



STANDARD INTERPRETATION GUIDELINE 2018-02

SIG ON PUBLIC BINDING RULINGS

This Standard Interpretation Guideline (“SIG”) sets out Fiji Revenue and Customs Service’s policy and operational practice in relation to the drafting, consultation and finalization of Public Binding Rulings (“PUBRs”).

It is issued with the authority of the Chief Executive Officer of FRCS who is also the Commissioner of Inland Revenue.

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

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

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INTRODUCTION

1. The need for rulings 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.
2. In most cases, the obvious way for taxpayers to know their tax obligations is for them to obtain independent advice from their accountants, lawyers and their tax agents.
3. However, such is the nature of tax law that different interpretations can arise on a single issue. In such cases, it is often helpful for taxpayers and their advisers to know what is the CEO's interpretation on the matter. It will provide certainty to taxpayers and this is good for the economy. FRCS is fully committed to providing this certainty where it is possible and feasible.
4. However, there is a balancing act involved in this process. FRCS has limited resources and hence cannot provide advice to every taxpayer on every tax issue that is out there. FRCS is a tax collection and administration entity and is not geared up to be a tax advisory firm.
5. Consequently, the first issue that needs consideration is which matters are appropriate for FRCS to give its view on?

WHEN IS IT APPROPRIATE FOR FRCS TO GIVE ITS VIEW ON TAX MATTERS?

6. The CEO considers that the following principles should govern the circumstances in which it is appropriate for him to expend time and resources into formulating guidelines for taxpayers and their advisers:
 - Broad tax areas that are commonly encountered by a wide section of the taxpayer community – PAYE, VAT, FBT and CGT are such examples.
 - Particular tax issues that are encountered by a significant section of the taxpayer community. For example, tourism is a big part of Fiji's economy and it makes sense for FRCS to provide guidelines on complex tax issues that may be affecting the industry broadly.
 - Some taxpayers may have very specific tax issues that either affects either just themselves or a very small part of the tax community. In such circumstances, it may be appropriate for the CEO to research and formulate a view on the matter if the taxpayer is willing to contribute towards the costs associated with formulating the view (i.e. staff costs etc).

MECHANISMS FOR PROVIDING FRCS VIEW

7. Within the framework of Fiji's tax administration system, there are three main mechanisms for providing the CEO's view on certain tax matters and these are:

- Standard Interpretation Guidelines (“SIGs”)
 - Public Binding Rulings (“PUBRs”)
 - Private Binding Rulings (“PRBR”)
8. The documents listed above do different things in different circumstances. However, the major difference is between SIGs and Rulings: SIGs relate to tax topics whereas Rulings relate to tax arrangements – this is explained in detail later.
 9. The CEO has issued a SIG on the nature and contents of SIGs – please refer to *SIG 2018-1 Development and Finalisation of Standard Interpretation Guidelines*.
 10. SIGs and rulings in combination achieve three important purposes:
 - (i) Taxpayers will know with clarity what FRCS’s position is in relation to certain revenue laws – especially complex areas.
 - (ii) Two taxpayers in exactly the same situation will be treated equally because FRCS officers will use the same SIG/rulings guidelines for both taxpayers.
 - (iii) It will make the job work of FRCS officers easier and more certain – since they will have good quality analysis to use across the board with all taxpayers.

DIFFERENCE BETWEEN SIGs AND RULINGS

11. As stated above, SIGs and Rulings have the same objective of giving taxpayers certainty by providing the CEO’s view on certain tax matters. However, they do this in different ways and there are three key differences:
 - SIGs are topic specific whereas Rulings apply tax laws to one (or more) set of facts.
 - SIGs are not legally binding on the CEO (for the reasons discussed in *SIG 2018-1*) whereas Rulings are binding (refer section 61 (2) for PUBRs and section 64(3) for PRBRs); and
 - There are two types of rulings – Public and Private.

RULINGS ARE ARRANGEMENT – SPECIFIC

12. The first issue that needs consideration is the fact that Rulings are “arrangement specific”. Specifically, rulings are made in reference to an actual or proposed set of facts.
13. What this means is that the CEO provides an opinion on the application of the tax law to specific types of taxpayers or arrangements. The set of facts encapsulates a tax question (or questions). Often the question is either the set of facts giving rise to assessable income (or allowable deduction).

