



STANDARD INTERPRETATION GUIDELINE 2020-47

Income Tax Act 2015 - Income Tax (Other Incentives) Regulations 2018 - (includes Budget Amendments 2020-2021)

This Standard Interpretation Guideline (“SIG”) sets out Fiji Revenue and Customs Service’s (“FRCS”) policy and operational practice in relation to Income Tax (Other Incentives) Regulations 2018, that includes amendments made in National Budget 2020-2021.

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

Legislative references in this SIG are to the Income Tax (Other Incentives) Regulations 2018 (“Regulations”), Income Tax Act 2015 (“ITA”), unless otherwise stated.

This SIG comes into effect from 1 August 2020, except for provisions relating to FNPF employer additional contributions which is deemed to have come into effect from 1 April 2020.

This SIG may be reviewed in the event of any relevant legislative amendments.

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PURPOSE

1. The purpose of this SIG is to provide CEO's interpretation on application of legislative provisions contained in Income Tax (Other Incentives) Regulations 2018 including the amendments¹ made in the National budget 2020-2021.

INTRODUCTION

2. This SIG discusses various incentives set out under the Income Tax (Other Incentives) Regulations 2018, as below -
 - a) Annual Meeting of the Asian Development Bank Board of Governors
 - b) Research and Development
 - c) Electric omnibuses
 - d) Reduction of rent
 - e) COVID-19 pandemic
 - f) Corporate bonds
 - g) FNPF employer additional contributions
 - h) Loans taken for medical treatment
 - i) Local artists
3. In this SIG, any reference to 'Minister' is a reference to Minister responsible for Finance.
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. The full text of the legislative provisions is contained in the Appendix.

LEGISLATIVE ANALYSIS

Annual Meeting of the Asian Development Bank (ADB) Board of Governors²

6. ADB's annual meeting is a premier forum for the discussion of economic and social development issues in Asia and the Pacific.
7. The meetings provide opportunities for member governments to interact with ADB staff, nongovernment organizations (NGOs), media, and representatives of observer countries, international organizations, academe and the private sector.
8. Meetings are held in a member country every year, and the 52nd Annual Meeting of the Asian Development Bank's (ADB) Board of Governors was held in Nadi, Fiji from 1-5th May 2019. It marked the first time for a Pacific developing member country to host ADB's largest annual gathering.
9. To encourage sponsorship towards hosting the 52nd Annual Meeting in Fiji, Regulation 2 stated that any person making cash donation to the Government of Fiji towards the Annual Meeting would be allowed a deduction of 150% of the amount donated provided the contribution exceeded \$10,000.

¹ Income Tax (Other Incentives) (Amendment) (No. 2) Regulations 2020

² Regulation 2

Research and development³

10. Regulation 3 provides that a company engaging in research and development activity resulting in development of –
 - a) information communications technology(ICT); or
 - b) renewable energy industries

will be allowed deduction of 250% of the amount of expenses incurred in such research and development activity.

11. This incentive is purported to boost investment in research and development activity in ICT and renewable energy industries, thereby promoting these sectors. The incentive came into effect from 1 August 2018.

Example 1:

ABC Ltd. runs a resort in the interior islands of Fiji with inadequate electricity supply. ABC Ltd. uses solar energy as an alternative means of electricity by fixing solar panels to capture and convert sun's rays into electricity. During tax year 2019, the Company had spent \$3000 on solar panels and other equipment.

During the same tax year, ABC Ltd. also incurred a research expenditure of \$5000 to use wind energy where wind is harnessed using wind turbines.

ABC Ltd. wants to know if it will be eligible for any incentive in its bid to adopt renewable sources of energy.

CEO's position: As provided under Regulation 3 of Income Tax (Other Incentives) Regulations 2018, expenses incurred in carrying out research and development of ICT or renewable energy shall be allowed deduction to the extent of 250% of the amount expended. Thus, ABC Ltd. will be allowed deduction in respect of expenditure incurred for carrying out research to use wind energy (a renewable source of energy).

250% of \$5,000 amounting to \$12,500 shall be allowed as a deduction from income for the tax year 2019.

