



**PRACTICE
STATEMENT No. 1/2016**

SUBJECT	FIJI REVENUE & CUSTOMS AUTHORITY: Imposition and Remission of Penalties
DATE OF EFFECT	1 January, 2016.
CONFIDENTIALITY STATUS	May be released to the public
LEGISLATIVE REFERENCES	<i>Tax Administration Act 2009 Income Tax Act 2015</i>
PRACTICE CO-ORDINATOR	National Manager Debt Management Services

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INTRODUCTION

1. This statement sets out the practice of the Fiji Revenue and Customs Authority (FRCA) in relation to the application of various administrative penalties under the taxing acts. It is issued with the authority of the Chief Executive Officer of the Fiji Revenue and Customs Authority, who is also Commissioner of Inland Revenue.
2. The penalties covered by this statement are **administrative penalties**, i.e., those which are imposed by the legislation, or by FRCA officers under an authority provided for in the tax law. They are distinguished from **court-imposed penalties**, which a magistrate imposes following the conviction of a taxpayer for an offence provided for in the law under section 48(2) of the Tax Administration Act 2009 (TAA).
3. The purpose of penalties is to impose a financial cost on a taxpayer as a consequence of a particular behavior by the taxpayer, so that the taxpayer(s) will be deterred from engaging in the similar type of behavior in the future.
4. Administrative penalties are generally considered one of the main enforcement tools of a tax compliance process and will be used by FRCA to improve compliance levels with the tax law.
5. Some penalties are imposed by the law automatically as a consequence of a person's action or inaction. In these cases the penalty is not imposed by the CEO - the law makes the person liable for a penalty at the maximum amount specified in the statutory provision, and the CEO has the discretion to remit all or part of the penalty. Other penalties are initially imposed at a level set by the CEO. In both cases consistent outcomes are required for taxpayers with the same degree of culpability.
6. The use of these guidelines by FRCA officers is mandatory. As there are numerous officers within FRCA authorized by the CEO to apply the penalty provisions on a daily basis, this practice statement is necessary to give guidance in the setting of rates for each penalty applied to a taxpayer. It is important that all taxpayers are treated in a similar way for similar breaches of the law. It is also important that taxpayers have access to this document, to understand the basis on which the penalty imposition and remission powers have been applied to them.

LEGISLATIVE BASIS

7. The CEO's general powers to remit penalties are in Sections 48(6) and 48(7) of the *Tax Administration Act 2009*. There are some specific remission powers such as subsection 110(12) of the *Income Tax Act 2015 (ITA)*. The specific remission powers override the general remission power, and they may provide limited grounds to remit the penalty.

APPLICATION

8. In deciding whether to reduce penalties, consideration has to be given to the degree of culpability of the taxpayer, and whether any mitigating factors exist.
9. **Culpability** is synonymous with “blame” or “guilt”, and refers to the level of responsibility the taxpayer bears for the legal requirement not having been met.
10. **Mitigating factors** are factors which may warrant a reduction in a penalty and which are not related to the degree of culpability of the taxpayer. Both these concepts are discussed further below.
11. The degree of culpability would be in the lower end of the range if an event occurred which prevented the taxpayer from fulfilling their obligation under the tax law, such as the taxpayer contracting a serious illness or a natural disaster destroying business premises. Not only must such an event have occurred, but it must have been impossible for the taxpayer to have arranged for another person such as a tax agent to have carried out the legal obligation for the taxpayer. An excuse by a taxpayer such as:
 - a. that they were too busy with their business affairs to fulfill their obligations, or
 - b. that they were unaware of their obligations, or
 - c. that the taxpayer was in overseas, or
 - d. that the responsible/accountable staff has resignedwill not reduce culpability.
12. Lower culpability would also be indicated by the taxpayer contacting FRCA prior to the due date for lodgment to inform FRCA that the obligation would not be met on reasonable grounds. If FRCA is the initiator of contact with the taxpayer this would indicate a higher level of culpability. If FRCA issues a demand notice for an outstanding obligation to be complied with, a slow response by the taxpayer or no response would indicate higher level of culpability.
13. Mitigating factors may warrant a reduction in penalty no matter what the culpability level. These may include:
 - whether the taxpayer has an otherwise good record of tax compliance. If this is the first occurrence of non-compliance, a lesser penalty combined with a warning may be more effective in ensuring the taxpayer improves their future compliance;
 - whether the taxpayer suffers from ill health or is of old age;
14. Mitigating factors do not include:
 - the taxpayer’s status in the community: or
 - the extent to which the taxpayer has exhibited admission/regret for the breach of their statutory obligations;
 - taxpayers physical absence from Fiji during the tax year.

