FIJI INSTITUTE OF ACCOUNTANTS (FIA)

DRAFT INCOME TAX BILL – 14TH DRAFT (JULY 2015)
UPDATED COMMENTS USING EARLIER SUBMISSION ON THE INCOME TAX DECREE 2012 – SIXTH DRAFT (SEPTEMBER 2012)

1. EXECUTIVE SUMMARY

While we note the positive reasons for which the Bill has been prepared, this summary concentrates on some of the new and major areas of concern discussed during the various meetings in 2012 but which we still see as issues in the current draft Income Tax Bill (ITB). We expect that if these issues are properly addressed, it will assist in building investor confidence, growth in investments, economic activities and employment opportunities.

We also note that there have been numerous changes included in the current Bill (14th draft) as compared to the last draft that we had reviewed in 2012 (6th draft). In this regard, we advise that we will need more time to properly review and comment on the draft Bill and the potential implications of the same. We would also suggest a detailed review of the Bill with yourselves to ensure that all the relevant issues are properly addressed.

1.1. Overall framework

We welcome Government's recent announcement of invitations for submissions on the planned Strategic Development Framework for Fiji. In this regard we suggest that consideration be given to first planning the overall framework which should include the policy framework for taxation which in turn may be used to properly prepare the ITB.

The ITB should be consistent with the objectives of Government to attract investment and encourage small and medium enterprises (SME's).

The ITB should also include objects and reasons similar to other Bills indicating the intention of the legislation for this important legislation which will have far reaching implications on the country as a whole.

If an overall framework has already been prepared, we would be grateful if you would share the same with us to allow us to properly review the framework, constructively review the Draft ITB and appropriately comment on the same.

1.2. Intention of the rewrite

We understand that the intention of the rewrite of the current Income Tax Act (ITA) was to simplify the language and remove various sections which were no longer relevant or in effect but maintain the current policy in the ITA.

We note that the draft ITB contains various diversions from current policy including imposing income tax on capital gains arising from the sale of depreciable buildings, definition of dividend extended to include any net profit after income tax, dividends paid by a resident company to another resident company are no longer exempt from income tax, imposition of dividend tax resulting in double taxation, etc.

We suggest that the overall policy framework be reviewed taking into accounts the issues noted in this submission and appropriate adjustments be made accordingly.

1.3. Change in definition of gross income

We note that there has been a change in gross income which now includes "amounts" derived from all sources as opposed to "income" derived from all sources. This is a fundamental change which would appear to impose income tax and SRT on all amounts received rather than just relevant income. The policy needs to be reconsidered and appropriate changes made accordingly.

1.4. Retrospective application

We note that any person who has *"undistributed profits prior to 1 January 2014, and the profits continue to be undistributed after 1 January, 2014, shall be liable to pay annually within 3 months after the tax year at the dividend rate specified in the Second Schedule".*

This provision applies retrospectively and the intention appears to be to impose dividend tax on the amount of undistributed profits (on a continuing basis?). It would discourage the re-investment of retained earnings in Fiji if the assumed application is correct.

We suggest the policy be reviewed and appropriate adjustments be made to the Bill accordingly.

1.5. Final taxes

1.5.1. PAYE tax

We note the logic behind the intention of Government of making PAYE taxes a final tax. This would apply for a large number of the tax returns lodged, which could reduce the Fiji Revenue and Customs Authority's (FRCA's) costs since the number of tax returns to be assessed could be reduced significantly. However, this would only apply if the taxpayer derives only employment income from one job.

We note that with the recent change to introduce PAYE as a final tax, while business profits would be assessed along with salaries and wages at the relevant marginal rate of tax, tax losses are no longer available for offset against salaries and wages in calculating taxable income.

Treating PAYE tax as a final tax and the quarantining of business losses would have an adverse effect on investments, particularly for SMEs. The treatment discourages investment by employees who would not be able to offset their business losses against their employment income but would have to pay taxes on business profits.

A lot of SMEs are started by individuals who are still employees. The funds these individuals save from their employment income are usually used as capital for their business. These employees may be discouraged from investing in a business venture if they would not be able to offset their business losses against their employment income.

Furthermore, there could be a distortion between employees with a business and independent consultants with a business. The employees may be liable for more taxes than the consultants who are deriving the same levels of income since the consultants would be allowed to offset any business losses against their consultancy income.

1.5.2. Functionality

The functionality of PAYE as a final tax should also be reconsidered.

The current formula for calculating PAYE final tax has some issues and requires improvement.

1.5.3. Interest and dividend withholding taxes

The treatment of interest and dividend withholding tax as final taxes could also adversely affect retirees, pensioners, low income earners, and persons that are incurring business losses.

The following table summarises the disparity in taxes between different classes of taxpayers earning income from interest and an employee earning the same amount of total income:

Taxpayer	Source of income	Amount $	Tax payable $
Pensioner or employee	Interest / employment income	16,000.00	-
Pensioner	Interest	16,100.00	1,610.00
Employee	Employment income	16,100.00	7.00
Employee	Employment income	16,001.00	0.07
	Interest	99.00	9.90
	Total	16,100.00	9.97

The above would discourage savings and would also impact investment in the country.

We suggest that the policy be reviewed and either progressive rates be introduced for the imposition of tax on interest or allow the taxpayer to lodge a tax return and claim appropriate tax credits/refunds to ensure that the prevailing progressive rates of tax apply.

1.6. Compliance and taxation cost

We understand that it is the Government's intention to encourage voluntary compliance and that the taxation system should be service oriented. In such case, compliance cost would need to be reduced or, at least, remain the same and the taxpayers should not be further burdened by additional compliance requirements.

We note that while Government has reduced the corporate income tax rate in recent years, several other taxes and levies have been introduced which not only increases the level of taxation on businesses, but also increases the cost of doing business by imposing the collection obligation of the additional taxes on taxpayers. We note that the ITB introduces an additional tax, namely dividend tax.

You may wish to consider removing the dividend tax regime altogether to simply the taxation system and ensure consistency with Government policy of imposing only one layer tax on corporate entities and their shareholders. If the dividend tax regime is to be maintained we suggest that all the exemptions from tax on dividends (including intercompany dividends) under the existing legislation be included in the ITB.

The ITB imposes further compliance obligations on taxpayers (eg. interest withholding tax on all interest paying entities, dividend tax requirements, etc.). This increases the cost of doing business and makes Fiji a less attractive investment option.

We suggest that the overall policy framework be reviewed to make the tax system more effective and efficient while maintaining an acceptable level of revenue for Government. In this regard we suggest that the above issue be considered in conjunction our suggestion below on the imposition of social responsibility tax (SRT) over a wider base.

1.7. Social Responsibility Tax

We suggest that the imposition of SRT be reconsidered. Otherwise, the application of SRT should be reviewed. We reiterate our previous comments in relation to SRT, that is –

- The imposition in its current form discourages industriousness and the drive to succeed in individuals as individuals who work hard or strive to succeed and earn more income are being penalised;

- The imposition of SRT is discriminatory against non-corporate business structures. Where a corporate business structure is used, the income tax may be limited to 20%. However, an individual making the same level of income is taxed at up to 49%.

- There may be an issue in relation to whether a tax credit would be allowed for SRT paid against non-residents' income tax payable in their home countries.

If the SRT is to be maintained, we suggest that the SRT be imposed on a broader base (ie. including companies) at a much lower rate. This should ensure a more equitable taxation system and higher revenue for Government.

1.8. Allowable deductions

The following should be allowed as tax deductions:

- Fringe Benefit Tax (FBT) and Fiji National Provident Fund (FNPF) / Superannuation Fund contributions by employers; and

- All donations to approved charities, including for taxpayers with only employment income.

Where a taxpayer has a break even position at the end of the year, the disallowance of FBT and FNPF would result in the taxpayer paying tax on the disallowed FBT and FNPF which are necessary business expenses. This would not make sense as the taxpayer would be paying tax when they are not making profits. We suggest that the relevant policy be reviewed and that appropriate changes be made to the legislation.

1.8.1. Fringe Benefit Tax

The fringe benefit tax and FNPF / Superannuation Fund contributions are statutorily imposed and thus required costs for doing business in Fiji. These are necessary employee costs and should be allowed as tax deductions. It is very difficult for businesses in Fiji to find experienced and qualified professionals in certain fields. Hence, employers have to provide competitive and attractive packages to hire and retain their qualified employees and maintain their edge in the business and their profitability. The fringe benefit (and the applicable tax) is part of the cost to the employers.

