FIJI INSTITUTE OF CHARTERED ACCOUNTANTS

2023-2024 National Budget Submission

CONTENTS

1. INTRODUCTION

The Fiji Institute of Chartered Accountants (**FICA**) acknowledges the importance placed by Government on budget process and thank the Ministry of Economy for giving FICA the opportunity to make this submission.

The FICA has made various submissions to the Government in the past and has been working with the Fiji Revenue and Customs Service (**FRCS**) with a view to improving tax compliance, encouraging voluntary tax compliance and tax collection within the ambit of the tax legislation.

We believe that the Government, through its strategic vision and policy creation process, plays a pivotal role as the catalyst for the revival of the Fiji economy. We understand that the Government's policy measures include the diversification of the economy by focusing on the growth of alternative industries. We believe that with the optimum mix of budgetary support, policies and tax incentives, these alternative industries will be in a position to significantly contribute to the recovery of Fiji's economy.

Certain issues highlighted in previous submissions have also been reiterated. The submission also includes relevant comments and feedback from members of the Institute who were invited to provide their contributions for inclusion in this submission.

2. EXECUTIVE SUMMARY

The FICA appreciates Government's efforts with the budget review process.

We outline below the key areas that we wish to recommend for consideration as part of the budget review, in order to focus on mapping a pathway to Fiji's economic recovery:

Diversification of the Fiji economy: Identify and target key industry sectors (in addition to Tourism) which have the ability to grow the economy, attract investment and create employment. We believe that with an optimum mix of budgetary support, progressive policies and tax incentives, these industries will substantially aid in Fiji's economic recovery efforts.

The development of the MSME sector is critical for the social and economic development of the country across informal sectors / settlements, including those in the rural and remote areas.

Review and Improve Fiji's Overall Tax Policy Framework: An effective Tax Policy Framework should fit within the Government's economic, fiscal and revenue strategy. The current framework needs to be assessed and analysed, and improvements should be implemented and monitored accordingly.

Streamline tax and regulatory requirements: An effective Tax Policy Framework requires a simple and streamlined tax and regulatory requirement regime. In this regard, we suggest that Fiji's tax and regulatory systems be reviewed and streamlined. This will assist in improving the ease of doing business in Fiji, thus creating investment and flow-on benefits such as employment and economic growth.

Government should consider a broader tax base coverage to provide additional Government revenue for required social support and simplifying the tax regime by reducing the number of different taxes, which will in turn reduce the administrative cost of doing business and allow more focus on business activities.

This may be achieved by:

- Having a flat Value Added Tax (**VAT**) rate of say 12.5% (instead of 9% and 15% for different supplies as this creates unnecessary administrative issues for businesses).

- Increase the tax threshold for individual taxpayers to say $35,000 to cushion the impact of increased VAT and inflation for low-income earners.

- Remove Social Responsibility Tax (**SRT**) and gradually increase income tax rates for those over say $100,000, including corporates.

Rationalise Size and Cost of Government: The size and cost of any government can have a direct impact on the country's economic growth and the living standards of its citizens. We suggest that the Government undertake an exercise to rationalise its size and operational costs, with a view to reaching optimal levels to maximise GDP growth.

Environmental, Social and Governance (ESG) issues: ESG investing has seen a rapid rise internationally. While the relevance of ESG is understood for business and investors, it is important to understand the relevance of ESG to Government and develop an ESG framework. In addition, consideration should also be given to developing a Corporate Social Responsibility (**CSR**) framework for businesses.

The underlying objective for the country is to encourage investment, create employment opportunities and generate economic activity which will result in flow-on benefits to Fiji's overall economy. Government's strategic vision and related policy measures will be the catalyst in facilitating the revival of the Fiji economy.

Please refer to the following sections and Appendices for our detailed submission and comments on the above matters.

3. DIVERSIFICATION OF THE FIJI ECONOMY

Over the years, Fiji has been known as one of the world's key tourist destinations. Our friendly people and the Fiji sun, sea and sand has attracted many visitors to Fiji over the years, with close to 900,000 tourists visiting our shores in 2019. The success of the industry was largely a direct result of the targeted budgetary support, progressive policies and tax incentives provided by Government.

The COVID-19 pandemic has seen the collapse of the tourist industry which contributed approximately 40% to the country's GDP.

While the total arrivals for 2022 was just below 650,000 or around 71% of 2019, a significant result and growth post COVID-19, it is important that the Government focus on the diversification of the Fiji economy by creating opportunities to encourage investment in other sectors, in particular the Manufacturing, Agriculture, Forestry, Fisheries, Information Communications Technology (**ICT**) and Business Process Outsourcing (**BPO**) sectors. These sectors have the potential to grow the economy, create employment opportunities and generate export earnings.

Initiatives and sectors for consideration include:

3.1. Review of Investment Act and related regulations

A review should be undertaken of the Investment Act 2021 and related Regulations to ensure that they encourage investment and not be a deterrent. Some of the matters that require review and revision include the following:

- definition of "foreign investor";
- the timeframe for bringing investment amount into Fiji; for various reasons, 3 months is too short a timeframe; and
- the requirements to bring in $300,000 but having the option to seek a waiver – as it stands, in our view, most investors will try and seek a waiver, thus causing delays in the investment implementation. We suggest that this requirement is reviewed or limiting the option to seek waiver to specific instances only.

3.2. Credit / data bureau

There is also a need to consider having a credit/data bureau as this will provides the much-needed credit rating information to financial institutions for making lending decisions. This is particularly important for the MSME sector where financial institutions may otherwise be hesitant to lend.

3.3. MSME sector

The development of the micro and SME sector is critical for the social and economic development of the country spread across remote and rural areas. This sector needs to be given due attention, nurturing and support.

3.3.1. VAT threshold for prescribed services

Unless there is a uniform VAT rate across all businesses, Government should consider introducing a threshold for prescribed businesses currently subject to 15% VAT so that MSMEs are not disadvantaged (e.g., small restaurant operating next to a supermarket is subject to 15% VAT whereas supermarket selling similar products is subject to 9% VAT).

3.4. Tourism industry

Tourism remains the economic engine and as per the World Bank accounts for almost 40% of Gross Domestic Product (**GDP**), 30% of employment and is a primary source of foreign exchange earnings.

