

## IRD dispute procedures – update

This document updates our article "[Disputes, agreed adjustments and disputable decisions](#)" published in the March 2010 Institute of Chartered Accountants Journal – refer [www.owenstax.com/news/index.html](http://www.owenstax.com/news/index.html).

### Agreed adjustment forms

From time to time, Inland Revenue will attempt to persuade or cajole<sup>1</sup> taxpayers into signing an "agreed adjustment form".

My very strong recollection from my time as Tax Director at the Institute Of Chartered Accountants [1994 to 2004] was that this form was intended to document a situation where Inland Revenue and a taxpayer had **already** reached substantive agreement on an issue.

See for example a statement made by Inland Revenue in September 2001:

*In most instances, both the taxpayer and Inland Revenue will come to an agreement as to what adjustments are to be made to the return, thus avoiding the necessity to enter the disputes process.*

*As a result of this agreement, both the taxpayer and Inland Revenue sign an "agreed adjustment" form which lists the item and amounts that have been agreed upon as requiring adjustment.*

Refer QWBA "Shortfall penalties in respect of agreed adjustments (September 2001)

[www.ird.govt.nz/technical-tax/questions/questions-shortfall/qwba-penalties-shortfall.html](http://www.ird.govt.nz/technical-tax/questions/questions-shortfall/qwba-penalties-shortfall.html)

We repeatedly observe IRD using "agreed adjustment" forms in quite inappropriate circumstances:

- where there has been no agreement reached,
- where Inland Revenue is abundantly aware that the taxpayer does not agree with IRD's proposed position,
- telling a taxpayer that they "must" sign and return the form within a specified period
- IRD using such "acceptance" as the basis for issuing an assessment, and telling the taxpayer they don't have any appeal rights.

Beware of such behaviour.

We urge you to ensure that such a form is only signed when you are absolutely certain that you know what you are agreeing to, and to object when IRD misuses this process.

## Notice of disputable decision

Subsequently, or on other occasions IRD will avoid the cost and effort involved in preparing technical arguments sufficient for a NOPA, and instead issue an arbitrary assessment, call it a "notice of disputable decision" [NOD] and require the taxpayer to go to the expense of preparing a NOPA.

In effect, where a taxpayer disagrees with an IRD position, they must prepare a NOPA, whereas if IRD disagrees with the taxpayer's position, IRD can issue an arbitrary assessment, call it a NOD, and require the taxpayer to prepare a NOPA. The taxpayer incurs the cost in both situations.

We have raised this with the Commissioner and other senior IRD representatives, but IRD apparently sees no problem with its conduct.

Instead, IRD has reinforced its position that once Inland Revenue has issued a determination (and in our experience these are frequently poorly researched and often quite arbitrary) the only way to challenge is through the formal dispute process, in particular with a Notice Of Proposed Adjustment. We consider this attitude is arrogant and overbearing, imposes significant unnecessary costs on taxpayers, and in any case is incorrect under the relevant legislation.

This is surely breaching the principles of the care and management provisions of the Tax Administration Act.

Further, the underlying issue is not how a taxpayer needs to reply to a 'disputable position', but rather the poor quality of the 'disputable position' in the first place.

Examples include the issues outlined in our two previous newsletters – Tax Residence, and GST Change in Use adjustments, and many other issues.

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<sup>i</sup> **Cajole: Part of Speech:**      **verb**

Definition:      attempt to coax; flatter

Synonyms:      apple polish, argue into, banter, beguile, blandish, bootlick, brownnose, build up, butter up, con, crowd, deceive, decoy, delude, dupe, entice, entrap, get around, get next to, hand a line, induce, influence, inveigle, jolly, lay it on thick, lure, make up to, maneuver, massage, mislead, oil, play up to, push, rub the right way, seduce, snow\*, soap, soft-soap, soften, spread it on, stroke, suck up to, sweet-talk, sweeten up, tantalize, tempt, urge, wheedle, work on, work over

<http://thesaurus.com/browse/cajole>