The current treatment unfairly penalises business, adds to the cost of doing business in Fiji and reduces the attractiveness of Fiji as a business destination for both employers and employees.

1.8.2. Donations to approved organisations

The non-deductibility of donations to approved charitable organizations for taxpayers earning purely employment income could have substantial social ramifications.

We understand that, during the recent natural disasters that adversely affected the West, a lot of assistance was provided by various Non-Government Organizations. These organizations rely on generous donations from both businesses and individuals whose main or only source of income is employment income. Most of the organizations that assist the handicap, the elderly, the children, etc. also rely on donations. A lot of donations come from individuals who earn purely employment income. The disallowance of donations as tax deductions may discourage employees from making donations.

While the loss to FRCA from tax deductions for donations would normally be up to 20% of the donation. The loss to the community would be at least 80% of the donation amount. Furthermore the donations help to pay for assistance which would otherwise have to be derived from the Government or other similar sources.

1.9. Carry forward of tax losses period

The carry forward of tax losses period should be increased to assist business and encourage investment in Fiji.

The carry forward of tax losses period should be increased to at least eight years as per the previous tax legislation. The carry forward of tax losses in respect of agricultural or pastoral pursuit should be allowed indefinitely since it normally takes years before such ventures realise profits. Mining entities should also be allowed to carry forward tax losses indefinitely for the same reason. The policy on this matter should be reviewed and changes made accordingly.

1.10. Thin capitalisation

The Reserve Bank of Fiji (RBF) imposes restrictions under the Exchange Control Act for borrowings by non-resident controlled entities. The debt equity ratio of 3:1 normally applies when local borrowings are made by foreign owned entities.

The "thin capitalisation" requirements in the draft ITB are considered to be too stringent for a developing country. The policy and the tax laws should encourage foreign capital, irrespective of the form of capital (whether equity or debt). We note that interest free loans from shareholders or related entity are treated as equity for the purpose of calculating the debt equity ratio under the ITB. This would be in line with the requirements under the Exchange Control Act.

We suggest the ITB be amended to reflect the current debt to equity ratio of 3:1 as per the Reserve Bank of Fiji Regulations under the Exchange Control Act.

We also suggest that the transfer pricing rules in relation to the deeming of interest on related party loans be appropriately amended to reflect the same principle and ensure that there is consistency and symmetry in the overall legislation.

2. DETAILED DISCUSSIONS

Sec Ref. (6th draft)	Sec Ref. (14th draft)	Decree Provision, Observations and Issue	6th Draft		14th Draft FIA comments
			Previous Outstanding Comments / Suggestions	Discussions / Comments / Suggestions	
		General matters		FIA requested the policy framework within which the draft Decree was being prepared. FIA requested that the explanatory notes be forwarded by FRCA to assist in the review of the draft Decree. FRCA agreed and has provided the same. FIA also requested that the country where the provisions of the draft Decree originated be provided to assist in the interpretation of the provisions and the case law on the same. FIA asked when the provisions in relation to binding rulings would become effective since it has been three years since the promulgation of TAD. FIA to support introduction through Budget submission.	Reiterate earlier comments. We suggest that action be taken accordingly.
			The FITs should be changed to accommodate the practical aspects of the law.		Reiterate earlier comments.

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s.2		General			Please ensure that the section references within s.2 are correct.
s.2		"arm's length transactions"		Ensure that the definition is consistent with the Income Tax (Transfer Pricing) Regulations and the OECD Model Tax Treaties.	
s.2 s.34		"capital asset"			The definition of "capital asset" now excludes depreciable assets. That together with the revised provisions of s.34 seeks to impose income tax on any capital gain derived from the disposal of a depreciable asset which would include buildings. This is contrary to existing policy and could have significant implications on investment. We suggest that the distinction be maintained between a capital and revenue gain.

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s.2		"dividend" means - *(a) any net profit after Income Tax;* *(b) 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, but does not include profits taxed as a dividend under paragraph (a);* *(c) ….*			Explanation required from FRCA/Prof Burns as to what this is intended to capture? The definition of "dividend" in the current form seeks to impose dividend tax on net profits of an entity even before the profits are "distributed". This is contrary to current policy. However, if the intention is to impose dividend tax on net profit after tax, then to avoid having to track the net profits and subsequent distributions and whether appropriate dividend tax has been paid, Government should consider increasing the corporate income tax rate instead. Additionally, the definition now includes capital profits of a unit trust. Capital profits should not be subject to income tax. The income derived from a unit trust is exempt from income tax. We understand that the policy behind this was to encourage investment and growth.

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					To impose dividend tax on the capital profits of a unit trust would be contrary to the above intention. Furthermore, the current ITB provisions would impose several layers of tax as dividend tax is imposed without any exemption for intercompany dividend payments. Similar to (b) every other item under the definition of dividend should have the proviso: "*... but does not include profits taxed as a dividend under paragraph (a)*"
s.2	s.2	"dividend" in relation to a company, means – (h) in the case of a <u>disposal of a company</u>, the total value of the retained earnings			This is a confusing term and there has been much dispute with FRCA as to what it actually means – i.e. 100% of the shares or any portion of the sales? For clarity and the avoidance of doubt, the definition should be reworded to refer to "sale of shares".

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s.2	s.2	"Remote area" means an area that is fifteen or more kilometres from a rural local authority, town or city			"Rural local authority" is a new insertion. Change "fifteen" to "15" (for consistency throughout Bill) What determines where the "rural local authority" is located?

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s.2	s.2	"resident company" in subsection (a) refers to a company "settled" in Fiji and in (b) is defined as any company that has any part if its practical management and control located in Fiji'.	The word "settled" has a very broad meaning, which may appear to include non-resident companies with a branch in Fiji. Consider amending the provision to clarify the definition of resident company. The definition under the current FITA or the income tax law of Australia (i.e., a company which is incorporated in Fiji, or which, not being incorporated in Fiji, carries on business in Fiji, and has either its central management and control in Fiji, or its voting power controlled by shareholders who are residents of Fiji) may be considered. The effect of the words "***any part***" means that FRCA could create a contest about the head office of a company whose practical management and control is clearly in another country. This is bad for international tax harmonisation and investment. It will simply discourage business from having any presence in Fiji at all. We should revert to original definition.	The issue still remains. FIA has no issue with the current definition in the ITA. The FRCA said they will consider the FIA's suggestion.	Reiterate earlier comments. Definition of "resident company" should be amended in accordance with the current ITA.

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s.2		"permanent establishment" includes *"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"*			The 90 days should be increased to 6 months to ensure consistency with other definitions of what constitutes a permanent establishment eg. In DTA in the current ITB itself.
s.2	s.2	"foreign-sourced income" means "*an amount to the extent to which it is not derived from sources in Fiji..*"		It is suggested that "a*mount*" be changed back to "*income*".	Reiterate earlier comments and amendment be made.
s.2	s.2	"Fiji assets" means "*(b).... 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***"		The definition is not the same as per the CGT Decree. The CGT Decree does not include "*held by the company, partnership, or trust, directly or indirectly, through one or more interposed persons".* The phrase should be deleted.	Reiterate earlier comments and suggest that amendments be made accordingly.

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s.2	s.2	"received" includes "*(c) credited to an account….*"		It is suggested that account be clarified (i.e., bank account as opposed to an account). It is also suggested that "paid" have a similar definition to match the income and expenditure.	Reiterate earlier comments. Suggest changes be made or at least indicate awareness of *"recipient of the amount"* as although an amount may be credited by an entity in favour of a third party, the third party may not be aware of the amount being credited. .
s.3	s.3	Approved fund		Approved funds are limited to employer provided funds. The current provisions in the Income Tax Act are not limited to employer provided funds. Furthermore, expatriate employees and their employers may be required to contribute to offshore funds. It is suggested that the qualifications for approved funds not be limited to employer provided funds.	Reiterate earlier comments and suggest amendments be made accordingly.

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s.3; First Sch - Part VI	s.3; First Sch - Part VI	Pension received by military personnel limited to disability or death only.		The pension fund of the Civil Servants should also be included. (7) is limited to pension received by a military personnel or relative for any disability or death of the principal. The exemption should include pension received by military personnel which is not due to disability. Should Parliamentary pension also be exempt income?	First Schedule, Part VI, paragraph (7) is limited to disability or death. Should be extended to include pension received for other reasons. Should consider inclusion of parliamentary pension under the schedule as exempt income.
s.7(4)	s.7(4)	Sources in Fiji includes "*(a) a dividend paid by a resident company…*"		S.8(7) of the current ITA, which excludes dividend paid from foreign-sourced income of a resident company, should be incorporated. A similar provision to s.8(7) of the current ITA should be included in draft Decree.	Reiteration earlier comments. Suggest changes be made to avoid double/triple taxation.
s.7(4)(g)(i)		"resident person, other than as an expenditure of a business carried on by the person <u>outside Fiji</u> through a permanent establishment"			Consider re-phrasing [in line with (ii)] as: "resident person, other than as an expenditure of a business carried on by the person through a permanent establishment <u>outside Fiji</u>".

