STANDARD INTERPRETATION GUIDELINE 2019 – 12

INCOME TAX ACT ("ITA") 2015 – FOREIGN TAX CREDIT

This Standard Interpretation Guideline ("SIG") sets out Fiji Revenue and Customs Service's ("FRCS") policy and operational practice in relation to the eligibility of a resident person entitled to a foreign tax credit for an amount of foreign income tax paid on foreign-sourced income.

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* ("the ITA"), *Income Tax (Rates of Tax and Levies) Regulations 2016* and its amendments (unless otherwise stated).

This SIG is in effect from 20th May 2019 and may need to be reviewed in the event of any relevant legislative amendments.

CONTENTS

EXECUTIVE SUMMARY

1. Foreign tax credit is a mechanism to provide relief from international double taxation on the same income.

2. The need for relief from international double taxation arises because resident persons are liable for income tax on worldwide income.[1] In this situation, the same income is likely to be taxed in the foreign country of source and country of residence, therefore, subject to double taxation.

3. Thus, it is usual for the residence country to provide some/partial relief in the form of foreign tax credit so that the same income is not taxed twice.

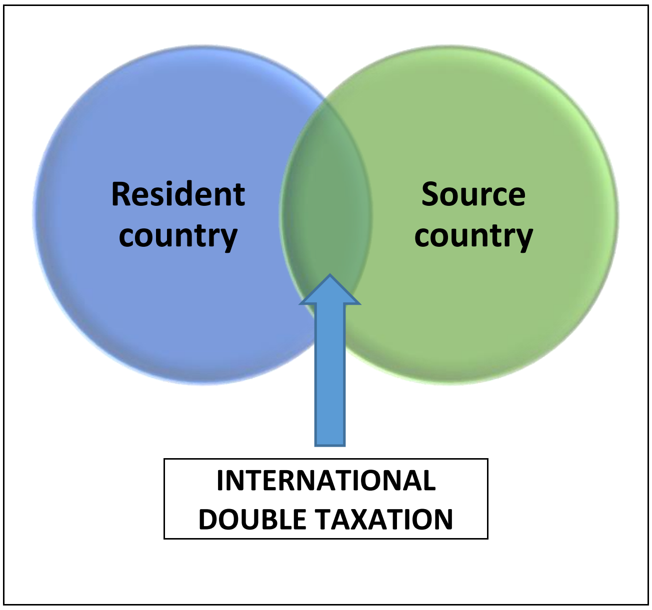
4. Section 60 of ITA provides an eligible person to claim foreign tax credit for an amount of foreign income tax paid on respective foreign sourced income.

5. In some instances, all the tax paid in foreign source country will not be allowed as a tax credit. This is because the foreign tax credit allowed will be lesser of:
   (a) the foreign Income Tax paid; or
   (b) the Fiji Income Tax payable in respect of the taxable foreign-source income.

6. Above scenario may arise when the tax rates in other countries are higher than Fiji tax rates.

INTRODUCTION

7. International double taxation arises when the same income gets taxed in the hands of the same taxpayer twice in two or more countries. This is basically known as juridical double taxation.



8. In general, there are two methods to eliminate double taxation. The two methods are:
   (i) Exemption method – exempt/do not include foreign sourced income in chargeable income for taxation purpose in Fiji.

[1] Section 14(3)(a) – ITA 2015

(ii) Foreign Tax Credit method – include foreign sourced income in chargeable income and provide a tax deduction or credit for foreign tax paid for taxation purpose in Fiji.

9. In Fiji to eliminate double taxation, section 60 of ITA provides for the foreign tax credit as a method of relief from international double taxation.

10. A foreign tax credit is available to a resident person who has a foreign source income. A resident person can credit their foreign income tax payments in respect of foreign source income against the income tax payable on that income in Fiji.

11. However, in order to qualify for a foreign tax credit, a person has to satisfy certain conditions which will be discussed later in this SIG.

LEGISLATIVE ANALYSIS

12. The following part of this SIG sets out the legislative provisions relevant to the authority to allow foreign tax credit under section 60 of ITA.

13. For the purpose of this SIG, the following terms are primarily important.

(i) **Resident Person[2] –** means a resident individual, resident partnership, resident trust and resident company.

(ii) **Foreign-source income** simply is an amount that is not derived from sources in Fiji. Section 7 addresses the amounts derived from sources in Fiji and any amount that is not derived from sources in Fiji is foreign-source income. Foreign source income must always be converted and expressed in Fijian dollars.[3]

(iii) **Net foreign-source income** means the total taxable foreign-source income of a resident person for a year reduced by any deductions allowed to the person under ITA for the year that —

(a) relate exclusively to the derivation of the taxable foreign-source income; and

(b) are apportioned to the derivation of taxable foreign-source income.[4]

(iv) **Taxable foreign source income** means foreign-source income included in gross income for tax purpose. There are two requirements to be satisfied for an amount to be taxable foreign-source income. Firstly, the amount must be foreign-source income as discussed in paragraph 12 (ii) of this SIG. Secondly, the foreign-source income must be included in gross income as per section 14(3)(a) of ITA. In other words, the amount must be included in gross income and taxable in Fiji under the normal income tax.

(v) **Chargeable Income** - is the gross income of a person for the year reduced by the total amount of deductions allowed to the person for the year (refer Appendix 1).

[2] Section 2 – ITA 2015
[3] Section 139 – ITA 2015
[4] Section 45 – ITA 2015

(vi) **Gross Income** - the gross income of a resident person for a tax year is the total of the employment income, business income, and property income derived by the person during the year. It does not include exempt income and it includes income derived from all sources within and outside Fiji for a resident person (refer Appendix 1).

