific research.

Loss carried forward

30.—(1) If the total deductions allowed to a person for a tax year, other than the deduction allowed under this section, exceeds the person’s gross income, other than employment income, for that year, the person has a net loss for the year equal to the amount of the excess.

(2) If a person has a net loss for a tax year, the amount of the loss is carried forward to the following tax year and allowed as a deduction against the person’s gross income, other than employment income, derived in that following year.

(3) If a net loss is not wholly deducted in a tax year under subsection (2), the undeducted amount is carried forward to the next following tax year and applied as specified in subsection (2) in that year, and so on until the loss is fully deducted, but no net loss can be carried forward for more than 4 tax years after the tax year in which the loss was incurred.

(4) If a person has a net loss carried forward under this section for more than one tax year, the loss of the earliest year is deducted first.

(5) The employment income derived by an employee in a tax year cannot be reduced by a net loss carried forward under this Act.

Division 5—Depreciation and Amortisation

Depreciation of depreciable assets

31.—(1) A person is allowed a deduction for a tax year for the amount by which the depreciable assets owned by the person have declined in value during the year through use in deriving income included in gross income.

(2) Subject to subsection (3), a person may elect for the depreciation deduction allowed under subsection (1) to be computed according to the straight-line method under section 32 or the diminishing value method under section 33 and an election so made applies to all depreciable assets owned by the person.

(3) A structural improvement can be depreciated only under the straight-line method and the cost of a structural improvement does not include the cost of the land on which the improvement is situated.

(4) A person may apply, in writing, to the CEO for a change in the method of depreciation and the CEO may, by notice in writing to the applicant, approve the application subject to such conditions as the CEO may specify in the notice.

(5) If a depreciable asset is used by a person in a tax year partly to derive income included in gross income and partly for another use, the amount of the depreciation deduction allowed under subsection (1) for the year is the fair proportional part of the amount computed under section 32 or 33, as the case may be, that would be allowed if the asset were wholly used to derive income included in gross income.

(6) If a depreciable asset is not used by a person for the whole of the tax year to derive income included in gross income, the depreciation deduction for the year is computed according to the following formula—

$$A \times B/C$$

where—

- A** is the depreciation deduction computed under section 32 or 33 after taking into account subsection (5);
- B** is the number of days in the tax year the asset is used in deriving income included in gross income; and
- C** is the number of days in the tax year.

Straight-line depreciation

32.—(1) Subject to section 31(5) and (6), the depreciation deduction allowed under section 31 to a person for a tax year in respect of a depreciable asset under the straight-line method is computed by applying the rate prescribed by Regulations made under this Act against the cost of the asset.

(2) The total deductions allowed, or that would be allowed but for section 31(5), to a person in respect of a depreciable asset to which this section applies for the current tax year and all previous tax years must not exceed the cost of the asset.

Diminishing value depreciation

33.—(1) Subject to section 31(5) and (6), the depreciation deduction allowed to a person for a tax year in respect of a depreciable asset under the diminishing value method is computed by applying the rate prescribed by Regulations made under this Act against the written down value of the asset at the beginning of the year.

(2) Subject to subsection (3), the written down value of a depreciable asset at the beginning of a tax year is—

- (a) if the asset was acquired during the year, the cost of the asset; or
- (b) in any other case, the cost of the asset as reduced by the total depreciation deductions allowed to the person in respect of the asset in previous tax years.

(3) If section 31(5) applies to a depreciable asset for a tax year, the written down value of the asset is computed on the basis that the asset has been used in that year solely to derive income included in gross income.

Disposal of depreciable asset

34.—(1) Subject to this section, if a person disposes of a depreciable asset in a tax year, the person is not allowed a depreciation deduction for the year and—

- (a) if the consideration for the disposal of the asset exceeds the written down value of the asset at the time of disposal, the amount of the excess is income included in the gross income of the person for that year; or
- (b) if the written down value of the asset at the time of the disposal exceeds the consideration for the asset, the person is allowed a deduction in that year for the amount of the excess.

(2) If subsection (1) applies to a depreciable asset that has been used partly in deriving income included in gross income and partly for another use and the consideration for the disposal of the depreciable asset is equal to or less than the cost of the asset at the time of the disposal, the amount of income included in gross income under subsection (1)(a) or the amount allowed as a deduction under subsection (1)(b) is the proportional part that relates to the use of the asset in deriving income included in gross income.

(3) If subsection (1) applies to a depreciable asset that has been used partly in deriving income included in gross income and partly for another use and the consideration for the disposal of the asset exceeds the cost of the asset at the time of the disposal, the amount of income included in gross income under subsection (1)(a) is the sum of the following:

- (a) the full amount of the difference between the consideration for the disposal and the cost of the asset at the time of the disposal;
- (b) the proportional part of the difference between the cost of the asset and the written down value of the asset at the time of the disposal that relates to the use of the asset in deriving income included in gross income.

(4) If subsection (1)(a) applies to the disposal of a depreciable asset (referred to as the “replaced asset”) by a person and the person acquires a similar depreciable asset wholly used to derive income included in gross income (referred to as the “replacement asset”) within 12 months after the disposal, the person may elect by notice in writing to the CEO to defer recognition of the gain on disposal of the replaced asset until the subsequent disposal of the replacement asset.

(5) If a person makes an election under subsection (4) and the consideration given by the person for the replacement asset is equal to or exceeds the consideration received or receivable for the replaced asset, the cost of the replacement asset is the written down value of the replaced asset at the time of disposal increased by the amount of the excess, if any.

(6) If a person makes an election under subsection (4) and the consideration received or receivable for the replaced asset exceeds the consideration given for the replacement asset, the cost of the replacement asset is the written down value of the replaced asset at the time of disposal reduced by the amount of the excess.

(7) Subject to subsection (8), the written down value of a depreciable asset at the time of disposal of the asset is the cost of the asset at the time of disposal reduced by the depreciation deductions allowed to the person in respect of the asset in previous tax years.

(8) If section 31(5) applies to a depreciable asset for a tax year, the written down value of the asset is computed on the basis that the asset was used in that year solely to derive income included in gross income.

Amortisation of business intangibles

35.—(1) A person is allowed an amortisation deduction for a tax year for the amount by which the person’s business intangibles have declined in value during the year through use in deriving taxable business income.

(2) Subject to subsections (4) and (5), the amortisation deduction allowed to a person for a tax year in respect of a business intangible is computed by applying the amortisation rate specified in subsection (3) against the cost of the business intangible.

(3) The rate of amortisation is—

- (a) in the case of pre-commencement expenditure, 25%;

- (b) in the case of a business intangible mentioned in paragraph (b) of the section 2 definition of “business intangible”, 100% divided by the period of the lease;
- (c) in the case of a business intangible with a useful life of more than 10 years, other than a business intangible referred to in paragraph (b), 10%; or
- (d) in the case of any other business intangible, 100% divided by the useful life of the intangible.

(4) If a business intangible is used by a person in a tax year partly to derive taxable business income and partly for another use, the amount of the amortisation deduction for the year is the fair proportional part of the amount computed under subsection (2) that relates to the use of the business intangible to derive taxable business income.

(5) If a business intangible is not used for the whole of the tax year in deriving taxable business income, the amortisation deduction for the year is computed according to the following formula—

$$A \times B/C$$

where—

- A** is the amortisation deduction computed under subsection (2) after taking into account subsection (4);
- B** is the number of days in the tax year the asset is used in deriving taxable business income; and
- C** is the number of days in the tax year.

(6) The total deductions allowed, or that would be allowed but for subsection (4), to a person under this section in respect of a business intangible for the current tax year and all previous tax years must not exceed the cost of the business intangible.

(7) Subject to subsections (8) and (9), if a person disposes of a business intangible in a tax year, the person is not allowed an amortisation deduction for the year and—

- (a) if the consideration for the disposal of the intangible exceeds the written down value of the intangible at the time of disposal, the amount of the excess is income included in the gross income of the person for that year; or
- (b) if the written down value of the intangible at the time of the disposal exceeds the consideration for the intangible, the person is allowed a deduction in that year for the amount of the excess.

(8) If subsection (7) applies to a business intangible that has been used partly in deriving taxable business income and partly for another use and the consideration for the disposal is equal to or less than the cost of the business intangible at the time of the disposal, the amount of income included in gross income under subsection (7)(a) or allowed as a deduction under subsection (7)(b) is the proportional part that relates to the use of the business intangible in deriving taxable business income.

(9) If subsection (7) applies to a business intangible that has been used partly in deriving taxable business income and partly for another use and the consideration for the disposal of the business intangible exceeds the cost of the intangible at the time of the disposal, the amount of income included in gross income under subsection (7)(a) is the sum of the following:

- (a) the full amount of the difference between the consideration for the disposal and the cost of the intangible at the time of the disposal;
- (b) the proportional part of the difference between the cost of the intangible and the written down value of the intangible at the time of the disposal that relates to the use of the intangible in deriving taxable business income.

(10) Subject to subsection (11), the written down value of a business intangible at the time of disposal of the intangible is the cost of the intangible at the time of disposal reduced by the amortisation deductions allowed to the person in respect of the intangible in previous tax years.

(11) If subsection (4) applies to a business intangible for a tax year, the written down value of the intangible is computed on the basis that the intangible was used in that year solely to derive taxable business income.

Division 6—Income Tax Accounting

Substituted tax year

36.—(1) A company carrying on a business may, with the written approval of the CEO, adopt a period of 12 months other than the Calendar year as the tax year of the company (referred to as the “substituted tax year”) and that period is the tax year for the company for each succeeding year unless, with the written approval of the CEO, another period of 12 months is adopted as the company’s tax year.

(2) If a company’s tax year changes as a result of subsection (1) and the period between the last full tax year prior to the change and the date on which the new tax year commences is 6 months or less (referred to as the transitional period), the transitional period is treated as part of the first substituted tax year.

(3) If a company’s tax year changes as a result of subsection (1) and the transitional period is more than 6 months, the transitional period is treated as a separate tax year (referred to as the “transitional tax year”).

(4) The law under this Act applicable to a substituted tax year or a transitional tax year is—

- (a) if the substituted tax year or transitional tax year ends in the period 1st January to 30th June, the law applicable for the Calendar year in which the substituted tax year or transitional tax year commenced; or
- (b) if the substituted tax year or transitional tax year ends in the period 1st July to 31st December, the law applicable for the Calendar year in which the substituted tax year or transitional tax year ends.

Method of Income Tax accounting

37.—(1) An employee must account for employment income on a cash basis.

(2) Subject to subsection (4), the following persons must account for gross income, and expenditures and losses on an accrual basis—

- (a) a company;
- (b) a partnership; and
- (c) a person required to account for valued added tax on an invoice basis under section 36 of the Value Added Tax Decree 1991.

(3) Subject to subsections (1) and (4), a person to whom subsection (2) does not apply may account for gross income, and expenditures and losses on a cash or accrual basis, provided that the same basis is used for determining both gross income, and expenditures and losses.

(4) The CEO may specify that any class of persons must account for Income Tax purposes on a cash or accrual basis.

(5) A person may apply, in writing, for a change in the person's method of accounting for Income Tax and the CEO may, by notice in writing, approve the application but only if he or she is satisfied that the change is necessary to properly compute the chargeable income of the person.

(6) If a person's method of accounting for Income Tax changes, the person must make adjustments in the tax year of change to items of income, deduction or credit, or to any other items affected by the change so that no item is omitted and no item is taken into account more than once.

Cash-basis accounting

38. A person accounting for Income Tax on a cash basis derives an amount when it is received by the person and incurs expenditure when it is paid by the person.

Accrual-basis accounting

39.—(1) A person accounting for Income Tax on an accrual basis derives an amount when it is due to the person and incurs expenditure when it is payable by the person.

(2) Subject to this Act, an amount is due to a person at the time the person becomes entitled to receive it even if the time for discharge of the liability is postponed or the amount is payable by instalments.

(3) If—

- (a) a person has been allowed a deduction for any expenditure incurred in deriving gross income; and
- (b) the person has not paid the liability or a part of the liability to which the deduction relates within one year after the end of the tax year in which the deduction was allowed,

the unpaid amount of the liability is income included in the gross income of the person for the first tax year following the end of the one-year period.

(4) An amount to which subsection (3) applies has the same character as the income to which the deduction relates.

(5) If the amount of an unpaid liability is included in gross income under subsection (3) and the person subsequently pays the liability or a part of the liability, the person is allowed a deduction for the amount paid in the tax year in which the payment is made.

Trading stock

40.—(1) The amount that a person is allowed as a deduction for a tax year for the cost of trading stock disposed of during the year is computed in accordance with the following formula—

$$(A + B) - C$$

where—

- A** is the opening value of the trading stock of the person for the year;
- B** is the cost of trading stock acquired by the person in the year; and
- C** is the closing value of trading stock of the person for the year.

(2) The opening value of trading stock of a person for a tax year is—

- (a) the closing value of the trading stock of the person for the previous tax year; or
- (b) if the person commenced business in the year, the value of any trading stock acquired by the person prior to the commencement of the business.

(3) The value referred to in subsection (2)(b) is the lesser of—

- (a) cost of the trading stock; or
- (b) the fair market value of trading stock determined at the time the trading stock is brought into the business.

(4) The closing value of the trading stock of a person for a tax year is the lower of cost or fair market value of the trading stock of the person on hand at the end of the year.