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s.8(5)	s.8(6)	Based on discussions, business losses incurred by individuals shall only be offset against current or future business income (i.e., business losses shall not be offset against employment income of the individual taxpayer)		FRCA was to email the sample application of this provision. FIA stated that there should be symmetry in application. The application discourages investment by local employees (e.g., rental property – there usually are losses in the beginning due to the interest paid on loans obtained to purchase property). This only applies to about 20% of employee population. These potential investors should be encouraged since this assist in driving the economy. Runs against the whole logic of promoting investment and entrepreneurship spirit. Penalises the people who have the initiative to start a business while being employed. This discourages investment among local employees. FRCA comments that PAYE is a final tax and Government has already given away by lowering tax rates. Hence, business losses should not be offset against employment income. This year (2012) is a bonus year – freak year. Only affected	Reiterate earlier comments. Ring-fencing of losses may be a deterrent to investment and SME's especially where SME's are funded from employment income. Also creates disparity between taxpayers. Refer following example: **Employee subject to final tax:** Employment income - $20,000 Loss from rental property - $5,000 Total tax payable - $280 **Contractor:** Contractual income - $20,000 Loss from rental property - $5,000 Total tax payable – nil. Suggest that the above be considered in line with policy framework.

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				with losses are SMEs. FIA states that it is the whole point. Government should promote SMEs in the country. The tax avoidance issue should be covered under tax avoidance and not make it a tax policy. FIA also showed the distortion between an employee with business income and a consultant with business income by example.	

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s.9	s.9	Presumptive Income Tax – on registered persons with gross turnover of less than $50k. The presumptive income tax (PIT) is a final income tax.	FIA members generally do not have significant stakes in this sector of the taxpaying public but as a matter of policy this should be carefully considered: - is it a good use of resources to try to capture a maximum of $1,500 p.a. from a presumptive taxpayer [anyone paying more will file a return] when the individual threshold is $15,000? - does such a tax – and the administration involved – not discourage enterprise and small business initiative? Therefore isn't this a "lose-lose"? Better SME simplified taxation regimes have been suggested before (refer D Tansey Paper) A person who pays PIT before obtaining approval from the CEO to be subject to normal income tax should also be allowed to claim the PIT as credits against its income tax.	To be discussed later since implementation has been postponed till date appointed by Minister. There is still time to discuss and amend as necessary before it becomes applicable. ***FIA will subsequently review the provisions and provide its comment.***	Reiteration earlier comments. PIT is imposed on turnover of up to $100,000 which the option to apply to CEO to be taxed under general provisions when turnover is over $25,000. What happens to someone with turnover of $16,000 and net profit less than $16,000? Ordinarily that person should not be subject to tax. However, under the PIT provisions that person would be subject to PIT of $480. The PIT provisions may be a deterrent to SME's. Suggest that the introduction of PIT be reviewed and appropriate changes be made.

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s.10(5)	s.10(5)	The non-resident withholding tax (NRWHT) is discharged if withheld and paid to FRCA.		The liability of the non-resident should be discharged if the tax has been withheld even though not paid to the FRCA. The liability after the tax has been withheld should be the payer who withheld the tax. It is suggested that "*... and paid to the CEO under section 117*" be deleted.	Reiterate earlier comments. NRWHT in respect of dividends now extended to branch profits even though the same is not remitted to the head office. This goes beyond the current ITA and is a change in policy. Appropriate changes should be made.
	s.11(3)(c)	"***transhipment*** of livestock etc."			What is meant by "transhipment"? Is there a definition?
s.12	s.12	**General Provisions relating to s 9,10 and 11** – these are final taxes Any person conducting a business who meets the conditions for PIT should be subject to PIT. Hence, if a person whose business meets the criteria and earns income (e.g., employment income), which may be subject to withholding taxes (WHT), shall not be allowed claim any excess WHT against its PIT.	Once paid, not required to file returns PIT should only be a final tax if the person is solely carrying out a business, which meets the criteria for PIT unless the person's only other income is subject to final tax (e.g. bank interest, etc.).	To be discussed later since PIT has been postponed. ***FIA will subsequently review the provisions and provide its comment.***	Reiterate earlier comments. Suggest appropriate changes be made particularly where an entity is deemed to have a permanent establishment in Fiji.

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s.12	s.12	The NRWHT is a final tax; hence, there is no credit or refund mechanism.		If there is a dispute on whether the NRWHT should be applicable, the FRCA may seek to collect the NRWHT. However, there is no practical credit or refund mechanism if it is properly maintained that the NRWHT is not applicable. It is suggested that a fall back clause be included to provide that the NRWHT may be refunded or credited against income tax payable.	Reiterate earlier comments and suggest amendments be made. We also suggest the ITB clearly indicate that there should be no tax pure cost reimbursements.

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s.14	s.14	**Amounts included in Gross Income** Section 2 states that "*"**gross income**" has the meaning in section 14*". Under Division III, there is a subheading entitled "***Amounts Included in Gross Income***" and section 14 is under this heading; and section 14 provides that "*…. the **gross income** of a person…. is the total amount of – …* *(b) income according to ordinary concepts (other than an amount covered by paragraph (a)) derived by the person during the year; and* *(c) other amounts included in the gross income of the person under this Decree for the year…*"	This doesn't seem quite to work in making clear how conceptually chargeable income is arrived at. We suggest a re-write as follows: *14.- (1) Subject to this Decree, the **total** income of a person for a tax year is the total amount of –* *(a) employment income, business income and property income derived by the person during the year; and* *(b) **any other** income derived by the person during **the year.*** *(2) **Gross income is total income less** –* *(a) exempt income; or* *(b) an amount subject to tax under section 9, 10 or 11.* The definition is not very clear. It appears to be a question of "Which comes first – the chicken or the egg?" (The definition appears to go around in circles, i.e., the phrase is defined by including the same phrase that is being defined.)	S.14(b) is not clear and s.14(c) is a circular phrase. It is suggested that s.14(c) be deleted and s.14(b) be amended to - *"(b) any other income derived by the person during the year."*	Reiterate earlier comments and suggest that amendments be made. s.14(1)(b) is not clear and for clarity purpose we need to explain "ordinary concepts". s.14(1)(d) is a circular phrase. It is suggested that s.14(1)(d) be deleted. It is suggested that the word "amount" in subsection 3 is substituted with "income". Reference to "amounts" is very broad and should be limited to "income" as income is already defined in s.14(1). Use of the word "amount" as opposed to "income" would substantially change the potential tax implications under this law as it would include all amounts as part of gross income.

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s.15(1) (a)	s.15(1) (a)	**Work Condition Supplements** Employment income includes 'work condition supplements'	The term 'work condition supplements' should be defined or explained.	FRCA indicated that the definition of work condition supplements as per the explanatory note (i.e., additional allowances paid for unpleasant or dangerous working conditions) is included.	Reiterate earlier comments and suggest that the term "work condition supplements" be appropriately defined.
s.15(1) (b)	s.15(1) (b)	**Value of a fringe benefit, etc.** Employment income includes *"the value of fringe benefit…. that **has not been taxed** under the fringe benefit tax…"*	Some care should be taken (perhaps in regulations) to ensure that the **employee** knows what has **not** been subjected to FBT	For clarity, it is suggested that "*tax under*" be deleted. Hence, provision would state "*… the value of fringe benefit… that is subject to fringe benefit tax…"*	Reiterate earlier comments and suggest that amendments be made.
s.15(1) (c); s.16	s.15 & 16	**Employee Share Scheme** There is no longer any qualifying employee share scheme and a corresponding exempt income not exceeding $1,000 in relation to the same.	If it is not the intention of the Government to eliminate the exemption, the proposed law should be amended accordingly.	S.16 includes the definition of qualifying employee share scheme but the exemption of $1,000 has not been included. The section would need to be appropriately amended to consider the exemption. Whatever the treatment (e.g. deduction or exemption) should be consistent.	Suggest that s.15 and s.16 be reviewed to ensure that employee share scheme benefits are properly included under the appropriate tax type (ie. employment income?). We also suggest that the qualifying employee share scheme exemption be included.

