



STANDARD INTERPRETATION GUIDELINE 2020-13

INCOME TAX ACT 2015 – INCOME TAX (COLLECTION OF PROVISIONAL TAX) REGULATIONS 2016 - CERTIFICATE OF EXEMPTION (PROVISIONAL TAX)

This Standard Interpretation Guideline (SIG) sets out Fiji Revenue and Customs Service's (FRCS) policy and operational practice in relation to the re-introduction of Certificate of Exemptions which was announced during the COVID-19 Response Budget on 26th March 2020.

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

All legislative references in this SIG are to the Income Tax Act 2015, Income Tax (Collection of Provisional Tax) Regulations 2016 and Legal Notice No. 31 Income Tax (Collection of Provisional Tax) (Amendments) Regulation 2020 (unless otherwise stated).

This SIG is in effect from 16th June 2020 and may need to be reviewed in the event of any relevant legislative amendments.

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PURPOSE

1. The purpose of this Standard Interpretation Guideline (SIG) is to discuss CEO's interpretation and application of how the Certificate of Exemption can be availed by persons engaged in contracts for services.

INTRODUCTION

2. The Provisional Tax system was amended in the Covid-19 Response Budget 2020 and is applicable to persons who engage in contracts for services in Fiji.
3. The Minister for Economy, in his 2020 Covid-19 Budget Response address stated that the *"certificate of exemption will be reintroduced for the 5 percent Provisional Tax which further boosts businesses' cash flow."*
4. Hence, the COE allows the recipient of the service to receive the gross contractual payment without any Provisional Tax (PT) deducted from the payment.
5. "Persons" for the purpose of this SIG is applicable to businesses and companies only. However, in situations where the service provider is a Non – Profit Organisation, Fiji Revenue and Customs Service (FRCS) will facilitate accordingly upon request for a COE, as and when applicable.
6. "Contract for service" would have the same meaning as per defined under SIG 2019-20 Income Tax Act 2015 – Withholding of tax from Commissions and other payments under a Contract for service.
7. The full text of the legislative provisions is contained in the Appendix.

LEGISLATIVE ANALYSIS

INCOME TAX (COLLECTION OF PROVISIONAL TAX) REGULATIONS 2016

8. Regulation 3A is the legislative reference for the certificate of exemption on PT.

Who is eligible for COE?

9. Sub-regulation 1 of Regulation 3A¹ provides that the CEO may, subject to conditions he or she thinks fit, issue a certificate of exemption to any person who is engaged in a contract for service and is required to pay PT.
10. This would mean that the COE will be issued to persons whose contractual income is taxable in the hands of such persons. Ideally, eligible persons to apply for a COE would be businesses and companies.
11. However, in cases where the contractual income is exempt income in the hands of the service provider, such contractual income is exempt income in the hands of the service provider, unless it forms part of the service provider's taxable income.
For instance, in situations where a contractual agreement is between a company or business and a non – profit organisation (NPO), where the NPO is the service provider, FRCS can facilitate with issuance of COE for the NPO, upon request by the NPO.

¹ Legal Notice No. 31 – Income Tax (Collection of Provisional Tax) (Amendments) Regulations 2020

What is the implication of the COE?

12. Sub-regulation 2 of Regulation 3A² states that a person issued with a certificate of exemption is entitled to receive any monies due under any contract for service without any deduction of any sum as provisional tax.
13. Hence, a COE holder is entitled to receive the gross contractual payment from the services provided. No provisional tax will be deducted from such sums under sub-regulation 2.
14. Sub-regulation 3 of Regulation 3A³ provides that the CEO may, if he or she thinks fit, withdraw a certificate of exemption by giving a written notice to the certificate holder.
15. In such situation, if it is later discovered that the eligible person does not honor arrangements (including lodgments and payments) made with the Service or the COE holder engages in avoidance activities or, the COE may be withdrawn and a written notice will be served to the COE holder to validate the withdrawal process.

COE Requirements

16. The requirements to avail the COE are as follows:
 - Completed *Application for Certificate of Exemption from Contractors Provisional Tax (IRS603)*.
 - Tax compliant (including lodgments and payments); and
 - Customs compliant (including lodgments and payments).

