



<b>PRACTICE STATEMENT 34/2016</b>
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<b>SUBJECT</b>	<b>FIJI REVENUE &amp; CUSTOMS AUTHORITY</b>  <b>CAPITAL GAINS TAX</b>
<b>DATE OF EFFECT</b>	1 January 2016
<b>CONFIDENTIALITY STATUS</b>	May be released to the public
<b>LEGISLATIVE REFERENCE</b>	<i>Income Tax Act 2015 – Section 2, 5, 64, 65, 66, 67, 68, 82, 83, 84, 85, 86, 87, 89, 102, 126, 127, 129, 139</i>  <i>Income Tax (Rates of Tax and Levies) Regulations 2016 LN#5</i>  <i>Tax Administration Act, 2009</i>
<b>PRACTICE COORDINATOR</b>	National Manager Revenue Collection

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## **INTRODUCTION**

1. The purpose of this Practice statement is to provide guidance on the application of the capital gains tax. It is issued with the authority of the Chief Executive Officer of the Fiji Revenue & Customs Authority.
2. The capital gains tax which is 10% will apply on the profit or gain on the sale or disposal of 'capital assets'. For example, if the capital gain on disposal of an asset is \$100,000, the capital gains tax payable is \$10,000. It does not apply on trading stock, a depreciable asset, a business intangible and an asset that does not meet the definition of 'capital assets'.
3. Disposal includes any transaction whereby ownership of an asset is transferred from one person to another such as by sale, gift or where a loss occurs through fire, destruction, cancellation or other means. There are situations under which a disposal will be exempt from tax and where the recognition of capital gain is deferred to a later date.
4. A person disposing of a capital asset is required to lodge a capital gains tax return, whether the person is liable for capital gains tax or not. This means that returns must be lodged for capital gains that are exempt (except gains on disposal of shares listed on the South Pacific Stock Exchange) and for capital losses. The responsible person is required to calculate the tax payable and submit a return and payment for the tax due (where applicable) within one month after the event occurs. Persons applying for tax clearance may be required to pay the tax before the due date.
5. Confirmation on the taxability of transactions can be obtained from FRCA. Requests must be accompanied by a completed and signed capital gains tax declaration form.
6. For Fiji residents, the tax applies on gains arising from the disposal of taxable assets whether situated in Fiji or not. For non-residents the "capital asset" must be an asset located in Fiji ("Fiji asset").
7. Computation of the tax payable involves taking into account a number of factors such as time of acquisition, time of disposal, fair market value (open market value at the time), total consideration received for the asset and total expenses.
8. The CEO can determine the tax payable if he is not satisfied with a return. In this regard, proper record keeping of documents to support valuations and expenses is important. Records in respect of a disposal of an asset subject to capital gains tax must be kept for seven (7) years.

## LEGISLATIVE BASIS

9. Section 65 of the *Income Tax Act 2015* (ITA) provides for the imposition of capital gains tax on the disposal of a capital asset ('capital asset' as defined in the Act) by a person. The tax rate (10%) is prescribed in the *Income Tax (Rates of Tax and Levies) Regulations 2016*
10. "Person" is defined in section 2 of the Act to mean an individual, company, trust or partnership, government, political subdivision of a government, or international organization. Key points:
  - in the case of a partnership and trust, the tax is imposed at the entity level,
  - the definition of company includes unincorporated bodies or associations of persons such as co-operatives, societies, fellowships and clubs.
11. When a capital asset is sold or disposed, the person must work out the gain on each asset separately as the tax is imposed on individual transactions. For non-residents capital gains tax applies only if the capital asset is a 'Fiji asset'.
12. The provisions relating to the acquisition of capital assets is relevant when applying fair market value rules. Section 83 defines what constitutes an acquisition of an asset and states when an acquisition occurs.
13. A person acquires a capital asset :
  - a. at the time the person begins to own an asset,
  - b. at the time the person acquires legal title, and
  - c. when a right or option is granted to the person.
14. Section 5 provides that the Fair market value is the value that an asset would ordinarily fetch in the open market at a particular time and is determined on prevailing market conditions. If it is not possible to determine the fair market value of a particular asset the value of a similar asset can be used and adjustments made to take into account differences. The CEO can also determine the fair market value of an asset.
15. Extracts of the relevant sections of the ITA are given in the Attachment. Further guidance on the provisions are given in the following paragraphs.

## APPLICATION

16. Capital assets are defined in Section 2 ITA. They include real property, marine vessels, intangible assets, membership interest in a company, security, or other financial assets, an interest in a partnership or trust, an option, right, or other interest in an asset (Refer Attachment 1).
17. The definition of 'Fiji asset' in Section 2 is relevant to Section 65 (3) which provides that a non-resident person is subject to CGT only in respect of a capital asset that is a Fiji asset. It also applies to Section 87 (2), which provides that the deferral of tax under Section 87 (1) (a) or (b) applies only to Fiji assets if the recipient of the disposal is a non-resident person. The assets that are Fiji assets for CGT purposes are listed in Attachment 2.
18. A capital gain made on disposal of a capital asset is computed as follows:

*Consideration received on disposal of the asset*  
**Less** *Cost of the asset at the time of disposal*

“Consideration” and “Cost” is determined under Sections 85 and 86 respectively; unless a special rule relating to cost is provided elsewhere in the ITA. (e.g. Section 87 deferrals and Section 89 Non-arm's length transaction).

19. There is no provision for offsetting against capital gains tax payable, losses arising from the disposal of another capital asset (Section 66 (2)). This is because capital gains are taxed at a low rate and is imposed on a transactional basis.
20. Section 66 (3) provides for reconciliation with the income tax. The purpose of this Section is to ensure that a capital gain which is subject to income tax is not taxed again under the capital gains tax (i.e. it prevents double taxation).
21. A capital gain is reduced by any part of the gain that is included in gross income in the following circumstances:
- any part of the gain that is included in gross income will reduce the capital gain. This ensures that the same gain is not taxed under both the income tax and capital gains tax with priority given to the income tax.
  - the part of a gain that is treated as exempt income for income tax purposes.
22. Section 67 provides for exemptions. The eight situations under which a gain on disposal of a capital asset is exempt from CGT is tabled below. Additional explanatory notes on principal place of residence are given in paragraphs 25 – 30.

