

5 August 2020

Newsletter

Income Tax

Gazette Notice August 2020 Update

Ernst & Young wishes to bring to your attention Income Tax Act (ITA) 2015 amendments effective 1st August 2020.

A. Changes to the Principal Act

1. Capital Asset definition

The definition of a "capital asset" now excludes a depreciable asset. This means that a depreciable asset disposed of such as buildings will now be subject to "Capital Gains Tax" at 10% on any gains derived as a result of a disposal. Previously this was subject to income tax.

2. Permanent Establishment (PE) definition

The definition of Permanent Establishment (PE) now excludes the proviso where the Minister has discretion that non-resident contractors may not be deemed as a PE. This amendment reintroduces the previous definition of "permanent establishment" to bring consistency in its application with international taxation rules.

3. Source Rule Section 7

The deletion of subsection 5 of the "Source Rule" to align with changes in the definition of a PE and the removal of discretion of the Minister.

4. Non-resident withholding tax (NRWT)-Professional services

Under Non-resident withholding tax, Section 10 of the Act is amended by deleting subsection 2A which previously included the following amounts under professional fees and subject to NRWT;

- (a) accommodation provided or reimbursed;
- (b) airfare;
- (c) transport; and
- (d) allowances.

The above deletion is done to bring consistency with international taxation rules.

5. Debt forgiveness income

Section 17(1B) of the Act to provide for debts created on or before 31 December 2020 and forgiven between 1 April 2020 and 31 December 2021, are not to be treated as business income and therefore not be subject to income tax.

6. Fringe Benefit Tax (FBT)

The Act is amended in section 22(1)(h) of the Act to exclude Fringe Benefits Tax from the list of deductions not allowed. This means FBT will not be an add back item in determining chargeable income for income tax purposes from 1st August 2020.

7. FNPF Deduction

Section 23(2) of the Income Tax Act is amended to allow employers who make additional FNPF contributions to claim a 100% deduction for income tax purposes. For example, if an employer contributes 10% rather than 5% of the employee remuneration to FNPF, the full amount contributed is deductible to the employer for income tax purposes. In line with changes with the Income Tax Regulations on Exempt Income and discussed in B(1)(i), we understand that the Fiji Revenue Customs Service will provide a clarity shortly on whether any excess of 10% of employee's salary will qualify for a further deduction.

8. Depreciable asset rules

Section 34 of the Act is amended to align with the definition of capital asset to allow the benefit of the gain made from the sale of a capital asset where the consideration is more than the cost price, to not form part of total income; instead it will be subject to capital gains tax.

9. Debt to equity ratio

Section 62 of the Act to increase the debt-to-equity ratio from 2:1 to 3:1. A foreign controlled resident company would be eligible for deduction of interest paid where the debt-to-equity ratio exceeds equals to or is less than 3:1.

10. Capital Gains Tax Threshold

Section 67 of the Income Act to increase the capital gains tax exemption threshold from \$16,000 to \$30,000.

11. Reorganization deferred

Under Section 88 of the ITA a deferment is allowed between two resident companies for income tax purposes. In the latest amendments the ITA under this section is amended to allow an individual to transfer his or her assets to a company that he or she wholly owns. As a result, any tax arising from the transfer of assets will be deferred until the company disposes of the said assets.

12. Advance Taxes

Section 110 of the ITA is amended to make the relaxed rules for advanced tax payments permanent. Companies would be required to make advanced tax payments in nine payments.

As a result of the above section 110A of the Act is deleted. Section 110A was introduced during the Covid 19 Response Budget tax amendments.

B. Changes to the Income Tax Regulations

1. Income Tax (Exempt income) Regulations 2016

(i) Excess FNPF contributed on behalf of employees

The amount of additional contribution made by an employer to the FNPF or an approved fund provided that the additional sum does not exceed 10% of the employee's salary. This is effective from 1st April 2020.

(ii) Interest earned on corporate bonds

Interest earned on corporate bonds is exempt for income tax at all levels. This is effective from 1st August 2020.

2. Income Tax (Rates and Levies) Regulations

Refer to Appendix A for the following table to effect the changes in the Environmental Climatic Adaption Levy applies to salaried chargeable income of \$270,000 and above for resident and non-residents. This comes into effect on the 1st August 2020.

3. Income Tax (Depreciation Rates) Regulations 2016

Where the cost of a depreciable asset is \$10,000 or less, a taxpayer may deduct the full cost of the asset when acquired. This comes into effect from 1st August 2020.

