**PRACTICE STATEMENT No. 12/ 2016**

| | |
|---|---|
| **SUBJECT** | **FIJI REVENUE & CUSTOMS AUTHORITY:**<br><br>**CARRY FORWARD OF LOSSES** |
| **DATE OF EFFECT** | 1 January 2016 |
| **CONFIDENTIALITY STATUS** | May be released to the public |
| **LEGISLATIVE REFERENCES** | *Income Tax Act 2015*<br><br>*Income Tax (Hotel Investment Incentives) Regulations 2016* (Legal Notice #3)<br><br>*Income Tax (Medical Investment Incentives) Regulations 2016* (Legal Notice #4)<br><br>*Income Tax (Electric Vehicle Charging Station Development Package) Regulations 2016* (Legal Notice#70)<br><br>*Tax Administration Act 2009, Section 46A* |
| **PRACTICE CO-ORDINATOR** | National Manager Revenue Collection |

**INDEX**

## INTRODUCTION

1. The purpose of this Practice Statement is to provide information on the net loss carry forward period allowed as a deduction for a tax year and other related provisions. These guidelines are issued with the authority of the Chief Executive Officer (CEO) of the Fiji Revenue & Customs Authority (FRCA).

2. A person operating a business that makes a net loss for a tax year, can carry forward the loss and claim it as a deduction against gross income (except employment income such as salary/wages) in future years. In general, a person makes a tax loss when the total deductions claimed for a tax year is more than the income for that year.

3. The period for carry forward of losses is restricted to four (4) years for most taxpayers. A taxpayer conducting an approved hotel or integrated tourism development project before 1 January 2016 can carry forward losses for 8 years or until it expires. A taxpayer granted a medical investment incentive or an electric charging station incentive from 2016, is entitled to carry forward losses for 8 years.

4. A loss can only be claimed against income that is included in gross income therefore a loss in respect of a business is no longer available for carry forward in the years following the year in which such business ceases.

## LEGISLATIVE BASIS

5. The period for carry forward of losses and other related provisions are covered in the following sections of the *Income Tax Act* 2015 (ITA) – Section 30, Section 59 (Change in control of companies), Section 61 (foreign losses) and in the case of taxpayers granted tax incentives, the Regulations made by the Minister in accordance with Section 142 (1) of the ITA

## APPLICATION

6. A person has a net loss for a tax year if the total deductions allowed to the person for a tax year (excluding any allowable deduction for a loss carried forward), exceeds the person’s gross income (excluding employment income) for that year.

7. Section 30 (2) provides that if a person has a net loss for a tax year, the loss is carried forward and allowed as a deduction in computing the person’s chargeable income (excluding employment income) for the following tax year.

8. Under section 30(3) ITA, a net loss that is not fully deducted is carried forward to the next following tax year and so on until it is fully deducted, but only up to a maximum carry forward period of four tax years.

9. If a person has a net loss carried forward for more than one tax year, the loss of the earliest tax year is deducted first. This ensures that each net loss gets the full benefit of the four-year carry forward period before it is used up. (Section 30 (4) ITA).

10. Section 30(5) ITA clarifies that the employment income of an employee for a tax year is not reduced by any amount including net losses from business activities undertaken by the employee.

**Example 1**

*Sala earns an annual salary of $10,000. She also has a business which incurred losses in the tax years 2014. Her assessments for the years 2014 – 2018 are as follows:*

| | *2014* | *2015* | *2016* | *2017* | *2018* | *2019* |
|---|---|---|---|---|---|---|
| *Gross income* | *$11,000* | *14,000* | *17,000* | *12,000* | *18,000* | *20,000* |
| *Assessable business income* | *1,000* | *4,000* | *7,000* | *2,000* | *8,000* | *10,000* |
| *Less: expenses* | *25,000* | *1,000* | *1,000* | *1,000* | *1,000* | *1,000* |
| *Taxable profit/loss* | *-24,000* | *3,000* | *6,000* | *1,000* | *7,000* | *9,000* |
| *Loss b/f* | | *-24000* | *- 21000* | *-15,000* | *-14,000* | |
| *Chargeable income* | | *- 21,000* | *- 15000* | *-14,000* | *-7000* | *19,000* |
| *Tax payable* | | *0* | *0* | *0* | *0* | *$210* |