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s.15(1) (d)	s.(15) (c) & (d)	**Employee allowances**	Some clarity should be provided on what FRCA will consider an allowance *to the extent expended in the performance of the employee's duties…* These can be needlessly (and unproductively) ambiguous and difficult. Clarity is also required in respect to per diem allowances, which is a norm, paid to employees, officers, directors for business travelling.	The practical implementation of s.15(1)(d) and (e) should be clarified.	Reiterate earlier comments and suggest that appropriate amendments be made.

Sec Ref. (6th draft)	Sec Ref. (14th draft)	Decree Provision, Observations and Issue	6th Draft		14th Draft FIA comments
			Previous Outstanding Comments / Suggestions	Discussions / Comments / Suggestions	
s.15(1)(h)		"loan, payment for an asset or services, value of any asset or services provided"			A new subsection (h) is introduced. *(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, employment income of the member.* Some clarity should be provided on what FRCA will consider "*in substance, employment income of the member*". These can be needlessly (and unproductively) ambiguous and difficult. Similar subsection appears under Business Income s.17(1)(e). It is suggested that this additional paragraph is reconsidered. Should be appropriately amended and included in the definition of either Employment Income or Business Income, but not both.

Sec Ref. (6th draft)	Sec Ref. (14th draft)	Decree Provision, Observations and Issue	6th Draft		14th Draft FIA comments
			Previous Outstanding Comments / Suggestions	Discussions / Comments / Suggestions	
s.16	s.16				**Employee Share Scheme** There is no longer any qualifying employee share scheme and a corresponding exempt income not exceeding $1,000 in relation to the same. If it is not the intention of the Government to eliminate the exemption, the proposed law should be amended accordingly. s.16 includes the definition of qualifying employee share scheme but the exemption of $1,000 has not been included. The section would need to be appropriately amended to consider the exemption. Whatever the treatment (e.g. deduction or exemption) should be consistent.
s.17	s.17	Section 2 states that ""***business income***" *has the meaning in section 17*". Section 17 provides that "*…. the following are included in the* ***business income*** *of a person…. - … an amount included in business income under this Decree…*"	The definition is not very clear. It appears to be a question of "Which comes first – the chicken or the egg?" (The definition appears to go around in circles, i.e., the phrase is defined by including the same phrase that is being defined.) Consider amending the definition by amending or totally deleting subparagraph (e) of section 17(1).	S.17(d) is not clear and s.17(e) is a circular phrase. It is suggested that s.17(e) be deleted and s.17(d) be amended to - *"(b) any other income derived in the conduct of a business."*	S.17(d) is not clear and s.17(e) is a circular phrase. It is suggested that s.17(e) be deleted and s.17(d) be amended to – *"(d) any other income derived in the conduct of a business."*

Sec Ref. (6th draft)	Sec Ref. (14th draft)	Decree Provision, Observations and Issue	6th Draft		14th Draft FIA comments
			Previous Outstanding Comments / Suggestions	Discussions / Comments / Suggestions	
s.17(1)	s.17(1)	**Business Income** Reference is made to 'gross proceeds from carrying on the business….' under paragraph (a). Need to clarify that gross proceeds exclude VAT, HTT, excise duty, etc.	Need to clarify that gross proceeds exclude VAT, HTT, excise duty, etc.		Reiterate earlier comments and suggest that amendments be made.
s.17 s.17(1) (b)	s.17 s.17(1) (b)	**Business Income** Includes gross proceeds from **investment of capital of the business.** Appears to be similar to Section 18 – Property Income.	• 17(1)(a) – 'gross proceeds' need to clarified to exclude VAT, HTT, etc. • 17(1)(b)- need to review the rationale and scope. The principal sum can sought to be included under the paragraph. Suggest it to read *'the gross revenue proceeds from investment including dividend…..'*		Reiterate earlier comments and suggest that amendments be made.

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	s.17(1)(c)	Net gain derived by a person			This subsection appears to include revenue gains as gains as part of business income. However, it does not specifically exclude capital gains. Suggest inclusion of a proviso similar to that under s.11(a) of the current ITA: *"but nevertheless, the profit or gain derived from a transaction of purchase and sale which does not form part of a series of transactions and which is not in itself in the nature of trade or business shall be excluded"*

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s.17(1)(e)	s.17(1)(e) and (f)				A new subsection is introduced *"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, business income of the member".* Some clarity should be provided on what FRCA will consider "*in substance, business income of the member*". These can be needlessly (and unproductively) ambiguous and difficult. Similar subsection appears under Employment Income. It is suggested that this additional paragraph is reconsidered. Should be appropriately amended and included in the definition of either Employment Income or Business Income, but not both.

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s.18	s.18	**Property Income** Includes "a pension, charge or annuity, or any supplement to a pension, charge, or annuity". Similar to that under Employment Income with the exception of "charge"	• Review the rationale and scope. 18(b) also included in 'Employment Income'. Should be included in the definition of one only; either Employment Income or Property Income. • Also need to explain the meaning of *'supplement to a pension'*.		Reiterate earlier comments and suggest that amendments be made.
s.19	s.19				Clarify the term "*Annuity*" It is suggested that a definition of "Annuity" is included in the section.
	s.20(2)	Exempt income *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 Bill*			Need to carefully consider the income tax exemptions that are provided in other legislations for e.g. "Parliamentary Pensions" and "statutory bodies or corporates". Appropriate amendments should be made.

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s.21	s.21	Election cost is no longer allowed as deductions.		It is suggested that election cost under s.21(1)(g) of the Income Tax Act be included as s.21(7). FRCA said they would relook at it given that PAYE is a final tax on employment income.	Reiterate earlier comments in relation to election costs. New subsections (2), (3) and (4) added which make reference to subsection 1(h), but there appears to be no 1(h). To review and make appropriate amendments.
s.21(1) (c) and (d)	s.21(1) (c) and (d)	The phrase *"... have declined in value"* is ambiguous. The asset or intangible may not have declined in fair market value.		It is suggested that the provisions be amended to "*the total amount of depreciation (or amortisation) as determined under section 31 (or 35)...;*" It is also suggested that similar amendments be made to s.31(1) and s.35(1).	Reiteration earlier comments and suggest that amendments be made..
s.21(1) (e)(ii)	s.21(1) (e)(ii)	**Allowable Deductions**		FIA and FRCA have to relook at s.21(2) and (3) and how to reconcile the provisions to s.22(1)(c). FRCA will revisit s.21(5) and (6). The provisions are not good for business. The practical application of the same should also be considered.	Now s.21(5) and (6). Suggest that these provisions be reconsidered and that appropriate amendments be made. Now s.21(8) and (9). Suggest that these provisions be reconsidered and that appropriate amendments be made.

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	s.21(1)(h)	First time employees deduction			s.21(1)(h) is missing!! It's referred to in ss 2, 3 and 4. We understand that s.21(1)(h) relates to first time employee deduction. We suggest that relevant subsection be included.
s.21(10)		"*If a child is a dependent child of more than one employee –* *(a) the deduction under subsection (7) shall be apportioned among them in such proportions as determined under the Regulations; and* *(b) the $20,000 in subsection (9) is determined taking into account the total employment income of both employees.*"		However, if it is a policy, it is suggested that the apportionment between spouses be expressly stated and the Regulations to provide the scenarios. It is also suggested that (b) be amended to "*total employment income of **<u>each</u>** employee…*" to properly reflect the intention of the law. ***Please refer to above comment in relation to the 2013 National Budget.***	

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s.22(1) (h)	s.22(1) (h)	Non-deductibility of Fringe Benefit Tax (FBT)		FBT is part of cost of doing business. It is an employee cost and should be deductible.	Reiterate comments in respect of non-deductibility of FBT especially as FBT is calculated on a grossed-up basis. @ 25%. Section should be clarified to avoid non-deductibility of taxes deducted at sources as these really form part of the gross amount of mostly deductible expenditure.
s.22(1) (j)	s.22(1) (j)	Contribution to a non-approved fund		The employer contribution is a benefit and income in the hands of the employee. Hence, employer should be allowed the deduction.	Reiterate earlier comments and suggest that amendments be made.
	s.22(1) (l)				New provision on expenditure on repairs. Seeks to disallow deduction for repairs. Inconsistent with s.21(1)(f). Is this a mistake? Suggest review and appropriate amendments be made.

