

97

INCOME TAX ACT (BUDGET AMENDMENT) DECREE 2001
(DECREE NO. 8 OF 2001)

ARRANGEMENT OF SECTIONS

1. Short title, etc.
2. Normal tax
3. Non-resident dividend withholding tax
4. Section 8A (Non-resident miscellaneous withholding tax) inserted
5. Resident interest withholding tax
6. Dividend tax
7. Deemed distribution
8. Exemption of certain income from tax
9. Incomes not taxable
10. Expenses deductible
11. Section 21A (Deduction for dividends) inserted
12. Section 21B (Export income deduction) inserted
13. Section 21C (Investment allowance) inserted
14. Losses
15. Return of income
16. Additional tax payable by companies when advance tax payments are less by more than 20 per cent of final liability
17. Tax concessions in respect of approved enterprises
18. Rates of normal tax
19. Export incentives
20. Agricultural enterprises incentives

INCOME TAX ACT (BUDGET AMENDMENT) DECREE 2001

(Interim Civilian Government Decree No. 8)

In exercise of the powers conferred upon the Interim Civilian Government by section 4 of the Interim Civilian Government (Transfer of Executive Authority) Decree No.19 of 2000, I, Ratu Josefa Iloilovatu Uluivuda, President of the Republic of Fiji, acting on the advice of Cabinet, hereby make this Decree to amend the Income Tax Act to effect the measures announced in the 2001 Budget.

Short title, etc.

1.—(1) This Decree may be cited as the Income Tax Act (Budget Amendment) Decree 2001 and is deemed to have come into force on 1st January 2001.

(2) In this Decree "principal Act" means the Income Tax Act (Cap. 201).

Normal tax

2. Section 7(1) of the principal Act is amended—

(a) in paragraph (a) by deleting "\$5,000" wherever it occurs and substituting "\$6,500"; and

(b) by repealing paragraphs (b) to (e) and substituting the following new paragraphs—

"(b) a company, other than a company to which paragraph (c), (d) or (e) applies, in respect of its chargeable income derived during the year preceding the year of assessment;

Non-resident dividend withholding tax

3. Section 8 of the principal Act is amended—

(a) in subsection (1) by deleting "the payments" and substituting "a dividend"

(b) in subsection (2) by—

(i) deleting "a dividend" in paragraph (a) and substituting "the portion of a dividend";

(ii) inserting after "incorporated in Fiji" in paragraph (a) "and which has been paid or credited, either wholly or partly, from chargeable income upon which no tax has been paid by that company";

(iii) deleting paragraph (hh) of the definition of "amount distributed" in paragraph (a);

(iv) repealing paragraphs (b), (c) and (d); and

(v) deleting "any such sums have" where it occurs after the wording "in whose favour or to whom" following paragraph (a) and substituting "any dividend has";

(c) in subsection (3) by deleting "the above-mentioned sums accrue" and substituting "a dividend is declared, paid or credited";

(d) in subsection (4) by repealing paragraph (c);

(e) in subsection (5) by deleting "or other person"; and

(f) in subsection (7) by deleting—

(i) "or sum" where it twice occurs; and

(ii) "paragraphs (a) and (b)" and substituting "paragraph (a)".

Section 8A inserted

4. The principal Act is amended by inserting after section 8 the following new section—

"Non-resident miscellaneous withholding tax"

8A.—(1) Notwithstanding anything to the contrary in the other provisions of this Act, there shall be paid a tax, to be known as "non-resident miscellaneous withholding tax", in respect of the payments specified in subsection (2) at the rate of 15 per cent of the gross amount payable.

(2) Such tax shall be payable in respect of—

(a) any payment made for the hire or rent of films and any sum paid for the use of such films whether by way of purchase or long term hire;

- (b) subject to subsection (4), a know-how payment and any sum paid or credited for the management of or supervision in connection with the carrying on of a business, to the extent that such payment or credit does not constitute reimbursement of expenditure, that is—
 - (i) of a kind that is deductible under this Act; and
 - (ii) incurred in relation to the payment or credit by the person to whom the payment or credit is made; and
- (c) alimony and maintenance paid under an order of a court of competent jurisdiction, allowed as a deduction in arriving at total income,

if the person in whose favour or to whom any such sums have been paid or credited is a non-resident.

