



STANDARD INTERPRETATION GUIDELINE 2020-26

TAX ADMINISTRATION ACT 2009 – IMPOSITION OF AUDIT PENALTIES

This Standard Interpretation Guideline (SIG) sets out Fiji Revenue and Customs Service's (FRCS) policy and operational practice in relation to the imposition of audit penalties by FRCS Auditors.

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

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

This SIG is in effect from 1st August 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 SIG is to issue a practical guidance on the imposition of audit penalty on false or misleading statements made to FRCS tax officials.
2. The entire audit penalty regime has been simplified as a result of amendments made to the TAA in the 2020-2021 National Budget. Therefore, the CEO has considered it necessary to provide awareness and guidelines to the taxpayer community on the legislative changes made to audit penalty provisions.

INTRODUCTION

3. The penalties regime is established within a tax system to administer tax compliance. Not only does it encourage compliance, it also ensures taxpayers take reasonable care when complying with their tax obligations.
4. The new amendment to sections 46 and 46A in the 2020-2021 National Budget provides for a more consistent and fair application of the audit penalties. The existing audit penalties are being replaced with a standard penalty at 15% of the tax shortfall or tax benefit arising from overstatement.
5. Taxpayers who purposely disengage from the compliance system and avoid their tax obligations will be firmly and fairly dealt with in accordance with law. Penalties may be a harsh compliance measure at times, however, it is simply a financial cost as a consequence for breaching the law.
6. The penalties covered under this SIG are administrative penalties imposed under the TAA 2009. On the other hand, it is distinguished from court – imposed penalties which is imposed by a court following the conviction of a taxpayer for an offence provided under the law.
7. For the purpose of this SIG, all references to “penalty” or “penalties” are to the administrative penalties imposed by FRCS tax officers/auditors in the course of carrying out a tax audit, unless explicitly noted otherwise.
8. Therefore, this SIG provides the CEO’s interpretation on the audit penalties and acts as a guide for application purpose.
9. This SIG is binding on all FRCS officers who are authorised on a daily basis to apply penalties.
10. Examples illustrated in this SIG demonstrate the CEO’s interpretation and application of the audit penalties. The examples do not cover the infinite number of factual scenarios that may arise. The relevant legislative provisions must be considered and applied to each case on its particular facts. That is, conclusions should not be drawn by determining whether the facts of a particular case may be analogous with particular examples, but rather on the basis of applying the correct tests established by the law.
11. The full text of the legislative provisions is contained in the Appendix.

LEGISLATIVE ANALYSIS

Section 46 – Penalty for making false or misleading statement

12. The following part of this SIG sets out the legislative provisions relevant to the imposition of audit penalties under Section 46.

13. For the purpose of this SIG, the CEO interprets key terms given under Section 46 as follows:

“omit” means leave out or exclude (someone or something) , either intentionally or forgetfully or fail or neglect to do¹.

“false” means not according with truth or fact; incorrect.²

“misleading” means giving the wrong idea or impression.³

“statement” is defined under section 46(6) of TAA 2009;

“tax shortfall” in accordance with Section 46 means that tax liability for a person computed on the basis of the statement is less that it would have been if the statement had not been false or misleading.

14. Section 46(1)(a) and (b) outline and establish three (3) key requirements which must be satisfied for section 46(1) to apply to a person:

- i. A statement is made or there is an omission from a statement made to a tax officer;
- ii. The statement is false or misleading or the omission leads the statement to be false or misleading in a material particular; and
- iii. The false or misleading statement has resulted in a tax shortfall.

15. Section 46(6) defines “statement” for the purpose of Section 46 and 46A, as a statement made to a tax officer in writing or orally –

- i. in any application, certificate, declaration, notification, tax return, objection, or other document furnished or lodged under a tax law;
- ii. in any information required to be furnished under a tax law;
- iii. in any document furnished to a tax officer;
- iv. in answer to a question asked of a person by a tax officer; or
- v. to another person with the knowledge or reasonable expectation that the statement would be passed on to a tax officer.

16. The CEO considers that statement should be in the form of any of the above; and is applicable whether it is in writing or oral. The emphasis is that the statement is made to a tax officer.

