



STANDARD INTERPRETATION GUIDELINE 2020-18

INCOME TAX 2015 – EXEMPT CAPITAL GAINS UNDER SECTION 67(1)(H)

This Standard Interpretation Guideline (“SIG”) sets out Fiji Revenue and Customs Service’s (“FRCS”) policy and operational practice in relation to the administration of Exempt Capital Gains under section 67(1)(h) of ITA 2015.

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* (unless otherwise stated).

This SIG is in effect from 14th of August 2020 and may need to be reviewed in the event of any relevant legislative amendments.

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PURPOSE

1. This SIG is aimed at providing the CEO's interpretation and application of the exempt capital gain provision under section 67(1)(h) of ITA 2015.
2. It also provides clarity on how the exemption provision can be availed by the beneficiary or trustee of a deceased person's estate upon disposal if the exemption has never been enjoyed by the deceased during his or her lifetime.
3. In addition, this SIG also discusses how the budget amendment 2020/2021 led to the amendment of the "capital asset" definition and its impact on the tax treatment of depreciable and capital assets in relation to disposal of capital asset under section 67(1)(h) of ITA 2015.

INTRODUCTION

4. On general principles, Capital Gains Tax (CGT) is imposed on a person who has made a capital gain on the disposal of a capital asset.
5. Section 67 of the ITA 2015 specifies capital gains that are exempt from CGT.
6. There are different scenarios which exempt capital gains and these scenarios are provided for under paragraphs (a) to (h) of section 67 of ITA 2015.
7. However, the scope of this SIG will be based on section 67(1)(h) which is on exempt capital gain, which can be availed by a trustee or beneficiary of a deceased estate on the disposal of an asset forming part of the estate if the gain had been made by the deceased on a disposal of the asset immediately before death. More discussions on this will be made under Legislation.
8. Examples illustrated in this SIG demonstrate the CEO's interpretation and application of the tax implications relating to the application of section 67(1)(h) of ITA 2015. 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.
9. The full text of the legislative provisions is contained in the Appendix.

LEGISLATION

Section 67 – Exempt Capital Gains

10. Section 67(1)(h) provides that capital gains tax exemption shall be available to a beneficiary or trustee of a deceased person on the assets forming part of the deceased person's estate.
11. In order for the trustee or beneficiary to be eligible for the exemption, the following requirements must be fulfilled -
 - a) There must be a capital gain made by the trustee or beneficiary of a deceased estate on the disposal of an asset;
 - b) the capital asset must be forming part of the estate of the deceased person;

- c) had the disposal been made by the deceased person prior to his passing, any gain made on that disposal would have been an exempt capital gain; and
- d) the asset must be disposed by the trustee or beneficiary within two years from passing of the deceased.

12. In other words, if the disposal of an asset of a deceased person would have given rise to an exempt capital gain had the asset been disposed of by the deceased immediately prior to his or her death, then a subsequent disposal of the asset by the executor or beneficiary of his or her estate also gives rise to an exempt capital gain.
13. Under these circumstances, the exempt nature of the capital gain from the disposal of the capital asset passes through to the trustee or beneficiary of the deceased if the exemption has never been enjoyed by the deceased during his lifetime.
14. If the exemptions pertaining to capital assets have been availed by the deceased during his lifetime, then any subsequent disposal by the beneficiaries or trustees will be subject to CGT.
15. Upon the passing of the deceased, the pool of assets of the deceased at the time of his or her passing forms part of the estate of the deceased. The gain or loss from the transfer of the assets forming part of the deceased's estate to the beneficiary or trustee is deferred under section 87(1)(b) of ITA 2015.
16. The law is specific with the timeline for subsequent disposal. The exemption only applies when the asset is disposed of by the trustee or beneficiary within two (2) years after the death of the deceased.
17. This 2-year period is intended to take account of the time that it may take to fully execute a deceased estate, particularly taking account of the fact that the deceased's will may be disputed.
18. Further to the 2 year-period, the law also provides for such a time that the CEO allows.

In this case, exceptional cases are based on CEO's discretion provided that the reasons to consider any extension to the 2-year exemption period are genuine, reasonable and justifiable, for instance, lengthy legal proceedings due to a disputed will.

19. The CEO's discretion is applicable on a case by case basis.

CGT application on capital assets and depreciable assets prior and post Budget Amendment 2020/2021

20. The definition of "capital asset" has been amended in the 2020/2021 Budget Amendment to include depreciable assets.
21. For this purpose, effective from 1st August 2020, the assessment of CGT on depreciable asset will be subject to 10% CGT rate.
22. **Prior** to the budget amendment 2020/2021, the CGT assessment relating to depreciable and capital assets for the purpose of availing the CGT exemption will be still be subjected to the split assessment,

i.e. the land will be subject to the 10% CGT rate whereas the depreciable asset will be subject to 20% income tax rate.

Example 5 captures the prior and post budget amendment 2020/2021 on page 7-8 of this SIG.

23. For more information, refer to SIG ___ on Income Tax Act 2015 – Budget Amendments 2020/2021.
24. The following illustrations may be used as a guide only and covers different scenarios and aspects relating to the application of section 67(1)(h).

