Income Tax Act

Subsidiary Legislation

CHAPTER 201

INCOME TAX

SECTION 16 - CO-OPERATIVE SOCIETIES INCOME TAX EXEMPTION ORDER

TABLE OF PROVISIONS

PARAGRAPH
1. Short title
2. Exemption
3. Limitation on exemption

Order 31 May 1965

Short title

1. This Order may be cited as the Co-operative Societies Income Tax Exemption Order.

Exemption

2. Subject to the provisions of this Order, the income of any co-operative society which is registered under the provisions of the Co-operative Societies Act is hereby exempted from liability to income tax for a period of 5 years from the date of registration or, in the case of deferment, from the date upon which notice of deferment was issued by the Registrar of Co-operative Societies.

(Cap. 250.)

Limitation on exemption

3. A co-operative society shall not be entitled to exemption under the provisions of this Order where-
(a) three-fourths or more of its members are or have been members of a society having similar objects and the same area of operations as a registered society which has previously been granted exemption from income tax under the provisions of paragraph (b) of subsection (1) of section 16 of the Income Tax Act, or any prior Ordinance relating to Income Tax; or

(b) it is an amalgamation of any 2 or more societies which have previously been granted exemption from income tax under the provisions of paragraph (b) of subsection (1) of section 16 of the Income Tax Act or any prior Ordinance relating to Income Tax.

SECTION 16 - EXEMPTIONS FROM INCOME TAX

(a) PUBLIC PURPOSES LOAN (1929)

Proclamation No. 19 of 1931

The interest payable on the Public Purposes Loan raised under the provisions of the Public Purposes Loan (1929) Ordinance to persons not resident in Fiji shall be wholly exempt from income tax.

(b) PUBLIC WORKS LOANS (1932 AND 1934)

Proclamation No. 16 of 1937

The interest payable on the Public Works Loans raised under the provisions of the Public Works Loan (1932) Ordinance and the Public Works Loan (1934) Ordinance to persons not resident in Fiji shall be wholly exempt from income tax.

(c) FIJI EXTERNAL LOAN No. 1 OF 1968

Legal Notice No. 51 of 1968

The interest payable on the Fiji External Loan No. 1 of 1968 raised under the provisions of the Specific Loans Ordinance, 1967, shall be wholly exempt from income tax.

(d) FIJI EXTERNAL LOAN No. 2 OF 1969

Legal Notice No. 28 of 1969

The interest payable on the Fiji External Loan No. 2 of 1969 raised under the provisions of the Government Loans Act shall be wholly exempt from income tax.

(e) LOAN FROM GOVERNMENT OF NAURU

Legal Notice No. 88 of 1969

The interest payable on the loan of $A2,250,000 by the Government of Nauru to the Government of Fiji raised under the provisions of the Government Loans Act shall be wholly exempt from income tax.
(f) FIJI GOVERNMENT AUSTRALIAN DOLLAR LOAN

Legal Notice No. 134 of 1971

The interest payable on the Fiji Government Australian Loan No 1 of 1971 raised under the provisions of the Government Loans Act, shall be wholly exempt from income tax.

Legal Notice No. 33 of 1973

(g) The interest payable on the Fiji Government Stock for $A2,780,000.00 raised under the provisions of the Government Loans Act to meet the balance of the consideration due to the Colonial Sugar Refining Company Limited under the provisions of section 2.2(b) of the Land Purchase Agreement dated 3 May 1971 made between The Colonial Sugar Refining Company of Fiji, shall be wholly exempt from income tax.

Legal Notice No. 52 of 1977

(h) The interest payable upon the loan not exceeding ten million American dollars arranged by Orion Pacific Limited and the Subject of an Agreement dated 6 May 1977, and made between the Government of Fiji of the first part the several Banks and Financial Institutions whose names and addresses appear in Schedule 1 of the Agreement of the second part and Orion Pacific Limited of the third part shall be wholly exempt from tax.

Legal Notice No. 205 of 1979

(i) The interest payable upon the loan not exceeding thirty-six million American dollars arranged by Continental Illinois Agreement Limited and the subject of an Agreement dated 9 November 1979 and made between the Government of the first part the several Banks and Financial Institutions whose names and addresses appear in the Agreement of the second part and Continental Illinois Limited of the third part shall be wholly exempt from tax from the date thereof.

Legal Notice No. 115 of 1980

(j) The interest payable upon the loan not exceeding five million American dollars arranged by The Tokai Bank Limited and the subject of an Agreement dated 22 May 1980 and made between the Fiji Electricity Authority of the first part the several Banks and Financial Institutions whose names and addresses appear in the Agreement of the second part and The Tokai Bank Limited of the third part shall be wholly exempt from tax from the date thereof.

Legal Notice No. 147 of 1980

(k) The interest payable upon the credit facility not exceeding thirty-four million, six hundred and seventy-five thousand Australian dollars provided by the Export Finance and Insurance Corporation of Australia and the subject of a Credit Agreement dated 28 August 1980 and made between the Government of Fiji and Export Finance and Insurance Corporation of Australia of 22 Pitt Street, Sydney, New South Wales, Australia shall be wholly exempt from tax from the date thereof.
(l) The interest payable upon the loan not exceeding twenty-five million American dollars arranged by Bank of New South Wales and the subject of an Agreement dated 19 April 1982 and made between the Government of Fiji of the first part the several Banks and Financial Institutions whose names and addresses appear in the Agreement of the second part and Bank of New South Wales of the third part shall be wholly exempt from tax from the date thereof.

SECTION 16 INCOME TAX (CANE FARMING INCOME) (EXEMPTION) ORDER

TABLE OF PROVISIONS

PARAGRAPHS
1. Short title
2. Exemption

Legal Notice No. 79 of 1982

Short title

1. This Order may be cited as the Income Tax (Cane Farming Income (Exemption) Order.

Exemption

2. The income derived by a taxpayer, whether an individual or not, from cane farming shall be exempt from normal tax to the extent of 25 per cent thereof for a period of 5 years commencing on 1 January 1982, subject to the provisions sub-paragraph (c) (iii) of subsection (1) of section 16 of the Act.

SECTION 16 - INCOME TAX (FARMING INCOME) (EXEMPTION) ORDER

TABLE OF PROVISIONS
Legal Notice No. 75 of 1982

Short Title

1. This Order may be cited as the Income Tax (Farming Income) (Exemption) Order.

Exemption

2. The income derived by an individual from coconut growing, rice farming, dairy farming, beef production and goat farming shall be exempt from normal tax for a period of 5 years commencing on 1 January 1981, subject to the provisions of sub-paragraph (c)(i) of subsection (1) of section 16 of the Act.

Legal Notice No. 73 of 1982

Short title

1. This Order may be cited as the Income Tax (Prescribed Farming Income) (Exemption) Order.

Interpretation

2. In this Order
"farming activity" includes fishing and forestry, but excludes cane farming, coconut growing, rice farming, dairy farming, beef production and goat farming.

Exemption

3. The income derived by an individual from any farming activity shall be exempt from normal tax to the extent of 85 per cent thereof for a period of 5 years commencing on 1 January 1982, subject to the provisions of sub-paragraph (c)(ii) of subsection (1) of section 16 of the Act.

SECTION 21 - ALLOWANCES FOR DEPRECIATING AND IMPROVEMENTS INSTRUCTIONS*

TABLE OF PROVISIONS

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Part IX - Revocation (Paragraph 31)

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* Deemed to have come into force on 1 January 1980.


PART I - PRELIMINARY

1. These Instructions may be cited as the Allowances for Depreciation and Improvements Instructions.
2. In these Instructions, unless the context otherwise requires -

"agriculture", without limiting the meaning of the term, includes copra planting, silvi-culture, dairy farming, fruit growing, sugar cane growing, all forms of animal husbandry, poultry keeping, agriculture, grazing and market gardening;
"commercial" means concerned with commerce generally including whole sale and retail trading, hotels, offices, and the means of distribution, transport and exchange, but not including industrial (as hereinafter defined) undertakings or properties let for residential purposes;
"industrial" means concerned with mills, factories or other similar premises in which manufacturing or processing of raw or partly manufactured materials is carried out, and includes mining, land development and road development.

PART II - DEPRECIATION

Division 1 - Allowances

3. The Commissioner may allow depreciation (representing wear and tear during the year in which the income was derived) on any machinery, implement, utensils, rolling stock, buildings and other articles or plant owned by the tax payer and used by him for producing income during the year, such wear and tear not being of a kind that may be made good by repairs. No depreciation other than this shall be allowed unless specifically provided for in these instructions.

4. (a) The maximum rates of annual depreciation in respect of assets, other than buildings, are those set out in the Schedule, to be calculated on -
1. diminishing value in the case of assets acquired before 1 January 1980;
2. prime cost basis (straight line method) in the case of assets acquired on or after 1 January 1980;
Provided that, if special circumstances arise the Commissioner at his discretion may make alternative arrangements.
(b) The maximum rates of depreciation in respect of buildings are those set out in Part VII.

5. Depreciation allowances shall be allowed only in cases where double entry books of account, or other appropriate records, are maintained by or on behalf of the tax payer to the satisfaction of the Commissioner, and a copy of the profit and loss account and balance sheet, indicating the amount of depreciation written off, is submitted with the return of income each year.

Division 2 - General

6. Where an asset is used in the production of the income for part only of the income year in which it was acquired or completed, the depreciation which may be allowed for that year shall be -
(a) if the asset is used for 6 months or more, the full scheduled rates;
(b) if the asset is used for less than 6 months, half the scheduled rates.

This apportionment shall not apply to initial allowances. The date on which the asset was first used should be supplied when making the first claim on new or additional assets.

7. Where an asset has been acquired on or before 31 December 1979, and an initial allowance is permitted to be written off such asset under these Instructions, the ordinary depreciation for the first year may be claimed on the total capital outlay before the deduction of the initial allowance but, for the next and succeeding years, the annual depreciation allowance shall, in all cases, be upon the written down value at the end of the previous year of income unless otherwise specified in the case of a particular asset.

8. Where, after 31 December 1979, an initial allowance is permitted to be written off an asset under these Instructions, or a balancing charge is set off against the cost of a replacement asset, ordinary depreciation shall be calculated on the total capital outlay after the deduction of the initial allowance and balancing charge. Any balancing charge arising in respect of motor cars, station wagons, panel vans or other similar vehicles designed to carry loads of less than 1 tonne, or fewer than 9 passengers, other than those vehicles used primarily for carrying passengers or goods for hire or reward will not be available for set off against the cost of the replacement asset.

9. Where an asset is transferred to a person over whom the seller has control, or the seller is a body of persons over whom the buyer has control, or both buyer and seller are bodies of persons and some other person has control over both of them, depreciation allowable to the person shall exclude any initial allowance and shall be based upon the written down value in accordance with these Instructions at the time of the transfer in the accounts of the transferee.

10. Where an item of plant and machinery may be classified under more than 1 of the scheduled items it shall be classified in accordance with its preponderating use in the year of income.

11. In the case of property acquired otherwise than by purchase, e.g. by inheritance or gift, the allowance for depreciated to the person acquiring the property shall not be greater than that which would have been available to the deceased if he had lived, or to the donor if he had retained the property. The depreciated value of the property after allowing for notional depreciation up to the date of acquisition, shall be the basis of the allowance for depreciation.

PART III - INITIAL ALLOWANCE FOR PLANT AND MACHINERY

12. (a) Where, after 1 January 1959 and before 1 January 1980, a person has incurred capital expenditure on the provision of plant and machinery for agricultural, commercial or industrial purposes, he may claim for the year of income in which the expenditure was incurred an initial allowance of 20% of the expenditure so incurred.
(b) Where, after 31 December 1979, a person has incurred capital expenditure on the provision of plant and machinery for agricultural, commercial or industrial purposes, he may claim for the year of income in which the expenditure was incurred an initial allowance of 30% of the expenditure so incurred. This initial allowance will not apply in relation to
expenditure incurred on the provision of motor cars, station wagons, panel vans or similar vehicles designed to carry loads of less than 1 tonne, or fewer than 9 passengers, other than those used primarily for carrying passengers or goods for hire or reward.

PART IV - ACCELERATED DEPRECIATION ALLOWANCES FOR SPECIFIED COMPANIES

13. Notwithstanding paragraph 4, the Minister may, by notice in the Gazette and subject to such conditions as he thinks fit, approve a company which proposes to incur substantial expenditure which he is satisfied is expedient for the economic development of Fiji, to receive the benefit of the following write off of such capital expenditure which may be claimed and allowed as an alternative to any other depreciation allowances provided either under these Instructions or elsewhere:

In each of any 5 out of 8 years consisting of the year in which such expenditure was incurred and the 7 succeeding years, the company so approved may claim as a deduction in calculating its total income for that year one-fifth of the capital expenditure incurred by it on the provision of buildings, plant and equipment the subject of the Ministerial approval, but excluding the purchase price of any land or any expenditure incurred on site preparation, or the purchase of any existing business premises or equipment or of any goodwill:

Provided that:

(i) the company so entitled may, at its discretion, claim a lesser but not a greater amount in any 1 year than the one-fifth of the capital expenditure incurred as hereinbefore provided. Any such partial write-off shall reduce the written down value of all of the assets covered by such capital expenditure on a pro rata basis;

(ii) any amount of capital expenditure as hereinbefore described which shall remain not written-off at the end of the prescribed number of years shall then be available for write-off in accordance with the normal depreciation rules provided for under the provisions of section 21 of the Act, such depreciation to be based on the written down values at the end of such years;

(iii) the total of ordinary depreciation, initial allowance (if any) and amounts written-off under this paragraph shall not exceed the amount of the capital expenditure incurred by the company on the provision of the buildings, plant and equipment in respect of which the concession has been granted.

14. Where conditions are imposed under paragraph 13, the Minister may withdraw his approval at any time in the event of a breach of any of such conditions, and such withdrawal may, if considered appropriate, be made to operate retrospectively.

15. It is declared that, for the purposes of paragraph (a) of subsection (1) of section 21 of the Act, any amounts written-off under the authority of this Part shall be deemed to be depreciation.

PART V - ALLOWANCE FOR CAPITAL EXPENDITURE RELATING TO FUEL ECONOMY AND ALTERNATIVE SOURCES OF ENERGY
16. By Instructions to the Commissioner and subject to such conditions as he thinks fit, the
Minister, in order to encourage economics in the use of fuel oil and its derivatives, may, on
application by a taxpayer, approve the following allowances for depreciation in respect of
capital expenditure:

(i) an allowance of 100% of the expenditure incurred in the adaptation of buildings, plant and
machinery presently employed in a trade or business where such expenditure is considered to
be expedient for the purpose of reducing the consumption of electricity or fuel oil or its
derivatives, such allowance to be in substitution for any other allowance for depreciation; or
(ii) an initial allowance of 50% of the expenditure considered to be expedient for the purpose
of economizing in the consumption of electricity and incurred upon plant and machinery
purchased to replace plant and machinery presently used in any trade or business in
substitution for the initial allowance of 20% or 30% referred to in paragraph 12; or
(iii) either -

(aa) a fuel economy investment allowance of up 40% of the expenditure incurred upon plant
and machinery purchased to replace plant and machinery used in a trade or business, and
using an alternative energy to electricity or fuel oil and its derivatives; or
(bb) a fuel economy investment allowance of 40% of the expenditure incurred upon an asset
used in a trade or business which generates energy from a source of energy which is
indigenous to and is produced in Fiji:

Provided that the fuel economy investment allowance, which shall be in addition to the initial
and annual allowances provided under any other paragraph of these Instructions, shall not be
approved unless the expenditure is deemed to be expedient for the economic benefit of Fiji
and also to be capable of achieving substantial savings in foreign exchange.

17. (a) The depreciation and initial allowances referred to in paragraph 16 shall be deducted by the
taxpayer from the total income for the accounting year in which the expenditure is incurred
and shall be deducted in calculating the written down value of any asset in respect of which
the allowances have been granted;

(b) The fuel economy investment allowance shall be deducted by the taxpayer from the total
income for the accounting year in which the expenditure is incurred but shall not be deducted
in calculating the written down value of any asset in respect of which the allowance has been
granted:

Provided that, in the event of a sale of any such asset within 5 years of the end of the
accounting year in which the asset was purchased, the amount of the fuel economy
investment allowance shall be added back to the income of the trade or business for the year
in which such asset is sold.

18. It is declared that, for the purposes of paragraph (a) of subsection (i) of section 21 of the
Act, any allowances approved under the provisions of this Part, other than the fuel economy
investment allowance, shall be deemed to be depreciation.

PART VI - ALLOWANCE FOR IMPROVEMENTS

19. The Commissioner may, for the purpose of arriving at the total income of the taxpayer for
any year, allow to any taxpayer engaged in any agricultural pursuit a deduction in respect of
any sum spent in that year by the taxpayer on capital improvements to land where the sum is
spent on:

(a) the destruction and removal of timber indigenous to the land; or
(b) the destruction of weed or plant growth detrimental to the land; or
(c) the preparation of the land for agriculture or grazing; or
(d) the planting of trees or crops upon the land for the purpose of deriving income therefrom; or
(e) the draining of swamp or low lying lands; or
(f) the prevention or combating of soil erosion on the land; or
(g) the construction of levee banks or similar improvements having like uses; or
(h) the construction of any work, whether or not included in the foregoing paragraphs, which
the taxpayer is required to do on the land under the provisions of section 9 of the Land
Conservation and Improvement Act:
(Cap. 141.)

Provided that the taxpayer may opt to have the expenditure allowed during the year in which
the expenditure was incurred and the next succeeding 4 years, such allowances not to exceed
the total allowable expenditure incurred.

20. Notwithstanding the other provisions of these Instructions, if he is satisfied that the
buildings or other constructions hereinafter specified will be used wholly and exclusively for
the agricultural or pastoral pursuit of the taxpayer, the Commissioner may, for the purpose of
arriving at the total income of the taxpayer for any year, allow the taxpayer a deduction in
respect of any sum spent on such buildings or constructions in the year in which the
expenditure is incurred, or, at the option of the taxpayer, in that year and the next succeeding
4 years, so long as the total amount of the deductions allowed shall not exceed the total
allowable expenditure incurred. The buildings or other constructions in respect of which this
concession shall be allowed are:

(a) any agricultural building, excluding a dwelling house, costing not more than $20,000;
(b) any agricultural building, excluding dwelling house, the cost of which exceeds $20,000
where the Minister has certified that it is to the economic benefit of Fiji;
(c) any dwelling house provided for an employee provided that the cost of any single
dwelling house shall not exceed $2,000;
(d) the cost of fencing;
(e) the cost of a water storage scheme other than a water storage scheme constructed solely or
mainly for the purpose of supplying the taxpayer's dwelling house or the employee's dwelling
house or both;
(f) the cost of any irrigation scheme.

