



**PRACTICE
STATEMENT 6/2016**

SUBJECT	TAXATION DIVISION ADMINISTRATION OF OBJECTION(S) TO TAX DECISIONS
DATE OF EFFECT	1 January 2016
CONFIDENTIALITY STATUS	May be released to the public
LEGISLATIVE REFERENCES	<i>Tax Administration Decree, 2009</i> Section 16
PRACTICE CO-ORDINATOR	National Manager Debt Management Services, Lodgement Enforcement & Objections Review

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INTRODUCTION

1. This statement sets out the practice of the Fiji Revenue & Customs Authority in relation to the administration of objections to tax decisions under the *Tax Administration Decree 2009* (TAD). It is issued with the Authority of the Chief Executive Officer of the Fiji Revenue & Customs Authority (FRCA).
2. The practice statement also provides information on the procedures that the responsible team, Objection Review Team (ORT), will follow when handling correspondence relating to objections to tax decisions.
3. Once a tax decision has been made in any section of the Taxation Division, a taxpayer has several possible options to have the tax decision reviewed; these are:
 - i) file a written notice of objection to the tax decision with the ORT - an objection is a formal process for dispute resolution under which the taxpayer has the right to appeal;
 - ii) where a notice of objection is disallowed or partly allowed, file an application for review of the objection decision to the Tax Tribunal or Tax Court established under TAD; or
 - iii) file a request to amend an order or assessment, which is outside the objection period but within the period for the Commissioner to amend an order or re-open an assessment - a request to amend an order or an assessment is a process which may be used to correct a mistake or omission where there is no dispute about the facts or the law; or
 - v) file a written request for a review of a tax decision – this is an independent review service where an officer who was not involved in a tax decision reviews the merits of a case relating to a taxpayer’s request.
4. This Practice Statement is concerned only with objections to tax decisions. The administration of and/or policy relating to the other options listed above will be the subject of other Practice Statements.

LEGISLATION

5. A person’s right to challenge a tax decision is covered in Division III of Part II of TAD. Section 16 provides the legal basis for objections and the terms ‘tax decision’ and ‘tax law’ are defined in section 2 (refer Attachment 1)
6. The objection procedure applies to all tax decisions (as defined) made under any tax law administered by the CEO including the TAD; but excluding the Customs laws.
7. The first step in the procedure for the review of tax decisions is the lodgement of an objection to the tax decision which will lead to a review by the CEO.

TIME FRAME TO LODGE AN OBJECTION

8. A person, who is not satisfied with a tax decision may lodge an objection as follows:
 - (i) tax assessment - within 60 consecutive days of service of the notice;
 - (ii) other tax decisions - within 30 consecutive days of service of the notice.
9. Failure to lodge an objection within the time specified (or extended time) affects a person's ability to apply to the Tax Tribunal for review of the decision or to appeal the decision to the Tax Court.
10. A taxpayer may also object to amended tax assessments but only on any alterations and additions made in the amended assessments.
11. An objection must be in the approved form and include the grounds upon which it is made. There must be sufficient details to make the CEO aware of the particular aspects of the decision that the taxpayer considers erroneous and the reasons for the taxpayer's view.
12. The objection must be lodged in the approved form and signed by the taxpayer and where applicable, the tax agent. That is, in the format approved in writing by the CEO for the purpose of lodging objections. (See Attachment 2).

EXTENSION OF TIME

13. A person may apply, in writing to the CEO for an extension of time to lodge an objection. The CEO may allow this if satisfied that the applicant is unable to lodge the objection by the due date for any reasonable cause.

Example: The CEO may consider that a person has a reasonable cause for being unable to lodge an objection on time if the person is absent from Fiji, or suffers from illness or some other misadventure (such as loss of records due to an accident or natural cause) or any other genuine reason.

14. The CEO will make a decision based on the circumstances.

Example: *A person's absence from Fiji may not be regarded as a reasonable cause if the person had sufficient notice of the travel and failed to make adequate arrangements for lodgement of the objection in his or her absence.*

15. The written request for extension of time should be lodged with the CEO on or before the time frame given in Section 16(1) of TAD.

Example: *Taxpayer A received a notice of assessment dated 4th September 2015 on 8th September 2015. If he is not satisfied with his assessment he must submit his notice of objection) or request for extension of time to lodge an objection by 6th November (60 days from the date of posting of the notice.*

16. Upon receiving an application for extension of time, the CEO is obliged to advise the person of the tax decision by a written notice.