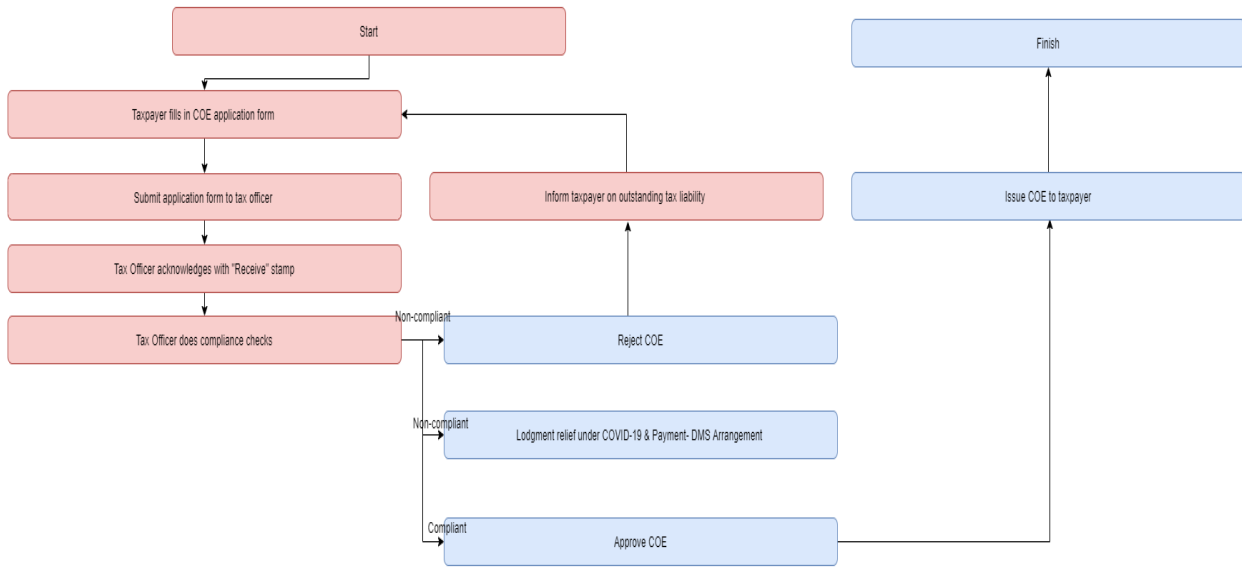
Application

17. The COE application form must be completed by the COE applicant and submitted to Customer Service Center counter officers.
18. The receiving Customer Service Officer acknowledges application with “Received” Stamp.
19. The Customer Service Officer carries out compliance checks; both for Tax and Customs lodgments and payments.
20. If the COE applicant is non – compliant in terms of his/her tax or Customs obligations, the COE application will be declined and customer will be informed accordingly of the outstanding obligations, be it lodgments or payments.
21. On the other hand, if the customer is fully compliant, the COE application will be approved.
22. For further information and clarification in regard to this SIG, please email us at tipu@frcs.org.fj

² Legal Notice No. 31 – Income Tax (Collection of Provisional Tax) (Amendments) Regulations 2020

³ Legal Notice No. 31 – Income Tax (Collection of Provisional Tax) (Amendments) Regulations 2020

APPENDIX ONE: FLOWCHART



APPENDIX TWO: LEGISLATION

INCOME TAX (COLLECTION OF PROVISIONAL TAX) REGULATIONS 2016

Table of Amendments

Income Tax (Collection of Provisional Tax) Regulations 2016 (LN 9 of 2016) commenced on 1 January 2016, as amended by:

Amending Legislation	Date of Commencement
Income Tax (Collection of Provisional Tax) (Amendment) Regulations 2019 LN 40 of 2019	1 August 2019
Income Tax (Collection of Provisional Tax) (Amendment) Regulations 2020 LN 31 of 2020	1 April 2020

[Regulation 3A] Certificate of exemption on provisional tax

(1) The CEO may, subject to conditions he or she thinks fit, issue a certificate of exemption to any person who is engaged in a contract for service and is required to pay provisional tax.

(2) A person issued with a certificate of exemption is entitled to receive any monies due under any contract for service without any deduction of any sum as provisional tax.

(3) The CEO may, if he or she thinks fit, withdraw a certificate of exemption by giving a written notice to the certificate holder.

[Reg 3A insrt by LN 31 of 2020, Reg 2, effective 1 April 2020]