STANDARD INTERPRETATION GUIDELINE 2018-04

VALUE ADDED TAX – ZERO RATING OF EXPORTS – REMITTANCE TO FIJI

This Standard Interpretation Guideline ("SIG") sets out Fiji Revenue and Customs Service's ("FRCS") policy and operational practice in relation to the VAT zero rating of exports.

It is issued with the authority of the Chief Executive Officer of FRCS.

All legislative references in this SIG are to the *Value Added Tax Act 1991* ("the VAT Act") (unless otherwise stated).

This SIG will replace Practice Statement No. 45/2017 – *Zero Rating of Exports*.

This SIG is in effect from 25 June 2018 and may need to be reviewed in the event of any relevant legislative amendments.

CONTENTS

EXECUTIVE SUMMARY

1. Various supplies of good and services are zero rated for VAT purposes under the items listed in Second Schedule of the *Value Added Tax Act 1991*.

2. There are various policy reasons why such supplies are zero rated. For most of the items in the Second Schedule, it is because the goods and services have been "exported". If Fiji does not zero rate these supplies, our suppliers will lose price competiveness against similar suppliers from countries that do not have VAT.

3. However, there are other items in the Second Schedule that do not have any "international angle" to them. For example, paragraph 27 of the Second Schedule zero rates certain supplies of transport services from a place in Fiji to another place in Fiji. These supplies have no international aspect to them.

4. The zero rating rule is a concession for suppliers – for it allows them to claim input tax credits but effectively charge no VAT on supplies made.

5. With effect from 1 August 2016, the Second Schedule has been amended to stipulate that the supplies listed in that schedule can be zero rated "provided the [CEO] is satisfied that the export earnings have been remitted to Fiji …"

6. The first thing to note is that this remittance requirement applies to those Second Schedule supplies that constitutes "export earnings". Not all Second Schedule supplies will constitute "export earnings".

7. The next issue to be considered is the meaning of the term "export earnings" and which Second Schedule paragraphs are covered under the remittance requirement.

8. The CEO considers that the term "export earnings" refers to "direct exports" and "indirect exports". Further discussion on these terms is provided in this SIG.

9. A number of practical issues arise in relation to the remittance requirement, which are considered thoroughly in this SIG.

INTRODUCTION

10. Two key concepts form the fundamental basis of VAT in Fiji (and generally internationally). The first is that VAT is a tax on consumption of goods and services, whereby the ultimate incidence of VAT falls on the end-users of the goods and services.

11. The second fundamental basis is that VAT is destination-based tax, where the VAT rate is based on the location of the customer. So in broad terms, if a good or service is sold by a Fiji based supplier and the end user is overseas, the supply will generally be zero rated for VAT purposes. In ordinary parlance, these are exports of goods and services.

12. The aim of zero rating such supplies is that Fiji's international competitiveness is not reduced as a result of charging VAT on such supplies (who may well decide to purchase such supplies from a country that does not have VAT).

13. As such, zero rating of exports is a concession. However, in return for such concessions, it makes sense (as a matter of tax policy) that the concession should only be given if the earnings are actually remitted to Fiji.

14. If the earnings stay overseas, then no concession should be granted and the supply should be charged VAT at the standard rate of 9%.

15. A number of practical issues arise in relation to the requirement for funds to be remitted to Fiji.

16. The purpose of this SIG is to provide the CEO's views on these practical issues.

LEGISLATIVE ANALYSIS

17. VAT is a tax on transactions. Section 15 governs which transactions VAT will be charged on. It states:

> **[VAT 15] Imposition of tax on supply**
>
> **"15** (1) Subject to the provisions of this Act, the tax shall be charged in accordance with the provisions of this Act at the rate of 9% on the supply (but not including an exempt supply) in Fiji of goods and services on or after 1 July 1992, by a registered person in the course or furtherance of a taxable activity carried on by that person, by reference to the value of that supply.
>
> (2) Where, but for this subsection, a supply of goods and services would be charged with tax under subsection (1), any such supply shall be charged at the rate of 0% where that supply is a zero-rated supply."

