Practice Statement No. 17
Revised: 7/11/12

SUBJECT :	**Fiji Revenue and Customs Authority: Distress And Sale for Unpaid Taxes**
DATE OF EFFECT:	1st of January, 2009.
CONFIDENTIALITY STATUS:	May be released to public
LEGISLATIVE REFERENCES:	Tax Administration Decree (Decree No. 50 of 2009) Section 29 and Section 95A of Customs Act.
PRACTICE CO-ORDINATOR:	National Manager Debt Management Services, Lodgment Enforcement & Amendments

INTRODUCTION

1. This statement sets out the practice of the Taxation Division in relation to distress and sale of taxpayer's assets for unpaid tax.
2. It is used with the authority of the Chief Executive Officer of the Fiji Revenue and Customs Authority, who is Commissioner of Inland Revenue or authorized Tax Officer.
3. Distress for unpaid tax is, in no way limited to prior exhaustion of other recovery tools, but at the discretion of the CEO on assessment of the severity and significance of noncompliance and revenue threat.

LEGISLATIVE BASIS

4. Section 29 of the Tax Administration Decree (Decree 50 of 2009).

Collection of Tax by Distress and Sale

s29. **—** (1) The CEO, or a tax officer authorised in writing by the CEO for the purposes of this section, may issue an order, in writing, for the recovery of tax that has not been paid by the due date by distress and sale of the personal property of the taxpayer.

(2)An order under subsection (1) must specify -

(a) the taxpayer against whose property the proceedings are authorised;

(b) the property against which the proceedings are to be executed and the location of that property; and

(c) the tax liability to which the proceedings relate.

(3) The CEO or authorised tax officer may, at any time, enter any premises described in an order issued under subsection (1) for the purposes of executing distress and may require a police officer to be present while distress is being executed.

(4) Any property distrained under this section must be -

(a) identified by the attaching of a notice stating ―**PROPERTY IMPOUNDED FOR NOT COMPLYING WITH TAX OBLIGATIONS BY ORDER OF THE CHIEF EXECUTIVE OFFICER OF THE FIJI ISLANDS REVENUE AND CUSTOMS AUTHORITY UNDER SECTION 29 OF THE TAX ADMINISTRATION DECREE**‖; and

(b) kept at the premises where the distress is executed or at any other place that the CEO or authorised tax officer may consider appropriate, at the cost of the taxpayer.

(5) If the taxpayer does not pay the tax liability described in the order, together with the costs of the distress -

(a) in the case of perishable goods, within a period that the CEO or authorised tax officer considers reasonable having regard to the condition of the goods; or

(b) in any other case, within 10 consecutive days after the distress is executed, the property distrained may be sold by public auction or in such other manner as the CEO or authorised tax officer may direct.

(6) The proceeds of disposal under subsection (5) must be applied by the CEO or authorised tax officer as follows -

(a) first towards the cost of taking, keeping, and selling the property distrained;

(b) then towards payment of any tax due by the taxpayer; and

(c) the remainder of the proceeds, if any, must be paid to the taxpayer.

(7) If the proceeds of disposal are less than the sum of the costs of the distress and the tax payable, the CEO or authorised tax officer may proceed under this Division to recover the shortfall.

(8) A person subject to an order under subsection (1) may enter into an agreement referred to as a ―possession agreement‖ with the CEO or authorised tax officer under which, in consideration of the property distrained upon being allowed to remain in the custody of the taxpayer and delaying of the sale of the property, the taxpayer -

(a) acknowledges that the property specified in the agreement is under distraint and held in possession for payment of the tax specified in the agreement; and

(b) undertakes that, except with the consent of the CEO or an authorised tax officer, in writing, for the purposes of this section and subject to such conditions as the CEO or authorised tax officer may impose, the taxpayer will not remove or allow the removal of the property specified in the agreement from the premises specified in the agreement.

(9) If a taxpayer has entered into a possession agreement under subsection (8), subsections (4) to (7) do not apply unless the taxpayer is in breach of the agreement.

Recovery of tax debts

95A.—(1) The Commissioner of Inland Revenue may, in writing, request to the Comptroller to detain any goods, if the owner of such goods has not paid taxes due and payable under the Income Tax Act (Cap. 201), the Value Added Tax Decree 1991, the Gambling Turnover Tax Decree 1991 and the Hotel Turnover Tax Act 2006.

(2) Section 95(2) applies, with necessary modifications, to recovery of tax under this section. (Inserted by Promulgation No. 14 of 2008 s. 29)

DECISION TO DISTRESS AND SALE FOR UNPAID TAXES

5. An exercise of distress powers may not be the first debt recovery action taken. Prior to distress, action in the form of a demand letter, a telephone call and/or a field visit should have been taken. If these actions have proved futile, the DMU officer should consider distress and sale. While distress is not a ―last resort‖, the taxpayer should have been given at least two chances to voluntarily comply with the payment of their debt before it is used unless the taxpayer is a flight risk.
6. If no arrangement on or before due dates of payment of the above taxes has been made, a final notice (letter) should be issued to the taxpayer giving 7 days to pay or make satisfactory arrangement to CEO.
7. Subsequently, in the event the taxpayer is an importer or exporter, the Debt Management Services must notify, in writing, the Comptroller of Customs (or an authorized Customs Officer) of arrival alert on any importation including imports-in-transit or notification on entering of any goods for export, to be cleared by Customs in the name of or by the defaulting taxpayer.
8. Depending on the risk profiling of the case, the Comptroller of Customs or authorized Customs Officer, may be notified for immediate detaining of the goods.
9. A distress action may be carried out on any day of the year (including a Sunday or public holiday).

