



cutting through complexity

MEDIA AND ENTERTAINMENT

Film Financing and Television Programming

A Taxation Guide

Sixth Edition

kpmg.com



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Preface

KPMG LLP's (KPMG) *Film Financing and Television Programming: A Taxation Guide*, now in its sixth edition, is a fundamental resource for film and television producers, attorneys, tax, and finance executives involved with the commercial side of film and television production. The guide is recognized as a valued reference tool for motion picture and television industry professionals. Its primary focus is on the tax and business needs of the film and television industry with information drawn from the knowledge of KPMG International's global network of media and entertainment Tax professionals.

KPMG published the first guide more than 15 years ago as a resource for global coverage of incentives and tax updates as they apply to the film and television industry. Subsequent editions expanded into coverage of financing techniques, credits/incentives, and a thorough appendix of withholding tax rates—a valuable reference tool for all finance and tax professionals.

Each chapter of the sixth edition focuses on a single country and provides a description of commonly used financing structures in film and television, as well as their potential commercial and tax implications for the parties involved. Additionally, the United States chapter focuses on both federal and state incentives, highlighting the states that offer the more popular and generous tax and financial incentives. Key sections in each chapter include:

Introduction

A thumbnail description of the country's film and television industry contacts, regulatory bodies, and financing developments and trends.

Key Tax Facts

At-a-glance tables of corporate, personal, and VAT tax rates; normal non-treaty withholding tax rates; and tax year-end information for companies and individuals.

Financing Structures

Descriptions of commonly used financing structures in film and television in the country and the potential commercial tax implications for the parties involved. The section covers rules surrounding co-productions, partnerships, equity tracking shares, sales and leaseback, subsidiaries, and other tax-effective structures.

Tax and Financial Incentives

Details regarding the tax and financial incentives available from central and local governments as they apply to investors, producers, distributors, and actors, as well as other types of incentives offered.

Corporate Tax

Explanations of the corporate tax in the country, including definitions, rates, and how they are applied.

Personal Tax

Personal tax rules from the perspective of investors, producers, distributors, artists, and employees.

Appendices

Additionally, withholding tax tables setting forth the non-treaty and treaty-based dividend, interest, and film royalty withholding tax rates for the countries surveyed are included as an appendix and can be used as a preliminary source for locating the applicable withholding rates between countries.

KPMG and Member Firm Contacts

References to KPMG and KPMG International member firm contacts at the end of each chapter are provided as a resource for additional detailed information.

The sixth edition of KPMG's Film and Television Tax Guide is available in an online PDF format at www.kpmg.com/filmtax and on CD. The guide is searchable by country.

Please note: While every effort has been made to provide up-to-date information, tax laws around the world are constantly changing. Accordingly, the material contained in this book should be viewed as a general guide only and should not be relied upon without consulting your KPMG or KPMG International member firm Tax advisor.

Finally, we would sincerely like to thank all of the KPMG International member firm Tax professionals from around the world who contributed their time and effort in compiling the information contained in this book and assisting with its publication. Production opportunities are not limited to the 35 countries contained in this guide. KPMG and the other KPMG International member firms are in the business of identifying early-stage emerging trends to assist clients in navigating new business opportunities. We encourage you to consult a KPMG or KPMG International member firm Tax professional to continue the conversation about potential approaches to critical tax and business issues facing the media and entertainment industry.

Thank you and we look forward to helping you with any questions you may have.

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Chapter 09

Fiji

Introduction

Since 1990, the Fiji government has undertaken a program of significant business tax reforms. The result is a changed Fijian tax landscape that includes the broad based Value added Tax (VAT), Gambling Turnover Tax (GTT), Hotel Turnover Tax (HTT) and introduction of Capital Gains tax (CGT) and Tax Practice Statements.¹

On the international front, new double taxation agreements (DTA) with countries such as Australia, South Korea, Malaysia, Papua New Guinea and Singapore have come into force. Other significant changes on the international front include amendments to the taxation of dividends and branch profits of foreign companies upon repatriation.