**Table 1: Exempting provisions**

<b>Section</b>	<b>Exemption</b>	<b>Eligible person</b>
67 (1) (a) General exemption	a capital gain made by a resident individual or a Fiji citizen that does not exceed \$16,000 Fiji dollars;	available to Fiji resident individuals and Fiji citizens only.
67(1) (b) First residential property	a capital gain made by a resident individual or a Fiji citizen on the first disposal of either the individual's principal place of residence or first residential property.	available to Fiji resident individuals and Fiji citizens only.
67 (1) (c) SPSE shares	a capital gain made by a person on the disposal of shares in a company listed on the South Pacific Stock Exchange;	available to all persons.
67 (1) (d) Asset used to derive exempt income	a capital gain made on disposal of a capital asset that is used solely to derive exempt income.	available to all persons whose income or part of income is exempt from tax
67 (1) (e) Unit Trust shares	any gain made by a person on the disposal of an interest in a company within paragraph (c) of the definition "company" in section 2;	available to all persons.
67 (1) (f) Family home	a capital gain made by a resident individual or a Fiji Citizen on disposal of his or her interest in a family home, provided however that the disposal of the interest is by way of transfer to an existing joint tenant or tenant in common	Available to individuals
67 (1) (g) Reorganisation/ restructure	a capital gain made by a resident person from the sale of shares where a private company goes through re-organisation, restructure or amalgamation for the purposes of listing or as part of a listing process on the South Pacific Stock Exchange, provided that—  (i) the private company is listed on the South Pacific Stock Exchange	Available to resident persons

	<p>within 24 months from the date of commencement of re-organisation, restructure or amalgamation; and</p> <p>(ii) where the private company is not listed with the South Pacific Stock Exchange in accordance with sub-paragraph (i), the gain from the re-organisation, restructure or amalgamation of the private company shall be taxable under this Act;</p>	
<p>67 (1) (h)</p> <p>Trust or estate</p>	<p>a capital gain made by the trustee or beneficiary of a deceased estate on the disposal of an asset forming part of the estate that, if the gain had been made by the deceased on a disposal of the asset immediately before death, the gain would be an exempt capital gain to the deceased under this subsection, but only when the asset is disposed of by the trustee or beneficiary within 2 years after the death of the deceased or within such further time as the CEO allows.</p>	<p>Available to all individuals</p>

23. An individual is a resident if he/she is a resident within the meaning given in the ITA. A Fiji citizen is an individual who is a Fiji citizen within the meaning of the *Citizenship of Fiji Act 2009*.
24. The inclusion of Fiji citizens means that an individual does not have to be physically present in Fiji to enjoy the exemptions. Fiji citizens living abroad can claim the benefit of exemption provided they can prove that the house located in Fiji, which is sold/disposed, is their principal or main place of residence. The following paragraphs outline some of the factors that will be taken into account to assist in decision making on whether or not a residence is an individual's principal place of residence during the period of ownership.
25. To qualify for exemption under Section 67 (1) (b), the residence must have been the individual's and where applicable, the spouse's or partner's or joint owner's, principal place of residence during the period of ownership. 'Spouse' is defined in the Section 2 of the Act and includes individuals in de-facto relationships.

26. Section 67 (4) (a) provides that for the purpose of Section 67 (1) (b), the principal place of residence of an “individual” is the residence where the individual mainly lives. Therefore, if an individual has more than one residence, the exemption applies only to the residence where he/she lives most of the time.
27. The person must have sole ownership or co-ownership with his or her spouse. It further clarifies that a spouse includes persons living in a *de facto* relationship as defined in the *Family Law Act 2003*. Some common scenarios are given in the example below however if two main residences are maintained, a more detailed analysis may be required.

### Example 1

#### Scenario 1

*A person may live in a residence for say 5 years, is posted elsewhere (another place in Fiji or overseas) and lives there temporarily for 3 years, returns and lives in the main residence for another 4 years before selling the house. The person has owned the residence for 12 years and occupied it for 9 years. The residence would qualify as the principal place of residence notwithstanding the 3 year absence. **Exemption applies.***

#### Scenario 2

*A person occupied a residence for one year and was then posted abroad for two years and sold the residence immediately on their return, the residence has not been occupied by the person principally during the period of ownership. **Exemption does not apply.***

#### Scenario 3

*A resident individual owns a residence in Suva (where they work) and a residence Sigatoka, where they spend weekends and holidays. Only the Suva residence will be the person’s principal place of residence because that is the **residence in which they mainly live.***

#### Scenario 4

*A husband and wife either jointly or separately own more than one residence. They can claim the exemption in Section 67 (1) (b) in respect of **only one of those residences.** The residence would also have to be the one that either of them mainly lives.*

28. The principal place of residence includes any form of residential accommodation such as house, apartment, houseboat, but does not include land that is adjacent to the residence.

29. If a building is partly used as a principal place of residence and partly for some other use, only that part of the gain relating to use as a principal place of residence is exempt . The capital gain on disposal of the building must be apportioned between the two uses on any reasonable basis.

### **Example 2**

*A doctor disposes of his principal residence for a capital gain of \$100,000. One-quarter of the floor space of the residence was his surgery. Using floor space as the basis of apportionment, the exempt amount of the capital gain is \$75,000 and the other \$25,000 is taxable.*

30. In cases where resident individuals dispose a capital asset in two or more parts and the to take advantage of the FJ\$16,000 threshold, any disposal arising from such disposal will be exempt from tax only if the total gain from disposal of all parts is below \$FJ16, 000.

### **Foreign Capital Gains**

31. A resident person is liable for capital gains tax on their worldwide capital gains. A tax credit is allowed if the following conditions are met –
- a. the person that disposed of the capital asset is a resident person
  - b. the person has disposed of a capital asset, and
  - c. the person has paid foreign tax on the capital gain within 2 years after the end of the tax year in which the capital asset was disposed . “Foreign tax” is defined in the Act.
32. If these conditions are satisfied, the resident person is entitled to a tax credit:
- equal to the lesser of the foreign tax paid or
  - Fijian capital gains tax payable in respect of the capital gain.
33. The amount of the tax credit is limited to the Fijian capital gains tax payable on the capital gain. The tax credit allowed reduces the amount of capital gains tax payable. This means that if the Fiji dollar equivalent of the foreign tax paid is more than the Fijian tax payable, the credit allowed will not be more than the Fijian tax payable. i.e. no refund is due for the excess neither the excess credit will be transferred applied against the Capital Gains Tax payable in respect of the disposal of another capital asset.

