PIPSO
Pacific Islands Private Sector Organisation

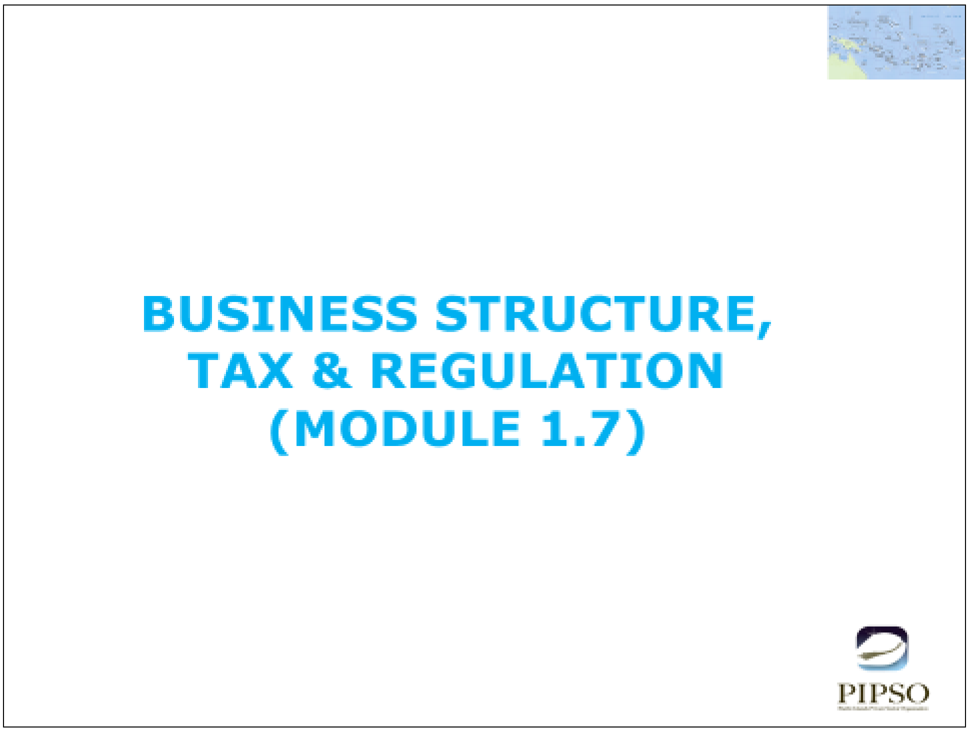
BUSINESS STRUCTURE, TAX & REGULATION

January 1

2014

This Module compares the three common business forms. It looks at the advantages & disadvantages of each. It outlines business income & expenses with an emphasis on compliance for tax purposes & business records for a cash based small business. The Module includes some Fiji specific tax compliance & incentives information. Calculation of prices before & after adding VAT/GST is included.

MODULE 1.7



Contents

PURPOSE

This module distinguishes between business activities & personal activities that are sometimes confused with business activities. It considers the three main business forms; sole trader, partnership & company. It reviews these forms that a small business may take &details the mainfeatures, advantages & disadvantages of each of them. Participant understand in is tested before moving on.

Given the differences in taxation regimes across the Pacific this Module is general in its nature. Itfocuses on “business” inflows & outflows generally, whether they are:

- Revenue & expenses recorded in the income statement, or
- Changes in balance sheet assets, liabilities or equity

There is an emphasis on being a responsible business owner, complying with the requirements of the taxation authorities & meeting all other compliance obligations.

Current Fiji Tax information is included. For other Pacific countries info needs to replace it &/or Fiji specific comments used as examples only to show the types of rules & concessions that may apply.

The important features of a Tax Invoice are detailed as is the calculation of VAT/GST. Given the frequent misunderstanding of the calculation of VAT/GST from the selling price to the consumer, some exercises are provided to guide participants. These stress the difference in the calculation based on the starting point, i.e. selling price before or after the addition of the VAT/GST.

Business owners are reminded that they are responsible for the compliance of their business under the Government regulations in their country. They are also reminded that there may be some opportunity for subsidies, grants & access to cheap finance.They need to look at their business needs& opportunities.

The Module ends with all participants contributing to a guide to setting up a new business.

On completion of this Module participants should understand that they are personally responsible for compliance. Participants should also understand the calculation of VAT or GST from different starting points.

NOTE FOR PRESENTER &FACILITATOR

This Module is generic to cover issues that may apply across the various Pacific nations.

It is not specifically designed for any county as there would need to be 15 variations. **A national facilitatoror invited specialist may provide more specific information based on their knowledge of local regulations. This will enhance the intrinsic value of this Module.**

BUSINESS STRUCTURE

It is most important to distinguish the difference between:

- A pastime or hobby, a windfall gain & a business
- A business capital gain & a profit from normal business activity, which will continue
- A non-profit organisation

Definitions

A pastime or hobby–an activity undertaken by an individual or group for the pleasure of it. It may result in goods or services which are given away or sold, but without either being a regular activity or having profit motive.

A windfall gain - an unexpected, unearned, or sudden gain or advantage that is unforeseen & not expected to repeat, e.g. winning a prize, the lottery/lotto or an occasional gambling win.

A Business - comprises the regular activity of:

- making, buying, or selling goods or providing services
- receiving in exchange money or other goods or services
- the intention to make a profit or net income.

A business capital gain (or loss) - occurs as the result of a sale of an asset at a gain (or loss) compared to its current value in the business records & balance sheet.

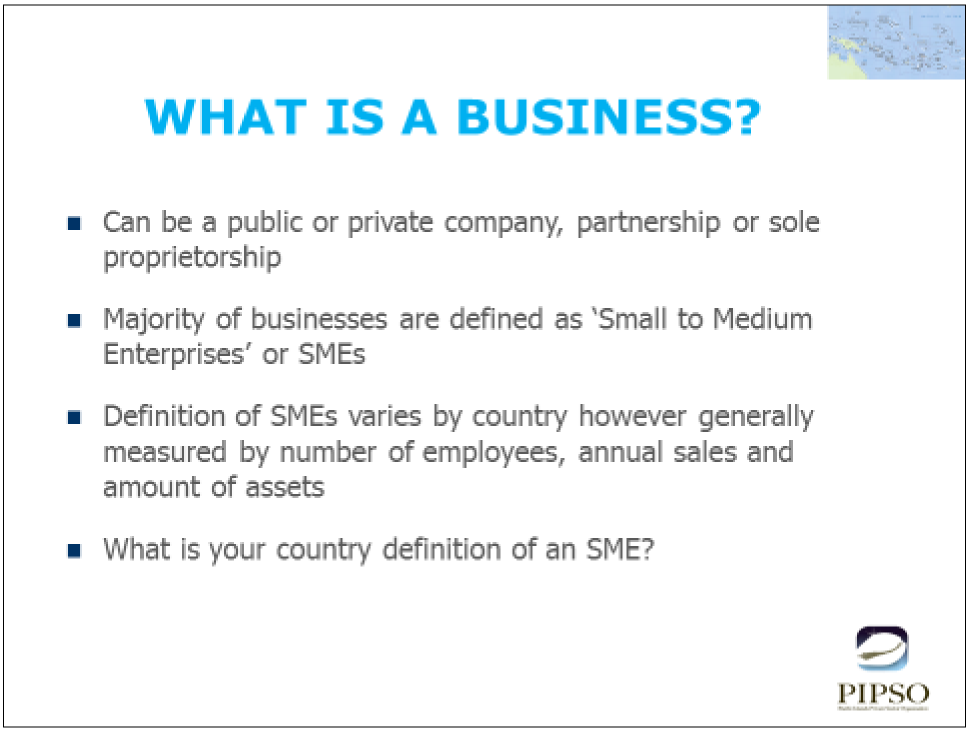
Business profit – arises from the difference between the business revenue from the sale of goods or services plus any other revenues & the business costs & expenses incurred to achieve the revenues.