Of more direct relevance for film projects has been the amendment of the Sixth Schedule of the Income Tax Act and the introduction of the new Film-Making and Audio-Visual Incentives as a result of a 2002 review to reform and strengthen the Fiji audio-visual industry. The shift towards producer based incentives is designed to make Fiji a more attractive location for overseas film investment by introducing tax rebates, deductions for capital expenditure and exemptions from tax in respect of the income from films as well as that of qualifying employees.

In addition, a new authority called the Fiji Islands Audio-Visual Commission was established to promote and develop the audio-visual industry in Fiji and carry out additional functions in relation to the support and promotion of Fijian films as well as the provision of tax incentives to film producers.

¹ A re-write of the Fiji tax legislations is currently taking place. The new legislation is expected in early 2012 and may change the information provided at the date of publication.

Key Tax Facts

Corporate income tax rate	From 2010 – 28% 2009 – 29% 2004 to 2008 – 31%
Highest personal income tax rate	31%
Value Added Tax	From 2011 – 15% 2003 to 2010 – 12.5%
Annual VAT registration turnover threshold	Services – F\$50,000 Goods – F\$50,000
Normal non-treaty withholding tax rates: Dividend	15%
Interest	10%
Royalties	15%
Tax year-end: Companies	Variable based on financial year end
Tax year-end: Individuals	December 31

Partnership

General partnerships are not taxed in Fiji and accordingly are one of the commonly used business structures. Limited partnerships are not used in Fiji.

Where a general partnership is formed in Fiji to make a film in Fiji, the Fijian tax treatment will be straightforward as general partnerships are not tax paying entities. However, partnerships are required to lodge tax returns in Fiji disclosing their profit sharing arrangements. All partners will be subject to full Fijian tax on their share of the partnership profits as the carrying on of a business by the partnership will cause each partner to have a permanent establishment in Fiji.

In the event that a partner is a resident of Fiji but their partnership carries on business outside Fiji under the control of a non-Fijian resident, the non-Fijian resident partner would not be liable to Fijian tax. However, the Fijian resident partner would still be liable to Fijian tax on their share of the partnership's profit.

Equity Tracking Shares

The term "equity tracking shares" is not used in Fiji. Internationally, the term can be used to refer to shares that provide dividend returns depending on the profitability of a film production company's business. These shares have

the same rights as the production company's ordinary shares except that dividends are profit-linked and have preferential rights to assets on liquidation of the company.

If the production company is resident in Fiji, such shares would be regarded as preference share capital. Normally, the dividends paid on such shares would be treated in the same way as dividends paid on ordinary shares. Dividends paid on ordinary and preference shares in Fiji are normally treated in a similar manner provided that preference shares are considered to be an equity instrument under the debt/equity rules.

If such shares are acquired by a Fijian resident investor, but the production company is not a resident of Fiji, then any dividends received would be treated in the same way as dividends received on ordinary shares. Any tax withheld in the foreign jurisdiction would be dealt with according to the dividend article of the appropriate DTA.

Sale and Leaseback

A purchase and leaseback of a film is not usually tax effective in Fiji as the purchaser is regarded as having made a capital payment and would only be able to amortize the purchase price over the life of the film's copyright. In addition, any license payments received by the purchaser/lessor of the film would be fully assessable to tax.

Tax and Financial Incentives

Investors

Fijian tax legislation has a general anti-avoidance provision whose broad impact is to allow Fijian revenue authorities to attack any transaction that has the dominant purpose of avoiding tax.

In 2002 the Government initiated a review and subsequent amendment of the Sixth Schedule of the Income Tax Act. This review resulted in the provision of various financial and tax incentives such as the Film Making Incentives and the Audio Visual Incentives. The Sixth Schedule was further reviewed and revised effective from January 2011.

Part 1 – General

Section 3 (1) – Limitation on applications for incentives

A company, production entity or any person engaged in An Audio-Visual Production (AVP) in Fiji may apply for only one incentive under Parts 2, 3, 4 or 5.

Part 2 – Film Making Incentives

The income of qualifying employees of a film company is fully exempted from income tax or taxed at reduced rates for a period determined by the Minister.

Part 3 – Audio Visual Incentives

An Audio-Visual Production (AVP) qualifies as an F1 or F2 audio-visual production if it satisfies certain minimum prerequisites including 100 percent of its production budget being deposited in an AVP bank account prior to the commencement of the production and 100 percent of its profits or revenues paid to any Fiji investors must pass through an approved Fijian bank account before any disbursement.