### **Example 3**

*X Co, a company resident in Fiji, holds shares in a non-resident company. X Co sells the shares and makes a \$100,000 capital gain on which foreign tax (equivalent to \$30,000 Fijian dollars) is paid. The shares are a capital asset and, therefore, X Co*

*is liable for capital gains tax in respect of the gain. As foreign tax has been paid in respect of the capital gain, X Co is entitled to a tax credit.*

*The amount of the credit is the lesser of the foreign tax paid (equivalent to \$FJD 30,000) or the Fijian capital gains tax payable on the gain (\$10,000 (\$100,000 x 10%)) – i.e. \$10,000. The effect of the tax credit is to reduce the Fijian capital gains tax payable to \$0. Fijian capital gains tax payable on the gain \$10,000, tax credit allowed \$10,000, amount of tax payable in Fiji will be nil. The excess, \$20,000 (\$30,000 - \$10,000) will not be refunded.*

#### **Example 4**

*If only \$5000 of foreign tax was paid in respect of the capital gain, the amount of the tax credit would have been \$5000 (i.e. the lesser of the foreign tax paid (\$5000) and the Fijian capital gains payable (\$10,000)). Total tax payable in Fiji will be \$5,000 after allowing the tax credit.*

34. In cases where foreign tax will be paid in a later period, within two years an amended return should be submitted for reassessment with evidence of foreign tax paid. (Section 60 (5)).

#### **Joint Owners (Section 82)**

35. Section 82 provides for the apportionment of a gain or loss made on disposal of a jointly-owned asset, such as a jointly-owned rental property.
36. Section 82 (1) requires the owners of a jointly owned asset to apportion a gain or loss arising on disposal of the asset according to their respective interests in the asset. Section 82 (2) provides for an equal apportionment when it is not possible to ascertain the relative interests of the different owners. This could be the case, for example, with a rental property owned through a joint tenancy.

#### **Example 5**

*George and Mia own a rental property as tenants-in-common. They have an equal interest in the property. The property is sold and a capital gain of \$100,000 is made on the disposal. The effect of section 82(1) is that the capital gain is apportioned equally between the owners so that George and Mia each report a capital gain of \$50,000.*

### **Example 6**

*Suppose the same facts as in Example 1, but instead George and Mia own the property as joint tenants. Under a joint tenancy, each joint tenant owns the whole of the property jointly with the other joint tenant(s). Unlike with a tenancy-in-common, under a joint tenancy, no joint tenant has a specific share of the property. Further, the principle of survivorship applies under a joint tenancy such that if one joint tenant dies, their interest in the property automatically transfers to the surviving joint tenant(s). The presumption under general law is that each joint tenant has an equal interest in the property. Section 82(2) gives effect to this for the purposes of the Act. Thus, section 82(2) deems George and Mia to own the property equally and, again, they would each report a capital gain of \$50,000.*

### **Acquisition**

37. Section 83 provides rules relating to the acquisition of assets for the purposes of the ITA. It is particularly relevant when applying fair market value rules under the ITA. The section defines what constitutes an acquisition of an asset; and secondly, it states when an acquisition occurs.
38. A person acquires a capital asset at the time:
- a. At the time the person begins to own an asset;
  - b. At the time the person acquires legal title;
  - c. When a right or option is granted to the person/

### **Disposals**

39. Section 84 provides that capital gains tax is imposed only if there has been a “disposal” of a capital asset. Disposal includes the disposal of a part of a capital asset and occurs when a person parts with or ceases to own it. Under Sections 84 (1) (a) and (b), a person makes a disposal when:
- a. a capital asset is sold, exchanged (e.g. a barter transaction), transferred (e.g. gift), a capital asset is distributed (e.g. dividend in-kind)
  - b. a capital asset is cancelled, redeemed, relinquished, expired, surrendered (e.g. expiration of a contractual right), destroyed, lost (e.g. by fire).
40. The disposal occurs at the time the person parts with the ownership or ceases to own it or ceases to have legal title. For instance, in the case of the disposal of tangible personal property, a person parts with ownership of the property at the time that the person ceases to have legal title to the asset. (Section 84 (2)).

41. Section 84 (3) applies when a person creates a capital asset in another person and where at the time it was created, the first mentioned person did not own it. The disposal is deemed to have occurred at the time when the asset is created.

**Example 7**

*A person (A) who owns shares grants an option to another person (B) to acquire the shares. Whilst B now owns the shares, the option to purchase those shares is a capital asset that A created to B by contract. Section 84 (3) ensures that any capital gain arising from this transaction (i.e. the grant of an option) to A is subject to capital gains tax.*

42. Section 84 (4) provides that a disposal by a deceased person occurs at the time a capital asset is transmitted to another person by succession or under a will.
43. Section 84 (5) provides that a disposal includes the disposal of a part of an asset. This may include a physical separation and disposal (for example, a subdivision of real property) or any other part disposal possible in law such as a temporal disposal (for example, rights to property for a period).
44. Section 84 (6) provides for treatment of assets disposed of by a trustee-in-bankruptcy, liquidator, or receiver (such as behalf of a mortgagee-in-possession) as follows:
- when a trustee-in-bankruptcy, liquidator, or receiver disposes of an asset, the person who owned the asset is treated as having disposed of the asset ( i.e. there is no separate disposal in relation to the taking of possession of the asset by the trustee-in-bankruptcy, liquidator, or receiver)
  - any liability in relation the asset is not taken into account in determining the gain or loss on the disposal.
  - the CEO can collect the tax payable on the disposal from the trustee-in-bankruptcy, liquidator, or receiver in accordance with section 26 of the Tax Administration Act

**Cost –Tangible Assets (Section 85)**

45. Section 85 sets out the rules for determining the cost of assets for the purposes of the ITA. Generally, under the ITA, the gain made on disposal of an asset is the consideration for the disposal reduced by the cost of the asset at the time of the disposal. The rules in this Section apply unless the ITA provides otherwise. The cost of a capital asset that is a tangible asset is calculated as follows:

Cost = Total consideration + Incidental expenditure (in acquiring or disposing of the asset) + Any expenditure incurred to install, alter, renew, reconstruct or improve the asset

- a) Total consideration given by the person for the asset - this includes the fair market value of any consideration given in kind. . If the asset is constructed, produced or developed (rather than purchased), the cost of the asset includes the cost of construction, production or development.
- b) The total amount of any incidental expenditure incurred in acquiring or disposing of the asset. Examples of incidental expenditure include professional fees (such as for the services of an agent, lawyer, valuer, auctioneer or surveyor), and advertising costs (particularly on disposal).
- c) The total expenditure incurred to install, alter, renew, reconstruct or improve the asset.

