

PS # 1/2013 Company Advance Tax 'discussion draft'
19July2013



**PRACTICE
STATEMENT
No. 1/2013**

SUBJECT	FIJI REVENUE & CUSTOMS AUTHORITY: COMPANY ADVANCE TAX PAYMENTS
DATE OF EFFECT	1 January 2013
CONFIDENTIALITY STATUS	May be released to the public
LEGISLATIVE REFERENCES	<i>Income Tax Act 1974</i>
PRACTICE CO-ORDINATOR	National Manager Revenue Collection

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INTRODUCTION

- 1) The purpose of this Practice Statement is to provide information on the new provisions relating to the payment of advance tax (and penalty for underpayment) by companies. The changes, which are effective from 1 January 2013, apply to advance tax payments due in the 2013 income year and subsequent years. These guidelines represent the Commissioner's interpretation and are issued with the authority of the Chief Executive Officer, of the Fiji Revenue & Customs Authority (FRCA).
- 2) Advance tax is a way that companies can pay the tax towards the expected income tax liability on its income, during the income year. For the 2013 income year, the amount to pay is based on the previous year's assessment.
- 3) Payments must be made in 3 installments on the 6th, 9th and 12th month of the taxpayer's fiscal year; also known as financial year end (YE). The fiscal year of a company is the 12-month accounting period that ends on its annual balance date. This is usually the calendar year (1 January - 31 December). A company may, upon the Commissioner's approval adopt an accounting period other than 31 December (e.g. 1 April – 31 March, 1 July – 30 June, 1 November – 31 October).
- 4) When a company lodges its annual income tax return after the end of the income year and the actual tax liability is calculated, advance tax paid is credited against the assessment to work out if the company owes more tax or is due for a refund of all or some of the tax paid. A penalty of 40% will be imposed for any insufficient advance tax payment.
- 5) Companies that have already made advance tax payments for the income year 2013 based on the 2012 system may make appropriate adjustments in the next instalment due date.
- 6) Where the previous year's assessment is a loss or has not been determined, authorized or responsible officers should make appropriate arrangements to pay some tax towards their current year's tax liability to avoid late payment penalties on final assessment which may be imposed if they are unable to pay the final tax on assessment by the due date.
- 7) For companies that have adopted an accounting period ending on a date other than 31 December, parts of the fiscal year will fall into two calendar years (e.g. 31/12/2012 and 31/12/2013). In such cases, the calendar year in which *more than half* of the income year falls will be deemed to be the year of income for tax purposes and the profits for the fiscal year is regarded as the profits of that calendar year (Refer section 7 *Income Tax Act*). Examples:
 - for a company with fiscal year ending on 31 March, the profits for the fiscal year ending 31 March 2013 is deemed to be the profits for the calendar year 2012.
 - for a company with fiscal year ending on 30 June, the profits for the fiscal

- year 30 June 2013 is deemed to be the profits for the calendar year 2012.
- for a company with fiscal year ending on 31 July, the profits for the fiscal year 31 July 2013 is deemed to be the profit for the calendar year 2013.

LEGISLATIVE BASIS

- 8) In the 2012 Budget Address, the Minister of Finance announced changes to the advance tax payment regime for companies. Further amendments have been made to sections 91 and 92 of the *Income Tax Act* to provide for a simpler advance tax payment system. (Decree No.16 of 2013 of 10 May 2013). The changes are effective from 01 January 2013 and apply to the income year 2013 and subsequent years.
- 9) Section 91 as amended states:

“(1) Every company shall pay to the Commissioner advance payments on account of tax to be assessed in accordance with the provisions of section 55 in respect of the income of any fiscal year and be payable in instalments in the following manner –

- a) the last day of the sixth month, pay 33.3% equal to the tax assessed in respect of the income of the previous income year;*
- b) the last day of ninth month, pay another 33.3% of the tax assessed in respect of the income of the previous income year;*
- c) the last day of the fiscal year, pay another 33.4 of the tax assessed in respect of the income of the previous income year.*

- (2) Notwithstanding subsection (1), when an assessment is issued prior to an advance company tax instalment becoming due, the amount of any tax liability will need to be paid by the date specified in the notice of assessment issued under section 55”.
- 3) When, in accordance with the provisions of section 55, a notice of assessment is sent to the company by the Commissioner in the ordinary course of events, credit shall be given against the amount of that assessment for the advance payments of tax made as provided in subsection (1).
- (4) For the income year 2011, the advance payment of tax by every company to the Commissioner may continue under the percentage and instalment payment of tax applied before 1st January 2012.
- (5) For the income year 2012, the advance payment of tax by every company to the Commissioner may continue under the percentage and installment payment of tax applied before the commencement of this Decree.”