(vii) **Fiji Income Tax** - is the Income Tax, Social Responsibility Tax and Environment and Climate Adaptation Levy.[5]

(viii) **Foreign Income Tax** means the Income Tax, including withholding tax, imposed by the government of a foreign country or a political subdivision of a government of a foreign country, but does not include penalty, additional tax, or interest payable in respect of such tax. Foreign income tax must always be converted and expressed in Fijian dollars.[6] Taxpayers must provide evidence of payment of foreign income tax such as:

- a Notice of Assessment (NOA) from the foreign tax office and an official receipt confirming tax is paid;
- a withholding tax certificate confirming deduction of withholding tax issued by the person who pays dividend, interest, royalty or any other income that is subject to foreign tax;
- a letter from the foreign tax office with similar details that would have been normally captured on a NOA and an official receipt confirming tax is paid.

(ix) **Tax year**[7] means the Calendar year and includes a substituted tax year and transitional tax year under section 36 (refer Appendix 1).

(x) **Average rate of Fiji Income Tax** is the percentage of Fiji Income Tax payable by a resident person for a tax year in respect of the chargeable income of the person for the year, before the allowance of any tax credit under ITA.

The formula to compute Average rate of Fiji Income Tax is:

$$\textbf{Average rate of Fiji Income tax (\%)} = \frac{\textbf{Income Tax Payable}}{\textbf{Chargeable income}} \times 100$$

Note: Average rate of Fiji Income tax will be referred to as Average tax rate later in this SIG.

What is Foreign Tax Credit?

14. Foreign tax credit is a tax deduction for foreign income tax paid on foreign sourced income. The rationale for providing a foreign tax credit is to eliminate double taxation on same income.

15. A resident person who has a foreign source income and has paid foreign income tax on that income can claim a foreign tax credit. This is because residents are liable for income tax on worldwide income which includes the foreign source income and the same income is likely to be taxed twice. Thus, section 60 provides for foreign tax credit to eliminate double taxation.

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[5] Section 8 – ITA 2015
[6] Section 139 – ITA 2015
[7] Section 2 – ITA 2015

16. Foreign tax credit method is a relief mechanism that operates to exempt foreign sourced income from Fijian income but only to the extent of the income tax chargeable in the foreign country so that the foreign tax is allowed as a credit against Fijian tax.

Application of Foreign Tax Credit

17. Section 60(1) provides for the allowance of the foreign tax credit and also sets outs conditions that must be satisfied before a person is entitled to claim foreign tax credit.

18. The conditions that must be satisfied are as follows:
Conditions for Claiming Foreign Tax Credit
(i) the person must be a resident for tax purpose in Fiji;
(ii) the person must have earned/sourced income outside Fiji;
(iii) the foreign source income must be part of chargeable income[8];
(iv) foreign income tax must be paid on taxable foreign source income;
(v) there must be a Fiji income tax payable on the foreign sourced income; and
(vi) eligible person will be allowed to claim a foreign tax credit of an amount equal to the lesser of:
(a) the Foreign Income Tax paid; or
(b) the Fiji Income Tax payable in respect of the taxable foreign-source income.

Example 1 – Fiji Income Tax Payable is Lower than Foreign Income Tax Paid

If foreign income tax paid is FJ$1000 and Fiji income tax payable on taxable foreign income is FJD$600, allowable foreign tax credit will be FJ$600. The remaining $400 will not be refunded to the taxpayer as tax is paid in overseas tax jurisdictions. If income tax paid overseas is not utilized in the same tax year, it gets forfeited and this will be discussed later in this SIG.

Example 2 - Foreign Income Tax Paid is Lower than Fiji Income Tax Payable

If foreign income tax paid is FJ$1000 and Fiji income tax payable on taxable foreign sourced income is FJ$1200, allowable foreign tax credit will be FJ$1000 and an additional FJ$200 will be payable by the taxpayer in Fiji.

19. Section 60(2) further clarifies what is Fiji income tax payable in respect of the taxable foreign-source income for the purposes of section 60(1)(b).

20. Fiji Income Tax payable in respect of taxable foreign-source income derived by a resident person in a tax year is computed by applying the **average rate of Fiji Income Tax** applicable to the person for the year against the **net foreign-source income** of the person for the year.

21. Therefore, the formula to compute Fiji Income Tax payable in respect of taxable foreign-source income is:

Fiji Income Tax Payable in respect of taxable foreign-source income	*=*	*Average tax rate x Net Foreign-Source Income*

[8] Section 13 – ITA 2015

Determination of Allowable Foreign Tax Credit

Steps to Determine Allowable Foreign Tax Credit

Step 1 - Calculate Chargeable Income

Step 2 - Calculate Fiji Income Tax Payable on the chargeable income

Step 3 - Calculate Average tax rate

Step 4 - Calculate Fiji Income Tax Payable on taxable foreign sourced income

Step 5 - Determine Allowable Foreign Tax Credit

Example 3 – Foreign Tax Credit for Resident Individuals

Mr. A' s income and tax payment details for tax year 2018 are as follows:

- Fiji income FJ$40,000
- Foreign royalty income FJ$10,000
- Foreign tax paid @15% = FJ$1500

CEO's position

The allowable foreign tax credit will be determined as follows:

(i) Calculate Chargeable Income

Chargeable Income = FJ$40,000 + FJ$10,000

= **<u>FJ$50,000</u>**

(ii) Calculate Income Tax Payable in Fiji on the chargeable income?

Fiji Income Tax Payable = Tax using Fiji Tax rates (refer Appendix 2)

= 18% * (FJ$50,000 - FJ$30,000)

= 18% * FJ$20,000

= **<u>FJ$3,600</u>**

(iii) Calculate Average tax rate

$$\text{Average tax rate} = \frac{\text{Income Tax Payable}}{\text{Chargeable income}} \times \frac{100}{1}$$

= FJ$3,600 /FJ$50,000 x 100/1

= **<u>7.20%</u>**

(iv) Calculate Fiji Income Tax Payable on taxable foreign sourced income?

