PRACTICE STATEMENT No. 47
Issued: 19/01/2017

SUBJECT	**FIJI REVENUE & CUSTOMS AUTHORITY** **Foreign Tax Credit**
DATE OF EFFECT	1 January 2016
CONFIDENTIALITY STATUS	May be released to the public
LEGISLATIVE REFERENCES	Income Tax Act 2015 - Section 8 (4), 60 and 139
PRACTICE CO-ORDINATOR	Deputy Director Revenue Management

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INTRODUCTION

1. The purpose of this Practice Statement is to explain how the income tax provisions on foreign tax credit is applied. These guidelines are issued with the authority of the Chief Executive Officer (CEO) of the Fiji Revenue & Customs Authority (FRCA).

2. The foreign tax credit (FTC) is a method of relief from international double taxation. It applies to taxable foreign-source income derived by a resident person.

3. The need for relief from international double taxation arises because resident persons are liable for income tax on worldwide income. The same income is likely to also be taxed in the foreign country of source and therefore, subject to double taxation.

4. In this situation, it is usual for the residence country to provide relief and that is the purpose of the FTC. In general, a resident person can credit their foreign income tax payments in respect of foreign source income against the Fiji income tax payable on that income.

5. To qualify for a FTC the following requirements must be met:
    - the person must be a Fiji resident;
    - the foreign income for which FTC is claimed must be included in chargeable income and there must be Fiji tax payable on that income;
    - the person must have paid the tax for which FTC is claimed;
    - a claim for FTC must be made within two years after the end of the year in which the foreign income was derived (unless time to claim is extended by the CEO).

6. The FTC does not apply to any tax that is not paid in respect of taxable income such as Social Security Tax, Medicare Tax etc.

7. When reporting foreign income in tax returns, the amount of foreign income earned and foreign tax paid must be expressed in Fiji dollars.

LEGISLATIVE BASIS

8. The rules for granting FTC are set out in Section 60 of the *Income Tax Act 2015* (ITA). Section 60 (1) provides for the allowance of a foreign tax credit.

9. Fiji taxes resident persons on worldwide income, therefore FTC is allowed only to resident persons that have derived foreign-source income. These terms are defined in Section 2 of the ITA.

10. The provisions of Section 60 must be read in conjunction with the following sections –
    - Section 8 (4) which sets out the rules for the order in which tax credits will be allowed;
    - Section 45 which covers apportionment of expenses for classes of income;
    - Section 139 (1) which provides that all amounts (income, gains, expenditures, costs, and tax credits) taken into account under the Act must be expressed in Fiji dollars.

11. Extracts of the relevant sections are given in the Attachment and further guidance on the provisions are given in the following paragraphs.

APPLICATION

12. Section 60 (1) provides that if foreign income is included in gross income, the FTC allowed will be the lesser of :
    (i) the foreign income tax paid; or
    (ii) the Fiji tax payable on the foreign-source income.

Example 1

If foreign income tax paid is FJD$100 and Fiji income tax payable on taxable foreign income is FJD$60, FTC is limited to FJD$60

If foreign income tax paid is FJD$100 and Fiji income tax payable on taxable foreign income is FJD$120, FTC is FJD$100

13. The allowable FTC is computed by applying the average tax rate of the Fiji Income tax payable for the year, to the foreign income.

    FTC allowable = Average tax rate x Foreign Income

14. The average tax rate is the percentage of income tax payable (income tax and social responsibility tax) to the total chargeable income for the year.

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

Example 2

Mr. Singh' s 2016 income and tax payment details are as follows:

- *Fiji income $40,000*
- *Foreign income FJD$10,000*
- *Foreign tax paid @15% = FJD$1500*
- *Gross income $50,000*

- *Income tax payable = $5460*

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

= $5460 /$50,000 x 100/1
= 10.92%

FTC allowable = Average tax rate x Foreign Income
= 10.92% x $10,000
= $1092

Even though Mr. Singh has paid foreign tax of FJD$1500, the allowable tax credit is only $1092.

15. Section 60 (3) provides that the credit limit is computed separately for foreign-source business income (e.g. consultancy, supermarket etc.) and other foreign-source income (e.g. dividend, rent).

16. For the purpose of computing the foreign tax credit limit, Section 60 (4) provides that deductions are to be apportioned between foreign-source business income and other foreign source income. This is on the basis that they are separate classes of income and is applied in accordance with the principles set out in Section 45 ITA.

17. Section 60(5) limits the claiming of the FTC to two years after the end of the tax year in which the foreign income was derived. If the foreign tax is paid after this period, the credit is lost unless the CEO extends the time to enable the person to claim a credit (Refer to Paragraph 22).

Example 3

Scenario 1
Mr. Singh, a Fiji resident derived income in New Zealand (NZ) in 2017.
His claim for FTC must be made by December 2019.
Suppose he lodges his 2017 tax return in June, 2020.
Since his return is lodged after December 2019, he loses the right to claim FTC. Mr. Singh may only be allowed a FTC in 2020 if extension of time to make the claim is granted.

Scenario 2
Suppose FTC was not claimed in the 2017 return because the NZ tax had not been paid. If Mr. Singh pays the foreign tax after 2020, FTC will only be allowed if extension of time to make the claim is granted.

18. If a resident person has more than one type of tax credit, the FTC is applied in accordance with Section 8(4), which sets out the rules for claiming the tax credits (Section 60 (6)).

