

EXTRAORDINARY



GOVERNMENT OF FIJI GAZETTE

PUBLISHED BY AUTHORITY OF THE FIJI GOVERNMENT

Vol. 14

FRIDAY, 10th May 2013

No. 48

[565]

GOVERNMENT OF FIJI

INCOME TAX (AMENDMENT) DECREE 2013 (DECREE NO. 16 OF 2013)

IN exercise of the powers vested in me as the President of the Republic of Fiji and the Commander in Chief of the Republic of Fiji Military Forces by virtue of the Executive Authority of Fiji Decree 2009, I hereby make the following Decree—

TO AMEND THE INCOME TAX ACT (CAP. 201)

Short title and commencement

1.—(1) This Decree may be cited as the Income Tax (Amendment) Decree 2013 and shall be deemed to have come into force on 1st January, 2013 except section 7 (a) which shall be deemed to have come into force on 1st January, 2012.

(2) The Income Tax Act (Cap. 201) shall be referred to as the “Act”.

Section 7 amended

2. Section 7 (1) (a) of the Act is amended by deleting “\$15,600” and substituting “\$16,000” wherever it appears.

Section 7E amended

3. Section 7E of the Act is amended by deleting “Levy” and substituting “Tax” wherever it appears.

Section 7G amended

4. Section 7G of the Act is amended by deleting subsections (1), (2) and (3) and substituting with the following new subsections—

“(1) Subject to this Act, a levy to be known as the “Credit Card Levy” shall be imposed for each monthly billing cycle at the rate of 2% imposed on the holder of a bank credit card.

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

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

Section 9A amended

5. Section 9A of the Act is amended by inserting—

- (a) “final tax” after the words “resident interest withholding tax” wherever they appear; and
- (b) the following new subsection after subsection (2)—

“(2A) Any financial institution paying interest to a resident person, must withhold tax from the gross amount of the interest at the rate specified in subsection (2).”

Section 11 amended

6. Section 11 of the Act is amended by adding the following new paragraph after paragraph (bb)—

“(cc) undefined or unidentified deposits in any bank account.”

Section 21 amended

7. Section 21 (1) of the Act is amended—

- (a) in paragraph (r) by deleting “2012” and substituting “2014”; and
- (b) by adding a new paragraph after paragraph (zq)—

- “(zr) – (i) two times the amount of the cost of new computers, laptops and tablets donated to rural schools registered with the Ministry of Education; and
- (ii) one and a half times the amount of the cost of new computers, laptops and tablets donated to urban schools registered with the Ministry of Education.

Notwithstanding subparagraphs (i) and (ii), any person wishing to claim this deduction shall prove to the satisfaction of the Commissioner that they meet the minimum cost requirement.

- (a) For the purpose of this paragraph—

“cost” means the total cost incurred for the purchase of any new computer, laptop or tablet with the minimum cost of \$10,000 and maximum cost of \$100,000, excluding other incidental costs.

Section 21B amended

8. Section 21B (2) of the Act is amended by—

Year of assessment	Percentage of export income to be deducted	
2013	deleting “30%”	substitute “40%”

Insertion of section 23A

9. The Act is amended by inserting the following new section after section 23—

“No deduction allowed until tax withheld is paid

23A.—(1) If a person is allowed a deduction for a payment from which the person is required to withhold employment or resident interest withholding tax, the deduction shall not be allowed until the tax withheld has been paid to the CEO.

(2) No deduction shall be allowed for any charitable donation to reduce the employment income or resident interest of an employee, as a final tax under section 122.”

Section 24 amended

10. Section 24 of the Act is amended in—

- (a) subsection (1) by deleting “, subject to the deductions specified in sections 25 and 26” after the word “elsewhere”;
- (b) subsection (2) by deleting—
 - “, only such proportion of—
 - (i) the deductions specified in section 25;
 - (ii) the deductions specified in section 26 (1) (a), (b), (c) and (f); and
 - (iii) any contributions allowable under section 26 (1) (d) and (e)”;
- (c) subsection (3) by deleting paragraph (c).