17. The first requirement of section 46(1) looks at omission(s) from a statement made to a tax officer. The law refers to the term “omits”, however it is not defined within TAA 2009. Therefore, reference is made to its ordinary meaning as per para 13 above.

18. Therefore, if a statement is made or there is an omission from a statement that is made to a tax officer, the first requirement is satisfied.

19. Following the discussion on the first requirement, the second requirement that the statement must be “false or misleading in a material particular” is discussed.

¹ <https://en.oxforddictionaries.com/definition/omit>

² <https://en.oxforddictionaries.com/definition/false>

³ <https://en.oxforddictionaries.com/definition/misleading>

20. The terms “false or misleading” are not defined within TAA 2009. However, the terms have been discussed in a domestic law and guidance is sought from the same.
21. In the case of Taxpayer S and Fiji Revenue and Customs Authority, the Resident Magistrate, Mr. Andrew J. See, in determining whether taxpayer had made a statement that was false or misleading in a material particular held the following:
- “Insofar as the terms false and misleading are concerned, **the Decree does not define either of these expressions. Given its plain meaning, the term ‘false’ has been defined to mean “not true or correct; erroneous: a false statement; a false accusation”. The terms ‘misleading’ as “to lead or guide wrongly; lead astray, to lead into error of conduct, thought, or judgement”.** (See also *Given v C.V. Holland (Holdings) Pty Ltd (1977) 29FLR 212*). “
- [Emphasis added]
22. Therefore, the CEO is of the view that the ordinary meanings of false and misleading will be considered when assessing the second requirement.
23. The terms “in a material particular” is dependent on a case by case on the facts and circumstances of each audit case.
24. The third requirement that needs to be satisfied under section 46(1) is that the false or misleading statement has resulted in a **tax shortfall**. In other words, this means that a tax shortfall arises as a result of a false or misleading statement. It arises if the tax liability of a person computed on the basis of the statement is less than it would have been if the statement had not been false or misleading.

Section 46(5) – Exemptions from Section 46 Penalty

25. Once such determination is made under Section 46(1) above, attention should then be drawn to Section 46(5) as the basis for whether taxpayer is **exempted** from Section 46 penalty or not.
26. The above is supported by the case of *Investment Limited Company vs. Fiji Revenue & Customs Authority*⁴, in reviewing the grounds of appeal by the Appellant, Judge K. Kotigalage, stated the following:
- “On the above Ground of Appeal, the relevant provision in the Tax Administration Decree is the Section 46(2). As submitted by the Appellant, **the penalty cannot be imposed ignoring the Section 46(5) of the Tax Administration Decree..... Imposing penalty under Section 46(2) cannot be effected in isolation or arbitrarily. The Respondent cannot overlook the Section 46(5) and the said provisions of the said Section should be applied to the facts of the case...**”
- [Emphasis added]
27. There are two limbs that will be considered under section 46(5). This means that either one of the two limbs (section 46(5)(a) or section 46(5)(b)) can apply in determining whether the exemption will apply or not.

⁴ Appeal No. HBT 10 of 2013

28. The first limb, section 46(5)(a) has two requirements that will be elaborated further in this SIG. The elements are as follows:
- a) “did not know” and
 - b) “could not reasonably be expected to know”.
29. The second limb of this provision of the law applies to a self-assessment taxpayer.

Limb 1 - Section 46(5)(a)

“Did Not Know”

30. The first requirement of section 46(5)(a) refers to the phrase “*did not know*”. This requirement refers specifically to a person who made the statement.
31. For the purpose of section 46(5)(a), the CEO considers “*did not know*” to mean that the person who made the statement is unaware of his or her tax obligations when making the statement.
32. This requirement is subjective as it has to be further on qualified under the below mentioned basis.

