



**PRACTICE
STATEMENT No. 18
2nd release**

SUBJECT	RISK & COMPLIANCE DIVISION: DEPARTURE PROHIBITION ORDER (DPO)
DATE OF EFFECT	Applicable to debts arising on or after 1 January 2004
CONFIDENTIALITY STATUS	May be released to the public
LEGISLATIVE REFERENCES	<i>Income Tax Act</i> Section 77A <i>Constitution</i> Section 34 <i>Debtors Act</i> Section 6 <i>Value Added Tax Decree –Section 64</i>
PRACTICE CO-ORDINATOR	National Manager, Debt Management Lodgment Enforcement & 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 the issue of Departure Prohibition Order (DPO). It is issued with the authority of the Chief Executive Officer of the FIRCA who is also the Commissioner of Inland Revenue.

LEGISLATIVE BASIS

2. The *Income Tax (Budget Amendment) Act 2004*, passed by Parliament in March 2004, inserted the DPO provisions into the Income Tax Act, which was amended in 2005. The provisions now read:

“Departure Prohibition Order”

“77A (1) Notwithstanding any other provision of this Act, if the Commissioner has the reason to believe that a taxpayer might leave the Fiji Islands without paying tax assessed [owed by him **or a company** in which he has controlling interest under this Act or any other written Law] then, whether or not the due date for payment of the tax has passed, the Commissioner may issue a departure prohibition order, in writing stating the –

- (a) name and address of the taxpayer; and
- (b) amount of unpaid assessed tax.

(2) A departure prohibition order has effect throughout the Fiji Islands, including aboard ships and vessels within the Fiji Islands territorial waters and aircraft within the Fiji Islands airspace.

(3) If a departure prohibition order is issued in respect of a taxpayer, the Commissioner of Police and the Director of Immigration must each exercise the powers they lawfully possess, or cause an officer under their direction to exercise such powers, so far as is necessary to prevent the taxpayer named in the order from departing the Fiji Islands, including the removal and retention of any passport, identity card, visa or other travel document authorising the taxpayer to leave the Fiji Islands.

(4) A copy of a departure prohibition order issued by the Commissioner of **Inland Revenue** in respect of a taxpayer must, as soon as practicable, be served upon the taxpayer and upon the Commissioner of Police and the Director of Immigration.

(5) The Commissioner of **Inland Revenue** may revoke a departure prohibition order if the taxpayer-

- (a) pays the amount of unpaid assessed tax; or
- (b) provides or arranges for security be given to the satisfaction of the Commissioner of Inland Revenue for payment of the amount of unpaid assessed tax

(6) A departure prohibition order is valid for a period of 3 years from the date of issue and the Commissioner upon review may extend or revoke the period.

(7) No proceedings, either criminal or civil, may be instituted or maintained, for anything lawfully done under this section, against the Commissioner or any other

officer directed or authorised to act under this section.”

(8) A person who, knowing that a departure prohibition order has been issued against him under this section, voluntarily leaves or attempts to leave the Fiji Islands, without:

(a) Paying any tax referred to in subsection (1); or

(b) Providing security, to the satisfaction of the Commissioner, for such payment, commits an offence, and may be arrested without warrant by any police officer, customs officer or immigration officer.

(9) A person subject to this section may be refused customs or immigration clearance.

(10) Where a person is refused customs or immigration clearance under subsection (9), the State, the Customs authorities or any public officer or other duly authorised person is not liable for refusing customs or immigration clearance.

3. Before the introduction of Section 77A, the Commissioner had to obtain an Absconding Debtor’s Warrant from a Court, under section 6 of the *Debtors Act* Cap. 32. The purpose of introducing Section 77A was to speed up the Commissioner’s debt collection powers in relation to persons about to leave Fiji.
4. The concept of DPOs is supported by the Constitution, especially subsections 34(7) and (8) which limit the freedom of movement from Fiji.
5. The term “tax assessed upon him” in subsection 77A(1) is interpreted as all taxes payable under the *Income Tax Act* (**including all other types of taxes**) and not just income tax payable upon assessment.

6 The term “ tax assessed upon him “ in subsection 77 A (1) is interpreted as extending the scope of the DPO further than taxes which fall under the *Income Tax Act* to taxes payable under the *Value Added Tax Decree* (including import VAT), *Gambling Turnover Tax Decree*, *Hotel Turnover Tax Act* and the *Land Sales Act*, and any other taxes which FIRCA may administer. The Term does not extend to duties, tariffs, excise etc that do not fall under the definition of “taxes.

DECISION TO ISSUE DPO

7. 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). The decision to issue a DPO should therefore be considered seriously.
8. The legislation applies to both Fiji nationals and foreign nationals who are liable to pay Fiji tax. A DPO should not be issued where the Immigration Department has issued a deportation order on the taxpayer.
9. The decision to issue a DPO should be made after considering all the facts of the case, including whether:

(i) there is a tax liability.

- (ii) Known **enforceable** assets are sufficient to pay existing and future debts and whether those **said** assets are in a readily realisable form;
- (iii) recovery proceedings are in course (whether the debtor is unwilling or unable to pay);
- (iv) the debtor has recently disposed of assets to associated persons or entities (the transactions may be overturned in bankruptcy);
- (v) there is any information to suggest concealment of assets (bank accounts in false names, use of an alias) or movement of funds (e.g. Financial Intelligence Unit reports);
- (vi) the debtor has entered into transactions that "charged" assets in Fiji and then moved the borrowed funds offshore;
- (vii) the debtor has assets overseas adequate to maintain a comfortable lifestyle;
- (viii) funds have been transferred overseas (and the purpose of the transfer);
- (ix) the debtor has significant business interests in Fiji;
- (x) the debtor is subject to investigation for criminal activities (and whether any charges have been laid);
- (xi) there is a threat against the debtor's life as a result of criminal or other activities;
- (xii) there is FIRCA audit activity (or similar activity from other Government agencies);
- (xiii) the debtor holds (or the debtor has applied for) Fiji or foreign passport/visa/work permit;
- (xiv) **This office has information** of likely overseas travel, **or the debtor has a history of overseas travels**, and
- (xv) the debtor's family situation (this information may not be relevant by itself, but when combined with a number of other factors, it may influence a decision to issue an order).