(5) A person accounting for Income Tax purposes on a cash basis may compute the person's cost of trading stock under the prime-cost method or absorption-cost method, and a person accounting for Income Tax purposes on an accrual basis must compute the person's cost of trading stock under the absorption-cost method.

(6) If particular items of trading stock cannot be readily identifiable, a person may account for that trading stock under any method recognised under generally accepted accounting principles, but the last-in-first-out method may not be used.

(7) If a person disposes of trading stock outside the ordinary course of business, including as part of the sale of a business—

- (a) the consideration for the disposal; and

(b) the cost for the person acquiring the trading stock,
is the fair market value of the trading stock at the time of disposal.

(8) In this section, “absorption-cost method”, “last-in-first-out method”, and “prime-cost method” have their meaning under generally accepted accounting principles.

Finance leases

41.—(1) If a person has entered into a finance lease in relation to an asset, this Act applies to the person on the basis that the—

- (a) lessee is the owner of the asset;
- (b) lessee acquired the asset at the commencement of the lease, except when the lessee was the owner of the asset; and
- (c) lessor has made a blended loan to the lessee at the commencement of the lease and each lease payment is in part repayment of principal and in part payment of interest under that loan.

(2) The cost of an asset treated as owned by the lessee under subsection (1)(a) is—

- (a) if the lessor and lessee are not associates and an amount is stated as the cost or value of the asset in the lease agreement, that amount; or
- (b) in any other case, the fair market value of the asset at the commencement of the lease.

(3) The amount of the loan referred to in subsection (1)(c) is the amount determined under subsection (2) as the cost of the asset.

(4) The interest part of each payment made under the loan is computed by reference to the interest rate implicit in the lease agreement.

(5) In this section—

“blended loan” means a loan under which payments by the borrower represent in part a payment of interest and in part a repayment of principal where the interest part is calculated on the principal outstanding at the time of each payment;

“finance lease” means a lease that is treated under generally accepted accounting principles as a finance lease and is so accounted for by the lessor in its financial accounts; and

“lease term” includes any additional period of the lease under an option to renew.

Long-term contracts

42.—(1) A person accounting for Income Tax on an accrual basis must compute the gross income and expenditures deductible under this Act arising under a long-term contract during a tax year under the percentage of completion method.

(2) If, in the tax year in which a long-term contract is completed—

- (a) the person carrying out the contract has a final year loss; and
- (b) the person is not able to carry the loss forward under section 30 for the reason that the person ceases to carry on business in Fiji at the end of the contract,

the loss may be carried back to the preceding 2 tax years and allowed as a deduction in those years commencing with the year immediately preceding the year in which the contract was completed.

(3) The time limits for the amendment of assessments under section 11 of the Tax Administration Decree 2009 do not apply for the purposes of subsection (2).

(4) A person has a final year loss under a long-term contract if both the following conditions are satisfied—

- (a) the chargeable income estimated to be made under the contract for the purposes of the percentage of completion method exceeds the actual chargeable income, if any, under the contract; and
- (b) the amount of the excess under paragraph (a) exceeds the difference between the gross income and deductible expenditures computed under subsection (1) for the tax year in which the contract was completed,

and the amount of the excess under paragraph (b) is the amount of the final year loss.

(5) In this section—

“long-term contract” means a contract for manufacture, installation or construction, or, in relation to each, the performance of related services, that is not completed within the tax year in which work under the contract commenced, other than a contract estimated to be completed within 6 months of the date on which work under the contract commenced; and

“percentage of completion method” means the generally accepted accounting principle under which revenues and expenditures arising under a long-term contract are recognised by reference to the stage of completion of the contract determined by reference to the actual costs incurred as a percentage of estimated total contract costs under the contract.

Division 7—Miscellaneous Rules Relating to Income and Deductions

Income of joint owners

43.—(1) For the purposes of this Act, if property is jointly owned by two or more persons, any income, or expenditures or losses relating to the property are apportioned among the owners according to their respective interests in the property.

(2) If the interests of the owners of jointly owned property cannot be ascertained, the owners of the property are treated as having an equal interest in the property.

Benefits-in-kind

44.—(1) In determining whether a benefit-in-kind is income included in gross income, the fact that the benefit is not otherwise convertible to cash is to be disregarded.

(2) Subject to this Act, the value of a benefit-in-kind included in gross income is the fair market value of the benefit at the time that the benefit is derived and ignoring any restriction on transfer.

Classes of income

45.—(1) Subject to this Act, an expenditure or loss relating to—

- (a) the derivation of more than one class of income; or
- (b) the derivation of a class of income and to some other purpose,

is apportioned on any reasonable basis taking account of the relative nature and size of the activities or purposes to which the expenditure or loss relates.

(2) The following are treated as a separate class of income—

- (a) taxable foreign-source income;
- (b) any other income included in gross income; and
- (c) exempt income.

Cessation of source of income

46.—(1) If—

- (a) any income is derived by a person in a tax year from a business, activity, investment, or other source that had ceased before the income was derived; and
- (b) had the income been derived before the business, activity, investment, or other source ceased it would have been included in the gross income of the person,

this Act applies to the income on the basis that the business, activity, investment, or other source had not ceased at the time the income was derived.

(2) An expenditure or loss incurred to derive income to which subsection (1) applies is deductible to the extent allowed in accordance with this Act.

Rules to prevent double derivation and double deductions

47.—(1) For the purposes of this Act, if—

- (a) income is included in gross income on the basis that it is due, the income is not included again on the basis that it is received; or
- (b) income is included in gross income on the basis that it is received, the income is not included again on the basis that it is due.

(2) For the purposes of this Act, if—

- (a) expenditure is deductible under this Act on the basis that it is payable, the expenditure is not deductible again on the basis that it is paid; or
- (b) expenditure is deductible under this Act on the basis that it is paid, the expenditure is not deductible again on the basis that it is payable.

Division 8—Insurance

Short-term insurance

48.—(1) The gross income of a resident company from carrying on a short-term insurance business for a tax year is the sum of the following amounts—

- (a) the gross premiums derived by the company in the year for the insurance of any risk, including premiums on reinsurance, but not including premiums returned to the insured;
- (b) any other income derived by the company in carrying on the short-term insurance business included in gross income under this Act, including any commission or expense allowance derived from the reinsurance of any risk, and any income derived from investments of the business;
- (c) the amount of the company’s reserve for unexpired risks deducted in the previous tax year under subsection (2)(c).

(2) The total deductions allowed to a resident company in carrying on a short-term insurance business for a tax year is the sum of the following amounts—

- (a) the amount of the claims admitted by the company in the year less any amount recovered or recoverable under any contract of re-insurance, guarantee, security or indemnity;
- (b) the amount of agency expenses incurred by the company in the year in carrying on the short-term insurance business;
- (c) the balance of the company’s reserve for unexpired risks at the percentage adopted by the company at the end of the year;
- (d) the total amount of any other expenditure or loss incurred by the company in carrying on the short-term insurance business in the year allowed as a deduction under this Act.

(3) The gross income of a non-resident company from carrying on a short-term insurance business in Fiji for a tax year is the sum of the following amounts—

- (a) the gross premiums derived by the company in the year for the insurance of any risk in Fiji, including premiums on reinsurance, but excluding premiums returned to the insured;

- (b) the total amount of any income derived from sources in Fiji by the company in carrying on the short-term insurance business that is included in the gross income of the company for the year, including any commission or expense allowance derived from the reinsurance of any risk in Fiji, and any income derived from investments of the business;
 - (c) the amount of the company's reserve for unexpired risks deducted in the previous tax year under subsection (4)(c).
- (4) The total deductions allowed to a non-resident company in carrying on a short-term insurance business in Fiji for a tax year is the sum of the following amounts—
- (a) the amount of the claims admitted by the company in the year in respect of insured risks in Fiji less any amount recovered or recoverable under any contract of re-insurance, guarantee, security, or indemnity;
 - (b) the amount of agency expenses incurred by the company in Fiji in carrying on the short-term insurance business in the year;
 - (c) the balance of the company's reserve for unexpired risks in Fiji at the percentage adopted by the company as at the end of the year;
 - (d) the total amount of any other expenditure or loss incurred by the company in carrying on the short-term insurance business in the year allowed as a deduction in accordance with this Act.
- (5) If a company carries on a short-term insurance business to which this section applies and any other business, the chargeable income of the company is computed taking account of all activities of the company but the income derived by the company from carrying on a short-term insurance business is a separate class of income for the purposes of section 45.
- (6) In this section—
- “claim” does not include a claim made under a life policy; and
 - “risk” does not include a risk under a life policy.

Life insurance

49.—(1) The chargeable income of a company carrying on a life insurance business is computed in accordance with the Regulations.

(2) If a company carries on a life insurance business to which this section applies and any other business, the chargeable income of the company is computed taking account of all activities of the company but the income derived by the company from carrying on a life insurance business is a separate class of income for the purposes of section 45.

*Division 9—Application of Income Tax to Persons**Subdivision 1—Individuals**Chargeable income of individuals*

50. The chargeable income of each individual is computed separately.

*Subdivision 2—Partnerships**Principles of taxation for partnerships*

51.—(1) This Subdivision specifies how the Income Tax applies to amounts derived, and expenditures and losses incurred, through activities conducted by persons in partnership.

(2) A partnership is liable to furnish a partnership return of income in accordance with section 104, but the partners, and not the partnership, are liable to pay Income Tax in respect of the partnership’s activities as set out in this Subdivision.

(3) Subject to subsection (4), the presence or absence of a written partnership agreement is not decisive in determining whether a partnership relationship exists between persons.

(4) Spouses carrying on a business together are not treated as doing so in partnership unless the CEO is satisfied that each spouse makes a separate and distinct contribution to the partnership based on their capital contribution or personal skills.

(5) Any election, notice or statement required to be filed in relation to a partnership’s activities must be filed by the partnership and binds all the partners.

(6) If a partnership has a non-resident partner or partners, then, for the purposes of section 41 of the Tax Administration Decree 2009, each resident partner in the partnership is treated as a representative of each non-resident partner in the partnership.

(7) In this section—

“non-resident partner” means a partner in a partnership who is not a resident person; and

“resident partner” means a partner in a partnership who is a resident person.

Computation of chargeable partnership income and partnership loss

52.—(1) Subject to subsection (3), the chargeable partnership income of a partnership for a tax year is—

(a) the gross income of the partnership for that year calculated as if the partnership were a resident person; less

(b) the total amount of deductions allowed under this Act for expenditures or losses to the extent incurred by the partnership in deriving that income, other than the deduction allowed under section 30.

(2) Subject to subsection (3), a partnership has a partnership loss for a tax year if the amount in subsection (1)(b) exceeds the amount in subsection (1)(a) for the year, and the amount of the excess is the amount of the partnership loss.

(3) For the purposes of calculating the chargeable partnership income or partnership loss of a partnership under this section and notwithstanding section 12(a), the gross income of the partnership includes amounts subject to tax under section 10 or 11.

Taxation of partners

53.—(1) The gross income of a partner in a partnership for a tax year includes—

- (a) if the partner is a resident person for the whole of the tax year, the partner's share of the chargeable partnership income of the partnership for the year;
- (b) if the partner is a non-resident person for the whole of the tax year, the partner's share of the chargeable partnership income for the year that is attributable to income derived from sources in Fiji; or
- (c) if the partner is a resident person for part of the tax year and a non-resident person for the other part of the tax year—
 - (i) the partner's share of the chargeable partnership income of the partnership for that part of the year the partner is a resident person; and
 - (ii) the partner's share of the chargeable partnership income for that part of the year the partner was a non-resident person and that is attributable to income derived from sources in Fiji.

(2) A partner in a partnership is allowed a deduction for a tax year—

- (a) if the partner is a resident person for the whole of the tax year, for the partner's share of a partnership loss of the partnership for the year;
- (b) if the partner is a non-resident person for the whole of the tax year, for the partner's share of a partnership loss of the partnership for the year that is attributable to income derived from sources in Fiji; or
- (c) if the partner is a resident person for part of the tax year and a non-resident person for the other part of the tax year—
 - (i) for the partner's share of a partnership loss of the partnership for that part of the year the partner was a resident person; and
 - (ii) for the partner's share of a partnership loss of the partnership for that part of the year the partner was a non-resident person and that is attributable to income derived from sources in Fiji.

(3) For the purposes of subsections (1)(b) and (c)(ii) and (2)(b) and (c)(ii), income derived from sources in Fiji includes only—

- (a) income derived by the partnership to the extent to which it is directly or indirectly attributable to—
 - (i) a business carried on by the partnership through a permanent establishment in Fiji;
 - (ii) sales in Fiji of goods or merchandise of the same or similar kind as those sold by the partnership through a permanent establishment in Fiji; or
 - (iii) any other business activity carried on in Fiji of the same or similar kind as that carried on by the partnership through a permanent establishment in Fiji; and
- (b) amounts derived by the partnership treated as derived from sources in Fiji under section 7(4), other than amounts to which section 10 or 11 apply.

(4) If the gross income of a resident partner under subsection (1) includes the partner's share of income to which section 10 or 11 applies, the partner is entitled to a tax credit for the partner's share of the tax paid under section 10 or 11 in relation to that income.

(5) A tax credit allowed under subsection (4) is applied in accordance with section 8(3).

