

**SECRETARIAT OF THE PACIFIC COMMUNITY**

**THIRTY-EIGHTH MEETING OF THE  
COMMITTEE OF REPRESENTATIVES OF GOVERNMENTS AND ADMINISTRATIONS**  
(Noumea, New Caledonia, 13–16 October 2008)

*Regional Policy Agenda*

**AGENDA ITEM 3.10 – ISSUE OF TAXATION OF FIJI NATIONALS EMPLOYED BY SPC  
IN FIJI**

(Paper presented by the Secretariat)

**EXECUTIVE SUMMARY**

1. Following the 5<sup>th</sup> Conference of the Pacific Community, the Secretariat conducted consultations with the Government of Fiji to try and resolve the issue of taxation of Fiji nationals employed by SPC in Fiji.
2. Through a cabinet decision in May 2008, the Government of Fiji agreed to a temporary cessation of this taxation, from May to December 2008.
3. The Director-General acknowledged the Government of Fiji for its decision and further requested the government to give positive consideration to:
  - i. retrospectively applying the effective date of the cabinet decision to 1 January 2007, when tax was first imposed,
  - ii. agreeing on a process to negotiate a new host country agreement between Fiji and SPC, with the tax issue being part of these negotiations;
  - iii. agreeing on a mechanism, comprising the Government of Fiji and a subcommittee of CRGA, to work on the tax issue as an integral component of a new host country agreement between Fiji and SPC;
  - iv. agreeing on a time frame of between August 2008 and December 2009 for negotiating a new host country agreement between Fiji and SPC; and
  - v. pending the finalisation of the new host country agreement, extending the decision on the temporary cessation of tax to December 31, 2009. After this date, the arrangement agreed on during the negotiation of the new host country agreement would apply, with effect from 1 January 2010.
4. The Secretariat and Fiji delegation will update CRGA on the outcome of the Director-General's proposal to Fiji.

## **RECOMMENDATIONS**

5. CRGA is requested to:
- i. note the progress made by the Secretariat in implementing the decision by Conference on the subject of taxation of Fiji nationals employed by SPC in Fiji;
  - ii. thank the Government of Fiji for its decision agreeing to a temporary cessation of this taxation;
  - iii. support the proposal put forward by the Director-General to the Interim Minister of Foreign Affairs that a new host country agreement be negotiated between Fiji and SPC, with the tax issue to be part of these negotiations ;
  - iv. request the Fiji delegation to update CRGA on the Government's response to the proposal put forward by the Director-General in paragraphs 17 and 18; and
  - v. request the Secretariat and Government of Fiji to present the final outcome of this matter to CRGA 39 and the 6<sup>th</sup> Conference of the Pacific Community in Tonga in 2009.
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## ISSUE OF TAXATION OF FIJI NATIONALS EMPLOYED BY SPC IN FIJI

### Purpose

1. This paper provides an update to CRGA on progress achieved during 2008 in implementing the decision made by the 5<sup>th</sup> Conference of the Pacific Community on the subject of taxation of Fiji nationals employed by SPC in Fiji (the decision is given below).

Conference:

- a) requests the Secretariat hold consultations with the Government of Fiji soon after the Fifth Conference of the Pacific Community to address the issue of taxation of Fiji nationals working at SPC in Fiji;
- b) requests that the Secretariat involve a subcommittee of CRGA, composed of Pacific Community representatives present in Fiji, in the consultations to be undertaken with the Government of Fiji;
- c) further requests the Secretariat to report on the outcome of these consultations to the 2008 CRGA meeting.

### Background

2. Fiji nationals employed by SPC in Fiji were exempted from paying tax based on an agreement made between the Government of Fiji and the then South Pacific Commission in 1964<sup>1</sup>.
3. In its 2007 budget, the Government of Fiji decided to apply income tax to Fiji nationals working for SPC in Fiji. As a result of this decision, for the first time since the establishment of SPC's office in Fiji, Fiji nationals are required to pay income tax.
4. Noting Fiji's sovereign right to apply income tax to its nationals, but also noting that the tax exemption for Fiji nationals employed by SPC in Fiji was based on an agreement between the Government of Fiji and the then South Pacific Commission around 1964<sup>2</sup>, the Secretariat sought the guidance of the 5<sup>th</sup> SPC Conference (Apia, November 2007) on this issue.
5. With the support of CRGA 37 and the 5<sup>th</sup> Conference, the Secretariat proposed the following two options to be considered by the Government of Fiji:

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<sup>1</sup> Letter from the Office of the Prime Minister, Fiji, 9 February 2001. A copy of the agreement has however not been found.

<sup>2</sup> Letter from the Office of the Prime Minister, Fiji, 9<sup>th</sup> February 2001. A copy of the agreement has however not been found

**Option 1** - The Government of Fiji considers formalising the status quo through a waiver by the Minister of Finance of the tax requirements for Fiji nationals employed by SPC in Fiji. This waiver can be justified on the following grounds: (i) the current exemption from income tax is based on an agreement; (ii) huge benefits have and will continue to flow into the Fiji economy as a result of SPC's presence in Fiji; (iii) the exemption adds to Fiji's contribution to SPC's regional service; and (iv) the exemption maintains parity with the arrangement at SPC headquarters in Noumea where French/New Caledonia nationals working for SPC in Noumea are exempt from paying income tax.

