DRAFT PRACTICE STATEMENT No. 40A/2017
Issued 31/08/2017

SUBJECT	Fiji Revenue and Customs Service **1 % Transitional Tax on Undistributed After-Tax Profits For The Tax Years Prior to 2014**
DATE OF EFFECT	1 August 2017
CONFIDENTIALITY STATUS	May be released to the public
LEGISLATIVE REFERENCE	*Income Tax* Act 2015 - Sections 143A (3) – 143A (7)
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 taxation of after-tax profits of a company, for the tax years prior to 2014, that remain undistributed as at 30 June 2017. It is issued with the authority of the Chief Executive Officer (CEO) of the Fiji Revenue and Customs Service.

2. A company's profits for the tax years prior to 2014 is subject to a final tax of 1% tax (referred to hereinafter as "Transitional Tax") if not distributed by 30 June 2017.

3. Where a company has paid dividend tax on a distribution of profits for the tax years prior to 2014, the amount paid is not refundable if it was correctly assessed based on the taxing provisions prevailing at the time.

LEGISLATIVE BASIS

4. Section 143A(3) of the *Income Tax Act 2015* provides for the imposition of a Transitional Tax at the rate of 1% on a company's undistributed profits for the tax years prior to 2014, that remain undistributed by 30 June 2017.

5. Section 143A (3) states :

   " If any part of the net profit after tax of a company for a tax year prior to 2014 has not been distributed as a dividend prior to 30 June 2017, the company must pay tax on the undistributed amount at the rate of 1% and the tax must be paid on or before 30 September 2017."

6. "Tax year" is defined in section 2 to mean the calendar year and includes a substituted tax year.

7. Sections 143 A (4), (5) and (6) contain penalty provisions. A company that fails to pay the tax on or before the due date is liable to a penalty of 75% of the amount of unpaid tax and 5% of the amount of unpaid tax for each month of default.

8. Any penalty incorrectly imposed and paid by the company will be refunded.

9. Section 143 (7) provides that any pre-2014 dividend tax correctly paid prior to 30 June 2017 is not refundable.

APPLICATION

10. The following companies are liable to pay Transitional Tax –
    - resident companies, except a company listed on the South Pacific Stock Exchange;

- non-resident companies operating in Fiji, including a permanent establishment of a non-resident company e.g. branches.

11. The 1% Transitional Tax is charged on the accounting net profit. In this regard, a company with approved tax concessions and a company that has exempt income is also liable for the Tax.

PROCESS

12. For tax purposes, a distribution of after-tax profits is deemed to be made from retained earnings in the order in which such profits have accumulated. This chronological order rule also applies for the purpose of determining the amount of undistributed after-tax profits for the tax years prior to 2014 that are subject to the Transitional Tax.

13. The 1% Transitional Tax on undistributed pre-2014 after-tax profits is due and payable by 30 September, 2017.

14. Where a company makes a distribution of profits that has been subject to the 1% Transitional Tax, such dividends are exempt from income tax.

15. Failure to pay the tax by the due date will attract a penalty amounting to 75% of the amount of unpaid tax. An additional penalty of 5% on the amount of unpaid tax will apply for each month of default.

16. For further information, please write to info@frcs.org.fj

ATTACHMENT

Calculation of Transitional Tax

Example 1

Xco's retained earnings balance at the end of the tax year 2013 was $120,000 and dividends paid as follows:

Date Dividend Paid	Amount
31 March 2014	20,000
30 June 2015	20,000
28 February 2016	50,000

Calculation

Particulars	Amount	Explanatory Notes
Retained Earnings balance at the end of tax year 2013	$120,000	Accumulated amount of retained earnings at the end of tax year 2013.
Less: Total dividends paid from tax year 2014 till 30 June, 2017	$90,000	Total amount of dividend paid from tax year 2014 till 30 June, 2017.
Balance	$30,000	Retained Earnings balance at the end of tax year 2013 less the amount of Total dividends paid from tax year 2014 till 30th June, 2017.
1% Transitional Tax on the balance	$300	

Example 2

Yco's retained earnings balance at the end of the tax year 2013 was $500,000 and dividend paid as follows:

Date Dividend Paid	Amount
31 March 2014	150,000
30 June 2015	200,000
28 February 2016	300,000

Calculation

Particulars	Amount	Explanatory Notes
Retained Earnings balance at the end of tax year 2013	$500,000	Accumulated amount of retained earnings at the end of tax year 2013.
Less: Total dividends paid	$650,000	Total amount of dividend paid from tax year 2014 till 30 June, 2017.

Balance	Nil	Balance amount of Retained Earnings from end of tax year 2013 after deducting the total dividends paid from tax year 2014 till 30 June, 2017
1% Transitional Tax on the balance	Nil	1% of the balance.

In this case Yco will not be required to pay Transitional Tax because all the retained earnings at the end of the tax year 2013 was distributed as dividends before 30th June, 2017.

Example 3

Aco's retained earning balance was $200,000 at the end of tax year 2013 and dividends paid as follows:

Date Dividend Paid	Amount
31 March 2014	30,000
30 June 2015	20,000
28 February 2016	50,000
15 July 2017	$100,000

Calculation

Particulars	Amount	Explanatory Notes
Retained Earnings balance at the end of tax year 2013	$200,000	Accumulated amount of retained earnings at the end of tax year 2013.
Less: Total dividends paid from tax year 2014 till 30 June, 2017	$100,000	Total amount of dividend paid from tax year 2014 till 30 June, 2017.
Balance	$100,000	Retained Earnings balance at the end of tax year 2013 less the amount of Total dividends paid from tax year 2014 till 30 June, 2017.
1% Transitional Tax on the balance	$1000	

When calculating the tax liability to pay 1% TT on pre-2014 after tax profits, the dividends paid on 15 July, 2017 will not be included in the calculation because the dividend was paid after 30th June, 2017.

Example 4

Bco's retained earnings balance at the end of tax year 2013 was $300,000. There was no dividend distribution in the period 2014 to 30 June, 2017.

Calculation

Particulars	**Amount**	**Explanatory Notes**
Retained Earnings balance at the end of tax year 2013	$300,000	Accumulated amount of retained earnings at the end of tax year 2013.
Less: Total dividends paid	-	No dividend paid
Balance	$300,000	Retained Earnings balance at the end of tax year 2013 less the amount of Total dividends paid from tax year 2014 till 30 June, 2017.
1% transitional tax on the balance	$3,000	

Calculation of Penalty on Late Payment of Transitional Tax

Eco was required to pay $5,000 Transitional Tax on 30 September, 2017 but paid $5,000 on 15 October 2017. Eco will be required to pay the following amount of penalty:

Amount of tax due after the due date	**Rate of penalty**	**Calculation**	**Amount of Penalty**
$5,000	75% of the amount of unpaid tax	5,000 x 75%	**$3,750**

If the tax is paid on 15 December, 2017 instead of 15 October, 2017.

Amount of tax due after the due date	**Rate of penalty**	**Calculation**	**Amount of Penalty**
$5,000	75% of the amount of unpaid tax	5,000 x 75%	$3,750
	5% of the amount of unpaid tax for each months default. In this case taxpayer defaulted 2 months October and November, 2017.	(5,000 x 5%) x 2	$500
Total Penalty			**$4,250**

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