

Tax Talk – Tax Recovery Measures

This week we will look into FRCA processes for recovery and repayment of taxes and duties as per the law and will outline some major recovery measures.

Communicating with Debtors

Similar to any business debt recovery procedure, the initial step is to establish contact and inform the debtor of the tax assessment, amount payable and the due date for payment. It is also at this stage that we can send the Notice of Assessment [NOA] to the taxpayers via email. It is to be noted that the original NOAs are posted to the respective mailing address. Options are given to debtors should they wish to discuss payment options and the debt recovery team are always available to meet with taxpayers.

Receiving a Demand Notice for Tax Payment

Once the debt exceeds 30 days, a Tax Demand letter is issued which provides a 14-day timeline for tax debts to be paid. Should there be no positive response from the debtors in terms of full settlement, providing an undertaking or to enter into a time to pay arrangement, necessary recovery measures will be undertaken.

Initially the recovery measures will be friendly and professional however, for non-compliant and for those that do not honor agreements, FRCA will explore more drastic means of recovery. The recovery will be based on the assessment of the severity and significance of non-compliance and revenue threat. FRCA will ensure that all its decisions are carried out appropriately and with transparency in accordance with the relevant tax laws. FRCA ensure that taxpayers are always advised via telephone, visitation and via email or postal mail before any action is made or in other cases after the recovery process has been done. Tax Debtors are classified in three categories firstly the Under 31 Days Debtors whose debts are within 0 – 31 Days; second are the Under 5 year Debtors - whose tax debts are within 31 days to 5 years; and the third category are the More than 5 year Debtors.

Statement of Tax Account issued to Taxpayer

As soon as the return of a taxpayer is assessed and the tax payable determined, the taxpayer is advised via the Tax Statement of Account and is allowed 30 days to settle the tax assessed without incurring any late payment penalties.

Initial recovery action - Telephone call / meeting

Following the issuance of the Statement of Tax Account, FRCA will follow up with telephone, email where available as a reminder on the tax debt within a week from when the assessment was raised. The purpose of the follow up is to inform the taxpayer on the amount of tax debt and when and how the debt is to be paid. The telephone call will also serve to update the accuracy of the taxpayer details and update all current information and contacts. If taxpayer disagrees with the assessment, the taxpayer has the right object and should lodge a formal objection letter within 60 days from the date of assessment,

via email or postal mail or hand delivery. Where the taxpayer is unable to settle within the required 30 days from assessment, the taxpayer will be advised for the time to pay agreement.

FRCA will ensure that each taxpayer is advised of his/her tax obligations and mapping a way forward to resolve outstanding tax obligations. This is also to assist taxpayers from incurring penalties. Where Accountants, Tax Agents or Lawyers represent taxpayers, the onus and responsibility of clearing the tax debt is still with the taxpayer and not the agent. Some taxpayers prefer to meet in person to discuss on the settlement of the tax debt, and in other circumstances may authorize the tax agent to agree on arrangements, FRCA would call for the meeting.

Time-To-Pay Arrangements (TTPA)

Time-To-Pay Arrangements are entered into when the taxpayer requests to make installment payments instead of a one off settlement or full payment due to genuine financial constraints. FRCA may grant an extension of time to pay tax, after scrutinizing the taxpayer's financial status and is convinced that the taxpayer is facing financial issues and inability to pay tax debt at once.

Only authorized personals at FRCA can sign on the TTPA otherwise it will be considered null and void. Most TTPAs are to be restricted to 3 to 6 months where the taxpayer will have to settle all debt. The agreement can also include the remission of penalties (if any) if core taxes are fully paid in one-off settlement. Most TTPAs would start with a down payment of minimum 25% of total tax liability.

Garnishee Notice

FRCA has powers to recover tax debts from third parties owing money to, or holding money for the taxpayer. A Garnishee is a legal document which instructs a third party to pay FRCA any monies owing to a taxpayer. This payment to FRCA is in satisfaction of a debt outstanding at FRCA. Whilst the Garnishee Order is to recover outstanding taxes it is not limited to prior exhaustion of issuance of demand notice or time to pay arrangement. This is based on risk profiles.

Garnishees can be issued to Employers, Banks, Other Financial Institutions which accept deposits, third parties who hold money for taxpayer e.g. taxpayer customers/debtors. The following sources of funds can be garnisheed: Access /Passbook /Savings Accounts, Fixed Deposits, Joint accounts provided source of income is taxpayer's income, Any deposit into a third party bank account provided income determined to be taxpayer's income, Business accounts with overdraft facility, Salaries / Wages, Dividends, Rental Income, Royalty Payments, Directors Fees, Annuities, Any compensation payouts

When FRCA issues a Garnishee notice, the Original is issued to the payer - 3rd party and a copy is issued to the taxpayer.

