



**PRACTICE
STATEMENT # 7
2nd release**

SUBJECT	REVENUE COLLECTION DIVISION: ADMINISTRATION OF AMENDMENTS TO INCOME TAX AND VAT ASSESSMENTS
DATE OF EFFECT	1 May 2003
CONFIDENTIALITY STATUS	May be released to the public
LEGISLATIVE REFERENCES	<i>Income Tax Act 1974</i> Sections 59,62,78 <i>VAT Decree 1991</i> Sections 44, 48, 50,76
PRACTICE CO-ORDINATOR	Manager Technical Services Revenue Collection Division

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INTRODUCTION

1. This statement sets out the practice of the Revenue Collection Division in relation to the administration of amendments to Income tax and Value Added Tax (VAT) assessments, other than amendments arising from objections.
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 Amendment and Correspondence Control Unit (ACCU), which will deal with objections and other issues involving amendment of Income 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 the 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.
4. The Authority has the objective of collecting the correct amount of tax from each taxpayer, no more or no less and has mechanisms in place to ensure taxpayers do not underpay their tax liabilities. The Authority has no wish to collect more tax than it is supposed to. However, there are legislative restrictions to amending assessments which may prevent this outcome.

LEGISLATION

5. The legal basis for amendments is found in subsection 59(2) of the *Income Tax Act* and section 50 and subsection 76(2) of the *VAT Decree*.
6. Section 59 of the *Income Tax Act* states:

“(2) ...the Commissioner may re-open any assessment within 6 years of the end of the year of assessment and may, where the amount of tax assessed under such assessment is less than the amount which ought properly to have been assessed, amend such assessment. Where the Commissioner amends an assessment under the provisions of this subsection, he shall fix the date of payment of any tax outstanding thereunder. An objection shall lie from the amended assessment in the same manner as if it were an original assessment but subject to the proviso to subsection (1) of section 62.”

7. Section 48 of the *VAT Decree* states:

“Section 48 Limitation of time for issue of an assessment or amendment of assessment

- (1) Where any registered person has furnished a return in respect of any taxable period or has been assessed for tax or further tax in respect of that period, it shall not be lawful for the Commissioner to issue an assessment or reopen an assessment after the expiration of six years from the end of the taxable period in respect of which the return was furnished or when the assessment was made.
- (2) Notwithstanding anything in subsection (1) of this Section where any registered person has failed to make a return as required by this Decree or in the opinion of the Commissioner has knowingly and fraudulently failed to make a full and true disclosure to the Commissioner of any material facts necessary to determine the true amount of tax payable, the Commissioner may at any time:
 - (a) where an assessment has not been issued, make an assessment; or
 - (b) where an assessment has been issued, amend the assessment so as to amend or alter the assessment thereof.”

8. Paragraph 76(2)(d) of the *VAT Decree* states:

“It shall be lawful for the Commissioner to make or reopen an assessment of penal tax at any time.

INCOME TAX AMENDMENTS

9. Under subsection 59(2) of the Income Tax Act, the Commissioner may only amend an assessment where the amount of tax is less than the proper amount, i.e., to increase the amount of tax payable. The Commissioner is not authorised by subsection 59(2), nor any other section of the Act, to amend an assessment so as to decrease the amount of tax payable.

10. Section 62 of the *Income Tax Act* states:

“(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.”

11. The effect of the above two subsections is:

- a) within a 6 year period, the Commissioner can amend an income tax assessment, but only to increase the amount of tax payable; and

- b) if the objection period has expired, the assessment “stands” and cannot be amended in the taxpayer’s favors, even if the original assessment was defective due to either the taxpayer’s or the Commissioner’s fault.
12. Subsection 78(3) of the Income Tax Act prohibits the Commissioner from revising an assessment which has become valid and binding, for the purpose of allowing a refund under section 78. Section 78 has no application to this practice statement, and only applies where tax has been overpaid. For example, the Commissioner may issue an assessment, which does not allow a taxpayer’s claim for an allowance because evidence requested to support the claim was not provided. The assessment is valid and binding, and no tax has been “overpaid”. The assessment can only subsequently be reviewed following receipt of a valid objection, and not under sections 59 or 78.