However, ABC Ltd. will not be eligible to claim deduction on expenses incurred in acquiring and using solar panel since there is no research or development activity taking place in respect of solar energy.

Electric omnibuses⁴

12. Regulation 4 provides that any company making investments in electric omnibuses will be allowed a deduction of 55% of the amount of expense incurred.
13. Omnibus is defined under section 63(3)(d)(i) of Land Transport Act, 1998, as *a motor vehicle equipped for conveyance of not less than 16 persons excluding the driver and constructed so that the driver and passenger are located in the same structural compartment.*

³ Regulation 3

⁴ Regulation 4

14. In line with the global trend, this incentive is expected to encourage people to shift from fuel based transport to environment friendly electric way of transport resulting in reduced levels of pollution.

Reduction in Rent⁵

15. The Income Tax (Other Incentives) Regulations 2018 was amended in the COVID-19 Response Budget to introduce incentives relating to reduction of rent. It provided that if a landlord reduces the rent payable under a tenancy agreement, the landlord will be allowed a deduction for the aggregate sum of the difference between the rent payable on 26th March 2020 and the rent payable in the deduction period.
16. The incentive is applicable for tenancy agreements entered into for commercial purposes only and not for residential purpose. The incentive, when introduced in the COVID-19 Response Budget, was available from 27 March 2020 to 31 December 2020.
17. In the 2020-2021 National Budget, the rent reduction incentive to landlords has been extended by amending the 'deduction period' from 31 December 2020 to 31 December 2021.
18. In order to qualify for the incentive, the tenancy agreement must have been in effect for 6 consecutive months prior to 26th March 2020.
19. In order to effect the changes in the monthly rent, a new tenancy agreement should not be entered into, rather the terms of the original agreement must be amended.

Example 2 – Reduction of Rent

X Co owns commercial property consisting of a warehouse and office space. X Co has a tenancy agreement with Z Co from 1st January 2019 for use of the warehouse with a monthly rent of \$5,000. Due to the COVID-19 pandemic the parties decide to reduce the monthly rent to \$2000 effective 1st April 2020.

Would X Co qualify for the deduction?

CEO's position:

The conditions to qualify for the incentive are:

1. There must be a reduction in rent payable;
2. The tenancy agreement must be for commercial purposes; and
3. The tenancy agreement must have been in effect for 6 consecutive months prior to 26th March 2020

In this case, there is a reduction in rent from \$5000 to \$2000. The tenancy agreement is for commercial purposes and has been in effect for more than 6 consecutive months prior to 26th March 2020. Therefore, X Co will be eligible to claim the deduction of \$3000 per month till 31st December 2021 (the deduction period extended from 31 December 2020 to 31 December 2021).

⁵ Regulation 5

Contributions towards COVID-19 fund⁶

20. Any person making cash donation towards Government fund to respond to COVID-19 pandemic shall be allowed a deduction for 300% of the amount of cash donated.
21. The Government has set out the following activities in respect of which the fund will be utilized-
 - a) to procure medical supplies and personal protective equipment;
 - b) to establish and maintain quarantine facilities;
 - c) to maintain food security;
 - d) to assist employees affected by the COVID-19 pandemic;
 - e) to assist industries affected by the COVID-19 pandemic; or
 - f) any other COVID-19 pandemic related response approved by the Minister.
22. For the purposes of the Regulation, “COVID-19” means the coronavirus disease as named by the World Health Organization on 11 February 2020.”

Corporate Bonds⁷

23. Regulation 7 was inserted in the National Budget 2020-2021, to encourage issuance of corporate bonds by companies for trading on the South Pacific Stock Exchange.
24. A company whose corporate bond is listed on the South Pacific Stock Exchange, shall be allowed deduction of 150% on prescribed costs incurred for listing the bonds.
25. Also, a company whose corporate bond is listed for trading on the South Pacific Stock Exchange, will be allowed deduction of 150% on the interest payments made by it to bondholders under the terms of issue of corporate bond.
26. For the purpose of this Regulation, the following terms have been defined:
 - “corporate bond” means an instrument issued by a company which provides debt security to raise capital for the company; and
 - “prescribed costs” includes accounting fees, investment advisory fees, listing fees, legal fees, company administration and management costs, underwriting costs and special reports costs.
27. For the purpose of this SIG, the term “listed” has been defined as below:
 - “a Company, Managed Investment Scheme or other body is listed if it is admitted to listing by the South Pacific Stock Exchange in accordance with the Listing Rules or other Rules relevant to the securities.”