21. The write-off of capital expenditure under this Part may be claimed and allowed as an
alternative to any other depreciation allowances provided in these Instructions.
PART VII - ALLOWANCES FOR BUILDINGS

22. Buildings, the erection of which commenced on or after 1 January 1946, built and let for residential purposes and used by the taxpayer for the purpose of producing income, may be written down as follows:

Brick, stone or concrete ................. 1¼ % on prime cost,

Entirely of wood ............................... 2½ % on prime cost.

Other material ............................... Such rate as may be fixed by the Commissioner in the particular case:

Provided that, where part only of the building is let for residential purposes and used by the taxpayer for the purpose of producing income, only the part so let and used shall qualify for the allowance.

23. Buildings, the erection of which commenced on or after 1 January 1947, and which are used for agricultural, commercial or industrial purposes, including buildings so used by an employer for the purpose of housing or welfare of his employees, may be written down as follows:

An initial allowance of 10% of the prime cost and an annual allowance of:

Brick, stone or concrete ............... 1¼ % on prime cost
Entirely of wood ........................ 2½ % on prime cost.
Steel or steel prefabricated .......... 2% on prime cost.
Steel or steel prefabricated on copra plantations................................. 5% on prime cost.
Bures ........................................ 10% on prime cost.
Other material .......................... Such rate as may be fixed by the Commissioner in the particular case:

Provided that, where part only of the building is used for agricultural, commercial or industrial purposes, only the part so used shall qualify for the allowance, and no initial allowance will be permitted where buildings are used by an employer for the purpose of housing or welfare of his employees who are blood relatives or shareholders or blood relatives of shareholders of a controlled company. For the purposes of this Part-

(a) The initial allowance shall be allowed for the income year in which the construction of the building was completed, and shall be allowed once only.

(b) The expression "prime cost" shall mean the cost of construction, excluding any expenditure incurred on the acquisition of, or rights in or over any land or any expenditure incurred on preparing, cutting, tunnelling, reclaiming, or levelling the land.
Irrespective of any change of ownership of a building, the depreciation which may be allowed thereon shall be based on its original prime cost, plus the prime cost of any additions. If the date of commencement of construction of a building or its prime cost cannot be satisfactorily ascertained, the Commissioner may, for the purposes of this paragraph, determine the date and the cost on the best evidence available.

Where, upon the disposal of any building, any excess depreciation is recouped or any further allowance given, the amount of the adjustment shall be deemed to have been made as at the time of the disposal and shall be taken into account in calculating the written down value of the building for depreciation purposes in the hands of the purchaser.

In no case shall the total of the initial and annual allowances together with any adjustment on the disposal of any building exceed the total prime cost of the building.

**PART VIII - ACCELERATED ALLOWANCE FOR BUILDINGS ERECTED BETWEEN 1 JANUARY 1981 AND 31 MARCH 1986**

24. Notwithstanding Part VII and provided that the application is lodged with the Commissioner on or before 30 April 1985, a write off of capital expenditure may be claimed in respect of the capital expenditure incurred upon the construction of a building, the erection of which has been commenced between 1 January 1981 and 30 September 1985, which has been completed on or before 31 March 1986 and which is used for agricultural, commercial or industrial purposes, excluding any building (not being a multi-storey or a multi-unit residential building as hereinafter defined) designed to be used as a hotel or for residential purposes:

Provided that -

(a) where the erection of such building is not completed by 31 March 1986, the actual cost or value (whichever is the less) of the work done as at that date, certified by an independent qualified architect or engineer registered in Fiji, will be treated as the allowable capital expenditure for the purpose of this paragraph; and

(b) the capital expenditure incurred upon such building shall not include either the cost or value of the site or the expenditure incurred upon any preparation of the site enabling the erection of the building to commence nor shall it include the cost of any plant and machinery installed in a building.

Subject to the foregoing, the write-off for the purposes of this paragraph shall be as follows:

In each of any 5 out of 8 years consisting of the year in which the building is completed and the next 7 succeeding years the taxpayer may claim as a deduction in calculating his income arising for that year from such building or from a new trade or business established in such building or from an existing trade or business which includes the letting or occupation of such building, one-fifth of the capital expenditure incurred by him on the erection of such building, but he shall not, however, be permitted to set off such deduction from his income in that year or carry forward any resulting losses as a deduction against his income in any subsequent year from any other trade, business or employment:

Provided that:
(i) the taxpayer so entitled may, at his discretion, claim a lesser but not a greater amount in any 1 year than one-fifth of the capital expenditure incurred as hereinafter provided:

(ii) any amount of capital expenditure as hereinafter described which shall remain not written off at the end of the prescribed number of years shall then be available for write off in accordance with the normal depreciation rules under the other provisions of these Instructions, such depreciation to be based on the written down values at the end of such years;

(iii) the aggregate amount of capital expenditure is respect of any number of buildings shall be limited to $2,000,000 or the actual cost, whichever is the less, for the same taxpayer. The allowance to be granted to any person or company under the control of or deemed to be under the control of a taxpayer who has also claimed such an allowance shall be reduced by the amount of such claim. Notwithstanding that he has incurred expenditure of $2,000,000 upon buildings qualifying for the accelerated depreciation allowance hereinafter referred to as a identifying building, where the same taxpayer incurs capital expenditure upon the erection of a further building, then each such further building shall qualify for relief to the extent of $2,000,000 per building or the actual capital expenditure incurred, whichever is the less, if it is 10 road miles away by the most direct route from any qualifying building, or building qualifying for further allowance under this proviso;

(iv) the total depreciation written off under the provisions of this paragraph or any other paragraphs shall not exceed the amount of the capital expenditure incurred by the taxpayer on the erection of the buildings in respect of which this concession has been granted, exclusive of the purchase price of any land or any expenditure incurred on site preparation.

(Amended by Legal Notices 41 of 1981, 9 of 1982 and 61 of 1983.)

25. In order to qualify for relief in terms of this Part, it shall be required that the buildings in question are erected on behalf of the claimant by an independent building contractor under a general building contract. If the independent building contractor is either directly or indirectly under the control (as defined in section 2 of the Act) of non-residents, the capital expenditure will only qualify for this relief if such building contractor was actively engaged in construction work in Fiji as at 1 January 1976.

25A. If the buildings in question are not erected on behalf of the claimant by an independent building contractor under a general building contract, relief in accordance with this Part shall be permitted provided that the cost or value of construction of such buildings is certified by an independent qualified architect or engineer registered in Fiji and the cost of construction of such buildings is approved by the Commissioner.

26. Where there is a direct or indirect sale of shares in a controlled company as defined in subsection (2) of section 12 of the Act, and which company has as its principal asset a building which qualifies or has qualified for this relief, then it will be deemed that such proportion of the consideration recoverable from the sale of such shares as the Commissioner shall decide shall be the consideration for the building or part of the building, and the vendor of such shares shall be deemed an owner or part owner of the building and the provisions of proviso (k) to section 11 of the Act shall apply to him.

27. In the event of the sale of a partnership interest by a partner, either directly or indirectly, in any partnership whose principal asset is a building which qualifies or has qualified for this relief, it will be deemed that such proportion of the consideration recoverable from the sale of
such interest of a partner as the Commissioner shall decide shall be the consideration for the building or part of the building, and, for the purpose of this paragraph, such partner shall be deemed an owner or part owner of the building and the provisions of proviso \((k)\) to section 11 of the Act, shall apply to him.

28. It is declared that, for the purposes of paragraph \((a)\) of subsection \((1)\) of section 21 of the Act, any amounts written off under the authority of this Part shall be deemed to be depreciation.

29. The allowance permitted under this Part is an alternative to any other depreciation allowances provided under these Instructions or elsewhere.

30. For the purposes of this Part -

"multi-storey or multi-unit residential building" means a residential block of flats consisting of at least 2 floors and 6 units;

"same taxpayer" includes a holding company and its subsidiaries, or companies or partnerships which are under the control, as defined in section 2 of the Act, of the same person;

"building contractor actively engaged in construction" means a building contractor who had at least 10 employees in employment as at 1 January 1976.

PART IX - REVOCATION

31. The Allowances for Depreciation and Improvements Instructions, published in reprint form at page 147 of Part II of the 1972 Laws of Fiji are revoked.

SCHEDULE

\((\text{Paragraph 4})\)

MAXIMUM RATES OF ANNUAL DEPRECIATION OF ASSETS OTHER THAN BUILDINGS

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<td>Category</td>
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<td>Allowable Duty</td>
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<td>Aerated Water Plant</td>
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<td>Air-conditioning Plant</td>
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<td>Aircraft Hangers</td>
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<td>Amusement Machines and Equipment</td>
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<td>Coin operated pool tables</td>
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<td>Merry-Go-Rounds</td>
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<td>Slicing and wrapping machines</td>
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<td>Bedding, Linen, Crockery etc. (Hotels and Boarding Houses)</td>
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<td>Carpets</td>
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<td>Boats, Ships, Lighters, etc.</td>
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<td>Oil rigs (off-shore drilling) and ancillary equipment</td>
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<tr>
<td>blowing machines</td>
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<tr>
<td>Poultry Processing Plant -</td>
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<tr>
<td>Conveyor systems and troughs</td>
<td>7</td>
<td>10</td>
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<tr>
<td>Refrigeration plant and boiler</td>
<td>7</td>
<td>10</td>
</tr>
<tr>
<td>Other processing plant</td>
<td>7</td>
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</tr>
<tr>
<td>Primary Production Industries, Farmers', etc -</td>
<td></td>
<td></td>
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<tr>
<td>Agricultural implements and plant</td>
<td>7</td>
<td>10</td>
</tr>
<tr>
<td>Bridges, wooden</td>
<td></td>
<td>Rep.</td>
</tr>
<tr>
<td>Dairy farm plant -</td>
<td></td>
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<tr>
<td>Power</td>
<td>7</td>
<td>10</td>
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<tr>
<td>Other</td>
<td>7</td>
<td>10</td>
</tr>
<tr>
<td>Fences</td>
<td></td>
<td>Rep.</td>
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<tr>
<td>Irrigation plant and equipment</td>
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<tr>
<td>Metal piping</td>
<td></td>
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<tr>
<td>Other piping (including concrete channels, but not earth channels)</td>
<td>5</td>
<td>7½</td>
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<tr>
<td>Other plant</td>
<td>7</td>
<td>10</td>
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<tr>
<td>Lighting plant (electric)</td>
<td>7</td>
<td>10</td>
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<tr>
<td>Loose tools</td>
<td></td>
<td>Rep.</td>
</tr>
<tr>
<td>Poultry farmers' plant</td>
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<tr>
<td>Incubators</td>
<td>7</td>
<td>10</td>
</tr>
<tr>
<td>Egg boxes and filters</td>
<td></td>
<td>Rep.</td>
</tr>
<tr>
<td>Fences, wire netted</td>
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<td>Rep.</td>
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<tr>
<td>Tractors</td>
<td>15</td>
<td>22½</td>
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<td>Trailers</td>
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<td>22½</td>
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<tr>
<td>Printers' Plant and Machinery</td>
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<td>Electronic engraving machines</td>
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<tr>
<td>Linotype metal</td>
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<td>Rep.</td>
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<tr>
<td>Machinery</td>
<td>7</td>
<td>10</td>
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<tr>
<td>Types</td>
<td></td>
<td>Rep.</td>
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<tr>
<td>Projectors- Cinemas</td>
<td>5</td>
<td>7½</td>
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<tr>
<td>Punts</td>
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<td>See boats</td>
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<tr>
<td>Quarrying Plant</td>
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<td>Rice Milling Plant</td>
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<tr>
<td>Road-making Plant -</td>
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<tr>
<td>Road graders and rollers</td>
<td>15</td>
<td>22½</td>
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<td>Rolling Stock -</td>
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<td>Scaffolding</td>
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<tr>
<td>Scales (platform)</td>
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<td>7½</td>
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<tr>
<td>Screen Printing-also driers</td>
<td>7</td>
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<td>Security Systems (Camera scanning)</td>
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<td>Swimming Pools</td>
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<td>Tarpaulins</td>
<td>22½</td>
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<td>Tents</td>
<td>22½</td>
<td>33½</td>
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<tr>
<td>Tennis Courts</td>
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<tr>
<td>Timber Drying Kilns</td>
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<tr>
<td>Timber and Sawmilling Plant</td>
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<td>Tramways-Portable</td>
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<tr>
<td>Vegetable and Fruit Canning Plant</td>
<td>7</td>
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<tr>
<td>Welding Plant</td>
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<td>10</td>
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<td>Wharves</td>
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<tr>
<td>Ferro Concrete</td>
<td>2</td>
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<td>Wood sheathed</td>
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<tr>
<td>Wood unsheathed</td>
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<tr>
<td>Wood composite</td>
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SECTION 56 - UNITED KINGDOM INCOME TAX AGENT

Notice 25 January 1957

The person for the time being holding the office of official Representative, Overseas Territories Income Tax Office, London shall be the United Kingdom Income Tax Agent for Fiji.

SECTION 64 - INCOME TAX (COURT OF REVIEW) RULES

TABLE OF PROVISIONS

PARAGRAPH
1. Short title
2. Interpretation
3. Registrar of the Court
4. Office of the Court
5. Place of sitting
6. Notice of appeal
7. Entry of appeal and direction for hearing
8. Notice of hearing of appeal
9. Service
10. Amendment of notice of appeal
11. Attendance of witness under subpoena
12. Hearing of appeal
13. Fees of Court
14. Costs

First Schedule - Notice of Appeal
Second Schedule - Fees

Rules 26 March 1966,
Legal Notice No. 22 of 1983
1. These Rules may be cited as the Income Tax (Court of Review) Rules.

Interpretation

2. In these Rules-

"the Act" means the Income Tax Act;
"the Court" means the Court of Review as for the time being constituted under section 63 of the Act;
"Registrar" means the Registrar of the Court.

Registrar of the Court

3. The Chief Registrar of the Supreme Court of Fiji shall be the Registrar of the Court.

Office of the Court

4. The office of the Court shall be at the Supreme Court Registry at Suva.

Place of sittings

5. The Court may sit for the hearing of an appeal, or for the hearing of any interlocutory application incidental to an appeal, or at any place within Fiji which the Court, from time to time or at any time, may deemed convenient for the sitting.

Notice of appeal

6. - (1) Every appeal to the Court shall be brought by notice of motion (in these Rules referred to as "the notice of appeal") in the form appearing in the First Schedule.

(2) The notice of appeal shall state clearly and concisely the grounds of appeal. The notice shall be signed by the appellant or his agent or barrister and solicitor and shall state therein an address for service in Fiji to or at which notices, process, and other documents and written communications relating to the appeal may be sent by registered post or left for the appellant. Service by post or delivery as aforesaid shall be deemed to be good service on the appellant.

(3) The original notice of appeal and 1 copy thereof shall be filed in the office of the Court within the time notified to the appellant by the Commissioner under subsection (5) of section 62 of the Act as the time within which the appellant may exercise the right of appeal to the Court.

(4) The appellant shall cause a copy of the notice of appeal to be served upon the
Commissioner at his office at Suva, either personally within the time referred to in paragraph (3).

Entry of appeal and direction for hearing

7. - (1) Upon the filing of the notice of appeal, the Registrar shall cause the appeal to be entered in the books of the Court and shall obtain a direction by the person for the time being appointed to hold the Court as to the day, time and place to be appointed for the hearing of the appeal.

(2) Unless, on the application of the appellant, it is otherwise directed, the place of the hearing of the appeal shall be at Suva. An appellant may apply any time to the person for the time being appointed to hold the Court for the direction that the appeal be entered for hearing at any place other than at Suva or, if the appeal has been entered for hearing at Suva, to change the place of hearing. Any such application may be made by motion on not less than 4 days’ notice to the Commissioner.

Notice of hearing of appeal

8. The Registrar shall not give less than 30 days’ notice in writing (in these Rules referred to as "the notice of hearing") to the appellant and to the Commissioner of the day, time and place appointed for the hearing of the appeal.

Service

9. Service of the notice of hearing on the Commissioner may be effected by sending a copy of the notice by registered post to him at his office at Suva, or by leaving a copy of the notice at that office. Service on the appellant may be effected in accordance with paragraph (2) of rule 6.

Amendment of notice of appeal

10. A notice of appeal may be amended at any time by or with the leave of the Court on such terms and conditions as the Court may think just.

Attendance of witness under subpoena

11. At the request of the appellant or the Commissioner or by the direction of the Court itself, a subpoena ad testificandum or duces tectum may be issued requiring any person to attend to give evidence or to produce document in connection with the appeal.

Hearing of appeal

12. (1) On the day fixed for the hearing of the appeal or any other day to which the hearing
may be adjourned, the appellant, or his agent or barrister and solicitor, shall be heard in support of the appeal.

(2) The Court shall then, if it does not dismiss the appeal at once, hear the Commissioner or his officer or barrister and solicitor and, in such case, the appellant shall have the right of reply.

(3) Subject to the provisions of the Act or to these Rules, the ordinary practice and the Rules of the Supreme Court shall apply, with the necessary modifications, in relation to an appeal under these Rules.

Fees of Court

13. - (1) The fees set out in the Second Schedule shall be charged and paid in respect of the matters therein specified.

(2) The fees to be charged and paid in respect of matters not specified in the said Schedule shall be the fees payable in respect of similar matters in civil proceedings in the Supreme Court:

Provided that no fees shall be charged or be payable by the Commissioner in relation to any act, application or proceeding by him in relation to an appeal.

Costs

14. - (1) Subject to the provisions of section 68 of the Act, the costs of and incidental to an appeal shall be in the discretion of the Court but, unless the Court in any particular case for good reason shall think fit to otherwise to order, legal practitioners' costs shall not exceed the maximum allowance of costs set out in Appendix 4 to the Supreme Court Rules.

(2) When the Court directs that the costs, or any part of the costs, of an appeal be paid by the appellant or by the Crown, the Court may the amount of such costs to be paid or may direct that the costs be taxed by the registrar.

(3) The Court may allow as costs of an appeal the allowances and expenses of witnesses attending the hearing of the appeal in accordance with the Rules for the time being in force in the Supreme Court of Fiji in relation to allowances and expenses of witnesses attending at trials before the Supreme Court and, for that purpose, any reference in such Rules to the Chief Registrar of the Supreme Court shall be deemed to be a reference to the Registrar of the Court of Review.

(4) The Court may allow such other necessary costs and allowances as may seem to the Court to be fair and reasonable.
FIRST SCHEDULE
(Rule 6 (1))

NOTICE OF APPEAL

INCOME TAX ACT

In the matter of an appeal to the Court of review by the Appellant.

TAKE NOTICE that the Court of Review will be moved by the above-mentioned appellant upon such day and time and at such place as may be appointed for the sitting of the Court, for an order that the decision of the Commissioner for the Inland Revenue dated the ........ day of ...., 19...., disallowing the objection by the appellant to the following assessment(s):-

[state particulars of assessment(s) appealed against ]

be revised or set aside and that the Crown do pay to appellant the costs of this appeal.