Example: Taxpayer B received a letter dated 8th September 2015, which was posted on the same day, advising that VAT registration will be cancelled. He requests for extension of time to lodge an objection to that tax decision on 8th November 2015 (30 days from the date of posting of the notice). The application is received on time, however the CEO has the discretion to allow or disallow the application and the tax decision must be conveyed in writing.

17. The CEO's decision on an application for an extension of time is itself a "tax decision" therefore a person may challenge the decision under the objection and appeal procedure in Division III of Part II of TAD. This means that the person must lodge an objection to the decision within thirty days of service of the notice of the decision.

Example: Taxpayer B received a written response dated 10th November 2015 advising that his request for extension of time to lodge an objection is disallowed. Taxpayer B can object to the CEO's decision within 30 days i.e. by 10th December 2015.

18. The CEO may by notice require the taxpayer to provide additional information relevant to the objection.

TAX DECISION

19. The CEO is required to consider the objection and make a decision (referred to as an "objection decision"). If the CEO allows the objection in whole or part, then the CEO must change the tax decision accordingly.
20. The CEO must issue a tax decision –
 - within 90 consecutive days after lodgement of the objection; or,
 - where additional information has been sought, 90 consecutive days after receipt of such additional information.
21. Once the period for objecting (including any extension of time to lodge an objection) has ended, the assessment is binding on the taxpayer, unless there is any defect, error or omission made in the tax decision or in any related proceedings.

OBJECTION PROCESS

22. A person must lodge an objection "in writing", which means that it must be an original document sent to FRCA by post or delivered to an official FRCA acceptance point, such as a box in a Customer Service Centre. The documents can be scanned and emailed electronically as well.
23. The notice of objection and supporting documents are to be sent to the address below:

Chief Executive Officer
Fiji Revenue and Customs Authority
Private Mail Bag
Suva

Attention: Chief Assessor - Objections Review Team

In addition, the documents can be hand delivered to any FRCA Customer Enquiry Center Fiji wide copies or emailed to ort@frca.org.fj

24. When the correspondence is received in the ORT, an ORT officer is required to determine whether it is a valid objection. This will involve consideration of 3 issues:
 - whether the objection has been lodged within the time frame prescribed by law, or within an extension of time granted to lodge the objection,
 - whether the objection is in the acceptable form,
 - if the objection is against an amended assessment, whether the grounds of objection relate only to the liability arising from that amendment.
25. In determining whether the objection has been lodged within the time limit, the objection period starts from, in the case where the an assessment has been posted/hand delivered, the date of posting/date delivered and not the date the assessment notice was produced.
26. The FRCA date of posting of assessment notices is the next working day after the day the assessment is processed. For other tax decisions disallowing or partly allowing a request for review of a tax decision, this is sent by registered post. The FRCA date for registered mail is the next working day after the date of posting. Under section 72 of TAD, a notice or other document served by normal post is, in the absence of proof to the contrary, deemed to have been served at the time at which the notice or other document would be delivered in the ordinary course of the postal service. The envelope containing the notice or other document can be used as proof of proper address and date of posting service.
27. The CEO may extend the time to lodge objection(s) and the power to grant these extensions has been delegated to certain officers. Valid grounds for extending the objection period are, for example, where delays within FRCA or the postal system led to the taxpayer receiving their assessment notice or correspondence much later than would be usual i.e. assessment notice or correspondence being posted the day after processing.
28. The complexity of the matter being objected to is not a valid ground to extend the time to lodge objection period.
29. A person may object to an assessment (including an amended assessment) and imposition of a penalty.

30. If the ORT officer decides that the correspondence is not a valid objection, the taxpayer will be formally advised in writing. A letter should be sent to the taxpayer informing them of the decision and basis.
31. If the ORT officer decides that the correspondence is a valid objection, a letter or email should be sent to the taxpayer acknowledging receipt of the objection and advising them that a decision will be made in due course.
32. An action to recover the amount of tax in dispute may be suspended by the CEO while the objection is being decided as provided under section 21(4) of TAD.