Example 3: 150% tax deduction on prescribed costs

XYZ Ltd. is a large manufacturing company; it plans to build an additional warehouse to store its goods before distributing it for retail. To fund the construction of the warehouse, XYZ Ltd. plans to issue corporate bonds to raise funds from several investors. XYZ Ltd is also interested to admit its corporate bond on the South Pacific Stock Exchange. Hence, on June 10, 2021, XYZ Ltd. issues a 5-year bond with a face value of \$5,000,000 with a fixed coupon rate of 5.0 percent.

⁶ Regulation 6

⁷ Regulation 7

XYZ Ltd. incurred expenses totaling \$6,050 (listing fees: \$2,000 + investment advisory fees: \$1,500 + legal fees: \$1,800 + VAT: \$750) to admit the bond for trading on the South Pacific Stock Exchange.

XYZ Ltd. wants to know if the above costs incurred for listing corporate bonds will be allowed as deduction.

CEO's position:

XYZ Ltd. will be allowed a 150% tax deduction on prescribed costs incurred for admitting its corporate bond on the South Pacific Stock Exchange.

In accordance with the definition of prescribed costs, listing fees (\$2,000), investment advisory fees (\$1,500) and legal fees (\$1,800) totaling to \$5,300 will qualify for 150% deduction. VAT amount of \$750 will not be eligible for deduction of 150% as it does not fall under the definition of prescribed cost.

XYZ Ltd. can claim deduction of \$7,950 ($\$5,300 \times 150\%$) in the tax year 2021.

Example 4: Deduction of 150% on interest payments

As per the same example 3 above, XYZ Ltd. issues a 5-year bond with face value of \$5,000,000 for a fixed coupon rate of 5 percent in June 2021. XYZ Ltd. will pay bondholders interest expenses totaling \$250,000 ($\$5,000,000 \times 5\%$) on 1st June 2022 (one year from the date of the listing). XYZ Ltd. wants to know if it can claim deduction on interest paid to bondholders.

CEO's Position:

XYZ Ltd. will be allowed deduction of 150% on corporate bond interest amount paid on 1st June 2022. The total amount of deduction will be \$375,000, as computed in the table below.

Corporate Bond Issue Amount	Interest at the rate of 5%	Tax Deduction (150%)
\$5,000,000	$(5,000,000 \times 5\%) = \$250,000$	$(250,000 \times 150\%) = \$375,000$

28. A related amendment was made to Income Tax (Exempt Income) Regulations 2016 by passing Income Tax (Exempt Income) (Amendment) Regulations 2020 according to which interest income earned on corporate bonds traded on the South Pacific Stock Exchange shall be exempt income in the hands of the bondholder. It means that such an interest amount shall be exempt from withholding tax.

Example 5: Tax exemption on interest income earned

D Fund Ltd., is a company registered in Fiji. It is one of the major investors in the country and is looking to diversify its investment portfolio by investing in XYZ Ltd.'s corporate bond mentioned in Examples 3 and 4 above. D Fund Ltd. invests \$1,000,000 in XYZ Ltd.'s corporate bonds. During the tax year 2022, D Fund Ltd. earns \$50,000 ($\$1,000,000 \times 5\%$) as interest income from the bond. D Fund Ltd. wants to know if the interest income is taxable or exempt.

CEO's Position:

D Fund Ltd. is exempt from paying tax on the interest income earned on its investment in XYZ Ltd.'s corporate bond as below-

Amount invested	Interest Rate	Interest earned	Tax on interest income on corporate bonds
\$1,000,000	5%	\$50,000	Effective 1 st August 2020, tax on interest income earned on corporate bonds is exempt income, thus exempt from withholding tax ⁸ .