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			Previous Outstanding Comments / Suggestions	Discussions / Comments / Suggestions	
s.23(2)	s.23(2)	*"The amount allowed as a deduction under subsection (1) for a tax year for an employer contribution to the Fiji National Provident Fund. or an approved fund in respect of an employee is limited to 50% of the statutory contribution* ***paid*** *by the employer in respect of the employee for the year."*	Read	It is suggested that "paid" be amended to "paid or payable" or "paid or accrued" but the FRCA refused to amend the same. Amend instead "for the year" to "for a tax year."	Reiterate earlier comments and suggest that appropriate amendments be made. Now reads: *"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 half of the employer statutory contribution paid in respect of the employee for the tax year"* Should be amended to the same wording in the current ITA to take into account increased in employer contribution to 10%: *"half of the ten percent statutory contribution paid by the employer to the Fiji National Provident Fund in respect of an employee, shall be allowed as an expense incurred in the year in which it was paid".*
	s.24(2)	From this point in the Bill reference is made to FJD$			Suggest that it be changed to "$"
	s.24(5), (8), (9), (10)	Sentence structure is confusing and inconsistent with other sections.			Consider making it all consistent by moving "made in a tax year" to just before the Charity's name.

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s.24(6)	s.24(11)	"*No deduction is allowed under this section to reduce the employment income of an employee.*"		The list of charitable organisations would be in Regulations. Most of the donations are by employees. The social ramifications of the provision would need to be considered.	Reiterate earlier comments. *"business" means a sole trader or a company"* Is there a policy reason for this limitation? What about partnerships and trading trusts? Suggest that amendment be made.
s.25		Industry Incentives	Suggest the section includes reference to other incentives available to ensure industry incentives under s63-65 are allowed as a deduction from gross income. Suggest it to read: '*A person is allowed a deduction for expenditure incurred in a tax year as specified in the Fourth Schedule* ***and any other incentives provided in this Decree.***'	S.21(1)(zd) and s.21(1)(v) of the Income Tax Act would be included as (5) and (6). Any other similar provisions should also appropriately be included. The SPSE listing cost is no longer enumerated. It would be included in (7) and (5) would become (8). Should not (5) include construction of a new building?	Ensure all existing deductions in the ITA are included in the ITB.

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s.26(1)		Reasonable grounds for believing that the debt is irrecoverable.		Reasonable grounds would need to be clarified. It is suggested that the clarification be in a Practice Statement or Regulations. FIA would be glad to assist the FRCA in drafting of the Practice Statement and / or Regulations.	Reiterate earlier comments and suggest that Practice Statements be made available for review by the FIA. Deduction for bad debt in respect of money lent by the person is now limited to cases where the money was lent in the normal course of carrying on a business of money lending to derive taxable business income. Deduction should be allowed especially where the person had charged interest and that interest had been included in assessable income. Suggest review and appropriate amendments.
	s.28	ss(1) refers to "deposited by a company" whilst (3) and (4) refer to "a person"			Need to determine who this is available to and make it consistent. Suggest changing ss(1) to "a person".

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s.29		The definition of "scientific research" is only limited to the development of human knowledge.	Please define what "human knowledge" means. Does this include knowledge in relation to the advancement in technology, health, etc?	The deduction is allowed only "*to the extent that the expenditure is incurred to derive taxable business income.*" There may not be a link between the expenditure and income. This is the development stage and the expenditure may or may not result in taxable income. Hence, it is suggested that the phrase be deleted or amended similar to the Income Tax Act provisions.	Reiterate earlier comments and suggest that amendments be made.
s.30		Carry forward of tax losses limited to 4 years only irrespective of type of loss. Losses can be carried forward for only 4 years.	Carry forward of tax losses in respect of agricultural, forestry or pastoral pursuit should be allowed indefinitely as it takes years before such ventures will result in any income/profits. Mining should be allowed to carry forward tax losses indefinitely as well.	S.21(1)(c) of the current ITA would be included in the transitional provisions [s.142(3)]. It is suggested that the same business and owner test under s.59 and the foreign losses under s.61 be moved to this section since it is in relation to tax losses.	Reiteration earlier comments and suggest amendments be made.

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s.32; s.33; Third Sch		Rate of Depreciation	The idea behind the Income Tax Decree 2011 is simplicity. This was also the reason behind the elimination of the use of the diminishing value method of depreciation tax purposes with effect of 1 January 1998 and maintaining just the straight line method of depreciation. The current rates of depreciation available under the 7 bands commensurate the useful lives of depreciable assets in practice and should be maintained.	The diminishing value was repealed in 1999 since there was a difficulty by assessors in reviewing the calculations. The 40% depreciation rate in relation to computers, etc is more realistic. A range of depreciation rates for each category is also preferable. The FRCA took note of the comments and would consider them.	Reiterate earlier comments and suggest amendments be made.

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s.34		Disposal of depreciable assets.		It is suggested that (1) be amended to make the intention of the legislation (i.e., revenue gain vs. capital gain) very clear. What does "cost of asset at time of disposal" mean? It is also suggested that the common rules in relation to asset under s84 be referred to as appropriate.	With the changes in the definition of a "depreciable asset" and changes in s.34, a capital gain on a depreciable asset is subject to income tax. This is contrary to existing policy and a deterrent to investment. Income tax should only be imposed on recouped depreciation and not any capital gain. Suggest review in line with current policy and that amendments be made. Offsetting of balancing charge against replacement assets – required to give notice in writing to the CEO. This increases compliance costs on the part of the taxpayer. Suggest removing this requirement.

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s.35		The rates of amortisation are contained in the subsections.	In order to simplify and allow easy access to rates of amortisations, these rates should be put in a table form into a Schedule similar to that in case of depreciation rates.		Reiterate earlier comments. A capital gain on the disposal of an intangible asset is subject to income tax. This is contrary to current policy. Income tax should be limited to recouped amount of amortisation. Consider appropriate amendments.
s.35(7)					Definition of "capital asset" includes an intangible. Section 35(7) - 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 included in the gross income of the person for that year Is the gain on disposal of intangible asset subject to income tax or CGT. Need clarifications and suggest appropriate amendments be made.

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s.35(7) & (8)		"Subject to subsection (8), if a person disposes of a business intangible in a tax year ..... (a) if the consideration ..... is included in the gross income of the person for that year; or..." "If subsection (7) applies to a business intangible that has been used partly in deriving amount included in t***axable business income*** and partly for another use, the amount included in ***gross income*** under subsection 7(a)..."			Should the reference to "gross income" in both ss(7) and ss(8) instead be a reference to "business taxable income". Suggest review and that amendments be made.

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s.39	s.39	***Accrual-basis Accounting (new provision)*** *(1) If-* *a. a person has been 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 of the end of the tax year in which the deduction was allowed,* *the unpaid amount of the liability is included in the gross income of the person for the first tax year following the end of the one-year period.* *(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.*	This provision will unfairly disadvantage and impact businesses in distress, where it is common for old debts to still exist on the books (possibly on a time payment basis) while the supplier provides goods and services on cash on delivery basis. Hence, the older debt continues to exist, rather than current payments being applied against oldest debts first.	It is suggested that the provisions be deleted and the tax avoidance provisions be tightened. This is the case for all specific tax avoidance provisions in the various sections of the draft Decree.	Reiterate earlier comments and suggest that amendments be made.

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s.41	s.41	***Finance leases (new provision)*** *Specifies treatment of finance leases similar to that of a loan.*	Does the provision require further clarification on tests for "ownership" e.g. risks and benefits of ownership – or is it sufficient to refer to GAAP?	***FIA would need to consider the implications in relation to the reference to GAAP or IFRS.***	
s.42	s.42	***Long-term Contracts*** - *allows carry back of losses where taxpayer is unable to carry forward the loss where taxpayer ceases to carry on business in Fiji* - *relates solely to contracts for manufacture, installation or construction of more than 6 months*	Consider instances where carry forward is impeded by change in ownership or other rules for carry forward of losses (Section 60). Should be allowed to carry back the loss in such instances.	This should apply to all long-term contracts and not only to persons who will cease to carry on business in Fiji at the end of the contract. It is suggested that (2)(b) be deleted.	Reiterate earlier comment and suggest amendments be made.