Division 5 – Deduction for Capital Expenditure on Audio-Visual Production

Capital expenditure expended by a taxpayer by way of contribution to the audio-visual production (AVP) costs in respect of a qualifying audio-visual production can be deducted in the year monies are expended as follows:

- F1 AVP – 150 percent of the monies expended
- F2 AVP – 125 percent of the monies expended

Division 6 – Taxation of Audio-Visual Income

If a taxpayer incurs capital expenditure by way of contribution to the AVP costs in respect of a qualifying AVP, the income derived by the taxpayer from the commercial exploitation of the copyright is exempt from tax until the taxpayer has received, from the commercial exploitation, a return as follows:

- F1 AVP – 60 percent of the monies expended
- F2 AVP – 50 percent of the monies expended

Thereafter the net income would be subject to tax.

Part 4 – Studio City Zone

Division 1 – Studio City Zone (SCZ)

A sole proprietor, partnership or company, on application to the Fiji Audio-Visual Commission (FAVC), may be granted an audio-visual operating license. Such a license exempts the licensee from the payment of income tax (except withholding tax) on any income derived by the licensee from a production activity with effect from the commencement of the audio-visual operating license.

The income from the sale of shares in a licensee or the sale of the licensee's business or part of a business would be subject to tax at the rate of:

- 20 percent – if the sale occurs within 2 years after the commencement of the business
- 15 percent – if the sale occurs within 4 years after the commencement of the business
- 10 percent – if the sale occurs within 6 years after the commencement of the business
- 2.5 percent – if the sale occurs within 8 years after the commencement of the business

Division 2 – Taxation Concessions to Residents of the SCZ

Earnings derived by an individual approved by the FAVC may be exempt from tax. The FAVC may approve an application for tax exemption from individuals provided they meet the following conditions:

Non-citizens

- The individual is resident in the SCZ for a period or periods of at least 60 days in aggregate in the year of assessment
- Maintains a permanent place of residence in the SCZ during the year of assessment
- Provides to the Commissioner a confirmation from a chartered accountant that he/she had net audio-visual earnings in excess of F\$100,000 in the year of assessment and held assets during the year of assessment in the SCZ in excess of F\$250,000 in real estate, tangible assets including stock, plant and equipment and tools of trade or other valuable and confirmable assets excluding cash and other liquid assets

Citizens

- The individual is resident in the SCZ for a period or periods of at least 183 days in aggregate in the year of assessment or, if he/she derives a minimum of 80 percent of audio-visual earnings from outside Fiji, is resident in the SCZ for a period or periods of at least 60 days in aggregate in the year of assessment
- Maintains a primary place of residence in the SCZ during the year of assessment

- Provides to the Commissioner a confirmation from a chartered accountant that he/she had net audio-visual earnings in excess of F\$50,000 in the year of assessment whether sourced from within or outside Fiji and held assets during the year of assessment in the SCZ in excess of F\$100,000 in real estate, tangible assets including stock, plant and equipment and tools of trade or other valuable and confirmable assets excluding cash and other liquid assets

Part 5 – Film Tax Rebate

Division 2 – Tax rebate for Fiji Expenditure In Making a Film

Effective 1 January 2011, a film production company is entitled to a tax rebate of 47 percent of qualifying Fiji Islands production expenditure on a film. If the expenditure exceeds F\$25 million, the tax rebate would be limited to F\$11.75 million.

The tax rebate would only be granted to a film production company in an income year in which it satisfies the following requirements:

- The film was completed in that year
- The company is provided with a certificate for the film by the FAVC
- The company claims (irrevocably) the tax rebate in its income tax return
- The company is resident of Fiji and, if not resident, lodges a tax return for the purpose of claiming tax rebate
- The company is not a holder of a broadcast license in television or radio in Fiji and is not associated with any company or individual with substantial holdings in broadcast licenses in Fiji
- The company is not a theatrical exhibitor in Fiji and is not associated with any company or individual with substantial holdings in a theatre or group of theatres in Fiji

A company or any other person would not be not entitled to the tax rebate if an application has been made under Part 3 of the Sixth Schedule or has been issued with a provisional or final certificate for the film under Part 3 of the Sixth Schedule, whether or not the certificate is still in force.

