

## **Tax Talk –Provisional Tax**

### **FS: What Provisional Tax?**

**CEO:** Provisional tax is not a separate tax but a law that requires a taxpayer to pay an advance tax. There are two modes of paying the Provisional Tax. The first being a requirement for all business other than Companies to pay their final tax liability in advance, through three equal installments in the course of the year of assessment, based on previous years assessed taxable income. However, the final tax liability for the tax year will be determined upon assessment of the income tax return. This system is also to assist taxpayers meet their liabilities in the form of minimum three equal payments, instead of in the form of a single, large sum on assessment. Such Provisional Tax payments are due on the last day of April, August and November. The other mode of collecting Provisional Tax is by way of withholding, through a direct deduction for any payment for service fees or commission.

### **FS: There have been a lot of queries on the withholding or Provisional Tax deductible for service fees and commission. What is the tax rate?**

**CEO:** Again this is not a separate tax but rather an advance tax required by law and will be made to offset against the final tax assessment. A person is required to deduct 5% Provisional Tax from the gross amount payable for service fees or commission. The sum deducted is remitted to FRCA by the collection agent or responsible person and the tax collected is given as credit to the recipient's or payee's tax liability at the end of the year when the tax return is lodged.

### **FS: Who can deduct this provisional tax and when is it due to FRCA?**

**CEO:** Only persons conducting business and are registered for Income Tax here in Fiji can withhold or deduct the 5% Provisional Tax from service charges. Once they deduct the provisional tax from a service provider, they must remit the amount deducted to FRCA by the 15<sup>th</sup> of the month following the month in which the tax was deducted. Proper records must be kept for all income and commission payments, the tax deducted and details of recipients.

### **FS: In what circumstances is the Provisional Tax deductible?**

**CEO:** Provisional Tax will only be applicable if the parties have a written agreement for the supply of services or for payment of commission; and the person hiring the service is a business; and the total to pay to a person in one year will be \$1000 or more. The Provisional tax must be deducted before any commission is paid for selling insurance, property, land, books or publications and payments made under any contracts for services.

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 issues an invoice as notice for payment. Marie's Enterprises is not required to deduct Provisional Tax as the issue of an invoice, receipts or similar documents such as a local purchase order is not regarded as a formal agreement for withholding tax purposes.

### **Example 2**

James' Law provides legal services to Jone. They have a formal agreement. Jone is not required to deduct Provisional Tax when paying for the services as the legal advice is not for a business purpose

### **Example 3**

Jone hired Charlie's Accounting to audit his business (Jone's Farm). They make a formal agreement and the fees is settled at \$800. Although Jone's Farm is a business and a formal agreement exists, Jone is not required to deduct Provisional Tax as the amount to pay is less than \$1000.

### **FS: Do they issue a certificate to the provider of the service after deducting the 5% Provisional Tax?**

**CEO:** Yes, they are required to issue a tax certificate for every deduction made, if requested by the recipient and importantly have to lodge an annual reconciliation and summary of deductions.

### **FS: In what circumstances is Provisional Tax not deductible?**

**CEO:** Provisional Tax deductions will not be made if the payer is not conducting a business; or the payee is an employee; or the total payments in a year to a payee will be less than \$1000; or there is no formal or written agreement for the supply of services.

### **FS: On what amount is Provisional Tax calculated on?**

**CEO:** The responsible person is required to deduct Provisional Tax from the gross amount paid for the service and remit it to FRCA. The gross amount refers to the entire payment, including any element of reimbursed expenses incurred by the service provider and any expense items that might be invoiced separately or isolated for separate payment. Any VAT, STT or stamp duty charged by the service provider is to be excluded for the purpose of calculating the amount of Provisional Tax to deduct.

### **Example 4**

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 [ $\$1000 - (\$1000 \times 9/109)$ ]	= \$917.43
Payment due to John & Co. on 6 December 2016	= \$1000.00
Provisional Tax to deduct on 6 December 2016 – [ $\$917.43 \times 5\%$ ]	= 45.87
Amount payable to John & Co ( $\$1000 - \$45.87$ )	= \$954.13
Provisional Tax payable to FRCA before 31 <sup>st</sup> January 2016	= \$45.87

### **FS: What are some responsibilities of the person deducting the Provisional Tax?**

**CEO:** The person will ensure that the amounts deducted each month must be sent to FRCA with a completed remittance form by the end of the following month. The accountable person must give the service provider the following stamped and signed certificates as evidence that Provisional Tax was deducted from payments. The Provisional Tax Withholding Tax Certificate is to show proof of the deduction and hence reduce the advance tax payable by the service provider. The Provisional Tax payer is required to issue an annual certificate of withholding tax deducted in a tax year by end of February of the following year. The Provisional Tax deducted in a year is credited against the income tax payable by the service provider; this certificate will be attached to the service provider's income tax return. Responsible persons must inform FRCA in writing if they fall out of the registration requirements. If there is no Provisional Tax to report for a period, a return indicating that there was no turnover for that particular period must be submitted.

**FS: What happens to a person who does not or fails to withhold Provisional Tax when required to?**

**CEO:** Any person who does not withhold any or enough tax will be required to pay the tax that should have been deducted and any associated penalties prescribed in sections 43, 44 and 49 of the Tax Administration Decree 2009.

**FS: Some may not be sure whether to deduct the Provisional Tax or not. Can they request assistance from you?**

**CEO:** Yes, any person 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.