



**PRACTICE STATEMENT  
7/2016**

<b>SUBJECT</b>	<b>TAXATION DIVISION</b>  <b>Amendments to Tax Returns &amp; Tax Assessments</b>
<b>DATE OF EFFECT</b>	1 January 2016
<b>CONFIDENTIALITY STATUS</b>	May be released to the public
<b>LEGISLATIVE REFERENCES</b>	<i>Tax Administration Act, 2009 - Sections 2, 11, 12.</i>
<b>PRACTICE CO-ORDINATOR</b>	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 amendments to tax assessments and tax returns under the *Tax Administration Act 2009* (TAA). It is issued with the Authority of the Chief Executive Officer of the Fiji Revenue & Customs Authority (FRCA).
2. The Authority has the objective of collecting the correct amount of tax from each taxpayer, nothing more, nothing less and has mechanisms in place to ensure that taxpayers do not overpay or underpay their tax liabilities. The Authority has no wish to collect more tax than it is supposed to. However, there are legislative restrictions to amending assessments which may prevent this outcome. The practice statement provides guidance on the laws relating to amendments and information on the procedures that the responsible team, Objection Review Team (ORT), will follow when assessing applications for review.
3. Once an assessment or amended assessment is raised in any arm of the Taxation Division, a taxpayer has several possible options to have that assessment reviewed; these are:
  - i) file an amended return; or
  - ii) file a request to amend an assessment, which is outside the objection period but within the period for the Commissioner to re-open an assessment - a request for amendment of an assessment is a procedure which may be used to correct a mistake or omission where there is no dispute about the facts or the law; or
  - iii) file a written notice of objection with the ORT - an objection is a formal process for dispute resolution under which the taxpayer has appeal rights;
  - iv) where a notice of objection is disallowed or partly allowed, file an application for review against the tax decision to the Tax Tribunal or Tax Court established under the Tax Administration Act.
4. This Practice Statement is concerned only with amendments to tax assessments and tax returns. A decision by the CEO to refuse a request to revise an assessment is a tax decision which the taxpayer has the right to object to.

## **LEGISLATIVE BASIS**

5. A person's right to request a review of a tax decision is covered in Division III of Part II of the *Tax Administration Act, 2009*. TAA. Sections 11 and 12 provides the legal basis for amendments. The terms 'tax decision' and 'tax law' are defined in Section 2 (refer Attachment 1)
6. The legal basis for amendments to tax assessments is found in section 11 of TAA. (refer Attachment 3)

7. The legal basis for amendments to tax returns is found in Section 12 of TAA (refer Attachment 4)

## **APPLICATION**

8. When an assessment has been made by the CEO it can be amended if :
  - (i) a person is not satisfied with a return previously made; e.g. a person, who discovers that a return furnished is incorrect or contains an error, can submit an amended return clearly identifying what needs to be amended;
  - (ii) the CEO can make changes needed to ensure that a taxpayer is liable for the correct amount of tax payable.
9. Amendments must be done within the following time limits -
  - (i) original assessments - an application for an amendment must be made within six (6) years from the date that the return was filed.
  - (ii) amended assessments - within six years from the date the CEO served notice of the amended assessment.
10. The time limit for amending assessments in all other cases is six years from the date the CEO served notice of the assessment to the taxpayer. In the case of a self-assessment, the six year period begins to run from the date the taxpayer filed the return.

### **Example 1**

Naleen lodged a 1999 return of income on 31/01/15 (14 years late). An assessment to pay \$300 was issued on 21/02/15.

If Naleen wants to have the assessment reviewed because of a mistake he made or a mistake made by the CEO, he must make the request in writing within 6 years of the date the CEO served the notice of assessment for 1999 on him. (i.e. on or before 21/02/2021).

The CEO must advise Naleen in writing of the decision to amend or reject an application. This decision is a 'tax decision' as defined in Section 2 of TAA.

If the CEO disallows the application, the decision can be challenged only under the objection and appeal procedure. The provisions are contained in Division III, Part II of TAA and provide that an objection to such tax decisions must be filed within 30 days of the tax decision.

