PRACTICE STATEMENT No. 53 Issued: 28/02/2017

SUBJECT	**FIJI REVENUE & CUSTOMS AUTHORITY:** **APPROVED FUNDS**
DATE OF EFFECT	1 January 2016
CONFIDENTIALITY STATUS	May be released to the public
LEGISLATIVE REFERENCES	*Income Tax Act 2015 - Section 2, 3, 22, 23, 72* *Income Tax (Exempt Income) Regulations 2016. (LN# 2/2016)*
PRACTICE CO-ORDINATOR	Deputy Director Revenue Management

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INTRODUCTION

1. The purpose of this Practice Statement is to provide information on pension/retirement funds that are approved funds for tax purposes. It is issued with the authority of the Chief Executive Officer, of the Fiji Revenue & Customs Authority (FRCA).

2. An approved fund is an employer-provided fund that satisfies the tax requirements. The conditions are intended to ensure that the tax concessions for approved funds are not the subject of tax avoidance arrangements

3. All retirement funds are non-approved funds except the Fiji National Provident Fund and an approved fund.

4. For approved funds, the tax system operates as an exemption system. There is partial taxation of contributions, but no taxation of accumulations and pay-outs.

5. For non-approved funds, no tax concessions apply as contributions and accumulations are taxed. Pay-outs are exempt as these represent the previously taxed contributions and accumulations. The tax treatment of retirement savings through a non-approved fund is similar to the tax treatment of normal bank savings (deposits made out of after tax earnings; interest on deposits is taxed and withdrawals are exempt).

6. Companies can apply for recognition as an approved fund by writing to the CEO with details of the rules of the Pension/Provident Funds. The company must provide details such as the purpose of setting up the fund, the trust deed and rules of the proposed fund in the application.

LEGISLATIVE BASIS

7. The provision for approved funds is set out in Section 3 of the *Income Tax Act 2015* (ITA) with specific terms defined in Section 2 and Section 3 (3). Extracts of the law are in the Attachments.

8. An "Approved Fund" is an employer-provided fund that satisfies the requirements set out in Section 3 (1) of the ITA as follows-

   (a) The fund is established by the employer under irrevocable trusts (i.e. it is an indefinitely continuing fund) and set up solely for either or both of the following purposes:
   (i) the provision of benefits to members of the fund in the event of the retirement or permanent disability of the member; or

(ii) the provision of benefits to dependents of members in the event of the death of a member of the employer.

(b) Membership of the fund is confined to employees of the employer who established the fund or employees of an associate of the employer who established the fund.

(c) The fund can accept contributions only from the employer, an associate of the employer, employees of the employer, and employees of an associate of the employer.

(d) Members of the fund have been fully informed of their rights to receive benefits from the fund. The rights of members and dependants to receive benefits from the fund in respect of employer and member contributions, and income accruing thereon, are fully secured.

(e) The retirement age for benefits specified for members of the fund are not less than those specified in the Public Service (General) Regulations 1999, which is currently 55 years of age.

(f) The benefits to which members or dependants are entitled should not be not excessive and the following must be taken into account:
   (i) the remuneration paid to the member prior to retirement or death;
   (ii) the period of employment or service; and
   (iii) other benefits provided to the member (or dependant) by the employer or associate of the employer (such as a lump sum gratuity or an employer-paid pension).

(g) The total cost of investment assets does not exceed 10% of the cost of all assets of the fund. These are referred to as "in-house assets".

(h) The fund does not provide loans to members or dependants under the governing rules of the fund.

(i) The fund maintains a reasonable amount of monies needed to provide benefits.

(j) The fund is certified by the CEO.

9. Section 3 (2) provides that even if an employer-provided fund does not meet all the qualifying conditions, the CEO can still certify it is an approved fund, provided most of the requirements are met.

10. The provisions on deductibility and non-deductibility of contributions for approved and non-approved funds are set out in Sections 22 (1) (j), Section 23

and Section 72 of the ITA. Exemption of income paid out of pension funds are covered in the *Income Tax (Exempt Income) Regulations 2016.*

11. Further guidance is given in the following paragraphs.

APPLICATION

12. The following tax concessions apply under the ITA to an approved fund:
    (i) an employer is entitled to a deduction for contributions made to an approved fund in respect of employees (Section 23 ITA) - the deduction for a tax year is limited to 50% of the employer statutory contributions paid in respect of the employee for the year;
    (ii) an employer contribution in respect of an employee to an approved fund is an exempt fringe benefit of an employer (Section 72(2)(a) ITA);
    (iii) the income of an approved fund is exempt income (Paragraph (2), Part 6, *Income Tax (Exempt Income) Regulations* 2016);
    (iv) a pension or lump sum payment to a member is exempt income (Paragraphs (3) and (4), Part 6 *Income Tax (Exempt Income) Regulations 2016*).

13. For non-approved funds, the following applies -
    (i) no deduction is allowed in respect of contributions to non-approved funds (Section 22(1)(j) ITA).
    (ii) an employer contribution in respect of an employee to a non-approved fund is an exempt fringe benefit of an employer (Section 72(2)(a) ITA)) as the contribution is taxed through the non-deductibility rule in Section 22(1)(j) of ITA.