Sections 25, 26 and 28 repealed

11. Subject to section 22 of this Decree, the Act is amended by repealing sections 25, 26 and 28.

Section 31 amended

12. Section 31 of the Act is amended in—

- (a) sub section (1) by deleting—

“, subject to the following deductions—

(a) in respect of a wife living with or wholly maintained by the non- resident, an allowance of \$1,200; and

(b) in respect of a non-resident who is widowed, an allowance of \$1,000”; and

(b) in the proviso by deleting “only such proportion of the allowances as equals” after the word “deduct”.

Section 43 amended

13. Section 43 of the Act is amended in—

(a) subsection (1) (a) by deleting “Such election shall state whether the husband or the wife is to be the person to whom allowances, if any, under the provisions of section 25 or 31 may be made and only the person so stated shall be entitled to receive any such allowance” after the word “unmarried”;

(b) subsection (1) (b) by deleting “subject to the provisions of section 25 (1) (A)”;

(c) subsection (2) by deleting paragraphs (a) and (b); and

(d) subsection (10) (b) (ii) by deleting “with a deduction of \$1,200 in respect of the allowance for the wife”.

Part XI amended

14. The Act is amended by deleting Part XI and substituting the following—

“Part XI – Pay As You Earn Final Withholding Tax

Interpretation

79. For the purposes of this Part and the Act—

“employee” means an individual engaged in employment;

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

“employment” includes—

(a) a directorship or other office in the management of a company;

(b) a position entitling the holder to a fixed or ascertainable remuneration; or

(c) the holding or acting in any public office;

“employment income” has the meaning as provided for in section 81; and

“tax” includes the Social Responsibility Tax.

Imposition of Income Tax and Social Responsibility Tax

80.—(1) Subject to this Act, a tax to be known as “Income Tax” shall be imposed for each tax year at the rate or rates specified in the Fourth Schedule on a person who has chargeable income for the year.

(2) In addition to the Income Tax imposed under subsection (1) and subject to this Decree, a tax to be known as the “Social Responsibility Tax” shall be imposed for each tax year at the rate specified in the Fourth Schedule on an individual, including an employee, who is liable for Income Tax for the tax year.

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

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

(a) the foreign tax credit allowed;

(b) the tax credits allowed.

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

- (a) tax as provided in sections 8, 8A, 9, 9A, 10A; or
- (b) withholding of tax as a final tax as provided in section 122.

(6) If, for a tax year, an individual has both chargeable income and employment income to which section 82 applies, the Income Tax payable on the chargeable income is computed according to the following formula—

$$A - B$$

where—

- A** is the amount of Income Tax that would be payable on an amount of chargeable income equal to the aggregate of the individual's chargeable income and employment income to which section 122 applies for the year; and
- B** is the amount of Income Tax that would be payable on an amount of chargeable income equal to the individual's employment income to which section 122 applies for the year.

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

Employment income

81.—(1) The following amounts are included in the employment income of an employee—

- (a) salary, wages, or other remuneration derived by the employee in respect of employment, including leave pay, payment in lieu of leave, overtime pay, bonus, commission, fees, gratuity or work condition supplements;
- (b) the value of a fringe benefit, other than an exempt fringe benefit, derived by the employee in respect of employment that is not subject to tax under the Fringe Benefits Tax Decree;
- (c) the amount of any allowance derived by the employee in respect of employment, including a cost of living, subsistence, rent, utilities, education, entertainment, meeting or travel allowance, but not including any allowance to the extent expended in the performance of the employee's duties of employment;
- (d) the amount of any expenditure incurred by the employee that is reimbursed by the employer, other than expenditure to the extent incurred on behalf of the employer in the performance of the employee's duties of employment;
- (e) an amount derived by the employee as consideration for—
 - (i) the agreement by the employee to enter into employment;
 - (ii) the employee to agree to any conditions of employment or any changes to the employee's conditions of employment; or
 - (iii) the agreement of the employee to accept a restrictive covenant in respect of any past, present or prospective employment;
- (f) an amount derived by the employee on termination of employment, whether paid voluntarily or under an agreement, including a redundancy payment or other compensation for loss of employment, and golden handshake payments;
- (g) any pension, annuity or supplement to a pension or annuity derived by the employee in respect of employment, including a past employment;
- (h) the amount of any loan, payment for an asset or services, value of any asset or services provided, 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 of which the transaction is, in substance, employment income.

