PRACTICE STATEMENT No. 39/2017

Issued 29 September 2017

SUBJECT	Fiji Revenue and Customs Service Taxation of Dividends
DATE OF EFFECT	1 January 2016 – 31 July 2017
CONFIDENTIALITY STATUS	May be released to the public
LEGISLATIVE REFERENCES	Income Tax Act 2016 - Section 2, 10 (6) (c) & 10 (7), 112 (2), 113, 115,116, 120, 121, 143(7), 143 (9A) Income Tax (Exempt Income) Regulations 2016 (Legal Notice 2 of 2016 and Legal Notice 57 of 2017)
PRACTICE CO-ORDINATOR	Deputy Director Revenue Collection

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INTRODUCTION

1. The purpose of this Practice Statement is to provide guidance on the taxation of dividends from 1 January 2016 to 30 June 2017. It is issued with the authority of the Chief Executive Officer (CEO) of the Fiji Revenue and Customs Service.

2. The term 'dividend' for tax purposes means a payment by a company to its members from the profits (both capital or revenue in nature) of the company, whether in cash or other forms and any amount treated as a dividend (deemed dividends).

3. Any dividend paid or credited in the period 1 January 2016 to 30 June 2017 (except exempt dividends) is subject to a final dividend withholding tax. The company making the payment is required to withhold the tax and pay it to the Revenue and Customs Service.

4. Tax is applied on the gross amount of dividend or 'deemed dividend' as follows:
   - resident member – 3% dividend withholding tax
   - non-resident member – 9% non-resident withholding tax (NRWT)

5. For tax purposes, a distribution of net profit after-tax is deemed to be made from retained earnings in chronological order; i.e. the order in which such profits have accumulated. In this regard, proper records must be kept.

6. With effect from 1 August 2017, dividends paid to residents and non-residents are exempt from income tax and the deemed dividend provisions repealed.

LEGISLATIVE BASIS

7. 'Dividend' is defined in section 2 of the *Income Tax Act*, 2015. Paragraph (a) states the ordinary meaning of dividend which is, a distribution of profits to a member/shareholder and paragraphs (b) – (f) other distributions that are treated as dividends. Deemed dividend provisions are contained in Section 10 (6) (c).

8. Dividend tax is collected by withholding when it is paid or credited to a resident (Section 112 (2)) or a non-resident (Section 113), unless it is exempt income (Section 115). The collection and reporting requirements are set out as follows- Sections 112, 113, 116, 117, 120 and 121.

9. Dividends will not be taxed in the following cases:
   (a) where it is exempt under the *Income Tax Act* -

(i) it is paid to a person listed in Part 5 of the Schedule to Regulation 3 of the *Income Tax (Exempt Income) Regulations* 2016. e.g. companies listed on the South Pacific Stock Exchange, Unit Trusts, resident company to resident company (Refer Attachment);

(i) the dividends are connected to the Fiji PE of a non-resident (Section10(3)(a));

(ii) it is exempt income of a non-resident person (Section10(3)(e))

(b) where it is paid out of profits for the tax years 2014 or 2015 that have been subject to the 1% additional company tax ('Transitional Tax') on undistributed profits under Section 143(7) and Section 143 (9A)).

Note:

(1)Part 5 of the Income Tax (Exempt Income) Regulations 2016) provides that with effect from 1 August 2017 all dividends are exempt from taxation.

(2) The deemed dividend provisions under Section 20A are repealed.

APPLICATION

Dividends

10. The following is a guide on the meaning of dividend defined in Section 2.

1. *"a distribution of profits by a company to a member of the company, and includes an entitlement to income or capital profits of a unit trust;"* (Paragraph (a))	"Company" is defined in section 2 and means any corporate or unincorporated body (excluding a partnership), a trust and any foreign person declared by the CEO to be a company. "Member" is defined in section 2 and includes a shareholder, a member of a company limited by guarantee, a member of an unincorporated association or body of persons and a participant in a Managed Investment Scheme (MIS) who has membership interest or ownership interest E.g. a share
2. "*the capitalisation of profits by the company, whether by way of a bonus share, bonus unit, or bonus debenture issue, or increase in the amount paid-up on a membership interest, or otherwise involving a credit of profits to a share or trust capital account, but does not include a bonus share, bonus unit, or bonus debenture paid out of a share or unit premium account*"	Paragraph (b) treats the capitalisation of profits by a company, whether by way of a bonus share, bonus interest in an MIS (in the case of a company that is an MIS), or bonus debenture issue, or increase in the amount paid-up on a membership interest, or otherwise involving a credit of profits to a share or an MIS capital account (other than the share premium account) as a dividend.

