PRACTICE STATEMENT 29
Issued 19/01/2017

SUBJECT	**FIJI REVENUE & CUSTOMS AUTHORITY** **5% Withholding Tax (also known as "Provisional Tax ") on Payments made under a Contract for Service**
DATE OF EFFECT	1 January 2016
CONFIDENTIALITY STATUS	May be released to the public
LEGISLATIVE REFERENCES	*Income Tax Act 2015, Sections 114, 116, 117,119, 120, 121,* *Income Tax (Collection of Provisional Tax) Regulations 2016. (LN#9/2016)* *Tax Administration Act 2009*
PRACTICE CO-ORDINATOR	Deputy Director Revenue Management

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INTRODUCTION

1. The purpose of this Practice Statement is to provide guidance on the administration of the 5% withholding tax, hereinafter referred to as "provisional tax" (PT). It is issued with the authority of the Chief Executive Officer of the Fiji Revenue and Customs Authority (FRCA).

2. The obligation to withhold tax applies only in relation to services provided by a business person, to another business person under a formal agreement (other than a letter of engagement or service agreement with, an accountant or lawyer) and the amount that will be paid in a year is $1000 and above. It does not apply on payments made to employees.

3. A business person paying service fees or commission to a service provider is required to deduct 5% PT from the gross amount to pay. Such persons are collection agents and responsible persons for tax purposes. The tax they collect is paid to FRCA and is credited towards the service provider's tax liability.

4. The responsible person must register and comply with the following:
   - pay the amount deducted to FRCA by the end of the month following the month in which the tax was deducted;
   - issue to the service provider, a tax certificate for every deduction made;
   - lodge an annual reconciliation and summary of deductions.

5. Proper records must be kept for all income and commission payments, the tax deducted and details of recipients.

LEGISLATIVE BASIS

6. Section 114 of the *Income Tax Act* 2015 (ITA) provides for the withholding of tax by persons making payments under a contract for service. Such persons are collection agents as set out in section 2 and 24(1) of the *Tax Administration Act* 2009. An amount deducted by a collection agent is credited against the tax liability of the service provider.

7. The responsibilities of a collection agent are set out in Sections 116, 117, 120 and 121 of the ITA and the *Income Tax (Provisional Tax) Regulations 2016*.

8. Section 119 imposes a personal liability on any person who was required to withhold tax but who fails to do so or who collects the tax and fails to remit it to the CEO. Withholding tax is a tax for the purposes of the Tax Administration Act (TAA) and, therefore, the CEO can use the recovery provisions in the TAA to collect unpaid withholding tax and any penalties.

APPLICATION

9. A responsible person must deduct PT when paying commission to a service provider (i.e. commission for selling insurance, property**,** land, books or publications) or when making a payment due under certain contracts for services, if the following conditions exist –

- the parties have a written agreement for the supply of services or for payment of commission; and
- the person acquiring the service is a business; and
- the total to pay to a person in one year will be $1000 or more.

Example 1

BenCo provides consultancy services to Marie's Enterprises. They don't have a formal agreement for the provision of services. When the work is completed, BenCo will issue an invoice to Marie's Enterprises as notice for payment.

Marie's Enterprises is not required to deduct PT as the issue of an invoice, tax invoice, receipt or similar document such as a local purchase order is not regarded as a formal agreement for PT purposes.

Example 2

Jay's Finance Co provides personal investment advice to Laisa regularly. They have a formal agreement.

Laisa is not required to deduct PT when paying for the service as it is not for a business purpose.

Example 3

Jone's Farm hires Lusi's Carriers to transport produce to the Korovou market regularly and the service fee is expected to exceed $1000 per annum.

Although Jone's Farm is a business and he will pay more than $1000 a year, no formal agreement exists therefore Jone is not required to deduct PT from the payment made to Lusi's Carriers.

10. The responsible person is required to deduct PT from the *gross* amount paid to a service provider and remit it to FRCA.