Example 1 – Single Beneficiary

25. Mr. A died on 1 January 2019. He owned only one residential home where he lived. As per his will, his son Adams inherited the home. The property was transferred from the estate to Adams on 31 August 2019. Adams disposed the property on 1 February 2020.

Will the exemption under section 67(1)(h) apply?

CEO's position

Two checks must be carried out when assessing whether or not the exemption can be availed by the beneficiary, Adams.

Step 1: Is the property exempt in the hands of the deceased immediately prior to his death?

Example 1 provides that Mr. A owned only one property which implies that if he had disposed of the property during his lifetime, he would have been eligible for the exemption under section 67(1)(b). Therefore, Example 1 satisfies the requirement under Step 1.

Step 2: Is the disposal carried out within 2 years from his death?

Mr. A passed on 1 January 2019. The beneficiary to his estate, his son, Adams, disposed of the property on 1 February 2020. Clearly, the disposal was within the 2 years' time period. Therefore, Example 1 satisfied the requirement under Step 2.

Yes. Since both requirements under the two steps above have been satisfied, *Adams can avail the exemption under section 67(1)(h).*

Example 2 – Multiple Beneficiaries

26. Mr. B died on 1 January 2019. He owned two residential homes (one he acquired in 1975 & the other he acquired in 1989) and was renting during his lifetime. As per his will, his children, Bob inherited the 1975 property whereas Mary inherited the 1989 property after his passing. The properties were transferred from the estate to Bob and Mary on 31 August 2019. Bob and Mary both disposed the property on 1 February 2020.

Will the exemption under section 67(1)(h) apply?

CEO's position

Two checks must be carried out when assessing whether or not the exemption can be availed by the beneficiaries, Bob and Mary.

Step 1: Is the property exempt in the hands of the deceased immediately prior to his death?

Example 2 provides that Mr. B owned two properties and had he carried out a first disposal of either his first residential home or principal place of residence, he would have been eligible for the exemption under section 67(1)(b).

Bob

Bob was willed the property which was acquired in 1975. Therefore, the 1975 property qualifies as the first residential property of the late Mr. B on which Bob can enjoy the section 67(1)(h) exemption.

Mary

Mary was willed the property which was acquired in 1989. Therefore, the 1989 property did not qualify as a 'first residential property' in the hands of the late Mr. B. Hence, upon subsequent disposal by Mary, she cannot enjoy the section 67(1)(h) exemption.

Step 2: Is the disposal carried out within 2 years from his death?

Mr. B passed on 1 January 2019. The beneficiaries to his estate, his children, Bob and Mary both disposed of the property on 1 February 2020. Clearly, the disposal was within the 2 years' time period.

Upon qualifying the nature of the properties in the hands of the beneficiaries, the subsequent disposals of the willed properties qualify as the first disposal of the 'first residential property' only in the hands of Bob and not Mary. *Therefore, only Bob can avail the exemption under section 67(1)(h).*

Example 3 – Subsequent disposal outside of the 2-years' exemption period

Scenario 1

27. Mr. C died on 1 January 2019. He owned a residential home and was residing in it. As per his will, his daughter, Catherine inherited the properties after his passing. The property was transferred from the estate to Catherine on 31 August 2019. Catherine disposed of the property on 1 August 2021.

Will the exemption under section 67(1)(h) apply?

CEO's position

Two checks must be carried out when assessing whether or not the exemption can be availed by the beneficiary, Catherine.

Step 1: Is the property exempt in the hands of the deceased immediately prior to his death?

Example 3 provides that Mr. C owned a residential property and was residing in it. Had he carried out a first disposal of his principal place of residence, he would have been eligible for the exemption under section 67(1)(b).

Catherine

Catherine was willed the properties which formed part of his late father's estate. Therefore, the residential property qualifies as the principal place of residence of her late father, Mr. C on which Catherine can enjoy the section 67(1)(h) exemption.

Step 2: Is the disposal carried out within 2 years from his death?

Mr. B passed on 1 January 2019. The beneficiary to his estate, his daughter, Catherine disposed of the property on 1 August 2021. Clearly, the disposal was outside of the 2 years' time period.

Therefore, the subsequent disposal of the willed property qualified as the first disposal of the 'principal place of residence'; however, the disposal took place outside of the 2-year period. *Therefore, Catherine cannot avail the exemption under section 67(1)(h), assuming that the CEO's discretion is not exercised in this case.*

Example 4 – Subsequent disposal outside of the 2-years' exemption period

Scenario 2

28. Based on the same facts in Example 3 – Scenario 1 above, Suppose the legal proceedings took longer and Catherine ended up disposing the property to Carl on 30 September 2025.

Will the exemption under section 67(1)(h) apply?

CEO's position

Two checks must be carried out when assessing whether or not the exemption can be availed by the beneficiary, Catherine.

Step 1: Is the property exempt in the hands of the deceased immediately prior to his death?

Example 4 provides that Mr. C owned a residential property and was residing in it. Had he carried out a first disposal of his principal place of residence, he would have been eligible for the exemption under section 67(1)(b).

