

# A GUIDE TO DISPUTES WITH INLAND REVENUE



There are two certainties in life: 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 it 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, you must prove they are wrong, by how much, and show what the correct amount is.

## **VOLUNTARY DISCLOSURE**

A voluntary disclosure is a legal process that allows taxpayers to declare past errors or omissions. A voluntary disclosure is beneficial in that it can lead to the full reduction of shortfall penalties in some cases. A voluntary disclosure must meet certain legal requirements, and should be discussed with your tax specialist as soon as possible as the reduction in penalties diminish if notification of an audit is received beforehand. This is a delicate process and must be managed accordingly.

## **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 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 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 if you have been notified of an audit but the audit has not commenced. However, the reduction in shortfall penalties is only 40% during this time. 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 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 the 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 who is not involved in the dispute. If an agreement is reached, then Inland Revenue will issue a new assessment to reflect that.

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 to this by sending a Challenge Notice. If the parties do not both agree to determine the dispute at the TRA, 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 as proposed by the taxpayer and the dispute ends there.

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 (if both sides agree) which allows the TRA to make a decision based on all the documentation that has been provided. 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 it is wrong, and the amount by which it 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 covering the issues we know Inland Revenue want to address 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 documents may 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 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 Inland Revenue had alleged) and then successfully negotiating the remission of penalties; and an instalment arrangement for payment.
- Undertaking the disputes resolution process to have the DRU rule in the taxpayer's favour saving the taxpayer millions compared to Inland Revenue's assessment.
- Negotiating instalment arrangements for the payment of tax after Inland Revenue had issued liquidation notices which allowed the taxpayer companies to continue to trade.
- Negotiating many remissions for interest and or penalties, along with instalment arrangements for payment for both individuals and businesses in most industries.
- Successfully negotiating a full remission of over \$140,000 of core tax, penalties and interest after the client had received liquidation proceedings from Inland Revenue.