

## Income tax – Disputing an IRD assessment

Disputes sometimes arise because a taxpayer and Inland Revenue have not reached agreement on a tax position taken by a taxpayer. If no agreement can be reached on some or all of the issues identified, there will need to be a disputes resolution process.

### Disputes resolution process

The steps in the dispute resolution process are:

- ✦ Either party issues a notice of proposed adjustment (NOPA).
- ✦ If the dispute is less than \$15,000 and does not involve significant legal issues it can be resolved by small claims.
- ✦ The responding party will issue a notice of response (NOR).
- ✦ If the NOR is not accepted, a conference is called to discuss issues.
- ✦ If issues are still not resolved, a disclosure notice is issued.
- ✦ A SOP is then issued by each party and the matters are resolved in court.

### Notice of proposed adjustment (NOPA)

A NOPA is the first formal step in the disputes process. It can be issued by either party.

The purpose of a NOPA is to ensure that the party receiving the notice is aware of the arguments on which the other party is relying.

A NOPA must contain the following:

- ✦ The items to be adjusted;
- ✦ The tax laws on which the adjustments are based;
- ✦ An outline of the facts giving rise to the adjustments;

- ✦ The legal issues arising from the adjustments; and
- ✦ The propositions of law relied on or distinguished in the adjustments.

When Inland Revenue issues a NOPA, the taxpayer then has the opportunity to dispute these adjustments before the assessment is issued. The intention is that, in most cases, the dispute will be settled before the assessment is issued so that no further proceedings will be necessary.

### Acceptance

If the NOPA is accepted in writing, the disputes process ends and an amended assessment is issued.

If either party fails to respond to the NOPA within 2 months they are deemed to have accepted the NOPA, and an amended assessment is issued.

### Late response

If the taxpayer fails to respond to the NOPA the 2-month period, they may be able to obtain an extension of time to respond. They must prove there are exceptional circumstances are that beyond their control and provide reasonable justification for a late response.

### Small claims

If the dispute is less than \$15,000 and does not involve significant legal issues it can be resolved by small claims.

### Notice of response (NOR)

If either party do not accept any part of the NOPA, they must notify the other party by issuing a NOR within 2 months of the date of issue of the NOPA.

The NOR is the vehicle used by the recipient of the NOPA to formally reply to the proposed adjustment. It must specify:

- ✦ The items in the NOPA that are considered incorrect;
- ✦ The tax laws relied on;
- ✦ The facts in the NOPA that are considered incorrect;
- ✦ Any further facts relied on;
- ✦ Any additional legal issues that are considered to arise; and
- ✦ The propositions of law relied on regarding the response notice.

If the NOR is not accepted a conference can be called to discuss the NOPA.

## Conference

The purpose of the conference is to facilitate the resolution of any disputed facts and issues that have been raised in the NOPA.

At this stage the dispute can be resolved and an amended assessment issued.

## Disclosure notice

If the dispute is not resolved because the NOR is not accepted, Inland Revenue may issue a disclosure notice to the taxpayer. A disclosure notice may be issued at any time from the issue of a NOPA. The disclosure notice must include Inland Revenue's statement of position, and must also advise the taxpayer of the effect of the evidence exclusion rule.

A disclosure notice requires both Inland Revenue and the taxpayer to detail in writing their respective statements of position.

## Statement of position

A statement of position (SOP) is then issued by each party and the matters are resolved by adjudication or in court.

Each SOP must:

- ✦ Give an outline of the facts on which the party intends to rely;
- ✦ Give an outline of the evidence on which the party intends to rely;
- ✦ Give an outline of the issues that the party considers will arise; and
- ✦ Specify the propositions of law on which the party intends to rely.

## Inland Revenue starts dispute

If Inland Revenue starts the dispute, then Inland Revenue must issue a SOP at the same time that a disclosure notice is issued. The taxpayer must then file their own SOP within 2 months of the disclosure notice.

Inland Revenue may reply to the taxpayer's SOP by providing additional information. They must do this within the 2 months of the date of issue of the taxpayer's SOP.

## Taxpayer starts dispute

If the taxpayer starts the dispute, the taxpayer must issue a SOP within 2 months of the date of the disclosure notice. Inland Revenue have 2 months to prepare a SOP in reply to the taxpayer's SOP.

## Extension

The High Court may allow an extension if either party applies before the 2-month response period expires, and certain conditions are met.

Also, the parties may agree that either can add additional information to their statement of position at any time.

## See Us First

- ✦ To assist you in meeting the necessary legal or financial requirements.
- ✦ If you consider that any of the issues contained in this fact sheet may affect you.

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## Disclaimer

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