Business cash flow – comprises cash receipts & payments of a business.

NOTE:A *non-profit organization* is one whose purpose is something other than making a profit, including charities& religious orders, but there are many other types of non-profit organization, e.g. clubs, societies & co-operatives. Generally, they either serve members or communities. A non-profit organisation may be incorporated, i.e. be a company.

An important lesson if you are to operate a business is the separation of business & personal activities & events. It is not possible to measure business performance when it is combined with, or contaminated by other personal receipts &, most importantly, subject to recorded personal expenditure on a systematic or ad hoc basis.

Separation of personal & business activities becomes easier to recognise & record as a business grows, but if a business is to grow, the owner should know whether it is worthwhile growing it. How can this be determined without separating business & private activities.



There are 4 basic business forms. These are:

1. Sole trader
2. Partnership
3. Private company
4. Public company

We should now also consider the country definition of micro, small & medium businesses briefly. Do you know the definitions for your country? Does it matter? When? There may be benefits & assistance available for start-up businesses or based on size.

In your country, are there tax incentives & other concessions offered to small businesses as encouragement? There are in a number of countries.

In Fiji, a small enterprise is defined as any business which has a turnover or total assets between F$30,000 and F$100,000 and employs between 6 and 20 employees. Under F30,000 & 5 or less employees is a micro enterprise. From $100,000 to $500,000 with employees of from 21 to 50 is a medium size enterprise.

Are these still appropriate or are they out of date? Is it a fair reflection of current business?

NOTE FOR FACILITATOR

Ask participants if they know their country rules? Discuss if the response warrants it. If not, suggest that the participants may seek out this information for their own benefit.

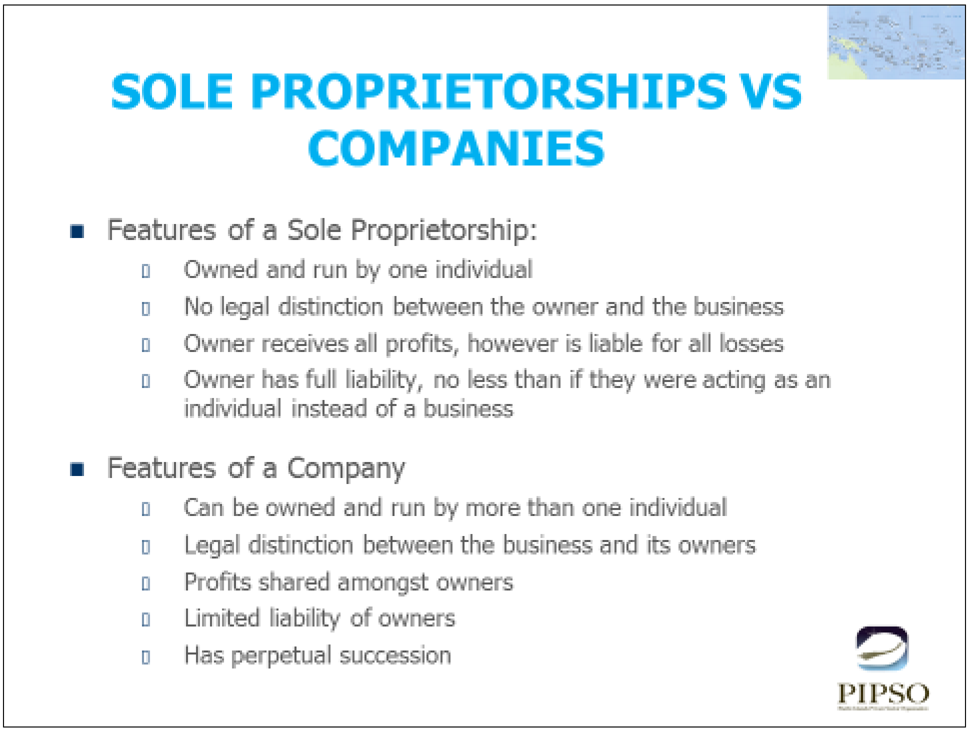
Note also that any country measure of businesses is limited to those registered. There are many that are not registered & operate below the radar of the authorities.

The features of a sole trader business are as listed below. The features of a partnership are similar except that all obligations & benefits are shared as per the agreement between the partners, except in one important way.

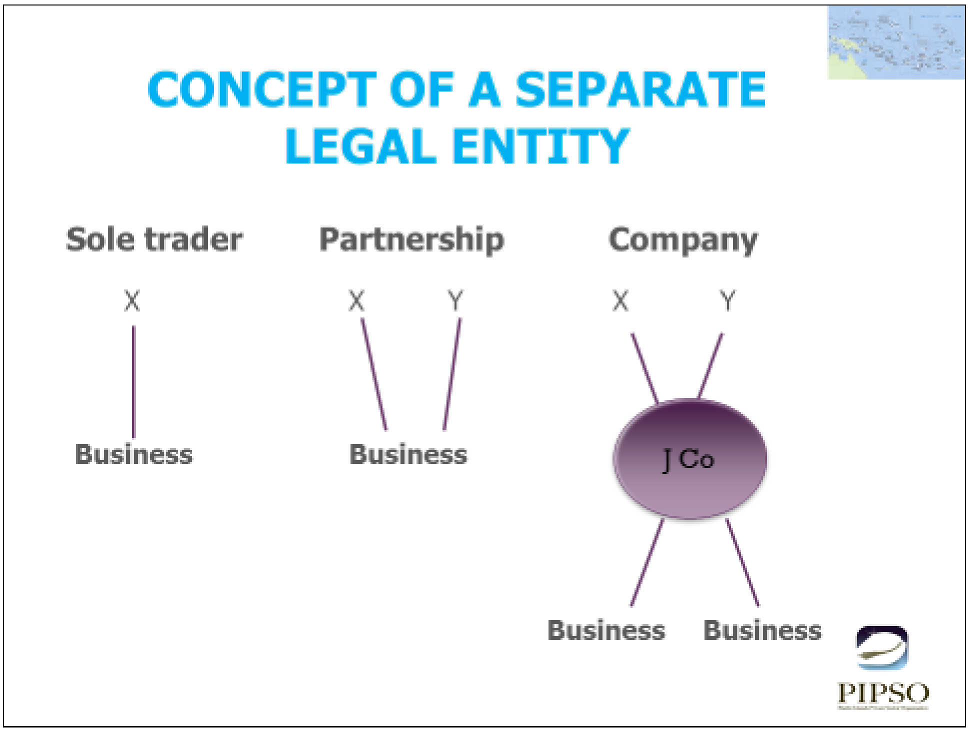
Each partner is **both** jointly & severally liable for all debts of the business. In other words, each partner is individually under the same obligation as a sole trader, i.e. all debts & obligations.

The main featuresof the company structure, public or private, are as listed.Owners of companies are called shareholders. The extent of their interest is determined by the number of shares held. Profits are normally distributed based on the number of shares held. A company is managed by a Board of Directors. Shareholders may, or may not be directors or executives of the business they own.

For taxation purposes, a partnership or company each lodge separate returns to the individual partners (partnership) or shareholders (company).



Most important to the use of the company structure is the legal "concept of a separate entity".The possessions owned by, & the business of, a sole trader or partnership are not legally separate from the individual owner(s), but for a company they are.



A company may in turn control numerous other businesses & these may or may not be separate companies. Provided there is no fraud or other malpractice, the owners of the company are separate from the business & not personally liable for any business arrangements&contractual obligations in the event of a default or liquidation.