(6) A tax credit or part of a tax credit allowed to a person under subsection (4) for a tax year that is not credited under section 8(3) for the year is refunded to the person in accordance with section 33 of the Tax Administration Decree 2009.

(7) Income derived, or expenditure or losses incurred, by a partnership retain their character as to geographic source and type of income, expenditure or loss in the hands of the partners, and are allocated to partners on a pro rata basis.

(8) Subject to subsection (9), a partner's share of chargeable partnership income or a partnership loss is equal to the partner's percentage interest in the income of the partnership as set out in the partnership agreement.

(9) If the allocation of income in the partnership agreement does not reflect the contribution of the partners to the partnership's operations or there is no written partnership agreement, a partner's share of chargeable partnership income or a partnership loss is equal to the partner's percentage interest in the capital of the partnership.

Subdivision 3—Trusts

Principles of taxation for trusts

54.—(1) Income derived by the trustee of a trust are taxed either to the trustee, settlor or beneficiary of the trust in accordance with this Subdivision.

(2) A trustee is not liable for Income Tax except as provided for in this Subdivision.

(3) The trustee of a trust is required to furnish a trust return of income in accordance with section 104 in relation to the trust.

(4) For the purposes of section 41 of the Tax Administration Decree 2009, the trustee of a trust is treated as a representative of each beneficiary of the trust who is a non-resident person.

(5) In this section, “settlor” has the meaning in section 55.

Settlor and absolute beneficiary trusts

55.—(1) For all purposes of this Act, the following apply to a settlor trust—

- (a) a settlor trust is not treated as an entity separate from the settlor of the trust;
- (b) amounts derived, and expenditures and losses incurred, by the trustee of a settlor trust are treated as derived or incurred by the settlor;
- (c) the assets of a settlor trust are treated as owned by the settlor and any dealing in the assets by the trustee is treated as a dealing of the settlor.

(2) For all purposes of this Act, the following apply to an absolute beneficiary trust—

- (a) an absolute beneficiary trust is not treated as an entity separate from the beneficiary of the trust;
- (b) amounts derived, and expenditures and losses incurred, by the trustee of an absolute beneficiary trust are treated as derived or incurred by the beneficiary;
- (c) the assets of an absolute beneficiary trust are treated as owned by the beneficiary and any dealing in the assets by the trustee is treated as a dealing of the beneficiary.

(3) In this section—

“absolute beneficiary trust” means a trust that satisfies the following conditions:

- (a) the trust has a single beneficiary;
- (b) if the beneficiary of the trust is a non-resident person, the only income of the trust is derived from sources in Fiji and the only assets of the trust are Fiji assets;
- (c) the beneficiary has an absolute entitlement to the assets of the trust as against the trustee;

“absolute entitlement”, in relation to the assets of a trust, means a vested and indefeasible interest in the assets of the trust with the beneficiary having the right to call for the assets to be transferred to the beneficiary or otherwise dealt with at beneficiary’s direction;

“settlor”, in relation to a trust, means a person who—

- (a) has transferred money or an asset, or has provided a benefit to the trust;
- (b) has the power to revoke or alter the trust so as to acquire a beneficial entitlement in the whole or part of the capital or income of the trust, or has a reversionary interest in the capital or income of the trust; and
- (c) if the person is a non-resident person, the only income of the trust is derived from sources in Fiji and the only assets of the trust are Fiji assets; and

“settlor trust” means a trust in relation to which there is a settlor.

Taxation of beneficiaries

56.—(1) Amounts derived by a trustee of a trust to which a beneficiary of the trust is presently entitled are treated as derived by the beneficiary.

(2) If a beneficiary is treated as having derived income under subsection (1), the beneficiary is treated as having incurred any expenditure or loss incurred by the trustee to the extent to which it relates to the derivation of income to which subsection (1) applies.

(3) For the purposes of subsections (1) and (2)—

- (a) an amount, or expenditure or loss, retains its character and geographic source in the hands of the beneficiary; and
- (b) an amount is treated as derived, and expenditures and losses are treated as incurred by the beneficiary at the time the amount was derived or incurred by the trustee.

(4) The gross income of a resident beneficiary includes a distribution received by the beneficiary from a non-resident trust except to the extent that the distribution represents an amount derived by the trustee of the non-resident trust—

- (a) to which subsection (1) applies;
- (b) that has been taxed to the trustee under section 57; or
- (c) that would have been exempt income if derived by the resident beneficiary.

(5) A beneficiary is presently entitled to income of a trust if the beneficiary has a vested and indefeasible interest in the income and an immediate right to demand payment of the income from the trustee.

(6) In this section—

“distribution”, in relation to a resident beneficiary, includes the amount of a loan, payment for goods or services, the fair market value of an asset or service provided, or the amount of a debt obligation released by a non-

resident trust in favour of the resident beneficiary of the trust to the extent that the transaction is, in substance, a distribution of income accumulated in the trust; and

“resident beneficiary”, in relation to a trust, means a beneficiary of the trust who is a resident person.

Taxation of trustees

57.—(1) The trustee of a trust is liable for Income Tax for a tax year in respect of the chargeable trust income of the trust for the year at the rate or rates prescribed by Regulations made under this Act.

(2) If a trustee has paid Income Tax on the chargeable trust income of a trust under this section, that income is not taxed again in the hands of the beneficiary.

(3) The trustee of a trust is personally liable for an Income Tax liability arising in respect of the chargeable trust income of the trust that is not satisfied out of the assets of the trust and, if there is more than one trustee, the trustees are jointly and severally liable.

(4) Subject to subsection (5), the “chargeable trust income” of a trust for a tax year is—

(a) in the case of a resident trust, the gross income derived by the trustee for the year reduced by the sum of the following—

(i) any part of that amount to which section 56(1) applies for the year; and

(ii) the total deductions allowed under this Act in respect of expenditures or losses incurred by the trustee for the year, other than amounts to which section 56(2) applies; or

(b) in the case of a non-resident trust, the gross income derived by the trustee from sources in Fiji for the year reduced by the sum of the following—

(i) any part of that amount to which section 56(1) applies for the year and in respect of which the beneficiary has paid tax; and

(ii) the total deductions allowed under this Act in respect of expenditures or losses incurred by the trustee for the year that relate to the gross income derived by the trustee from sources in Fiji, other than amounts to which section 56(2) applies.

(5) If a trust is a resident trust for a part of a tax year and a non-resident trust for the other part of a tax year, the trust has—

(a) a chargeable trust income calculated under subsection (4)(a) for the part of the tax year that the trust is a resident trust; and

(b) a chargeable trust income calculated under subsection (4)(b) for the part of the tax year that the trust is not a resident trust estate.

*Subdivision 4—Companies**Principle of taxation for companies*

58. A company is liable for tax separately from its members.

Change in control of company

59.—(1) If there is a change of more than 50% in the underlying ownership of a company, any carry forward loss incurred for a tax year before the change is not allowed as a deduction in a tax year after the change, unless the company—

- (a) carries on the same business after the change as it carried on before the change until the earlier of either the loss has been fully deducted or the period for carrying the loss forward under the Act has expired; and
- (b) does not, until the earlier of either the loss has been fully deducted or the period for carrying the loss forward under the Act has expired, engage in any new business or investment after the change if the principal purpose of the company or the members of the company is to utilise the loss so as to reduce the Income Tax payable on the amounts derived from the new business or investment.

(2) In this section, “carry forward loss” means a net loss carried forward under section 30 or a foreign business loss carried forward under section 61.

*Division 10—International**Foreign tax credit*

60.—(1) If a resident person derives taxable foreign-source income in respect of which the person has paid foreign Income Tax, the person is allowed a tax credit (referred to as a “foreign tax credit”) of an amount equal to the lesser of—

- (a) the foreign Income Tax paid; or
- (b) the Fiji Income Tax payable in respect of the taxable foreign-source income.

(2) For the purposes of subsection (1)(b), the Fiji Income Tax payable in respect of taxable foreign-source income derived by a resident person in a tax year is computed by applying the average rate of Fiji Income Tax applicable to the person for the year against the net foreign-source income of the person for the year.

(3) The foreign tax credit of a resident person for a tax year is computed separately for the business income of the person that is foreign-source income and the other foreign-source income of the person.

(4) Where subsection (3) applies, deductions are apportioned for the purposes of paragraph (b) of the definition of “net foreign-source income” in subsection (8) in accordance with section 45 on the basis that the business income that is foreign source income and the other foreign-source income are separate classes of income.

(5) A foreign tax credit is allowed under this section only if the foreign Income Tax is paid within 2 years after the end of the tax year in which the foreign-source income to which the tax relates was derived by the resident person or within such further time as the CEO allows.

(6) A foreign tax credit allowed under this section is applied in accordance with section 8(3).

(7) Any foreign tax credit or part of a foreign tax credit allowed under this section for a tax year that is not credited under section 8(3) is not refunded, carried back to the preceding tax year or carried forward to the following tax year.

(8) In this section—

“average rate of Fiji Income Tax”, in relation to a resident person for a tax year, means the percentage that the Fiji Income Tax payable by the person for the year, before the allowance of any tax credit under this Act, is of the chargeable income of the person for the year;

“Fiji Income Tax” means the Income Tax and Social Responsibility Tax imposed under this Act;

“foreign Income Tax” means the Income Tax, including withholding tax, imposed by the government of a foreign country or a political subdivision of a government of a foreign country, but does not include penalty, additional tax, or interest payable in respect of such tax; and

“net foreign-source income”, in relation to a resident person for a tax year, means the total taxable foreign-source income of the person for the year, as reduced by any deductions allowed to the person under this Act for the year that—

(a) relate exclusively to the derivation of the taxable foreign-source income; and

(b) are apportioned to the derivation of taxable foreign-source income in accordance with section 45.

Foreign losses

61.—(1) An amount that a resident person is allowed as a deduction under this Act in deriving taxable foreign-source income is deductible only against that income.

(2) If a resident person has a foreign loss for a tax year, the amount of the loss is carried forward to the following tax year and allowed as a deduction against the person’s taxable foreign-source income derived in that following year.

(3) If a foreign loss is not wholly deducted in a tax year under subsection (2), the undeducted amount is carried forward to the next following tax year and applied as specified in subsection (2) in that year, and so on until the loss is fully deducted, but no foreign loss can be carried forward for more than 4 years after the tax year in which the loss was incurred.

(4) In this section, “foreign loss”, in respect of a resident person for a tax year, is the excess of deductions allowed to the person in deriving taxable foreign-source income for the year over the amount of that taxable foreign-source income.

Thin capitalisation

62.—(1) Subject to subsection (2), if a foreign-controlled resident company, other than a financial institution, has a debt-to-equity ratio in excess of 2 to 1 at any time during a tax year, a deduction is disallowed for the interest paid by the company during that year on that part of the debt that exceeds the 2 to 1 ratio for the period the ratio was exceeded.

(2) If the debt-to-equity ratio of a foreign-controlled resident company exceeds 2 to 1 for a tax year, subsection (1) does not apply if, at all times, during the year, the amount of the debt of the company does not exceed the arm’s length debt amount.

(3) This section applies to a non-resident company with a permanent establishment in Fiji on the basis of the following—

- (a) the permanent establishment is treated as a foreign-controlled resident company; and
- (b) the debt-to-equity ratio of the permanent establishment is computed by reference to—
 - (i) the debt obligations of the non-resident company attributable to the permanent establishment; and
 - (ii) the equity of the non-resident company attributable to the operations of the company conducted through the permanent establishment.

(4) In this section—

“arm’s length debt amount”, in relation to a foreign-controlled resident company, means the amount of debt that a financial institution that is not an associate of the company would be prepared to lend to the company having regard to all the circumstances of the company;

“debt”, in relation to a foreign-controlled resident company, means the greatest amount, at any time during a tax year, of the debt obligations of the company on which interest is payable as determined according to generally accepted accounting principles;

“debt obligation” means an obligation to make a repayment of money to another person, including obligations arising under promissory notes, bills of exchange, and bonds;

“equity”, in relation to a foreign-controlled resident company, means the greatest amount, at any time during a tax year, of the equity of the company as determined according to generally accepted accounting principles; and

“foreign-controlled resident company” means a resident company in which more than 50% of the membership interests in the company are held by a non-resident person either alone or together with an associate or associates.

Transfer pricing

63.—(1) Subject to subsection (2), the CEO may, in respect of any transaction between persons who are associates, distribute, apportion, or allocate income, gain, deductions, or tax credits between the persons as is necessary to reflect the income that the persons would have realised in an arm’s length transaction.

(2) If a party to a transaction between associates is located in and subject to tax in Fiji, and another party to the transaction is located outside Fiji, any distribution, apportionment, or allocation of income, gain, deductions, or tax credits under subsection (1) must be made in accordance with the Regulations.

(3) The allocation of income and deductions to—

- (a) a permanent establishment in Fiji of a non-resident person; or
- (b) a permanent establishment outside Fiji of a resident person,

must be made in accordance with the Regulations.

PART 3—CAPITAL GAINS TAX

Part 3 interpretation

64. In this Part, unless the context requires otherwise, “person” means an individual, trust, partnership or company.

Imposition of Capital Gains Tax

65.—(1) Subject to this Act, a tax to be known as “Capital Gains Tax” is imposed at the rate prescribed by Regulations made under this Act on a person who has made a capital gain, other than an exempt capital gain, on the disposal of a capital asset.