11. The CEO can amend a tax assessment at any time in cases of fraud (where a false statement is made), wilful neglect (deliberate acts to minimise tax payable) or

serious omission by or on behalf of the taxpayer. What is considered a serious omission will be relative to the amount of the omission and the total amount of tax payable. This means that even an omission of a small amount of income may be a serious omission if that tax constitutes most of the tax payable by the taxpayer.

### **Example 2**

*John's taxable income for 2005 was \$6,499 –*

*Net consultancy fees \$6,499*

*Net property income \$25,000*

*Only the consultancy income was disclosed in his 2005 income tax return in 2006. Income assessed was below the taxable threshold, therefore no tax was payable in the original assessment.*

*The omission of \$25,000 which led to a tax shortfall of \$6,474.70 ( $3,025 + 0.30(31,499 - 20,000)$ ) is regarded as a serious omission. Therefore the 2005 assessment can be reviewed even though this occurred more than 10 years ago.*

12. The fraud or willful neglect may be committed by the taxpayer or by a person acting on the taxpayer's behalf (such as a tax agent, accountant or other adviser).
13. If the CEO has amended an assessment, a notice of the amended assessment must be sent to the taxpayer.
14. The CEO can also amend an amended assessment. Such amendment must be made within six years from the date the CEO served notice of the amended assessment.

### **Example 3**

*An amended assessment was issued to Seini on 21/02/15. New information was obtained after this date. The CEO can re-open the amended assessment before 21/02/2021.*

*If the case involves fraud, the amended assessment can be amended at any time.*

15. An amended assessment is treated as a tax assessment for all purposes of the TAA and the tax law under which the original assessment was made.

16. The making of an amended assessment does not affect a taxpayer's liability to pay any late payment interest and penalty arising from the date that tax was due under the original assessment.
17. Section 12 provides for the amendment of all types of returns.
18. Taxpayers can amend a return within 6 years of the tax period to which the return relates. The return must clearly identify what has been altered. However, the CEO can accept or decline amended returns.
19. Where an amended return is accepted, the CEO must issue an amended notice of assessment. If no assessment had been issued yet, the CEO must issue a notice of assessment in respect of the amended tax return.
20. Where an amended return is declined, the CEO must advise the taxpayer in writing within 60 consecutive days of receipt of the amended return.

**Example 4**

*Akata lodged a 1999 return of income on 31/01/15 (14 years late). An assessment to pay \$300 was issued on 21/02/15.*

- (a) Akata forgot to claim some expenses - She cannot lodge an amended return but can request the CEO to review the assessment under Section 11 (2) (b) of TAA*
- (b) Akata forgot to include some income - She cannot lodge an amended return but can request the CEO to review the assessment and the CEO can do so under Section 11 (2) (b) of TAA*

21. Amended returns are treated as original returns for the purposes of the TAA. For example, the due date for lodgement of returns is not affected by the lodgement of an amended return at a later date. If the tax payable increases, late lodgement penalty will be reassessed based on the amended tax payable. The same applies to increases in chargeable income. The penalties for making false returns that are applicable under Section 46 of TAA continue to apply even if an amended return is submitted at a later date. However, the penalties may be reduced if a taxpayer makes voluntary disclosures before the omission is discovered by the CEO or before the commencement of an audit into that person's tax affairs.
22. A person making a request for amendment must do so in a return stating clearly, in writing, what has been amended.

## **PROCESS**

23. A request for a review of an assessment must be made in writing, which means that it must be a paper document sent to FRCA by post or delivered to an official FRCA acceptance point, such as a box in a Customer Service Centre. The paper documents can be scanned and emailed electronically as well.

24. The correspondence or amended return should be sent to the address below:

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

Attention: Chief Assessor/Auditor – Objections Review Team

In addition, paper documents can be hand delivered to any FRCA Customer Service Center Fiji wide and electronic copies of the documents emailed to the DFRCA - Objections Review Team <ort@frca.org.fj> address

25. When correspondence is received, the ORT Officer is required to determine whether it is a valid amendment. This will involve consideration of three issues-

- (i) whether the amendment has been lodged within the time frame prescribed by law;
- (ii) whether the amendment is in the acceptable form; and
- (iii) whether the amendment correspondence is subject to the objection process under Section 16 of TAA.