A logical extension of this concept, if one owner dies, the company does not cease to exist as a result. It has its own continuous existence, often referred to as “perpetual succession”. Any ownership entitlement (share) of an individual may be transferred to a third party or pass to the beneficiaries of a deceased estate.

IMPORTANT: Even where there is not legal separation, actual business & personal activities must be separated for taxation & related business purposes. This is essential to determine business cash flow, & profitability.

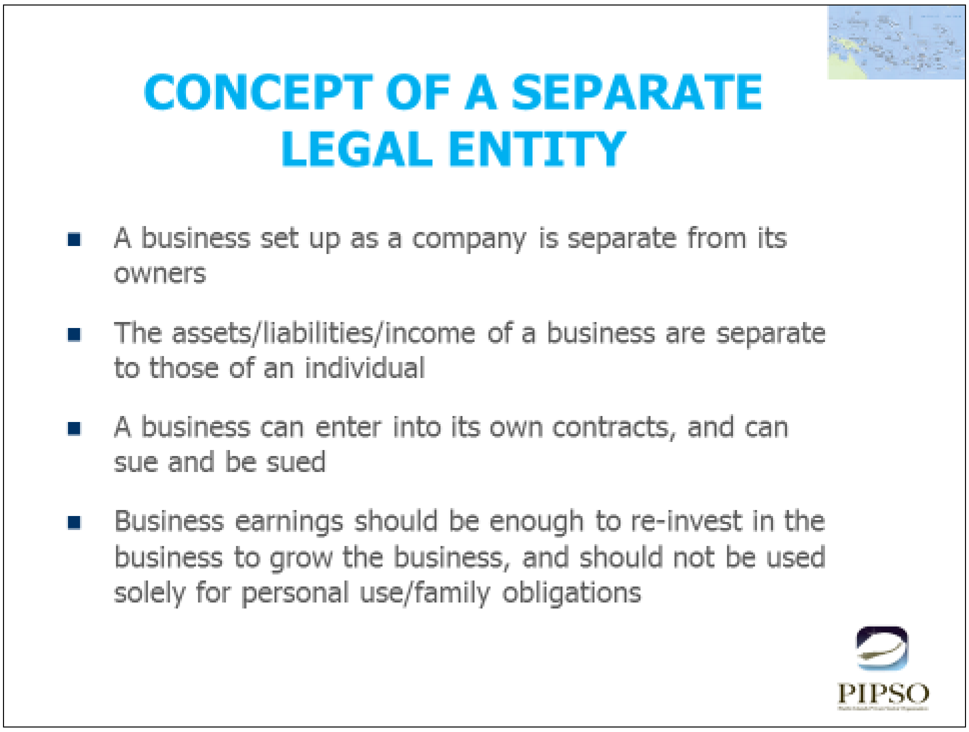
The use of a business bank account even where no personal account exists is the most effective way of tracking business inflows & outflows provided all cash is deposited into & drawn from the account or by the use of a supplementary petty cash system, refer Level 2, Module 2.7.

As per Module 1.1 of this Toolkit, the separation of, but accessibility to, business records comprised of all source documents remains important, including the following:

- Receipts, cheque butts, bank statements & record of internet transactions affecting cash flows
- Sales & purchases orders & invoices, whether designated as tax invoices or not, & any debtor & creditor records
- Stocktake & other inventories records
- Contracts for leases, insurance etc.

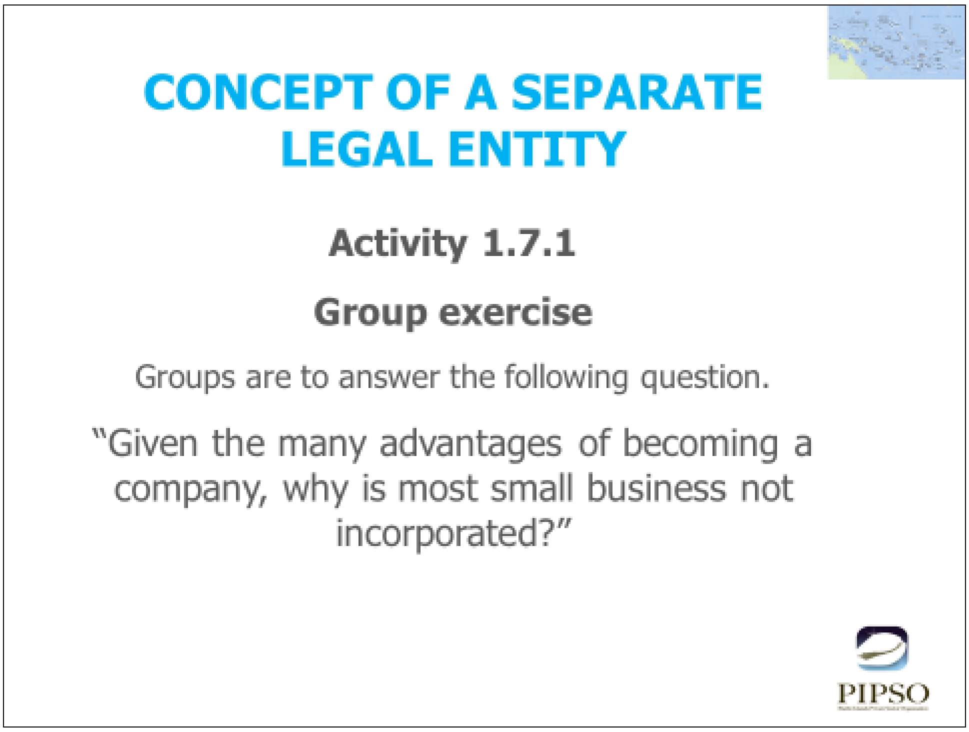
Records may be primary - evidence of an actual business transaction at the time it occurred, e.g. an invoice, receipt or delivery docket - or secondary - evidence before or after the actual event, e.g. purchase order, bank statements or monthly account statements.

When cash, assets or inventory is removed from the business for private purposes it should be recorded as drawings. **Any withdrawal from the business, being cash, goods or services, taken for private purposes isdrawings** & reduces the value of the investment of the owner in the business.

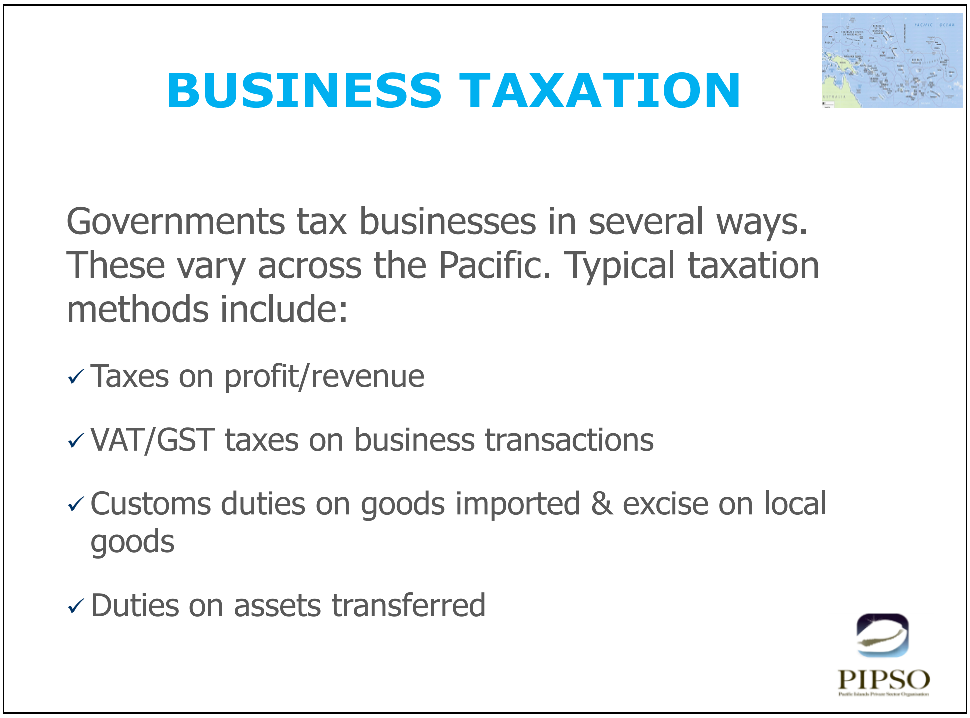


The benefits of being a company often become more relevant as the business grows. Issues include:

- Protection of private/personal assets
- Ease of doing business
- Perpetual succession
- Ability of investors to enter or exit business
- Taxation (this alone is not a good reason to change form)



BUSINESS TAXATION



Governments often place onerous taxation recording & collection requirements on business. Ignorance of the laws is not accepted as an excuse. It is the responsibility of all business owners to:

- Become aware of the rules & regulations
- Maintain accurate taxation records
- Collect taxes as required
- Remit taxes to government on time
- Submit all required paperwork
- Submit to taxation audits as determined by the taxing authority

The emphasis here is on record keeping for compliance with taxation requirements

IMPORTANT: It is timely to remind business owners that it is up to them to understand the Government recording & reporting requirements. Ignorance of the law is not accepted as an excuse.

BUSINESS TAXATION

Taxes that apply in Fiji:

Income tax	Departure tax
VAT	Customs duty
Capital gains tax	Gold tax
Stamp duty	Land tax
Gambling turnover tax	Death duty/inheritance tax
Hotel turnover tax	Land sales tax

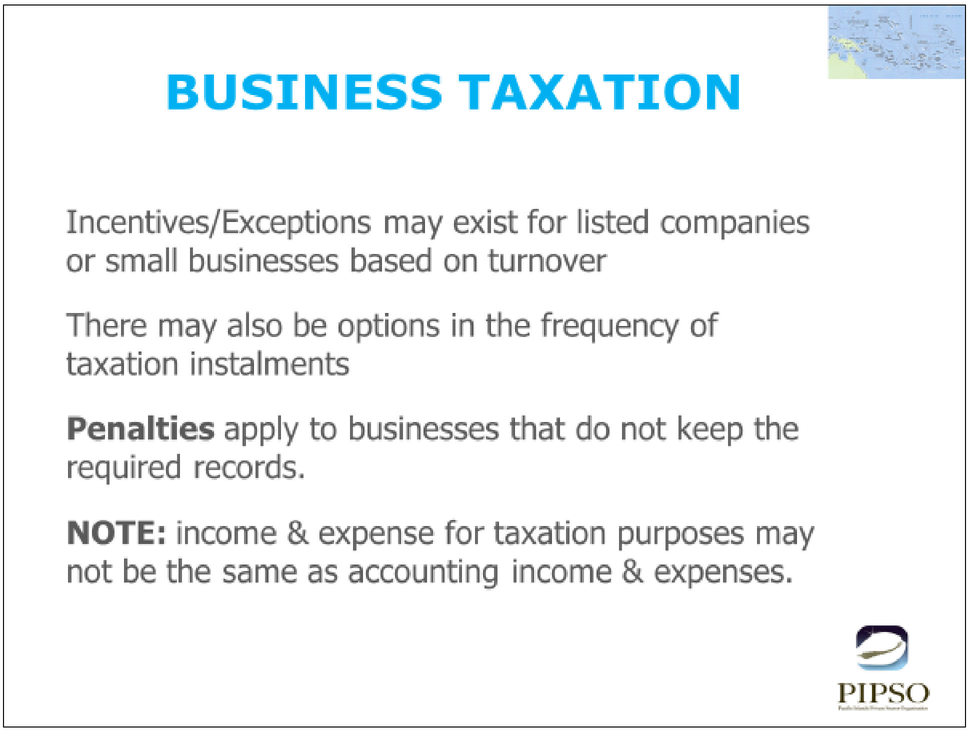
A taxation method may be “progressive”, “regressive” or “flat”.

A progressive tax is a tax in which the tax rate increases as the taxable amount increases. The term "progressive" refers to the way the tax rate progresses from low to high, with the result that a taxpayer's average tax rate is less than the person's marginal tax rate. Under this form of taxation high income earners pay a higher “marginal” tax rate.

A regressive tax is a tax imposed in such a manner that the tax rate decreases as the amount subject to taxation increases. "Regressive" describes a distribution effect on income or expenditure, referring to the way the rate progresses from high to low, so that the average tax rate exceeds the marginal tax rate.

A flat tax (short for flat tax rate) is a tax system with a constant marginal rate, usually applied to individual or corporate income. A true flat tax would be a proportional tax, but implementations are often progressive and sometimes regressive depending on deductions and exemptions in the tax base. Flat taxes often have a regressive effect as they take a higher percentage of income from low income earners than high income earners, e.g. sales tax.

As an example of typical business taxation, let’s use Fiji. Other countries whether they have similar taxation regimes or not, will each have ways to offer businesses, particularly small businesses &/or local businesses concessions or other benefits. The alternative is to penalise businesses, foreign or otherwise, but this latter approach is generally less palatable to authorities.



Taxes concessions may change so the list is not necessarily current or complete. Participants wanting to know current types & rates of taxes should visit their country Government website.

Once again the payment arrangements, paperwork required & timing of payments will vary from country to country, so participants cannot rely on the information provided herein. It is a guide only. For details check the Government website.

All countries have penalty regimes to punish deviant business behaviour & achieve compliance.

Taxation authorities normally provide information on records to be kept & forms required to be completed by a business to meet its taxation reporting & dates that payments are due to be made as well as other general compliance.

BUSINESS TAXATION

The local tax authorities provides information as to what records are required. These may include:

- Records on income tax and VAT/GST
- Records of payments to your employees
- Any records relating to business withholding payments
- Records on other taxes payable by the business.

BUSINESS TAXATION

An old Bee Gee's song

'its only words

and words are all I have

to take your heart away'

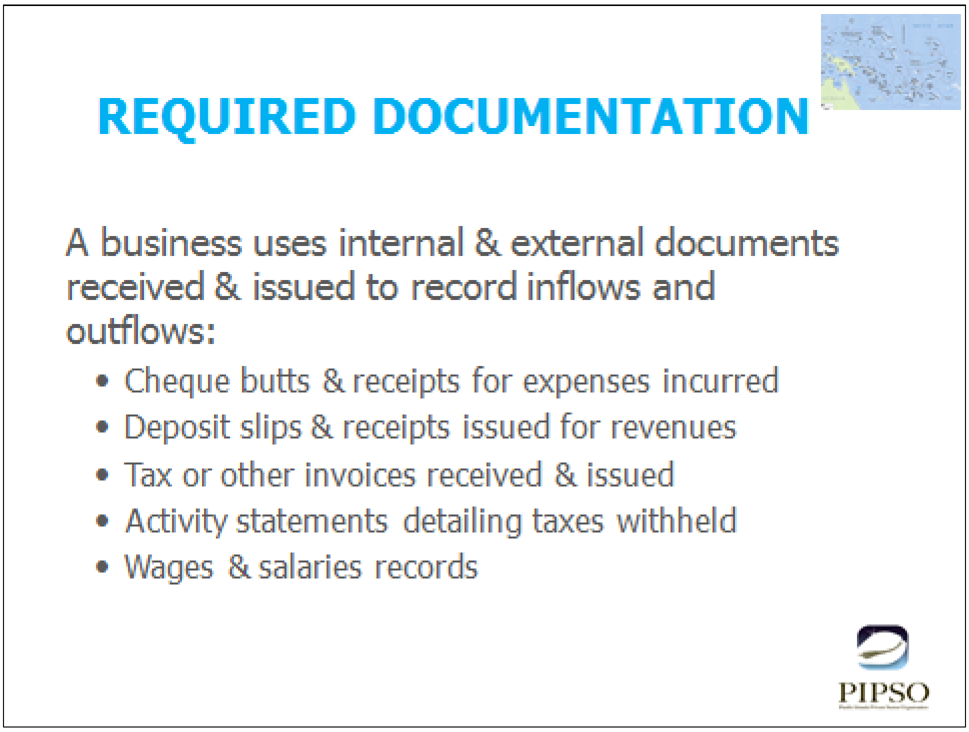
A tax version

'its only tax

and tax is all we have

to take your wealth away'

