



In dispute

Inland Revenue's disputes process costs taxpayers money and a chance for justice, warns JEFF OWENS.

It is inevitable that from time to time Inland Revenue and taxpayers will have different views on tax issues.

In response to widespread concern about the time and cost in resolving tax disputes, in October 1996 the Government introduced a new disputes regime. One of the stated purposes is to:

- Promote the prompt and efficient resolution of any dispute concerning a disputable decision by requiring the issues and evidence to be considered by the Commissioner and a disputant before the disputant commences proceedings [Section 89A (d) of the Tax Administration Act].

Unfortunately, in many ways that regime has increased rather than decreased those costs.

In a current review of the Disputes Regime, the NZ Institute of Chartered Accountants and NZ Law Society have said that some taxpayers with a legitimate dispute were "walking away part way through the process because they couldn't afford to carry on to the end" (reported in the Chartered Accountants *Journal*, February 2010).

In my experience one of the reasons is that Inland Revenue's actions undermine the process.

CURRENT DISPUTE PROCEDURE

Agreed adjustment forms: From time to time IR issues an "agreed adjustment form" which is intended to document a genuine agreement that has been reached between the taxpayer and IR. It is extremely common however for IR to issue such documents to try to "encourage" an agreement. Sometimes IR does so where there is clearly no agreement, obviously in an attempt to trick or bully the taxpayer into inadvertently agreeing.

Taxpayer NOPA: Where a taxpayer disagrees with a tax position – by way of self assessment or otherwise, the standard process is to issue a Notice of Proposed Adjustment (NOPA) within four months. This is generally a lengthy and complex document that can be expensive to prepare. If the IR disagrees they then have two months in which to issue a Notice of Response (NOR).

Taxpayer request under section 113: Outside of the four-month period a taxpayer can request that the Commissioner exercise his discretion to correct an assessment under section 113 but common experience is that IR is very reluctant to do so in the taxpayer's favour, invoking an IR fiction they call "regretted choice".

IR NOPA: If IR disagrees with the taxpayers' position then IR has up to four years after the year in which a return was filed before it is subject to the section 108 time-bar. Since it is IR that is objecting, it is IR that prepares the NOPA and the taxpayer that then responds.

These steps are clearly set out in IR's June 2008 standard practice statement: SPS 08/01 - Disputes resolution process commenced by the Commissioner of Inland Revenue – see www.ird.govt.nz.

TIMEFRAMES

The process imposes timeframes on taxpayers; in some cases on IR but somewhat longer, and in other cases no timeframe is imposed on IR.

This can lead to IR dragging disputes out and blowing out the cost to the taxpayer, including use of money charges. Unfortunately IR consistently rejects the concept of statutory timeframes on IR even though they impose timeframes on taxpayers.

DISPUTABLE DECISIONS

Another way in which the IR attempts to force the taxpayers hand and load the major cost on the taxpayer is to issue what it calls a "disputable decision", and tell the taxpayer that if they disagree then they must prepare and issue the NOPA in the prescribed time.

The result is:

- if the taxpayer disagrees with IR, taxpayer incurs the expense of a NOPA
- if the IR disagrees with the taxpayer, IR issues a disputable decision and forces the taxpayer to issue a NOPA – ie taxpayer does the NOPA both times.

In a recent example IR tried to extract \$800,000 from a taxpayer when only \$250,000 was legitimately payable under a voluntary disclosure. IR senior management acknowledged that both the excessive assessment and demands, and the attempt to "truncate" the disputes process (actually, force the cost of preparing a NOPA onto the taxpayer) were not appropriate.

We lodged a formal complaint to the Institute of Chartered Accountants and that matter is awaiting conclusion.

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Unfortunately IR staff continue to take this approach. We have received three such decisions alleging that taxpayers living and working overseas remain NZ resident (in one case after seven years), and other examples where IR "floats a boat" on an aggressive interpretation of law but forces the taxpayer to incur the cost of defending.

IR assurances seem to be meaningless.

In fact if IR does issue a disputable decision that is not an assessment, the taxpayer is [contrary to IR's assertion] not under any obligation to respond in a particular timeframe. However my view is that it is better to keep the dialogue moving in order to resolve the matter.

However if IR is using this process to inappropriately load the cost of disputes onto the taxpayer, I do urge you to write to the Commissioner and lodge a formal complaint.

We have raised this matter again with NZICA. ■

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Jeff Owens is Director of Owens Tax Advisors Ltd.