

PR 2024/6 (previously PR 2022/1)- Income tax: offset of business licence fee paid to Councils

LEGALLY BINDING SECTION:	para
What this Ruling is about	1
Class of person/arrangement or transaction	1
Legislation	4
RULING	7
The order in which fees are to be offset in the assessment process.	7
Entitlement to a refund	10
Alternative view	14
Other matters to note	17
DATE OF EFFECT	18
ADMINISTRATIVELY BINDING SECTION	
Examples	19

PREAMBLE: This publication is a Public Ruling made under the Tax Administration Act 2022 and applies as an interpretation of provisions in the Income Tax Act Cap 123. The number, subject heading, What this Ruling is about (including Class of person/arrangement section), Date of effect, and Ruling parts of this document are a 'public ruling' for the purposes of section 149 of the Taxation Administration Act 2022 and are legally binding on the Commissioner. The remainder of the document is administratively binding on the Commissioner.

TAXPAYER PROTECTION

This Ruling provides you with the following level of protection:

This Ruling sets out how a tax law applies in relation to a type of person or a type of arrangement.

You can rely on this Ruling (excluding appendixes) to provide you with protection from interest and penalties in the way explained below. If a statement in this Ruling turns out to be incorrect because of a Court decision and you underpay your tax as a result, you will not have to pay a penalty. Nor will you have to pay interest on the underpayment provided you reasonably relied on the Ruling in good faith. However, even if you don't have to pay a penalty or interest, you will have to pay the correct amount of tax provided the time limits under the law allow it.

WHAT THIS RULING IS ABOUT

Class of person/arrangement or transaction

1. This Ruling applies to persons who pay business licence fees to Councils.
2. The Ruling provides guidance as to order in which fees are to be offset in the assessment process.
3. The Ruling considers the question of whether business licence fees should be offset against the tax chargeable before the crediting of any provisional tax or withholding tax or after those taxes.

This Public Ruling was previously issued as PR 2022/1 and has been reissued following the introduction of the Tax Administration Act 2022.

Legislation

4. Section 41(1) of the Income Tax Act Cap 123 (the Act) provides that:

- if any person carrying on business proves to the satisfaction of the Commissioner that he paid during any year a licence fee for that year in respect of that business to a Council, and
- if he makes a claim in that behalf to the Commissioner within the time allowed for furnishing a return under section 57 of the Act, or such further time as the Commissioner may allow,

the amount of such fee shall be set off for the purposes of collection against so much of the tax charged on such person for such year as is attributable to gains or profits derived from the carrying on of such business during such year, provided that, notwithstanding the provisions of section 90, such person shall not be entitled to any refund in the event of the amount to be set off exceeding such tax charged on him.

5. Section 41 was a section inserted in the Act in 1977. According to the Notes accompanying the introduction of the section, the purpose of the section was to allow the Commissioner of Income Tax (as he then was) to treat (*deem*) business licence fees paid to local councils as a prepayment of income tax instead of as a business expense.
6. The effect of the provision, it was said, was to transfer part of the Government of Solomon Islands' tax revenue to councils in accordance with the Government's decentralization program. In other words, Councils would get the first bite of the tax revenue.

RULING

The order in which fees are to be offset in the assessment process.

7. The question is whether business licence fees should be offset against the tax chargeable before the crediting of any provisional tax or withholding tax or after those taxes.
8. The Commissioner has recently reviewed the policy of the order in which

provisional tax and business licence fee expense are to be offset. The Commissioner's view on the business license credit and the basis on which it is to be applied is set out below.

9. As indicated above, section 41(1) allows for a business license fee paid to the council for the running of a business for that year, to be offset against tax charged for profits received from carrying on that same business, not against tax payable.

Entitlement to a refund

10. However, a taxpayer is not be entitled to a refund if the amount to be set off exceeds the tax charged. This section overrides section 90 in respect of refunds of Business License fees.
11. Sections 83(5) & (6) of the Act requires a business to make prepayments of tax on the profits for each year in equal instalments (known as provisional tax). These payments will be credited against the tax chargeable. It should be noted that provisional tax is not an actual tax but merely instalments of prepayment of income tax
12. Section 90 provides for any overpayment of tax in excess of the amount chargeable to be refunded.
13. As the Income Tax Act does not provide an order in which credits for tax are to be offset, the Commissioner's view is that any amounts paid to IRD (e.g. provisional tax, Withholding Tax) should be offset against tax chargeable first with the business license fee available to be offset against any tax payable that is remaining. The purpose of offsetting in this order is that the provisional tax is an actual credit of income tax based on the estimated tax based on the net profit of the taxpayer. Whereas the Business license credit is a deemed pre-payment of income tax. This is what the notes to the 1977 amendment that introduced section 41 states.

Alternative view

14. The alternative view is that business licence should be offset against tax chargeable first because otherwise it disadvantages taxpayers who have paid provisional tax or withholding tax by minimizing the offset benefit they can receive from their business license fee. This becomes a disincentive for people to pay provisional tax it is said.
15. The alternative view is based on maximising the business licence offset and the fact that the Income Tax Act does not provide an order in which credits for tax are to be offset. It is claimed that the use of the term “tax chargeable” rather than “tax payable” would seem to imply that the offset should occur before any actual payments have been applied. Tax payable is the amount of tax charged left to be paid after any prepayments have been applied. However, section 83(6) provides that the Commissioner shall credit against the tax chargeable any instalments paid for that year under subsection (5) and shall recover the balance or refund the excess as necessary. Accordingly, both the business licence credit and the provisional tax credits are offset against tax chargeable.
16. Whilst the Commissioner’s position disadvantages taxpayers by minimizing the offset benefit they can receive from their business license fee; it is to be remembered that the fee is not a tax paid on income but a deemed pre-payment of tax paid. Section 41 creates a deemed credit for licence fees which would normally be a deduction from income. However, it is subject to the conditions that:
- it is to be offset against so much of the tax charged for profits received from carrying on that same business, not against tax payable and
 - cannot create a refund in the event that the amount of the business licence fees exceeds “such tax charged on him”

Other matters to note

17.

- A business license fee offset is only allowed if the return is filed in time or further time allowed by the Commissioner;
- The business license fee must first be added back as an expense before it can be used as an offset;
- If the Business License fee is not allowed as an offset because there is no tax chargeable, the amount of the expense it can be claimed as a business operating expense; or only a proportion, then the fee or balance can be claimed as a deduction from net income. The effect of this means that there is a lower tax chargeable and payable; and
- If the provisional tax payments are greater than the tax charged, then no amount of business licence fee can be offset.

DATE OF EFFECT

18. This Ruling applies to years of income commencing both before and after its date of issue. This Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the final Ruling.

Joseph Dokekana
Commissioner of Inland Revenue
Dated 31st May 2024

Example:

1. Non-provisional taxpayer

Tax chargeable	\$1,000
Provisional tax	nil
Balance owing	\$1,000
Business license fee available to offset	\$2,500 (uses \$1000 set off)
Refund/Payable	nil

2. Provisional Taxpayer

Tax chargeable	\$1000
Provisional tax	\$800
Balance owing	\$200
Business License fee available to offset	\$2,500 (uses \$200 set off)
Refund/Payable	nil

Non-provisional Taxpayer has paid no tax and \$2,500 business license fee

Provisional Taxpayer has paid \$800 tax and \$2,500 business license fee