



FIJI TAX TRIBUNAL

Decision

Title of Matter: COMPANY C (Applicant)
V
FIJI REVENUE AND CUSTOMS SERVICES (Respondent)

Section: Section 82 *Tax Administration Act 2009*

Subject: Application for Review of Decision

Matter Numbers: Income Tax No 08 of 2019

Appearances: Mr Gosai, Jiten Reddy Lawyers for the Applicant
Mr E Eterika, FRCS Legal Unit for the Respondent

Date of Hearing: 30 January 2020

Before: Mr Andrew J See, Resident Magistrate

Date of Decision: 31 January 2020

KEYWORDS: *Section 82 Tax Administration Act 2009 – Reviewable decision; Regulation 6 Tax Administration (Infringement Notices) Regulations 2018 - Dispute against Infringement Notice; Section 82(3) Application for extension of time.*

CASES CONSIDERED

Raviravi Investment Timber & Hardware Ltd v Fiji Revenue and Customs Service [2019] FJHC 341; HBT01.2019 (15 April 2019)
Taxpayer K v Fiji Revenue and Customs Authority [2013] FJTT 10; Action10.2013 (31 May 2013)

Background

[1] The Applicant Taxpayer has filed by way of Notice of Motion, an objection to tax claimed, on the basis that it disputed an Infringement Notice being issued against it, for an offence allegedly committed under Regulation 28(3) of the *Tax Administration (Electronic Fiscal Device) Regulations 2017* (“**the EFD Regulations**”). That is, for failing to install, implement and operate an electronic fiscal device for the business before the expiry of 31 October 2018. The Infringement Notice was

issued on 5 December 2018 and the Notice of Motion filed on 16 July 2019. The Applicant Taxpayer has made an application to this Tribunal for an extension of time in which the Notice of Motion can be considered, by virtue of the 30 day time limit that otherwise is imposed under Section 82 (2)(c) of the *Tax Administration Act* 2009. The Taxpayer asks that the Tribunal exercise its discretion to enlarge the time period, in accordance with Section 82(2) (d) of the *Tax Administration Act*.

Infringement Notices

[2] The overarching law that governs the scheme for issuing and contesting Infringement Notices is located at Sections 60B and 60C of the *Tax Administration Act* 2009. For the sake of convenience, these provisions are reproduced as follows:

[Section 60B] Infringement Notices

- (1) *Subject to this Subdivision, where a tax officer has reason to believe that a person has committed a prescribed offence, the tax officer may institute proceedings in respect of the alleged commission of the offence by issuing upon that person an infringement notice.*
- (2) *An infringement notice issued under subsection (1) must—*
 - a) name the person to whom the infringement notice is issued;*
 - b) specify the particulars of the offence;*
 - c) specify the fixed penalty that the person named on the infringement notice is required to pay; and*
 - d) specify any other information prescribed by regulations.*
- (3) *A fixed penalty payable under this Act or any regulations made under this Act is a debt due to the State that—*
 - a) is to be collected by the Fiji Revenue and Customs Service in the manner and form prescribed by regulations;*
 - b) following the collection of the fixed penalty under paragraph (a), is to be paid by the Fiji Revenue and Customs Service into the Consolidated Fund; and*
 - c) ceases to be due— i. at the time the fixed penalty is paid; or ii. on acquittal or conviction of the prescribed offence or on the determination of the proceedings by the court or tribunal in which the proceedings were instituted.*

[Section 60C] Regulations for Issuance of Infringement Notices

The Minister may make regulations prescribing matters that are required to be prescribed or are necessary or convenient to be prescribed for the issuance of infringement notices under this Subdivision, including—

- a) the offences for which infringement notices may be issued;*
- b) the fixed penalties for prescribed offences;*
- c) the manner, form and time frames for which infringement notices are to be issued;*
- d) the actions a person may undertake on receipt of an infringement notice; and*
- e) the penalties that a person to whom an infringement notice has been issued may be liable to.* 67

[3] Regulation 5(1) of the *Tax Administration (Infringement Notices) Regulations* 2018 (“the **Infringement Notices Regulations**”) provides that a tax officer may issue an Infringement Notice to a person alleged to have committed a fixed penalty offence. The definition of “fixed penalty offence” is located at Regulation 2 and defined to mean “a penalty prescribed in column 4 of Schedule 1”. It is hard to ascertain from that Schedule exactly what is meant by column 4, given that there appears to be six columns in the table within that location. In any event, applying a practical approach to such matters, within the table that has been provided in the case of fixed penalties to be issued for breaches of the EFD Regulations, an offence against Regulation 28(3)

would yield a maximum penalty of \$50,000.00. This must be the fourth column of penalties within the table of the Schedule.