*Chargeable income for 2019 is $19000 (Net profit $9000 + Salary $10,000)*
*Tax payable ($19,000 - $16,000 ) x 7% = $210.00*

## Foreign Tax Loss

11. If a resident person has a foreign loss (taxable foreign source income less allowable deductions in deriving taxable foreign income), the loss can be carried forward for four years and is allowed as a deduction against the person's taxable foreign income only.

**Tax Incentive Losses**

12. A taxpayer conducting an approved hotel or integrated tourism development project before 1 January 2016 under which it was allowed to carry forward a net loss for 8 years continues to enjoy that tax incentive. This provision is contained in the transitional provisions (Regulation 29) of the *Income Tax (Hotel Investment Incentives) Regulations* 2016.

13. A taxpayer granted a hotel investment incentive after 31 December 2015 is entitled to carry forward a net loss and set it off against the total income of that hotel business or hotel premises for the next 4 years. (Regulations 11 and 23)

14. A taxpayer conducting an approved medical investment project granted under the Income *Tax (Medical Investment Incentives) Regulations* 2016, is entitled to carry forward a net loss for 8 years (subject to conditions in the respective provisions)

15. A net loss that can be carried forward for 8 years must be in relation to the following approved projects:

| | |
|---|---|
| 1.Existing private hospital renovation/ extension project - Part 2 | A net loss arising from a deduction for investment allowance (being 60% of allowable capital expenditure incurred in the project), which cannot be offset against the taxable income of the hospital owner, for the first year of income after the completion of the project or extension, can be carried forward and set off against the total income of that private hospital business or private hospital premises for the next 8 years. (Regulation 10) |
| 2.New hospital building project - Part 3 | A net loss incurred by a company that has been granted exemption from income tax for 10 years under Part 3, Regulation 19, can be carried forward and set off against the total income of that private hospital business or private hospital premises for the next 8 years. (Regulation 21) |
| 3. Existing ancillary medical centre project - Part 4 | A net loss arising from a deduction for investment allowance (being 60% of allowable capital expenditure incurred in the project), which cannot be offset against the taxable income of the hospital owner, for the first year of income after the completion of the project or extension, can be |

| | |
|---|---|
| | carried forward and set off against the total income of that ancillary medical centre business or ancillary medical centre premises for the next 8 years. (Regulation 33) |
| 4. New building for the provision of ancillary medical services project - Part 5 | A net loss incurred by a company that has been granted exemption from tax for 4 years under Part 5 Regulation 42, can be carried forward and set off against the total income of that ancillary medical centre business or ancillary medical centre premises for the next 8 years. (Regulation 44) |

16. A taxpayer conducting an investment project to set up an Electric Vehicle Charging Station is entitled under Regulation 14 to carry forward a net loss for 8 years.

17. If there is a change of 51% or more in the underlying ownership of a company, any carry forward loss incurred prior to the change is not allowed as a deduction in a future tax year unless two conditions are met. The company must carry on the same business before and after the majority change in ownership until the
    (i) the loss has been fully deducted; or
    (ii) the loss carry forward period (4 or 8 years) has expired.

18. If a company conducts a new business or investment during the periods in (i) and (ii) above, it must not be entered into for the principal purpose of utilising the company's tax losses to reduce the income tax payable from the new business /investment.

19. If there is change of ownership or control and the conditions above are not met, the company must work out its taxable income and tax loss separately. This means that it may have taxable income and a tax loss for the same year.

**PROCESS**

20. A claim for losses is made in a taxpayer's return of income

21. The provisions of section 46A of the Tax Administration Decree 2009 relating to the filing of incorrect returns apply to reporting of net tax losses.