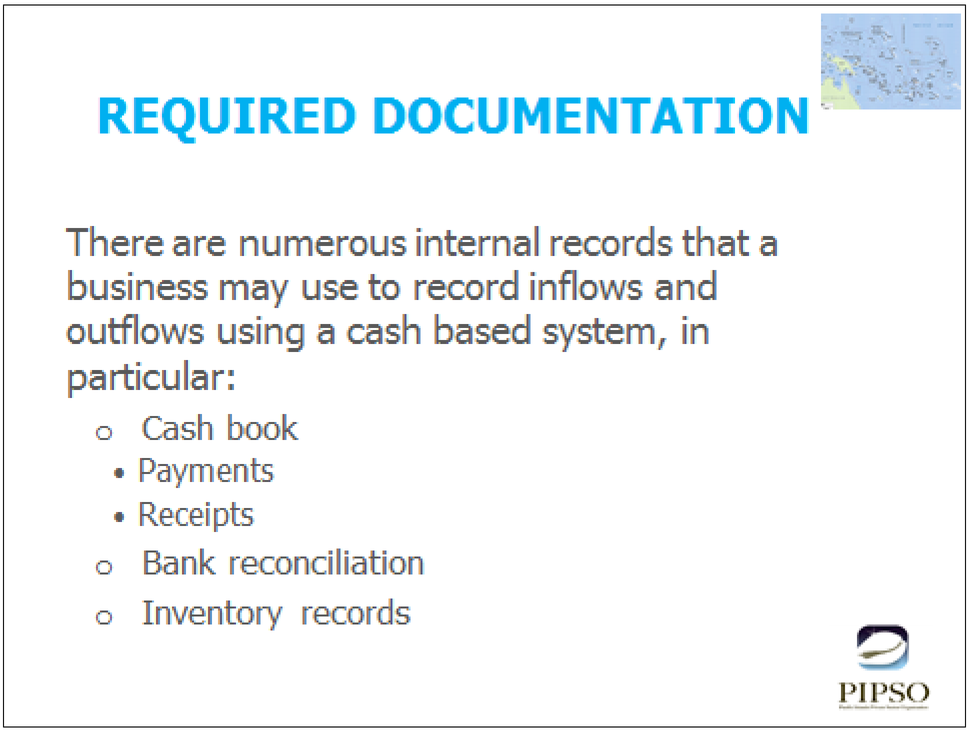
REQUIRED DOCUMENTATION



If a small business keeps its source documents relating to purchases & sales of goods & services as well as other transactions that affect assets, liabilities & equity, the information taken from these should meet all its business needs

If a small business keeps its source documents & prepares cash records of all business transactions in the form of a cash book (considered in detail previously in Module 1.5), it has sufficient information to meet all management & taxation requirements.

NOTE: Remember that primary documents are more detailed & therefore better as evidence in the event of a tax audit or a dispute with a customer or supplier.

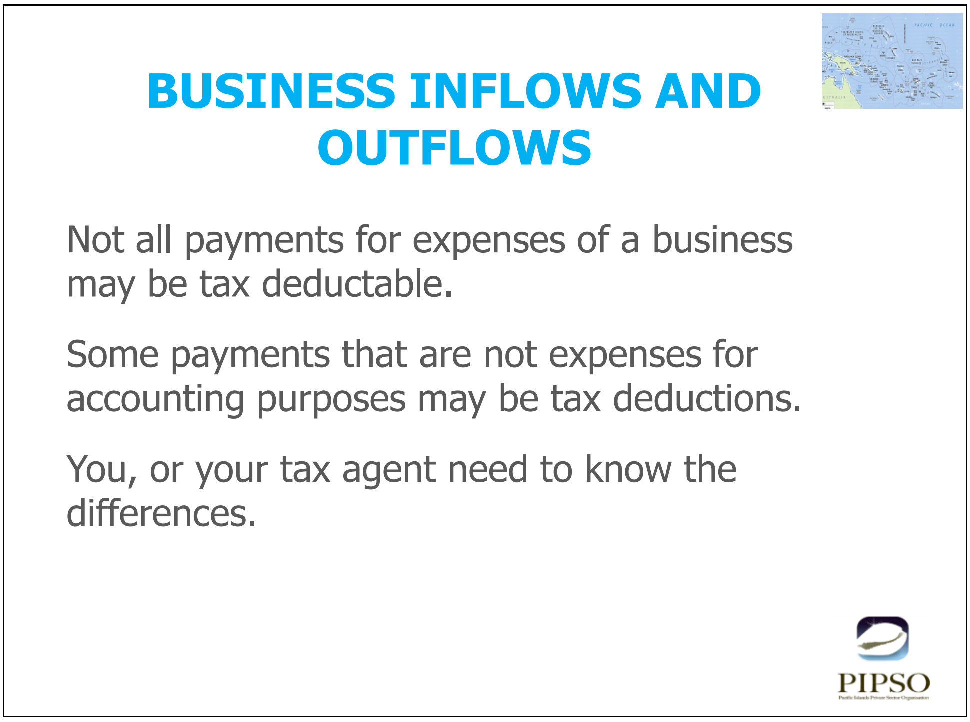


A cash book comprises both:

- Cash receipts, &
- Cash payments

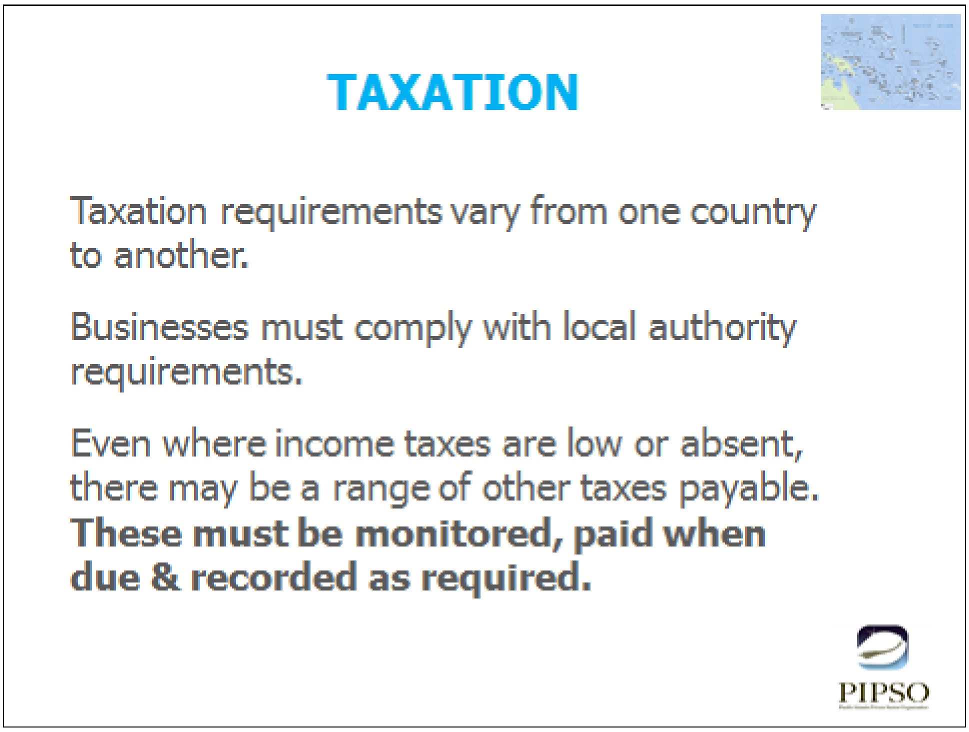
The cash book must be reconciled periodically, monthly or quarterly, to the bank statement for internal control purposes & to check for errors & omissions. The taxation authority will use the bank statement if no other record is available & will interpret inflows & outflows as it sees fit. It is up to the taxpayer to "prove" that the taxation authority has got it wrong. This will require additional documentation, not mere assertions.

