



STANDARD INTERPRETATION GUIDELINE 2018-01

DEVELOPMENT AND FINALISATION OF STANDARD INTERPRETATION GUIDELINES

This Standard Interpretation Guideline (“SIG”) sets out Fiji Revenue and Customs Service’s (“FRCS”) policy and operational practice in relation to the drafting, consultation and finalisation of Standard Interpretation Guidelines. It is issued with the authority of the Chief Executive Officer (“CEO”) of FRCS, who is also the Commissioner of Inland Revenue.

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All legislative references in this SIG are to the *Tax Administration Act (“TAA”) 2009* (unless otherwise stated).

This SIG is in effect from 6th June 2018 and may need to be reviewed in the event of any relevant legislative amendments.

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INTRODUCTION

1. SIGs represent a big step for tax administration in Fiji because it sets a new standard for the CEO's official policy and guidelines on the interpretation and application of laws administered by FRCS. **SIGs, once finalised, will replace the current practice statements.**
2. SIGs play a very important role in the overall tax administration. The name SIG was chosen after careful consideration because we needed to stress three things:
 - i. SIGs will have **standard** application across FRCS by all of its' officers where relevant;
 - ii. SIGs will outline the CEO's **interpretation** of laws, regulations (as guided by case law where applicable); and
 - iii. SIGs will serve as **guidelines** for FRCS officers and the wider taxpayer community.
3. The need for SIGs arises because tax legislation by itself often cannot give full explanations and guidelines of tax rules. This is especially so for complex areas of tax law. A fuller analysis and discussion of revenue laws is often required to give guidance on practical issues.
4. A competently prepared and fully explained SIG will serve three important purposes:
 - Taxpayers will know with clarity what is FRCS's position in relation to certain revenue laws - especially complex areas of tax laws;
 - Two taxpayers in exactly the same situation will be treated equally because FRCS officers will use the same SIG guidelines for both taxpayers; and
 - It will make the work of FRCS officers easier and more certain – since they will have good quality analysis to use across the board with all taxpayers.
5. The purpose of this SIG is:
 - to outline the process for converting all current practice statements to SIGs;
 - to explain whether the contents of the SIGs are “legally binding”;
 - to outline what the taxpayers and their advisers can expect to be contained in a typical SIG;
 - to provide opportunities for taxpayers and their advisers to comment on draft SIGs before they are finalised;
 - to outline the CEO's commitment that SIGs will be applied uniformly across the

organization; and

- to act as a guide in providing certainty to all taxpayers.

CONVERTING PRACTICE STATEMENTS TO SIGs

6. FRCS is embarking on a major project to convert current practice statements to SIGs. It needs to be stressed that this exercise is not merely a cosmetic one - the transition to SIGs will mean more robust and fuller discussion of laws and their practical applications.
7. It is anticipated that all practice statements will be reviewed. The conversion to SIGs will involve the following:
 - Some practice statements may be obsolete and discarded completely. No SIGs will be needed for such topics;
 - Some practice statements may be incorrect due to law changes. Relevant updates will be made to capture law changes; and
 - Further analysis will be added to make the guidelines more robust.
8. Meanwhile, further SIGs on new topics may be added.
9. The conversion to SIGs is a monumental task. Hence, it is anticipated that the process may take some time to complete. It is difficult at this stage to give an estimated timeline. Draft SIGs will be progressively rolled out as they are prepared.
10. Attached as Appendix "A" is a list of the current practice statements. We welcome comments from taxpayers and their advisers on which practice statements they want converted to SIGs as a matter of urgency.

ARE SIGs BINDING ON FRCS?

11. The next issue that needs consideration is whether SIGs are "legally binding" on the CEO. A frequent viewpoint by the Fiji taxpayer community is that FRCS's practice statements are not binding on the CEO. The implication being that taxpayers cannot rely on what is written in practice statement and this reduces the relevance of these statements.
12. This viewpoint from taxpayers has two aspects:
 - That SIGs cannot be enforced in Court. This will often be the case where a SIG contains material that is favorable to a taxpayer but the taxpayer may fear that FRCS will "reverse" its stance and argue the opposite if the matter proceeds to Court.
 - SIGs do not contain guidelines/interpretations that are applied across the board by

FRCS staff. In other words, different officers have different interpretations.

13. It is indeed the case that there is nothing in revenue legislation (especially the Tax Administration Act 2009) which explicitly states that SIGs are specifically binding on the CEO. So in that sense, it is agreed that SIGs are not “legally binding” on the CEO.
14. However, on a practical level, SIGs will be “binding” on FRCS officers because there is a clear expectation that the principles and guidelines in SIGs will be adopted by all FRCS officers where relevant and all instances of non-compliance will be carefully examined.
15. It should also be mentioned that there are practical reasons why SIGs are left non-binding in nature. It is because SIGs are broad guidelines and principles on the interpretation of laws. As such, SIGs do not pertain to specific arrangements.
16. Binding materials can only be given when the principle relate to a specific set of facts or an “arrangement”. This is what happens in Court cases - the judge(s) sets out the set of facts, discusses the laws, and then makes a judgment of how the law relates to that set of facts. SIGs cannot do that.

DIFFERENCE BETWEEN SIGS AND BINDING RULINGS

17. FRCS does give “binding” opinions - these are called “Binding Rulings” which are issued under Division 9 of the Tax Administration Act 2009.
18. Please refer to SIG 2017-2 -Public Binding Rulings for further information on the various ways taxpayers can get certainty on their tax positions by either using a Public Binding Ruling or applying for a Private Binding Ruling.

CONTENTS OF SIGS

19. SIGs generally will encompass the following:
 - Discuss FRCS's approach to the interpretation of a general area of law;
 - How FRCS will, in practice, exercise a statutory discretion or deal with practical and operational issues arising from the administration of the revenue Acts; and
 - Sets out the CEO's interpretation of the law in a specific set of circumstances in cases where a binding public ruling cannot be issued or where it is considered inappropriate.

CONSULTATION PROCESS

20. A very important aspect of the SIG development process is how FRCS consults with stakeholders in the SIG development process. They should have ample opportunities to comment

on and make submissions before the finalisation of SIGs.

21. In terms of who the relevant stakeholders are, we think the following categories are relevant:

- Taxpayers and their advisers (accountants, lawyers and tax advisors), and
- Operational FRCS staff who have direct contact with taxpayers and their advisers (auditors etc.).

22. FRCS is committed to ensuring that both sides have the same opportunity to review drafts, and provide comments and submissions.

23. We anticipate that draft SIGs will be sent as a matter of course to:

- Fiji Institute of Accountants;
- Registered Tax Agents;
- Any other industry groups; and
- Any other interested person who may wish to have their name added to the draft SIG emailing list.

24. There are numerous industry groups that represent the various sectors of the Fijian economy. Depending on the nature of the topic covered in the SIG, the draft can also be sent to the industry group. For example, a SIG that directly impacts on tourism operators can be sent to the Fiji Hotel and Tourism Association for wider dispersion to their members.

25. Other interested taxpayers or entities can also receive draft SIGs by having their names added to the recipients' database. If you would like your name to be added, please email to tipu@frcs.org.fj

26. In most cases, stakeholders will be given **10 business days** to provide their comments. However, in relation complex areas of law, a longer timeframe may be given as appropriate.

27. Where appropriate, a further draft public ruling or a revised draft public ruling may be issued for further public consultation before finalising.

28. Any changes to the law will be applied prospectively.