



**PRACTICE
STATEMENT No. 6
2nd release**

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| SUBJECT | REVENUE COLLECTION DIVISION: ADMINISTRATION OF OBJECTIONS MADE AGAINST INCOME TAX AND VAT ASSESSMENTS |
| DATE OF EFFECT | 1 January 2004 |
| CONFIDENTIALITY STATUS | May be released to the public |
| LEGISLATIVE REFERENCES | <i>Income Tax Act 1974</i> Section 62 <i>Value Added Tax Decree 1991</i> Sections 9, 50 <i>Land Sales Tax Act 1974</i> Section 13 |
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INTRODUCTION

1. This statement sets out the practice of the Revenue Collection Division in relation to the administration of objections received against Income tax, Land sales tax and Value Added Tax (VAT) assessments.
2. This Practice Statement has been produced to coincide with the restructure of the Operations Division of the Authority and in particular with the establishment of the Amendments and Correspondence Control Unit (ACCU), which will deal with objections and other issues involving amendment of Income tax, Land sales tax and VAT assessments.
3. Once an assessment has been raised by the Authority, a taxpayer has several possible options to have that assessment reviewed:
 - a) formal objection;
 - b) if the objection is disallowed or partly allowed, appeal against that decision;
 - c) a request to amend an assessment, which is outside the objection period but inside the period for the Commissioner to re-open an assessment;
 - d) referral to the Discretions Review Board under section 70 of the *Income Tax Act*;
 - e) review under the *Administrative Decisions (Judicial Review) Act*; and
 - f) other judicial remedies such as declaratory proceedings.

This Practice Statement is concerned only with formal objections. The Authority's administration of and/or policy relating to the other options listed above will be the subject of other Practice Statements.

LEGISLATION

4. The legal basis for objections is found in section 62 of the *Income Tax Act* and section 50 of the *VAT Decree*. The provisions of section 62 of the *Act* apply to objections to Land sales tax assessments.
5. Section 62 of the *Income Tax Act* states:

“Objection to assessment

62. (1) Any taxpayer dissatisfied with an assessment may, personally or by his agent, within 60 days of the date upon which the notice of assessment has been served upon him or his agent or, where such notice has been posted, the date of posting, lodge with the Commissioner an objection in writing to the assessment in the form set out in Form 2 in the **First Schedule** stating the grounds on which he relies:

Provided that, where the assessment is an amended assessment, the taxpayer shall have no further right of objection except to the extent to which, by reason of the amendment, a fresh liability in respect of any particular is imposed on him or an existing liability in respect of any particular is increased.

(2) The Commissioner may, in his discretion, extend the time for giving notice of objection under subsection (1).

(3) On receipt of the notice of objection referred to in subsection (1), the Commissioner may require the taxpayer to furnish such particulars as the Commissioner may deem necessary with respect to his income and to produce all books or other documents in his custody or under his control relating to such income, and may summon any person who, he thinks, is able to give evidence respecting the assessment to attend before him and may examine such person (except the clerk, agent, servant or other person confidentially employed in the affairs of the taxpayer) on oath or otherwise.

(4) The Commissioner shall consider the objection and shall either allow or disallow it wholly or in part.

(5) The Commissioner shall give written notice of his allowance or disallowance of the objection to the person objecting and shall state in such notice the time, not being less than 35 days, within which such person may exercise the right of appeal given to him in subsection (6) or in subsection (7) of section 70. Any notice required to be given under this subsection shall be sent by registered post and the period within which an appeal may be lodged shall commence upon the date of posting of the notice.

(5A) Where, before the expiration of the time specified in a notice is given under subsection (5), the person to whom the notice is given makes application in writing to the Commissioner for an extension of that time, the Commissioner may, in his discretion, extend that time for such period as he thinks fit and shall, as soon as practicable, give notice in writing to the applicant of his decision, and, where the time is so extended, a reference in this Act to the time specified in a notice given under subsection (5) shall be deemed to include a reference to that time as so extended.

(6) Any person objecting to the decision of the Commissioner under subsection (4) may, within the time determined under subsection (5), appeal to the Court of Review and such appeal shall be heard and determined as hereinafter provided. Save with the leave of the Court of Review, no person may appeal to the Court of Review upon any ground other than a ground stated in the objection to the Commissioner.

(7) The obligation to pay and the right to receive and recover any tax chargeable under this Act (including any interest, costs and penalties) shall not, unless the Commissioner so directs, be suspended by any objection or appeal or pending the decision of the Court of Review under section 63, 69 or 70 but, if any assessment is altered on objection or appeal or in conformity with any such decision, a due

adjustment shall be made, amounts paid in excess being refunded and amounts short paid being recoverable.