Fiji Income Tax Payable in respect of taxable foreign-source income. = Average tax rate x Net Foreign-Source Income

= 7.20% x FJ$10,000

= **<u>FJ$720</u>**

(v) Determine Allowable Foreign Tax Credit

Foreign tax paid = FJ$1,500

Fiji Income Tax Payable = FJ$720

Therefore, allowable foreign tax credit is FJ$720 as this is lesser of the two. The rationale for allowing the lesser amount which is FJ$720 is that in Fiji, on average the income tax applicable on the $10,000 using the average tax rate would have been FJ$720. The excess of FJ$780(FJ $1,500 – FJ$720) is not refundable according to section 60(7) of ITA.

Example 4 - Foreign Tax Credit for Resident Companies

Company A's income and tax payment details for 2018 are as follows:

- Fiji Sales FJ$100,000
- Deductible expenses attributable to sales FJ$40,000
- Foreign interest income FJ$10,000
- Foreign tax paid on interest income @10% = FJ$1,000

CEO's position

The allowable foreign tax credit will be determined as follows:

(i) Calculate Chargeable Income

Chargeable Income = Fiji Sales – Deductible expenses + Foreign Interest income
= FJ$100,000 - FJ$40,000 + FJ$10,000
= **FJ$70,000**

(ii) Calculate Income Tax Payable in Fiji on the chargeable income?

Fiji Income Tax Payable = Chargeable Income * Corporate tax rate
= FJ$70,000 * Tax using Fiji Tax rates (refer Appendix 2)
= FJ$70,000 * 20%
= **FJ$14,000**

(iii) Calculate Average tax rate

$$\text{Average tax rate} = \frac{\text{Income Tax Payable}}{\text{Chargeable income}} \times \frac{100}{1}$$

= FJ$14,000 /FJ$70,000 x 100/1
= **20%**

(iv) Calculate Fiji Income Tax Payable on taxable foreign sourced income?

Fiji Income Tax Payable in respect of taxable foreign-source income. = Average tax rate x Net Foreign-Source Income
= 20% x FJ$10,000
= **FJ$2,000**

(v) Determine Allowable Foreign Tax Credit

Foreign tax paid = FJ$1,000

Fiji Income Tax Payable = FJ$2,000

Therefore, allowable foreign tax credit is FJ$1,000 as this is lesser of the two. An additional FJ$1,000 is tax payable in Fiji in respect of foreign interest income.

Example 5 – Income earned from multiple foreign countries and falls in SRT and ECAL bracket

Mr D's income and tax payment details for 2018 are as follows:

Fiji Income

- Employment Income from Fiji FJ$180,000

Income from Australia

- Interest income FJ$100,000
- Foreign tax paid on interest income @10% = FJ$10,000

Income from New Zealand

- Royalty income FJ$200,000
- Foreign tax paid on royalty income @15% = FJ$30,000

CEO's position

The allowable foreign tax credit will be determined as follows:

(i) Calculate Chargeable Income

Chargeable Income = Fiji Income + Australian Income + New Zealand Income
= FJ$180,000 + FJ$100,000 + FJ$200,000
= **FJ$480,000**

(ii) Calculate Income Tax Payable in Fiji on the chargeable income?

Fiji Income Tax Payable = Tax using Fiji Tax rates (refer Appendix 2)
= FJ$83,600 + (20% * (FJ$480,000 - FJ$450,000))
= FJ$83,600 + (20% * FJ$30,000)
= FJ$83,600 + FJ$6,000
= **FJ$89,600**

(iii) Calculate Average tax rate

$$\text{Average tax rate} = \frac{\text{Income Tax Payable}}{\text{Chargeable income}} \times \frac{100}{1}$$

= FJ$89,600 /FJ$480,000 x 100/1
= **18.67%**

(iv) Calculate Fiji Income Tax Payable on taxable foreign sourced income?

Fiji Income Tax Payable in	= Average tax rate	x	Net Foreign-Source Income
respect of net foreign-	= 18.67%	x	(FJ$100,000 + FJ$200,000)
source income	= 18.67%	x	FJ$300,000
	= **FJ$56,000**		

(v) Determine Allowable Foreign Tax Credit

Foreign tax paid = FJ$10,000 + FJ$30,000

= FJ$40,000

Fiji Income Tax Payable = FJ$56,000

Therefore, allowable foreign tax credit in respect of foreign source income is FJ$40,000 as this is lesser of the two.

(vi) Note that Social Responsibility Tax (SRT) & Environment & Climate Adaptation Levy (ECAL) will also apply as follows:

SRT = FJ$26,400 + (17% * (FJ$480,000 - FJ$450,000))
= FJ$26,400 + (17% * FJ$30,000)
= FJ$26,400 + FJ$5,100
= **FJ$31,500**

ECAL = 10% * (FJ$480,000 - FJ$270,000)
= 10% * FJ$210,000
= **<u>FJ$21,000</u>**

Computation of Foreign Tax Credit for Separate Classes of Income

22. Section 60(3) states that foreign tax credit of a resident person for a tax year is computed ***separately*** for the business income of the person that is foreign-source income and the other foreign source income of the person.

23. Section 60(4) further explains that where section 60(3) applies, deductions are apportioned for the purposes of paragraph (b) of the definition of "net foreign-source income" in section 60(8) in accordance with section 45 on the basis that the business income that is foreign source income and the other foreign-source income are separate classes of income.

24. Section 45 provides for the apportionment of expenditures that are incurred to derive more than one class of income. The following are treated as classes of income for the purposes of the section:

    - taxable foreign-source income (foreign-source income included in gross income);
    - other income included in gross income; and
    - exempt income.

