

# FIJI TAX TRIBUNAL



## Decision

Section 89 Tax Administration Decree 2009

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Title of Matter:	A PHOTOGRAPHIC BUSINESS v FIJI REVENUE AND CUSTOMS AUTHORITY	(Applicant)  (Respondent)
Section:	Section 15(2) Value Added Tax Decree 1991	
Subject:	Application for review of Objection Decision	
Matter Number(s):	VAT No 1 of 2014	
Appearances:	Mr A Bale, for the Applicant Ms F Gavidi, FRCA Legal Unit for the Respondent	
Date of Hearing:	29 -30 October 2014	
Before:	Mr Andrew J See, Resident Magistrate	
Date of Decision:	4 November 2014	

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OBJECTION TO TAX DECISION– Section 16(6)-Tax Administration Decree 2009; Application for Review of Reviewable Decision- Section 82(2); Imposition of Tax on Supply-Section 15(2) Value Added Tax Decree 1991

### Background

1. The Applicant Taxpayer conducts a photography business operating out of Nadi, Viti Levu. As part of that business, the Taxpayer is required to send by international post, computer discs containing files of the images captured through the photography process.
2. By an Application for Review filed in the registry of this Tribunal on 12 June 2004, the Taxpayer,

*“...appeals to the Tax Tribunal against the objection decision of the delegate of the Chief Executive Office of the Fiji Revenue & Customs Authority dated 13 May 2014 whereby the objection of the taxpayer was fully disallowed by the delegate of the Chief Executive Officer for the taxable periods July to September 2011, October to December 2011 and January to December 2012.”<sup>1</sup>*

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<sup>1</sup> See document incorrectly headed Grounds of Appeal and dated 12 June 2014.

3. As a preliminary issue, the Tribunal has challenged the capacity of the Taxpayer to bring the Application for Review.

**The Objection Decision**

4. Section 17(1) of the *Tax Administration Decree* 2009 provides:

*A person dissatisfied with an objection decision may make an application to the Tax Tribunal in accordance with section 82 for review of the decision.*

5. Section 82 of the Decree further provides inter alia:

*(1) A person dissatisfied with a reviewable decision may apply to the Tax Tribunal for review of the decision.*

*(2) An application under subsection (1) must —*

*(a) be in the approved form;*

*(b) include a statement of the reasons for the application;*

*(c) be lodged with the Tax Tribunal within 30 consecutive days after the applicant has been served with notice of the reviewable decision; and*

*(d) be accompanied by the prescribed fee.*

6. The Objection Decision that is flagged by the Applicant within its Application for Review is dated 13 May 2014.<sup>2</sup> For the sake of clarity, it is worthwhile reproducing in part, the contents of this letter, that reads:

*“Dear Sir*

*Re: Objection Finalization*

*I refer to the company’s objection submission to amend the VAT returns for the taxable periods July to September 2010 and October to December 2010 and formally advise that the objection is fully disallowed. This is in line with Section 16(6) of the Tax Administration Decree 2009.*

*In accordance to the provisions made under the Second Schedule of the VAT Decree, any exports made pursuant to the Customs Act 1986 must only eventuate upon the rightful issuance and approval of the export certificates. Hence in the absence of any corresponding customs entries we have ascertained that the portion of the export sales in this case does not qualify as being Zero rated.*

*Therefore on the above justification we have amended the taxable periods July to September 2011, October to December 2011 and January to December 2012 where zero rated sales was allowed in the original assessments. ....*

*Please note that the amended notices of assessment are attached for your perusal.*

*Should you decide to appeal against this objection decision you are allowed under Section of the Tax Administration Decree 2009 to do so. You will need to lodge your application with the Tax Tribunal within 30 consecutive days from the date of this letter. You are also required to*

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<sup>2</sup> Refer to Respondent’s Section 83 Documents at Folio 2.

*serve a copy of the application on the FRCA CEO within 5 consecutive days of your application.*

*For any further enquiries pertaining to the above, do not hesitate to contact the undersigned on telephone number .....*"

7. When viewed and analysed, this correspondence seeks to do two things:-
- (i) It is a Section 16(7) Objection Decision pertaining to the Taxable Periods July to September 2010 and October to December 2010; and
  - (ii) It also is the vehicle for providing the Taxpayer with a Notice of Amended Assessment for the purposes of Section 11(3) of the Decree for the Taxable Periods July 2011 to December 2012.

#### **Has the Section 16(7) Objection Decision Been Properly Issued?**

8. Section 16(7) of the Decree provides as follows:-

*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*

9. It appears that there is common agreement between the parties that the lodgement of objection took place by letter dated 25 November 2013.<sup>3</sup> The 90 consecutive days that followed, in the absence of any additional information being sought, would make a requirement to issue a valid Objection Decision, falling to be made by no later than close of business on 23 February 2014.
10. As there appears to be acceptance by the parties that the communications dated 13 May 2014, is in fact a validly issued Objection Decision, the Tribunal is unwilling to disturb that position. Having said that, the form of the Objection Decision is not good. The document should be properly titled and should identify the relevant provision of the Decree to which it relates. Such a situation would ensure that the Taxpayer can clearly identify what the document purports to be and where it fits within the legislative scheme.