25. If a taxpayer fails to file a tax return before the due date in a tax payable situation tax payer is liable for the penalty of 20% on the amount of assessed tax payable. A penalty of 5% on the assessed tax payable amount will apply for each month of default.
26. If a person lodges a return required to be filed by collection agents later than the due date, penalty of \$1 will apply per day from the due date till the date return is lodged.
27. If taxpayer is in a similar situation as discussed in paragraph 26 and if the assessment is subsequently amended to result in a tax payable situation, the penalty for \$1 per day will be withdrawn and the taxpayer will be liable for the penalty of 20% on the amount of tax payable. A penalty of 5% on the tax payable amount will be further applied for each month of default.

Example 1

Taxpayer's tax return was due on 31st January, 2016 but lodged on 30th May, 2016 with the tax payable amount of \$10,000.

Amount of LLP that will apply:

20% on the assessed tax payable amount, 43(1) (a) of TAA.

$$20\% \times \$10,000 = \$2,000$$

1. 5 % on assessed tax payable amount for each month of default, 43(1) (b) of TAA.

Penalty Rate	x	Assessed Tax payable Amount	x	Number of months Default
5%	x	\$10,000	x	4
= \$2,000				

2. **Total amount of penalty payable is \$4,000.**

Example 2 Late Lodgement Without the 5% Penalty.

Taxpayer's tax return was due on 31st March, 2016 but lodged on 15th April, 2016 with the tax payable amount of \$20,000.

Amount of LLP that will apply:

20% on the assessed tax payable amount, 43(1)(a) of TAA.

$$20\% \times \$20,000 = \$4,000$$

1. 5 % on tax payable amount for each month of default, 43(1)(b) of TAA.
5 % penalty will not be applied since return was lodged before end of the one month after the due date.

2. **Total amount of penalty payable is \$4,000.**

Example 3

Taxpayer's tax return was due on 31st March, 2016 but lodged on 15th May, 2016 with the tax payable amount of \$25,000.

Amount of LLP that will apply:

20% on the assessed tax payable amount, 43(1)(a) of TAA.

$$20\% \times \$25,000 = \$5,000$$

1. 5 % on assessed tax payable amount for each month of default, 43(1)(b) of TAA.

$$\begin{array}{rclcl} \text{Penalty Rate} & \times & \text{Tax payable Amount} & \times & \text{Number of months Default} \\ 5\% & \times & \$25,000 & \times & 1 \\ \hline & & & & = \$1,250 \end{array}$$

2. **Total amount of penalty payable is \$6,250.**

Example 4

Taxpayer's tax return was due on 30th April, 2016 but lodged on 30th June, 2016 with the tax refundable amount of \$5,000.

Amount of LLP that will apply:

1. 20% on the assessed tax payable amount, Section 43(1)(a) of TAA.

This rate of penalty will not apply since it is refundable situation.

2. 5 % on assessed tax payable amount for each month of default, 43(1)(b) of TAA.

This rate of penalty will not apply since it is refundable situation.

3. \$1 for each day of default, , 43(1)(b) of TAA

$$\begin{array}{rcl} \$1 & \times & \text{Number of days default} \\ \$1 & \times & 61 \text{ days} \\ \hline & & = \$ 61.00 \end{array}$$

4. **Total amount of penalty payable is \$61.00**

Example 5

Taxpayer's tax return was due on 30th April, 2016 but lodged on 30th June, 2016 with the tax refundable amount of \$5,000. Later taxpayer's assessment was amended and result was tax payable amount of \$2,000

Amount of LLP that will apply:

1. **Initially:** \$1 for each day of default, 43(1)(b) of TAA

$$\begin{array}{rcl} \$1 & \times & \text{Number of days default} \\ \$1 & \times & 61 \text{ days} \\ \hline & & = \$ 61.00 \end{array}$$

2. When the return will be amended with tax payable situation, section 43(1)(b) of TAA will be waived and section 43(1)(a) and 43(1)(b) of TAA will be imposed.