10. The requesting officer's consideration of the need for a DPO **must** be documented and kept in the **DMS** file.

ISSUE OF DPO

11. The DPO should be generated from the standard letters template by the requesting officer, and printed in five copies (see Attachment A for sample DPO). Copy 1 goes to the taxpayer, Copy 2 goes to the Director Immigration, Copy 3 goes to the **Commissioner of Police**, Copy 4 goes to the **DMS** File, and Copy 5 is retained in

the office of the Commissioner of Inland Revenue.

12. While the Commissioner of Inland Revenue may delegate any of his/her powers under the tax acts (other than the power of delegation itself), in the case of DPOs no delegation is made and the DPO can only be signed by the Commissioner or Acting Commissioner. All five copies of the DPO need to bear the original signature of the Commissioner or Acting Commissioner. However, any officer within FIRCA can request a DPO to be issued, and will usually be a **DMS** case officer or auditor.
13. All copies of the DPO should be stamped by the Manager DMS with an official FIRCA stamp. However, failing to stamp the DPO does not invalidate it.
14. Once signed and stamped the DPO should be hand delivered to the taxpayer as soon as possible. If the taxpayer cannot be located, the DPO can be left at the most recent street address advised to us by the taxpayer **or known to DMS** as being their residential or business address. The other copies of the DPO should be hand delivered to the Director Immigration and the Police Commissioner or their delegated officer.
15. A copy of the DPO should be faxed to the officer in charge of FIRCA's Border Control office at Nadi and Nausori airports, and E-mail sent alerting them to the issue of the DPO.
16. Include the taxpayer's passport number and **date of birth** on the DPO, if known. If a copy of the passport has been obtained during the course of an audit **or DMS enquiry**, give the **Director of Immigration**, a copy of the title page. Provide the **Commissioner of Police with the home address of the taxpayer**, so that the passport can be seized.
17. **The DMS staff member delivering the DPO should ask the debtor to sign to acknowledge receipt of the DPO. The signature should be legible and the person should also print their name and the date. If delivering the DPO to the last-known residential or Business address of the debtor and the person other than the debtor receives the DPO on behalf of the debtor, asks the person to sign, date it and print their name and relationship to the debtor or job title. If a debtor or another person receiving the DPO refuses to sign to acknowledge receipt, the staff member should make a file note upon his return to the office.**

REVOCATION OF DPO

18. The revocation of a DPO can only be done by the Commissioner of Inland Revenue. The standard letter revoking the DPO should be personally signed by the Commissioner and be in 5 copies as with the DPO itself.
19. Once the taxpayer has paid the debt or provided **acceptable & satisfactory** security for the debt, the Commissioner will usually lift the DPO. If the Commissioner did not do so, without good reason, he or she would be exposed to civil litigation.
20. However, the use of the word "may" gives the Commissioner the option of not revoking the DPO despite the tax being paid or **acceptable & satisfactory** security provided. Where there are reasonable grounds not to revoke the DPO it can be left in place. For example, the taxpayer may have paid the tax by personal cheque, and the DPO may need to remain in place until the cheque clears **or the security provided**

is verified.

21. Another case where it may be reasonable not to uplift the DPO, despite payment, is where a taxpayer has a long history of defaulting, has finally paid amounts owing to date, wants to fly out on the 14th, but has a large PAYE amount payable on the 15th which it would be reasonable to expect would not be paid once the taxpayer has left.
22. **The revocation of the DPO should be issued in the format of Attachment B.**

SAMPLE DEPARTURE PROHIBITION ORDER (DPO)



[Date of issue]

To: [Taxpayer name]
[Taxpayer address]

Dear [Sir/Madam]

DEPARTURE PROHIBITION ORDER

[Passport Number]

In accordance with the provisions of section 77A of the Income Tax Act 1974, I hereby issue this Departure Prohibition Order to prevent you from departing the Fiji Islands.

This order has effect throughout the Fiji Islands, including aboard ships and vessels within the Fiji Islands territorial waters and aircraft within the Fiji Islands airspace.

This order may be revoked if you:

- (a) pay the amount of unpaid tax assessed of [\$Amount]; or
- (b) provide or arrange for security to be given for payment of the above amount.

This order is effective for 3 years from the date of issue unless extended or revoked.

[Commissioner’s signature]
.....
[Commissioner’s name]
Commissioner of Inland Revenue

CC: Director of Immigration
Commissioner of Police

SAMPLE REVOCATION PROHIBITION ORDER



[Date of issue]

To: [Taxpayer name]
[Taxpayer

address] Dear

[Sir/Madam]

REVOCATION OF DEPARTURE PROHIBITION ORDER

[Passport Number/Country of Issue]
[Date of Birth]

In accordance with the provisions of section 77A (5) of the Income Tax Act 1974, I hereby revoke the Departure Prohibition Order previously issued to you under Section 77A of that Act.

You are now permitted to travel outside the Fiji Islands.

[Commissioner’s signature]

.....

[Commissioner’s name]
Commissioner of Inland
Revenue

CC: Director of Immigration
Commissioner of Police