25. Apportionment is necessary in two scenarios:
    (i) Firstly, it applies when expenditure is incurred to derive more than one class of income. For example, expenditure incurred partly to derive income included in gross income and partly to derive exempt income. In the case of exempt income, expenditures are not deductible to the extent incurred in deriving such income according to section 21(1)(a) as a deduction is allowed only for expenditures and losses incurred in deriving gross income.

    (ii) Secondly, it applies when expenditure is incurred partly to derive income included in gross income and partly for another purpose such as a private purpose.

26. In general, business income includes the net gain/profit from the conduct of a venture or concern in the nature of a trade, commerce, agriculture or manufacture. It also includes other income apart from net profit which is set out in section 17 of ITA (Refer Appendix 1).

27. The classification of dividends, interest, royalties and rents earned by resident person is important for the purpose of foreign tax credit that is, should it be classified as business income under section 17(1)(b) or as property income under section 18(1)(a) of ITA.

28. Section 17(1)(b) states the gross revenue derived by the person from the investment of the capital of the business such as dividends arising from any shares or other interests of the business, interest arising from any debt securities of the business, royalties arising from any industrial or intellectual property of the business, and rental income from any real property of the business is business income.

29. This simply means that if business funds are used for investments then the income earned from investments will be classified as business income. For example, if a person operating a

sole trader business deposits excess funds with a bank, any interest income derived is included in business income. The interest income may also be property income under section 18(1)(a) but its classification as business income is given priority therefore, an amount that is business income is excluded from the definition of property income under section 18(2) of ITA (Refer Appendix 1).

Example 6 - Foreign Tax Credit for Separate Classes of Income

Mr Z's income and tax payment details for 2018 are as follows:
Fiji Income

- Employment Income from Fiji FJ$50,000

Income from Australia
Business Income

- Sales FJ$150,000
- Total expenses FJ$100,000 (Deductible expenses attributable to sales FJ$90,000 and FJ$10,000 for private use)
- Foreign income tax paid on business income $18,000 ($60,000 @ 30%)

Other Income

- Foreign interest income FJ$10,000
- Foreign tax paid on interest income @10% = FJ$1,000

CEO's position
The allowable foreign tax credit will be determined as follows:

(vi) Calculate Chargeable Income

Chargeable Income = Employment Income + (Australian Sales – Deductible expenses) + Foreign Interest income
= $50,000 + ($150,000 - $90,000) + $10,000
= **FJ$120,000**

(vii) Calculate Income Tax Payable in Fiji on the chargeable income?

Fiji Income Tax Payable = $3,600 + (20% * ($120,000 - $50,000))
= $3,600 + (20% * $70,000)
= $3,600 + $14,000
= **$17,600**

(viii) Calculate Average tax rate

$$\text{Average tax rate} = \frac{\text{Income Tax Payable}}{\text{Chargeable income}} \times \frac{100}{1}$$

= $17,600 /$120,000 x 100/1
= **14.67%**

(ix) Calculate Fiji Income Tax Payable on taxable foreign sourced income?

Fiji Income Tax Payable in	= Average tax rate	x	Net Foreign-Source Business Income
respect of taxable foreign-	= 14.67%	x	($150,000 - $90,000)
source business income	= 14.67%	x	$60,000
	= **FJ$8,800**		

Fiji Income Tax Payable in	= Average tax rate	x	Net Foreign-Source Other Income
respect of taxable foreign-	= 14.67%	x	$10,000
source business income	= **FJ$1,466.67**		

(x) Determine Allowable Foreign Tax Credit

Foreign source business income

Foreign tax paid = FJD$18,000

Fiji Income Tax Payable = FJD$8,800

Therefore, allowable foreign tax credit in respect of foreign source business income is FJ$8,800 as this is lesser of the two.

Foreign source other income

Foreign tax paid = FJD$1,000

Fiji Income Tax Payable = FJD$1,466.67

Therefore, allowable foreign tax credit in respect of foreign source other income is FJ$1,000 as this is lesser of the two. An additional $466.67 will be payable by Mr. Z.

Time Limit to claim Foreign Tax Credit

30. Section 60(5) discusses that a foreign tax credit will be allowed under section 60 only if the foreign Income Tax is paid within 2 years after the end of the tax year in which the foreign-source income to which the tax relates was derived by the resident person unless CEO allows further time based on genuine reasons.

Example 7

Mr. B is a Fiji resident for tax purpose in Fiji. He derived interest income of FJD$10,000 in New Zealand in 2016 and paid foreign income tax of FJD$1,000.

Scenario 1 – Claim made within time limit

Mr B lodged his 2016 tax return in October, 2018.

CEO's position: His claim for foreign tax credit must be made within 2 years after the end of tax year. In this case the tax year is 2016 so the claim must be made by December 2018. Since his return is lodged in October 2018, he is entitled to claim foreign tax credit. However, late lodgment penalty of 20% of the amount outstanding under the return after taking into account the foreign tax credit and late payment penalty of 25% of the amount outstanding under the return after taking into account the foreign tax credit will apply.

Scenario 2 – Claim made after time limit

Suppose he lodged his 2016 tax return in January, 2019.

CEO's position: His claim for foreign tax credit must be made within 2 years after the end of tax year. In this case the tax year is 2016 so the claim must be made by December 2018. Since his return is lodged after December 2018, he loses the right to claim foreign tax credit. Late lodgment penalty of 20% of the amount outstanding under the return and late payment penalty of 25% of the amount outstanding under the return will apply.

Mr. B may only be allowed a foreign tax credit in 2019 if extension of time to make the claim was granted by CEO.

Scenario 3 – Extension of time to make the claim is granted by CEO
Suppose foreign tax credit was not claimed in the 2016 return because the New Zealand tax had not been paid.