#### **Section 11(3) Service of Notice of Amended Assessment**

11. As mentioned earlier, the document also purports to be the service of a notice of amended assessment for the purposes of Section 11(3) of the Decree for the periods July 2011 to December 2012. A Notice of Amended Assessment is a "tax decision" for the purposes of Section 2 of the Decree.<sup>4</sup>

12. Once that decision is issued, Section 16(1)(a) of the Decree provides:

*A person dissatisfied with a tax decision may lodge an objection to the decision with the CEO—*

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<sup>3</sup> See letter marked document A for identification purposes.

<sup>4</sup> Note Schedule 1 to the Decree and the fact that an amendment of a VAT assessment is a Tax Assessment for the purposes of that Schedule.

*(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..*

13. There does not appear to be any Objection lodged by the Taxpayer in relation to the amended assessment.<sup>5</sup> The logical consequence of this inaction, would at least in a prima facie sense, suggest that there is also no Objection Decision that has been made for the purposes of Section 16(7), nor any capacity to have an Objection Decision reviewed for the purposes of Section 17(1) of the Decree.

#### **Application for Review**

14. As mentioned earlier, the Application for Review as made<sup>6</sup> on 12 June 2014, seeks to challenge the tax decision of the Respondent dated 13 May 2014, as it relates to the amended assessments for the relevant VAT periods July 2011 to December 2012.
15. As there appears to be no precursor steps taken by the Taxpayer that would take the form of an Objection, that may or may not give rise to the issuing of an Objection Decision, it would appear that the Application for Review is not a valid one for the purposes of the Decree.
16. While it would seem that greater care by the Taxpayer and its lawyers could have been taken to dissect the respective rights of the parties and to review the prerequisite steps needed to commence such an application, I am not so inclined to place all such blame on the Taxpayer.
17. The Respondent should not merge the issuing of statutory notices into one communication to the Taxpayer. It is confusing and on this occasion has caused a failure by the Taxpayer in understanding the correct procedural step to follow.

#### **Conclusions**

18. In light of the above and given that the Taxpayer's non-acceptance of the amended assessments was made within the 60 day window otherwise required for the lodgement of objections to decisions for the purposes of Section 16(1)(a) of the Decree, the matter should be remitted to the Respondent for further consideration in accordance with Section 86 of the Decree.
19. The Application for Review will be discontinued by order of the Tribunal and the "Grounds of Appeal" document as otherwise lodged in the registry on 12 June 2014, remitted to the Chief Executive Officer and considered as if it was an objection to a decision for the purposes of Section 16(1)(a) of the Decree.
20. The matter should thereafter be allowed to progress through the usual steps within the statutory scheme, should the parties desire it to do so.

#### **Decision**

The Tribunal orders:-

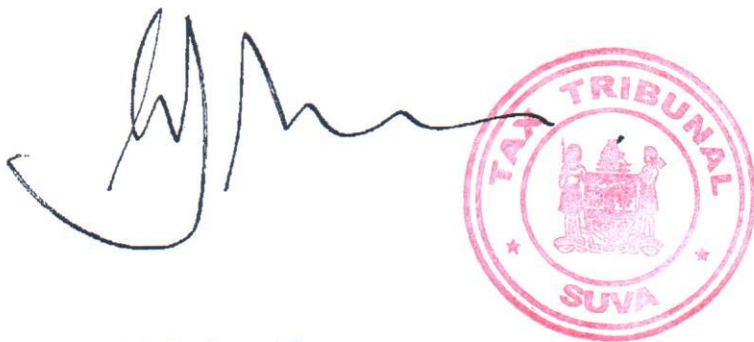
- (i) That the Application for Review be dismissed.

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<sup>5</sup> This may have been because of the confusion caused by the Respondent's merging of the two statutory notices.

<sup>6</sup> Despite incorrectly being referred to in a form headed "Grounds of Appeal".

- (ii) That the "Grounds of Appeal" document as filed in the registry on 12 June 2014, be remitted to the Chief Executive Officer, as if it was a valid lodgement of an objection, for the purposes of Section 16(1)(a) of the Decree.

A handwritten signature in black ink is written over a red circular stamp. The stamp features the text "TAX TRIBUNAL" at the top and "SUVA" at the bottom, with a central emblem depicting a figure on a throne flanked by two figures. Two small stars are positioned on either side of the central emblem.

**Mr Andrew J See**  
**Resident Magistrate**