29. It requires to be noted that a company that only has corporate bonds listed on the South Pacific Stock Exchange, will not be termed as a listed company or entity and the reduced income tax rate of 10%⁹ shall not apply to such companies or entities.
30. The Reserve Bank of Fiji together with the South Pacific Stock Exchange will be releasing Regulations on requirements and process of listing and trading corporate bonds on the South Pacific Stock Exchange.

FNPF employer additional contribution¹⁰

31. Regulation 8 was inserted in the National Budget 2020-2021, to provide for incentives when an employer makes an additional contribution (in excess of statutory contribution of 5%), to FNPF or an approved fund, where the excess will be allowed as deduction to the employer to the extent of 50% of the excess contribution, provided the excess contribution does not exceed 10% of the total salary or wages.
32. In the COVID-19 Response Budget – 2020, the statutory FNPF (Fiji National Provident Fund) employer's contribution was reduced from 10% to 5% with effect from 1st April 2020. Therefore, a contribution over 5% will be given additional incentives under Regulation 8 provided the contribution does not exceed 10% of total salary or wages.
33. The various scenarios discussed below provide the deductions available to the employer and the exemptions that can be claimed by the employee.

Scenario 1: Where Employer's contribution is 5% to FNPF or an approved fund

- a. Under section 23(2), an employer will be allowed 100% deduction for contributing 5% to FNPF or an approved fund.
- b. The above contribution of 5% made by the employer shall be fully exempt in the hands of the employee under Part 6, Para 1 of Income Tax (Exempt Income) Regulations 2016.

Scenario 2: Where Employer's contribution is more than 5% but less than 10% to FNPF or an approved fund

⁸ In other cases, (i.e. excluding interest payments on corporate bonds), where interest payment is made to a resident, withholding tax of 10% is applicable under section 112 of Income Tax Act 2015 and Income Tax (Rates of Tax and Levies) Regulations 2016. If interest payment is made to a non-resident, withholding tax at the rate of 10% is applicable under section 10 of Income Tax Act 2015 and Income Tax (Rates of Tax and Levies) Regulations 2016.

⁹ As prescribed under Income Tax (Rates of Tax and Levies) Regulations 2016

¹⁰ Regulation 8

- a. As a result of amendment to section 23(2), a contribution made by the employer in excess of minimum statutory amount of 5% to FNPF or an approved fund, shall be allowed 100% deduction to the employer in that tax year.

In addition to the above, under this Regulations the employer shall also be allowed 50% deduction on additional contributions made provided the additional contribution does not exceed 10% of the total salary or wages paid to the employee by the employer for a month^[1].

- b. For the employee, contribution of 5% made by the employer shall be fully exempt under Part 6, Para 1 of Income Tax (Exempt Income) Regulations 2016 and the excess contribution shall be exempt under Part 6, Para 1A of Income Tax (Exempt Income) Regulations 2016^[2], provided the contribution is not more than 10% of total salary or wages.

Example 6: Employer makes a contribution of 8% to FNPF or an approved fund, the employer and employee will be allowed the following deduction:

- a. For the Employer -
 - i. Contribution of 5% will be allowed as deduction to the employer under section 23(2)
 - ii. For excess contribution of 3% (8% - 5%) – employer will be allowed 50% deduction on the 3% of excess contribution.
- b. For the employee –
 - i. Contribution of 5% made by the employer shall be fully exempt in hands of the employee under Part 6, Para 1 of Income Tax (Exempt Income) Regulations 2016 and;
 - ii. the excess contribution of 3% shall be exempt under Part 6, Para 1A of Income Tax (Exempt Income) Regulations 2016^[2], as the contribution is not more than 10% of total salary or wages.

Scenario 3: Employer's contribution in excess of 10% to FNPF or an approved fund

- a. Where an employer contributes in excess of 10%, the employer shall be allowed a 100% deduction under section 23(2). The additional incentive discussed under para (a) of Scenario 2 above, shall not be allowed.
- b. For an employee, the FNPF contribution in excess of 10% shall be taxable under section 15(1)(a) of ITA as an employment income.