**Example 8**

*Lote purchased a rental property for \$500,000 and, in relation to the purchase, incurred \$2,000 in legal fees. After two years, Lote adds another room onto the property for a cost of \$50,000. Lote then sells the property and incurs \$3,000 in real estate agent fees.*

*At the time of sale, Lote's cost is \$555,000 being the sum of purchase price (\$500,000) legal fees (\$2,000) capital improvement (\$50,000) real estate agent's fees(\$3,000).*

**Cost - intangible assets (Section 85 (3))**

- 46. The cost of an intangible asset (such as an industrial or intellectual property right, or a contractual right) is calculated as follows:

Cost = Total expenditure incurred in acquiring, creating, improving or renewing the intangible asset + any incidental expenditure incurred in acquiring or disposing of the intangible asset.

**Example 9**

*Willie has been appointed the Fijian distributor of a new children's toy by a US company. It is expected that the toy will sell well in Fiji and Willie has paid the US company \$100,000 to be appointed the exclusive distributor of the toy in Fiji for five years. Willie's rights under the contract are an intangible asset and the cost of the asset is \$100,000.*

- 47. Section 85 (4) provides that the cost of a capital asset of a person includes any amount given for the grant of an option to the person to acquire the asset.

**Example 10**

*A person has paid \$10,000 to be granted an option to acquire land. The exercise price under the option is \$100,000. The cost of the land once the option is exercised is \$110,000 (\$100,000 + \$10,000).*

48. Section 85(5) provides that the cost of an asset of a person is reduced by the amount of any deduction allowed to the person in respect of amounts otherwise included in the cost of the asset under subsection (2) or (3). This ensures that a person does not obtain a double benefit, i.e. both a deduction for an expenditure and inclusion of the amount of the expenditure in the cost of an asset. The effect of subsection (5) is that priority is given to allowance of the expenditure as a deduction. It is expressly provided that there is no reduction under Section 85 (5) for depreciation or amortisation deductions allowed in respect of a depreciable asset or business intangible.

**Example 11**

*Lote purchased a rental property for \$500,000 and, in relation to the purchase, incurred \$2,000 in legal fees. If the legal fees are deductible against rental income, they are not included in the cost of the rental property.*

49. Section 85 (6) provides that an amount is included in the cost of an asset on the earlier of the date that it is paid or is payable. This aligns with the equivalent rule in section 86(6) for the inclusion of an amount in the consideration for the disposal of an asset on the earlier of the date that it is received or receivable.
50. Where a person disposes of part of a capital asset, the cost of the asset is apportioned between the part of the asset retained and the part disposed of in accordance with the fair market value rules. (Section 85 (7)).
51. Any grant, subsidy, rebate, commission, or other assistance received or receivable by the person in respect of the acquisition of the asset is excluded from the cost of a capital asset of a person unless the amount is included in the person's total income under the ITA (Section 85 (8)). Loans, including low interest and interest-free loans are not treated as "assistance" for this purpose. (Section 85 (9)).
52. The acquisition of a capital asset by a person may result in the inclusion of an amount in the gross income of the person. For example, an employee may be issued with shares at a discount under an employer share scheme resulting in an amount being included in the total income of the employee. The amount included in total income is treated as part of the cost of the asset to ensure that there will be no double taxation when the asset is disposed. The cost of the

asset also includes any additional amount the person may have paid for the acquisition of the asset. (Section 85 (10) (a)).

53. Section 85 (10) (b) provides a similar rule for the acquisition of an asset that is the derivation of exempt income. The asset has a cost equal to the exempt amount plus any consideration given for the asset. This prevents the income tax exemption being recaptured under the capital gains tax on a subsequent disposal of the asset.
54. Section 85 (11)-(14) provide for a procedure whereby an independent assessor can be appointed to verify the amount of expenditure incurred in relation to a capital asset (defined in section 2) when the owner of the asset is unable to produce documentary evidence of the expenditure. The procedure applies only to capital assets as these are likely to be held for a long period and documentation of expenditures may be lost over time.
55. The procedure applies when the conditions in subsection (11) are satisfied, namely –
  - (1) A person wants to include an amount of expenditure in the cost of a capital asset, including expenditure incurred in making improvements to the asset.
  - (2) The person is unable to produce a record of the expenditure. This may be because the expenditure was incurred some years previously.
  - (3) After investigating the matter, the CEO has declined to include the expenditure in the cost of the asset.
56. If these conditions are satisfied, the person can apply to the Solicitor-General for the appointment of an independent assessor to provide an assessment of the amounts that should be included in the cost of the asset.
57. If the Solicitor-General agrees to the application, subsection (12) requires that the independent assessor must be a person who is suitably qualified in valuation. It is also provided that a person employed by the Government may be appointed as the independent assessor.
58. Subsection (13) provides that the decision and assessment of the independent assessor is final and binding on both the CEO and the taxpayer. The decision of the independent assessor is not a “tax decision” as defined in the Tax Administration Act as it is not a decision made by the CEO.
59. Subsection (14) provides that the costs relating to appointment and work of the independent assessor are to be paid by the Solicitor General.

## Consideration (Section 86)

60. Section 86 sets out the rules for determining the consideration for the disposal of an asset for the purposes of the ITA. Generally, under the ITA, a gain made on disposal of an asset is the consideration for the disposal reduced by the cost of the asset at the time of the disposal. The rules in this section apply unless the ITA provides otherwise.
61. Section 86 (2) sets out the basic rule that the consideration for the disposal of an asset by a person is the total amount received or receivable by the person for the asset including the fair market value of any consideration received in kind. The fair market value of consideration in kind is determined under Section 5 at the date of disposal (as determined under section 84).
62. It includes the consideration received by a person on the grant of an option in relation to the asset if the person has not been subject to tax in respect of any capital gain made on the grant of the option (Section 86 (3)).

