

# National report – Fiji

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## Introduction

Covid-19 has had a significant impact on Fiji's economy as tourism, the largest source of economic activity and foreign revenue, has largely come to a halt. Significant changes were made to Fiji's tax laws in March 2020 and in July 2020 (as part of the national annual budget). Some of the changes were to provide relief to taxpayers; others to entice investment (both local and foreign) to counter the effects of Covid-19 on Fiji's economy. In this report, we highlight some of the changes, focusing on international taxation and those that affect foreign investors. We also highlight some recent developments.

## Easing of thin capitalisation rules

Under the previously applicable thin capitalisation rules, interest paid by a foreign-controlled resident company (a company with more than 50 per cent non-resident shareholding) on any debt that exceeded the debt-to-equity ratio of 2:1 was disallowed as a deduction (some exceptions apply). The ratio allowed has now increased to 3:1. In addition, the thin capitalisation rules will not apply to a debt incurred between 1 April and 31 December 2020.

## Definition of 'permanent establishment'

Previously, under Fiji's Income Tax Act 2015, the Minister (for Economy) 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 the original aim was to attract contractors for public sector contracts.

The ability to issue such certificates has now been removed. This change is stated to be made to bring the definition of 'permanent establishment' into line with international taxation rules. It is unclear what happens to the certificates that were issued.

## Exceptions to taxation on debt forgiveness

Under the Income Tax Act, debts forgiven by an associate of a Fiji taxpayer are taxed in the hands of the debtor. An exception to this is now available for debts that are:

- incurred on or before 31 December 2020; and
- forgiven between 1 April 2020 and 31 December 2021.

The exception extends to debts owed to foreign associated entities.

### **Withholding tax on professional services**

Fiji imposes 15 per cent withholding tax on payments to offshore services providers (see also below). The applicable laws were changed in 2016 to include for withholding tax purposes certain expenses such as transportation and accommodation costs billed in the service provider's invoice. This meant that withholding tax was payable on disbursements merely invoiced by the service provider by way of cost recovery. This strange enactment, inconsistent with any international taxation concepts or principles, resulted in either unhappy service providers or, where the payer was required to gross up, added costs to the Fiji payer. Now this issue has been corrected by removing the changes introduced in 2016.

### **Abolition of stamp duty**

Stamp duty, which had been payable for 100 years on specified instruments at various rates, is now repealed. Although a simple concept in most jurisdictions, it had become increasingly distorted by repeated legislative tinkering, including in some cases discriminating against non-residents. The repeal of stamp duty should make transactions cheaper and faster.

### **Incentives**

New incentives have been introduced as follows:

- for establishing medical facilities: tax holidays between seven and 20 years are available depending on the amount of investment; and
- for corporate bonds: the incentive provides for 150 per cent deduction for the bond issuer for interest paid. Interest income of the bond holder is also exempt.

In addition, the investment threshold to qualify for hotel developer tax incentives has been reduced, from F\$7m to F\$250,000. These incentives offer tax holiday periods of between five and 13 years (depending on the amount of investment) for hotel developers.

### **Implementation of DTA provisions on professional services**

Withholding tax on professional services has been an ongoing issue in Fiji, particularly in relation to services providers from Australia and New Zealand, Fiji's closest trading partners. Fiji's Income Tax Act imposes withholding tax on professional services. This differs from the provisions of various double tax agreements (DTAs) to which Fiji is a party. For example, under the DTAs Fiji has with Australia and New Zealand, the country where professional services are performed has the right to tax that income. The Fiji Income Tax Act also makes it clear that in case of an inconsistency between the Act and a DTA, the DTA prevails. This means that withholding tax should not be payable to service providers in Australia and New Zealand. However, the Fiji Revenue and Customs Service (FRCS) has been effectively ignoring this law, imposing and collecting withholding tax on almost all offshore professional service payments,

including on payments to Australia and New Zealand service providers. FRCS has stated that it is in discussion with the tax authorities in Australia and New Zealand on this issue. This matter will most likely be resolved and there may be a possibility of refunds to those affected.

### **Potential change to the VAT rules**

A draft VAT Bill was circulated earlier this year for public consultation. The initial plan was to pass this as part of the 2020-21 national budget (announced in July 2020). However, because of Covid-19, this project has been shelved for now. We expect FRCS to pick this up again in the future. A major change contained in the draft VAT Bill is an intention to charge VAT (currently nine per cent) on digital content (a 'Netflix tax') similar to those imposed in Australia. If such a law comes into effect, it is unclear how it would be implemented.