

IN THE STATUTORY TRIBUNAL, FIJI ISLANDS
SITTING AS THE TAX TRIBUNAL

Action No 10 of 2012
(Decision No 10 of 2013)

BETWEEN: **TAXPAYER K**

Applicant

AND: **FIJI REVENUE & CUSTOMS AUTHORITY**

Respondent

Counsel: **Ms P Salele, QB Bale & Associates**
Mr S Vukica, FRCA Legal Unit for the Respondent

Date of Hearing: **Monday 27 May 2013**

Date of Decision: **Friday 31 May 2013**

DECISION

Section 82 (c) Tax Administration Decree 2009 – Time period for application for review;
Section 82 (3) Application for Extension of Time; Exercise of Judicial Discretion.

1. The Applicant Taxpayer has filed an Application for Review, against the Objection Decision of the Respondent dated 29 August 2012.
2. The application was filed in the registry of the High Court on 12 November 2012.
3. In accordance with Section 82(2)(c) of the *Tax Administration Decree 2009*, an application for review of an objection decision must be lodged with the Tax Tribunal,

within 30 consecutive days after the taxpayer has been served with notice of that decision.¹

4. Section 82(3) of the Decree thereafter provides that the Tax Tribunal may, on an application in writing, extend the time for making an application for a review of a reviewable decision.
5. The language of Section 82(3) of the Decree is quite plain. The provision does not speak of a discretion to allow an application that is made out of time, rather what it provides for is a protocol for allowing an extension of time in which an application can be made.
6. In the present case, the Applicant makes such application in writing, by Affidavit dated 8 November 2012, filed in the Registry on 12 November 2012.
7. I am prepared to accept that this Affidavit constitutes a compliant request for the purposes of Section 82(3).

No of Days Outside Review Period

8. Section 51 of the *Interpretation Act* (Cap 7) provides:

In computing time for the purpose of any written law, unless a contrary intention appears-

(a) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;

(b) if the last day of the period is a Saturday, Sunday or a public holiday (which days are in this section referred to as excluded days), the period shall include the next following day, not being an excluded day;

(c) where any act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day;

The parties have not specified when exactly the decision was served on the Applicant, but it would appear to be on that same date that it was issued.

(d) where an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time.

9. Thirty consecutive days from the date of the objective decision would be, up and until close of business 28 September 2012.
10. The application that has been made to the Tribunal, is done some 45 days after the ordinary time requirement set out in Section 82(2)(c) and 75 days from the date of the Objection Decision.

Relevant Factors to be Considered

11. In considering whether or not to exercise the discretion of the Tribunal in allowing an extension of time in which an application for review can be made, I have had regard to the following factors:
 - the reason for the delay;
 - the length of the delay;
 - any action taken by the Applicant to dispute the Objection Decision;
 - possible impact and prejudice to the Respondent; and
 - the apparent merits of the application.
12. Such an approach is consistent with that of his Honour and President of the Supreme Court, Chief Justice Gates in *NLTB v Ahmed Khan and Anor*,² where the principles to be applied in the exercise of judicial discretion, are set out.
13. According to the submissions of Counsel Salele and as included within the Affidavit of the Taxpayer, the reason for the delay was for the fact that the Taxpayer had entered into further communications with the Respondent, challenging the Objection Decision.

² CBV0002.2013

14. Included within that letter to the Respondent dated 14 September 2012, the Taxpayer writes:

With due respect to your office, before the matter goes further to the Tribunal, I do suggest that your office obtain a Legal Opinion first before any further decision is made on the future of my case. Upon discussion with my lawyer, we have noted that there are precedent cases already decided on similar case scenarios as mine.....