### **Example 12**

*Joe grants Raju an option to acquire land owned by Joe that cost \$200,000. The exercise price under the option is \$500,000 and the price paid for the option is \$25,000. Raju subsequently exercises the option.*

*Joe has made two capital gains:*

- (1) a capital gain of \$25,000 on grant of the option*
- (2) a capital gain of \$300,000 (\$500,000 - \$200,000) on disposal of the land.*

*As the capital gain on grant of the option is taxable, the consideration received for the option is not included as part of the consideration received for the land.*

### **Example 13**

*Suppose, instead, that the option price was \$10,000. In this case, there is no capital gain on the grant of the option because the gain is exempt under Section 67(1) (a) and therefore, the consideration for the land includes the price of the option to acquire the land.*

63. The consideration received in respect of an asset that is lost or destroyed includes any compensation, indemnity or damages received as a result of the loss or destruction of the asset. This includes amounts paid under insurance policies, as a result of settlements of law suits, or under judicial decisions such as a damages award under (Section 86 (4)).

**Example 14**

*Selai is the owner of a yacht that cost \$100,000. The yacht is a “capital asset”. The yacht is completely destroyed in a storm. The yacht is treated as disposed of under section 84(1)(b). The yacht is insured and Selai receives \$125,000 compensation from the insurance company. The insurance payout is treated as the consideration received on disposal of the boat. Consequently, Selai has made a capital gain on disposal of the boat of \$25,000. The recognition of this gain may be deferred under section 87 (1) (d) if Selai invests the insurance proceeds in the purchase of a new yacht within 12 months of the loss of the other yacht.*

64. Section 86 (5) requires a person to apportion any undivided consideration provided for two or more assets in proportion to their respective fair market values as determined under section 5 at the time of the disposal.
65. Section 86 (6) provides for the timing of inclusion of amounts in the consideration received for an asset. An amount is included in consideration received on the date that it is paid.

**Deferral of Recognition of Gain or Loss**

66. Section 87 provides the rules for replacement assets. Apart from the sale of capital assets, some events are regarded as a ‘disposal’ for capital gains tax purposes which can lead to a capital gain. There are four situations where a disposal will not be subject to capital gains tax in the hands of the transferor. In such cases, if the asset is sold or disposed of at a later date, it will be subject to capital gains tax and payable by the present owner making the disposal.

<b>Section</b>	<b>Deferral type</b>	<b>Example</b>
87(1) (a) Divorce	<p>Disposal of a capital asset between spouses (this includes partners in a <i>de facto</i> relationship) as part of a divorce settlement or under a separation agreement to live apart.</p> <p>NB</p> <p>1) If the acquirer of the asset is a non-resident person, Section 87 (1) (a) applies only if the capital asset is a Fiji asset (section 87 (2) (b))</p> <p>2) at the time of disposal by the acquirer, the acquirer takes on the original cost of the asset. (Section 87 (3))</p>	<p><b><u>Example 15</u></b></p> <p>Under a divorce agreement, A is required to transfer shares to B. A acquired the shares for a cost of \$100,000.</p> <p>At the time of the transfer, the shares have a fair market value of \$200,000. Two years later, B sells the shares for \$300,000.</p> <p><i><u>Effect of transaction on A</u></i></p> <p><i>Transfer of the shares is a disposal of a capital asset. After taking into account the fair market value, there is a capital gain of \$100,000 (\$200,000 -</i></p>

	<ul style="list-style-type: none"> <li>• For principal place of residence or first residential property, the fair market value at the time of the disposal.</li> <li>• Any other asset the cost of the asset for person disposing the asset at the time of disposal.</li> </ul>	<p><i>\$\$100,000) in respect of the disposal. However, Section 87(1)(a) provides that no capital gain arises in respect of the disposal.</i></p> <p><i><u>Effect of transaction on B</u></i>  <i>B takes over A's cost (\$100,000). Taxation of the capital gain that has accrued in respect of the shares is deferred until B disposes of the shares. When B subsequently sell the shares, B makes a capital gain of \$200,000 (\$300,000 - \$100,000) - this represents \$100,000 of deferred capital gain that accrued while A owned the shares and \$100,000 of capital gain that accrued while B owned the shares.</i></p>
<p>87(1) (b) Death</p>	<p>Disposal of a capital asset by transmission of the asset on the death of a person to the executor or beneficiary of the person's estate</p> <p>NB</p> <p>1) If the acquirer of the asset is a non-resident person, section 87 (1) (b) applies only if the capital asset is a Fiji asset (Section 87(2) (b))</p> <p>2) at the time of disposal by the acquirer, the acquirer takes on the original cost of the asset. (Section 87 (3))</p>	<p>Recognition of the gain on a transmitted capital asset that has accrued prior to the deceased's death is deferred until the executor or beneficiary subsequently disposes of the asset.</p> <p><b><u>Example 16</u></b>  Upon death of A in 2010, a house acquired at a cost of \$70,000 is transmitted to B. At the time of the transmission, the house has a fair market value of \$90,000.</p> <p><i><u>Effect of transaction on A</u></i>  <i>No capital gain arises in respect of the \$20,000 gain on disposal.</i></p> <p><i><u>Effect of transaction on B</u></i>  <i>B takes over the deceased's cost</i></p>

		<p>of the asset as at the date of death. The house is sold for \$100,000 in May 2011. When B sells the house, there is a capital gain of \$30,000 (\$100,000 - \$70,000) - this represents \$20,000 of deferred capital gain that accrued while A owned the house and \$10,000 of capital gain the accrued while B owned the house.</p>
<p>87(1) (c) Love and affection</p>	<p>Principal place of residence, first residential property, an interest in a capital asset, or shares in a company, by reason of love and affection between spouses, siblings, parents to children, grandchildren to grandparents and vice versa,</p> <p>NB 1) If the acquirer of the asset is a non-resident person, Section 87 (1) (c) applies only if the capital asset is a Fiji asset (section 87 (2) (b))</p> <p>2) at the time of disposal by the acquirer, the acquirer takes on the original cost of the asset. (Section 87 (3))</p> <ul style="list-style-type: none"> <li>• For principal place of residence or first residential property, the fair market value at the time of the disposal.</li> </ul>	<p><b>Example 17</b> Mr. A died in 2012, transferred a house to B, son. At the time of the transmission, the house has a fair market value of \$250,000 which was acquired at the cost of \$100,000.</p> <p><u>Effect of transaction on A</u> No capital gain arises in respect of the \$150,000 gain on disposal.</p>
<p>87 (1) (d) Replacement</p>	<p>Disposal of a capital asset by way of loss/ destruction/ compulsory acquisition if the recipient uses the consideration received to buy a replacement asset, within one year</p>	<p>Subsection (1) (d) provides that no capital gain is taken to arise on the disposal of a capital asset if the person reinvests in a replacement asset within a year of disposal. Received is defined to include receivable and also has its ordinary meaning.</p>