Catherine

Catherine was willed the properties which formed part of his late father's estate. Therefore, the residential property qualifies as the principal place of residence of her late father, Mr. C on which Catherine can enjoy the section 67(1)(h) exemption. Hence, Step 1 is satisfied.

Step 2: Is the disposal carried out within 2 years from his death?

Mr. B passed on 1 January 2019. The beneficiary to his estate, his daughter, Catherine disposed of the property on 1 August 2021. Clearly, the disposal was outside of the 2 years' time period.

Therefore, the subsequent disposal of the willed property qualified as the first disposal of the 'principal place of residence'; however, the disposal took place outside of the 2-year period. Therefore, Catherine cannot avail the exemption under section 67(1)(h). Hence, Step 2 is not satisfied.

Step 3: Can the CEO extend the exemption period for Catherine?

Yes. The CEO may consider extending the exemption period for Catherine for reasons beyond her control.

Therefore, Catherine can avail the section 67(1)(h) exemption.

Example 5 – Capital asset and Depreciable asset forming part of the deceased’s estate

29. Mr. D died on 1 January 2019. He owned one property comprising of 3 flats. Mr. D was residing in one flat, with the other two rented out. Over the years, depreciation was claimed on the cost of the building for the rented-out portions. As per his will, his son, Daniel inherited the properties after his passing. The properties were transferred from the estate to Daniel on 31 August 2019. Daniel disposed of the property on 1 February 2020.

Will the exemption under section 67(1)(h) apply?

CEO’s position

Two checks must be carried out when assessing whether or not the exemption can be availed by the beneficiary, Daniel.

Step 1: Is the property exempt in the hands of the deceased immediately prior to his death?

The property in this example is of two parts:

- Land; and
- Building.

Example 4 provides that Mr. D owned a property and he claimed depreciation expense on the building. Since there are two assets involved, the building qualifies as a depreciable asset in the hands of Mr. D, whereas the land qualifies as a capital asset.

Therefore, had Mr. D disposed of his property, he would not have been eligible for the exemption under section 67(1)(b) for the disposal of the land only.

Daniel

Daniel was willed the property which formed part of his late father’s estate. Therefore, the nature of the property passes on to Daniel. Hence, Daniel can avail the section 67(1)(h) exemption on the subsequent disposal of the land only.

Step 2: Is the disposal carried out within 2 years from his death?

Mr. D passed on 1 January 2019. The beneficiary to his estate, his son, Daniel disposed of the property on 1 February 2020. Clearly, the disposal was within the 2 years’ time period.

Prior to 1st August 2020

Since the asset involved the disposal of an asset comprising a depreciable asset (building) and a capital asset (land), Daniel can only avail the section 67(1)(h) exemption pertaining to the gain on the disposal of the capital asset which is land.

The gain on disposal of the building (depreciable asset) will be subject to Income Tax at the rate of 20%. Land will be subject to 10% CGT rate.

Post 1st August 2020

The definition of capital asset has been amended to include depreciable assets. Therefore, Daniel can avail the section 67(1)(h) exemption pertaining to the gain on the disposal of both the land and the building.

Appendix – LEGISLATION

[Section 67] Exempt Capital Gains

(1) The following capital gains are exempt capital gains—

- a) a capital gain made by a resident individual or Fijian citizen that does not exceed \$16,000;
 - b) a capital gain made by a resident individual or a Fijian Citizen on the first disposal of either the individual's first residential property or principal place of residence;
 - c) a capital gain made by a person on the disposal of shares listed on the South Pacific Stock Exchange;
 - d) a capital gain made on disposal of an asset that is used solely to derive exempt income excluding the disposal of shares;
- [sub(1)(c) amended by Act 9 of 2019 s6; effective 1 August 2019]
- e) any gain made by a person on the disposal of an interest in a company within section 2(c) of the definition "company";
 - f) a capital gain made by a resident individual or a Fijian citizen on disposal of his or her interest in a family home, provided however that the disposal of the interest is by way of transfer to an existing joint tenant or tenant in common;
 - g) any gain made by a resident person from a capital asset, including from the sale of shares where a private or public company goes through re-organisation, restructure or amalgamation for the purposes of listing or as part of a listing process on the South Pacific Stock Exchange, provided that—
 - i. the private company is listed on the South Pacific Stock Exchange within 24 months from the date of commencement of re-organisation, restructure or amalgamation; and
 - ii. where the private company is not listed with the South Pacific Stock Exchange in accordance with subparagraph (i), the gain from the re-organisation, restructure or amalgamation of the private company shall be taxable under this Act;
 - h) a capital gain made by the trustee or beneficiary of a deceased estate on the disposal of an asset forming part of the estate that, if the gain had been made by the deceased on a disposal of the asset immediately before death, the gain would be an exempt capital gain to the deceased under this subsection, but only when the asset is disposed of by the trustee or beneficiary within 2 years after the death of the deceased or within such further time as the CEO allows.

ibs (1) am Act 27 of 2016 s 9, effective 1 August 2016; Act 14 of 2018 s 3, effective 1 August 2018]