(8) Where no objection is made within the time for objecting set out in subsection (1) or where that time is extended by the Commissioner, within the time so extended, the assessment shall stand and shall be valid and binding upon the taxpayer, notwithstanding any defect, error or omission that may have been made therein or in any proceeding required by this Act or any regulation thereunder.”

6. Form 2 in the First Schedule to the *Income Tax Act*, referred to in section 62, is in this form:

“FORM 2.

OBJECTION TO ASSESSMENT

THE INCOME TAX ACT
(Section 62)

Name of Taxpayer:

Reference Number:

To the Commissioner of Inland Revenue:

I hereby give notice that I object to the amount for which I am assessed, for the following reasons: —

[Here shortly describe reasons.]

(or) I am not liable to taxation under the above Act for the following reasons: —

[Here shortly describe reasons.]

Dated this day of 19

Signature.”

7. Section 50 of the *VAT Decree* states:

“Section 50 *Objection to assessment*”

(1) Any registered person dissatisfied with an assessment may, personally or by his agent, within twenty-eight days of the date upon which the notice of assessment has been served upon him or his agent or, where such notice has been posted, the date of posting, lodge with the Commissioner an objection in writing to the assessment in the form set out in Form 2 in the Third Schedule to this Decree stating fully and in detail the grounds on which he objects:

Provided that, where the assessment is an amended assessment, the person so assessed shall have no further right of objection except to the extent to which, by reason of the amendment, a fresh liability in respect of any particular is imposed on him or an existing liability in respect of any particular is increased.

(2) No notice of objection given after the time specified in the notice of assessment shall be of any force or effect unless the Commissioner, in the Commissioner's discretion, accepts the same and gives notice to the objector accordingly.

(3) On receipt of the notice of objection referred to in subsection (1) of this Section, the Commissioner may require any person to furnish such particulars as the Commissioner may deem necessary in accordance with Sections 11 and 12 of this Decree.

(4) The Commissioner shall consider the objection and shall either allow or disallow it wholly or in part.

Provided that the Commissioner shall not be required to consider any objection unless and until the objector has complied with all requirements under this Decree for the furnishing of returns and the payment of tax.

(5) If an objection is not wholly allowed by the Commissioner, the objector may, within two months after the date on which notice of disallowance is given to the objector by or on behalf of the Commissioner, by notice in writing to the Commissioner require that the objection be heard and determined by the Tribunal.

(6) Any person objecting to the decision of the Commissioner under subsection (4) of this Section may, within the time determined under subsection (5) of this Section, appeal to the Tribunal and such appeal shall be heard and determined as hereinafter provided. Save with the leave of the Tribunal, no person may appeal to the Tribunal upon any ground other than a ground stated in the objection to the Commissioner.

(7) The obligation to pay and the right to receive and recover any tax chargeable under this Decree (including any interest, costs and penalties) shall not, unless the

Commissioner so directs, be suspended by any objection or appeal or pending the decision of the Tribunal under Section 55 of this Decree but, if any assessment is altered on objection or appeal or in conformity with any such decision, a due adjustment shall be made, amounts paid in excess being refunded subject to Section 65 of this Decree and amounts short paid being recoverable.

(8) Where no objection is made within the time for objecting set out in subsection (1) of this Section or where that time is extended by the Commissioner, within the time so extended, the assessment shall stand and shall be valid and binding upon the registered person, notwithstanding any defect, error or omission that may have been made therein or in any proceeding required by this Decree or any regulation thereunder.”

8. Form 2 in the Third Schedule to the *VAT Decree*, referred to in section 50, is in this form:

“FORM 2

OBJECTION TO ASSESSMENT

VALUE ADDED TAX DECREE 1991
(Section 50)

Name of Taxpayer :-----

Tax Identification Number :-----

To the Commissioner of Inland Revenue:

I hereby give notice that I object to the amount for which I am assessed, for the following reasons: -

[Here fully and in detail describe reasons]

(or I am not liable to taxation under the above Decree for the following reasons: -

[Here shortly describe reasons]

Dated this ----- day of-----, 19--.