FAVC may issue a certificate to a company stating that a film satisfies various requirements laid down in the Sixth Schedule including:

- The film was produced for exhibition to the public in cinemas or by way of television broadcasting or distribution to the public via internet
- The film is a large format feature film or a short film

- The film is a production intended for exhibition as an advertising program or a commercial in at least one significant international market
- The total of the company's qualifying Fiji Islands production expenditure is at least F\$250,000 for large format film, short film, television program, television movies, mini-series, drama series, comedy series, documentaries, educational programs and series, animation series and current affairs series
- The total of the company's qualifying Fiji Islands production expenditure is at least F\$50,000 for advertising or commercial programs.
- The film is not culturally derogative in its portrayal of the Fiji islands or its people

Division 3 – Production Expenditure and Qualifying Fiji Production Expenditure

A company's production expenditure on a film is the expenditure that is incurred in relation to the making of the film or reasonably attributable to the use of equipment or other facilities or activities undertaken in the making of the film.

The making of the film means the performance of things necessary for the production of the first copy of the film including pre-production and post-production activities in relation to the film and any other activities undertaken to bring the film to a state where it is ready to be distributed or exhibited to the general public.

The following costs are excluded in order to focus the tax offset on the expenditure that is incurred in the making of a film:

- developing the proposal for making of the film
- Arranging or obtaining finance for the film
- Distributing and promoting the film

Qualifying Fiji Islands Production Expenditure

A company's qualifying Fiji Islands production expenditure on a film is the production expenditure on the film to the extent that is incurred or reasonably attributable to:

- Goods and services provided in Fiji and paid from a Fiji bank account
- The use of land or building located in Fiji
- The use of goods located in Fiji at the time they are used in making the film

Product Rulings

Under the product rulings system administered by the Fiji Revenue & Customs Authority (FRCA), it is possible to obtain a ruling which is legally binding on the Commissioner of Inland Revenue and which confirms the tax consequences to a class of investors contemplating an investment in a film.

No film product rulings have been issued since the amendment of the Sixth Schedule of the Income Tax Act.

Businesses

Interest payable on loans and other forms of business indebtedness can generally be deducted for tax purposes. However, the loan principal can never be deducted in calculating taxable profit.

Other general tax incentives for investment include certain beneficial rates of tax depreciation (known as “accelerated depreciation”) for buildings and a 40 percent “investment allowance” for certain qualifying investments. The Fijian Government has also introduced further concession with effect from 1 January 2009, where a 100 percent income tax exemption is provided for a number of years in respect of any business established in a “Tax Free Region” subject to certain conditions.

Other Financing Considerations

Tax Costs of Share or Bond Issues

No tax or capital duty is imposed in Fiji on any issue of new ordinary or preference shares.

With the introduction of Capital Gains Tax (CGT) in Fiji, effective from 1 May 2011, profit on sale of shares in Fiji incorporated companies, or foreign companies with Fiji assets, are subject to 10 percent CGT.

Stamp Duties

Stamp duty is levied on certain types of transactions in Fiji and the rate of the duty varies depending on the type of transaction.

The transfer of shares is subject to stamp duty at the rate of F\$1.01 for every F\$100 (or part thereof) of the greater of the consideration paid and the unencumbered value of the shares. Stamp duty on the sale of real property is subject to duty at the rate of F\$2.02 for every F\$100 (or part thereof).

Exchange Controls and Regulatory Rules

The Reserve Bank of Fiji administers the *Exchange Control Act* in Fiji. There is therefore a very tight scrutiny of funds repatriated out of Fiji. In addition, under the financial transactions reporting legislation it is necessary to file a currency transfer report to transfer more than F\$10,000 (or foreign currency equivalent) in or out of Fiji.