And further take notice that the grounds of this appeal are as follows: - [set out clearly and concisely the grounds of appeal which, save with the leave of the Court, shall be the reasons stated in the objection to the assessment]

Dated this day....... of ........, 19...

(Signature of appellant, or his agent, or barrister and solicitor)

*Address for service:

To the Commissioner of Inland Revenue, Suva.

SECOND SCHEDULE
(Rule 13)
(Substituted by Legal Notice 22 of 1983)

FEES

$ c
1. On filing notice of appeal and copy....................................................10.00
2. On filing any other notice of motion and copy .........................................2.00
3. On filing an affidavit or any other document ............................................1.00
4. On sealing a writ of subpoena for a witness............................................2.00

5. On filing a Bill of Costs and obtaining an appointment to tax.........................3.00

6. On taxation-for every $4 or fraction thereof allowed..................................0.30

7. On sealing a certificate or allocature ..........................................................1.00

* The appellant must ensure that the address for service given is adequate to secure that notices, etc., posted to or left at that address will reach him without delay.

SECTION 81 INCOME TAX (EMPLOYMENTS) REGULATIONS

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2. Interpretation

PART II REGISTRATION

3. Employers to register with Commissioner

PART III DECLARATIONS

4. Employee may file declaration as to allowances to be taken into account in calculating deductions.

PART IV DEDUCTION OF TAX

5. Employer to ascertain periodical allowances applicable
6. Employer to deduct tax as prescribed in tax tables
7. Deductions in case of overtime, bonus, gratuity, etc.
8. Casual and seasonal employees, etc
9. Deductions in case of death of employee
10. Exemptions from deductions
11. Commissioner may determine questions on emoluments

PART V PAYMENT OF TAX DEDUCTED
12. Employer to pay to Commissioner amount of tax deducted

PART VI ACCOUNTING FOR TAX DEDUCTED

13. Returns to accompany payments of tax deducted
14. Employer to submit separate accounts in respect of retrospective emoluments
15. Employer to furnish certificates of deduction
16. Employer to furnish certificates on cessation of employment
17. Employer to furnish certificates of deductions on cessation of business
18. Employer to furnish certificate on death of employee
19. Employer to furnish employee with particulars of emoluments and deductions
20. Employer to keep records of emoluments paid and deductions
21. Summary of emoluments

PART VII ASSESSMENT OF EMOLUMENTS

22. Commissioner to assess tax on emoluments and notify employee of assessment

PART VIII MISCELLANEOUS AND PENALTIES

23. Personal representative to assume liability of deceased employer
24. Change of employer
25. Commissioner to prepare tax tables
26. Employer to produce wages sheets, etc., for inspection
27. Employee may complain to Commissioner in respect deductions made by employer
28. Commissioner to determine complaint
29. Publication of notice by Commissioner
30. Tax deductions by employer to be treated as single debt
31. Commissioner may sanction use of certificates and tax tables other than prescribed
32. Personal liability in cases of partnership or company
33. Obstructions
34. Offences by employer

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Regulations 9 September 1964,
Legal Notices Nos. 38 of 1967, 202 of 1968, 69 of 1976,
31 of 1982, 6 of 1983

PART 1 - PRELIMINARY

Short title

1. These Regulations may be cited as the Income Tax (Employment) Regulations.
Interpretation

2. - (1) In these Regulations, unless the context otherwise requires -

"appropriate form" means a form approved by the Commissioner for use in any particular case pursuant to these Regulations;
"emoluments" means all salary, wages, overtime, bonus, remuneration, gratuities, including the estimated annual value of any quarters or board or residence or of any other allowance granted in respect of employment whether in money or otherwise, stipend, commission, or other amounts for services, directors' fees, retiring allowances or pension, accruing in, derived from or received in Fiji, and which are assessable to tax, but shall not include any salary or share of profits arising from a trade, business, profession or vocation carried on by any person either by himself or in partnership with any other person;
"employee" means any person to whom emoluments are paid;
"employer" means any person paying emoluments whether on his own account or on behalf of any other person to an employee;
"tax tables" means the tax tables prepared by the Commissioner in accordance with regulation 25;
"total allowances", in relation to an individual, means the aggregate of any deductions to which a person is entitled under the Act in computing chargeable income, including deductions under the provisions of paragraph (d) of subsection (1) of section 21, paragraphs (a), (d) and (g) of section 26 and section 29 thereof, subject to the provisions of regulation 4.

Employer to include the Crown

(2) Unless the context otherwise requires, references in these Regulations to an employer or a person paying emoluments shall be deemed to include reference to the Crown.

Principal employer and immediate employer

(3) (a) Where an employee works under the general control and management of a person who is not his immediate employer, that person (referred to hereafter in this regulation as the “principal employer”) shall be deemed (in relation to such employee) to be the employer for the purposes of these Regulations, and the immediate employer shall furnish the principal employer with such particulars of the employee’s emoluments as may be necessary to enable the principal employer to comply with the provisions of these Regulation;
(b) If the employee's emoluments are actually paid to him by the immediate employer -
(i) the immediate employer shall be notified by the principal employer of the amount of tax to be deducted when the emoluments are paid to the employee and shall deduct the amount so notified to him accordingly; and
(ii) the principal employer shall on make a corresponding deduction on making to the immediate employer the payment out of which the said emoluments will be paid.

PART II - REGISTRATION
Employers to register with Commissioner

3. - (1) Subject as hereinafter provided, every person who carries on or is about to carry on any trade, business, profession or vacation in respect of which he is or will be an employer, shall, on or before the 15 January 1965 or within 30 days of the commencement of such trade, business, profession or vacation, which ever is the later date, register with the Commissioner-

(a) his name and address;
(b) the names and addresses of his partners and associates, if any, indicating the "precedent partner" as defined by regulation 32;
(c) the trade or business name where the trade, business, profession or vocation is carried out on under a name or style other than his own name;
(d) the place and address, if any, where he carries on or intends to carry on his trade, business, profession or vocation;
(e) the number of employees employed or expected to be employed:

Provided that this regulation shall be deemed to have been complied with if, in the case of a partnership, the precedent partner and, in the case of body of persons, the manager or the principal officer, carries out the provisions of this regulation.

Exemption from registration

(2) The provisions of paragraph (1) shall not apply in respect of any person who has filed a return of the income of his trade, business, profession or vocation for the income year ended 31 December 1963 and such person shall be exempt from the provisions of this regulation.

PART III - DECLARATIONS

Employee may file declaration as to allowances to be taken into account in calculating deductions

4. - (1) Any employee to whom any payment is made at any time during the year 1965 or any year thereafter of or on account of any emoluments may, for the purpose of enabling any deductions which may be made under regulation 6 to be calculated with reference to the allowances to which such employee may be entitled under the Act, file with the person making the payment a declaration in the appropriate form containing such particulars as may be required therein:

Provided that:

(a) for the purpose of the declaration lodged with the person making the payment, the allowance which may be claimed by any 1 employee in respect of:

(i) paragraphs (a), (d) and (g) of section 26 of the Act shall not exceed $300; and
(ii) section 29 of the Act, shall not exceed $400 for each child; and
(iii) subsections (3) and (4) of section 25 of the Act shall not exceed $100;

(b) any employee who wishes to claim a greater allowance than that provided in paragraph (a) or who, for any reason, elects so to do, shall file his declaration with the Commissioner instead of with the person making the payment, and the Commissioner shall, following receipt of such declaration, advise the person making the payment of the amount of total annual allowances for that employee for the purposes of regulation 5;

(c) no declaration shall be filed by -

(i) an employee resident outside Fiji; or

(ii) such employees or classes of employees as may be specified by the Commissioner by notice published in accordance with these Regulations,

unless the Commissioner in any particular case, authorises any such employee to file a declaration;

(d) if any employee entitled by this regulation to file a declaration and wishing to file the same is, at the time or times when he is required these Regulations to file such declaration, in the employment of more than 1 person by whom any such payment is made, he shall file a declaration with 1 only of the persons by whom any such payment is made as he shall think fit.

(2) Every employee who is a married woman living with her husband shall submit to her employer a declaration to that effect in the appropriate form on the first receiving emoluments from her employer and thereafter on the first working day of January in every year during which she is an employee and, in such declaration may claim only the personal allowance and any allowance to which she may be entitled under paragraphs (a), (d) and (g) of section 26 of the Act as modified by paragraph (i) of proviso (a) to paragraph (1).

(3) The declaration which an employee may file under the provisions of this regulation may include particulars of all or any of his total allowances as the employee may think fit.

Time for filing declarations

(4) An employee entitled to and wishing to file a declaration under the provisions of this regulation shall do so at the following times:-

(a) on the day on which his employment commences;

(b) within 7 days of the day on which a change occurs in the total allowances to which he is entitled; and

(c) with such other time or times as may be specified by notice published by the Commissioner in the Gazette and in at least 1 newspaper circulating Fiji or in such other manner as the Commissioner may think fit:

Provided that the Commissioner may, in his discretion, permit any such employee to file a declaration at any time other than the aforesaid times.
(5) On a change occurring in the total allowances of any employee by whom a declaration has been filed which results in the total allowances of that employee being less than the total allowances claimed by him in his declaration, such employee shall file a further declaration within 7 days of the day on which the change occurs.

(6) The employer within 15 days of receipt of a declaration from an employee shall sent it to the office of the Commissioner.

(7) The Commissioner may, if he is not satisfied with the amount of any allowances claimed by an employee in the declaration made by him under the manner as may be required. The Commissioner, in such circumstances may issue to the employer a direction as to the total amount of allowances in respect of such employee.

Penalty

(8) If an employee who, under these Regulations is liable to have tax deducted from his emoluments –

(a) files a declaration in which the provisions of proviso (a) to paragraph (1) are contravened; or
(b) files a declaration with more than 1 person in contravention of proviso (d) to paragraph (1); or
(c) fails to file a further declaration as required by paragraph (5), he shall be guilty of an offence and liable, to a fine of $100.

PART IV - DEDUCTION OF TAX

Employer to ascertain periodical allowances applicable

5. – (1) On receiving from an employee a declaration made under the provisions of regulation 4 or upon receipt of a declaration from the Commissioner as to the total amount of allowances in respect of an employee, the employer shall ascertain what amount of the total annual allowances claimed is applicable to each periodical payment of emoluments as follows:-

(a) in the case of an employee who is paid weekly, by dividing the total annual allowances claimed by 52;
(b) in the case of an employee who is paid fortnightly, by dividing the total annual allowances claimed by 26;
(c) in the case of an employee who is paid 4 weekly by dividing the total annual allowances claimed by 13;
(d) in the case of an employee who is paid monthly, by dividing the total annual allowances claimed by 12,
and shall enter the amount thus ascertained (hereinafter referred to as the "free emoluments") in the appropriate part of the declaration form, and in his own pay records and, after making such entries, shall send the declaration to the Commissioner within the time prescribed by paragraph (6) of regulation 4:

Provided that the Commissioner may deduct from the total amount of allowances in respect of an employee:

(i) an amount representing the estimated annual value of all emoluments received by such employee otherwise than in money; and

(ii) with the consent of the employee, for the more convenient accounting for tax thereon, an amount in respect of income, other than income from emoluments, of that employee, and, by notice in writing to the employer, require the employer to treat as the free emoluments of such employee the net amount specified in such notice.

(Amended by Legal Notice 38 of 1967.)

(2) Where emoluments are payable to any employee at intervals other than a week, a fortnight, 4 weekly or a month, the employer shall refer the question of ascertainment of free emoluments to the Commissioner for direction.

(3) Where no declaration under the provisions of regulation 4 has been received from an employee, the total annual allowances for such employee shall be deemed to be the amount of the personal allowances provided for in subsection (1) of section 25 of the Act:

Provided that, for an employee resident outside Fiji, the amount of such allowances shall be deemed to be NIL.

(4) In any case where a person commences employment in Fiji during the year, he may apply to the Commissioner for his free emoluments for that year to be fixed by reference to the unexpired portion of the year and the Commissioner shall determine the free emoluments for that year accordingly and shall notify the employer the amount of free emoluments as thus determined.

Employer to deduct tax as, prescribed in tax tables

6. - (1) Every employer, when making payment of emoluments to an employee in excess of the free emoluments (such excess emoluments hereinafter being referred to as "taxable emoluments"), shall deduct therefrom such amount of tax as shall be prescribed in the tax tables:

Provided that the proportion of the annual value of all emoluments received by such employee otherwise than in money applicable to the period in respect of which the emoluments are being paid shall, unless already taken into account in the ascertainment of such employee's free emoluments under the provisions of the proviso to paragraph (1) of regulation 5, be deemed for the purposes of this paragraph to be part of the emoluments being
paid and shall be taken into account in calculating the amount of tax to be deducted therefrom.

(Amended by Legal Notice 38 of 1967.)

(2) Every employer shall be deemed to make payment of emoluments to an employee not only when an amount of emoluments is actually paid but also when emoluments are credited for the benefit of an employee to an account on which the employee can draw or over which he has control or are otherwise applied for his benefit or at his direction or are applied in reduction of a debt due by him to the employer, unless such indebtedness arose from a payment in advance of or on account of remuneration from which tax was deducted at the time of payment.

(3) In any case where an employee is in receipt of emoluments from more than 1 employer at the same time, the Commissioner shall, on request of the employee, determine and notify each of such employers in writing the amount to be deducted by each of such employers as tax from the emoluments of the employee and, in such a case, the employer shall not act upon the amount of total annual allowances which may be shown in a declaration submitted to him by the employee under the provisions of regulation 4.

(4) No action shall lie against any person for deducting any sum of money in compliance or intended compliance with the provisions of these Regulations.

(5) Where, by these Regulations, any obligation is imposed on any person to deduct any tax upon payment of emoluments, any agreement made by such person not to deduct such tax shall be void and of no force or effect whatsoever.

(6) Every person from whose emoluments any amount shall be deducted pursuant to these Regulations shall, upon the amount being so deducted, be deemed to have paid the same and shall thereupon cease to be liable for payment of tax to the extent of the amount so deducted.

Deductions in case of overtime, bonus, gratuity, etc.

7. - (1) If an employer makes a payment in respect of overtime services to an employee and such payment is not made at the same time as the payment of his regular emoluments, the employer shall, for the purpose of determining the tax to be deducted in respect thereof, include the amount of the overtime as part of the regular emoluments next to be paid, and deduct tax from those next emoluments by reference to the total of those emoluments and the overtime payment made earlier.

(2) If an employer makes a payment in respect of bonus, gratuity, or other additional earnings or retrospective increase in emoluments, the employer shall either:

(a) upon making the payment, deduct therefrom an amount in respect of tax thereon in accordance with the following scale, based upon the employer's estimate upon a reasonable basis of what the employee's emoluments, including such payment, will be from the same employer for the year in which the payment is made:
(i) emoluments for the year from the same employer $2,500 or under - 10 per cent of the payments;
(ii) emoluments for the year from the same employer between $2,501 and $4,000 - 18 per cent of the payment;
(iii) emoluments for the year from the same employer between $4,001 and $7,000 - 30 per cent of the payment;
(iv) emoluments for the year from the same employer between $7,001 and $10,000 - 40 per cent of the payment;
(v) emoluments for the year from the same employer between $10,001 and $12,000 - 45 per cent of the payment;
(vi) emoluments for the year from the same employer between $12,001 and $20,000 - 47 1/2 per cent of the payment;
(vii) emoluments for the year from the same employer in excess of $20,000 - 50 per cent of the payment;
or, at the request of the employee -
(b) make application to the Commissioner to determine the amount of tax to be deducted from the amount of these additional emoluments and, upon advice of the amount to be so deducted, the employer shall deduct such amount from the emoluments upon making payment thereof to the employee.

(Amended by Legal Notice 69 of 1976; 31 of 1982.)

Casual and seasonal employees etc.

8. (1) The Commissioner may direct employers as to the amount of tax, if any, to be deducted from:

(a) the emoluments of employees engaged in casual or seasonal employment; and
(b) the emoluments of any other class which, in the opinion of the Commissioner, is of such a nature that deduction of tax by reference to the tax tables would be impracticable or would constitute undue hardship.

(2) Where the Commissioner is satisfied that the deduction of the amount of tax otherwise to be deducted from the emoluments of an employee would constitute an undue hardship, he may determine and advise the employer of the amount, if any, to be so deducted.

(3) Any directions given pursuant to the provisions of this regulation may, in particular, include directions as to the manner in which the tax, if any, shall be deducted, the period over which such deductions shall be made and such other matters as the Commissioner may think fit; and any employer to whom any such directions may be given shall comply with the directions so given.

Exemption cards
(4) (a) The Commissioner may, in any case which he considers appropriate, issue to an employee an exemption card which shall be valid for the term specified thereon or for such shorter term as he shall notify to the employee holding the exemption card.

(b) An employee holding an exemption card shall return it to the Commissioner when it ceases to be valid or whenever the Commissioner so directs.

(c) For the purposes of regulations 5 and 6, the amount of total allowances signified on the exemption card shall be deemed to have been determined by the Commissioner as the appropriate total amount of allowances in respect of that employee for each of the years for which the exemption card is valid.

(d) Where an employee to whom an exemption card has been issued produces such card to his employer upon the commencement of this employment, it shall not then be necessary for him to file a declaration under the provisions of paragraph (4) of regulation 4.

(e) For the purposes of these Regulations, an "exemption card" means a card in the appropriate form bearing the words "exemption card", on which has been signified by the Commissioner the appropriate total annual allowances.

(f) If an exemption card should become lost or destroyed, the employee to whom it was issued may apply to the Commissioner for a new exemption card stating fully the circumstances surrounding such loss or destruction and, on the Commissioner being satisfied that it is appropriate to do so, he may issue a new exemption card.

(g) Any person other than the person to whom an exemption card is issued who uses or attempt to use such card to avoid deduction of tax from his emoluments shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding $200 or to imprisonment for a term not exceeding 3 months or to both such fine and imprisonment.

Deductions in case of death of employee

9. If any emoluments are paid by an employer at any time after the date of death of an employee, the employer by whom the emoluments are paid, shall, subject to the provisions of regulation 10, on making any such payment, deduct, in accordance with the provisions of these Regulations, the tax on those emoluments as if the deceased employee was still alive at the date of payment.

Exemptions from deductions

10. Tax shall not be deducted by an employer from-

(a) the emoluments of an employee whose income is exempt from the payment of tax; or

(b) any payment made in respect of domestic services performed in or in connection with any dwelling-house, apartment or other similar place of residence in which place the employer as a general rule sleeps or eats when in Fiji,

unless the Commissioner, in any particular case, directs the employer to deduct tax in accordance with these Regulations.
Commissioner may determine questions on emoluments

11. If any question shall arise as to-

(a) the amount of tax to be deducted on payment of any emoluments; or
(b) whether or not any emoluments are of any class specified in regulation 8; or
(c) whether or not any payment of emoluments is a payment of a bonus or of a retrospective increase in emoluments,

such question shall be determined by the Commissioner.

