



STANDARD INTERPRETATION GUIDELINE 2020-29

INCOME TAX ACT 2015 – SECTION 110 - ADVANCE PAYMENTS OF TAX

This Standard Interpretation Guideline (SIG) sets out Fiji Revenue and Customs Service's (FRCS) policy and operational practice in relation to advance payments of tax under the Income Tax Act 2015.

The SIG 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 (unless otherwise stated).

This SIG is in effect from 1 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 Standard Interpretation Guideline (SIG) is to issue a practical guidance on amendments made to the Income Tax Act 2015 (ITA) in relation to new rules for the payment of advance tax in the 2020/2021 National Budget.
2. The amendments have been effected through Income Tax (Budget Amendment) Act 2020 (Act No. 14 of 2020)

INTRODUCTION

3. The 2020/2021 National Budget has made the changes to the advance tax regime under 2020 COVID-19 supplementary budget permanent.
4. The examples used throughout this SIG are merely illustrative. They 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.
5. In this SIG, any reference to the term “Minister” is a reference to the Minister responsible for Finance; and a reference to Income Tax also includes the Social Responsibility Tax.
6. The full text of the legislative provisions is contained in the Appendix.

LEGISLATIVE ANALYSIS

7. Section 110 of the Income Tax Act 2015 governs the manner in which advance payments are to be made. The rules provide the dates and frequency of advance payments.
8. The dates of advance payments are highlighted below:

	Section 110	Conditions
Company	last day of the sixth, seventh, eighth, ninth, tenth, eleventh and twelfth months of the tax year and the first and second months of the following tax year	
Any other person	30 April, 31 May, 30 June, 31 July, 31 August, 30 September, 31 October, 30 November and 31 December	If the advance tax payable for a tax year is less than \$120, the advance tax payable by the person for the year is payable in one instalment on 30 September ¹ .

¹ Section 110(2) of the ITA 2015

The Formula

9. The amount of each advance payment of Income Tax payable by a person for a tax year is computed according to the following formula:

$$11\frac{1}{9}\% \times (A - B)$$

where—

- A** is the person's assessed Income Tax liability for the preceding tax year, including under a self-assessment, after reduction of any foreign tax credit allowed to the person for that year; and
- B** is so much of A that was paid by amounts withheld under Subdivision 4 of Division 2.
10. Each payment of advance tax during a tax year is treated as a payment towards the income tax liability of the taxpayer for the tax year. If the payments of advance tax are in excess of the income tax liability for a taxpayer, the amount of excess is refundable to the person².
11. In the event where the preceding income tax liability for the previous year has not been calculated or the person has commenced to derive income included in gross income during the tax year, an estimated income tax liability is used to calculate the advance tax payable³.

The advance tax is calculated by the following:

$$\frac{1}{9} \text{ of estimated income tax liability or } \frac{\text{estimated income tax liability}}{9}$$

The estimated tax liability excludes income tax which was to be collected by withholding under Subdivision 4 of Division 2.

Statement of Estimated or Revised Income Tax Liability

12. Where the income tax liability is estimated, a statement of the estimated income tax to be payable by the person must be filed with the CEO at any time before the due date of the seventh advance payment, that is:
- before the twelfth month of the year for a company; or
 - before 31st October for any other person⁴.

If the statement is not filed by the person for a tax year, the estimated income tax liability payable will be estimated by the CEO⁵.

² Section 110(10) of ITA 2015

³ Section 110(4) of ITA 2015

⁴ Section 110(5) of ITA 2015

⁵ Section 110(7) of ITA 2015

13. If the person has reasonable grounds to believe that the income tax liability for the year will be significantly lower than the income tax liability for the previous year, the person may file a statement of the anticipated income tax liability.

The statement must be filed any time before the end of the twelfth month of a company's tax year or before 31st October for any other person.

14. A statement filed by the taxpayer for the estimated income tax liability and the statement for lowered income tax liability remains in force for the tax year unless the taxpayer files a revised statement with the CEO.
15. In the case of a revised statement relating to the calculation of advance payment of income tax for a tax year payable by the person both before and after the date the statement was filed and any underpaid advance tax must be paid by the person together with the first advance payment due after the statement is filed⁶.

If there is an amount overpaid before the statement was filed, the overpaid amount is applied against future advance payments of income tax⁷.

Penalty for Advance Tax Shortfall

16. A person is liable to a penalty of 40% of the difference between the estimated or revised advanced tax and the actual income tax liability (advance tax shortfall). The penalty is also applicable in instances where the estimation of advance tax was made by the CEO⁸.
17. The penalty is not applicable if the CEO is satisfied that the reason for the advance tax shortfall was due to circumstances beyond the control of the person and all reasonable care was taken by the person in making the estimate or revised estimate⁹.
18. Moreover, the penalty is not applicable for a period of 3 years commencing on 1st August 2020¹⁰.