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s.44	s.44	**Benefit In Kind** • Deals with "benefit–in-kind" not covered under fringe benefits. • Appears to cover benefits in-kind received under employment.	Review the rationale and scope. /Clarify that this section covers benefit in-kind under employment.	FRCA will seek clarification from the consultant in relation to "*...ignoring any restriction on transfer*" under (2).	Reiterate earlier comments and suggest amendments be made.
s.45(1)	s.45(1)	**Classes of income** "*...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.*"		FRCA to work on Practice Statement with the assistance of FIA.	Reiterate earlier comments and suggest that Practice Statements be made available to FIA for review and comments.
s.45(2)	s.45(2)	**Classes of Income** Section 44(2) requires under paragraph (b) that "any other income included in gross income" to be also treated as a separate class of income.	Clarify rationale for this proviso.		Reiterate earlier comments. Reference to "amounts" in s.45(2)(b) should be limited to "income". Suggest that appropriate amendments be made.

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s.48	s.48	The total deductions allowed include the amount of claims "admitted". We suggest that this wording be changed to "paid or outstanding" as the current Income Tax Act.		Applicable to resident and non-resident short term insurance companies with PE in Fiji [link to s.10(3)(d)]. Insurance premiums of non-resident short term insurance companies without PE would be subject to tax of 3%.	Reiterate earlier comments and suggest that appropriate amendments be made.
s.49	s.49	Life insurance			Mechanics to be included in regulations. Regulations should be provided to allow appropriate FIA/industry submissions to be made.

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s.50		Husbands and wives are no longer allowed to lodge a joint income tax return.	Consider keeping the option available for spouses to lodge joint returns (particularly if the income of the wife is very minimal). Only a minor issue.		Reiterate earlier comments and suggest amendments be made.
s.51(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"*			Unfair to treat resident partners as representatives of non-resident partners. Consider deleting this provision.
s.52		Gross income for the year is calculated as if the partnership were a resident person.	The partnership should calculate its income based on whether or not it is a resident or non-resident partnership. We suggest the words "as if the partnership were a resident person" be deleted. Related changes would need to be made to the other relevant provisions of the Decree. Appropriate amendments should also be made for other similar entities.	***The provisions would be discussed later after FIA and FRCA have been able to relook at the provisions and the proper treatment for resident and non-resident partnerships and partners.***	Reiterate earlier comments and suggest that appropriate amendments be made.

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		There are no provisions in relation to joint ventures and hotel villa management schemes.	Consider including provisions wherein venturers in a joint venture may elect to lodge a return as a partnership or separately. How the income of owners in a hotel villa management scheme may account for tax should also be addressed. Related changes would need to be made to the other relevant provisions of the Decree (e.g., procedural rules under Part VII)	Treatment of joint ventures may need to be appropriately covered in this section.	Reiterate earlier comments and suggest that appropriate amendments be made. Alternatively definition for "partnership" should be included to include joint ventures.
s.53(9)		Where the allocation of partnership income in the agreement does not reflect the contributions of the partner to the partnership's operations, a partners' share of the partnership income or loss is equal to the partners' percentage interest in the capital of the partnership.	This provision should be reviewed to reflect the practical business reality. Where the actual income is distributed on a different basis, it will create a difference between income actually received and taxable income of the partners. If the concern here is in relation to tax avoidance, this issue should be appropriately addressed under the avoidance provisions of the Decree.		Reiterate earlier comments and suggest appropriate amendments be made.

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s.54; s.56		Trust income		It is suggested that "amounts" be amended to "income" in (1). We understand that if settlor is a non-resident, the trust income would be taxed in the beneficiary or trustees' hands. Reflection in law?	Reiterate earlier comments and suggest amendments be made.
s.54(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."*			Very broad. To what extent should trustee be treated as a representative of the non-resident beneficiary? Consider deleting this provision or limiting its application.
s.59		*If there is a change of 50% or more 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 loss has been fully deducted; and* *(b) does not, until the loss has been fully deducted, engage in any new business or investment after the change if the principal purpose of the*	Consideration should be given to appropriately amending s. 60(1)(b) to allow change but no substantial change in business. This would also be necessary, if no such loss is offset against any income from such new investment. Hence the company would still be able engage in any new business or investment after a change of 50% or more in the underlying ownership of such a company.	It is suggested that this be moved to s.30 on tax losses. The principal purpose for the new business under (1)(b) depends on the facts of the case (e.g.; new business is closely related to the existing business, etc.)	Reiterate earlier comments and suggest amendments be made.

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		company or the members of the company is to utilise the loss so as to reduce the income tax payable on the income arising from the new business or investment.			

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s.60(5)		**Foreign Tax Credit** • Foreign tax credit is allowed only if foreign income tax is paid within **two years**. • Circumstances may arise whereby foreign tax authority may raise amended assessments after lapse of two years or tax returns get filed in foreign country after 2 years.	The two year limit is unreasonable. This limit should be removed.	Under the tax laws, assessment is within six years and refund is within three years. Hence, what is the basis for the two years? Change to at least 4 years?	Reiterate earlier comments and suggest amendments be made.
s.62(1)		**Thin Capitalisation** • Requirement to maintain debt to equity throughout the year (Section 68(1)). • Full tax deduction disallowed (on pro-rata basis for number of days the ratio is not maintained) irrespective of the level of ratio (Section 68(2)). • Equity threshold for foreign controlled resident company is 50% or more (Section 68(2)). Should be more than 50%. • Thin capitalisation requirement is considered to be too stringent. • Proposed provisions are considered to be 'anti-investment' and 'anti-economic development'. • The policy and the tax laws should encourage foreign capital, irrespective of the form	• The tax policy should support the Government's policy to promote investments, and focus needs to be for the "wider growth of the economy". • Remove 'thin capitalisation' rule from investment and economic development view point, and on the basis that this matter is already regulated by RBF under exchange control. • Alternatively, equity threshold should be more than 50% (instead of 50% or more), and the definition and scope of equity should be extended to include 'interest free and unsecured loans and advances' provided by shareholders and related entities. This will be in line with the requirements under the Exchange Control Regime.	Should this still be applicable given the non-resident interest WHT rate is 10% and the company income tax rate is 20% (difference of only 10% implies effective profit margin of 50%). Shouldn't the debt be from a related party? This is not specifically indicated in the provisions. It is also suggested that the arm's length debt amount not be limited to financial institution, but include any other entity that is not an associate.	Reiterate earlier comments. The debt to equity ratio has been changed from 3:1 to 2:1. Should this still be applicable given the non-resident interest WHT rate is 10% and the company income tax rate is 20% (difference of only 10% implies effective profit margin of 50%). Shouldn't the debt be from a related party? This is not specifically indicated in the provisions. It is also suggested that the arm's length debt amount not be limited to financial institution, but include any other entity that is not an associate.

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		of capital (whether equity or debt). Also, interest free loans from shareholders or related entity should be treated as equity for the purpose of calculating debt equity ratio. This will be in line with the requirements under the exchange control regime. • RBF has restrictions under exchange control regime for borrowings by non-resident controlled entities. Debt equity ratio required is 3:1 which is applicable when local borrowings are made.			It is suggested that the Debt to Equity ratio should be aligned to RBF requirements if thin capitalisation rules are maintained. Should be considered in line with transfer pricing provisions. The FRCA currently seek to deem interest on non-interest bearing parent company loans. In such a case, on the one hand withholding tax would be applicable, the on the other hand the deemed interest would be disallowed as a deduction. Overall implications of thin capitalisation rules should be considered, especially in view of Fiji an investment option.
	s.63	Transfer pricing			Policy around "parent entity" loans at nil interest being permissible, needs to be considered.

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	s. 64 - 68	• CGT does not provide for the adjustment of historical cost to "fair market value" as on 1 May 2011 (being the effective date for the commencement of CGT). • Furthermore, CGT does not provide for indexation adjustment. • The current method of calculating cost of capital asset (without considering fair value as on 1 May) is unjust, unfair and unreasonable. • The current system effectively imposes CGT on 'inflation gains'. Such system does not encourage voluntary compliance.	Consideration should be given to introduce 'indexation' adjustment to ensure the tax is imposed on real capital gains, and not 'inflation gains'. Alternatively, **at least allow for 'cost adjustment at fair value' as on May 2011**. Refer previous FIA submissions on this matter, providing reasons and justifications in support of indexation.		Reiterate earlier comments and suggest that amendments be made.
	s.67(1) (f)	Refers to "***shares*** in a family home"			The reference to "shares" is generally in respect of a company – a better description would be "***ownership interest***". Suggest amendments be made.
	s.67(1) (h)	"a capital gain made by a resident upon disposal of a principal place of residence, ***shares or shares in a company***, …"			What is the distinction between these?? Suggest review and appropriate amendments be made.
	s.67(3)	Jointly owned assets – this provision is contrary to s.82(1)			It should only allow the joint owners are not related parties.