(2) The Capital Gains Tax payable by a person on the disposal of a capital asset is computed by applying the rate prescribed by Regulations made under this Act to the amount of the capital gain arising on the disposal.

(3) If the person who has made a capital gain is a non-resident person, subsection (1) applies only if the capital asset is a Fiji asset.

Capital gain

66.—(1) The capital gain made by a person on the disposal of a capital asset is the consideration for the disposal reduced by the cost of the asset at the time of the disposal.

(2) A capital gain made by a person on disposal of a capital asset is not reduced by any capital loss on the disposal of another capital asset.

(3) A capital gain made by a person on the disposal of a capital asset is reduced by any part of the gain that is included in the gross income of the person or that is exempt income.

Exempt capital gains

67.—(1) The following capital gains are exempt capital gains—

- (a) a capital gain made by a resident individual or Fiji citizen that does not exceed FJD\$16,000;
- (b) a capital gain made by a resident individual or a Fiji Citizen on disposal of either the individual's first residential property or principal place of residence;
- (c) a capital gain made by a person on the disposal of shares listed on the South Pacific Stock Exchange;
- (d) a capital gain made on disposal of an asset that is used solely to derive exempt income;
- (e) any gain made by a person on the disposal of an interest in a company within paragraph (c) of the definition "company" in section 2;
- (f) a capital gain made by a resident individual or a Fiji Citizen on disposal of his or her interest in a family home, provided however that the disposal of the interest is by way of transfer to an existing joint tenant or tenant in common;
- (g) a capital gain made by a resident person from the sale of shares where a private company goes through re-organisation, restructure or amalgamation for the purposes of listing or as part of a listing process on the South Pacific Stock Exchange, provided that—
 - (i) the private company is listed on the South Pacific Stock Exchange within 24 months from the date of commencement of re-organisation, restructure or amalgamation; and
 - (ii) where the private company is not listed with the South Pacific Stock Exchange in accordance with sub-paragraph (i), the gain from the re-organisation, restructure or amalgamation of the private company shall be taxable under this Act;
- (h) a capital gain made by the trustee or beneficiary of a deceased estate on the disposal of an asset forming part of the estate that, if the gain had been made by the deceased on a disposal of the asset immediately before death, the gain would be an exempt capital gain to the deceased under this subsection, but only when the asset is disposed of by the trustee or beneficiary within 2 years after the death of the deceased or within such further time as the CEO allows.

(2) If the CEO is satisfied that a capital asset has been disposed of in two or more parts for the purpose of taking advantage of subsection (1)(a), any capital gain arising from the disposals is exempt under subsection (1)(a) only if the total gain from the disposal of all parts does not exceed FJD\$20,000.

(3) In the case of the disposal of a capital asset that is jointly owned, subsection (1)(a) applies only if the total capital gain made by all owners of the asset on disposal of the asset does not exceed FJD\$20,000.

(4) For the purposes of—

(a) subsection (1)(b)—

(i) “first residential property” means the first residential property that a resident individual or Fiji citizen has acquired, and who has sole ownership or co-owns the same with his or her spouse and includes a spouse living in a *de facto* relationship as defined in the Family Law Act 2003; and

(ii) “principal place of residence” means the place of residence where the individual lives; and

(b) subsection (1)(f), “family home” means a residential property in which family members, whether immediate or extended, hold an interest as joint tenants or tenants in common.

Foreign capital gains

68.—(1) Subject to this section, if a resident person has made a capital gain on disposal of a capital asset in respect of which foreign tax has been paid, the person is allowed a tax credit of an amount equal to the lesser of—

(a) the foreign tax paid in respect of the disposal of the asset; or

(b) the Fiji Capital Gains Tax payable in respect of the disposal of the asset.

(2) A tax credit allowed under subsection (1) reduces the amount of Capital Gains Tax payable under section 65 in respect of the disposal of the capital asset.

(3) A tax credit is allowed under this section only if the foreign tax is paid within 2 years after the end of the tax year in which the capital asset was disposed of by the resident person, or within such further time as the CEO may allow.

(4) The amount of a tax credit allowed under this section that is not credited under subsection (1) is neither refunded nor applied against the Capital Gains Tax payable in respect of the disposal of another capital asset.

(5) In this section—

“Fiji Capital Gains Tax” means the Capital Gains Tax imposed under this Act; and

“foreign tax” means the Income Tax or Capital Gains Tax imposed by the government of a foreign country or a political subdivision of a government of a foreign country, but does not include penalty, additional tax, or interest payable in respect of such tax.

PART 4—FRINGE BENEFITS TAX

*Division 1—Imposition of Tax**Imposition of Fringe Benefits Tax*

69.—(1) Subject to this Act, a tax to be known as “Fringe Benefits Tax” is imposed for each quarter at the rate prescribed by Regulations made under this Act on an employer who has a fringe benefits taxable amount for the quarter.

(2) The Fringe Benefits Tax imposed under subsection (1) for a quarter is computed by applying the rate prescribed by Regulations made under this Act to the fringe benefits taxable amount of the employer for the quarter.

Fringe benefits taxable amount

70.—(1) Subject to subsection (2), the fringe benefits taxable amount of an employer for a quarter is computed in accordance with the following formula—

$$\frac{A}{(1-r)}$$

where—

- A** is the total value of fringe benefits provided by the employer to employees in the quarter; and
- r** is the rate of Fringe Benefits Tax prescribed by Regulations made under this Act.

(2) The value of the following fringe benefits provided by an employer is not included in the fringe benefits taxable amount of the employer—

- (a) an exempt fringe benefit;
- (b) a fringe benefit provided by an employer to an employee that is not received by the employee from sources in Fiji;
- (c) a fringe benefit provided by a non-resident employer and received by an employee, unless the benefit has been provided by a permanent establishment in Fiji of the employer.

(3) The value of a fringe benefit that is not included in the fringe benefits taxable amount of an employer by reason of subsection (2)(b) or (c) is included in the employment income of the employee under section 15(1)(b).

(4) A fringe benefit is received by an employee from sources in Fiji—

- (a) to the extent to which it is received in respect of employment exercised in Fiji, wherever provided; or
- (b) if it is provided by, or on behalf of, the Government, wherever the employment is exercised.

(5) In this section, “non-resident employer” means an employer who is a non-resident person.

Exempt fringe benefits

- 71.**—(1) The following fringe benefits are exempt fringe benefits—
- (a) a fringe benefit, the value of which is exempt income of the employee;
 - (b) a fringe benefit provided to an employee in respect of employment if the employment income arising from the employment is exempt income;
 - (c) a fringe benefit the value of which, after taking into account the frequency with which similar benefits are provided by the employer, is so small as to make accounting for it unreasonable or administratively impracticable;
 - (d) a meal or refreshment provided in a canteen, cafeteria or dining room operated by or on behalf of an employer solely for the benefit of employees and which is available to all non-casual employees on equal terms; or
 - (e) the provision of accommodation or housing to a non-managerial employee in a remote area if—
 - (i) the employee’s usual place of employment is in the remote area; and
 - (ii) it is necessary for the employer to provide the accommodation or housing to the employee in the remote area because—
 - (A) the nature of the employer’s business is such that the employee is likely to move frequently from one residential location to another; or
 - (B) there is insufficient suitable residential accommodation available in the remote area;
 - (f) a fringe benefit provided to an employee of a religious body registered under the Religious Bodies Registration Act (Cap. 68).
- (2) In this section—
- “remote area” includes on board a vessel when not berthed; and
- “vessel” includes a yacht, boat, or ship.

*Division 2—Fringe Benefits**Fringe benefits*

- 72.**—(1) Subject to subsections (2) and (3), the following are fringe benefits—
- (a) a debt waiver fringe benefit;
 - (b) a household personnel fringe benefit;
 - (c) a housing fringe benefit;
 - (d) a discounted interest loan fringe benefit;
 - (e) a meal or refreshment fringe benefit;

- (f) a motor vehicle fringe benefit;
- (g) a private expenditure fringe benefit;
- (h) a property fringe benefit; and
- (i) a residual fringe benefit.

(2) A benefit is not a fringe benefit to the extent that it—

- (a) is a contribution to the Fiji National Provident Fund, or an approved or non-approved fund;
- (b) is included in employment income under section 15(1)(c) or (d) or gross income under section 16;
- (c) would be included in employment income under section 15(1)(c) or (d) but for the exception in those paragraphs; or
- (d) is not provided in respect of employment.

(3) A benefit is not a fringe benefit to the extent that, if the employee had acquired the benefit, the expenditure incurred by the employee in acquiring the benefit would have been incurred in deriving employment income.

(4) In determining whether a benefit is a fringe benefit and the value of a fringe benefit, any restriction on transfer of the benefit and the fact that the benefit is not otherwise convertible to cash are to be disregarded.

(5) For the purposes of determining whether a benefit is a fringe benefit under this Division, a benefit is treated as provided by an employer to an employee if—

- (a) the benefit is provided to the employee by the employer, an associate of the employer, or a third party arranger; or
- (b) the benefit is provided by the employer, an associate of the employer, or a third party arranger to the employee or an associate of the employee.

Debt waiver fringe benefit

73.—(1) The waiver by an employer of the obligation of an employee to pay or repay an amount owing to the employer is a debt waiver fringe benefit.

(2) The value of a debt waiver fringe benefit is the amount waived.

Household personnel fringe benefit

74.—(1) The services of a housekeeper, driver, gardener, security guard, or other household personnel (referred to as “household personnel”) provided by an employer to an employee is a household personnel fringe benefit.

(2) The value of a household personnel fringe benefit for a quarter is the total employment income paid to the household personnel in that quarter for services rendered to the employee reduced by any payment made by the employee for such services.

Housing fringe benefit

75.—(1) Accommodation or housing provided by an employer to an employee is a housing fringe benefit.

(2) The value of a housing fringe benefit provided by an employer to an employee for a quarter is—

- (a) if the employer or associate owns the accommodation or housing, the fair market rent of the accommodation or housing for the quarter; or
- (b) in any other case, the rent paid by the employer for the accommodation or housing during the quarter,

reduced by any payment made by the employee for the accommodation or housing.

(3) Despite the exemption in section 71(1)(e), the provision of accommodation or housing to an executive or manager of a hotel is a housing fringe benefit regardless of where the hotel is located.

Discounted Interest Loan fringe benefit

76.—(1) A discounted interest loan provided by an employer to an employee is a discounted interest loan fringe benefit.

(2) The value of a discounted interest loan fringe benefit for a quarter is the difference between the interest paid by the employee on the loan for the quarter, if any, and the interest that would have been paid by the employee on the loan for the quarter if the loan had been made at the market lending rate for that quarter.

(3) In this section, “market lending rate”, in relation to a quarter, means the market lending rate for the quarter as determined by the CEO in consultation with the Governor of the Reserve Bank of Fiji.

Meal or refreshment fringe benefit

77.—(1) A meal or refreshment provided by an employer to an employee is a meal or refreshment fringe benefit.

(2) The value of a meal or refreshment fringe benefit is the total cost to the employer of providing the meal or refreshment reduced by any amount paid by the employee for the meal or refreshment.

Motor vehicle fringe benefit

78.—(1) A motor vehicle provided by an employer to an employee wholly or partly for the private use of the employee is a motor vehicle fringe benefit.

(2) Subject to subsections (3) and (4), the value of the benefit for a quarter is as follows—

MOTOR VEHICLE ENGINE CAPACITY	VALUE PER QUARTER
Under 1,800cc	\$656
1,800cc and < 2,000cc	\$778
2,000cc and above	\$958
Irrespective of engine capacity, if the cost of the vehicle exceeds \$100,000	\$958 plus 2.5% of the excess of the cost above \$100,000.

(3) Subject to subsection (4), if a motor vehicle is provided to an employee partly for private use and partly for use in employment, the value of the benefit is reduced by 50% of the value of the benefit determined under subsection (2).

(4) If a motor vehicle referred to in subsection (2) or (3) is not provided for the whole of a quarter, the value of the benefit computed under subsection (2) or (3) is based on the proportion of the quarter that the vehicle was provided wholly or partly for private use.

(5) For the purposes of subsection (2), if the motor vehicle is leased by the employer, the cost of the vehicle is the fair market value of the vehicle at the commencement of the lease.

Private expenditure fringe benefit

79.—(1) Subject to subsection (3), the payment of expenditure by an employer is a private expenditure fringe benefit to the extent that the expenditure gives rise to a private benefit to an employee.

(2) For the purposes of subsection (1), expenditure paid by an employer gives rise to a private benefit to an employee if, had the employee paid the expenditure, it would come within section 22(1)(a).

(3) This section does not apply to expenditure paid by an employer that is a fringe benefit under another section of this Division apart from section 80.

(4) The value of a private expenditure fringe benefit is the amount of the expenditure paid by the employer treated as a private expenditure fringe benefit under subsection (1).

Property fringe benefit

80.—(1) The transfer of property or provision of services by an employer to an employee is a property fringe benefit.

(2) Subject to subsection (3), the value of a property fringe benefit is—

- (a) if the employer supplies the property or services to customers in the ordinary course of business, the normal selling price of the property or services; or

(b) in any other case, the cost to the employer of acquiring the property or services,

reduced by any payment made by the employee to the employer for the property or services.