**Option 2** - If the Fiji Government wishes to proceed with the application of income tax to its nationals, then the following parameters should be agreed on to guide the negotiations: (i) the consultation/negotiation process between the Fiji Government and the Secretariat should take place in 2008; (ii) the outcome of any recommendation should be implemented only after approval by SPC's governing body, and in accordance with a time frame set by the governing body that takes into account SPC's budget process; (iii) any increases in the salary budget resulting from the application of income tax to Fiji nationals employed by SPC in Fiji should be met by the Government of Fiji, which will be the sole beneficiary of the income tax; (iv) there should be no retrospective application of income tax payments to national staff currently and previously employed by SPC in Fiji; and (v) the application of income tax, if implemented, should honour the existing contracts of staff at the time of implementation, i.e. any income tax regime would only be applied progressively to new contracts issued after the agreed date of implementation.

6. The Secretariat sought Conference's support in requesting the Government of Fiji to defer any application of income tax to its nationals working for SPC in Fiji until a decision was reached between the Government and SPC's governing body

#### **Update on the consultation process with the Fiji Government**

7. The Secretariat has conducted three formal consultations with the Government of Fiji in the last 10 months to try and reach an amicable agreement on the taxation issue. Two of the consultations were led by the Director-General (November 2007 and July 2008) and one by the Suva-based Deputy Director-General (March 2008).
8. The November consultation between SPC and representatives of Fiji's Foreign Affairs, Inland Revenue and Customs Authority (FIRCA) took place immediately after CRGA 37 and the 5th Conference. After receiving the request by SPC's governing body, the Fiji delegation advised the Director-General to write directly to the Office of the Interim Prime Minister as a political decision was required to defer the application of tax, given that it had already been applied with effect from 1 January 2007.
9. The Director-General wrote to the Office of the Prime Minister in December 2007 informing him of the decision and the request by the SPC Conference for his consideration, and asking that the government consider putting the application of tax to Fiji nationals working at SPC in Fiji on hold until a negotiated position was reached between the parties. A positive response was received from the Office of the Prime Minister in January 2008.

10. In May 2008, the Fiji Government through a cabinet decision... 'approved a temporary cease in the charging of income tax on Fiji nationals working for the Secretariat of the Pacific Community (SPC) based in Fiji with effect from 20th May, 2008. Cabinet has also agreed to defer the re-imposition of income tax on Fiji nationals working for the SPC based in Fiji to 1 January 2009'.
11. In its decision, the Fiji Government noted the existing arrangements under the 1964 Agreement between SPC and Fiji, and the request by Conference, in particular as it related to the implication ... 'that the imposition of income tax as such would, inter alia, affect its (SPC's) budgeting programme for 2007 and 2008 and have associated implications on funding sources, especially annual member country contributions'.
12. The Secretariat welcomed the decision by the Government of Fiji on a temporary cessation of the tax. However, the decision did not provide for the whole period for which the tax was imposed (from January 2007), nor for a consultative mechanism along the lines requested by Conference.

### **Current situation**

13. The Director-General met with Fiji's Interim Minister of Foreign Affairs on 17 July and requested that the government give kind consideration to:
  - i. extending the application of the decision by Cabinet on temporary cessation of tax retrospectively to 1 January 2007, the date on which tax was first imposed;
  - ii. agreeing on a process to negotiate a new host country agreement between Fiji and SPC, which would include negotiations on the tax issue;
  - iii. agreeing on a mechanism, comprising the Government of Fiji and a CRGA sub-committee, to work on the tax issue as an integral component of a new host country agreement between Fiji and SPC;
  - iv. agreeing on a time frame of between August 2008 and December 2009 to negotiate a new host country agreement between Fiji and SPC; and
  - v. pending the finalisation of the new host country agreement, extending the cabinet decision on temporary cessation of tax to December 31, 2009, after which the arrangement agreed on in the new host country agreement would apply from 1 January 2010.
14. Following the Interim Minister's positive reception of SPC's suggestion, the Director-General wrote to the minister on 26 August 2008 officially requesting the Government's consideration of the matters discussed during their meeting (summarised in paragraph 17).
15. The Director-General also advised the Interim Minister in this letter that as the issues of a new host country agreement and taxation of Fiji nationals had yet to be resolved, SPC was not in a position to address any tax-related matters in the 2009 SPC budget. The 2009 budget does not include any provision for taxation of Fiji nationals working in Fiji.

16. The Secretariat is expecting a response from the Government of Fiji before CRGA and will update the meeting.
17. The Fiji delegation to CRGA will also provide an update to the meeting on its Government's response to the Secretariat's request and the next steps needed to ensure this matter can be brought to a close by the 6<sup>th</sup> Conference of the Pacific Community in Tonga in 2009.

**Conclusion**

18. After a request from the Secretariat, the Fiji Government approved a temporary (May to December 2008) cessation of tax imposed on Fiji nationals employed by SPC in Fiji.
19. The setting up of a CRGA subcommittee to assist the Secretariat in its consultations with Fiji is yet to be formalised with the Fiji Government.
20. The Secretariat is expecting a response from the Fiji Government in relation to its proposal to negotiate a new host country agreement between Fiji and SPC. The tax issue would be addressed within these negotiations.
21. The Secretariat has also requested the Fiji Government to consider retrospectively applying the decision by cabinet on the temporary cessation of tax imposed on Fiji nationals employed by SPC in Fiji to 1 January 2007, and further extending it to 31 December 2009 to allow for the negotiation of a new host country agreement, which will include exploring a long-term solution for the tax issue.

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14 September 2008