Signature ”

RECEIPT OF OBJECTIONS AND DETERMINATION OF VALIDITY

9. A taxpayer must lodge an objection “in writing”, which means that it must be an original document sent to the Authority by post or dropped off in an official acceptance point, such as a box in a Customer Service Centre. Faxed or emailed objections are not valid. Under no circumstances should an officer of the Authority accept by hand a letter purporting to be an objection or amendment request from a taxpayer or their representative. The officer should inform the taxpayer to post the letter or drop it off in an official acceptance point.
10. The Authority’s staff who opens mail should be trained in recognising correspondence which may be objections. When such a mail item is opened, the opening officer should record receipt of the item on the FIRCA automated record-keeping system, identifying it as a possible objection. The item should then be sent to the Amendments & Correspondence Control Unit (ACCU).
11. When the correspondence is received in the ACCU, the ACCU Officer should scrutinize it to determine whether it is a valid objection. This will involve consideration of 3 issues:
 - a) whether the objection has been lodged within the time frame prescribed by law, or within an extension of time granted to lodge the objection;
 - b) whether the assessment is in the correct form, i.e., for income tax objections, in the form set out in Form 2 of the First Schedule of the Act and, for VAT objections, in the form set out in Form 2 of the Third Schedule of the Decree (see paragraph 14 for more details); and
 - c) if the objection is against an amended assessment, whether the grounds of objection relate only to the liability arising from that amendment.
12. In determining whether the objection has been lodged within the time limit, note that the objection period starts from, in the case where the assessment notice has been posted, the date of posting, not the date the assessment notice was produced. The date of posting of assessment notices must be recorded on the Authority’s systems or in the paper file.
13. The Commissioner may extend the time for lodgment of objections under subsection 62(2) of the *Income Tax Act* or section 9 of the *VAT Decree*. Note that the power to grant these extensions has been delegated to certain officers. Valid grounds for extending the objection period are, for example, where delays within the Authority or the postal system led to the taxpayer receiving their assessment notice much later than would be usual, had the assessment notice been posted on the day it was produced. The complexity of the matter being objected to is not a valid ground for extending the objection period.

14. In determining whether an objection is in the correct form, it must be determined whether the objection contains the features described in the legislative form, though it does not need to repeat the legislative form word for word. It must contain:
- a) the words “I object” or “I am not liable to taxation” or any similar words with the same purpose. Any wording which indicates that the taxpayer is not satisfied with their assessment, or wants a review of their assessment, will be valid. A form or letter in a language other than the English language, purporting to be an objection, will not be valid;
 - b) the taxpayer’s name and Taxpayer Identification Number (TIN) or the number of any accountable document issued by any part of FIRCA e.g. the sequential number of an annual PAYE summary slip. The TIN may be accepted whether or not it has a branch code appended. If no reference number is provided, the Authority’s staff should not search for the identity of the taxpayer. If either the taxpayer name or a reference number is not provided then the letter will not be an objection;
 - c) the reasons for the objection must be provided. Any argument put forward by the taxpayer will generally be considered an adequate reason for objection. If no information is provided which could reasonably be interpreted as a “reason” then the letter will not be an objection; and
 - d) the objection must be signed and dated. The signature must be of the taxpayer or, if the taxpayer is not an individual, the authorised person. Although the legislative form is not Y2K compliant, a date commencing with “20--” instead of “19--” will not invalidate the objection.
15. Sometimes taxpayers lodge “amended returns” i.e. a second return for a period for which lodgment has already been made, with different figures. An amended return lodged within the objection period should be deemed to be an objection. The different figures in the amended return will be deemed to be grounds of objection. An amended return lodged outside the objection period should be deemed to a request to have the assessment amended, and dealt with according to the Practice Statement on amendment requests.
16. A taxpayer may object to an assessment (including an amended assessment) or to the imposition of a penalty, which is not included in an assessment.
17. If the ACCU officer decides that the correspondence is not a valid objection, a letter should be sent to the taxpayer informing them of this decision, and the basis of the decision.

18. If the ACCU officer decides that the correspondence is a valid objection, a standard letter should be sent to the taxpayer acknowledging receipt of the objection and advising them that a decision will be made in due course.
19. All valid objections should be entered into the objection register by the ACCU officer.
20. Under subsection 50(4) of the *VAT Decree* the Commissioner need not consider an objection unless the taxpayer has all their lodgments and payments up to date. Note that this subsection only applies to valid objections. In cases where a valid objection has been received, but the taxpayer has outstanding lodgments and payments, they should be sent a letter notifying them that their objection will no be considered until all returns and payments have been received. If and when the taxpayer completes all lodgments and payments, this date should be recorded in the file and consideration of the objection commence. During the period of late late/late payment normal recovery action should continue by Debt Management Unit (DMU) as if there were no objection.
21. Under subsection 62(7) of the *Income Tax Act* and subsection 50(7) of the *VAT Decree*, action to recover the amount of tax in dispute may be suspended at the Commissioner's option while the objection is being decided. The policy on this matter is set by the DMU. Current DMU policy is to generally suspend recovery until the objection has been decided. This is the policy in the majority of cases, although there may be exceptions where recovery action will continue, for example, where an auditor advises the DMU officer that the taxpayer is a flight risk.