3. 20% on the assessed tax payable amount, 43(1)(a) of TAA.

$$20\% \times \$2,000 = \$400$$

4. 5 % on assessed tax payable amount for each month of default, 43(1)(b) of TAA.

Penalty Rate	x	Tax payable Amount	x	Number of months Default
5%	x	\$2,000	x	2
= \$200				

5. **Total amount of penalty payable is \$600.**

Remission of Late Lodgment Penalty

28. The administration of late lodgment penalty remission is handled by FRCA’s Lodgment & Enforcement Unit (LEU). Remission of LLP is only considered in few scenarios depending of culpability level and mitigating factors.
29. Exceptional scenarios in which full or partial LLP may be remitted by LEU are:
- i. Amnesty period imposed by state which covers waiver of LLP for specific periods,
 - ii. Compliance history shows that taxpayer is fully compliant with lodgment of returns but due to circumstances taxpayer failed to lodge the returns in some instances, either full or partial withdrawal may be allowed,
 - iii. Taxpayers who are first time lodger of tax return substantially were not aware of mandated due dates, or
 - iv. LLP which is imposed even though manual or automatic extension for tax return lodgment were granted by LEU.

LATE PAYMENT PENALTY (LPP)

30. If taxpayer fails to pay tax by the due date, taxpayer is liable for the penalty of 25% on the amount of unpaid tax. A penalty of 5% on the amount of unpaid tax will be further applied for each month of default.
31. If taxpayer was imposed with LPP for unpaid taxes in the tax payable situation and later the return was amended with no taxes being payable or with a tax refund situation, amount of LPP imposed will be waived.

Example 6
Tax payable of \$5,000 was due on 31st January, 2016 but was fully paid by taxpayer on 30th April, 2016

Amount of LPP that will apply:
25% on the tax payable amount, 44(1) of TAA.
25% x \$5,000 = \$1,250

1. 5 % on tax payable amount for each month of default, 43(2) of TAA.

Penalty Rate	x	Tax payable Amount	x	Number of months Default
5%	x	\$5,000	x	3

= \$750

2. **Total amount of penalty payable is \$2,000.**

Example 7

Tax payable of \$6,000 was due on 31st March, 2016 but was fully paid by taxpayer on 15th April, 2016. Taxpayer's tax assessed amount was \$10,000 and taxpayer had the refund of \$4,000 which will be offsetted with assessed amount.

Amount of LPP that will apply:

1. 25% on the tax payable amount, 44(1) of TAA.

$$25\% \times \$6,000 = \$1,500$$

2. 5 % on tax payable amount for each month of default, 43(2) of TAA.

5 % penalty will not be applied since return was lodged before end of the one month after the due date.

3. **Total amount of penalty payable is \$1,500.**

Example 8

Tax payable of \$20,000 was due on 31st March, 2016; taxpayer made the payment of \$10,000 on the due date and the balance was paid on 10th of November, 2016.

Amount of LPP that will apply

1. 25% on the tax payable amount, 44(1) of TAA.

2. **25% x \$10,000 = \$2,500**

3. 5 % on tax payable amount for each month of default, 43(2) of TAA.

$$\begin{array}{r} \text{Penalty Rate} \quad \times \quad \text{Tax payable Amount} \quad \times \quad \text{Number of months Default} \\ 5\% \quad \times \quad \$10,000 \quad \times \quad 7 \\ = \$3,500 \end{array}$$

4. **Total amount of penalty payable is \$6,000.**

NOTE: LPP is only imposed on the unpaid tax amount by the due date.

Example 9

Taxpayer's tax return was due on 31st January, 2016 but lodged on 30th May, 2016 with the tax payable amount of \$10,000 which was paid on date return was lodged.

