



SUBJECT	TAXATION OF LUMP SUM PAYMENTS
DATE OF EFFECT	1 January 2005
CONFIDENTIALITY STATUS	May be released to the public
LEGISLATIVE REFERENCES	<i>Income Tax Act 1974 Sections 11, 17, 17A, 79,80,81 Income Tax (Employments) Regulations</i>
PRACTICE CO-ORDINATOR	National Manager Revenue Collection Fiji Islands Revenue & Customs Authority
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INTRODUCTION

1. This Statement sets out the practice of the Fiji Islands Revenue & Customs Authority (FIRCA) in relation to the taxability of Lump sum payments. The Practice statement revokes and supersedes previous instructions and any other previous statement of policy or interpretation, public or private, on this matter issued by FIRCA or the former Department of Inland Revenue.
2. In general, the purpose of this Statement is to provide employers and employees with information on the nature of lump sum payments and the situations under which exemptions may apply.

TRANSITIONAL PROVISIONS

3. In the past, some employers have made payments without deduction of tax as required under the PAYE regulations. Others have sought advice without providing sufficient information to allow this office to make an informed decision. As a result, there have been cases where approval for exemption has been granted and later discovered to be incorrect. In such cases, the shortfall is recovered directly from the employee.
4. To prevent this from happening in future, these instructions will ensure that:
 - Employers are aware of their responsibilities in relation to the deduction of tax
 - Employers are aware of the type of records that must be kept
 - Employees are informed of their rights and in particular whether or not the payments qualify for whole or partial exemption.
5. In relation to payments made prior to 2005, employers will be held responsible for failing to provide correct information or failing to follow instructions issued by FIRCA
6. Any employer making lump sum payments after 1 January 2005 must ensure that the correct amount of tax is deducted at source either by seeking advice from this office or following the steps outlined in this Practice statement.
7. This Statement covers:
 - Employers' regulations;
 - Incomes that are taxable under the provisions of Section 11(j) of the *Income Tax Act, 1974* and
 - Exemptions from tax under the provisions of Section 17(13)(ii), Section 17(41) and Section 17A of the *Act*.

PAYE REGULATIONS

8. The authority for the making of regulations for the deduction of tax at source is found in Sections 80 and 81 of the *Income Tax Act 1974*. The "Pay-As-You-Earn" (PAYE) system of tax collection is found in the *Income Tax (Employments) Regulations*. Under the system, employers are required to deduct tax from emoluments paid to employees.
9. Emoluments is defined in Section 79 of the *Act* as:

“all salary, wages, overtime, bonus, remuneration, gratuities, including the estimated annual value of any quarters or board or residence or of any other allowance granted in respect of employment whether in money or otherwise, stipend, commission, or other amounts for services, directors’ fees, retiring allowances or pension, accruing in, derived from or received in Fiji, and which are assessable to tax, but shall not include any salary or share of profits arising from a trade, business, profession or vocation carried on by any person either by himself or in partnership with any other persons.”

10. Under Section 81 of the *Act and Income Tax (Employments) Regulations*, an employer making an extra-ordinary payment is required to deduct tax at the rates given on the 1st page of the Tax tables (P15 booklet) issued by FIRCA.
11. The current rates were effective from 01/01/05.

<i>Estimated income for the year including the Lump sum payment</i> \$	<i>Tax payable</i> \$
0– 8,840	Nil
8,841–10,000	15%
10,001–20,000	25%
20,001 +	31%

12. Where an Employer chooses to apply the rates given in the tax tables, it is not authorized to exempt any portion of the payment from PAYE tax.
13. The employer may apply to the Commissioner to determine the amount of tax to be deducted. This will apply in cases where lump sum payments are made in respect of:
 - Any award or bonus relating to an office or employment
 - Compensation for loss of office upon termination of appointment
 - Compensation for loss of office due to changes in the terms of employment
 - Compensation for loss of office due to downsizing or restructure in the organization
 - Gratuity or retirement

Information to be provided

14. An employer seeking a determination of the tax to be deducted must apply to the Commissioner in writing setting out the reasons for the payment and provide the following information:
 - Nature of the payment
 - Names of the recipients and other relevant details such as age date of appointment, number of years’ service, etc.
 - Correspondence leading up to the decision to make the payment
 - Computation of final salary including the lump sum payment for each employee

Taxability of Lump sum payments

15. The authority for taxing lump sum payments is found in Section 11 (j) of the *Act*. Many lump sum payments are fully taxable and should be taxed at the rates specified in paragraph 11.
16. Where the payment is in relation to termination of appointment for any reason including redundancy payments and there is a possibility that exemptions may apply, the additional information outlined in paragraph 14 must be provided.
17. Where all or part of the payment will be exempt from tax, any payment in lieu of notice and any other taxable emoluments (e.g. leave compensation and other contractual payments) should not be taken into account in determining the portion. subject to exemption.
18. This information will enable the Commissioner to identify payments that are excessive or made in such a way so as to attempt to avoid tax.

EXEMPTIONS

19. There are 3 provisions in the *Act* for which exemption from tax may be applicable. These are:
 - Section 17(13)(ii)
 - Section 17(41) and
 - Section 17A

Section 17(13) (ii) – Loss of office

20. This section sets out the exempting provisions for certain lump sum payments
It states:

Incomes not taxable

17. “The following classes of income shall not be chargeable to ... normal tax: —

...