Further information can be obtained by contacting any of our Customer Service Centres Fiji wide or emailing: info@frca.org.fj

**ATTACHMENT**

**Example 1 Carry forward of net loss by a taxpayer**

John Wong began his mini bus operations in 2016. For the first five years he made operating losses. Profits were recorded for the years 31/12/21 and 31/12/22.

| | Income Year | Taxable Profit /(Loss) | Balance c/f | Explanatory notes |
|---|---|---|---|---|
| 1 | 31/12/16 | -20,000 | -20,000 | 2016 loss can be c/f for 4 years. If not used up by the tax year 2020, it will be forfeited |
| 2 | 31/12/17 | -14,000 | -34,000 | 2017 loss can be c/f for 4 years till the tax year 2021<br>Balance c/f $34,000 is the total of 2016 and 2017 losses |
| 3 | 31/12/18 | -8,000 | -42,000 | 2018 loss can be c/f for 4 years till the tax year 2022<br>Balance c/f $42,000 is the total of 2016 to 2018 losses |
| 4 | 31/12/19 | -5,000 | -47,000 | 2019 loss can be c/f for 4 years till the tax year 2023<br>Balance c/f $47,000 is the total of 2016 to 2019 losses |
| 5 | 31/12/20 | -1,000 | -28,000 | 2020 loss can be c/f for 4 years till the tax year 2024<br>Balance c/f $28,000 is the total of 2017 – 2020 losses<br>2016 Loss (-20,000) forfeited |
| 6 | 31/12/21 | 6,000 | -14000 | Balance c/f $14,000 is the total of 2018 - 2020 losses.<br>Balance of 2017 Loss $8000 ($14,000-$6000) forfeited |
| 7 | 31/12/22 | $15,000 | - | 2018 - 2020 losses totaling $14,000 fully utilized |

Note:

1. In the example above, the 2016 loss amounting to $20000 is c/f for 4 years and remains unused in 2020; the whole amount is forfeited.
2. 2017 loss ($14,000) is c/f for 4 years, $6000 used and the balance, $8000 is forfeited.

3. 2018 loss is c/f for 4 years and the whole amount is used in 2022.
4. 2019 loss is c/f for 3 years and the whole amount is used in 2022
5. 2020 loss is c/f for 2 years and the whole amount is used in 2022
6. For the 2022 tax year John Wong will pay income tax on $1000 (2022 profit of $15000 less $14,000 (2018 – 2020 loss b/f )

<u>**Example 2**</u>

**Carry forward of net loss by a taxpayer granted a medical incentive allowance either under part 2 or Part 4 of the Medical Incentives Investment Regulations 2016**

DEF Partnership, a medical practitioner, is granted a medical investment allowance in 2017 for its private hospital renovation project. Any loss arising from the investment allowance can be c/f for 8 years. Future losses can be c/f for a period of 4 years.

| | **Income Year** | **Taxable Profit (Loss) $** | **Balance C/F $** | **Comments** |
|---|---|---|---|---|
| 1 | 31/12/2017 | -8,000 | -8,000 | 2017 loss can be c/f for 8 years till Year 2025 if not used up by then, it will be forfeited |
| 2 | 31/12/2018 | 800 | -7,200 | |
| 3 | 31/12/2019 | 1,200 | -6,000 | |
| 4 | 31/12/2020 | 900 | -5,100 | |
| 5 | 31/12/2021 | 500 | -4,600 | |
| 6 | 31/12/2022 | 2,000 | -2,600 | |
| 7 | 31/12/2023 | 1,000 | -1,600 | |
| 8 | 31/12/2024 | -12,000 | -13,600 | 2024 loss can be c/f for 4 years till Year 2028 |
| 9 | 31/12/2025 | 1,000 | -12,000 | Balance of 2017 loss 600 forfeited |
| 10 | 31/12/2026 | 2,000 | -10,000 | |
| 11 | 31/12/2027 | 2,000 | -8,000 | |
| 12 | 31/12/2028 | 5,000 | 0 | Balance of 2024 loss $3000 forfeited |
| 13 | 31/12/2029 | 2,000 | 0 | |

If DEF Partnership qualifies for another medical incentive allowance for another renovation or extension project in a later year, any loss incurred can be c/f for 8 years.

