



**PRACTICE
STATEMENT No. 17
2nd release**

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| SUBJECT | RISK & COMPLIANCE DIVISION: DISTRAIN FOR UNPAID TAX. |
| DATE OF EFFECT | 1st January 2004 |
| CONFIDENTIALITY STATUS | May be released to the public |
| LEGISLATIVE REFERENCES | <i>Income Tax Act Section 75A Value Added Tax Decree Section 63A Distress for Rent Act Cap. 36</i> |
| PRACTICE CO-ORDINATOR | National Manager, Debt Management Service/Lodgment Enforcement Unit & Reconciliation. |

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INTRODUCTION

1. This statement sets out the practice of the **Fiji Islands Revenue and Customs Authority (FIRCA)** in relation to distraint for unpaid tax. It is issued with the authority of the Chief Executive Officer of the FIRCA, who is also Commissioner of Inland Revenue.

LEGISLATIVE BASIS

2. The *Income Tax (Budget Amendment) Act 2004*, passed by Parliament in March 2004, inserted the following provisions into the *Income Tax Act*:

“Distrain for unpaid tax

- 75A.** The Commissioner may levy distress on the goods, other than real property, and chattels of any taxpayer who refuses or fails to pay any tax payable by him or any other amount recoverable from him under this Act and for the disposal of any such goods or chattels by sale or otherwise to recover the amount of the tax payable by the **taxpayer** and any other amount recoverable from him including the costs and expenses of the disposal.”
3. A distraint provision already exists in the *Value Added Tax Decree*, at section 63A, which is identical word for word with section 75A. The amendment harmonises the Commissioner’s distress powers in both income tax and VAT laws. This will facilitate the collection by the **Debt Management Services (DMS)** where a **registered person** has a composite debt. In such cases the distress powers of each act can be initiated simultaneously and carried out in a single visit to the taxpayer.
4. The *Distress for Rent Act* Cap. 36 contains procedures to be followed by a landlord who is seeking to distress the property of a tenant for unpaid rent. Nothing in the *Distress for Rent Act* or any other legislation apart from the *Income Tax Act* and the *VAT Decree* is relevant to the exercise of the Commissioner’s powers of distress.
5. The terms “distrain” and “distress” are not defined in any legislation, so we must look to their general (dictionary) meaning. The terms date back centuries in English law.

Distrain

(verb) to constrain or force a person by the seizure and detention of a chattel or thing, for sale, to satisfy a debt.

Distress

(noun) the action of distraining; the legal seizure and detention of a chattel, in order to satisfy some debt or claim out of the proceeds of its sale.

DEFINITION OF “GOODS” AND “CHATTELS”

6. The dictionary definition of “goods” is “merchandise, wares or trading stock”. The dictionary definition of “chattels” is “any **moveable assets** other than land or buildings.

DISTRESS PROCEDURE

7. The Commissioner of Inland Revenue has, through signed instruments of delegation, authorised **officers** in the **Debt Management Services (DMS)** to exercise the distress powers.
8. An exercise of distress powers should not be the first debt recovery action taken. Prior to distress, action in the form of demand **letters, telephone calls and/or a field visit** should have been taken. If these actions have proved fruitless, the **DMS officer** should consider distress. 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.
The requesting officers consideration for a need to pursue distress need to be documented and prior approval from management to proceed with distress is required..
9. While a taxpayer has been alerted to the fact that a debt recovery action is underway against them, they should **not** be alerted to the proposed used of the distress provisions. The element of surprise is valuable in the case of distress, so that the taxpayer does not conceal goods and chattels, which could be the subject of distress. The best method of performing distress is to visit the taxpayer’s business premises or residence without giving prior notice. A distress action may be carried out on any day of the year (including a Sunday or public holiday).
10. During a distress action, if the taxpayer obstructs the **DMS** officer, or threatens or carries out physical violence, cease the action and return with Police officers. If it is suspected in advance that obstruction or violence will occur, ask Police officers to accompany you on the first distress action. Taxpayers who obstruct, threaten or assault **DMS** officers should be prosecuted under the tax law and criminal law.
11. If the taxpayer says that items about to be distressed are under a bill of sale or hire purchase agreement, they should be given reasonable opportunity to provide documentary evidence that this is the case. If they cannot provide such evidence, the **DMS** officer should seize the goods. If evidence of such bill of sale or hire purchase agreement is later provided, the goods can be released from detention.
12. The **DMS officer** should provide the taxpayer with a list of distressed goods. All distressed goods should be kept in a secured warehouse, **Items seized should be labeled as belonging to the taxpayer, with the taxpayer’s name and Tax Identification Number (TIN).**

13. Distressed goods should be accounted **for in the Distress Inventory Schedule** . The goods will be auctioned and the net proceeds used to reduce the debt **of** the taxpayer **and** all within a timely manner. The taxpayer should be advised of the amount of reduction of their debt due to the distress action.
14. Perishable goods such as fruit and vegetables should never be distressed.
15. The distress action should first target the trading stock, business assets and tools of trade of the taxpayer. If these assets have been seized, and it is reasonable to estimate their value as falling short of the tax debt owing, action should then be taken to distress private assets of the taxpayer such as vehicles, household appliances, bedding, clothing and jewellery.
16. The **DMS** officer should always endeavour to distress assets worth no more than the value of the debt (plus penalties). As **DMS** officers are not trained valuers, this will always be a subjective call. If, after disposal of distressed goods at auction, the auction proceeds exceed the value of the debt and costs of holding the auction, the balance should be refunded to the taxpayer.