(13) (ii) *so much of any lump sum relating to an office or employment as in the opinion of the Commissioner is reasonable but in any event not exceeding \$5,000, less any other amounts which have been excluded from the taxpayer’s income by virtue of the provisions of this paragraph whether in the current or any previous year of assessment. “Lump-sum” for the purpose only of this subparagraph means any amount, other than a redundancy payment, a contractual sum, received by or accrued to the holder of any office or employment because of the termination or impending termination of the services required to be rendered by him as the holder of that office or employment or for the relinquishment, termination, loss, repudiation, cancellation or variation of his office or employment or in respect of his appointment, or of his right or claim to be appointed to any office or employment and includes any sum paid on retirement which, in the opinion of the Commissioner is reasonable, if the holder of the office or employment has either been a contributor to an approved fund or to the Fiji National Provident Fund provided payment is made on or before 31st December 1986 and the holder has attained the age of 55 years or more, or has not been a contributor to an approved fund or to the Fiji National Provident Fund, but does not include—*

- (a) *any refund from an approved superannuation or retirement benefit fund, including the Fiji National Provident Fund;*
- (b) *any amount received or accrued in respect of or in commutation of any amount due under any contract or employment or service;*
- (c) *any payment in respect of or in lieu of leave”*

21. The main features are:

- The payment must be in the nature of compensation for loss of office - where there is no loss of benefits, the amount is fully taxable;
- It must not be contractual;
- It includes payments made on retirement, provided the payment is not contractual and the employee is not a member of FNPF or an Approved fund;
- The maximum exemption is \$5000;
- In determining the portion exempt from tax, all taxable payments must be excluded.

22. It does not apply to redundancy payments.

Section 17(41) – Gratuity

23. Section 17(41) states:

“Incomes not taxable

“The following classes of income shall not be chargeable to normal tax: —

any sum paid to an employee on final retirement after a period of continuous service of not less than 10 years by a statutory corporation or by the Government of Fiji under a contract in existence at 31 December 1973;”

24. The main features are:

- The payment must be made by the government or a statutory body upon final retirement;
- The employee must have served continuously for more than 10 years;
- The contract under which the payment is made should have been in existence before 31/12/73.

25. This provision applies to gratuity payments received by civil servants employed prior to 31/12/73 that elected to remain in the Fiji Government Pension Scheme when it became compulsory to join FNPF. It also applies to employees seconded to statutory bodies that chose to remain in the Scheme.

26. It does not apply to the following:

- Gratuity payments made by the Government or Statutory bodies under any collective agreements or contract of service made after 31/12/73
- Gratuity payments made by any other person

Section 17A - Redundancy

27. Section 17A states:

Redundancy payments

“Notwithstanding any other provision of this Act, tax shall be assessed, levied, and paid in respect of any redundancy payment received on or after 1st October 1995 as follows:

- (a) on the first \$15,000 of any such payment at the rate of NIL %;
- (b) on any amount in excess of \$15,000 at the rate of 15%.”

28. The definition of redundancy is given in Section 2 of the Act.

“redundancy payment” means a bona fide lump sum payment, other than a retiring allowance on the occasion of the termination of employment, where—

- (a) *in the case of an individual who is an employee and who is not a seasonal worker, the employment is terminated by the employer, the termination being attributable, wholly or mainly, to the fact that the position filled by that individual is, or will become, superfluous to the needs of the employer; or*
- (b) *in the case of an individual who is an employee and a seasonal worker, that individual’s usual seasonal employment is made unavailable by the employer, the unavailability being attributable, wholly or mainly, to the fact that the individual’s position or usual position is, or will become, superfluous to the needs of the employer;*

but does not include—

- (c) *any payment relating to a situation solely involving a seasonal lay-off; or*
- (d) *any payment contingent on the completion of either a fixed-term engagement or an engagement to complete work specified in a contract; or*
- (e) *any payment in lieu of notice terminating the employment of the taxpayer; or*
- (f) *any payment which, if it had not been made upon termination of employment, would, in the opinion of the Commissioner, have been paid so as to constitute monetary remuneration of the employee; or*
- (g) *any payment made by a company pursuant to its articles of association to any of its directors; or*
- (h) *any payment which, in the opinion of the Commissioner, is excessively large in relation to the earnings and length of service of the employee”*

29. The main features are:

- It is made on termination of employment due to the abolishment of the employee’s post.
- The first \$15000 is subject to tax at 0%, the balance is taxed at 15%.

- For the purpose of calculating the portion taxable at 0%, any taxable payment, which will be part of the total redundancy package, must be excluded.

30. It does not apply to:

- Payments made upon lay-off of seasonal employees
- Payments made upon completion of a fixed term engagement or upon completion of work specified in a contract
- Any contractual payments upon completion of contract
- Any payment in lieu of notice;
- Any gratuity payment
- Payments on retirement
- Payments considered excessive

Other Information

31. Where an employer enquires as to whether their redundancy scheme is valid, they will be given this Practice Statement as a guide. Under no circumstances will FIRCA approve a redundancy scheme in advance.

32. If queried or audited by FIRCA in relation to redundancy payments, employers should have records providing details of the business structure, before and after the redundancy.

33. Where a bona fide redundancy payment is fully taxed, the employee may make submissions directly to the Commissioner to be allowed the concessional treatment in their individual assessment.

34. Employers should show a breakdown of annual salary and the redundancy payment separately on the employee certificate issued to the employee following the redundancy.

*****End of Practice Statement*****