“Could Not Reasonably Be Expected to Know”

33. The second requirement of section 46(5)(a) refers to the phrase “*could not reasonably be expected to know*”.
34. Under this provision, no penalty is payable if the person who made the statement could not reasonably be expected to have known that the statement or omission made was false or misleading.
35. This element is objectively determined. This means that determination is not based on personal feelings or opinions. Rather it is based on facts of the case.
36. The domestic case law *Taxpayer S vs Fiji Revenue and Customs Authority*,⁵ Resident Magistrate Andrew J See, in trying to respond to whether there was any defense available under section 46, stated the following:

“The Tribunal is not satisfied that the Applicant has **proved beyond the balance of probability, that she did not know and could not reasonably have been expected not to have known**, that some of the remittances received into her bank account may have not possibly been regarded as income of the purposes of the *Income Tax Act (Cap 201)*”.
[Emphasis added]

37. When analysing the facts and circumstances relating to the domestic case, the Resident Magistrate ruled that based on the case that has been mounted and the evidence before the Tribunal, the defense available at Section 46(5) was not satisfied.⁶
38. Hence, in civil trials, the evidence is on the *balance of probabilities* basis. This simply means that the burden of proof is on the taxpayer in accordance with Section 21(1)(a)⁷ to prove on the balance of

⁵ Income Tax Appeal No 14 of 2012

⁶ Income Tax Appeal No 14 of 2012

⁷ Referenced to TAA 2009

probabilities that he/she did not knowingly make a false or misleading statement, and that he/she could not reasonably have expected to know those statements were to be false or misleading.⁸ For this purpose, the onus is on the taxpayer to prove the two requirements of section 46(5)(a).

Limb 2 – Section 46(5)(b)

39. The second limb of this provision of the law applies to a self-assessment taxpayer. Self-assessment taxpayer for the purpose of this SIG refers to taxpayers who lodge self-assessment returns as stipulated under Third Schedule, Part B of TAA 2009.
40. Importantly, the position taken by the self-assessment taxpayer must relate to a contentious area of the law or a case of uncertainty in the application of the law to the taxpayer's circumstances.
41. This discussion is applicable on a case by case basis for the purpose of imposing the exemption provision, Section 46(5).
42. Once the determination is made under either Section 46(5)(a) and/or Section 46(5)(b) and either Section 46(5) exemption provision is satisfied, then no audit penalty will apply.
43. Section 46(5A) has an exception to the exemption under section 46(5)(b). It states that if a position taken by the taxpayer in making a self-assessment is contrary to a public ruling in force under section 62 or a private ruling issued to the taxpayer under section 66 of TAA then it will not be regarded for the purpose of section 46(5)(b) unless the ruling is held to be incorrect.
44. If either exemption provision is **not** satisfied, the tax officer's attention must then be directed to Section 46(2).

Section 46(2) – How is Tax Shortfall Penalty Calculated?

45. Section 46(2) has been amended in the 2020-2021 National Budget. The penalty regime has been simplified and the formula to compute audit penalty is set out in this subsection.
46. In the case of **income tax**, the penalty will be calculated as follows:

$$\text{Penalty} = A \times r \times t$$

where –

A is the tax shortfall

r is the rate of penalty at 15%

t is the number of years after the year of assessment for the tax return

Note:

- i. **t** excludes the year in which the amended/audit assessment is raised for the purpose of calculating audit penalty for income tax; and
- ii. **t** is the number of completed years after the year of assessment for the tax return. Part of the year will not be taken into consideration.

⁸ Income Tax Appeal No 14 of 2012

Example 1 – Income Tax penalty for a calendar year

XCo Ltd did not report part of the sales to FRCS for tax year 2017. XCo’s tax year is the calendar year. The omitted amount is \$100,000. The company was audited and on 10 April 2021, an audit assessment of \$100,000 was made by FRCS tax officer.

What will be the penalty imposed on YCo Ltd?

CEO’s position: The audit penalty will be computed as follows:

Step 1: Calculate the tax shortfall where corporate tax rate is 20%

$$\begin{aligned} \text{Tax Shortfall} &= \text{Omitted Amount} \times \text{Corporate Tax Rate} \\ &= \$100,000 \quad \times \quad 20\% \\ &= \underline{\$20,000} \end{aligned}$$

Step 2: Calculate the penalty on the tax shortfall

$$\begin{aligned} \text{Audit Penalty} &= A \times r \times t \\ &= \$20,000 \times 15\% \times 3\text{years} \\ &= \underline{\$9,000} \end{aligned}$$

Example 2 – Income Tax penalty for a substituted tax year

YCo Ltd did not report part of the sales to FRCS for tax year 2019. YCo’s financial year/tax year is October 2018 to September 2019. The omitted amount is \$600,000. The company was audited and on 1 March 2021, an audit assessment of \$600,000 was made by FRCS tax officer.