(Paragraph (b))	
3. "*an amount returned to a member of the company in respect of a membership interest in the company on a partial reduction in capital to the extent that the amount returned exceeds the amount by which the nominal value of the membership interest was reduced*" (Paragraph (c))	Paragraph (c) applies to a reduction of corporate capital. It treats as a dividend any amount returned to a member that is above the amount by which the nominal value of the membership interest in the company is reduced. **Example**: *Suppose XCo paid shareholders $0.20 per share as consideration for a reduction in the nominal value of the share from $1 to $0.90. In this case, $0.20 is paid to the shareholder, but the nominal value of the share is reduced by only $0.10. The effect of paragraph (c) is :* *- $0.10 per share is a dividend (i.e. a distribution of profits) and* *- $0.10 is the reduction in capital.*
4. "*an amount returned to a member of the company on redemption or cancellation of a membership interest in the company, including on liquidation, dissolution, or termination of the company, to the extent the amount distributed exceeds the nominal value of the membership interest*;" (Paragraph (d))	Paragraph (d) provides for a similar rule in the case of - the redemption or - cancellation of a membership interest (such as the cancellation of shares on liquidation, dissolution or termination of a company, or on termination of an MIS). Any amount paid which is above the nominal value of the membership interest, is a dividend.
5. "*in the case of a reconstruction, reorganisation, or amalgamation of the company, an amount paid to a member of the company in respect of a membership interest in the company in excess of the nominal value of the membership interest before the reconstruction, reorganisation, or amalgamation*;"	Paragraph (e) provides for a similar rule in the case of a reconstruction, reorganisation or amalgamation of a company (including an MIS).

(Paragraph (e))	
6. *the amount of any loan, payment for an asset or service, value of any asset or service 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, a distribution of profits* (Paragraph f)	This applies to the amount of any : - loan or advance ; - payment for an asset or service; - value of any asset or service provided; - any debt obligation released; by a company to a member/ associate of a member where the transaction is in substance, a distribution of profits.

Deemed dividend – Section 10(6) (c): After- tax profits of a permanent establishment

11. The net profit after tax of a permanent establishment (PE) is a dividend when it is paid or credited to the head office. The Fijian PE is required to pay 9% NRWT at the time the amount is determined.

Example 1

AB Fiji (ABF) is the Fiji branch of a non-resident. Its net profit after-tax for the tax year 2016 was determined as follows-

<u>ABF – YE 31/12/16</u>

(A) Accounting profit = $10000
(B) Taxable profit = $9000
(C) Tax paid = $1800 ($9000 x 20%)
After tax profit (A-C) = $8200 ($10,000 - $1800)

ABF will pay 9% NRWT on the after- tax profit and the tax payable is $738 ($8200 x 9%)

'Exempt dividends

12. The dividend income of a resident company is exempt from income tax.

Example 2

Aco is a shareholder in SuvaCo.

SuvaCo paid dividends to ACo in 2017. SuvaCo is not required to withhold dividend tax under section 115 of the ITA as the income is exempt in Aco's hands under Part 5 of the Income Tax (Exempt Income) Regulations.

SuvaCo will be required to give ACo a dividend withholding tax certificate under section 120.

13. Section 10 (3)(a) provides that NRWT does not apply to a dividend, if the holding giving rise to the dividend is effectively connected with a PE in Fiji of the non-resident person.

    Example 3.

    AustFiji is a PE of an Australian company. It owns shares in a resident company DBL Co. Ltd (DBL)

    DBL paid dividends to AustFiji in 2016 which is remitted to Australia

    Since the shares are owned by AustFiji, DBL is not required to deduct NRWT.

    The dividend income will be included in AustFiji's gross income for 2016 and is subject to income tax.

14. Section 10 (3) (e) provides that NRWT does not apply to a dividend that is exempt income of a non-resident.

    Example 4

    NZCo is a non-resident company. It owns shares in NadiCo a company listed on the South Pacific Stock Exchange.

    Any dividend paid to NZCo by NadiCo will be exempt from NRWT under Part 5 Paragraph 1 of the Income Tax (Exempt Income) Regulations 2016

PROCESS

15. Dividend tax is collected at the time it is paid or credited (Section 116) and the amount withheld must be paid by the end of the month following the month in which the tax was due. (Section 117).

16. Resident companies accounting for dividends must give the recipient a dividend withholding tax certificate.

17. An Annual Summary of withholding tax paid must be sent to the Revenue and Customs Service within two months after the end of a tax year or such further time allowed by the CEO.