PART V - PAYMENT OF TAX DEDUCTED

Employer to pay to Commissioner amount of tax deducted

12. Every employer shall pay to the Commissioner or as the Commissioner directs the total amount of tax deducted by him in compliance or intended compliance with the provisions of these Regulations on or before the fifteenth day of the month next succeeding the month in which the employer paid the emoluments and, on payment of such total amount, the Commissioner shall cause to be sent to such employer a receipt therefore:

Provided that, where the employer ceases to carry on business, all amounts of tax deducted by him as required by these Regulations and not paid to the Commissioner shall be paid by him to the Commissioner within 7 days of the day on which the employer ceased to carry on business.

PART VI - ACCOUNTING FOR TAX DEDUCTED

Returns to accompany payments or tax deducted

13. Every payment made as required by regulation 12 shall be accompanied by a return made out on the appropriate form by on behalf of the employer.

Employer to submit separate accounts in respect of retrospective emoluments

14. Where the payment of a bonus or of any sum to meet any retrospective increase in emoluments granted to an employee is made at any time in any year and the whole or any part of such payment relates to any calendar year preceding the year in which such payment is made, the employer shall, within 7 days of such payment being made, deliver or send by post to the Commissioner a separate account of such payment made out on the appropriate form, and showing the total of such emoluments paid and the total amount of tax deducted therefrom.

Employer to furnish certificates of deduction
15. - (1) On or before the last day of the month of February of each year next following a year in which tax was deducted from the emoluments of an employee, the employer by whom the tax was deducted shall unless he has previously delivered or sent to the employee a certificate provided for by regulation 16, 17 or 18, deliver personally or send by post to the employee a certificate in duplicate made out on the appropriate form and containing the following particulars, namely:

(a) the name and address of the employee;
(b) the number, if any, used to identify the employee;
(c) the gross amount of all emoluments paid by him to the employee during the year immediately preceding that in which the certificate is by this regulation required to be sent or delivered;
(d) the value of free quarters and/or rations or any other allowance provided;
(e) the total amount, if any, deducted by him on the making of any payment of these emoluments to the employee for or in respect of any amount contributed by the employee under any approved fund,
(f) the total amount of tax deducted in accordance with these Regulations from the emoluments of the employee;
(g) the total of the personal allowances claimed by the employee in his declaration under regulation 4;
(h) the date when the employment commenced if such date is a date subsequent to 1 January in the year to which the certificates relates.

2) Where an employer is required to deliver or send a certificate in duplicate to an employee under the provisions of paragraph (1), he shall make, on the appropriate form, 2 further copies of such certificate, 1 of which copies he shall deliver personally or send by post to the Commissioner on or before the last day of February in each year, and the other copy shall be retained by the employer for record purposes.

(Substituted by Legal Notice 38 of 1967.)

Employer to furnish certificates on cessation of employment

16. - (1) If any employer ceases to employ an employee from whose emoluments tax was deducted by him in accordance with these Regulations, he shall not later than 7 days after the day on which the last payment of emoluments was made, deliver personally or send by post to the employee a certificate in duplicate on the appropriate form containing the following particulars, namely:

(a) the name and address of the employee;
(b) the number, if any, used to identify the employee,
(c) the date on which the employment ceased;
(d) the gross amount of all emoluments paid by him to the employee from the first day of his employment in the year in which the employment ceased up to and including the day on which the last payment of emoluments was made to the employee;

(e) the value of the free quarters and/or rations or any other allowance provided;

(f) the total amount, if any, deducted by him on the making of any payment of those emoluments for or in respect of any amount contributed by the employee under any approved fund;

(g) the total amount of tax deducted in accordance with these Regulations from the emoluments of the employee;

(h) the total of the personal allowances claimed by the employee in his declaration under regulation 4.

(2) Where an employer is required to deliver or send a certificate in duplicate to an employee under the provisions of paragraph (1), he shall make, on the appropriate form, 2 further copies of such certificate, 1 of which copies he shall deliver personally or send by post to the Commissioner not later than 7 days after the day on which the last payment of emoluments was made, and the other copy shall be retained by the employer for record purposes.

(Substituted by Legal Notice 38 of 1967.)

(3) If an employee retires from the service of an employer and is granted a pension, such retirement shall not be treated as a cessation of employment for the purposes of this regulation, if the emoluments are paid by or on behalf of the same person both before and after the retirement.

Employer to furnish certificates of deductions on cessation of business

17. - (1) If an employer ceases to carry on business, he shall, not later than 1 month after the cessation of the business, deliver personally or send to each employee from whose emoluments any tax was deducted during the year in which the business ceased a certificate in duplicate made out in the appropriate form and containing the particulars specified in regulation 15 for or in respect of a period beginning with the first day of the year in which the business ceased to be carried on and ending on the day of cessation of that business:

Provided that, in the case of a business commenced to be carried on in the year in which it ceases, the date of commencement of the period for or in respect of which the particulars of the certificate shall relate shall be the date on which the business commenced to be carried on in that year.

(2) Where an employer is required to deliver or send a certificate in duplicate to an employee under the provisions of paragraph (1) he shall make, on the appropriate form, 2 further copies of such certificate, 1 of which copies he shall deliver personally or send by post to the Commissioner within 1 month of the day of cessation of business, and the other copy shall be retained by the employer for record purposes.

(Amended by Legal Notice 38 of 1967.)
18. Where an employee dies, the employer shall, not later than the fifteenth day of the month next following that in which the death occurred, deliver personally or send to the legal or personal representative, or on to the next of kin of the deceased employee, if known to him, the certificate in duplicate referred to in regulation 16 and shall, within the same time, deliver personally or send by post to the Commissioner a further copy of such certificates made on the appropriate form and shall insert thereon the name and address of the legal or personal representative, or of the next of the kin of the deceased employee, if known to him.

(Amended by Legal Notice 38 of 1967)

19. When an employer makes any payment of emoluments to an employee from whom tax is deducted as required by these Regulations, he shall, at the same time, furnish to the employee particulars of payment, including particulars of the gross emoluments for the pay period and of the amount of tax deducted therefrom, in the appropriate form:

Provided that, where the Commissioner is satisfied that it is expedient to do so, he may, by notice in writing, exempt any or all employers from complying with the provisions of this regulation in respect of such classes of employees as may be specified in such notice, which shall be operative until revoked.

20. Every employer who makes any payment of emoluments to an employee from whose emoluments tax is deducted as required by these Regulations shall keep, to the satisfaction of the Commissioner, a record of the emoluments paid to each such employee and of the tax deducted therefrom on each payment thereof.

Summary of emoluments

21. On or before the last day of February of each year next following the year in which tax was deducted from emoluments of employees, every employer shall deliver personally, or send by post, to the Commissioner a summary in duplicate made out in the appropriate form containing the following particulars:-

(a) the name and address of the employer;
(b) the gross amount of all emoluments paid to all employees during the year immediately preceding that for which the summary is, under the provisions of this regulation, required to be delivered or sent;
(c) the total amount of tax deducted from all employees from their emoluments in accordance with the provisions of these Regulations; and
(d) the total amount of basic tax accounted for in accordance with the provisions of the
Income Tax (Collection of Basic Tax) Regulations on all emoluments of employees:

Provided that, on the cessation of business by the employer, the Commissioner may require
the employer to deliver or send the summary within such times as he may specify.

(Inserted by legal Notice 202 of 1968)

PART VII - ASSESSMENT OF EMOLUMENTS

Commissioner to assess tax on emoluments and notify employee of assessment

22. (1) Tax in respect of emoluments shall be assessed by the Commissioner in accordance
with the provisions of section 55 of the Act, and a notice of assessment shall be sent to every
employee so assessed by whom tax is payable or from whose emoluments any tax was
deducted during the year:

Provided that nothing in this regulation shall be construed as requiring a notice of assessment
to be sent in any case which does not require adjustment of tax, unless the employee so
requires.

(2) If the tax payable under the assessment is less than the total tax deducted from the
employee's emoluments in respect of the year, the Commissioner shall refund the difference
to the employee:

Provided that, in all such cases, the Commissioner shall ignore the amount of such difference
if it be less than $2.

(Amended by Legal Notice 202 of 1968.)

(3) If the tax payable under the assessment exceeds the total tax deducted from the
employee's emoluments in respect of the year, the Commissioner shall required the
employee to pay the difference to him:

Provided that, in all such cases, the Commissioner shall ignore the amount of such difference
if it be less than $2.

(Amended by Legal Notice 202 of 1968)

(4) The provisions of the Act relating to objections and appeals shall apply to any assessment
made in accordance with this regulation.

PART VIII - MISCELLANEOUS AND PENALTIES

Personal representative to assume liability of deceased employer
23. If an employer dies, anything which he would have been liable to do under these Regulations shall be done by his personal representative, or, in the case of an employer who paid emoluments on behalf of another person, by the person succeeding him, or if no person succeeds him, by the person on whose behalf the emoluments were paid.

Change of employer

24. - (1) This regulation shall apply where there has been a change only in the employer from whom an employee receives emoluments in respect of his employment in any trade business, profession or vocation or in connection with the working of any property, or from whom an employee receives any annuity or pension or allowance in respect of past services.

(2) Where this regulation applies, the change shall not be treated as a cessation of employment for the purposes of regulation 16 and, in relation to any matter arising after the change, the employer after the change shall be liable to do anything which the employer before the change would have been liable to do under these Regulations if the change had not taken place:

Provided that the employer after the change shall not be liable for the payment of any tax which was deductible from emoluments paid to the employee before the change took place.

Commissioner to prepare tax tables

25. (1) The tax tables shall be constructed by the Commissioner with a view to securing that, so far as practicable, the tax to be deducted as required by these Regulations from the emoluments of any employee may be readily ascertained and with a view to securing that, so far as practicable, the total tax payable in respect of any emoluments is deducted from the emoluments paid during the year.

(2) Separate tables shall be prepared for weekly, fortnightly, 4 weekly and monthly pay periods. Such tables shall make provision for such ranges of emoluments as the Commissioner shall think fit.

(3) For the purposes of this regulation, reference to the total tax payable shall, in relation to the tables referred to in paragraph (1), be construed as references to the total tax estimated to be payable, having regard only to the allowances claimed by the employee in the declaration required to be completed and filed under the provisions of regulation 4 and without aggregating emoluments from 2 or more sources or emoluments with other income, or the emoluments of a husband with those of his wife.

Employer to produce wages sheets, etc. for inspection

26. Every employer, when called upon to do so by the Commissioner or by any person authorised in writing by the Commissioner in that behalf, shall produce to the Commissioner or to such authorised person for inspection all wages sheets and other documents and records whatsoever relating to the calculation or payment of the emoluments of his employees to
whom he pays emoluments or to the deduction of tax therefrom or to the accounting for any
tax deducted therefrom.

Employee may complain to Commissioner in respect of deductions made by employer

27. If any employee considers that any tax deducted by his employer is less than or in excess of the amount of tax which ought properly to be deducted from his emoluments in accordance with these Regulations, he may, in writing, give notice of complaint, stating the grounds of his complaint, to the Commissioner.

Commissioner to determine complaint

28. In the event of the Commissioner being satisfied on the complaint of any employee made under Regulation 27:

(a) that any tax in excess of the amount which ought properly to have been deducted in accordance with these Regulations from the emoluments of the employee was deducted by the employer, he shall, as soon as practicable, cause the excess to be refunded to the employee;

(b) that less tax than the amount which ought properly to have been deducted in accordance with these Regulations from the emoluments of the employee was deducted by the employer he shall, as soon as practicable, cause the amount of the deficiency to be collected from the employee.

Publication of notice by Commissioner

29. Any notice published by the Commissioner pursuant to these Regulations shall be published in the Gazette and in at least 1 newspaper circulating in Fiji or in such other manner as the Commissioner may think fit.

Tax deductions by employer to be treated as single debt

30. (1) The total amount of tax which an employer is liable under the provisions of regulation 12 to pay to the Commissioner within the time specified by that regulation may, for the purposes of recovery thereof, be treated as a single debt, notwithstanding that the employer is liable to pay separate amounts in respect of more than 1 employee but nothing in this regulation shall prevent the bringing of separate actions for the recovery of each of the several amounts which the employer is liable to pay within the first 15 days of any month in respect of his several employees to whom he pays emoluments.

(2) A certificate of the Commissioner that any amount of tax mentioned in paragraph (1) has not been paid to him, or to the best of his knowledge and belief to any person acting on his behalf, shall be prima facie evidence that the sum mentioned in the certificate is due and unpaid, and any document purporting to be such a certificate as aforesaid shall be deemed to be such a certificate until the contrary is proved.
Commissioner may sanction use of certificates and tax tables other than prescribed

31. It shall be lawful for the Commissioner to give permission in writing to any employer to use for the purposes of these Regulations -

(a) in lieu of the certificate as prescribed in regulations 14, 15, 16 and 17, some other certificate which, in the opinion of the Commissioner, is adequate; or

(b) tax tables other than tables prepared by the Commissioner, provided he is satisfied that such tables will produce the same result as the tax tables which he is required to prepare under the provisions of regulation 25.

Personal liability in cases of partnership or company

32.-(1) Where a trade, business, profession or vocation is carried on by 2 or more persons jointly, the precedent partner shall be personally liable for the performance of the duties required by the provisions of these Regulations to be performed by the person making the payment or by the person deducting any amount of tax; and, where a trade, business, or profession is carried on by a company, the managing director and the secretary of the company shall each, in addition to the company itself, be personally liable for the performance of the said duties.

(2) For the purposes of these Regulations in relation to a "partnership" the expression "precedent partner" shall mean the partner who of the partners resident in Fiji -

(a) is first named in the agreement of partnership; or

(b) if there is no agreement, is named singly or with precedence to the other partners in the usual name of the firm; or

(c) is the precedent active partner if the partner named with precedence is not an active partner,

and, where no partner is resident in Fiji, the expression "precedent partner" shall mean the attorney, agent, manager or factor of the firm resident in Fiji.

Obstructions

33. If any person shall hinder, prevent or obstruct the Commissioner or any person authorised in writing by the Commissioner in that behalf from inspecting any wages sheets or other documents or records mentioned in regulation 26 after being called upon to produce the same, he shall be guilty of an offence and shall be liable on conviction, to a fine not exceeding $200 or to imprisonment for a term not exceeding 3 months or to both such fine and imprisonment.

Offences by employer
34. If an employer fails or neglects to deduct tax from the emoluments of an employee in accordance with any of the provisions of these Regulations or of any direction issued thereunder by the Commissioner, or fails or neglects to remit to the Commissioner any tax deducted in accordance with these Regulations or with any such direction of the Commissioner or fails or neglects to keep the records required by regulation 20, he shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding $2,000 or to imprisonment for a term not exceeding one year in respect of each such failure or neglect on his part or to both such fine and imprisonment.

(Amended by Legal Notice 6 of 1983.)

SECTION 107 - INCOME TAX (COLLECTION OF BASIC TAX) REGULATIONS

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Regulations 28 December 1964,
Legal Notices Nos. 203 of 1968, 77 of 1969

PART I - PRELIMINARY
1. These Regulations may be cited as the income Tax (Collection of Basic Tax) Regulations.

Interpretation

2. (1) In these Regulations, unless the context otherwise requires -

"appropriate form" means a form approved by the Commissioner for use in any particular case pursuant to these Regulations;
"emoluments" has the same meaning as in section 79 of the Act;
"employee" means any person to whom emoluments are paid;
"employer" means any person paying emoluments whether on his own account or on behalf of any other person to an employee;
"income" includes payments from which basic tax is required to be deduct at source under the provisions of these Regulations;
"precedent partner" means the partner who, of the partners resident in Fiji -
(a) is first named in the agreement of partnership; or
(b) if there is no agreement, is named singly or with precedence to the other partners in the usual name of the firm; or
(c) is the precedent active partner if the partner named with precedence is not an active partner, and where no partner is resident in Fiji, the expression "precedent partner" shall mean the attorney, agent, manager or factor of the firm resident in Fiji.

Employer to include the Crown

(2) Unless the context otherwise requires, references in these Regulations to an employer or a person paying emoluments shall be deemed to include reference to the Crown.

Principal employer and immediate employer

(3) (a) Where an employee works under the general control and management of a person who is not his immediate employer, that person (referred to hereafter in this regulation as the "principal employer") shall be deemed (in relation to such employer) to be the employer for the purposes of these Regulations, and the immediate employer shall furnish the principal employer to comply with the provisions of these Regulations.

(b) If the employee's emoluments are actually paid to him by the immediate employer-

(i) the immediate employer shall calculate and deduct the amount of basic tax when the emoluments are paid to the employer; and

(ii) the principal employer shall make a corresponding deduction on making to the immediate employer the payment out of which the said emoluments will be paid.

Deduction at source wherever practicable
(4) Basic tax shall be collected in the manner most convenient to the source of income and where practicable shall be deducted at source by the person making the payment.

(5) In calculating the basic tax to be deducted from any amount in accordance with the requirements of these Regulations, the cents in that amount shall be ignored.

(Amended by Legal Notice 203 of 1968)

PART II - REGISTRATION

Requirement to register

3. Every person who carries on or is about to carry on any trade, business, profession or vocation in respect of which he is an employer shall provide the Commissioner with certain information, and registration under the provisions of regulation 3 of the Income Tax (Employment) Regulations, shall be sufficient compliance with this regulation.

PART III - DEDUCTION OF BASIC TAX FROM EMOLUMENTS

Employer to deduct basic tax upon payment of emoluments

4. (1) Every employer, when making payment of emoluments to an employee, shall deduct therefrom the amount of basic tax applicable thereto:

Provided that, in respect of the payment of emoluments after 30 April 1969, where the amount of any payment to any employee (excluding the value of all emoluments received otherwise than in cash applicable to the period in which the emoluments are being paid) is $10 or less a week or where the amount of basic tax applicable to any such payment would reduce the balance thereof to $10 or less, then, unless the Commissioner otherwise directs, no deduction of basic tax shall be made by the employer from such payment.

(Amended by a Legal Notice 203 of 1968; 77 of 1969.)

(2) Where the emoluments of an employee include the estimated value of any quarters or board or residence or any other allowance granted in respect of employment other than in money, the proportion of the amount of the annual value of such quarters, board or residence or other allowance applicable to the period in respect of which the emoluments are being paid shall be deemed, for the purposes of paragraph (1), to be part of the emoluments being paid and shall be taken into account in calculating the amount of basic tax to be deducted therefrom.

(3) Every employer shall be deemed to make payment of emoluments to an employee not only when an amount of emoluments is actually paid but also when emoluments are credited for the benefit of an employee to an account on which the employee can draw or over which he has control or are otherwise applied for his benefit or at his direction or are applied in reduction of a debt due by him to the employer, unless such indebtedness arose from a
payment in advance of or on account of remuneration from which basic tax was deducted at the time of payments.

(4) Where an employer makes to an employee, any payment of the types referred to in regulation 7 of the Income Tax (Employments) Regulations, he shall in all cases deduct basic tax at the time of making such payments.

