Tax talk on Foreign Tax Credit On Non-DTA Country Sourced Income

FS: What is a Foreign Tax Credit?
CEO: Foreign tax credit is a method of relief from international double taxation. It applies to taxable foreign-source income derived by a resident person and tax deducted thereon.

FS: Why is the Foreign Tax Credit necessary?
CEO: The need for relief from international double taxation arises because resident persons are liable for income tax on worldwide income. The same income is likely to also be taxed in the foreign country of source and, therefore, subject to double taxation. In this situation, it is usual for the residence country to provide relief and that is the purpose of the foreign tax credit. Broadly, under the foreign tax credit, a resident person can credit their foreign income tax payments in respect of foreign source income against the Fijian income tax payable on that income.

FS: How do you determine an amount to be taxable foreign source income?
CEO: There are two requirements for an amount to be taxable foreign-source income. First, the amount must be foreign-source income. An amount is foreign-source income to the extent to which it is not derived from sources in Fiji. Any income that is not derived from sources in Fiji is foreign-source income. No foreign tax credit is allowed in respect of income derived from sources in Fiji even if foreign tax has been paid on that income because the foreign country has a different source rule than that applicable. Secondly, the foreign-source income must be included in gross income, i.e., it must be taxable in Fiji. Thus, no foreign tax credit is allowed for foreign tax paid in respect of exempt foreign income.

FS: Are there certain conditions to be met to be entitled for a foreign tax credit?
CEO: Yes, there are a number of conditions that must be satisfied before a person is entitled to a foreign tax credit. Firstly the person must be a resident person in Fiji. As Fiji taxes only resident persons on worldwide income, the foreign tax credit is allowed only to resident persons. Non-resident persons are taxed only on income derived from sources in Fiji; Secondly, the resident person must have derived taxable foreign-source income which would be included in gross income. Thirdly, the resident person must have paid foreign income tax or withholding tax in respect of the taxable foreign-source income. Foreign income tax is a tax that is imposed on net income on a realisation basis which includes a withholding tax. This covers withholding taxes imposed on dividends, interest and royalties derived by non-residents. Such taxes are imposed on a gross (rather than net basis) but are considered to be income taxes because they are the international norm for taxing such income of non-residents. However, foreign income tax excludes any penalty tax, additional tax, or late payment interest.

FS: How do you claim for a foreign tax credit?
CEO: A foreign tax credit can be claimed only when the foreign tax has been paid (not payable). If the foreign tax is paid after the Fijian tax is paid, the assessment for the tax year in which the foreign source income was derived can be amended to allow for the credit. However, there is a limit in the claiming of the foreign tax credit to two years after the end of the tax year in which the foreign income was derived. If the foreign tax is paid after that time, the credit is lost unless the CEO allows for further time for the foreign tax to be paid and still qualify for a credit.

FS: What happens if the foreign tax credit is more than the Fijian income tax payable on the same income?

CEO: The resident person is entitled to a foreign tax credit equal to the lesser of the foreign income tax paid on the foreign-source income or the Fijian income tax payable on the same income. In other words, the amount of the foreign tax credit allowed is limited to the Fijian income tax payable on the foreign-source income. No foreign tax credit is allowed for foreign tax in excess of the Fijian income tax on the foreign-source income. If the resident person has more than one type of tax credit, the foreign tax credit is applied to reduce the income tax payable before other tax credits. An excess foreign tax credit is lost – it is not refunded, carried back or carried forward. However, to limit the possibility of excess foreign tax credits, the foreign tax credit is applied to reduce the income tax payable before other tax credits.