PRACTICE
STATEMENT No. 51/2017
Issued: 06/10/2017

SUBJECT	Fiji Revenue and Customs Service Amortisation of Business Intangibles
DATE OF EFFECT	1 January 2016
CONFIDENTIALITY STATUS	May be released to the public
LEGISLATIVE REFERENCES	*Income Tax Act 2015: Section 2, 35, 85 (3)*
PRACTICE CO-ORDINATOR	Deputy Director Revenue Management

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INTRODUCTION

1. The purpose of this Practice Statement is to provide information on the amortisation of intangible assets used in a business. It is issued with the authority of the Chief Executive Officer (CEO) of the Fiji Revenue and Customs Service and applies to the tax years that begin on or after 01/01/16.

2. Amortisation of intangibles is a new provision which allows a business to claim a deduction for existing and new intangible assets. It applies to the decline in the value of a person's business intangibles for a tax year.

3. The rates are summarised in the table below.

Category	Description	Amortisation rate
1	Pre-commencement expenditure	25%
2	Leases - a fine, premium, or other capital amount payable upon the grant or transfer of a lease of land or a structural improvement to land; or - expenditure incurred in relation to an obligation to make improvements to land or a structural improvement to land used to derive taxable business income.	100% divided by the period of the lease
3	A business intangible with a useful life of more than 10 years (excluding those that fall in Category 2 above)	10%
4	Other business intangibles	100% divided by the useful life of the intangible.

LEGISLATIVE BASIS

4. The basic principles for amortisation of business intangibles is covered in Section 35 of the *Income Tax Act 2015* (ITA). Section 85 sets out the rules for determining the cost of assets for the purposes of the ITA. The deduction for amortisation applies to the tax years that begin on or after 1 January 2016 (Section 1 (2) ITA).

5. Section 35 (1) allows an amortisation deduction for the decline in the value of a person's business intangibles for a tax year. 'Business intangibles' and 'intangible asset' are defined in Section 2.

6. The application of Section 35 and related provisions are explained in the following paragraphs. Extracts of the relevant Sections of the ITA are in the Attachment.

APPLICATION

7. Section 35(1) allows a person to claim a deduction for amortisation of business intangibles.

8. Business intangibles for the purpose of the ITA include the following:

a	Assets listed in paragraphs (a), (b) or (c) of the definition of intangible asset. These are: (a) a copyright, patent, design, model, plan, secret formula, secret process, trademark, or other similar property or right; (b) a contractual right, including a right arising as a result of a prepayment of expenditure, with a benefit for a period of more than one year; (c) a customer list, distribution channel, unique name, symbol, picture or other marketing intangible. Note – it excludes 'goodwill'.
b	A fine, premium or other capital amount paid or payable upon grant or transfer of a lease of land or a structural improvement to land Also included is expenditure incurred pursuant to an obligation to effect improvements to land or to a structural improvement to land. The land or structural improvement must be used to derive taxable business income.
c	Expenditure incurred to derive business income included in gross income when the expenditure provides an advantage or benefit for a period of more than one year. It does not apply to expenditure incurred to acquire any tangible personal or real property.
d	Expenditure incurred before the commencement of a business - the income must be an amount that is to be included gross income;

	- it does not apply to: (i) expenditure incurred in acquiring real property, (ii) expenditure in acquiring a depreciable asset or an intangible within paragraphs (a)-(c) of the definition of "business intangible". Example - expenditure incurred in carrying out feasibility studies, market research, staff training that will eventually contribute to future business income.

9. Section 35(2) provides for the calculation of the amortisation deduction. The amount of the decline is calculated by applying the rate of amortisation against the cost of the business intangible. The cost of a business intangible is determined under Section 85 of the ITA. Amortisation deductions are computed on a straight-line basis.

10. The amortisation rates are provided in Section 35 (3) (a) – (d). This is explained in paragraphs 11 – 14 below.

11. The rate of amortisation for pre-commencement expenditure is 25% (Section 35 (3) (a)).

    Example 1: amortisation deduction for pre-commencement expenditure

    ABC Manufacturing Ltd commenced its operations on 1st October 2016.

    It spent $60,000 to conduct a feasibility study and $40,000 to carry out market research relating to their prospective products in the period February to June 2016.

    Amortisation of pre-commencement expenditure
    = $100,000 x 25%
    = $25,000

    The amortisation of pre-commencement expenditure can be claimed for 4 tax years.

12. The rate of amortisation for the following expenses is 100% divided by the term of the lease (Section 35 (3) (b)).
    - fine, premium, or other capital amount paid or payable upon grant or transfer of a lease of land; or
    - a structural improvement to land; or
    - expenditure incurred pursuant to an obligation to effect improvements to land or a structural improvement to land that is the subject of a lease.