(3) If the property fringe benefit is the provision of free or subsidised air travel to an employee by an employer that is an airline operator, travel agent or tour operator, the value of the benefit is 40% of the standard economy fare for the flight reduced by any payment made by the employee to the employer for the flight.

(4) In this section, “services” includes the use of property and the making available of any facility.

Residual fringe benefit

81.—(1) A benefit provided by an employer to an employee not covered by another section in this Division is a residual fringe benefit.

(2) The value of a residual fringe benefit is the fair market value of the benefit determined at the time it is provided, as reduced by any payment made by the employee for the benefit.

PART 5—COMMON RULES RELATING TO ASSETS

Joint owners

82.—(1) For the purposes of this Act, if an asset is jointly owned by two or more persons, any gain or loss made on disposal of the asset must be apportioned among the owners according to their respective interests in the asset.

(2) If the interests of the owners of a jointly owned asset cannot be ascertained, the owners of the asset are treated as having an equal interest in the asset.

Acquisition

83.—(1) A person acquires an asset if the person begins to own the asset, including, in the case of an asset that is a right or option, the granting of the right or option to the person.

(2) A person acquires an asset at the time the person begins to own the asset, including, when a person acquires legal title to the asset and, in the case of an asset that is a right or option, when the person is granted the right or option.

Disposal

84.—(1) A person makes a disposal of an asset if the person parts with the ownership of the asset, including when the asset is—

(a) sold, exchanged, transferred or distributed; or

(b) cancelled, redeemed, relinquished, destroyed, lost, expired or surrendered.

(2) A person disposes of an asset at the time the person parts with the ownership of the asset, including when the person ceases to have legal title to the asset and when the asset is sold, exchanged, transferred, distributed, cancelled, redeemed, relinquished, destroyed, lost, expired or surrendered.

(3) If a person creates an asset in another person being an asset that did not previously exist, the first-mentioned person is treated as having made a disposal of the asset to the second-mentioned person and the disposal occurs when the asset is created.

(4) The transmission of an asset by succession or under a will is treated as a disposal of the asset by the deceased and the disposal occurs at the time the asset is transmitted.

(5) A disposal includes the disposal of a part of an asset.

(6) If a trustee-in-bankruptcy, liquidator, or receiver disposes of an asset of a person, the person is treated as having made the disposal and the CEO can collect the tax payable by the person in respect of the disposal from the trustee-in-bankruptcy, liquidator, or receiver in accordance with section 26 of the Tax Administration Decree 2009.

Cost

85.—(1) Subject to this Act, this section establishes the cost of an asset for the purposes of the Act.

(2) Subject to this section, the cost of an asset of a person, other than an intangible asset, is the sum of the following amounts—

- (a) the total consideration given by the person for the asset, including the fair market value of any consideration in kind determined at the time the asset is acquired and, if the asset is constructed, produced or developed, the cost of construction, production or development;
- (b) any incidental expenditure incurred by the person in acquiring or disposing of the asset;
- (c) any expenditure incurred by the person to install, alter, renew, reconstruct or improve the asset.

(3) Subject to this section, the cost of an asset of a person that is an intangible asset is the total expenditure incurred by the person in acquiring, creating, improving and renewing the intangible asset, and any incidental expenditure incurred in acquiring or disposing of the intangible asset.

(4) The cost of an asset of a person includes any amount given for the grant of an option to the person to acquire the asset.

(5) The cost of an asset of a person is reduced by the amount of any deduction allowed to the person under Part 2 in respect of amounts included in the cost of the asset, other than a depreciation or amortisation deduction.

(6) An amount is included in the cost of an asset on the earlier of the date that it is paid or payable.

(7) If a person disposes of a part of an asset, the cost of the asset is apportioned between the part of the asset retained and the part disposed of in accordance with their respective fair market values determined at the time the person acquired the asset.

(8) The cost of an asset of a person does not include the amount of any grant, subsidy, rebate, commission, or other assistance received or receivable by the person in respect of the acquisition of the asset, except to the extent to which the amount is included in the gross income of the person.

(9) The reference to “other assistance” in subsection (8) does not include a loan repayable with or without interest.

(10) If the acquisition of an asset by a person is the derivation of an amount—

- (a) included in the gross income of the person, the cost of the asset is the amount so included plus any amount paid by the person for the asset; or
- (b) that is exempt income, the cost of the asset is the exempt amount plus any amount paid by the person for the asset.

(11) If—

- (a) a person seeks to include an amount of expenditure in the cost of a capital asset, including expenditure incurred in carrying out improvements to a capital asset;
- (b) the person is unable to produce any record of the expenditure; and
- (c) the CEO, after carrying out such investigation as he or she considers appropriate, has decided not to allow the inclusion of any such expenditure in the cost of the capital asset,

the person may apply to the Solicitor-General to appoint an independent assessor to provide an assessment of the amounts sought to be included as expenditure in the cost of the capital asset, including any expenditure incurred in carrying out improvements to the capital asset.

(12) The person appointed as an independent assessor under subsection (11) must be a person suitably qualified in carrying out valuation and assessment of such expenditure, and may include any person employed by the Government.

(13) The decision and assessment of the independent assessor appointed under subsection (11) is final and binding on all parties.

(14) The costs incurred in the appointment of, and assessment by, the independent assessor are to be borne by the Solicitor-General.

Consideration

86.—(1) Subject to this Act, this section establishes the amount of consideration for the disposal of an asset for the purposes of the Act.

(2) The consideration for the disposal of an asset is the total amount received or receivable for the asset, including the fair market value of any consideration in kind determined at the time of the disposal.

(3) The consideration for the disposal of an asset includes the consideration for the grant of an option in relation to the asset if the person has not been subject to tax in respect of any income or capital gain made on the grant of the option.

(4) If an asset has been lost or destroyed by a person, the consideration for the asset includes any compensation, indemnity, or damages received by the person as a result of the loss or destruction, including amounts received or receivable as a consequence of—

- (a) an insurance policy, indemnity, or other agreement;
- (b) a settlement; or
- (c) a judicial decision.

(5) If two or more assets are disposed of by a person in a single transaction and the consideration for each asset is not specified, the total consideration for the disposal is apportioned among the assets disposed of in proportion to their respective fair market values determined at the time of the disposal.

(6) An amount is included in the consideration for the disposal of an asset on the earlier of the date that it is received or receivable.

Deferral of recognition of gain or loss

87.—(1) For the purposes of this Act and subject to subsection (2), no gain or loss is taken to arise on the disposal of any of the following—

- (a) an asset between spouses as part of a divorce settlement or under an agreement to live apart;
- (b) an asset by reason of the transmission of the asset on the death of a person to an executor or beneficiary;
- (c) a principal place of residence, first residential property, an interest in a capital asset, or shares in a company, by reason of love and affection between spouses, siblings, parents to children and vice versa, and grandchildren to grandparents and vice versa; or
- (d) an asset by reason of the loss, destruction or compulsory acquisition of the asset (referred to as the “replaced asset”) if the consideration for the disposal is reinvested by the recipient in an asset of a like kind (referred to as a “replacement asset”) within one year of the disposal or within such further period as the CEO allows.

(2) If the person acquiring an asset referred to in subsection (1)(a), (b), or (c) is a non-resident person at the time of the acquisition, subsection (1) applies only if—

- (a) a subsequent disposal of the asset by the non-resident will give rise to an amount included in the gross income of, or allowed as a deduction to, the non-resident person; or
- (b) the asset is a Fiji asset.

(3) If subsection (1)(a), (b), or (c) applies, the person acquiring the asset is treated as acquiring—

- (a) subject to subsection (4), an asset of the same character as the person disposing of the asset; and
- (b) the asset for an amount equal to—
 - (i) for an asset that was the principal place of residence or first residential property of the person disposing of the asset immediately before the disposal, the fair market value of the residence at the time of the disposal; or
 - (ii) for any other asset, the cost of the asset for the person disposing of the asset at the time of the disposal.

(4) If the asset to which subsection (3) applies is the principal place of residence or first residential property of the person disposing of the asset immediately before the disposal, the asset retains that character only if the person acquiring the asset uses the asset as their principal place of residence.

(5) If subsection (1)(d) applies and the consideration given by the person for the replacement asset is equal to or exceeds the consideration received or receivable for the replaced asset, the cost of the replacement asset is the cost of the replaced asset at the time of disposal increased by the amount of the excess, if any.

(6) If subsection (1)(d) applies and the consideration received or receivable for the replaced asset exceeds the consideration given for the replacement asset, the cost of the replacement asset is the cost of the replaced asset at the time of disposal reduced by the amount of the excess.

(7) Section 34(3) and not subsection (1)(d) applies if the asset is a depreciable asset.

(8) In this section, “first residential property” and “principal place of residence” have the meanings in section 67(4).

Corporate re-organisations

88.—(1) If a resident company (referred to as the “transferor”), disposes of an asset, with or without any liability not in excess of the cost of the asset, to another resident company (referred to as the “transferee”) and the transferor is a group company in relation to the transferee company—

- (a) no gain or loss is taken to arise on disposal of the asset;
- (b) the transferee is treated as acquiring an asset of the same character as the asset disposed of by the transferor; and
- (c) the transferee’s cost on acquisition of the asset is equal to the transferor’s cost for the asset at the time of disposal.

(2) Subsection (1) does not apply if the income of the transferee company is exempt income.

(3) A company is a group company in relation to another company if—

- (a) one company owns, directly or through one or more interposed persons, 100% of the issued shares in the other company; or
- (b) another company owns, directly or through one or more interposed persons, 100% of the issued shares in both companies.

(4) In this section, “company” means an incorporated body.

Non-arm’s length transaction

89. Subject to section 63, if an asset is disposed of by a person in a transaction that is not an arm’s length transaction—

- (a) the person disposing of the asset is treated as having received consideration equal to the fair market value of the asset determined at the time the asset is disposed of; and
- (b) the person acquiring the asset is treated as having a cost equal to the amount determined under paragraph (a).

PART 6—MINING

Part 6 interpretation

90.—(1) In this Part—

“contractor” means a person who has been issued with—

- (a) a mining right under the Mining Act; or
- (b) a petroleum right under the Petroleum (Exploration and Exploitation) Act;

“development expenditure” means capital expenditure incurred in undertaking operations authorised under—

- (a) a mining tenement, other than expenditure incurred in the acquisition of a depreciable asset, and includes expenditure incurred in the acquisition of—
 - (i) the mining right other than a right referred to in paragraph (a) (i) of the definition of “exploration expenditure”; or
 - (ii) information associated with a mining right other than information referred to in paragraph (a)(ii) of the definition of “exploration expenditure”; or

- (b) a production licence, other than expenditure incurred in the acquisition or construction of a pipeline or in the acquisition of a depreciable asset, and includes expenditure incurred in the acquisition of—
- (i) the petroleum right other than a right referred to in paragraph (b)(i) of the definition of “exploration expenditure”; or
 - (ii) information associated with a petroleum right other than information referred to in paragraph (b)(ii) of the definition of “exploration expenditure”;

“Director” means the Director of Mines appointed under the Mining Act;

“exploration expenditure” means expenditure incurred in undertaking operations authorised under—

- (a) a prospector’s right, other than expenditure incurred in the acquisition of a depreciable asset, and includes expenditure incurred in the acquisition of—
 - (i) the prospector’s right from the Government or under a farm-out agreement; or
 - (ii) prospecting information associated with a prospector’s licence from the Government or under a farm-out agreement; or
- (b) an exploration licence, other than expenditure incurred in the acquisition of a depreciable asset, and includes expenditure incurred in the acquisition of—
 - (i) the exploration licence from the Government or under a farm-out agreement; or
 - (ii) exploration information associated with an exploration licence from the Government or under a farm-out agreement;

“farm-out agreement” means an agreement to which section 96 applies;

“Mining Act” means the Mining Act (Cap. 146);

“mining operations” means operations undertaken under a mining tenement;

“mining right” means a mining tenement or a prospector’s right;

“Petroleum (Exploration and Exploitation) Act” means the Petroleum (Exploration and Exploitation) Act (Cap. 148);

“petroleum operations” means operations undertaken under a petroleum right;

“petroleum right” means an exploration licence or a production licence; and

“sub-contractor” means a person supplying services to a contractor in relation to mining operations or petroleum operations, other than a person supplying services as an employee.

- (2) Unless the context otherwise requires, any term that is not defined in this Part but—
- (a) is defined in the Mining Act has, in relation to mining operations, the meaning assigned to it in the Mining Act; or
 - (b) is defined in the Petroleum (Exploration and Exploitation) Act has, in relation to petroleum operations, the meaning assigned to it in the Petroleum (Exploration and Exploitation) Act.

Taxation of contractors and sub-contractors

91.—(1) A contractor or sub-contractor is subject to tax in accordance with this Act, subject to modifications in this Part.

(2) If there is an inconsistency in the taxation of a contractor as between this Part and the other Parts of this Act, this Part prevails.

(3) The rate of tax applicable to a contractor that is a company is 20%.

(4) The rate of Non-resident Withholding Tax applicable to a sub-contractor that is a non-resident person is 15%.

Exploration and prospecting

92.—(1) Section 35 applies to exploration expenditure incurred by a contractor on the basis that it is a business intangible with a rate of amortisation equal to 100%.

(2) For the purpose of Division 5 of Part 2, the depreciation rate applicable to a depreciable asset acquired by a contractor primarily for the purpose of undertaking operations under a prospector’s right or exploration licence, and is being used for that purpose, is equal to 100%.