ADVANCE TAX PAYMENT SYSTEM – INCOME YEAR 2013

- 10) For the 2013 income year, 100% of the advance tax due is payable in 3 installments during the fiscal or income year.

Advance payment	Due date	Amount payable
1	by end of 6 th month of the fiscal year	<i>33.3% of the tax payable on the previous year's assessment</i>
2	by end of 9 th month of the fiscal year	<i>33.3% of the tax payable on the previous year's assessment</i>
3	by last day of the fiscal year	<i>33.4% of the tax payable on the previous year's assessment</i>

- 11) Although a company is required to pay advance tax based on the previous year's, companies may make sufficient payments towards their assessment for the current year.
- 12) The balance of tax payable for the current year, if any, will be payable after the income tax return is processed and on the due date for payment given on the notice of assessment.
- 13) The effect of the changes for a company with YE 31 July 2013 is illustrated below - 2013 advance tax payable is \$85,000 (based on 2012 assessed tax liability)

Period: 01/08/12 – 31/07/13	Aug 2012	Sep 2012	Oct 2012	Nov 2012	Dec 2012	Jan 2013 (6th month)	Feb 2013	Mar 2013	Apr 2013 (9th month)	May 2013	Jun 2013	July 2013 (12th month)	Oct – 2013 return of income due
Installments						33.3%			33.3%			33.4%	
Due date						31-Jan			30 Apr			31-Jul	31 Oct *
Advance tax payable						\$28,305			\$28,305			\$28,390	
Assessment for YE 31/07/13	* Return of Income (ROI) due date for companies with YE 31 July is 31 October Actual tax liability for 2013 - \$90,000 Advance tax paid based on 2012 tax liability to be credited in 2013 assessment - \$85,000 After ROI is processed, balance of tax for the 2013 income year (\$5000) payable on due date for payment given on Notice of Assessment NB: In this example there is no shortfall in advance tax payments												

Other situations – tax liability for previous year not known

14) There may be cases where the tax payable for the previous year has not been determined or is a loss. The following is provided as a guide to assist companies to pay the current year’s tax in installments.

Description of situation	
1. Previous year’s tax liability not determined yet (return not lodged or return lodged but not processed yet)	<ul style="list-style-type: none"> • advance tax payments may be based on the last assessment issued or an estimate of the current year’s tax payable
2. Previous year’s return was a loss	<ul style="list-style-type: none"> • no advance tax is due • company may make advance tax payments voluntarily
3. New taxpayer	<ul style="list-style-type: none"> • no advance tax is due • company may make advance tax payments voluntarily
4. Current year’s income will be less than previous year’s assessment	<ul style="list-style-type: none"> • provided the Commissioner approves, advance tax will be based on the company’s estimate of tax payable for the current year

ADDITIONAL TAX PAYMENTS – INCOME YEAR 2013

15) Section 92 (4) has been amended in line with the changes to the method of advance tax payment. A 40% penalty will apply on short payments in any of the advance tax installments, but only if a company has paid less than 90% of the advance tax due.

16) Section 92 states that:

“(1) If the amounts of the advance payments of tax required to be paid under the provisions of subsection (1) of section 91 are less by more than 20 per cent, at the expiry of 3 months after the last day of a company’s fiscal year, of 662/3 per cent of the tax for that year of assessment as finally assessed by the Commissioner in accordance with the provisions of section 55, then the company shall be liable to pay to the Commissioner, by way of additional tax, an amount equal to 10 per cent of the difference between the amount of the advance payment made and 662/3 per cent of the liability to tax as finally assessed.

(2) If the amounts of the advance payments of tax required to be paid under the provisions of subsection (1) of section 91 are less by more than 20 per cent, at the expiry of 7 months after the last day of a company’s fiscal year, of 100 per cent of the tax for that year of assessment as finally assessed by the Commissioner in accordance with the provisions of section 55, then the company shall be liable to pay to the Commissioner, by way of additional tax, an amount equal to

10 per cent of the difference between the amount of the advance payment made and 100 per cent of the liability to tax as finally assessed.