Amount of LLP that will apply:

20% on the tax payable amount, 43(1)(a) of TAA.

$$20\% \times \$10,000 = \$2,000$$

1. 5 % on tax payable amount for each month of default, 43(1)(b) of TAA.

$$\begin{array}{rclcl} \text{Penalty Rate} & \times & \text{Tax payable Amount} & \times & \text{Number of months Default} \\ 5\% & \times & \$10,000 & \times & 4 \\ \hline & & & & = \mathbf{\$2,000} \end{array}$$

Amount of LPP that will apply:

25% on the tax payable amount, 44(1) of TAA.

$$25\% \times \$10,000 = \$2,500$$

2. 5 % on tax payable amount for each month of default, 43(2) of TAA.

$$\begin{array}{rclcl} \text{Penalty Rate} & \times & \text{Tax payable Amount} & \times & \text{Number of months Default} \\ 5\% & \times & \$10,000 & \times & 4 \\ \hline & & & & = \mathbf{\$3,500} \end{array}$$

3. Total LLP and LPP payable by taxpayer \$10,000

Remission of Late Payment Penalty

32. The administration of late payment penalty remission is handled by FRCA's Debt Management Unit (DMU). The DMU case manager will attempt to secure payment of all outstanding tax and penalties in full.
33. The DMU case manager decides if any time-to-pay arrangement is to be entered into, and if any remission of penalty is warranted. It is a DMU requirement that mitigation of late payment penalty is not implemented until the principal tax debt is paid in full. This is the case even if the principal tax debt is in dispute.
34. If the remission of late payment penalties is to be considered, this remission will be allowed on a sliding scale principle, depending on the length of time agreed to pay the debt in full. The application of the sliding scale **must** consider taxpayer's history on payment compliance.
35. The sliding scale referred to in the above paragraph is:

Number of Months agreed to pay	% of LPP to be remitted
2	100
3	90
4	80
5	70
6	60
7	50
8	40
9	30
10	20
11	10
12	0

36. It should be noted that the rates in the sliding scale do not apply automatically. They should only be agreed to by the DMU case manager after a thorough interview with the taxpayer, in which the taxpayer demonstrates their inability to pay and good faith in intending to pay off the debt within the time frame arranged.
37. Note that the percentage in the table is not the rate of penalty, but the percentage of the total dollar amount of the penalty to be remitted.

Example

Number of Months Agreed to Pay	Percentage of LPP to be remitted	Amount of Penalty	Calculation on the amount of penalty to be remitted	Amount of Penalty to be remitted
2	100	\$10,000	100% x \$10,000	\$10,000
3	90		90% x \$10,000	\$9,000
4	80		80% x \$10,000	\$8,000
5	70		70% x \$10,000	\$7,000
6	60		60% x \$10,000	\$6,000
7	50		50% x \$10,000	\$5,000
8	40		40% x \$10,000	\$4,000
9	30		30% x \$10,000	\$3,000
10	20		20% x \$10,000	\$2,000
11	10		10% x \$10,000	\$1,000
12	0		0% x \$10,000	\$0

38. It should be noted that the above sliding scale refers only to late payment penalties. In negotiating the settlement of a debt or a payment arrangement, if DMS decide to remit/reduce the late lodgement penalty, it will be at the discretion of the CEO considering the mitigating factors.
39. Scenarios in which full or partial LPP may be remitted by DMU are:
- i. Amnesty period imposed by the State which covers waiver of LLP for specific periods,
 - ii. Compliance history shows that taxpayer is fully compliant with payment of taxes but due to circumstances taxpayer failed to pay taxes in some instances, either full or partial withdrawal may be allowed, or
 - iii. Genuine financial constraints faced by the taxpayer and evidence is supported with valid documents such as particular periods bank statements, status of overdraft facilities, debtors and creditors listing etc.

LATE PAYMENT PENALTY ON ADVANCE TAX PAYMENTS

40. Where any installment of advance tax (whether based on preceding year or based on an estimate of the current year's tax payable) is not paid on time, a late payment

penalty (LPP) of 25% applies on the amount unpaid. A 5% penalty applies as well for every month that the tax remains unpaid.

41. Since advance tax is an amount to pay for the time being (i.e. it's a provisional amount), LPP may be adjusted when the actual income tax payable is known. For instance, if the tax result in any tax year is a net loss or there is no actual income tax payable, any LPP imposed for late payment of advance tax must be withdrawn. In other cases there may be no adjustment or partial withdrawal.