ISSUE AND EXECUTION OF DISTRESS AND SALE ORDER

10. If the taxpayer fails to make a satisfactory arrangement to **pay** within 7 consecutive days, the CEO or authorized Tax Officer may enter any premises described in the Distress and Sale Order to execute the Order.
11. All property distrained must be attached with the notice in 5 above.
12. The distrained properties may be kept at the premises where distress is executed or any other storage place considered appropriate by CEO or authorized tax officer, at the cost of the taxpayer.
13. All the removals will be at the cost of the taxpayer.
14. Taxpayer may be given further time to pay the full sum from the date of the execution of the order to the date of tender advertisement.
15. If the taxpayer requests to enter into a ―possession agreement‖ whereby distrained property be allowed to remain in the custody of the taxpayer and delay the sale of the property, the taxpayer:
    a. acknowledges that the property specified in the agreement is under distraint and held in possession for payment of the tax specified in the agreement; and
    b. undertakes that, except with the consent of the CEO or an authorized tax officer, in writing, for the purposes of TAD 29 and subject to such other conditions as the CEO or authorized tax officer may impose, the taxpayer will not remove or allow the removal of the property specified in the agreement from the premises specified in the agreement.
16. If a taxpayer has entered into a possession agreement as under section 29(8), then subsections (4) to (7) of TAD 29 do not apply unless the taxpayer is in breach of the agreement.
17. Depending on the manner in which the CEO or the authorized tax officer directs for the sale of the items, the distressed items can be delivered to Customs on the auction day (that is Last Wednesday of every month)or sale by tender process to be initiated as per Sale By Tender SOP - all in a timely manner.
18. In case, the taxpayer may decide to pay - the authorized Tax Officer may hold off the execution of the order until the taxpayer provides FRCA receipt evidencing the payment has been made. The hold-off must be restricted to the close of business on the day of execution.
19. The proceeds from the sale are used as follows:
    a. First to cover costs of taking, keeping and selling the properties.
    b. Secondly to reduce the debt on the taxpayer's ledger
    c. Remainder to be paid to the taxpayer.
    d. If the proceeds are insufficient to cover tax arrears, further recovery procedures will be undertaken.
20. The taxpayer should be formally advised of the application of the sale proceeds.
21. The Taxpayer shall be prosecuted under section 54 of TAD (Decree No. 50 of 2009) in the event of any obstruction to the CEO or the authorized Tax Officer in execution of the Distress and Sale Order.

end of the statement *

ATTACHMENT A - SAMPLE FINAL NOTICE

DEBT MANAGEMENT
SERVICES
FIJI REVENUE &
CUSTOMS AUTHORITY
PRIVATE MAIL BAG
SUVA, FIJI ISLANDS

TELEPHONE: (679) 3243000
(679) 3243901
FAX: (679) 3318635
E-MAIL: vdas@frca.org.fj
REF: DMU/DAS

Please address all correspondence to the Chief Executive

FINAL NOTICE

[Date]
[Taxpayer Name]
[TIN]
[Address]

Dear Sir/Madam,

RE: TAX ARREARS & PENALTIES - [$ Amount]

Please note that you are required to pay the sum of $[Amount] of which breakdown is provided below:

Tax Type	Tax Owing Amount	Penalties	Total
VAT			
Income Tax			
TOTAL	$	$	$

Failing this, pursuant to Section 29 of the Tax Administration Decree (Decree No. 50 of 2009), you are hereby notified that the Authority intends to execute collection of tax by distress and sale on expiry of 7 consecutive days from the date of this notice.

Should you fail to meet this obligation the Authority will issue Distress and Sale Order on [day, date].

……………………………………………
Authorized Tax Officer
Debt Management Services
For Chief Executive Officer

ATTACHMENT B - SAMPLE DAS ORDER -

ORDER FOR COLLE STRESS AND SALE

[Date of Issue]

To : ***Taxpayer Name***
Tax Identification Number
Taxpayer Address

In accordance with the provisions of Section 29 of the Tax Administration Decree (Decree No. 50 of 2009), I hereby issue this Order for Collection of Tax by Distress and Sale of the following properties:

Property Description	Property Location
1.	
2.	
3.	
4.	

This order may be suspended if you, personally and as the representative for ***[Company/Business Name] (TIN)*: pay the amount of unpaid tax assessed of ***$[Amount] ([amount in words])***

[Authorised Tax Officer's signature]
…………………………………………………………………
[Authorized Tax Officer's Name]
Commissioner of Inland Revenue

CC: Commissioner of Police