Corporate Taxation

Recognition of Income

Film Production Company – Production Fee Income

Fiji-resident Company

If a special purpose company is set up in Fiji to produce a film without acquiring any rights in that film, the tax authorities often query the level of income attributed to Fiji if they believe that there is flexibility in the level of production fee income that may be attributed such that it is below a proper arm's-length amount. It is difficult to be specific about the percentage of the total production budget that would be an acceptable level of income attributed to Fiji. The lower the percentage, the more likely an enquiry.

Non-Fiji Resident Company

If a company is not resident in Fiji but has a production office to administer location shooting in Fiji, it is possible that the tax authorities may try to argue that it is liable to tax in Fiji by being regarded as having a permanent establishment, subject to specific exemptions under an applicable DTA. The Fiji authorities would determine whether or not a "permanent establishment" exists by applying the appropriate article in an applicable DTA (i.e., presences such as a branch, office, factory, workshop or similar site). If no treaty exists then they could still be expected to apply a similar set of criteria.

If a company is not resident in Fiji and does not have a production office in Fiji but undertakes location shooting there, it is unlikely that it would be liable to tax in Fiji as it would not be regarded as having a permanent establishment.

If Fijian tax authorities attempt to tax a company on a proportion of its profits on the basis that it has a permanent establishment, they would first seek to attribute the appropriate level of profits that the enterprise would be expected to make if it were a distinct and separate enterprise engaged in that activity. However, as proper measurement of such profits is difficult,

it is likely that the Fijian tax authorities would measure the profit enjoyed by the company in its own resident territory and seek to attribute a specific proportion, perhaps by comparing the different levels of expenditure incurred in each location or the periods of operation in each territory. The level of tax liability would ultimately be a matter for negotiation.

The foreign investor would have to rely on an applicable treaty and/or its home country rules to obtain relief from double taxation.

Examples of the relief provided for under Fiji's treaties are as follows:

Australia	Fiji tax on business profits creditable against Australia. tax (Article 25)
New Zealand	Fiji tax on business profits creditable against NZ tax (Article 22)
U.K.	Fiji tax on business profits creditable against U.K. tax (Article 22)
Japan	Fiji tax on business profits creditable against Japanese tax (Article XVII)
Singapore	Fiji tax on business profits creditable against Singapore tax (Article 23)
Malaysia	Fiji tax on business profits creditable against Malaysian tax (Article 24)
South Korea	Fiji tax on business profits creditable against Korea tax (Article 23)
PNG	Fiji tax on business profits creditable against PNG tax (Article 24)

Film Production Company – Sale of Distribution Rights

If a Fijian resident production company sells distribution rights (i.e., through licenses rather than an assignment of copyright) in a film to an unconnected distribution company in consideration for a lump-sum payment in advance and subsequent periodic payments based on gross revenues, the sale proceeds would normally be treated as income arising in the trade of film rights exploitation. The same rules would apply to whatever type of entity is making the sale.

If intangible assets such as distribution rights are transferred from Fiji to a connected party in a foreign territory, it is preferable to help ensure that such a transfer is carried out as part of a commercially defensible transaction, as the tax authorities may well seek to attribute an arm's-length price.

Film Distribution Company

If a Fijian resident distribution company acquires rights by way of a lump-sum payment for distribution rights from an unconnected production company, the payment for the acquisition of the rights is normally treated as an expense in earning profits. The expense is not regarded as the purchase of an intangible asset but as a royalty payment. This would be the case whether the company exploits the rights in Fiji or worldwide, and whether or not the production company is resident in a country that has a DTA with Fiji.

Where the recipient of the payments is a non-resident of Fiji and not subject to tax in Fiji, payments for distribution rights may be subject to Fijian withholding tax.

The Fijian tax regime does not discriminate between royalty payments for films or other intellectual property. In the absence of a treaty all royalties are subject to a withholding of 15 percent with the exception of South Korea and Singapore where the rate is 10 percent.

The income arising from exploiting such rights is normally recognized as trading income. The distribution company would be taxed on the income derived from the exploitation of any of its acquired films, wherever and however they are sub-licensed, provided that the parties are not connected. If they were connected, the tax authorities might question the level of income returned. For Fijian taxation purposes, income in this case is normally recognized when the right to be paid has been irrevocably determined.