18. The effect of subsection (2) is that all zero rated supplies are charged VAT nominally at 0%.

19. Section 15 also has the effect that Fiji VAT is only applicable to supplies made "in Fiji". Section 16 governs what this means. It states:

> **[VAT 16] Place of supply**
>
> **"16** (1) For the purposes of section 15, the following provisions of this section shall apply for determining, for the purposes of the charge of tax, whether goods and services are supplied in Fiji.
>
> (2) In relation to a supply of goods which does not involve their removal from or to Fiji, those goods shall be deemed to be supplied in Fiji if those goods are in Fiji and otherwise shall be deemed to be supplied outside Fiji.
>
> (3) In relation to a supply of goods which involves their removal-
>
> (a) from Fiji, those goods shall be deemed to be supplied in Fiji;
>
> (b) to Fiji, those goods shall be deemed to be supplied outside Fiji.

(4) Subject to this section, a supply of services shall be deemed to be-
(a) in Fiji if the supplier belongs in Fiji; or
(b) in another country, if that supplier belongs in that other country."

20. Once it has been ascertained that a supply has been made "in Fiji" (and the supply is not exempt), then the next issue is whether the supply is charged VAT at standard rate of 9% or otherwise.

21. The effect of section 15(2) is that all zero rated supplies are charged VAT nominally at 0%. However, section 15 does not specify what is or is not zero rated.

22. This is instead done in the Second Schedule to the VAT Act (see Appendix A). There are two important points to note at the outset:

- Zero rating is not limited to direct exports. There are several other instances where supplies that indirectly have an overseas connection can also be zero rated. For example, supplies of insurance relating to international carriage of passengers is zero rated (paragraph 11 Second Schedule). Supplies that have no overseas connection can also be zero rated in some instances. A good example is the supply of going concerns zero rated under paragraph 8 Second Schedule, which often related to Fiji property/businesses sold by a Fiji supplier to a Fiji recipient.

- Zero rating is not limited to goods. Services can be exported too.

23. The VAT legislation was amended with effect from 1 August 2016 whereby the introduction to the Second Schedule is as follows:

"A claim for zero-rated supply of goods and services is only allowed under this Schedule provided the Chief Executive Officer is satisfied that the export earnings have been remitted to Fiji, **with respect to the following supplies** – "

24. This SIG considers the following two issues that may arise as a result of the 1 August 2016 amendment:

(i) Does the requirement for export earnings to be remitted to Fiji apply to all the paragraphs in the Second Schedule, or just those that are explicitly refer to exports? Moreover, should the CEO in this SIG specify which paragraphs the remittance requirement applies to and which ones it does not apply to?

(ii) What is the meaning of "remittance" in the context of the Second Schedule?

(iii) What practical issues can arise in relation to the remittance requirements?

Ambit of the remittance requirement

25. The introduction to the Second Schedule refers to zero-rating status being granted only where "export earnings" are remitted to Fiji. So the issue arises whether the rule only applies to those paragraphs that explicitly refer to exports.

26. The CEO considers that the following principles are pertinent to this issue:

- The introduction to the Second Schedule states that the remittance requirement applies “with respect to” **all** the paragraphs. Consequently, at a theoretical level, the introduction to Second Schedule imposes no limits on which paragraphs of the schedule the remittance requirements apply to.

- However, the introduction only applies where “export earnings have been remitted to Fiji”. Therefore, those supplies that do not yield “export earnings”, but satisfy one of the Second Schedule paragraphs will not be subject to the remittance requirement.

27. The term “export earnings” is not defined in the Second Schedule or in the VAT Act itself. Therefore, its meanings must be ascertained in accordance with its ordinary usage.

28. The term “export” is defined in the Oxford Dictionary as follows:

export

NOUN

1 A product or service sold abroad.
‘wool and mohair were the principal exports’

1.1 **(exports)** Sales of goods or services abroad, or the revenue from such sales.
‘meat exports’

1.2 **[mass noun]** The selling and sending out of goods or services to other countries.
‘the export of Western technology’

1.3 **[as modifier]** Of a high standard suitable for export.
‘export ales’

29. The above definition highlights the fact that the remittance requirement will of course apply to situations where goods are actually exported from Fiji to an overseas country. And where services are performed by a Fiji supplier and received by someone who belongs outside Fiji. These are known as “direct exports”.