BUSINESS INFLOWS & OUTFLOWS



For a small business paying tax on a cash basis, there should not be many differences between the profit for record & for taxation purposes.

TAXATION



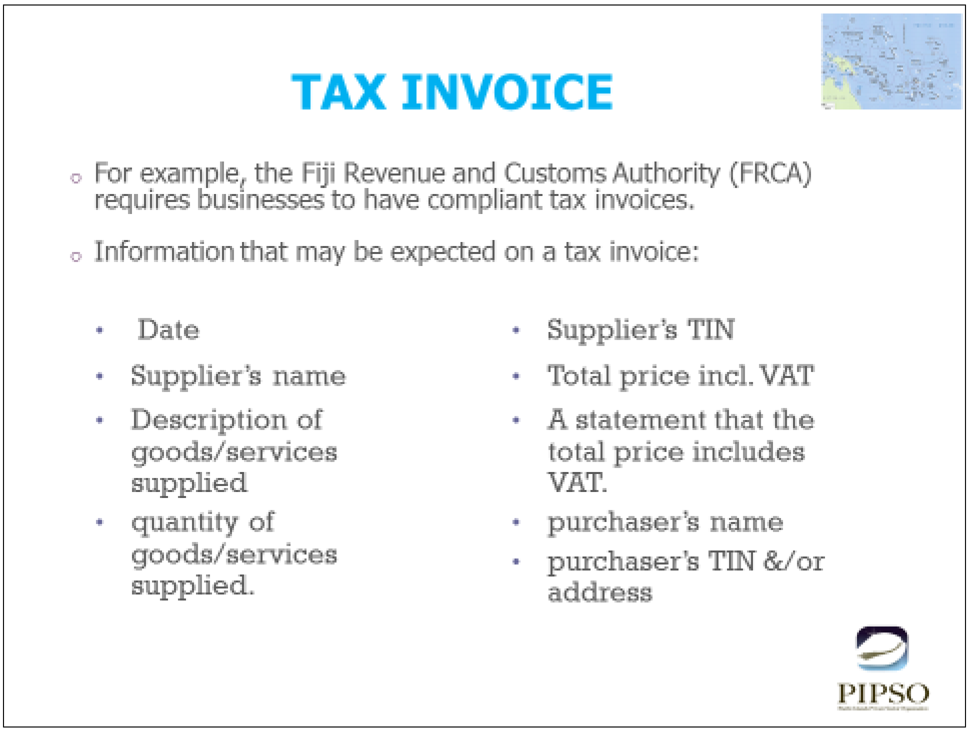
No attempt is made here to address specific taxation requirements on a country basis as there are 14 Pacific island countries, each with their own:

- Taxation authorities
- Categories of taxation
- Taxation rates
- Compliance regulations
- Payment & collection arrangements& timing
- Penalty regimes
- Preferentialtax subsidies & incentives

For those countries with a consumption tax, VAT or GST, the documents that registered businesses issue will determine whether they receive tax credits & otherwise comply with legislative requirements.

The invoice is a primary document evidencing a transaction subject to the collection of tax by a business & remittance of that tax to the taxation authorities.

The following document is illustrative of the requirements for a “tax invoice”. Not all countries require the word “tax” on the face of the invoice, but some do. A business owner needs to be aware of the local requirements.



Key components of a “Tax Invoice” are as listed in the slide above.Not all countries require the words “Tax Invoice” on the document. Does yours? Know the answer to this question.

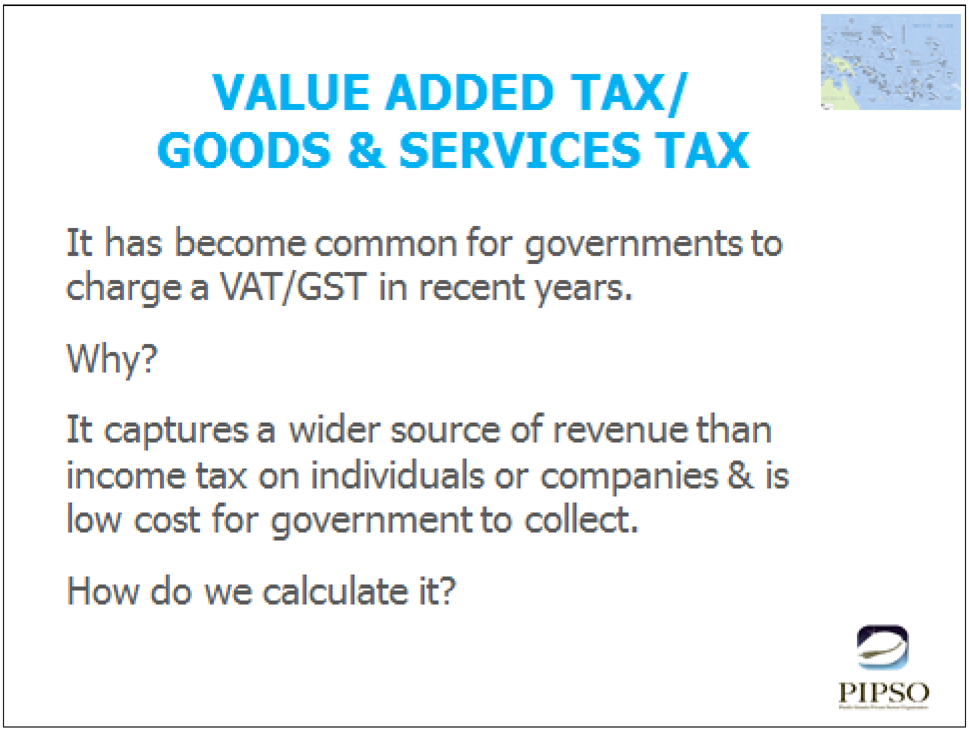
IMPORTANT: Fiji does require the words “Tax Invoice” if a business is to claim a VAT refund/offset.

A consumption tax may be called VAT or GST in different countries.

