

A GUIDE TO DISPUTES WITH INLAND REVENUE

It is said that in this world nothing can be said to be certain, except death and taxes. While we can't guarantee a painless death, we can certainly make a tax dispute a lot less painful.

When Inland Revenue start to investigate your tax affairs this can be stressful and time consuming. Below is a summary of the main stages of Inland Revenue investigations and disputes.

BURDEN OF PROOF

It is important to note that in all civil tax cases, the burden of proof rests with the taxpayer. This means that you cannot just say Inland Revenue is wrong, but you must prove they are wrong, by how much, and show what the correct amount is.

RISK REVIEW – BEFORE THE FORMALITIES

Inland Revenue often issue a 'Risk Review' letter to taxpayers before they commence an audit in order to further assess the risk of non-compliance. This is a great opportunity for you to assist Inland Revenue with their understanding of your affairs in order to minimise the risk of proceeding to audit or the formal dispute resolution process. Alternatively, this provides an opportunity for you to

'put things right' by way of voluntary disclosure to Inland Revenue. A voluntary disclosure at this stage enables you to advise Inland Revenue of anything that may not be correct, and you can benefit from a reduction of shortfall penalties of up to 100%.

AUDIT

Inland Revenue do not always issue a risk review letter first. In some instances the first you will know that Inland Revenue are looking into your tax affairs is a notification of audit letter. This is really serious. You should engage an experienced tax solicitor to assist you with this process as soon as possible. There is still an opportunity to provide a voluntary disclosure, however, the reduction in shortfall penalties is only 40% once you have been notified of an audit. The audit process can be stressful and time consuming. As with the risk review process, this is an opportunity to try and resolve Inland Revenue's concerns before it progresses to the formal dispute resolution process.

THE START OF A FORMAL DISPUTE – NOTICE OF PROPOSED ADJUSTMENT

If a taxpayer and Inland Revenue do not agree on a filed tax return, the party who does not agree must initiate the disputes process by sending a Notice of Proposed Adjustment (NOPA). Essentially, a NOPA must include the details of the amount the taxpayer or Inland Revenue wants adjusted and why the adjustment should be made. If the other side accepts the other's NOPA, then the dispute ends and a new tax assessment will be issued. If the other side disagrees with the NOPA,

then they must formally reject it and the disputes process continues. There are very strict timeframes on when a NOPA can be issued and how to object.

NOTICE OF RESPONSE

If the other side does not accept the NOPA and has rejected it correctly, then they must then send a Notice of Response (NOR). The NOR will provide the reasons for disagreement with the NOPA. If the other side accepts the NOR, then the dispute ends and a new assessment will be issued. If other side disagrees with the NOR, then the disputes process continues.

CONFERENCE

If by this stage no acceptable outcome for either side has been arranged, then the taxpayer and Inland Revenue may get together (in person or over the phone) to exchange relevant information and documents about the dispute in an effort to try to come to an agreement. The conference can be facilitated or not. A facilitator is a member of Inland Revenue which is not involved in the dispute. If an agreement is reached, then Inland Revenue will issue a new assessment to reflect that.

However, if both sides are still unable to reach an agreement, then the taxpayer has the option to pursue determination of the dispute at the Taxation Review Authority (TRA). Inland Revenue must agree this by sending a Challenge notice. If no agreement to determination of the dispute at the TRA is reached, then the disputes process continues.

STATEMENT OF POSITION

A Statement of position (SOP) from each side is then exchanged. Essentially, the SOP includes the facts, issues and evidence of each side's argument as well as any questions that need to be asked to resolve the dispute along with the reasons why each side believes their view is correct.

ADJUDICATION REPORT

The Disputes Review Unit (DRU) will then issue an adjudication report. The DRU are independent experts within Inland Revenue that will look at the dispute independently and will consider the facts, evidence, legal principles and issues raised by both sides in their SOPs. The DRU will reach a decision and then send a copy of the adjudication report to both sides.

If the DRU decides in the favour of the taxpayer, then Inland Revenue will issue a new assessment in line with the amounts the taxpayer proposed and the dispute ends there. Otherwise, if the DRU decides in favour of Inland Revenue, then the assessment or disputable decision stands. Note that, if the DRU decides in favour of Inland Revenue, then the taxpayer has the option to take their case to either the TRA or the High Court.

GETTING JUDGMENT - TAXATION REVIEW AUTHORITY

The TRA consists of a District Court Judge who deals with all taxation reviews. Taking a dispute to the TRA is usually a more attractive option than the High Court as the TRA is less formal, it usually costs less, matters are not open to the public, and names and particulars (such as addresses) are kept confidential.

The TRA has the power to hear cases on the papers. That allows the TRA to (if both sides agree) not hold a formal hearing in a courtroom and instead make a decision based on all the documentation that has been provided by both sides.

Alternatively, you are allowed to either present your case yourself, or a lawyer or an agent may present your case for you. Presenting your case at the TRA will include proving the assessment or disputable decision is wrong, why the assessment or disputable decision is wrong, and the amount by which the assessment or disputable decision is wrong.

WHY IS IT IMPORTANT TO INVOLVE SAUNDERS & CO?

As there is no requirement for you to use a lawyer during the disputes process, many people may be tempted to undertake the disputes process against Inland Revenue by themselves. However, involving a lawyer may save you a lot of time, effort, and in the end, money.

Here's why:

- The sooner you resolve an Inland Revenue dispute, the better. A well drafted response to an Inland Revenue risk review may save a long, drawn out disputes process.
- Filling in documents such as a NOPA or a SOP is complex. There are many statutory requirements which must be met or the NOPA will not be valid.
- Including the law in your NOPA and/or SOP strengthens your case. However, as tax law is notoriously difficult and constantly changing, we understand that you might need some help. We're the experts, and we're ready to help.
- We will guide you (and your accountant) seamlessly through every step of the process and ensure every deadline is met; from our initial meeting, to preparing your documents, to presenting your case in the TRA.
- We can work with your accountant and advisors to ensure you achieve the best possible result. We are often contacted by accountants and advisors looking for our specific experience. While this is common for us, it is not something most people deal with on a daily basis.

SUCCESS STORIES

Some of our team's successes include:

- Completing the voluntary disclosure process and ensuring no criminal prosecution for a client in a case involving multi millions of dollars in the retail industry. Then we successfully negotiated an instalment arrangement for payment of that tax.
- Taking over the running of a tax audit for a client in the services industry, and ensuring the correct amount of tax was paid (hundreds of thousands less than IRD had alleged) and then successfully negotiating the remission of penalties an instalment arrangement for payment of the tax.
- Undertaking the disputes resolution process to have IRD's DRU rule in the taxpayer's favour saving the taxpayer millions compared to IRD's assessment.
- Negotiating many remissions for interested and or penalties, along with instalment arrangements for payment for both individuals and businesses in most industries.



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Julia leads out tax team and has provided tax services to a wide range of businesses of various sizes, as well as individuals and other professional advisors. Julia has had over 10 years of tax advisory experience within a nationally recognised specialist tax advisory law firm, as well as with accounting firms including in the Big 4. In addition to tax, she has spent a couple of years working in a large corporate recovery team which provided her with additional commercial experience.

Julia prides herself in her ability to work with your current accountant/advisor when assisting with all tax work. While she can work independently, where you have an active advisor with background knowledge of your affairs it is Julia's preference to work with them during this process. A collaborative approach between advisor and tax specialist will often lead to a quicker and more favourable resolution. Of course, where you do not have an accountant or advisor, Julia is able to work independently, and can recommend a suitable accountant if the need arises.