30. As such, the remittance requirements will automatically apply to those paragraphs 1-5, 9-10, 13-15.

31. However, the CEO considers that the application of the remittance requirement is not limited to these “direct” exports. It also covers supplies of goods and/services that are “indirect exports” (and are able to be zero-rated under the Second Schedule).

32. The reason for this view is also in line with the policy behind this rule that the concession should be granted where earnings from **export-related** activities are actually remitted to Fiji.

33. In broad terms, “indirect exports” are those goods and services that:

- Assist, facilitate or otherwise are sufficiently connected with exported goods and services. For example, insurance supplied in relation to international carriage of passengers and goods (paragraph 11). Also, paragraph 7 states that the supply of goods “supplied pursuant to Part 12 of the Customs Act 1986, for use as stores for consumption outside Fiji on an aircraft or ship proceeding to a place outside Fiji”;

- Or are otherwise connected with export-type activities. For example, temporary imports are akin to exports because they relate to goods that will not be consumed in Fiji and will in due course leave Fiji. Paragraph 6 states that “goods supplied in the course of repairing, renovating, modifying or treating any goods which are a temporary import or ships or aircraft.” Similarly, paragraph 12 states that “the supply of services directly in connection with any goods which a temporary import or ships or aircrafts in transit in terms of the Customs Act 1986.”

34. Consequently, it is considered that the remittance requirement will also apply to paragraphs 6, 7, 11 and 12.

35. A further point needs to be noted. There are other paragraphs in the Second Schedule that give zero rated concessions to goods and services supplied irrespective of whether they are supplied in Fiji. These are:

- Paragraph 8 – going concerns;
- Paragraph 16 – the supply of sugar cane;
- Paragraph 18 – goods supplied to inbound passengers in the international disembarkation concourse of airports (the Duty Free shops);
- Paragraph 19 - supply of fertilizer solely for planting cane under the FSC Advancement Scheme;
- Paragraph 20 - supplies of goods cleared ex-bond or imported direct for or on behalf of approved persons or bodies under section 14(4)(e);
- Paragraph 21 – the handling of international inbound telecommunication services;
- Paragraph 23 – the supply by the State of Water and Sewerage Services;
- Paragraph 26 – supply of specific educational items (for supplies made between 4 January 2011 to 28 February 2011);
- Paragraph 27 – the supply of transport services relating to the carriage of passengers and goods from a place in Fiji to another place in Fiji by an omnibus licensed as a public service vehicle;
- Paragraph 28 – payments from donor agencies to the Government; and
- Paragraph 29 – payment by the Government (from monies received by donors) to contractors.

36. Many of the paragraphs listed above conceptually can never have an export angle to it. For example, paragraph 27 specifically relates to a supply within Fiji – so it is difficult to envisage any scenarios in which the remittance requirement will apply to supplies zero-rated under paragraph 27.

37. However, other paragraphs listed above can conceivably have a zero rated angle to it. For example, all sales of sugar cane are zero-rated irrespective of whether it is sold in Fiji (which is predominantly the case). However, if any sugar cane is sold overseas, it will constitute an export and as such the remittance requirement will apply.

38. Scenarios such as these may be uncommon – but they do highlight two important aspects of the remittance requirement:

    (i) The plain wording of the Second Schedule does not exclude certain paragraphs from the application of the remittance requirement.

    (ii) However, at a practical level, some paragraphs will be excluded due to the nature of the supplies to which they relate to.

Practical application of remittance requirement

39. As noted above, the requirement for zero-rating is that, it is allowed "provided the Chief Executive Officer is satisfied that the export earnings have been **remitted** to Fiji."

40. The term remitted is not defined in either the VAT Act or in the Second Schedule. Therefore, it meaning must be ascertained in accordance with its ordinary usage.

41. The term "remit" is defined in the Oxford Dictionary as follows:

    remit

    VERB
    [**WITH OBJECT**]
    …
    2 Send (money) in payment or as a gift.
    'the income they remitted to their families'

42. It is important to understand the context in which all export and export-related transactions take place between a Fiji supplier and overseas recipient of the good or service.

