



<p>Practice Statement 44/2016</p>

SUBJECT	<p>FIJI REVENUE & CUSTOMS AUTHORITY</p> <p>Taxation of Income from Forfeited Deposits and installments on cancelled sales of Capital Assets</p>
DATE OF EFFECT	1 August 2016
CONFIDENTIALITY STATUS	May be released to the public
LEGISLATIVE REFERENCE	<p><i>Income Tax Act 2015, Section 14 (1) (e)</i></p> <p><i>Tax Administration Act 2009</i></p>
PRACTICE COORDINATOR	National Manager Revenue Collection

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INTRODUCTION

1. The purpose of this Practice Statement is to provide guidance on the tax implications when an amount received by the seller of a 'capital asset' is a forfeited deposit or forfeited installment of the purchase price. It is issued with the authority of the Chief Executive Officer of the Fiji Revenue and Customs Authority (FRCA).
2. This applies to situations where the sale of a 'capital asset' is cancelled and a deposit or installment is not refunded. It does not apply to retail sales e.g. hire purchase or lay-by sales or any other arrangement where income from amounts forfeited is normally included in business income.
3. Any part of a deposit or installment that is not refunded is to be included in the seller's gross income.
4. "Capital asset" is defined in the Income Tax Act and therefore the provision on forfeited deposits does not apply to depreciable assets, trading stock or a business intangible. All these terms are defined and extracts from the Income Tax Act are provided in page 5 of this Statement.

LEGISLATIVE BASIS

5. Section 14 (1) of the Income Tax Act 2015 provides for the calculation of gross income of a person for a tax year. It states -
"14.—(1) Subject to this Act, the gross income of a person for a tax year is the total of the following—
 - (a) employment income, business income, and property income derived by the person during the year;*
 - (b) income according to ordinary concepts, other than income referred to in paragraph (a), derived by the person during the year;*
 - (c) unexplained and unidentified deposits during the year in any bank account if the deposit can be sourced to the person;*
 - (d) income that a section of this Act includes in the gross income of the person for the year; and*
 - (e) forfeited deposits and installments on capital assets."*
6. Section 14 (1) (e) provides that any amount received in respect of a capital asset that is a forfeited deposit or a forfeited instalment is to be included in gross income.

APPLICATION

7. This law generally applies to situations involving transactions that are cancelled because some part of the agreement is not fulfilled and a deposit or an instalment is retained by the seller.

Example 1 - Forfeited amounts on sale of 'capital asset' by a company

Seru Co Ltd (SCL), a dive operator, sells a speed boat to Lote for \$25,000. They have agreed that the full amount is to be paid by 31/12/16.

By October 2016, only \$1000 is paid and Lote pulls out of the deal. SCL does not refund the deposit as this was part of the terms of sale.

Since the speed boat is a "depreciable asset" the amount forfeited (\$1000) will not be included in gross income for the purpose of section 14 (1) (e).

However, the income will be included in SCL's gross income under section 14 (1) (b) and dealt with under the ordinary accounting principles applicable to depreciable assets.

Example 2 - Forfeited amount on sale of 'ordinary asset' by a company

Seru Co Ltd (SCL) sells a car to Lote for \$25,000. They have agreed that the full amount is to be paid by 31/12/16. By October, only \$1000 is paid and Lote pulls out of the deal. SCL does not refund the deposit as this was part of the terms of sale.

Since the car is a depreciable asset, the amount forfeited will not be included in gross income for the purpose of section 14 (1) (e).

However, it will be included in SCL's gross income under section 14 (1) (b) and dealt with under the ordinary accounting principles applicable to depreciable assets.

Example 3 - Non business sale of a 'capital asset'

In August 2016, Mr. Seru sells his boat to Lote for \$25,000. It is a private sale. By October 2016, only \$1000 is paid and Lote pulls out of the deal. Seru does not refund the deposit as this was part of the agreement.

2016

Since the boat is a 'capital asset' for the purposes of section 14 (1) (e), the amount forfeited (\$1000) will be included in Seru's gross income for the tax year 2016 and is subject to income tax. He can deduct expenses relating to the cancelled transaction.

If Seru finds another buyer in 2016, the sale price will be \$25,000 and the net gain will be subject to capital gains tax

2017

If the boat is sold in 2017, the sale price for CGT purposes will be \$25,000. Seru will be able to claim expenses that have not been claimed on the cancelled transaction

Note - In cases where the activities of a person are in the nature of a trade, income tax may apply.

Example 4 - Non business sale of an asset

In August 2016, Mr. Seru sells his car to Lote for \$25,000. It is a private sale. The proceeds from this sale is not subject to capital gains tax or income tax as it is neither a 'capital asset' nor a 'depreciable asset' as defined for tax purposes.

In cases where the activities of a person are in the nature of a trade, income tax may apply.

PROCESS

8. A person who has received a forfeited deposit which is subject to income tax or capital gains tax is required to report the income in tax returns in the year in which the transaction took place.
9. Incidental costs are allowable expenses however may be claimed only once.

10. The laws relating to correct returns, record keeping requirements and imposition of penalties in the Tax Administration Act 2009 apply.

11. For enquiries, please contact Taxpayer Education & Publicity Unit (TEPU) team on:
Email: tepu@frca.org.fj or call on telephone number 3243505/ 3243509.

ATTACHMENT

Extracts from the Income Tax Act 2015

“asset” includes a capital asset, depreciable asset, intangible asset, or trading stock;

“capital asset” means—

(a) real property, a structural improvement to real property, an interest in real property or an interest in a structural improvement to real property, and includes the following—

(i) a lease of real property;

(ii) a lease of a structural improvement to real property; or

(iii) an exploration, prospecting, development, or similar right relating to real property;

(iv) information relating to a right referred to in sub-paragraph (iii);

(b) a ship or boat;

(c) a yacht;

(d) a membership interest in a company, security, or other financial asset;

(e) an intangible asset;

(f) an interest in a partnership or trust;

(g) an airplane, helicopter or other aircraft;

(h) an option, right or other interest in an asset referred to in the foregoing paragraphs,

but does not include an asset that is trading stock, a depreciable asset or a business intangible;

“depreciable asset” means any tangible personal property or structural improvement to real property that—

(a) has a useful life exceeding one year;

(b) is likely to lose value as a result of normal wear and tear, or obsolescence; and

(c) is used wholly or partly to derive income included in gross income;

“intangible asset” means—

(a) a copyright, patent, design or model, plan, secret formula or process, trademark, or other like property or right;

(b) a contractual right, including arising as a result of a prepayment of expenditure, with a benefit for a period of more than one year;

(c) a customer list, distribution channel, or unique name, symbol or picture, or other marketing intangible; or

(d) goodwill;

“trading stock” includes—

- (a) any property produced, manufactured, purchased, or otherwise acquired for manufacture, production, sale or exchange;*
- (b) any materials or consumables used in the production or manufacturing process; or*
- (c) livestock, other than animals used as beasts of burden or working beasts;*

End of PS

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