- 34. Standard Interpretation Guideline No.24¹¹ discusses in detail tax treatment resulting from amendments made to Income Tax Act and Regulations relating to employer's contribution to FNPF or approved Fund.

^[1] Newly inserted Regulation 8 of Income Tax (Other Incentives) Regulations 2018 effective 1 April 2018

^[2] Part 1A was inserted by passing Income Tax (Exempt Income) (Amendment) Regulations 2020

^[2] Part 1A was inserted by passing Income Tax (Exempt Income) (Amendment) Regulations 2020

¹¹ Standard Interpretation Guideline No. 46 will be released on a later date.

Loans taken for medical treatment¹²

35. The newly inserted Regulation 9, provides that a person taking loan from a credit institution or financial institution for the purposes of medical treatment during a tax year will be allowed deduction on principal amount and interest accrued thereon.
36. If full principal amount has not been spent on medical treatment, deduction will be allowed to the extent of principal amount spent and interest accrued thereon.
37. The principal amount of the loan for the purposes of the medical treatment means
 - a. the actual cost of medical treatment;
 - b. any expenditure on accommodation and food, if part of a package with a hospital, and
 - c. any international travel in relation to the medical treatment.
38. The loan must be taken from a credit institution or financial institution licensed under the Banking Act 1995.
39. A person who applies for deduction will be required to provide medical certificates, details of loans, receipts to confirm expenditure and other related documents.

Example 7: John takes a secured loan from ABZ Bank of \$20,000 at the rate of 5% interest to travel to India for his mother's hospital treatment. His total expenditure in India, including international travel, amounted to \$15,000 (inclusive of principal amount and the interest paid thereon.). The hospital package includes food costs but does not include accommodation costs and John is expected to bear accommodation costs on his own. John had spent \$3500 on accommodation cost for their stay in India for 30 days.

John wants to know the amount of deduction available under the Regulations.

CEO's position: John has availed loan for medical treatment from ABZ Bank, a financial institution under the Banking Act 1995. John will get deduction to the extent of principal amount of loan spent together with interest accrued on that amount. So, in this case John will be eligible for deduction of \$15,000 only as that was the actual amount spent (principal + interest) even though the full loan amount was \$20,000. Also, John cannot claim the accommodation cost of \$3,500 as it was not part of the hospital package.

In order to verify the claims made by John, the actual medical certificates, loan details and documents and receipts of expenditure made will have to be submitted by John.

Local artists¹³

40. Regulation 10 inserted in the National Budget 2020-2021 provides that if a hotel or resort carrying on business in Fiji employs a local artist such a hotel or resort shall be allowed deduction of 150% on the amount of salary or wages paid for the employment of a local artist.
41. "Local artist" for the purpose of this Regulation means a craftsperson, dancer or musician.

¹² Regulation 9

¹³ Regulation 10

42. This incentive is to encourage hotels and resorts to hire, promote and support the local talent of Fiji.

Example 8: VitiLevu Resorts Ltd. hires a local band of musician to attract customers during a long weekend. The Resort pays the music band \$2,000 for their services. The Resort wants to know the amount of deduction available.

CEO's position: As the Resort is employing *local artists*, it will be eligible for deduction of 150% of the amount of wages paid for their performance, therefore in this case, the Resort will be eligible for deduction of \$3,000 ($\$2,000 * 150\%$).

Note: For information or clarifications in regard to this SIG please email us at tipu@frcs.org.fj

Income Tax (Other Incentives) Regulations 2018

[Regulation 1] Short title and commencement

- (1) These Regulations may be cited as the Income Tax (Other Incentives) Regulations 2018.
- (2) These Regulations come into force on 1 August 2018.

[Regulation 2] Annual Meeting of the Asian Development Bank Board of Governors

A person is allowed a deduction for 150% of the amount of a cash donation exceeding \$10,000 made in a tax year to the Government for the hosting of the 52nd Annual Meeting of the Asian Development Bank Board of Governors in May 2019.

[Regulation 3] Research and development

A company is allowed a deduction for 250% of the amount of expenses incurred for research and development of Information Communications Technology and renewable energy industries.