3.4.1. Incentives

The hotel incentives should be maintained to ensure appropriate support is provided to the hotel industry.

Government should also look at incentives for tourism support services which are important for the success of the overall tourism industry.

3.4.2. "Work from Home in Fiji" initiatives

Working from a tropical island is the "new working from home" for many business-leisure travellers. Fiji is well placed to take advantage of this and should look at putting this in place and actively marketing Fiji as a "work from home" destination.

The work permit categories should be reviewed to a permit to allow individuals in Fiji to work remotely for international companies or for their own offshore business.

We understand that this has been introduced in Vanuatu where a holder of such a permit must be able to demonstrate that they work either for an international company, or for their own business outside of Vanuatu. They must not engage in any employment or commercial activities in Vanuatu, or seek employment with a Vanuatu company.

3.5. Manufacturing Sector

Fiji has an inherent advantage, being the hub of the South Pacific. This advantage, coupled with several other advantages (such as our shipping and port facilities, technology, competitive wage rate, etc.) makes Fiji a prime location for certain industries and multinationals to set up manufacturing plants to service the South Pacific and other countries.

3.5.1. Incentives for existing manufacturers

Consideration should also be given to existing manufacturers who intend to reinvest in new initiatives to increase productivity and generate employment opportunities. Broad based incentives should be considered based on the level of investment, job creation and potential for foreign exchange earnings. This is to promote our existing entrepreneurs.

3.5.2. Export Income Deduction

The encouragement of export industries which contribute to foreign reserves is important for the Fiji economy.

We suggest that:

- The Export Income Deduction (**EID**) be extended indefinitely, or at least for a longer term such as 10 years, in view of the current economic climate and the need to stimulate the economy. This would provide future certainty for the manufacturing industry and allow the industry to plan for the future.

- Export incentives be made available to all exporters of goods and services to the maximum extent. The remittance rule (i.e., the requirement to remit export proceeds to Fiji) under the Schedule 2 of the VAT Act should be removed as there could be many reasons for maintaining exports proceeds offshore, for instance payment to suppliers in foreign currency. The monitoring of the remittance of export profits should be left to the Reserve Bank of Fiji. We believe this will assist in promoting further investment, create jobs, business and economic activity.

3.5.3. Import duties

We also suggest a review of import duties to provide reasonable assistance to local manufacturers.

3.6. Agriculture, Forestry and Fisheries Sector

We suggest that consideration be given to the following:

- Driving the balance between Agriculture and Forestry development with a view of developing more medium to longer term ESG related assets / initiatives especially with Fiji's 2050 net-zero commitment.

- Utilise the knowledge and experience of private sector entities which have the ability and know-how to market the "Fiji-Brand" for export purposes. Public Private Partnerships (**PPPs**) can be set up as a vehicle for the same. For this project, we suggest that a number of high value crops are selected (e.g., turmeric, cinnamon, vanilla, certain root crops) and that the PPPs concentrate on providing end to end support for the development, planting, growth, harvesting, packaging and marketing and export sales. The Government can put in place the necessary structures and provide funding for these crops. We envisage that this will appeal to all demographics, including the younger generation of farmers, resulting in reduced urban migration, increased employment and therefore reducing the prevalent social and economic issues.

- Introduce effective incentives to promote investment in producing sustainable inputs for (front end) agricultural development and also the processing of agricultural produce into secondary products (back end).

- Reintroduction of the indefinite carry forward of tax losses for the agricultural and forestry industry, given the high risk of investing in the sector.

- Extension of agricultural leases to 99 years; in particular, for sectors of the agricultural industry that produce goods that are marketable offshore (i.e., increase exports); or which can replace imports such as rice, vegetables, meat, etc. (i.e., import substitution).

- Introducing bold and effective incentive packages for the agriculture sector, including industries that support the growth of the agricultural sector (e.g., primary input supplies such as fertiliser, etc. and secondary conversion of agricultural produce such as manufacturing, processing, etc.).

- As has been done in the past, we suggest that Government seriously consider granting total tax exemption to income from agricultural sources. Alternatively, current provisions should be amended to allow for tax incentives on a pro-rata basis where turnover exceeds $500,000 and should be available to all agricultural activities. The current tax incentives for MSMEs are available only if total turnover is less than $500,000 per annum and for selected prescribed agricultural, fisheries and tourism activities.

- Establish processing ventures or incentives to encourage value adding which would support rural communities and farmers creating opportunities through diversifying to agriculture and fisheries and ventures.

- Emphasis should be placed on the importance of promoting modernisation of the agriculture sector by linking agriculture with technology so that farmers get comprehensive benefits. New budget allocation for the creation of a new Agriculture Education and Research Unit with the right and quality resources to direct change in farming methodology and modernisation of the farming techniques.

- With the current low performance of the fishing industry, this natural resource should be managed effectively, with the objective of retaining maximum value within Fiji. Specific measures should be implemented to encourage processing and value-added activities within Fiji. Furthermore, this important natural resource is being depleted. There is a need for greater incentives to be considered for the sustainability of the fishing industry.

We need large scale projects with a proper project management system for an end-to-end solution (seed to market).

Further comments are included in Appendix B.

3.7. ICT industry

As a significant contributor to both foreign income and employment, the ICT sector is a fast-growing sector of Fiji's economy. Support in the way of tax breaks and capital expenditure incentives are important to ensuring the ongoing attractiveness and viability of the industry.

A large part of Fiji's ICT industry is the BPO sector. As Fiji delves into the diversification of its major industries, business process outsourcing provides a real and tangible alternative to Fiji's traditional areas of focus, to contribute to the country's economic growth and provide new jobs to its young population.

3.7.1. Tax incentives

We note the incentives that are available to the ICT industry were put in place at a time when the ICT sector was in its early growth stages. We suggest that these incentives be made available to all investors in the industry (both existing and new).

Furthermore, the tax exemption under the ICT infrastructure investment incentive applies only if at least 90% of the income derived from the project within the fiscal year is from an ICT business. We suggest that this threshold is lowered to allow some flexibility and not have it as an unattainable threshold.