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	s.67(4)	Again refers to "***hold shares*** as joint tenants or tenants in common"			The reference to "shares" is generally in respect of a company – a better description would be "***ownership interest***".

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		Fringe benefits			There should be a definition of what a "fringe benefit" is. Suggest amendments be made.
	s.71(1) (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"*			This is very general and subject to dispute with FRCA in term of identifying what is "*so small as to make accounting for it unreasonable or administratively impracticable"*. It is suggested that a dollar value is used instead of "*so small as to make accounting for it unreasonable or administratively impracticable"*.
	s.75(2)	Fringe benefits – what's caught			(a) & (b) look like a duplication – wouldn't (b) alone be sufficient for this purpose?
	s.75(3)	Housing benefit			Removed 1/8th and 1/9th provisions – Why? Suggest review and limitation on value of housing benefit be maintained.

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	s.75(3)	Executive/managers – hotels – new insertion			This ss is redundant as 71(1)(e) only exempts accommodation provided to ***non-management employees.*** Suggest review and amendments be made.
	s.75(4)	Executive/managers – hotels – new insertion			Another duplication of 75(3) – just worded a different way! Suggest review and amendments be made.
	s.76	Loan fringe benefit "A loan provided by an employer to an employee is a loan fringe benefit" (technically not correct!)			This is actually a "concessionary interest rate fringe benefit" – whilst we're changing the law, we should correct this! Suggest amendments be made.

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s.82	s.83	**Acquisition of Asset** A person acquires an asset "when the person begins to own" the asset	Need to clarify the phrase "when the person ***begins to own*** the asset".	***FIA and FRCA need to look at what this means***.	Reiterate earlier comments and suggest amendments be made.
s.84	s.85	**Cost of Asset** The cost of an asset includes the incidental expenditure of acquiring ***or disposing of the asset***.	Cost of disposing of asset should not be part of 'cost of asset', but ***should be adjusted to disposal proceeds***. This is in line with the accepted accounting standards and accounting practices. Holding costs, including interest cost, should also be allowed as part of cost if not claimed for income tax purposes.	Interest cost, insurance cost, repairs, etc should also be allowed as part of cost if not claimed for income tax purposes.	Reiterate earlier comments. In case of land, rates payable to a Council in accordance with the Local Government Act (Cap. 125)", should be allowed at part of cost of an asset. Suggest amendments be made.
	s.85(2) (b)	Common rules relating to assets - Cost			Missing "***and***" at the end of (b) before (c). Suggest amendments be made.
s.84(6)	s.85(6)	**Cost of Asset** It has been stipulated that "An amount is included in the cost of an asset ***on the date that it is paid.***	The cost amount must also ***include, 'amount due and payable' or 'amount payable in future'***.		Reiterate earlier comments and suggest that amendments be made.

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s.84(7)	s.85(7)	**Disposal of Part of An Asset** For disposal of a part of an asset, the cost is required to be apportioned based on fair market values at the time asset ***was acquired***.	Cost apportionment should be based on fair value ***at the time of asset disposal*** (instead of time of acquisition).		Reiterate earlier comments and suggest that amendments be made.
s.86	s.87	**Deferral of Recognition of Capital Gain** • In case of loss of capital asset by destruction or compulsory acquisition, etc., paragraph (c) requires reinvestment of the consideration received in an asset of a like kind **within 1 year of disposal**. • The above limitation is impracticable and not workable. This issue has also been acknowledged in the Practice Statement issued by FRCA.	Need to simplify the current proviso to make it practical and workable. One year limit should be extended to say 3 years with proviso for further extension as approved by CEO.	One year is unrealistic, unreasonable and impractical. Approvals normally take an average of 7 to 12 months. Construction normally takes 18 months. Hence, three years is more realistic.	Reiterate earlier comments and suggest that amendments be made.

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	s.88	Corporate Re-organisation			Limited to ***resident companies***. Should this not be "persons"? What about non-resident? And the new Companies Act – with single shareholders permitted? What about trustee ownership? Suggest review and appropriate amendments especially in case of transfer of shares to beneficial owner.

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		Mining		***FIA still needs to review the provisions and comment on the same.***	Needs specific consultation with industry Ring fencing for example is anti-investment.

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	General			Consider repealing all the levies.	Reiterate earlier comments. Should be considered in line with Government policy on promoting investment. Whilst the corporate tax rate has been reduced in recent years, a number of different taxes and levies have been introduced which has increase compliance cost and cost of doing business.. Should consider limiting the number of taxes, and perhaps imposing SRT over a broad base at a lower rate to maintain revenue collection.
	s.98(2)	**Telecommunications levy** "…. to the charges incurred by the person for **calls** transmitted by any **telecommunications services**"			Should the word "***provider***" be at the end of the sentence? Suggest review and that appropriate amendments be made.

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s.99		**Third Party Insurance Levy**		All other levies are imposed on the user (indirect tax). However, the third party insurance levy is imposed on the insurance companies. Consider amending "total insurance premiums collected" to "net insurance premiums…" (net of discounts, credits, commissions, etc) – needs to be clarified for practical purposes.	Reiterate earlier comments and suggest amendments be made.

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s.100	s.101	**Income Splitting** If one of the reasons for income splitting is to lower total tax payable, the CEO is allowed to adjust the taxable income.	For most entities, one of the reasons for income splitting is to reduce income. However, this reason may not be the primary reason for the splitting of income. Consider amending to cases where the sole or main reason for the split is reducing income tax.	Tax avoidance should be the main or principal (and not only one of the) purpose or reason for the income splitting. Consistent with other foreign jurisdictions. There is a lot of case law in relation to this matter.	Reiterate earlier comments and suggest amendments be made.

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s.103		**Filing of returns** "A person liable for Income Tax or who has an assessed loss for a tax year …"			An "**assessed** loss" only comes about after the return is lodged – this is a bit of a "chicken and egg" scenario! What about a person who wants a refund (but not necessarily from a loss)? Suggest review and that appropriate amendments be made.
s.104		**Income tax return not required to be filed**			There is an issue with this, because FRCA does not let an employer equalise the PAYE for the year – so happens when it is over-deducted? Suggest review and that appropriate amendments be made.
s.106		**Rental Income Reporting System**		***FIA and FRCA should ensure that the provisions and implications are similar to the Income Tax Act.*** .	Reiterate earlier comments.

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s.107		**Due date** Income tax and SRT are due on the date that the income tax return for the year is due or such other date as prescribed.		This should be considered along with the provisions in relation to provisional tax, advance payments of company tax and PAYE taxes.	Reiterate earlier comments and suggest that appropriate amendments be made.
	s.110	**Advance payment of company tax**		The amendments in the Income Tax Act in relation to the discrepancy should be included. Taxpayers need some form of certainty. Entities may not know their exact tax position at the balance sheet date. FRCA's contention is that entities have professionals that may be able to estimate. The 10% leeway is reasonable. Entities are required to lodge a statement of estimates. However, the penalties are still applicable despite lodging the statement of estimates. ***FIA to suggest the wording of the section. We understand that this has already been provided to the FRCA.***	Advance tax based on previous years' assessment where previous years' assessment is available, otherwise company has to estimate and file a statement with FRCA. This all needs discussion – there is a divergence from current practice to "estimates". Suggest provisions mirror current provisional tax payment requirements.

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	General			Refer to s.125 in relation to WHT as a final tax. There is a lot of issue in relation to certain WHT as final tax. PAYE tax should only be a final tax if the only income derived is employment income.	Reiterate earlier comments and suggest amendments be made.
s.111(2) (b)		Withholding tax "applies notwithstanding any law that provides that the employment income of an employee is not to e reduced or subject to attachment"			Currently – top marginal rate and SRT at 29% plus FNPF breach the requirements of the ERP. FRCA should work with Labour to correct the law.

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s.112		**Interest WHT** Any resident or non-resident with PE in Fiji (even if not a financial institution) should be required to withhold the WHT.		Should be limited to financial institutions paying the interest as per the Income Tax Act. ***FIA to propose wording.*** Final tax for resident individuals (refer to s.125). Hence, in cases of people who earn below the threshold, the income is still subject to tax. The limit is only $200. Hence, people below the poverty line who earn interest of more than $200 will unfairly be subject to the highest rate of income tax. There should be a provision granting Certificate of Exemption to qualifying individuals "subject to the Regulations". ***FIA to propose wording of provision.***	Reiterate earlier comments that interest WHT should be limited to financial institutions paying the interest as per the Income Tax Act. Suggest amendments be made.
s.112 & 113		Rates of withholding tax are stated in the section			For consistency (and style) the sections should refer to "Second Schedule" and show the WHT rates there. Suggest amendments be made.