[Regulation 4] Electric omnibuses

- (1) A company is allowed a deduction for 55% of the amount of expenses incurred for investments in electric omnibuses.
- (2) In this regulation, “omnibus” has the meaning given in section 2 of the Land Transport Act 1998.

[Regulation 5] Reduction of rent

- (1) Subject to subregulation (2), a landlord that reduces the rent payable under a tenancy agreement is allowed a deduction for the aggregate sum of the difference between the rent payable on 26 March 2020 and the rent payable in the deduction period.
- (2) The tenancy agreement must have taken effect before 26 March 2020 and the landlord must prove to the satisfaction of the CEO that the tenancy agreement has been in effect for the 6 consecutive months before 26 March 2020.
- (3) In this regulation—
“**tenancy agreement**” means a tenancy agreement for any premises used for commercial purposes but does not include residential purposes; and
“**deduction period**” means the period commencing on and from 27 March 2020 to 31 December 2021.

[Regulation 6] COVID-19 pandemic

- (1) A person is allowed a deduction for 300% of the amount of a cash donation made in a tax year to a fund established by the Government to respond to the COVID-19 pandemic.
- (2) The fund will be used for any of the following—
 - a) to procure medical supplies and personal protective equipment;
 - b) to establish and maintain quarantine facilities;
 - c) to maintain food security;
 - d) to assist employees affected by the COVID-19 pandemic;
 - e) to assist industries affected by the COVID-19 pandemic; or
 - f) any other COVID-19 pandemic related response approved by the Minister.

(3) In this regulation, “**COVID-19**” means the coronavirus disease as named by the World Health Organization on 11 February 2020.”

[Reg 6 inserted by LN 29 of 2020, reg 2, effective 1 April 2020]

[Regulation 7] Corporate bonds

(1) A company is allowed a deduction for 150% of the prescribed costs incurred in a tax year in preparation for listing a corporate bond on the South Pacific Stock Exchange.

(2) A company is allowed a deduction for 150% of the amount of interest paid on a corporate bond.

(3) In this regulation—

“**corporate bond**” means an instrument issued by a company which provides debt security to raise capital for the company; and

“**prescribed costs**” includes accounting fees, investment advisory fees, listing fees, legal fees, company administration and management costs, underwriting costs and special reports costs.

[regulation 7 inserted by LN 68 of 2020; effective 1 August 2020]

[Regulation 8] FNPF employer additional contributions

The total amount allowed as a deduction for a tax year for an employer additional contribution to the Fiji National Provident Fund in respect of an employee is 50% of the employer additional contribution paid in respect of the employee for the tax year, provided that the additional contribution does not exceed 10% of the total salary or wages paid to the employee by the employer for a month.

[regulation 8 inserted by LN 68 of 2020; effective 1 August 2020]

[Regulation 9] Loans taken for medical treatment

(1) A person who takes a loan from a credit institution or financial institution for the purposes of medical treatment during a tax year is allowed a deduction of—

a) the principal amount of the loan and any interest accrued on the principal amount provided the full principal amount is spent for the purposes of the medical treatment; or

b) only the amount of the principal amount of the loan that is spent for the purposes of the medical treatment and any interest accrued respectively, where the full principal amount has not been spent for the purposes of the medical treatment.

(2) In subregulation (1), expenditure of the principal amount of the loan for the purposes of the medical treatment means the actual cost of medical treatment and any expenditure on accommodation and food, if part of a package with a hospital, and any international travel in relation to the medical treatment.

(3) Subject to subregulation (1), a person applying for a deduction must provide any applicable medical certificate, details of the loan taken from the credit institution or financial institution and receipts to confirm expenditure in relation to the medical treatment.

(4) In this regulation, “**credit institution or financial institution**” means a credit institution or financial institution licensed under the Banking Act 1995.

[regulation 9 inserted by LN 68 of 2020; effective 1 August 2020]

[Regulation 10] Local artists

(1) A hotel or resort carrying on business in Fiji is allowed a deduction for 150% of the amount of any salary or wages paid for the employment of a local artist.

(2) In this regulation, “local artist” means a craftsman, dancer or musician.