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Newsletter

August 2021

Principal Tax Acts Updates

Ernst & Young highlights for your attention the following related Tax Administered laws by the Fiji Revenue Customs Services (FRCS) that are now effective from 1st August 2021.

A. Amendments to the Income Tax Act (ITA) and Income Tax Regulations

(i) Extension to the "Debt" forgiveness provisions

The debt forgiveness provisions that were to expire on the 31st December 2021 are now extended to 31st December 2022. A very useful provision for restructuring of related party debts between entities.

(ii) Export Income Deduction (EID) incentives

The EID incentive in the case of any industry apart from forestry and fisheries will be extended to 2023 and 2024 and 60% of export income will be exempted. Again, a very useful incentive for exporter businesses.

For the same period, the forestry and fisheries industries will qualify for a 90% exemption on export income.

(iii) Pandemic Reserve

(1) Section 28A of the ITA is being inserted to allow for an income tax deduction for an amount deposited by a company in a tax year in an account with a financial institution for the purpose of providing a reserve for sustaining a business activity of the company that is affected by a pandemic.

(2) The deduction allowed under subsection (1) for a tax year is 150% of the amount deposited by the company.

(3) No deduction is allowed for the following:

- an amount previously deposited to an account referred to in subsection (1) and for which a deduction has been allowed under that subsection in respect of the deposit; and
- an amount that is withdrawn by the company and that is not applied to sustain the business activity of the company that is affected by a pandemic is income included in the gross income of the company for the tax year in which the amount is withdrawn.



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(iv) Reorganization-Deferral for Capital Gains Tax (CGT) purposes

The transfer of a property owned by a partnership to a resident company will qualify for a deferral on disposal if the percentage ownership in the partnership is exactly the same as that of the company.

Example: if A owns 40% and B owns 60% in a partnership that proposes to transfer property to a company, the percentage shareholding in the said company must be the same.

Section 88 has allowed for the transfer of assets between companies with the exactly the same shareholding to qualify for the CGT deferral.

B. Amendments to Value Added Tax (VAT) Act

(i) VAT Exemption on Parametric insurance

Parametric insurance refers to climate and disaster parametric insurance which is related to microinsurance products targeting farmers, fishermen, small businesses, market vendors and other vulnerable groups, for which a small subscription fee is paid and in the event of disasters the insured party receives a payout.

The supply of such services will also be included under the 1st schedule of the VAT Act.

(ii) Declaration of VAT status

The Chief Executive Officer (CEO) of FRCS may now disclose the VAT registration status of any person if a 3rd party requests it.

(iii) Zero rated changes

The definition of omnibus has now the same meaning given in section 2 of the Land Transport Act 1998.

(iv) Exemption of Import VAT

The following items have been exempted from Import VAT at country borders:

- Crew allowance; and
- Passengers unaccompanied luggage

C. Amendments to the Tax Administration Act (TAA)

(i) Amended assessments

Section 11 of the TAD has been amended so that FRCS will only go back 3 years to amend tax returns of Companies that have a gross turnover of less than \$1.25 million.

(ii) Refunds

Section 9C provides for refunds to persons where the ECAL has been levied or paid inadvertently or erroneously.

(iii) Non-Resident Withholding Tax (NRWHT) refunds

A new section 33(7) of the ITA is now inserted to clarify that refunds of NRWHT on fees for professional services would be made to non-residents who have paid the said NRWHT contrary to an international tax treaty to which Fiji is a party ('Tax Treaty'). This will be facilitated in accordance with the Mutual Procedure Agreement under the Tax Treaty.

This is a very important positive development for taxpayers who have paid the NRWHT under protest. We are awaiting the FRCS SIG to determine the time frame for refunds and to for which countries these are applied to.

(iv) Dishonoured cheques

A new section 46B is inserted to penalize taxpayers who have presented cheques that are dishonoured. The penalty is \$500.

(v) Waiver of penalty

A new Section 48D is being inserted to allow for waiver of penalties for any tax laws based on the following:

- makes payment arrangements with the CEO within 3 months after 1 August 2021; and
- pays the tax prior to 30 June 2022.

(vi) Tax Court referrals

Section 86 is amended to allow the Tax Court to remit the matter to the Chief Executive Officer of FRCS to reconsider his or her decision. Previously this was confined to the Tax Tribunal.

D. Environment and Climate Adaption Levy (ECAL)

(i) Refunds

Section 9C provides for refunds to persons where the ECAL has been levied or paid inadvertently or erroneously.

(ii) Offset of refunds

Section 9D which provides that refunds may first be used to pay any other outstanding duty, fee or charge owed by the claimant before being paid to the claimant.

(iii) Exemption on items listed under Customs Tariff Act concessionary codes

- Concession codes 212, 218, 218A and 219A pertain to personal imports, goods imported by travelling passengers and crew and unaccompanied luggage; and
- concession codes 235 and 235A pertain to goods imported for hotels and resorts.

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

We will be issuing shortly the amendments to the various tax regulations administered by the FRCS.

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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