26. In determining whether the request for amendment of tax return has been lodged within the time limit, the 6- year period starts from the end of the tax period to which the return relates.

27. The following information must be provided in the correspondence-

- (i) the taxpayer's name and Tax Identification Number (TIN) – if the taxpayer name and TIN reference number is not provided then the correspondence will not be valid;
- (ii) reason for the amendment;
- (iii) the correspondence must be signed and dated - the signature must be of the taxpayer and (if applicable) an authorised representative.

28. If the ORT officer decides that the amendment correspondence is not valid, the taxpayer will be formally advised in writing. A letter or email should be sent to the taxpayer to advise of the decision and basis for the decision.

29. If the ORT officer decides that the amendment correspondence is valid, the taxpayer will be formally advised in writing. A tax assessment and/or letter or email should be sent to the taxpayer to advise of the amendment.

## **DECISION-MAKING FOR AN AMENDMENT**

30. After an amendment 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 review the amendment case and level of complexity.
31. All amendments decision making should be conducted within 60 consecutive days.
32. The ORT officer who issued the assessment or amended assessment or who made a decision which is being reviewed, should not be the person to be assigned the same amendment. This is in accordance with the principle of natural justice which requires that a decision-maker reviewing an amendment not be the original decision-maker, so that an independent consideration of the amendments is made.
33. The internal process includes analysis of the alterations and additions for an amendment determination and reporting/endorsement system to ensure accountability of the ORT officers.
34. After the receipt of an amendment, further information may be requested by the ORT officer for an amendment determination.
35. Once an amendment decision is determined, the amendment 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 amendment 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 60 days of receipt of amendment correspondence. If a decision is not made within 60 days, the ORT officer must consult with the taxpayer.
36. 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 amendment register, and the decision has been notified to the taxpayer. The taxpayer should be sent a correspondence in writing of the amendment decision, the reasons for the decision, and advice of objection rights.

## **ATTACHMENT 1**

### **Extracts from TAA**

#### **Section 2 - Interpretation**

- (i) *tax assessment* - an assessment or determination listed in the **First Schedule** of TAA
- (ii) *tax return* - means a return, statement or other document listed in Part A of the Third Schedule
- (iii) *tax decision* –
- a) *the making of a tax assessment; or*
  - b) *a decision on any tax related matter (other than the making of a tax assessment) for which–*
    - *the CEO uses discretion, or judgement;*
    - *the CEO gives direction, opinion, approval, consent;*
    - *the CEO is satisfied;*
    - *the CEO makes a determination*
- (iv) *the 'tax law' that applies to amendments is listed in the **Second Schedule** of TAA*
- (v) *tax period* – means
- a) *in the case of the income tax –*
    - for the purposes of withholding tax, the period to which the relates; or*
    - (i) *for the purposes of provisional tax or advance payments of tax, the period to which the provisional tax or advance payments relates; or*
    - (ii) *for any other purposes, tax year;*
  - b) *in the case of VAT, the taxable period; or*
  - c) *in any other case, the period for which the tax is reported;*

#### **FIRST SCHEDULE**

*(Section 2)*

#### **TAX ASSESSMENTS**

*The following are tax assessments for the purposes of this Act –*

- (a) an assessment of income tax, including a nil or loss notice;*
- (b) the ascertainment of provisional tax or advance payments of tax under Subdivision 3 of Division 2 of Part 9 of the Income Tax Act*
- (c) an assessment of VAT, including a self-assessment under section 8;*

- (d) an assessment of capital gains tax, including a self-assessment under Section 5;*
- (e) an assessment of penalty or additional tax under a tax law;*
- (f) a default assessment of tax under section 9;*
- (g) an advance assessment of tax under section 10;*
- (h) an assessment including a self-assessment of Gambling Turnover Tax under section 8;  
and*
- (i) an amendment of an assessment referred to in paragraph (a) to (g);*
- (j) an assessment including a self-assessment of the Service Turnover Tax under section 8.*