What will be the penalty imposed on YCo Ltd?

CEO’s position: The audit penalty will be computed as follows:

Step 1: Calculate the tax shortfall where corporate tax rate is 20%

$$\begin{aligned} \text{Tax Shortfall} &= \text{Omitted Amount} \times \text{Corporate Tax Rate} \\ &= \$600,000 \quad \times \quad 20\% \\ &= \underline{\$120,000} \end{aligned}$$

Step 2: Calculate the penalty on the tax shortfall

$$\begin{aligned} \text{Audit Penalty} &= A \times r \times t \\ &= \$120,000 \times 15\% \times 1\text{year} \\ &= \underline{\$18,000} \end{aligned}$$

Example 3 – Income Tax penalty for multiple tax years

BCo Ltd did not report part of the sales to FRCS for tax years 2017 to 2019. BCo's financial year/tax year is the calendar year. The company was audited and on 1 February 2021, the following audit assessment were made by FRCS tax officer.

Tax year 2017 – \$100,000

Tax year 2018 – \$90,000

Tax year 2019 – \$60,000

What will be the penalty imposed on BCo Ltd?

CEO's position: The audit penalty will be computed as follows:

Step 1: Calculate the tax shortfall where corporate tax rate is 20%

2017

$$\begin{aligned}\text{Tax Shortfall} &= \text{Omitted Amount} \times \text{Corporate Tax Rate} \\ &= \$100,000 \quad \times \quad 20\% \\ &= \underline{\$20,000}\end{aligned}$$

2018

$$\begin{aligned}\text{Tax Shortfall} &= \text{Omitted Amount} \times \text{Corporate Tax Rate} \\ &= \$90,000 \quad \times \quad 20\% \\ &= \underline{\$18,000}\end{aligned}$$

2019

$$\begin{aligned}\text{Tax Shortfall} &= \text{Omitted Amount} \times \text{Corporate Tax Rate} \\ &= \$60,000 \quad \times \quad 20\% \\ &= \underline{\$12,000}\end{aligned}$$

Step 2: Calculate the penalty on the tax shortfall

2017

$$\begin{aligned}\text{Audit Penalty} &= A \times r \times t \\ &= \$20,000 \times 15\% \times 3\text{years} \\ &= \underline{\$9,000}\end{aligned}$$

2018

$$\begin{aligned}\text{Audit Penalty} &= A \times r \times t \\ &= \$18,000 \times 15\% \times 2\text{years} \\ &= \underline{\$5,400}\end{aligned}$$

2019

$$\begin{aligned}\text{Audit Penalty} &= A \times r \times t \\ &= \$12,000 \times 15\% \times 1\text{year} \\ &= \underline{\$1,800}\end{aligned}$$

$$\begin{aligned}\text{Total Audit Penalty} &= \$9,000 + \$5,400 + \$1,800 \\ &= \underline{\$16,200}\end{aligned}$$

47. In **any other case**, the penalty will be calculated as follows:

$$\text{Penalty} = A \times r \times t/12$$

where –

A is the tax shortfall

r is the rate of penalty at 15%

t is the number of months after the period of assessment for the tax return

Note:

- i. **t** excludes the period in which the amended/audit assessment is raised for the purpose of calculating audit penalty; and
- ii. **t** is the number of completed months after the period of assessment for the tax return. Part of the month will not be taken into consideration.

48. In other words, the above formula will be used to calculate the penalty for tax types other than income tax (for example, Value Added Tax, Environment and Climate Adaptation Levy, etc).

Example 4 – Value Added Tax (VAT) for monthly taxable period

XCo Ltd is a registered person for VAT. It's taxable period for filing VAT returns is monthly. XCo Ltd did not report part of the taxable sales/supplies to FRCS for taxable period February 2019. The omitted amount is \$500,000 exclusive of VAT. The company was audited and on 10 January 2021, an audit assessment of \$500,000 was made by FRCS tax officer.

What will be the penalty imposed on XCo Ltd?