CEO's position: If Mr. B pays the foreign tax after 2018, foreign tax credit will only be allowed if extension of time to make the claim was granted by CEO. Late lodgment penalty of 20% of the amount outstanding under the return and late payment penalty of 25% of the amount outstanding under the return will apply once return is lodged.

Foreign Tax Credit Given Priority over other tax credits

31. A foreign tax credit allowed under section 60 will be applied in accordance with section 8(3) and 8(4) of ITA.

32. Section 8(3) states that tax credits are allowed for a person and is deducted from the actual tax liability in relation to chargeable income for a tax year.

33. Section 8(4) provides that the foreign tax credit is applied to reduce the income tax payable and must be applied before any other tax credits. This is favorable to taxpayers because foreign tax credits can be used only in the tax year in which they arise and is also not refundable (if any) as it is paid in the other country.

Example 8
Mrs. C is a Fiji resident. She earned FJ$40,000 from her employment in year 2018 for which she paid FJ$1,800 as PAYE tax.
She also derived royalty income of FJ$20,000 from Australia in 2018 and paid foreign income tax of FJ$3,000.

CEO's position:
The allowable foreign tax credit will be determined as follows:

(i) Calculate Chargeable Income
Chargeable Income = FJ$40,000 + FJ$20,000
= **FJ$60,000**

(ii) Calculate Income Tax Payable in Fiji on the chargeable income?
Fiji Income Tax Payable = $3,600 + (20% * ($60,000 - $50,000))
= $3,600 + (20% * $10,000)
= $3,600 + $2,000
= **$5,600**

(iii) Calculate Average tax rate

$$\text{Average tax rate} = \frac{\text{Income Tax Payable}}{\text{Chargeable income}} \times \frac{100}{1}$$

$$= \$5{,}600 / \$60{,}000 \times 100/1$$

$$= \mathbf{9.33\%}$$

(iv) Calculate Fiji Income Tax Payable on taxable foreign sourced income?

Fiji Income Tax Payable in respect of taxable foreign-source income	=	Average tax rate x Net Foreign-Source Income
	=	9.33% x $20,000
	=	**$1,866.67**

(v) Determine Allowable Foreign Tax Credit

Foreign tax paid = FJD$3,000

Fiji Income Tax Payable on foreign sourced income = FJD $1,866.67

Therefore, allowable foreign tax credit is FJD$1,866.67 as this is lesser of the two.

(vi) Calculate tax payable or refundable

Actual Tax liability	$ 5,600.00[9]
Less foreign tax credit	$ 1,866.67[10]
	$ 3,733.33
Less PAYE tax	$ 1,800.00
Tax Payable	**$ 1,933.33**

Forfeiture of Excess Foreign Tax Credit

34. Section 60(7) clarifies that an excess foreign tax credit is forfeited. In other words, it is neither refundable nor it be carried forward for credit in the following tax year or carried back for credit in a previous tax year. Hence, the foreign tax credit must be used in the tax year in which it arises otherwise it will be forfeited.

Example 9 – Excess Foreign Tax Forfeited

Mr Y operates restaurants as sole trader business in Fiji and Australia. His income and tax payment details for 2018 are as follows:

Fiji Income

Business Income

- Sales FJ$40,000
- Total deductible expenses attributable to sales was FJ$75,000
- The business had a loss of $2,000 in 2017 therefore there was no advance tax paid in 2018

Income from Australia

Business Income

- Sales FJ$200,000
- Total deductible expenses attributable to sales was FJ$100,000
- Foreign income tax paid on business income $25,000

[9] Example 8 – CEO's position (ii)

[10] Example 8 – CEO's position (iv)

CEO's position:
The allowable foreign tax credit will be determined as follows:

(i) Calculate Chargeable Income

Chargeable Income = Fiji Business Loss + Australian Business Income
= (FJ$40,000 - FJ$75,000) + (FJ$200,000 - FJ$100,000)
= - FJ$35,000 + FJ$100,000
= **FJ$65,000**

(ii) Calculate Income Tax Payable in Fiji on the chargeable income?

Fiji Income Tax Payable = $3,600 + (20% * ($65,000 - $50,000))
= $3,600 + (20% * $15,000)
= $3,600 + $3,000
= **$6,600**

(iii) Calculate Average tax rate

$$\text{Average tax rate} = \frac{\text{Income Tax Payable}}{\text{Chargeable income}} \times \frac{100}{1}$$

$$= \$6,600 / \$65,000 \times 100/1$$

$$= \mathbf{10.15385\%}$$

(iv) Calculate Fiji Income Tax Payable on taxable foreign sourced income?

Fiji Income Tax Payable in respect of taxable foreign-source income = Average tax rate x Net Foreign-Source Income
= 10.15385% x $100,000
= **$10,153.85**

(v) Determine Allowable Foreign Tax Credit

Foreign tax paid = FJD$25,000

Fiji Income Tax Payable on foreign sourced income = FJD $10,153.85

Therefore, allowable foreign tax credit is FJD$10,153.85 as this is lesser of the two.

However, the Fiji income tax payable on chargeable income is $6,600 thus, the excess foreign tax paid will not be refunded and will get forfeited. The excess tax credit that will be forfeited is as follows:

Actual Tax liability	$ 6,600.00[11]
Less foreign tax credit	$10,153.85
Excess Tax Credit (forfeited)	**$ 3,553.85**

35. Section 60(8) elaborates on Average rate of Fiji Income Tax, Fiji Income Tax, Foreign Income Tax and Net foreign-source income definitions which has been discussed in paragraph 14 above.

[11] Example 9 – CEO's position (ii)

Additional Comments

36. Foreign Tax Credit will not be provided for any tax that is not paid in respect of taxable income such as Social Security Tax, Medicare Tax, etc.

37. Interest income earned by a resident individual in Fiji is subject to final withholding tax[12] therefore, this is not included in gross income to compute chargeable income[13].