Is An Infringement Notice a Reviewable Decision ?

[4] The Taxpayer has approached the Infringement Notice as if it was a reviewable decision of the Chief Executive and capable of being part of the scheme that is provided for within Section 82 of the *Tax Administration Act*. The definition of reviewable decision is given at Section 2 of that Act and in short, insofar as this matter is concerned, deals with an objection decision, that in turn is dealt with at Section 16. An objection decision must deal with a 'tax decision', again defined at Section 2 of the act to mean:

- (a) *a tax assessment, other than a self assessment; or*
- (b) *in relation to a tax law, a decision on any matter left to the discretion, judgment, direction, opinion, approval, consent, satisfaction, or determination of the CEO, other than such decision made in relation to the making of a tax assessment.*

[5] What the Taxpayer is wishing to argue, is that the Infringement Notice should be viewed as a tax decision, so as to render it subject to review for the purposes of Section 82 of the *Tax Administration Act 2009*. The Taxpayer also raises the question of whether the Infringement Notice has been properly issued and in this regard has referred the Tribunal to a decision of the Tax Court in the case of *Raviravi Investment Timber & Hardware Ltd v Fiji Revenue and Customs Service*¹ in which his Lordship Alfred J, has questioned the operation of Regulations 28(3) and (4) of the EFD Regulations. For present purposes, this Tribunal understands that the Infringement Notice has been issued in relation to the Taxpayer having committed a 'prescribed offence'. That is, an offence under the EFD Regulations for which a fixed penalty is prescribed by Regulations. This is not a proceeding commenced under Section 60 of the *Tax Administration Act 2009*, in which a person may be convicted of the same offence in accordance with Regulation 28 (4) of the EFD Regulations. The prescribed offence comes about, because it is identified as such by virtue of Regulation 5 and Schedule 1 to the Infringement Notices Regulations.

[6] The Infringement Notice has its own appeal mechanism that is prescribed by a more specific purpose law. That is, the notice can be disputed in a court in accordance with Regulation 6 of the Infringement Notices Regulations. Having regard to Section 60 of the *Tax Administration Act 2009*, that makes provision for the Magistrates Court to hear and determine any prosecution for an offence under a tax law, the Tribunal is of the view that on its face, this would be the appropriate court in which the Infringement Notice must be challenged. It would make no sense that the parliament establishes a discrete appeals regime for Infringement Notices so issued, only to have Taxpayers seeking to have them reviewed through a different mechanism that is Section 82 of that Act.

[7] Whilst the Tribunal was prepared to entertain arguments from the Taxpayer in relation to the extension of time cases that have previously been determined by this Tribunal², at the end of the day they are of no import, given that the principal issue of standing cannot be overcome. The Notice of Motion is dismissed on that basis.

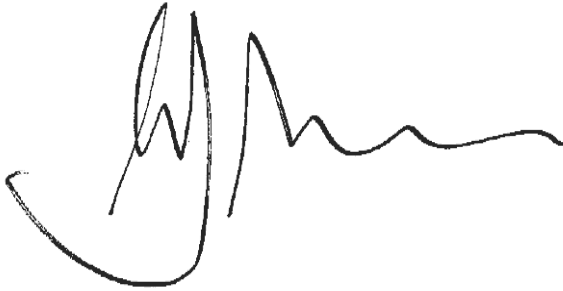
¹ [2019] FJHC 341; HBT01.2019 (15 April 2019)

² See for example, *Taxpayer K v Fiji Revenue and Customs Authority* [2013] FJTT 10; Action 10.2013 (31 May 2013)

Decision

[8] It is the decision of this Tribunal that:

- (i) The Notice of Motion is dismissed.
- (ii) Costs are summarily assessed in favour of the Respondent in the amount of \$1,500.00 to be paid within 21 days.



Mr Andrew J See
Resident Magistrate