Development and production

93.—(1) Subject to subsection (2), section 35 applies to development expenditure on the basis that it is a business intangible with a rate of amortisation equal to 25%.

(2) If development expenditure is incurred by a contractor before commercial production, subsection (1) applies on the basis that the expenditure was incurred at the commencement of commercial production.

(3) In this section, “commencement of commercial production”, in relation to mining or petroleum operations undertaken at a mine or well means the first day of the first period of 30 consecutive days during which the average level of production of the mine or well on the 25 highest production days in the thirty-day period reaches a level as determined by the CEO with the advice of the Director.

Rehabilitation expenditure

94.—(1) A contribution made by a contractor to a rehabilitation fund in accordance with an approved rehabilitation plan in relation to mining or petroleum operations is allowed as a deduction for the tax year in which the contribution was made.

(2) An expenditure incurred by a contractor in carrying out work required by an approved rehabilitation plan in respect of the contractor's mining or petroleum operations is allowed as a deduction for the tax year in which the expenditure is incurred provided that the work is not paid for, directly or indirectly, from money made available out of the contractor's rehabilitation fund for the mining or petroleum operations.

(3) Amounts accumulated in a rehabilitation fund, or withdrawn from a rehabilitation fund to meet expenditure incurred under an approved rehabilitation plan, are exempt income.

(4) Subject to subsection (5), an amount withdrawn from the fund and returned to the contractor is included in the gross income of the contractor for the tax year in which the amount was returned to the contractor.

(5) Any surplus in a rehabilitation fund of a contractor at the time of completion of rehabilitation is included in the gross income of the contractor for the tax year in which rehabilitation is completed.

(6) In this section,—

“approved rehabilitation plan” means a plan for rehabilitation of a mine site or decommissioning of a petroleum site approved by the CEO upon the advice of the Director; and

“rehabilitation fund” means a fund or account required to be established under a mining or petroleum right to provide for the future payment of remedial work to the title area covered by the mining or petroleum right and is managed jointly by the Director and the contractor.

Ring-fencing of mining or petroleum operations

95.—(1) A deduction for expenditures or losses incurred wholly or partly by a contractor in undertaking mining or petroleum operations in a title area during a tax year are allowed only against the gross income derived by the contractor from such operations in the title area during the period.

(2) If the total deductions of a contractor in respect of mining or petroleum operations undertaken by a contractor in a title area during a tax year exceed the total gross income for such operations in the title area for the period, the excess is carried forward and allowed as a deduction against the gross income of the contractor from mining or petroleum operations in the title area in the next following tax year of the contractor.

(3) An amount that is not deducted under subsection (2) is carried forward to the next following tax year of the contractor and allowed as a deduction in accordance with subsection (2) in that period and so on until the amount has been fully deducted or the mining or petroleum operations in the title area cease.

(4) If a contractor has an excess carried forward under subsection (2) for more than one tax year, the excess of the earliest period is allowed as a deduction first.

(5) In this section, “title area”, in relation to mining or petroleum operations undertaken by a contractor, means the area covered by the mining or petroleum right under which the mining or petroleum operations have been undertaken and includes—

- (a) in the case of a mining tenement—
 - (i) the area covered by a prospector’s right of the contractor if the area covered by the mining tenement falls wholly within the area covered by the prospector’s right; or
 - (ii) the area covered by another mining tenement of the contractor if the area covered by the other mining tenement is adjacent with the first-mentioned mining tenement and both tenements relate to the same mineral; or
- (b) in the case of a production licence—
 - (i) the area covered by an exploration licence of the contractor if the area covered by the production licence falls wholly within the area covered by the production right; or
 - (ii) the area covered by another production licence of the contractor if the area covered by the other production licence is adjacent with the first-mentioned production licence.

Farm-out agreements

96.—(1) This section applies if the following conditions are satisfied—

- (a) a contractor (referred to as the “transferor”) has entered into an agreement with a person (referred to as the “transferee”) for the transfer of a part of the transferor’s interest in a mining or petroleum right; and
- (b) the consideration given by the transferee for the transferred interest wholly or partly includes the transferee agreeing to incur expenditure or undertaking some or all of the transferor’s work commitments in respect of the part of the interest retained by the transferor.

(2) If this section applies—

- (a) the value of any work undertaken by the transferee in relation to the part of the interest retained by the transferor is not included in the consideration of the transferor for the transferred interest;
- (b) the following applies to any amount in money received or receivable by the transferor for the transferred interest—
 - (i) section 27 applies to the amount in money on the basis that it is a reimbursement by the transferor of any deductions allowed for

expenditure incurred by the transferor in respect of the transferred interest;

- (ii) if the amount of money exceeds the amount of deducted expenditure to which section 27 applies, the excess is treated as consideration for the transferred interest.

Indirect disposals of mining or petroleum rights

97.—(1) If a contractor that holds a mining or petroleum right suffers a 25% or more change in its underlying ownership, the contractor must immediately notify, in writing, the CEO of the change.

(2) If the person disposing of the right to which a notice under subsection (1) relates is a non-resident person, the contractor to which the notice relates is treated as the representative of the non-resident person for the purposes of section 41 of the Tax Administration Decree 2009.

PART 7—LEVIES

Imposition of Telecommunications Levy

98.—(1) Subject to this Act, a levy to be known as the “Telecommunications Levy” is imposed for a Calendar month at the rate prescribed by Regulations made under this Act on a user of telecommunications services.

(2) The Telecommunications Levy imposed under subsection (1) for a Calendar month is computed by applying the rate prescribed by Regulations made under this Act to the charges incurred by the person for calls transmitted by a licensed telecommunications service provider.

(3) The licensed telecommunications service provider providing the telecommunications service on which the Telecommunications Levy is imposed is liable to pay the levy on behalf of the user of the telecommunications services.

Imposition of Credit Card Levy

99.— (1) Subject to this Act, a levy to be known as the “Credit Card Levy” is imposed for each monthly billing cycle at the rate prescribed by Regulations made under this Act on the holder of a bank credit card.

(2) The Credit Card Levy imposed under subsection (1) for a monthly billing cycle is computed by applying the rate prescribed by Regulations made under this Act to the debit balance at the end of the day specified as the due date for payment for the monthly billing cycle of the holder of the bank credit card including interest and other charges.

(3) The bank providing the credit card on which the Credit Card Levy is imposed is liable to pay the levy on behalf of the holder of the bank credit card.

Imposition of Third Party Insurance Levy

100.—(1) Subject to this Act, a levy to be known as the “Third Party Insurance Levy” is imposed for a Calendar month at the rate prescribed by Regulations made under this Act on an insurance company.

(2) The Third Party Insurance Levy imposed under subsection (1) for a Calendar month is computed by applying the rate prescribed by Regulations made under this Act to the total third party insurance premiums collected by the insurance company during the month.

PART 8—ANTI-AVOIDANCE

Income splitting

101.—(1) If a person attempts to split income with another person, the CEO may adjust the chargeable income and tax credits of both persons to prevent any reduction in tax payable as a result of the splitting of income.

(2) A person is treated as having attempted to split income when—

- (a) the person transfers income or the right to income, directly or indirectly, to another person; or
- (b) the person transfers property, including money, directly or indirectly, to another person with the result that the other person receives or enjoys the income from that property,

and the reason or one of the reasons for the transfer is to lower the total tax payable upon the income of the transferor and the transferee.

(3) In determining whether a person attempts to split income, the CEO must consider the value, if any, given for the transfer.

Tax avoidance schemes

102.—(1) Notwithstanding this Act, if the CEO is satisfied that—

- (a) a tax avoidance scheme has been entered into or carried out;
- (b) a person has obtained a tax benefit in connection with the tax avoidance scheme; and
- (c) having regard to the substance of the tax avoidance scheme, it would be concluded that a person or one of the persons, who entered into or carried out the scheme did so for the sole or dominant purpose of enabling the person referred to in paragraph (b) to obtain a tax benefit,

the CEO may determine the tax liability of the person who obtained the tax benefit as if the tax avoidance scheme had not been entered into or carried out and can make compensating adjustments to the tax liability of any other person affected by the tax avoidance scheme.

(2) When a resident person has entered into a transaction that directly or indirectly has the effect that income is foreign-source income derived through a non-resident entity that is connected to a tax haven, the CEO may adjust the income and foreign tax credit position of the resident person to reverse the tax effect of the transaction.

(3) If a determination or adjustment is made under this section, the CEO must issue an assessment giving effect to the determination or adjustment.

(4) A determination or adjustment under this section must be made within 7 years from the last day of the tax year to which the determination or adjustment relates.

(5) In this section—

“non-resident entity” means a partnership, trust or company that is not a resident person;

“scheme” includes a course of action and an agreement, arrangement, promise, plan, proposal, or undertaking, whether express or implied and whether or not enforceable;

“tax avoidance scheme” means any scheme if one of the main purposes of a person in entering into the scheme is the avoidance or reduction of any person’s liability to tax under this Act;

“tax benefit” means—

- (a) a reduction in a liability to pay tax;
- (b) a postponement of a liability to pay tax;
- (c) an entitlement to a refund;
- (d) an increase in a tax credit;
- (e) any other advantage arising because of a delay in payment of tax; or
- (f) anything that causes gross income to be exempt income, a capital gain to be an exempt capital gain, or a fringe benefit to be an exempt fringe benefit;

“tax haven” means a foreign country or part of a foreign country that has—

- (a) effective tax rates significantly lower than those of Fiji; or
- (b) laws providing for the secrecy of financial or corporate information that facilitate the concealment of the identity of the real owner of any income or asset.

PART 9—PROCEDURAL RULES

*Division 1—Application of Tax Administration Decree 2009**Application of Tax Administration Decree 2009*

103. The Tax Administration Decree 2009 applies for the purposes of the administration of this Act but subject to this Part.

*Division 2—Procedural Rules for Income Tax, Social Responsibility Tax and Presumptive Income Tax**Subdivision 1—Tax Returns and Records**Filing of returns*

104.—(1) A person liable for Income Tax or who has a net loss for a tax year must file an Income Tax return for the year within 3 months after the end of the tax year.

(2) A partnership or the trustee of a trust must file an Income Tax return for a tax year within 3 months after the end of the tax year.

(3) A person liable for Presumptive Income Tax for a quarter must file a Presumptive Income Tax return for the quarter within one month after the end of the quarter.

(4) An Income Tax return or Presumptive Income Tax return must be in the approved form and filed in the prescribed manner.

Income Tax return not required to be filed

105. An individual is not required to file an Income Tax return under section 104 for a tax year if the only income derived by the individual during the year consists solely of the following amounts—

- (a) income from which tax has been withheld under section 111, except if the person has two or more employments at the same time for the whole or part of the tax year;
- (b) income from which tax has been withheld under section 112 when section 125 treats the tax withheld as a final tax on the income.

Accounts and records

106.—(1) A person must keep such accounts, documents and records to enable the computation of the Income Tax or Presumptive Income Tax payable by the person for a tax year or quarter, as the case may be.

(2) Notwithstanding anything in the Tax Administration Decree 2009, a person liable for Presumptive Income Tax must retain the records required under subsection (1) for 2 years after the end of the quarter to which they relate.

(3) The CEO may disallow a claim for a deduction for an expenditure or loss if a person is unable, without reasonable excuse, to produce a receipt or other record of the expenditure or loss, or to produce evidence relating to the circumstances giving rise to the claim for the deduction.

Rental Income Reporting System

107.—(1) A real estate agent must file a report for a tax year by the last day of February after the end of the tax year.

(2) A report required to be filed under subsection (1) must be in the approved form and filed in the prescribed manner.

(3) If two or more persons carry on business jointly as real estate agents, each of those persons is treated as a real estate agent for the purposes of this section.

(4) In this section—

“land” includes all estates and interests, whether freehold or chattel, in real property, and 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, includes those goods or chattels and that other property;

“real estate agent” includes a person who 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 business, either with or without any interest in land, or in respect of the leasing and letting of land or business, whether or not the person carries on any other business; and

“tax year” means the Calendar year.

*Subdivision 2—Payment of Income Tax and Social Responsibility Tax**Due date for payment of Income Tax*

108.—(1) The Income Tax and Social Responsibility Tax payable by a person for a tax year are due on the date that the Income Tax return for the year is due or such other date as prescribed.

(2) The Presumptive Income Tax payable by a person for a quarter is due on the date that the Presumptive Income Tax return for the quarter is due.

*Collection of Non-resident International Shipping Income Tax
from non-resident ship owners or charterers*

109.—(1) Subject to subsection (3), before the granting of a port clearance for a ship owned or chartered by a non-resident person from a port in Fiji, the captain or chief commanding officer of the ship, or the shipping agent in Fiji for the non-resident person—

(a) must file with the CEO a return showing the gross amount derived from the carriage of passengers, livestock, mail, merchandise, or goods embarked or loaded in Fiji in respect of the ship and the Non-resident International Shipping Income Tax payable thereon; and

(b) pay the Non-resident International Shipping Income Tax due in respect of the ship with the return.

(2) The return required under subsection (1)(a) must be in the approved form and filed in the prescribed manner.

(3) The CEO may allow the return required under subsection (1)(a) to be filed within 30 days after departure of the ship from Fiji provided that the non-resident owner or charterer has made satisfactory arrangements with the CEO for the payment of any Non-resident International Shipping Income Tax due in respect of the ship.