18. The record keeping requirements and penalties in the Tax Administration Act, 2009, apply.

19. For comments and enquiries please e-mail: info@frcs.org.fj.

ATTACHMENT

Extracts from ITA

Section 2

"dividend", in relation to a company, means—

(a) a distribution of profits by a company to a member of the company, and includes an entitlement to income or capital profits of a unit trust;

(b) the capitalisation of profits by the company, whether by way of a bonus share, bonus unit, or bonus debenture issue, or increase in the amount paid-up on a membership interest, or otherwise involving a credit of profits to a share or trust capital account, but does not include a bonus share, bonus unit, or bonus debenture paid out of a share or unit premium account;

(c)an amount returned to a member of the company in respect of a membership interest in the company on a partial reduction in capital to the extent that the amount returned exceeds the amount by which the nominal value of the membership interest was reduced;

(d)an amount returned to a member of the company on redemption or cancellation of a membership interest in the company, including on liquidation, dissolution, or termination of the company, to the extent the amount distributed exceeds the nominal value of the membership interest;

(e) in the case of a reconstruction, reorganisation, or amalgamation of the company, an amount paid to a member of the company in respect of a membership interest in the company in excess of the nominal value of the membership interest before the reconstruction, reorganisation, or amalgamation; or

(f) the amount of any loan, payment for an asset or service, value of any asset or service 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, a distribution of profits.

Section 10 (1), (2) and (6), (7)

10 (1) Subject to this Act, a tax to be known as "Non-resident Withholding Tax" is imposed at the rate prescribed by Regulations made under this Act on a non-resident person who has derived a dividend, interest, royalty, insurance premium, management fee, natural resource amount or fee for the provision of professional or other independent services from sources in Fiji.

(2) The tax imposed under subsection (1) is computed by applying the rate prescribed by Regulations made under this Act to the gross amount of the dividend, interest, royalty, insurance premium, management fee, natural resource amount or fee for the provision of professional or other independent services.

(3) …

(6) For the purposes of this section, section 7, and Subdivision 4 of Division 2 of Part 9—

(a) a permanent establishment in Fiji of a non-resident company and the rest of the company are treated as separate persons;

(b) the permanent establishment is treated as a resident company and the rest of the company (referred to as the "head office company") is treated as a non-resident company; and

(c) the after-tax earnings of the permanent establishment as determined according to generally accepted accounting principles paid or credited in favour of the head office company is treated as a dividend derived by the head office company and paid by the permanent establishment.

(7) If subsection (6) applies, section 12 applies only to the after-tax earnings of a permanent establishment treated as a dividend under subsection (6)(c).

Section 12

General provisions relating to taxes imposed under sections 9, 10 and 11

***12.** Subject to this Act, the tax imposed under sections 9, 10, and 11 on a person is a final tax on the income in respect of which it is imposed and—*

(a) the income is not included in gross income in computing the chargeable income of the person for any tax year;

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

(c) the amount on which tax is imposed under section 9, 10 or 11 is not reduced by a deduction allowed under this Act including for any loss carried forward; and

(d) the tax payable by the person under section 9, 10 or 11 is not reduced by any tax credits allowed under this Act.

(7) For the purposes of subsection (1), the onus of proof as to whether the failure to distribute the net profit after tax has been or will be reinvested by the resident company for the purposes of maintenance or development of the business of the resident company is, in all cases, on the resident company.

(8) For the purposes of this section, "member" means a person by whom or on whose behalf shares in the resident company are held at the end of the sixth month after the end of the resident company's tax year.

(9) This section does not apply to a resident company listed on the South Pacific Stock Exchange."

Extract from Legal Notice #2 Income Tax (Exempt Income) Regulations 2016

PART 5—EXEMPT DIVIDENDS

"(1) A dividend paid by a resident company listed on the South Pacific Stock Exchange, to a resident or non-resident shareholder.

(2) The nominal value of bonus shares provided to a shareholder to the extent that the shares have been paid up out of profits arising from the reconstruction or reorganisation of the company's equity structure undertaken solely for the purpose of listing on the South Pacific Stock Exchange if the company—
(a) is listed on the South Pacific Stock Exchange within 12 months of such reconstruction or reorganisation or such longer period as the CEO may allow; and
(b) remains listed on the South Pacific Stock Exchange for a period of not less than 3 years.

(3) A dividend paid to a resident person from the Unit Trust of Fiji, the Colonial First State Income and Growth Fund, Fijian Holdings Unit Trust and the Fijian Holdings Property Trust Fund.

(4) A dividend paid or credited in favour of a resident from any other Unit Trust company approved by the CEO.

(5) A dividend paid by a resident company to another resident company. Despite the treatment of the dividend as exempt income, the resident company receiving the dividend is entitled to a deduction for expenditure incurred in deriving the dividend to the extent allowed under the Act.

(6*) Any dividend paid out by a resident company listed on SPSE shall not be subject to section 143(7) of the Act.*

Section 143 (7)

(7) If any part of the net profit after tax of a company for the tax year commencing on 1 January 2014 or equivalent substituted tax year has not been distributed as a dividend prior to 1 January 2016, the company shall pay tax on the undistributed amount at the rate of 1% and the tax is due on March 31, 2016."

Extract from Legal Notice #57 Income Tax (Exempt Income) (Amendment) Regulations 2017 effective from 1 August 2017

"PART 5—EXEMPT DIVIDENDS

(1) Any dividend received is exempt income."