4. Income Tax (Hotel Incentives) Regulations 2016

Regulation 21(2)(b) is amended by deleting \$1,000,000 and including \$1,000,001-\$2,000,000 of capital investment, in the case of a company that applies on or after 1 April 2020, for a period of 7 consecutive fiscal years for the Short Life Investment Package.

5. Income Tax (Housing Incentives) Regulations 2016

A person who establishes a residential housing project under a Public Private Partnership investment is allowed a duty concession on the importation of raw material, machinery and capital equipment for the establishment of the residential housing project.

6. Income Tax (Other incentives) Regulations 2020

(i) Corporate bonds

150% of the prescribed cost incurred in a tax year in preparation for listing of a corporate bond is allowed as a new tax deduction.

“Corporate bonds”-means an instrument issued by a company which provides debt security to raise capital for the company.

“Prescribed costs” includes accounting fees, investment advisory fees, listing fees, legal fees, company administration and management costs, under writing costs and special reports costs.

(ii) FNPf employer additional contributions

The total amount allowed as a deduction for income tax purposes in a tax year for an employer additional contribution to the FNPf in respect of an employee is 50% of the employer additional contribution paid in respect of the employee for the tax year provided the additional contribution does not exceed 10% of the employee's salary for the month. Similarly, to A(7) above, we will seek clarification with FRCS on this matter and notify all clients on the same.

(iii) Loans taken for medical treatment

A person who takes a loan for medical reasons may deduct for income tax purpose the principal and interest amounts. This is provided the principal and interest amounts are spent wholly for medical purposes. This includes the actual cost of medical treatment, food and accommodation which is part of the package with the hospital. The person must provide documentation around medical certificates and loan details from a credit institution licensed under the Banking Act 1995.

(iv) Local artists

A hotel or resort carrying on business in Fiji is allowed a deduction for 150% of the amount of any salary paid for the employment of a local artist defined as a craftsman, dancer or musician.

7. Income Tax (Medical incentives) Regulation 2020

(i) Definition changes

The definition of ancillary medical services investment is now amended to have two levels in order to qualify for investment allowances or tax exemptions;

- ✓ Means a project with capital investment (including the cost of support structure infrastructure and overseas consultant's fees but excluding land);

- ✓ \$2,000,000 of capital investment where the project commences on or after 1st January 2016; and

- ✓ \$500,000 of capital investment where the project commences on or after 1st August 2020.

- (ii) Definition of ancillary medical service investment allowance now amended to have two levels similar to the above

- ✓ 30% of the total expenditure incurred in the project with capital investment (less land) from \$500,000 to \$1,000,000; and

- ✓ 60% of the total expenditure incurred in the project with capital investment (less land) over \$1,000,000.

(iii) Tax Exemptions or medical incentive packages

Tax exemptions are granted for the following;

- ✓ \$2,500,000-\$5,000,000 of capital investment- 7 consecutive years on or after 1st August 2020;

- ✓ \$5,000,000-\$10,000,000 of capital investment - 13 consecutive years on or after 1st August 2020; and

- ✓ More than \$10,000,000 of capital investment -20 consecutive years on or after 1st August 2020

8. Income Tax (Subdivision of Lands Incentives) Regulation 2020

A new incentive package for the subdivision of land is now in effective from 1st August 2020.

The subdivision of land incentive package (less cost of furniture and motor vehicle) is combined in one provisional and final approval unlike other incentive granted by Government.

They are as follows;

- (i) Investment allowance; and
- (ii) Tax exemption.

Where the capital investment is;

- ✓ less than \$1,000,000- a 20% tax deduction;
- ✓ \$1,000,001-\$3,000,00- a 30% tax deduction;
- ✓ \$3,000,001-\$7,000,000- a 40% tax deduction; and
- ✓ Over \$7,000,000- a tax deduction of 60%.

Tax exemption is granted on developer profits but only once pursuant to sub-regulation 11: -

“If the Minister or CEO has granted a provisional or final approval in relation to a project, the applicant is only entitled once, in relation to the project, to the subdivision of land investment package.”

All projects must commence within 24 months of the provisional approval granted by the Minister.

Let us know should you wish to seek clarifications on the issues highlighted.

Our advice is based on the current taxation legislation and our understanding of FRCS's current interpretation of the law. We note however that, it is our experience that the FRCS can be inconsistent in their interpretation of the tax law and we cannot guarantee that the advice will not be challenged. Nor is it possible to guarantee the outcome of such a challenge if it occurs. Should you have any contact from the FRCS in respect of this advice, we recommend that you contact us for advice on how to proceed.

It is also important that you ask us to review any advice already given if a transaction is delayed, or is to be repeated, or if an apparently similar transaction is to be undertaken. Our original advice may no longer be applicable or appropriate in such circumstances.



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