42. Examples are given below.

Scenario 1

2016 advance tax payable, \$3000 is less than 2016 actual tax payable, \$4000

Instalment	Advance Tax Payable - 2016	Amount Paid	Actual Tax Payable	Arrears	LPP
1 st	\$1,000.00	\$500.00	\$4,000.00	\$500.00	\$125 (500 x 25%)
2 nd	\$1,000.00	\$1,000.00		-	-
3 rd	\$1,000.00	-		\$1,000.00	\$250 (1000 x 25%)
Total	\$3,000.00	\$1,500.00	\$4,000.00	\$1,500.00	\$375.00

In this scenario, the actual tax payable is more than the advance tax assessed, therefore no LPP adjustment is required.

Scenario 2

2016 Advance tax \$3000 is more than 2016 actual tax payable, \$2400

Instalment	2016 Advance Tax	Amount Paid	Actual Tax Payable	Arrears	Adjusted LPP
1 st	\$1,000.00	\$500.00	\$2,400.00	\$300.00	\$75 (300 x 25%)
2 nd	\$1,000.00	\$800.00		-	-
3 rd	\$1,000.00	-		\$800.00	\$200 (800 x 25%)
Total	\$3,000.00	\$1,300.00	\$2,400.00	\$1,100.00	\$275.00

In this scenario, the actual tax payable for 2016 is less than the advance tax therefore LPP is adjusted based on \$800 per instalment (\$2400/3).

ADVANCE TAX SHORTFALL PENALTY

43. This penalty only applies to a person who is required to pay advance tax based on an estimate of the tax payable for the current year.
44. If a person's advance tax in a year is based on an estimate of the income tax payable for that year and the amount paid is less than the actual income tax payable, a 40% penalty will apply on the shortfall.
45. It may not be possible for a company to make an accurate estimation due to change in circumstances, miscalculation or some other reason. In this regard, a 10% margin of error will be allowed for the purpose of determining if any advance tax shortfall penalty applies.
46. The advance tax shortfall penalty will only be imposed if the shortfall difference exceeds 10%.
47. Examples are given below.

Scenario 1

LMN Company Ltd paid \$4500 advance tax for 2016, which was based on an estimate of 2016 income tax payable. Due to an unexpected increase in business, there was an increase in profits and actual tax payable for 2016 was \$6000.

Estimated Income Tax Payable	\$4,500
Actual Income Tax Payable	\$6,000
Shortfall Difference	\$1,500 (6,000 less 4,500)
Percentage of shortfall difference	25% (1,500/6,000 x 100)
Will The Penalty be imposed	Yes (shortfall difference exceeds 10%)
Amount of Penalty Applicable	\$600 (1,500 x 40%)

Scenario 2

LB Company Ltd paid \$5,000 advance tax for 2016, which was based on an estimate of 2016 income tax payable actual tax payable for 2016 was \$5,500.

Estimated Income Tax Payable	\$5,000
Actual Income Tax Payable	\$5,500
Shortfall Difference	\$500 (5,500 less 5,000)
Percentage of shortfall difference	9% (500/5,500 x 100)
Will The Penalty be imposed	No (shortfall difference is less than 10%)
Amount of Penalty Applicable	-

REVIEW OF ADVANCE TAX SHORTFALL PENALTY

48. Section 110 (12) of the Act allows the CEO to review the advance tax shortfall penalty calculated under section 110 (11) if the advance payment was short paid due to unforeseen circumstances. The relevant sections state :

“(11) If the estimate, including the estimate of the CEO and any revised estimate, of Income Tax payable by a person for a tax year is less than 100% of the actual Income Tax liability of the person for the year (the difference referred to as the “advance tax shortfall”), the person is liable for a penalty equal to 40% of the person’s advance tax shortfall.

(12) No penalty is imposed under subsection (11) if the CEO is satisfied that the reason for the advance tax shortfall was due to circumstances beyond the control of the person and all reasonable care was taken by the person in making the estimate or revised estimate.”

49. Companies can request for a review of a penalty imposed under section 110 (11) by writing to the CEO.

AUDIT PENALTY

50. Audit penalty is imposed on the audit discrepancy ascertained from the audit, the penalty rate imposed varies upon the nature of behaviour by taxpayers which has led to the discrepancy.