CEO's position: The audit penalty will be computed as follows:

Step 1: Calculate the tax shortfall where VAT rate is 9%

$$\begin{aligned} \text{Tax Shortfall} &= \text{Omitted Amount} \times \text{VAT Rate} \\ &= \$500,000 \quad \times \quad 9\% \\ &= \underline{\$45,000} \end{aligned}$$

Step 2: Calculate the penalty on the tax shortfall

$$\begin{aligned} \text{Audit Penalty} &= A \times r \times t/12 \\ &= \$45,000 \times 15\% \times 22/12 \\ &= \underline{\$12,375} \end{aligned}$$

Example 5 – VAT for quarterly taxable period

ZCo Ltd is a registered person for VAT. It's taxable period for filing VAT returns is quarterly. ZCo Ltd did not report part of the taxable sales/supplies to FRCS for taxable period January to March 2018. The omitted amount is \$20,000 exclusive of VAT. The company was audited and on 1 January 2021, an audit assessment of \$20,000 was made by FRCS tax officer.

What will be the penalty imposed on ZCo Ltd?

CEO's position: The audit penalty will be computed as follows:

Step 1: Calculate the tax shortfall where VAT rate is 9%

$$\begin{aligned}\text{Tax Shortfall} &= \text{Omitted Amount} \times \text{VAT Rate} \\ &= \$20,000 \quad \times \quad 9\% \\ &= \underline{\$1,800}\end{aligned}$$

Step 2: Calculate the penalty on the tax shortfall

$$\begin{aligned}\text{Audit Penalty} &= A \times r \times t/12 \\ &= \$1,800 \times 15\% \times 33/12 \\ &= \underline{\$742.50}\end{aligned}$$

Example 6 – VAT for yearly taxable period

ACo Ltd is a registered person for VAT. It's taxable period for filing VAT returns is yearly. ACo Ltd did not report part of the taxable sales/supplies to FRCS for taxable period January to December 2019. The omitted amount is \$25,000 exclusive of VAT. The company was audited and on 12 January 2021, an audit assessment of \$25,000 was made by FRCS tax officer.

What will be the penalty imposed on ZCo Ltd?

CEO's position: The audit penalty will be computed as follows:

Step 1: Calculate the tax shortfall where VAT rate is 9%

$$\begin{aligned}\text{Tax Shortfall} &= \text{Omitted Amount} \times \text{VAT Rate} \\ &= \$25,000 \quad \times \quad 9\% \\ &= \underline{\$2,250}\end{aligned}$$

Step 2: Calculate the penalty on the tax shortfall

$$\begin{aligned}\text{Audit Penalty} &= A \times r \times t/12 \\ &= \$2,250 \times 15\% \times 12/12 \\ &= \underline{\$337.50}\end{aligned}$$

Example 7 – Environmental & Climate Adaptation Levy (ECAL)

XCo Ltd is a registered person for ECAL. XCo Ltd omitted the sales or consideration for water sports for taxable period August 2020. The omitted amount is \$60,000 exclusive of ECAL. The company was audited and on 24 February 2021, an audit assessment of \$60,000 was made by FRCS auditor.

What will be the penalty imposed on XCo Ltd?

CEO's position: The audit penalty will be computed as follows:

Step 1: Calculate the tax shortfall where ECAL rate is 5%

$$\begin{aligned}\text{Tax Shortfall} &= \text{Omitted Amount} \times \text{ECAL Rate} \\ &= \$60,000 \quad \times \quad 5\% \\ &= \underline{\$3,000}\end{aligned}$$

Step 2: Calculate the penalty on the tax shortfall

$$\begin{aligned}\text{Audit Penalty} &= A \times r \times t/12 \\ &= \$3,000 \times 15\% \times 5/12 \\ &= \underline{\underline{\$187.50}}\end{aligned}$$

Section 46A – False or misleading statement *not* resulting in a tax shortfall

49. This section has been amended in the 2020-2021 National Budget.
50. This provision is applied to a person who makes a false or misleading statement under section 46A **which does not result** in a tax shortfall but results in a tax benefit arising from the overstatement.
51. The four key requirements that must be satisfied for section 46A to apply to a person are as follows:
- a) A statement is made or there is an omission from a statement made to a tax officer;
 - b) The statement is false or misleading in accordance with section 46A;
 - c) The false or misleading statement does not result in a tax shortfall; but
 - d) The false or misleading statement results in a tax benefit arising from the overstatement.
52. This section will apply in cases where there is no tax shortfall resulting in no tax liability but the false or misleading statement will result in a tax benefit arising from the overstatement.
53. In the case of **income tax**, the penalty will be calculated as follows:

$\text{Penalty} = A \times r \times t$

where –

- A** is the tax benefit arising from the overstatement
- r** is the rate of penalty at 15%
- t** is the number of years after the year of assessment for the tax return

Note:

- i. **t** excludes the year in which the amended/audit assessment is raised for the purpose of calculating audit penalty for income tax; and
- ii. **t** is the number of completed years after the year of assessment for the tax return. Part of the year will not be taken into consideration.