Transfer of Film Rights Between Related Parties

Where a worldwide group of companies holds rights to films and videos, and grants sub-licenses for exploitation of those rights to a Fijian resident company, care needs to be taken to help ensure that the level of profit earned by the Fijian company can be justified. Any transactions within a worldwide group of companies are liable to be challenged by the Fijian tax authorities since they would seek to apply an open-market third-party value to such transactions. Indeed, if a Fijian resident company remits income to a low tax territory via a sub-licensing distribution agreement, the Fijian tax authorities can be expected to query the level of such income.

Amortization of Expenditure

Production Expenditure

At times a distributor may acquire the copyright in a film. Generally, this is done by way of an assignment of the copyright by the producer.

The distributor will obtain a deduction for the purchase price of the copyright over the period of the purchase. The tax treatment of the assignment of copyright as a true purchase of property consisting of the copyright, rather than a payment for the use of, or the right to use, the property (and therefore a royalty) will depend on all relevant facts and circumstances.

An investor in a qualifying AVP who takes the place of another investor before the film is completed may be eligible for a deduction. The replacement investor's contribution as well the expenditure incurred by the outgoing investor may still be treated as costs of producing a film.

As long as the requirements under Division 3 of Part 5 Division of the Sixth Schedule are satisfied, the replacement investor will be allowed a deduction in respect of the expenditure incurred by them as well as those incurred by the outgoing investor.

Other Expenditure

Neither a film distribution company nor a film production company has any special status under Fijian tax law. Consequently, they are subject to the normal rules to which other companies are subject. For example, in calculating taxable trading profits, they may deduct most normal day-to-day business expenditure such as the cost of film rights (as detailed above), salaries, rents, advertising, travel expenses, and legal and professional costs normally relating to the business.

Certain other expenditure cannot be deducted. For example, any expenditure on capital account, such as the purchase of land and buildings, goodwill, and investments cannot be deducted as well as the acquisition of plant and machinery (although capital allowances can be deducted at specific rates and in some circumstances these rates can be generous).

Losses

There are no special rules regarding loss recoupment. If a company has AVP expenditures, such expenditures can be offset against any class of income in the year of loss, but any unrecouped losses may only be carried forward to offset against film income derived in future years subject to Section 22 of the *Income Tax Act*.

Foreign Tax Relief

Producers and Distributors

There are no special rules for producers and distributors when it comes to foreign tax relief and so they are treated as ordinary taxpayers.

If a Fijian resident film distributor/producer receives income from unconnected, non-resident companies, but suffers overseas withholding tax, it is usually able to rely on Fiji's wide range of DTAs to obtain relief for the tax suffered. If no such treaty exists between the territories concerned, it would expect to receive credit for the tax suffered on a "unilateral" basis.

Indirect Taxation

Value Added Tax

Value Added Tax (VAT) of 15 percent is payable by an entity on the taxable supplies that it makes. An entity makes a *taxable supply* if the supply is made for consideration, in the course or furtherance of an enterprise that an entity carries on, the supply is connected with Fiji and the entity is registered for VAT or required to be so registered. A supply will be a taxable supply if it is VAT exempt.

An entity is entitled to input tax credits for the VAT component of its *creditable acquisitions*, that is, for the acquisitions incurred in carrying on its enterprise except to the extent that the acquisition relates to making supplies that are VAT exempt or the acquisition is of a private or domestic nature.

If a supply is "VAT exempt," no VAT is payable on it but the supplier cannot claim input tax credits for the VAT payable on its acquisitions that relate to that supply. VAT exempt supplies include supplies of residential accommodation and certain supplies of financial services (e.g., loans, mortgages, guarantees).

A supply is zero rated if no VAT is payable on it but the supplier is entitled to claim credits for the VAT payable on its acquisitions that relate to that supply. Zero rated supplies include exports and other supplies that are for consumption outside Fiji. With effect from 1 January 2009 "live broadcasts of films made or filming carried out in Fiji" has been specifically included in the relevant schedule detailing zero rated supplies.

There is no VAT on exported release positive prints or negatives provided that the goods are exported by the exporter. However, release positive prints or negatives imported into Fiji are subject to VAT calculated on the sum of the customs value of the goods, cost of overseas freight, and insurance and any customs duty.