38. Interest income earned by a resident individual from foreign source will be included in the gross income when computing the chargeable income.

39. Income earned in other countries that are exempt in that country may be taxable in Fiji therefore, residents must declare all the income they earn that is both income sourced from Fiji and overseas.

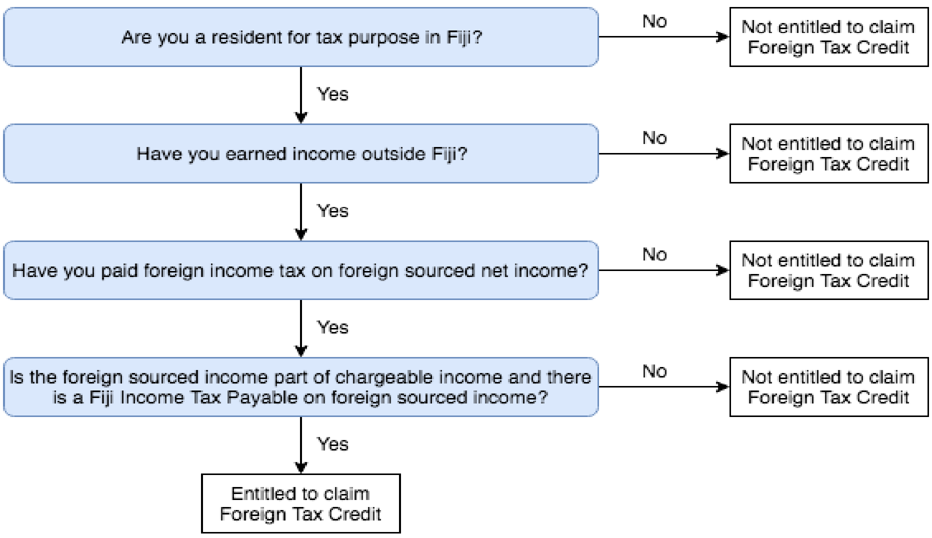
40. Income earned in other countries that are exempt income in Fiji does not form part of gross income and chargeable income therefore residents will not be entitled to a claim foreign tax credit on that income.

41. Income derived from a country with whom Fiji has a Double Tax Agreement (DTA), relief will be allowed in accordance with the DTA.

42. Income derived from a country with whom Fiji does not have a DTA, relief will be allowed in accordance with section 60 of ITA.

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

Flowchart to Claim Foreign Tax Credit



[12] Section 112 – ITA 2015

[13] Section 125(2)(a)(i) – ITA 2015

Appendix 1: Legislation

Income Tax Act 2015

Foreign tax credit

60.— (1) If a resident person derives taxable foreign-source income in respect of which the person has paid foreign Income Tax, the person is allowed a tax credit (referred to as a "foreign tax credit") of an amount equal to the lesser of—

(a) the foreign Income Tax paid; or

(b) the Fiji Income Tax payable in respect of the taxable foreign-source income.

(2) For the purposes of subsection (1)(b), the Fiji Income Tax payable in respect of taxable foreign-source income derived by a resident person in a tax year is computed by applying the average rate of Fiji Income Tax applicable to the person for the year against the net foreign-source income of the person for the year.

(3) The foreign tax credit of a resident person for a tax year is computed separately for the business income of the person that is foreign-source income and the other foreign source income of the person.

(4) Where subsection (3) applies, deductions are apportioned for the purposes of paragraph (b) of the definition of "net foreign-source income" in subsection (8) in accordance with section 45 on the basis that the business income that is foreign source income and the other foreign-source income are separate classes of income.

(5) A foreign tax credit is allowed under this section only if the foreign Income Tax is paid within 2 years after the end of the tax year in which the foreign-source income to which the tax relates was derived by the resident person or within such further time as the CEO allows.

(6) A foreign tax credit allowed under this section is applied in accordance with section 8(3).

(7) Any foreign tax credit or part of a foreign tax credit allowed under this section for a tax year that is not credited under section 8(3) is not refunded, carried back to the preceding tax year or carried forward to the following tax year.

(8) In this section—

"average rate of Fiji Income Tax", in relation to a resident person for a tax year, means the percentage that the Fiji Income Tax payable by the person for the year, before the allowance of any tax credit under this Act, is of the chargeable income of the person for the year;

"Fiji Income Tax" means the Income Tax and Social Responsibility Tax imposed under this Act;

"foreign Income Tax" means the Income Tax, including withholding tax, imposed by the government of a foreign country or a political subdivision of a government of a foreign country, but does not include penalty, additional tax, or interest payable in respect of such tax; and

"net foreign-source income", in relation to a resident person for a tax year, means the total taxable foreign-source income of the person for the year, as reduced by any deductions allowed to the person under this Act for the year that—

(a) relate exclusively to the derivation of the taxable foreign-source income; and

(b) are apportioned to the derivation of taxable foreign-source income in accordance with section 45.

Imposition of Income Tax and Social Responsibility Tax

8. —(1) Subject to this Act, a tax to be known as "Income Tax" is imposed for each tax year at the rate or rates prescribed by Regulations made under this Act on a person who has chargeable income for the year.

(2) In addition to the Income Tax imposed under subsection (1) and subject to this Act, a tax to be known as the "Social Responsibility Tax" is imposed for each tax year at the rate prescribed by Regulations made under this Act on an individual, including an employee, who is liable for Income Tax for the tax year.

(3) The Income Tax and Social Responsibility Tax imposed under subsections (1) and (2) for a tax year are computed by applying the rate or rates of Income Tax and Social Responsibility Tax applicable to the person prescribed by Regulations made under this Act to the chargeable income of the person for the year, with any tax credits allowed to the person for the year subtracted from the resulting amount.