(2) The value of a fringe benefit included in employment income under subsection (1) (b) is determined under the Fringe Benefit Tax Decree.

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

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

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

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

Withholding of tax from employment income

82.—(1) An employer must withhold tax from a payment of employment income to an employee as prescribed.

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

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

Regulations

82A. The Minister shall make regulations with regards to the charge, collection and repayment of tax in respect of employment income as withholding tax.”

Section 91 amended

15. Section 91 of the Act is amended—

(a) in subsection (1)—

- (i) paragraph (a), by deleting “thirty percent (30%) of the estimated amount of tax payable” and substituting “33.3% equal to the tax assessed in respect of the income of the previous income year”;
- (ii) paragraph (b), by deleting “thirty percent (30%) of the estimated amount of tax payable” and substituting “33.3% of the tax assessed in respect of the income of the previous income year”;
- (iii) paragraph (c) by deleting “thirty percent (30%) of the estimated amount of tax payable” and substituting “33.4% of the tax assessed in respect of the income of the previous income year”; and
- (iv) by deleting paragraph (d); and

(b) by adding a new subsection after subsection (4)—

“(5) For the income year 2012, the advance payment of tax by every company to the Commissioner may continue under the percentage and instalment payment of tax applied before the commencement of this Decree.”

Section 92 amended

16. Section 92 of the Act is amended by deleting subsection (4) and substituting the following new subsection (4)—

“(4) – (a) If the advance payment of Income Tax payable by a company for the sixth, ninth and twelfth month of a tax year is less than 90% of the actual Income Tax liability as specified in subsection (1), the company is liable for a penalty equal to 40% of the company’s advance payment shortfall for the respective months.

(b) In this section, “advance payment shortfall” means, in relation to a company for a tax year, the difference between the advance tax payable based on the actual Income Tax liability of the company for

the preceding tax year and the advance tax paid in the sixth, ninth and twelfth months.”

Insertion of section 107A

17. The Act is amended by inserting the following new section after section 107—

“Concessionary rate of tax for Regional or Global Headquarters

107A.—(1) The Minister may by regulations, provide that tax at a rate of 17% or such other concessionary rate, be levied and paid for each year of assessment upon such income as the Minister may specify for an approved regional or global headquarters.

(2) Pursuant to subsection (1), tax shall be levied for income derived by the regional or global headquarters from the provision of qualifying services as prescribed to its offices, associated companies and other persons, outside Fiji.

(3) The concessionary rate of tax referred to in subsection (1) shall apply to an approved regional or global headquarters—

- (a) in respect of any qualifying service only where the qualifying service and the office, associated company or person to whom the service is rendered, have been approved in relation to that regional or global headquarters for such concessionary rate; and
- (b) subject to such conditions as the CEO or any person appointed by the CEO, may impose.

(4) In this section—

“associated company”, in relation to an approved regional or global headquarters, means a company—

- (a) the operations of which are or can be controlled, directly or indirectly, by that regional or global headquarters;
- (b) which controls or can control, directly or indirectly, the operations of that regional or global headquarters; or
- (c) the operations of which are or can be controlled, directly or indirectly, by a person or persons who control or can control, directly or indirectly, the operations of that regional or global headquarters; and

“regional or global headquarters” refers to a regional or international company which operates or is carrying on business in Fiji, and which provides management, technical or other supporting services to its offices or associated companies, outside Fiji.

(5) For the purposes of subsection (4), a company shall be deemed to be an associated company in relation to an approved regional and global headquarters if—

- (a) at least 25% of the total number of its issued shares are beneficially owned, directly or indirectly, by the approved headquarters company; or
- (b) at least 25% of the total number of the issued shares of the approved headquarters company are beneficially owned, directly or indirectly, by the first-mentioned company.”

Insertion of Part XVI

18. The Act is amended by inserting the following new Part after Part XV—

“Part XVI – Withholding Employment or Resident Interest Withholding Tax

No withholding from exempt income

112. A person shall not be liable to withhold tax from an amount that is exempt income of the recipient mentioned under section 16 and section 17.

Time of withholding

113. A person required to withhold employment or resident interest withholding tax under this Part from an amount paid by the person must withhold the employment income or resident interest withholding tax when the amount is—

- (a) credited to the account of the recipient; or
- (b) actually paid,

whichever occurs first.