3.7.2. Data Protection and Privacy Legislation

The protection and privacy of data is a critical issue for any organisation, and more so for the ICT / BPO Industry. Data security is vital to ensure the safety and confidentiality of an entity's data, and data that it may hold for third parties. It is critical that the laws of Fiji are such that the operators, investors and their customers have peace of mind that their data is safe and protected. An effective risk and governance structure is supported by effective data protection and privacy policies and procedures, which are in turn supported by Data Protection and Privacy Laws.

There is an urgent need for Fiji to take the necessary steps towards the composition and implementation of robust Data Protection and Privacy Laws. We understand that at present, the protection of rights to information and privacy are only covered by existing provisions for rights to privacy and access to information in the Bill of Rights.

We suggest that due consideration be given by the Government and necessary steps be taken to draft and implement Data Protection and Privacy Laws in Fiji. The ICT / BPO Industry strongly believes that this will strengthen its position in attracting and retaining major and renowned BPO investors to reposition their back-office processing in Fiji. We understand that well-established data protection and privacy laws already exist in Australia and New Zealand, and we can appropriately structure our laws around this.

3.8. Tax-Free Regions (TFR)

The "Look North" and similar incentives should be made available not only to new companies but also to existing entities for new investment projects. This would assist in achieving the overall investment and socio-economic goals while removing a perceived bias towards new companies.

In addition to the above, the existing legislation requires that a company which has a TFR licence derive all of its income from the TFR. As Government would appreciate, there are a number of circumstances which may require a company which has a TFR licence to derive income or contract with entities outside the TFR. Hence, the existing requirements would be prohibitive. We therefore recommend that the legislation be amended to allow some flexibility (e.g., a company with a TFR licence to derive at least 70% of its income from the TFR).

The relaxation of requirements and or restrictions is likely to generate a lot more activity in the TFR.

3.9. Specialised industries and entities

The current tax depreciation rates fall within certain categories and do not cater for specialised industries and entities. Under the current framework these specialised industries and entities are required to claim depreciation at the set rates within these categories even though these rates may not be appropriate.

The overall depreciate rates should be reviewed to set a maximum rate for each category of assets as opposed to an absolute rate.

3.10. Social Policy Exemptions

Non-profit and charitable organisations play an important role in our society. Every dollar that a charity spends on providing shelter or food and clothing to the poor is another dollar that the Government can spend on roads, hospitals and schools.

Currently, under the Income Tax (Exempt Income) Regulations 2016 any business income derived by a non-profit or charitable organisation is subject to tax even though the income be used for carrying out the charitable purpose of the organisation.

Previously, under the Income Tax Act 1974, the business income of a non-profit or charitable organisation was not subject to tax provided that such income was to be expended either in Fiji or for purposes which resulted in the benefit of the residents of Fiji.

We suggest that Government reconsider the current taxation of business income of non-profit and charitable organisations and revert to the provisions previously available under the Income Tax Act 1974 as noted above.

Please also refer to our comments in Part 7.2 on CSR.

3.11. Debt servicing

We suggest that Government formulate a clear medium to long term plan for the repayment of debts and the annual budgets should with formulated with this in mind.

4. REVIEW AND IMPROVE FIJI'S OVERALL TAX POLICY FRAMEWORK

The FICA believes that it is critical to have a robust Tax Policy Framework (**the Framework**) as this will create certainty and provide the level of confidence in the tax regime needed by investors. The Framework should focus on how the tax regime and legislation fits within the Government's economic, fiscal and revenue strategy.

Government should undertake a review of the Framework, with a view to redesigning, simplifying and articulating the same, along with legislative changes enabling the application of the new Framework to streamline and enhance tax revenue collections, whilst reducing complexity and compliance costs to taxpayers.

We suggest that a review be conducted on the Framework to assess the compatibility of the taxation regime with the Government's economic, fiscal and revenue strategy. The Framework should also provide a clear and concise mechanism for the application of Fiji's tax laws and compliance.

We also suggest that in this process, a draft version of the revised Framework be articulated and disseminated to the people of Fiji for their views and contributions. This will provide them with a level of awareness and participation in the review and formulation of the country's tax policies.

We outline below some of the specific areas that may be considered when conducting this review:

4.1. Review of the overall tax incentives

While acknowledging that incentives may provide a distortion of perceived normal market conditions, for a small economy such as the Fijian economy, a certain level of incentives is critical for the attraction of investment and development of the economy.

A review of the tax incentives that are available under the Fiji tax legislation should be undertaken. There is an array of different tax incentives that are available under the Fiji tax legislation, and it would be prudent to conduct a review all available incentives, with an analysis of approvals, utilisation and the resulting impact on the economy (revenue foregone vs investment and jobs created). If this is done, it will become apparent which incentives are working and actually resulting in increased investment and assisting in growing the economy and providing employment.

In order to generate more investment, instead of having industry specific incentives, we suggest that Government consider introducing a simple system of incentives which entitles an investor certain years of income tax exemption depending on the investment levels and employment generated.

Alternatively, we suggest that the resulting mix of incentives be targeted to the industries and potential investment areas that will grow the economy and generate investment and employment opportunities (such as Manufacturing, Agriculture and ICT / BPO, as outlined in Part 3 above).

Incentives to the Tourism Industry should remain, given the fact that this industry will be undergoing an intense recovery period over the next few years. Incentives for MSMEs should also be in place to assist the smaller investors and operators.

Incentives should be designed to practically work for the investor/business so that the intended end results are achieved.

Consideration should also be given to the Organisation for Economic Co-operation and Development (**OECD**) initiatives, and in particular to the Pillar Two Global Anti-Base Erosion (**GloBE**)[1] rules so that the incentives are relative to Fiji as well as the needs of foreign investors'.

Many a times new investment and employment comes from existing local businesses. Incentives should also be appropriately extended to existing businesses.

4.2. Tax policy implementation – operational challenges

We suggest that consideration be given to the practical mechanisms of tax measures when reviewing, drafting and implementing tax policy and legislation. Clearly articulated and applied position and reasoning in respect of operationalising tax policy implementation should be reviewed and properly implemented.