51. Audit penalty imposition matrix

TAA Provisions	Penalty Rates	Nature of Behaviour to Tax Omissions
46(3)(b) & 46A(2)(a)	100%	Taxpayer is Involved in Similar Offence for Third or More Time
46(3)(a) & 46A(2)(a)	85%	Taxpayer is Involved in Similar Offence for Second Time
46(2)(a) & 46A(2)(a)	75%	<p>It Applies to a taxpayer who makes the Statement or Omission Knowingly or Recklessly.</p> <ul style="list-style-type: none"> ➤ Taxpayer knowingly makes the statement or omission to evade or avoid the actual tax liability. ➤ Makes the deliberate discrepancy in the tax return. ➤ Gives false statement to tax auditors or assessors. ➤ Taxpayer makes deliberate discrepancy in tax losses that does not result in tax shortfall. ➤ Taxpayer corrupting employees or any other person to make discrepancies in the tax return. ➤ Taxpayer involves in the scheme to evade tax liability.
46(4) & 46A(2)(a)	65%	<p>Taxpayer makes the voluntarily disclosure of discrepancies, tax evasion and avoidance before:</p> <ol style="list-style-type: none"> 1. the discovery by the CEO of the tax short fall or discrepancy in losses; 2. the commencement of an audit for the tax affairs of that taxpayer.

46(3)(b) & 46A(2)(b)	45%	Taxpayer is Involved in Similar Offence for Third or More Time
46(3)(a) & 46A(2)(b)	30%	Taxpayer is Involved in Similar Offence for Second Time
46(2)(b) & 46A(2)(b)	20%	It applies to taxpayers who makes the statement or omission for any other cases such as: <ul style="list-style-type: none"> ➤ Clerical error on the part of the taxpayer caused the discrepancy in the tax return. ➤ Taxpayer made the genuine mistake which caused the discrepancy in the tax return. ➤ Taxpayer had the lack of knowledge on the particular tax issue and did not liaise with FRCA to rectify it which caused the discrepancy in the tax return. ➤ Clerical error, genuine mistake or taxpayer had a lack of knowledge on the particular tax issue and did not liaise with FRCA to rectify it, had caused the discrepancy in tax losses that does not result in tax shortfall.
46(4) & 46A(2)(b)	10%	Taxpayer makes the voluntarily disclosure of discrepancies before: <ol style="list-style-type: none"> 1. The discovery by the CEO of the tax short fall; 2. The commencement of an audit for the tax affairs of that taxpayer.
46(5) & 46A(3)	0%	Taxpayer was reasonably unaware of the tax shortfall or discrepancy in tax losses which was caused by their tax agent, employee or another person. The tax shortfall or discrepancy in tax losses that does not result in tax shortfall involved an unresolved area of tax law, and the taxpayer has a reasonably arguable position in their current treatment.

52. Penalty for making false or misleading statement applies to taxpayers who make false or misleading statement to a tax official(s) or omits any important information from the statement which causes the tax liability of the taxpayer to be computed at a material tax short fall or omitted income for discrepancy in losses that does not result in tax shortfall.

53. The statement made to the tax officials means statement made in writing or orally such as:

- i. Documents which includes:
 - Tax Return
 - Objection
 - Application
 - Certificate
 - Declaration
 - Notification
 - Any other documents furnished or lodged under the tax law.
- ii. Information furnished under the tax law.
- iii. Answers given to questions asked by tax officials.
- iv. Information given to any other person which will conveyed to tax officials.