Deductions in case of death of employee

5. Where, in the case of a deceased employee, any emoluments are paid by an employer at any time after the date of death of such employee, the employer shall, on making any such payment, deduct basic tax in accordance with these Regulations as if the employee were still alive at the date of payment.

Exemption from deductions

6. Basic tax shall not be deducted by an employer from:

(a) the emoluments of an employee whose income is exempt from the payment of tax;
(b) any payment made in respect of domestic services performed in or in connection with any dwelling-house, apartment or other similar place of residence in which place the employer as a general rule sleeps or eats when in Fiji,

unless the Commissioner, in any particular case, directs the employer to deduct basic tax in accordance with these Regulations.

PART IV - PAYMENT OF BASIC TAX DEDUCTED FROM EMOLUMENTS

Employment employer to pay to Commissioner amount of tax deducted

7. Every employer shall pay to the Commissioner or as the Commissioner directs the total amount of basic tax deducted by him in compliance or intended compliance with the provisions of these Regulations on or before the fifteenth day of the month next succeeding the month in which the employer paid the emoluments and, on payment of such total amount, the Commissioner shall cause to be sent to such employer a receipt therefor:

Provided that, where the employer ceases to carry on business, all amounts of basic tax deducted by him as required by these Regulations and not paid to the Commissioner shall be paid by him to the Commissioner within 7 days of the day on which the employer ceased to carry on business.

Method of accounting for basic tax where wages bill under $1,920

8. - (1) Where an employer who is liable for provisional tax under the provisions of section 83 of the Act may reasonably be expected to have a wages bill of less than $1,920 a year, the
basic tax deducted from or to be paid by him in respect of those wages shall, notwithstanding
the other provisions of these Regulations, be accounted for in conjunction with the instalment
payments of provisional tax, unless in any case the Commissioner otherwise directs.

(2) In the case of a partnership to which paragraph (1) applies, the precedent partner shall be
liable to account for such basic tax.

Special arrangements in certain cases

9. To facilitate the accounting for small amount of basic tax by persons to whom regulation 8
would not apply, the Commissioner may make such special arrangements as he may consider
appropriate.

Returns to accompany payments of tax deducted

10. Every payment made as required by regulation 7 shall be accompanied by a return made
out on the appropriate form by or on behalf of the employer.

PART V - ACCOUNTING FOR BASIC TAX DEDUCTED

Accounting procedure and notification to employee

11. The requirements of regulations 15, 16, 17, 18, 19 and 20 of the Income Tax
(Employments) Regulations shall apply to every employer in respect of basic tax deducted
under the provisions of these Regulations, except that, where the only deduction made from
the emoluments of an employee under either the provisions of these Regulations or the
Income Tax (Employments) Regulations has been in respect of basic tax, then the provisions
of such regulations 15, 16, 17 and 18 need not be complied with, unless in any particular case
the Commissioner so requires.

Records in cases of casual labour

12. In the case of casual labour in respect of whom an employer is not required under the
provisions of the Employment Regulations, or any regulations superseding such Regulations
to keep a record of wage payments, then no separate record shall be required to be kept in
respect of such persons for the purposes of basic tax deductions, unless in any case or class of
case the Commissioner should otherwise direct, and the provisions of regulation 11 shall be
read accordingly.

PART VI - ASSESSMENT OF EMOLUMENTS

Commissioner to assess tax on emoluments

13. The provisions of regulation 22 of the Income Tax (Employments) Regulations shall
apply in respect of basic tax.
PART VII - DEDUCTIONS OF BASIC TAX FROM CERTAIN INTEREST

Payers of certain interest to deduct basic tax

14. Upon payment of any interest to, or on the crediting of interest to, the account of any depositor, by any trading bank or savings bank in Fiji, or by the National Bank of Fiji, or upon payment by the Chief Accountant of any interest to any investor in any loan raised by the Fiji Government, basic tax shall be deducted by the person making the payment or the credit. Such amounts deducted shall, within 7 days of deduction, be paid to the Commissioner in such manner as he shall direct and with such details as he shall require.

PART VIII - DEDUCTIONS OF BASIC TAX FROM PROCEEDS OF PRIMARY PRODUCE AND OTHER INCOME AT SOURCE

Deductions from sale proceeds of primary produce

15. - (1) The Commissioner may nominate, at his discretion, the person who shall be responsible for making the deduction at source of basic tax from the proceeds of the sale of primary produce and the person so nominated shall make and account for such deductions in such manner as the Commissioner shall require.

(2) In order that the amount of basic tax to be deducted from the sale proceeds of primary produce may be calculated, the Commissioner shall estimate such percentage of the gross sale proceeds of the primary produce as may be expected in the normal course of events to accrue to that class of primary producer as net profit for tax purposes.

(3) For the purpose of assisting primary producers to account to him for the basic tax which such producers are required to deduct from or to pay in respect of emoluments paid by them, the Commissioner shall estimate such percentage of the gross sale proceeds of the primary produce as may be expected in the normal course of events to be paid out as emoluments by the class of primary producer concerned.

(4) The Commissioner shall inform the person nominated under the provisions of paragraph (1) of the total of the 2 percentage figures estimated in accordance with paragraphs (2) and (3), and such person shall make the deduction of basic tax at the rate of 5 cents in each 2 complete dollars from that total percentage of the gross sale proceeds upon payment of such proceeds to, or on the crediting thereof to the account of, the primary producer.

(5) In making his estimates of the percentage figures required under the provisions of this regulation, the Commissioner shall have regard to returns of income lodged with him by that particular class of primary producer in previous years.

Deduction of basic tax from other income

16. Where he is satisfied that it would be expedient for the more effective collection of basic tax, the Commissioner may, in the case of any particular source of income, require the person responsible for making payment to the person entitled to the income from the source deduct
basic tax at the rate of 5 cents in each 2 complete dollars from such income upon payment or
the crediting thereof to the account of the person entitled to such income and to account for
such deductions in such manner as the Commissioner shall require.

Basic tax deducted at source in the case of certain companies

17. Where any company has suffered deductions at source of basic tax under the provisions
of these Regulations, the amount of such basic tax deducted during the course of the year
shall, if required by the company, and to the extent to which it exceeds the liability of that
company to account to the Commissioner for basic tax in respect of emoluments it has paid
during that year, be treated by the Commissioner as part of the first payment of tax required
to be made by that company under the provisions of paragraph (a) of subsection (1) of section
91 of the Act.

Commissioner may make special arrangements in any case

18. The Commissioner may, to meet the special circumstances of any case or class of case
and subject to such terms and conditions as he, in his discretion, may require, make special
arrangements for the deduction of basic tax and for accounting for the amounts so deducted.

Basic tax deducted at source to be taken
into account in ascertaining amount of provisional
tax payable

19. For the purpose of estimating the amount of provisional tax payable by a person in
accordance with the provisions of section 84 of the Act, the Commissioner shall take into
account the estimated amount of basic tax expected to be deducted at source from the income
of that person, to the extent to which the amount to be so deducted may reasonably be
expected to exceed the estimated liability of that person to account to the Commissioner for
basic tax in respect of emoluments expected to be paid by him during the year.

PART IX - MISCELLANEOUS AND PENALTIES

Indemnity of person making deduction

20. No action shall lie against any person for deducting any sum of money in compliance or
intended compliance with the provisions of these Regulations.

Agreement not to deduct basic tax shall be void

21. Where, by these Regulations, any obligation is imposed on any person to deduct any basic
tax upon payment of emoluments, interest, proceeds of primary produce or any other income,
any agreement made by such person not to deduct such tax shall be void and of no force or
effect whatsoever.

Deduction of basic tax
22. Every person, from whose emoluments, interest, proceeds of primary produce or other income shall be deducted pursuant to the provisions of these Regulations, shall, upon the sum being so deducted, be deemed to have paid such sum and shall thereupon cease to be liable for payment of basic tax in respect of such emoluments, interest, proceeds of primary produce or other income.

**Personal representative to assume liability of deceased person**

23. If an employer or person nominated under the provisions of regulations 15, 16, and 18 dies, the obligations of such deceased employer or person nominated in pursuance of the provisions of these Regulations shall be performed by his personal representative, or, in the case of an employer who paid emoluments on behalf of another person, by the person succeeding such employer or, if no person succeeds him, by the person on whose behalf the emoluments were paid.

**Change of employer**

24. When there has been a change in the employer from whom an employee receives emoluments in respect of his employment in any trade, business, profession or vocation, or in connection with the working of any property or from whom an employee receives any annuity, pension or allowance, such charge shall not be treated as a cessation of employment for the purposes of regulation 16 of the Income Tax (Employments) Regulations and, in relation to any matter arising after the change, the employer after the change shall be liable to do all that which the employer before the change would have been liable to do under the provisions of these Regulations if the change had not taken place:

Provided that the employer after the change shall not be liable for the payment of any basic tax which was deductible from emoluments paid to the employee before the change took place.

**Employer, etc., to produce wages sheets, etc. for inspection**

25. Every employer, every payer of interest required under the provisions of regulation 14, every person nominated under the provisions of paragraph (2) of regulation 15 and every other person required under the provisions of these Regulations to make deductions of basic tax, when called upon to do so by the Commissioner or by any person authorised in writing by the Commissioner in that behalf, shall produce to the Commissioner or to such authorised person for inspection all wages sheets and other documents and records whatsoever relating to the calculation or payment of the emoluments of his employees to whom he pays emoluments or to the deduction of basic tax therefrom or from any payment of interest proceeds of primary produce or other income or to the accounting for any basic tax deducted therefrom.

**Employee may complain to Commissioner in respect of deductions made by employer**
26. If any employee considers that any basic tax deducted by his employer is less than or in excess of the amount of basic tax which ought properly to be deducted from his emoluments in accordance with these Regulations, he may, in writing, give notice of complaint, stating the grounds thereof, to the Commissioner.

**Commissioner to determine complaint**

27. In the event of the Commissioner being satisfied on the complaint of any employee made under regulation 26 that:

(a) any tax in excess of the amount which ought properly to have been deducted in accordance with the provisions of these Regulations from the emoluments of the employee was deducted by the employer, he shall, as soon as practicable, cause the excess to be refunded to the employee;

(b) less tax than the amount which ought properly to have been deducted in accordance with these Regulations from the emoluments of the employee was deducted by the employer he shall, as soon as practicable, cause the amount of the deficiency to be collected from the employee.

**Personal liability in cases of partnership or company**

28. Where a trade, business, profession or vocation is carried on by 2 or more persons jointly, the precedent partner shall be liable for the performance of the duties required by the provisions of these Regulations to be performed by the person making the payment or by the person deducting any amount of basic tax; and, where a trade, business or profession is carried on by a company, the managing director and the secretary of the company shall each, in addition to the company itself, be personally liable for the performance of the said duties.

**General**

29. The Commissioner shall determine any question which may arise as to the amount of basic tax which should be deducted in any particular case and, where he considers it appropriate, may direct that no basic tax need be deducted, or direct any person required to make any deduction as to the amount to be deducted in any particular case, in which he might otherwise be required to deduct under the other provisions of these Regulations.

**Obstruction**

30. If any person shall hinder, prevent or obstruct the Commissioner or any person authorised in writing by the Commissioner in that behalf from inspecting any wages sheets or other documents or records mentioned in regulation 25 after being called upon to produce the same, he shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding $200 or to imprisonment for a term not exceeding 3 months or to both such fine and imprisonment.
Offences

31. If any person required under the provisions of these Regulations to deduct basic tax from any payment fails or neglects to deduct such basic tax in accordance with any of the provisions of these Regulations or of any direction issued thereunder by the Commissioner or fails or neglects to remit to the Commissioner any basic tax deducted in accordance with these Regulations or with any such direction of the Commissioner or fails or neglects to keep such records as may be required by the Commissioner for the purposes of these Regulations, he shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding $200 or to imprisonment for a term not exceeding 3 months in respect of each such failure or neglect on his part or to both such fine and imprisonment.

SECTION 106 - DOUBLE TAXATION RELIEF ARRANGEMENT WITH JAPAN

Order 7 October 1970

The arrangements specified in the Schedule to this Order have been made between the Government of the United Kingdom and Northern Ireland and the Government of Japan and that it is expedient that those arrangements should have effect in Fiji in relation to tax notwithstanding anything contained in any enactment.

SCHEDULE


SECTION 106 - DOUBLE TAXATION RELIEF NEW ZEALAND

TABLE OF PROVISIONS

ARTICLE

1. Personal scope
2. Taxes covered
3. General definitions
4. Fiscal domicile
5. Permanent establishment
The Government of Fiji, has made arrangements with the Government of New Zealand with a view to the prevention of the levying under the laws of Fiji and of New Zealand of income tax in respect of the same income and the rendering of reciprocal assistance in the administration of and the collection of taxes under the income tax laws of Fiji and of New Zealand.

The arrangements so made are embodied in a Convention concluded on 27 October 1976, a copy of which is set out in the Schedule.

SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF FIJI AND THE GOVERNMENT OF NEW ZEALAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME


Desiring to conclude an Agreement with the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

Have agreed as follows:
ARTICLE 1
PERSONAL SCOPE

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2
TAXES COVERED

(1) The taxes which are the subject of this Agreement are:

(a) in Fiji:
the income tax (including basic tax and normal tax, the non-resident dividend withholding tax, the interest withholding tax and the dividend tax);

(b) in New Zealand:
the income tax and the excess retention tax.

(2) This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes by either Contracting State.

(3) For the purposes of paragraph (1) (b) of this Article the income tax does not include the bonus issue tax.

ARTICLE 3
GENERAL DEFINITION

(1) In this Agreement, unless the context otherwise requires-

(a) the term "Fiji" means the islands of Fiji, including the island of Rotuma and its dependencies; and includes all areas of water which, in accordance with international law, have been, or may hereafter be, designated under the laws of Fiji as areas over which the sovereignty of Fiji may be exercised with respect to the sea, the sea bed and its subsoil and the natural resources thereof;

(b) the term "New Zealand" when used in a geographical sense, means the metropolitan territory of New Zealand (including the outlaying islands) but does not include the Cook Islands, Niue or the Tokelau Islands; it also includes areas adjacent to the territorial sea of the metropolitan territory of New Zealand (including the outlaying islands) which by New Zealand legislation and in accordance with international law have been, or may hereafter be, designated as areas over which New Zealand has sovereign rights for the purposes of
exploring them or of exploring, exploiting, conserving and managing the natural resources of the sea, or of the seabed and subsoil;

(c) the terms "Contracting State", "one of the Contracting States", and "other Contracting State" mean Fiji or New Zealand, as the context requires;

(d) the term "person" includes any body of persons, corporate or not corporate;

(e) the term "Fiji tax" means tax imposed by Fiji being tax to which this Agreement applies by virtue of Article 2; the term "New Zealand tax" means tax imposed by New Zealand being tax to which this Agreement applies by virtue of Article 2;

(f) the term "tax" means Fiji tax or New Zealand tax, as the context requires;

(g) the term "competent authority" means, in the case of Fiji, the Commissioner of Inland Revenue or his authorised representative and, in the case of New Zealand, the Commissioner of Inland Revenue or his authorised representative;

(h) the term "natural resource royalties" means payments of any kind to the extent to which they are made as consideration for the use of, or the right to use, any mine or quarry, or as consideration for the extraction, removal or other exploitation of, or the right to extract, remove or otherwise exploit, standing timber or any natural resource;

(i) the term "industrial or commercial profits" means profits derived by an enterprise of a Contracting State from the carrying on of a trade or business, but does not include -

(i) dividends, interest, royalties (as defined in Article 11), or natural resource royalties;

(ii) income from the sale or other disposition of land situated in the other Contracting State or of any estate or interest in land so situated, or from the sale or other disposition of any share or comparable interest in a company or association whose assets consists wholly or principally of any such land or any such estate or interest;

(iii) income from the grant or renewal, or from the sale or other disposition, of any right relating to the operation of any mine or quarry, situated in the other Contracting State or to the extraction, removal or other exploitation of any standing timber or of any natural resource so situated or from the sale of other disposition of any share or comparable interest in a company or association whose assets consist wholly or principally of any such right; in this sub-paragraph (i) (iii), the term "right" means any right, licence, permit, authority, title, option, privilege or other concession and includes a share or interest in any right, licence, permit, authority, title, option, privilege or other concession;

(iv) rent;

(v) profits from operating ships or aircraft;

(vi) remuneration or other income for personal (including professional) services;

(vii) income from the furnishing of services of employees or others by any person in the course of the carrying on by that person of a profession or vocation; or

(viii) charges for the bailment of livestock;

(j) the terms "enterprise of a Contracting State "and" enterprise of other Contracting State" mean an enterprise carried on by a Fiji resident or an enterprise carried on by a New Zealand residents, as the context requires;

(k) words in the singular include the plural and words in the plural include the singular.

(2) In determining, for the purposes of Article 9, 10 or 11, whether dividends, interest or
royalties are beneficially owned by a resident of a Contracting State, dividends, interest or royalties in respect of which a trustee is subject to tax in that Contracting State shall be treated as being beneficially owned by that trustee.

(3) In this Agreement, the terms "Fiji tax" and "New Zealand tax" do not include any amount which represents a penalty or interest imposed under the law of either Contracting State relating to the taxes to which this Agreement applies by virtue of Article 2.

(4) In the application of the provisions of this Agreement by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes to which this Agreement applies by virtue of Article 2.

ARTICLE 4

FISCAL DOMICILE

(1) For the purposes of this Agreement -

(a) the term "New Zealand resident" means a person who is a resident in New Zealand for the purposes of New Zealand tax;
(b) the term "Fiji resident" means a person who is a resident of Fiji for the purposes of Fiji tax.

(2) Where by reason of the provisions of paragraph (1) of this Article an individual is both a New Zealand resident and a Fiji resident then his status shall, for the purposes of this Agreement, be determined in accordance with the following rules -

(a) he shall be deemed to be solely a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting State, he shall be deemed to be solely a resident of the Contracting State with which his personal and economic relations are closest (hereinafter referred to as his centre of vital interests);
(b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be solely a resident of the Contracting State in which he has an habitual abode;
(c) if he has an habitual abode in both Contracting State or in neither of them, he shall be deemed to be solely a resident of the Contracting State of which he is a national;
(d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

(3) Where, by reason of the provisions of paragraphs (1) of this Article, a person other than an individual is both a New Zealand resident and a Fiji resident then its status shall, for the purposes of this Agreement, be determined in accordance with the following rules -
(a) it shall be treated solely as a New Zealand resident if the centre of its practical management is situated in New Zealand and solely as a Fiji resident if the centre of its practical management is situated in Fiji, whether or not any person outside New Zealand or Fiji, as the case may be, exercises or is capable of exercising any overriding control of it or of its policy or affairs in any way whatsoever; and

(b) failing a resolution of the matter under sub-paragraph (a) of this paragraph, it shall be treated solely as a New Zealand resident if it is established by or under the laws of New Zealand and solely as a Fiji resident if it is established by or under the laws of Fiji.