OBJECTION REGISTER

22. The objection register is a system-based module, or an application such as an Excel spreadsheet, which records information relating to objections. There will be only one objection register encompassing objections to assessments raised in both Operations and Compliance Divisions. The objection register will be maintained by the Amendments & Correspondence Control Unit (ACCU) in the Revenue Collection Division.
23. For each valid objection received, the following details should be recorded on the objection register:
 - a) taxpayer's name;
 - b) taxpayer's Taxation Identification Number (TIN) or other reference number;
 - c) year(s) or taxable period(s) objected to;
 - d) whether the objection(s) relate(s) to Income tax, Land sales tax or VAT;
 - e) date of assessment(s);
 - f) date objection(s) received;
 - g) officer to whom objection assigned for decision; and
 - h) amount of tax in dispute, for each year or taxable period.

24. After the objection is decided, the following details should be entered into the objection register:
- a) whether the objection for each year or taxable period was allowed in full, partly allowed, or disallowed in full;
 - b) the reduction of any amount of tax in dispute as a result of allowing or partly allowing the objection, for each year or taxable period; and
 - c) the date on which the objection decision was advised to the taxpayer for each year or taxable period objected to.
25. At the end of each calendar year, the ACCU will present a set of summary statistics to senior FIRCA management on objections, distinguished into income tax and VAT, including:
- a) number of objections on hand at the start of the year;
 - b) number of new objections received;
 - c) number of objections finalised;
 - d) number of objections on hand at the end of the year;
 - e) number (and percentage of total objections finalised) of objections allowed in full, partly allowed or disallowed in full;
 - f) the total amount of tax in dispute at the start of the year, for new objections received, for finalised objections and at the end of the year;
 - g) for the total amount of tax in dispute for objections finalised during this year, the amount of tax in dispute in respect of all cases allowed in full, partly allowed or disallowed in full; and
 - h) the average time taken to finalise an objection (i.e. average number of days elapsed for all finalised cases counted from date objection received to date objection decision advised to taxpayer).

DECISION-MAKING ON OBJECTIONS

26. After the objection has been registered, the ACCU Manager will assign the case to a particular ACCU officer. The person assigned the case should be one who has the appropriate tax technical skills, knowledge and experience to determine the matter, taking into account the difficulty of the case.
27. Objections against assessments, which originate in the Risk & Compliance Division will be referred to the relevant National Managers at Compliance, who will assign the case to a suitable officer within the Division.
28. Objections should be finalised in the shortest practical time frame. In terms of performance indicators, all standard objection cases should be determined within 28 days. The most complex objection should be finalised within 3 months.

29. The officer who raised the assessment or amended assessment, which is being objected to, should not be the person to handle that objection. This is in accordance with the principle of natural justice which requires that a decision-maker reviewing a decision not be the original decision-maker, so that an independent consideration of the objection be made. This applies to both objections determined in the ACCU and in Compliance.
30. In determining an objection, full and proper consideration should be given to all arguments raised in the objection. Under no circumstances should an objection be disallowed automatically, without consideration of the arguments of the taxpayer. The deciding officer's analysis of the taxpayer's reasons for objecting, together with the decision on the objection, should be documented in an objection report. The objection report should also include the decision-maker's name, signature and date of decision.
31. Subsection 62(3) of the *Income Tax Act* and subsection 50(3) of the *VAT Decree* give the Commissioner information-gathering powers to be used in determining objections. The Authority's officer should exercise these powers if he or she thinks that there is information available to assist in determining the objection, which is not in the objection itself or elsewhere in the Authority. Note that the power in subsection 62(3) of the *Income Tax Act* has an exception for confidential information.
32. After the objection has been lodged, the taxpayer may supply further grounds of objection, and further material and evidence in support of their case, only up until the last day of the period for lodgment of the objection. Any further material supplied by the taxpayer after this date cannot be considered by the officer in determining the objection.
33. Once the decision has been made, the objection report should be submitted for approval by the appropriate authorising officer. The authorising officer should evaluate whether all the standards in this Practice Statement have been met. If they have not been met, the objections decision should not be approved. Once all standards have been met, and the authorising officer has approved the decision, the decision should be advised to the taxpayer as soon as possible.

FINALISING THE OBJECTION AND NOTIFICATION OF DECISION

34. The objection has been finalised once the authorising officer has approved the decision on the objection, the details of that decision have been entered in the objection register, and the decision has been notified to the taxpayer. The taxpayer should be sent a standard letter, informing them of the decision, the reasons for the decision, and advising them of their appeal rights. The letter should be sent by registered post.