

[LEGAL NOTICE NO. 2]

INCOME TAX ACT 2015
(ACT NO. 32 OF 2015)

Income Tax (Exempt Income) Regulations 2016

IN exercise of the powers conferred on me by section 20(1) of the Income Tax Act 2015, I hereby make these Regulations—

Short title and commencement

1.—(1) These Regulations may be cited as the Income Tax (Exempt Income) Regulations 2016.

(2) These Regulations shall come into force on 1 January 2016.

Interpretation

2.—(1) In these Regulations, “Act” means the Income Tax Act 2015.

(2) Subject to subregulation (1), words and phrases have the same meaning as under the Act unless the context otherwise requires.

Exempt income

3.—(1) The amounts specified in the Schedule are exempt income for the purposes of the Act.

(2) For the purposes of section 112(1)(b) of the Act, interest is exempt under the provisions of the Schedule.

Made this 1st day of January 2016.

F. S. KOYA
Acting Minister for Finance

SCHEDULE
(Regulation 3)

EXEMPT INCOME

PART 1—GOVERNMENT

The following amounts are exempt income—

- (1) The official allowances paid to Members of Parliament.
- (2) The income of a town or local council, or public authority, other than income received in trust.
- (3) The income of a company, commission, or association if not less than 90% of the stock or capital of the company, commission, or association is owned by a town council.
- (4) The income of the Reserve Bank of Fiji or of any sinking fund in respect of the public debt.
- (5) The income from the investment of a loan raised by the Government, the interest on which is exempt income under Part 4(1) of this Schedule.
- (6) The income of the Fiji Development Bank.
- (7) The income of the Land Transport Authority.
- (8) The income of the iTaukei Land Trust Fund.
- (9) The income of Film Fiji.

PART 2—EXEMPT ENTITIES

The income of the following entities is exempt income—

- (1) A co-operative society registered under the Co-operatives Act 1996 if the Minister has declared by order, to be exempt income. The period of the exemption shall be as specified in the order but shall not exceed 8 years from the date of registration as a co-operative society.
- (2) A society registered under the Co-operatives Act 1996, whose sole objects are accepting deposits from members and non-members, and granting loans for productive purposes to members but not including income derived from a trade or business carried on by the society. The exemption applies on income derived by a co-operative society and carried to a reserve fund or capitalised.
- (3) The Government of a foreign country or foreign territory to the extent specified under the Diplomatic Privileges and Immunities Act (Cap. 8).
- (4) An international organisation declared pursuant to section 6 of the Diplomatic Privileges and Immunities Act (Cap. 8) to the extent specified under that Act. If the exemption provided to an international organisation under an agreement between the organisation and the Government of Fiji is broader than provided under the Diplomatic Privileges and Immunities Act (Cap. 8), the exemption under the agreement applies, provided that the agreement has been approved by Cabinet.

PART 3—INDIVIDUALS

The following amounts are exempt income—

- (1) A capital payment received by way of a death gratuity or consolidated compensation for death or injury.
- (2) So much of a lump sum amount relating to the employment of an employee as, in the opinion of the CEO, is reasonable, but not exceeding \$5,000, reduced by any other amount treated as exempt income under this paragraph for the employee in the current and previous tax years. In this paragraph, “lump sum amount” means any amount, other than a redundancy payment, payable under a contract to an employee:
 - (a) on termination or impending termination of employment;
 - (b) for the relinquishment, termination, loss, repudiation, cancellation, or variation of employment;
 - (c) in respect of appointment to an employment, or of a right or claim to be appointed to an employment; or
 - (d) on retirement which, in the opinion of the CEO is reasonable if the employer of the employee has either been a contributor to an approved fund or to the Fiji National Provident Fund provided payment is made on or before 31st December 1986 and the employee has attained the age of 55 years or more, or has not been a contributor to an approved fund or to the Fiji National Provident Fund,

but does not include the following:

- (i) any refund from an approved fund or the Fiji National Provident Fund;
 - (ii) any amount received or accrued in respect of, or in commutation of, any amount due under any contract of employment;
 - (iii) any payment in respect of or in lieu of leave.
- (3) The employment income of a member of the State’s forces serving in Fiji to the extent that such income are derived from funds other than the funds of the Government of Fiji.
- (4) The employment income of a member of the State’s forces who is ordinarily resident in Fiji but who is serving outside Fiji to the extent that such income are derived from funds other than the funds of the Government of Fiji.
- (5) The employment income of a member of the State’s forces who is ordinarily resident in Fiji but who is serving with the United Nations that is additional to the employment income that the member would be entitled if serving in Fiji.
- (6) The foreign-source income of a member of the armed forces of a foreign country or territory allied with the State serving in Fiji.

- (7) The foreign-source income of a member of an official mission, approved by the Minister, of a foreign country or territory allied with the State serving in Fiji.
- (8) The foreign-source income of an individual arising from service in Fiji on secondment from the government of a foreign country or territory (referred to as “foreign government”), but only if the foreign government continues to be responsible for the payment of the person’s employment income during the secondment and the employment income is not exempt income in the foreign country or territory.
- (9) A scholarship awarded to a person for full-time instruction at a university, college, school, or other educational institution.
- (10) An education allowance paid to—
 - (a) a designated officer in pursuance of the Overseas Service (Fiji) Agreement, 1961; or
 - (b) a member of the staff of the University of South Pacific in pursuance of an agreement with a foreign government.
- (11) An amount payable as compensation under the Compensation Scheme to a pensionable designated officer under the Overseas Service (Fiji) Agreement, 1961 who retires in the interests of localisation.
- (12) The income of a member of the American Peace Corps working in Fiji.
- (13) The foreign income, other than employment income, of a temporary resident.
- (14) The employment income of a public servant of the Government who is required to live outside Fiji in order to perform their duties, other than basic salary and gratuity, if the income has been subject to tax in the foreign country or territory.
- (15) The costs of passage of a temporary resident and his or her family paid or reimbursed by an employer. The exempt amount is limited to the economy airfare by the most direct route between Fiji and the home country of the temporary resident in relation to—
 - (a) the initial arrival in or final departure from Fiji;
 - (b) one return journey per year for leave purposes; and
 - (c) journeys made for urgent family purposes.
- (16) Alimony or maintenance.
- (17) The income received by an individual who is a member of the staff of the University of the South Pacific or is the holder of an appointment sponsored by the Fiji Government that is payable under a scheme of supplementation by virtue of an agreement between the Fiji Government and the Government of another State if such income is paid, and subject to tax in the other State.
- (18) An inducement or education allowance received by an employee.
- (19) The proportion of a gratuity received by a designated officer that is payable by the United Kingdom Government under the provisions of the Overseas Service (Fiji) Agreement 1961, as amended from time to time.

- (20) The employment income derived by an individual by reason of service at the University of the South Pacific—
- (a) under the Australian Universities International Development Programme in such circumstances that the Programme is responsible for the payment of such income and only to the extent that such income is paid under the Programme and is subject to Income Tax in Australia; or
 - (b) as the holder of any appointment in respect of which employment income is payable under any scheme of supplementation of the Government of Australia approved by the Government of Fiji, only to the extent to which such income is subject to Income Tax in Australia.
- (21) An allowance paid in accordance with the Criminal Procedure Decree (Allowances to Witnesses and Assessors) Rules 2010 to—
- (a) a witness attending at a trial or enquiry before a Magistrate’s Court or the High Court, or summoned to appear before any Court exercising appellate jurisdiction; or
 - (b) an assessor attending a trial at the High Court.
- (22) The income of an individual entitled to privileges under the Diplomatic Privileges and Immunities Act (Cap. 8) to the extent specified under that Act. If the exemption provided to an official or employee of an international organisation under an agreement between the organisation and the Government of Fiji is broader than provided under the Diplomatic Privileges and Immunities Act (Cap. 8), the exemption under the agreement applies, provided that the agreement has been approved by Cabinet.