Payment of tax withheld

114.—(1) Any employment or resident interest withholding tax required to be withheld by a person under this Decree must be paid to the CEO by the end of the calendar month following the month in which the person was required to withhold the tax.

(2) A liability for withholding employment or resident interest withholding tax under this Decree arises by operation of this section and shall not be dependent on the CEO making an assessment of the withholding tax due.

Failure to pay tax withheld

115.—(1) A person who—

- (a) fails to withhold employment or resident interest withholding tax as required under this Part; or
- (b) having withheld employment or resident interest withholding tax, fails to pay the tax to the CEO as required under section 114,

is personally liable to pay the amount of employment and resident interest withholding tax to the CEO.

(2) A person personally liable for an amount of tax under subsection (1) as a result of failing to withhold the employment or resident interest withholding tax shall be entitled to recover the employment and resident interest withholding tax from the recipient of the payment.

Recovery of withholding tax

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

(2) Notwithstanding the recovery of any employment or resident interest withholding tax under subsection (1), the person who fails to withhold the employment or resident interest withholding tax shall continue to be liable for—

- (a) any other legal action in relation to the failure;
- (b) the imposition of penalty in respect of the failure; and
- (c) the disallowing of a deduction for the expenditure to which the failure relates to under section 23A (1).

Tax Withholding Certificate

117.—(1) A person withholding employment or resident interest withholding tax as final tax must give to the recipient of the payment a Tax Withholding Certificate as prescribed.

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

Annual withholding tax summary

118. A person withholding employment or resident interest withholding tax must, within two months after the end of the tax year or within such further time as the CEO may allow by notice in writing, file with the CEO an annual withholding tax summary as prescribed.

Priority of tax withheld

119. An amount that a person is required to withhold from a payment is—

- (a) a first charge on the payment; and
- (b) deducted prior to any other amount that the person may be required to deduct from the payment by virtue of an order of any Court or under any other law.

Indemnity

120. A person who has withheld employment or resident interest withholding tax from a payment under this subdivision and remitted the employment or resident interest withholding tax to the CEO shall be indemnified against any claim by the recipient for payment of the withheld amount.

Credit for withholding employment or resident interest withholding tax

121.—(1) For the purposes of this Act, if employment or resident interest withholding tax has been withheld under this subdivision from income derived by a person, the amount of income included in the gross income of the person shall be the amount derived before the withholding of the employment and resident interest withholding tax.

(2) Subject to subsections (3) and (4), if employment or resident interest withholding tax has been withheld from income derived by a person, the person shall be allowed a tax credit against the tax due by the person on the chargeable income of the person for the tax year in which the tax was withheld.

(3) No tax credit shall be allowed if the employment or resident interest withholding tax withheld is a final tax on the income under section 114.

(4) A tax credit allowed under this section is applied in accordance with section 80 (3).

(5) A tax credit or part of a tax credit allowed to a person under this section for a tax year that is not credited under section 80 (3) for the year shall be refunded to the person in accordance with section 33 of the Tax Administration Decree 2009.

Withholding employment and resident interest withholding tax as a final tax

122.—(1) This section applies to employment or resident interest withholding tax withheld during a tax year under—

- (a) section 82 provided that the employee does not have two or more employments at the same time for the whole or part of the tax year; or
- (b) section 9A (2) if the interest is paid by a financial institution to a resident individual.

(2) If this section applies, the employment or resident interest withholding tax withheld is a final tax on the amount in respect of which the tax has been withheld and—

- (a) the amount is not included in gross income in computing the chargeable income of the person who derives it for any tax year, although employment income to which subsection (1) (a) applies is taken into account as specified in section 80 (5);
- (b) no deduction is allowable under this Act in computing the chargeable income of the person for any expenditure or loss incurred in deriving the amount;
- (c) the amount is not reduced by any deduction allowed under this Act or by any loss carried forward; and
- (d) the tax withheld is not reduced by any tax credits allowed under this Act.”