Customs Duties

Blank videotapes, recorded tapes, video masters, and cinematographic films, exposed and developed, are subject to customs duty.

Customs duty is levied on an *ad valorem* basis. The valuation system is based on the WTO valuation agreement with some variations. Generally, the customs value is determined by reference to the price of the goods at the place of export (the place where the goods are placed in a container, posted or placed on board a ship or aircraft). The following additions are made to the price to determine the customs value:

- Commissions other than buying commissions
- Foreign inland freight and insurance (to the extent these are not already included)
- Packing costs
- Cost of materials and services required for production of imported goods, supplied by the purchaser free of charge at reduced costs
- All or part of proceeds for resale, use, etc. that accrue to the vendor
- Certain royalties

The legislation in this area is quite complex and each case must be examined individually to help ensure that the correct value is used.

The Fiji Customs and Excise Service administers a system of strict liability/administrative penalties. Where customs duty is underpaid, the maximum administrative penalty that can be imposed is 200 percent of the short paid duty or F\$1,000 whichever is greater. Penalties can also apply where incorrect information is supplied to Customs even if there is no duty underpayment.

The maximum judicial penalty for counterfeiting documents is F\$20,000 or two years imprisonment or both and for fraudulent evasion is three times the value of goods or F\$20,000 or two years imprisonment or both.

Personal Taxation

Non-Resident Artists (self-employed)

Income Tax Implications

Subject to its DTAs Fiji taxes the income arising to a non-resident artist from a performance in Fiji and any other activities carried on in Fiji. The authorities would also seek to tax income received outside Fiji in connection with a Fijian performance but not if it relates to services carried on outside of Fiji.

If a non-resident artist receives any payment arising from or in consequence of a Fijian activity, the Fijian payer is obliged to deduct "income tax" and account for this tax to the authorities. However, where a non-Fiji payer makes a payment to the non-resident artist in respect of a Fijian performance, the Fijian withholding tax rules are not effective and the authorities can only rely on voluntary disclosure by the artist.

Fiji's DTAs provide the following rules:

Australia	Australia resident artists (or an entity that provides the services or an artist) are taxable in Fiji to the extent to which they perform services in Fiji (Article 17)
New Zealand	NZ resident artists are taxable in Fiji to the extent to which they perform services in Fiji (Article 14)
U.K.	U.K. resident artists (or an entity that provides the services or an artist) are taxable in Fiji to the extent to which they perform services in Fiji (Article 17)
Singapore	Singapore resident artists are taxable in Fiji to the extent to which they perform services in Fiji (Article 17)
Malaysia	Malaysian resident artists are taxable in Fiji to the extent to which they perform services in Fiji (Article 18)
Papua New Guinea	PNG resident artists are taxable in Fiji to the extent to which they perform services in Fiji (Article 18)
South Korea	Korea resident artists are taxable in Fiji to the extent to which they perform services in Fiji (Article 17)

It should be noted that non-resident artists are taxable only on the remuneration received in respect of the services they perform in Fiji. Provided that genuine services are performed outside Fiji and an arm's-length fee is payable for those services by the production company no tax would be levied in Fiji on those payments.

Pay As You Earn (PAYE) tax is levied at differing rates and may be as high as 31 percent of an individual's salary.

Fringe benefits are taxed in the hands of the employees in respect of benefits such as employer-provided cars, free or low interest loans, free or subsidized residential accommodation or board, goods and services sold at a discount or provided free by an employer, and expenses paid on behalf of an employee.

Resident Artists (self-employed)

Resident artists are treated identically to employees. If they perform services through a company the tax authorities will challenge the arrangement and, accordingly, most resident artists are taxable as individuals.

Employees

Income Tax Implications

Employers of employees working in Fiji are obliged to make regular, periodic payments to the Fijian tax authorities in respect of employees' personal tax liabilities arising from salaries or wages paid to them. Deductions are made under the PAYE system. Employers deduct PAYE tax based on tax tables supplied by the tax authorities which are designed to approximate the tax liabilities.

Social Security Implications

Employers are liable for superannuation contributions in respect of payments of salaries or wages. Currently the minimum superannuation contribution is 8 percent by the employer with a similar amount deducted from the employees.

KPMG Contacts

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