Example 8 – Income Tax for a calendar year

XCo Ltd claimed an additional \$50,000 as utility expenses for tax year 2019. The company was audited and on 10 April 2022, an audit assessment of \$50,000 was made by FRCS tax officer, disallowing the over claimed expenses.

What will be the penalty imposed on XCo Ltd?

CEO's position: The audit penalty will be computed as follows:

Step 1: Calculate the tax portion of the overstatement where corporate tax rate is 20%

$$\begin{aligned}
\text{Tax Benefit} &= \text{Overstatement} \times \text{Corporate Tax Rate} \\
&= \$50,000 \quad \times \quad 20\% \\
&= \underline{\$10,000}
\end{aligned}$$

Step 2: Calculate the penalty on the tax portion of the overstatement

$$\begin{aligned}
\text{Audit Penalty} &= A \times r \times t \\
&= \$10,000 \times 15\% \times 2 \text{ years} \\
&= \underline{\$3,000}
\end{aligned}$$

54. In **any other case**, the penalty will be calculated as follows:

$\text{Penalty} = A \times r \times t / 12$

where –

A is the tax benefit arising from the overstatement

r is the rate of penalty at 15%

t is the number of months after the period of assessment for the tax return

Note:

- i. **t** excludes the period in which the amended/audit assessment is raised for the purpose of calculating audit penalty; and
- ii. **t** is the number of completed months after the period of assessment for the tax return. Part of the month will not be taken into consideration.

55. In other words, the above formula will be used to calculate the penalty for tax types other than income tax (for example, Value Added Tax, Environment and Climate Adaptation Levy, etc).

Example 9 – VAT for yearly taxable period

Mr. X operates a dairy shop and is a registered person for VAT. His taxable period for filing VAT returns is yearly. He constructed a building which commenced on 1 January 2018 and completed on 31 December 2018 to operate the business. He registered for VAT purposes on 1 January 2018. The total cost of construction of the building was \$500,000 plus VAT of \$45,000.

The company was audited and the FRCS tax officer identified that Mr. X claimed input VAT of \$90,000 in relation to construction cost of \$1,000,000 for taxable period 2018 instead of \$45,000. As a result, on 1 January 2021 an audit assessment of \$500,000 was made by FRCS officer.

What will be the penalty imposed on Mr. X?

CEO’s position: Mr. X made a false statement to FRCS tax officer. The false statement did not result in a tax shortfall since in year 2018, the shop was not operational but in construction stage. The overstatement of \$500,000 resulted in a tax benefit or tax refund of \$45,000 (\$90,000 - \$45,000).

In this scenario, the audit penalty will be computed as follows:

$$\begin{aligned}\text{Audit Penalty} &= A \times r \times t/12 \\ &= \$45,000 \times 15\% \times 24/12 \\ &= \underline{\underline{\$13,500}}\end{aligned}$$

Note: In addition to the penalty, Mr. X has to pay \$45,000 VAT which he previously claimed in 2018 VAT return.

56. The penalty under Section 46A does not apply in the circumstances where the exemption provision applies. The exemption provision is referred to under Section 46(5) which is discussed in paragraphs 25 to 44 in this SIG.

Section 46B – Penalty in case of VAT Evasion

57. This provision was applied to a person in case of VAT evasion. The penalty was 300% of the deficient tax.

58. This section has been removed in the 2020-2021 National Budget.

Section 48 – General provisions relating to penalty

59. Section 48(7) of TAA has been amended in 2020-2021 National Budget.

60. Prior to 1 August 2020, the CEO did not have the powers to remit or reduce the audit penalty. The amendment gives the powers to the CEO to remit whole or part of any penalty payable by a person including audit penalty upon application to the CEO.

