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**Recent Developments in International Taxation**

**Fiji**

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## **Introduction**

Covid-19 reached its peak in Fiji in 2021, having a huge impact on Fiji's economy. Most tax relief schemes and allowances from 2020 were extended. Significant amendments were also made to tax laws between 2021 and 2022 to provide further relief to taxpayers and boost the economy. In this report, we highlight some of the recent changes and developments in Fiji's tax regime.

## **Definition of 'permanent establishment'**

Previously, under Fiji's Income Tax Act 2015, the Minister for the Economy (the 'Minister') could certify certain offshore entities as deemed not to have a permanent establishment in Fiji. These certificates could be issued to entities that contracted with either the government or an entity in which the government had an interest. The Minister had to be satisfied that the contractual agreement would contribute to an identifiable benefit to Fiji. It appears that the original aim was to attract contractors for public sector contracts.

The ability to issue such certificates was removed to bring the definition of 'permanent establishment' in line with international taxation rules. A subsequent amendment clarifies that any exemption granted by the Minister continues to have effect in accordance with the terms and conditions of the exemption.

## **Exceptions to taxation on debt forgiveness**

As a general rule, debt between associates that is forgiven is taxed as the income of the debt-relieved entity. An exception to this rule, that is now extended, applies to debt incurred before 31 December 2022 and forgiven between 1 April 2020 and 31 December 2023.

The exception extends to debts owed to foreign-associated entities.

## **Implementation of double tax agreement (DTA) provisions on professional services**

Withholding tax on professional services has been an ongoing issue in Fiji, particularly in relation to service providers from Australia and New Zealand, Fiji's closest trading partners. The Fiji Revenue and Customs Service (FRCS) had been effectively ignoring the provisions of various DTAs and collecting withholding tax on almost all offshore professional service payments contrary to the DTAs. FRCS has now started giving effect to the DTAs. Provisions were also introduced to refund taxes collected in the past. Where a non-resident derived a fee for the provision of a professional service and paid withholding tax to FRCS contrary to a DTA, the non-resident may now make a claim to FRCS for a refund, and FRCS will issue a refund in accordance with the Mutual Agreement Procedure under the applicable DTA.

## **Applications for binding ruling**

FRCS's power to issue a private binding ruling has been part of the law since 2009, but only came into effect from 25 October 2021. The private ruling is only binding on FRCS, not the taxpayer.

The private ruling is made on application by a taxpayer. It sets out FRCS's position regarding the application of a tax law to a transaction entered into or proposed to be entered into.

The private ruling is binding on the chief executive officer (CEO) of FRCS in relation to the taxpayer if:

- the taxpayer has made a full and true disclosure of all aspects of the transaction relevant to the making of a private ruling; and
- the transaction has proceeded in all material aspects as described in the application.

A private ruling, or part of it, is deemed withdrawn if legislation is passed, or a public ruling is subsequently made, that is inconsistent with the private ruling.

### **New capital gains tax (CGT) exemption**

Effective from 1 August 2021, capital gains made by a person on the sale of shares, if the shares were held by the person before 1 May 2011, are exempt. In addition, if before commencement (ie, 1 August 2021) a person was required to pay CGT and the person had not paid it, the person is no longer required to pay. However, if a person had paid CGT before commencement, CGT is not refundable.

### **VAT**

Effective 1 April 2022:

- VAT on a range of imported goods, and the supply of certain goods including white goods, passenger vehicles, alcohol, tobacco and textiles, increased from nine per cent to 15 per cent.
- The supply of basic food items, such as cooking oil and gas, milk, flour and potatoes, and other basic goods, such as sanitary pads, soap, soap powder, toilet paper and toothpaste, is zero rated.
- VAT on the provision of prescribed services was increased from nine per cent to 15 per cent, including on accommodation, refreshments and other hotel services; provision of meals and beverages; and provision of professional, scientific and technical services, including legal, accounting, management and consultancy.

The consequence of this amendment is that VAT-registered businesses now have to apply three different VAT rates depending on the type of goods or services they supply.

The Environment and Climate Adaptation Levy (ECAL), applied at five per cent, was removed with effect from 1 April 2022. ECAL generally applied to the prescribed imported goods, services and income on which the increased VAT now applies.

### **Incentives**

#### *Film-making and audio-visual incentives*

Effective 1 April 2022:

- The amount of tax rebate was reduced from 75 per cent to 20 per cent of the company's total Fiji expenditure on the film.
- The maximum allowable tax rebate was reduced from F\$15m to F\$4m, where the total expenditure on the film exceeds F\$20m.

### *New incentives*

New incentives were introduced in 2021 that allow tax holidays and exemption from duties on the import of capital goods for the following projects:

- establishment of a new commercial agricultural farming and agro-processing business building, factory, plant or farm;
- establishment, development or construction of information and communications technology (ICT) infrastructure; and
- establishment of a new submarine network cable business, including the construction, renovation or refurbishment of a building, factory or plant into a cable landing station or other associated infrastructure development.