Fourth Schedule amended

19. The Act is amended in the Fourth Schedule by inserting the following table after—

(a) Table A8 —

“Table A9 – Year of Assessment 2013 and subsequent year —

Resident Individuals

Chargeable income FJD\$	Income Tax Payable FJD\$	Social Responsibility Tax FJD\$
0–16,000	Nil	Nil
16,001–22,000	7% of excess over \$16,000	Nil

22,001–50,000	\$420 + 18% of excess over \$22,000	Nil
50,001–270,000	\$5,460 + 20% of excess over \$50,000	Nil
270,001–300,000	\$49,460 + 20% of excess over \$270,000	23% of excess over \$270,000
300,001–350,000	\$55,460 + 20% of excess over \$300,00	\$6,900 + 24% of excess over \$300,000
350,001–400,000	\$65,460 + 20% of excess over \$350,000	\$18,900 + 25% of excess over \$350,000
400,001–450,000	\$75,460 + 20 % of excess over \$400,000	\$31,400 + 26% of excess over \$400,000
450,001–500,000	\$85,460 + 20% of excess over \$450,000	\$44,400 + 27% of excess over \$450,000
500,001–1,000,000	\$95,460 + 20% of excess over \$500,000	\$57,900 + 28% of excess over \$500,000
1,000,001 +	\$195,460 + 20% of excess over \$1,000,000	\$197,900 + 29% of excess over \$1,000,000”

(b) Table B6 –

“Table B7 – Year of Assessment 2013 and subsequent year –

Non-resident individuals

Chargeable income FJD\$	Tax payable FJD\$	Social Responsibility Tax FJD\$
0 – 16,000	20% of excess over \$0	Nil
16,001 – 22,000	\$3,200 + 20% of excess over \$16,000	Nil
22,001 – 50,000	\$4,400 + 20% of excess over \$22,000	Nil
50,001 – 270,000	\$10,000 + 20% of excess over \$50,000	Nil
270,001 – 300,00	\$54,000 + 20% of excess over \$270,000	23% of excess over \$270,000
300,001–350,000	\$60,000 + 20% of excess over \$300,000	\$6,900 + 24% of excess over \$300,000
350,001–400,000	\$70,000 + 20% of excess over \$350,000	\$18,900 + 25% of excess over \$350,000
400,001–450,000	\$80,000 + 20% of excess over \$400,000	\$31,400 + 26% of excess over \$400,000
450,001–500,000	\$90,000 + 20% of excess over \$450,000	\$44,400 + 27% of excess over \$450,000
500,001–1,000,000	\$100,000 + 20% of excess over \$500,000	\$57,900 + 28% of excess over \$500,000
1,000,001 +	\$200,000 + 20% of excess over \$1,000,000	\$197,900 + 29% of excess over \$1,000,000”

(c) Table C7—

“Table C8 – Year of assessment 2013 and subsequent year—

- | | |
|--|--------|
| (a) Every company, other than companies to which paragraph (b),(c) or (d) applies..... | 20% |
| (b) Non-resident shipping companies..... | 2% |
| (c) Any non-resident company that establishes or relocates their regional or global headquarters in Fiji | 17% |
| (d) Any company listed on South Pacific Stock Exchange and has a minimum of 40% resident shareholders..... | 18.5%” |

Twelfth Schedule amended

20. The Twelfth Schedule is amended in—

- (a) paragraph 4 (d) by deleting “Levuka” and substituting “Korovou to Tavua” ; and
- (b) paragraph 12 (1) by inserting the following new sub-subparagraphs after sub-subparagraph (ii)—
 - “(iii) any new activity approved and established on or after 1st January, 2013 in the Tax Free Region from Korovou to Tavua and is engaged in the agricultural sector shall be exempt from tax for a period of 13 consecutive fiscal years; or
 - (iv) any new activity approved and established on or after 1st January, 2013 in the Tax Free Region from Korovou to Tavua and is engaged for the dairy industry shall be exempt from tax for a period of 20 consecutive fiscal years.”

Transitional

21. Sections 25, 26 and 28 shall continue to apply to any 2012 returns lodged after the commencement date of this Decree.

Consequential amendment

22. The Act is amended by deleting “emoluments” and substituting “employment income” wherever it appears.

GIVEN under my hand this 10th day of May 2013.

EPELI NAILATIKAU
President of the Republic of Fiji