

Income tax – Tax investigations

It is common knowledge that Inland Revenue is increasing its reliance on auditing and investigating taxpayers' affairs, and is more aggressive in its demands for access to information. These are practical guidelines for use in most situations.

Information requests

Information requests will generally either be informal requests or formal demands.

Examples of informal requests are telephone calls or letters requesting information without putting the recipient under a legal obligation to provide information. Some letters will routinely cite the Tax Administration Act 1994.

Generally, requests for access to audit workpapers will only be made in exceptional circumstances, where inquiries are being conducted by the general audit units of Inland Revenue.

Information will be requested first from the taxpayer.

Inland Revenue will seek access to accounting and tax return workpapers containing information which supports the financial statements and/or the tax return.

Requests will be limited for access to advice workpapers in which an accountant gives advice to a client on tax or other matters, and all workpapers in support of that advice, including due diligence and prudential review workpapers and those prepared for litigation.

Access will be sought to the factual content of advice workpapers, but generally only after attempts have been made to obtain such information from the taxpayer.

Powers of Inland Revenue

The law gives Inland Revenue the power to require any person to furnish in writing any information and any books and documents which they consider relevant.

They may remove and retain any books or documents for as long as it is necessary for them to carry out a full and complete inspection of those books and documents. They can also make copies of any books or documents produced for inspection.

They are not allowed to retain the books or documents throughout the course of an investigation or otherwise beyond such time as is necessary for a full and complete inspection.

It is an offence for a person to refuse or fail to comply with any such demand. However, it is a defence if the person proves that they did not have relevant information, books, or documents in their knowledge, possession, or control.

The court may review the information to determine whether it is the subject of legal professional privilege.

The provision specifically overrides any enactment or rule of law requiring the taxpayer not to disclose information or to keep information secret, or not to perform an obligation. Compliance with such a request from Inland Revenue will not be held to be a breach of any such enactment or rule of law.

Inland Revenue can require written information, books, or documents to be produced to a particular Inland Revenue office.

Full and free access does not empower Inland Revenue to force entry, even with reasonable force. Access is only authorised to allow inspection of books or documents. It is probable that inspection cannot take place without the taxpayer being:

- ✦ Told with some precision what the Inland Revenue officer seeks to inspect; and

- ✦ Given time to determine whether anything which the officer seeks to inspect is or may be privileged.

It is only inspection that is allowed – not seizure. However, Inland Revenue is allowed to remove books or documents to make copies. Such copies are to be made, and the books or documents returned, as soon as practicable.

Copies certified by Inland Revenue will be admissible as evidence in court as if they were the originals.

The owner may inspect, and obtain copies of, books or documents removed by Inland Revenue.

Books or documents requested for inspection must be considered by Inland Revenue or an officer of the Inland Revenue to be:

- ✦ Necessary or relevant for the purposes of collecting any tax or duty;
- ✦ For the purpose of carrying out any other function lawfully conferred on the Commissioner; or
- ✦ Likely to provide information otherwise required for the purposes of the Revenue Acts.

There must be a reasonable basis for Inland Revenue determining that the documents may do any of the above.

Inland Revenue is not to enter a private dwelling except with the consent of an occupier, or under a warrant. Warrants:

- ✦ Can only be obtained from a judicial officer (being a judge, justice, or registrar of a District Court);
- ✦ Are valid for a period of 1 month from the date of issue or a lesser period, as the judicial officer considers appropriate;

- ✦ Must be in a prescribed form; and
- ✦ Must be produced when first entering the private dwelling and after entering whenever reasonably required to do so.

Solicitor-client privilege

One of the exceptions to Inland Revenue's powers to examine or seize documents relates to documents which are subject to solicitor-client privilege.

This privilege dates back to the 16th century. It protects the confidentiality of communications passing between a solicitor and their client by providing that such communications are not admissible as evidence in court, and may not be disclosed without the client's consent.

Although the law does not admit any accountant-client privilege, there may well be instances of communication passing between an individual and their accountants which qualify as privileged communications under solicitor-client privilege. An example is where the accountant, acting expressly as agent on behalf of a client, requests and receives a legal opinion on a particular matter. Also included would be copies of letters between a client and the client's solicitors which may be in the accountant's files.

Similarly, communications between accountants and their clients, where the accountant is acting as agent for a solicitor, are protected from disclosure by solicitor-client privilege, although this situation is likely to be a rare occurrence.

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.

Disclaimer

Important: This is not advice. Clients should not act solely on the basis of the material contained in this fact sheet. Items herein are general comments only and do not constitute or convey advice per se. Changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. We believe the contents to be true and accurate as at the date of writing but can give no assurances or warranty regarding the accuracy, currency or applicability of any of the contents. This fact sheet is made available to our clients as a helpful guide for their private information. Therefore it should be regarded as confidential and should not be made available to any person without our prior approval.