VAT AMENDMENTS

13. Under subsection 48(1) of the VAT Decree the Commissioner can amend a return or assessment within 6 years, but unlike its income tax equivalent the provision contains no restriction on whether the amount of tax in the amended assessment can only be increased. As it is silent on the issue, the inference is therefore that the amended return or assessment can be for either a greater or lesser amount than in the original assessment.
14. It should be noted that the *VAT Decree* is different from the *Income Tax Act* in that VAT is largely a self-assessed tax. The Commissioner can only issue an assessment in respect of a return lodged if one of the five situations in Section 44 applies.
15. Section 44 states:

“Section 44 Assessment of tax”

(1) Where -

(a) a registered person liable to pay tax fails to furnish any return; or

(b) a registered person is not satisfied with any return furnished by him in respect of any tax paid and within twelve months of furnishing the return, request the Commissioner in writing to make any alteration or addition to that return, or

(c) the Commissioner is not satisfied with the return made by any registered person; or

(d) the Commissioner has reason to believe that any person, although that person is not required to make a return, is liable to pay tax; or

(e) any person, not being a registered person, supplies goods and services and represents that tax is chargeable on that supply, -

the Commissioner shall make an assessment of the amount which, in his opinion, is the tax payable pursuant to this Decree and that registered person shall be liable to pay the tax so assessed.

- (2) Subject to Section 48 of this Decree, the Commissioner may from time to time and at any time make all such alterations in or addition to an assessment made under this Section as he thinks necessary to ensure the correctness thereof, notwithstanding that tax or further tax may have been paid.”
16. An amendment request by a taxpayer under paragraph 44(1)(b) can be in respect to either an increase or decrease in the VAT payable or refundable in the original VAT return.
17. Subsection 48(2) gives the Commissioner a wide power to issue amendments to assessments made under subsection 48(1). Subsection 48(2) does not contain any time limitation, and it is possible that subsection 48(2) can be used by the Commissioner to amend an assessment even though the time limit in section 48 has expired.
18. Subsection 50(8) of the *VAT Decree* states:
- “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.”
19. Paragraph 76(2)(d) of the VAT Decree authorises the Commissioner to amend an assessment of penal tax at any time. This allows the Commissioner to issue an amended assessment, which either increases or decreases the VAT penalty, either inside or outside the 6-year period specified in section 48.

AMENDED RETURNS

20. Sometimes taxpayers lodge “amended returns”, i.e. a second return for a period for which lodgment has already been made, with different figures. However, a taxpayer can only legally lodge one return for a year or taxable period. Further return forms sent to the Commissioner for a year or period already lodged are not “returns”.
21. An amended return lodged within the objection period should be deemed to be an objection, and dealt with according to the Practice statement on objections. An amended return lodged outside the objection period should be deemed to be a request to have an assessment amended, and dealt with in accordance with this Practice Statement.

AMENDMENT REGISTER

22. The amendments register is a systems-based module, or an application such as an Excel spreadsheet, which records information relating to amendments other than those arising from objections. There will be only one amendment register for the Authority, encompassing amendment to assessments raised in both Revenue Collection and Compliance Divisions. The amendment register will be maintained by the Amendment & Correspondence Control Unit (ACCU) of the Revenue Collection Division.
23. For each valid amendment request received, the following details should be recorded

on the amendment register:

- a) taxpayer's name;
- b) taxpayer's Tax Identification Number (TIN) or other reference number;
- c) year(s) or taxable period(s) amendment requested for;
- d) whether the amendment(s) relate(s) to income tax or VAT;
- e) date of assessment(s);
- f) date amendment request(s) received;
- g) officer to whom amendment request has been assigned for decision; and
- h) amount of tax in dispute, for each year or taxable period.

24. After the amendment request is decided, the following details should be entered into the amendment register:

- a) whether the amendment request 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 amendment request, for each year or taxable period; and
- c) the date on which the amendment request decision was advised to the taxpayer for each year or taxable period in dispute.

25. At the end of each calendar year, the ACCU will present a set of summary statistics to senior FIRCA management on amendment requests, distinguished into income tax and VAT, including:

- a) number of amendment requests on hand at the start of the year;
- b) number of new amendment requests received;
- c) number of amendment requests finalised;
- d) number of amendment requests on hand at the end of the year;
- e) number (and percentage of total amendment requests finalised) of amendment requests 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 amendment requests received and at the end of the year;
- g) for the total amount of tax in dispute for amendment requests 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 amendment request (i.e. average number of days elapsed for all finalised cases counted from date amendment request received to date decision advised to taxpayer).

DECISION-MAKING ON AMENDMENT REQUESTS

26. A valid request to have an assessment amended should be treated with the same seriousness that an officer would have if the case were an objection, even though there will be no appeal rights. Amendment requests should be finalised in the shortest practical time frame. In terms of performance indicators, all standard cases should be determined within 28 days, and the most complex cases should be finalised within 3 months. The officer who raised the assessment or amended assessment, to which the amendment request relates, should not be the person to handle that request.
27. A report on the amendment request should be made by the deciding officer. Once the decision has been made, the 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 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.