(3) For the purposes of subsection (2)(a) "films" includes—

- (a) motion picture films; or
- (b) films or video tapes for use in connection with television.

(4) If a payment or credit referred to in subsection (2)(b) is made partly for any purpose other than those mentioned in that subsection, the Commissioner may, for the purposes of this subsection, determine to what extent the sum so paid or credited is for such other purpose.

(5) The person liable for the tax shall be the person to whom or in whose favour the sums referred to in subsection (2) accrue.

(6) Notwithstanding subsection (5), the tax shall be payable and recoverable from the person by whom such sum is paid or credited.

(7) Any tax payable under subsection (6) by any person, otherwise than by deduction, may, notwithstanding any agreement to the contrary, be recovered by such person from the person entitled to the payment concerned.

(8) The tax shall not be payable in respect of—

- (a) any sum payable to a person referred to in paragraph (5) of section 17; or
- (b) any sum, where the Minister is satisfied that such non-payment is expedient for the economic development of Fiji. In any such case, the Minister shall, by notice to the Commissioner, direct that any tax otherwise payable under the provisions of this section shall either be waived or be at such reduced rate as the Minister may specify.

(9) The person who, in accordance with subsection (6), is required to pay the tax shall remit the same to the Commissioner within 30 days, or such other period as the Commissioner may specify, of the payment or crediting of the sum specified in subsection (2)."

Resident interest withholding tax

5. Subsection 9A(2) of the principal Act is amended by deleting "at the rate of 35%", substituting "—" and adding the following new paragraphs—

- (a) in the year of assessment 2001 – at the rate of 34%;
- (b) in the year of assessment 2002 – at the rate of 32%;
- (c) in every subsequent year of assessment – at the rate of 30%."

Dividend tax

6. Section 10 of the principal Act is amended—

- (a) in subsection (1) by—
 - (i) deleting "5 per cent" and substituting "15%";
 - (ii) deleting "(including an interim dividend)";
 - (iii) inserting "and holding an operating licence granted under the Tax Free Zones Decree 1991," after "incorporated in Fiji,"; and
 - (iv) repealing the proviso;
- (b) by repealing subsection (2);
- (c) by repealing subsection (3); and

- (d) in subsection (6)—
- (i) by deleting “company, person or agent” and substituting “company”; and
 - (ii) by deleting “company, person or agent, as the case may be,” and substituting “company”.

Deemed distribution

7. Section 12 of the principal Act is repealed.

Exemption of certain income from tax

- 8.—(1) Section 16(2)(b) of the principal Act is amended by inserting, “on or before 31st December 2000,” after “specify”.
- (2) Section 16(2)(d) of the principal Act is amended by inserting “, on or before 31st December 2000,” after “specify”.
- (3) Section 16(2)(f) of the principal Act is amended by inserting “on or before 31st December 2000,” after “specify”.

Incomes not taxable

9. Section 17 of the principal Act is amended—

- (a) in paragraph (37) by deleting the full-stop after “trust”, substituting a semi-colon and deleting the sentence commencing “For the purposes”;
- (b) in paragraph (55) by deleting “Suva Stock Exchange” and substituting “South Pacific Stock Exchange”; and
- (c) by repealing paragraph (57) and substituting the following new paragraph—

“(57) the nominal value of any bonus shares awarded to a shareholder to the extent to which such shares have been paid up by means of profit arising from the reconstruction or reorganisation of the company’s equity structure undertaken solely for the purpose of listing on the South Pacific Stock Exchange provided that—

 - (a) the said company is listed on the South Pacific Stock Exchange within 12 months of any such reconstruction or reorganisation or such longer period as the Commissioner may determine; and
 - (b) the said company remains listed on the South Pacific Stock Exchange for a period of not less than three years.”.

Expenses deductible

10. Section 21 of the principal Act is amended—

- (a) in subsection (1)—
 - (i) in paragraph (n) by deleting “one half” and substituting “the amount”;
 - (ii) in the proviso to paragraph (n) by deleting everything after “in aggregate,” and substituting “\$50,000”; and
 - (iii) in paragraph (r) by deleting “31st December 2001” and substituting “31st December 2003”; and
- (b) by repealing subsections (2) and (3).