4.3. Review and changes in law

We suggest that the review and rewrite of any legislation (e.g. VAT Act and Customs legislation) should be carefully considered and be positively progressive for business. As an example, the draft rewrite of the VAT Act was potentially more disruptive than progressive in the initial draft form.

Instead of performing rewrites of legislation, we suggest that Government build the proposed amendments into the existing legislation. In doing so, any such amendments should be more progressive and consistent with the international norms to avoid creating additional or further inefficient costs for business.

Furthermore, the alignment of the tax policy framework with the resultant law is critical, along with the implementation in practice. Review of relevant issues and meaningful consultation should be conducted with key and relevant stakeholders.

4.4. Prospective imposition of tax laws

There are a number of examples where tax laws have been retrospectively introduced. The retrospective introduction of tax legislation laws creates uncertainty for stakeholders and affects investor confidence. Tax laws and its practical implementation should be applied prospectively.

[1] The Pillar Two GloBE rules provide a co-ordinated system to ensure that multinational enterprises (**MNEs**) pay at least a minimum level of tax – at an effective rate of 15% – on the income arising in each of the jurisdictions in which they operate.

5. STREAMLINE TAX AND REGULATORY REQUIREMENTS

A key component to Fiji's prosperity and stability is investment and economic activity which are achieved through improved investor confidence and providing a conducive business environment. Investors need clear policies, practices and interpretations to make informed decisions which form the basis for their investments. The FRCS should, without compromising its position, work with taxpayers and investors in providing a conducive business environment while continuing to collect taxes.

Furthermore, the streamlining of regulatory requirements of the various government agencies will result in improving the ease of doing business in Fiji, which is a key component to business and investor confidence.

While Fiji currently has a relatively low corporate income tax rate of 20%, there are various other taxes in place. We suggest that the Government review the overall tax structure. Simplifying / streamlining the tax regime will facilitate compliance, tax collections and monitoring of taxpayers. This will make compliance costs more manageable and allow businesses to focus on carrying out their business activities.

The FICA makes the following specific recommendations:

TAX REFORM

5.1. Broader but streamlined taxes

Whilst Fiji's income tax rates have generally been reduced over the last few years, many new taxes and levies and accompanying requirements have been introduced which makes it more expensive and administratively cumbersome to do business in Fiji.

Government should consider a broader tax base coverage to provide additional Government revenue for required social support and simplifying the tax regime by reducing the number of different taxes, which will in turn reduce the administrative cost of doing business and allow more focus on business activities.

We suggest the following with a view to simplifying taxes and generating more tax revenue:

- A flat Value Added Tax (**VAT**) rate of say 12.5% (instead of 9% and 15% for different supplies as this creates unnecessary administrative issues for businesses).

- Increase the tax threshold for individual taxpayers to say $35,000 to cushion the impact of increased VAT and inflation for low-income earners.

- The worldwide average statutory corporate income tax rate, measured across 180 jurisdictions, is 23.37 percent. When weighted by GDP, the average statutory rate is 25.43 percent.[2] Government should consider increasing the corporate income tax rate to say 25%.

---

[2] Source: https://taxfoundation.org/publications/corporate-tax-rates-around-the-world/#:~:text=Sixteen%20jurisdictions%20do%20not%20impose,statutory%20rate%20is%2025.43%20percent.

- Remove Social Responsibility Tax (**SRT**) and gradually increase income tax rates for those individuals over say $100,000. Also refer to Part 7.2 in relation to CSR.

- Align the tax regime for business activities undertaken by sole traders (which would include MSME ventures) to the prevailing corporate tax rate and remove SRT. Sole traders are currently disadvantaged because of the high tax rates that they can be subjected to when making high profits.

- Increase the annual LTA taxes (ACC, wheel tax, road levy, inspection fees) on private motor vehicles, but make it a one-off fee or tax to reduce processing costs. This would effectively make vehicle owners responsible for issues such as motor vehicle pollution, congestion and road conditions, as promote the use of public transport. This should not be levied on commercial vehicles as the cost would be passed on to the consumer.

- Introduce a "disposal levy" on motor vehicles from the 10th year of manufacture. This can be built into the annual LTA renewal process.

5.2. Other tax considerations

5.2.1. VAT and income tax refunds and interest on delay in refunds

The FICA suggests that the FRCS continue to pay VAT refunds, and if necessary, this can be done by staggering the amounts paid out.

Furthermore, the FICA still believes that as an incentive to the FRCS to continue to improve its refund practice, interest should be automatically paid for the delay in issue of refunds as provided for under the respective legislation, similar to how late payment penalties are automatically imposed by the FRCS.

5.2.2. PAYE final tax and business losses for MSMEs

Currently, business losses of only $20,000 may be offset with employment income. We suggest that the threshold of $20,000 be removed to further encourage business activity in MSMEs by individual taxpayers.

5.2.3. Carry forward of tax losses

Under the FITA 2015, if there is a change of more than 50% in the underlying ownership of a company, any carry forward loss incurred for a tax year before the change is not allowed as a deduction in a tax year after the change, unless the company—

- carries on the same business after the change as it carried on before the change until the earlier of either the loss has been fully deducted or the period for carrying the loss forward under the Act has expired; and

- does not, until the earlier of either the loss has been fully deducted or the period for carrying the loss forward under the Act has expired, engage in any new business or investment after the change if the principal purpose of the company or the members of the company is to utilise the loss so as to reduce the Income Tax payable on the amounts derived from the new business or investment.

The above rules can be quite limiting on business which may choose to diversify their operations, especially in light of the COVID-19 pandemic or similar situations.

The Government may wish to adopt legislation to relax the loss continuity rules.

We understand the New Zealand government is currently proposing a similar amendment whereby the NZ Inland Revenue Department will allow losses to be carried forward unless there is a major change in the nature of the company's business activities, having regard to the assets used and other relevant factors. Relevant factors would include business processes, use of suppliers, markets supplied to, and the type of product or services supplied. Not every change will be a major change. Any change in business activities (including use of assets) must be considered against the unchanged business activities (including use of assets) employed by the company to generate income to establish whether the change is "major".

We suggest the Government consider similar amendments to the FITA 2015, to assist businesses with carry forward losses going forward.