PROCESS

14. The trustee or manager of an employer-provided fund may apply, in writing, for certification. An application can be mailed to the Chief Executive officer at the address below. The application must provide full details such as the purpose of setting up the proposed fund, draft trust deed and rules.

Chief Executive Officer
Fiji Revenue & Customs Authority
Private mail Bag
Suva.

15. The CEO may require an applicant to provide additional information or documents and may seek clarification with the employer on certain provisions of the trust deed or draft trust deed and rules.

16. Once the CEO determines that the trust deed and rules are acceptable, approval will be granted.

17. For draft trust deeds, the CEO will confirm that the terms are met after which the trust deed and rules must be signed by the trustee(s) of the fund and submitted for formal approval.

18. The CEO must give the applicant written notice of the decision.

19. Once a certification is issued, it remains in force until withdrawn by the CEO.

20. Where there is a change in the circumstances of the fund so that it no longer satisfies the conditions in section 3(1) of the ITA, the trustee or manager of the approved employer-provided fund must notify the CEO in writing.

21. If the CEO is satisfied that the fund no longer satisfies or substantially satisfies the requirements for certification under section 3(1) of the ITA, the CEO must cancel a certification by notice in writing, the cancellation takes effect from the date specified in the notice.

22. For comments and enquiries, please e-mail: tepu@frca.org.fj or info@frca.org.fj or call on telephone number 3243504/3243505.

ATTACHMENT

Extracts from ITA 2015

Interpretation

2. *"approved fund" has the meaning in section 3;*

Approved fund

3.—*(1) An employer-provided fund is an approved fund if the following conditions are satisfied—*

(a) the fund is established under irrevocable trusts by an employer solely for either or both of the following purposes—

(i) the provision of benefits to members of the fund in the event of the retirement or permanent disability of the member;

(ii) the provision of benefits to dependants of a member in the event of the death of the member;

(b) membership of the fund is confined to employees of the employer or employees of an associate of the employer;

(c) the fund is authorised to accept contributions only from the employer, associates of the employer, or members of the fund;

(d) the rights of members and dependants to receive benefits from the fund are fully secured and members are fully informed of those rights;

(e) the retirement ages specified for members are not less than those applicable under regulation 14 of the Public Service (General) Regulations 1999;

(f) the benefits to which members or dependants are entitled are not excessive having regard to—

(i) the remuneration paid to the member;

(ii) the period of service; and

(iii) any other benefits that may be provided to the member or dependant of the member by the employer or an associate of the employer;

(g) the total cost of in-house assets of the fund does not exceed, at any time, 10% of the cost of all assets of the fund;

(h) the fund is not permitted, under the governing rules of the fund, to lend monies to members or dependants of members;

(i) the amount of the fund is not in excess of the amount necessary to provide benefits having regard to contributions reasonably expected to be made to, and income reasonably expected to be earned by, the fund in succeeding years;

(j) the CEO has certified in accordance with the Regulations that the fund is an approved fund.

(2) *The CEO may certify an employer-provided fund to be an approved fund even though the conditions in subsection (1) have not been fully complied with, provided that there has been substantial compliance with those conditions.*

(3) In this section—

"benefits" *means an annuity, pension or lump sum paid by a fund to a member;*

"dependant", *in relation to a member of a fund, means the spouse and any child under the age of 18 years, of the member;*

"employer-provided fund" *means a retirement fund created by an employer or an associate of an employer for the benefit of employees or, in the case of the death of an employee, for the benefit of dependants of employees;*

"in-house asset"*, in relation to a fund, means an asset of the fund that is a loan to, or investment in the employer who established the fund or an associate of the employer but, in the case of a public sector fund, does not include an interest in securities issued by the Government; and*

"public sector fund" *means a fund established by the Government or a political subdivision of the Government.*

Deduction not allowed

22.—*(1) Except as provided in this Act, no deduction is allowed for the following—*

(j) a contribution made to a non-approved fund;

Contribution to an approved fund or Fiji National Provident Fund

23.—*(1) Subject to subsection (2), an employer is allowed a deduction for the amount of a contribution paid by the employer in a tax year to the Fiji National Provident Fund or an approved fund in respect of an employee, other than by way of deduction from the salary or wages of the employee, or which is otherwise recovered from the employee.*

(2) The total amount allowed as a deduction under subsection (1) for a tax year for an employer contribution to the Fiji National Provident Fund and an approved fund in respect of an employee is limited to 50% of the employer statutory contribution paid in respect of the employee for the tax year.

Fringe benefits

72 *(2) A benefit is not a fringe benefit to the extent that it—*

(a) is a contribution to the Fiji National Provident Fund, or an approved or non-approved fund;

Extracts from Income Tax (Exempt Income) Regulations 2016 – (Legal Notice 2)

PART 6—PROVIDENT AND PENSIONS FUNDS, AND PENSIONS

The following amounts are exempt income—

(2) The income of an approved fund and the Fiji National Provident Fund.

(3) A pension or annuity paid by the Fiji National Provident Fund, or an approved or non-approved fund to a resident or non-resident individual.

(4) A lump sum or refund of contributions paid by the Fiji National Provident Fund, or an approved or non-approved fund paid to a member of the fund or, in the case of the death of a member, paid to the person entitled to the benefit.

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