**Example 3**

**Carry forward of net loss by a taxpayer granted a medical incentive allowance either under part 3 or Part 5 of the Medical Incentives Investment Regulations 2016**

Company JKL a new taxpayer is granted a medical investment package in 2017 in respect of its new private hospital project. Any loss incurred by JKL Co Ltd in the operation of the private hospital can be carried forward for 8 years. Future losses can be carried forward for 8 years as well.

| | Income Year | Taxable Profit (Loss) $ | Balance C/F $ | Comments |
|---|---|---|---|---|
| 1 | 31/12/2017 | -8,000 | -8,000 | 2017 loss can be c/f for 8 years till Year 2025 if not used up by then, it will be forfeited |
| 2 | 31/12/2018 | 800 | -7,200 | |
| 3 | 31/12/2019 | 1,200 | -6,000 | |
| 4 | 31/12/2020 | 900 | -5,100 | |
| 5 | 31/12/2021 | 500 | -4,600 | |
| 6 | 31/12/2022 | 2,000 | -2,600 | |
| 7 | 31/12/2023 | 1,000 | -1,600 | |
| 8 | 31/12/2024 | -18,000 | -19,600 | 2024 loss can be c/f for 8 years till Year 2032 |
| 9 | 31/12/2025 | 1,000 | -18,000 | Balance of 2017 loss $600 forfeited |
| 10 | 31/12/2026 | 1,000 | -17,000 | |
| 11 | 31/12/2027 | 2,000 | -15,000 | |
| 12 | 31/12/2028 | 3,000 | -12,000 | |
| 13 | 31/12/2029 | 3,000 | -9,000 | |
| 14 | 31/12/2030 | 4,000 | -5,000 | |
| 15 | 31/12/2031 | 2,000 | -3,000 | |
| 16 | 31/12/2032 | 2,000 | -1,000 | |
| 17 | 31/12/2033 | 3,000 | - | 2024 loss used up ,Taxpayer will pay tax on $2000 |
| 18 | 31/12/2034 | -8000 | | 2034 loss can be c/f for 8 years till Year 2042 |

**Example 4**

**Carry forward of net loss by a taxpayer with hotel incentives**

LMN Company Ltd is granted hotel investment incentives in 2011. Losses in tax year 2011 and 2018 can be carry forward for 8 and 4 years respectively. The provision for losses would be applied as follows:

| | **Income Year** | **Taxable Profit (Loss) $** | **Balance C/F $** | **Comments** |
|---|---|---|---|---|
| 1 | 31/12/2011 | -8,000 | -8,000 | 2011 loss can be carried forward for 8 years till Year 2019 if not used up by then, it will be forfeited |
| 2 | 31/12/2012 | 800 | -7,200 | |
| 3 | 31/12/2013 | 1,200 | -6,000 | |
| 4 | 31/12/2014 | 900 | -5,100 | |
| 5 | 31/12/2015 | 500 | -4,600 | |
| 6 | 31/12/2016 | 2,000 | -2,600 | |
| 7 | 31/12/2017 | 1,000 | -1,600 | |
| 8 | 31/12/2018 | -12,000 | -13,600 | 2018 loss can be carried forward for 4 years till Year 2022 |
| 9 | 31/12/2019 | 1,000 | -12,000 | Balance of 2011 loss $600 forfeited |
| 10 | 31/12/2020 | 2,000 | -10,000 | |
| 11 | 31/12/2021 | 2,000 | -8,000 | |
| 12 | 31/12/2022 | 5,000 | 0 | Balance of 2018 loss $3000 forfeited |
| 13 | 31/12/2023 | 2,000 | 0 | Company will pay tax on $2000 |

***End of PS***

**============================================================**