67. Where a disposal under Section 87 (1) (d) applies, the cost of the replaced asset is 'rolled over' into the replacement asset. The cost of the replacement asset is determined as follows;

68. Where consideration given by the person for the replacement asset is **equal to or exceeds** the consideration received or receivable for the replaced asset

- the cost of the replacement asset is the *cost of the replaced asset* at the time of disposal increased by the amount of the excess, if any.

$$\begin{aligned} \text{Cost of the replacement asset} &= \text{cost of the replaced asset} \\ &+ (\text{purchase price} - \text{sale price}) \end{aligned}$$

69. Where consideration received or receivable for the replaced asset exceeds the consideration given for the replacement asset

- the cost of the replacement asset is the cost of the replaced asset at the time of disposal reduced by the amount of the excess.

$$\begin{aligned} \text{Cost of the replacement asset} &= \text{cost of the replaced asset} \\ &- (\text{sale price} - \text{purchase price}) \end{aligned}$$

### **Example 18**

*Rupeni owns a yacht that is destroyed in a fire on 2 May 2011.*

- *Cost at the time of disposal - \$100,000.*
- *Insurance proceeds received on 10 November 2011, ( \$110,000), was used to purchase replacement yacht (\$110,000)*
- *On 3 July 2012, replacement yacht sold for \$130,000*
- *Capital gain on disposal that occurred on 2 May 2011 - \$10,000 (\$110,000 - \$100,000)*

#### **Step 1 - Calculate cost of replacement asset:**

*Note that insurance proceeds = cost of acquiring replacement asset, therefore cost of replacement asset is \$100,000*

*Consideration received for replacement asset exceeds the consideration given for the replaced asset.*

$$\begin{aligned} \text{Cost of the replacement asset} &= \text{cost of the replaced asset} \\ &+ (\text{Purchase price} - \text{sale price}) \\ &= \$100,000 + (110,000 - 110,000) \\ &= \$100,000 \end{aligned}$$

**Step 2 - Calculate capital gain on sale of replacement yacht:**

*Sale price \$130,000 - \$100,000 = \$30,000 (Capital gain on disposal of first yacht is \$30,000, being \$10,000 deferred and \$20,000 on sale of replacement yacht)*

**Example 19**

*Same details as in Example 18 except that replacement yacht cost \$120,000*

- *Cost at time of disposal - \$100,000.*
- *Insurance proceeds received 10 November 2011, \$110,000*
- *Replacement yacht cost \$120,000*
- *On 3 July 2012, replacement yacht sold for \$130,000*
- *Capital gain on disposal that occurred on 2 May 2011 - \$10,000 (\$110,000 - \$100,000)*

**Step 1 - Calculate cost of replacement asset:**

*Cost of the replacement asset = cost of the replaced asset + (consideration given - consideration received)*  
*= \$100,000 + (120,000 - 110,000)*  
*= \$110,000*

**Step 2 - Calculate capital gain on sale of replacement yacht:**

*\$130,000 - 110,000 = \$20,000 (being \$10,000 deferred capital gain on disposal of first yacht and \$10,000 capital gain on disposal of replacement yacht)*

**Example 20**

*Same details as in example 18 except that replacement yacht cost \$100,000*

- *Cost at time of disposal - \$100,000*
- *Insurance proceeds received 10 November 2011, \$110,000*
- *Replacement yacht cost \$100,000*
- *On 3 July 2012, replacement yacht sold for \$130,000*
- *Capital gain on disposal that occurred on 2 May 2010 - \$10,000 (\$110,000 - \$100,000)*

**Step 1 - Calculate cost of replacement asset:**

*Cost of the replacement asset = cost of the replaced asset - (consideration received - consideration given)*  
*= \$100,000 - (110,000 - 100,000)*  
*= \$90,000*

**Step 2 - Calculate capital gain on sale of replacement yacht:**

*\$130,000 - 90,000 = \$40,000 (being \$10,000 deferred capital gain on disposal of first yacht and \$30,000 capital gain on disposal of replacement yacht )*

## **Corporate Re-Organizations**

70. Section 88 provides for a deferral rule in relation to the transfer of assets on the re-organization of companies within a wholly-owned corporate group. As the asset remains within the wholly-owned corporate group, the deferral rule applies because the transfer does not involve any change in the economic ownership of the asset.
71. Section 88 (1) provides that the deferral rule applies when the following conditions are satisfied –
- (1) A resident company transfers an asset to another resident company - it is provided in subsection (2) that subsection (1) does not apply if the income of the transferee company is exempt income.
  - (2) The transferor company is a group company in relation to the transferee company. -
72. When the conditions are met , the following applies -
- a)* no gain or loss is taken to arise on disposal of the asset;
  - (b)* the transferee is treated as acquiring an asset of the same character as the asset disposed of by the transferor; and
  - (c)* the transferee's cost on acquisition of the asset is equal to the transferor's cost for the asset at the time of disposal.

## **Non-arm's Length Transaction (Section 89)**

73. The consideration received by a person disposing of a capital asset in a non-arm's length transaction is the fair market value of the asset at the time of the disposal. This amount is treated as the cost of the asset for the person acquiring the asset in the transaction. Thus, the effect of the section is to treat, for all purposes of the Act, the fair market value of the asset as the consideration given and received under a non-arm's length transaction.

## **Avoidance of Capital Gains Tax (Section 102)**

74. The CEO has broad powers to deal with arrangements intended to avoid or evade the tax. This is in addition to the non-arm's length transaction rule.