Section 21A inserted

11. The principal Act is amended by inserting the following new section after section 21—

“Deduction for dividends

21A.—(1) In determining total income, a deduction shall be allowed in accordance with this section for a qualifying dividend included in a taxpayer’s total income.

(2) For the purposes of this section, “qualifying dividend” means a dividend paid or credited by a company to the extent that it has been paid or credited from income which has been charged to tax.

(3) The amount of the deduction is the amount of the qualifying dividend.

(4) A deduction shall not be allowed unless the taxpayer provides to the Commissioner a certificate issued by the company paying or crediting the dividend in accordance with the regulations.”.

Section 21B inserted

12. The principal Act is amended by inserting the following new section after section 21A—

“Export income deduction

21B.—(1) In determining total income, a deduction for export income shall be allowed in accordance with this section.

(2) The amount of the deduction, representing a percentage of the export income, is set out in the following Table—

TABLE

<i>Year of assessment</i>	<i>Percentage of export income to be deducted</i>
2001 and 2002	100%
2003 and 2004	75%
2005 and 2006	50%
2007 and 2008	25%
2009 and every year thereafter	0%

(3) For the purposes of this section, "export income" means income derived by a taxpayer from the business of exporting goods or services.

(4) A deduction may not be claimed under this section in respect of income for which a deduction or rebate is claimed or allowed under the Fifth Schedule."

Section 21C inserted

13. The principal Act is amended by inserting the following new section immediately after section 21B—

"Investment allowance

21C.—(1) In determining total income, a taxpayer may, in accordance with this section, claim as a deduction in a qualifying year an investment allowance equal to 40% of the qualifying expenditure.

(2) In respect of any particular asset, a taxpayer may not claim more than one investment allowance for that asset, either in the same year of assessment or any other year of assessment.

(3) A taxpayer may claim an investment allowance in respect only of—

- (a) new capital assets purchased by the taxpayer, either in Fiji or in any other country and imported into Fiji; and
- (b) any capital asset purchased by the taxpayer in any country other than Fiji, and imported into Fiji.

(4) If a taxpayer sells or otherwise disposes of a capital asset within 3 years of a year in which a deduction under this section was made, the amount of the deduction is deemed to be income of the taxpayer in the year that the sale or disposal took place.

(5) For the purposes of this section—

"agricultural, forestry or marines resources business" means a business which processes or manufactures Fiji natural resources to the extent that the resources are substantially transformed, but excludes a restaurant or a retail food outlet;

"capital asset" means any capital asset but does not include—

- (a) a building;
- (b) a passenger vehicle; or
- (c) trading stock;

"Fiji natural resources" means unprocessed or raw natural produce, including timber, wholly derived in or from Fiji;

"information technology business" means a business providing services specifically based on utilising information technology, and delivered by making use of open networks and tele-communications, including—

- (a) call centres;
- (b) ticketing, ordering and reservations services;
- (c) data base, records, and list management;
- (d) data entry and processing;
- (e) web site development and management;
- (f) software programming and design;

- (g) tele-medicine services;
- (h) internet service provision,

but excludes—

- (A) the retailing or wholesaling of information technology products;
- (B) the sale, care, repair or service of any item;

“investment activity” means—

- (a) an agricultural, forestry or marines resources business;
- (b) an information technology business; or
- (c) a rural manufacturing business;

“manufacturing” means any activity included under Major Division 3 of the Fiji Standard Industrial Classification (FSIC) codes.

“qualifying expenditure” means expenditure of an amount (or total amounts) not less than \$50,000 incurred for the purpose of acquiring a capital asset (or assets) for use in the carrying on of an investment activity;

“qualifying year” means a year of assessment between 2001 and 2005 (both years inclusive) in which the qualifying expenditure was incurred;

“rural manufacturing business” means a manufacturing business carried on in a location not less than 25 kilometres, measured by the most direct road route, from the general post office in Suva or the principal post office in Lautoka, Nadi, Nausori or Navua;

“substantial transformation” means a process applied to Fiji natural resources which results in a different classification under the Harmonised System (HS) codes of the processed materials from that of the unprocessed materials, but excludes—

- (a) repackaging and rebottling; and
- (b) logging of timber.”.