5.2.4. Capital Gains Tax (CGT)

The provisions relating to CGT were amended to exempt from CGT any capital gain made on the disposal of shares held from before 1 May 2011. This was further amended to limit the exemption to only resident persons or Fijian citizens. We feel that this exemption should not be limited to only shares but should apply to all capital assets held or owned from before 1 May 2011.

5.2.5. Penalties

We acknowledge that the FRCS has been waiving late payment and late lodgement penalties on a case-by-case basis.

We suggest that the CEO of the FRCS be provided with discretion in the application and removal of audit penalties under section 46 of the Tax Administration Act.

5.2.6. Royalties – double taxation (income tax / fiscal duty)

The FICA notes that the FRCS has recently started to impose fiscal duty plus VAT on certain royalty payments (including lease of assets from offshore) on which non-resident royalty withholding tax has already been paid. As a consequence, the taxpayers are now subject to double taxation on the same transaction, including a double imposition of VAT.

The FRCS needs to determine the nature of the royalty payments, i.e. whether these are value consideration for services (subject to non-resident royalty withholding tax plus reverse charge VAT) or value for the goods (subject to fiscal duty plus VAT).

Accordingly, the FRCS and Government policy needs to determine if it wishes to impose the 15% non-resident royalty withholding or the fiscal duty in respect of these royalty payments but not both.

Any changes in law or practice should be prospective.

5.2.7. Thin capitalisation rules

Many Fijian subsidiaries rely on funding from parent entities. The current thin capitalisation rules could prove to be a deterrent for such funding and should be removed.

5.2.8. Debt forgiveness

We note that the Government and the FRCS in its efforts to provide further incentives to taxpayers under the current pandemic has suspended the debt forgiveness provision in the FITA from 1st April to 31st December 2023.

We suggest that the debt forgiveness provisions should be repealed altogether as the accounting principles of reversing entries will capture items for which deductions were previously claimed and subject such reversals to tax.

5.2.9. Film-making and audio-visual

The Income Tax (Film-making and Audio-visual) Regulations requires certain clarification with regard to items of expenditure which qualify as “Fiji expenditure”. We suggest that this be reviewed and amended as required.

The overall sustainability of the film-making and audio visual incentives also needs to be reviewed.

5.2.10. Taxation of Life Insurance Companies and Mining Sector

Currently, the taxation of the mining sector and that of life insurance business continues to be determined based on the old provisions of the Income Tax Act (Cap 201). In this regard, the FICA suggests that:

a) Under the provisions of Section 49 of the FITA, the appropriate regulations for the computation of tax for the life insurance business should be finalised and gazetted. FICA suggests that this regulation is drafted in consultation with the industry stakeholders and relevant bodies; and

b) Part 6 of the FITA dealing with the taxation of the mining sector should be made effective immediately.

5.2.11. Tax Avoidance Provisions

The FICA agrees that the FRCS should collect its fair share of taxes and penalise those taxpayers that intentionally engage in schemes to avoid taxes.

However, the tax avoidance provisions in its current form (amended in 2017) restricts businesses and taxpayers from engaging in any form of planning and assumes that the maximum taxes should be paid, even though the planning may not be primarily motivated by tax implications. Businesses and taxpayers engage in planning for various reasons including succession planning, exit strategies, asset protection, etc.

The tax avoidance provisions should be reconsidered to allow businesses and taxpayers to properly plan their affairs. The FRCS should also reconsider its stance with respect to planning around tax incentives available to taxpayer. This will also allow businesses to invest and grow without the undue risk of the FRCS deeming as a tax avoidance scheme, every transaction that does not result in the maximum potential tax earnings being derived.

5.2.12. Statute of Limitations

The CEO of the FRCS may amend a tax assessment within 3 years in case of a company with a gross turnover of less than $1.25million, within 6 years for other taxpayers and at any time in case of fraud, wilful neglect, or serious omission by or on behalf of the taxpayer.

The FICA agrees that the FRCS should collect its fair share of taxes and penalise those taxpayers that intentionally engage in tax fraud.

However, the current definition of “serious omission” in the Tax Administration Act is very broad and allows the CEO of the FRCS to amend assessments at any time where there is an omission of any amount of tax, even if the omission was not intentional. This practically indefinitely extends the 6-year limitation on assessments being reopened even if no fraud is involved. The effect of this is that taxpayers would need to maintain records indefinitely to defend any adjustment that the FRCS may seek to make in the future. This also affects the certainty and confidence of doing business in Fiji.

5.2.13. Taxpayer time limit to lodge amended tax returns

The provisions of the FITA 2015 currently allows taxpayers only two years to lodge amended income tax returns. We suggest that the TAA be amended to allow taxpayers six years to lodge amended returns, similar to the six years that allows the FRCS to make changes to assessments.

5.2.14. Customs Duty on imported goods

Customs duty on imported goods is currently assessed on the CIF Value (i.e., FOB Cost + Insurance + Overseas Freight). As Fiji is regionally isolated and far from the ‘source’ markets (such as New Zealand, Australia, United States of America, etc.), the overseas shipment cost i.e., the freight component is usually quite significant. It would assist the business community if Customs Duty is calculated on the FOB Value (i.e., excluding overseas freight and insurance costs).

Example:

- FOB cost of goods from Australia $10,000
- Insurance of 1% is $100
- Freight for one container is $3,000
- CIF value is $13,100
- Customs Duty is at say 15% which would be $1,965
- Landed Cost to importer $15,065

If customs duty was based on the FOB cost of $10,000, then 15% customs duty would be $1,500; so, the landed cost to importer would be only $11,500 (and not $15,065). This would result in a significant saving of over $3,565 for the importer which would mean Fiji would become more competitive and the purchasers (and consumers) would enjoy a cheaper price on those goods.

We also suggest a review of import duties to provide reasonable assistance to local manufacturers.

5.2.15. Taxpayer Online Service Portal (TPOS)

We support the good initiative of seeking to introduce and properly implement a digitized taxation system that will substantially improve the efficiency and effectiveness for all stakeholders involved in properly reporting and paying taxes to the FRCS. This support is reflected by our providing hours of review and input from the initial discussions about the proposed implementation through to the recent reviews and testing of the TPOS modules.