## **PROCESS**

### **Filing of Capital Gains Tax Return and Payment of Capital Gains Tax (Section 126 and 127)**

75. A person liable for capital gains tax in respect of the disposal of a capital asset must file a capital gains tax return within thirty days after the disposal of the capital asset. A separate return must be filed in respect of each disposal. Capital gains tax is due for payment within thirty days after the disposal of the capital asset giving rise to the gain.
76. The obligation to file a capital gains tax return arises whenever there is a disposal of a capital asset regardless if the gain is exempt or a loss (except for disposal of shares in a company listed on the South Pacific Stock Exchange).
77. If a person fails to file a capital gains tax return by the due date, the CEO can make a default assessment of the capital gains tax payable. Failure to file a capital gains tax return by the due date may result in the imposition of penalty under Sections 43 and 44 of the Tax Administration Act or the prosecution for an offence under section 49 of the Tax Administration Act.
78. Records relating to capital gains tax must be kept for seven years from the date of disposal of the capital asset. This includes records relating to the acquisition and disposal of the asset, cost of the asset and the consideration received on disposal.
79. A person who fails to keep records as required may be liable for a penalty under Section 45 of the Tax Administration Act or guilty of an offence under Section 51 of the Tax Administration Act.
80. The CEO may disallow the inclusion of an amount of expenditure in the cost of a capital asset if the incurring of the expenditure cannot be supported by documentary evidence.

### **Collection of Tax Payable by Partnerships and Trusts (Section 129)**

81. The partners in a partnership are jointly and severally liable for the capital gains tax payable by the partnership and the trustees of a trust are jointly and severally liable for the capital gains tax payable by the trust.

### **130. Capital Asset Registration and Renewals**

82. The section relates to registration and renewal of registration of capital assets. The section provides that the Registrar of Titles must not register an instrument relating to the transfer of a capital asset under the Land Transfer Act, or renew the registration of a capital asset, unless the transferor or transferee has furnished the

Registrar of Titles with a certificate from the CEO stating that the capital gains tax due on the transfer has been paid or satisfactory arrangements for payment of CGT have been made, or that no CGT is payable.

The CEO is required to issue a certificate within seven (7) days of receipt of the application for a CGT certificate.

### **Currency Translation (Section 139)**

83. All amounts (consideration received, costs and foreign tax) taken into account under the Act are to be expressed in Fijian dollars. A foreign currency amount is to be translated to Fijian dollars using the financial institution exchange rate applying on the date the amount is taken into account for capital gains tax purposes.
84. For enquiries, please contact Taxpayer Education & Publicity Unit (TEPU) team on: email: [info@frca.org.fj](mailto:info@frca.org.fj) or call on telephone number 3243504/ 3243505.

## ATTACHMENT 1

### Description of 'Capital Asset'

	<b>Capital asset</b>	<b>Explanation</b>
(a)	Real property, a structural improvement to real property, an interest in real property or an interest in a structural improvement to real property.	<ul style="list-style-type: none"><li>• The reference to “real property” includes a freehold or other ownership interest in land.</li><li>• “Structural improvement” is separately defined in section 2 – in relation to real property, included any building (e.g. house, shop, hotel, factory, warehouse etc.), road, driveway, car park, pipeline, bridge, tunnel, airport runway, canal, dock, wharf, retaining wall, fence, power lines, water or sewerage pipes, drainage, landscaping, or dam.</li><li>• An interest in real property/structural improvement to real property includes a lease of real property or a lease of structural improvement to real property and will cover any other interest in real property/structural improvement.</li><li>• It includes and right to an exploration, prospecting, development, or similar right relating to real property.</li></ul>
(b)	Ship or boat	<ul style="list-style-type: none"><li>• Includes all forms of marine vessels, such as ships, boats, barges etc.</li></ul>
(c)	Yachts	<ul style="list-style-type: none"><li>• This covers all forms of yachts regardless of the tonnage</li></ul>
(d)	A membership interest in a company, security, or other financial asset	<ul style="list-style-type: none"><li>• Share includes any ownership interest in a company and a unit in a unit trust.</li><li>• “Security” includes debt interest such as debentures.</li><li>• “Financial asset” has its ordinary meaning and includes convertible notes, participating</li></ul>

		loans and similar assets.
(e)	Intangible assets	<ul style="list-style-type: none"> <li>• Examples of intangible assets are:- <ul style="list-style-type: none"> <li>-industrial and intellectual property rights (such as patents, copyrights and designs),</li> <li>-goodwill, know-how and contractual rights (such as the rights obtained under a contract appointing a person as an exclusive distributor).</li> </ul> </li> </ul>
(f)	An interest in a partnership or trust.	<ul style="list-style-type: none"> <li>• An interest in a trust would include the interest of an income or capital beneficiary, and also the interest of a discretionary beneficiary to have the trust properly administered.</li> </ul>
(g)	An airplane, helicopter or other aircraft.	<ul style="list-style-type: none"> <li>• This covers all forms of aircraft.</li> </ul>
(h)	An option, right, or other interest in an asset referred to in paragraphs (a) –(g)	<ul style="list-style-type: none"> <li>• This ensures that both the actual asset and a lesser interest in the asset are treated as capital assets for the purposes of this.</li> </ul>

## **ATTACHMENT 2**

**Table 2: Description of ‘Fiji Asset’**

	<b>Capital asset</b>	<b>Explanation</b>
(a)	Real property, a structural improvement to real property, an interest in real property or an interest in a structural improvement to real property located in Fiji.	<ul style="list-style-type: none"> <li>• This is equivalent to the section 2 definition of “Capital asset” except that the land must be located in Fiji.</li> </ul>
(b)	A membership interest in a company, or an interest in a partnership or trust, if the assets of the company, partnership or trust consist solely or principally of Fiji assets under paragraph (a) held by the company, partnership or trust, directly or indirectly, through one or more interposed persons	<ul style="list-style-type: none"> <li>• The value of an interest in an entity (such as shares in a company) will reflect the value of the assets owned by the entity. Thus if the assets of an entity comprise primarily of Fijian land, a capital gain arising on the disposal of the interest in the entity will be equivalent of the gain that would have arisen if the land had been sold. It applies to an entity (resident or non resident) as the main concern is the nature of the asset, namely Fijian</li> </ul>

		Land
(c)	A capital asset of a fixed place of business in Fiji	<ul style="list-style-type: none"> <li>• This applies to movable “capital assets” defined in section 2 which are located in an office, factory, warehouse, shop or other business premises of the non-resident in Fiji.</li> </ul>
(d)	A membership interest, security, or other financial asset issued by a resident person.	<ul style="list-style-type: none"> <li>• This covers shares, debentures etc. issued by a resident company.</li> </ul>
(e)	An interest in a resident partnership or resident trust.	<ul style="list-style-type: none"> <li>• This includes an interest in a resident partnership or resident trust which is respectively defined in section 2.</li> </ul>
(f)	An option, right, or other interest in an asset referred to in paragraphs (a)-(e).	<ul style="list-style-type: none"> <li>• This ensures that both the actual Fiji asset and a lesser interest are included.</li> </ul>