15. Within that correspondence, the Taxpayer referred the Respondent to the case of *Commissioner of Inland Revenue v Charles Woodward*³ and asked that the decision-maker consider the present case in the context of what was viewed as a comparable set of facts.
16. The Respondent was under no such obligation to entertain that further request. The appropriate course of action following the issuing of an Objection Decision that is disputed, is that a review application be made to the Tax Tribunal. There are clear policy reasons for such an approach, not the least of which would be to provide a circuit breaker from the potential never-ending dialogue between taxpayers and the Authority.
17. The reason for the delay was very much a choice of the Taxpayer. In his own communications, he freely admits to having had the benefit of legal input at this time. Clearly that input did not turn its attention to the implications of not making an application for review within the prescribed statutory timeframe. As such, the delay in time was not proportionate to the time period in which the further communications ensued. The Taxpayer received his response to the further request on 21 October 2012. He then waited a further 21 days in which to lodge an application for review. His lawyers would have been well aware of the time limits imposed. A seven day period of review and reflection may have been understandable. A period of three weeks is simply a disregard for the statutory scheme.

³ [1989] FJCA 3

18. The Respondent is entitled to the certainty of approach that is established within the timeframes of the Decree and there would ordinarily be required special or exceptional circumstances, in order to justify deviation of approach. The delay of the further 21 days is simply not justified.
19. Finally, for the sake of completeness, it is worthwhile mentioning something about the apparent merits of the case. Matters of this type have been previously addressed by the Tribunal.⁴ The broad nature of the income tax law and the various categories of case that it seeks to apply to, have been dealt with elsewhere. (See for example *Company B v Fiji Revenue & Customs Authority* [2011] FJTT 1; *Taxpayer S v Fiji Revenue & Customs Authority* [2012] FJTT 18; and *A Property Management and Investment Company v Fiji Revenue and Customs Authority* [2013] FJTT 3)).
20. On its face, the gradual disposition of land by the Taxpayer, has the appearance of more than the realisation of profit from the sale of an inherited asset. As was said in the case of *Ferguson v Federal Commissioner of Taxation*⁵

A person may conduct a business, albeit of a limited nature, the activities of which business are preparatory to or in preparation for the conduct of another business on a larger scale. The question is whether the activities at an earlier stage, standing alone, constitute a business.

21. The submissions of the Taxpayer appear to suggest that there was some funding of a hydroponics project that was supported through the land sales proceeds.⁶ This gives the impression, though it is not an influencing factor in my considerations, of some business associated with the land sales. If that

⁴ See *Taxpayer S v Fiji Revenue & Customs Authority* [2012] FJTT 18; See also *Taxpayer L v Fiji Revenue & Customs Authority* (Decision No 11 of 2012), 26 November 2012.

⁵ [\(1979\) 26 ALR 307](#) at 318

⁶ See Submissions dated 4 February 2013.

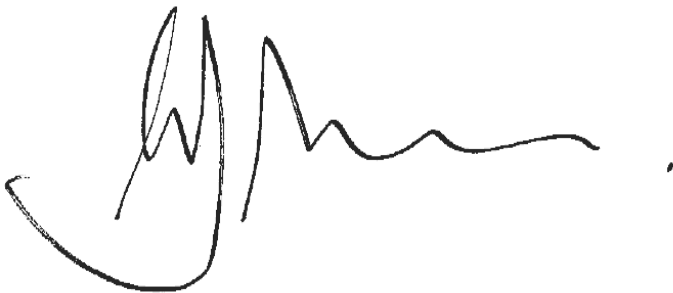
were the case, the Taxpayer may have had difficulty in any event, convincing the tribunal, that its fact scenario did not render it within the nature of a business activity for the purposes of *California Copper*.⁷

Conclusion

22. In conclusion, having regard to the broad set of principles that should be applied when exercising judicial discretion, I am not convinced that there is sufficient justification to entertain an enlargement of time on this occasion.
23. The Taxpayer was in receipt of legal advice; it was clearly indifferent to the issues of the time requirements imposed under Section 82 of the *Tax Administration Decree* 2009.
24. For the above reasons, the Application must fail.

DECISION

- (i) The Application is dismissed.
- (ii) The Respondent is free to make application in relation to costs within 28 days.

A handwritten signature in black ink, appearing to read 'Mr Andrew J See', with a large, stylized initial 'A'.

Mr Andrew J See
Resident Magistrate

⁷ *Californian Copper Syndicate v Harris* (1904) 5 T.C. 159