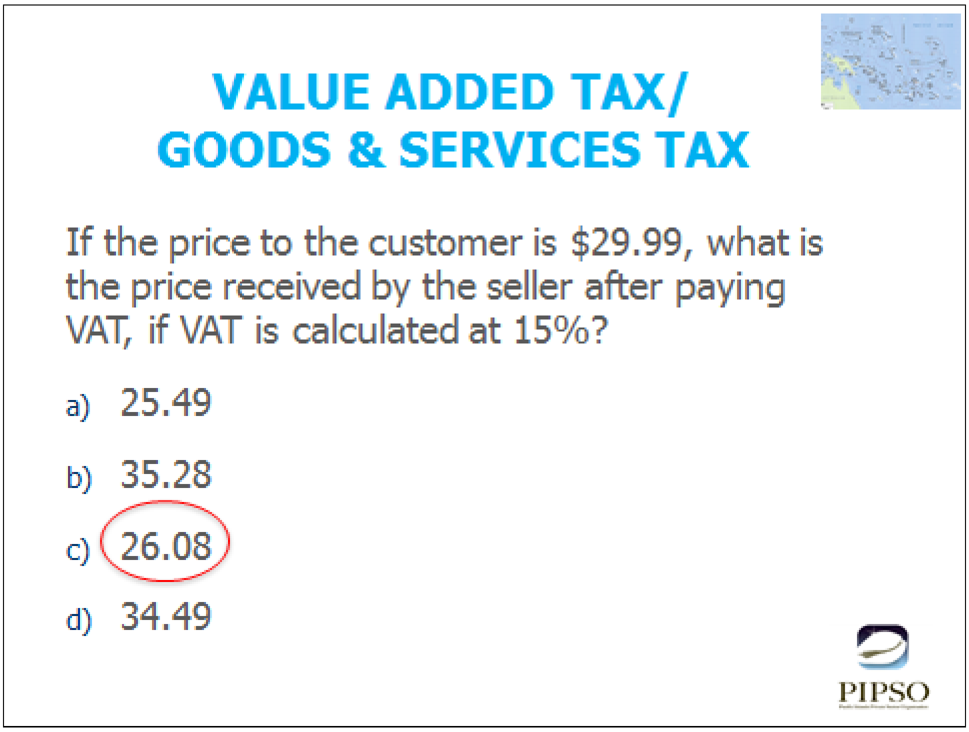
A Business Registration Number isrequired but may be given another name in different jurisdictions, e.g. aTIN in Fiji, but must be included on the invoice.

The tax invoice also normally requires that the statement include the total price includes VAT/GST or nominate the amount of VAT/GST included in the total selling price.

VALUE ADDED TAX/GOODS & SERVICES TAX



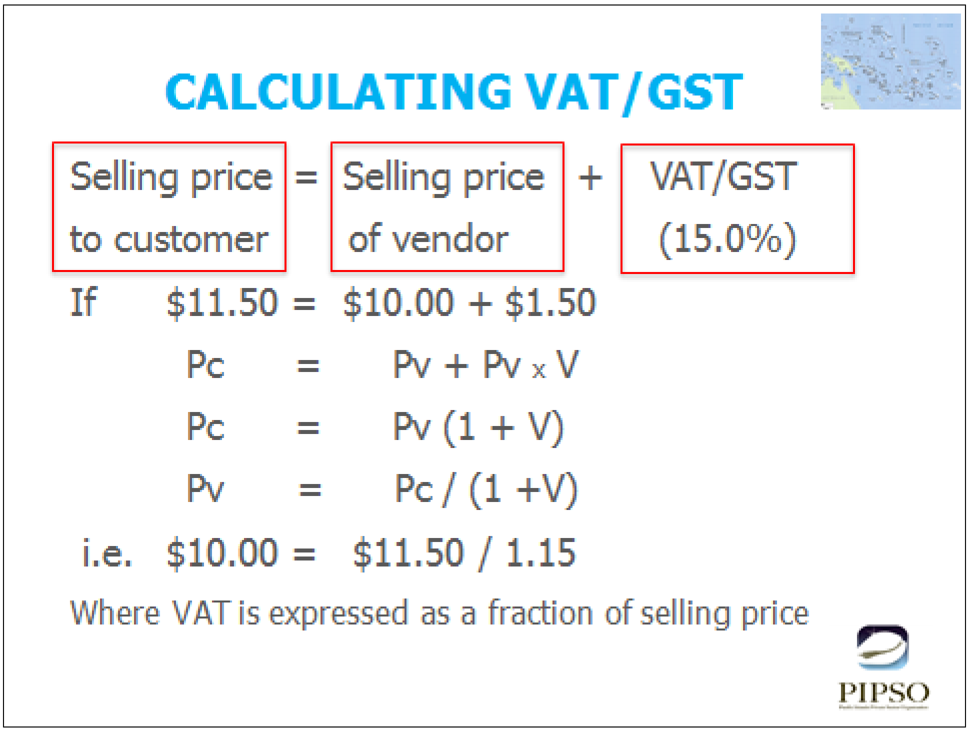
While most business people know how to ad VAT/GTS to their price, it is surprising how many do not know how to calculate it if given the total price to the customer. Try the example below.



NOTE FOR FACILITATOR

The calculations required in the preceding slide will test the participants understanding of the calculation required. Expect most to choose a. above. Ask participants to add 15% to $25.49 & advise the result. It is $29.31.

Do not attempt to explain the calculation now. Move to the next slide & return to this one afterwards, if required.



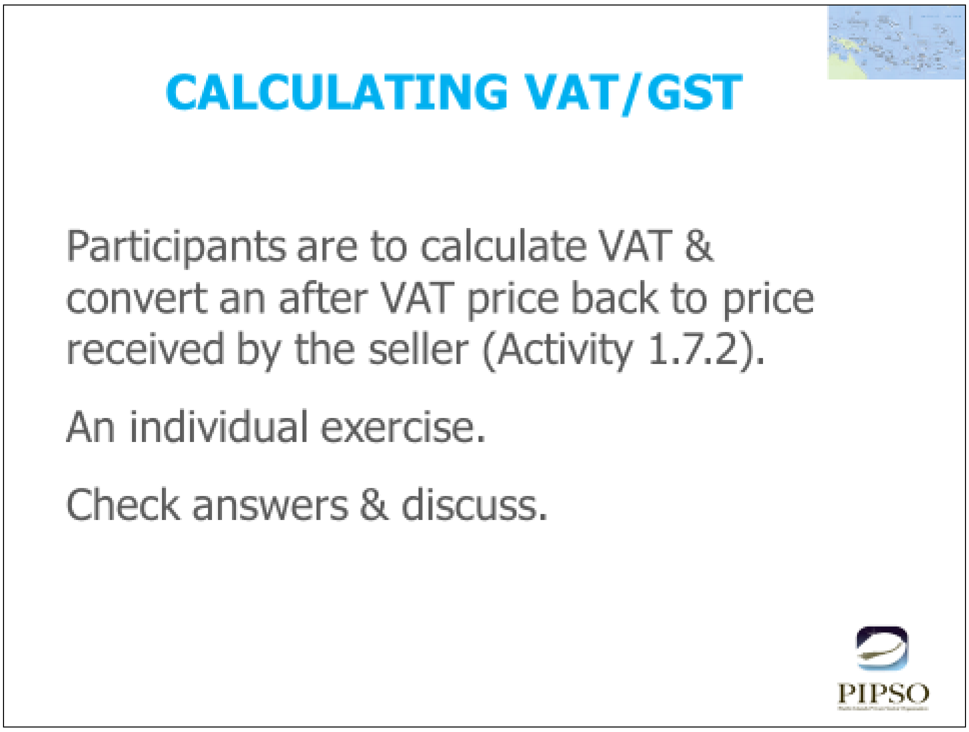
Therefore, the price calculations before & after VAT/GST are as follows.

The **VAT inclusive price** is:

$\text{Price}^{\text{Customerr}} = \text{Price}^{\text{Vendor}}$ x (1 + VAT%)

The **VAT exclusive price** is:

$\text{Price}^{\text{Vendor}} = \text{Price}^{\text{Customer}}$ / (1 + VAT%)



Activity 1.7.2

EXERCISES

1. Jone lives in Lautoka, Fiji. He wishes to receive a minimum of $16.00 for parcels of 10 dalo at the market. He is currently registered for VAT. What is his selling price if VAT is 15%?