Example 2: amortisation deduction for lease

> *InvestCo lets a building to YCo for 5 years from 1 January 2016.*
>
> *The lease payable is $100,000.*
>
> *Assume the lease is a business intangible.*
>
> *Amortisation deduction = $100,000 x (100%/5)*
> *= $100,000 x 20%*
> *= <u>$20,000</u>*
>
> *$20,000 can be claimed for 5 tax years.*

13. The rate of amortisation of a business intangible that has a useful life of more than ten years is 10% (Section 35 (3) (c)).

Example 3: amortisation where useful life is more than 10 years

> *Xco Ltd purchased the exclusive rights to sell Aco's products in Fiji for FJD$100,000 for a term of 12 years.*
>
> *The agreement was made on January 1, 2016. The rights acquired by Xco Ltd is a "business intangible" within paragraph (b) of the definition of intangible asset.*
>
> *Amortisation deduction = $100,000 x 10%*
> *= <u>$10,000</u>*
>
> *$10,000 can be claimed for 10 tax years.*

14. The rate of amortisation for any other business intangible is 100% divided by the useful life of the intangible (Section 35 (3) (d)).

Example 4: amortisation of other business intangibles

> *Bruce pays Acme Inc. $100,000 as consideration for being appointed the exclusive distributor of Acme's products in Fiji for four years.*
>
> *The agreement is made on January 1, 2016. The rights acquired by Bruce under the distribution agreement is a "business intangible" within paragraph (b) of the definition of intangible asset.*

Amortisation deduction = $100,000 x 100%/4 years
= $100,000 x 25%
= <u>$25,000</u>

$25,000 can be claimed for 4 tax years.

15. Section 35 (4) includes apportionment rules when an intangible is partly used for business purposes. This will not apply to a business intangible that is pre-commencement expenditure as an amount is only pre-commencement expenditure if the income to be derived by the business will be wholly and exclusively included in gross income.

Example 5: amortisation of asset partly used for business purposes

InvestCo lets a building to YCo for 5 years from 1 January 2016.

The lease payable is $100,000.

Assume:
- the lease is a business intangible.
- only 75% of the lease property is used to derive business income.

Amortisation deduction = $100,000 x (100%/5)
= $100,000 x 20%
= <u>$20,000</u>

Allowable deduction = $20,000 x 75%
= $<u>15,000</u>

YCO can claim a deduction of $15,000 for 5 tax years.

However, the written down value of the intangible will be based on the full deduction amount. (Section 35 (11)).

16. Section 35 (5) includes apportionment rules when an intangible is used for part of the tax year.

Example 6: amortisation of assets used in part of the year

InvestCo will lease a warehouse building to YCo for 5 years from 1 June 2018.

The lease payable is $100,000.

Assume:
- the lease is a business intangible.
- the lease property is used for only 183 days to derive business income in the first tax year.

Amortisation deduction = $100,000 x (100%/5)
= $100,000 x 20%
= $20,000

Allowable Amortisation deduction = A x B/C
= $20,000 x 183/365
= $10,027.40

The allowable amortisation deduction is $20,000 however for the first year the deduction is $ 10,027.40. The same adjustment is to be done in the final tax year.

17. Section 35 (6) provides that the total amortisation deductions allowed (or that would be allowed if there was no apportionment) must not exceed the cost of the business intangible.

Example 7: maximum deduction allowable

In Example 5 above, if the term of the agreement is 5 years, amortisation deductions are allowed for 5 years.
At the end of the fifth year, the cost of the intangible has been completely amortised.

Year	*Cost*	*Amortisation (20%)*	*WDV*	*Amount deductible*
2016	*$100,000*	*$20,000*	*$80,000*	*$15,000*
2017	*$100,000*	*$20,000*	*$60,000*	*$15,000*
2018	*$100,000*	*$20,000*	*$40,000*	*$15,000*
2019	*$100,000*	*$20,000*	*$20,000*	*$15,000*
2020	*$100,000*	*$20,000*	*$0*	*$15,000*
Total	*$100,000*	*$100,000*	*$0*	*$75,000*

18. If a person disposes of a business intangible during a tax year, the person is not allowed an amortisation deduction for that year (Sections 35 (7)), however the following will apply:
    - if the consideration for the disposal is more than the written down value of the intangible at the time of disposal, the excess is included in gross income (Section 35 (7) (a))

- If the written down value exceeds the consideration, the person is allowed a deduction for the excess (Section 35 (7) (b))

Example 8: Sale price exceeds written down value

Mr Y pays Acme Inc. $100,000 as consideration for being appointed the exclusive distributor of Acme's products in Fiji for five years.