Example - Transitional

19. Taxpayer ABCo has its tax year as 1st June 2019 to 31st May 2020. In its 2019 tax year ABCo has already made an advance payment on the 6th and 9th month of its tax year. ABCo had a tax liability of \$90,000 in 2018. The advance payments were made as follows:

⁶ Section 110(9)(a) of the ITA 2015

⁷ Section 110(9)(b) of the ITA 2015

⁸ Section 110(11) of the ITA 2015

⁹ Section 110(12) of the ITA 2015

¹⁰ Section 110(13) of the ITA 2015

30th November 2019 : \$30,000
29th February 2020 : \$30,000
31st May 2020 : \$30,000

The amendments to the Income Tax Act are effective from 1st April 2020. How will ABCo account for the remaining payment of advance tax?

The remaining payment of \$30,000 would be payable on the twelfth month, and first and second months of the following tax year. This equates to the following payments on the following dates:

31st May 2020 : \$10,000
31st June 2020 : \$10,000
31st July 2020 : \$10,000

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

APPENDIX: LEGISLATION

[Section 110] Advance Payments of Tax

(1) A person liable for Income Tax for a tax year is liable to make advance payments of Income Tax—

- a) in the case of a company, on the last day of the sixth, seventh, eighth, ninth, tenth, eleventh and twelfth months of the tax year and the first and second months of the following tax year; or
- b) in the case of any other person, on 30 April, 31 May, 30 June, 31 July, 31 August, 30 September, 31 October, 30 November and 31 December.

(2) If the total advance payments of Income Tax payable by a person, other than a company, for a tax year is less than \$120, the advance tax payable by the person for the year is payable in one instalment on 30 September.

(3) The amount of each advance payment of Income Tax payable by a person for a tax year is computed according to the following formula—

$$11 \frac{1}{9} \% \times (A - B)$$

where—

A is the person's assessed Income Tax liability for the preceding tax year, including under a self-assessment, after reduction of any foreign tax credit allowed to the person for that year; and

B is so much of A that was paid by amounts withheld under Subdivision 4 of Division 2.

(4) If—

- a) the Income Tax payable by a person for the preceding tax year has not been assessed by the due date for payment of the first advance payment of Income Tax for a tax year; or
- b) the person commenced to derive income included in gross income during the tax year, the amount of each advance payment of Income Tax is one-ninth of the amount of Income Tax estimated by the person to be payable for the tax year, other than Income Tax to be collected by withholding under Subdivision 4 of Division 2.

(5) A statement of the Income Tax estimated to be payable by a person for a tax year in accordance with subsection (4) must be filed with the CEO at any time before the due date for payment of the seventh advance payment of Income Tax for the year.

(6) A person who reasonably believes that their Income Tax liability for a tax year will be significantly lower than the Income Tax liability assessed for the previous tax year may file a statement of the Income Tax estimated to be payable by the person for the year, at any time before the end of the twelfth month of the person's tax year, and the amount of each advance payment of Income Tax payable for the year is one-ninth of the person's estimated Income Tax liability for the year, other than Income Tax to be collected by withholding under Subdivision 4 of Division 2.

(7) If a person fails to file a statement as required under subsection (5) for a tax year, the estimated Income Tax of the person payable for the year is the amount of Income Tax estimated by the CEO to be payable by the person for the year.

(8) A statement filed by a person under subsection (5) or (6), or the CEO's estimate of the Income Tax payable by the person under subsection (7) remains in force for the whole of the tax year unless the person files a statement of a revised estimate with the CEO.

(9) A statement of a revised estimate filed under subsection (8) applies to the calculation of advance payments of Income Tax for a tax year payable by the person both before and after the date the statement was filed and—

- a) the amount of any underpayment of advance payment of Income Tax made prior to filing the statement of revised estimate must be paid by the person together with the first advance payment due after the statement is filed; or
- b) the amount of any overpaid advance payments of Income Tax is applied against future advance payments of Income Tax payable by the person.

(10) Each advance payment of Income Tax paid by a person during a tax year is credited against the person's Income Tax liability for the year in accordance with section 8(3) and if the amount of the credit allowed exceeds the Income Tax due for the year, the amount of the excess is refunded to the person.

(11) If the estimate, including the estimate of the CEO and any revised estimate, of Income Tax payable by a person for a tax year is less than 100% of the actual Income Tax liability of the person for the year

(the difference referred to as the “advance tax shortfall”), the person is liable for a penalty equal to 40% of the person’s advance tax shortfall.

(12) No penalty is imposed under subsection (11) if the CEO is satisfied that the reason for the advance tax shortfall was due to circumstances beyond the control of the person and all reasonable care was taken by the person in making the estimate or revised estimate.

(13) Notwithstanding subsection (12), no penalty is imposed under subsection (11) for a period of 3 years commencing on 1 August 2020.

(14) In this section, “Income Tax” includes the Social Responsibility Tax.