While we continue to support the initiative, particularly as it is critical for the country as a whole, we would suggest an overall review of the current system to:

- Firstly, to determine where the system currently stands from an overall perspective in delivering the desired outcomes;
- Secondly, how the system is expected to be performing in 5 to 10 years;

- Planned implementation to achieve the desired outcomes over the next few years; and
- Communication/consultation plan with all relevant stakeholders to ensure this is properly implemented.

We note that the modules on TPOS have been gradually going live from December 2019. Previously, we were not included in the testing phases. There have been some significant issues with these modules which we have highlighted to the FRCS officials at various times but these issues remain in the current system.

TPOS should be reviewed to ensure that it does not create additional compliance costs for taxpayers, and it works efficiently and effectively in achieving its purpose. In its current form, TPOS is likely to create increased cost of compliance and frustration for taxpayers.

We have already written to the CEO of the FRCS on the above concerns, including those in relation to the Corporate Income Tax (**CIT**) and Personal Income Tax (**PIT**) modules that were recently rolled out. We will continue to engage with the FRCS with a view to resolving the issues.

Government should also review the overall VMS from a cost-benefit perspective. The current VMS system may work for supermarkets but does not cater for the many different scenarios and transactions that businesses in other industries undertake, for instance, buyer-created invoices. This will create many challenges for businesses and the cost of compliance will be significant and out way the benefits.

REGULATORY REFORM / OTHER RECOMMENDATIONS

5.3. Eliminate duplicated regulatory steps

Government departments, including statutory bodies, need to remain focused on reducing unnecessary legislative burden on business by reducing red tape and unnecessary compliance costs. For instance, there are documentation requirements that are duplicated by several regulatory bodies. There is a need for a "one stop shop" concept and FICA considers that any proposed legislative / administrative changes should be subject to stringent tests on its necessity, design and impact on investors and businesses.

5.4. Family care and paternity leave

While we acknowledge the family care and paternity leave have been temporarily suspended, we believe that a review and re-design of family care and paternity leave is needed. This leave has caused substantial work disruption since no advance notice is required and businesses are not able to monitor the same.

We suggest that family care and paternity leave should be abolished with employers using their discretion to provide time off for this purpose, especially as many employers are already giving annual leave in excess of the statutory 10 days.

5.5. Fiji National Provident Fund (FNPF) contributions

The FNPF contributions were reduced to 5% each for employer and employee during COVID-19 and these have been gradually increased to now 7%.

FNPF contributions should be reinstated to pre-COVID-19 levels to ensure that workers have sufficient funds at retirement.

5.6. Tax Agent requests

Please refer to **Appendix A** for an outline of recommendations with regard to Tax Agents.

5.7. Other areas for consideration

Please refer to **Appendix B** for some other issues for consideration by Government going forward.

6. RATIONALISE THE SIZE AND OPERATING COST OF GOVERNMENT

FICA supports Government's expenditure policy which is aimed at offering efficient Government services, developing infrastructure, and support and assistance to the needy. Emphasis however needs to be placed on proper management and control of expenditure and improving efficiencies within Government, thereby maximising returns for each dollar spent and importantly getting it right the first time.

Government should also invest in the maintenance of its assets to avoid substantial capital expenditure in terms of replacement of assets due to lack of proper maintenance.

We also suggest that the Government consider making reductions in its operating expenditure where possible, particularly for non-productive areas. One of the key areas that may be considered is to gradually reduce the civil service payroll (which we understand is the Government's largest expenditure item). We suggest that this be reduced by 15% to 20%. The savings may be diverted to areas that have been discussed earlier in this submission to create further economic activity and employment opportunities.

Government should also review its medium to long term development plans in light of the recent COVID-19 crisis including the impact on the local and global economy.

7. IMPLEMENTATION OF AN ESG FRAMEWORK

7.1. Implementation of an ESG framework

ESG investing has seen a rapid rise internationally. While the relevance of ESG is understood for business and investors, it is important to understand the relevance of ESG to Government.
The three main reasons why Government needs to pay attention to ESG:

(i) Because it intersects with protection of people, society and the environment.
(ii) Because it influences business and investment attraction.
(iii) Because it affects the government's credit rating and borrowing costs.

Government should consider developing an ESG framework for Fiji. The framework will be useful both as an internal tool to ensure all parts of Government are speaking the same language, and as an external stakeholder tool to help communicate Fiji's ESG performance to others. It will also help Investment Fiji tell a better story as they attempt to draw foreign investment to Fiji.

7.2. Corporate Social Responsibility (CSR)

CSR is a form of self-regulation that reflects a business's accountability and commitment to contributing to the well-being of communities and society through various environmental and social measures.

Government should consider a CSR framework for businesses. As an example, India has a legislated CSR framework which makes it mandatory for board of directors of certain companies to ensure that the company spends, in every financial year, at least 2% of the average net profits of the company made during the three immediately preceding years on CSR activities.

Many organisations are already doing this in some form so putting a legislative framework may help in sharing Government's social burden.

8. CONCLUSION

The focus of the FRC should be to recover from the damaging effects of the COVID-19 pandemic, which has caused a major shock to global financial systems, the economy and to people's livelihoods. Along with the rest of the world, Fiji has experienced the real effects of the extensive economic downturn caused by the pandemic and the Russia-Ukraine conflict.

We reiterate below the key areas that we wish to recommend for consideration by the FRC, in order to focus on mapping a pathway to Fiji's economic recovery:

- Diversification of the Fiji economy
- Review and improve Fiji's overall tax policy framework
- Streamline tax and regulatory requirements
- Rationalise size and cost of Government

We believe that the above measures will take Fiji in the right direction towards encouraging and increasing investment, creation of employment and growing the economy.

In addition to the above, there needs to be a focus on increasing the ease of doing business and reducing the cost of doing business in Fiji.

Policy frameworks for the various relevant areas should be developed and reviewed consistently with a focus on sustaining growth. The policy framework for relevant areas such as trade, investment, fiscal and monetary policy including taxation should then be used to ensure that the existing and future laws are consistent with this policy framework.

We would be pleased to provide further assistance, guidance and support to the FRC and Government, and work together to achieve our mutual national goals.