43. Unless the parties are associated, the overseas recipient will, in most instances, act on the Fiji supplier's instructions as to **where** the funds are to be deposited – Fiji or overseas. The contract between the parties will usually stipulate the timeframe for payment, method of payment (in money or in kind), and to whom the payment is made.

44. The Fiji supplier may be motivated to keep the earnings overseas as a method of circumventing foreign exchange controls – but the overseas recipient will, in most cases, have no self-interest in participating in such schemes.

45. If the parties (Fiji supplier and overseas recipient) are associated, then there is scope for the parties to collude in an attempt to circumvent the exchange control rules.

46. A number of issues arise in relation to this requirement:

    I. Fiji VAT registered suppliers are required to account for output tax on all supplies (including exports) in the VAT period in which time of supply takes place. At that point, the supplier may not have received the funds (and a period of credit has been provided). But the decision may need to be made soon as to whether the supply is zero rated. The wording in the Second Schedule states that zero-rated status applies if export earnings have been remitted. Does that mean the supply can be zero-rated **only after** the money has been received?

    II. If an exported supply is zero rated, but funds have not been received yet, what types of evidence does the CEO expect to see to show that the parties have **planned** to bring the money into Fiji once the money is paid by the overseas recipient?

    III. Is the remittance requirement an "all-or-nothing" test, or does it allow apportionment? In other words, if only part of the total export price is remitted to Fiji, then is only the remitted part zero-rated?

    IV. Should the CEO stipulate a time-frame for when funds are expected to be remitted to Fiji?

    V. In cases where goods and services have been exported on credit, what principles govern the practical application of the remittance requirement?

    VI. What principles govern zero-rating status in cases of bad debts? At what stage can a debt be classified as "bad"?

    VII. What does "remitted to Fiji" mean? Does it have to mean that funds are transmitted to Fiji? Or is it sufficient if the funds are applied for the benefit of someone in Fiji?

    VIII. What are the implications for barter transactions?

    IX. Do the funds have to be actually paid to the Fiji supplier? Or is it sufficient that the funds have been paid or applied to the benefit of anyone in Fiji?

    X. Is temporary remittance to Fiji sufficient to satisfy the test (i.e. funds are sent to Fiji but taken out of the country soon after)? For example, Person A is about to migrate to Australia. He has machinery that he sells to Tonga. The funds are received in Person A's Fiji bank account but transferred to his Australian bank account soon after.

47. Each of these issues are considered in detail below:

I Status at time of supply

48. All registered persons are required to account for VAT on all taxable supplies (both standard rated at nine percent (9%) and zero rated at zero percent (0%).

49. This is of course declared in their regular VAT returns – one or three monthly depending on their turnover levels.

50. If they have exported goods in a particular VAT period, they will have to decide in each applicable interval's VAT return how to account for the export remittances, whether zero – rated or not.

51. The issue, hence, in this regard is, they will have to decide at point of lodgment of VAT return whether or not an Export transaction is zero – rated even though payment for exports is not fully settled yet by the overseas recipient. In other words, the registered person decides now on how export will be accounted for even before receiving payments for exported goods/services.

52. If FRCS takes a hard-line approach to the wording of the remittance requirement, we will not allow registered persons to get zero rating status unless and until the money has been brought to Fiji.

53. Regardless of the earlier paragraph, we in FRCS intend not to take the hard line position, compromising our core vision, which is trade facilitation. We will allow for zero – rating on a conditional basis.

54. Instead, we will allow for zero – rating even in the case where money has not been remitted to Fiji at point of lodgment of VAT return but only if taxpayer justifies claims via evidence that there is a solid plan to bring the funds back to Fiji.

55. Zero – rating of exports is not a giveaway, rather it's a major concession intended to support and boost the Fiji export market. Registered persons are therefore advised to capitalize on this concession and not abuse it.

56. It is imperative to note that remittance has far greater impact on the greater Fijian economy in terms of the multiplier effects of the circulation of remitted proceeds in the economic cycle.

II Evidence that there is a plan to bring the fund into Fiji

57. As a source of evidence, we will look at the contract governing the supply between the exporter and the overseas recipient. It should show the timeframe of payment, method of payment, exporter's bank account and the recipient of the payment. This information should suffice at point of verification by FRCS.