Losses

14.—(1) Section 22 of the principal Act is amended—

- (a) in subsection (1) in line 2 by deleting “person, either solely or in partnership” and substituting “taxpayer”;
- (b) in subsection (1)(a) in line 1 by deleting “his” and substituting “the taxpayer’s”;
- (c) in subsection (1)(b) in line 3 by deleting “his” and substituting “the taxpayer’s”;
- (d) in subsection (1)(b) by deleting “6” and substituting “8”;
- (e) by repealing subsections (3) and (4) and substituting the following new subsections—

“(3) Notwithstanding subsections (1) and (2), if a company claims to carry forward to any income year (“carry forward year”) any loss incurred by it in any former income year (“loss year”), the claim shall not be allowed unless the shareholders of the company during the whole of the carry forward year were substantially the same as the shareholders of the company during the whole of the loss year.

(3A) For the purposes of subsection (3)—

- (a) the shareholders of a company during the whole of the carry forward year is deemed to be substantially the same as the shareholders of the company during the whole of the loss year if, at all times during the carry forward year and the loss year, not less than 51% of the voting power in and the right to receive dividends from the company was held by or on behalf of the same persons, and, at all times during those years, not less than 51% of the nominal value of the allotted shares in the company were held by or on behalf of the same persons;
- (b) shares in a company held by or on behalf of another company are deemed to be held by the shareholders of that other company;

- (c) shares held by or on behalf of the trustee of the estate of a deceased shareholder, or by or on behalf of the persons entitled to those shares as beneficiaries in the estate of a deceased shareholder, are deemed to be held by that deceased shareholder.
- (4) If a claim to carry forward a loss under subsection (1)(b) is not allowed by the Commissioner under subsection (3), that claim shall be allowed if the company carries on the same business in the carry forward year as it did in the loss year.
- (4A) For the purposes of subsection (4), a company does not carry on the same business if it derives income from—
- a business of a kind it did not carry on when the loss was incurred; or
 - a transaction of a kind that it had not entered into in the course of its business operations when the loss was incurred;
 - a business or kind of transaction that was not carried out during the whole of the loss year; and
 - in subsection (5) by deleting “6” and substituting “8”.

Return of income

15. Section 44 of the principal Act is amended by inserting after subsection (2) the following new subsections—
- “(3) If any income is derived by a taxpayer from a business carried on in a country other than Fiji—
- that income shall be expressed in Fiji currency at a rate equal to the average exchange rates applicable from time to time during the year that the income is derived; and
 - any foreign tax paid in that other country in respect of that income shall be expressed in Fiji currency at the exchange rate applicable at the time when the tax was paid.
- (4) If any income is derived by a taxpayer from employment in a country other than Fiji—
- that income shall be expressed in Fiji currency at a rate equal to the average exchange rates applicable from time to time during the whole or part of the year that the income is derived; and
 - any foreign tax paid in that other country in respect of that income shall be expressed in Fiji currency at the exchange rate applicable at the time when the tax was paid.
- (5) If any income, other than income to which subsection (3) or (4) applies, is derived by a taxpayer from a country other than Fiji, that income and any foreign tax paid in that other country in respect of that income, shall be expressed in Fiji currency at the exchange rate applying—
- if all of the income is remitted to Fiji – on the day it is remitted;
 - if part of the income is remitted to Fiji – on the day it is remitted; or
 - in any other case – at the end of the relevant year of income.
- (6) For the purposes of subsections (3), (4) and (5)—
- the day an amount is remitted is the day that it is received in Fiji; and
 - “exchange rate” means the telegraphic transfer buying rate issued by a financial institution licensed under the Banking Act 1995.”.

Additional tax payable by companies when advance tax payments are less by more than 20 per cent of final liability

16. Section 92(1) of the principal Act is amended by deleting “50 per cent” where it twice occurs and substituting “66 $\frac{2}{3}$ per cent”.

Tax concessions in respect of approved enterprises

17. The Third Schedule to the principal Act is amended by inserting “, on or before 31st December 2000,” after “specified”.