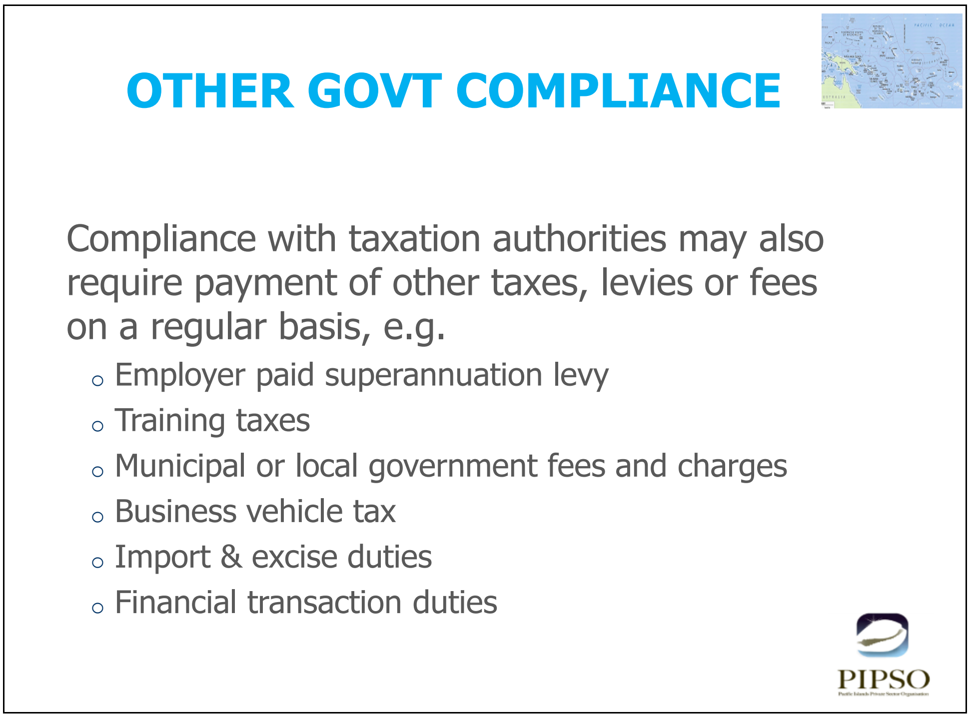
   If the going market price for dalo per parcel is currently $20.00, what will Jone receive?

2. Ana Lives in Port Moresby, Papua New Guinea. She sells poultry products. The current price for chicken breasts is PGK 24.95 per kilo. Vat is 10%. What revenue, after deducting VAT, will Ana receive for a sale of 5 kg of chicken breast.

3. Mere operates a clothing store in Nuku'alofa, Tonga. The retail prices range for a lavalava is from TOP 20-40 subject to quality. She has the opportunity to acquire a quantity of high quality ladies lavalavas for TOP 22. She requires a mark-up of 50% & VAT is 12.5%. She will only purchase these if her retail price is below TOP 40.

   Should she buy at this price?
   What if the price is TOP 25?
   What is the maximum price Mere can pay to achieve a sale price of TOP 39?

OTHER COMPLIANCE



This slide is not intended to be specific for any country, but is rather a general list of the other most common forms of taxation that do occur.

It is a reminder that income tax, company tax & VAT/GST are not the only taxes available to taxation authorities, although they tend to be more efficient as they are wider reaching & easier to control & incur a lower cost of collection.

OTHER GOVT COMPLIANCE

Compliance with other authorities may also impose other restrictions on business or offer incentives, e.g.

Restrictions

- The location of some businesses may be limited
- Uses for land may be restricted by zones
- The type & size of businesses may be limited in some locations

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In addition to taxation authorities there are other governing authorities for countries as a whole or relevant to local jurisdictions that may impose charges or, in other ways, restrict business activity within certain precincts or locations.

There may also be incentives for business, so check it out.

OTHER GOVT COMPLIANCE

Compliance with other authorities may also impose other restrictions on business or offer incentives, e.g.

Incentives

- Lower taxation for producers in preferred locations
- Subsidised loans for particular types of business
- Tax concessions for exporters

PIPSO

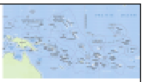
DOING BUSINESS

Let's look at Fiji as an example of the process involved. It is, of course, not just the process, but the time it takes for each & the integration, or lack of integration, of each of the steps involved that matters.

The annual Doing Business survey conducted by the World Bank Group highlights the difficulties of new & existing businesses in the Pacific as is revealed in the following published information.

The full results of the survey is available at:

http://www.doingbusiness.org/rankings



DOING BUSINESS

DOING BUSINESS RANKINGS 2016				
Economy	Ease of Doing Business	Starting a Business	Getting Credit	Resolving Insolvency
Vanuatu	83	126	20	93
Tonga	85	55	44	132
Samoa	89	37	157	134
Fiji	97	159	157	90
Solomon Islands	104	97	82	138
Papua New Guinea	119	130	32	137
Palau	136	120	82	166
Marshall Islands	143	70	82	167
Micronesia, Fed Sts	151	167	75	119
Kiribati	152	140	167	169

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The preceding table emphasises the need for Governments to make the processes of setting up a business & running a business more user (entrepreneur) friendly. Only threePacific countries out of 10 are ranked above average for doing business, but only just. Similarly for starting a business only 3 are ranked better than average. It appears that over the past several years that the Pacific is slipping backwards compared to the other 187 countries surveyed.

Looking across the table, the Pacific seems to rank particularly poor when resolving insolvency & is not good for business start-up either. This will discourage businesses setting up in the formal economy,particularly as companies.

Smaller Pacific countries are not listed (American Samoa, Cook Islands, Nauru, Niue & Tuvalu) Where would these countries stand? Each of these needs to consider where they might rank & the efficiency of their taxation collection systems & regulate accordingly.

This is the last slide in this Module.

ANSWERS TO ACTIVITIES

ACTIVITY 1.7.1

BUSINESS FORM

Question

"Given the many advantages of becoming a company, why is most small business not incorporated?"

Answer

Reasons include:

- To stay under the radar of authorities
- Size of business
- Costs of registration
- Annual fees
- Difficulty of set-up
- Legal compliance & reporting rules
- Complexity of management, i.e. Shareholder + directors + management
- Possible lessening of direct control
- Double taxation of earnings (unless dividend imputation system applies)
    - Profits in the hands of the company
    - Dividends in the hands of individual owners

ACTIVITY 1.7.2

EXERCISES

1. Jone lives in Lautoka, Fiji. He wishes to receive a minimum of FJ$16.00 for parcels of 10 dalo at the market. He is currently registered for VAT. What is his selling price if VAT is 15%?

    FJ$ 18.40 (16 x 1.15)

   If the going market price for dalo per parcel is currently $20.00, what will Jone receive?

    FJ$ 17.39 (20 / 1.15)

2. Ana Lives in Port Moresby, Papua New Guinea. She sells poultry products. The current price for chicken breasts is PGK 24.95 per kilo. Vat is 10%. What revenue, after deducting VAT, will Ana receive for a sale of 5 kg of chicken breast.

    PGK 113.41 ((5 x 24.95) / 1.1)

3. Mere operates a clothing store in Nuku'alofa, Tonga. The retail prices range for a lavalava is from TOP 20-40 subject to quality. She has the opportunity to acquire a quantity of high quality ladies lavalavas for TOP 22. She requires a mark-up of 50% & VAT is 12.5%. She will only purchase these if her retail price is below TOP 40.

   Should she buy at this price?

    Yes. Sale price is TOP 37.13 (22 x 1.5 x 1.125)

   What if the price is TOP 25?

    No. Sale price is TOP 42.19 (25 x 1.5 x 1.125)

   What is the maximum price Mere can pay to achieve a sale price of TOP 39?

    TOP 23.11 (39 / 1.125 / 1.5)