58. The contract must be evidenced in writing. Verbal arrangements will not suffice nor will it constitute a legal contract.

59. Taxpayers can still have verbal arrangements as a means of commercial practice, however, for the purpose of zero – rating the supply, the concession will not be granted.

60. If at point of lodgment of return the timeframe of payment is uncertain, FRCS will allow a window of three (3) month from time of supply for payment to be remitted.

61. However, the mandatory requirement in such cases is a written contract outlining all the terms and conditions of the supply between the exporter and the overseas recipient.

62. FRCS also considers that traders can opt to maintain foreign exchange earnings in offshore bank accounts upon Reserve Bank of Fiji (RBF) approval. FRCS, in such case will have some allowance around this provided the exporter is able to satisfy us with the Documentary requirements and approval from RBF.

63. With the RBF approval, some traders may choose to buy raw materials/merchandise with ease from its Importing counterpart. FRCS will also consider this provided exporter provides documentary requirements and will align its stance to that of RBF's Foreign Currency Payments Guideline.

64. It is also noted that remittances, as per approval by RBF can be in the form of **merchandise imports**, which has a delegated limit of $100,000 per transaction and **other business payments**, which has a delegated limit of up to $100,000 per invoice.

65. It is therefore the responsibility of the exporter to satisfy the FRCS CEO with the applicable documentary requirements so that the zero – rating concession is fairly granted.

III Is the test "all or nothing" or is apportionment allowed?

66. The issue here is whether the remittance requirement is an "all or nothing" test. In other words, whether the full amount of the export sale needs to be remitted before the time of supply in order for the zero-rating concession to be given? After all, this can be one of the interpretation for the words "export earnings **have been** remitted to Fiji".

67. The CEO considers that this will be an overly harsh interpretation for taxpayers. In effect, it will mean that zero-rating will be denied forever if funds are not remitted prior to the time of supply (for that is when the decision has to be made whether the supply is zero-rated or not).

68. Consequently, the CEO will allow zero-rating to the extent the funds are remitted to Fiji. So, if only part of the funds is actually (or expected to be, as the case may be) remitted to Fiji, then that part only will be zero-rated.

69. **THREE** common scenarios arise:

70. **First scenario** – (assume monthly VAT returns filing frequency). Say, Kava Co. exports $100,000 to Aussie Cobber Company in Australia in August 2017. The contract between the parties state that 100% of the funds will be paid into a Fiji bank account by 30 November 2017.

71. In the August 2017 VAT return, all $100,000 is zero rated.

72. However, come 30 November, only $70,000 is paid into Fiji bank account and the rest is either written off or paid into an account outside of Fiji. So, in the VAT return for November 2017, output tax adjustment will be required for the unremitted portion, which is $30,000.

73. **Second scenario** – Kava Co. exports $100,000 to Aussie Cobber Company in Australia in August 2017. The contract between the parties state that $70,000 of the funds will be paid into a Fiji bank account by 30 November 2017 and $30,000 in required to be into Kava Co.'s New Zealand bank account.

74. In the August 2017 VAT return, $70,000 is zero rated whereas $30,000 is standard rated at 9%.

75. However, by November 2017, out of the $70,000 payable to Fiji, only $60,000 is actually remitted to Fiji.

76. So in the November 2017 VAT return, a further output tax adjustment of $10,000 is required to be made.

77. **Third scenario** – same as Second Scenario, Kava Co. exports $100,000 to Aussie Cobber Company in Australia in August 2017. The contract between the parties state that $70,000 of the funds will be paid into a Fiji bank account by 30 November 2017 and $30,000 is required to be in Kava Co.'s New Zealand bank account.

78. In the August 2017 VAT return - $70,000 is zero rated whereas $30,000 is standard rated at 9%.

79. But eventually the $30,000 that was supposed to be paid into New Zealand bank account is instead, brought back to Fiji in the month of September.

80. So, in this case, FRCS will allow an input tax deduction based on the $30,000 remitted to Fiji in the September VAT return to reverse the output tax earlier paid by the taxpayer in August.

81. This is allowed as an input tax deduction on the underlying basis as it fits in with the scheme and purpose of the remittance requirement.