61. The person liable to pay the penalty has to make a written application to the CEO for remission and must also provide the reasons for the remission of the penalty⁹.

62. For further information and clarification in regard to this SIG, please email us at tipu@frcs.org.fj

⁹ Section 46(6) of TAA 2009

APPENDIX: LEGISLATION

TAX ADMINISTRATION ACT 2009

[TAA 46] Penalty for making false or misleading statement

- 46 (1)** This section applies to a person—
- (a) who makes a statement to a tax officer that is false or misleading in a material particular or omits from a statement made to a tax officer any matter or thing without which the statement is false or misleading in a material particular; and
 - (b) the tax liability of the person or of another person computed on the basis of the statement is less than it would have been if the statement had not been false or misleading (the difference being referred to as the “tax shortfall”).

- (5)** No penalty is payable under subsection (2) if—
- (a) the person who made the statement did not know and could not reasonably be expected to know that the statement was false or misleading in a material particular; or
 - (b) the tax shortfall arose as a result of a self-assessment taxpayer taking a reasonably arguable position on the application of a tax law to the taxpayer's circumstances in filing a self-assessment return.

(5A) A position taken by a taxpayer in making a self-assessment that is contrary to a public ruling in force under section 62 or a private ruling issued to the taxpayer under section 66 is not regarded as a reasonably arguable position for the purposes of subsection (5)(b) unless the ruling is held to be incorrect.

[subs (5A) insrt Act 13 of 2018 s 15, effective 1 August 2018]

- (6)** For the purposes of this section, a statement made to a tax officer includes a statement made, in writing or orally—
- (a) in any application, certificate, declaration, notification, tax return, objection or other document furnished or lodged under a tax law;
 - (b) in any information required to be furnished under a tax law;
 - (c) in any document furnished to a tax officer;
 - (d) in answer to a question asked of a person by a tax officer; or
 - (e) to another person with the knowledge or reasonable expectation that the statement would be passed on to a tax officer.

ACT NO. 13 OF 2020



I assent.

J. K. KONROTE
President

[31 July 2020]

AN ACT

TO AMEND THE TAX ADMINISTRATION ACT 2009

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

1.—(1) This Act may be cited as the Tax Administration (Budget Amendment) Act 2020.

(2) This Act comes into force on 1 August 2020.

(3) In this Act, the Tax Administration Act 2009 is referred to as the “Principal Act”.

Section 46 amended

2. Section 46 of the Principal Act is amended by deleting subsections (2) to (4) and inserting the following new subsection—

“(2) Subject to subsection (5), a person to whom this section applies is liable to a penalty equal to the amount computed in accordance with the following formula—

(a) in the case of income tax—

$$\text{penalty} = A \times r \times t$$

where—

- A is the tax shortfall
- r is the rate of penalty at 15%
- t is the number of years after the year of assessment for the tax return; and

(b) in any other case—

$$\text{penalty} = A \times r \times t/12$$

where—

- A is the tax shortfall
- r is the rate of penalty at 15%
- t is the number of months after the period of assessment for the tax return.”.

Section 46A amended

3. Section 46A of the Principal Act is amended by—

(a) deleting subsection (1) and substituting the following—

“(1) This section applies to a person who makes a false or misleading statement as specified in section 46(1)(a) which—

- (a) does not result in a tax shortfall; but
- (b) results in a tax benefit arising from overstatement.”; and

(b) deleting subsection (2) and substituting the following—

“(2) Subject to subsection (3), a person to whom this section applies is liable to a penalty equal to the amount computed in accordance with the following formula—

(a) in the case of income tax—

$$\text{penalty} = A \times r \times t$$

where—

- A is the tax benefit arising from overstatement
- r is the rate of penalty at 15%
- t is the number of years after the year of assessment for the tax return; and

(b) in any other case—

$$\text{penalty} = A \times r \times t/12$$

where—

- A is the tax benefit arising from overstatement
- r is the rate of penalty at 15%
- t is the number of months after the period of assessment for the tax return.”.

Section 46B deleted

4. The Principal Act is amended by deleting section 46B.

Section 48 amended

5. Section 48(7) of the Principal Act is amended by deleting “other than that imposed under section 46”.