54. Taxpayer is liable for 75% penalty on the tax short fall or discrepancy in losses that does not result in tax shortfall if the false statement or omission from the statement was made knowingly and recklessly.
55. The penalty will escalate to 85% on the tax short fall or discrepancy in losses that does not result in tax shortfall if the false statement or omission from the statement was made knowingly and recklessly for the second time.
56. Penalty will further escalate to 100% on the tax short fall or discrepancy in losses that does not result in tax shortfall if the false statement or omission from the statement was made knowingly and recklessly for the third or more than third time.
57. Penalty will be reduced from 75% to 65% if taxpayer makes the voluntarily disclosure before the tax short falls or discrepancy in losses that does not result in tax shortfall is discovered by the CEO or the commencement of an audit of the taxpayers tax affairs.
58. In any other cases such as where clerical error, genuine mistake or taxpayer has lack of knowledge on a particular tax issue which has caused the material discrepancy in the tax return in these circumstances taxpayer will be liable for the penalty of 20% on the amount of the tax short fall for or discrepancy in losses that does not result in tax shortfall.
59. Penalty will escalate to 30% of the tax short fall or discrepancy in losses that does not result in tax shortfall if clerical error, genuine mistake or any other similar kind of mistake is made by the taxpayer for the second time.
60. Penalty will further escalate to 45% of the tax short fall or discrepancy in losses that does not result in tax shortfall if clerical error, genuine mistake or any other similar kind of activity is made by the taxpayer for third or more time.
61. Penalty will be reduced from 20% to 10% if taxpayer makes the voluntarily disclosure before the tax short falls or discrepancy in losses that does not result in tax shortfall is discovered by the CEO or the commencement of an audit of the taxpayers tax affairs.
62. No penalty is payable by taxpayer who was reasonably unaware of the tax shortfall or discrepancy in losses that does not result in tax shortfall, which was caused by their tax agent, employee or another person or tax shortfall involved an unresolved area of tax law, and the taxpayer has a reasonably arguable position in their current treatment.
63. If tax agents provide false statement or omission knowingly or recklessly, they will be dealt according section 114 of TAA, which may lead to cancellation of registration.

Example

Nature of taxpayer behaviour	Amount of Tax Discrepancy	Penalty Rate Applicable	Amount of Penalty Payable
Taxpayer knowingly omitted the income of \$50,000 from the tax return.	\$20,000	75%	\$15,000 = (75% x 20,000)
Taxpayer made the mistake which caused the discrepancy in the income tax return.	\$40,000	20%	\$8,000 = (20% x 40,000)
Upon audit discrepancy was ascertained in taxpayer's tax return which was caused by taxpayer's tax agent and taxpayer was unaware about it.	\$20,000	0%	\$0 = (0% x 20,000)
Taxpayer knowingly overstated the expenses in the tax return but informed the auditor before the commencement of the audit.	\$35,000	65%	\$22,750 = (65% x 35,000)
Taxpayer knowingly overstated the losses in the return, taxpayer has committed the similar kind of offence for the third time.	\$25,000 Discrepancy in losses.	100%	\$25,000 = (100% x 25,000)
Taxpayer made the mistake which caused the discrepancy in the income tax return but informed the auditor before the commencement of the audit.	\$50,000	10%	\$10,000 = (10% x 50,000)
Taxpayer made similar mistake in the tax return for the second time.	\$2,000	45%	\$900 = (45% x 2,000)

Penalty in Case of VAT Evasion

64. Section 46B of the TAA imposes a penalty equal to 300% of the deficient tax on a VAT registered person for getting involved or conducting VAT avoidance or evasion activities.

65. Imposition Criteria for Penalty in Cases of VAT Evasion

TAA Provisions	Penalty Rates	Nature of Behaviour by Registered Person
46B(1)(a)	300%	Any person registered for VAT who makes false statement to a tax officer which results in material tax deficiency. ➤ False input tax claim
46B(1)(b)		Any person registered for VAT evades or does acts with intent to evade the payment of any deficient amount of tax payable.

		<ul style="list-style-type: none"> ➤ Manipulation of the values submitted to tax office. ➤ Maintaining the record keeping system which does not capture all the transaction of the business.
46B(1)(c)		<p>Any person registered for VAT causes or does any act with intent to obtain falsified amount of refund from the tax office.</p> <ul style="list-style-type: none"> ➤ False registration by taxpayer where business does not exist. ➤ Uses falsified invoices or uses others persons invoice to claim input tax.
46B(1)(d)		<p>Any registered person who does not fulfills the duty and obligation imposed under the VAT Act which causes:</p> <ol style="list-style-type: none"> 1. Evasion in the payment of any deficient tax; and 2. To obtain the falsified amount of VAT refund. <ul style="list-style-type: none"> ➤ Claiming the same input tax more than once. ➤ False Zero rated claims. ➤ Claiming the VIP amount as an input tax credit. ➤ Not declaring the taxable supply made during the period. ➤ Avoids declaration of output tax in the VAT return
46B(2) & 46(5)	0%	<ol style="list-style-type: none"> 1. Taxpayer was reasonably unaware of the deficient tax which was caused by their tax agent, employee or another person. 2. The deficient tax involved an unresolved area of tax law, and the taxpayer has a reasonably arguable position in their current treatment.