14. So viewed this way, Rulings operate like court judgments in tax cases – where a judge looks at the facts and decides the tax outcome for the taxpayer.
15. On the other hand, SIGs are created to provide the CEO’s view on particular tax topics. These generally will relate to a specific area of tax law. It could be something general like VAT issues affecting the tourism industry. However, some SIGs could be more specific – such as VAT zero-rating issues faced by the tourism industry.
16. Whereas Rulings are like tax case judgments, SIGs are like tax textbooks – which discuss tax principles but do not give answers to particular tax problems.
17. SIGs and Rulings can often relate to the same area of tax law. For example, tax avoidance schemes can be countered for tax purposes under section 102 of the *Income Tax Act 2015* so the CEO has issued SIG 2018-3 in relation to this topic. This SIG sets out the broad principles that the CEO considers will apply to tax avoidance schemes. However, the SIG does not give a “yes/no” answer to whether any particular factual situation will give rise to a tax avoidance scheme.
18. Instead this is done in Rulings. FRCS may have regularly encountered factual situations that may constitute tax avoidance schemes. This usually arises where a tax adviser/accountant/lawyer sells a tax avoidance “template” to its clients. Its clients then use the same template to try to avoid tax.
19. The CEO can then issue a PUBR providing an opinion on whether he considers the “template” to constitute a tax avoidance scheme.

WHY RULINGS ARE BINDING BUT SIGs ARE NOT?

20. 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.
21. In other words, SIGs do not pose tax questions for which answers/opinions need to be stated.
22. Binding material can only be given when the principles 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.
23. It should also be stressed that Rulings are issued by the CEO and binds the CEO only. If taxpayers disagree with the outcome in Rulings, they are able to have the matter tested in the courts.

DIFFERENCE BETWEEN PUBLIC AND PRIVATE BINDING RULINGS

24. While both give an answer to a tax question relating to a set of facts, but PUBRs are usually initiated by the CEO in response to issues of widespread relevance whereas PRBRs are usually done (and paid for) in response to a tax answer that a particular taxpayer is looking for.
25. PUBRs are not issued in response to taxpayer applications, but may be applied by taxpayers whose tax scenarios match those in the ruling.
26. This SIG relates only to development and finalisation of PUBRs. It is anticipated that a separate SIG will be issued shortly for PRBRs.

EXTENT TO WHICH PUBRs ARE BINDING ON THE CEO

27. Taxpayer's can rely on PUBRs and adopt tax positions accordingly if their factual situation substantially matches those facts listed on the PUBR.

WITHDRAWAL OF PUBRs

28. A PUBR can be withdrawn in whole or in part by the CEO, by publishing the notice of withdrawal in the Gazette.
29. If there are changes in the tax laws or if the CEO makes the PUBR which is inconsistent with the existing PUBR, the existing PUBR will be treated as withdrawn.
30. PUBR which is withdrawn by the notice of withdrawal, the date of withdrawal will be specified in the notice of withdrawal and if no date is specified then the date of withdrawal will be the date, notice of withdrawal published in the Gazette.
31. If a PUBR is withdrawn due to changes in the law or if the CEO issues a new PUBR, the date of withdrawal will be, date of application of the amended law or new PUBR.
32. A withdrawn PUBR will continue to apply to transactions commenced before the withdrawal date.
33. A withdrawn PUBR will not apply to transactions commenced after the withdrawal date.

WHAT LAWS CAN RULINGS BE GIVEN FOR?

34. Schedule 2 governs what is "tax law" and therefore what legislation binding rulings can be made in respect of. Paragraph (1) (h) has the effect that public binding cannot be issued in respect of customs and excise legislation.
35. Consequently, any issues that fall within customs and excise legislation cannot be the subject of a public binding ruling.

36. There are some cases that may have tax as well as customs issues. For example, exporting of goods has VAT and customs issues. Due to the limitation in paragraph 1 (h) of Schedule 2, PUBRs will only cover the VAT issues.

CONTENTS OF PUBRs

37. PUBRs 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.
- Sets out the CEO's view of the law in a specific set of circumstances in cases where a SIG cannot be issued or where it is considered inappropriate.

CONSULTATION PROCESS

38. A very important aspect of the PUBR development process is how FRCS consults with stakeholders in the PUBR development process. They should have ample opportunities to comment on and make submissions before the finalization of PUBRs.