Example 4

In 2018 , Mr Singh's income tax on chargeable income was $6,000 :

Tax paid : Fiji PAYE $3000 NZ FJD$2500
Allowable tax credits: PAYE $3,000 FTC FJD$2000

The credits will be applied in the following order:

Income tax	*$6,000*	
FTC allowed	*$2,000*	*FTC is allowed before other credits*
Balance	*$4,000*	
PAYE credit	*$3,000*	
Tax payable	*$1,000*	

19. Section 60(7) provides that an excess FTC is lost – it is not refunded, carried back or carried forward. For example, if foreign tax paid was $3000 and FTC allowable $2000, the excess $1000 is not taken into account.

Example 5

In 2018 , Mr. Singh's chargeable income was below the taxable threshold
Tax paid : Fiji - PAYE $100 NZ - FJD$50 (interest withholding tax)
Allowable tax credits : PAYE $100 FTC – $0
The tax credits will be applied as follows.

Income tax assessed	*$0*	
FTC allowed	*$0*	*The FTC allowed will be the lesser of :* *(i)the foreign income tax paid -$50; or* *(ii)the Fiji tax payable on the foreign-source income - $0* *Since there is no Fiji tax payable on the foreign income, FTC is $0.*
Balance	-	
PAYE credit	*$100*	
Refund	*$100*	*Excess PAYE is refunded,* *Excess foreign tax paid is lost*

20. Foreign income tax for the purpose of Section 60 is defined as income tax including the withholding tax (i.e. tax that applies on dividends, interest and royalties derived by the non-resident person) imposed by the government of a foreign country. It excludes any penalty tax, additional tax, or late payment interest (Section 60 (8)).

Example 6

Mr Singh did not pay the tax payable in NZ (FJD$2,500) by the due date and was charged FJD$20 late payment penalty.

Only FJD$2,500 will be taken into account for the purpose of determining the allowable FTC.

PROCESS

21. A claim for FTC is made in a taxpayer's tax return. The computation of FTC must be provided and should show :
    - the Fiji and foreign income earned for the period (worldwide income);
    - foreign tax payable on the foreign source income;
    - Fiji tax payable on the foreign source income;
    - tax payable on chargeable income
    - average tax rate calculation;
    - amount of FTC claimed;
    - currency calculations.

22. Evidence of foreign tax paid must be attached. Acceptable documents are a notice of assessment, a tax certificate, tax receipt etc.

23. A request for extension of time to claim a credit should be made in writing before the expiry of the two year period. The CEO may allow extension of time to make a claim in the following cases:
    - tax payable is under dispute in the foreign country;
    - evidence of tax paid not received.

24. For enquiries, please contact Taxpayer Education & Publicity Unit (TEPU) team on e-mail: tepu@frca.org.fj. or info@frca.org.fj or call on telephone number 3243504/3243505.

ATTACHMENT 1

Section 2 Interpretation

"resident person" means a resident individual, resident partnership, resident trust, resident company, the Government, and a political subdivision of the Government;

"taxable foreign-source income" means foreign-source income included in gross income;

Section 6 Definition of *Resident individual*

6.—*(1) Subject to subsections (2) and (3), an individual is a resident individual if the individual—*

(a) resides in Fiji;

(b) is domiciled in Fiji unless the individual has a permanent place of abode outside Fiji;

(c) is present in Fiji for a period of, or periods amounting in aggregate to, 183 days in any twelve-month period; or

(d) is an employee of the Government posted abroad.

(2) An individual who is a resident individual under subsection (1) in relation to a tax year, in this section referred to as the "current tax year", but who was not a resident individual for the preceding tax year is treated as a resident individual in the current tax year only for the period commencing on the day on which the individual was first present in Fiji.

(3) An individual who is a resident individual under subsection (1) for the current tax year but who is not a resident individual for the following tax year is treated as a resident individual in the current tax year only for the period ending on the last day on which the individual was present in Fiji.

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.

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.

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) With the prior written permission of the CEO, amounts taken into account in computing the business income and deductions relating to such income of a person for a tax year may be translated to Fiji dollars at the average exchange rate for the tax year between the foreign currency and Fiji dollars.

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

ATTACHMENT 2 – Additional Example

Mr. Lee, a Fiji resident , derived income from Fiji and Samoa in 2016 as follows:

	Fiji	Samoa	Total
Income	$30,000	FJD$20,000 (FJD)	FJD$50,000
Tax paid	$3,000	FJD$5,000 (FJD)	FJD$8000

Steps to calculate allowable FTC :

1. Calculate the amount of tax payable on worldwide income.
   $5,460 *((($50,000- $22,000) x 18%) + $420)*

2. Calculate the average tax rate (ATR).
   ATR = *(Income tax payable divided by chargeable income) x 100*
   = *($5,460 / $50,000) x 100*
   = ***10.92%***

3. Calculate the Fiji tax payable on the foreign-source income.

   Fiji tax payable = ATR multiplied by foreign income
   = 10.92% x $20,000
   = **$2,184**

4. Determine allowable FTC.

   FTC allowable is $2,184 as this is the lesser of the two amounts –
   (a) $2,200 (Fiji tax payable on foreign income based on average tax rate) and
   (b) $5,000 tax paid in Samoa

5. Total income tax payable in Fiji and FTC allowable:

Taxable income	$50,000	*($20,000 + $30,000)*
Income tax	$5,460	
Less: FTC allowed	$2,184	*FTC allowed before other credits*
Balance	$3,276	*($5,460 - $2,184)*
Less: tax paid in Fiji	$3,000	
Tax payable	$276	*($3,276-$3,000)*

Note : Excess foreign tax credit $2816 ($5,000 - $2,184) is lost.

=========End of Practice Statement========