IV Timing issues

82. Most cases involving exports of goods will involve the following steps:

- Fiji supplier negotiates export contract with overseas buyer;
- Overseas buyer pays a deposit or nothing at all;

- The Fiji supplier ships the goods to the overseas buyer;
- The overseas buyer pays for the full contract price (or the balance) after the goods have been shipped. In effect, the Fiji supplier provides a period of credit to the buyer as outlined in the export contract.

83. Similarly, most cases of export of services will involve payment after the services have been provided.

84. There are 2 distinct issues here:

    - How soon after time of supply will compliance checks be conducted by FRCS? This is an internal FRCS timeframe for monitoring compliance with the remittance requirement.

    - What are the broader principles for dealing with the remittance requirement when credit has been provided?

85. In respect of the first issue, generally FRCS will conduct compliance check after 6 months from the time of supply of the export.

86. However, this does not mean that the zero rating status will be automatically revoked if funds have not been remitted at the 6-month mark.

87. If funds have not been received at this point, FRCS officers will conduct (among other things) the following checks:

    - Examine the contract terms in respect of the period of credit given. If it is longer than 6 months (say 12 months), FRCS will conduct a follow-up check at the latter stage.

    - However, if the period of credit was less than 6 months, and funds have not been remitted as yet, FRCS will seek to disallow zero-rating unless sufficient explanations are provided to justify why funds have not been received.

88. These points are examined in greater detail below.

V Principles governing remittance in the case of credit given

89. When goods and services are exported on credit, the remittance requirement would be deemed to be satisfied provided the registered person can show that there is a definite plan for the funds to be remitted to Fiji.

90. The contract would need to specify a timeframe for when the payment is expected to be remitted.

91. If funds are not remitted by the due date, the registered persons would need to show that they still expect to receive the funds.

VI Bad Debts

92. Another issue which must be considered is, export earnings that are initially zero-rated but later unrecoverable and written off.

93. Consider the first scenario of the Kava Co. example above, whereby Kava Co. exports $100,000 to Aussie Cobber Company in Australia in August 2017. The contract between the parties state that 100% of the funds will be paid into a Fiji bank account by 30 November 2017.

94. In the August 2017 VAT return, all $100,000 is zero rated for VAT purposes. However, by 30 November 2017, only $80,000 has been remitted to Fiji and it has become apparent that Aussie Cobber Company is in financial trouble and will not be able to pay the balance of $20,000. Kava Co. decides to write-off the balance as a bad debt.

95. Since $20,000 has not been remitted, we would ordinarily expect an output tax adjustment in the VAT return for the period ended 30 November 2017. However, where the CEO is satisfied that the debt has been written off in Kava Co.'s books, no output tax adjustment would in fact be required. The rationale for this is as follows:

96. If a literal interpretation of the remittance requirement is taken in respect of bad debts, then initially an output tax adjustment would be required for the VAT component of the $20,000 written off in the November 2017 VAT return.

97. However, since the debt has been written off, an input tax adjustment would be allowed for the **same amount in the same period** under section 43 of the VAT Act. The net effect of the output and input tax adjustments for the November 2017 period would be nil.

98. However, the position stated above applies only if the debt has been written off. It is anticipated that SIGs and/or rulings will be issued to provide further guidance on the requirements for a bad debt write-off.

VII What does "remitted to Fiji" mean?

99. The issue here is the practical meaning of the term "remitted to Fiji".

100. In most cases, the overseas recipient would deposit funds into a Fiji bank account. This would obviously satisfy the remittance requirement.

101. However, the position may not be so straight forward where the export earnings are remitted in another mode. The financial world is getting more complicated so the avenues for making international payments in cash and in kind are increasing.

102. What, for example, if funds go straight from overseas to purchasing unit trust or shares? No Fiji bank account involved, but still there is a transfer of economic value from “remitted funds” to “investment funds.”

103. In broad terms, the CEO will look at any mode of remittance to ensure:
   - The remittance ends up purchasing assets or otherwise for use in Fiji,
   - Is otherwise applied for the benefit of Fiji.

104. In terms of records keeping to show that funds have been remitted to Fiji, FRCA will work in consultation with the Reserve Bank of Fiji to verify information relating to inward remittances, approvals to keep funds offshore and exchange rate conversions. Currency conversions will be based on commercial bank exchange rates.