(3) The Commissioner may, where it is shown to his satisfaction that the failure to make an advance payment or a sufficient advance payment was due to circumstances which were not or could not reasonably have been foreseen by the company at the time such payments were due, remit the whole or any part of the penalty provided for in this section.

(4) – (a) If the advance payment of Income Tax payable by a company for the sixth, ninth and twelfth month of a tax year is less than 90% of the actual Income Tax liability as specified in subsection (1), the company is liable for a penalty equal to 40% of the company's advance payment shortfall for the respective months.

(b) In this section, "advance payment shortfall" means, in relation to a company for a tax year, the difference between the advance tax payable based on the actual Income Tax liability of the company for the preceding tax year and the advance tax paid in the sixth, ninth and twelfth months."

REVIEW OF PENALTIES

16) Section 92 (3) allows the Commissioner to review a penalty in cases where advance payments were short paid due to unforeseen circumstances. Taxpayers seeking a review of penalties should write to the Commissioner and provide an explanation for any shortfall in advance tax payments.

APPENDIX

How to work out additional tax to pay

YE 31/12/13

- 2013 actual tax liability - \$90,000
- 2013 advance tax payable - \$85000
- 2012 tax payable - \$85000

Note: IAPP may apply whenever there is a shortfall in each instalment

The penalty is 40% of the shortfall but only if the company paid less than 90% of the advance tax due in each instalment

Actual tax liability for the current year is not taken into account

Example 1

Due date	Advance tax payable	Amount paid	Shortfall	IAPP (40% of the shortfall)
30/06/13	\$28305 (85000 x 33.3%)	0	\$28305	\$11322 (\$28305 x .40)
30/09/13	\$28305 (85000 x 33.3%)	\$28400	0	0
31/12/13	\$28390 (85000 x 33.4%)	\$28,000	\$390	<i>Although there is a shortfall in this instalment, no IAPP applies because the amount paid is more than 90% of the advance tax due which is \$25551 (\$28390 x .90 = \$25551)</i>
	\$85000	\$56400	\$28695	\$11322

Example 2

Due date	Advance tax payable	Amount paid	Shortfall	IAPP (40% of the short fall)
30/06/13	\$28305 (85000 x 33.3%)	\$28,000	\$305	<i>Although there is a shortfall in this instalment, no IAPP applies because the amount paid is more than 90% of the advance tax due \$25474 (\$28305 x .90 = \$25474)</i>
30/09/13	\$28305 (85000 x 33.3%)	0	\$28305	\$11322 (\$28305 x .40)
31/12/13	\$28390 (85000 x 33.4%)	\$28400	0	0
	\$85000	\$56400	\$28610	\$11322

Example 3

Due date	Advance tax payable	Amount paid	Shortfall	IAPP (40% of the short fall)
30/06/13	\$28305 (85000 x 33.3%)	\$10000	\$18305	\$7322 (\$18305 x .40)
30/09/13	\$28305 (85000 x 33.3%)	\$15000	\$13305	\$5322 (\$13305 x .40)
31/12/13	\$28390 (85000 x 33.4%)	\$15000	\$13390	\$5356 (\$13390 x .40)
	\$85000	\$40000	\$45000	\$18000 <i>The amount of advance tax paid in each installment is less than 90% of the advance tax due therefore IAPP applies to the shortfall in all installments</i>

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Example 4

Due date	Advance tax payable	Amount paid	Shortfall	IAPP (40% of the short fall)
30/06/13	\$28305 (85000 x 33.3%)	\$40000	0	0 <i>The Advance paid is more than the amount payable by \$11695. This amount will be carried forward and offset against the 2nd installment which is due on 30/09/13</i>
30/09/13	\$28305 (85000 x 33.3%)	\$10000	\$6610	\$2644 90% of advance tax payable (\$28305 x .90) = \$25474 Advance tax paid \$21695 (\$10000 + \$11695) <i>Shortfall - \$6610</i> <i>Therefore IAPP of \$2644 applies on the shortfall</i>
31/12/13	\$28390 (85000 x 33.4%)	\$25000	\$3390	\$1356 (\$3390 x .40)
	\$85000	\$75000	\$10000	\$4000

=end