The agreement is made on January 1, 2016. The rights acquired by Mr Y under the distribution agreement is a "business intangible" within paragraph (b) of the definition of intangible asset.

Mr Y sells the rights in 2019.

Year	Cost	Amortisation (20%)	WDV	Sale price	Gain on disposal
2016	$100,000	$20,000	$80,000		
2017	$100,000	$20,000	$60,000		
2018	$100,000	$20,000	$40,000		
2019	$100,000	-	$40,000	$60,000	$20,000
Total	$100,000	$60,000			

$20,000 will be included in gross income.

Example 9 – Written down value exceeds Sale price

Using the facts in Example 8. Assume that the selling price is $30,000

Year	**Cost**	**Amortisation (20%)**	**WDV**	**Sale price**	**Loss on disposal**
2016	$100,000	$20,000	$80,000		
2017	$100,000	$20,000	$60,000		
2018	$100,000	$20,000	$40,000		
2019	$100,000	-	$40,000	$30,000	$10,000
Total	$100,000	$60,000			

The $10,000 loss is an allowable deduction.

19. Where the asset is used partly for business purposes and the consideration for the disposal is equal to or less than the cost at the time of disposal, the amount to be included in gross income or allowed as a deduction is to be adjusted accordingly.

Example 10: Apportionment upon disposal of intangible used in part of the year

Using the details in Examples 5 and 7 suppose that upon sale of the intangible, the gain on sale profit was $30,000.

Year	**Cost**	**Amortisation (20%)**	**WDV**	**Amount deductible**	**Sale price**	**Gain on sale**
2016	$100,000	$20,000	$80,000	$15,000		
2017	$100,000	$20,000	$60,000	$15,000		
2018	$100,000	$20,000	$40,000	$15,000		
2019	$100,000		$40,000	$0	$60,000	$20,000
Total	$100,000	$60,000	$0			

The amount to be included in gross income is $15,000 (75% of $20,000).

If the sale price was $30,000, the loss on sale is $10,000 and the loss deductible will be $7500 ($10,000 x 75%).

20. Where an intangible was used partly for business purposes and the consideration for the disposal exceeds the cost of the intangible at the time of disposal, the amount of income to be included in gross income will be as follows:

Amount = (*consideration for the disposal - the cost of the intangible at the time of the disposal) + (Cost of intangible - WDV at the time of disposal adjusted to taxable use)*

Example 11: Apportionment when asset partly used for business purposes is sold

Using the details in Examples 5 and 7, assume that the sale price was $120,000.

Year	Cost	Amortisation (20%)	WDV	Amount deductible (75%)	Sale price	Gain on sale
2016	$100,000	$20,000	$80,000	$15,000		
2017	$100,000	$20,000	$60,000	$15,000		
2018	$100,000	$20,000	$40,000	$15,000		
2019	$100,000		$40,000	$0	$120,000	$65,000*
Total	$100,000	$60,000				

* Gain on sale = (SP – Cost) + [(Cost – WDV) x Percentage of taxable use]

= ($120,000 - $100,000) + [($100,000 - $40,000) x 75%] = $20,000 + $45,000 = $65,000 The amount to be included in gross income is $65,000.

21. The total deductions allowed, or that would be allowed if there were no non business use adjustments under section 35 (4), to a person for the current tax year and all previous tax years must not exceed the cost of the business intangible.

PROCESS

22. A taxpayer may claim an amortisation deduction in the person's return of income.

23. Amortisation records must be kept for seven (7) years and should include the following:
    - a list of intangible assets in respect of which amortisation is claimed;
    - date of purchase;
    - cost;
    - calculation of amortisation;
    - date of disposal;
    - consideration received;
    - records of profit and loss statement and amount claimed for income tax purposes.
    - valuation records.

24. Further information can be obtained by contacting any of our Customer Enquiry centers Fiji wide or email to info@frcs.org.fj.

ATTACHMENT

PART 1 - Preliminary

2. *Interpretation*

"amortisation deduction" means a deduction allowed under section 35;

"business intangible" means—

(a) an intangible asset within paragraphs (a), (b), or (c) of the definition of "intangible asset" that has a limited useful life and is wholly or partly used to derive taxable business income;

(b) a fine, premium, or other capital amount paid or payable upon the grant or transfer of a lease of land or a structural improvement to land, or expenditure incurred pursuant to an obligation to effect improvements to land or a structural improvement to land, if the land or structural improvement is wholly or partly used to derive taxable business income;

c) an expenditure incurred to derive taxable business income that provides an advantage or benefit for a period of more(than one year, other than expenditure incurred to acquire tangible personal or real property, or an intangible asset; or