DECISION – MAKING FOR AN OBJECTION

33. After an objection has been registered, the ORT Manager will assign the case to a particular ORT officer. The ORT officer assigned the case should have the appropriate tax technical skills, knowledge and experience to determine the matter, taking into account the difficulty of the case.
34. All objection decision making should be conducted within 90 days or where additional information has been sought, 90 days after receipt of such additional information.
35. An officer who raised an assessment or amended an assessment or who made a decision which is being objected to, should not be the person to review an objection. This is in accordance with the principle of natural justice which requires that a decision-maker reviewing a decision not be the original decision-maker, so that an independent consideration of the objection is made. This applies to objections to tax decisions determined in all sections of the Taxation Division.
36. The internal process includes an analysis of the taxpayer's reasons for objecting,
37. The internal process includes an analysis of the taxpayer's reasons for objecting, together with the decision on the objection and reporting system to ensure accountability by the assessing officer.
38. Once an objection decision is determined, the objection decision should be submitted for approval by the appropriate authorising officer(s). The authorising officer(s) should evaluate whether all the standards in this Practice Statement have been met. If they have not been met, the objection decision should not be approved. Once all standards have been met, and the authorising officer(s) has approved the decision, the decision should be relayed to the taxpayer in writing as soon as practicable within 90 days of receipt of objection. Where additional information was required, the decision should be relayed within the additional 90 days of receipt of the requested information. If a decision is not made within 90 days, the ORT officer must consult with the taxpayer.

FINALISING AN OBJECTION AND NOTIFICATION OF AN OBJECTION DECISION

39. The objection process has been finalised once the authorising officer(s) have approved the decision on the objection, the details of that decision have been entered in the objection register, and the decision has been notified to the taxpayer. The taxpayer should be sent a correspondence in writing of the objection decision, the reasons for the decision, and advice of appeal rights.

Attachment 1

“tax decision” means -

- (a) a tax assessment; or
- (b) in relation to a tax law, a decision on any matter left to the discretion, judgement, direction, opinion, approval, consent, satisfaction, or determination of the CEO, other than such decision made in relation to the making of a tax assessment;

“tax law” means a law listed in the Second Schedule”;

Objection to Tax Decision

16.— (1) A person dissatisfied with a tax decision may lodge an objection to the decision with the CEO -

- (a) in the case of a tax decision that is a tax assessment, within 60 consecutive days of service of the notice of the decision; or
- (b) in any other case, within 30 consecutive days of service of notice of the decision.

(2) If the tax decision to which an objection relates is an amended assessment, a taxpayer’s right to object to the amended assessment is limited to the alterations and additions made in it.

(3) An objection must be lodged in the approved form stating fully and in detail the grounds upon which the person objecting relies to support the objection and the approved form shall be signed by the taxpayer and tax agent

(4) A person may apply, in writing, to the CEO for an extension of time to lodge an objection and the CEO may, if satisfied there is reasonable cause, grant an application under this section and must serve notice of the decision on the applicant.

(5) The CEO may by notice require the taxpayer to provide additional information relevant to the objection

(6) Subject to subsection (7), the CEO must consider the objection and either allow the objection in whole or part, or disallow it, and the CEO’s decision is referred to as an objection decision.

(7) The CEO must serve notice of the objection decision on the person objecting no later than 90 consecutive days after lodgement of the objection or, where additional information has been sought in accordance with subsection (5), 90 consecutive days after receipt of such additional information.

(8) If no objection to a tax decision is lodged within the time for objecting under subsection (1) or, when such time is extended by the CEO, within the extended time, the tax decision is treated as valid and binding upon the taxpayer subject to any defect, error, or omission that may have been made in the tax decision or in any proceeding relating to the tax decision required by a tax law.

Attachment 2

Form of Objection

An objection is in the correct form if it contains the features described in the legislative form. It must contain the following:

- The words “I object” or “I am not liable to taxation” or any similar words with the same purpose. Any wording which indicates that the taxpayer is not satisfied with their assessment or other tax decision will be valid.
- A form or letter in a language other than the English language, purporting to be an objection, will not be valid;
- the taxpayer’s name and tax identification number (TIN) – if the taxpayer name or TIN is not provided then the letter will not be an objection;
- The reasons for the objection must be provided. Any argument put forward by the taxpayer will generally be considered an adequate reason for objection. If no information is provided which could reasonably be interpreted as a “reason” then the letter will not be an objection; and
- The objection must be signed and dated. The signature must be of the taxpayer or, if the taxpayer is not an individual, the authorised person.
- If the person preparing the objection is a tax agent then both the taxpayer and the tax agent must sign the form.