Trusts' tax obligations

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FRCA head Jitoko Tikolevu. Picture: FILE

THERE are various types of taxes enforced by the Fiji Revenue and Customs Authority and applicable to individuals, sole trader business or partnership business, beneficiary or investment income earner. This week, FRCA head Jitoko Tikolevu speaks to Business editor GERALDINE PANAPASA about trusts in relation to tax obligations.

TIMES: Is a trust subject to tax?

TIKOLEVU: No. A trust is not capable of being taxed because its legal nature is a fiduciary relationship and not an entity. A trust can only distribute profits, not losses. Losses are accumulated within the trust and used to reduce future profits or corpus of the trust. The chargeable income of a trust equals its total income and income from a trust is included in a beneficiary's total income.

TIMES: How are trusts taxed?

TIKOLEVU: Under the Income Tax Act, trust income is taxed either in the hands of the trustee or the beneficiary. If trust income is not distributed, or is distributed to a beneficiary who is under a legal disability, the trustee is taxed on the income; and if trust income is distributed to a beneficiary who is not under a legal disability, the beneficiary is taxed on the income.

TIMES: What are the types of trusts that you categorise for tax purpose?

TIKOLEVU: At FRCA, the prefix in a tax identification number (TIN) of a trust determines the type of entity. That is, 50 is for companies and unit trusts, 60 is for non-profit bodies including charitable trusts, 70 is for deceased estates and 75 is for trading trusts and superannuation funds. The prefix is important as this would determine the type of tax assessment that would apply.

TIMES: What are the requirements for registering a trust at FRCA?

TIKOLEVU: To register a trust you need to give a copy of the trust deed to FRCA together with the tax identification numbers (TIN) of the trustees and beneficiaries for FRCA's records. The residency status of the trustee or beneficiary needs to be ascertained, as this affects the tax rate trustee or beneficiary is assessed at.

TIMES: Are trusts required to lodge tax returns?

TIKOLEVU: Yes. Unit trusts should lodge a Form C as they are taxed as companies. All other trusts with TIN prefix 60, 70 and 75 should lodge a Form E. Upon the demise of an individual within a financial year, their legal representative must lodge an individual return from the start of the year up to the date of death.

If the individual's estate carries on business after the date of death, the trustee must lodge a trust return from the day after the date of death to the end of the year, and for any subsequent fiscal years that the trust carries on business. Trading trusts should include in their returns the usual financial statements that businesses are required to supply, such as profit and loss account and balance sheet.

TIMES: How is a trustee taxed?

TIKOLEVU: Where the trustee is taxed, he or she will not be taxed in their own right, but in their capacity as trustee. The trust's income is not added to the trustee's other income, but rather a separate assessment is made.

Where the trustee is an individual, he or she will be assessed under the special 27 series of TINs, under the name of, for example, "Henry Smith as trustee for the Jones Family Trust", and the tax applied will be at the individual rate. Where the trustee is a company, it will have a normal 50-series TIN and be taxed as a trustee at the company rate of tax.

TIMES: How is a beneficiary taxed?

TIKOLEVU: Where a beneficiary is taxed on their share of the trust distribution, the trust income is added to the beneficiary's other income. The beneficiary is assessed under his or her personal TIN.

Beneficiaries should lodge Form B, and the trust income they receive will be subjected to provisional tax. Trust income distributed retains its characteristics in the hands of the beneficiary.

For example, if a discretionary trust receives dividend and other income, the trustee can "stream" the dividend income to a particular beneficiary, and it retains the characteristics of dividend income in the hands of the beneficiary.

* This is a weekly column specifically targeting tax issues. If you have any topics that you want Talk Tax to focus on, please email Business editor Geraldine Panapasa on gpanapasa@fijitimes.com.fj or Business reporter Ropate Valemei on rvalemei@fijitimes.com.fj.