PART 4—EXEMPT INTEREST

The following amounts are exempt income—

- (1) Interest payable on a loan charged on the public revenue of Fiji if the Minister has declared the interest, by order, to be exempt income.
- (2) Interest paid by a resident company or a permanent establishment in Fiji of a non-resident company to a non-resident person in respect of a loan if the following conditions are satisfied—
 - (a) the loan was entered into outside Fiji;
 - (b) the loan was provided in a currency other than Fiji currency;
 - (c) the payer and recipient of the interest are not associates;
 - (d) the loan funds were for use by—
 - (i) the resident company in a business carried on by the company in or outside Fiji; or
 - (ii) the permanent establishment of a non-resident company in a business carried on in Fiji; and
 - (e) the interest is paid outside Fiji.

- (3) Interest credited to the account of a member of the Fiji National Provident Fund under the provisions of the Fiji National Provident Fund Decree 2011.
- (4) The first \$200 of interest derived by a resident individual in a tax year from a financial institution in Fiji.
- (5) Interest derived by a citizen of a foreign country from a financial institution in Fiji recognised in the “Fiji My Second Home” programme administered by the Department of Immigration in Fiji—
 - (a) if the individual is below 50 years of age, the individual maintains a minimum deposit of one hundred and fifty thousand dollars (FJD\$150,000) with a financial institution in Fiji for a minimum of 2 years; or
 - (b) if the individual is 50 years of age or older, the individual maintains a minimum deposit of one hundred thousand dollars (FJD\$100,000) with a financial institution in Fiji for a minimum of 2 years.

In both cases, the exemption is available in the third or a subsequent year only if the individual maintains a minimum deposit of fifty thousand dollars (FJD\$50,000).

- (6) Interest derived by a non-resident person from a deposit in a Foreign Currency Account if the amount of the deposit is above the equivalent of one hundred and fifty thousand dollars (FJD\$150,000).
- (7) Interest derived by a non-resident person from a deposit in a Fiji Dollar External Account.
- (8) Interest derived from a financial institution by a non-profit organisation.
- (9) Interest derived from a Bank,—
 - (a) by a senior citizen (55 years old or above) or a pensioner in a year, which—
 - (i) does not exceed \$16,000; and
 - (ii) the CEO is satisfied that the interest income is their only source of income unless the other source of income is as specified in sub paragraph (b);
 - (b) by any senior citizen (55 years old or above) or a pensioner who earns a pension income paid by the Government, Fiji National Provident Fund or any approved fund and also earns an interest income as specified in paragraph (9) sub paragraph (a) of this part, shall be entitled to the exemption; and
 - (c) the interest derived from a licensed Bank, by an individual taxpayer gross income \$16,000 or less in a year.

PART 5—EXEMPT DIVIDENDS

- (1) A dividend paid by a resident company listed on the South Pacific Stock Exchange, to a resident or non-resident shareholder.
- (2) The nominal value of bonus shares provided to a shareholder to the extent that the shares have been paid up out of profits 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 if the company—

- (a) is listed on the South Pacific Stock Exchange within 12 months of such reconstruction or reorganisation or such longer period as the CEO may allow; and
 - (b) remains listed on the South Pacific Stock Exchange for a period of not less than 3 years.
- (3) A dividend paid to a resident person from the Unit Trust of Fiji, the Colonial First State Income and Growth Fund, Fijian Holdings Unit Trust and the Fijian Holdings Property Trust Fund.
 - (4) A dividend paid or credited in favour of a resident from any other Unit Trust company approved by the CEO.
 - (5) A dividend paid by a resident company to another resident company. Despite the treatment of the dividend as exempt income, the resident company receiving the dividend is entitled to a deduction for expenditure incurred in deriving the dividend to the extent allowed under the Act.
 - (6) Any dividend paid out by a resident company listed on SPSE shall not be subject to section 143(7) of the Act.