(4) If a person is allowed more than one tax credit for a tax year, the credits are applied in the following order—
(a) the foreign tax credit allowed under section 60;
(b) the tax credits allowed under sections 53(4), 110, and 124.

(5) Instead of taxation under subsection (1), certain classes of income, including the income of certain classes of persons, may be subject to—
(a) tax as provided in section 9, 10 or 11; or
(b) withholding of tax as a final tax as provided in section 125.

(6) If, for a tax year, an individual has both chargeable income and employment income to which section 125 applies, the Income Tax payable on the chargeable income is computed according to the following formula—

A—B

where—

A is the amount of Income Tax that would be payable on an amount of chargeable income equal to the aggregate of the individual's chargeable income and employment income to which section 125 applies for the year; and

B is the amount of Income Tax that would be payable on an amount of chargeable income equal to the individual's employment income to which section 125 applies for the year.

(7) The reference to "Income Tax" in subsection (6) includes the Social Responsibility Tax.

(8) Notwithstanding subsection (2), Social Responsibility Tax is not payable on the portion of chargeable income derived from a one – off payment or receipt prescribed by regulations.

Chargeable income

13. The chargeable income of a person for a tax year is the gross income of the person for the year reduced by the total amount of deductions allowed to the person for the year.

Income included in gross income

14. —(1) Subject to this Act, the gross income of a person for a tax year is the total of the following—
(a) employment income, business income, and property income derived by the person during the year;
(b) income according to ordinary concepts, other than income referred to in paragraph (a), derived by the person during the year;
(c) unexplained and unidentified deposits during the year in any bank account if the deposit can be sourced to the person;
(d) income that a section of this Act includes in the gross income of the person for the year; and
(e) forfeited deposits and instalments on capital assets.

(2) Income is not included in gross income if it is—
(a) exempt income; or
(b) subject to tax under section 9, 10, or 11.

(3) Subject to this Act—
(a) the gross income of a resident person includes income derived from all sources within and outside Fiji; and
(b) the gross income of a non-resident person includes only income derived from sources in Fiji.

Employment Income

15. —(1) The following are employment income—

(a) salary, wages, or other remuneration derived by an employee in respect of employment, including leave pay, payment in lieu of leave, overtime pay, bonus, commission, fees, gratuity, or work condition supplements;

(b) the value of a fringe benefit, other than an exempt fringe benefit, derived by an employee in respect of employment that is not subject to tax under the Fringe Benefits Tax;

(c) the amount of any allowance derived by an employee in respect of employment, including a cost of living, subsistence, rent, utilities, education, entertainment, meeting or travel allowance, but not including any allowance to the extent expended in the performance of the employee's duties of employment;

(d) the amount of any expenditure incurred by an employee that is reimbursed by the employer, other than expenditure to the extent incurred on behalf of the employer in the performance of the employee's duties of employment;

(e) an amount derived by an employee as consideration for—

(i) the agreement by the employee to enter into employment;

(ii) the employee to agree to any conditions of employment or any changes to the employee's conditions of employment; or

(iii) the agreement of the employee to accept a restrictive covenant in respect of any past, present or prospective employment;

(f) an amount derived by an employee on termination of employment, whether paid voluntarily or under an agreement, including a redundancy

payment or other compensation for loss of employment, and golden handshake payments;

(g) any pension, annuity or supplement to a pension or annuity derived by an employee in respect of employment, including a past employment;

(h) the amount of any loan, payment for an asset or services, value of any asset or services provided, or any debt obligation released, by the company to, or in favour of, a member of the company or an associate of a member to the extent to which the transaction is, in substance, remuneration for services provided in any capacity to the company by the member.

(2) The value of a fringe benefit included in employment income under subsection (1)*(b)* or an amount referred to in subsection (1)*(h)* is determined under Division 2 of Part 4.

(3) An amount or benefit is derived by an employee in respect of employment regardless of whether it is paid or provided by— *(a)* the employer of the employee; *(b)* an associate of the employer; or *(c)* third party arranger.

(4) An amount or benefit is derived by an employee even though it is paid or provided to an associate of the employee by the employer of the employee, an associate of the employer, or a third party arranger.

(5) In this section, "work condition supplements" includes an additional amount paid as compensation for difficult, unpleasant, or dangerous work conditions.

Business Income

17.—(1) The following are included in the business income of a person conducting a business—

(a) the gross proceeds from the conduct of the business, including the consideration for the disposal of trading stock and the gross fees from the provision of services;

(b) the gross revenue from the investment of the capital of the business, including dividends, interest, royalties and rents;

(c) the net gain from—

(i) the conduct of a venture or concern in the nature of a trade, commerce, agriculture or manufacture;

(ii) the carrying on or carrying out of a profit-making undertaking or scheme; or

(iii) the disposal of an asset, other than trading stock or an asset subject to sub-paragraph (i) or (ii), held on revenue account by a person in carrying on a business;

(d) any other income according to ordinary concepts from the conduct of a business;

(e) any other income that a section of this Act deems to be business income.

(2) For the purposes of subsection (1)*(c)*(i) and (ii), and subject to subsection (3), the net gain arising from the conduct of a venture or concern in the nature of a trade, commerce, agriculture or manufacture, or in carrying on or carrying out of a profit-making undertaking or scheme is the amount by which the gross proceeds derived by the person from the venture, concern, undertaking or scheme exceed the expenditures or losses incurred in conducting the venture, concern, undertaking or scheme.

(3) An expenditure or loss is taken into account in computing the net gain under subsection (2) only if the expenditure or loss is allowed as a deduction under this Act (ignoring section 22(1)*(c)*).

(4) Subject to this Act, the net gain arising on disposal of an asset to which subsection (1)*(c)*(iii) applies is the consideration for the disposal reduced by the cost of the asset at the time of disposal.