### **ATTACHMENT 3**

#### **Extracts from ITA 2015**

##### **Section 5\_- Fair market value**

*“5.—(1) The fair market value of an asset, property, service, or benefit at a particular time is the ordinary open market value of the asset, property, service or benefit at that time.*

*(2) If it is not possible to determine the fair market value of an asset, property, service, or benefit at a particular time under subsection (1), the fair market value is the consideration of a similar asset, property, service or benefit would ordinarily fetch in the open market at that time, adjusted to take account of the differences between the similar asset, property, service, or benefit and the actual asset, property, service or benefit.*

*(3) For the purposes of subsection (2), an asset, property, service or benefit is similar to another asset, property, service or benefit, as the case may be, if it is the same as, or closely resembles, the other asset, property, service or benefit in character, quality, quantity, functionality, materials or reputation.*

*(4) If the fair market value of an asset, property, service or benefit cannot be determined under subsection (1) or (2), the fair market value is the amount determined by the CEO provided that the valuation is consistent with generally accepted valuation principles.*

*(5) This section is subject to sections 63 and 85(11)-(14)."*

## **Section 64 - 68**

### **Part 3 interpretation**

**64.** *In this Part, unless the context requires otherwise, "person" means an individual, trust, partnership or company.*

### **Imposition of Capital Gains Tax**

**65.—***(1) Subject to this Act, a tax to be known as "Capital Gains Tax" is imposed at the rate prescribed by Regulations made under this Act on a person who has made a capital gain, other than an exempt capital gain, on the disposal of a capital asset.*

*(2) The Capital Gains Tax payable by a person on the disposal of a capital asset is computed by applying the rate prescribed by Regulations made under this Act to the amount of the capital gain arising on the disposal.*

*(3) If the person who has made a capital gain is a non-resident person, subsection (1) applies only if the capital asset is a Fiji asset.*

### **Capital gain**

**66.—***(1) The capital gain made by a person on the disposal of a capital asset is the consideration for the disposal reduced by the cost of the asset at the time of the disposal.*

*(2) A capital gain made by a person on disposal of a capital asset is not reduced by any capital loss on the disposal of another capital asset.*

*(3) A capital gain made by a person on the disposal of a capital asset is reduced by any part of the gain that is included in the gross income of the person or that is exempt income.*

### **Exempt capital gains**

**67.—***(1) The following capital gains are exempt capital gains—*

*(a) a capital gain made by a resident individual or Fiji citizen that does not exceed FJD\$16,000;*

*(b) a capital gain made by a resident individual or a Fiji Citizen on disposal of either the individual's first residential property or principal place of residence;*

*(c) a capital gain made by a person on the disposal of shares listed on the South Pacific Stock Exchange;*

*(d) a capital gain made on disposal of an asset that is used solely to derive exempt income;*

*(e) any gain made by a person on the disposal of an interest in a company within paragraph (c) of the definition "company" in section 2;*

*(f) a capital gain made by a resident individual or a Fiji Citizen on disposal of his or her interest in a family home, provided however that the disposal of the interest is by way of transfer to an existing joint tenant or tenant in common;*

*(g) a capital gain made by a resident person from the sale of shares where a private company goes through re-organisation, restructure or amalgamation for the purposes of listing or as part of a listing process on the South Pacific Stock Exchange, provided that—*

*(i) the private company is listed on the South Pacific Stock Exchange within 24 months from the date of commencement of re-organisation, restructure or amalgamation; and*

*(ii) where the private company is not listed with the South Pacific Stock Exchange in accordance with sub-paragraph (i), the gain from the re-organisation, restructure or amalgamation of the private company shall be taxable under this Act;*

*(h) a capital gain made by the trustee or beneficiary of a deceased estate on the disposal of an asset forming part of the estate that, if the gain had been made by the deceased on a disposal of the asset immediately before death, the gain would be an exempt capital gain to the deceased under this subsection, but only when the asset is disposed of by the trustee or beneficiary within 2 years after the death of the deceased or within such further time as the CEO allows.*

*(2) If the CEO is satisfied that a capital asset has been disposed of in two or more parts for the purpose of taking advantage of subsection (1)(a), any capital gain arising from the disposals is exempt under subsection (1)(a) only if the total gain from the disposal of all parts does not exceed FJD\$20,000.*

*(3) In the case of the disposal of a capital asset that is jointly owned, subsection (1) (a) applies only if the total capital gain made by all owners of the asset on disposal of the asset does not exceed FJD\$20,000.*

*(4) For the purposes of—*

*(a) subsection (1)(b)—*

*(i) “first residential property” means the first residential property that a resident individual or Fiji citizen has acquired, and who has sole ownership or co-owns the same with his or her spouse and includes a spouse living in a de facto relationship as defined in the Family Law Act 2003; and*

*(ii) “principal place of residence” means the place of residence where the individual lives; and*

(b) subsection (1)(f), “family home” means a residential property in which family members, whether immediate or extended, hold an interest as joint tenants or tenants in common.

**Foreign capital gains**

**68.**—(1) Subject to this section, if a resident person has made a capital gain on disposal of a capital asset in respect of which foreign tax has been paid, the person is allowed a tax credit of an amount equal to the lesser of—

(a) the foreign tax paid in respect of the disposal of the asset; or

(b) the Fiji Capital Gains Tax payable in respect of the disposal of the asset.

(2) A tax credit allowed under subsection (1) reduces the amount of Capital Gains Tax payable under section 65 in respect of the disposal of the capital asset.

(3) A tax credit is allowed under this section only if the foreign tax is paid within 2 years after the end of the tax year in which the capital asset was disposed of by the resident person, or within such further time as the CEO may allow.

(4) The amount of a tax credit allowed under this section that is not credited under subsection (1) is neither refunded nor applied against the Capital Gains Tax payable in respect of the disposal of another capital asset.

(5) In this section—

“Fiji Capital Gains Tax” means the Capital Gains Tax imposed under this Act; and

“foreign tax” means the Income Tax or Capital Gains Tax imposed by the government of a foreign country or a political subdivision of a government of a foreign country, but does not include penalty, additional tax, or interest payable in respect of such tax.

**End of PS**

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