Rates of normal tax

18. The Fourth Schedule to the principal Act is amended –
- by deleting the title “RATES OF NORMAL TAX FOR INDIVIDUALS, ESTATES OF DECEASED PERSONS, TRUSTS AND SETTLEMENTS” and substituting as the new title “RATES OF NORMAL TAX”; and

(b) by deleting Tables A, B and C and substituting the following new tables—

"A. ESTATES OF DECEASED INDIVIDUALS, TRUSTS, SETTLEMENTS AND RESIDENT INDIVIDUALS

Table A1 – Year of assessment 2001

<i>Chargeable income \$</i>	<i>Tax payable \$</i>
0– 6,500	Nil
6,501–10,000	15% of excess over \$6,500
10,001–20,000	525 + 25% of excess over \$10,000
20,001 +	3,025 + 34% of excess over \$20,000

Table A2 – Year of assessment 2002

<i>Chargeable income \$</i>	<i>Tax payable \$</i>
0– 6,500	Nil
6,501–10,000	15% of excess over \$6,500
10,001–20,000	525 + 25% of excess over \$10,000
20,001 +	3,025 + 32% of excess over \$20,000

Table A3 – Year of assessment 2003 and subsequent years

<i>Chargeable income \$</i>	<i>Tax payable \$</i>
0– 6,500	Nil
6,501–10,000	15% of excess over \$6,500
10,001–20,000	525 + 25% of excess over \$10,000
20,001 +	3,025 + 30% of excess over \$20,000

B. NON-RESIDENT INDIVIDUALS

Table B1 – Year of assessment 2001

<i>Chargeable income \$</i>	<i>Tax payable \$</i>
0– 6,500	20% of excess over \$0
6,501–10,000	1,300 + 25% of excess over \$6,500
10,001–20,000	2,175 + 30% of excess over \$10,000
20,001 +	5,175 + 34% of excess over \$20,000

Table B2 – Year of assessment 2002

<i>Chargeable income \$</i>	<i>Tax payable \$</i>
0– 6,500	20% of excess over \$0
6,501–10,000	1,300 + 25% of excess over \$6,500
10,001–20,000	2,175 + 30% of excess over \$10,000
20,001 +	5,175 + 32% of excess over \$20,000

Table B3 – Year of assessment 2003 and subsequent years

<i>Chargeable income \$</i>	<i>Tax payable \$</i>
0– 6,500	20% of excess over \$0
6,501–10,000	1,300 + 25% of excess over \$6,500
10,001 +	2,175 + 30% of excess over \$10,000

C. COMPANIES

Table C1 – Year of assessment 2001

(a) Every company, other than companies to which paragraph (b), (c) or (d) applies	34%
(b) Mutual insurance companies in respect of life insurance business	30%
(c) Non-resident or non-mutual insurance companies to the extent that the income of their life insurance businesses is deemed to be mutual under section 37(1)	30%
(d) Non-resident shipping companies	2%

Table C2 – Year of assessment 2002

(a) Every company, other than companies to which paragraph (b), (c) or (d) applies	32%
(b) Mutual insurance companies in respect of life insurance business	30%
(c) Non-resident or non-mutual insurance companies to the extent that the income of their life insurance businesses is deemed to be mutual under section 37(1)	30%
(d) Non-resident shipping companies	2%

Table C3 – Year of assessment 2003 and subsequent years

(a) Every company, other than companies to which paragraph (b), (c) or (d) applies	30%
(b) Mutual insurance companies in respect of life insurance business	30%
(c) Non-resident or non-mutual insurance companies to the extent that the income of their life insurance businesses is deemed to be mutual under section 37(1)	30%
(d) Non-resident shipping companies	2%.”.

Export incentives

19. Paragraph 1 of the Fifth Schedule to the principal Act is amended by inserting “, on or before 31st December 2000,” after “specified”.

Agricultural enterprises incentives

20. The Seventh Schedule to the principal Act is amended by inserting “, on or before 31st December 2000,” after “specified”.

Made at Suva this 23rd day of January 2001

J. I. ULUIVUDA
President of the Republic Fiji

EMERGENCY DECREE NO. 4 OF 2000

EMERGENCY DECREE (EXTENSION) (NO. 2) ORDER 2001

IN exercise of the powers conferred upon me by section of the Emergency Decree No. 4 of 2000, I, hereby make this Order—

Citation

1. This Order may be cited as the Emergency Decree (Extension) (No. 2) Order 2001.

Extension of Validity

2. The Emergency Decree No. 4 of 2000 is extended to a further 14 days with effect from 26th January 2001.

Dated at Suva this 25th day of January 2001.

T. RATAKALE
Minister for Home Affairs & Immigration