APPENDIX A – ISSUES AFFECTING TAX AGENTS

1. Tax Agents' Portal

The following are some of the issues being faced by tax agents in relation to the TPOS tax agents' portal and also formed part of our previous Budget submission:

- Team leaders can only assign tasks but have no other administrative access such as checking and reviewing returns online.
- Ability to view clients for only one tax agent and denies viewing other clients that maybe under a couple of tax agents for different tax purposes.
- No flexibility in claiming Customs VAT in future months where VAT has been paid and documents received by the taxpayer. The only solution available is to amend the VAT return when these documents are made available
- Utilities invoice numbers - vendor invoices do not have a proper invoice number, so account numbers are used. This generates an error in the portal with regard to VAT input claims on such invoices
- The lodgement confirmation generated from TPOS generated from the portal are not detailed, that is, it does not show sales, VAT output and input declared. Only shows payment made and assessed amount.
- When tax becomes due, and is allocated to DMS, case manager contact details should also be shown.
- For change in details request, we request a confirmation email to both the tax agent and the tax payer.
- Under the Payday reporting module, for weekly / fortnightly pay periods, the portal does not allow the start date to be in another month, which is not feasible.
- When the tax agent lodges a request for tax compliance certificate for tax clearance, the tax agent does not get a notification when the application has been approved.

2. Other

- Create a special window of providing service to Tax Agents similar to the “Gold Card” system currently in place for high-value business taxpayers.

- Given that the Tax Agents are now exposed to severe penalties, we request that the Tax Agents be profiled to ensure they are properly qualified and admissible to the FICA. Perhaps, it should be mandatory for Tax Agents to have completed relevant tax units and be members of FICA.

- It is noted that a draft Tax Agents' Code of Conduct was circulated by the FRCS for review and comments by the FICA during 2016. We suggest that the FRCS staff code of conduct also be circulated to Tax Agents for their information and to assist in ensuring that the code is followed.

APPENDIX B – OTHER AREAS FOR CONSIDERATION

1. Tax Evasion and the Hidden Economy

We note that the FRCS has introduced the whistle blower policy and is aggressively looking at Customs compliance issues.

We suggest that the Government also review and implement initiatives taken by other countries to reduce the level of tax evasion and the hidden economy.

2. Review of Transfer Pricing Legislation

A review of Transfer Pricing legislation for clarity on documentation requirements is needed. For example, what should be included in Transfer Pricing Documentation, whether entities meeting a certain threshold should lodge Transfer Pricing documentation, or whether group documentation that includes the Fiji entity is sufficient. De-minimis rules for small and medium enterprises may be introduced, with up to, say, three related party transactions, e.g., interest on loans or management fees which provide a minimum or maximum acceptable benchmark rate, and for which transfer pricing documentation is not required.

Consideration should be given to legislating the Advanced Pricing Agreement (APA) process. APA is an administrative approach that attempts to prevent transfer pricing disputes from arising by determining the transfer price(s) prior to the transactions taking place. The idea of APA is to reach an agreement prior to the transaction, whereas a transfer pricing audit examines the transaction after it takes place.

Any proposed introduction of related penalties should be carefully reviewed before its imposition and should be consistent with the TAA penalty provisions.

3. Tax Tribunal

The mechanism for challenging decisions of the FRCS are simply through the Tax Tribunal which can be an expensive and a lengthy endeavour and cost inefficient, particularly where the matter is one of principle and the quantum of tax is not significant. Such practices create more uncertainty for businesses, discourage further investment and erode the confidence of doing business in Fiji.

There should be an alignment of the Customs laws with the Tax laws in this regard as well. The Customs laws require the taxpayer to address any assessments at the court level rather than independent review at FRCS level. The call comes from the fact that the FRCS conducts joint audit operations on importers who are taxpayers on similar issues.

4. Independence from Objection Review Team (ORT)

FICA would like the FRCS to further ensure a high level of independence with the current ORT when dealing with objection cases. What is being noted is a rather aggressive approach by some units at the FRCS where technical issues are assessed rather hastily and sent to the ORT to resolve.

5. Role of the FRCS in Promoting and Stimulating Investments and Economic Activities

The FRCS plays an inherent role in promoting investment and economic activities. We suggest that the FRCS be aware of this role and ensure that it recognises the commercial reality of economic activity and be able to visualise economic results.

We reiterate some avenues available to the FRCS to assist in this role include:

- Identification and implementation of specific measures to improve dialogue and understanding between the business community / investors and the FRCS. Establish forums to consult the business community. For example, a forum by the FRCS with the shipping industry, the manufacturing industry or even the hotel industry.

- Continuing to undertake an independent review of the tax administrative policies, procedures and activities to assess its impact on business activities and economic activities, and its impact on the economic development of the country. Such reviews are carried out regularly in a number of countries with the objective of identifying difficulties and problems faced by businesses and taxpayers, with suggestions for improvements and systems and processes aimed at promoting business activities and economic growth.

- Improving customer service levels and internal efficiencies to allow business processes to be completed effectively and efficiently by relevant officers and minimising the duplication of effort and time to attend to taxpayer matters.

- Exercise of the CEO's discretion in all tax laws to consider changing technologies in the various industries.

6. FRCS – As a Business and Commercial Enterprise

As discussed in last year's submission, there is a need for the FRCS to view its operations from a commercial / cost/benefit approach. Inefficiencies in business and IT processes as well as time spent by staff in resolving matters are all costs to business.

We acknowledge that based on past submissions on this issue, the FRCS has extended its opening hours for lodgement on Saturdays from 9am to 1pm and have opened satellite ports for tax and customs payments in attempts to reduce at least some business cost.

Other measures that may be considered include:

- Working with other regulatory bodies such as Investment Fiji and other Government Ministries on approved projects by proactively reaching out to these taxpayers and working out solutions to ensure that projects are not stalled. FICA would like to propose the set-up of a toll-free line for FRCS, FNPF, Immigration and Investment Fiji to save on communication cost for investors and businesses when seeking advice.