39. 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).

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

41. We anticipate that PUBR drafts will be sent as a matter of course to:

- Fiji Institute of Accountants
- Registered Tax Agents

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

43. Other interested taxpayers or entities can also receive draft PUBRs 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

44. In most cases, stakeholders will be given 28 days to provide their comments. However, in relation complex areas of law, a longer timeframe may be given as appropriate.
45. Where appropriate, a further draft PUBR or a revised draft PUBR may be issued for further public consultation before finalizing.

PUBLIC BINDING RULING NOT A TAX DECISION

46. A tax decision is a tax assessment, determination, notice or decision against which a tax objection can be made.
47. A taxpayer dissatisfied with the tax decision will lodge an objection to the decision with the CEO. An objection is the formal process where taxpayer's assessment is assessed again by the independent team.
48. PUBR is **NOT** a **Tax Decision**, hence taxpayers cannot object it to the CEO and to the tax tribunal.

FINALISATION PROCESS

49. Once the review process is complete, the PUBR will be published in the Gazette.
50. The PUBR will be enforced from either:
 - the date specified in the PUBR, or
 - if no date is specified, from the date publication of the Gazette.
51. A PUBR will state that it is a PUBR, have a number and subject heading by which it can be identified.
52. A final copy will be posted on the website and will be sent to:
 - Fiji Institute of Accountants
 - Registered Tax Agents
 - The organisation of the industry group to which the PUBR relates, for example, issues relating to tourism industry will be sent to Fiji Hotel and Tourism Association.

Appendix A: Relevant Legislation

"TAX ADMINISTRATION ACT 2009 DIVISION 9 – RULINGS

Subdivision 1 – Public Rulings

Binding public rulings

- 61. (1) *The CEO may make a public ruling in accordance with section 62 setting out the CEO’s interpretation on the application of a tax law.*
- (2) *A public ruling made in accordance with section 62 is binding on the CEO until withdrawn.*
- (3) *A public ruling is not binding on a taxpayer.*

Making a public ruling

- 62. (1) *The CEO makes a public ruling by publishing a notice of the ruling in the Gazette.*
- (2) *A public ruling must state that it is a public ruling and have a number and subject heading by which it can be identified.*
- (3) *A public ruling applies from the date specified in the ruling and if no date is specified, from the date of publication in the Gazette.*
- (4) *The making of a public ruling is not a tax decision for the purposes of this Decree.*

Withdrawal of a public ruling

- 63. (1) *The CEO may withdraw a public ruling, in whole or in part, by publishing notice of the withdrawal in the Gazette.*
- (2) *If legislation is passed, or the CEO makes a public ruling, that is inconsistent with an existing public ruling, the existing ruling is treated as withdrawn to the extent of the inconsistency.*
- (3) *The withdrawal of a public ruling, in whole or in part, has effect –*
 - (a) *If subsection (1) applies, from the date specified in the date of withdrawal and if no date is specified, from the date notice of the withdrawal is published in the Gazette; or*
 - (b) *If subsection (2) applies, from the date of application of the inconsistent legislation or public ruling.*
- (4) *A public ruling that has been withdrawn in whole or in part –*
 - (a) *continues to apply to a transaction commenced before the public ruling was withdrawn; and*
 - (b) *does not apply to a transaction commenced after the ruling was withdrawn to the extent that the ruling is withdrawn.”*

The term “tax law” is defined as follows in section 2 of Tax Administration Act 2009:

“tax law” means a law listed in the Schedule 2.”

"SCHEDULE 2

(Section 2)

TAX LAWS

- (1) *The following are tax laws for the purpose of this Act -*
- (a) *this Act;*
 - (b) *the Gambling Turnover Tax Act 1991;*
 - (c) *the Service Turnover Tax Act 2012;*
 - (d) *the Income Tax Act 2015;*
 - (e) *[Repealed]*
 - (f) *the Value Added Tax Act; and*
 - (g) *[Repealed]*
 - (h) *any other Act, or any other written law (other than the customs and excise legislation) under which a tax is levy is imposed if responsibility for the general administration of the tax or levy is imposed on the CEO.*
- (2) *A reference to a tax law in paragraph (1) includes any regulations or other subsidiary legislation made under the law."*