Property income

18.— (1) Subject to subsection (2) and section 19, the following are included in the property income of a person—

(a) a dividend, interest, royalty, rent, natural resource amount, or other amount arising from the provision, use or exploitation of property;

(b) the net gain from the disposal of an asset that was acquired for the purpose of disposal at a profit;

(c) a pension, charge or annuity, or any supplement to a pension, charge or annuity;

(d) a benefit paid by a retirement fund.

(2) Property income does not include income that is business or employment income.

(3) The net gain arising on disposal of an asset to which subsection (1)*(b)* applies is the consideration for the disposal of the asset reduced by the cost of the asset at the time of disposal.

Substituted tax year

36.—(1) A company carrying on a business may, with the written approval of the CEO, adopt a period of 12 months other than the Calendar year as the tax year of the company (referred to as the "substituted tax year") and that period is the tax year for the company for each succeeding year unless, with the written approval of the CEO, another period of 12 months is adopted as the company's tax year.

(2) If a company's tax year changes as a result of subsection (1) and the period between the last full tax year prior to the change and the date on which the new tax year commences is 6 months or less (referred to as the transitional period), the transitional period is treated as part of the first substituted tax year.

(3) If a company's tax year changes as a result of subsection (1) and the transitional period is more than 6 months, the transitional period is treated as a separate tax year (referred to as the "transitional tax year").

(4) The law under this Act applicable to a substituted tax year or a transitional tax year is—

(a) if the substituted tax year or transitional tax year ends in the period 1st January to 30th June, the law applicable for the Calendar year in which the substituted tax year or transitional tax year commenced; or

(b) if the substituted tax year or transitional tax year ends in the period 1st July to 31st December, the law applicable for the Calendar year in which the substituted tax year or transitional tax year ends.

Classes of income

45. —(1) Subject to this Act, an expenditure or loss relating to—

(a) the derivation of more than one class of income; or

(b) the derivation of a class of income and to some other purpose, is apportioned on any reasonable basis taking account of the relative nature and size of the activities or purposes to which the expenditure or loss relates.

(2) The following are treated as a separate class of income—

(a) taxable foreign-source income;

(b) any other income included in gross income; and

(c) exempt income.

Withholding of tax from interest

112. Subject to this Subdivision, a resident company or permanent establishment in Fiji of a non-resident company paying interest to a resident person, must withhold tax from the gross amount of the interest at the rate prescribed by Regulations except if—

(a) the payment is to a financial institution;
or

(b) the CEO issues a certificate of exemption to a resident person on the basis that the interest is exempt as prescribed by Regulations made under this Act.

Withholding tax as a final tax

125.—(1) This section applies to tax withheld during a tax year under—

(a) section 111 provided that the employee does not have two or more

employments at the same time for the whole or part of the tax year;

(b) section 112 from interest paid by a financial institution to a resident individual or

(c) section 112 from interest paid to a resident individual to which paragraph (b) does not apply and the only other income of the individual is the following—

(i) income to which this section applies;
(ii) subject to tax under section 9.

(d) Deleted

(2) If this section applies, the tax withheld is a final tax on the income in respect of which the tax has been withheld and—

(a) the income is not included in—

(i) gross income in computing the chargeable income of the person who derives it for any tax year, although employment income to which subsection (1)(a) applies is taken into account as specified in section 8(6); or

(ii) gross turnover in computing the Presumptive Income Tax liability of the person who derived it for any tax year;

(b) no deduction is allowable under this Act in computing the chargeable income of the person for any expenditure or loss incurred in deriving the income;

(c) the income is not reduced by any deduction allowed under this Act or by any loss carried forward; and

(d) the tax withheld is not reduced by any tax credits allowed under this Act.

Currency translation

139.—(1) An amount taken into account under this Act must be expressed in Fiji dollars.

(2) If an amount is in a currency other than Fiji dollars, the amount must be translated to Fiji dollars at the exchange rate applying between the foreign currency and Fiji dollars on the date the amount is taken into account for the purposes of this Act.

(3) Repealed

(4) For the purposes of this Act, "exchange rate" means the telegraphic transfer buying rate issued by a financial institution relevant to the transaction.

Appendix 2:

Tax Rates – Resident Individuals

Chargeable Income ($)	Income Tax Payable ($)	Social Responsibility Tax ($)	Environment and Climate Adaptation Levy ($)
0 – 30,000	Nil	Nil	Nil
30,001 – 50,000	18% of excess over 30,000	Nil	Nil
50,001 – 270,000	3,600 + 20% of excess over 50,000	Nil	Nil
270,001 – 300,000	47,600 + 20% of excess over 270,000	13% of excess over 270,000	10% of excess over 270,000
300,001 – 350,000	53,600 + 20% of excess over 300,000	3,900 + 14% of excess over 300,000	10% of excess over 270,000
350,001 – 400,000	63,600 + 20% of excess over 350,000	10,900 + 15% of excess over 350,000	10% of excess over 270,000
400,001 – 450,000	73,600 + 20% of excess over 400,000	18,400 + 16% of excess over 400,000	10% of excess over 270,000
450,001 – 500,000	83,600 + 20% of excess over 450,000	26,400 + 17% of excess over 450,000	10% of excess over 270,000
500,001 – 1,000,000	93,600 + 20% of excess over 500,000	34,900 + 18% of excess over 500,000	10% of excess over 270,000
1,000,000	193,600 + 20% of excess over 1,000,000	124,900 + 19% of excess over 1,000,000	10% of excess over 270,000

Income Tax (Rates of Tax and Levies) (Amendments) Regulations 2017 (Legal Notice No. 59/2017).

Tax Rates – Companies

Company Details	Income Tax Payable
Company that has established or relocated its headquarters to Fiji	17%
Company listed on the South Pacific Stock Exchange	10%
Any other company	20%

Income Tax (Rates of Tax and Levies) Regulation 2016