## **ATTACHMENT 2**

### **SECOND SCHEDULE (Section 2) TAX LAWS**

*"1) The following are tax laws for the purpose of this Act -*

- a) this Act;*
- b) the Gambling Turnover Tax Act;*
- c) the Service Turnover Tax Act;*
- d) the Income Tax Act;*
- e) the Capital Gains Tax Act;*
- f) the Value Added Tax Act; and*
- g) any other Act... (other than the customs and excise legislation) under which a tax or levy is imposed if responsibility for the general administration of the tax or levy is imposed on the CEO."*

*2) A reference to a tax law in paragraph (1) includes any regulations or other subsidiary legislation made under the law."*

### **THIRD SCHEDULE (Section 2) PART A - TAX RETURNS**

*"The following are tax returns for the purposes of this Act -*

- 1) In relation to income tax -
  - a) a return referred to in sections 104 and 108 of the Income Tax Act*
  - b) a report referred to in section 107 of the Income Tax Act;*
  - c) an annual withholding tax summary required under section 121 of the Income Tax Act**
- 2) In relation to value added tax -
  - a) a return required to be furnished under sections 33, 34, and 35 of the Value Added Tax Act; and*
  - b) particulars required to be furnished under section 37 of the Value Added Tax Act.**
- 3) A return required under section 4(1) (b) of the Service Turnover Tax Act and payment required under section 4(1) (a).*
- 4) A return required under section 5(1) (b) of the Gambling Turnover Tax Act and payment required under section 5(1) (a).*
- 5) A return required under section 126 of the Income Tax Act*
- 6) A return required under section 131 of the Income Tax Act"*

### **PART B: SELF-ASSESSMENT RETURNS**

*"The following are self-assessment returns for the purposes of this Act*

*(1) A return required under section 33, 34 or 35 of the Value Added Tax Act .A return required under section 104, 108, 126, 131 or 135 of the Income Tax Act”*

### **ATTACHMENT 3**

#### *Section 11 Amendment of tax assessments*

*“11. — (1) Subject to this section, the CEO may amend a tax assessment by making such alterations or additions to the assessment as the CEO considers necessary to ensure that a taxpayer is liable for the correct amount of tax payable in respect of the tax period to which the assessment relates.*

*(2) The amendment of a tax assessment under subsection (1) may be made -*

- a) in the case of fraud, wilful neglect, or serious omission by or on behalf of the taxpayer, at any time; or*
- b) in any other case, within 6 years of the date the CEO served the notice of assessment on the taxpayer.*

*(3) As soon as practicable after making an amended assessment under this section, the CEO must serve the taxpayer with notice of the amended assessment.*

*(4) Subject to subsection 2(b) if a notice of assessment (referred to as the “original assessment”) has been amended under subsection (1), the CEO may further amend the original assessment or an amended assessment within 6 years or as the CEO deems fit after serving the notice of the original or amended assessment on the taxpayer.*

*(5) An amended assessment is treated in all respects as a tax assessment for the purposes of this Act (other than subsection (1) or (2)) and the tax law under which the original assessment has been made.*

*(6) The making of an amended assessment does not preclude the liability for penalty from arising from the date that tax was due under the original assessment”*

*(7) For the purposes of this section-*

- i) “fraud” in relation to a taxpayer or anyone acting on behalf of a taxpayer, means an act of making a false statement to the CEO;*
- ii) “willful neglect” means the deliberate act by a taxpayer or anyone acting on behalf of a taxpayer to minimize tax payable; and*
- iii) “serious omission” means an omission of any amount of tax as determined by the CEO.”*

**ATTACHMENT 4**

**Section 12 Amended Returns**

- "12. - (1) A tax return may be amended by the taxpayer at any time within 6 years of the tax period to which the return relates, with the alterations clearly identified on the return to ensure that the taxpayer has correctly filled out such return for the tax period to which it relates and the CEO may accept or decline such amended return.*
- (2) If the CEO accepts the amended return, the CEO must issue an amended notice of assessment (or notice of assessment if no assessment had been issued) in respect of the amended tax return.*
- (3) If the CEO declines the amended tax return, the CEO must advise the taxpayer in writing within 60 consecutive days.*
- (4) An amended tax return is treated in all respects as a tax return for the purposes of this Act and the tax law under which the original tax return was lodged.*

***End of PS***

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