

Subpart A.—Tax Conventions

FIJI

REPUBLIC OF FIJI
MINISTRY OF
FOREIGN AFFAIRS
SUVA
AUGUST 12, 1996

The Ministry of Foreign Affairs of the Government of the Republic of Fiji presents its compliments to the Embassy of the United States of America and has the honour to refer to the latter's Note No. 64 of June 19, 1996, the text of which reads as follows:

“The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs of the Government of the Republic of Fiji and has the honour to propose that the two governments conclude an agreement to exempt from income tax on a reciprocal basis, income derived by residents of the other country from the international operation of ships and aircraft. The terms of the agreement are as follows:

The Government of the United States of America, in accordance with section 872(B) and 883(A) of the Internal Revenue Code, agrees to exempt from tax gross income derived from the international operation of ships or aircraft by individuals who are residents of Fiji (other than United States citizens) and corporations which are incorporated in Fiji.

The Government of the Republic of Fiji agrees to exempt from tax gross income derived from the international operation of ships or aircraft by individuals who are residents of the United States of America (other than Fiji citizens) and corporations which are incorporated in the United States of America.

In the case of a Fiji corporation, the exemption shall apply only if the corporation meets one of the following conditions:

(I) The corporation's stock is primarily and regularly traded on an established securities market in Fiji,

another country which grants an equivalent exemption to U.S. corporations, or the United States,
OR

(II) More than 50 percent of the value of the corporation's stock is owned directly or indirectly by individuals who are residents of Fiji or of another foreign country which grants an equivalent exemption to U.S. corporations or by a corporation organized in a country which grants an equivalent exemption to U.S. corporations and whose stock is primarily and regularly traded on an established securities market in that country, another country which grants an equivalent exemption to U.S. corporations, or the United States.

For the purpose of exemption from the U.S. tax, Subparagraph (II) will be considered to be satisfied if the corporation is a “controlled foreign corporation” under the Internal Revenue Code.

In the case of a U.S. corporation, the exemption shall apply only if the corporation meets the ownership requirements under Fiji law.

In this agreement:

(A) The terms “contracting state”, and “other contracting state” mean the Sovereign Democratic Republic of Fiji or the United States of America, the governments of which have concluded this agreement.

(B) Gross income includes all income derived from international operation of ships or aircraft, including:

(I) Income from the rental on a full (time or voyage) basis of ships or aircraft used in international transport;

(II) Income from the rental on a bareboat basis of ships or aircraft used in international transport;

(III) Income from the rental of containers and related equipment used in international transport that is incidental to income from the international operation of ships and aircraft; and

(IV) Gains from the sale or other alienation of ships or aircraft used in international transport derived by a person primarily engaged in the international operation of ships or aircraft.

In the application of this agreement by a contracting state, any term not defined in this agreement shall, unless the context otherwise requires, have the meaning which it has under the laws of that state relating to the taxes to which this agreement applies.

The Embassy proposes that if the foregoing is acceptable to the Government of the Republic of Fiji, this note and the Ministry's note in reply shall constitute an agreement. This agreement shall enter into force on the date of the Ministry's note in reply and shall have effect in respect of income derived on or after January 1, 1996, and during all prior years for which the relevant statute of limitations remains open on that date.

This agreement shall continue into force until the Government of either contracting state gives written notice of termination of the agreement to the Government of the other contracting state through the diplomatic channel.

The Embassy of the United States of America avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Government of the Republic of Fiji the assurances of its highest consideration.”

The Ministry has the further honour to confirm that the Government of the Republic of Fiji accepts that the Embassy's above-quoted Note and this Note in reply from the Ministry shall constitute an agreement between the two governments to exempt from income tax on a reciprocal basis, income derived by residents of the other country from the international operation of ships and aircraft.

The Ministry of Foreign Affairs of the Government of the Republic of Fiji avails itself of this opportunity to renew to the Embassy of the United States of America the assurances of its highest consideration.