PART 6—PROVIDENT AND PENSIONS FUNDS, AND PENSIONS

The following amounts are exempt income—

- (1) The amount of contributions made by an employer to the Fiji National Provident Fund, or an approved or a non-approved fund in respect of an employee to the extent that the contributions do not exceed statutory minimum required to be made by the employer in respect of the employee under the Fiji National Provident Fund Decree 2011.
- (2) The income of an approved fund and the Fiji National Provident Fund.
- (3) A pension or annuity paid by the Fiji National Provident Fund, or an approved or non-approved fund to a resident or non-resident individual.
- (4) A lump sum or refund of contributions paid by the Fiji National Provident Fund, or an approved or non-approved fund paid to a member of the fund or, in the case of the death of a member, paid to the person entitled to the benefit.
- (5) The income of a provident fund lawfully established by a town council.
- (6) The income of the Civil Service Widows and Orphans Pension Scheme and Non-Pensionable Employees Fund established under the Government Employees Provident Fund Ordinance.
- (7) A pension received by a member of Fiji's naval, military, or air forces for any disability suffered by the person receiving the pension serving in the State's forces during a war and a pension received by a dependent relative of any person killed or who suffered a disability while serving in a State's forces during a war if the pension is granted in respect of such death or disability.

PART 7—SOCIAL POLICY EXEMPTIONS

The following amounts are exempt income—

- (1) The income arising from investments made by the Banaban Trust Fund Board in accordance with section 6C of the Banaban Settlement Act (Cap. 123).
- (2) The income (other than business income) derived by a non-profit organisation provided that the income is either expended in Fiji or for purposes that result in benefit of resident individuals.

PART 8—SHIPPING PROFITS

- (1) The income of a non-resident person operating a ship in international traffic is exempt income if the Minister is satisfied that an equivalent exemption from Income Tax is granted to resident persons by the country in which the non-resident person resides. For the purposes of this section, a company is resident in the country in which its central management and control is located.

PART 9—ECONOMIC DEVELOPMENT EXEMPTIONS

- (1) The Minister may, either by order, or by written direction to the CEO, if satisfied that it is expedient for the economic development of Fiji, declare that the whole of the income of a mining company is exempt income or taxed at a reduced rate as specified in the order or direction. The period of the exemption or application of a reduced rate is as specified in the order or direction.
- (2) The income of a co-operative dairy company incorporated in Fiji and registered under the provisions of the Co-operative Dairy Companies Act (Cap. 119) is exempt income in so far only as it is derived from the collection, treatment or manufacture and distribution of dairy produce from milk or cream supplied by shareholders, or from the investment of any surplus funds from such activities not distributed to shareholders.
- (3) The income of an Information Communications Technology business—
 - (a) operating on or before 1 January 2007 in the declared Kalabu Tax Free Zone is exempt income for the period 1 January 2007—31 December 2016; or
 - (b) granted a licence after 1 January 2009 is exempt income for the period of 13 years from the date of issue of the licence,

provided that the business employs fifty employees or more for at least 6 months of the tax year and at least 60% of the total value of services provided in the tax year is exported.

A business granted a licence referred to in subparagraph (a) must pay an annual licence fee of one thousand dollars (FJD\$1,000) to the CEO for the period of the licence.

For the purposes of this paragraph, “Information Communication Technology business” means services provided by a person by way of software development,

call centres, or internet services, but does not include an internet café or any retail or wholesale of information technology products or the repair, sale or service of any such products.