- Further profiling of taxpayers with the objective of providing greater flexibility to taxpayers (including MSMEs and individuals) maintaining a high standard of compliance. Furthermore, Government needs to look at the ease of doing business, particularly for MSMEs. There are many procedures and requirements to start a business along with the related costs. This issue needs to be properly reviewed and addressed so that MSMEs can be set up efficiently and be allowed to operate without the unnecessary cost and red tape.

- The FICA acknowledges and commends the FRCS on the introduction of a taxpayer profiling process for the purposes of compliance. However, the FICA suggests that this process be developed further and shared with taxpayers to promote transparency and positive working relationships. This process will be of further benefit if it was also used to reward compliant taxpayers with improved ease of doing business and tax compliance processes (similar to Gold Card).

- The FRCS should update its records for corporate taxpayers directly from the ROC database. The FRCS's current database is not automatically updated when there has been changes in directorship, which is registered with the ROC. As a result, requests for Tax Compliance Certificates are unnecessarily delayed due to non-compliance or tax outstanding by former directors.

7. Taxpayers' Charter and Tax Dispute Resolution Service

The establishment and promotion of the Taxpayers' Charter and the Associated Tax Dispute Resolution Service is long overdue. The proposed set up of a committee to review FRCS actions is yet to be made effective. This will provide taxpayers with an avenue to seek redress on their issues, but also more importantly set a benchmark for FRCS's service standards and practices.

8. Registrar of Companies (ROC)

With the introduction of the Fiji Companies Act (**FCA**) 2015, we suggest that more awareness sessions be carried out by the ROC and / or relevant Government agencies, in view of the new requirements, substantial new charges and penalties and other changes.

We also suggest that the Government consider an amnesty period to allow entities to update their statutory and compliance requirements without being penalised.

9. Other agencies

We also suggest the following initiatives in relation to other agencies:

- Titles Office – digitisation of the entire database so that related services including title searches can be conducted online.
- Department of Town and Country Planning – the application and approval processes need to be simplified and made efficient and robust with minimum turnaround time of five (5) working days.
- Town and City Councils – processes to be simplified and digitised so that online applications and payments can be made.

10. Public Sector Reform

We suggest the following:

- The FICA understands that Government revenue as a percentage of GDP has substantially reduced. We suggest that the Government assess any unproductive sectors within the various Ministries and take appropriate action to generate revenue from such sectors.

- Government should also consider implementing a shared services model for the Ministries as a means of reducing costs.

- Government should relook at strategies with regard to the notion of a private sector led economy and the efficiency and effectiveness of the use of resources.

- Continue to implement public sector reform measures to deliver efficient and effective services and enforce accountability in the public service.

- Review disciplinary procedures for civil servants to expedite the process.

11. Health Care

We are of the view that targeted efforts are required for improvements to hospitals and health centres from both a capital and operating perspective. There have been continuous calls for improvement to our public health systems.

We suggest an increased investment in preventive health which must include early detection and education to tackle non-communicable diseases including cardiovascular diseases, obesity, and smoking. The FICA considers that such investment will substantially reduce the impact on our on-going limited medical resources.

A 300% deduction for cash donations towards the maintenance of public hospitals and health centres should be considered. Those wanting to make non-cash donations should consult with the Ministry of Health first in terms of requirements and necessities.

The FICA also suggests that the government consider exploring a National Medical Scheme for all citizens of Fiji (similar to Medicare in Australia).

12. Education

Commitment to education should be continued.

The quality of the Fiji workforce is the key for transformation to a knowledge-based economy. The FICA considers that the government should ensure that our education and training bodies are sufficiently funded to support and train our workforce.

The focus must therefore be on investing in tomorrow's workforce, improving our management capability and encouraging lifelong learning. This will be achieved by improving the educational facilities, improving academic resources and introducing strategies and measures to develop a pool of qualified, skilled and competent teachers.

Improving the teacher to students' ratio could also improve the education standards.

13. Tax Ombudsman

The taxpayer perception of a tax system is critical to ensuring voluntary compliance. Further to the setting up of FRCS's Objection Review Team, the appointment of an independent Tax Ombudsman could further provide assurances that there is an independent review available to taxpayers before the courts.

In most countries the Tax Ombudsman is seen as a critical role in providing an independent avenue for taxpayers to lodge complaints and seek an impartial review of tax office decisions.

Accordingly, the FICA considers that there is a need to create an independent body outside the jurisdiction of FRCS where taxpayers, particularly small and medium enterprises, could appeal to if they feel that they had been treated unfairly by FRCS, especially when many could not afford to go the legal route. We understand that there is a current proposed committee made up of professionals from the private sector that will be tasked to review FRCS actions and activities. It would have been preferred that the Tax Ombudsman take over this role.

The basic function of the office of Tax Ombudsman will be to diagnose, investigate, redress and rectify any unfair action and treatment, bias or prejudice or faculty procedures or unfair administration of the tax laws by FRCS, or speed up an action. This is not to detract from the current objection and appeal procedures against an assessment that the taxpayer believes is incorrect.

14. Judiciary

An efficient and independent judiciary is one of the critical factors for attracting investment.

Measures should be taken to further strengthen the judiciary to provide assurance to investors on the effectiveness of the judicial system and processes.

15. Agriculture, food security and exports

We suggest the following:

Agriculture

- Exotic trees are highly valued and present a lucrative opportunity for Fiji. Government should consider building direct relationships with exotic tree farmers (e.g., sandalwood farmers) and monitoring the harvested sales from these exotic trees.

Food Security and Exports

- Government should consider creating incentives to boost plantation and biosecurity requirement trainings for local farmers who wish to enter the exporting market. Government may also want to consider advocating for research into other foreseeable high demand commodities soon to diversify the export commodities out of Fiji. For example, breadfruit has a great global market which need to produce large volumes of crops but the current supply is not able to meet this demand.

- Farmers in Fiji face the issue of having an oversupply of produce. Appropriate assistance should be provided to farmers in addressing these oversupply issues. For example, Government may be able to assist with the provision of freezing facilities for safe storage of farmers' produce during times of oversupply.

- Food security is a crucial issue that affected everyone, particularly on female farmers. One of the major obstacles facing female farmers is a lack of access to resources, especially with trying to market their produce. Government may want to consider providing assistance to female farmers in respect of the marketing for sales of their produce.