Garnishees to salary and wages and other remuneration is limited to 20% from each payment. Garnishees will not be revoked without - at least some payment upfront and an alternative payment arrangement including negotiating a variation on the percentage of fund to remitted by the payer.

Charge or caveat on Taxpayer Asset

FRCA may charge or caveat taxpayers assets in lieu of outstanding tax liabilities to secure its tax debts. Where FRCA has reasonably exhausted other recovery measures and believes that enforcement of the charge (in case of properties) is the suitable way to collect the State debts, the FRCA may apply by petition to High Court for sale order or appointment of a Receiver. In case of movable assets, FRCA can enforce collection of debt by Distress and Sale. FRCA will place charges or caveat on titles where overdue debt is above \$25,000. For Lease Land FRCA will issue the notice to ILTB or Lands Department, notifying of potential FRCA charge.

FRCA may issue a 14 Day Final Notice to the Taxpayer advising him that FRCA will foreclose on the Charge if the amount as stated is not paid within 14 days. FRCA may also place an LTA Charge on all existing encumbrances pertaining to the motor vehicles of a taxpayer that owes taxes.

Release of the title charges can ONLY be done if all outstanding tax arrears are FULLY cleared by the taxpayer. Where a taxpayer requests for release of Title or LTA charge in order to obtain refinancing to be able to clear tax arrears, the taxpayer has to provide a security such as a Bank Guarantee or Surety witnessed by a Solicitor.

In case of direct sale by the taxpayer to obtain higher sale price advantage, an undertaking by the taxpayers solicitors to remit the proceeds from the sale directly to FRCA will be required. In cases of a forced or mortgagee sale (where FRCA ranking is second), all proceeds in excess of first charge to be remitted directly to FRCA. Taxpayers can organize with the financial institution for refinancing the taxpayer's debt.

Departure Prohibition Order (DPO)

A DPO prohibits the debtor from leaving Fiji, regardless of whether the debtor intends to return. By its very nature, a DPO imposes a significant restriction on the normal rights of a debtor and the impact of this restriction on a debtor's freedom of movement must be recognized (basically an order deprives debtors of their liberty to travel outside Fiji). DPO is applicable on both Fiji nationals and foreign nationals who are liable to pay Fiji tax.

Distress and Sale

FRCA can distress and sell goods for settling taxpayers outstanding tax arrears. A Final Notice will be issued before any distress and sale, allowing the taxpayer 7 days to settle or make satisfactory arrangement with FRCA. Items for distress and sale include - trading stock, business assets and tools of trade of the taxpayer, vehicles, furniture and fittings, equipment, private assets of the taxpayer such as vehicles, household appliances, bedding, clothing and jewelry.

Taxpayer may be given further time to pay the full tax arrears and costs of distress action from the date of the execution of the order to the date of tender advertisement. The taxpayer may request to enter into a possession agreement, whereby distraint property be allowed to remain in the custody of the taxpayer and delay the sale of the property, whilst the taxpayer settles the tax debt owing. The distress and sale of goods recorded on the inventory list is suspended unless the taxpayer is in breach of the

agreement. The prices of goods will be sold at a reserved selling price as determined by FRCA. The proceeds from the sale will be used to firstly cover costs of taking, keeping and selling the properties and secondly to reduce the tax debt with the remainder paid to the taxpayer. Where the proceeds are insufficient to cover tax arrears, further recovery procedures may be undertaken. The taxpayer will be formally advised of the application of the sale proceeds.

FRCA Online Tax Payments

Taxpayers can use online/Internet banking through ANZ, BSP or Westpac Bank for any tax payment. However, taxpayers must register for Internet banking with their respective banks to use the Bill Pay system. It is CRITICAL and is a MUST to use the reference format stated below.

Tax Type	Westpac Account Number
Value Added Tax	9802691312
PAYE	9802691346
Provisional Tax	9802691353
Withholding Tax	9802691361
Vat Reverse Charge	9802691387
Other	9802691395
Income Tax	9802691403
Service Turnover Tax	9802691411
Departure Tax	9803044800
WBC Swift Code (for all accounts listed above)	WPACFJFX BSB – 039-001