11. The gross amount refers to the entire payment. It includes any element of reimbursed expenses incurred by the service provider and any expense items that might be invoiced separately or isolated for separate payment. Where a single contract includes a separate costing for labour (service) and materials (goods), PT will apply on the gross amount of the contract.

Example 4

Pio & Associates hires XCo Bakery to bake and deliver cakes for their office functions once a month. They have a formal agreement and the total service fee for 2017 will be around $6000. The bill for the month of May 2017 is $570 and XCo invoices Pio as follows:

Direct materials	*$ 50*
Labour fees	*$500*
Delivery Cost	*$ 20*
Total invoiced amount	*$570*

PT will apply on $570 (gross payment)

12. If the supply of both goods and services by a contractor in a single transaction is governed by two separate contracts, PT applies on the service contract only.

Example 5

Scenario 1

JCo hired HCo Construction Company to renovate and extend their office space. Under the formal agreement between the parties, HCo Construction will supply the building materials and the labour for the service for a term of 1 year. At the end of the contract term, HCo invoices JCo VEP quotation as follows:

Building materials	-	*$ 5000*
Labour	-	*$15,000*
		$20,000

Since there is a single contract, PT will apply on the gross amount of $20,000. PT to deduct will be $1000 = ($20,000 x 5%)

Scenario 2

Suppose in the Scenario above, there were two contracts between the parties each covering the supply of materials and services respectively. HCo invoices JCo and the gross amount of each invoice is $5,000 and $15,000 respectively. Since there are two separate contracts, PT will apply on the service contract only. Therefore, PT amount will be $750 = ($15,000 x 5%)

13. Any VAT, STT or stamp duty charged by the service provider is to be excluded for the purpose of calculating the amount of PT to deduct.

Example 6

XCo hired John & Co in November 2016 to provide office cleaning services for 6 months. They have a written agreement and XCo will pay $1000 a month.
The amount is VAT inclusive.

The VEP amount is [$1000 – ($1000 x 9/109)].	*$917.43*
Payment due to John & Co. on 6 December 2016	*$1 000.00*
PT to deduct on 6 December 2016 [$917.43 x 5%]	*45.87*
Amount payable to John & Co [$1000 - $45.87]	*$954.13*
PT payable to FRCA before 31st January 2016	*$ 45.87*

PROCESS

14. A person who is required to withhold tax can register for PT purposes by writing to the CEO.

15. Amounts deducted each month must be sent to FRCA with a completed remittance form (IRS350) by the end of the following month.

16. The responsible person must give the service provider the following stamped and signed certificates as evidence that PT was deducted from payments:
    - a 'withholding tax certificate' (IRS454A) for every deduction made – this may be used by the service provider to support a request for reduction of advance tax payable;

- an annual certificate of withholding tax deducted (Form IRS403) in a tax year, by end of February of the following year - the service provider will require this to support a claim for PT paid in its income tax return.

17. Where the service provider's accounting period is not the calendar year, a withholding tax certificate for the appropriate period is to be issued upon request. Alternatively, the service provider may write to the CEO to obtain the relevant PT credits.

18. For reporting purposes, the gross amount is the amount paid, and if the service provider has included VAT, then the gross amount is the VAT inclusive amount.

19. The information recorded on forms IRS454A and IRS403 includes:
    - amount of the payment;
    - date paid or year of payment;
    - the amount of PT deducted;
    - the Tax Identification Number of the service provider;
    - the Tax Identification Number of the payer (recipient of the service)

20. Responsible persons must inform FRCA in writing if they fall out of the registration requirements. If there is no PT to report for a period, a return indicating that there was no PT collected for that particular period must be submitted.

21. A responsible person who does not deduct and/or pay the right amount of tax will be required to pay the amount that should have been deducted and any associated penalties prescribed in sections 43, 44 and 49 of the *Tax Administration Act* 2009.

22. Persons making payments under a contract for service can write to us directly for clarification on whether they should register or not or whether to deduct tax or not. For comments and enquiries please e-mail: tepu@frca.org.fj or info@frca.org.fj or call on telephone number 3243504/3243505.

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