(d) pre-commencement expenditure;

"pre-commencement expenditure" means any expenditure incurred by a person before the commencement of a business if the income to be derived by the person will be wholly and exclusively included in taxable business income, other than expenditure incurred in acquiring real property, a depreciable asset, an intangible asset, or a business intangible within paragraphs (a) to (c) of the definition of "business intangible";

"intangible asset" means—

(a) a copyright, patent, design or model, plan, secret formula or process, trademark, or other like property or right;

(b) a contractual right, including arising as a result of a prepayment of expenditure, with a benefit for a period of more than one year;

(c) a customer list, distribution channel, or unique name, symbol or picture, or other marketing intangible; or

(d) goodwill;

PART 2—INCOME TAX

Division 4 - Allowable Deductions

21.—(1) Subject to this Act, a person is allowed a deduction for a tax year for—

(d) the total amount of amortisation of the person's business intangibles for the tax year as determined under section 35;

Division 5 - Depreciation and Amortisation

Amortisation of business intangibles

***35.**—(1) A person is allowed an amortisation deduction for a tax year for the amount by which the person's business intangibles have declined in value during the year through use in deriving taxable business income.*

(2) Subject to subsections (4) and (5), the amortisation deduction allowed to a person for a tax year in respect of a business intangible is computed by applying the amortisation rate specified in subsection (3) against the cost of the business intangible.

(3) The rate of amortisation is—

- *(a) in the case of pre-commencement expenditure, 25%;*
- *(b) in the case of a business intangible mentioned in paragraph (b) of the section 2 definition of "business intangible", 100% divided by the period of the lease;*
- *(c) in the case of a business intangible with a useful life of more than 10 years, other than a business intangible referred to in paragraph (b), 10%; or*
- *(d) in the case of any other business intangible, 100% divided by the useful life of the intangible.*

(4) If a business intangible is used by a person in a tax year partly to derive taxable business income and partly for another use, the amount of the amortisation deduction for the year is the fair proportional part of the amount computed under subsection (2) that relates to the use of the business intangible to derive taxable business income.

(5) If a business intangible is not used for the whole of the tax year in deriving taxable business income, the amortisation deduction for the year is computed according to the following formula—

A x B/C

where—

***A** is the amortisation deduction computed under subsection (2) after taking into account subsection (4);*

***B** is the number of days in the tax year the asset is used in deriving taxable business income; and*

***C** is the number of days in the tax year.*

(6) The total deductions allowed, or that would be allowed but for subsection (4), to a person under this section in respect of a business intangible for the current tax year and all previous tax years must not exceed the cost of the business intangible.

(7) Subject to subsections (8) and (9), if a person disposes of a business intangible in a tax year, the person is not allowed an amortisation deduction for the year and—

(a) if the consideration for the disposal of the intangible exceeds the written down value of the intangible at the time of disposal, the amount of the excess is income included in the gross income of the person for that year; or

(b) if the written down value of the intangible at the time of the disposal exceeds the consideration for the intangible, the person is allowed a deduction in that year for the amount of the excess.

(8) If subsection (7) applies to a business intangible that has been used partly in deriving taxable business income and partly for another use and the consideration for the disposal is equal to or less than the cost of the business intangible at the time of the disposal, the amount of income included in gross income under subsection (7)(a) or allowed as a deduction under subsection (7)(b) is the proportional part that relates to the use of the business intangible in deriving taxable business income.

(9) If subsection (7) applies to a business intangible that has been used partly in deriving taxable business income and partly for another use and the consideration for the disposal of the business intangible exceeds the cost of the intangible at the time of the disposal, the amount of income included in gross income under subsection (7)(a) is the sum of the following:

(a) the full amount of the difference between the consideration for the disposal and the cost of the intangible at the time of the disposal;

(b) the proportional part of the difference between the cost of the intangible and the written down value of the intangible at the time of the disposal that relates to the use of the intangible in deriving taxable business income.

(10) Subject to subsection (11), the written down value of a business intangible at the time of disposal of the intangible is the cost of the intangible at the time of disposal reduced by the amortisation deductions allowed to the person in respect of the intangible in previous tax years.

(11) If subsection (4) applies to a business intangible for a tax year, the written down value of the intangible is computed on the basis that the intangible was used in that year solely to derive taxable business income.

PART 5 – COMMON RULES RELATING TO ASSETS

Cost

85.— (3) *Subject to this section, the cost of an asset of a person that is an intangible asset is the total expenditure incurred by the person in acquiring, creating, improving and renewing the intangible asset, and any incidental expenditure incurred in acquiring or disposing of the intangible asset.*

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