- (4) The income of prescribed small and micro enterprises engaged in agriculture, fisheries, or tourism that has a gross turnover not exceeding FJD\$500,000 is exempt income.
- (5) The income of the Hospital Corporation (South Pacific) Limited trading as Apollo Pacific Hospital Project is exempt income for the period 1 January 2008 to 31 December 2017.
- (6) The income of a person derived from a new activity in commercial agricultural farming and agro-processing approved by the CEO during the period 1 January 2009 to 31 December 2014 and employing thirty local employees or more for every tax year—
 - (a) for a new activity approved and established from 1 January 2009 to 31 December 2009, the income is exempt income—
 - (i) in the case of capital investment from FJD\$250,000 to \$1,000,000, for a period of 4 consecutive tax years;
 - (ii) in the case of capital investment from FJD\$1,000,001 to FJD\$2,000,000, for a period of 7 consecutive tax years; or
 - (iii) in the case of capital investment of more than FJD\$2,000,000, for a period of 10 consecutive tax years; or
 - (b) for a new activity approved and established from 1 January 2010 to 31 December 2014 with a capital investment of more than FJD\$2,000,000, the income is exempt income for a period of 10 consecutive tax years.
- (7) The income of a person derived from a new activity in processing agricultural commodities into bio-fuels for a period of 10 years is exempt income if—
 - (a) the person with a minimum level of investment in the activity of FJD\$1,000,000;
 - (b) the person employs twenty or more local employees for each year of the ten-year period; and
 - (c) the exemption is approved by the CEO during the period 1 January 2009—31 December 2018.
- (8) The income of a person derived from a new activity in renewable energy projects and power cogeneration is exempt income for a period of 5 years if the exemption is approved by the CEO.
- (9) The net gain derived by a resident during the tax year from the trading of shares in a company listed with the South Pacific Stock Exchange is exempt income.

- (10) The income derived by a person from any new activity approved and established in the declared Tax Free Region from the airport side of the Rewa Bridge, excluding the town boundary of Nausori, up to the Ba side of the Matawalu River is exempt income—
- (a) \$250,000 to \$1,000,000, for a period of 5 consecutive fiscal years;
 - (b) \$1,000,001 to \$2,000,000, for a period of 7 consecutive fiscal years;
 - (c) \$2,000,001 or more, for a period 13 consecutive fiscal years.
- (11) The income derived by Momi Bay Resort Limited is exempt income for a period of 13 consecutive tax years commencing from the 2013 tax year.
- (12) The income of a shipping company derived from servicing the Rotuma and Lau Group, as approved by the CEO, is exempt income for a period of 7 consecutive tax years.
- (13) The income of any taxpayer who is a Fiji Citizen derived from a local backpacker operation that is wholly owned by the Fiji Citizen, with an annual gross turnover not exceeding \$1,000,000, is exempt income.
- (14) The income of Information Communications Technology start-ups involved in application design or software development for a period of 13 years from the date of approval by the CEO.
- (15) The income of an accredited Information Communications Technology training institution for a period of 13 years from the date of approval by the CEO.
- (16) The income of a taxpayer derived from a new activity in commercial agricultural farming and agro-processing as approved by the CEO from 1st January, 2015 to 31st December, 2018—
- (a) \$250,000 to \$1,000,000, for a period of 5 consecutive fiscal years;
 - (b) \$1,000,001 to \$2,000,000, for a period of 7 consecutive fiscal years;
 - (c) \$2,000,001 or more, for a period of 13 consecutive fiscal years.

PART 10—LISTING IN SOUTH PACIFIC STOCK EXCHANGE

- (1) Subject to paragraph (2), the income made from the gain of the sale of shares that may arise from the re-organisation, re-construction or amalgamation of a private company for the purposes of listing or as part of a listing process on the South Pacific Stock Exchange, prior to listing, or after listing on the South Pacific Stock Exchange.
- (2) The private company shall be listed with the South Pacific Stock Exchange within 24 months from the date of commencement of the re-organisation, re-construction or amalgamation of the private company.
- (3) If the private company is not listed with the South Pacific Stock Exchange in accordance with paragraph (2), the income from the reorganisation, reconstruction or amalgamation of the private company shall be taxable under the Act.