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When you are in dispute with IRD...

"The Inland Revenue is not slow – and quite rightly – to take every advantage which is open to it under the taxing statutes And the taxpayer is, in like manner, entitled to be astute to prevent, so far as he honestly can, the depletion of his means by the Revenue." – Ayrshire Pullman Motor Services v. Inland Revenue Commissioners (1929) 14 T.C. 754 at page 763

In my experience, the Inland Revenue ("IRD") makes every effort to apply the tax laws fairly and correctly, but sometimes taxpayers, quite rightly, can disagree with how they have been assessed.

What many people do not realise is the IRD cannot simply amend the assessment of a taxpayer so as to increase the amount of tax to be paid before the statutory dispute resolution process is complete, except in limited circumstances. The process requires formal legal documents be exchanged between both the IRD and the taxpayer covering details of the adjustment in dispute, the relevant facts and evidence involved and the particular propositions of law relied on by each party. The process is complicated and time consuming and I cannot emphasise enough the importance of getting a tax lawyer involved in this process.

Either the IRD or a taxpayer can initiate a dispute by issuing a Notice of Proposed Adjustment ("NOPA") to amend a prior tax position. If the recipient disagrees with the NOPA, the recipient must issue a Notice of Response ("NOR") which also must cover propositions of law. When the IRD has issued a NOR in response to a taxpayer initiated

NOPA, the taxpayer must reject the IRD's NOR in writing to ensure the dispute process continues. It's like a ritual dance between the IRD and the taxpayer. Following the rejection of the proposed adjustment, a conference between the parties is usually scheduled to discuss the issues in more depth and potentially resolve the dispute or at least some of the issues. The taxpayer will be offered the opportunity to have a facilitated conference. If the dispute is not resolved, the IRD will issue a disclosure notice except in certain situations.

Where both parties maintain their positions they will be required to issue a Statement of Position ("SOP") setting out their final position on the issues. SOPs are extremely important. They must contain all of the facts, issues and legal arguments the party would want to rely on in any later tax challenge before the Courts.

With some limited exceptions, if facts, issues and arguments cannot be found in the SOPs from either party, they cannot be raised at a later stage in proceedings. This makes it very important to prepare these documents with legal input from a tax lawyer who will argue the case for you if it is not resolved.

If the matter remains unresolved, the IRD's practice is that generally all matters



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will be referred to an independent Disputes Review Unit within the IRD. In the event the Unit decides in favour of the taxpayer, the IRD has no right of appeal against the Unit's decision. However, where the Unit has found in favour of the IRD, a taxpayer has further rights in relation to the dispute. If they wish to continue the dispute they can do so by filing a challenge in the Taxation Review Authority or the High Court. For these reasons, it is very important to get a tax lawyer involved at the very early stages of any investigation.

Please note this is only an overview of the tax dispute resolution process and it is necessarily of a general nature and not intended to be a comprehensive statement of the law or practice and should not be relied upon as such.

IR Legal Limited provides legal advice on a range of tax matters and are able to assist law firms, accounting firms and taxpayers with any tax issues they might have. Ismail Rasheed worked for the IRD for over 16 years as a senior tax lawyer. Please contact him on (04) 566 1155.