(4) The Comptroller of Customs and Excise must not grant a port clearance for a ship owned or chartered by a non-resident person, and must use the powers available under the Customs legislation to prevent a ship from leaving Fiji, until the Comptroller is satisfied that—

- (a) any Non-resident International Shipping Income Tax due in respect of the ship has been paid or that arrangements for its payment have been made to the satisfaction of the CEO; or
- (b) no Non-resident International Shipping Income Tax is payable in respect of the ship.

(5) This section does not relieve the owner or charterer of the ship from liability to pay any Non-resident International Shipping Income Tax due that is not paid by the captain or chief commanding officer of the ship, or the shipping agent in Fiji of the non-resident owner or charterer.

Subdivision 3—Current Payment System

Advance payments of tax

110.—(1) A person liable for Income Tax for a tax year is liable to make advance payments of Income Tax:

- (a) in the case of a company, on the last day of the sixth, ninth and twelfth months of the tax year; or
- (b) in the case of any other person, on 30th April, 31st August and 30th November.

(2) If the total advance payments of Income Tax payable by a person, other than a company, for a tax year is less than \$120, the advance tax payable by the person for the year is payable in one instalment on 30th September.

(3) The amount of each advance payment of Income Tax payable by a person for a tax year is computed according to the following formula—

$$33\frac{1}{3}\% \times (A - B)$$

where—

- A** is the person's assessed Income Tax liability for the preceding tax year, including under a self-assessment, after reduction of any foreign tax credit allowed to the person for that year; and

B is so much of A that was paid by amounts withheld under Subdivision 4 of Division 2 of this Part.

(4) If—

- (a) the Income Tax payable by a person for the preceding tax year has not been assessed by the due date for payment of the first advance payment of Income Tax for a tax year; or
- (b) the person commenced to derive income included in gross income during the tax year,

the amount of each advance payment of Income Tax is one-third of the amount of Income Tax estimated by the person to be payable for the tax year, other than Income Tax to be collected by withholding under Subdivision 4 of Division 2 of this Part.

(5) A statement of the Income Tax estimated to be payable by a person for a tax year in accordance with subsection (4) must be filed with the CEO by the due date for payment of the first advance payment of Income Tax for the year.

(6) A person who reasonably believes that their Income Tax liability for a tax year will be significantly lower than the Income Tax liability assessed for the previous tax year may file a statement of the Income Tax estimated to be payable by the person for the year, before the end of the sixth month of the person's tax year, and the amount of each advance payment of Income Tax payable for the year is one-third of the person's estimated Income Tax liability for the year, other than Income Tax to be collected by withholding under Subdivision 4 of Division 2 of this Part.

(7) If a person fails to file a statement as required under subsection (5) for a tax year, the estimated Income Tax of the person payable for the year is the amount of Income Tax estimated by the CEO to be payable by the person for the year.

(8) A statement filed by a person under subsection (5) or (6), or the CEO's estimate of the Income Tax payable by the person under subsection (7) remains in force for the whole of the tax year unless the person files a statement of a revised estimate with the CEO.

(9) A statement of a revised estimate filed under subsection (8) applies to the calculation of advance payments of Income Tax for a tax year payable by the person both before and after the date the statement was filed and—

- (a) the amount of any underpayment of advance payment of Income Tax made prior to filing the statement of revised estimate must be paid by the person together with the first advance payment due after the statement is filed; or
- (b) the amount of any overpaid advance payments of Income Tax is applied against future advance payments of Income Tax payable by the person.

(10) Each advance payment of Income Tax paid by a person during a tax year is credited against the person's Income Tax liability for the year in accordance with section 8(3) and if the amount of the credit allowed exceeds the Income Tax due for the year, the amount of the excess is refunded to the person.

(11) If the estimate, including the estimate of the CEO and any revised estimate, of Income Tax payable by a person for a tax year is less than 100% of the actual Income Tax liability of the person for the year (the difference referred to as the “advance tax shortfall”), the person is liable for a penalty equal to 40% of the person’s advance tax shortfall.

(12) No penalty is imposed under subsection (11) if the CEO is satisfied that the reason for the advance tax shortfall was due to circumstances beyond the control of the person and all reasonable care was taken by the person in making the estimate or revised estimate.

(13) In this section, “Income Tax” includes the Social Responsibility Tax.

Subdivision 4—Withholding Tax

Withholding of tax from employment income

111.—(1) Subject to this Subdivision, an employer must withhold tax from a payment of employment income to an employee as prescribed.

(2) The obligation of an employer to withhold tax under subsection (1)—

- (a) is not reduced or extinguished because the employer has a right, or is otherwise obliged, to withhold any other amount from a payment of employment income; and
- (b) applies notwithstanding any law that provides that the employment income of an employee is not to be reduced or subject to attachment.

(3) In this section and in other sections of this Subdivision applicable to employment income, “tax” includes the Social Responsibility Tax.

Withholding of tax from interest and dividends

112.—(1) Subject to this Subdivision, a resident company or permanent establishment in Fiji of a non-resident company paying interest to a resident person, must withhold tax from the gross amount of the interest at the rate of 10% except if—

- (a) the payment is to a financial institution; or
- (b) the CEO issues a certificate of exemption to a resident person on the basis that the interest is exempt as prescribed by Regulations made under this Act.

(2) Subject to this Subdivision, a resident company paying a dividend to a resident person must withhold tax from the gross amount of the dividend at the rate of 3%.

Withholding of tax from payments to non-resident persons

113. A person paying an amount to a non-resident person that is subject to tax under section 10 must withhold tax from the gross amount paid at the Non-resident Withholding Tax rate prescribed by Regulations made under this Act.

Withholding of tax from commissions and other payments for services

114.—(1) Subject to subsection (3), a resident person or permanent establishment in Fiji of a non-resident person making a payment of a commission for the provision of insurance or the sale of any property, including books, publications, buildings, or land, must withhold tax from the gross amount of the payment as prescribed.

(2) Subject to subsection (3), a resident person or a permanent establishment in Fiji of a non-resident person making a payment under a contract of services, including progress payments, must withhold tax from the gross amount of the payment as prescribed.

(3) This section does not apply to the following—

- (a) payments made under a contract of employment; or
- (b) payments subject to tax under section 10.

No withholding from exempt income

115. A person is not liable to withhold tax from an amount that is exempt income of the recipient as prescribed by Regulations made under this Act.

Time of withholding

116. A person required to withhold tax under this Subdivision from an amount paid by the person must withhold the tax at the earlier of the time the amount is—

- (a) applied on behalf of the recipient either at the instruction of the recipient or under any law;
- (b) reinvested, accumulated or capitalised for the benefit of the recipient;
- (c) credited to the account, or carried to any reserve, or a sinking or insurance fund for the benefit of the recipient;
- (d) actually paid or otherwise made available to the recipient.

Payment of tax withheld

117.—(1) Any tax required to be withheld by a person under this Subdivision must be paid to the CEO by the end of the Calendar month following the month in which the person was required to withhold the tax.

(2) A liability for withholding tax under this Subdivision arises by operation of this section and is not dependent on the CEO making an assessment of the withholding tax due.

Failure to pay tax withheld

118.—(1) If a person—

- (a) fails to withhold tax as required under this Subdivision; or
- (b) having withheld tax fails to pay the tax to the CEO as required under section 117,

that person is personally liable to pay the amount of tax to the CEO.

(2) A person personally liable for an amount of tax under subsection (1) as a result of failing to withhold the tax is entitled to recover the tax from the recipient of the payment.

Recovery of withholding tax

119.—(1) If a person fails to withhold tax as required under this Subdivision, the CEO may recover the tax from the recipient of the payment provided that the total amount recovered does not exceed the tax that should have been withheld.

(2) Notwithstanding the recovery of any tax under subsection (1), the person who failed to withhold the tax continues to be liable for—

- (a) any other legal action in relation to the failure;
- (b) the imposition of penalty in respect of the failure; and
- (c) the disallowing of a deduction for the expenditure to which the failure relates under section 22 (2).

Tax Withholding Certificate

120.—(1) A person withholding tax under this Subdivision must give to the recipient of the payment a Tax Withholding Certificate as prescribed.

(2) A person required to lodge an Income Tax return for a tax year must attach to the return any Tax Withholding Certificate as prescribed.

Annual withholding tax summary

121.—(1) A person withholding tax under this Subdivision except for employment income withholding final tax must, within 2 months after the end of the tax year or within such further time as the CEO may allow by notice in writing, file with the CEO an annual withholding tax summary as prescribed.

(2) In this section, “tax year” means the Calendar year.

Priority of tax withheld

122. An amount that a person is required to withhold from a payment under this Subdivision is—

- (a) a first charge on the payment; and
- (b) deducted prior to any other amount that the person may be required to deduct from the payment by virtue of an order of any Court or under any other law.

Indemnity

123. A person who has withheld tax from a payment under this Subdivision and remitted the tax to the CEO is indemnified against any claim by the recipient for payment of the withheld amount.

Credit for withholding tax

124.—(1) For the purposes of this Act, if tax has been withheld under this Subdivision from income derived by a person, the amount of income included in the gross income of the person is the amount derived before the withholding of the tax.

(2) Subject to subsections (3) and (4), if tax has been withheld under this Subdivision from income derived by a person, the person is allowed a tax credit for the tax against the tax due by the person on the chargeable income of the person for the tax year in which the tax was withheld.

(3) No tax credit is allowed if the tax withheld is a final tax on the income under section 12 or 125.

(4) A tax credit allowed under this section is applied in accordance with section 8(3).

(5) A tax credit or part of a tax credit allowed to a person under this section for a tax year that is not credited under section 8(3) for the year is refunded to the person in accordance with section 33 of the Tax Administration Decree 2009.

Withholding tax as a final tax

125.—(1) This section applies to tax withheld during a tax year under—

- (a) section 111 provided that the employee does not have two or more employments at the same time for the whole or part of the tax year;
- (b) section 112(1) from interest paid by a financial institution to a resident individual;
- (c) section 112(1) from interest paid to a resident individual to which paragraph (b) does not apply and the only other income of the individual is the following—
 - (i) income to which this section applies;
 - (ii) subject to tax under section 9; or
- (d) section 112(2).

(2) If this section applies, the tax withheld is a final tax on the income in respect of which the tax has been withheld and—

- (a) the income is not included in—
 - (i) gross income in computing the chargeable income of the person who derives it for any tax year, although employment income to which subsection (1)(a) applies is taken into account as specified in section 8(6); or
 - (ii) gross turnover in computing the Presumptive Income Tax liability of the person who derived it for any tax year;

- (b) no deduction is allowable under this Act in computing the chargeable income of the person for any expenditure or loss incurred in deriving the income;
- (c) the income is not reduced by any deduction allowed under this Act or by any loss carried forward; and
- (d) the tax withheld is not reduced by any tax credits allowed under this Act.

Division 3—Procedural Rules for Capital Gains Tax

Filing of Capital Gains Tax return

126.—(1) A person disposing of a capital asset must file a Capital Gains Tax return within one month after the disposal of the capital asset, except for disposal of capital asset under Section 67(1)(c).

(2) A Capital Gains Tax return must be in the approved form and filed in the prescribed manner.

Payment of Capital Gains Tax

127. The Capital Gains Tax payable by a person on the disposal of a capital asset is due on the due date for filing the taxpayer's Capital Gains Tax return in respect of the disposal.

Capital Gains Tax accounts and records

128. A person must keep accounts, documents, and records relating to—

- (a) the disposal of capital assets by the person; and
- (b) the computation of the Capital Gains Tax payable (if any) by the person in respect of the disposal of capital assets.

Collection of Capital Gains Tax payable by partnerships or trusts

129.—(1) Each trustee of a trust is responsible for performing any duties or obligations imposed by this Act on the trust in relation to Capital Gains Tax, including the payment of Capital Gains Tax.

(2) Each partner in a partnership is responsible for performing any duties or obligations imposed by this Act on the partnership in relation to Capital Gains Tax, including the payment of Capital Gains Tax.

(3) If a trust has more than one trustee, the duties and obligations imposed under this section on the trustee of the trust shall apply jointly and severally to the trustees but may be discharged by any of them.

(4) The duties and obligations imposed under this section on the partners in a partnership apply jointly and severally to the partners but may be discharged by any of them.

Capital asset registration and renewals

130.—(1) The Registrar of Titles must not register an instrument relating to the transfer of a capital asset under the Land Transfer Act (Cap. 131) or renewal of the registration of a capital asset, unless the transferor or transferee has furnished the Registrar of Titles with a certificate from the CEO stating that the Capital Gains Tax due on the transfer has been paid or satisfactory arrangements for payment of the tax have been made, or that no such tax is payable.

(2) The Civil Aviation Authority of Fiji, Maritime Safety Authority of Fiji and Registrar of Companies must not register any instrument relating to the capital asset or renewal of a capital asset, unless the Civil Aviation Authority of Fiji, Maritime Safety Authority of Fiji or the Registrar of Companies is furnished with a certificate from the CEO stating that the capital gains tax due had been paid or satisfactory arrangements for payment of the tax has been made, or that no such tax is payable.