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s.114		**Non-resident withholding taxes**		The tax exemption for dividends to non-residents under the Tax Free Zone Decree subject to the condition should be incorporated in the draft Decree. The exemption would be included under the transitional provision of the draft Decree. Makes reference to the Regulations and the Decree for the calculation of NRWHT.	Reiterate earlier comments and suggest that amendments be made.

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s.124 and s.125	s.123 & 124	No credit is allowed for tax withheld in respect of employment income, interest income paid by financial institution to a resident individual and dividend paid to resident individual. An individual who receives income from these sources cannot file a return even in case where an excessive amount of tax has been deducted and the individual is not entitled to a refund of tax withheld at source.	This is highly unfair. Tax withheld should not be a final tax. The individual should be allowed the option of being able to file a return and claim a refund in case where a refund is correctly due. Alternatively, does the employee have recourse against the person withholding tax in case of excessive amount withheld? There should be check and balance mechanism in place to ensure correct amounts are being deducted and paid by the employer.	Refer to the discussion in relation to fallback clause for non-resident withholding taxes under s.10(3) and s.12. If the withholding taxes are deducted and remitted and subsequently deemed inappropriate, there should be a credit or refund mechanism in relation to the withholding taxes paid. A taxpayer without a certificate of exemption under s.112 should be allowed a credit or refund for the interest WHT deducted and remitted. Appropriate amendments to s.125 in relation to PAYE and withholding tax on interest and dividends should also be considered.	Reiterate earlier comments and suggest that amendments be made.

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	s.128	**Capital Gains Tax Records**	Extend retention period to 7 years (in line with TAD).	There should be a provision in the draft Decree where only income tax or CGT is applicable and not both. Please look at s.65(3) if it appropriately covers the issue of double taxation.	Reiterate earlier comments and suggest that amendments be made.
	FBT - General			Relief from double taxation of fringe benefit (i.e., income tax and FBT) should also be appropriately covered in the draft Decree.	Reiterate earlier comments and suggest that amendments be made.

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	s.137	Concessionary rate of tax for regional or global headquarters			Ensure consistent with current ITA.
	s.138(2)	Currency translation			The word "Bill" is missing from the end of the sentence.
General		**Double Tax and Tax Information Exchange Agreements** • The risk of non-availability of tax credits in DTA countries. • Foreign investors and foreign suppliers of services may not get tax credit for tax payments in Fiji.	Assess the impact to foreign investors, and suppliers of services from offshore. Consider to provide "imputed tax credits" within foreign sourced dividend income to promote Fiji as investment hub. This will also encourage, and provide incentives, for distribution and remittance of profits back to Fiji.	Should include a provision that the current DTAs should be considered.	Reiterate earlier comments and suggest that amendments be made.

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	S.139(7)	Double tax and tax information exchange agreements.		Does this eliminate the benefit of the Double Taxation Agreement (DTA) to branches and non-resident controlled companies? This is a new subsection. It is suggested that this provision not be included as this seems to be relevant to DTAs. Such provisions should instead be incorporated into the DTAs, if required. This is somewhat similar to the Third Protocol to Fiji/New Zealand DTA.	Reiterate earlier comments. "***Subsection*** to subsection...." Should read "***Subject*** to subsection ...". Suggest that amendments be made.

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	s.141	Regulations –provision in (3) for retrospective application of Regulations if made within 6 months of commencement. Regulations cannot prescribe penalties unless there is a law that set the limitations in relation to the same.	Contrary to statutory interpretation of making law applicable for a period when taxpayers not aware of law. Penalties deprive persons of properties. One of the basic human rights is that no person shall be deprived of life, liberty or property without due process of law. Hence, there should be provisions in the law allowing the imposition of penalties and the law itself should set the basis for the CEO to prescribe the same. Consider amending the provision to allow the CEO to prescribe penalties with reference to the penalties prescribed under the Tax Administration Decree.		Reiterate earlier comments. Regulations should not have retrospective application. Suggest that regulations that are intended to come into effect at the date of commencement of the Bill should be made available for review and comments as soon as possible. Alternatively, suggest appropriate amendments.

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	s.142	Transitional and Savings – repealed legislation continues to apply to years of assessment prior to the tax year in which this Decree comes into force S.21E (ICT incentive)and s.21F(fixed line Next Gen network) continue to supply until 31 Dec 2012 The transitional provisions do not include any provision in relation to concessions granted or deductions allowed under the FITA (e.g., standard allowance for hotels, short life investment package, Tax Free Regions, etc). The provisions also do not provide what legislations are repealed by this Decree	The transitional provisions should include a provision wherein any concessions or deductions under the FITA that have been repealed but has not yet expired shall be valid until the expiration of the validity period under the current FITA. The Decree should specify what laws are repealed (e.g., Income Tax Act and CGT Decree).	Consider all the amendments indicated above. (3) to include s.22(1)(c) of Income Tax Act. S.10 and s.17(53) of Income Tax Act and s.11 of the Tax Free Zone Decree 1991 to be in a separate paragraph. S.17(53) in relation to different concession (i.e., 5th Schedule and Tax Free Zone Decree). Reference in (7) should be to s.24 instead of s.23.	Ensure includes all relevant provisions.

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	s.142 (12)	"Any person who has undistributed profits prior to 1st January 2014, and the profits continue to be undistributed after 1st January 2014, shall be liable to pay annually within 3 months after the tax year at the dividend rate specified in the Second Schedule.			What is the policy rationale behind this provision? Retained earnings don't necessarily mean "cash" is available to pay a dividend? And if a dividend is declared but not paid, will the shareholder loan be subject to TP rules of arms length interest charges? Needs to be carefully considered in line with overall policy and framework.

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	General			***FIA and FRCA to ensure that all current exemptions are included (together with s.142)*** S.22(1)(y) and s.22(1)(zd) of Income Tax Act to be included. Should also relook at Part IV (4) and Part V (4) with reference to s.9A and s.17(72) of the Income Tax Act	
	Part I	**Government**		No clause 8 and 9. Clauses 10, 11 and 12 should be amended to state "The income of..." Film Fiji should be included under Part I and removed under Part II.	Done
	Part II Clauses 1 and 2			The provision of clause 1 should be the same as to s.16(1) (b) of the Income Tax Act. The last sentence of clause 2 should be deleted since it appears to be a reference to s.17(2) of the Income Tax Act.	

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	Part III Clause 5	**Individuals** Provides exemption to a person "ordinarily resident in Fiji" serving with UN. It appears that the term 'ordinarily resident' is not defined.	Define the term 'ordinarily resident' (if not defined elsewhere).		
	Part III Clauses 6, 7, 8	Makes reference to foreign-sourced income		The Fiji-sourced income as defined under the draft Decree will not be exempt. Have to reword.	
	Part IV			Nehla of Munro Leys to email FRCA the wording of the additional exempt income. It is also suggested that a new clause similar to s.17(3) of the Income Tax Act be included.	
	Part V	**Exempt dividends**			Removed inter-corporate dividends being exempt – why? What is the general policy re dividends?
	Part VI			It should include an annuity. Should also include After Care Fund.	

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	First Sch	**Exempt Income** It has been noted that certain concessions and incentives currently available under the Income Tax Act are not listed under the First Schedule or elsewhere in the Decree.	All concession and incentives currently available under the Income Tax Act should be included under the First Schedule of the Decree or elsewhere in the Decree, as appropriate.		Reiterate earlier comments and suggest that amendments be made. In particular, we suggest that the Minister's discretion to exempt certain income from withholding tax as contained in sections 8A and 9A of the current ITA be included in the ITB.

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	General			For 6(c), it should indicate the basis for the rate.	Reiterate earlier comment and suggest that amendments be made.

Sec Ref. (6th draft)	Sec Ref. (14th draft)	Decree Provision, Observations and Issue	6th Draft		14th Draft FIA comments
			Previous Outstanding Comments / Suggestions	Discussions / Comments / Suggestions	
	General			Please refer to comments under s.31. Consider range as follows – First category 10 - 40% Second category 5 - 25% Third category 2.5 – 15% Consider amending the depreciation rate for the buildings to include others with range of 1.5 to 10% and amend timber to 2.5 to 10%.	Reiterate earlier comments. Currently timber buildings are depreciated at 4%. Under the ITB timber buildings can only be depreciated at 1.25% which is lower than the rate for concrete buildings. Normally timber building depreciate at a faster rate than concrete building. To reconsider and make appropriate adjustments.