(4) For the purposes of this Article the term "national" means -

(a) in relation to New Zealand, any individual who is a New Zealand citizen;

(b) in relation to Fiji, any individual who is a Fiji citizen.

(5) For the purposes of this Agreement, the terms "resident of a Contracting State" and "resident of the other Contracting State" means a person who is a New Zealand resident or a person who is a Fiji resident, as the context requires.

ARTICLE 5
PERMANENT ESTABLISHMENT

(1) For the purposes of this Agreement the term "permanent establishment", in relation to an enterprise, means a fixed place of trade or business in which the trade or business of the enterprise is wholly or partly carried on.

(2) The term "permanent establishment" includes -

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, quarry or other place of extraction of natural resources;

(g) an agricultural, pastoral or forestry property;

(h) a building site or construction, installation or assembly project which exists for more than six months.

(3) The term "permanent establishment" shall not be deemed to include -

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a fixed place of trade or business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise; or

(d) the maintenance of a fixed place of trade or business solely for the purpose of activities which have a preparatory or auxiliary character for the enterprise, such as advertising or scientific research.

(4) An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State and to carry on trade or business through that permanent establishment if -

(a) it carries on supervisory activities in that other Contracting State for more than six months in connection with a building site, or a construction, installation or assembly project which is being undertaken, in that other Contracting State;

(b) substantial equipment is in that other Contracting State being used or installed by, for or under contract with the enterprise.

(5) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State (other than an agent of independent status to whom paragraph (7) of this Article applies) shall be deemed to be a permanent establishment of that enterprise in the first-mentioned Contracting State if -

(a) he has, and habitually exercises in that first-mentioned Contracting State, any authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise;

(b) there is maintained in that first-mentioned Contracting State a stock of goods or merchandise belonging to the enterprise, from which he habitually fills orders on behalf of the enterprise; or

(c) in so acting he carries out in that first-mentioned Contracting State activities of any of the kinds referred to in sub-paragraph (a) (i) or sub-paragraph (a) (ii) or sub-paragraph (a) (iii) of paragraph (6) of this Article.

(6) In any case where paragraph (5) of this Article does not apply, an enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State and to carry on trade or business through that permanent establishment if -

(a) for, or at or to the order of, that enterprise, another enterprise -

(i) manufactures, assembles, processes, packs or distributes in that other Contracting State any goods or merchandise;

(ii) performs, in that other Contracting State, any mining or quarrying operations or any operations carried on in association with mining or quarrying operations, or performs, in that other Contracting State, any operations for the extraction, removal or other exploitation of standing timber or of any natural resources; or
(iii) breeds, manages, agists or raises in that other Contracting State any livestock; and
(b) either enterprise participates directly or indirectly in the management, control or capital of
the other enterprises, or the same persons participate directly or indirectly in the management,
control or capital of both enterprises.

(7) An enterprise of a Contracting State shall not be deemed to have a permanent
establishment in the other Contracting State merely because it carries on trade or business in
that other Contracting State through a broker, a general commission agent or any other agent
of independent status, where such a person is acting in the ordinary course of his business as
a broker, a general commission agent or other agent of independent status.

(8) The fact that a company which is a resident of a Contracting State controls or is controlled
by a company which is a resident of the other Contracting State, or which carries on trade or
business in that other State (whether through a permanent establishment or otherwise), shall
not of itself constitute a place of business of either company a permanent establishment of the
other.

ARTICLE 6

INDUSTRIAL OR COMMERCIAL

(1) Industrial or commercial profits of an enterprise of Contracting State shall be subject to
tax only in that Contracting State unless the enterprise carries on trade or business in the other
Contracting State through a permanent establishment situated therein. If the enterprise carries
on trade or business as aforesaid, tax may be imposed by that other Contracting State on the
whole of the industrial or commercial profits of the enterprise from sources within that other
Contracting State whether or not those profits are attributable to that permanent
establishment.

(2) Where an enterprise of a Contracting State carries on trade or business in the other
Contracting State through a permanent establishment situated therein, there shall be attributed
to that permanent establishment situated therein, there shall be attributed to that permanent
establishment the industrial or commercial profits which it might be expected to make if it
were an independent enterprise engaged in the same or similar activities under the same or
similar conditions and dealing at arm's length with the enterprise of which it is a permanent
establishment; and the profits so attributed shall be deem to be income derived from sources
in that other Contracting State and shall be taxed accordingly.

(3) In determining the industrial or commercial profits attributable to a permanent
establishment in a Contracting State, there shall be allowed as deductions all expenses of the
enterprises, including executive and general administrative expenses, which would be
deductible if the permanent establishment were an independent enterprise and which are
reasonably connected with the permanent establishment, whether incurred in the Contracting
State in which the permanent establishment is situated or elsewhere.

(4) If the information available to the competent authority of the Contracting State concerned
is inadequate to determine the industrial or commercial profits to be attributed to the
permanent establishment, nothing in this Article shall affect the application of the law of that
Contracting State in relation to the liability of the enterprise to pay tax in respect of the permanent establishment on an amount determined by the exercise of a discretion or the making of an estimate by the competent authority of that Contracting State. Provided that the discretion shall be exercised or the estimate shall be made, so far as the information available to the competent authority permits, in accordance with the principles stated in this Article.

(5) Industrial or commercial profits shall not be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

(6) Nothing in this Article shall apply to either Contracting State to prevent the operation in the Contracting State of any provisions of its law at any time in force relating to the taxation of any income from the business insurance. Provided that if the law in force in either Contracting State at the date of signature of this Agreement relating to the taxation of that income is varied (otherwise than in minor respects so as not to affect its general character), the Contracting Governments shall consult with each other with a view to agreeing to such amendment of this paragraph as may be appropriate.

ARTICLE 7

ASSOCIATED ENTERPRISES

(1) Where -

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are operative between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing at arm's length, then any profits which, but for those conditions, might have been expected to accrue to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise.

(2) Profits included in the profits of an enterprise of a Contracting State under paragraph (1) of this Article shall be deemed to be income of that enterprise derived from sources in that Contracting State and shall be taxed accordingly.

(3) If the information available to the competent authority of a Contracting State is inadequate to determine, for the purposes of paragraph (1) of this Article the profits which might have been expected to accrue to an enterprise, nothing in this Article shall affect the application of any law of that Contracting State in relation to the liability of that enterprise to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the competent authority of that Contracting State. Provided that the discretion shall be exercised or the estimate shall be made, so far as the information available to the competent authority permits, in accordance with the principle stated in this Article.
ARTICLE 8

SHIPPING AND AIR TRANSPORT

(1) A resident of a Contracting State shall subject to paragraphs (2), (3) and (4) of Article 6 and to Article 7, be exempt from tax in the other Contracting State on profits from the operation of ships or aircraft other than operations confined to places in that other Contracting State.

(2) The exemption provided in paragraph (1) of this Article shall apply in relation to the share of the profits from the operation of ships or aircraft derived by a resident of a Contracting State through participation in a pool service, in a joint transport operating organisation or in an international operating agency but only to the extent to which the share of the profits is not attributable to profits from voyages, flights or operations confined solely to places in the other Contracting State.

(3) For the purposes of this Article and Article 20, profits derived from the carriage of passengers, livestock, mails, goods or merchandise shipped in a Contracting State for discharge at another place in that Contracting State shall be treated as profits from the operation of a ship or aircraft confined solely to places in that Contracting State.

(4) If the mode of operation of ships or aircraft by residents of either of the Contracting States at the date of signature of this Agreement is subsequently so changed that either of the Contracting Governments considers that the wording of the Article should be reviewed, the Contracting Governments shall consult with each other with a view to deciding whether any modification of this Article is desirable.

ARTICLE 9

DIVIDENDS

(1) Dividends paid by a company which is a Fiji resident to a person who is a New Zealand resident may be taxed in New Zealand. However, such dividends may be taxed in Fiji and according to the law of Fiji, but, where that person is the beneficial owner of the dividends, the amount of Fiji tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

(2) Dividends paid by a company which is a New Zealand resident to a person who is a Fiji resident may be taxed in Fiji. However, such dividends may be taxed in New Zealand and according to the law of New Zealand, but, where that person is the beneficial owner of the dividends, the amount of New Zealand tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

(3) The limitation on the amount of tax for which paragraphs (1) and (2) of this Article provide shall not apply if the person who is the beneficial owner of the dividends being a resident of a Contracting State, has in the other Contracting State a permanent establishment and the holding giving rise to the dividends is effectively connected with that permanent establishment. In such a case, the dividends may be taxed in that other Contracting State in
accordance with the law of that other Contracting State.

(4) Dividends paid by a company which is a resident of a Contracting State, being dividends which are derived and beneficially owned by a person who is not a resident of the other Contracting State, shall be exempt from tax in that other Contracting State.

ARTICLE 10

INTEREST

(1) Interest derived from sources within a Contracting State by a person who is a resident of the other Contracting State may be taxed in that other Contracting State. However, such interest may be taxed in that first-mentioned Contracting State and according to the law of that State, but, where that person is the beneficial owner of the interest, the amount of tax so charged shall not exceed 10 per cent of the gross amount of the interest.

(2) The limitation on the amount of tax for which paragraph (1) of this Article provides shall not apply if the person who is the beneficial owner of the interest, being a resident of a Contracting State, has in the other Contracting State a permanent establishment and the indebtedness giving rise to the interest is effectively connected with that permanent establishment, in such a case, the interest may be taxed in that other Contracting State in accordance with the law of that other Contracting State.

(3) The limitation on the amount of tax for which paragraph (1) of this Article provides shall not apply if the person who is the beneficial owner of the interest, being a resident of a Contracting State, and the person paying the interest are associated with each other. In such a case, the interest may be taxed in the other Contracting State in accordance with the law of the other Contracting State. For the purposes of this paragraph a person is associated with another person if either person controls directly or indirectly the other or if the same persons control directly or indirectly both. For this purpose the term "control" includes any kind of control, whether or not legally enforceable, and however exercised or exercisable.

(4) Where the application of the limitation on the amount of tax for which paragraph (1) of this Article provides is not excluded by virtue of the foregoing provisions of this Article, but, owing to a special relationship between the person paying the interest and the person who is the beneficial owner of the interest, or between both of them and some other person, the amount of the interest paid exceeds the amount which might have been expected to have been agreed upon in the absence of such relationship, the limitation on the amount of tax for which paragraph (1) of this Article provides shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State.

ARTICLE 11

ROYALTIES

(1) Royalties derived from sources within a Contracting State by a person who is a resident of the other Contracting State may be taxed in that other Contracting State. However, such
royalties may be taxed in that first-mentioned Contracting State and according to the law of
that State, but, where that person is the beneficial owner of the royalties, the amount of tax so
charged shall not exceed 15 per cent of the gross amount of the royalties.

(2) The term "royalties" in this Article means payments of any kind to the extent to which
they are made as consideration for -

(a) the use of or the right to use any -
(i) copyright, patent, design or model, plan, secret formula or process, trade-mark, or other
like property or right;
(ii) industrial, agricultural, commercial or scientific equipment;
(iii) motion picture films; or
(iv) films or video tapes for use in connection with television or tapes for use in connection
with radio broadcasting;
(b) the supply of -
(i) scientific, technical, industrial or commercial knowledge or information;
(ii) any assistance which is given as a means of enabling the application or enjoyment of such
knowledge or information; or
(c) the supply by a resident of a Contracting State of management services in the other
Contracting State, but does not include natural resource royalties.

(3) The limitation on the amount of tax for which paragraph (1) of this Article provides shall
not apply if the person who is the beneficial owner of the royalties, being a resident of a
Contracting State, has in the other Contracting State a permanent establishment and the
knowledge, information, assistance, right or property giving rise to the royalties is effectively
connected with that permanent establishment. In such a case, the royalties may be taxed in
that other Contracting State in accordance with the law of that other Contracting State.

(4) Where the application of the limitation on the amount of tax for which paragraph (1) of
this Article provides is not excluded by virtue of paragraph (3) of this Article but owing to a
special relationship between the person paying the royalties and the person who is the
beneficial owner of the royalties, or between both of them and some other person, the amount
of the royalties paid exceeds the amount which might have been expected to have been
agreed upon in the absence of such relationship, the limitation on the amount of tax for which
paragraph (1) of this Article provides shall apply only to the last-mentioned amount. In that
case, the excess part of the payments shall remain taxable according to the law of each
Contracting State.

ARTICLE 12
PERSONAL SERVICES

(1) Subject to Articles 15, 17 and 18, remuneration or income (other than pensions) derived
by an individual who is a resident of a Contracting State in respect of personal (including
professional) services shall be subject to tax only in that Contracting State unless the services
are performed in the other Contracting State. If the services are so performed, such remuneration or income as is derived in respect thereof shall be deemed to have a source in, and may be subjected to tax in, that other Contracting State.

(2) Notwithstanding paragraph (1) of this Article, remuneration (other than pensions) derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be exempt from tax in that other Contracting State if -

(a) the recipient is present in that other Contracting State for a period or periods not exceeding in the aggregate 183 days in the income year of that other Contracting State; and
(b) the remuneration is paid by or on behalf of an employer who is not a resident of that other Contracting State; and
(c) the remuneration is not borne by a permanent establishment which that employer has in that other Contracting State; and
(d) the remuneration is, or upon the application of this Article will be, subject to tax in the first-mentioned Contracting State.

(3) Notwithstanding paragraphs (1) and (2) of this Article, remuneration in respect of services performed aboard a ship or aircraft operated in international traffic by a resident of a Contracting State may be subjected to tax in that Contracting State. For the purposes of this paragraph, the term "international traffic" includes traffic between places in one country in the course of a voyage which extends over more than one country.

ARTICLE 13
DIRECTORS' FEES

Notwithstanding anything contained in Article 12, directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State shall be deemed to have a source in, and may be taxed in, that other Contracting State.

ARTICLE 14
PUBLIC ENTERTAINERS AND ATHLETE

(1) Notwithstanding anything contained in Article 12, remuneration or income derived by public entertainers (such as theatrical, motion picture, radio or television artistes and musicians) and by athletes from their personal activities as such shall be deemed to have a source in, and may be subjected to tax in, the Contracting State in which these activities are exercised.

(2) An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State and to carry on trade or business through that permanent establishment if it provides the services of a public entertainer or athlete referred to in paragraph (1) of this Article in that other Contracting State.
ARTICLE 15
GOVERNMENTAL FUNCTIONS

(1) Remuneration (other than pensions) paid by the Government of Fiji to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from New Zealand tax if the individual is not resident in New Zealand for the purposes of New Zealand tax or is resident in New Zealand for the purposes of New Zealand tax solely for the purpose of rendering those services.

(2) Remuneration (other than pensions) paid by the Government of New Zealand to an individual for services rendered to that Government in the discharge of governmental functions shall be exempt from Fiji tax if the individual is not a resident of Fiji for the purposes of Fiji tax or is a resident of Fiji for the purposes of Fiji tax solely for the purpose of rendering those services.

(3) Paragraphs (1) and (2) of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either Government for the purposes of profit.

ARTICLE 16
NEW ZEALAND GOVERNMENT’S BILATERAL AID TO FIJI

Notwithstanding anything elsewhere in this Agreement, income derived by any person from the participation in any capacity whatsoever of that person in the New Zealand Government's Bilateral Aid Programme to Fiji shall be exempt from Fiji tax if -

(a) that person is not a resident of Fiji for the purposes of Fiji tax or is a resident of Fiji for the purposes of Fiji tax solely for the purpose of such participation; and

(b) that income is subject to tax in New Zealand.

ARTICLE 17
PROFESSORS AND TEACHERS

A professor or teacher who visits a Contracting State for a period not exceeding two years for the purpose of teaching at a university, college, school or other educational institution in that Contracting State and who immediately before that visit was a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching in respect of which he is or upon the application of this Article will be, subject to tax in the other Contracting State.

ARTICLE 18
STUDENTS AND TRAINEES
A student or trainee who is, or was immediately before visiting a Contracting State, a resident of the other Contracting State and is present in the first-mentioned Contracting State solely for the purpose of his education or training shall not be taxed in that first-mentioned Contracting State on payments (including salary or wages to the extent to which he receives such payments for the purpose of his maintenance, education or training provided that such payments are made to him from outside that first-mentioned Contracting State.

ARTICLE 19

DUAL RESIDENCE

(1) This Article shall apply to a person who is a resident of Fiji for the purposes of Fiji tax and is also resident in New Zealand for the purposes of New Zealand tax.

(2) Where such a person is treated for the purposes of this Agreement solely as a resident of a Contracting State, he shall be exempt in the other Contracting State from tax on income other than income which, under the law of that other Contracting State or under this Agreement, is derived, or is deemed to be derived, from sources in that other Contracting State.

ARTICLE 20

ELIMINATION OF DOUBLE TAXATION

(1) Subject to any provisions of the laws of Fiji which may from time to time be in force and which relates to the allowance of a credit against Fiji tax of tax paid in a country outside Fiji (which shall not effect the general principle hereof), New Zealand tax paid under the law of New Zealand and consistently with this Agreement, whether directly or by deduction, in respect of income derived by a Fiji resident from sources in New Zealand (excluding, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) shall be allowed as a credit against Fiji tax payable in respect of that income.

(2) Subject to any provisions of the law of New Zealand which may from time to time be in force and which relate to the allowance of a credit against New Zealand tax of tax paid in a country outside New Zealand (which shall not affect the general principle thereof), Fiji tax paid under the law of Fiji and consistently with this Agreement, whether directly or by deduction, in respect of income derived by a New Zealand resident from sources in Fiji (excluding, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) shall be allowed as a credit against New Zealand tax payable in respect of that income.

(3) For the purposes of paragraph (2) of this Article the term Fiji tax paid shall be deemed to include any amount which would have been payable as Fiji tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under -

(a) any of the following provisions, that is to say -

(i) Section 16(2)(a), (b) and (d), Section 8(6)(c) and Section 9(3)(h) of the Income Tax Act; and
(ii) Section 8(1) of the [Hotels Aid Act](#):

(Cap 215)

Provided that relief is given for the same year under either section 16(2)(a) or section 16(2)(b) of the [Income Tax Act](#), or section 8(1) of the [Hotels Aid Act](#), so far as they were in force on, and have not been modified since, the date of signature of this Agreement or have been modified only in minor respects so as not to affect their general character; or

(b) any other provisions which may subsequently be made granting an exemption or reduction which is agreed, in an Exchange of Letters between the Contracting States, to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character;

(4) For the purposes of this Article -

(a) (i) New Zealand tax borne by a Fiji resident in respect of dividends paid by a company which is a New Zealand resident shall be treated as tax in respect of income from sources in New Zealand;

(ii) Fiji tax borne by a New Zealand resident in respect of dividends paid by a company which is a Fiji resident shall be treated as tax in respect of income from sources in Fiji.