(3) The CEO shall furnish a certificate in subsection (2) within 7 days of receipt of an application from the Civil Aviation Authority of Fiji, Maritime Safety Authority of Fiji or Registrar of Companies for such a certificate.

*Division 4—Procedural Rules for Fringe Benefits Tax**Filing of Fringe Benefits Tax return*

131.—(1) An employer liable for Fringe Benefits Tax for a quarter must file a Fringe Benefits Tax return for the quarter within one month following the end of the quarter.

(2) A Fringe Benefits Tax return must be in the approved form and filed in the prescribed manner.

Payment of Fringe Benefits Tax

132. The Fringe Benefits Tax payable by an employer for a quarter is due on the due date for filing the taxpayer's Fringe Benefits Tax return for the quarter.

Fringe Benefits Tax accounts and records

133. An employer must keep such accounts, documents and records to enable the computation of the Fringe Benefits Tax payable by the person for a quarter.

Collection of Fringe Benefits Tax payable by partnerships or trusts

134. Section 129 applies, with the necessary changes made, to the Fringe Benefits Tax.

*Division 5—Procedural Rules for Levies**Filing of returns for levies*

135.—(1) A licensed telecommunications service provider liable for the Telecommunications Levy must file a Telecommunications Levy return within 15 days after the end of each Calendar month.

(2) A bank liable for the Credit Card Levy must file a Credit Card Levy return within 15 days following the end of each Calendar month.

(3) An insurance company liable for the Third Party Insurance Levy must file a Third Party Insurance Levy return within 15 days after the end of each Calendar month.

(4) A return required to be filed under this section must be in the approved form and filed in the prescribed manner.

Payment of levies

136. The Telecommunications Levy, Credit Card Levy or Third Party Insurance Levy payable by a person for a Calendar month is due on the date that the Telecommunications Levy, Credit Card Levy or Third Party Insurance Levy return, as the case may be, for the month is due.

Accounts and records relating to levies

137. A person liable for the Telecommunications Levy, Credit Card Levy or the Third Party Insurance Levy must keep such accounts, documents and records to enable the computation of the amount of levy payable.

PART 10—MISCELLANEOUS PROVISIONS

Concessionary rate of tax for regional or global headquarters

138.—(1) The Minister may, by regulations, provide that tax at a rate of 17% or such other concessionary rate, be levied and paid for each tax year upon such income as the Minister may specify for an approved regional or global headquarters.

(2) Pursuant to subsection (1), tax shall be levied for income derived by the regional or global headquarters from the provision of qualifying services as prescribed to its offices, associated companies and other persons, outside Fiji.

(3) The concessionary rate of tax referred to in subsection (1) shall apply to an approved regional or global headquarters—

- (a) in respect of any qualifying service only where the qualifying service and the office, associated company or person to whom the service is rendered, have been approved in relation to that regional or global headquarters for such concessionary rate; and
- (b) subject to such conditions as the CEO or any person appointed by the CEO, may impose.

(4) A foreign company which operates or is carrying on business in Fiji is allowed a 150% deduction for capital expenditure incurred for the relocation of its regional or global headquarters to Fiji, which provides management, technical or other supporting services to its offices or associated companies.

(5) In this section—

“associated company”, in relation to an approved regional or global headquarters, means a company—

- (a) the operations of which are or can be controlled, directly or indirectly, by that regional or global headquarters;
- (b) which controls or can control, directly or indirectly, the operations of that regional or global headquarters; or
- (c) the operations of which are or can be controlled, directly or indirectly, by a person or persons who control or can control, directly or indirectly, the operations of that regional or global headquarters; and

“regional or global headquarters” refers to a regional or international company which operates or is carrying on business in Fiji, and which provides management, technical or other supporting services to its offices or associated companies, outside Fiji.

(6) For the purposes of subsection (4), a company shall be deemed to be an associated company in relation to an approved regional or global headquarters if—

- (a) at least 25% of the total number of its issued shares are beneficially owned, directly or indirectly, by the approved headquarters company; or
- (b) at least 25% of the total number of the issued shares of the approved headquarters company are beneficially owned, directly or indirectly, by the first-mentioned company.

Currency translation

139.—(1) An amount taken into account under this Act must be expressed in Fiji dollars.

(2) If an amount is in a currency other than Fiji dollars, the amount must be translated to Fiji dollars at the exchange rate applying between the foreign currency and Fiji dollars on the date the amount is taken into account for the purposes of this Act.

(3) With the prior written permission of the CEO, amounts taken into account in computing the business income and deductions relating to such income of a person for a tax year may be translated to Fiji dollars at the average exchange rate for the tax year between the foreign currency and Fiji dollars.

(4) For the purposes of this Act, “exchange rate” means the telegraphic transfer buying rate issued by a financial institution.

Double tax and tax information exchange agreements

140.—(1) The Minister may enter into—

- (a) an agreement with the Government of any other country or territory under which arrangements are made with that Government for the prevention, mitigation, or discontinuance of the levying of Income Tax under the laws

of Fiji and the other country or territory, in respect of the same income, gain or benefit, or to the rendering of reciprocal assistance in the administration of, and collection of taxes under this Act and the other country or territory;
or

- (b) a tax information exchange agreement with the Government of any other country or territory for the reciprocal exchange of information.

(2) Without limiting the generality of subsection (1), it is hereby declared that an agreement to which effect is given under this section may contain provisions in relation to—

- (a) relief from double taxation;
- (b) the taxation of income derived from sources in Fiji by non-resident persons, the taxation of capital gains in relation to Fiji assets of non-resident persons, or the taxation of fringe benefits received by non-resident employees;
- (c) determining the income, and losses and expenditures, and capital gains to be attributed to permanent establishments in Fiji of non-resident persons;
or
- (d) determining the income attributable to resident persons who have special relationships with non-resident persons.

(3) An agreement made under this section may include relief from double taxation for periods before the commencement date or before the agreement enters into force, and provisions relating to income that is not subject to double taxation.

(4) As soon as may be after the conclusion of an agreement under this section, the agreement must be notified by the Minister in the Gazette whereupon, until revoked, the agreement has effect as if enacted in this Act but only if and for so long as such agreement, in so far as it relates to immunity, exemption, or relief in respect of Income Tax levied or liable in the other country or territory has the effect in the other country or territory.

(5) The Minister may, at any time, revoke a notification in the Gazette under subsection (4) and whereupon the agreement to which the notification relates ceases to have effect, but the revocation does not affect the validity of anything done prior to the revocation having effect.

(6) The secrecy obligation in section 52 of the Fiji Revenue and Customs Authority Act 1998 does not prevent the disclosure to any authorised officer of the Government of a foreign country or territory with which an agreement has been made under this section of such information as is required to be disclosed under the agreement.

(7) Subject to subsection (8), when an agreement made under this section provides that income derived from sources in Fiji is exempt or excluded from tax or the application of the agreement results in a reduction in the Fiji Income Tax payable, the benefit of that exemption, exclusion, or reduction is not available to any person who, for the purposes

of the agreement, is a resident of the other contracting state when 50% or more of the beneficial ownership of that person is held by an individual or individuals who are not residents of that other Contracting State for the purposes of the agreement.

(8) Subsection (7) does not apply to a company listed on a stock exchange in the other Contracting State.

(9) To the extent that the terms of an agreement entered into under this section are inconsistent with the provisions of this Act, apart from subsection (7) and Part 8 which deals with tax avoidance, the terms of the agreement prevail over the provisions of this Act.

(10) In this section, “Income Tax” means any tax imposed under this Act.

PART 11—CONSEQUENTIAL AMENDMENTS

Consequential amendments

141. The Tax Administration Decree 2009 is amended—

(a) in section 2—

- (i) by deleting the definition of “authorised officer”;
- (ii) by deleting the definition of “controlling interest” and substituting the following—
 - ““controlling interest” means a direct or 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;”;
- (iii) by inserting the following new definition—
 - ““Capital Gains Tax” means the Capital Gains Tax imposed under the Income Tax Act;”;
- (iv) by deleting the definition of “Capital Gains Tax Decree”;
- (v) by deleting “Fringe Benefit Tax Decree” and substituting “Income Tax Act” in the definition of “Fringe Benefit Tax”;
- (vi) by deleting the definition of “Fringe Benefit Tax Decree”;
- (vii) by deleting the definition of “Income Tax Act” and substituting the following—
 - “Income Tax Act” means the Income Tax Act 2015;
- (viii) by deleting “year of assessment” and substituting “tax year” in paragraph (a)(iii) of the definition of “tax period”;

- (ix) in the definition of “taxpayer” by deleting—
 - (A) “year of assessment” and substituting “tax year” wherever it appears; and
 - (B) “imposed under section 8, 8A, 9, 9A, 10, 10A or any other tax withheld specified in the Income Tax Act” in paragraph (a)(iv); and
- (x) in the definition of “withholding tax” by deleting—
 - (A) “8, 8A, 9, 9A, 10 or 10A of the Income Tax Act” and substituting “10 of the Income Tax Act” in paragraph (a);
 - (B) “from emoluments under Part XI of the Income Tax Act; or” and substituting “under Subdivision 4 of Division 2 of Part 9 of the Income Tax Act.” in paragraph (b); and
 - (C) paragraph (c);
- (b) in section 24 by deleting “under section 8(4), 8A(6), 9(5), 9A(12), 10(5), 10A(3), 107(a)(2) or Part XI of the Income Tax Act” in subsection (1)(a);
- (c) in section 41 by deleting “authorised officer,” in subsection (1)(b);
- (d) in the First Schedule by—
 - (i) inserting “1.” before “The following are tax assessments for the purposes of this Decree—”;
 - (ii) deleting “section 5” and substituting “section 8” wherever it appears;
 - (iii) deleting “Part XII of the Income Tax Act” and substituting “Subdivision 3 of Division 2 of Part 9 of the Income Tax Act” in sub-paragraph (b); and
 - (iv) inserting the following new paragraph at the end of the Schedule—
 - “2. The determination of the withholding tax payable is not a tax assessment.”;
- (e) in the Third Schedule—
 - (i) in Part A by deleting—
 - (A) paragraph (1) and substituting the following—
 - “(1) In relation to the Income Tax—
 - (a) a return required under sections 104 or 108 of the Income Tax Act;
 - (b) a report required under section 107 of the Income Tax Act; or

- (c) an annual withholding tax summary required under section 121 of the Income Tax Act”;
 - (B) “15 of the Capital Gains Tax Decree” and substituting “126 of the Income Tax Act” in paragraph (5); and
 - (C) “19 of the Fringe Benefits Tax Decree” and substituting “131 of the Income Tax Act” in paragraph (6); and
- (ii) in Part B by—
- (A) inserting “(1)” before “A return”;
 - (B) deleting “and a return required under section 15 of the Capital Gains Tax Decree and a return required under section 19 of the Fringe Benefit Tax Decree” in paragraph (1); and
 - (C) inserting the following new paragraph after paragraph (1)—
 - “(2) A return required under section 104, 108, 126, 131 or 135 of the Income Tax Act.”

PART 12—FINAL PROVISIONS

Regulations

142.—(1) The Minister may make Regulations—

- (a) prescribing forms or other matters as required under this Act; or
- (b) to give effect to the provisions of this Act.

(2) Without limiting the general effect of subsection (1), Regulations made under that subsection may—

- (a) contain provisions of a saving or transitional nature consequent on the implementation of this Act ; or
- (b) prescribe penalties for the contravention of the Regulations.

(3) If Regulations made under this section are of a transitional nature and are made within 6 months after the commencement of this Act, the Regulations may provide that they take effect from the date on which the Act comes into force.

Transitional and savings

143.—(1) The repealed laws continue to apply to years of assessment prior to the tax year in which this Act comes into force.

(2) A reference in this Act to a previous tax year includes, when the context requires, a reference to a year of assessment under the repealed laws.

(3) Section 21(1)(r) of the Income Tax Act (Cap. 201) continues to apply.

(4) Sections 10 and 17(53) of Income Tax Act (Cap. 201) and section 11 of the Tax Free Zones Decree 1991 continue to apply until the expiration of the Tax Free Zone licence.

(5) An academic or charitable institution listed in, or approved by the CEO under, section 21(1)(n) of the Income Tax Act (Cap. 201) is an approved academic or charitable institution for the purposes of section 24.

(6) A Double Tax Agreement in force at the commencement date of this Act continues to apply unless reviewed by the CEO in consultation with the Double Tax Agreement country's competent authority.

(7) If any part of the net profit after tax of a company for the tax year commencing on 1 January 2014 or equivalent substituted tax year has not been distributed as a dividend prior to 1 January 2016, the company shall pay tax on the undistributed amount at the rate of 1% and the tax is due on March 31, 2016.

(8) A business is allowed a deduction for 150% of the amount of any cash donation made in a tax year to the Fiji Association of Sports and National Olympic Committee (FASANOC) for Fiji's participation at the 2015 Pacific Games.

(9) A business is allowed a deduction for 150% of the amount of any cash donation made in a tax year to the Fiji Rugby Union (FRU) for Fiji's participation at the 2015 Rugby World Cup.

(10) In this section, "repealed laws" means the laws specified in section 144.

Repealed laws

144. The following laws are hereby repealed—

- (a) Income Tax Act (Cap. 201);
- (b) Capital Gains Tax Decree 2011; and
- (c) Fringe Benefit Tax Decree 2012.

Passed by the Parliament of the Republic of Fiji this 20th day of November 2015.