66. **Deficient tax** has meaning where amount of tax payable or refundable declared by the taxpayer is relatively less than or more than respectively to the amount of tax payable or refundable according to the tax law.

67. VAT evasion activities under section 46B subsection 1 includes where registered person:

- i. makes a statement to a tax officer that is false or misleading in a material particular which calculates the material tax deficiency;
- ii. evades, or does any act with intent to evade, the payment of any amount of tax payable which calculates to the material tax deficiency;
- iii. causes or does any act with intent to obtain falsified amount of refund from the tax office; or
- iv. who does not fulfills the duty and obligation imposed under the VAT Act which causes:
 - evasion in the payment of any deficient tax; and
 - to obtain the falsified amount of VAT refund.

68. No penalty is payable by taxpayer who was reasonably unaware of the deficient tax, which was caused by their tax agent, employee or another person or deficient tax involved an unresolved area of tax law, and the taxpayer has a reasonably arguable position in their current treatment.

Example

Nature of taxpayer behavior	Amount of Tax Deficiency	Penalty Rate Applicable	Amount of Penalty Payable
Taxpayer falsified the VAT returns by over stating the VAT input claims.	\$20,000	300%	\$60,000 = (300% x 20,000)
Taxpayer under stated the VAT output in the VAT return to obtain VAT refund.	\$40,000		\$120,000 = (300% x 40,000)
Taxpayer is registered for business which does not exist and has claimed VAT refunds.	\$100,000		\$300,000 = (300% x 100,000)

Penalty for Failure to Maintain the Proper Records

69. Taxpayers are required to retain and maintain the proper documents, accounts and records for any declarations made to FRCA, taxpayers who fail to fulfil these responsibilities are liable for penalty under Section 45 of TAA.

Imposition Criteria

TAA Provisions	Penalty Rates	Nature of Behaviour to Tax Omissions
45(a)	75%	Taxpayer who knowingly or recklessly does not retain or maintain accounts and documents as required under the tax law.
45(b)	20%	Taxpayer was unable to retain or maintain the accounts and documents as required under the tax law due to lack of information and knowledge regarding the requirements under the tax laws.

72. Taxpayer who knowingly or recklessly fails to keep, retain or maintain accounts or documents as required under the tax law is liable for penalty equal to 75% of the amount of tax payable by the taxpayer for the tax period to which the failure relates.

73. Taxpayer who was unable to keep, retain or maintain accounts or documents as required under the tax law due to lack of information and knowledge of about the tax law or for any other similar circumstances is liable for penalty equal to 20% of the amount of tax payable by the taxpayer for the tax period to which the failure relates.

PROCESS

74. Taxpayers seeking a review of penalties can write to the CEO. In many cases the circumstances of each individual taxpayer needs to be examined before the decision can be made over what level of penalty remission, if any, is justified. On the other hand, in some situations automatic remissions of penalty can take place. An automatic remission is a remission of penalty that applies to all taxpayers, or all taxpayers in a distinctive group such as an industry, without them asking for it.
75. Automatic remissions require the authorization of the CEO, as the nominal amounts of penalty, which are foregone, may be significant. The State has enacted the penalty laws at specific percentages and amounts. A blanket remission of those percentages and amounts contrary to the intention of the State needs to be justified in terms of the benefits it will provide for the revenue.
76. Factors which need to be considered before an automatic remission is granted include:
- whether the granting of an automatic remission would provide significant savings to FRCA in not having to devote resources to make numerous penalty remission decisions of a similar nature;
 - the general economic conditions in the country or in a particular industry;
 - whether, after the proposed automatic remission takes place, taxpayers who have failed in meeting a tax obligation have been sufficiently punished and the penalty acts as a deterrent to others; and
 - whether the proposed remission would put the revenue base at significant risk.
77. For enquiries, please contact Taxpayer Education & Publicity Unit (TEPU) team on: email: info@frca.org.fj or call on telephone numbers 3243504/ 3243505.