(b) interest, royalties, (as defined in Article 11) and natural resource royalties which are derived by a resident of a Contracting State and which under the law of the other Contracting State -

(i) are derived from sources in that other Contracting State; or

(ii) being derived by a non-resident are subject to withholding tax, shall be treated in the first-mentioned Contracting State as having a source in that other Contracting State;

(c) remuneration in respect of services performed aboard a ship or aircraft operated in international traffic by a resident of a Contracting State shall be treated as having a source in that Contracting State;

(d) profits derived by a resident of a Contracting State from the operations of ships or aircraft, being profits from operations confined solely to places in the other Contracting State, shall be treated as having a source in that other Contracting State;

(e) an amount which, for the purposes of tax in a Contracting State, is included in the taxable income of a person who is a resident of the other Contracting State and which is so included under any provision of the law of the first-mentioned Contracting State for the time being in force relating to the taxation of any income from the business of any form of insurance shall be treated as having a source in that first-mentioned Contracting State;

(f) income referred to in paragraph (ii), (iii), or (iv) of the definition of "industrial or commercial profits" in sub-paragraph (i) of paragraph (1) of Article 3 shall be treated as having a source in the Contracting State in which the land, mine, quarry, standing timber, natural resource or rent-producing property is situated.

(5) Where profits, on which an enterprise of a Contracting State has been charged to tax in that Contracting State, are also included in the profits of an enterprise of the other Contracting State as being profits which, because of the conditions operative between the two
enterprises, might have been expected to accrue to the enterprise of that other Contracting State if the enterprise had been independent enterprises dealing at arm’s length, the profits so included shall be treated for the purposes of this article as profits of the enterprise of the first-mentioned Contracting State from a source in that other Contracting State and credit shall be given in accordance with this Article in respect of the extra tax chargeable in that other Contracting State as a result of the inclusion of such profits.

ARTICLE 21
MUTUAL AGREEMENT PROCEDURE

(1) Where a taxpayer considers that the action of the competent authority in a Contracting State has resulted, or is likely to result, in double taxation contrary to the provisions of this Agreement, he shall be entitled to present the facts to the competent authority in the Contracting State of which he is a resident and, should his claim be deemed worthy of consideration, the competent authority in that Contracting State shall endeavour to come to an agreement with the competent authority in the other Contracting State with a view to the avoidance of the double taxation in question.

(2) The competent authority in a Contracting State may communicate directly with the competent authority in the other Contracting State for the purpose of giving effect to the provisions of this Agreement and in an endeavour it assures its consistent interpretation and application.

ARTICLE 22
EXCHANGE OF INFORMATION

(1) The competent authorities shall exchange such information (being information available under the respective taxation laws of the Contracting States) as is necessary for carrying out the provisions of this Agreement or for the prevention of fraud or for the administration of statutory provisions against avoidance of the taxes to which this Agreement applies by virtue of Article 2.

(2) Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those (including a Court or reviewing authority) concerned with the assessment or collection of the taxes to which this Agreement applies by virtue or Article 2, or the determination of appeals in relation thereto.

(3) No information shall be exchanged which would disclose any trade secret or trade process.

(4) A competent authority shall not be obliged by this Article to disclose to the other competent authority any information which does not relate directly to the affairs of a taxpayer with whom the other competent authority is concerned.

ARTICLE 23
ENTRY INTO FORCE

This Agreement shall come into force on the date on which the last of all such things shall have been done in Fiji and New Zealand as are necessary to give the Agreement the force of law in Fiji and New Zealand so far as its provisions affect Fiji tax and New Zealand tax respectively, and shall thereupon have effect -

(a) in Fiji -

in relation to Fiji tax, in respect of income derived during any income year beginning on or after 1st January, 1976;

(b) in New Zealand -

in relation to New Zealand tax, in respect of income derived during any income year beginning on or after 1st April, 1976.

(2) The Contracting States shall, as soon as possible, inform one another in writing when the last of all such things shall have been done as are necessary to give the Agreement the force of law in the respective Contracting States.

ARTICLE 24

TERMINATION

This Agreement shall continue in effect indefinitely, but neither Contracting State may, on or before 30th June in any calendar year after the year 1979 give to the other Contracting State notice of termination and, in that event, this Agreement shall cease to be effective -

(a) in Fiji -

in relation to Fiji tax, in respect of income derived during any income year beginning on or after 1st January in the calendar year next following that in which the notice is given;

(b) in New Zealand -

in relation to New Zealand tax, in respect of income derived during any income year beginning on or after 1st April in the calendar year next following that in which the notice is given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto have signed this Agreement.

Done at Wellington in duplicate this twenty-seventh day of October, one thousand nine hundred and seventy-six in the English language.

C. A. STINSON, P. I. WILKINSON,
For the Government of For the Government of New Fiji Zealand
The Government of Fiji and the Government of New Zealand have agreed that the following provision shall form an integral part of the Agreement:

In connection with Articles 9 and 20:

For the purposes of Articles 9 and 20, every reference to dividends paid shall include a reference to dividends distributed, credited, or dealt with in the interest of or on behalf of a person, and shall also include a reference to dividends deemed to have been distributed under the laws of a Contracting State.

This protocol shall enter into force on the same date as the Agreement.

Done at Wellington in duplicate this twenty-seventh day of October, one thousand nine hundred and seventy-six in the English language

C. A. STINSON, P. I. WILKINSON,
For the Government of For the Government of New
Fiji Zealand

SECTION 106 - DOUBLE TAXATION RELIEF ARRANGEMENTS WITH THE UNITED KINGDOM

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The Government of Fiji has made arrangements with the Government of the United Kingdom with a view to the prevention of the levying under the laws of Fiji and of the United Kingdom of income tax in respect of the same income and the rendering of reciprocal assistance in the administration of, and the collection of taxes under the income tax laws of Fiji and of the United Kingdom.

The arrangements so made are embodied in a Convention concluded on the 21 November 1975, a copy of which is set out in the Schedule.

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**SCHEDULE**

**CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF FIJI FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Fiji;

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;
Have agreed as follows:-

ARTICLE 1

PERSONAL SCOPE

This Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

TAXES COVERED

1. The taxes which are the subject of this Convention are:

   (a) in the United Kingdom of Great Britain and Northern Ireland:
      (i) the income tax;
      (ii) the corporation tax; and
      (iii) the capital gains tax;
      (hereinafter referred to as "United Kingdom tax").

   (b) in Fiji:
      (i) the income tax (including basic tax and normal tax) ;
      (ii) the non-resident dividend withholding tax, the interest withholding tax and the dividend tax; and
      (iii) the land sales tax.
      (hereinafter referred to as "Fiji tax").

2. This Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify to each other any changes which are made in their respective taxation laws.

ARTICLE 3

GENERAL DEFINITIONS

1. In this Convention, unless the context otherwise requires:

   (a) the term "United Kingdom" means Great Britain and Northern Ireland, including any area outside the territorial which in accordance with international law has been or may hereafter be designated under the laws of the United Kingdom concerning the Continental Shelf, as an
area within which the rights of the United Kingdom with respect to the sea bed and sub-soil and their natural resources may be exercised;

(b) the term "Fiji" means the islands of Fiji, including the island of Rotuma and its dependencies, and includes all areas of water which in accordance with international law have been or may hereafter be designated under the laws of Fiji as areas over which the sovereignty of Fiji may be exercised with respect to the sea, the sea bed and its sub-soil and the natural resources thereof;

(c) the term "nationals" means:

(i) in relation to the United Kingdom, all citizens of the United Kingdom and Colonies who derive their status as such from their connection with the United Kingdom and all legal persons, partnerships and associations deriving their status as such from the law in force in the United Kingdom;

(ii) in relation to Fiji:

(a) all citizens of Fiji; and

(b) all legal persons, partnerships and associations deriving their status as such from the law of Fiji;

(d) the term "United Kingdom tax" means tax imposed by the United Kingdom being tax to which this Convention applies by virtue of the provisions of Article 2; the term "Fiji tax" means tax imposed by Fiji being tax to which this Convention applies by virtue of the provisions of Article 2;

(e) the term "tax" means United Kingdom tax, or Fiji tax, as the context requires;

(f) the terms "a Contracting State" and "the other Contracting State" mean the United Kingdom or Fiji, as the context requires;

(g) the term "person" comprises an individual, a company and any other body of persons;

(h) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(i) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(j) the term "competent authority" means, in the case of the United Kingdom the Commissioners of Inland Revenue or their authorised representative, and in the case of Fiji the Commissioner of Inland Revenue or his authorised representative;

(k) the term "international traffic" includes traffic between places in one country in the course of a voyage which extends over more than one country.

2. As regards the application of this Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of this Convention.

ARTICLE 4

FISCAL DOMICILE
1. For the purposes of this Convention, the term "resident of a Contracting State" means, subject to paragraphs (2) and (3) of this Article, any person who, under the law of that Contracting State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature; the term does not include any individual who is liable to tax in that Contracting State only if he derives income from sources therein. The terms "resident of the United Kingdom" and "resident of Fiji" shall be construed accordingly.

2. Where by reason of the provisions of paragraph (1) of this Article an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

(a) he shall be deemed to be a resident of the Contracting States, in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);

(b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

(c) if he has an habitual abode in both Contracting States or of neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;

(d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph (1) of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

ARTICLE 5
PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, oil well, quarry or other place of extraction of natural resources;

(g) a building site, or construction or assembly project which exist for more than six months;
(h) an agricultural, pastoral or forestry property.

3. The term "permanent establishment" shall not be deemed to include:

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
(e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. An enterprise of one of the Contracting States shall be deemed to have a permanent establishment in the other Contracting State if:

(a) it carries on the activity of providing the services within that other Contracting State of public entertainers or athletes referred to in Article 17; or
(b) it carries on supervisory activities in that other Contracting State for more than six months in connection with a building site, or a construction, installation or assembly project which is being undertaken in that other Contracting State.

5. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State - other than an agent of an independent status to whom the provisions of paragraph (6) of this Article apply - shall be deemed to be a permanent establishment in the first-mentioned Contracting State if he has, and habitually exercises in that Contracting State an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in other Contracting State merely because it carries on business in that other Contracting State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State or which carries on business in that other Contracting State (whether through a permanent establishment or otherwise) shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

LIMITATION OF RELIEF
Where under any provision of this Convention income is relieved from tax in a Contracting State and, under the law in force in the other Contracting State, an individual, in respect of the said income is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State, and not by reference to the full amount thereof, then the relief to be allowed under this Convention in the first-mentioned Contracting State shall apply only to so much of the income as is remitted to or received in that other Contracting State.

ARTICLE 7

INCOME FROM IMMOVABLE PROPERTY

1. Income from immovable property may be taxed in the Contracting State in which such property is situated.

2. (a) The term "immovable property" shall, subject to sub-paragraph (b) below, be defined in accordance with the law of the Contracting State in which the property in question is situated.

   (b) The term "immovable property" shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph (1) of this Article shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs (1) and (3) of this Article shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

ARTICLE 8

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Contracting State but only so much of them as is attributable to that permanent establishment.

2. Where an enterprise of a Contracting State carries on Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent
3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise (other than expenses, which would not be deductible if the permanent establishment were a separate enterprise) which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere.

4. In so far as it has been customary in a Contracting State according to its law, to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total income of the enterprise to its various parts nothing in paragraph (2) of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall however, be such that the result shall be in accordance with the principles of this Article.

5. No profits shall be attributed to a permanent establishment by reason on the mere purchase by that permanent establishment of goods of merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is a good and sufficient reason to the contrary.

7. Where profits include items which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

8. Where profits are attributable to a permanent establishment situated in a Contracting State of an enterprise of the other Contracting State and those profits are remitted in whole or in part out of the first-mentioned State, then the profits so remitted shall not be subject to any greater charge to tax in the first-mentioned State then if they had not been so remitted.

9. Nothing in this Article shall affect any provisions of the law of either Contracting State regarding the taxation of:

(a) any person who carries on a business of any form of insurance. Provided that if the law in force in either Contracting State at the date of signature of this Convention relating to the taxation of any such person is varied (otherwise than in minor respects so as not to affect its general character), the Contracting Governments shall consult each other with a view to agreeing to such amendment of this sub-paragraph as may be necessary;

(b) any income from the alienation of immovable property as defined in paragraph (2) of Article 7 which is situated in that Contracting State or from the alienation of shares in a company incorporated in that Contracting State whose assets consist wholly or mainly of such immovable property situated therein.

ARTICLE 9

SHIPPING AND AIR TRANSPORT
A resident of a Contracting State shall be exempt from tax in the other Contracting State on profits from the operation of ships or aircraft other than profits from voyages of ships or aircraft confined wholly or mainly to places in the other Contracting State.

ARTICLE 10
ASSOCIATED ENTERPRISES

Where-

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State;

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

ARTICLE 11
DIVIDENDS

1. Dividends derived from a company which is a resident of Fiji by a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in Fiji but where such dividends are beneficially owned by a resident of the United Kingdom the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

2. Dividends derived from a company which is a resident of the United Kingdom by a resident of Fiji may be taxed in Fiji. Such dividends may also be taxed in the United Kingdom, and according to the laws of the United Kingdom, but where such dividends are beneficially owned by a resident of Fiji the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

3. However, as long as an individual resident in the United Kingdom is entitled to a tax credit in respect of dividends paid by a company resident in the United Kingdom, the following provisions of this paragraph shall apply instead of the provisions of paragraph (2) of this Article:

(a) (i) Dividends derived from a company which is a resident of the United Kingdom by a resident of Fiji may be taxed in Fiji;

(ii) Where a resident of Fiji is entitled to a tax credit in respect of such a dividend under subparagraph (b) of this paragraph tax may also be charged in the United Kingdom and
according to the laws of the United Kingdom, on the aggregate of the amount or value of that
dividend and the amount of that tax credit at a rate not exceeding 15 per cent;

(iii) Except as provided in sub-paragraph (a) (ii) of this paragraph, dividends derived from a
company which is a resident of the United Kingdom and which are beneficially owned by a
resident of Fiji shall be exempt from any tax in the United Kingdom which is chargeable on
dividends;

(b) A resident of Fiji who receives dividends from a company which is a resident of the
United Kingdom shall, subject to the provisions of sub-paragraph (c) of this paragraph and
provided he is the beneficial owner of the dividends, be entitled to the tax credit in respect
thereof to which an individual resident in the United Kingdom would have been entitled had
he received those dividends and to the payment of any excess of such credit over his liability
to United Kingdom tax;

(c) the provisions of sub-paragraph (b) of this paragraph shall not apply where the beneficial
owner of the dividends is a company which either alone or together with one or more
associated companies controls directly or indirectly at least 10 per cent of the voting power in
the company paying the dividends. For the purpose of this paragraph two companies shall be
deemed to be associated if one controls directly or indirectly more than 50 per cent of the
voting power in the other company, or a third company controls more than 50 per cent of the
voting power in both of them.

4. The term "dividends" as used in this Article means income from shares, or other rights, not
being debt-claims, participating in profits, as well as income from corporate rights
assimilated to income from shares by the taxation law of the State of which the company
making the distribution is a resident and also includes any other item (other than interest
relieved from tax under the provisions of Article 12 of this Convention) which, under the law
of the Contracting State of which the company paying the dividend is a resident, is treated as
a dividend or distribution of a company.

5. The provisions of paragraph (1), or as the case may be paragraphs (2) and (3), of this
Article shall not apply if the beneficial owner of the dividends, being a resident of a
Contracting State, has in the other Contracting State, of which the company paying the
dividends is a resident, a permanent establishment and the holding by virtue of which the
dividends are paid is effectively connected with a business carried on through that permanent
establishment. In such a case the provisions of Article 8 shall apply.

6. If the beneficial owner of a dividend being a resident of a Contracting State owns 10 per
cent or more of the class of shares in respect of which the dividend is paid then the provisions
of paragraph (1), or as the case may be paragraphs (2) and (3), of this Article shall not apply
to the dividend to the extent that it can have been paid only out of profits which the company
paying the dividend earned or other income which it received in a period ending twelve
months or more before the relevant date. For the purposes of this paragraph the term "relevant
date" means the date on which the beneficial owner of the dividend became the owner of 10
per cent or more of the class of shares in question:

Provided that this paragraph shall not apply if the beneficial owner of the dividend shows that
the shares were acquired for bona fide commercial reasons and not primarily for the purposes
of securing the benefit of this Article.
7. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that the State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid of the undistributed profits consist wholly or partly of profits or income arising in that other State.

ARTICLE 12

INTEREST

1. Interest arising in a Contracting State which is derived and beneficially owned by a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may, also be taxed in the Contracting State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. The term "interest" as used in this paragraph means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits and other debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises.

4. The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, has in the other Contracting State in which the interest arises a permanent establishment and the debt-claim from which the interest arises is effectively connected with a business carried on through that permanent establishment. In such a case, the provisions of Article 8 shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is the Government of that State, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred and such interest is borne by that permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Any provision of the law of one of the Contracting State which relates only to interest paid to a non-resident company with or without any further requirement, or which relates only to interest payments between interconnected companies with or without any further requirement, shall not operate as to require such interest paid to a company which is a resident of the other Contracting State to be left out of account as a deduction in computing the taxable profits of a company paying the interest as being a dividend or distribution. The preceding sentence shall not however apply to interest derived and beneficially owned by a company which is a resident of one of the Contracting States in which more than 50 per cent of the voting power is controlled, directly or indirectly by a person or persons resident in the
7. The relief from tax provided for in paragraph (2) of this Article shall not apply to interest on any form of debt-claim dealt in on a stock exchange where the beneficial owner of the interest:

(a) does not bear tax in respect thereof in the Contracting State of which it is a resident; and

(b) sells (or makes a contract to sell) the debt-claim from which such interest is derived within 3 months of the date on which such beneficial owner acquired such debt-claim.

8. Where, owing to a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and beneficial owner in the absence of such relationship, the provisions of this Article shall apply to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 13

ROYALTIES AND MANAGEMENT FEES

1. Royalties and management fees arising in a Contracting State which are derived and beneficially owned by a resident of the other Contracting State may be taxed in that other State.

2. Royalties derived and beneficially owned by a resident of a Contracting State may also be taxed in the Contracting State in which they arise and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the royalties.

3. Management fees derived and beneficially owned by a resident of a Contracting State may also be taxed in the Contracting State in which they arise and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the net amount of the management fees after deduction of any amount allowed as expenses against those management fees in computing the tax payable thereon in the first-mentioned Contracting State.

4. (a) The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematography films and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific experience but does not include royalties or other amounts paid in respect of the extraction or removal of natural resources.

(b) The term "management fees" as used in this Article means payment of any kind to any persons, other than to an employee of the person making the payments, for, or in respect of, the provision of industrial, scientific or commercial advice, or management of technical
services, or similar services or facilities, but it does not include payments for independent personal services mentioned in Article 15.