105. Verification on inward remittances will take place six months after the export transaction date or such time extended by the CEO.

106. Exporters will be required to keep records to support that export earnings were remitted to Fiji. Where applicable, records of transactions relating to funds kept offshore must be maintained as well.

107. If export earnings are not brought to Fiji or if there is no documentation to support why funds were kept offshore, the registered person will be issued with a notice of the CEO’s intention to make an adjustment for Output tax. An amended assessment will be issued if no response is received within 14 days.

108. The provisions relating to voluntary disclosures, record keeping requirements and imposition of penalties in the Tax Administration Act 2009 will apply.

VIII Implications for barter transactions?

109. In some situations, export earnings will be remitted via barter transactions. For example, in our Kava Co. example, say Aussie Cobber takes $100,000 worth of kava and repays by shipping $100,000 worth of boomerangs to Kava Co.

110. Here the remittance requirement would be deemed to be satisfied.

111. However, care should be taken in relation to the following:

   - The value of the barter must be readily identifiable.

   - Export documentation must clearly state the description and quantity of goods imported.

IX Do the funds have to be remitted to the supplier?

112. The issue here is, whether the export earnings have to be remitted to the supplier in Fiji? Or is it sufficient that someone in Fiji receives the remitted funds (which may or may not be the supplier himself)?

113. The CEO considers that the remittance rule is satisfied as long as someone in Fiji receives the export earnings. It is not necessary that the earnings be remitted to the bank account of (or otherwise for the benefit of) the Fiji registered person who exported the goods or services.

114. This view accords with the scheme and purpose of the remittance requirement in the Second Schedule.

115. The plain words of the remittance rule do not state that funds must be remitted to the supplier in Fiji.

116. Moreover, the purpose for this rule is that zero-rating concession is given only if the funds are actually brought into Fiji for use here. Consequently, it becomes irrelevant who the funds are given to in Fiji.

X Temporary remittance

117. The requirement in the Second Schedule is that the funds "have been remitted to Fiji". An issue arises in relation to temporary remittances to Fiji.

118. Consider the following example:

> Sachin Tendulkar lives in Fiji and operates a tractor business. His business has 10 tractors.
>
> He decides to migrate to India to become a cricketer. In August 2017, he sells all his tractors to a Tonga based tractor business for $500,000. The Tongan recipient pays all the funds into Mr. Tendulkar's ANZ Fiji bank account on 30 August.
>
> All of the funds are transferred to India on 1 September 2017.

119. The issue is whether the funds staying in Fiji for a matter of days is sufficient to meet the remittance requirement. Moreover, is it appropriate for the CEO to specify a time frame for how long the funds must stay in Fiji in order for the remittance requirement to be satisfied?

120. The CEO considers that the following principles should apply:

121. It is not appropriate for the CEO to specify a timeframe for how long the funds must stay in Fiji. Instead the focus should be on the genuineness and reasonableness of the reasons why remitted funds are subsequently taken out of Fiji.

122. In broad terms, the following guidelines will be used by the CEO's officers:

123. If the funds are initially remitted to Fiji but taken out because the taxpayer is ceasing to operate completely in Fiji, then the remittance requirement will still be satisfied. This would cover the example above where the supplier is migrating overseas. It would also cover situations where the Fiji supplier is a company that is winding down in Fiji and its owners are moving overseas.

124. However, where the Fiji supplier is continuing to operate in Fiji and the remitted funds are taken out of Fiji within a short period of time, FRCS would then examine the underlying reasons for the transfer.

125. If the taxpayer can show the transfer was necessary due to normal trading conditions, the remittance requirement would be deemed to be satisfied.

126. However, if the evidence shows the taxpayer had pre-planned that the export funds would always be for use outside Fiji, the remittance requirement would not be satisfied and the supply would be standard rated at 9%.

127. The onus would be on the taxpayer to show that the funds transfer out of Fiji was for genuine commercial reasons. The evidence would need to show that the funds were not transferred for the main purpose of exploiting the remittance requirement rules.

128. For further information, please email us on tipu@frcs.org.fj