5. Notwithstanding paragraph (2) of this Article, copyright royalties and other like payments in respect of the production or reproduction of any literary, artistic or scientific work (excluding royalties and like payments in respect of cinematograph films and films or tapes for radio or television broadcasting) arising in a Contracting State and which are derived and beneficially owned by a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State.

6. The provisions of paragraphs (1), (2) and (3) of this Article shall not apply if the beneficial owner of the royalties or management fees, being a resident of a Contracting State, has in the other Contracting State in which the royalties or management fees arise, a permanent establishment and the right or property giving rise to the royalties is, or the management fees are effectively connected with a business carried on through that permanent establishment. In such a case, the provisions of Article 8 shall apply.

7. Royalties and management fees shall be deemed to arise in a Contracting State where the payer is that State itself, a local authority or a resident of that State. Where, however, the person paying the royalties or management fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the royalties or management fees was incurred and the royalties or management fees are borne by that permanent establishment, then the royalties or management fees shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

8. Where, owing to a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties or management fees paid, having regard to the advice, services, use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 14

CAPITAL GAINS

1. Capital gains from the alienation of immovable Property, as defined in paragraph (2) of Article 7, may be taxed in the Contracting State in which such property is situated.

2. Capital gains from the alienation of shares in a company incorporated in a Contracting State whose assets consist wholly or mainly of immovable property as defined in paragraph (2) of Article 7 which is situated in that Contracting State may be taxed in that State.

3. Capital gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the
other Contracting State or movable property pertaining to a fixed base available to a resident of a Contracting State in the other contracting state for the purpose of performing professional services, including such gains from the alienation of such permanent establishments (alone, or together with a whole enterprise) or of such a fixed base, may be taxed in the other State.

4. Notwithstanding the provisions of paragraph (3) of this Article, capital gains derived by a resident of a Contracting State from the elimination of ships and aircrafts operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in that Contracting State.

5. Capital gains from the alienation of any property other than those mentioned in paragraphs (1), (2) and (3) of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

6. The provisions of paragraph (5) of this Article shall not affect the right of a Contracting State to levy according to its own law a tax on capital gains from the alienation of any property derived by a person who is a resident of the other Contracting State and has been a resident of the first-mentioned Contracting State at any time during the five years immediately preceding the alienation of the property.

**ARTICLE 15**

**INDEPENDENT PERSONAL SERVICES**

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that Contracting State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

**ARTICLE 16**

**EMPLOYMENTS**

1. Subject to the provisions of Articles 18, 19 and 21, salaries wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that Contracting State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Contracting State.

2. Notwithstanding the provisions of paragraph (1) of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned state if:
(a) the recipient is present in the other Contracting State for a period or periods not exceeding
in the aggregate 183 days in the fiscal year concerned; and
(b) the remuneration is paid by, or on behalf of, an employer is not a resident of the other
Contracting State;
(c) the remuneration is not borne by a permanent establishment or a fixed base which the
employer has in the other Contracting State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an
employment exercised aboard a ship or aircraft in international traffic may be taxed in the
Contracting State of which the person deriving the profits from operation of the ship or
aircraft is a resident.

4. In relation to remuneration of a director of a company derived from a company the preceding
provisions of this Article shall apply as if the remuneration were remuneration of an employee in
respect of an employment and as if references to "employer" were references to the company.

ARTICLE 17

ARTISTES AND ATHLETES

Notwithstanding the provisions of Articles 15 and 16, income derived by public entertainers,
such as theatre, motion picture, radio or television artistes, and musicians, and by athletes,
from their personal activities as such may be taxed in the Contracting State in which those
activities are exercised.

ARTICLE 18

PENSIONS

1. Subject to the provisions of paragraphs (1) and (2) of Article 19, pensions and other similar
remuneration paid in consideration of past employment to a resident of a Contracting State and
any annuity paid to such a resident shall be taxable only in that State.

2. The term "annuity" means a stated sum payable periodically at stated times during life or
during a specified or ascertainable period of time under an obligation to make the payments in
return for adequate and full consideration in money or money's worth.

ARTICLE 19

GOVERNMENTAL FUNCTIONS

1. Remuneration, including pensions, paid by the Government of a Contracting State to any
individual in respect of services rendered to that Government in the discharge of
governmental functions shall be exempt from tax in the other Contracting State if the
individual is not ordinarily resident in that other State or (where the remuneration is not a pension) is ordinarily resident in that other State solely for the purpose of rendering those services.

2. The provisions of paragraph (1) of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by the Governments of either of the Contracting States for the purposes of profit.

ARTICLE 20

STUDENTS

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in the first-mentioned State, provided that such payments are made to him from sources outside that State.

ARTICLE 21

TEACHERS

A professor or teacher who visits a Contracting State for a period not exceeding two years for the purpose of teaching at a university, college, school or other educational institution in that Contracting State and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching in respect of which he is subject to tax in the other Contracting State.

ARTICLE 22

ELIMINATION OF DOUBLE TAXATION

1. Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof):

(a) Fiji tax payable under the laws of Fiji and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within Fiji (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits income or chargeable gains by reference to which the Fiji tax is computed;

(b) in the case of a dividend paid by a company which is a resident of Fiji to a company which is a resident of the United Kingdom and which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Fiji tax for which credit may be allowed under the provisions of
sub-paragraph (a) of this paragraph) the Fiji tax payable by the company in respect of the profits out of which such dividend is paid.

2. For the purposes of paragraph (1) of this Article, the term "Fiji tax payable" shall be deemed to include any amount which would have been payable as Fiji tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under-

(a) any of the following provisions, that is to say-
Section 16(2)(a) and Section 16(2)(b) of the Income Tax Act;
Section 8(1) of the Hotels Aid Act;
Section 9(3)(h) of the Income Tax Act provided that relief is given for the same taxable year under either Section 16(2)(a) or Section 16(2)(b) of the Income Tax Act or Section 8(1) of the Hotels Aid Act;
so far as they were in force on, and have not been modified since, the date of the signature of this Convention, or have been modified only in minor respects so as not to affect their general character; or
(b) any other provision which may subsequently be made granting an exemption or reduction which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor aspect so as not to affect its general character.

Provided that relief from United Kingdom tax shall not be given by virtue of this paragraph in respect of income from any source if the income arises in a period starting more than ten years after the exemption from, or reduction of, Fiji tax was first granted in respect of that source.

3. Subject to the provisions of the law of Fiji regarding the allowance as a credit against Fiji tax of tax payable in a territory outside Fiji (which shall not affect the general principle thereof)-

(a) United Kingdom tax payable under the laws of the United Kingdom and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within the United Kingdom (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Fiji tax computed by reference to the same profits, income or chargeable gains reference to which the United Kingdom tax is computed;

(b) in the case of a dividend paid by a company which is a resident of the United Kingdom to a company which is a resident of Fiji and which controls directly or indirectly at least 10 per cent of the voting power in the United Kingdom company, the credit shall take into account (in addition to any United Kingdom tax for which credit may be allowed under the provisions of sub-paragraph (a) of this paragraph) the United Kingdom tax payable by the company in respect of the profits out of which such dividend is paid.

4. For the purposes of paragraphs (1) and (3) of this Article profits, income and capital gains owned by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other
5. Where profits on which an enterprise of a Contracting State has been charged to tax in that State are also included in the profits of an enterprise of the other State and the profits so included are profits which would have accrued to that enterprise of the other State if the conditions made between the enterprises had been those which would have been made between independent enterprises dealing at arm's length, the amount included in the profits of both enterprises shall be treated for the purposes of this Article as income from a source in the other State of the enterprise of the first-mentioned State and relief shall be given accordingly under the provisions of paragraph (1) or paragraph (3) of this Article.

ARTICLE 23

PERSONAL ALLOWANCES

1. Individuals who are residents of Fiji shall be entitled to the same personal allowances, reliefs and reductions for the purposes of United Kingdom tax as British subjects not resident in the United Kingdom.

2. Individuals who are residents of the United Kingdom shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Fiji tax as Fiji nationals not resident in Fiji.

ARTICLE 24

NON-DISCRIMINATION

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirements connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities:

Provided that this paragraph shall not prevent the Government of a Contracting State from imposing on the profits attributable to a permanent establishment in that Contracting State of a company which is a resident of the other Contracting State an additional tax not exceeding 15 per cent of two-thirds of the profits of the permanent establishment after payment of the company or corporation tax on those profits.

3. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.
4. Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident, nor as conferring any exemption from tax in a Contracting State in respect of dividends paid to a company which is a resident of the other Contracting State.

5. In this Article the term “Taxation” means taxes which are the subject of this Convention.

ARTICLE 25

MUTUAL AGREEMENT PROCEDURE

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Convention.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention.

The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 26

EXCHANGE OF INFORMATION

The competent authorities of the Contracting State shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of this Convention or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Convention. Any information so exchanged shall be treated as secret but may be disclosed to persons (including a court or administrative body) concerned with assessment, collection enforcement or prosecution in respect of taxes which are the subject of this Convention. No information shall be exchanged which would disclose any trade, business, industrial or professional secret or any trade process.

ARTICLE 27
ENTRY INTO FORCE

1. This Convention shall come into force on the date when the last of all such things shall have been done in the United Kingdom and Fiji as are necessary to give the Convention the force of law in the United Kingdom and Fiji respectively, and shall thereupon have affect:

(a) in the United Kingdom:
(i) as respects income tax and capital gains tax, for any year of assessment, beginning on or after 6th April, 1975;
(ii) as respects corporation tax, for any financial year beginning on or after 1st April, 1975;

(b) in Fiji:
as respects income tax (including basic tax and normal tax), non-resident dividend withholding tax, interest withholding tax, dividend tax and land sales tax for any year of assessment beginning on or after 1st January, 1975.

2. Subject to the provisions of paragraph (3) of this Article, the Arrangement between the Government of the United Kingdom and the Government of Fiji made in 1950, as amended by the Arrangement made in 1968 (hereinafter referred to as "the 1950 Arrangement"), shall cease to have effect as respects taxes to which this Convention in accordance with the provisions of paragraph (1) of this Article applies.

3. Where any provision of the 1950 Arrangement would have afforded any greater relief from tax any such provision shall continue to have effect for any year of assessment or financial year beginning before the entry into force of this Convention.

ARTICLE 28
TERMINATION

1. This Convention shall remain in force until terminated by one of the Governments. Either Government may denounce the Convention by giving notice of termination at least six months before the end of any calendar year after the year 1980. In such event, the Convention shall cease to have effect:

(a) in the United Kingdom:
(i) as respects income tax and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which the notice is given;
(ii) as respects corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which the notice is given;

(b) in Fiji:
as respects income tax (including basic tax and normal tax), non-resident dividend withholding tax, interest withholding tax, dividend tax and land sales tax for any year of
assessment beginning on or after 1st January in the calendar year next following that in which the notice is given.

2. The termination of this Convention shall not have the effect of reviving any Arrangement terminated by this Convention.

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Governments, have signed this Convention.

Done in duplicate at Suva this 21st day of November, 1975.

BRIAN MILLER, C. A. STINSON,
For the Government of the United Kingdom of Great Britain and Northern Ireland. For the Government of Fiji.

SECTION 107 - INCOME TAX (COLLECTION OF PROVISIONAL TAX) REGULATIONS

TABLE OF PROVISIONS

REGULATION

1. Short title
2. Provisional tax on commissions, and on payments for services
3. Recovery of tax
4. Date of payment
5. Deductions deemed to have been consented to by taxpayer
6. Recovery from person under an obligation to deduct tax
7. Exemption from liability to deduct when contract under two hundred dollars in any year
8. Withdrawal of certificate of exemption
9. Collection of advance payments

Legal Notices Nos. 70 of 1976, 95 of 1976, 12 of 1982

Short title

1. These Regulations may be cited as the Income Tax (Collection of Provisional Tax) Regulations.
2. (1) For the purpose of assisting persons whose income is derived wholly or partly from commissions received from the selling of any property of whatever nature including insurance on life or property and the sale of books, publications and land, the Commissioner may make such arrangements as he considers appropriate in respect of any particular person or class of persons, which may include instalment deductions at source upon the crediting or payment of such commissions.

(2) To facilitate the payment of provisional tax payable by any person in respect of the profits or gains of the trade, profession or vocation of that person, there shall be deducted from any payment made under any contract for services, but not being a contract of employment, including progress payments under a contract, a sum equal to 15 per cent of such payment. The sum so deducted shall be paid to the Commissioner and shall be treated for the purposes of income tax as not diminishing the payment:

Provided-

(a) that such person entitled to such payment may request the Commissioner to make such other determination as to the sum properly payable, and to notify the person making such payment of such determination;

(b) that it shall be lawful for the Commissioner to issue to persons liable to the deduction of provisional tax in the manner aforesaid certificates of exception from the provisions of this Regulation. Such certificates may be issued subject to such conditions, and may be withdrawn, in the manner prescribed by regulation 8, but, whilst in force, shall entitle such person to receive any moneys due under any contract for services without any deduction of any sum as provisional tax.

(3) For the purpose of facilitating the making of the arrangements referred to in paragraph (1), the Commissioner may, at his discretion, nominate the person who shall be responsible for making the deduction at source of the instalments to be paid in respect of provisional tax and the person so nominated shall make and account for such deductions in such manner as the Commissioner shall require.

Recovery of tax

3. Where any sum has been deducted by any person under the provisions of these Regulations, such sum shall be deemed to be held in trust for the Crown in accordance with the provisions of section 82 of the Act.

Date of payment

4. Any person who is required to make any such deductions and fails to do so or fails to remit or pay the sum of such deductions to the Commissioner on or before the fifteenth day of the month next succeeding the month in which the payment under the contract was made shall be
guilty of an offence and shall be liable to the penalties provided under the provisions of section 93 of the Act.

**Deductions deemed to have been consented**

5. Any sums lawfully deducted under the provisions of these Regulations shall be deemed to have been deducted with the consent of the person otherwise entitled to receive the same and no action shall lie by such person against any other person by reason of the making of such deductions.

**Recovery from person under an obligation to deduct tax**

6. For all purposes of the Act, any tax to be lawfully deducted under the provisions of these Regulations shall be recoverable in the same manner in all respects as if it were tax payable by the person by whom the payment is made.

**Exemption from liability to deduct when contract under two hundred dollars in any year**

7. These Regulations shall not require the deduction of provisional tax by any person making payments in respect of contracts for services where the total to be paid to any 1 person in any year is less than $200.

**Withdrawal of certificate of exception**

8. (1) The Commissioner may, if he considers it necessary, withdraw any certificate of exception issued by him in terms of paragraph (b) of the proviso to paragraph (2) of regulation 2.

(2) The Commissioner shall signify his intention to withdraw any certificate by means of notification to that effect published in the Gazette specifying the certificate number and the name of the holder.

(3) The certificate shall be deemed to have been withdrawn any such expiration of 14 days from the date of publication of the notification in the Gazette.

(Substituted by Legal Notice 12 of 1982.)

**Collection of advance payments**

9. These Regulations shall apply mutatis mutandis to the collection of advance payments of tax from companies.

(Inserted by Legal Notice 12 of 1982.)
REGULATION
1. Short title
2. Chief Accountant may deduct tax
3. When assessment deemed final and conclusive
4. Saving

Regulations 11 February 1950

Short title

1. These Regulations may be cited as the Income Tax (Deductions from Pensions) Regulations.

Chief Accountant may deduct tax

2. Where, whether before or after 17 February 1950, the assessment of any payments on account of any pension in respect of past services with the Government of Fiji has become final and conclusive and the tax assessed or any part thereof remains unpaid for a period of 3 months from the date of such event, the Chief Accountant may, in his discretion, deduct the tax due by instalments or otherwise from payments made on account of such pension.

When assessment deemed final and conclusive

3. For the purposes of these Regulations, the assessment shall be deemed to have become final and conclusive-

(a) where no valid objection or appeal has been lodged within the time limited by the Act, on the expiration of such time; or
(b) where a valid objection or appeal has been lodged, on the final determination of such objection or appeal.

Saving

4. These Regulations shall not derogate from any other remedy for the recovery of tax.
Legal Notice No. 83 of 1980

Short title

1. These Regulations may be cited as the Tax Agents (Registration) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires-

"Board" means the Tax Agents’ Board constituted under section 54B of the Act;
"Secretary" means the Secretary to the Board and includes any person acting in that capacity.

Secretary

3. - (1) The Board shall have a Secretary who shall be an officer of the Commissioner appointed by the Commissioner.

(2) The Secretary shall attend all meetings of the Board and shall keep a record of the proceedings of the Board.

(3) All correspondence to the Board, including applications under the Act or these Regulations, shall be addressed to the Secretary in the care of the Commissioner of Inland
Revenue in Suva.

(4) Any certificate or other instrument given or issued by the Board shall be sufficiently authenticated if signed by the Secretary on behalf of the Board.

Application for registration

4. - (1) An application for registration as a tax agent shall be in a form approved by the Board for that purpose and shall be accompanied by a fee of $5 which shall be paid into the Consolidated Fund.

(2) An applicant shall furnish the Board with any additional information it may require for the purpose of considering his application.

Certificate of registration

5. - (1) Where the Board registers a person as a tax agent it shall issue a certificate of registration to that person and shall notify the Commissioner accordingly.

(2) The Board may, by reason of cancellation of the registration of a tax agent, by notice in writing, call upon any person to whom a certificate has been issued or, if that person has died, his personal representative to return such certificate to the Board within 14 days after the service of the notice.

Register of tax agents

6. - (1) The Board shall keep and maintain a register of the persons registered as tax agents and shall, as soon as convenient after 30 June in each year, caused to be published in the Fiji Royal Gazette the full names and addresses of all persons so registered.

(2) Every tax agent shall forthwith give notice in writing to the Secretary of any change in his address for service of notices and other communications.

Notification of cancellation of registration

7. - (1) Subject to paragraph (2), where the Board cancels the registration of any tax agent in terms of subsection (1) of section 54G of the Act, the Board shall forthwith give notice of the cancellation to the tax agent and to the Commissioner and shall cause notice of the cancellation of the registration to be published in the Fiji Royal Gazette.

(2) Notice of the cancellation of the registration of a taxi agent shall not be published in the Fiji Royal Gazette until the cancellation has taken effect in accordance with subsection (2) of section 54G of the Act.

Notice of appeal
8. - (1) Where any person files an appeal under section 54H of the Act, he shall serve a copy of the notice of appeal on the Secretary on the same day as the notice of appeal is filed with the Minister.

(2) The Board shall furnish to the Commissioner a copy of any notice of appeal served on the Board under paragraph (1).

Service of notices, etc.

9. Any notice or other communication to any person by or on behalf of the Commissioner or the Board in relation to any matter arising under Part VIIA of the Act or of these Regulations may be served upon him personally or by sending it by pre-paid letter post to his last known address and shall be deemed to have been received by the addressee within 28 days of the date of posting.

END NOTES

*Paragraph (q) in force 1 January 1986 (Act 23 of 1985. s.8) but for convenience included in the 1985 Revision.